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ANNEX

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NOTE

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to: Working Party on Terrorism

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Report the evaluation of Portugal 18–19 September 2003

Evaluation of Portugal, 18-19 September 2003

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1. Terrorist Situation

1.1 Introduction

For the time being there is no apparent terrorist activity in Portugal.

1.2 National Terrorism

- After the 1974 revolution, the only significant terrorist group, the Popular Forces of the 25th of April (Forças Populares do 25 Abril--FP25)¹ carried out a number of attacks between 1980 and 1986. Effective counterterrorism measures and the absence of public support curtailed the ability of FP-25 to sustain its campaign of violent operations against the Portuguese government and Western or NATO missions in Portugal².

Between 1980 and 1984, FP-25 actions mostly involved assassinations³, bombings, and bank robberies. FP-25's ability to wage its terrorist campaign was curtailed by the arrest of a large number of its adherents in June 1984, including Otelo Saraiva de Carvalho, who had become a popular hero in Portugal due to his key role in the Revolution of 1974. As of early 1992, Carvalho was free on a conditional basis, and the issue of a general amnesty for members of FP-25 had aroused wide public interest.

- Other obscure radical groups claimed responsibility for subsequent minor bombing attacks, but such acts of terrorism abated in 1987.

¹ FP-25 claimed to be a workers' organization dedicated to a struggle against exploitation, misery, and repression. Its goals were to defeat "imperialism," to lead a "workers' assault on bourgeois power," and to achieve the violent overthrow of the Portuguese government.

² Mortars were fired at the compound of the Embassy of the United States, at NATO's IBERLANT headquarters, and at NATO ships anchored in Lisbon harbour. Bombs destroyed a number of cars owned by West German air force personnel.

³ Many also believe that FP-25 was responsible for the assassination of Sá Carneiro in 1980, although little evidence has been produced to support this. The principal leaders of FP-25, which includes Otelo Saraiva do Carvalho, who was responsible for planning and leading the 1974 revolution, have all spent time in jail because of their involvement. They have since been released by Presidential pardon, then re-tried, most recently in 2000, when it was decided that there was insufficient evidence against the accused to warrant their re-imprisonment. They have been unsuccessful in obtaining immunity from prosecution.

- Separatist independence movements have long existed in the Azores and Madeira archipelagoes. The main group, the Azorean Liberation Front, has been responsible for many demonstrations but has not been associated with clandestine activities and violence. A newer group, the Azorean Nationalist Movement, was regarded as illegal because Portuguese law prohibited any association advocating the independence of the Azores. The existing system of autonomy recognized by the constitution of 1976 and subsequent legislation have endowed the regional governments with considerable rights and greatly reduced the appeal of the separatist movements.

- In addition, it has to be noted that in February 2004, the Lisbon's Court of Appeals approved the extradition of one of India's most wanted men, suspected in a wave of bombings⁴. Abu Salem was arrested by the Portuguese police in September 2002 and convicted on false document charges.

I.3 International Terrorism

Authorities did not note terrorist activities as such and international terrorism including in particular terrorist activities related to Islamic extremists apparently had no impact in Portugal. However, this does not mean that there is no underground activity that could be related to terrorism e.g. in the areas of false documents and financing of terrorism. **NOT DECLASSIFIED**

⁴ He faces charges stemming from 1993 bombings that killed 260 people in Bombay. According to Indian authorities, Salem was a key associate of Indian criminal figure Dawood Ibrahim. They accuse Ibrahim of planning and paying for the Bombay attacks in retaliation for religious riots triggered by the destruction of a mosque in 1992. Salem is suspected of murdering a music magnate and also has been accused of extorting money from people working in India's film industry.

From this point of view and in the wake of March terrorist attacks in Madrid, the Portuguese authorities that are preparing security measures related to UEFA EURO 2004 have in particular stepped up co-operation with Spain on security issues⁵. As said by the Minister responsible, it is needed to learn from the Madrid events. Authorities will pay an extreme attention to the risk of terrorism during Euro 2004 and will not only focus on hooliganism. While Portuguese officials have repeatedly stressed that there is no specific terrorist threat against Portugal they have nonetheless bolstered their security plans for the football finals since the Madrid attacks. In terms of security measures, the government is planning to temporarily reintroduce passport controls along Portugal's border during the football finals⁶. Authorities have also asked NATO for radar surveillance planes and logistical aid to help bolster security⁷.

