Decree-Law n.º 313/93 of September 15: The prevention of the use of the financial system for the purpose of money laundering


The liberalisation of the movement of capital and the freedom to provide financial services, which are inherent to the operation of the Community's internal market, constitute an environment which may favour the multiplication of criminal laundering activities in the European financial area.

Hence the idea that both the prevention and the punishment of such criminal behaviour would be more effective if carried out by means of Community action, as opposed to diversified measures taken by individual member States and not always compatible with the said market.

The recent adoption of Decree-Law No. 15/93, of 22 January, changed the Portuguese legal system with respect to illicit traffic in narcotic drugs and psychotropic substances, in particular Article 23 thereof which incriminates the laundering of money obtained by such means.

Legislative logics and the coherence of the system are such that the legal provisions now adopted are aimed at preventing money from being laundered through the financial system.

In general terms and in accordance with the above-mentioned Directive, this law is limited in scope to entities that provide services of a financial nature.

Amongst the principal measures provided for in the said Directive, those deemed to be the most adequate for the purposes both of preventing money laundering and carrying out effective criminal investigations were the following: the duty to identify the clients, the duty to refuse to carry out the transaction when the client refuses to provide identification, the duty to keep identification documents on record, the duty to stay the execution when there is suspicion of laundering, the duty to provide adequate training for employees and the dispensation from restrictions on disclosure of information on certain typified cases upon authorization from the competent judicial authority.

Article 14 of the Directive leaves it to the discretion of member States to decide upon the measures that they take in order to ensure full application of its provisions.

Thus, it was deemed that any reactions of a penal nature were inadequate and it was decided that typified breaches of the provisions of this Law were to be made regulatory offences. This option is in line with modern theories on decriminalisation and follows the same pattern as that followed with respect to other situations of a similar nature.

Without prejudice to the principle according to which legal provisions concerning regulatory offences in general apply subsidiarily to the offences provided for in this Law, a special punitive system has been designed that is in harmony with the system already applicable in matters concerning the financial system.

Thus:

Giving effect to the authorization given by Parliament to the Government in the Law No. 16/93, of 3 June, to legislate in the following matters, and under the terms of Article 201, paragraph 1, subparagraphs a and b, of the Constitution, the Government decides as follows:

CHAPTER I

Purpose and scope

Article 1
Purpose


Article 2

Scope

1. This law shall apply to credit institutions, financial corporations, insurance companies in so far as they carry out activities in the area of "life insurance", and corporations which manage pension funds, which have their head offices on Portuguese territory.

2. This law also applies to branches or general agencies located in Portuguese territory of undertakings of the type mentioned in the preceding paragraph, which have their head offices outside Portugal, as well as their off-shore branches.

3. This law also applies to entities operating the public postal service, in so far as they provide financial services.

4. For the purposes of this law, the entities mentioned in paragraphs 1 to 3 above shall be designated as "financial institutions".

CHAPTER 11

Duties of financial institutions

Article 3

Duty to identify

1. Financial institutions must require identification from their customers by means of valid supporting evidence when entering into business relations, particularly when opening an account or savings accounts, when offering safe custody facilities, when offering stock investment services, when issuing insurance policies or when managing pension schemes.

2. The identification requirement shall also apply when the financial institutions enter into occasional transactions involving a sum amounting to Portuguese Escudos (PTE) 2 500 000 or more, whether the transaction is carried out in a single operation or in several operations, including transactions in respect of which identification did not take place in the way provided for in the preceding paragraph.

3. Where the sum is not known at the time when the transaction is initiated, the institution concerned shall proceed with identification as soon as it is made aware of the sum and establishes that the threshold mentioned in the preceding paragraph has been reached.

4. Financial institutions must also require identification, as provided for in paragraph 1, of their customer's representatives.

