

Decree-Law n.º 15/93 of January 2

Anti-Drug Legislation

The main reason for enacting this law was the approval of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed at the appropriate time and recently ratified by Portugal - Resolution of the Assembly of the Republic No. 29/91 and Decree of the President of the Republic No. 45/91, both published in the *Diário da República* of 6 September 1991.

This instrument of public international law pursues three fundamental aims.

First of all, it aims to deprive those who devote their efforts to trafficking in narcotic drugs of the proceeds of their criminal activities, thereby eradicating their motive and main incentive and at the same time preventing transnational criminal organisations from invading, contaminating and corrupting the structures of the State, the legitimate commercial and financial activities, as well as society at all levels, by means of wealth illicitly generated and accumulated.

Secondly, it aims to adopt such measures as are necessary to control and supervise precursors, chemical products and solvents, and other substances that may be used for the preparation of narcotic drugs or psychotropic substances. Indeed because of their being readily available on the market, such substances have contributed to an increase in the underground manufacture of narcotic drugs and psychotropic substances.

In the third place, it aims to reinforce and supplement the measures provided for both in the Single Convention on Narcotic Drugs, 1953, as amended by the 1972 Protocol, and in the Convention on Psychotropic Substances, 1971. It furthermore aims fill gaps and increase the legal means available for international co-operation in criminal matters.

The transposition into the domestic legal system of the objectives and rules that, in an evolutionary way, are being acquired by the international community is of course necessary for their practical operation. In fact, the most significant provisions of the above-mentioned 1988 Convention are not self-executing.

At the international level, account was also taken of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990, which was signed by Portugal on 8 November 1990, as well as the Directive of the Council of the European Communities of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering.

Consideration was also given to the draft Directive of the Council on the production and marketing of certain substances used in the illicit production of narcotic drugs or psychotropic substances. This draft aims to establish the supervisory measures on precursors that are necessary under Article 12 of the afore-mentioned 1988 United Nations Convention, which was autonomously signed by the Community. At the same time, it purports to preclude distortions in competition with respect to the licit production and marketing of such products within the Community, as well as the control of exports.

After the publication of the Decree-Law No. 430/83, of 13 December, presently under review, a new Code of Criminal Procedure entered into force. Some of the specificities and innovations brought about by the former are now provided for in general terms by the latter.

Furthermore, a new text on international co-operation also entered into force, namely the Decree-Law No. 43/91, of 22 January, which aims to make provision in a single text for different forms of co-operation that include extradition, transfer of criminal proceedings, enforcement of criminal sentences, transfer of sentenced persons, supervision of conditionally sentenced or conditionally released offenders, as well as a large panoply of measures of mutual assistance in criminal matters.

As mentioned in its preamble, this text has already taken care of the 1988 United Nations Convention, "notably with respect to mutual assistance, extradition, and the enforcement of decisions concerning confiscation of the proceeds from crime".

This law incorporates the new terminology and the new rules of criminal procedure, as well as some of the new underlying principles which subordinate the current reform of the Criminal Code, such as fines being imposed as an alternative to imprisonment, not adding to the latter.

This matter of fines must be given special attention. In particular it must be measured against what is nowadays seen as a priority, namely seizing the illicitly acquired fortunes of traffickers.

Once the possibility of cumulating pecuniary sanctions with imprisonment no longer exists, the panoply of measures aimed at depriving the traffickers from the goods and assets that derive directly or indirectly from their criminal activities becomes particularly relevant, especially with respect to the more serious crimes.

With respect to the quantum of sanctions, the present formulation is more in harmony with the legal system in general and in particular with the Criminal Code. Moreover, it is well known that the dissuasive effect, if any, of making abstract provision for severe sanctions is limited - as it is stressed in the preamble to the Decree-Law No. 430/83 - unless it is accompanied by gradual improvements in the technical resources of criminal investigation and in the training and vigour of the staff involved.

It is also known that certain schools of thought only reluctantly accept that criminal law and procedure should contain special norms which are aimed at combatting only certain forms of criminality. Furthermore, it is true to say that the new Code of Criminal Procedure is already equipped with updated legal instruments of criminal investigation. All this favours the reduction to a minimum of the number of special provisions. However, it should be recognised that the legal consequences of the more serious offences of drug trafficking must be in line with the legal consequences foreseen in the Code of Criminal Procedure with respect to violent or highly organised criminality and terrorism.

Even though the main objective of the present reform is to introduce into domestic law the adaptations necessary in order to render the 1988 United Nations Convention effective at the internal level, the possibility was not excluded of introducing other changes deemed relevant.

One of the concerns was to reorganise the Tables appended to this law.

It would not have been difficult to add to the previously existent Tables the two lists - concerning precursors - that are mentioned in the 1988 Convention, and simultaneously to include the substances that have since been listed in legal texts adopted in conformity with the Conventions of 1961 and 1971 respectively.

However, it was thought that new steps could be taken with a view to grading the danger of the substances by reorganising their listing within newly made tables linked to different levels of sanctions.

Already now the substances listed in Table IV appended to the Decree-Law No. 430/83 are treated differently from other substances, notably with respect to the punishment of trafficking therein, incitement to consumption and consumption thereof.

Grading the sanctions applicable to trafficking according to the real danger of the drugs involved seems to be the closest solution to the idea of proportionality. This does not imply adherence to the distinction between hard and soft drugs, nor does it imply adherence to the inferences therefrom that have been reached in some countries in the field of decriminalisation or depenalisation of the consumption of drugs.

Nevertheless, any decision to proceed to a more adjusted grading must rely both on a rigorous scientific measure of the relative danger of the different drugs in various aspects, and on non-scientific reasons that relate to non-negligible considerations of a social and cultural nature.

All this leads to the conclusion that the question of the (re)organisation of the Tables requires further consideration in due course.

The same position was adopted with respect to trafficking on the high seas. Notwithstanding the growing relevance of the sea as a preferential means of circulation for drugs, because traffickers take advantage of the limited capacities of States to intervene in international waters, solutions have not been found allowing for greater control, in particular bearing in mind the limited approach of Article 17 of the 1988 Convention.

Indeed, the preponderance given to the flag State, including where serious suspicion exists that the ships abuse the freedom of movement granted by international law in order to engage in illicit trafficking, is a sign that certain interests, in particular commercial interests, as recognised in paragraph 5 of Article 17, prevail over the interests of the health and well-being for the world's population.

This question is of concern in particular to the Members of the Council of Europe (Pompidou Group). We in our country will continue to focus on it, on the one hand within the framework of bilateral treaties to be drawn up with countries bordering the sea, and on the other hand as a country that detains a considerably large exclusive economic zone.

Prevention, inter alia by way of information, training and education, plays an important role in this field. However, ideas in this area develop fast and therefore should not be carved in stone.

For the same reason, this law does not contain provisions relating to the organisation of the departments involved in its implementation. However, it expresses an underlying request for more coordination between the judicial system and the public health services, in particular with respect to matters pertaining to the prevention of drug addiction and the treatment of drug addicts, both in quality and in number, and with consequences at the level of the territorial distribution of responsibilities. Only thus will it be possible to build a wall capable of stopping the extension of a phenomenon whose roots are cultural but which has immediate and evident consequences to the health of individuals.

A mandatory subject for thought is the way in which the legal system deals with the consumption of drugs. Any radical policy change in this field would have to be based both

in a thorough knowledge of the latest scientific developments concerning the effect of drugs over the human character and in extensive research on the idiosyncrasies of the social groups more involved (young people, parents, families in general and, having in mind their cultural influence, the educators). Such an approach has been put aside since the beginning. However, we did not fail to compare the policy followed in Portugal until now with the policies followed in other countries that are culturally and geographically close to us.

Back in 1983, the explanatory notes to the Decree-Law No. 430/83 stated the following:

The consumption of narcotic drugs and psychotropic substances is considered to be socially censurable, notably on account of the loss of individual accountability with respect to other citizens. However, that does not prevent drug addicts from being seen in the first place as persons who are in need of medical assistance and everything should be done in order to treat them, for their own sake and also for the sake of others.

In line with such declarations, drug consumers are presently legally punishable in an almost symbolic fashion, the aim being that contacts with the formal justice system serve the purpose of encouraging treatment if the case is one of drug addiction.

This position has won support in countries such as Italy and Spain.

The position which is perhaps the most extreme in Europe is that of the Netherlands where in practical terms the consumption of drugs is not prohibited. Claiming that their stance is pragmatic, non emotional and non dogmatic, the health of the consumer is the cornerstone of their system. They believe in social control rather than in legal measures.

That position has been criticised as being too soft, in particular by the Nordic countries, themselves experienced in "soft" solutions which have been gradually abandoned.

It may however be said that most countries represented in the United Nations fear that the alleged pragmatism of the Dutch variety might open holes in a combat whose dimension in terms of health care, especially concerning young people, is so enormous that enough dykes would not be available to compensate for the holes, bearing in mind the traffickers capacity to explore new situations and new markets.

The Council of Europe moves in the same direction - cf. points 9, 10 and 17 of the Parliamentary Assembly's Recommendation 1141 (1991) of 31 January 1991.

