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Letter dated 6 September 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report of Portugal submitted pursuant to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 1 September 2006 from the Permanent Representative of Portugal addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to send you herewith the response of Portugal to the questionnaire on the implementation of Security Council resolution 1624 (2005) (see enclosure).

(*Signed*) João **Salgueiro**
Permanent Representative of Portugal
to the United Nations

Enclosure

Response of Portugal to the questionnaire on the implementation of Security Council resolution 1624 (2005)

1.1 What measures does Portugal have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

The articles in the Penal Code (300 and 301) which previously regulated this matter have been revoked by Law 52/2003, dated 22 August – law on fight against terrorism, which transposed the Council Framework Decision nº 2002/475/JAI, dated 13 July.

This law covers the responsibility of legal persons and the criminalisation of both terrorist acts and organisations. Namely, art. 2 par. 2 foresees the punishment of the "promotion" of terrorist acts and activities.

"*Whoever promotes or funds a group, an organisation or a terrorist association, adheres to them or supports them, namely through information or the provision of material means, or through any form of financing, shall be punished with imprisonment from 8 to 15 years".*

Within the Judiciary Police, there is a Central Direction with specific responsibilities in this realm (see *infra*).

The prevention of the incitement to commit a terrorist act or terrorist acts is already included in the general criminal prevention strategy approved by the Portuguese Government. The Portuguese Government has responded to the need for more and better security at all levels by adopting a two-fold, complementary and inter-related strategy: on the one hand, strengthening the measure for prevention and combating crime; on the other hand, modernizing the services whose role is to protect citizens. Moreover, measures of prevention and repression have been applied in the area of terrorism and terrorism financing as part of the policy of control. The Government has also focused and will continue to focus on raising public awareness and also through the approval of educational measures. At the same time, there is also a focus on raising awareness among the population and the various non-financing businesses and professions for all the issues related to terrorism, namely incitement and its financing.

Besides the fact that a specific offence of terrorism incitement is not included in the Criminal Code, the material and subjective elements of this illegal behaviour are set forth in the general rules of incitement to the commission of an offence (Article 26) and, more precisely, in Article 236 (incitement to war through hatred) and Article 330 (incitement to collective disobedience).

Regarding further steps, some changes could be undertaken in the Portuguese criminal legislation, as a result of the future ratification of the Council of Europe Convention on the Prevention of Terrorism, of 16 May 2005, which includes, among others, a provision designated as public provocation to commit a terrorist offence. However, the mentioned legal instrument is not yet ratified, but only signed.

1.2 What measures does Portugal take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to commit a terrorist act or acts?

In regard to asylum, the main legal text is the Constitution of the Portuguese Republic:

"The expulsion of any person who has entered or stays in Portuguese territory on a regular basis of a person who has obtained a residence permit, or who presents an asylum request that has not been refused, may only be determined by a judiciary authority. The Law will ensure expeditious decisions" (see article 33, par. 2).

In addition, Law 15/98, dated 26 March, establishes a new legal regime in the field of asylum and refugees.

According to article 3 of this Law, asylum is denied to those who have committed acts against the fundamental interests or sovereignty of Portugal; individuals that commit war crimes or crimes against humanity; those who have committed intentional acts which are punished by law with an imprisonment penalty exceeding 3 years, or those who have committed acts contrary to the objectives and principles of the United Nations. Article 7 lists a number of the activities the asylum seeker is prohibited from undertaking.[1]

Still on the question of asylum, Decree-Law nº 4/2001, dated 10th January has been altered by Decree-Law n.º 34/2003, dated 25th February, which regulates the conditions of entry, permanence, departure and expulsion of foreigners from the national territory. The entry into Portuguese territory must be refused to foreigners who do not cumulatively fulfil the requisites of entry foreseen in the Law or who constitute a danger or a serious menace to the public order, national safety, or to the international relations of Member States of the European Union or of States where the Convention of Application is in force.

The entry into Portuguese territory is forbidden to foreigners indicated by the Schengen information system for the purpose of non admission. Entry into Portuguese territory is also denied to foreigners under suspicion of having committed serious punishable acts or of having the intention to commit punishable acts or who pose a threat to public order, national safety or to the international relationships of a Member State of the Union or of a State in which the Convention of Application is in force.

