

**Portugal: Financial Sector Assessment Program—Detailed Assessment of  
Observance of IOSCO Objectives and Principles of Securities Regulation**

This Detailed Assessment of Observance of IOSCO Objectives and Principles of Securities Regulation for Portugal was prepared by a staff team of the International Monetary Fund as background documentation to the Financial Sector Assessment Program with the member country. It is based on the information available at the time it was completed in December 2006. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of Portugal or the Executive Board of the IMF.

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FINANCIAL SECTOR ASSESSMENT PROGRAM  
PORTUGAL

IOSCO OBJECTIVES AND PRINCIPLES OF  
SECURITIES REGULATION  
DETAILED ASSESSMENT OF  
OBSERVANCE

DECEMBER 2006

INTERNATIONAL MONETARY FUND  
MONETARY AND CAPITAL MARKETS DEPARTMENT

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## GLOSSARY

AML/CFT	Anti-Money Laundering/Combating Financing of Terrorism
BdP	Banco de Portugal
BSCH	Banco Santander Central Hispano, S.A.
CC	Companies Code
CIS	Collective investment scheme
CMVM	Comissão do Mercado de Valores Mobiliários
CNSF	Conselho Nacional de Supervisores Financeiros (National Council of Financial Supervisors)
CPA	Código do Procedimento Administrativo – Administrative Procedure Code
CPSS	Committee on Payment and Settlement Systems
CSD	Central Securities Depository
DL	Decree Law
DVP	Delivery versus payment
ECB	European Central Bank
FII	Fundos de Investimento Imobiliário (Real Estate Funds)
GAAP	Generally Accepted Accounting Principles
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
IOSCO	International Organization of Securities Commissions
ISP	Instituto de Seguros de Portugal (Insurance supervisory and regulatory authority)
IT	Information technology
LEG	Lei das Entidades Gestoras (Law on Management Entities)
LEOE	Lei de Enquadramento do Orçamento de Estado (Law on the State Budget)
LFCIFC	Legal Framework of Credit Institutions and Financial Companies
MEDIP	Mercado Especial de Dívida Pública
MoU	Memorandum of understanding
MMoU	Multilateral memorandum of understanding
NAV	Net asset value
OL	Organic Law of the Banco de Portugal
OROC	Ordem dos Revisores Oficiais de Contas (Order of Chartered Accountants)
SC	Securities Code
SII	Sistema de Indemnização aos Investidores (Investors’ Indemnity System)
SROs	Self-Regulatory Organizations
STAT	Statute of the CMVM
UCITS	Undertakings for the Collective Investment of Transferable Securities

## I. GENERAL

1. An assessment of the Portuguese Securities Market was conducted during December 6–20, 2005, as part of the FSAP, by Ana Carvajal, MCM.

### **Information and methodology used for the assessment**

2. The Assessment was conducted based on the International Organization of Securities Commissions' (IOSCO) Principles and Objectives of Securities Regulation and its Methodology adopted in 2003.

3. The assessor relied on the self-assessment carried out by the Comissão do Mercado de Valores Mobiliários of Portugal (CMVM) and the Banco de Portugal (BdP); the review of relevant laws, mainly the Organic Law (OL) of BdP, the CMVM Statute (STAT), the Legal Framework of Credit Institutions and Financial Companies (LFCIFC) and the Securities Code (SC), particular regulations issued by both the CMVM and BdP, and other relevant documents provided by them including procedures, manuals and guidelines; meetings with board members and staff of both the BdP and the CMVM, and other public authorities, in particular the Minister of Finance, and representatives of his Ministry and the Ministry of Justice; as well as meetings with market participants, including issuers, financial intermediaries, market operators (Euronext, MTS Portugal S.A.), Central Securities Depository (CSD) and settlement entities (Interbolsa and Siteme) and associations that represent their interests (Association of Brokerage Houses, Association of Pension and Mutual Funds, Association of Insurance Companies).

4. A Committee on Payment and Settlement Systems (CPSS)/IOSCO Assessment was not conducted, thus Principle 30 was not assessed. As for Principle 29, the effectiveness of LCH-Clearnet S.A. in imposing and monitoring limits for large exposures could not be taken into account for the grade due to the fact that LCH-Clearnet S.A. has not been assessed as central counterparty. Given its role as central counterparty for five different markets (Paris, Brussels, Amsterdam, Lisbon and London for the derivatives market) the assessor recommends that a full assessment of LCH-Clearnet S.A. be conducted. Regarding Principle 8, the assessor carried out a broad review of Anti-Money Laundering provisions, as required under IOSCO Principles, which should not be construed as an Anti-Money Laundering/Combating Financing Terrorism (AML/CFT) Assessment.

5. The assessor wants to thank both the CMVM and the BdP for their full cooperation as well as their willingness to engage in very candid discussions regarding the regulatory and supervisory framework for the securities market. The assessor also wants to extend her appreciation to all other public authorities and market participants with whom she met.

## II. INSTITUTIONAL AND MACROPRUDENTIAL SETTING, MARKET STRUCTURE

### Financial intermediaries

6. **The legal and regulatory framework of Portugal provides for the participation of banks as well as other specialized entities in the securities market.** The framework authorizes banks to provide investment services under a universal banking model, except for the management of collective investment schemes (CIS) that has to be provided through separate entities, the investment fund management companies.<sup>1</sup> In addition, it authorizes the participation of other specialized entities including brokers, dealers and wealth management companies.

7. **As of August 2005, there were 56 intermediaries authorized to provide investment services,** including 32 credit institutions, 8 credit institution branches (one from a non-EU country), 8 broker companies, 4 broker-dealer companies, and 4 branches of investment companies. As of August 2005, there were 43 investment managers authorized to managed CIS, 15 authorized to manage mutual funds and 28 to manage property funds.

### Cash markets

8. **Two main cash markets operate in Portugal: Eurolist, operated by Euronext Lisbon and the Mercado Especial de Dívida Pública (MEDIP), operated by MTS Portugal S.A.**

9. **Eurolist integrates the markets of Brussels, Paris, Amsterdam and Lisbon into a single market<sup>2</sup> with the same rules for access as well as listing requirements.** In addition to private securities, Portuguese government bonds are traded on Eurolist. It is a centralized electronic order driven market, where priority is assigned based on price and time and quotes are anonymous. LCH Clearnet SA, a bank registered under French Law, provides central counterparty and clearing services. Settlements are made via Interbolsa in a delivery-versus-payment (DVP) T+3 basis.

10. **MEDIP, launched in July 2002, is the wholesale market for Portuguese government debt.** MEDIP is fully integrated into MTS, a single market for public debt that has segments in many European countries, including among others Italy, Belgium, Netherlands, France, Germany, Poland and Finland.<sup>3</sup> Both government bonds and treasury

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<sup>1</sup> Certain credit institutions, including banks, are allowed to manage closed-end securities investment funds and real estate investment funds.

<sup>2</sup> Full integration into a single market took place in April 2004. Before that date they all shared a single trading platform, but operated markets with different rules.

<sup>3</sup> Only in Italy and Portugal MTS operates as a regulated market.

bills are traded in MEDIP.<sup>4</sup> MEDIP is driven by quoting obligations imposed on all participants with the status of market makers. The market also allows participants acting as price takers with the status of market dealers. All participants carry out their transactions on their own account. Trading takes place via the MTS Telematico electronic platform and it works as a blind system; thus participants trade anonymously and counterparties are known only after trading is complete. Settlements are made via Euroclear Bank and Clearstream Banking Luxembourg on a DVP T+3 basis. The market operates with repo facilities.

11. **The Portuguese Securities market has a limited role as an alternative source of financing for companies and this is, perhaps, the key challenge faced by the market as a whole.** The number of companies listed on Eurolist is modest. As of September 30, 2005 there were 51 companies with listed shares and 46 companies with listed bonds. There was only one initial public offering in 2005.

12. **While market capitalization has shown modest growth, the market is still highly concentrated** with the 10 top companies amounted to roughly 88 percent of market capitalization.<sup>5</sup> Market capitalization amounted to about 44 percent of GDP.<sup>6</sup> The average free float for the 10 top companies amounts to 33.8 percent of their capital.

13. **Most of the companies listed in the Lisbon segment are local companies.** As of September 30, 2005 foreign companies represented 58.1 percent of market capitalization mainly due to BSCH participation in the market. On the other hand, an important number of the companies listed in the Lisbon segment are cross-listed in other markets. Counting B.S.C.H., 11 companies are cross-listed, mainly in the United States (American Depositary Receipts).

14. **Liquidity of the secondary markets remains limited, except for MEDIP.** As of September 30, 2005 the average daily trading volume of the Lisbon segment of Eurolist amounted to EUR 46.8 million and the average daily trading volume for the top 10 companies was EUR 36.7 million. Average daily turnover amounted to EUR 126.5 million, while average daily turnover for the top ten companies amounted to EUR 110.0 million. As for Portuguese government bonds traded on Eurolist, as of September 30, the average daily volume of trading amounted to EUR 0.2 million.

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<sup>4</sup> MEDIP started trading only Portuguese government bonds. On July 13, 2003 after a decision of the Government to issue treasury bills, MTS Portugal created a new segment within MEDIP for the wholesale trading of those securities.

<sup>5</sup> Banco Santander Central Hispano S.A. (BSCH), a Spanish cross listed issuer, represents about 52 percent of the stock market capitalization. But its weight in terms of turnover is limited since the most liquid market for these shares is the Madrid Stock Exchange.

<sup>6</sup> Excluding BSCH.

15. **MEDIP is a more liquid market.** As of September 2005, the average daily volume of trading amounted to EUR 522.5 million and average daily turnover to EUR 556.5 million. Average annual turnover was EUR 107.4 billion. Concerning the Treasury Bills market, banks accounted for 50.4 percent in 2004. Nonresidents accounted for 71 percent of the Treasury Bills market and 85.6 percent of the Government bonds.<sup>7</sup> For 2005, trading volume in MEDIP accounted for 81.4 percent of total trading volume, Euronext for 18 percent and the non-regulated markets for the remaining 0.6 percent.

16. **There are indications that retail and foreign investors are important players in the secondary market.** Statistical information on the type and characteristics of investors operating in Eurolist is not available; however, there is information regarding orders received and executed on behalf of third parties. For September 2005, participation of individual investors amounted to 36.1 percent in equity and 30.5 percent in bonds. For August 2005, orders from foreign investors amounted to 47 percent for equity and 35.2 percent for bonds.

#### **Participation of financial intermediaries**

17. **The market shows high levels of concentration.** From January to October 2005, 5 financial intermediary groups were responsible for roughly 52 percent of the total trading volume in equities and 2 accounted for roughly 65 percent of the trading volume in bonds.

#### **Collective investment schemes**

18. **The asset management industry is also modest, though it has experienced steady growth since 2000.** As of August 2005, individual portfolios amounted to EUR 34.9 billion (23.7 percent of GDP), compared to EUR 11.2 billion in 2000. Over the same period CIS increased from EUR 24.9 billion to EUR 34.2 billion (22.3 percent of GDP).

19. **In particular the collective investment industry shows steady growth, and an increase in the number and types of products available.** As of August 31, 2005 there were 240 mutual funds and assets under management amounting to EUR 26.4 billion, which represents an increase of roughly 15 percent from the previous year. For that same period, there were 74 property funds and assets under management amounting to EUR 7.8 billion, which represents a growth of roughly 17 percent from the previous year. Although most of the assets are invested in bonds, treasury and money market bonds, other more sophisticated products such as securitization funds, and risk capital funds are also available to the public. In fact securitization funds are showing significant growth. As of September 30, 2005 there were 30 funds as compared to 23 in the previous year and assets under management

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<sup>7</sup> The amounts subscribed by nonresident primary dealers is used as a proxy of the amounts subscribed by nonresidents.

amounted to EUR 18.4 billion as compared to EUR 12.1 billion in the previous year, which represents an increase of 52.8 percent.

