



S. R.
MINISTÉRIO DA JUSTIÇA

POLÍCIA JUDICIÁRIA

DIRECTORIA NACIONAL

Act No. 5/2002

of 11 January

(rectified by Statement of Rectification n° 5/2002)

**ESTABLISHING MEASURES FOR THE COMBAT AGAINST ORGANISED
CRIME AND ECONOMIC AND FINANCIAL CRIME AND ADDING 2nd
AMENDMENT TO ACT No. 36/94 OF 29 SEPTEMBER, AMENDED BY ACT
No. 90/99 OF 10 JULY, AND 4th AMENDMENT TO DECREE-LAW No. 325/95
OF 2 DECEMBER, AMENDED BY ACT No. 65/98 OF 2 SEPTEMBER, BY
DECREE-LAW No. 275-A/2000 OF 9 NOVEMBER, AND BY ACT No.
104/2001 OF 25 AUGUST**

(as rectified by the Statement of Rectification n° 5/2002)

The Assembly of the Republic decrees, pursuant to Article 161 (c) of the Constitution, to be in force as general Law of the Republic, the following:

CHAPTER I

Article 1

Scope of application

1 - This law establishes a special regime for the collection of evidence, breach of professional secrecy and confiscation of assets to the State in relation to the following offences:

- a) Narcotics trafficking, pursuant to articles 21 to 23 and 28 of Decree-Law No. 15/93, of 22 January;
- b) Terrorism and terrorist organisation;
- c) Arms trafficking;
- d) Passive corruption and embezzlement;
- e) Money laundering;
- f) Criminal gang;
- g) Smuggling;
- h) Trafficking and change of identification elements in robbed vehicles;
- i) Incitement to prostitution and incitement to prostitution and trafficking in minors;
- j) Counterfeiting currency and securities equivalent to currency.



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2 – The provisions in this Act shall only apply to the offences provided for in subparagraphs g) and j) of the preceding article if these are committed in an organised manner.

3 – The provisions in chapters II and III shall also apply to the other offences referred to in paragraph 1, article 1, of Act No. 36/94 of 29 September.

CHAPTER II

Professional secrecy

Article 2

Breach of secrecy

1 - In the investigation, fact finding and trial phases for the crimes listed in article 1, members of the governing bodies of credit institutions and financial companies, the respective employees and services providers, as well as tax officials, shall no longer be bound by professional secrecy if there is reason to believe that the respective information is important for the discovery of the truth.

2 – For the purposes of this law, the provision laid out in the preceding paragraph shall solely depend on the order from the judiciary authority in charge of directing the proceedings, by means of a reasoned order.

3 - The reasoned order referred to in the preceding paragraph shall identify the persons at issue and shall specify the required pieces of information and the documents to be delivered. The reasoned order may take a generic form in relation to each one of the subjects at issue, where specification is not possible.

4 – Where the holder or holders of the account, or the persons involved in the transactions, are not known, the identification of the accounts and transactions on which information is required, shall suffice.

5 – Where the pieces of information relate to a defendant in the proceedings or to a legal person, the reasoned order referred to in article 2, shall always take a generic form, and shall include:

- a) Tax information;
- b) Information on bank accounts and the respective activity, held or co-held by the defendant or by the legal person, or which he/it is entitled to operate;
- c) Information on bank and financial transactions in which the defendant or the legal person are involved;
- d) Identification of other persons involved in the transactions referred to in subparagraphs b) and c);



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- e) Documents supporting the pieces of information referred to in the preceding paragraphs.

6 – In order to comply with the provisions set forth in the preceding paragraphs, the judiciary authorities and the criminal police bodies empowered to investigate, shall have access to the databases of the tax administration.

Article 3

Procedure relating to credit institutions or financial companies

1 – Following the reasoned order referred to in the preceding article, the judiciary authority or, by delegation, the criminal police body empowered to investigate, shall request from credit institutions or financial companies the relevant pieces of information or support documents, or a copy of them.

