1. Does your country have legislation, or regulations, and/or court rules of procedure that are relevant to the topic of our focus this year – chemical substances and essential equipment possibly used in illicit drug manufacturing and trafficking, including importing, exporting, for domestic distribution and use and private sector due diligence.

Please explain

The approval of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, timely signed by Portugal and ratified by Resolution of the Assembly of the Republic no. 29/91 and Decree of the President of the Republic no. 45/91 , published in the Diário da República, on September 6, 1991, gave rise to or determined the emergence of Decree-Law No. 15/93, of January 22.

That instrument of public international law aims to pursue three fundamental objectives.

Firstly, deprive those who engage in drug trafficking of the proceeds of their criminal activities, thus suppressing their main motivation or incentive and preventing, at the same time, the use of illicitly accumulated fortunes to enable transnational criminal organizations invade, contaminate and corrupt state structures, legitimate commercial and financial activities and society at all levels.

Secondly, adopt appropriate measures to control and monitor precursors, chemical products and solvents, substances used in the manufacture of narcotics and psychotropic drugs and which, due to the ease of obtaining and availability on the current market, have led to an increase in the clandestine manufacture of narcotics and psychotropic substances.

Thirdly, reinforce and complement the measures provided for in the 1961 Convention on Narcotic Drugs, modified by the 1972 Protocol, and in the 1971 Convention on Psychotropic Substances, filling loopholes and enhancing legal means of international cooperation in criminal matters.

The transposition into domestic law of the objectives and rules that, in an evolutionary process, were acquired by the international community proved to be necessary for its practical functioning, as the most significant provisions of that United Nations Convention were not enforceable without legislative mediation.

In the international domain, account was also taken of the Convention on Laundering, Screening, Seizure and Confiscation of the Proceeds of Crime, drawn up within the Council of Europe and which Portugal signed on 8 November 1990, as well as the Council directive of the European Communities of 10 June 1991, relating to the use of the financial system for the purpose of money laundering.

Also worthy of attention was the proposal for a Council directive on the production and placing on the market of certain substances used in the illicit production of narcotic drugs and psychotropic substances, an instrument that aims to establish supervision measures on the "precursors" used by article 12 of the referred to in the 1988 United Nations Convention, signed autonomously by the Community, at the same time as it aims to avoid distortions of competition

in the legal fabric and in the placing of such chemical products on the Community market, in complementarity with the supervision of the same outside the European Communities.

After the publication of Decree-Law No. 430/83, of December 13th, then revised by the aforementioned Decree-Law No. 15/93, of January 22nd, a new Criminal Procedure Code came into force, meaning that Some of the specialties and innovations – for example the principle of opportunity – foreseen in that diploma are today enshrined in general terms in the new criminal procedural system.

A diploma on international cooperation also came into force, Decree-Law no. 43/91, of 22 January, which proposed to regulate, in a single text, different forms of cooperation, ranging from extradition to transmission from criminal proceedings, execution of criminal sentences, transfer of convicted persons and surveillance of them or those released conditionally, to a wide range of legal aid measures in criminal matters.

As stated in the preamble itself, this domestic law has already complied with the 1988 United Nations Convention, "namely in matters of legal assistance, extradition and execution of decisions to confiscate proceeds from crime".

The organization of the tables attached to Decree-Law no. 15/93, of 22 January, was one of the points of concern.

It would not be difficult to add to the existing tables the two lists relating to precursors, under the terms of the 1988 Convention, taking advantage of the opportunity to integrate the substances that had meanwhile been included by decrees issued under the terms of the 1961 and 1971 Conventions.

However, it appeared that another step could be taken towards a certain gradation of dangerousness of substances, reordering them into new tables and thus extracting effects with regard to sanctions.

The gradation of penalties applicable to trafficking taking into account the real danger of the respective drugs appears to be the position most compatible with the idea of proportionality. This does not imply necessary adherence to the distinction between hard and soft drugs and, much less, to the lessons drawn by some countries in the field of decriminalization or decriminalization of consumption.

Simply, the decision for a more adjusted gradation must be based on rigorous scientific assessment of the dangerousness of drugs in their various aspects, which include motivations that go beyond the scientific domain, to take account of considerations of a socio-cultural nature that cannot be minimized.

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The control of precursors and other chemical products essential to the manufacture of drugs implements the provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 1988, to which Portugal and the EU are signatories.

This commitment resulted in different Community and national legislative measures, with the aim of adopting mechanisms that would allow the control and supervision of the production, placing on the market and extra-Community trade of drug precursors.