### **Derivatives markets**

20. **Derivatives markets do not play a significant role in the Portuguese securities market.** Moreover their importance has diminished since their creation: the futures market has shown a downward trend, while the options market disappeared following the migration to the Liffe Connect platform. As of September 30, there were 8 instruments authorized for trade, the market value was EUR 419 million and the average daily number of contracts was 1,319 as compared to 18,322 in 2000.

### **Description of regulatory structure and practices**

21. **Regulation and supervision of the Portuguese securities market is mainly a responsibility of the CMVM<sup>8</sup> and BdP, under a partially integrated functional approach.** CMVM is responsible for the regulation and supervision of CIS and securities markets as well as all market participants, except financial intermediaries, which it only regulates and supervises for purposes of market conduct. The authorization of financial institutions which may carry out financial intermediation in securities, as well as their regulation and supervision for prudential purposes is BdP's responsibility. However, if these financial institutions want to provide investment services they are also subject to registration with the CMVM. The Minister of Finance retains very specific powers, mainly the authorization of financial intermediaries which are subsidiaries of credit institutions with their head office in a non-EU member state, the authorization of regulated markets and the establishment of the minimum capital for financial intermediaries.

22. **The responsibilities of all these entities are set forth in the Law.** In the case of CMVM, the basic texts are the SC (mainly Article 353) and the STAT (Article 4). In the case of BdP, the basic texts are the OL (mainly Article 17), and the LFCIFC (Title X and X-A). Responsibilities of the Minister of Finance derive mainly from Article 352 of the SC and Articles 16, 91 and 95 of the LFCIFC.

23. **Both the CMVM and the BdP are public entities, subject to public law, governed by an executive board, whose members are appointed for a 5-year period by the Council of Ministers, on a proposal of the Minister of Finance.** In the case of CMVM, the board is composed of 5 members: the president, a vice-president and three voting members. In the case of BdP, it is composed of the Governor, one or two vice governors and 3 to 5 directors.

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<sup>8</sup> The CMVM was created in 1991.

24. **Legal provisions provide for the cooperation and exchange of information between the CMVM and BdP.** The two institutions signed a Memorandum of Understanding (MoU) in 1997 as well as a Protocol for the exchange of information on issues of securities in 2002. The Conselho Nacional de Supervisores Financeiros (CNSF – National Council of Financial Supervisors) was created in 2002 to foster coordination between the three authorities that regulate the financial sector.

25. **At the time of the Assessment some Directives that relate to the securities market had not yet been transposed into local legislation and/or regulations.** Those included the Conglomerates Directive, Recovery and Liquidation Directive and the Distance Marketing Directive.<sup>9</sup> However, it is important to note that, although these Directives have not been transposed, this does not necessarily affect the implementation of IOSCO Principles nor the grade assigned to a Principle.<sup>10</sup>

### III. GENERAL PRECONDITIONS FOR EFFECTIVE SECURITIES REGULATION

26. **There are a number of general preconditions necessary for the effective regulation of securities markets which, with some comments, appear to be in place in Portugal.** Those preconditions relate to sound macroeconomic policies, appropriate legal, tax and accounting frameworks, and the absence of entry barriers to the market.

27. **As to the legal system, the Companies Code (CC) provides a minimum level of corporate governance for all companies.** It should be noted that a new Law approved in 2006 completely updated the framework for corporations, and strengthened issues concerning corporate governance (Decree Law (DL) 76A-2006). The insolvency framework was amended in 2004 for the purpose of simplifying procedures and shifting important decisions to creditors (DL 53/2004). Moreover, the Minister of Justice has made public his intention to review the matter to further improve the system. One of the possible amendments includes the creation of specialized courts. As regards the judiciary, as in many other countries, the perception is that court proceedings are lengthy; however the country has in place mechanisms for alternative means of dispute resolution.

28. **The tax system appears to be complex, with different tax treatments for different sources of income.** In addition local authorities have expressed their concern that the local tax regime may be affecting the competitiveness of certain segments of the Portuguese

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<sup>9</sup> The Law that transposes into the Portuguese framework the Market Abuse Directive and the Prospectus Directive was approved during the course of the Mission.

<sup>10</sup> The CMVM carried out a review of the legal and regulatory framework for the Portuguese securities market to determine where changes are required and to make the necessary proposals to the Government. The results of the analysis were compiled in the document “A reforma legislativa do mercado de capitais Portugues no quadro das novas directivas comunitarias,” which is available on the website.

securities market vis-à-vis other countries in the European Union. The Chairman of the CMVM has submitted to the Government a proposal to change the taxation regime for mutual funds and small and medium-size companies listed in an authorized market.

29. **The accounting framework relies on International Financial Reporting Standards (IFRS) as regards consolidated accounts of listed companies.** Individual accounts may be presented either in local Generally Accepted Accounting Principles (GAAP) or IFRS; however, issuers that are only required to present individual accounts will be subject to IFRS beginning 2007. Non-listed companies supervised by BdP (financial intermediaries) are subject to adjusted accounting standards.<sup>11</sup>

30. **Finally there are no indications of barriers of entry to the financial sector.** Authorization requirements for financial intermediaries are reasonable and in line with the need to ensure the stability of financial intermediaries as well as protection for investors. Regarding issuers, as stated below, the regulatory framework is in line with IOSCO Principles.

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<sup>11</sup> Adjusted accounting standards constitutes a framework close to IFRS, with a few exemptions, mainly: a) it maintains the valuation and provisioning rules for credit granted established by BdP; b) it delays the impact on accounts arising from the transition to International Accounting Standards (IAS) 19 criteria (retirement pensions and other employee benefits); and c) it restricts the application of some options envisaged in IAS (e.g., not enabling tangible assets to be measured at fair value).

#### IV. PRINCIPLE-BY-PRINCIPLE ASSESSMENT

<b>Principles Relating to the Regulator</b>	
<b>Principle 1.</b>	The responsibilities of the regulator should be clear and objectively stated.
Description	<p><b>Responsibilities</b></p> <p>Regulation and supervision of the Portuguese securities market is mainly a responsibility of the CMVM and BdP. CMVM is responsible for the regulation and supervision of securities markets as well as all market participants, except financial intermediaries, which it only regulates and supervises for purposes of market conduct. The authorization of all financial institutions that may carry out financial intermediation in securities, as well as their regulation and supervision for prudential purposes, is a responsibility of BdP. However if these financial institutions want to provide investment services they are required to register with the CMVM, for which the CMVM can impose requirements. The Minister of Finance retains very specific powers, mainly the authorization of financial intermediaries which are subsidiaries of credit institutions with their head office in a non-EU member state, the authorization of regulated markets and the establishment of the minimum capital for financial intermediaries.</p> <p>The responsibilities of all these entities are set forth in the Law. In the case of CMVM, the basic texts are the SC (mainly Articles 353) and the STAT ( Article 4). In the case of BdP, the basic texts are the OL (mainly Article 17), and the LFCIFC (Title X and X-A). Responsibilities of the Minister of Finance derive mainly from Article 352 of the SC and Articles 16, 91 and 95 of the LFCIFC.</p> <p><b>Interpretation</b></p> <p>Authentic interpretation of the law is a responsibility of the legislative body. However, both the CMVM and the BdP have powers to issue regulations that affect market participants. In this regard, both the CMVM and BdP are legal persons governed by public law (Article 1 of the STAT for CMVM and Article 3 of the OL for the BdP) and thus, subject to the rule of law, which means that they can only exercise powers granted by the law and under the terms of the law.</p> <p><b>Coordination</b></p> <p>The LFCIFC contemplates specific cases where BdP is required to consult with the CMVM, the main one being the authorization of financial institutions which may carry out financial intermediation in securities.</p> <p>In addition, legal dispositions provide for the cooperation and exchange of information between CMVM and BdP (Article 355 of the SC, 29A and 81 of the LFCIFC). Based on this legal framework, CMVM and BdP signed an MoU in 1997. The Memorandum covers the establishment of credit and financial institutions, acquisition and increase of qualifying holdings, licensing of the members of management and other bodies of credit institutions, notification of investment companies based in Portugal for the performance of activities in other EC countries, rendering of investment services, voluntary winding up, transmission of information</p>

	<p>on offenses, information on internal regulation projects. A Protocol for the exchange of information regarding issues of securities was signed in 2002. Both documents are considered public but have not been included in their respective websites.</p> <p>From conversations held with staff of both institutions, the assessor concludes that communication and coordination between the two authorities has been constant and effective and that the exchange of information has covered other areas not provided for in the Memorandum or the Protocol, including reports arising from the exercise of the supervisory function.</p> <p>At an institutional level, the DL 228/2000 created the CNSF, as a collegiate organ in charge of promoting and facilitating coordination among the three authorities in charge of the regulation and supervision of the financial sector. It is composed of the Governor of the BdP, who presides over it, the member of the board of BdP with responsibility for credit institution supervision, and the chairs of the CMVM and the Instituto de Seguros de Portugal (ISP). The CNSF does not have regulatory authority, thus it does not affect the responsibilities assigned to each regulator. The DL does not specify the frequency of its meetings, but in practice the CNSF has met quarterly. The agenda for its meetings is set by its four members, thus each one has the opportunity to include issues. Issues are usually sent to task forces composed of staff from the three institutions who then report to the CNSF on their findings. From the conversations held with the three regulators, the assessor concludes that the CNSF has in fact proven useful in coordinating actions and eliminating possible sources of regulatory arbitrage. An example of that is the recommendations issued by the CNSF regarding information disclosure for structured products, which later on were included in regulations by the BdP, CMVM and ISP.</p> <p>As regards the Minister of Finance, the Law provides for mandatory consultation with the CMVM and the BdP in cases where the Minister has retained responsibility (see Principle 2).</p>
Assessment	Implemented
Comments	<p><b>Responsibilities</b></p> <p>At the outset there appears to be some overlapping in the authorization/registration process for financial intermediaries, since after obtaining a license from BdP they need to register with the CMVM for the specific activities they want to provide, and in both cases they have to present common information, including human, technical and financial resources, organizational structure and internal controls. The authorities commented that BdP's review is more general, seeking to identify problems of a prudential nature, while the CMVM reviews whether the specific arrangements are adequate for the particular activities they want to carry out. Thus, both processes are necessary and complement each other. The assessor also spoke with market participants who confirmed this view. Nevertheless, the authorities could review whether some streamlining of the authorization process vis-à-vis the registration process could be achieved. Finally coordination is achieved by provisions that require BdP to consult the CMVM when the authorization relates to intermediaries under its supervision.</p> <p><b>Coordination</b></p>

