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"LAW ENFORCEMENT AND ITS ROLE
IN THE FIGHT AGAINST DRUG TRAFFICKING"

REPORT ON PORTUGAL

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PART I

1 INTRODUCTION

1.1 General

Following the adoption of the Joint Action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

Portugal was the fifteenth Member State to be evaluated as part of the second round of mutual evaluations concerning law enforcement and its role in the fight against drug trafficking.

1.2 Persons involved in the evaluation

The examiners for the evaluation were Mrs André Clemang (Conseiller de Direction 1ère classe au Ministère de la Justice, Luxembourg), Mr Lionel Delaporte (Commissaire Principal de la police, OCRTIS, France) and Mr Norbert Steilen (Zolloberamtsrat, Zollkriminalamt, Germany). This team accompanied by two members of the General Secretariat and one member of the Commission visited Portugal for five days from 14 January 2002 to 19 January 2002.

1.3 Programme

The programme of the evaluation team is in Annex A. The list of the persons seen during the evaluation visit from whom information was received is in Annex B.

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1.4 Preparation of the report

Following these meetings, the evaluation team prepared this report, with the assistance of the Council Secretariat, based on the observations and conclusions of the experts in the team together with the answers to the questionnaire (12972/1/99 CRIMORG 171 REV 1) which the Portuguese authorities had provided. The principal purpose of this report is to evaluate the application and implementation at national level of instruments dealing with law enforcement and drug trafficking, of the resulting legislation and practices at national level and of international cooperation in the fight against drug trafficking. The evaluation seeks in particular to assess cooperation and coordination between different law enforcement structures and operational practices in them. The main focus of the evaluation is the practical day to day cooperation between different units both at national and international level.

1.5 Structure of the report

The report first describes the organisational structures, intelligence systems, special investigation techniques and methods of coordination and cooperation utilised in Portugal in the fight against drug trafficking. The report then evaluates the effectiveness of these systems and, finally, the experts draw conclusions and make recommendations.

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PART II

2 GENERAL INFORMATION AND STRUCTURES ¹

This chapter is aimed at describing the institutional and legal framework in Portugal that is employed in the fight against drug crime.

2.1 Government Structures

2.1.1 General Structures

Responsibility for any action directed against drug crime comes under the authority of different ministries, namely the Ministry of Justice, Ministry of the Interior and the Ministry of Finance.

Portugal has no dedicated body responsible for the coordination of repressive actions within the fight against drug trafficking. Instead of creating an autonomous body to coordinate the fight against drug trafficking, the Portuguese have opted to establish a coordination system amongst those authorities that are competent in the field of prevention and repression.

Within this system the Criminal Police (*Polícia Judiciária – PJ*) has been assigned the responsibility for coordinating the law enforcement effort to combat drugs crime ², while the Portuguese Institute of drugs and drug addiction (*Instituto Português da Droga e Toxicoddependência – IPDT*) is coordinating the strategy side of counteracting drugs.

2.1.2 Law enforcement coordination structure

Portugal has a three-level coordination structure for handling security issues. Level I, designed to take political and strategic decisions comprises the Ministers of Justice and Internal Affairs as well as the heads of the *PJ*, *GNR (Guarda Nacional Republicana)* and *PSP (Polícia de Segurança Pública)*. Should the necessity arise, the President of the Judges' Superior Council and the General Prosecutor would be called upon this structure.

¹ This part is mainly based on the answers of the Portuguese authorities to the questionnaire.

² Decree-Law No 81/95, of 22 April 1995.

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Level II is aimed at tackling general situations through a Coordination Council staffed by the heads of the three security forces *PJ*, *GNR* and *PSP*, that would act as operational contact points.

Level III deals with drug trafficking situations and the following units would be involved: Joint Coordination and Intervention Unit *UCIC Nacional*: 6 *UCICs* (*Norte, Centro, Lisboa, Sul, Madeira, Açores*) and the maritime authority *SAM*. These regional units have a twofold task and are working at two levels, firstly to review what has happened and to identify what has gone wrong and secondly as operational contact points.

2.1.3 *Drug policies and implementation*

2.1.3.1 *Institute for Drugs and Drug Addiction (IPDT)*

In 2000 the *Portuguese Institute for Drugs and Drug Addiction (Instituto Português da Droga e Toxicoddependência – IPDT)* was set up to rationalise resources that had previously been divided between two other bodies. *IPDT* constitutes a corporate body of public law with administrative and financial autonomy and is responsible for defining and promoting policies for the prevention of drug addiction. One of the objectives of the institute is to collect, process and publish data and information on the use of and illicit trafficking in drugs, in order to create a national information system on drugs and drug addiction.

Currently, *IPDT* has 302 staff throughout the country and a budget of € 1.5m.

One of its responsibilities is to maintain the Portuguese register on administrative penalties with regards to drug consumers who have been contravening the law.

2.1.3.2 *The IPDT's Follow-up Committee*

Within the *IPDT*, the Follow-up Committee is an interdepartmental technical committee that is headed by the chairman of the board of the *IPDT*. It exercises a multitude of functions in order to

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facilitate the coordinating of policies among the Portuguese players in the fight against drug trafficking and is manned by a whole range of Ministries and bodies that bear responsibilities in the field of repression and prevention.¹

The Follow-up Committee has a number of functions that are directed at harmonising efforts in Portugal. Apart from merging the individual policies of the different players into guidelines for all the services, it also has to make decisions on the *IPDT's* annual activity plan and report. It furthermore plays an important role in implementing fundamental guidelines for the national strategy against drugs by promoting their inclusion in the action programmes of public and private bodies with responsibilities in matters relating to the fight against drugs and drug addiction.

2.1.4 Drug Strategies

2.1.4.1 National Strategy in the Fight against Drugs

A comprehensive National Drugs Strategy² was ratified in April 1999. Its six general objectives cover both preventive and repressive lines of action, with the repression of illicit drug trafficking and money laundering being one of them.

2.1.4.2 National Action Plan in the Fight against Drugs and Drug Addiction – Horizon 2004

In March 2001 the *National Action Plan in the Fight against Drugs and Drug Addiction – Horizon 2004*³ was adopted; this plan follows the guidelines set in the EU Action Plan for Combating Drugs (2000-2004).

¹ Member of the Government responsible for the coordination of the drugs and drug addiction policy, Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Finance, Directorate-General of Staff of the Ministry of National Defence, Directorate-General of Customs and Special Taxes for Consumption of the Ministry of Finance, Directorate-General of Solidarity and Social Security of the Ministry of Labour and Solidarity, Directorate-General of Prison Services of the Ministry of Justice, Coordinating Commission of Promotion and Education for Health of the Ministry of Education, Drug Prevention and Treatment Service of the Ministry of Health, General Staff of the Armed Forces, National Institute for Sport, Security Intelligence Service, Public Safety Police, National Guard, Immigration Services, Institute for Employment and Professional Training, Institute for Social Development, Institute for Social Reintegration, Criminal Police, Portuguese Institute for Youth.

² Resolution of the Council of Ministers No 46/1999, of 26 May 1999.

³ Resolution of the Council of Ministers No 39/2001, of 9 April 2001.

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The *National Action Plan* focuses on two fields of action of special significance with regard to drug crime: (a) fight against illicit drug trafficking and money laundering and (b) international cooperation; in order to implement the objectives, the Portuguese authorities have introduced a comprehensive agenda of intervention plans and actions that they strive to develop.

Within the first field, (a), the plan aims at:

- essentially reducing the availability of drugs by increasing the quantity of confiscated drugs by 50% through a concerted effort of the law enforcement services,
- reducing drug-related crime by approximately 25%, by means of strengthening community policies on closer patrolling, increasing police visibility and the retrenchment of the respective phenomena,
- strengthening the fight against money laundering resulting from drug trafficking, through swift access to bank information as well as close cooperation with international agencies and police services abroad.

In order to fulfil the objectives, the National Action Plan has emphasised action in the following key areas:

- Increasing the fight against illicit drug trafficking via the high seas
- Increasing the fight against illicit drug trafficking as such
- Sheltering schools from drugs

The key objectives in international cooperation are:

- establishing and implementing a joint programme with Spain in order to control transnational circulation of drug dealers and drug consumers

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- intensifying the formal and informal mechanisms for international cooperation in the fight against drugs with all countries with which Portugal has cooperation agreements and particularly with the Community of Portuguese Speaking Countries (*Comunidade dos Países de Língua Portuguesa – CPLP*)

To implement the objectives for international cooperation, an ambitious agenda of contributing to various international fora has been set up.

2.2 Legal Bases, Regulating Guidelines and Strategies

2.2.1 Legal provisions with regard to drug trafficking

Portuguese current legislation on drugs ¹ is quite recent, dating back to 1993, and has since undergone several changes by various decrees and laws in order to respond to a changed situation.

The legislation itself provides for permanent adjustment to legislative and operational solutions required in order to fight drug trafficking effectively.

Punishment for drug trafficking is severe, with a maximum sentence for drug-related crime of up to 25 years, which is the longest term of imprisonment under Portuguese law.

Legislation introduced in 2000 ² has brought about a radical change to the way in which drug abuse is penalised by decriminalising consumers. While, depending on the type of drug ³, a drug consumer was, until recently, liable to be sentenced to between one month and three years, drug consumption is now being handled to a certain extent as an administrative offence.

¹ Decree-Law No 15/93 of 22 January 1993 and Regulatory Decree No 61/94 of 12 October 1994 determine the judicial regime applicable to trafficking and consumption of narcotic drugs and psychotropic substances.