On a different point, it is certain that, although the economic dimension of the phenomenon should not be overlooked, any change in strategy that is based on the rules of supply and demand and its consequences on prices presents serious risks, even if tainted with ingredients likely to ensure public control of the "market", especially if the transition is abrupt.

The discussion on such a controversial theme is far from being closed. However, we do not see reasons for changing the present position concerning the role of the criminal justice system in the field of drug consumption.

The intervention of the criminal justice system, even if it is reduced to a minimum, carries with it an undertone of wrongdoing. That should be seen to be the logical counterpart of an otherwise different message transmitted by the law, namely an appeal for accountability to and cohesion with the social fabric of which the drug addicts are necessarily a part.

Therefore, the main sense of the changes introduced consists in adapting the legal instruments to serve the purpose of contributing to the utmost of its capacities to liberate the drug addicts and the habitual consumers from slavery, provide appropriate incentives for medical treatment and rehabilitation, and bring him back to real life, preferably happy, within the community.

With respect to occasional consumers, it is necessary above all to avoid them being labelled, marginalised, pushed into an impasse or towards avenues whose only way out is drugs.

The key words are diversified choice of alternatives depending on the circumstances of each individual case and adaptability of the system in close co-operation with the health authorities.

Other than the working party that prepared the study upon which this text was built - with different representatives of the justice, health, education, youth, financial, commercial and tourism systems, plus the Bank of Portugal and the advocates' professional organisation - views were sought from the High Council of the Bench, the Attorney General's Office, the medical doctors' professional organisation, as well as other entities through the National Council of the Project VIDA [life].

The self-governing bodies of the Autonomous Regions of the Azores and Madeira were consulted.

Thus:

Giving effect to the authorization given by Parliament to the Government in the Law No. 27/92, of 31 August, to legislate in the following matters, and under the terms of Article 201, paragraph 1, sub-paragraphs a) and b), of the Constitution, the Government decides as follows:

CHAPTER I

General provisions

Article 1

Aims

The purpose of this law is to define the legal rules applicable to the traffic in and use of narcotic drugs and psychotropic substances.

Article 2

General rules and tables

1. This law applies to the plants, substances and preparations listed in the six tables appended hereto only.
2. Tables I to IV shall be updated according to the alterations adopted by the competent United Nations bodies and in conformity with the rules provided for in the conventions ratified by Portugal.

3. Tables V and VI shall be updated according to the alterations adopted by the competent United Nations bodies and in conformity with the rules provided for in the conventions ratified by Portugal or in legal texts emanating from the European Communities.

4. The cultivation, production, manufacture, utilization, distribution, import, export, transit, transport, possession on any terms, use of and trade in the plants, substances and preparations mentioned in the preceding paragraphs shall be subject to the conditions laid down in this law.

5. The rules that are necessary in order to implement this law with respect to the matters mentioned in the preceding paragraph shall be set out in a regulations' decree; the latter shall also specify the margins of cultivation surplus, the quotas of manufactured goods, the entities and businesses that are authorised to purchase plants, substances or preparations, the conditions of delivery, the records to be kept, the communications and information to be given, the reports to be produced, the requirements for packages and labels, the fees required in order to obtain authorizations, as well as the fines applicable to breaches of the regulations.

Article 3

Scope of control

All the plants, substances and preparations mentioned either in the conventions ratified by Portugal relating to narcotic drugs and psychotropic substances, or in the amendments thereto, as well as other substances listed in the tables appended to this law, shall be subject to control.

CHAPTER II

Authorizations, control and medical prescriptions

Article 4

Licences, requirements and authorizations

1. The National Institute of Pharmacy and Medicinal Drugs shall be empowered at national level to define requirements and grant authorizations for the activities mentioned in Article 2, paragraph 4, with respect to the substances and preparations listed in Tables I to IV; it shall exercise its powers within the strict limits of the country's needs whilst giving priority to medical, veterinary, scientific or didactic interests.

2. The Directorate General of External Trade shall be empowered at national level to issue import declarations and export authorizations for the substances listed in Tables V and VI.

3. The Directorate General of Industry shall be empowered at national level to authorize the production and manufacture of the substances listed in Tables V and VI.

4. Before examining any request for authorization, the National Institute of Pharmacy and Medicinal Drugs shall forward a copy of the request to the Ministry of Justice's Office for the Fight against Drugs: the latter shall give an opinion within a period of 30 days

and, if appropriate, shall consult with the departments concerned within the Ministries of Agriculture, Industry and Energy, or Trade and Tourism.

5. The decisions of the president of the National Institute of Pharmacy and Medicinal Drugs granting authorizations shall be published in the Diário da República; they shall set out the requirements imposed on the beneficiary of the authorization; the latter may appeal against the decision; complaints against the decision shall not stay the execution thereof.

6. Each generic authorization granted by the National Institute of Pharmacy and Medicinal Drugs shall be valid for no longer than one year, open to extension.

7. The provisions of this Article shall apply without prejudice to the specific powers of the Ministry of Trade and Tourism to issue licences for external trade operations relating to any of the items listed in Tables I to VI, and without prejudice to the specific powers of the Ministry of Industry and Energy to issue licences to set up and operate industrial plants producing any of the said items.

Article 5

Supervisory powers of the

National Institute of Pharmacy and Medicinal Drugs

1. The National Institute of Pharmacy and Medicinal Drugs shall be empowered to supervise the authorised activities of cultivation, production, manufacture, utilization, distribution, import, export, purchase, sale, delivery, possession of and wholesale trade in the plants, substances and preparations listed in Tables I to IV.

2. In supervising the authorised activities mentioned in the preceding paragraph, the said National Institute may at any time inspect businesses, establishments and places and request that documents and records be made available.

3. For the purposes of criminal investigations or administrative proceedings and investigations, the competent authorities shall be kept informed of any breach of the law.

4. The cultivation of plants from which narcotic substances can be extracted shall be prohibited by way of a Rule jointly issued by the Ministers of Justice, Agriculture and Health, where such a measure is deemed to be the most appropriate in order to protect public health and prevent drug trafficking.

5. Identical measures may be adopted with respect to the manufacture, preparation and trade in narcotic drugs and preparations.

Article 6

Nature of the authorizations

1. Authorizations shall not be transmissible and may not be transferred to or used by third parties on any terms.

2. Where businesses have different branches or stores, separate authorizations are required for each of them.

3. Requests for authorizations must state the identity of the persons responsible for the preparation and updating of records and compliance with the other legal duties.

Article 7

Requirements pertaining to persons

1. Authorizations shall be granted only to entities whose representatives produce credentials testifying moral and professional qualities.

2. Upon the request of the National Institute of Pharmacy and Medicinal Drugs, the Ministry of Justice's Office for the Fight against Drugs shall be empowered to investigate the qualities mentioned in the preceding paragraph, if need be in coordination with the entities that participate in the Coordination Group for the Fight against Drugs; in so doing it shall have due respect for citizens' rights, liberties and safeguards.

Article 8

Lifespan of the authorizations

1. Where the authorized person dies or is replaced, or where the business changes, a request for renewal of the authorization must be made to the National Institute of Pharmacy and Medicinal Drugs within 60 days.

2. Authorizations shall be renewed only subject to verification of the credentials for moral and professional qualities.

3. Authorizations shall lapse when the activity is transferred, as well as under the circumstances mentioned in paragraph 1 where their renewal is not sought within the required time-limit.

Article 9

Decisions to cancel or suspend authorizations

1. The National Institute of Pharmacy and Medicinal Drugs shall cancel any authorization where the requirements for granting it are no longer present.

2. Depending on the seriousness of the facts, authorizations may be cancelled or suspended for a period of up to six months, in case of technical accident, the disappearance or deterioration of substances or preparations, or any other irregularity that might endanger health or create a situation of illicit supply on the market, as well as in case of failure by the beneficiary of the authorization to comply with his duties.

3. The decisions to cancel or suspend authorizations shall be published in the Diário da República.

Article 10

Consequences of cancellation of authorizations

1. When cancelling any authorization, and upon request of the interested party, the National Institute of Pharmacy and Medicinal Drugs may authorize the return of the stock of substances and preparations listed in Tables I to IV to the entities who had provided

them, or the transfer of such stock to other entities, authorized businesses or pharmacies.

2. Requests for the return or transfer of stocks must be made within 30 days of the date of publication of the decision cancelling the authorization, or of the date of the communication of the ministerial decision confirming the cancellation, or of the date when the judicial decision to the same effect became *res judicata*.

3. Within the delay mentioned in the preceding paragraph, and upon instructions of the President of the National Institute of Pharmacy and Medicinal Drugs, an inventory of the stock shall be made and the stock kept in sealed premises of the business; he may promote the sale or the destruction of the stock if he deems that it risks deterioration or that there is a risk of illicit distribution in the market; the proceeds of the sale shall revert to the owner, after deduction of the expenses incurred by the State.

Article 11

Import and export of substances listed in the Tables

1. The import and marketing of any of the substances listed in Tables V and VI shall be submitted to the system of anticipated statistical control; export of the said substances shall be submitted to the licensing system as provided for in the Decree-Law No. 126/90, of 16 April, in the Rule No. 628/90, of 7 August, as well as in the applicable Community rules.