	<p>The MoU should cover other areas where coordination could be critical, including reports arising from the supervision departments and crisis management. The assessor was informed that, in addition to the bilateral MoUs, CMVM, BdP and ISP are currently working in a trilateral MoU/platform for cooperation, under the umbrella of the CNSF. For transparency purposes, once the MoU is signed, it is recommended that it be included on the website.</p>
<p><b>Principle 2.</b></p>	<p>The regulator should be operationally independent and accountable in the exercise of its functions and powers.</p>
	<p><b>Operational independence</b></p> <p>Both the CMVM and BdP enjoy independence for the exercise of their day to day operations.</p> <p>First, as explained under Principle 1, the main functions regarding the regulation and supervision of the securities market have been given to them. In situations where the Minister of Finance has retained functions, the Law provides for prior consultation with the CMVM or the BdP.</p> <p>a) Article 95 of the LFCIFC provides that the minimum initial capital of financial intermediaries be set by the Minister of Finance after hearing the BdP or under its proposal.</p> <p>b) Article 200 c of the SC requires prior consultation of the CMVM for the authorization of regulated markets.</p> <p>c) Articles 23A and 57 of the LFCIFC requires prior opinion of the BdP for the authorization of credit institutions from states outside the EU.</p> <p>Although the Minister of Finance has been given an oversight function of the financial sector, this function does not imply the power to revoke or change administrative decisions taken by the CMVM or the BdP.</p> <p>Second, members of the executive board of both entities are appointed by the Council of Ministers, following a proposal by the Minister of Finance, for a 5 year period, with staggered appointments. (Article 8 of the STAT for the CMVM and 27.2 of the OL for BdP). Once appointed they can only be removed by the Council for due cause (Article 15 of the STAT for the CMVM, and Article 14.2 of the OL for the BdP). Remuneration of board members of the CMVM is set by the Minister of Finance; however the Law guarantees a minimum level (Article 13 of the STAT). In the case of BdP, the salary is set by a remuneration committee established by the Minister of Finance (Article 40 of the OL).</p> <p>Third, both their board and staff enjoy reasonable legal protection in the exercise of their functions. As regards the CMVM, the general rules applicable to the public administration are applicable to it. These rules provide that directors of public law, legal persons and their agents bear legal responsibility only if they have executed an illicit act, exceeded the limits of their functions or acted with willful wrongdoing. (Articles 3 and 6 of DL 48051). In the case of the BdP, personal civil liability can only be enforced by BdP if it claims reimbursement from such persons after being required to pay damages to a third party, and if the respective conduct constitutes a</p>

crime (Article 12 of the LFCIFC).

Fourth, there are provisions both for the board as well as the staff of both the CMVM and the BdP aimed at ensuring their impartiality. The main provisions relate to the prohibition against exercising any other remunerated activity except professorship (Article 13 of the STAT for the CMVM and Article 61 of the OL for the BdP).

#### **Financial independence**

The CMVM has its own source of revenues, which correspond to fees charged to market participants (Articles 25-A, 26 and 29). Some of these fees are established by CMVM's Regulations. Other fees are set up by Ministerial Order of the Minister of Finance, based on a proposal of the CMVM (Article 25-A/3, 4 STAT). In practice the Minister of Finance has always respected the CMVM's proposals.

The CMVM annual plan as well as its annual budget are subject to the approval of the Minister of Finance (Article 9 of the STAT) and once approved by him are part of the state budget, thus subject to the approval of the Legislative Assembly. Before 2002 the budget presented by CMVM was approved without changes by the Minister of Finance. However, in 2002, the Minister of Finance made cuts in expenditures, particularly in investments provided for in the budget. Since then, restrictions that apply to the public sector have been applied to the CMVM budget, under penalty of the budget proposal not being approved (for example, Circular Series A. no 1322 of the Director General of the Budget for 2006, which requires that total expenditures for 2006 may not exceed the initial budget of 2005 under certain conditions). In addition, by DL 241-B/2004 85 percent of the surplus of its budget (as well as of the budget of the ISP) reverted to the State. The possibility that a similar action could take place again was corrected for 2006, through the inclusion of a provision in the budget.

Article 10 of 2006 Budget Act strengthens the financial independence of the CMVM as it makes clear that (i) the budget lines of the CMVM will no longer be subject to freezing (as happened in the 2003-2005 period and which is still the rule applicable to public bodies in general) and (ii) the CMVM is allowed to spend its surpluses without prior authorization of the Minister of Finance.

BdP enjoys financial independence. It obtains its income from its participation in the results of the currency issue of the European Central Bank (ECB), from interests of investment within the scope of monetary policy and from the management of reserves. BdP prepares its budget, which is not subject to the approval of the Minister of Finance (Article 52 of the OL). Only the annual report with the annual accounts is subject to the approval of the Minister of Finance (Article 54 of the OL)

#### **Accountability**

Both the CMVM and the BdP are required to prepare an annual report on their activities (Article 9, c and d of the STAT for the CMVM and Article 54 of the OL for the BdP). In addition the CMVM has to prepare an annual report on the securities market (Article 9 of the STAT). In the case of the CMVM both reports have to be

	<p>published, once approved by the Minister of Finance.</p> <p>As to specific acts and decisions taken by the CMVM and BdP, both the CMVM and the BdP are bound by the rule of law (Article 3 of the Código do Procedimento Administrativo – Administrative Procedure Code – CPA). In taking administrative decisions, they are obliged to provide the rationale for such decisions (Article 100 CPA). When taking administrative decisions that affect specific persons, they are bound by the obligation to follow a due process, which includes the legitimacy of its intervention and the need to provide the reasons for it, notification, hearing, communications of all decisions, as well as judicial review (Articles 52 ss of the CPA). This same principle of due process applies to administrative infraction procedures (Article 407 of the SC in relation to the Regime Geral das Contra-Ordenações (Rules governing administrative infractions). The administrative and fiscal courts are the courts used in disputes arising from administrative and fiscal decisions, while infractions are the responsibility of the Criminal Court of First Instance. As regards CMVM, except in the case of infractions, judicial appeals do not suspend the execution of administrative acts. As regards BdP, judicial appeals do not suspend the execution of administrative acts, nor the execution of certain sanctions, such as the prohibition from being a member of the management and auditing boards or the suspension of the exercise of voting rights.</p>
Assessment	<p><b>Financial accountability</b></p> <p>CMVM budget is subject to the approval of the Legislative Assembly as part of the state budget (Article 35 of the Lei de Enquadramento do Orçamento de Estado (Law on the State Budget – LEOE).</p> <p>Both the CMVM and the BdP have to prepare an annual report that includes the financial statements as well as the external auditor report and the report and opinion of the Board. In the case of BdP the annual accounts have to be approved by the Minister of Finance. In the case of CMVM they also have to be approved by the Legislative Assembly as part of the state General Account (Articles 69 and 72 of the LEOE). In both cases, the report has to be published (Article 9c of the STAT for the CMVM and 54 of the OL for the BdP).</p> <p>CMVM is also subject to monitoring by the supervisory committee, which provides an opinion on the budget, balance sheet and annual accounts. The committee is composed of three members appointed by the Minister of Finance (Article 16 of the STAT). In the case of BdP, this function is carried out by the Board of Auditors, composed of four members, three of which are appointed by the Minister of Finance and the other is appointed by the employees of the Bank.</p> <p>Both the CMVM and the BdP are subject to the jurisdiction of the Court of Auditors (Article 2 of the Lei de Organização e Processo do Tribunal de Contas (Law on the Organization and Process of the Court of Auditors), which oversees the legality and regularity of its income, costs and assesses the soundness of its financial management. However, neither the BdP nor the CMVM are subject to prior control nor to successive controls in matters pertaining to the performance of the tasks entrusted by</p>

	<p>the ECB and the law, respectively (Article 54 of the OL for the BdP and Article 28/1 of the STAT for the CMVM). Also, by resolution of the CMVM, its statements have been subject to external auditing since 2001. The BdP has also submitted its financial statements for external auditing and the external auditor's report is disclosed in the Annual Report together with the report and opinion of the Board of Auditors.</p> <p><b>Transparency</b></p> <p>The CMVM has a very impressive website, covering a broad range of information: legislation and regulations, recommendations, guidelines, general legal opinions, opinion statements, understandings, resolutions of the executive board, the annual reports on CMVM activities as well as the report on the market. As for its financial statements, in 2001 and 2002 the CMVM Income statement and the remuneration paid to the CMVM board of directors (in aggregated value) have also been disclosed on the website. For 2003 and 2004 the site discloses more extensive information on the accounts, including the main financial statements and their annexes. The website also contains information arising from the registration of markets and market participants. In the case of resolutions arising from infraction proceedings, they are only made public when the additional sanction of publicity has been applied.</p> <p>BdP also has a very comprehensive website, covering a broad range of information, including legislation, regulations, notice, instructions and circular letters, as well as the annual report on its activities. Also, the list of credit institutions and financial companies registered with BdP is included on the website.</p> <p>A significant proportion of the information contained on the websites of both BdP and CMVM is available also in English.</p> <p>CMVM and BdP are covered by the duty of professional secrecy.</p>
Assessment	Partly implemented
Comments	<p><b>CMVM Financial independence</b></p> <p>From a legal perspective, the fact that CMVM's fees, its annual plan and its budget are subject to the approval of the Minister of Finance are threats to its financial independence, since through the approval process the Minister of Finance could affect the level of resources of the CMVM as well as its priorities. Moreover, the experience of recent years, in particular the cut in budget expenditures, as well as the appropriation of the budget surplus, has shown that the CMVM does not enjoy full financial independence. Given the fact that the CMVM is funded by fees collected from market participants, at a minimum the Government should not have the power to appropriate its surplus. Broader independence is also desirable. The situation was corrected for 2006; however it is important that a permanent provision be put in place. The CMVM and representatives of the Ministry of Finance confirmed the commitment of the Minister of Finance to include a permanent provision on the subject of the surplus.</p> <p><b>Legal protection of CMVM staff</b></p> <p>The authorities have advised that the same standard that already exists for BdP will</p>

	apply to CMVM and its staff under the new legal provisions on personal civil liability approved by the Executive and that are expected to come into force soon.
<b>Principle 3.</b>	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
Description	<p><b>Powers</b> The CMVM and BdP have sufficient powers to carry out their functions.</p> <p>Within the scope of its responsibilities, CMVM has been given powers to monitor the activities of markets and market participants, supervise their compliance with laws and regulations, approve acts and grant authorizations, effect registrations, give orders and formulate concrete recommendations, disseminate information and publish studies (Article 360 of the SC). In the execution of its supervisory powers it can request information, examine books, registers and documents, hear any individual summoning them when necessary, request the collaboration of police authorities, replace any managing entity of the securities market when they do not adopt the necessary measures to regularize anomalous situations, replace supervised entities in their duty to inform (Article 361 of the SC), carry out inspections, perform inquiries to investigate offenses, and execute any action necessary to guarantee the fulfillment of the objectives assigned to it (Article 364). It has also been given enforcement powers (Title III of the SC), including the power to impose administrative sanctions (including fines) as well as to carry out preliminary investigations on criminal matters (Article 383 of the SC). For this purpose, the CMVM can request any individual or entity to present all necessary explanations, information, documents to confirm or deny suspicions of a crime and seize any documents or seal objects (Article 385 of the SC). It has also been authorized to cooperate both domestically and with foreign regulators (Article 355 of the SC).</p> <p>In the performance of its supervisory powers, BdP has authority to monitor the activities of financial intermediaries, oversee their compliance with the rules governing their activities, issue recommendations, take extraordinary reorganization measures, and impose penalties (Article 116 of the LFCIFC). It has also been authorized to cooperate with domestic and foreign regulators (Articles 81, 82, 195, 135 ss of the LFCIFC)</p> <p><b>Resources</b> CMVM and BdP have stable sources of financing that have been sufficient to adequately staff the institutions and make the technological investments necessary for the efficient execution of their functions.</p> <p><b>Human resources</b> As of June 30, 2005 CMVM had 144 staff and the Banking Supervision Department of the BdP 167. Both numbers appear to be reasonable for the responsibilities assigned to them as well as the state of development of the market. 66 percent of the staff of the CMVM and 70 percent of the staff of the Banking Supervision Department have a graduate degree or higher.</p>

The CMVM and the BdP are not bound by the civil service regimen, rather the law expressly provides that the labor law regulates their relationship with employees. This provision has allowed them to pay higher salaries that are close enough to the remuneration of the private sector and thus, to retain their personnel.