² Law 30/2000 of 29 November 2000.

³ Portuguese law has six groups of drug tables.

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In this context, however, the Portuguese authorities have stated that a certain degree of legal flexibility remained. As the administrative treatment of drug consumption only applied if the defendant did not carry drugs in excess of ten daily doses, the benchmark set by the law leaves some room for interpretation.

2.2.2 Guidelines

The Portuguese authorities explained in their answers to the questionnaire that no specific guidelines had been established, either for the prosecution services or the police or customs.

In their view, differences resulting from the nature of intervention were usually based on a combination of two factors, organisational structure and the reality of crime, hence guidelines were not considered necessary.

2.2.3 Cooperation with other authorities and NGOs

All public and private entities are obliged to cooperate with the Criminal Police and other bodies when duly requested by law ¹. All persons and entities who guard, protect and secure persons, public and private assets and facilities are obliged to cooperate with the Criminal Police. Conversely, the Criminal Police have a duty to act accordingly when being approached from the outside ².

2.3 Competent authorities

2.3.1 Police

The police authorities assigned to the repression of drug trafficking are the Criminal Police (*Polícia Judiciária – PJ*), Public Safety Police (*Polícia de Segurança Pública – PSP*), and the National Guard (*Guarda Nacional Republicana – GNR*).

¹ This is laid down in Article 6 of Decree-Law No 275-A/2000, of 9 November 2000.

² Cf. 1, of Article 6 of Decree-Law No 275-A/2000.

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2.3.2 Criminal Police (*Polícia Judiciária – PJ*)

The Criminal Police (*PJ*) come under the responsibility of the Ministry of Justice, which can be traced back to the historical fact that this service dealt with judicial cooperation.

Its tasks are to assist the judicial authorities within the investigation and to develop and promote preventive and repressive action within its own competence or that entrusted by the competent authorities.

2.3.2.1 Competence

The *PJ* has specific competencies and assigned tasks concerning investigations into crime, which are:

- to investigate serious crimes, inter alia drug trafficking and organised crime or other crimes by specific order of the General Prosecutor;
- to ensure the liaising between branches and services of the Portuguese *PJ* and that of other public services with international organisations regarding police cooperation, Interpol and Europol in particular;
- to guarantee at national level the resources to centralise, process, analyse and disseminate (a) crime- related information, (b) technical-scientific expertise and (c) the specific training adequate for preventing and investigating crime.

2.3.2.2 Structure

The Criminal Police have a vertical structure headed by its National Directorate with headquarters located in Lisbon. Subordinate are four Regional Directorates (*serviços regionais*) with headquarters in Lisbon, Oporto, Coimbra and Faro. Finally, there are eight Criminal Investigation Departments (*Departamentos de Investigação Criminal*) in mainland Portugal as well as on the Madeira and Azores archipelagoes with their headquarters in the towns of Aveiro, Braga, Funchal, Guarda, Leiria, Ponta Delgada, Portimão and Setúbal.

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Operational services are divided into central divisions, directorates, central departments and criminal investigation departments while support services are composed of departments.

Regarding operational control between the different levels certain rules do apply: should a task fall within the jurisdiction of a Regional Directorate, coordination is carried out by the National Directorate's Central Division for the Investigation of Trafficking in Narcotic Drugs (*Direção Central de Investigação de Trafico de Estupefacientes – DCITE*), alongside the Regional Directorate concerned.

Should a task fall under the jurisdiction of a Criminal Investigation Department, coordination is by the *DCITE*, along with the Criminal Investigation Department concerned. In both cases the National Director is the upper end of the chain of command.

2.3.2.3 National Directorate of the Criminal Police (PJ)

Within the National Directorate certain branches and services have a particular role in counteracting drug trafficking, with the Central Division for the Investigation of Trafficking in Narcotic Drugs (*DCITE*) being the focal point for all national police action directed against drugs.

Apart from this Central Division, the National Directorate comprises several specialist units that are common to other centralised police bodies at a national level and have a supportive role.

2.3.2.4 Central Division for the Investigation of Trafficking in Narcotic Drugs (DCITE)

Within the National Directorate, the Central Division for the Investigation of Trafficking in Narcotic Drugs (*Direção Central de Investigação de Trafico de Estupefacientes – DCITE*) is responsible for nation-wide prevention, criminal investigation and assistance to the judicial authorities with regard to the following crimes:

- Illicit drug trafficking, whenever it is not a case of direct distribution to the consumer
- Illicit trafficking in precursors

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- Money laundering
- Abuse of professional power
- Criminal associations (which cover organised crime in Portugal).

The *DCITE* is headed by a deputy national director and has 140 staff of whom around 110 work on crime investigations.

In their answers to the questionnaire, the Portuguese authorities stated that, following a recent change in the law ¹, the organisational structure of the *DCITE* as it was encountered by the evaluation team was still in the project phase and was subject to analysis and subsequent approval by the National Director of the *PJ*.

Further tasks of the *DCITE* that relate to their operational and strategic role in tackling drugs comprise the following:

- Representing the Criminal Police in all matters related to crime within its competence, at national and international level;
- Coordinating the activity of the Joint Coordination and Intervention Units;
- Managing the information and documentation related to crime within its competence, namely:
 - to centralise, process, analyse and disseminate information pertaining to infractions regarding drugs;
 - to elaborate and disseminate statistical analyses;
 - to participate in the dissemination of relevant documentation and specialised studies;
- Developing international cooperation within the scope of its competence, namely:

¹ Organic Law of the Criminal Police issued in November 2000.

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- to guarantee communication with the National Directorate's Central Department for International Cooperation;
- to guarantee operational contact with the authorised liaison officers for drugs in Portugal;
- Participating in the elaboration and application of specialised training programmes related to crime within its competence;
- Carrying out the functions of a Financial Intelligence Unit.

It is noteworthy that one particular unit within the National Directorate is responsible for the custodianship and final destruction of the drugs seized.

The Regional Departments, Directorates and Criminal Investigation Departments, which perform the duties of the *DCITE*, have operational groups composed of approximately 100 employees from the criminal investigation field.

2.3.3 *Public Safety Police – (Policia de Segurança Pública – PSP)*

2.3.3.1 *Competencies of the PSP*

The Public Safety Police (*Policia de Segurança Pública – PSP*) have a general nation-wide competence¹ for crime prevention and repression. Its role in fighting drug trafficking is confined to fighting minor trafficking and direct distribution to the consumer at street level, as well as illegal consumption.

2.3.3.2 *Structure*

The *PSP* has two metropolitan commands in Lisbon and Oporto as well as two regional commands in the Madeira and Azores archipelagoes.

Under the metropolitan commands there are 16 police commands in mainland Portugal, namely in Aveiro, Beja, Braga, Bragança, Castelo Branco, Coimbra, Evora, Faro Guarda, Leiria, Portalegre, Santarem, Setubal, Viana do Castelo, Vila Real and Viseu.

Three parallel commands are established in the Azores at Ponta Delgada, Horta and Angra do Heroísmo.

¹ According to the law for organisation and functioning.

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Furthermore special units of the *PSP* can be drawn upon for special operations related to drug trafficking: the Special Operations Group (*Grupo de Operações Especiais – GOE*) and the Intervention Body (*Corpo de Intervenção – CI*).

2.3.3.3 *Anti-crime brigades (BAC)*

Within each of the commands and their respective sub-units, anti-crime brigades (*Brigadas Anti-Crime – BAC*) have been created under the aegis of a 1995 law ¹, which defined and conferred competence on the *PSP* and the National Guard (*Guarda Nacional Republicana – GNR*) in the fight against and investigation of crime related to drug trafficking.

2.3.4 *The National Guard (GNR)*

2.3.4.1 *Competence*

The National Guard's (*Guarda Nacional Republicana – GNR*) competence ² covers about 90% of Portuguese territory, with the exception of the urban areas. Its role in fighting drug trafficking is confined to fighting minor trafficking and direct distribution to the consumer ³ at street level, as well as illegal consumption.

2.3.4.2 *Structure*

At a national level, the *GNR* is divided into four large territorial units (brigades) which share the territorial competence among each other. The territorial units are subdivided into territorial detachments and territorial posts.

Criminal Investigations Nuclei (*Núcleos de Investigação Criminal – NIC*) with a varying composition are attached to the approximately 80 territorial detachments throughout the country. *NICs* were created to help the *GNR* fulfil its more streetlevel-oriented objectives.

An average of 400 staff is specially qualified for this task.

¹ Decree-Law No 81/95, of 22 April 1995.

² Decree-Law No 15/93, of 22 January 1993 in circumstances falling within Articles 21, 26, 29, 30, 32, 33 and 40.

³ Due to changes introduced by Decree-Law No 81/95, of 22 April 1995.

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2.3.4.3 Fiscal Brigade (BF)

Furthermore, the GNR's Fiscal Brigade (*Brigada Fiscal – BF*) is responsible for the surveillance and patrolling of the coastline. For this purpose it uses the LAOS (Long Arm Operational System) system that consists of 11 fixed and 10 mobile surveillance posts, as well as ocean-going patrol boats. The LAOS system and its radar chain are used to gather intelligence by means of air, sea and land reconnaissance that is forwarded to two operation rooms. Among other things, the LAOS system is used for the long-range detection and surveillance of potential smuggling targets at distances of up to 20 km from the coastline. Of the 5 000 staff, approximately 400 are assigned to this task.

