

**BANKING AND FINANCE**

AML/CTF reporting duties for EU entities providing cross-border financial services in Portugal

Under article 3(2)(d) of Law 83/2017 of 18 August 2017 (“Law 83/2017” or the “AML/CFT Law”), financial entities operating in Portugal under the freedom to provide services must comply with the AML/CFT Law requirements with respect to the duties to report to the appropriate supervisory authority concerning their cross-border activities in Portugal.

Recently, the Portuguese Securities Markets Commission (“CMVM”) published Regulation 2/2020 and Banco de Portugal concluded public consultation paper 3/2019, which, among others, includes a draft Instruction setting out the terms and conditions for the annual report to Banco de Portugal). Following this, we are now providing a brief summary of the current and expected regulatory reporting duties for financial institutions providing cross-border services in Portugal under the free provision of services subject to the supervision of the CMVM and/or Banco de Portugal.

Under these new reporting duties, investment firms and credit institutions or payment services providers will be required to make an annual report to the applicable supervisory authority (the CMVM in the case of investment firms and entities providing investment services) and/or Banco de Portugal (in the case of credit institutions and payment services providers).

"Under these new reporting duties, investment firms and credit institutions or payment services providers will be required to make an annual report to the applicable supervisory authority and/or the Bank of Portugal."

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1. AML/CTF LAW supervisory authorities: CMVM vs Banco de Portugal

There is shared supervision model for most financial institutions operating in Portugal between Banco de Portugal, the CMVM and the Portuguese Insurance and Pension Funds Supervisory Authority. In light of this, articles 86 to 88 of Law 83/2017 regulate the allocation of regulatory responsibilities over financial entities for the purposes of the requirements established under the Portuguese AML/CFT Legal Framework. The overview set out below describes the regulatory responsibility over financial entities operating in Portugal under the freedom to provide services:

CMVM EXCLUSIVE RESPONSIBILITY	BANCO DE PORTUGAL EXCLUSIVE RESPONSIBILITY	CMVM AND BANCO DE PORTUGAL SHARED RESPONSIBILITY
<ul style="list-style-type: none"> a) Investment firms; b) Collective investment undertakings management companies and credit securitisation fund management companies; c) Self-governed securities investment companies and real estate investment companies; d) Self-governed venture capital companies, venture capital investors, social entrepreneurship companies, venture capital funds management companies, venture capital investment companies and specialised alternative investment companies; e) Securitisation special purpose entities; f) Companies which market to the public contracts for investment in tangible goods; and g) Investment advisers on securities. 	<ul style="list-style-type: none"> a) Mortgage credit institutions; b) Financial companies¹; c) Payment institutions; and d) Electronic money institutions. 	<p>Notably, credit institutions that also provide investment services.</p>

2. Annual reporting duty under CMVM Regulation 2/2020

With the publication of CMVM Regulation 2/2020, in force as from 17 April 2020, this authority has issued specific rules on certain matters relating to the AML/CFT Law, particularly concerning reporting duties to be observed by all financial entities falling under either its sole supervision or supervision shared with Banco de Portugal (in particular, credit institutions that also provide investment services).

CMVM Regulation 2/2020 essentially applies to regulated entities established in Portugal, including branches of EU regulated entities.

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¹ Except for credit financial institutions and investment firms governed by Decree-Law 260/94 of 22 October and financial companies under the CMVM's exclusive responsibility.

"The CMVM will report any non-compliance with this reporting duty or with any other AML/CFT provision to the authority for the sector in question in the home Member State."

However, it also requires an annual report from EU entities that provide cross-border services in Portugal on the activities carried out in Portugal, specifically under MiFID II, UCITS or AIFMD. This duty applies when at least two of the following criteria are met:

- Provision of services to more than 1,000 clients residing in Portugal during the reporting reference period;
- The total amount of commission charged to clients residing in Portugal is over EUR 2,500,000 during the reporting period;
- The total amount of transactions with retail clients residing in Portugal is over EUR 12,500,000 during the reporting period.

This annual report must cover the period from 1 January to 31 December of each year and must be sent to the CMVM by 28 February of each subsequent year

The mandatory minimum content of this annual report is set out in article 73(1)(b) of Law 3/2017. Under this provision, obliged entities have to report the volume and amounts of the transactions carried out in Portugal, the origin and destination jurisdictions of those transactions, and the products and services made available in Portugal and their distribution channels.