Turnover is low. On average, annually 10 percent of the total workforce of the CMVM terminates and/or suspends its contractual relationship with the CMVM. The staff members who leave are generally from technical positions; there is less turnover at management and higher-level specialists. Where workers left on their own initiative they had spent an average of 3.3 years at the CMVM. In the case of BdP, the number of contracts terminated is also very limited. In the 2001/2005 period only 3 members of the technical staff left the organization, while there was a net increase of 14 technical staff.

From the data provided, as well as from meetings held with representatives of the CMVM and BdP, the assessor concludes that both the CMVM and BdP regard training as a key element for the development of its personnel. Although not formalized, the CMVM runs an induction program for new employees designed to give them basic training on the role and functions performed by the CMVM. In addition, ad-hoc training is provided to personnel. In 2004 a total of 56 training courses were carried out with 339 participants.

BdP has a training program comprising institutional training, training in foreign languages as well as ad hoc training in supervisory matters. In the 2002/2004 period, the average number of training hours per employee reached 35.8 hours.

#### **Technological resources**

Technological resources are also adequate. Moreover, CMVM's and BdP's investments in their extranets have enhanced the efficiency of the respective supervisory departments since most information from financial intermediaries and issuers on the one hand and from credit institutions and financial companies on the other is received directly into their respective data bases.

#### **Capacity**

The organizational structure adopted by both the CMVM and the BdP are conducive to an adequate performance of their functions.

As regards the CMVM, each substantive area (issuers, CIS, financial intermediaries, markets, enforcement) has been assigned to a different Department. All Departments are reasonably staffed, including legal services that have been decentralized into the "substantive" Departments. Also, board members serve on a full time basis and are assigned "oversight" responsibilities over a particular Department. Thus, alignment with the board's objectives and policies is achieved through constant (usually daily) coordination of departmental actions with the board member in charge of overseeing the Department, as well as through final approval of all actions by the board.

Departments are also required to present periodic reports to the board, including an annual report on their performance vis-à-vis the annual plan of activities approved by

	<p>the board. The Board has also decided to create an Internal Audit Department to ensure adequate procedures and controls.</p> <p>As for BdP, supervision of financial intermediaries is the responsibility of the Banking Supervision Department. The Supervision/Surveillance area is divided into 10 Units. Financial intermediaries that belong to the same group are assigned to the same Unit, thus ensuring coordination. The Department has its own legal division in charge of providing advice for the authorization process and for the enforcement procedures as well as a Research and Institutions Analysis Division. Alignment with the board's objectives and policies is achieved through constant coordination of departmental actions with the board member in charge of overseeing the Department as well as through final approval of all actions by the board. Departments are also required to present periodic reports to the board, including an annual report on their performance vis-à-vis the annual plan of activities approved by the board. Furthermore, the activity of the Banking Supervision Department is subject to internal audit by the Audit Department of BdP.</p>
Assessment	Implemented.
Comments	<p>As can be seen from the description above, both the CMVM and the BdP have adopted very centralized models of decision making, whereby all departmental actions have to be approved by the board. Indeed such a model of organization ensures total alignment of departmental actions with the board's strategy and policies and helps to achieve consistency. However the use of this model in large organizations could hinder their ability to act in a timely manner. Based on conversations with the staff of both the CMVM and the BdP as well as market participants, the assessor concludes that the model has worked effectively in both organizations, due to a combination of factors including the modest size of the organizations and the fact that board members serve on a full time basis. However given its larger size, it is important for the board of the CMVM to set up mechanisms that would help it to discharge its functions. That is why the assessor strongly supports CMVM's initiative to set up an Internal Audit Department.</p>
<b>Principle 4.</b> The regulator should adopt clear and consistent regulatory processes.	
Description	<p><b>Processes and procedures</b></p> <p>The CMVM has developed adequate procedures and internal controls for the main functions that it exercises. In this regard, each "substantive department" has identified the main processes that it carries out and developed procedures that in most cases constitute real guidelines as to the way to perform specific tasks. Where appropriate, the guidelines are accompanied by check-lists and templates. These procedures are complemented by the "four eye" principle, since any work carried out by an analyst is subject to at least one layer of review. The establishment of the Internal Audit Department will further strengthen the system and ensure quality and consistency.</p> <p>The BdP has also developed adequate procedures and controls. There are guidelines on licensing criteria mainly related to fit and proper tests for shareholders and members of the boards, information technology (IT) and accounting services and internal controls. The quarterly analysis of financial intermediaries and the analysis of the reports on the internal control systems are carried out in accordance with</p>

standardized formats and there is also a guide for on site supervision. The organization also relies on the “four eye” principle to ensure quality and consistency. Furthermore, the activities of the Banking Supervision Department are subject to internal audit by the Audit Department of BdP.

### **Rulemaking**

Pursuant to its internal regulation No. OS 1/2004/ORG the CMVM has defined public consultation as the general principle to apply to its rulemaking process, though ultimately the decision on whether or not to consult over a regulation lies with the board. In practice the CMVM has adopted public consultation procedures on a regular basis since 1998 and systematically since late 2002. This internal regulation defines also the terms for the consultation process, as well as the information that should be available to the public. In this regard, the comments and responses received as well as their analysis have to be included in the website. In addition, regular informal contacts with market participants are also an important source of input for the rulemaking process.

Though the CMVM does not carry out a formal cost/benefit assessment, it does take into consideration the possible impact of regulations, as well as feedback given by market participants. As a general principle, regulations include a preamble that summarizes the reasons for their adoption.

BdP has relied more on focused consultation with the participants affected by the regulations, than on general public consultations. In certain cases, working groups with industry representatives have been set up.

### **Administrative decisions**

In the exercise of its functions, both the CMVM and the BdP are bound by the rule of law (Article 3 of the CPA). In taking administrative decisions, they are obliged to provide the rationale for their decisions (Article 100 of the CPA). When taking administrative decisions that affect specific persons, they are bound by the need to follow a due process, which includes the legitimacy of its intervention and the need to provide the reasons for it, notification, hearing, communications of all decisions, as well as judicial review (Articles 52 ss of the CPA).

This same principle of due process applies to administrative infraction procedures. The assessor was given access to the files of administrative proceedings, which show that in practice the CMVM is abiding by these obligations.

The administrative and fiscal courts are the courts used in disputes arising from administrative and fiscal decisions, while the Criminal Court of First Instance is the competent authority to consider infractions.

### **Licensing**

Criteria for licensing and registration are set up in law and regulation. Hearing of the

	<p>affected party is required by Article 100 CPA.</p> <p><b>Investors education</b></p> <p>As a result of its objective to protect investors, the CMVM has taken an active role in investors' education. It has set up an Investor Assistance and Mediation Office to receive complaints of investors as well as to guide them in matters related to the securities market. It has also developed and kept up-to-date brochures on a number of matters, including the CMVM, types of securities traded, trading markets, categories of intermediaries and their main duties, investment funds, investor compensation schemes, and a securities investor guide. This information is kept on the website, as well as a list of frequently asked questions, forms for requesting information and complaints, and warnings regarding unauthorized financial intermediation. The CMVM also participates regularly in seminars and conferences. It has also participated in the creation of a specialized program in securities at the university level.</p> <p>The Law also promotes the creation of associations for the defense of investors, though at the present time no association has been created.</p>
Assessment	Implemented
Comments	<p><b>Processes</b></p> <p>The work carried out by the CMVM for the development of procedures (including manuals, guidelines, check lists, and, when appropriate, standardized formats for reports) is impressive.</p> <p><b>Rulemaking</b></p> <p>BdP has taken this more narrow approach towards consultation, taking into consideration the prudential nature of the regulations that it issues. However, the assessor is not convinced that the nature of the regulations prevents in any way a broader consultation process. That is why the assessor recommends that BdP consider a more systematic use of public consultation—with the logical exemptions derived from emergency situations. BdP has advised that (i) a project for the formulation of written rules on public consultations is currently under way, and (ii) a first draft already exists and is under internal review by the relevant Departments.</p> <p><b>Investors' education</b></p> <p>The assessor believes CMVM efforts in investors education are significant. To complement these efforts, it might be worth considering the development of a broader type of program, with use of mass media.</p>
<b>Principle 5.</b>	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.
Description	<p>CMVM and BdP staff are subject to the rules of the CPA that establishes the duties of impartiality and neutrality and thus the duty to excuse themselves when a conflict of interests arises (Article 44 ss of the CPA).</p> <p>Specific provisions for both CMVM and BdP prohibit their boards from exercising any other remunerated activity except professorship (Article 13 of the STAT for the CMVM and Article 61 of the OL for the BdP). In addition, the staff of CMVM is</p>

	<p>prohibited from exercising another professional activity, or providing services which could lead to a conflict of interests with their functions with CMVM, except professorship or temporary secondment to a government entity, if authorized by the executive board (Article 31 of the STAT of the CMVM). Both the board and staff of BdP are prohibited from integrating the supervisory or management bodies of other credit institutions, and from performing any other duty therein (Article 61 of the OL)</p> <p>During their mandate, board members of the CMVM are not permitted to carry out securities transactions, directly or indirectly, except in the case of public or retirement funds. Thus, shares owned prior to their mandate must be sold, or their existence declared and they may sell them only upon authorization of the Minister of Finance (Article 13 of the STAT). CMVM employees are not permitted to carry out securities operations either on their behalf or on behalf of others, directly or indirectly, except for public or savings accounts funds or if written authorization is obtained from the board. Authorization can only be granted if it does not affect the normal market function, does not result from inside information, or in the case of sale more than six months must have passed from the moment of purchase (Article 31 of the STAT).</p> <p>In addition CMVM and BdP board members are required to submit to the Constitutional Court a declaration of their income, assets and shares of profits. Any citizen can consult them Law 4/83).</p> <p>Both CMVM and BdP staff are subject to professional secrecy (Article 354 of the SC for the CMVM and Articles 60 of the OL and 80 of the LFCIFC for BdP), and its breach constitutes a criminal offence (Articles 195 and 383 of the Código Penal – Criminal Code).</p> <p>Both CMVM and BdP have adopted codes of conduct. The codes of conduct are public and available on the website. CMVM has recently approved instructions that require employees to report their holdings in securities on an annual basis.</p>
Assessment	Implemented
Comments	Monitoring of compliance with code of conduct could be assigned to the Internal Audit Department.
<b>Principles of Self-Regulation</b>	
<b>Principle 6.</b> The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.	
Description	<p>Managing entities of any type of market, whether regulated or not regulated, are granted the power to define the rules to access the market, which have to be guided by the principles of equality and fair and healthy competition, as well as any other rule necessary for the good functioning of the market, including codes of conduct (Articles 201, 203 of the SC). Those rules are enforceable upon registration with the CMVM and are applicable to the managing company, the members of the market, the issuers and investors.</p> <p>In addition, managing entities of regulated markets have disciplinary powers over</p>