Article 4

Derogations

1. The provisions of Article 3 do not apply:
a. to insurance policies or pension funds where the annual premium or contribution amount to be paid does not exceed PTE 150 000 or where a single premium or contribution is paid amounting to PTE 400 000 or less;

b. to insurance policies in respect of pension schemes taken out by virtue of a contract of employment or the insured’s occupation, provided that such policies contain no surrender clause and may not be used as collateral for a loan;

c. to insurance policies, transactions within the area of "life insurance" or pension schemes, provided that the payment for the premium or the contribution is to be debited or drawn by cheque from an account opened in the customer's name with a credit institution subject to the duty provided for in Article 3.

2. If the annual premium or contribution amount to be paid is increased so as to exceed the threshold mentioned in sub-paragraph a, identification as provided for in Article 3 shall be required.

3. Financial institutions shall not be subject to the identification requirement where the customer is one of the entities mentioned either in this law or in the first or second indents of Article I of Directive 91/308/ EEC of 10 June.

**Article 5**

**Special duty to identify**

In any event, including where the amount of the transaction does not reach the figures mentioned in Article 3), paragraph 2, or in Article 4, paragraph 1, sub-paragraph a, financial institutions must require identification from their customers and, where appropriate, from the latter’s representatives or any other person acting on their behalf, as well as the beneficiaries of an insurance policy or transaction within the area of "life insurance" or a pension scheme, where there is good reason to believe that an offence, as provided for in Article 23 of Decree-Law No. 15/93, of 22 January, has been committed or is being committed.

**Article 6**

**Acts committed on behalf of third parties**

Where it is certain that the customer is not acting on his own behalf or there is good reason to believe that this is so, the financial institutions shall obtain from him information as to the identity of the person on whose behalf that customer is actually acting.

**Article 7**

**Refusal to carry out transactions**

Financial institutions shall refrain from carrying out any transaction with a customer who does not identify himself or does not provide information as to the identity of the person on whose behalf that Customer is actually acting.

**Article 8**

**Special duty of diligence**

1. Financial institutions shall examine with special attention any transaction which, by its nature, complexity or volume, or because of its unusual type, having regard to the customer’s activities,
they regard as particularly likely to constitute an offence as provided for in Article 23 of the Decree-Law No. 15/93, of 22 January.

2. In cases such as those provided for in the preceding paragraph and where the value of the transaction exceeds the amount mentioned in Article 3, paragraph 2, the financial institutions shall obtain from the customer written information as to the origin and the purpose of the funds as well as to the identity of the beneficiaries and the reasons for the transaction.

Article 9

Duty to keep documents

1. Financial institutions shall keep a copy or the references of the evidence required for identification for a period of at least five years after the relationship with their customer has ended.

2. Financial institutions shall also keep the original documents, or supporting evidence, by way of copies thereof or microforms with equivalent evidential value, records of the transactions, as well as evidence of the information obtained in accordance with the provisions of Article 8, paragraph 2, for a period of at least ten years after having carried out the transactions.

Article 10

Special duty to cooperate

1. Financial institutions shall inform the competent judicial authorities as soon as they have knowledge or grounds for suspicion that any amounts recorded in their books are the result of the commission of one or another of the crimes provided for in Articles 21 to 23, 25 or 28 of the Decree-Law No. 15/93, of 22 January, or as soon as they learn about any facts that may constitute evidence of the commission of the crime provided for in the said Article 23.

2. Financial institutions shall also provide any cooperation requested of them under the terms of Article 60 of the Decree-Law No. 15/93, of 22 January.

3. Any information supplied to the authorities in accordance with paragraphs 1 and 2 may be used only for the purposes of the investigation and punishment of any of the crimes provided for in Articles 21 to 23, 25 or 28 of the Decree-Law No. 15/93, of 22 January; the identification of the persons who supplied the information may not be disclosed.

4. Financial institutions, members of their respective bodies, their directors, managers or heads, their employees, their representatives and other persons that permanently or occasionally render services to them, shall not disclose, neither to the customer concerned nor to third parties, that information has been transmitted in accordance with the provisions of the preceding paragraphs or that a criminal investigation is being carried out.

Article 11

Duty to abstain

1. Financial institutions shall refrain from carrying out any transaction which they suspect to be related to the commission of the crime provided for in Article 23 of the Decree-Law No. 15/93, of 22 January and shall notify the Attorney-General or the Public Prosecution's magistrate appointed by the latter who may give instructions to stay the execution of the transaction.