2. Where there is suspicion that the purpose of importing or exporting substances listed in Tables V and VI is to illicitly produce or manufacture narcotic drugs or psychotropic substances, the entities responsible for supervision and licensing shall immediately inform the competent investigation authorities.

3. The Directorate General for External Trade shall forward to the Ministry of Justice's Office for the Fight against Drugs copies of all the import declarations and export licenses concerning any of the substances listed in Tables V and VI.

4. Within the framework of its powers relating to granting authorizations to produce or manufacture substances listed in Tables V and VI, the Directorate General for Industry may adopt such measures as it deems fit in order to control such operations.

5. For the purpose of exercising their respective powers, the entities mentioned in the preceding paragraphs may gather and obtain information from the Ministry of Justice's Office for the Fight against Drugs.

6. Without prejudice to the imposition of criminal or regulatory sanctions, licenses may be withdrawn and authorizations cancelled with respect to manufacturers, importers, exporters, wholesalers or retail dealers holding a license or authorized to manufacture or trade in any of the substances listed in Tables V and VI, who have knowledge of suspicious commands or operations and, having the possibility to do so, do not inform the national supervisory authorities.

7. Upon a Rule jointly issued by the Ministers of Finance, Justice, Agriculture, Industry and Energy, and Trade and Tourism, the production, manufacture, utilization, distribution, import, export, transit, transport, possession of on any terms, use of and trade in the substances listed in Tables V and VI may be prohibited if such a measure is deemed to be the most adequate in order to protect public health and prevent illicit trafficking in narcotic drugs or psychotropic substances.

8. Supervision and control measures, as well as the other rules provided for in this Article, shall be applied without prejudice to more stringent rules provided for under Community law.

Article 12

Supervisory powers

1. Without prejudice to the powers of the police and administrative authorities and with a view to preventing diversion for illicit purposes: (a) the Inspectorate General of Economic Activities shall be empowered to supervise, inter alia, the authorized activities of wholesale trade in and distribution, purchase, sale, transport, delivery and possession of any of the substances listed in Tables V and VI, and (b) the Directorate General of Customs shall be empowered to supervise the import, export and transit activities.

2. Within the supervision of the activities mentioned in the preceding paragraph, inspections may be made at any moment in businesses, establishments and premises, and the presentation of documents requested.

3. The competent investigative authorities shall be kept informed of any offenses detected.

4. The Directorate General of Customs shall keep the Inspectorate General of Economic Activities informed of all customs operations relating to any of the substances listed in Tables V and VI, including information on the identity of the importer, the exporter and the consignee, if known.

5. The Ministry of Justice's Office for the Fight against Drugs shall be kept informed of any seizure of any of the substances listed in Tables V and VI.

Article 13

International movement of persons

Any persons crossing Portuguese borders may, for the purpose of their personal use and if they present a medical document justifying the need thereof, be in possession of a quantity of substances and preparations listed in Tables I-A, II-B, II-C, III and IV, not in excess of the quantity that is necessary for 30 days treatment.

Article 14

Means of transport

1. The international transport in ships, aircraft and other means of public international transportation, of small quantities of the substances and preparations listed in Tables I-A, II-B, II-C, III and IV as may be necessary during the voyage for the purpose of administering first aid treatment shall be permitted.

2. Substances and preparations must be transported in conditions of safety such as to prevent their disappearing or being removed.

3. The substances and preparations transported according to the provisions of paragraph 1 shall be subject to the laws and rules of the flag country, without prejudice to the possibility of the competent Portuguese authorities proceeding to any necessary supervision or control measures on board.

Article 15

Medical prescription

1. Substances and preparations listed in Tables I and II may be supplied to the public only upon presentation of a medical prescription, subject to the provisions of the following paragraphs.
2. The National Institute of Pharmacy and Medicinal Drugs, in coordination with the Directorate General of Health and after having sought the opinion of the medical doctors' and the pharmacists' unions respectively, shall adopt a model book of prescription forms with double entries.
3. Each prescription form shall include the name and address of the doctor, the number of his matriculation in his union, and, in indelible characters, the name, address, sex, age, number of the identity card or the *cédula pessoal* of the sick person concerned, or the owner of the animal concerned, as well as the generic name or the trade name of the substance, its proportioning, the total quantity, the posology, the duration of the treatment, the date and the doctor's signature.
4. Without prejudice to the provisions of paragraph 5, the supply of any of the substances and preparations listed in Tables II and IV shall be made subject to medical prescription in conformity with the provisions of the general law.
5. Upon a Rule jointly issued by the Ministers of Justice and Health, the supply of any of the substances and preparations listed in Table IV may, where appropriate for the purpose of protecting public health, be made subject to special conditions concerning their prescription and other control measures provided for in the legal text concerning the substances and preparations listed in Tables I and II.

Article 16

Special duties of pharmacists

1. The pharmacist only or, where he is absent or unavailable, the person who replaces him, shall be empowered to deliver duly prescribed substances and preparations listed in Tables I and II; he must verify the identity of the purchaser by means of consulting the latter's identity card or another secure means of identification such as his driving license or, in case of foreigners, the passport; he must record in the margin of the prescription the name of the purchaser, the number and the date of issue of the latter's identity card and the date of delivery, and he must sign it.
2. The pharmacist must refrain from delivering the goods prescribed where the prescription does not meet the requirements provided for in Article 15.
3. Goods prescribed may not be delivered after a period of 10 days from the date of issue of the prescription. Substances and preparations listed in any of the Tables appended hereto may not be delivered more than once on the basis of the same prescription.
4. Pharmacies must keep a regular stock of the substances and preparations mentioned in paragraph 1; they must keep prescriptions on record for a period of time not longer than five years, under conditions that shall be defined in a regulations' decree.

Article 17

Cases of urgent need

In cases of urgent need, pharmacists may supply for immediate use, under their own responsibility and regardless of prescription, substances and preparations listed in Tables I and II, within the limits of the maximum dose that may be taken in any one single instance.

Article 18

Control of prescriptions

1. The National Institute of Pharmacy and Medicinal Drugs, in coordination with the Directorate General of Health and with the help of informatics means, shall control deliveries made upon prescriptions; every person who has access to that information shall be bound by the rules pertaining to professional secrecy.
2. Both the State and the private health services shall forward to the National Institute of Pharmacy and Medicinal Drugs once every three months a complete list of the narcotic drugs used for purposes of medical treatment.

Article 19

No delivery to mentally handicapped or under age persons

1. There shall be no delivery of any of the substances or preparations listed in Tables I to IV to manifestly mentally ill persons.
2. There shall be no delivery of any of the substances or preparations listed in Tables I-A, II-B and II-C to under age persons.
3. Where no one is empowered to represent the under age person, the delivery may be made to the person in charge of him or in charge of his education or supervision.

Article 20

Urgent communication

1. The disappearance or the removal of substances or preparations listed in Tables I to IV shall, as soon as it is known, be communicated by the entity responsible for its safe-keeping both to the local police authority and to the National Institute of Pharmacy and Medicinal Drugs; that entity shall indicate rigorously the quantities and the characteristics of the materials removed and supply any evidence available to it.
2. The same procedure shall be adopted in the case of the removal, destruction or disappearance of either any of the records provided for in this law or in its implementing rules, or prescription forms.

CHAPTER III

Trafficking, laundering and other offenses

Article 21

Trafficking and other illicit activities

1. Any non-authorized person who, contrary to the provisions of Article 40, cultivates, produces, manufactures, extracts, prepares, offers, offers for sale, sells, distributes, purchases, transfers or receives on any terms, makes available to others, transports, imports, exports, dispatches in transit or illicitly possesses any of the plants, substances or preparations listed in Tables I to III shall be liable to imprisonment for a term of 4 to 12 years.
2. Any person who, acting contrary to the terms of the authorization granted to him under the provisions of Chapter II, illicitly transfers or introduces into the market any of the plants, substances or preparations mentioned in the preceding paragraph, or induces other persons to introduce them into the market, shall be liable to imprisonment for a term of 5 to 15 years.
3. Any person who cultivates plants or produces or manufactures substances or preparations other than the plants, substances and preparations mentioned in the authorization granted to him, shall be liable to imprisonment for a term of 5 to 15 years.
4. Where the substances or preparations in question are listed in Table IV, the punishment shall be imprisonment for a term of 1 to 5 years.

Article 22

Precursors

1. Any non-authorized person who manufactures, imports, exports, or distributes the equipment, materials or substances listed in Tables V and VI, knowing that they are used or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances, shall be liable to imprisonment for a term of 2 to 10 years.
2. Any non-authorized person who possesses on any terms the equipment, materials or substances listed in Tables V and VI, knowing that they are used or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances, shall be liable to imprisonment for a term of 1 to 5 years.
3. When the offender holds an authorization granted in accordance with the provisions of Chapter II, the punishment shall be:
 - a. imprisonment for a term of 3 to 12 years, where the circumstances are those mentioned in paragraph 1;
 - b. imprisonment for a term of 2 to 8 years, where the circumstances are those mentioned in paragraph 2.