2.3.5 Customs

The General Directorate for Customs and Special Taxes for Consumption (*Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo – DGAIEC*) is a department under the responsibility of the Ministry of Finance ¹ whose mission is to control the external Community border and the national customs territory for fiscal and economic purposes.

The DGAIEC has no competence to investigate drug trafficking. Under existing legislation, the customs authorities have to request the intervention of the police services and security forces for this purpose.

Customs authorities however play a decisive role in detecting drugs at international airports and ports through the inspection of cargo, luggage and passengers.

2.4 Prosecution services and judges

The prosecution services in Portugal are organised ² in a Central Department for Investigation and Prosecution (*Departamento Central de Investigação e Acção Penal – DCIAP*) and four Departments for Investigation and Prosecution (*Departamento de Investigação e Acção Penal – DIAP*), with headquarters in four judicial districts of the country. In other jurisdictions at local level (*Comarcas*), the magistrates of Public Prosecutor services, also have competence for investigation and prosecution of penal actions.

¹ Decree-Law No 360/99, of 16 September 1999.

² Under the terms of Articles 47 and 73 of the Public Prosecutor's Statute (Law No 143/99) of 31 August 1999.

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2.4.1 Prosecution services specifically competent in fighting drugs trafficking

The *DCIAP* is responsible at national level for coordinating investigations into certain crimes, trafficking in drugs and precursors being one of them. Cases related to the direct distribution of drugs to consumers as well as to organised crime groups involved in drug trafficking do not fall into this remit.

Furthermore, *DCIAP* is also competent to investigate cases of money laundering.

2.4.2 Coordination within the prosecution services

2.4.2.1 Competence of the *DCIAP*

Where a drug-related crime affects more than one district, the *DCIAP* has the authority to assume control of the investigation and carry out the prosecution.

In cases of serious crimes, where the nature and extent of the criminal activity justifies centralised control of the investigation, the power to take charge of an investigation would be conferred on the *DCIAP* by a decision from the Prosecutor General's Office.

2.4.2.2 Competence of *DIAPs*

At district level the *DIAPs* have competence to conduct an investigation and prosecute in cases of drug trafficking, including cases of direct distribution to the consumer or cases of organised drug crime.

The mechanisms governing the *DIAPs'* competence to coordinate cases within their jurisdictions is similar to that of the *DCIAP* in relation to the four *DIAPs*. Preceding the verdict from the district prosecutor-general they have competence to conduct an investigation and prosecute at district level.

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Investigations that have been conducted by the *DCIAP* fall within the competencies of the national courts. As soon as it has been established that criminal activities relate to different judicial districts, the Central Court for Criminal Investigation (*Tribunal Central de Investigação Criminal – TCIC*) will be in charge of the proceedings.

Prosecutors working at the *TCIC*, at the *DCIAP* and at the four District *DIAPs* do not have any special competence as compared to prosecutors that deal with other forms of crime. The specific nature of their action, however, arises from the particular requirements for investigating a certain type of crime.

Within the Lisbon and Oporto *DIAPs*, which have a larger volume of drug cases, specialised sections dealing with drugs cases as well as money laundering and criminal associations have been established.

2.5 Training

The Higher Education College for the Criminal Police and Criminal Sciences (*Instituto Superior da Polícia Judiciária e Ciências Criminais – ISPJCC*) plays a central role in providing specialised training on drug-related topics and also provides training for the staff of other law enforcement services.

2.5.1 Criminal Police

2.5.1.1 Initial training

All trainee police inspectors receive instruction in drug-related issues during their initial training. Furthermore, there are specialised courses provided for in the plan for continuous training.

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2.5.1.2 *Specialised drug courses*

A specialised course on investigation of illicit trafficking in narcotic drugs has a comprehensive curriculum covering the knowledge, skills and techniques required to detect and identify different types of drugs, identify operational forms and concealment techniques, illicit trafficking circuits and networks, drug consumption and national and international legislation.

In order to counter the rising consumption of synthetic drugs, a course has been established to focus on this issue and the dismantling of illegal laboratories.

2.5.1.3 *Financial crime and money laundering*

The College also provides regular courses on money laundering and financial crime. These courses aim at providing knowledge on the utilisation of the financial and banking system by organised crime, the process of money laundering, the legal perspective and criminal investigation within this area.

Training on these topics has benefited from the support of EUROPOL professional trainers.

2.5.1.4 *Joint training*

Within the scope of its responsibilities, the *ISPJCC* has offered training courses and seminars on detection of narcotic drugs for other law enforcement services.

As a result of the creation of the anti-crime brigades (*BAC*) and joint intervention and coordination mixed units, the College has provided specific training on drug prevention and investigations to elements of the *PSP* and the *GNR*.

Within this context many training courses have been held for the *BACs*. Each course consisted of 60 hours, providing participants with practical and legal knowledge to tackle drug crime, and has been held in collaboration with the *DCITE*.

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2.5.2 *Public Safety Police -PSP*

In addition to the specific training administered by the *ISPJCC*, the *PSP* has begun to conduct intensive courses on crime investigation since September 2001.

Fifteen training courses are planned at the *PSP's* Police School and each course is designed to handle 150 trainees. The courses are administered by internal professional trainers from the *PSP* who have received specific training at the *ISPJCC* in this area.

The courses will be divided into 4 areas: techniques for police intervention, crime investigation, criminal and judicial intelligence. The two latter areas are designed to cover subjects related to narcotic drugs, psychotropic substances, precursors and dismantling of illegal drug laboratories.

2.5.3 *National Guard (GNR)*

The National Guard School also provides drug-related training, namely concerning the identification of the main psychotropic substances and the tactics and techniques commonly used in trafficking.

2.6 **Monitoring**

Although Portugal has no specific monitoring procedures in place, newly introduced legislation, regulations, etc. are subject to evaluation after a certain time. Examples given include the evaluation to be conducted of the administrative penalty for drug consumers and the efficiency of the *DCITE* reorganisation.

The Institute for Drugs and Drug Addiction (*IPDT*), however, is responsible for assessment of the implementation of policies related to the fight against drugs and drug addiction, namely through its follow-up Committee.

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3 INTELLIGENCE

3.1 General

3.1.1 Organisation

Law enforcement information on drug trafficking is centralised and coordinated through *DCITE*, acting as the focal point for receiving, processing and disseminating information. This system is governed by a cooperation protocol signed by the heads of the three law enforcement services (*PJ*, *PSP*, *GNR*) in 1996.

All law enforcement services and the subordinate structures of the police are therefore obliged to transmit any information regarding known violations of the law, operations planned, documents and final reports to the *DCITE* or the regional directorates at Oporto, Coimbra and Faro.

As concerns drug intelligence flows, the *DCITE*'s Central Directorate for drugs Trafficking Investigation (*Secções Centrais de Investigação do Tráfico de Estupefacientes – SCITE*) and the Central Section for Criminal Investigation (*Secção Central de Informação Criminal – SCIC*) can be considered as national clearinghouse for all in- and outgoing intelligence.

These units are particularly responsible for registering, evaluating, collecting and filing all incoming intelligence and feeding it into the appropriate channels.

Intelligence may then further be used by the *SCITE* to

- Produce tactical and strategic analysis for further dissemination.
- Gather, process and disseminate statistical data, or
- Develop, in general, tasks within the scope of the Integrated System for Criminal Intelligence (*SIIC*);

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3.1.2 Difficulties obtaining data from the law enforcement services

The Portuguese police authorities reported that they had experienced no difficulties in obtaining data from each other's services as the rules laid down in the cooperation agreement provided for clear management of information exchange.

3.1.3 Sources

Law enforcement services in Portugal have access to a number of national and international databases.

3.1.3.1 Databases used by the police

- SIIC – Integrated System for Criminal Intelligence: The system is maintained by the *PJ*; it contains hard data, stemming from investigations and soft data taken from intelligence received on suspected illicit drug trafficking. The system contains all data obtained from investigations conducted by the *PJ* as well as by customs and law enforcement services which are competent in matters related to illicit trafficking in drugs.
- SPO – On-line Research System: *SPO* consists of a set of databases available to all abovementioned branches and has the following registers:
 - Filing processes: maintained by the *PJ* on all the investigations conducted within this branch of criminal police.
 - Search register: maintained by the *PJ* on data related to persons being sought as well as those who have appeared in investigations; the system contains hard data.
 - Custody register: maintained by the Directorate General of Prison Services of the Ministry of Justice; contains essential data on persons in custody as well as on former inmates.
 - National Register of stolen vehicles: maintained by the *PSP*.
- Register of weapons: maintained by the *PSP* contains the identification of persons who have registered weapons and descriptions of the latter.

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- Civil register: maintained by the Identification Services Division of the Ministry of Justice; contains data on all persons who are holders of national identity documents.
- Corporate body register: maintained by the Directorate-General of Registries and Notaries of the Ministry of Justice; contains data on registered companies, respective partners and activities, as well as data on individual workers.
- Vehicle register: maintained by the Directorate-General of Registries and Notaries of the Ministry of Justice; it contains data on the vehicles and their owners.

Access to the aforementioned databases takes place on-line and is based on agreement/protocols signed with managing entities.

3.1.3.2 Customs databases

The customs authorities derive their intelligence from international files for customs administrations, namely those from the World Customs Organisation (WCO) and *OLAF*. They also receive intelligence via the MARINFO system.