2 – Credit institutions and financial companies are required to provide the requested elements within:

- a) 5 days, as to the data electronically available;
- b) 30 days, as to the respective support documents and data electronically unavailable; in case of defendants who are detained or under arrest, this time shall be reduced by half.

3 – If the request is not met within the scheduled time, or if there are grounds for suspicion that documents or information have been concealed, the judiciary authority charged with the direction of the proceedings shall seize the documents, upon authorisation from the criminal investigation judge, during the enquiry phase.

4 – Those documents considered to be of no interest to the proceedings shall be returned to the entity that supplied them or, provided these are not originals, destroyed, with a respective report being drawn up.

5 – Where the institutions referred to in paragraph 1 are not known, the judiciary authority charged with the direction of the proceedings shall request the dissemination of the information request by the Central Bank.

6 – The credit institutions or financial companies shall indicate to the Attorney-General of the Republic a central entity responsible for meeting the information and documents requests.

Article 4

Control of bank accounts



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1 – The control of a bank account requires the respective credit institution to report to the judiciary authority or to the criminal police body any operations on the account within the twenty-four hours that follow the operation.

2 – The control of a bank account is authorised or ordered, depending on the cases, by a reasoned order from the judge whenever it is thought to be important for the discovery of the truth.

3 – The reasoned order referred to in the preceding paragraph shall identify the account or the accounts included in the measure, its duration period and the judiciary authority or criminal police body responsible for the control.

4 – The reasoned order provided for in paragraph 2 may also include the obligation to stay the execution of the operations specified in it, if necessary for the prevention of a money laundering offence.

5 – The stay of execution shall lapse if not confirmed by the judiciary authority within forty-eight hours.

Article 5

Confidentiality duty

The persons referred to in article 2, paragraph 1, shall be bound by the duty of confidentiality in relation to the acts mentioned in articles 2 to 4 that may come to their knowledge, and they cannot disclose it to the persons whose accounts are being controlled or on which there have been requests of information or documents.

CHAPTER III

Other means for producing evidence

Article 6

Voice and picture recording

1 – It is admissible, where necessary for the investigation of the offences referred to in article 1, to record voice and picture files, by any means, without permission of the subject.

2 – These recordings require a prior consent or order from the judge, depending on the case.

3 – The procedures provided for in the Code of Criminal Procedure, article 188, shall apply to the mentioned recordings, with the adaptations thought to be necessary.

CHAPTER IV

Assets confiscation to the State

Article 7

Assets confiscation

1 - In case of conviction for an offence referred to in article 1, and for the purpose of assets confiscation to the State, it is considered as benefit from a criminal activity the difference between the value of the defendant's actual property and one that is consistent with his lawful income.

2 – For the purpose of the application of this Act, as the defendant's property one should consider all the assets:

- a) Owned by the defendant or under his control or to his benefit, as of his being held defendant or subsequently;
- b) Transferred to third parties for free or against a derisory instalment within the 5 previous years to his being held defendant;
- c) Received by the defendant within the 5 previous years to his being held defendant, though their intended use remains indeterminate.

3 – Interest, profits and other benefits derived from assets under the conditions set out in article 111 of the Penal Code, are always considered as benefits from criminal activity.

Article 8

Procedure for assets confiscation

1 – At the moment of the indictment, the Public Prosecutor shall settle the amount to be confiscated to the State.

2 – If the settlement is not possible at the moment of the indictment, it may take place until the 30th day prior to the date of the first discussion and trial audience, and it shall be included in the proceedings themselves.

3 – Once settled, the amount may be changed within the time period provided for in the preceding paragraph, if it proves to be inaccurate later on.

4 – Once the settlement is received by the court, or the respective amendment, it shall immediately be reported to the defendant and to his defender.



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Article 9

Evidence

1 - Without prejudice of consideration by the court, in general terms, of all evidence in the proceedings, the defendant is entitled to prove the lawful origin of the assets referred to in article 7, paragraph 2.