2. Financial Institutions may carry out the transaction where the instructions to stay its execution are not confirmed by the Criminal Investigation Judge within 24 hours from the time of the communication provided for in the preceding paragraph; that lapse of time may be widened to 48
hours where exceptional circumstances occur and with respect to transactions whose value is higher than a threshold determined by the Minister of Finance.

3. Where it is not possible for a financial Institution, in compliance with the provisions of paragraph 1, to refrain from carrying out a transaction, or where the authority mentioned in that paragraph deems that not carrying out the transaction might prevent it from gathering evidence, or hinder the gathering of evidence, or hinder its preventive goals, the financial institution may execute the operations and shall in that case immediately forward to that authority all the information relating thereto.

**Article 12**

**Duties of the supervisory authorities**

1. Where an authority entrusted with supervising financial institutions in the course of inspections or otherwise, discovers facts that could constitute evidence of the crime provided for in Article 23) of the Decree-Law No. 15/93, of 22 January, it shall inform the competent judicial authority.

2. The provisions of Article 10, paragraph 3, apply to the information supplied pursuant to the provisions of the preceding paragraph.

**Article 13**

**Exclusion of liability**

The disclosure in good faith of information pursuant to the provisions of Articles 10, 11 and 12 shall not constitute a breach of any restriction on disclosure of information and shall not involve the persons who disclosed the information in liability of any kind.

**Article 14**

**Control procedures**

1. Financial institutions, including their agencies and branches abroad, shall establish adequate procedures of internal control and communication in order both to ensure compliance with the provisions of this law and prevent operations related to the commission of the crime provided for in Article 23 of the Decree-Law No. 15/93, of 22 January.

2. Financial institutions, including their agencies and branches abroad, shall provide their directors and employees with adequate training programmes in order to allow them to recognize operations which may be related to the commission of the crime provided for in Article 23 of the Decree-Law No. 15/93, of 22 January, and proceed in accordance with the provisions of this law.

**CHAPTER III**

**Regulatory offences**

**SECTION I**

**General provisions**

**Article 15**

**Subsidiary law**
The legal provisions concerning regulatory offences in general shall subsidiarily apply to the offences provided for in this Chapter, provided that they do not go against the provisions of this Chapter.

**Article 16**

**Territorial application**

Regardless of the nationality of the person concerned, the provisions of this Chapter shall apply to:

a. acts committed in Portuguese territory;

b. acts committed outside Portuguese territory where responsibility for such acts lies, either on any one or more of the entities mentioned in Article 2, paragraph 1, performing through their branches or rendering services, or on any one or more of the persons mentioned in Article 17, sub-paragraph b;

c. acts committed on board Portuguese vessels and aircraft, unless otherwise provided for in any international treaty or convention.

**Article 17**

**Liability**

The following may be held liable for committing any of the offences provided for in this Chapter:

a. financial institutions;

b. natural persons that are either members of bodies of legal persons or their directors, managers or heads; natural persons acting, voluntarily or by virtue of the law, on behalf of legal persons; in the case of a breach of the duty provided for in Article 10, paragraph 4, the employees or other persons that permanently or occasionally render services.

**Article 18**

**Liability of financial institutions**

1. Financial institutions shall be liable for any offence committed by members of their respective bodies, their directors, managers or heads, within the exercise of their duties; they shall also be liable for any offence committed by their representatives by way of acts carried out on their behalf and in their interest.

2. Where the deed justifying the relationship between the person and the financial institution is void or null, that shall not preclude the provisions of the preceding paragraph from being applied.

**Article 19**

**Liability of natural persons**

The liability of the financial institution shall not preclude the individual liability of natural persons acting as members of their respective bodies, their directors, managers or heads; the natural persons shall be punished:

a. even where legally there can be no regulatory offence without certain personal elements, and such elements are present only in respect of the financial institution;
b. even where legally there can be no regulatory offence without the person having acted in his
own interest, and the person acted ill the interest of the financial institution.