The central services receive the information and screen it for any intelligence related to drug trafficking. Any information bearing indications of drug-related intelligence would be immediately forwarded to the *PJ*.

3.1.4 Information exchange – domestic

The Portuguese authorities have reported no particular difficulties as regards the domestic exchange of data or the transfer of data from one law enforcement service to another. The fact that exchange operates smoothly was largely attributed to the principle of information centralisation, rendering any information exchange less complicated.

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The relevant legal limits are set by the terms of the Law for the protection of personal data, which is in line with applicable international instruments on data protection.

Therefore, sensitive data or data relative to persons suspected of illicit activities, criminal infractions, and decisions applying to sentences or safety measures, can only be kept by public services with specific competence laid down in their legal statutes. The Portuguese authorities have, however, not reported any obstruction that would arise from the application of this law.

3.1.5 *Information exchange – international*

3.1.5.1 *Legal bases*

The role of the Portuguese Criminal Police in safeguarding the link between Portuguese law enforcement services and international bodies for criminal police cooperation, such as Interpol and Europol, is an obligation defined in law ¹.

International information exchange is effected via the National Directorate's Central Department for International Cooperation, which, *inter alia*, acts as Portugal's national Interpol bureau and national Europol unit. It is responsible for a number of tasks pertaining to international information exchange.

The exchange of information is subject to judicial and professional secrecy norms, enshrined within the Procedural Penal Code, and, as regards the Criminal Police, in Decree-Law No 275-A/2000, of 9 November 2000.

3.1.5.2 *Directorate-General of Customs and Special Taxes for Consumption*

Customs information exchange is governed by the Naples Convention of 1967 and Council Regulation No 515/97, as well as by conventions and bilateral agreements.

¹ Cf. Article 5, Decree-Law No 275-A/2000, of 9 November 2000.

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3.1.6 Intelligence – use and impact

3.1.6.1 Criminal Police (PJ)

With regard to police investigations, strategic analysis work has been described by the Portuguese authorities as still being in an embryonic phase.

Yet, in an objective for the year 2000, the *PJ* was striving to develop the capacity to respond to and solve situations related to organised crime within the scope of the fight against drug trafficking. One of the points of the objective was to increase the plans for accumulating intelligence, e.g. by systematically collecting information on a larger complex of the drug trafficking phenomenon, for instance heroine.

Although this would still be produced using operational analysis methods, the objective already seemed to exceed mere support for specific investigations by providing a basis for command decisions and generating intelligence for launching new investigations.

Operational analysis, on the other hand, has been used to an ever-increasing extent during the last years and employed to support investigations, namely by identifying criminal networks, their members, their dimension and their structure and organisation.

According to the answers given in the questionnaire, these elements have proved a valuable contribution for the investigation teams, clarifying the investigation process, allowing for a more adequate and effective management as well as greater efficiency when employing the resources available.

The *DCITE* stated that the intelligence project 'Maritime Intelligence and Operations Coordination System' (*SOCMAR*) had been under development since December 2001 and would be finished within the next six months in order to deliver a risk analysis with respect to fishing boats.

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3.1.6.2 *Public Safety Police*

Strategic analysis within the *PSP* relies primarily on statistics. From the elaboration of statistical reports that are disseminated throughout the force, crime and delinquency trends can be assessed and the figures are used for strategic planning.

At operational level, data processing and analysis, in accordance with methods similar to those in the *PJ*, is performed by intelligence nuclei of the commands, resulting in analytical reports which are transmitted to all elements responsible for investigation and crime prevention.

3.1.6.3 *National Guard*

Strategic analysis is carried out at the large units, in the anti-crime brigades and at the General Command within the *GNR* and appears in the form of directives. The most important is the directive of the Commander-General for the entire Guard, in the course of which the directive of the commanders for their unit is developed.

Operational analysis within the cases investigated by the *GNR* benefits from a direct acquaintance with those involved and their "modus operandi", which is a result of the closeness of the *GNR* to the terrain.

3.1.6.4 *Directorate-General for Customs and for Special Taxes for Consumption (DGAIEC)*

The *DGAIEC's* division for anti-fraud services processes all information received through the Intelligence Division and elaborates the following categories of information:

- Operational information – obtained through analysis of the *FIPAS* database (*FICHAS de Informação para Acção*). In cases of high risk, information is transmitted to a multidisciplinary team.

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- Tactical information – alert warnings and risk profiles for the respective Customs offices.
- Strategic information – disseminated through Periodic Information Bulletins (*Boletins de Informação Periodica – BIP*)

Apart from the centralised intelligence capability, the Customs Directorate-General also has intelligence units that provide analysis at local level.

The *DGAIEC* has an Intelligence Division in which a specially created surveillance unit aims to prevent and detect illicit trafficking.

3.2 Financial Intelligence

The *DCITE's* money laundering investigation brigade (*Secção Central de Investigação do Branqueamento SCIB*) performs the function of the Portuguese Financial Intelligence unit. It is staffed by eight investigators and is exclusively dedicated to financial investigations. The *BIB* receives communication from those bodies that are obliged to report suspicious transactions in accordance with Portuguese anti-money laundering legislation.

3.3 Training in crime analysis

3.3.1 Criminal Police

The *PJ* is conducting a training course in operational analysis of criminal intelligence that is addressed to all investigating officers of the *PJ* who have operational analysis duties.

The course comprises 90 hours and in principle follows the curriculum of the Europol course on operational analysis

At the time of the visit, two international courses had already taken place in Portugal, co-financed by the Commission-funded OISIN programme, aiming at the exchange of experience within this field.

3.3.2 National Guard

Taking into account the new Law for Criminal Investigation, the appropriate departments within the *GNR* underwent a reorganisation as crime analysis teams were created at brigade and group level.

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The creation of internal courses is planned for *GNR* officers who will participate in integrated teams for crime analysis with the Criminal Police. In this connection, a cooperation protocol with a university has been signed in order to support analytical training.

3.3.3 *Public Safety Police*

In accordance with existing protocols between the *PSP* and other services, both national and foreign, *PSP* employees have received training in information analysis.

Officers attending the training course for Police Officers at the Higher Education College for Criminal Police and Criminal Sciences (*ISPJCC*) receive training in methods and tools for strategic, operational and statistical analysis.

4 SPECIAL INVESTIGATIVE TECHNIQUES

4.1 Legislation, Regulations and Procedures

Although no comprehensive law on special investigative techniques exists, the inventory of specific legislation on controlled deliveries and the use of undercover agents is quite recent.

From an operational point of view, the *DCITE's* Central Section for Special Techniques (*Secção Central de Técnicas Especiais – SCTE*) is responsible for the development of surveillance techniques and operations, as well as for supporting other units with its special expertise. The *DCITE* informed the evaluation team that it planned to launch a national unit for undercover operations by mid-2002.

4.2 Financial Investigations

4.2.1 *Procedural aspects*

As already mentioned in paragraph 4.1, the procedural instruments of the Portuguese legal system make no distinction between financial and ordinary investigations.

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Portuguese anti-money laundering legislation ¹ provides for preventive actions that take place even where no criminal charges have been brought. Financial investigations, namely those deriving from communications by the bank institutions, are carried out by the *DCITEs* Brigade for the Investigation of Laundering (*SCIB*).

Apart from those prevention actions, the financial investigations are carried out after suspecting the initiation of a formal inquiry, with the communication of a crime and with products of said crime.

Existing experts from within law enforcement units are entrusted with financial investigations (namely accounting experts from the *PJ*, the Technical Advisory Nucleus of the Prosecutor-General's Office) and if deemed necessary, external experts can be called upon.

When conducting a financial investigation related to drugs crime, the competent law enforcement services may ² request information on and the presentation of documents relating to assets, deposits or any other valuables belonging to individuals suspected of drug trafficking, deviation of precursors, money laundering or membership of a criminal group, with a possible view to forfeiture.

Shortly after the date of the evaluation mission, an important change in the procedure was to come into effect: until then the request had to be issued by the competent judicial authority and was presented to the Bank of Portugal when it concerned a bank, financial or similar institution. While these requests had been putting a burden on the Bank of Portugal since the introduction of the anti-money laundering legislation in 1993, a new law which became effective on 11 February 2002, will allow for direct contact between a requesting judge and the bank concerned. Relaying through the Bank of Portugal would then only be necessary if fragmented information prevented the judge identifying the appropriate financial institute.

¹ Decree-Law No 313/93 of 15 September 1993.

² Regulated by Article 60 of Decree-Law No 15/93 of 22 April 1993.

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4.2.2 *Services involved in financial investigations*

As a result of the aforementioned legislation, financial investigations are part of drug trafficking investigations or of any other crime related to drugs legislation. Therefore the same officials would conduct the complete investigation.

Specific technical support for financial aspects of an investigation is provided by the *DCITE's* Department for Financial Expertise (*Departamento de Perícia Financeira e Contabilística*)¹.

This scientifically and technically autonomous department offers support functions in the form of accounting, financial, economic and banking appraisals and legal opinions; furthermore, its role is to assist the judicial authorities by rendering technical assistance throughout the judicial process.

As already mentioned in paragraph 2.3.2.4 the *DCITE's* Central Section for Money Laundering Investigations (*SCIB - Secção Central de Investigação do Branqueamento*) exercises the functions of the Portuguese FIU, its investigators having received specific training for these tasks.

4.2.3 *Practical experience*

The Portuguese law enforcement authorities have not reported any difficulties in international cooperation, apart from those that result from incompatibility of legislation.