As provided for in paragraph 1 of article 45, of Regulatory Decree no. 61/94, of 12 October, in its current consolidated version, it is the responsibility of the Directorate-General for Economic Activities:

a) Issue a license to carry out the activity of operators involved in the production, manufacture, transformation or storage of scheduled category 1 substances;

b) Register operators involved in the production, manufacture, processing and storage of scheduled category 2 substances.

The substances commonly used in the illegal manufacture of narcotic drugs or psychotropic substances are listed in Annex I to Regulation (EC) No. 273/2004 of the Parliament and of the Council of 11 February 2004, in its current consolidated version.

Operators involved in the production, manufacture, transformation or storage of scheduled category 1 substances must submit to the DGAE – Directorate-General for Economic Activities a request for a license to carry out the activity, on the ePortugal portal, as provided for in no. 1 of article 46 of Regulatory Decree no. 61/94, of October 12, in its current consolidated version, in the following terms:

1. Submission of the request for issuing a License to Carry Out an Activity, through the ePortugal portal, which must include:

a) Name and address of the headquarters of the requesting operator;

b) Identification of the person responsible for the activities to be licensed (point b) of no. 1 of article 46 of Regulatory Decree no. 61/94, of 12 October, in its current consolidated version);

c) Description of the position and functions of the person responsible;

d) Identification of individuals who can bind the company;

e) Address of all storage, production, manufacturing and processing sites for category 1 scheduled substances;

f) Name and CN code of the substances and/or their salts, whenever the existence of such salts is possible, for which the license is required;

g) In the case of a mixture or a natural product, the respective name and the name and maximum percentage of each scheduled substance, (and/or its salts, whenever the existence of such salts is possible), contained in the mixture or in the natural product.

2. Mandatory join elements:

The submission of the request for issuing a License to Carry Out an Activity must include the following elements:

a) Copy of the operator's tax identification card, in the case of a legal entity;

b) Declaration of appointment of a responsible person who ensures that the activity for which the license is requested is carried out in accordance with the applicable legal provisions and is empowered to represent the operator and make the necessary decisions to carry out these functions;

c) Implementation plan of the operator's facilities for the activities provided for in no. 1 of article 45 of Regulatory Decree no. 61/94, of 12 October, in its current consolidated version, including warehouses or deposits of scheduled substances;

d) Copy of the License, authorization or other industrial licensing title relating to the installations;

e) In the case of a legal person, access code to the permanent certificate, or alternatively, a certified copy of the updated and current commercial registration certificate. In the case of an individual entrepreneur, a copy of the declaration of commencement of activity stating the activity to be carried out;

f) Criminal record certificates of all individuals identified in the form or in any documents presented for the purposes of the License application, for the purposes of the legal market in narcotics and psychotropic substances;

g) Declaration with all information showing that adequate measures have been taken against the unauthorized removal of scheduled substances from the listed locations.

The DGAE decides on the license request within 60 days of its submission.

The application for issuing a license will be rejected if it is not properly completed, if any mandatory addition element is missing or if the information contained in the application and/or the elements to be added do not correspond to what was requested and, also, if there are reasonable reasons to suspect that the scheduled substances are intended for the illegal manufacture of narcotic drugs or psychotropic substances.

The original of the License to Exercise Activity is sent to the applicant.

Any change to the information provided to DGAE must be communicated by the License holder, within 10 days of verification.

The DGAE appreciates the new information and a new license must be requested if it is intended to add a scheduled substance, start a new activity, change the location of the facilities in which the activities are carried out.

Licenses issued may be revoked or temporarily suspended in the event of non-compliance by the license holder with the obligations set out in the legislation. The license may also be revoked or temporarily suspended in the event of a technical accident, theft, deterioration of substances and preparations or other irregularity that could pose a significant risk to health or illicit market supply.

The issuance, revocation or suspension of the license is communicated by DGAE to the following entities:

a) Intervention Service for Addictive Behaviors and Addictions (SICAD);

b) Food and Economic Security Authority (ASAE);

c) National Authority for Medicines and Health Products (INFARMED);

d) Judicial Police (PJ);

e) Tax and Customs Authority (AT).

In accordance with article 48.º-A of Regulatory Decree no. 61/94, of October 12, in its current consolidated version, operators involved in production, manufacturing,

Processing or storing category 2 scheduled substances must register as an operator with the Directorate-General for Economic Activities, under the following terms:

1. Submission of the Operator Registration request, through the ePortugal portal, which must include:

a) Name and address of the headquarters of the requesting operator;

b) Identification of the person responsible for operator registration;

c) Description of the position and functions of the person responsible;

d) Identification of individuals who can bind the company;

e) Address of all storage, production, manufacturing and processing sites for category 2 scheduled substances;

f) Name and CN code of the substances and/or their salts, whenever the existence of such salts is possible, for which registration is required.