From an international perspective, Portugal is an active member of fora dealing with terrorism including for instance the EU and OSCE...⁸ and obviously the UN.

2. Structure of Authorities

2.1 General structure

The starting point of the « new Portugal »⁹ is the « Carnation Revolution », which was planned and executed by a group of young Army officers.

⁵ The evaluation team met with Portuguese police forces, intelligence agencies and Justice before the bomb attacks in Madrid and the assessment of security measures related to football Euro 2004 was out of the scope of evaluation.

⁶ The security of the European Football Championships in Portugal was also on the agenda of the CPTF under the Irish Presidency (March 2004).

⁷ It has to be mentioned that Portugal is member of the coalition in Irak and deployed military forces.

⁸ It has to be noted that transnational organised crime, drug trafficking, money laundering and massive destruction arms trafficking are considered as « strategic threats » and obvious dangers. **NOT DECLASSIFIED**

⁹ Mario Soares in the UN.

The « Carnation Revolution » brought an end to an era - a dictatorship of 48 years modelled on fascism. Days of April 1974 remain vividly alive in the collective memory of the nation. Quickly said, in April 1974, Portugal opened its modern era based on democracy¹⁰.

Portugal is currently governed under the constitution of 1976 that took the opposite course to the previous political regime and its abuses¹¹.

The Constitution provides for a democratic, parliamentary system with political parties, elections, a parliament, and a Prime Minister. It also establishes an independent judiciary and lists a number of human rights. The final innovative feature of the Constitution was that it provides for a system of government that is both presidential and parliamentarian. This means two centers of power in order to avoid both the dangers of an excessively strong executive, as was the case during the Salazar period, and the weaknesses of parliamentary instability, as was the case in the First Republic¹².

The 1982 amendments were as follows: abolishment of the Council of the Revolution, controlled by the military, which was replaced with two consultative bodies (the Higher Council of National Defense, limited to commenting on military matters and the Council of State¹³), creation of a Constitutional Court to assess the constitutionality of legislation. Another important change reduced the president's power by restricting presidential ability to dismiss the government, dissolve parliament, or veto legislation. The constitution was amended again in 1989 (with consequences in the economic and financial areas) while governmental structures remained unchanged. The Fifth Constitutional revision took place in 2001.

¹⁰ Preamble of the Constitution: « The liberation of Portugal from dictatorship, oppression and colonialism represented a revolutionary change and an historic new beginning in Portuguese society ».

¹¹ This dimension applied to the organisation of law enforcement bodies and the intelligence agencies including a strict division of tasks and respective competencies, and a full respect of civil and public liberties and citizen rights. Cf Article 272 on the Police in the Constitution.

¹² From October 1910 (overthrow of the monarchy on 5 October 1910) to May 1926 (military coup d'état).

¹³ The Council of State is a high-level advisory body to the president. Its members consist of the president of the Assembly of the Republic, the prime minister, the president of the Constitutional Court, the ombudsman, the chairpersons of the regional governments, former presidents, five citizens appointed by the president, and five persons elected by the Assembly of the Republic.

The Constitution states that « Portugal comprises the territory on the Continent of Europe as is historically defined and the archipelagos of the Azores and Madeira » which constitute autonomous regions with their own political and administrative statutes and their own institutions of self-government.

It has to be noted that the Constitution includes an Article 272 on the Police as follows:

- (1) *The police has the functions of defending democratic legality and the rights of citizens.*
- (2) *The police measures are provided for by law and may not be used beyond what is strictly necessary*
- (3) *The prevention of crimes, including crimes against the security of the State, is performed with due regard to the general rules governing the police and to the rights, freedoms, and safeguards of citizens.*
- (4) *The law determines the system governing the security forces, each of which has a single organization for the whole national territory.*

These principles permanently apply to laws and other legal provision ruling the organisation and attributions of law enforcement bodies and intelligence agencies including competencies and activities in the field of the fight against terrorism.

2.2 Political and Security structure

In terms of counter terrorism, the analysis of the political and security structure has to be seen in the light of the distinction between the internal and the external security as defined by laws.