Furthermore, as to other United Nations Security Resolutions in the framework of terrorism, like UNSC/RES 1267 (1999) and UNSC/RES 1373 (2001), and within the European Union Regulations

[1] *"The asylum seeker cannot:*
a) (…)
b) Develop activities which maybe detrimental to the internal or external safety, the public order or which may endanger the relationship between Portugal and other States;
c)Commit acts which are contrary to the objectives and principles of the United Nations or of international treaties or conventions Portugal is a party to or to which it adheres".
The practice of any such act provides cause for the loss of the right to asylum.

that are directly applicable internally, Portugal is bound by the obligation to deny safe haven to any persons that are linked in any form to terrorism. Therefore, if an individual convicted by the offence of incitement to commit a terrorist act or acts is found in Portugal, he/she can be arrested and extradited to the country of the conviction, through the application of the Law on international judicial co-operation in criminal matters (Law 144/99 of 31 August). The same applies if the individual is found in Portugal and a request of mutual legal assistance is received in order to prosecute him/her in another country. On the other hand, if an individual falls under the suspicion of the commission of the mentioned offence, he/she can be investigated, detained and prosecuted in a Portuguese criminal court, according to the Criminal Code and to the Code of Criminal Procedure.

1.3. How does Portugal cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable,, by enhancing terrorist screening and passenger security procedures?

As a Member State of the European Union, Portugal fully cooperates with other European States in the framework of police and customs cooperation. At the same time Portugal also cooperates at international level, with non-EU countries and through the EUROPOL and INTERPOL channels in the matters related to the prevention and detection of terrorism.

Since the end of 2001, all relevant alert mechanisms of the National Security and Civil Protection System set up to deal with situations that threaten national security. It includes all customs and security forces and services. The measures in place include the borders control and the fraudulent or forged travel documentation. In the framework of the entry, permanence and exit of aliens in/from the national territory, the SEF – Borders and Aliens Service is the competent department to implement the borders control, migration and asylum policies in Portugal. Under the controls undertaken, a rigorous and systematic control of all passengers, through verification of all travel and identification documents (optical reading), is carried out by the SEF. In addition, this Department meets on a weekly basis with representatives of other security forces to deal with matters relating to prevention and countering terrorism, especially to the exchange of relevant information on the lists of individuals suspected of terrorism or in any way of terrorism support.

Portugal is also a Party of the Schengen Agreement, which relates to the control entry to and exit and from EU Member States. The Schengen Agreement and the Convention of Application of the Schengen Agreement, of 1990, led to the establishment of the Schengen area. The integration of Portugal into the Schengen area is based both on the Protocol of Accession of the Government of the Portuguese Republic to the Agreement on the Gradual Suppression of Controls in the Common Borders, signed in Schengen of 14th June 1985, and on the Agreement of Accession of the Portuguese Republic to the Convention of Application of the Schengen Agreement, of 14th June 1985, signed in Schengen on 19 June 1990 and concluded in Bonn, on 25th June 1991. The Protocol and the Agreement have been approved for adhesion by Resolution nº 35/93 of the Assembly of the Republic, dated 2nd April 1992, and ratified by Presidential Decree nº 55/93, dated 29th November, the notification of deposit of the instruments of ratification and entry in force were published under nº 93/95, dated 26th April 1995.

The Schengen area eliminates the controls on the internal borders between the Contracting Parties, enabling a consequent increase of the freedom of circulation of persons. Border control is ensured on the external borders, in conformity with the "obligations of detention, possession and presentation of the titles and documents foreseen in legislation" (article 2, par. 1 and 3 of the Convention of Application).

In terms of police and cooperation "the Contracting Parties ensure that their police services, in accordance with the national Law and within the limits of their competence, assist each other in order to prevent and investigate crimes".

According to Chapter 1 of the Convention of Application, the High Contracting Parties shall create and shall maintain a common information system - the Schengen Information System – composed of a national counterpart placed in each of the Contracting Parties and of a technical support function. The Schengen Information System includes an automatic process of consultation with lists of individuals and objects. The competent national authorities have access to such information whilst enforcing border and customs controls in compliance with national Law, as well as in order to process the emission of visas emission, residence permits and the administration of foreigners.

Decree-Law nº 292/94 must also be mentioned. The preamble states that "one of the conditions for the enforcement of the Schengen Agreement is that the suppression of internal borders does not endanger the safety of the Member States, which implies the creation of mechanisms which allow protection of the territories of the Contracting States". In this context, the Ministry of Internal affairs established the national Office SIRENE, placed under the authority of that Ministry.

The SIRENE consists of single permanent contact points in each Member State, through which all supplementary information needed for the SIS entities is transmitted.

Lastly, a Mission Unit for the penal reform was established in July 2005. This is a "structure designed for the conception, support and the development of penal law reform projects, carried out within the integrated framework of reforms foreseen in the Government's programme.

This Mission Unit has already elaborated a draft amendment law of the Penal Code. This revision also arises from the need to transpose into the national legal order the framework decisions of the European Union, as well as other international instruments which bind the Portuguese State.

The crimes of forgery are the object of many changes. The concept of identification document is reformulated and is now denominated "identification and travel document" and includes the citizen card. The special subjective element of these crimes includes the intention of preparing, facilitating, executing or covering another crime. The framework of the punishable conducts is amplified and contains reference to holograms and any component of the document, as well as its use, detention and cession.