In the case of a mixture or natural product, the respective name and the name and maximum percentage of each scheduled substance, (and/or its salts, whenever the existence of such salts is possible), contained in the mixture or product Natural.

2. Mandatory join elements:

The submission of the operator registration application must include the following elements:

a) Copy of the operator's tax identification card, in the case of a legal entity;

b) Declaration of appointment of a responsible person who ensures that the activity for which operator registration is requested is carried out in accordance with the applicable legal

provisions and is empowered to represent the operator and make the necessary decisions for the performance of these functions;

c) In the case of a legal person, access code to the permanent certificate, or alternatively, a certified copy of the updated and current commercial registration certificate. In the case of an individual entrepreneur, a copy of the declaration of commencement of activity stating the activity to be carried out;

d) Criminal record certificates of all individuals identified in the form or in any documents presented for the purposes of the License application, for the purposes of the legal market in narcotics and psychotropic substances.

The original registration is sent to the applicant and is valid for three years from the date of issue.

Whenever there is a change to the information contained in the registration, operators must carry out a new registration within a maximum period of 10 days from the date of the respective change.

Operators involved in the production, manufacture, transformation or storage of scheduled substances must communicate to the DGAE, by March 31st, information on the annual activity, indicating the quantities produced, manufactured, processed or stored, their respective uses in the previous year, as well as forecasting the quantities to be produced, manufactured, transformed or stored for the following year.

The Annual Information relating to the Activity must be submitted through the ePortugal portal.

The information contained in the communications received is transmitted by DGAE to SICAD and ASAE.

In accordance with no. 2 of article 1, Regulatory Decree no. 61/94, of October 12, in its current consolidated version, it is understood as:

a) Production: the obtaining, by collection or extraction, of narcotic drugs, psychotropic substances and drug precursors, from natural organisms;

b) Manufacturing: the operations through which narcotics, psychotropic substances, precursors and other chemical products capable of being diverted to obtain drugs can be obtained, including the purification and transformation of some products into others;

c) Manipulation or transformation: the operation through which narcotics, psychotropic substances, scheduled substances and other chemical products that may be diverted to drug manufacturing can be modified, through physical or chemical processes.

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2**. Does your country have specific legislation on precursors control?**

Community diplomas:

- Regulation (EC) No. 273/2004, of the European Parliament and of the Council, of February 11, 2004, on drug precursors, in its current consolidated version;

- Council Regulation (EC) No. 111/2005 of 22 December 2004, which establishes rules for controlling trade in drug precursors between the Community and third countries, in its current consolidated version;

- Regulation (EU) no. 1011/2015, of the Commission, of April 24, which supplements Regulation (EC) no. 273/2004 of the European Parliament and of the Council, on drug precursors and Regulation no. 111/2005, of the Council, which establishes trade rules between the Union and third countries and repeals Commission Regulation (EC) no. 1277/2005, in its current consolidated version;

- Implementing Regulation (EU) No. 2015/1013, of the Commission, of 25 June, which establishes the implementing rules for Regulation (EC) No. 273/2004 of the European Parliament and of the Council on drug precursors and Council Regulation (EC) No. 111/2005, which establishes rules for controlling trade in drug precursors between the Community and third countries.

National diplomas

- Decree-Law no. 15/93, of 22 January, in its current consolidated version;

- Regulatory Decree no. 61/94, of 12 October, in its current consolidated version.

Title of current legislation and date of adoption:

- Decree-Law no. 15/93, of 22 January – Legislation to Combat Drugs;

- Regulatory Decree No. 61/94, of 12 October – Establishes the rules relating to the control of the legal market for narcotics, psychotropic substances, precursors and other chemical products susceptible of use in the manufacture of drugs, included in tables I to VI attached to Decree-Law no. 15/93, of 22 January.

Last amended/updated in:

- Decree-Law No. 15/93, of January 22nd – last amended in 2023;

- Regulatory Decree No. 61/94, of October 12th – last amended in 2019.

3. In your country, is an approval by a judge a pre-condition to launch investigations into a case of diversion and trafficking of precursors? Similarly, is a court order or approval by a judge required for effecting controlled or monitored deliveries?

Please explain:

No, any investigations relating to a case of diversion and trafficking of precursors can be initiated by the police or the Public Prosecutor's Office without any control by the judge.