Article 23

Conversion, transfer and concealment of goods and products

1. Any person who, knowing that the goods or products are derived from any offence established in accordance with the provisions of Articles 21, 22, 24 or 25, and regardless of the terms of his participation in that offence:

a. converts or transfers such goods or products, or assists others in converting or transferring such goods or products, wholly or partially, directly or indirectly, for the purpose of concealing or disguising the illicit origin of such goods or products, or of assisting any person who is involved in the commission of such an offence to evade the legal consequences of his actions, shall be liable to imprisonment for a term of 4 to 12 years;

b. conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of such goods or products shall be liable to imprisonment for a term of 4 to 12 years;

c. acquires or receives on any terms, uses, possesses or keeps such goods or products shall be liable to imprisonment for a term of 1 to 5 years.

2. Punishment for the offenses described in the preceding paragraph shall not exceed the punishment incurred for the corresponding offenses described in Articles 21, 22, 24 or 25.

3. The sanctions for the offenses described in paragraph 1 shall be imposed notwithstanding the fact that the acts mentioned in Articles 21, 22, 24 and 25 were committed outside the national territory.

Article 24

Aggravation

The sanctions described in Articles 21, 22 and 23 shall be aggravated by one quarter in both their lower and upper limits where:

a. the substances or preparations have been delivered or were addressed to minors or mentally handicapped persons;

b. the substances or preparations have been distributed by a large number of persons;

c. the offender has obtained or has sought to obtain considerable gain;

d. the offender is a civil servant entrusted with preventing or punishing such offenses;

e. the offence was committed in the exercise of his duties by a medical doctor, a pharmacist or any other professional expert on health matters, a member of the staff of the prison service or the probation service, a member of the staff of the postal, telegraph, telephone or telecommunications services, a teacher, an educator, a member of the staff of a school or a member of the staff of the social services or of a social institution;

- f. the offender is involved in other organized criminal activities of international dimension;
- g. the offender is involved in other illegal activities that are facilitated because of the commission of the offence;
- h. the offence has been committed in a facility for the treatment of drug consumers, in a probation service facility, in a social service facility, in a penal institution, in a military unit, in an educational institution, or in other places to which school children and students resort for educational, sports and social activities, or in their immediate vicinity;
- i. the offender has benefited from the co-operation in any terms of minors or mentally handicapped persons;
- j. the offender has acted as a member, with the co-operation of at least one other member, of a band whose purpose is to repeatedly commit any of the offenses described in Articles 21 and 22;
- l. the substances or preparations have been decomposed, altered or adulterated, by way of manipulation or mixture, hence increasing the risk to the life or the physical integrity of others.

Article 25

Trafficking of minor importance

Where, in the cases mentioned in Articles 21 and 22, taking into account inter alia the means used by the offender, the modality or the circumstances of the facts, the quality or the quantity of the plants, substances or preparations, the illicit nature of the act proves to be considerably diminished, the sanction applicable shall be:

- a. imprisonment for a term of 1 to 5 years if the plants, substances or preparations involved are listed in Tables I to III, V or VI;
- b. imprisonment for a term up to 2 years and a day-fine for up to 240 days if the substances or preparations involved are listed in Table IV.

Article 26

Trafficking and consuming

1. Where the offender's aim, in committing any of the acts mentioned in Article 21, has been to obtain plants, substances or preparations for personal use only, the sanction applicable shall be (a) imprisonment for a term up to 3 years or a fine if the plants, substances or preparations involved are listed in Tables I to III, and (b) imprisonment for a term up to 1 year or a day-fine for up to 120 days if the substances or preparations involved are listed in Table IV.
2. Attempt shall be punishable.
3. The provisions of paragraph 1 shall not apply where the offender has been found in possession of a quantity of plants, substances or preparations exceeding the quantity corresponding to 5 days' average individual consumption.

Article 27

Abuse of professional privilege

1. Any medical doctor who prescribes, serves or hands out any of the substances or preparations mentioned in Article 21, paragraphs 2 and 4, or in Article 25, for non-therapeutical purposes, shall be liable to the sanctions mentioned in Article 21, paragraphs 2 and 4, and in Article 25.
2. Any pharmacist or, where he is absent or unavailable, any person replacing him, who sells or hands out any of the substances or preparations mentioned in the preceding paragraph, for non-therapeutical purposes, shall be liable to the sanctions mentioned in Article 21, paragraphs 2 and 4, and in Article 25.
3. Where sentences are rendered under the terms of the preceding paragraphs, the sentencing court shall transmit the sentences to the medical doctors' union or the pharmacists' union
as the case may be.
4. Any person who, contrary to the provisions of Article 19, hands out substances or preparations to manifestly mentally ill or under age persons shall be liable to imprisonment for a term up to 1 year or a day-fine for up to 120 days.
5. Attempt shall be punishable.

Article 28

Criminal associations

1. Any person who promotes the creation of, creates or funds a group, an organization or an association comprising two or more persons for the purpose of concertedly committing any of the offenses described in Articles 21 or 22, shall be liable to imprisonment for a term of 10 to 20 years.
2. Any person who co-operates directly or indirectly with, or supports any group, organization or association as mentioned in the preceding paragraph, shall be liable to imprisonment for a term of 5 to 15 years.
3. Any person who acts as head or steers any group, organization or association as mentioned in paragraph 1, shall be liable to imprisonment for a term of 12 to 20 years.
4. Where the aims of the group, organization or association are to convert, transfer, disguise or receive either goods or the proceeds of any of the offenses described in Articles 21 and 22, or where its activities amount to converting, transferring, disguising or receiving either goods or the proceeds of any of the offenses described in Articles 21 and 22, the offender shall be liable to:
 - a. imprisonment for a term of 2 to 10 years, in the cases mentioned in paragraphs 1 and 3;
 - b. imprisonment for a term of 1 to 8 years, in the cases mentioned in paragraph 2.

Article 29

Incitement to use narcotic drugs or psychotropic substances

1. Any person who publicly or privately induces, incites or encourages others, by any means, to use, or in any other way facilitates the illicit use of any of the plants, substances or preparations listed in Tables I to III, shall be liable to imprisonment for a term up to 3 years or a fine.
2. Where the substances or preparations involved are listed in Table IV, the sanction shall be imprisonment for a term up to 1 year or a day-fine up to 120 days.
3. The sanctions shall be aggravated by one third in both their lower and upper limits where:
 - a. the acts have been committed to the detriment of an under age or a mentally handicapped person, or to any person who is under the offender's care for purposes of treatment, education, training, supervision or guardianship;
 - b. any of the circumstances mentioned in Article 24, sub-paragraphs d), e) or h) occur.

Article 30

Trafficking and consuming in public places or in meeting places

1. Any person who is the owner, the manager or the director of, or who in any way operates a hotel, a restaurant, a cafe, a tavern, a club, a meeting room, a show room or an amusement precinct, and who consents to that place being used for the purpose of trafficking or illicitly using any of the plants, substances or preparations listed in Tables I to IV, shall be liable to imprisonment for a term of 1 to 8 years.
2. Any person who has at his disposal a building, a closed precinct or a vehicle and consents to it being habitually used for the purpose of trafficking or illicitly using any of the plants, substances or preparations listed in Tables I to IV, shall be liable to imprisonment for a term of 1 to 5 years.
3. Without prejudice to the provisions of the preceding paragraphs, any person who, after having been notified in conformity with the provisions of the following paragraph, does not take the measures that are necessary in order to prevent that the places indicated in the notification be used for the purpose of trafficking or illicitly using any of the plants, substances or preparations listed in Tables I to IV, shall be liable to imprisonment for a term up to 5 years.
4. The provisions of the preceding paragraph shall apply only after two seizures of plants, substances or preparations listed in Tables I to IV, have been effected within a period of time not longer than 1 year, by a judicial authority or an officer of the criminal police, and have been duly notified to the offender mentioned in paragraphs 1 and 2, regardless of the possessors having been identified or not.

5. Under the circumstances described in paragraphs 3 and 4, the authority empowered to investigate shall communicate the facts to the gobernador civil [prefect] of the district where the establishment is located, or to the administrative authority that licensed the establishment concerned, for the purpose of them deciding on whether or not to close down the establishment.

Article 31

Mitigating circumstances and exemption from sanction

Where in the cases described in Articles 21, 22, 23 and 28, the offender has voluntarily given up his activity, or has moved away or considerably diminished the danger resulting from his activities, or has prevented or made a serious effort to prevent the consequences that the law purports to avoid from happening, or has in concrete terms helped the authorities to gather decisive evidence with respect to the identification or capture of other offenders, in particular where groups, organizations or associations are involved, the sanction may be especially mitigated or he may be exempted from sanction.

Article 32

Derelict syringes

Any person who abandons in a public place, or in a place open to the public, or in a private place of shared use, a syringe or another object used for the illicit consumption of narcotic drugs or psychotropic substances and thus creates a danger for the life and physical integrity of any other person, shall be liable to imprisonment for a term up to 1 year or a day-fine up to 120 days, save where a more severe sanction is provided for in another legal provision.

Article 33

Aggravated disobedience

1. Any person who, after having been cautioned as to the penal consequences of his conduct, resists control measures or refuses to submit any document provided for in this law shall be liable to a punishment such as the punishment that the law ascribes for the offence of aggravated disobedience.