The CMVM will report any non-compliance with this reporting duty or with any other AML/CFT provision to the authority for the sector in question in the home Member State.

3. Reporting duties under article 64 of Notice 2/2018 of Banco de Portugal and the draft Instruction setting out specific contents and terms and conditions of the mandatory annual report

Under Banco de Portugal's exclusive and shared regulatory AML/CFT powers, article 64 of Notice 2/2018 of Banco de Portugal establishes an annual reporting duty for financial entities operating in Portugal under the freedom to provide services. Unlike the CMVM's Regulation no. 2/2020, this annual report is, in principle, mandatory for all of those entities regardless of the volume or total value of transactions/clients or commissions carried out or charged without prejudice to a potential waiver in the event such information is already reported to Banco de Portugal under any other regulations or legal provisions.

The annual report to be sent by financial entities providing cross-border services under its banking passport in Portugal must cover the period from 1 January to 31 December of each year and must be sent by 28 February of each subsequent year to Banco de Portugal.

In terms of its minimum content, this annual report is in line with article 73(1)(b) of Law 83/2017 and, as such, similar to the CMVM annual report mentioned above. However, a draft Instruction setting out specific contents, terms and conditions for this purpose was included in Banco de Portugal's Public Consultation Paper 3/2019 of 30 January² (the public consultation period ended on 16 January 2020). Without prejudice to potential amendments to be included in its final version³, the annual report is expected to be sent by email in the format of an Excel spreadsheet to be made available on Banco de Portugal's website and it must address the following items:

- Institutional information on the reporting entity as of 31 December of the year in question;
- Information on the activities carried out in Portugal during the reference period in accordance with the entity's authorisation (overall number of transactions, aggregated amount of transactions originating or whose destiny is Portugal, aggregated amount of transactions whose destiny is Portugal, top 10 destination jurisdictions of transactions originating in Portugal, top 10 origin jurisdictions of transactions with Portugal as their destination considering the overall volume, available distribution channels, overall number of suspicious activities reported in relation to transactions originating in or destined for Portugal, and aggregated amount of the reported suspicious activities);
- Information on criminal and administrative offences relating to AML/CFT activities or to non-compliance with procedures intended to prevent them (regardless of the jurisdictions in which they have taken place), where the following individuals are accused as offenders: (i) the financial entity or other legal persons belonging to the same group; (ii) members of the management and supervisory bodies; (iii) members of senior management; (iv) any employees working in compliance or in monitoring compliance within the legal framework on the prevention of money laundering and terrorist financing);
- Additional relevant information.

"Without prejudice to potential amendments to be included in its final version, the annual report is expected to be sent by email in the format of an Excel spreadsheet to be made available on Banco de Portugal's website."

² Addressing the Bank of Portugal's rules on AML/CFT topics, this paper is composed of three draft instructions and has had contributions from 10 entities according to the first published report on 6 March 2020. In this context, the Bank of Portugal has decided to issue separate reports on each draft Instruction, this first being dedicated to the draft instruction on high and low risk factors and the adoption of specific simplified or reinforced identification and due diligence measures.

³ Considering the envisaged timeline for the approval of its final terms, this draft Instruction included in its transitory rule the date of 15 April 2020 as the deadline for the compliance with the reporting duty concerning the period between 1 January and 31 December of 2019. Even though the Covid-19 outbreak has created some delays in the normal and planned activities for this quarter, considering the explanatory memorandum issued by the Bank of Portugal and the wording of the draft, the relevant report including a close-to-final version of the Instruction is expected to be issued within the coming weeks.

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Highlighting Banco de Portugal's powers on AML/CFT matters under Law 83/2017, article 64(5) of Regulation no. 2/2018 reaffirms its investigation powers whenever the reported information (or its absence) is clearly insufficient and leads to a relevant AML/CFT risk assessment. Banco de Portugal may, in particular:

- Request additional information on internal processes and controls implemented by the financial entity in order to mitigate such risks;
- Notify the financial entity of the contents of specific measures to be adopted and of the corresponding deadline for adoption;
- Adopt supervision measures in order to rectify/mitigate any risk (e.g., request additional reports, third-party audit assessment, among others),

Non-compliance or insufficient compliance with this annual report, the existence of identified risk events or the adoption of specific measures pursuant to its supervision powers will be communicated by Banco de Portugal to the supervisory authority for the sector in question in the home Member State. ■