Regarding the issue of controlled deliveries, Article 160-A of the Law on International Judicial Cooperation in Criminal Matters (Law no. 144/99, of 31 August) governs in Portugal.

In accordance with the aforementioned legal precept «1 - The non-action of criminal police bodies, within the scope of cross-border criminal investigations relating to offenses that require extradition, with the purpose of providing, in collaboration with the foreign State or States, the identification and criminal liability of the largest number of perpetrators of the offense.

2 - The right to act and the direction and control of criminal investigation operations carried out within the scope of the previous paragraph rests with the Portuguese authorities, without prejudice to due collaboration with the competent foreign authorities. (…)».

Therefore, the rule in Portugal is for controlled delivery to be authorized by the Public Prosecutor's Office and carried out by the Judiciary Police.

4. In your country, is an approval by a judge a pre-condition to launch investigations into a case of diversion and trafficking of precursors? Similarly, is a court order or approval by a judge required for effecting controlled or monitored deliveries?

Yes.

If your answer to either (a) or (b) is yes, what legislation, regulations or rules of procedure apply to the decision of a judge involved at the investigation stage?

- Law no. 144/99, of 31 August – Law on International Judicial Cooperation in Criminal Matters – which applies to the following forms of international judicial cooperation in criminal matters:

a) Extradition;

b) Transmission of criminal proceedings;

c) Execution of criminal sentences;

d) Transfer of people sentenced to custodial sentences and security measures;

e) Surveillance of people sentenced or conditionally released;

f) Mutual legal assistance in criminal matters.

- Law no. 88/2017, of 21 August – European Investigation Decision (Dei) in Criminal Matters.

The European investigation order consists of a judicial decision issued or validated by judicial authorities of an EU country, which aims to carry out, in another EU country, investigative measures aimed at collecting evidence in criminal matters.

The European Investigation Order Directive in criminal matters was adopted on 3 April 2014, which EU countries had to transpose into their national legal systems by 22 May 2017. Denmark and Ireland are not bound by this instrument.

The European Investigation Order is based on mutual recognition, which means that the executing authority is obliged to recognize and ensure the execution of the other country's request. The execution must be carried out in the same way and under the same modalities as if the investigative measure in question had been ordered by an authority in the executing country. A European investigation order may also be issued to obtain existing evidence.

The directive creates a single global framework for taking evidence. Investigative measures include, for example, hearing witnesses, wiretapping, covert investigations and information on banking transactions.

Issuing authorities may only resort to the European investigation order if the investigative measure is necessary, proportionate and permitted in similar national cases.

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5. Does your country have legislation or court rules that report to monitoring manufacture and distribution of precursors which are applicable over the entire national territory?

Please explain:

As mentioned above, the control of precursors and other chemical products essential to the manufacture of drugs implements the provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 1988, to which Portugal and the EU are signatories.

This commitment resulted in different Community and national legislative measures, with the aim of adopting mechanisms that would allow the control and supervision of the production, placing on the market and extra-Community trade of drug precursors, which are applicable to the entire national territory (continental and island) .

As provided for in paragraph 1 of article 45, of Regulatory Decree no. 61/94, of 12 October, in its current consolidated version, it is the responsibility of the Directorate-General for Economic Activities:

a) Issue a license to carry out the activity of operators involved in the production, manufacture, transformation or storage of scheduled category 1 substances;

b) Register operators involved in the production, manufacture, processing and storage of scheduled category 2 substances.

The substances commonly used in the illegal manufacture of narcotic drugs or psychotropic substances are listed in Annex I to Regulation (EC) No. 273/2004 of the Parliament and of the Council of 11 February 2004, in its current consolidated version.

Operators involved in the production, manufacture, transformation or storage of scheduled category 1 substances must submit to the DGAE – Directorate-General for Economic Activities a request for a license to carry out the activity, on the ePortugal portal, as provided for in no. 1 of article 46 of Regulatory Decree no. 61/94, of October 12, in its current consolidated version, in the following terms:

1. Submission of the request for issuing a License to Carry Out an Activity, through the ePortugal portal, which must include:

a) Name and address of the headquarters of the requesting operator;

b) Identification of the person responsible for the activities to be licensed (point b) of no. 1 of article 46 of Regulatory Decree no. 61/94, of 12 October, in its current consolidated version);

c) Description of the position and functions of the person responsible;

d) Identification of individuals who can bind the company;

e) Address of all storage, production, manufacturing and processing sites for category 1 scheduled substances;

f) Name and CN code of the substances and/or their salts, whenever the existence of such salts is possible, for which the license is required;

g) In the case of a mixture or a natural product, the respective name and the name and maximum percentage of each scheduled substance, (and/or its salts, whenever the existence of such salts is possible), contained in the mixture or in the natural product.