2. Any person who fails to comply with his duties under Article 20 shall be liable to a punishment such as the punishment that the law ascribes for the offence of aggravated disobedience.

Article 34

Deportation of aliens; closing down establishments

1. Without prejudice to the provisions of Article 48, where a person is sentenced for an offence described in this law and that person is an alien, the court, having due account of the rules applicable to nationals of member States of the European Community, may order the deportation of that person for a period of time not longer than 10 years.

2. When passing a sentence for an offence described in Article 30, and notwithstanding any disqualification from the practice of a profession or from the carrying out of an activity, the court may issue an order to close down, for a period of time of 1 to 5 years, the establishment or public precinct where the facts have occurred.

3. When sentencing, the court shall take into account any period during which the establishment or public precinct where the facts have occurred has been closed subsequent to a judicial or administrative order to that effect.

4. Any administrative order to close down the establishment or public precinct where the facts have occurred, shall immediately lapse where the defendant is acquitted.

Article 35

Forfeiture of property

1. Any object that has been used, or is intended to be used, as an instrumentality for any offence described in this law, or any object that has been produced as a result of such an offence, shall be confiscated if, because of its nature or because of the circumstances of the case, the object creates a danger to the security of persons or to the ordre public, or risks being used for the commission of other typified illicit acts.

2. The plants, substances and preparations listed in Tables I to IV shall be confiscated in all circumstances.

3. The provisions of the preceding paragraphs shall also apply where no determined person can be punished for the acts.

Article 36

Forfeiture of property or rights relating to the facts

1. Any rewards given to the author or authors of any offence described in this law, or promised to them for themselves or for a third party, shall be confiscated.

2. Any property, rights or benefits obtained by way of the offence by the author or authors thereof, for themselves or for a third party, shall be confiscated without prejudice to the rights of bona fide third parties.

3. The provisions of the preceding paragraphs shall also apply to any property, rights or benefits obtained by way of a transaction involving, or an exchange with, any property, rights or benefits directly obtained by way of the offence.

4. Where the rewards, the property, the rights or the benefits mentioned in the preceding paragraphs cannot be confiscated in specie, their respective value shall be confiscated instead.

5. This Article includes, inter alia, movable and immovable property, aircraft, ships, vehicles, deposits of cash and stock in banks and any other means of fortune.

Article 37

Property transformed, converted or mixed

1. Where the rewards, the property, the rights or the benefits mentioned in the preceding Article have been transformed into other goods, the latter shall be confiscated instead of the former.
2. Where the rewards, the property, the rights or the benefits mentioned in the preceding Article have been mixed with licitly acquired goods, the latter shall be confiscated up to the estimated value of the former.

Article 38

Gains and other benefits

The provisions of Articles 35 to 37 shall also apply to the interests, gains and other benefits obtained from the goods mentioned therein.

Article 39

Destination of goods confiscated

1. The rewards, the property, the rights and the benefits confiscated under the terms of Articles 35 to 37 shall be apportioned as follows and revert to:
 - a. the entity that coordinates the National Programme for the Fight against Drugs for the purpose of supporting actions, measures and programmes of prevention of the consumption of drugs, in the proportion of 30%;
 - b. the Ministry of Health for the purpose of financing structures of consultation, treatment and rehabilitation of drug addicts, in the proportion of 50%;
 - c. the departments of the Ministry of Justice, according to the legal provisions applicable to the destination of the proceeds of the sale of goods seized in criminal proceedings, for the purposes of treatment and social rehabilitation of drug addicts sentenced or subject to non-penal measures, in the proportion of 20%.
2. The alienation of self-propelled vehicles shall be made subject to previous authorization from the Directorate General of the State's Heritage, without prejudice to the provisions of Article 156 of the Decree-Law No. 295-A/90, of 21 September.
3. Confiscated property, objects or instruments shall not be alienated if, on account of their nature or their characteristics, they are capable of being used for the commission of new offences; where they do not have a criminalistic, scientific or didactic value, they shall be destroyed.
4. Property and goods seized at the request of authorities from a foreign State, as well as the proceeds of their sale, shall be shared equally between the requesting and the requested States, unless otherwise provided for in an international convention.

CHAPTER IV

Consumption and treatment

Article 40

Consumption

1. Any person who consumes, or cultivates, acquires or keeps for his consumption any plants, substances or preparations listed in Tables I to IV, shall be liable to imprisonment for a term up to 3 months or a day-fine up to 30 days.
2. Where the quantity of plants, substances or preparations cultivated, kept or acquired by the offender exceeds the quantity corresponding to three days' average individual consumption, the punishment shall be imprisonment for a term up to 1 year or a day-fine up to 120 days.
3. In the cases foreseen in paragraph 1 and where the offender is an occasional consumer only, he may be exempted from sanction.

Article 41

Self-imposed treatment

1. Any person who illicitly uses for his own consumption any plants, substances or preparations listed in Tables I to IV, and seeks assistance from the State or private health services shall be secured anonymity.
2. The same shall apply to under age or legally incapacitated persons where assistance is sought by their legal representatives.
3. Medical doctors, technical staff and other staff who assist the patient shall be bound by the rules pertaining to professional secrecy and shall not bear any obligation to testify before any court or to surrender to any police authority any information concerning the nature and the evolution of the therapeutical process.
4. Without prejudice to the provisions of the preceding paragraph, any medical doctor may inform the State health services of any cases of abuse of plants, narcotic drugs or psychotropic substances that he comes across within his professional practice, where he deems that treatment or assistance for which he is not equipped is required in the interest of the patient, his family or the community.

Article 42

Reception and treatment of consumers

1. The Ministry of Health, through its departments, shall take whatever steps necessary in order to ensure that drug addicts and other drug consumers who step forward on their own volition are adequately received.

2. The Minister of Health shall issue an order stating the conditions under which private entities may receive and provide treatment for drug addicts, as well as the control measures to which they shall be subjected.

Article 43

Medical examination of habitual consumers

1. Where evidence exists that a person is an habitual consumer of any of the plants, substances or preparations listed in Tables I to IV, thus seriously endangering his health or revealing social danger, the Public Prosecutor of the judicial district of that person's residence may order an adequate medical examination to be performed.

2. The initiative for such a medical examination may come from the Public Prosecutor or it may be requested from him by the legal representative or the spouse of the person concerned, or even by a sanitary or a police authority; in any event, the examination shall aim to investigate the evidence mentioned in the preceding paragraph.

3. The examination shall be entrusted to a specialized medical doctor, or a specialized health service, public or private, and shall be performed within a period of time not longer than 30 days; *mutatis mutandis*, the rules applicable in criminal proceedings shall also apply here, in particular the rules governing the duty to appear before the examining doctor; experts may be sworn in on one single occasion with respect to more than one examination or procedure.

4. The person examined may be subjected to analysis of his blood and urine, or to any other analysis that may prove to be necessary.

5. Where the examination shows that the person concerned is addicted to drugs, the Public Prosecutor shall propose to that person that he voluntarily submits himself to treatment; should the person accept that proposal, the treatment shall be performed under the responsibility of a specialized health service, public or private.

6. Should the treatment be discontinued without justification or should the person refuse it, the Public Prosecutor shall communicate the facts to the Social Rehabilitation Institute and, where appropriate, to the health services so that they may take adequate measures of assistance.

Article 44

Suspension of sentence and duty to submit to treatment

1. Where the offender has been sentenced either for the offence described in Article 40 or for an offence directly connected with that offence, and where, in accordance with the provisions of Article 52, he has been deemed to suffer from drug addiction, the court may suspend the execution of the sentence in accordance with the general law, subject to the imposition of adequate duties and rules of conduct, if the offender accepts to submit to voluntary treatment or to be placed in an appropriate institution; the court shall establish at what time and in which way the offender must submit evidence of compliance with the conditions imposed upon him.

2. During the period of suspension of the execution of the sentence, should the drug addict culpably refrain from submitting to treatment or to placement, or from abiding by the duties and rules of conduct imposed on him, the provisions of the general law concerning compliance with duties and rules of conduct of the same sort shall apply.
3. Should the suspension be revoked, the sentence shall be served in appropriate quarters within a prison.
4. The drug addict shall be assisted by the prison's medical services or, if necessary, by the services of the Ministry of Health under conditions agreed upon with the Ministry of Justice.
5. Any rules applicable to assistance provided for the detainee by private entities and to modalities of treatment that have a bearing on the prison regime shall be laid out in an order issued by the Minister of Justice.

Article 45

Suspension of sentence and probation

1. In the case described in the preceding Article, the court may decide, in accordance with the general law and if it deems that it is fit and proper to facilitate the drug addict's recuperation and his rehabilitation within the community, that the suspension of the execution of the sentence be accompanied by probation.
2. The individual recovery and rehabilitation plan shall be prepared and its implementation followed by the health services in coordination with the Social Rehabilitation Institute, under the responsibility of either, depending on which one the court deems the most appropriate; as far as possible, the agreement of the person concerned should be sought.
3. The court's decision may be taken before the individual plan is submitted; in that case, the court shall fix a reasonable delay for the plan to be submitted.
4. The provisions of paragraphs 2 to 4 of Article 44 shall apply respectively.