	<p>their members (Articles 31,29,13 of the Lei das Entidades Gestoras (Law on Management Entities – LEG), and may apply fines and other disciplinary sanctions, as long as they are set out in the market rules. They can also suspend and exclude members from the market (Article 13 of the SC). In the case of non-regulated markets, the enforcement powers derived from the general powers given to them to define the rules of the market (see first paragraph above).</p> <p>Based on that framework it can be concluded that there are 3 SROs in Portugal: Euronext Lisbon, MTS Portugal and Opex. All managing companies are demutualized.</p>
Assessment	Implemented
Comments	According to IOSCO Methodology, under Principle 6 the assessor must only assess whether SROs are in place. The assessment of the adequacy of the mechanisms in place is assessed under Principle 7.
<b>Principle 7.</b>	SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	<p><b>Authorization</b></p> <p>Regulated markets are subject to authorization by the Minister of Finance, after consultation with the CMVM (Article 200 of the SC). All markets, whether regulated or non-regulated are also subject to registration before the CMVM (Article 199 of the SC).</p> <p>Market operators are subject to initial capital requirement (Ministerial Order 1429/2001), which differ depending on the nature, regulated or non-regulated, of the market.</p> <p>Registration is conditioned to the demonstration by the operator that it has the human, technical and material resources to operate the market. Regulation 4/2001 develops those requirements, which include the existence of adequate internal control systems. In addition, the heads of the computer systems and surveillance units are subject to individual registration.</p> <p><b>Market rules</b></p> <p>Market operators are required to submit their rules to the CMVM for registration. The CMVM has powers to reject or require changes to the rules (Article 201 of the SC). As stated before, rules have to be guided by the principle of equal treatment (See also CMVM Regulation 5/2000).</p> <p><b>Oversight by the CMVM</b></p> <p>The CMVM has established a reasonable program for the supervision of SROs and the markets they operate, that has included both off-site and on-site supervision. An Annual Plan for the supervision of the markets is prepared by the Market Surveillance Department and approved by the Board.</p> <p><b>Off-site</b></p> <p>Market operators are required to send periodic information to the CMVM:</p>

- a) Monthly information regarding its solvency ratio, in a standardized format, by the 20<sup>th</sup> day following the end of each month.
- b) Half yearly: financial information, with the audit report
- c) Annually: its management report, annual account and audit report. Also, a description of organizational and human resources; a report on internal controls with emphasis on the audit carried out on data processing systems, which has to be accompanied by the opinion of the auditing body; situations susceptible to improvement or corrections and measures adopted.
- d) On the day following its occurrence, a report detailing any incident in the market. Regulations also establish other cases where notification to the CMVM is mandatory, including the notification of sanctions.

### **Market monitoring**

CMVM monitors all authorized markets on real time (on line) except for the derivatives market for which monitoring is carried out on the following day.

In the case of Euronext, the CMVM uses Aramis, which is the same system used by Euronext for the surveillance of all segments of Eurolist. The system includes mechanisms for the protection of trading, such as limits on the static price and dynamic price and interruption due to volatility, all of which allows the detection of abnormal transactions. In addition, CMVM developed an alarm system independent of Aramis, based on Brownian motion, that detects abnormal variations in trading volumes and prices.

In the case of MEDIP and PEX markets, the CMVM monitors them on line via extranet. As for Easynext, the CMVM has access to the information, also on line.

Monitoring of the markets is translated into a daily report on the performance of the markets, which in addition to a summary of the activity of the different markets includes a more detailed analysis of the most relevant facts and findings for a particular market. The report is submitted every day at 9 am and discussed with the board member, in order to decide on follow-up actions.

The Department has developed a manual for on-line monitoring. It has also developed manuals related to the detection of market abuse and insider trading. In these two cases the manual includes guidelines as to how to detect the crime (the manual on market manipulation contains an annex with the different modalities of manipulation), procedures to investigate it as well as a basic format for the corresponding preliminary report.

### **On-site**

The Annual Plan of the Department includes one on-site inspection at a managing entity. In this regard, the Department conducted on-site supervision of MTS Portugal in 2001 and Euronext Lisbon in 2002 (2 on-site inspections). In the cases of MTS and the first inspection of Euronext, recommendations were given and their compliance monitored by the CMVM. In 2004 CMVM conducted on-site supervision of Eurolist settlement mechanisms (Interbolsa).

	<p><b>Special case: Supervision of Euronext Lisbon</b></p> <p>The supervision of Eurolist represents a challenge for the CMVM as well as for the regulators of the other countries where the market operates. They all signed an MoU for the coordination of the regulation and supervision of Euronext Markets and Clearnet (Portugal joined the MoU in 2003). The MoU has been operationalized through the creation of a committee of presidents, a secretariat, in charge of the flow of information, and technical committees.</p> <p>The group identified nine areas of risk: control infrastructure, relationship with regulators, market monitoring , operational/IT risk, internal audit, risk management, strategy/acquisitions, business continuity, integration/regulatory Grip. These areas are subject to analysis and when necessary, actions from Euronext have been required. This work has been translated into a risk log, which is a matrix that identifies the main risks, and includes the current situation, the issues to be addressed, how to address them and the calendar. This log is updated every three months. Based on the conversations and the documentation provided it appears that this concerted effort is being effective. For example, concerns regarding monitoring and enforcement, were met with the creation of a supervision unit in Amsterdam that conducts next day supervision to complement on-line supervision carried out by Euronext Paris.</p> <p>Up to this moment, no joint on-site inspections have taken place. However CMVM foresees it for the future.</p> <p><b>Professional standards for SROs</b></p> <p>Market operators are bound by the duty of secrecy (Article 30 of LEG) and ensure procedural fairness. The three market operators have developed Codes of Conduct.</p>
Assessment	Implemented
Comments	As envisioned by the CMVM, joint inspections are needed to strengthen the oversight arrangements of the Euronext markets, since many critical issues can only be inspected in Paris.
<b>Principles for the Enforcement of Securities Regulation</b>	
<b>Principle 8.</b>	The regulator should have comprehensive inspection, investigation and surveillance powers.
Description	<p><b>Powers</b></p> <p>Within the scope of its responsibilities, CMVM has been given powers to monitor the activities of markets and market participants, supervise their compliance with laws and regulations, approve acts and grant authorizations, effect registrations, give orders and formulate concrete recommendations, disseminate information and publish studies (Article 360 of the SC).</p> <p>More specifically the CMVM may request information, examine books, registers and documents, summon any individual when necessary, request the collaboration of the police authorities, replace any managing entity of the securities market when they do not adopt the necessary measures to regularize anomalous situations, replace supervised entities in their duty to inform (Article 361 of the SC), carry out</p>

	<p>inspections even when there is no suspicion of irregularity, perform inquiries to investigate offenses, and execute any action necessary to guarantee the fulfillment of the objectives assigned to it (Article 364 of the SC).</p> <p>In the performance of its supervisory powers, BdP has been given authority to monitor the activity of financial intermediaries, oversee their compliance with the rules governing their activities, issue recommendations and take extraordinary reorganization measures (Article 116 of the LFCIFC).</p> <p><b>AML and recordkeeping</b></p> <p>There are measures in place to minimize potential money laundering. Law 11/2004 imposes very specific obligations on financial intermediaries and other financial institutions, including customer identification, reports of suspicious transactions, reviews of transactions of higher risk and the duty to cooperate with the competent authorities. As for recordkeeping, they are required to keep records on the identity of clients for a period of 10 years from the date on which identification was made and for 5 years following the end of the relationship and retain for 10 years all records and supporting documentation relative to the transactions carried out. BdP instructions further develop these requirements and among other things require intermediaries to assign a person responsible for coordinating internal control procedures designed to prevent money laundering. The report on internal control that intermediaries have to submit to the BdP must include a specific chapter describing procedures in place for that purpose. This report is analyzed in the regular off-site and on-site supervision activities of the BdP, whose inspection guide also includes a specific chapter on AML requirements. CMVM has also developed manuals to monitor compliance with the AML provisions within its supervision of market conduct.</p> <p>Under the provisions of Article 361 of the SC, the CMVM has authority to access the identity of all customers of regulated entities. The BdP has the same authority under the LFCIFC.</p>
Assessment	Implemented
Comments	A full assessment AML/CFT Assessment was not conducted.
<b>Principle 9.</b>	The regulator should have comprehensive enforcement powers.
Description	<p>The CMVM has been given broad powers to investigate offenses in the securities market. (Article 360 ss of the SC) For that purpose it has the power to hear any individual, summoning them when necessary, and request information from any person (Articles 360, 361 of the SC). For the purposes of investigating securities crimes, it can request any individual or entity to present explanations, information, documents, as well as the power to seize documents and proceed with the sealing of objects (Article 385 of the SC). Given the regulatory powers of managing entities, the CMVM is authorized by law to share information with them (Article 355 of the SC). As for investigations related to crimes, the Law allows it to pass the information to the competent judicial authority (Article 386 of the SC)</p> <p>BdP also has a wide range of inspection powers: in addition to the duty of supervising entities to provide BdP with all information, documents, books and records that BdP</p>

	<p>deems necessary for the performance of its supervisory functions, it has the power to conduct on-site inspections on the premises of supervised entities (Article 120 of LFCIFC, 197, 199). It also has the right to inspect the premises of non-authorized entities that are exercising or have exercised in the past activities for which a license is required, without the need for any judicial order. BdP may ask for police collaboration. Refusing or obstructing inspections constitutes a serious offense (Article 211 of the LFCIFC).</p> <p>In addition to the investigative powers, the CMVM has been vested with enforcement powers (Title VIII of the SC). There is a system of administrative offenses for violations to the securities laws and regulations. Sanctions include warnings as well as fines that depend on the offenses: between EUR 2,500 and EUR 250,000 for the less serious, EUR 12,500 to EUR 1,250,000 for serious offenses and EUR 25,000 to EUR 2,500,000 for the very serious offenses (Article 388 of the SC). In addition, the CMVM is authorized to impose additional sanctions, including making the sanction public, the loss of whatever was involved in the offense, temporary suspensions of the exercise of the profession, prevention from exercising management functions (Article 404 of the SC). The system is complemented with criminal sanctions for insider trading (Article 378 of the SC) and market abuse (Article 379 of the SC). In those cases, the CMVM has the power to order the opening of a preliminary investigation and, once that is done, to refer the matter to the competent judicial authority (Articles 382-387 of the SC).</p> <p>BdP has also been given enforcement powers within the scope of its responsibilities (Articles 201 ss of the LFCIFC). There is a system of administrative offenses for violation of the securities laws and regulations, consisting of two levels: (i) less serious offenses, punishable with fines of EUR 750 to EUR 750,000 or EUR 250 to EUR 250,000 depending on whether the fines are applied to a legal person or to a natural person, and (ii) serious offenses, punishable with fines of EUR 2,500 to EUR 2,500,000 or EUR 2,000 to EUR 1,000,000 depending also on whether the fines are applied to a legal or a natural person. BdP may also apply additional sanctions, such as seizure and loss of the object of the infraction, prohibition from being a member of the management or auditing boards, suspension of the exercise of voting rights, publication of the sanction applied (Article 212 of the LFCIFC).</p> <p>The CMVM does not have the power to settle patrimonial disputes between investors and financial intermediaries or any other institutions. Private parties can seek their own remedies in civil courts. The law contemplates class action suits (Articles 31 of the SC).</p>
Assessment	Implemented
Comments	