2. Mandatory join elements:

The submission of the request for issuing a License to Carry Out an Activity must include the following elements:

a) Copy of the operator’s tax identification card, in the case of a legal entity;

b) Declaration of appointment of a responsible person who ensures that the activity for which the license is requested is carried out in accordance with the applicable legal provisions and is empowered to represent the operator and make the necessary decisions to carry out these functions;

c) Implementation plan of the operator's facilities for the activities provided for in no. 1 of article 45 of Regulatory Decree no. 61/94, of 12 October, in its current consolidated version, including warehouses or deposits of scheduled substances;

d) Copy of the License, authorization or other industrial licensing title relating to the installations;

e) In the case of a legal person, access code to the permanent certificate, or alternatively, a certified copy of the updated and current commercial registration certificate. In the case of an individual entrepreneur, a copy of the declaration of commencement of activity stating the activity to be carried out;

f) Criminal record certificates of all individuals identified in the form or in any documents presented for the purposes of the License application, for the purposes of the legal market in narcotics and psychotropic substances;

g) Declaration with all information showing that adequate measures have been taken against the unauthorized removal of scheduled substances from the listed locations.

The DGAE decides on the license request within 60 days of its submission.

The application for issuing a license will be rejected if it is not properly completed, if any mandatory addition element is missing or if the information contained in the application and/or the elements to be added do not correspond to what was requested and, also, if there are reasonable reasons to suspect that the scheduled substances are intended for the illegal manufacture of narcotic drugs or psychotropic substances.

The original of the License to Exercise Activity is sent to the applicant.

Any change to the information provided to DGAE must be communicated by the License holder, within 10 days of verification.

The DGAE appreciates the new information and a new license must be requested if it is intended to add a scheduled substance, start a new activity, change the location of the facilities in which the activities are carried out.

Licenses issued may be revoked or temporarily suspended in the event of non-compliance by the license holder with the obligations set out in the legislation. The license may also be revoked or temporarily suspended in the event of a technical accident, theft, deterioration of substances and preparations or other irregularity that could pose a significant risk to health or illicit market supply.

The issuance, revocation or suspension of the license is communicated by DGAE to the following entities:

a) Intervention Service for Addictive Behaviors and Addictions (SICAD);

b) Food and Economic Security Authority (ASAE);

c) National Authority for Medicines and Health Products (INFARMED);

d) Judicial Police (PJ);

e) Tax and Customs Authority (AT).

In accordance with article 48.º-A of Regulatory Decree no. 61/94, of October 12, in its current consolidated version, operators involved in the production, manufacture, transformation or storage of scheduled category 2 substances must register as an operator with the Directorate-General for Economic Activities, under the following terms:

1. Submission of the Operator Registration request, through the ePortugal portal, which must include:

a) Name and address of the headquarters of the requesting operator;

b) Identification of the person responsible for operator registration;

c) Description of the position and functions of the person responsible;

d) Identification of individuals who can bind the company;

e) Address of all storage, production, manufacturing and processing sites for category 2 scheduled substances;

f) Name and CN code of the substances and/or their salts, whenever the existence of such salts is possible, for which registration is required.

In the case of a mixture or natural product, the respective name and the name and maximum percentage of each scheduled substance, (and/or its salts, whenever the existence of such salts is possible), contained in the mixture or natural product.

2. Mandatory join elements:

The submission of the operator registration application must include the following elements:

a) Copy of the operator's tax identification card, in the case of a legal entity;

b) Declaration of appointment of a responsible person who ensures that the activity for which operator registration is requested is carried out in accordance with the applicable legal provisions and is empowered to represent the operator and make the necessary decisions for the performance of these functions;

c) In the case of a legal person, access code to the permanent certificate, or alternatively, a certified copy of the updated and current commercial registration certificate. In the case of an

individual entrepreneur, a copy of the declaration of commencement of activity stating the activity to be carried out;

d) Criminal record certificates of all individuals identified in the form or in any documents presented for the purposes of the License application, for the purposes of the legal market in narcotics and psychotropic substances.

The original registration is sent to the applicant and is valid for three years from the date of issue.

Whenever there is a change to the information contained in the registration, operators must carry out a new registration within a maximum period of 10 days from the date of the respective change.

Operators involved in the production, manufacture, transformation or storage of scheduled substances must communicate to the DGAE, by March 31st, information on the annual activity, indicating the quantities produced, manufactured, processed or stored, their respective uses in the previous year, as well as forecasting the quantities to be produced, manufactured, transformed or stored for the following year.