Article 46

Drug addicts remanded in custody or serving a prison sentence

Where drug addiction is detected at a time when the person concerned is either remanded in custody or serving a prison sentence, the police or the prison services shall communicate the fact to the Public Prosecutor so that the latter can undertake adequate measures, without prejudice to any urgent measures that the situation might impose.

Article 47

Treatment in the context of proceedings pending

1. Where the treatment, regardless of its modality, is performed within the context of proceedings pending before a court, the medical doctor or the institution shall forward every three months, unless another frequency is imposed, a report on the evolution of the person concerned accompanied, if appropriate, by suggestions of measures deemed appropriate, with due respect for the confidential nature of the therapeutical relationship.
2. Within the framework of its attributions, the Social Rehabilitation Institute shall proceed in the same way.
3. Having received the report mentioned in the preceding paragraphs, the court shall, if it deems necessary, decide on the procedural situation of the person concerned.
4. The provisions of this law shall take precedence over the provisions concerning placement in closed institutions contained in the laws relating to mental health.

CHAPTER V

Subsidiary legislation

Article 48

Criminal law

The provisions of the General Part of the Criminal Code and the supplementary legislation thereto shall subsidiarily apply to the matters covered by this law.

Article 49

Applicability of the Portuguese criminal law

For the purposes of this law, the Portuguese criminal law shall also be applicable to acts committed outside the national territory where:

- a. such acts have been committed by aliens provided that the offender is in Portugal and will not be extradited;
- b. such acts have been committed on board a ship against which Portugal has been authorised to take measures under Article 17 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Article 50

Measures concerning minors

Where the person concerned is a minor, the courts that have jurisdiction over matters pertaining to minors shall be empowered to apply the measures provided for in this law, with adaptations as appropriate and in accordance with the special legislation on minors, without prejudice to the application by the ordinary courts of the legislation pertaining to young people aged between 16 and 21.

Article 51

Law of Criminal Procedure

1. For the purposes of the Code of Criminal Procedure and in conformity with the provisions of Article 1, paragraph 2, thereof, any act that amounts to any one or several of the offences described in Articles 21 to 24 and 28 of this law shall be treated as if it were an act of terrorism or violent or highly organised criminality.
2. The provisions of the Code of Criminal Procedure and supplementary legislation shall apply subsidiarily to any situation with respect to which this law does not make specific provision.

Article 52

Forensic expertise

1. Where in the course of the enquiry or the investigation indication is made that the person concerned was a drug addict at the time of the acts attributed to him, urgent expertise shall be undertaken in order to clarify the facts.
2. The expert shall, as far as possible, give his opinion with respect to the nature of the products consumed by the person concerned, the latter's present state of mind, as well as any eventual implications of his consumption of drugs on his capacity to evaluate the licit or illicit nature of his acts and accordingly decide on his conduct.
3. Where necessary, a decision may be taken to the effect that the analysis mentioned in Article 43, paragraph 4, is carried out.

Article 53

Body searches and expert examinations

1. Where there is evidence that a person conceals inside or carries on his body narcotic drugs or psychotropic substances, a body search and, if necessary, an expert examination shall be carried out.
2. The person concerned may be led to a hospital or to another adequate institution and kept there for as long as it is strictly necessary in order to carry out the expert examination.
3. Without prejudice to the provisions of Article 52, paragraph 1, where there is no consent from the person concerned, searches and expert examinations shall be made only subject to previous authorization from the competent judicial authority; as far as possible, the latter shall preside over the measure.
4. Any person who, after having been duly warned of the criminal law consequences thereof, refuses to submit to search or expert examination as provided for in the preceding paragraph, shall be liable to imprisonment for a term up to 2 years or a day-fine up to 240 days.

Article 54

Remand in custody

1. The provisions of Article 209, paragraph 1, of the Code of Criminal Procedure shall apply in every instance in which the alleged offence is drug trafficking, displacement of precursors, money laundering or criminal association; the judge shall take due account of the economic resources of the person concerned capable of being used in order to bear the costs of forfeiting the latter's bail, as well as the risk of pursuing his criminal activities both at national and international level.
2. Before deciding on whether or not the conditions exist that are required in order to impose remand in custody according to the provisions of Article 213 of the Code of Criminal Procedure, the Public Prosecutor shall seek to obtain from the competent department of the Polícia Judiciária whatever information is necessary in order to assess that matter.
3. The provisions of Article 215, paragraph 3, of the Code of Criminal Procedure shall apply to proceedings with respect to any of the offences mentioned in paragraph 1.

Article 55

Coercive measures

1. Where the alleged offence carries a maximum penalty of imprisonment above three years and the person concerned has been deemed to be a drug addict according to the provisions of Article 52, the judge may impose upon him an obligation to submit to treatment in an appropriate institution, without prejudice to the provisions of the Code of Criminal Procedure; the person concerned shall appear in that institution within the imparted delay.
2. Any obligation imposed to submit to treatment shall be communicated to the institution concerned; the judge may request the Social Rehabilitation Institute to assist the person concerned.
3. The person concerned shall produce before the court such evidence and at such point in time as the latter may require from him.
4. Remand in custody shall not be imposed upon a person who is undergoing treatment against drug addiction, unless especially relevant preventive reasons occur in concreto.
5. Where remand in custody has to be imposed, it shall be carried out in an appropriate area of the prison.
6. The provisions of Article 44, paragraph 5, shall apply.

Article 56

Provisional discontinuation of the proceedings

1. Where the alleged offence is either the offence described in Article 40 or another offence directly connected with it that carries either a prison sentence of no more than three years or a non-custodial sentence, the Public Prosecutor may decide to discontinue the proceedings, subject to the agreement of both the investigating judge and the person concerned, and subject also to the requirements being met that are set out in Article 281, sub-paragraphs d) and e), of the Code of Criminal Procedure.

2. In implementing the discontinuation of the proceedings, other than the rules of conduct mentioned in Article 281, paragraph 2, of the Code of Criminal Procedure, treatment or placement in an appropriate institution shall be imposed upon the person concerned once his drug dependence has been appraised; the provisions of Article 47 shall apply.

3. Any substances or preparations that have been used or were intended to be used in the commission of the offence shall be seized and confiscated.

CHAPTER VI

Special rules

Article 57

Criminal investigation

The Polícia Judiciária alone shall be empowered to investigate illicit trafficking in any of the plants, substances or preparations listed in the Tables appended to this law.

Article 58

International co-operation

In compliance with the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the provisions of the Decree-Law No. 43/91, of 22 January, shall subsidiarily apply to extradition, mutual legal assistance, enforcement of foreign criminal sentences and transfer of criminal proceedings.

Article 59

Non-punishable acts

1. Where, for the purposes of the investigation and without revealing his status and identity, any criminal investigation officer receives delivery of narcotic drugs or psychotropic drugs, directly or through a third person, that conduct shall not be punishable.

2. A report on such facts shall be joined to the file within 24 hours at the latest.

Article 60

Surrender of information and documents

1. It shall be lawful to request information about any documents pertaining to goods, deposits or any other assets belonging to any person suspected or accused of any of the offences described in Articles 21 to 23, 25 and 28, and to require that such documents be surrendered with a view to them being seized and confiscated.
2. Subject to the request being individualized and sufficiently concretized, communication of that information or surrender of those documents, either stocked manually or computer-based, may not be refused by any entities, public or private, in particular by banking or financial or similar institutions, civil law partnerships, commercial companies, or any tax or register's departments.
3. The request mentioned in the preceding paragraphs must come from the competent judicial authority.

Article 61

Controlled deliveries

1. Without prejudice to the exercise of criminal law powers with respect to acts that come within the jurisdiction of Portuguese law, and for the purpose of facilitating, in co-operation with the country or countries of destination or eventually other countries of transit, the identification and charging of the largest possible number of persons involved in the different traffic and distribution operations, the Public Prosecutor may authorize on a case by case basis that the Polícia Judiciária refrains from acting in respect of persons in transit in Portugal who carry with them narcotic drugs or psychotropic substances.
2. Such an authorization may be given at the request of the country of destination provided that:
 - a. the itinerary that is likely to be followed by the persons concerned is known in detail and the identification of those persons is established in a satisfactory way;
 - b. the competent authorities of the countries of transit and destination offer adequate guarantees as to the security of the substances against forfeiture and against them going astray;
 - c. the competent judicial authorities of the countries of transit and destination secure that their legislation provides for adequate sanctions and that prosecution will be instituted;
 - d. the competent judicial authorities of the countries of transit and destination secure that they will urgently provide detailed information about the results of the operation, as well as a detailed report of the action undertaken by each of the offenders, in particular those who acted in Portugal.
3. Notwithstanding the authorization mentioned in the preceding paragraphs, the Polícia Judiciária shall intervene if the margin of safety decreases significantly, or in the case of unexpected changes in the itinerary, or in any other circumstances that might make it

more difficult to seize the substances or arrest the offenders; where such an intervention has not been previously communicated to the authority that granted the authorization, a written report shall be submitted to the latter within 24 hours.