2.2.1 External and internal security

External security is defined in Article 273, s.2, of the Constitution: “National defence aims at affirming the respect for constitutional order, democratic institutions and international conventions, national independence, territorial integrity, and freedom and security of the population against any aggression or external threats”.

Internal security is defined in Law no. 20/87 of 12 of July (Internal Security Law) as « an activity developed by the State in order to maintain order, security, and public peace, protect juridical values and persons, prevent criminality and contribute in the assurance of the normal operation of democratic institutions, the regular enjoyment of rights and fundamental freedoms, and the respect for democracy and the Rule of Law ».

More precisely, the Internal Security Law specifies that “measures undertaken in the ambit of a policy of security are destined mainly to” combat “violent or highly organised criminality, in particular terrorism and espionage”.

2.2.2 Government

Are parts of and contribute to internal security in their respective fields of competence as defined by Law the following entities:

- The Parliament frames internal security policies and supervises its execution. The election of members of the Oversight Board for Intelligence Services¹⁴ falls under its competence.
- The Government conducts the internal security policy and, through the Council of Ministries, defines general directives, and executes the policy as defined by the Parliament. In particular, it approves the co-ordination plan between security forces and services, determines the rules for classification and circulation of official documents and accredits those persons that should have access to classified documents.
- The Prime Minister, who co-ordinates the action of cabinet members in matters regarding Internal Security, propounds to the Council of Ministers the plan for the co-ordination of security forces and services. It is responsible for supervising the inter-ministerial activity for the adoption of adequate measures in case of a serious threat to internal security, and finally, informs the President of the Republic on matters regarding the conduction of internal security policy. Some of these competencies may be delegated to the Minister for Internal Administration¹⁵.
- The Superior Council for Internal Security is an inter-ministerial consultative organ.
- The Cabinet for the Co-ordination of Security is a specialised organ of consultation for technical and operational co-ordination of the security forces and services activities. It operates under the direct supervision of the Prime Minister, and by delegation, under the authority of the Minister of Internal Administration.

¹⁴ See part of the report dedicated to the intelligence machinery (SIRP).

¹⁵ Similarly the security service (SIS) and the intelligence agency (SIEDM) which are respectively under the competence of the Ministers of Internal Administration and of Defence de facto act under the responsibility of the Prime Minister.

Regarding ministerial responsibilities related to the fight against terrorism, the Minister for Internal Administration is formally responsible for main law enforcement bodies and for the security service (SIS) and the Minister for Defence is formally responsible for the intelligence agency (SIEDM). They both are responsible at administrative level. However, it is more appropriate to consider that the security service and the intelligence agency act under the authority of the Prime Minister and are dependent to the Prime Minister through the Ministers responsible.

2.2.3 Security structures

The main points are:

- in the area of prevention of terrorism, all law enforcement bodies, intelligence agencies and relevant bodies are involved
- in the field of judicial investigations, the Judicial Police has the lead and an exclusive competence in counter terrorism
- existence of two co-ordinating bodies respectively located in the Ministry of Internal Administration (Security Co-ordinator Office: management of threats and co-ordination of security measures) and in the Judicial Police (UCAT: exchange of information mostly/mainly related to judicial investigations).

Law enforcement bodies and intelligence agencies involved in prevention of terrorism and/or counter terrorism

	Ministry of Justice	Ministry of Internal Administration	Ministry of Défence	Other Ministries
Law enforcement	Judicial Police/Polícia Judiciária	<ul style="list-style-type: none"> - National Republican Guard/Guarda Nacional Republicana - Public Security Police/Polícia de Segurança Pública - Aliens and Borders Service/Serviço de Estrangeiros e Fronteiras 		
Security Service		Security Information Service/Serviço de Informações de Segurança		
Intelligence agency			Strategic, Defence and Military Information Service/Serviço de Informações Estratégicas de Defesa e Militares	

	Ministry of Justice	Ministry of Internal Administration	Ministry of Défence	Other Ministries
Other bodies				<ul style="list-style-type: none"> - Maritime Security System/Sistema de Autoridade Maritima - Civil Aviation National Institute/Instituto Nacional de Aviação Civil

In addition, co-ordinating bodies are as follows:

Prime Minister/Minister of Internal Administration	Security Co-ordinator Office/Gabinete Coordenador de Segurança
Ministry of Justice	Unit for Anti-Terrorism Co-ordination (UCAT)