The Annual Information relating to the Activity must be submitted through the ePortugal portal.

The information contained in the communications received is transmitted by DGAE to SICAD and ASAE.

In accordance with no. 2 of article 1, Regulatory Decree no. 61/94, of October 12, in its current consolidated version, it is understood as:

a) Production: the obtaining, by collection or extraction, of narcotic drugs, psychotropic substances and drug precursors, from natural organisms;

b) Manufacturing: the operations through which narcotics, psychotropic substances, precursors and other chemical products capable of being diverted to obtain drugs can be obtained, including the purification and transformation of some products into others;

c) Manipulation or transformation: the operation through which narcotics, psychotropic substances, scheduled substances and other chemical products that may be diverted to drug manufacturing can be modified, through physical or chemical processes.

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6. Does your country have legislation or judicial rules that establish as a crime the manufacture, transportation and distribution of essential equipment intended for the illicit manufacture of drugs?

Please explain:

Pursuant to the provisions of article 21 of Decree-Law no. 15/93, of 22 January, incorrect in the commission of a crime of trafficking and other illicit activities:

1 - Whoever, without being authorized to do so, cultivates, produces, manufactures, extracts, prepares, offers, offers for sale, sells, distributes, buys, transfers or in any way receives, supplies to others, transports, imports, exports, Making transit or unlawfully detaining, outside of the cases provided for in article 40 (consumption), plants, raw materials or specific concentrations in tables I to III is punishable by a prison sentence of 4 to 12 years.

2 - Whoever, upon request to the contrary of authorization granted under the terms of chapter II, illegally transfers, introduces or arranges for others to introduce into the trade plants, substances or instructions referred to in the previous paragraph is punished with a prison sentence of 5 to 15 years.

3 - The penalty provided for in the previous paragraph is incorrect for anyone who cultivates plants, produces or manufactures materials or disciplines other than those stated in the authorization title.

4 - If it concerns substances or those detailed in table IV, the penalty is imprisonment for one to five years.

It then adds article 22 of the same legal diploma, entitled “Precursors”, that:

1 - Whoever, without being authorized, manufactures, imports, exports, transports or distributes equipment, materials or substances listed in tables V and VI, knowing that they are or will be used in the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances, is punished with a prison sentence of 2 to 10 years.

2 - Whoever, without being authorized, holds, in any capacity, equipment, materials or substances listed in tables V and VI, knowing that they are or will be used in the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances, is punished with a penalty imprisonment of one to five years.

3 - When the agent holds an authorization under chapter II, he is punished:

a) In the case of paragraph 1, with a prison sentence of 3 to 12 years;

b) In the case of no. 2, with a prison sentence of two to eight years.

7. In respect of non-scheduled chemicals/equipment, is the fact that they have been mis-declared before the Customs, sufficient to impute ‘knowledge’ on the part of the supplier of their being used for illicit drug manufacture?

Please explain:

No.

It is necessary to demonstrate knowledge and illicit intent, under penalty of violating the constitutional principle of the presumption of innocence.

There is no general rule. It all depends on the evidence. Either way, the criminal's intent is what matters. If the prosecutor can prove that the defendant knew what the chemicals/equipment were and what their purpose was (manufacture of illicit drugs) the supplier can be prosecuted. But these are very rare cases. I have never had a case like this in my court.

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8. In your country, does domestic legislation include measures and/or civil, criminal and/or administrative sanctions to address non-scheduled chemicals and emerging precursors, namely those that are used as starting materials and/or intermediaries in the legitimate manufacture of substances in Table I and Table II of the 1988 Convention? If yes, what type of sanctions?

Please explain:

Yes.

As we mentioned above, in accordance with the provisions of paragraph 1 of article 45, of Regulatory Decree no. 61/94, of 12 October, in its current consolidated version, it is the responsibility of the Directorate-General for Economic Activities :

a) Issue a license to carry out the activity of operators involved in the production, manufacture, transformation or storage of scheduled category 1 substances;

b) Register operators involved in the production, manufacture, processing and storage of scheduled category 2 substances.

Operators involved in the production, manufacture, transformation or storage of scheduled category 1 substances must submit to the DGAE – Directorate-General for Economic Activities a request for a license to carry out the activity, on the ePortugal portal, as provided for in no. 1 of article 46 of Regulatory Decree no. 61/94, of October 12, in its current consolidated version.

The DGAE decides on the license request within 60 days of its submission.

