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The Embassy of Portugal presents its compliments to the Secretariat of the Assembly of States Parties of the International Criminal Court and has the honour to enclose herewith, as requested, the information relevant to the promotion of the ratification and full implementation of the Rome Statute.

The Embassy of Portugal avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties the assurances of its highest consideration.



The Hague, 30 September 2013

The Secretariat of the Assembly of States Parties  
International Criminal Court  
Maanweg 174  
The Hague



4 OCT 2013

ASP/2013/063



## MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS

To  
The Secretariat of the  
Assembly of States Parties

In regard to paragraph 6, subparagraph (h), of the Plan of Action for achieving universality and full implementation of the Rome Statute, whereby the Assembly called upon States Parties to provide to the Secretariat information relevant to the promotion of the ratification and full implementation of the Statute, the Portuguese Republic has the honour to inform as follows:

1. The Portuguese Republic signed the Rome Statute on the 17<sup>th</sup> of July 1998, ratified it on the 18<sup>th</sup> of January 2002, and made the deposit of its instrument of ratification on the 5<sup>th</sup> of February 2002, with the following declarations:

*“The Portuguese Republic declares the intention to exercise its jurisdictional powers over every person found in the Portuguese territory, that is being prosecuted for the crimes set forth in article 5, paragraph 1 of the Rome Statute of the International Criminal Court, within the respect for the Portuguese criminal legislation.”*

*“With regard to article 87, paragraph 2 of the Rome Statute of the International Criminal Court, the Portuguese Republic declares that all requests for cooperation and any supporting documents that it receives from the Court must be drafted in Portuguese or accompanied by a translation into Portuguese.”*

2. For the ratification of the Rome Statute, the Portuguese Republic amended its Constitutional Law and its Criminal Law



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2.1. In the Constitution<sup>1</sup>, amendments were made to Articles 7 and 33, in the following terms:

2.1.1. In Article 7, a new paragraph (7) was added, establishing that *"with a view to achieving an international justice that promotes respect for the rights of the human person and of peoples, and subject to the provisions governing complementarity and the other terms laid down in the Rome Statute, Portugal may accept the jurisdiction of the International Criminal Court"*;

2.1.2. In Article 33, the amendments made it possible for the Portuguese Republic to accept *"extradition for crimes that are punishable under the applicant state's law by a sentence or security measure which deprives or restricts freedom, in perpetuity or for an undefined duration"*, as long as the *"applicant state is a party to an international agreement in this domain to which Portugal is bound, and offers guarantees that such a sentence or security measure will not be applied or executed"*.

2.2. In the Criminal Law

2.2.1. As a general principle, the Portuguese criminal law is applicable to all facts committed in the Portuguese territory<sup>2</sup>. The Portuguese criminal law is also applicable to facts committed outside the Portuguese territory<sup>3</sup>:

- i) When amounting to crimes such as "crimes against the national independence and integrity" or "crimes against the fulfilment of the State based on the rule of law";

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<sup>1</sup> The text of the Portuguese Constitution, in the English and French languages, can be found on the website: [www.parlamento.pt](http://www.parlamento.pt)

<sup>2</sup> Article 4 of the Portuguese Criminal Code.

<sup>3</sup> Article 5 of the Portuguese Criminal Code.

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- ii) By Portuguese citizens against other Portuguese citizens that reside in Portugal;
- iii) By Portuguese citizens or by foreigners against Portuguese citizens, if the offender is to be found in Portugal and if the facts are punishable in the territory where they took place unless if the punitive power is not carried out in that place, and the extradition cannot be performed or if it is decided not to surrender the offender as result of an European arrest warrant or of other international agreement binding Portugal;
- iv) By foreigners, irrespective of the nationality of the victim, if the offender is to be found in Portugal and the extradition cannot be performed or if it is decided not to surrender in result of an European arrest warrant or of other international agreement binding Portugal.

2.2.2. The Portuguese criminal law is also applicable to facts committed outside the Portuguese territory when it so results from an international convention to which Portugal is bound<sup>4</sup>.

### 3. International Judicial Co-operation in Criminal Matters

3.1. Regarding international judicial co-operation in criminal matters, the Portuguese Republic already had, at the time of the ratification of the Rome Statute, domestic legislation on this subject, namely the Law 144/99, of the 31<sup>st</sup> of August 1999<sup>5</sup>. This law is applicable to the co-operation between Portugal and any international judicial entities established within the framework of treaties or conventions that bind the Portuguese State, and covers the following forms of co-operation:

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<sup>4</sup> Article 5, paragraph 2 of the Portuguese Criminal Code.

<sup>5</sup> The text of the Law 144/99, in the English and French languages, can be found in the following websites:

<http://www.gddc.pt/legislacao-lingua-estrangeira/english/lei144-99rev.html>

<http://www.gddc.pt/legislacao-lingua-estrangeira/francais/Lei%20144-99%20F%20rev.HTML>

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- a) Extradition;
- b) Transfer of proceedings in criminal matters;
- c) Enforcement of criminal judgements;
- d) Transfer of persons sentenced to any punishment, or measure, involving deprivation of liberty;
- e) Supervision of conditionally sentenced or conditionally released persons;  
and
- f) Mutual legal assistance in criminal matters.

In accordance with the said law, the above forms of co-operation shall be, carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice the provisions of this law.

#### 4. Specific Adaptation of the Criminal Legislation to the Statute of the International Criminal Court

4.1. With the Law 31/2004 of the 22<sup>th</sup> July 2004, the Portuguese Republic made a specific adaptation of the criminal legislation to the Statute of the International Criminal Court specifying conduct constituting crimes against International Humanitarian Law, which constitutes the 17<sup>th</sup> amendment to the Criminal Code and encloses the Criminal Law Concerning Offences against International Humanitarian Law.

#### 5. Bilateral Co-operation Agreements

5.1. On the 10<sup>th</sup> December 2002, the Portuguese Republic signed the Agreement on the Privileges and Immunities of the International Criminal Court, adopted in New York, on the 9<sup>th</sup> September 2002, ratified it on the 10<sup>th</sup> September 2007, and made the deposit of its instrument of ratification on the 3<sup>rd</sup> of October 2007, with the subsequent declaration:



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*"With regard to the Agreement on the Privileges and Immunities of the International Criminal Court, Portugal declares that the persons, referred to in article 23 that are Portuguese nationals or have permanent residence in Portugal enjoy in Portuguese territory only the privileges and immunities referred to in this article."*

### 6. National contact points

6.1. The Portuguese Republic wishes to inform that the national contacts points for matters related to promotion of ratification and full implementation of the Statute are:

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## ANNEX III

### Implementing legislation questionnaire for States Parties

1. Yes, the Portuguese Republic has adopted national legislation implementing the Rome Statute.

#### Part B

5. The Portuguese Republic, in implementing the Statute, drafted special implementing legislation and incorporated substantive provisions of the Statute into pre-existing law.

6. The substantive crimes were incorporated into the legislation itself.

7. The Portuguese legislation incorporates arrest and surrender, co-operation with OTP investigations, co-operation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes, enforcement of sentences and other forms of co-operation.

It does so by regulating these forms of co-operation and establishing its applicability to the co-operation between Portugal and any international judicial entities established within the framework of treaties or conventions that bind the Portuguese State.

8. Taking into account that Article 87 of the Statute, the Portuguese Republic did not make any declaration or designation of any other appropriate channel for these purposes, because it assumed that, in the absence of any declaration concerning this subject, the diplomatic channel should apply.