<b>Principle 10.</b>	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.
Description	<p><b>Investigation and surveillance</b></p> <p>In the areas of their competence, the CMVM and the BdP have developed reasonable systems for the supervision of the securities market and their participants:</p> <p>Issuers: see discussion under Principle 14</p> <p>CIS: see discussion under Principle 17</p> <p>Markets and market operators: see discussion under Principles 7 and 27</p> <p>Financial intermediaries: see discussion under Principles 22 and 23.</p> <p><b>Enforcement</b></p> <p>The CMVM has in place an organizational structure and procedures to deal with the enforcement of securities regulations. Initially all possible infringements of the securities framework were sent to the Legal Department; however in 2004 the CMVM decided to reinforce a special autonomous unit, the Enforcement Department, which has been given the task of investigating complex cases. Thus, simple cases go straight to the Legal Department, while complex cases are investigated by the Enforcement Department and once this Department has collected the evidence, they are sent to the Legal Department for the instruction of the administrative proceedings or to the Public Prosecutor, when they involve a securities crime.</p> <p>The creation of the Enforcement Division represents an effort of the CMVM to build a strong enforcement culture. However, in the case of administrative infractions, this effort has been threatened by the policy of the board of using notifications and admonitions as the main tools for enforcement. In this regard, the statistics provided by the CMVM show that fines were more commonly applied in the earlier years of the CMVM, and its use has diminished in time; though in the cases where a fine has been imposed its amount has increased. For example, in 2004, 30 administrative proceedings culminated with an admonition, while only in 4 a pecuniary sanction was imposed. The assessor was informed that in a few cases an intermediary has even had a second admonition, though not for the same type of infraction. Heavy reliance on admonitions may thwart the deterrent effect that a sanction should have. In addition, sanctions imposed were confidential, unless the additional sanction of publication was applied (Article 447 of the SC). Only in a few cases has the CMVM made use of this sanction. Thus, except in general terms (publication of the number of administrative proceedings opened, and the number of sanctions imposed), there was no publicity of the actions taken by the CMVM, which hinders both the deterrent and exemplary effect of an enforcement regime.</p> <p>As for criminal cases that started to be investigated in the 2001/2005 period, there has been only 1 conviction. However, the assessor acknowledges that the CMVM has actively investigated possible crimes. For the period of 2001/2005, there are two cases waiting for trial and another 3 waiting for a decision of the Public Prosecutor on whether to pursue the case.</p>

	<p>Furthermore, regarding the cases that started to be investigated in the 1996-2000 period, there have been 5 criminal convictions. For the same period, there are 4 cases still pending in the courts and another 3 awaiting the decision of the Public Prosecutor on whether to institute proceedings or not. Summing up, with regard to the cases that started to be investigated in the 1996-2005 period, there have been 6 criminal convictions (4 for insider trading and 2 for market manipulation), 6 cases are still pending in the courts and 6 are awaiting the decision of the Public Prosecutor.</p> <p>Finally it is important to note that the CMVM has engaged in the training of both prosecutors and judges. At the judicial level, the Prosecutors office has created a specialized unit for financial crimes.</p> <p>As for BdP, the instruction of administrative proceedings is carried out by the Legal Division within the Banking Supervision Department. According to the information provided, from 15 cases opened in 2004, in 5 of them fines were applied, 2 were archived based on inconclusive evidence and the rest are pending. As for 2005, 23 administrative proceedings were opened, in 3 of them fines were applied and the rest are pending.</p>
Assessment	Broadly implemented
Comments	<p><b>Supervision</b> See comments under Principles 22 and 23. In addition, CMVM could consider the inclusion of a closing meeting with the board of financial intermediaries as part of the procedures for on-site supervision.</p> <p><b>Enforcement</b> The assessor recommended that the CMVM adopt a more vigorous policy regarding the application of administrative fines and the disclosure of administrative sanctions. During the mission, the assessor was informed that the Board decided to change its policy and will rely more on administrative fines. Information provided afterwards appears to support this statement. During 2005 the CMVM opened 33 administrative procedures; while in the first semester of 2006 it had already opened 49. In addition 15 fines were applied in 2005, while 14 fines had been applied as of July 1, 2006. The amount of the fines has also increased from EUR 543,000 in 2005 to EUR 2,570,000 for the first semester of 2006. In addition, an amendment to Article 42 of the SC makes mandatory the publication of convictions for very serious administrative infractions. These two changes constitute a significant improvement in the enforcement regimen. Nevertheless the assessor recommends that the CMVM take additional actions to increase transparency, since the public has the right to know if any disciplinary action has been brought against a market intermediary or an issuer.</p>
<b>Principles for Cooperation in Regulation</b>	
<b>Principle 11.</b>	The regulator should have authority to share both public and non-public information with domestic and foreign counterparts.
Description	<p><b>Domestic cooperation</b> Sectoral legislation (SC, LFCIFC and Insurance legislation) requires the CMVM, BdP and the ISP to cooperate among themselves in order to coordinate the exercise of their</p>

	<p>respective powers of supervision. Furthermore Article 374 of the SC explicitly provides for the exchange of information even when subject to the professional duty of secrecy. Cooperation is guided by the principles of reciprocity, duty of secrecy and restricted use of information for the purposes of supervision. Given the broad terms of this provision, it can be concluded that both CMVM and BdP are authorized to exchange any type of information, public and non-public, even if unsolicited.</p> <p><b>Foreign counterparties</b></p> <p>As for foreign counterparties, Article 376 authorizes the CMVM to cooperate with foreign counterparties, whenever necessary for the development of cross border activities with relevant connection to the national territory. Within this framework, the CMVM may sign agreements of cooperation with the intention of exchanging information necessary for the performance of the respective functions of supervision. As in the case of national authorities, cooperation should be guided by the principles of reciprocity, duty of secrecy and restricted use for the purposes of supervision.</p> <p>Based on this framework it can be concluded that the CMVM can exchange both public and non-public information. However the Law imposes a condition for the exchange of information with foreign counterparties, since it has to be connected with cross border activities with relevant connection to the national territory. Article 3 of the SC defines as acts or activities deemed to have relevant connection to Portuguese territory:</p> <ul style="list-style-type: none"> <li>a) Orders addressed to members of the markets registered with the CMVM and the operations carried out therein</li> <li>b) Activities carried out and acts performed in Portugal</li> <li>c) The disclosure of information accessible in Portugal that refers to situations, activities or acts regulated by Portuguese Law.</li> </ul> <p>Given the ample terms of this Article, it can be concluded that the provision does not require the existence of an “independent” interest from CMVM. In addition, in practice it is difficult to imagine a case of information accessible in Portugal that does not refer to an act, situation or activity carried out in Portugal or regulated by Portuguese law. Thus, in practice this provision does not seem to affect the ability of the CMVM to exchange information.</p> <p>As for BdP, Articles 81 and 195 of the LFCIFC provide that the secrecy duty does not prevent BdP from exchanging information for the purposes of supervision with the CMVM and foreign counterparties in EU member states. As for states that are not members of the EU, Article 82 of the LFCIFC allows the exchange of information within the framework of cooperation agreements on a reciprocal basis. These agreements can only be signed when the information to be disclosed is subject to guarantees of secrecy at least equivalent to those established in national law and when the purpose of the disclosure is the performance of supervisory functions entrusted upon the entities in question.</p>
Assessment	Implemented
Comments	The assessor acknowledges that the fact that Portugal is a signatory of the IOSCO Multilateral Memorandum of Understanding (MMoU) implies that its screening

	<p>committee considered that the Portuguese legal framework complies with Principles 11, 12, and 13. Also, the assessor acknowledges that in practice, Article 376 of the SC may not affect CMVM's ability to exchange information with foreign counterparties. Moreover, as stated under Principle 12, in practice the CMVM has actively cooperated with foreign counterparties. However, the condition imposed in this Article is obscure; thus, the assessor recommends that this provision be amended.</p>
<p><b>Principle 12.</b></p>	<p>Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.</p>
<p>Description</p>	<p><b>Domestic regulators</b></p> <p>The Law authorizes both CMVM and BdP to enter into agreements with domestic regulators (Article 374, 2e of the SC for the CMVM and 81 and 195 of the LFCIFC for the BdP). The legal framework does not require authorization from another authority either to enter into such agreements or to share information. Based on that authorization, the CMVM and the BdP signed an MoU in 1997. The Memorandum covers the exchange of information regarding: establishment of credit and financial institutions, acquisition and increase of qualifying holdings, licensing of the members of management and other bodies of credit institutions, notification of investment companies based in Portugal for the performance of activities in other EC countries, rendering of investment services, voluntary winding up, transmission of information on offenses, information on internal regulation projects. A Protocol for the exchange of information regarding issues of securities was signed in 2002. Both documents are considered public but have not been included in their respective websites. From the meetings held with staff of both institutions the assessor concludes that the exchange of information has worked in many other areas not provided for in the memorandum and the protocol, including reports arising from the exercise of the supervisory function.</p> <p><b>Foreign counterparties</b></p> <p>The Law also authorizes both CMVM and BdP to sign memoranda with foreign counterparties (Article 376,2 of the SC for the CMVM and 81 and 195 of the LFCIFC for BdP). The legal framework does not require authorization from another authority either to enter into these agreements or to share information. Based on that authorization, the CMVM has signed bilateral agreements with France, Greece, Germany, Italy, France, Belgium, Spain, Slovakia, Cyprus, Czech Republic, Slovenia, Hungary, Poland, Mozambique, Turkey, Chile, Australia, Argentina, Romania, Cape Verde, Hong Kong, South Africa, Switzerland, USA Security and Exchange Commission, USA Commodity Futures Trading Commission, Brazil, Mexico. It is also a signatory of the Multilateral agreement Committee of European Securities Regulators MoU and the IOSCO MMoU, and the Declaration of Boca Raton on cooperation and supervision of derivative markets, and clearing and settlement systems. All those memoranda are in writing, public and available on the website.</p> <p>The CMVM has developed procedures to ensure proper handling of requests for assistance, which include a quarterly report to the board as to the state of requests (both received and sent).</p>

	<p>Within the scope of these agreements the CMVM has fulfilled 73 requests for cooperation from foreign counterparties, for the period January 2000 to September 1, 2005. The assessor was provided with the list of requests for assistance for the period 2004/2005. Based on those records, the assessor concludes that assistance has been provided within a reasonable timeframe (ranging from 5 to 47 business days, depending on the complexity of the request).</p> <p>BdP has signed memoranda with Germany, France, Netherlands, United Kingdom, Luxembourg, Spain, Belgium, Macao and Mozambique.</p>
Assessment	Implemented
Comments	BdP informed that other memoranda are being negotiated, including Poland, Turkey, Slovakia, Romania and Brazil.
<b>Principle 13.</b>	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	<p>As stated in Principle 11, Article 376 of the SC authorizes the CMVM to cooperate with foreign counterparties, whenever necessary for the development of cross border activities with relevant connection to the national territory. For that purpose the Article authorizes the CMVM to sign agreements with the intention of:</p> <ul style="list-style-type: none"> <li>a) collecting details related to offenses against securities markets and to investigations that fall within the scope of the CMVM's responsibilities</li> <li>b) exchanging information necessary for the performance of the respective functions of supervision and regulation</li> <li>c) consultation regarding problems arising from their respective responsibilities</li> <li>d) sharing experiences for the purpose of staff training.</li> </ul> <p>Also, the Article authorizes foreign counterparties to participate in actions within the CMVM's jurisdiction, whenever there is a suspicion that the law of the foreign state has been violated.</p> <p>As for BdP, Article 137 of the LFCIFC imposes on BdP the duty to supply authorities of EC countries whatever information it possesses or may obtain in respect of the institutions which it supervises and in which those institutions have participation. It also requires BdP to carry out inspections or allow the foreign authority to carry them out, either directly or through an intermediary person. This collaboration applies also to non-EC members within the scope of reciprocal cooperation agreements.</p>
Assessment	Implemented
Comments	<p><b>CMVM ability to cooperate</b> See comments under Principle 11.</p> <p><b>BdP ability to cooperate</b> As for BdP, the provisions have a more limited scope. However, CMVM provisions would be sufficient to provide cooperation in the terms required by IOSCO.</p>