The Bank of Portugal, however, considered the processing of requests a burden and expects to benefit from the new legal procedures as described in paragraph 4.2.1.

4.2.4 *Exchange of fiscal information*

The exchange of information between fiscal authorities is carried out under the terms of the anti-money laundering legislation.

¹ Regulated by Article 42 of Decree-Law No 275-A/2000, of 9 November 2000.

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4.3 Controlled deliveries

4.3.1 Legal bases, Regulations, Requirements

Although the term "controlled delivery", is mostly used indiscriminately within EU law enforcement, the Portuguese authorities distinguish between "controlled" and "monitored" deliveries. While controlled deliveries imply the infiltration of an undercover agent, monitored deliveries are merely conducted under the surveillance of law enforcement. The legal regulations for monitored deliveries have recently been moved from the 1993 Law on drugs ¹ to the 2001 Law on controlled deliveries ². Hence, all crimes which would result in extradition would justify a monitored or controlled delivery.

Despite the change in legislation, the main arrangements relating controlled deliveries have remained unchanged, and the rules to be followed are laid down in the Europol Manual on Controlled Deliveries.

The Public Prosecutor's Office may authorise a controlled delivery across Portuguese territory, with the objective of identifying the largest possible number of participants involved in the trafficking and bringing them to trial.

In order for a controlled delivery to be authorised, certain prerequisites have to be fulfilled and the *PJ* may intervene if safety is at risk, if there is an unexpected change in itinerary or if any other circumstance arises which may render the seizure of substances and the arrest of the courier difficult. Non-compliance with its responsibilities by a destination or transit country may result in future requests being denied.

Other law enforcement services which receive requests for controlled deliveries, particularly customs authorities within the framework of international customs cooperation, are obliged to forward the requests immediately to the *PJ* for execution.

¹ Decree-Law No 15/93, of 22 April 1993 (cf. Article 61).

² Law No 104/2001, 25 August 2001.

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Substitution of drugs is possible, although a small quantity will have to remain in the delivery for purposes of evidence. The Portuguese authorities stated that any such procedure would be agreed on with the foreign authority.

Controlled delivery is also applicable to crimes related to money laundering and the laundering of other proceeds of trafficking in drugs and precursors ¹.

4.3.2 *Operational experiences*

As regards controlled deliveries, the Portuguese authorities have not reported any relevant issues pertaining to international cooperation in addition to those resulting from incompatibility of legislation.

In 2001, Portuguese law enforcement authorities handled nine incoming controlled deliveries (all cocaine) and one outgoing operation (cannabis).

The *PJ* is permanently on duty and stays in permanent contact with magistrates of the Public Prosecutor's Office (*Ministério Público – MP*) of the Lisbon District, which is responsible for authorising CDs. If the request is denied, the requesting party receives explanatory notification within 24 hours.

Under normal circumstances it would take approximately 2 hours for a surveillance team to be organised, in addition to transport time to the place where the operation begins.

The Portuguese law enforcement authorities reported that the usual procedure to coordinate CD would be by means of bilateral contact.

4.3.3 *Controlled money deliveries*

The Portuguese legal system can provide for controlled money deliveries under the same circumstances as a controlled delivery of narcotics.

¹ Cf. Article 20 of Decree-Law No 325/95 of 2 December 1995.

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4.3.4 *Cross-border drug transaction*

The Portuguese legal system can provide for cross-border drug transactions, also by means of substitution, under the same circumstances as a controlled delivery of narcotics.

4.4 **Interception of communications**

The Portuguese legislation¹ on the interception of telecommunications was last updated in 1998 and is applicable when investigating cases of drug trafficking. The legislation also extends to other forms of electronic communication.

According to the law, the police are authorised to listen to a communication in order to be able to react in situations where urgent action is required. However, neither the police nor the prosecutor is authorised to listen more attentively to the recordings, as a transcription of the communication will have to be presented to the judge immediately. It is up to him or her to decide what part of a communication will be used as evidence. According to the prosecution services, this procedure was cumbersome, as it deprived the police and prosecutor of the procedural importance of a certain piece of communication. Furthermore, immediate transcription was posing a problem to the services that had to provide it.

5 **COORDINATION AND COOPERATION**

5.1 **Cooperation at national level**

5.1.1 *Coordination between the law enforcement services*

Portugal has a very clear system of regulating the roles of the different law enforcement actors. The responsibilities of every law enforcement service as well as the coordination procedures are laid down in Decree-Law 81/95, of 22 April 1995 and the Cooperation Protocol drawn up on 7 October 1996. One of the key features of the Law is the establishment of the principle of information centralisation in the criminal police's *DCITE* that facilitates the processing of information and dissemination towards the appropriate agencies. Other features include assignment of specific responsibilities concerning investigations and prevention.

¹ Law 59/98, Articles 187 to 190 in particular.

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The duty to communicate stipulates that all branches of the criminal police, customs and security services that receive information on a crime are obliged to transmit it as quickly as possible to the public prosecutor's office and to the competent branches of the *PJ*.

5.1.2 *Multidisciplinary teams*

Although Portugal does not have any multidisciplinary teams as such, the Law has provided for the establishment of a coordination system through the creation of joint coordination and intervention units. These units comprising *PJ*, *GNR*, *PSP*, *DGAIEC* and the Immigration Services are coordinated by the *PJ* and are under its tactical and strategic command. Those units are responsible for directing and sharing information among each other as well as for coordinating operations that have to be executed jointly.

To tackle drug trafficking situations, seven units were created: the *UCIC* (*Unidades de Coordenação e Intervenção Conjunta*) - one at national level and six *UCICs* of regional scope – *UCIC/North*, *UCIC/Centre*, *UCIC/Lisbon*, *UCIC/South*, *UCIC/Madeira* and *UCIC/Azores*.

The regional *UCICs* are divided into two levels: assessment and decision level and operational informative level.

Within their remit, the following responsibilities have been assigned to all *UCICs*:

- To regulate and assess the centralisation and sharing of information coming from any force or service or resulting from processing by the National Unit for Drug Information of the *DCITE*,
- To decide, coordinate and assess actions which are to be jointly executed,
- To analyse and assess the situation concerning trafficking in and consumption of narcotic drugs and psychotropic substances.

Concerning the operational aspects of coordination, the Appendix to the 1996 Cooperation Protocol stipulates that both regional and national *UCICs* hold periodic meetings with all its members present and that bilateral or multilateral contacts have to be maintained between its members.

The assessment and decision level of the regional *UCICs* is obliged to have periodic meetings more frequently. The operational level of the regional *UCICs* is responsible for receiving, processing and disseminating the communications.

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5.1.3 Operational Cooperation

Several Protocols between the individual services further regulate forms of cooperation.

The *PJ* and the *DGAIEC* have signed an agreement protocol relating to surveillance equipment, which comprises the following forms of collaboration:

- Joint participation in control actions,
- Technical support rendered by the *PJ* pertaining to the assembling and dismantling of equipment, and
- Training, in the field of acquired knowledge relating to equipment.

The *GNR* have a cooperation protocol with the Fiscal Brigade and Customs (*DGAIEC*). Within this scope, periodic operations take place at national or regional level focusing on the prevention and repression of illicit trafficking. However, despite this protocol, *GNR* has no permanent detachment of sniffer dogs at Lisbon airport.

The Fiscal Brigade (*BF*) have a liaison officer at the *PJ*.

5.1.4 Prosecution services

The initial phase of the criminal investigation is directed by the Public Prosecutor. Therefore, the Departments for Investigation and Prosecution (*DIAPs*) at national level and the district *DIAPs* carry out operational coordination, depending on the areas in which the investigations occur.

The *PJ*, *DCITE* in particular, will assist the public prosecutor with its centralised organisation and helps at operational level to coordinate investigations which are conducted in various jurisdictions.

The Central Department for Investigation and Prosecution (*DCIAP*) has, at national level, the competence to carry out the criminal proceedings that succeed the Inquiry phase of procedure, and the Departments for Investigation and Prosecution (*DIAPs*) have the same competence at district level. At local level the Public Prosecutor has these same competence.

Since the end of 1999, the *DCIAP's* operational coordination is supported by mandatory information that has to be provided by all magistrates of the Public Prosecutor's Office, following an order issued by the Prosecutor-General. The public prosecutor is under an obligation to inform the *DCIAP* as soon as a serious crime is involved (thus comprising drug trafficking and money laundering).

Analysis of this information makes it possible to identify the cases in which coordination is necessary and render it effective.

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At present, communication is on paper; the Portuguese authorities, however stated that this would be changed to electronic communication in the near future, thus streamlining the process.

With regard to intervention by the examining magistrate, namely acts performed under his/her responsibility during the inquiry phase, such as telephone tapping and home searches, operational coordination is facilitated by two factors.

Firstly, as there is only one Central Court for Criminal Investigation (*Tribunal Central de Investigação Criminal – TCIC*) with a single magistrate exercising national competence in drug cases, coordination only has to take place between the former and the magistrate from the *DCIAP* who is in charge of the investigation.

Secondly, all magistrates with functions within the criminal proceedings can intervene in cases outside their territorial area of competence, whenever the investigation justifies it ¹.

Practically, this territorial extension of competence allows the same magistrate to intervene in the same investigation, even when various jurisdictions are involved.