4. Subject to the agreement of the country of destination, part of the substances in transit may be replaced by other, innocuous, substances; a formal record of that shall be kept.

5. Non-compliance with their undertakings by the countries of transit or destination may constitute sufficient grounds for refusing to authorize future requests.

6. International liaisons shall only be made, through the Polícia Judiciária, by the National Bureau of Interpol.

7. Any other entity that receives requests for controlled deliveries, in particular the Directorate General of Customs, either through the Customs Co-operation Council or through its foreign counterparts, without prejudice to processing information concerning customs and excise, shall immediately forward such requests to the Polícia Judiciária for action.

8. Requests for controlled deliveries shall be submitted to the competent Public Prosecutor of the Judicial District of Lisbon only.

Article 62

Examination and destruction of the substances

1. Upon injunction issued by the competent judicial authority, any plants, substances and preparations seized shall be examined as soon as possible.

2. Once the examination in laboratory has been carried out, the expert shall, if the quantity available so permits, select a sample, identify it, take its gross and net weight, package it and seal it; he shall proceed in the same way with the remaining quantities.

3. The samples shall be kept in the safe of the department responsible for the investigation until a final decision is taken.

4. Within five days from the time when the report from the examination in laboratory joins the file, the competent judicial authority shall order the destruction of the remaining quantities of drugs; that order shall be carried out within a period of time not longer than 30 days; while awaiting its destruction, the drug shall be kept in a safe.

5. Drugs shall be destroyed by way of incineration, in the presence of a magistrate, an officer appointed to that effect and a laboratory technician; a formal record of that shall be kept; drugs seized within the framework of different proceedings may be incinerated jointly.

6. When a final decision has been taken by the court, the latter shall order the destruction of the sample that had been kept; that destruction shall be performed in conformity with the provisions of the preceding paragraph and the record forwarded to the court.

7. Requests may be submitted to the magistrate responsible for the proceedings, through the Ministry of Justice's Office for the Fight against Drugs, to the effect that substances seized be allocated for didactic purposes or for purposes of training or criminal investigation, notably for training dogs.

8. A delay may be fixed for returning the drugs allocated in accordance with the provisions of the preceding paragraph; the entities to which they have been allocated may be authorized to destroy such drugs as soon as they are no longer necessary or become useless; record thereof shall be included in the file.

Article 63

Samples requested by foreign entities

1. Samples of substances or preparations that have been seized may, even whilst the proceedings are pending, be forwarded to public foreign entities at their request for scientific purposes or purposes of investigation.

2. Requests to that effect shall be forwarded to the competent judicial authority; the latter shall take a decision thereupon.

3. Requests to that effect shall be submitted through the Ministry of Justice's Office for the Fight against Drugs or the Polícia Judiciária only.

Article 64

Communication of decisions

1. The Ministry of Justice's Office for the Fight against Drugs shall be kept informed of any seizure of plants, substances or preparations listed in Tables I to IV.

2. Courts shall forward to the Ministry of Justice's Office for the Fight against Drugs copies of all the decisions taken by them in criminal proceedings concerning any of the offences described in this law.

CHAPTER VII

Regulatory offences and coimas

Article 65

General rule

1. Any violation of the requirements and duties provided for in Article 2, paragraphs 4 and 5, shall be a regulatory offence carrying a coima, in accordance with the provisions of the relevant regulations' decree.

2. The provisions of the Decree-Law No. 433/82, of 27 October, shall apply in all cases that are not specifically covered by this law and its supplementary legislation.

Article 66

Amount of the coimas

1. The amount of the coimas range between Portuguese Escudos (PTE) 10 000 and PTE 5 000 000.
2. In cases of negligence the amount of the coima imposed shall not exceed half the maximum amount provided for the regulatory offence in question.
3. Coimas applied to legal persons and the likewise may however reach a maximum amount of PTE 10 000 000 in cases of mens rea and PTE 5 000 000 in cases of negligence.

Article 67

Seizure and ancillary sanctions

1. Any objects that have been used for committing a regulatory offence may be seized within the framework of the proceedings concerning that regulatory offence; the following ancillary sanctions may likewise be imposed:
 - a. cancellation or suspension of an authorization granted for carrying out an activity;
 - b. disqualification from practising a profession or carrying out an activity during a period of time not longer than three years.
2. Where the same act also constitutes a criminal offence, the offender shall be punished for the latter only, without prejudice to the imposition of the ancillary sanctions provided for in respect of the regulatory offence.

Article 68

Competent authority and register

1. The President of the National Institute of Pharmacy and Medicinal Drugs or the Committee for Imposing Coimas in the Economic Field shall be empowered to impose the coimas and ancillary sanctions provided for in the relevant regulations' decree.
2. The National Institute of Pharmacy and Medicinal Drugs shall keep a register of all physical and legal persons authorized to carry out any of the activities mentioned in Article 2, paragraph 4, including the register of all the sanctions imposed upon the physical and legal persons listed therein.

CHAPTER VIII

Final provisions

Article 69

Representatives at international level

The entity that coordinates the National Programme for the Fight against Drugs, in coordination with the Ministry of Foreign Affairs, shall be empowered to take care of Portugal's representation at an international level, ensuring that the subjects of co-operation are taken care of, and the members of delegations include persons appointed by the different entities concerned according to their respective fields of competence.

Article 70

Primary prevention

1. The Ministries of Justice, Education and Health, as well as the governmental department responsible for youth matters, in coordination with the entity that coordinates the National Programme for the Fight against Drugs, shall be empowered to plan, enforce and evaluate the action, measures and specific programmes for the prevention of drug consumption, with due consideration for their multidisciplinary nature.

2. Without prejudice to the powers that have been or will be conferred, in their respective organizational rules, upon the ministries mentioned in the preceding paragraph, the Ministry of Education shall be empowered to:

a. include health education in schools' curricula, affording specific relevance to the prevention of drug consumption;

b. take measures in order to ensure that both the basic and the vocational training of teachers prepares them to teach and develop the teaching of those matters;

c. develop specific programmes of primary prevention of drug addiction in schools.

Article 71

Diagnosis; quantification of substances

1. After having sought an opinion from the High Council for Forensic Medicine, the Ministers of Justice and Health shall issue a Rule:

a. defining protocols for the diagnosis of drug addiction situations and for the corresponding preparatory expert examinations;

b. establishing the modalities of intervention of specialised health services in support of police and judicial authorities;

c. fixing the upper quantitative limits of active ingredients for each individual average daily dose of the more commonly used substances and preparations listed in Tables I to IV.

2. The Rule mentioned in the preceding paragraph must be updated as soon as required as a result of progress in scientific knowledge.

3. The value in terms of evidence of both the expert examinations and the limits mentioned in paragraph 1 shall be assessed according to the provisions of Article 163 of the Code of Criminal Procedure.

Article 72

Information addressed to health experts

In publications relating to pharmaceutical products and addressed exclusively to medical doctors and other health experts the letter "E" (Estupefaciente) must be added to any reference to substances or preparations listed in Tables I-A or III and the letter "P" (Psicotrópico) must be added to any reference to substances or preparations listed in Tables II-B, II-C or IV.

Article 73

Technical rules and concepts

Any technical rule or concept mentioned in this law shall be interpreted in accordance with the international conventions relating to narcotic drugs and psychotropic substances ratified by Portugal.

Article 74

The Ministry of Justice's Office for the Fight against Drugs

Awaiting the change in structure and denomination of the Office of Planning and Coordination of the Fight against Drugs, any reference made in this law to the Ministry of Justice's Office for the Fight against Drugs shall be understood to relate to the former.

Article 75

Legal provisions repealed

The following texts and provisions are hereby repealed:

- a. the Decree-Law No. 430/83, of 13 December;
- b. the provisions of Article 130, paragraph 1, of the Decree-Law No. 48 547, of 27 August 1968, as amended by the Decree-Law No. 214/90, of 28 June;
- c. the Decree-Law No. 209/91, of 8 June.

Article 76

Entry into force

1. This law shall enter into force 30 days after its publication.
2. The matters provided for in Article 2, paragraphs 4 and 5, in Articles 4 to 20 and in Article 65 shall be regulated within a period of time of 60 days from the date of publication of this law.