<b>Principles for Issuers</b>	
<b>Principle 14.</b>	There should be full, accurate and timely disclosure of financial results and other information that is material to investors' decisions.
Description	<p><b>Public offerings</b></p> <p>Public offerings are subject to registration before the CMVM (Article 114 of the SC), which is conditional upon the presentation of a set of information materials, with the main requirements being a prospectus, financial statements for the last 3 years and audited financial statements for the last year. For the purposes of the offering, if the financial information is more than 9 months old, then interim information has to be provided (Article 116 of the SC)</p> <p>The law requires the prospectus to contain complete, true, updated clear and objective information (Article 135). The main issues that have to be included in the prospectus relate to: the purpose of the offer, the issuer and its activities, the offeror and its activities, the issuer's corporate governance structure, the names of the members of the issuer's and offeror's governing bodies and the financial intermediaries involved in the placement, financial information on the issuer, mainly financial statements for the last three years, the audit report for the last year, and the issuer's business development plan (Article 136 ss of the SC)</p> <p>The CMVM is authorized to exempt specific offerings from the presentation of the prospectus, mainly: offers for sale of securities listed on a regulated market if the prospectus is up to date, offers with total value below EUR 40,000, offers unlimited and unconditionally guaranteed by the State, offers carried out by international organizations of a public nature and international financial institutions, offers aimed at employees, offers carried out by charitable organizations or humanitarian associations. The assessor considers these to be reasonable, and they are also in line with European Directives.</p> <p>The registration process is based on the principle of full disclosure, not on a merit system (Article 118 of the SC). The CMVM should deny registration if the information provided is not complete. The CMVM can also request the inclusion of information.</p> <p><b>Admission to listings</b></p> <p>The decision to grant admission to listing is a responsibility of the market operator. The law provides a minimum set of requirements for listing but also allows the market operator to develop its own rules for admission. As to the basic framework, admission to listing involves information requirements. The level of information (content, periodicity and means to supply it) required mainly depends on the type of market where the securities will be listed (Articles 202 of the SC). The more stringent requirements apply to the official listing market of a stock exchange (Article 214 of the SC), while the CMVM is authorized to reduce the requirements for all other markets. For the official listing, market information requirements include:</p>

- a) The prospectus. If the prospectus contains a report and annual accounts more than 9 month old, interim financial information has to be prepared (Article 227 of the SC). The prospectus is subject to registration before CMVM (Article 236 of the SC).
- b) Annually, not later than 30 days after their approval: annual accounts (balance sheet, profit and loss account, cash flow statement, appendices that include a table with specific changes in various items of own capital), the management report with a list of qualified shareholders and indication of all transactions of securities issued by the company carried out by the members of the governing body, corporate governance report, report and opinion of the supervisory board and the auditor's report (Article 245 of the SC, supplemented by Regulation 4/2004 and 7/2001). Information must be presented both on an individual and a consolidated basis. Publication is carried out via the Information Disclosure system of the CMVM. Article 65 of the CC states that shareholders should examine financial statements within the 3 months following the end of the year, which in practice means that financial statements have to be made available not later than 2.5 months after the closing date of accounts. In the case where the company has to present consolidated accounts, financial statements have to be presented no later than 4.5 months after the closing date of accounts.
- c) Half yearly: up to three months from the end of the first six months, the same information required for the annual financial statements, with the exception of the statutory board report and opinion, and the auditor's report is substituted by an opinion. (Article 246 of the SC) Information must be presented both on an individual and a consolidated basis.
- d) Quarterly, on the 1<sup>st</sup> and 3<sup>rd</sup> quarter within a 60 day period, a financial information summary, that includes a summary of the balance sheet, profit and loss account and a brief description of the activity. Information covers individual and consolidated accounts.
- e) Immediate disclosure of material information (Article 248 of the SC)
- f) In addition, all the documents and proposals submitted to the general meeting of shareholders should be available on the website of the issuer 15 days prior to the meeting. The Notice of the general meeting, with the agenda, has to be immediately disclosed to the market (Article 249 of the SC)
- g) All trades in the company's own shares carried out directly or indirectly by members of the managing board of companies and other boards, within 7 days. (Regulation 7/2001)
- h) Finally, all public companies are subject to disclosure of qualified holdings: Persons reaching 10 percent, 20 percent, a third, a half, two thirds and 90 percent of the capital of a public company must inform the CMVM of this within 3 days. In the case of listed companies, holdings of 2 percent and 5 percent of voting rights are equally subject to that obligation. (Article 16 of the SC)

Article 250 contains a general principle regarding exceptions to disclosure obligations.

Exclusions from trading are prescribed when listing requirements are no longer met (Article 207 of the SC) and the CMVM is empowered to order so, if the market operator has not done it (Article 208 of the SC). Insider trading constitutes a crime (Article 378 of the SC).

In the case of debt, the periodic information required are the half yearly and the annual accounts.

**System in place to ensure sufficiency, timeliness and accuracy of information**

The framework contains a set of measures designed to ensure the sufficiency, timeliness, accuracy of the information provided by the issuer:

a) Participation of auditors

b) Joint liability for damages caused by non-compliance with the content of the prospectus, except if they can prove to have acted without fault, is imposed on the offeror, its management body, the issuer, the members of the issuer's management body, the promoter, the members of the auditing body, accounting firms and chartered accountants that have certified or verified the accounting documents, the financial intermediaries that assisted with the offer, and any other entity that accepted being included in the prospectus as responsible for any information, forecast, or study included in it. However, a system of strict liability is imposed on the issuer and the leader of the placement consortium under certain circumstances.

c) The existence of a regimen of prior registration before the CMVM, and therefore the power of the CMVM to review the documents and demand explanations and additional information, both at the moment of registration and on an ongoing basis.

d) Administrative offenses.

**Practice**

The review of information provided by issuers is carried out by the Department of Supervision of Markets, Issuers, and Information. The Department has three units of three people each (two economists and a lawyer) to which a group of specific issuers is assigned on a permanent basis. This organization of the work fosters the development of expertise in the sector and issuers assigned to each unit.

The Department has elaborated procedures to handle the approval of public offerings. The procedures include checklists of the documents that have to be submitted in connection with the offering as well as guidelines for the review of the information provided. All prospectuses submitted are reviewed by the Department.

The Department has also developed procedures to review information related to qualified holdings, and material events. It is important to note that a daily report regarding relevant events related to issuers is sent daily at 9 am and discussed with the board member.

As for the review of financial information, the procedures contain three different stages, two for off-site supervision and the last one for on-site supervision. The first stage corresponds to the review of timeliness and completeness of the information provided and affects all issuers. The second stage involves an in-depth analysis of the information presented. In this case, the Department has developed a "scoring system" to decide the issuers that would be subject to this more in-depth review. The system has twelve different criteria (including among others, criteria related to auditors and

	<p>auditors' fees, disclosure of relevant information, compliance with corporate governance recommendations, evolution in income and free floating, and infractions), that are given certain weight. Issuers are measured against those criteria and based on the results are divided into three groups that are subject to different levels of scrutiny. The third stage involves on-site inspection for cases where the Department concluded there is a high risk of incorrect information, errors or fraud. The Manual of the Department contains procedures for each stage of supervision.</p> <p>The assessor was provided with a copy of the procedures as well as copies of specific reports related to the review of financial information, half yearly and annual. In both cases, the CMVM required the issuers to make additional disclosures to the market (in one, the disclosure involved corrections to the financial statements).</p> <p>The Annual Report for 2004 also contains information on the type of measures and information given to the public in regard to the quality of the information provided by issuers.</p>
Assessment	Implemented
Comments	<p><b>Level of disclosure</b></p> <p>The assessor considers the system to be reasonable since it provides different levels of disclosure depending on the type of market where securities are traded and the nature of the securities.</p> <p>Rules on the prospectus of a public offering for distribution and admission to a regulated market will be amended shortly due to the transposition of the Prospectus Directive 2003/71/CE.</p> <p><b>Annual accounts</b></p> <p>The assessor considers that the period given to present annual accounts in the case where consolidated information has to be provided is excessively long, to the point of bringing into question the "timeliness" of the information.</p> <p><b>Practice</b></p> <p>The Department of Markets, Issuers and Information has not developed detailed guidelines for the review of prospectuses, or industry studies that could help in this review. However the assessor considers that this has not affected the review process, due to the limited number of issuers and the structure given to the Department, that has fostered the development of analysts' expertise.</p>
<b>Principle 15.</b>	Holders of securities in a company should be treated in a fair and equitable manner.
Description	<p><b>General principle</b></p> <p>Article 15 of the SC requires public companies to provide equal treatment of all shareholders of the same category.</p> <p><b>Election of board</b></p> <p>The election of directors takes place at a shareholders' meeting (Article 252 of the SC). In the case of limited companies (sociedades anonimas), both public and non-public, shareholders who represent at least 10 percent of the share capital, either</p>

individually or jointly, and vote against the board elected, have the right to appoint an executive director (art 392 of the SC).

### **Corporate changes**

Changes that affect the terms and condition of securities have to be approved by a shareholders' meeting, as well as mergers, demergers and transformations, capital increases or reductions, redemption of shares and changes to company by-laws. Most of these obligations derive from the general framework for companies embedded in the SC.

Notices for shareholders' meetings must be published in the Official Gazette at least 30 days before the meeting (Article 377 of the SC). In the case of listed companies, issuers are required to submit the notices to the CMVM and publish them in a daily newspaper of large, national circulation, market bulletin or the CMVM information disclosure system (Regulation 4/2004).

### **Proxies**

The system has regulations for representation at shareholders' meetings (Articles 380 and 381 of the SC). The standard proxy may be a signed letter.

### **Ownership registration**

Securities admitted to trading on regulated markets must be compulsorily integrated into the centralized system (Article 59 ss of the SC). In the Portuguese market Interbolsa provides the services of a CSD.

### **Corporate control**

The law establishes a system of mandatory tender offer for the totality of the shares to anyone whose holdings exceed directly or indirectly one third or a half of the voting rights attributable to the share capital of a public company (Article 187 of the SC). However the limit of one third may be eliminated in the bylaws of companies that do not have shares listed on a regulated market. (Article 187 of the SC). The law establishes information requirements for the purposes of mandatory tender offers, mainly the presentation of a prospectus that has to be approved by the CMVM (Articles 134, 138 of the SC). Sufficient time is given to investors to consider the offer, which may vary between 2 and 10 weeks (Article 183 of the SC). The law establishes minimum conditions as to the price offered (Article 188 of the SC). Also the price at which the control block was purchased acts as a minimum price. Failure to fulfill the obligation to launch a tender offer, when it is mandatory, results in the immediate restraint of the voting rights and dividends related to the shares that exceed the limit from which the offer would be mandatory for 5 years (Article 192).

The SC contains a mandatory squeeze out, for those who after the launching of a total take over of a public company, exceed 90 percent of the voting rights (Article 194 of the SC). This offer is also subject to registration before the CMVM (Article 194 of the SC).