5.1.5 Cooperation between prosecutor and law enforcement services

Under the terms of the Code of Criminal Procedure, the judicial inquiry is directed by the public prosecutor. The public prosecutors only have competence to carry out the Statement of Identity and Residence (cf. article 268º, al.b) of Portuguese Code of Criminal Procedure). All other coercive measures are carried out by a Judge (*Juiz de Instrução Criminal*).

All police services (*PJ, PSP, GNR*), apart from investigating crime within their spheres of competence, will assist the judicial authorities (magistrates and public prosecutors).

In January 2002, a coordination unit was established within the *DCIAP*, particularly in order to avoid any possible friction; the unit is staffed by prosecutors and police officers.

¹ According to Article 79(2) of the Organisation and Functioning Law of the Judicial Courts.

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As soon as the police has become aware of a crime, it will immediately notify the public prosecutor. Depending on the type of infringement (organised crime to the *PJ*, street-level dealings to *PSP* or *GNR*, etc.), he or she will then order the appropriate police services to start the investigation. In practice, the magistrates of the public prosecutor's office and the police can always be contacted by telephone or in person if the case is deemed urgent or of great importance. Urgent cases would involve issuing a search warrant or arrest warrants, requests for authorisation to tap a telephone or carry out controlled deliveries or operations with undercover agents.

Court districts with a sufficient number of magistrates, as well as medium to large urban centres have a staff on duty round the clock so that the police will always be able to obtain the necessary authorisations.

Within these court districts, telephone and personal contact between the public prosecutor and the police is frequent, facilitating a close and uncomplicated relationship, namely with the *DCITE*, the *PSP* and *GNR's* anti-crime brigades.

The experts were given the example of the district *DIAP* of Lisbon, where one section, staffed by five Prosecutors, is specialised in drug-related crimes; one of them would usually man a weekly overtime shift and the section has daily contacts with the *DCITE* and the *PSP's* anti-crime brigades.

5.2 Cooperation at international level

5.2.1 Bilateral and multilateral agreements

As regards international cooperation against drug trafficking, the Portuguese government has concluded a number of agreements of a bilateral or multilateral nature, which are :

- Agreement between the Portuguese Government and the Spanish Government on Cooperation related to the fight against Drugs, ratified on 27 January 1987;

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- Cooperation Agreement between the Portuguese Government and the Brazilian Government for the Decrease in Demand for, Fight against Production and Repression of Trafficking in Narcotic Drugs and Psychotropic Substances, ratified on 7 May 1991;
- Bilateral Cooperation Agreement between the Portuguese Republic and the Republic of Mozambique in the Fight against illicit trafficking in Narcotic drugs, ratified in Maputo on 13 April 1995;
- Bilateral Cooperation Agreement between the Portuguese Republic and the Republic of Angola in the Fight against illicit trafficking in narcotic drugs, ratified on 30 August 1995;
- Convention on Prevention of Improper Use of and Repression of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances between the Government of the Republic of Portugal and the Government of the Republic of Argentina, ratified on 21 July 1997;
- Agreement between the Republic of Portugal and the Republic of Cuba on Cooperation on Prevention of Improper Use of and Repression of Illicit trafficking in Narcotic Drugs and Psychotropic substances, ratified on 8 July 1998;
- Agreement between the Republic of Portugal and the Republic of Uruguay for the Prevention of Improper Use of and Repression of Illicit trafficking in Narcotic Drugs and Psychotropic substances and their precursors and essential chemical products, ratified on 20 July 1998;
- Agreement between the Republic of Portugal and the Government of Venezuela on Prevention, Control and Repression of Improper consumption of and Illicit Trafficking in Narcotic Drugs and Psychotropic substances);
- Cooperation Agreement between the integrated Governments of Portuguese speaking Countries on Decrease in Demand, prevention of improper use of and fight against production and illicit trafficking in narcotic drugs and psychotropic substances, ratified on 18 June 1997.

Furthermore, Portugal has signed bilateral agreements to facilitate the fight against money laundering with the FIUs of France, Spain, Belgium, Brazil, Colombia and Monaco. Further agreements are planned with Poland, Uruguay and Venezuela.

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5.2.2 *Joint teams*

The Portuguese law enforcement services have not concluded any agreements concerning the setting up of joint teams under Article 9, paragraph 1(c) of the 1988 UN Convention.

However, the team was informed by the Portuguese authorities that it was one of the primary objectives of the Portuguese drug strategy to establish and implement a joint programme with Spain to control transnational circulation of drug dealers and drug consumers.

5.3 **Information channels used**

According to the information received, the Portuguese policy was to use all existing channels for information exchange, including direct bilateral contacts. However, the most efficient channel would be chosen for any incoming information.

The Portuguese authorities pointed out that they therefore preferred direct channels for obtaining support information for operations from other investigation services or through liaison officers as, in general, they were dealing with situations in which the need for rapid information was fundamental.

Although it was stated that the Interpol channel was used to gather information in a more formal manner, for procedural purposes or in the absence of one of the abovementioned channels, about half of the requests that reached Portugal in 2001 came in via that channel.

Out of 539 requests sent outside Portugal in 2001, the majority were handled via the Interpol channel.

5.4 **Operational experiences**

The Portuguese authorities reported that they had experienced no particular difficulties when exchanging information with other law enforcement agencies abroad except those resulting from differences between the judicial systems of the countries involved.

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5.5 Information exchange via Europol

The cases where Europol is involved are usually those where either there is no permanent need for information or information needs to be more detailed and structured. Europol would also be asked for assistance in urgent cases where no bilateral contacts exist.

The Portuguese law enforcement services reported that in 2000 they received 107 requests for information on illicit drug trafficking and 16 on money laundering. They forwarded 58 requests for information on illicit drug trafficking and five on money laundering to Europol.

5.6 Drug Liaison Officers (DLOs)

5.6.1 Foreign DLOs posted in Portugal

At the time of the visit, liaison officers from Spain, Germany and the United Kingdom were stationed in Portugal, all of them at their respective embassies.

Various other EU Member States have liaison officers in Spain who also cover Portugal.

5.6.2 Portuguese DLOs posted abroad

In addition to the two liaison officers located at Europol and Interpol, Portugal posted liaison officers to Brazil and Cape Verde in May 2001 only.

These liaison officers belong to the *PJ* with special competence for investigation of illicit trafficking in narcotic drugs and international cooperation. They are at the disposal of all competent Portuguese departments.

In specific instances and until now they have been responsible for the countries to which they have been posted.

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The missions are answerable to the head of the *DCITE* – Central Division for the Investigation of Trafficking in Narcotics Drugs.

5.6.3 *Use and coordination of DLO information*

The Portuguese liaison officers report via the head of the *DCITE*, who then ensures the necessary coordination and dissemination of the information.

5.6.4 *Role of DLOs*

Portuguese DLOs are responsible for dealing with all crime-related areas, although their main objective would be drug trafficking.

As regards cases of crime other than drug-related crime, they report to the Deputy National Directors responsible for the respective offence.

Since only a short period had elapsed since the secondment of the DLOs, the Portuguese authorities were not in a position to assess the role of their liaison officers.

5.6.5 *Customs liaison officers*

Portugal has no customs liaison officers posted abroad.

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PART III

6 EVALUATION OF THE EFFECTIVENESS OF SYSTEMS IN PORTUGAL RELATING TO THE FIGHT AGAINST DRUG TRAFFICKING

6.1 Findings

6.1.1 General

During the course of their visit, the evaluation team was able to gain a global view of the Portuguese legal and law enforcement system that has been put into place to counteract drug trafficking at the central and local level. Furthermore, the experts were given the opportunity to get an extended view of the three main law enforcement services (*PJ*, *PSP* and *GNR*), as well as an insight into a few specialised law enforcement services that are bearing the everyday brunt of counteracting drugs crime. The picture was completed by a visit to the Portuguese Institute for Drugs and Drug Addiction (*IPDT*) as well as the Central Department for Investigation and Prosecution (*DCIAP*).

The evaluation team was convinced that the Portuguese law enforcement agencies visited are pursuing their tasks in a very professional, dedicated and organised manner.

The team was particularly struck by the enormous effort that was apparently invested in the constant realignment of legislation in all fields relating to the fight against drug trafficking. Nevertheless, taking into account Portugal's location on an EU external sea and air border that is liable to be penetrated by drug traffickers, they also found that there was still room for some improvement to technical capabilities in this field.

6.1.2 Adoption of international instruments

All questions asked by the experts during the evaluation related to some extent to various international instruments on cooperation between law enforcement authorities on a national and international level with regard to drug trafficking. Unless specifically commented upon within the report, the experts were assured that all actions concerning the following related instruments have been or are in the process of being adopted.

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- The Action Plan to combat Organised Crime of 28 April 1997
- The Joint Action of 14 October 1996
- The Joint Action of 29 November 1996
- The Council Resolution of 29 November 1996
- The Joint Action of 17 December 1996
- The Joint Action of 9 June 1997
- The Joint Action of 16 June 1997
- The Joint Action of 3 December 1998
- The United Nations Conventions of 1961, 1971 and 1988

6.1.3 Legislation: Swift legislative adaptation to changed environments

As already referred to in 6.1.1 above, the evaluation team was particularly impressed by the eagerness with which the Portuguese authorities were pursuing the realignment of legislation in the different fields relating to action against drug crime. Law 5/2002, which was published just before the visit of the evaluation team, for instance, brought about some major changes as regards combating money laundering (cf. 6.1.7).