Article 20

Accomplishment of an omitted duty

Where the regulatory offence amounts to abstaining from accomplishing a duty, the imposition of
the sanction and the payment of the coima [pecuniary sanction specific to regulatory offences]
shall riot dispense tile offender from accomplishing that duty if possible.

Article 21

Destination of coimas

1. The sums collected from the payment of coimas shall constitute a revenue of the State, save
the provisions of the next paragraph.

2. The sums collected from the payment of coimas by financial institutions shall be apportioned as
follows: 60 % for the State and 40 % for the Deposits Guarantee Fund set up in Article 154 of
"Regime Geral das Instituições de Crédito e Sociedades Financeiras", approved by the Decree-Law
No. 298/92, of 31 December.

Article 22

Negligence

Negligence may be punished.

Article 23

Time-limitation

1. Proceedings concerning regulatory offences provided for in this Chapter shall lapse within five
years from the date of their being committed.

2. Coimas and ancillary sanctions shall lapse within five years from either the end of the delay for
judicial review of the decision of the Finance Minister, or the date when the sentence became res
judicata.

SECTIONII

Special provisions

Article 24

Regulatory offences

The following shall be regulatory offences punishable with coimas from PTE 150 000 to PTE 150
000 000, or from PTE 50 000 to PTE 50 000 000, depending on whether they are applied
respectively to financial institutions or to any of the persons mentioned in Article 17, sub-
paragraph b:

a. breach of any of the duties of identification provided for in Article 3, Article 4, paragraph 2,
Article 5 or Article 6;
b. breach of any of the special duties of diligence provided for in Article 8;

c. breach of any of the duties to keep documents provided for in Article 9.

**Article 25**

**Particularly serious regulatory offences**

The following shall be regulatory offences punishable with coimas from PTE 1 000 000 to PTE 500 000 000, or from PTE 5 000 000 to PTE 200 000 000, depending on whether they are applied respectively to financial institutions or to any of the persons mentioned in Article 17, sub-paragraph b:

a. the carrying out of transactions with any person who neither identifies himself nor the person on behalf of whom he acts;

b. the breach of any of the special duties to cooperate provided for in Article 10, paragraph 1;

c. the breach of any of the duties to abstain or to inform provided for respectively in Article 11, paragraph 1, and in Article 11, paragraph 3;

d. the disclosure by any means to the customer concerned or to third parties that information has been transmitted to the competent authorities in accordance with the provisions of Article 10, paragraphs 1 and 2, or that a criminal investigation is being carried out;

c. the breach of the duties provided for in Article 14.

**Article 26**

**Amount of coimas**

The amount of the coima imposed for a regulatory offence committed with negligence may not be in excess of half of the maximum prescribed for that regulatory offence.

**Article 27**

**Ancillary sanctions**

The following ancillary sanctions may be imposed concomitantly with the coimas provided for in Articles 24 and 25:

a. disqualification to take office as a member of any body of a financial institution, or as a director, a manager or a head in a financial Institution;

b. publicity of the final decision imposing the sanction, promoted by the supervising authority at the expense of the offender.

**SECTION III**

**Procedure**

**Article 28**

**Powers**
1. The supervising authority within the sector of activity of the entity involved shall be competent to investigate the regulatory offences provided for in this law and to organise and institute proceedings with respect to such offences.

2. The Minister of Finance shall be empowered to impose the sanctions provided for in the preceding articles.

**Article 29**

**Payment of the coimas**

1. Financial institutions shall be jointly responsible for the payment of coimas, justice levies, legal costs and other expenses imposed on their respective directors, managers, heads, employees or representatives for any offence provided for in this law.

2. Members of the bodies of financial institutions who, having had the possibility to do so, did not prevent the offence from being committed shall be personally and subsidiarily responsible for the payment of coimas and legal costs imposed on the respective financial institution even where the latter had gone into liquidation at the date of the decision imposing the coima.

**Article 30**

**Jurisdiction**

The Tribunal Judicial da Comarca de Lisboa [Judicial Court of Lisbon] shall have jurisdiction to hear appeals against, and to review, any decision imposing a coima, as well as the implementation of the latter.