The application for issuing a license will be rejected if it is not properly completed, if any mandatory addition element is missing or if the information contained in the application and/or the elements to be added do not correspond to what was requested and, also, if there are reasonable reasons to suspect that the scheduled substances are intended for the illegal manufacture of narcotic drugs or psychotropic substances.

The original of the License to Exercise Activity is sent to the applicant.

Any change to the information provided to DGAE must be communicated by the License holder, within 10 days of verification.

The DGAE appreciates the new information and a new license must be requested if it is intended to add a scheduled substance, start a new activity, change the location of the facilities in which the activities are carried out.

Licenses issued may be revoked or temporarily suspended in the event of non-compliance by the license holder with the obligations set out in the legislation. The license may also be revoked or temporarily suspended in the event of a technical accident, theft, deterioration of substances and preparations or other irregularity that could pose a significant risk to health or illicit market supply.

The issuance, revocation or suspension of the license is communicated by DGAE to the following entities:

a) Intervention Service for Addictive Behaviors and Addictions (SICAD);

b) Food and Economic Security Authority (ASAE);

c) National Authority for Medicines and Health Products (INFARMED);

d) Judicial Police (PJ);

e) Tax and Customs Authority (AT).

In accordance with article 48.º-A of Regulatory Decree no. 61/94, of October 12, in its current consolidated version, operators involved in the production, manufacture, transformation or storage of scheduled category 2 substances must register as an operator with the Directorate-General for Economic Activities.

In the case of a mixture or natural product, the respective name and the name and maximum percentage of each scheduled substance, (and/or its salts, whenever the existence of such salts is possible), contained in the mixture or natural product.

The original registration is sent to the applicant and is valid for three years from the date of issue.

Whenever there is a change to the information contained in the registration, operators must carry out a new registration within a maximum period of 10 days from the date of the respective change.

Operators involved in the production, manufacture, transformation or storage of scheduled substances must communicate to the DGAE, by March 31st, information on the annual activity, indicating the quantities produced, manufactured, processed or stored, their respective uses in the previous year, as well as forecasting the quantities to be produced, manufactured, transformed or stored for the following year.

The Annual Information relating to the Activity must be submitted through the ePortugal portal.

The information contained in the communications received is transmitted by DGAE to SICAD and ASAE.

Violation of the imposed rules constitutes a customs offense and follows the provisions contained in the general regime for tax offenses.

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9. Please elaborate on specific pieces of information and level of details that would allow you as a judge to act on information/intelligence/evidence received from counterparts in investigations related to new emerging drug precursor chemicals not under control in your country.

Please explain:

The list of prohibited products and substances is updated by law, and the presence of the product on this list is a condition for legal action to be taken.

The non-presence of the product on the official lists prevents any legal action.

Once a new product is known that is not on the list, the technical and legislative process is developed to incorporate the said product into that list.

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10. Are there any specific provisions that allow you as judge to act on non-scheduled chemicals with no known legitimate uses? Would information from an international body, or a collection of information from other countries, that a chemical has no known legitimate use facilitate your work in any way?

Please explain:

No.

As we mentioned above, the presence of the product on the official list is a necessary condition for the authorities to act, particularly judicial authorities.

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11. As a judge, if you receive a request for assistance in a drug/precursor-related crime from a foreign country, whether at the investigation stage or in the context of a court proceeding (a hearing or a trial), how is it relevant to your determination to ensure that basic human rights, principles of natural justice, and/or rules of procedural fairness that exist in your country are respected?

Please explain:

As we have already mentioned above, Portugal is bound by international and community legislation that binds national legislation in this matter.

Law No. 144/99, of 31 August – Law on International Judicial Cooperation in Criminal Matters – applies to the following forms of international judicial cooperation in criminal matters:

a) Extradition;

b) Transmission of criminal proceedings;

c) Execution of criminal sentences;

d) Transfer of people sentenced to custodial sentences and security measures;

e) Surveillance of people sentenced or conditionally released;

f) Mutual legal assistance in criminal matters.

International cooperation in criminal matters regulated in this diploma is subject to the principle of reciprocity.

The cooperation request is refused when:

a) The process does not meet or respect the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms, of 4 November 1950, or other relevant international instruments in the matter, ratified by Portugal;

b) There are well-founded reasons to believe that cooperation is requested for the purpose of persecuting or punishing a person on account of their race, religion, sex, nationality, language, their political or ideological convictions or their membership of a particular social group ;

c) There is a risk of worsening a person's procedural situation for any of the reasons indicated in the previous paragraph;

d) Be able to conduct a trial by an exceptional court or comply with the execution of a sentence handed down by a court of that nature;

e) The act in question is punishable by the death penalty or any other penalty that could result in irreversible damage to the integrity of the person;

f) Respect the offense that corresponds to a prison sentence or security measure of perpetual or indefinite duration.