6.1.4 Integrating the role of the Portuguese Institute for Drugs and Drug Addiction (IPDT)

The role of the Portuguese Institute for Drugs and Drug Addiction (IPDT) and its Follow-up Committee in defining objectives seems to be particularly noteworthy. By including all of the major players that have a say in the fight against drugs, it helps to shape the Portuguese anti-drug strategies and ensures that strategies are regularly adapted.

6.1.5 Legislation: Administrative sanctions for drug consumers

The new legislation on drugs, dating from 2000, introduced administrative penalties for offences of drug consumption. The law's objective was to redirect resources towards more important cases by relieving the courts of the bulk of cases involving drug consumption.

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A member of the Lisbon *DIAP*, however, declared that these cases only represented an estimated 10 to 15% of the workload at his office and that the new rule would not substantially relieve the burden on the prosecution service's shoulders.

The Portuguese authorities announced that the practice would be evaluated and that it was still too early to give an authoritative account.

6.1.6 Administrative penalties and their influence on proceedings

Following the new legislation, the Portuguese Institute for Drugs and Drug Addiction (*IPDT*) is the competent authority for maintaining the register of drug users. The experts noted with interest that even in the short period the new legislation had been in force, it had already had a considerable impact on the speed of proceedings: the average time lapse between the occurrence of an offence and the appearance of the defendant before the Commission was reduced to three days as compared to six months in the case of court proceedings.

The experts considered the results of the evaluation of this instrument to be of considerable interest for other EU Member States. Taking into account the findings under 6.1.4, the team would therefore advocate that the results be disseminated and that the data gathered be used for further scientific research.

6.1.7 Legislation: new legal rules on search warrants

The evaluators were informed that Portuguese legislation with respect to the execution of search warrants had been adapted to the needs of law enforcement. While, before the change in the law, it had been strictly forbidden to carry out a search outside daylight hours because of Portugal's pre-1974 history, this has now been constitutionally authorised in order to allow for searches between dusk and dawn.

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6.1.8 *Legislation: updating of Anti-Money Laundering provisions*

At the time of the evaluation mission, a new law ¹ strengthening the law enforcement authorities' position when investigating cases of money laundering had been published. Under the new law the public prosecutor can now order the disclosure of bank data either by issuing a specific or a general order, whereas before such an order had to be obtained from a judge. Under the new legislation, the requested party will have to observe certain deadlines for the provision of the requested information (five days for electronic documents, 30 days for written documents). Furthermore, bank accounts can be monitored, which obliges a bank to report within 24 hours any movements on an account that has been put under scrutiny. At least the law rules that an examining magistrate will not have to apply to the Bank of Portugal in order to obtain information from a particular bank or branch of a bank.

6.1.9 *Legislation: proceeds of crime*

The team was impressed by Portuguese legislation's provision on securing the proceeds of crime, which could in fact be considered as a reversal of the burden of proof. According to the legislation in force, proceeds of crime will generally be forfeited, although it is only possible to freeze them if a connection to the crime has been established. This involves an estimating procedure in which the public prosecutor (*MP*) will establish the wealth of a person before the trial has taken place and in which the legitimate income of the defendant will be deducted from the estimate. The experts found that the legislation could be of a certain interest to other EU Member States.

6.1.10 *Fiscal Brigade*

When visiting the operations room and a coastal radar station of the *GNR's* Fiscal Brigade (*BF*), the experts were impressed by the Brigade's professional approach to safeguarding the EU's-external sea border against drug traffickers. By using the LAOS system, the *BF* exercises long-range detection and surveillance of potential smuggling targets along mainland Portugal's 900 km coastline.

However, taking into account that Portugal is the southernmost outpost of the EU on the Atlantic, it appeared to the experts that the surveillance system needed updating, as the radar stations did not cover the entire coast and were not of recent design.

¹ Law 5/2002, published 11 January 2002.

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6.1.11 *Anti-crime brigades (BAC)*

From the presentations that were given during the visit the team found the anti-crime brigades (*BAC*) had achieved a high impact at street level and that the PSP had invested a lot in intensive training campaigns on drugs to have the force properly prepared for this task.

6.1.12 *Training*

As regards training, it was demonstrated that the Higher Education College for the Criminal Police and Criminal Sciences (*ISPJCC*) was providing joint training on certain subjects. Nevertheless, the experts would like to point out that it might be for the benefit of all the law enforcement services if they shared a greater proportion of training in order to avoid a duplication of effort.

Moreover, the team was surprised to learn from the Immigration Service (*SEF*) at Lisbon airport that they had received no drug-specific training at all. Considering that *SEF* are the first line of control, they would facilitate the work of the other services if they were able to profile the ID documents for any drug-trafficking-related risks.

6.1.13 *Intelligence: operational analysis*

From the information received the experts concluded that the Portuguese law enforcement authorities have been active in promoting training and application of operational analysis methods. They noted with satisfaction that particularly the *PSP* had devoted considerable resources to promotion and training in the field of operational analysis.

6.1.14 *Intelligence: strategic analysis*

From the information received, the experts concluded that strategic analysis within all the law enforcement services seemed to be in an embryonic stage and was partly confined to pure statistics. The *PJ's* policy of adopting bigger projects stemming from operational analysis which would help them acquire the necessary expertise is therefore strongly supported by the experts. They would nevertheless also suggest considering an in-depth approach to promoting methods and training in strategic analysis that could comprise all law enforcement services and that could be implemented by seeking cooperation on a bilateral or EU level.

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6.1.15 Intelligence: access to airline's databases

At Lisbon airport the team was told by customs representatives that no instruments were in place to allow for a regulated access to databases of airlines and freight companies, thus depriving the law enforcement services at the airport of a valuable tool for risk assessment. The experts therefore found it appropriate to suggest that negotiations be held in order to remedy this deficiency, as the current pre-manifest control in the cargo sector only allows for a very limited amount of information.

6.1.16 Special Investigative Techniques: controlled deliveries

The experts were surprised to learn that, despite Portugal's exposed position towards South America, only one controlled delivery had been carried out in 2001; they would therefore encourage the Portuguese authorities to consider a more frequent use of this instrument in appropriate cases, particularly in the light of the recently broadened legislation.

6.1.17 Special investigative techniques: interception of telecommunications

As the experts were told, only a judge could listen to recordings obtained from eavesdropping. Furthermore, the transcripts of the tapes would have to be drafted by the police and presented to the judge immediately, in line with the ruling of the constitutional code. The team found this practice rather cumbersome since it deprived the law enforcement services of a tactical advantage over any perpetrator. However, according to article 188, n° 2, of the of Portuguese Code of Criminal Procedure, in urgent cases when it is necessary to preserve evidences (for example, to locate and capture defendants) the police can listen, in real time, to recordings obtained from eavesdropping.

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6.1.18 *Coordination and cooperation: Lisbon airport*

Although it was difficult to assess in detail, the experts got the general impression that communication between departments within Lisbon airport left something to be desired. The group was surprised to hear that at present no *DCITE* officer is presently seconded to the airport and suggests that consideration be given to the permanent stationing of such an officer at the airport. Furthermore the team was surprised that no *GNR* sniffer dogs were stationed at the airport and that the customs authorities had no sniffer dogs of their own, a fact that stands in stark contrast to the risk of drug trafficking at an international airport. In this context the customs officials also stated that the use of sniffer dogs had not proven to be very effective.

Several times the experts were told that quality risk profiling was not possible due to lack of staff.

The role of the customs authorities vis-à-vis the other law enforcement authorities, at Lisbon airport in particular, appeared somewhat secondary: although they do not have a primary task in fighting drug trafficking, they are in the front line of detecting drugs. The experts had the impression that at Lisbon airport there was room for some improvement in staff and equipment to fulfil the role of first-line screeners and detect possible drug traffickers. In this respect they would also suggest considering joint training with police.

6.1.19 *Coordination and cooperation: joint teams with Spain*

Taking into account the findings of the drug strategy ¹ that Spain is seen as one of the major destinations of the drug trade that is crossing Portugal and given the similarity of the phenomenon in the two countries, the experts found it appropriate to consider the setting up of joint teams, should the necessity arise.

6.1.20 *Coordination and cooperation: drug liaison officers in Portuguese-speaking countries*

Considering the cultural affinity to Portugal of overseas Portuguese-speaking countries which are high risk in terms of drug trafficking and where Portugal has stationed DLOs, they appeared to be an example where pooling of DLOs, already discussed at EU level, could make sense.

¹ Cf. Portuguese Drug Strategy, para 15, p. 50.

6.2 Possible improvements

6.2.1 Fiscal Brigade (BF): update of the LAOS system

Although the BF's concept of coastal surveillance offers sufficient capabilities to detect and track drug trafficking in Portuguese coastal waters, the experts were of the opinion that they would benefit from a review of the technical installations. Not only are there gaps in the radar chain, but the technical surveillance equipment is not very recent and requires updating.

6.2.2 Training

The team considered it important to address two issues: one is to avoid a duplication of effort when providing drug-related training, a practice that has been partially observed by Portuguese law enforcement services. The other one is that those non-police departments that are entrusted with a front-line control duty at airports and harbours should be properly trained in order to be able to perform proper drug-profiling within their remit. The team therefore suggests offering such training to SEF and customs staff.

6.2.3 Intelligence: operational and strategic analysis

Although the experts only gained a partial view of the use of analytical methods, they concluded that some effort needs to be made to promote operational analysis in the law enforcement community.

They were particularly convinced that strategic analysis would require an in-depth approach. This could be promoted by a unit comprising all law enforcement services, which could be implemented by means of bilateral or EU cooperation.