1.4 What international efforts is Portugal participating in or considering participating initiating in order to enhance dialogue and broaden understanding among civilisations in an effort to prevent the indiscriminate targeting of different religions and cultures?

In Portugal some meetings took place with representatives of the different religions and cultures in order to improve dialogue and to discuss demystify the issue of the connection between terrorism and specific religions/cultures. Some debates were also broadcast on public television networks. However we should stress that communities from foreign countries and different religious assimilate the Portuguese cultural values to a very high degree and any suspicion of connection to terrorist support would be highly atypical.

1.5 What steps is Portugal taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?

Besides the above mentioned actions, namely the public awareness and the educational measures, no other specific steps have been taken. A review of the NPO sector in Portugal has been undertaken in the framework of FATF Special Recommendation VIII, which deals with the abuse of these organizations – where some of them have educational, cultural and especially religious aims – for financing terrorism purposes. However, the criminal legislation in force remains always a tool from the dissuasive point of view.

In what regards the discrimination of persons with a different culture, the draft amendments to the Penal Code foresees a number of changes. Relatively to the crimes against cultural identity, the scope of the crime of racial or religious discrimination is widened, in order to also comprise the discrimination by virtue of sex or sexual orientation. The amendments also cover crimes that may be committed via computerised systems and, in addition to the typical modalities of behaviour already foreseen, also accrue the threat against a person or a group of persons.[2]

[2] "Article 240
Racial, religious or sexual discrimination
1- Whoever:
a) founds or constitutes an organisation or develops activities of organised propaganda which incite to discrimination, hatred, or violence against a person or a group of persons due to their race, colour, national or ethnic origin, religion, sex or sexual orientation, or which encourage it, or;
b) participates in the organisation or in the activities mentioned in the precedent alinea or brings them support, namely through financing
shall be punished with a prison penalty from 1 to 8 years.
2- Whoever, in a public meeting, through written materials for divulgation or through whichever mass media or computerised system:
a) provokes acts of violence against the person or group of persons founded on their race, colour, national or ethnic origin, religion, sex or sexual orientation; or
b) Defames or insults a person or a group of persons because of their race, colour, national or ethnic origin, religion, sex or sexual orientation, namely through the negation of war crimes or crimes against the Humanity;
c) Threatens a person or group of persons because of their race, colour, national or ethnic origin, religion, sex or sexual orientation;
with the aim of inciting to racial, religious or sexual discrimination or to encourage it, shall be punished with a prison penalty from 6 months to 5 years.

Regarding this kind of crime, companies may also be made accountable in penal terms. Such responsibility only exists when the crime is committed in the name and in the interest of the company and does not affect the liability of physical persons.

In Portugal, the Central Direction for the Fight Against Banditism is the competent responsible for the prevention, criminal investigation and cooperation with the judicial authorities for the following crimes:

a) against peace and humanity;
b) slavery, sequeste and abduction or hostage taking;
c) terrorist organisations or terrorism;
d) against the security of the State;
e) participation in an armed riot;
f) capture or offence against the safety of transport by air, water, railway or road, which is punishable by penalty equal or superior to 8 years of imprisonment;
g) crimes executed with bombs, grenades, explosive materials, forbidden firearms and booby trapped equipment, nuclear, chemical or radioactive weapons.
h) robbery in credit institutions, treasury departments and the post office.

1.6. What is Portugal doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international law, in particular international human rights law, refugees law and humanitarian law?

Portugal is member of the United Nations and other international and regional organizations where a number of Treaties related with human rights, refugee law and humanitarian law have been ratified. In particular, the European Convention of Human Rights, of the Council of Europe has been ratified.

Portugal is governed by a Constitution establishing a democratic state of law. According to Articles 1 and 2 of the Constitution, Portugal is a sovereign Republic that is based upon the dignity of the human person and is based upon the rule of law, and respect and effective guarantees for fundamental rights and freedoms.

In addition, Article 7 states that in the framework of international relations, Portugal shall be governed by the principles of the respect for human rights, the rights of peoples, equality between states, the peaceful settlement of international disputes, non-interference in the internal affairs of other states and co-operation with all other peoples for the emancipation and progress of mankind.

All that fundamental principles are reflected in secondary legislation, where all the provisions are in accordance with the protection of individual, refugee humanitarian and other individual rights.

For instance, regarding extradition, one of the mandatory grounds for refusal, is the fact that where are well-founded reasons for believing that co-operation is sought for the purposes of persecuting or punishing a person on account of that person’s race, religion, sex, nationality, language, political or ideological beliefs, or his belonging to a given social group, the request should be not satisfied. We

can conclude that the Portuguese legislative framework is fully compliant with its international obligations under international law.