In terms of fight against the financing of terrorism¹⁶, the relevant body is the Portuguese FIU, which is part of the Judicial Police and whose exact name is Unidade de Informação Financeira¹⁷. This body which was recently created (13 December 2002) is tasked with collecting, processing information related to the prevention of money laundering and serious fiscal offences (over 500 000 €) when there is a special complexity, an organised manner or a cross border dimension. It collects, centralises, processes and disseminates at national level information concerning investigations and secures co-operation with the judicial authority, supervisory bodies, economic and financial institutions and co-operates internationally with other FIU and similar bodies. However this unit has no law enforcement competence.

¹⁶ Portugal signed and ratified (on 2 August 2002) the UN Convention for the Suppression of the financing of terrorism, implemented relevant UNSCR in this field such as the UNSCR 1373 and adopted new appropriate legal provision. Financing of terrorism is criminalised (Penal Code, Article 300 § 1) including implementation at national level of EU regulations (cf Constitutional Law 1/2001 of 12 December 2001 in the field of implementation at national level of EU regulations).

¹⁷ The previous Money Laundering Investigation Squad/DCITE-BIB or Brigada de Investigação Branqueamento, was already part of the Judicial Police.

3. Summary of the Evaluation

3.1 Organisation of the fight against terrorism at law enforcement level and leading ministries in the counter terrorism area

If all ministries contribute to the prevention of terrorism and to the fight against terrorism in their respective fields of competence, the leading ministries are the Ministries of Justice and Internal Administration. They both cover the police area and to a certain extent the intelligence field as follows:

- the Judiciary Police is part of the Ministry of Justice
- the other law enforcement bodies (the National Republican Guard, the Public Security Service, the Aliens and Frontier Service) and the security service (the Security Intelligence Service) form parts of the Ministry of Internal Administration.

This picture is more detailed and reinforced if we refer to the respective competencies: the judicial police has full and exclusive competence “de jure” for fighting terrorist activities in terms of judicial investigations including the fight against the financing of terrorism and the use of special investigative techniques. The other law enforcement bodies only have competence for fighting petty crime. In the field of counter terrorism activities, they only assist and support the Judicial Police when requested or when necessary/needed¹⁸.

3.2 Other ministries’ contribution at law enforcement level to the fight against terrorism

Other Ministries contribute to the fight against terrorism in their respective fields of competence due to the involvement of the Maritime Authority System (MAS) which is a maritime police and the Civil Aviation National Institute (CANI)¹⁹.

¹⁸ E.g. intervention of specialised units for hostage taking, protection of VIPs, etc.

¹⁹ By contrast with the Maritime Authority System, the Civil Aviation National Institute is only an administrative body with no law enforcement competence.

3.3 Contribution of the intelligence community to the fight against terrorism

The security service (SIS)²⁰ within the Ministry of Internal Administration and the intelligence agency (SIEDM) within the Ministry of Defence, are parts of the preventive and counter terrorism machinery. They both have competence for information gathering related to terrorism **NOT DECLASSIFIED**. Apart from certain cases involving the State security, they are allowed to inform the Judicial Police in particular when judicial investigations are needed²¹.

3.4 Co-ordination of law enforcement bodies and intelligence agencies²²

Co-ordination involving the previously mentioned leading ministries is ensured at two levels²³.

- the Unit for Co-ordination of Anti-Terrorism forms part of and is chaired by the Judicial Police within the Ministry of Justice
- the Ministry of Internal Administration includes the Security Co-ordination Office (GCS) which is headed by the Security Co-ordinator.

Both co-ordinating mechanisms are not similar and they complement each other with links ensuring the coherence.

²⁰ The SIS role is purely pre-emptive : it identifies threats that have not yet enough thickness to justify police action and investigations or criminal proceedings.

²¹ Article 5 on « material competency » of the Law Decree N° 225/85 of 4 July as amended by Law Decree N° 369/91 of 7 October and N° 245/95 of 14 September. Cf also Organic Law on the Portuguese intelligence community.

²² Cf Law on National Security N° 20/87, Decree Law N° 144/99 and other legal provision included in Penal Code and Penal Procedure Code on the exchange of information among relevant authorities in the fight against terrorism at national and international level.