2 – For the purpose of the above-mentioned paragraph, any instrument of evidence valid under the Criminal Procedure is admissible.

3 – The assumption established in article 7, paragraph 1, shall rebut if the assets prove to:

- a) Be derived from benefits of illicit origin;
- b) Have been in the ownership of the defendant for at least 5 years prior to the moment he was held defendant;
- c) Have been purchased by the defendant with income that was obtained in the time period referred to in the above-mentioned sub-paragraph.

4 – If the settlement of the confiscated amount is included in the indictment, the defence shall be presented in the pleadings. If it is subsequent to the indictment, the time limit for the defence is 20 days as of notification of the settlement.

5 – The evidence referred to in paragraphs 1 to 3 shall be presented along with the defence.

Article 10

Distrain

1 – As a guaranty relating to the payment of the amount as described in article 7, paragraph 1, the distrain of the defendant's assets shall be ordered.

2 – At any time, the Public Prosecutor shall require the distrain of the defendant's assets amounting to the value considered as benefit from a criminal activity.

3 – The distrain is ordered by the judge, regardless of the occurrence of the assumptions referred to in the Code of Criminal Procedure, article 227, if there are strong reasons to believe that an offence has been committed.

4 – The regime of preventive distrain provided for in the Code of Criminal Procedure shall apply to distrain in all situations that do not contradict the provisions of this Act.

Article 11

Amendment and cessation of distraint

- 1 – The distraint shall cease if economic security for the amount referred to in paragraph 1 of the preceding article, is provided.
- 2 – If, at any time in the proceedings, it is found that the amount subject to confiscation is lower or higher than the estimate, the Public Prosecutor shall require the reduction or the increase of the distraint, respectively.
- 3 – The distraint or the economic security shall cease with the final acquittal.

Article 12

Confiscation

- 1 – In the conviction sentence, the court shall state the amount to be confiscated to the State, pursuant to article 7.
- 2 – If this amount is lower than the assets under distraint or the provided security, these shall be reduced to the right amount.
- 3 – If no economic security has been provided, the defendant may voluntarily pay the amount referred to in the preceding paragraph within the 10 days that follow the *res judicata*, thus ceasing the distraint.
- 4 – If no payment is made, the assets under distraint shall be confiscated to the State.

CHAPTER V

Sanctionary regime

Article 13

Untruthful information

- 1 – Whoever, if a member of the governing bodies of credit institutions and financial companies, one of their employees or services provider, or a tax official, provides untruthful or misleading information or documents in compliance with an ordered procedure as set forth in chapter II, shall be punished with a penalty from six month's to three year's imprisonment, or a fine not lower than 60 days.
- 2 – Whoever, without due cause, refuses to provide information or documents or hinders its seizure, shall be subject to the same penalty.

Article 14

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Regulatory offences

1 - Non-compliance by credit institutions or financial companies with the duties provided for in chapter II, shall be considered a regulatory offence punishable with a fine from € 750 to € 750 000.

2 – If non-compliance is repeated, the maximum and the minimum limits of the fine shall be doubled.

3 – The competence for the taking of evidence relating to the regulatory offences provided for in the preceding paragraphs, falls on the supervising authority of the respective sector.

4 - The imposition of the sanctions provided for in paragraphs 1 to 3, is up to the Minister of Finance.

CHAPTER IV

Final provisions

Article 15

Revocation

1 – The following are hereby revoked:

- a) Article 5 of Act No. 36/94, of 29 September, with the wording given by Act No. 90/99, of 10 July;
- b) Article 19 of Decree-Law No. 325/95, of 2 December.

Article 16

Coming into force

This Act shall come into force 30 days after its publication.

Passed on 31st October 2001.

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

Enacted on 19th December 2001.

Let it be published.



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The President of the Republic, JORGE SAMPAIO.

Countersigned on 27th December 2001.

The Prime Minister, *António Manuel de Oliveira Guterres*.