Tables of plants, substances and preparations that are subject to control

(Articles 2 and 3 of the Decree-Law No. 15/93)

T A B L E I - A

Acetyl-alpha-metilphtentaniil; Acetyldihydrocodeine; Acetylmethadol; Acetorphine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Alpha-metilphtentaniil; Alpha-metiltiophentaniil; Alpentaniil; Alphaprodine; Allylprodine; Anileridine; Benzylmorphine; Benzethidine; Betacetylmethadol; Beta-hydroxiphtentaniil; Beta-hydroxi-3-metilphtentaniil; Betameprodine; Betamethadol; Betaprodine; Bezitramide; Dioxaphetyl butyrate; Ketobemidone; Clomitazene; Codeine; Codeine-N-Oxide; Codoxina; Compound poppy powder ; Desomorphine; Dextromoramide; Dextroprooxyphene; Diampromide; Diethylthimbutene; Diphenoxylate; Difenoxin; Dihydrocodeine; Dihydromorphine; Dimepheptanol; Dimenoxadol; Dimethylthiambutene; Dipipanone; Drotebanol; Ethylmethylthiambutene; Ethylmorphine; Etoniazene; Etorphine; Etozeridine; Phenadoxone; Phenampromide; Phenazocine; Phenomorphan; Phenoperidine; Fentanyl; Pholcodine; Furethidine; Heroin; Hydrocodone; Hydromorphinol; Hydromorphone; Hydroxypethidine; Isomethadone; Levophenacylmorphan; Levomethorphan; Levomoramide; Levorphanol; Methadone; Methadone intermediate; Metazocine; Methyl-desorphine; Methyl-dihydromorphine; 3-Metylphentaniil - N; Metopon; Myrophine; Morpheridine; Moramide intermediate; Morphine; Morphine methylbromide and other morphine derivates with polyvalent nitrogen; Morphine-N-Oxide; MPPP; Nicocodine; Nicodicodine; Nicomorphine; Noracymethadol; Norcodeine; Norlevorphanol; Normethadone; Normorphine; Norpipanone; Opium (raw opium); Opium, mixed alkaloids; Oxycodone; Oximorphone; Para-fluorophentaniil; PEPAP; Pethidine; Pethidine intermediate A; Pethidine intermediate B; Pethidine intermediate C; Piminodine; Piritramide; Proheptazine; Properidine; Propiram; Racemetorphan; Racemoramide; Racemorphan; Sufentaniil; Thebacon; Tebaine; Tilidine; Tiophentaniil - N; Trimeperidine

The isomers of the substances listed in this Table, where the existence of such isomers is possible with specific chemical designation, unless expressly excluded.

Every form of any ester of the substances listed in this Table, unless listed in any of the other Tables. Any salt of the substances listed in this Table, including the salts of esters and the above-mentioned ethers and isomers, where the existence of such salts is possible.

T A B L E I - B

Coca leaf - the leaves of *Erythroxylon coca* (Lamark), of the *Erythroxylon novagranatense* (Morris) of Hieronymus and its varieties of the *Erythroxylaceae* family, and the leaves of other species of this genus from which cocaine may be obtained either directly or chemically; the leaves of the coca bush except those from which all ecgonine, cocaine and any other ecgonine alkaloids have been removed.

Cocaine - methyl ester of acid 8-methyl-3-benzoyloxy-8-aza-bicycle-(1,2,3)-octane-2-carboxy; methyl ester of benzoylecgonine

D-cocaine - Dextro-isomer of cocaine

Ecgonine, acid - (-)-3-hydroxy-8-methyl-8-aza-bicycle-(1,2,3)-octane-2-carboxy, and its esters and derivatives transformable into ecgonine and cocaine. Any salt of the above-listed substances where the existence of such salts is possible.

TABLE - I - C

Cannabis - Flowering or fruiting tops of the *Cannabis Sativa* L. plant from which the resin has not been extracted, whatever the name given to them.

Resin cannabis - The separated resin, either raw or purified, obtained from the *Cannabis* plant.

Cannabis oil - Separated oil, either raw or purified, obtained from the *Cannabis* plant. Any salt of the above-listed substances where the existence of such salts is possible.

TABLE - II - A

Bufotenine; Catinone; DET - N-N-Diethyltryptamine; DMA - (+)-2,5-Dimethoxy-*a*-methylphenylethylamine; DMHP - 3-(1,2-Dimethyl-heptyl)-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo-(b,d) pyran; DMT - N-N-Dimethyltryptamine; DOB - 2,5-Dimethoxy-4-bromoamphetamine; DOET - (+)-2,5-Dimethoxy-4*a*-ethyl-methylenylethylamine; DOM, STP - 2-amino-1-(2,5-dimethoxy-4-methyl)phenyl propane; DPT - Dipropyltryptamine; Ethylcyclidine - PCE - N-ethyl-1-phenylcyclohexylamine; Phenylcyclidine - PCP - 1-(1-phenylcyclohexyl) piperidine; Lysergide, LSD, LSD - 25; MDMA - 3,4-methylenedioxyamphetamine; Mescaline; 4-methylaminorex; MMDA -; Parahexyl; PMA -; Philocypine; Psilocine; Rolicyclidine - PHP, PCPY; Tenamphetamine - MDA -; Tenocyclidine, TCP; TMA; Any salt of the above-listed substances where the existence of such salts is possible.

TABLE - II - B

Amphetamine; Catine; Dexamphetamine; Phendimetrazine; Phenethylamine; Phenmetrazine; Phentermine; Levamphetamine; Levometamphetamine; Metamphetamine; Metamphetamine, racemate; Methylphenidate; Tetrahydrocannabinol - the followings isomers : $\text{-6}^{\text{a}}(10^{\text{a}})$, $\text{-6}^{\text{a}}(7)$, -7 , -8 , -9 , -10 , $\text{-}(11)$.

; Any salt or derivative of the substances listed in this Table, as well as any preparation in which such substances associate with other compounds, regardless of the latter's action.

TABLE - II - C

Amobarbital; Bupremorphine; Butalbital; Cyclobarbital; Glutethimide; Mecloqualone; Methaqualone; Pentazocine; Pentobarbital; Secobarbital

Any salt of the above-listed substances where the existence of such salts is possible.

T A B L E - I I I

; 1. Preparations that, although being derived from narcotics, constitute no great risk of being used and/or abused, by virtue of their quantitative composition.

2. Preparations containing acetylthiocodeine, codeine, dihydrocodeine, ethylmorphine, pholcodine, nicodine, nicodicodine and norcodeine where combined with one or more other components and the quantity of the narcotic substance used does not exceed 100 mg. per dosage unit and its concentration, in non-divided form, in the pharmaceutical preparation does not exceed 2,5 per cent.

3. Cocaine preparations containing in the maximum 0,1 per cent of that substance, calculated in base cocaine, as well as opium and morphine preparations containing not more than 0,2 per cent of morphine expressed in anhydrous base morphine where one or more ingredients, whether active or inert, exist in any of those preparations and the cocaine and opium or morphine included cannot easily be recovered or are not present in such of a proportion that may constitute a danger to the public health.

4. Difenoxin preparations containing in dosage units not more than 0,5 mg of difenoxin expressed in the basic form, as well as a quantity of atropine sulphate equivalent at least to 5 per cent of the difenoxin that has been added.

5. Diphenoxylate preparations containing in dosage units not more than 2,5 mg. of diphenoxylate expressed in the basic form, as well as a quantity of atropine sulphate equivalent at least to 1 per cent of the diphenoxylate that has been added.

6. Opiated ipecacuanha powder with the following composition: 10 per cent powdered opium; 10 per cent powdered ipecacuanha root; 10 per cent any inert powder containing no controlled drug.

7. Propinam preparations containing not more than 100 mg. of that substance per dosage unit where associated with at least the same amount of methylcellulose.

8. Preparations that are capable of being orally administered containing not more than 135 mg. of base salts of dextropropoxyphene per dosage unit or compounds with a concentration not exceeding 2,5 per cent of the preparations in non-divided form where these preparations do not contain any substance controlled under the 1971 Convention on Psychotropic Drugs.

9. Preparations corresponding to any of the formulae mentioned in this Table, as well as combinations of such preparations with any uncontrolled drug.

T A B L E - I V

Alobarbital; Alprazolam; Anphepramone; Barbital; Benzphetamine; Bromazepam; Butobarbital; Camazepam; Cetazolam; Chlobazam; Chlobenzorex; Chlonazepam; Chlorazepate; Chlordiazepoxide; Chlordesmethyldiazepam; Clotiazepam; Cloxazolam; Delorazepam; Diazepam; Estazolam; Ethchlorvynol; Ethylamphetamine; Ethyl-

Ioflazepate; Ethinamate; Phencanphamine; Phenobarbital; Phemproporex; Fludiazepam ; Flunitrazepam; Flurazepam; Halazepam; Haloxazolam; Loprazolam; Lorazepam; Lormetrazepam; Mazindol; Medazepam; Mephenorex; Meprobanate;Methylphenobarbital; Methyprylon; Midazolam; Nimetazepam; Nitrazepam; Nordazepam; Oxazepam; Oxazolam; Pernolyn; Pinazepam; Pipradol; Pirovalerone; Prazepam; Propil-hexedrine;Quazepam; Secbutabarbital; SPA, Lefetamine; Temazepam; Tetrazepam; Triazolam; Vinibital; Any salt of the above-listed substances where the existence of such salts is possible.

TABLE - V

Lisergic acid; Ephedrine; Ergometrine; Ergotamine; Fenil-1 propanone-2; Isosafrole; 3,4-Metylenodioxyphenyl-2-propanone; N-acetylantranflic acid; Piperonal; Pseudo-ephedrine; Safrole; Any salt of the above-listed substances where the existence of such salts is possible.

TABLE - VI

Acetone; Antranilic acid ; Chloridric acid; Phenylacetic acid; Sulphuric acid; Acetic anhydrid; Ether eflic; Metyethylcetone; Potassium permanganat; Piperidina; Toluene; Any salt of the above-listed substances where the existence of such salts is possible.