6.2.4 Intelligence: formalised access for customs at Lisbon airport

For the customs authorities the possibility of gaining intelligence from existing information would increase tremendously if they had access to the databases of cargo operators, namely those in the South American air cargo business at Lisbon airport. In the absence of formalised agreements, the experts would therefore advocate negotiating such agreements with the appropriate companies, as this would facilitate a proper risk analysis. Furthermore it may be appropriate to include the criminal police in such agreements in order to regulate their access to the databases.

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6.2.5 *Special investigative techniques: controlled deliveries*

The main routes for smuggling drugs into Portugal were clearly described by the *DCITE* as from Morocco (hashish) and from Brazil (cocaine), suggesting the country had an open flank towards its sea borders. Portugal might therefore consider looking into the reasons why only a limited number of controlled deliveries have been carried out.

6.2.6 *Special investigative techniques: interception of telecommunications*

Considering the fact that during drug investigations a lot of intelligence can be drawn from eavesdropping operations, the experts believe it makes sense to review the current procedure, as it might deprive law enforcement authorities of a tactical advantage when using this instrument. Furthermore, they also suggested reconsidering the practice of immediate transcription as it seems to put some strain on the available resources.

6.2.7 *Cooperation and coordination: concerted approach of all services at the airport*

Although the services present at the airport seemed to fulfil their individual role in a satisfactory manner, the chain of control would benefit from a more concerted approach. The team had the impression that particularly those in the front line of control, customs and *SEF*, could improve their role in counteracting drug trafficking if they received appropriate training as regards profiling of drug trafficking.

6.2.8 *Cooperation and coordination: detachment of a police liaison officer to Lisbon airport*

The experts understood that the new Lisbon airport will have a permanent liaison officer from the *DCITE* seconded to the other services working on the spot. The experts concluded that it would facilitate cooperation to advance this secondment.

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6.2.9 *Cooperation and coordination: stationing of sniffer dogs at Lisbon airport*

Although the experts had received no direct reports of instances where the non-stationing of a sniffer dog had led to any operational difficulties, the permanent presence of sniffer dogs at Lisbon airport would make sense, as it is one of the main entry ports into Portugal and is at high risk of being used by drug traffickers. Apart from that, sniffer dogs will always have a deterrent effect. If the effectiveness of sniffer dogs provided by the *GNR* has been low, customs might benefit if they had their own sniffer dogs, particularly as experience in other EU Member States has shown that they are a very efficient means for detecting drugs.

6.2.10 *Cooperation and coordination: joint investigation teams with Spain*

With a view to tackling the problem of drugs reaching Portugal via the land border with Spain, the experts considered it to be of an advantage to establish joint investigation teams with Spain in the near future as they might help to overcome any procedural and practical problems that occur during cross-border investigations.

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7 RECOMMENDATIONS TO PORTUGAL, AND, WHERE APPLICABLE, TO OTHER MEMBER STATES OF THE EUROPEAN UNION

The evaluation team found it appropriate to make a number of suggestions for the attention of Portuguese authorities. This should not detract from the fact that Portugal has a justly deserved reputation for adopting an integrated policy with regard to drug trafficking that allows a flexible response by employing deterrence, prevention and help. It appeared to the evaluation team that cooperation in general terms works well between the different players and that all practitioners are highly motivated and dedicated to their tasks.

The experts would like to summarise their suggestions in the form of the following recommendations:

to Portugal:

- Should look into a re-assessment of its coastal surveillance system (LAOS) in terms of coverage and technical standard (cf. 6.1.10 and 6.2.1)
- Should consider, wherever appropriate, joint training efforts on drug trafficking-related subjects (cf. 6.1.12 and 6.2.2)
- Should provide the non-police front-line services at international air- and seaports with appropriate training concerning the profiling of drug traffickers (cf. 6.1.12 and 6.2.2)
- Should consider further promoting the use and training of analytical methods (cf. 6.1.14, 6.2.3 and 6.2.7)
- Should consider an in-depth approach to promoting methods and training in strategic analysis (cf. 6.1.14 and 6.2.3)
- Should look into the reasons for the infrequent use of controlled deliveries (cf. 6.1.16 and 6.2.5)

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- Should review the procedures linked with eavesdropping that might create an operational disadvantage for law enforcement (cf. 6.1.17 and 6.2.6)
- Should consider early secondment of a police liaison officer to Lisbon airport (cf. 6.1.18 and 6.2.8)
- Should assess whether formalised access to the airlines' and freight companies' databases could be facilitated (cf. 6.1.15 and 6.2.4)
- Should consider to equip customs with their own sniffer dogs at Lisbon airport (cf. 6.1.18 and 6.2.9)
- Should consider an early introduction of joint investigation teams with Spain (cf. 6.1.19 and 6.2.10)

to other European Union Member States:

- Should study the Portuguese system of administrative penalties for drug users and its effects on the efficiency of jurisdiction (cf. 6.1.5 and 6.1.6)
- Should study the recently introduced new Portuguese legislation that has updated the provisions against money laundering and on asset forfeiture (6.1.8).

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ANNEX A

Visiting Programme

13/01/2002 Official dinner offered by the Bureau for International Relations of the Portuguese Ministry of Justice at 20h30			
Date	Institution	Location	Time
14/01/2002	Formal reception at the Ministry of Justice <i>(Lunch)</i>	Lisbon	10h00
	Central Division for the Investigation of Trafficking in Narcotic Drugs	Lisbon	15h00
15/01/2002	Public Safety Police <i>(Lunch)</i>	Queluz	9h30
	National Guard	Fonte da Telha	15h00
16/01/2002	Central Department for Investigation and Prosecution <i>(Lunch)</i>	Lisbon	10h00
	Department for Investigation and Prosecution	Lisbon	15h00
17/01/2002	Portuguese Institute for Drugs and Drug Addiction <i>(Lunch)</i>	Lisbon	10h00
	General Directorate for Customs and Special Taxes for Consumption / Immigration Services	Lisbon (airport)	14h30/15h00

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18/01/2002	Bank of Portugal/ Central Division for the Investigation of Trafficking in Narcotic Drugs	Lisbon	9h00-10h00 10h00-12h00
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ANNEX B

List of Acronyms, Abbreviations and Terms

ACRONYM ABBREVIATION TERM	ORIGINAL PORTUGUESE	ENGLISH TRANSLATION OR EXPLANATION
BAC	<i>Brigadas Anti-Crime</i>	Anti-Crime Brigades
BF	<i>Brigada Fiscal</i>	Fiscal Brigade
BIB	<i>Brigada de Investigação do Branqueamento</i>	Brigade for the Investigation on Laundering
CI	<i>Corpo de Intervenção</i>	Intervention Body
CPLP	<i>Comunidade dos Países de Língua Portuguesa</i>	Community of Portuguese Speaking Countries
CSP	<i>Corpo de segurança pessoal</i>	Personal Safety Body
DCIAP	<i>Departamento Central de Investigação e Acção Penal</i>	Central Department for Investigation and Prosecution
DCITE	<i>Secção Central de Investigação do Branqueamento SCIB</i>	Central Department of Money Laundering Investigation
DGAIEC	<i>Direcção-Geral das Alfândegas e dos Impostos Especiais sobre o Consumo</i>	General Directorate for Customs and Special Taxes for Consumption
DIAP	<i>Departamento de Investigação e Acção Penal</i>	Departments for Investigation and Prosecution
EPP	<i>Escola Prática de Polícia</i>	Police School
FIPAS	<i>Fichas de – Informação para Acção</i>	Information Sheets for Action
GNR	<i>Guarda Nacional Republicana</i>	National Guard
GOE	<i>Grupo de Operações Especiais</i>	Special Operations Group
IPDT	<i>Instituto Português da Droga e Toxicoddependência</i>	Portuguese Institute for Drugs and Drug Addiction
ISCPSI	<i>Instituto Superior de Ciências Policiais e de Segurança Interna</i>	Police Sciences and Internal Security

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ACRONYM ABBREVIATION TERM	ORIGINAL PORTUGUESE	ENGLISH TRANSLATION OR EXPLANATION
ISPJCC	<i>Instituto Superior da Polícia Judiciária e Ciências Criminais</i>	Higher Education College for the Criminal Police and Criminal Sciences
NIC	<i>Núcleos de Investigação Criminal</i>	Criminal Investigation Nuclei
MP	<i>Ministério Público</i>	Public prosecutor
PJ	<i>Polícia Judiciária</i>	Criminal Police
PSP	<i>Polícia de Segurança Pública</i>	Public Safety Police
SCIB	<i>Secção Central de Investigação de Branqueamento</i>	Central Department of Money Laundering Investigations
SCIC	<i>Secção Central de Informação Criminal</i>	Central Section for Criminal Investigation
SCITE	<i>Secções Centrais de Investigação do Tráfico de Estupefacientes</i>	Central Directorate for drugs Trafficking Investigation
SCTE	<i>Secção Central de Técnicas Especiais</i>	Central Section for Special Techniques
SPO	<i>Sistema de Pesquisas On-Line</i>	On-line Research System
TCIC	<i>Tribunal Central de Investigação Criminal</i>	Central Court for Criminal Investigation
TCIC	<i>Tribunal Central de Investigação Crimina</i>	Central Court for Criminal Investigation
UCIC	<i>Unidades de Coordenação e Intervenção Conjunta</i>	Joint Coordination and Intervention Unit