²³ In addition to co-ordinating bodies dealing with operational co-operation, there is also the advisory board under the authority of the ministry of interior in the field : the heads of the GNR, PSP, Judicial police, the SEF, the maritime police and the SIS have permanent seats.

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3.5 Prosecution of terrorist activities

The Central Department of Investigation and Prosecution (*Departamento Central de Investigação e Acção Penal - DCIAP*) which is part of the Public Prosecution Service at the General Attorney's Office within the Ministry of Justice is the relevant judicial body dealing with prosecution and judicial investigation. It co-ordinates and directs the Judicial Police activities and investigations in the field of violent and/or serious crimes²⁴ including terrorism in particular.

4. Comment and recommendations by experts

4.1 First of all the most important point to be noted is that co-operation between law enforcement bodies, intelligence agencies and relevant bodies contributing to security is enshrined in laws and administrative provision ruling respective competencies and attributions. This applies to law enforcement and intelligence bodies and more widely to other entities such as e.g. public administrations and bank system in terms of information made available when needed and requested by appropriate bodies. For instance, legal provision forces the financial institutions to inform and to notify the judicial authorities and the Judicial Police as far as suspicious financial transactions are concerned.

²⁴ Articles 46 and 47 of Law N° 60/98 of 27 August.

- 4.2 Portugal signed and ratified all 12 UN conventions²⁵ and at domestic level legal provision²⁶ is available in order to prosecute terrorist acts including financing of terrorism, leading a terrorist group, participation in terrorist group, association and organisation of a terrorist group²⁷, recruitment, etc. Terrorist threat is an offence as such.
- 4.3 In the aftermath of 11 September 2001 Portugal took appropriate measures in order to reinforce its ability to combat terrorism including new legal provision²⁸ and relevant decisions aiming at improving law enforcement and intelligence capacities to prevent and to react to terrorist threat and terrorist activities²⁹.

²⁵ Portugal also signed and ratified the Council of Europe European Convention on the Suppression of Terrorism of 1977.

²⁶ The Portuguese Criminal Code (part dedicated to Crimes against Public Order and Peace) defines acts done by terrorist groups, associations and organisations (cf section 300) as well as individual terrorist acts (Decree Law N° 48/95 of 15 March, amended by Act N° 65/98 and Act N° 77/2001 of 13 July, Act N° 97/2001, Act N° 98/2001 and Act N° 99/2001 of 25 August. Section 301 of the Criminal Code. Legal provision dedicated to terrorism are based on the Council of Europe European Convention on the Suppression of Terrorism of 1977 which was incorporated into the Portuguese Criminal Code by Act N° 19/81 of 18 August.

²⁷ Section 300 of the Criminal Code.

²⁸ For instance a Law criminalising the threat of terrorism has been adopted as well as a new Law N° 31/2001 which foresees a special regime for collecting evidence in the area of organised crime including terrorism (this Law refers to derogation of tax and banking secrecy, voice and image recording with a view to better operationalise investigations. In the field of the fight against the financing of terrorism, Act N° 5/2002 of 11 January (on control of bank accounts) and Act N° 10/2002 of 11 February improved the existing legal provision aiming at and punishing money laundering including money laundering linked to terrorism. In addition Act 11/2002 of 16 February set up a regime which aims at penalising the violation of financial sanctions within the EU. Portugal also implemented UN and EU regulations on the financing of terrorism and on financial sanctions.

²⁹ For instance, on 13 December 2002 a FIU was set up within the Judicial Police which also set up a special Unit for the Co ordination of Anti-Terrorism (UCAT) on 25 February 2003.

4.4 The Portuguese counter terrorism machinery is structurally coherent and involves all ministries, law enforcement bodies and intelligence agencies in their fields of competence. In terms of competencies and attributions, there is no apparent overlapping on the basis of a clear definition of tasks and responsibilities:

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Supplementary to the duty to co-operate, law enforcement bodies and the security service are permanently part of the Security Co-ordination Office³⁰.

In addition to this, the Judicial Police set up a unit dedicated to co-ordinating appropriate entities dealing with counter terrorism activities (the security service and the SEF) and a FIU was created within the Judicial Police.

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4.5 Recommendations

However, the experts identified some points of concern as follows from a counter terrorism perspective.

³⁰ However the SIEDM is not member of this co-ordination.

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