The request is also refused when the process concerns a fact that constitutes:

a) Infringement of a political nature or an offense related to a political offense according to the concepts of Portuguese law;

b) Military crime that is not simultaneously provided for in common criminal law.

Cooperation is not admissible if, in Portugal or in another State where proceedings have been initiated for the same fact:

a) The process has ended with a final and unappealable acquittal ruling or with a decision to archive it;

b) The sentence has been fulfilled or cannot be fulfilled according to the law of the State in which it was pronounced;

c) The procedure is terminated for any other reason, unless this is provided for, in international convention, as not impeding cooperation on the part of the requested State.

A person who, as a result of an act of cooperation, appears in Portugal to intervene in criminal proceedings as a suspect, accused or convicted person cannot be persecuted, tried,

detained or subject to any other restriction of freedom due to a fact prior to their presence in the territory national, different from that which originates the request for cooperation formulated by the Portuguese authority.

A person who, under the terms of the previous paragraph, appears before a foreign authority cannot be persecuted, detained, tried or subject to any other restriction of freedom due to facts or convictions prior to their departure from Portuguese territory other than those determined in the cooperation request.

Before the transfer referred to in the previous paragraph is authorized, the State making the request must provide the necessary guarantees to comply with the specialty rule.

Cooperation may be denied when the fact that motivates it is the subject of pending proceedings or when that fact should or could also be the subject of proceedings under the jurisdiction of a Portuguese judicial authority.

Cooperation may also be denied when, taking into account the circumstances of the fact, granting the request could imply serious consequences for the person concerned, due to age, health status or other personal reasons.

When a request for cooperation is accepted that involves the delegation of the procedure in favor of a foreign judicial authority, a procedure cannot be initiated or continued in Portugal for the same fact that determined the request nor can a sentence be executed whose execution is delegated to a foreign authority.

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12. Describe your own personal experience(s) as a judge that are relevant to the topic of our focus this year, whether it be presiding over an extradition hearing (a request to extradite an accused person to another country in order to be prosecuted in that other country), or receiving evidence in a court proceeding in your country from a witness who is testifying from another country and with the help of court officials in that other country, or helping to arrange for a witness in a court proceeding in another country to testify from a place in your own country, or responding to a request for assistance from an international court such as The Hague, or something else. These are just examples of things that you may have experienced; they are not meant to be exhaustive.

Although not directly related to the subject matter of our study (drug trafficking), we had the opportunity to preside over the first and largest operation to date of the recently created European Public Prosecutor's Office (EPPO).

During the investigation (Operation Admiral), centralized in Portugal, it was possible to discover and dismantle an organized group suspected of tax fraud estimated at 2.2 billion euros.

The operation involved 14 EU Member States and carried out simultaneous investigative measures, including more than 200 home and non-home searches.

The action took place in Belgium, Cyprus, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovakia and Spain.

The investigation began in April 2021, with an inspection by the Portuguese Tax Authority, in Coimbra, of a company selling mobile phones, tablets, headsets and other electronic devices, on suspicion of VAT fraud.

During the course of the investigation, it was possible to gradually establish links between the suspected company in Portugal and close to 9,000 other legal entities, and more than 600 natural persons located in different countries.

Criminal activity was spread across the 22 Member States participating in the European Public Prosecutor's Office, as well as Hungary, Ireland, Sweden and Poland, together with third countries including Albania, China, Mauritius, Serbia, Singapore, Switzerland, Turkey, the United Arab Emirates, the United Kingdom and the United States.

In addition to the scale of the damage, what highlights this VAT carousel fraud is the extraordinary complexity of the chain of companies. From companies that act as seemingly legal suppliers of electronic devices, and those that claim VAT refunds from national tax authorities when they sell these devices online to individual customers – and subsequently channel the proceeds from these sales offshore, before disappearing – to those that launder proceeds from this criminal activity.

This activity would not be possible without the involvement of several highly qualified organized crime groups, each of which has specific functions in the overall system. Working transnationally, almost with an industrial logic, they have avoided detection for years.

In Portugal alone, in addition to the judicial interrogation of detained citizens, around 100 home and non-home searches were carried out.

During the police operation, cars and other luxury goods, computer equipment, money worth more than two million euros were seized, as well as various documentation relating to the commission of the acts.

The judicial seizure of around 50 vehicles, 47 properties and around 600 national bank accounts was also carried out.

The same thing happened in the other European countries involved.