	<p><b>Insolvency</b> Equal treatment is also a rule within insolvency proceedings, thus participation in the losses is proportional to the amount of the respective social participation (Article 22 of the CC)</p> <p><b>Disclosure of information</b> a) Qualified holdings: Persons reaching 10, 20, third, a half, two thirds and 90 percent of the capital of a public company must inform the CMVM of this within three days of its occurrence. For listed companies, there are two additional thresholds for holding of 2 percent and 5 percent (Article 16). Qualifying holdings also have to be disclosed in the annual and the half yearly report (regulation 4/2004) b) Insider transactions: In addition, members of the executive board and other boards have to inform the CMVM about the transactions they carry out (7/2001). This information has to be included in the annual and half yearly accounts. (Regulation 4/2001). c) Annual accounts: See Principle 14.</p> <p><b>Corporate Governance Recommendations</b> Since 1999 companies who issued shares admitted to a regulated market must publish, either in a chapter in their annual report or in an annex, a detailed report on the level of compliance with a set of recommendations issued by the CMVM (thus, as many European countries, Portugal has adhered to a “comply or explain” system).</p> <p><b>Practice</b> As discussed under Principle 14, the Department of Financial Information and Operations have developed procedures for the review of takeover bids, qualified holdings, material events and the financial information provided by issuers.</p>
Assessment	Implemented
Comments	
<b>Principle 16.</b>	Accounting and auditing standards should be of a high and internationally acceptable quality.
Description	<p><b>Obligation to provide audited statements</b> The prospectus for public offers have to include audited annual financial information (European Commission Regulation 809/2004), which has to be published (see description of Principle 14). In addition, companies listed in the official market have to present audited annual accounts and half yearly accounts with an auditor’s limited review.</p> <p><b>Accounting principles</b> Since January 2005 the consolidated financial statements of listed companies should comply with IAS/IFRS standards, according to the EU Regulation 1606/2002. Individual statements may be presented either in local GAAP or IFRS. However issuers that are only required to present individual statements will be subject to IFRS beginning 2007.</p> <p>Local GAAPs are established by the Accounting Standardization Committee, which is</p>

made up of an executive commission with 13 members, including a representative of CMVM.

#### **Auditing principles**

Audits have to be carried out according to DL 487/99 the Technical Revision/Auditing Standards and Revision/Auditing Guidelines issued by the Ordem dos Revisores Oficiais de Contas (Order of Chartered Accountants – OROC). In matters related to the securities market, the CMVM has representation in a technical commission of OROC.

These Standards are based on the International Auditing Standards, but are more detailed. The CMVM has authority to issue specific standards for securities admitted to regulated markets, and has done so in Regulation 6/2000. These standards complement the OROC Standards.

#### **Auditors quality and independence**

Audits have to be performed by auditors registered before the CMVM. Registration is conditional upon the auditor demonstrating that it is equipped with the human physical and financial resources necessary to guarantee their reputation, independence and technical competence. Article 9 of Regulation 6/2000 further develops these requirements. In addition, the general rules applicable to the audit profession are applicable to them (DL 487/99). These provisions include specific cases of incompatibilities, as well as a limit on income received from a client (auditor's client may not represent more than 15 percent of the auditor's total annual business, Article 6 of Regulation 6/2000).

The Department of Financial Information and Operations has developed procedures for the registration of auditors. It is important to note that as part of the registration process, the CMVM requests the opinion of OROC.

The CMVM has the power to require an issuer to publish supplementary information whenever it finds that accounting principles were not followed (Article 245 of the SC). The CMVM has the power to cancel the registration of an auditor as well as to require the replacement of the auditor in the listed company, whenever it considers that the auditor is not fulfilling the registration requirements. It also has sanctioning powers over auditors (Article 7 of the SC).

Based on those powers, the Department of Financial Information Supervision and Operations conducts inspections over auditors: annually they choose two auditors for on-site inspection. The Department has developed procedures for these inspections that include a horizontal review (professional activity, material resources, personnel, acquisitions and contracting of external services, ethics and independence, quality system) as well as vertical review (in-depth review of specific audits carried out by the firm). The assessor was provided with a copy of these procedures as well as a copy of a specific report arising from the inspection carried out on an auditing firm. The report followed the procedures in place and contained a list of specific actions to

	<p>be taken by the auditing firm. The CMVM also informed that based on the results of their supervision, the CMVM has cancelled the registration of two auditors (1995 and 1996).</p> <p>In addition, OROC has oversight responsibilities over all chartered accountants. Based on those responsibilities, it has designed a Quality Control Program. The program is based on inspections that include both a horizontal and a vertical review. OROC has developed a manual for the conduction of these inspections. In addition, the auditors that carry out these inspections are subject to special training. Based on the inspections the Committee on Quality Control has the power to ask auditing firms to implement changes or it could also send the report to the Disciplinary Council for the imposition of a sanction. The CMVM has coordinated with OROC, so that within its annual program OROC reviews the work of auditors that provide services to listed companies: OROC selects randomly a third of them so that all auditors for listed companies get reviewed in a 3 year period. The results are communicated to the CMVM. Based on those reviews the CMVM has cancelled the registration of one auditor.</p>
Assessment	Implemented
Comments	
<b>Principles for Collective Investment Schemes</b>	
<b>Principle 17.</b>	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
Description	<p><b>Authorization</b></p> <p>Authorization of CIS operators is a responsibility of BdP (Article 199-I of the LFCIFC). Authorization is based on the fulfillment of a set of criteria, that include minimum initial capital, suitability of shareholders, fit and proper requirements for the board of directors and supervisory board of these firms (the members of which are subject to registration with BdP), organizational structure and internal control, suitability of human and technical resources and financial capacity. Initial capital must be at least 250 000 Euros for securities investment fund management companies and 375 000 Euros for real estate investment fund management companies. There is a link between the funds of the CIS operators themselves and their assets, whereby their own funds must not be worth less than 0.5 percent of the assets under management up to 75 million Euros plus 0.1 percent for assets valued above 75 million Euros.</p> <p>The SC categorizes the management of CIS as a financial intermediation activity, and as such is subject to a registration process with the CMVM (Article 295 of the SC). CIS can only be marketed by the CIS operator or by financial intermediaries legally licensed or by other entities, meeting equivalent requirements, that have to be authorized by the CMVM on a case-by-case basis.</p> <p>Registration with the CMVM requires the CIS operator to demonstrate that it has the human, material and technological resources indispensable to the performance of its activities (Article 298 of the SC). Issues analyzed include: organization, management and means of the operating company, physical and institutional arrangements, segregation of information and computer systems, functional segregation and human</p>

resources, fund management activities, registration and accounting operations, internal control systems and marketing of investment units. For that purpose the CMVM conducts an on-site supervision before the company can commence operations. The Division of Asset Management has developed a procedure for the conduction of these inspections, that includes questions related to the organization of the CIS operator ; information and IT; proposed internal regulation; fund management; transactions registration and accounting; systems for internal control; and commercialization.

Certain functions considered control functions are subject to individual registration with the CMVM, for the purposes of assessing fitness and professional experience: persons responsible for investment decisions, CIS back office (accounting valuation and reporting) and the compliance officer. A questionnaire and declaration in the form provided by the CMVM has to be filled out by each of these persons. Conviction in criminal proceedings is considered a sign of lack of fitness.

The exercise of financial intermediation activities without proper authorization is an administrative infraction sanctioned with fine of EUR 250,000 to 2,500,000.

#### **Prudential supervision of CIS operators**

CIS operators are permanently monitored by BdP through off-site procedures and on-site inspections, as it does for all other financial intermediaries (see Principle 22).

#### **Prudential supervision of CIS and supervision of CIS operators for market conduct rules**

Supervision of CIS operators for market conduct rules and of CIS is carried out by the CMVM through the Assets Management Supervision Division. The Division prepares an annual plan that has to be approved by the board. Its plan includes both off-site and on-site supervision.

#### **Off-site:**

- a) Daily presentation of net asset value (NAV) via extranet.
- b) Monthly, up to 6<sup>th</sup> working day of the month, portfolios, NAV, the number of investment units under circulation, and accounts of the CIS
- c) Half yearly: accounts of the CIS and the CIS operator
- d) Annually: accounts of the CIS and the CIS operator

Based on the information provided, the Division produces the following reports:

- a) Daily report on the value of units, which are grouped into different classes according to the investment policies.
- b) Weekly analysis of the daily variations in the prices of fund units. There is an analysis of the reasons for the variation and when necessary a list of follow-up actions.
- c) Monthly monitoring of prudential limits, through a system of alerts.
- d) Monthly monitoring of the valuation of the assets of CIS on a sample basis. The report includes a column for comments and if necessary actions to be taken.
- e) Quarterly report on the prudential supervision of funds: prohibited operations or

	<p>operations for which conditions exist, limits to the composition of portfolios, use of derivatives assessment and valuation of property forming part of the assets of CIS, disclosure of information to the market and the CIS.</p> <p><b>On-site supervision</b></p> <p>The Division has developed a risk based approach for the supervision of CIS and Fundos de Investimento Imobiliário (Real Estate Funds – FII) operators, based on a set of criteria or risk factors, including criteria related to the activity, the financial condition, historical information, organizational structure and resources, institutional structure and other miscellaneous factors. Specific weights have been assigned to these criteria, and selection of the CIS to inspect is based on the results obtained. Areas subject to review are organization, marketing of CIS, conflicts of interest and AML.</p> <p>The Division has developed manuals for the conduction of inspections. The assessor was provided with copies of these documents as well as copies of specific reports arising from the inspections carried out. For each area covered in the inspection, the reports contained a detailed list of findings and the actions recommended to address the weaknesses found. In the cases that the assessor reviewed, the main actions recommended included notification of an irregularity to the intermediary, with a deadline to address it and requests for clarification. At least in one case the recommendation was the opening of an administrative proceeding.</p>
Assessment	Implemented
Comments	Although still modest, the CIS industry shows considerable growth. Thus, it is important that the CMVM keeps it under close scrutiny, to make sure that the regulatory framework is dealing appropriately with this growth and market participants are fulfilling their obligations towards investors (in particular suitability requirements and adequate advising).
<b>Principle 18.</b> The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.	
Description	<p><b>Legal structure</b></p> <p>Article 4, 8 and 9 of Decree Law 252/2003 provides the establishment of Undertakings for the Collective Investment of Transferable Securities (UCITS) on a contractual basis, with its assets fully segregated from the assets of the CIS operator, and subject to authorization by the CMVM. Under the terms of Article 2 of DL No. 60-2002, FII constitute standalone assets, that belong to a collective of persons. The establishment is also subject to CMVM authorization.</p> <p>CIS authorization requires the submittal of a prospectus, which must include information about the legal structure and rights of investors (Article 11 of DL 252/2003 ) The same applies to FII under Articles 22 and 23 of DL 60/2002.</p> <p><b>Changes in rights</b></p> <p>The framework also provides for authorization by the CMVM of changes to investors' rights (Article 66 DL 252/2003 and 22 and 23 of DL 60/2002) and notification to shareholders of certain changes in CIS, including increases in commission charges on</p>

	<p>investment policies, changes in income distribution policy and substitution of management and safekeeping entities. Similar requirements apply to FII (Article 39 DL 60/2002)</p> <p><b>Segregation of assets</b> Proper segregation of assets is required (Article 306 SC). Moreover, assets of CIS have to be deposited with a depository, which has to be a credit institution with equity equal to or greater than EUR 7.5 million. Similar provisions apply to FII (Article 12 DL 60/2002).</p> <p><b>Recordkeeping</b> CIS and FII operators must comply with the AML provisions, that include provisions on recordkeeping (See Principle 8).</p> <p><b>Valuation of assets</b> Both UCITS and FII are required to present financial statements on an annual and half yearly basis, audited by an external auditor registered before the CMVM (Article 8 of the SC and 67 of DL 252/2003 ). Regulations 16/2003 for CIS and 11/2002 for FII defined the accounting standards to be used, which adhered to IAS/IFRS.</p> <p>In general terms the auditor has to evaluate:</p> <ul style="list-style-type: none"> <li>a) The valuation of assets and compliance with valuation criteria defined in the CIS management regulations</li> <li>c) Over-the-counter operations related to securities listed on a stock exchange</li> <li>d) Subscriptions and redemptions.</li> <li>e) Prohibited operations</li> <li>d) Entry of facts related to properties in the case of FII.</li> </ul> <p>Regulations required the auditor to immediately communicate to the CMVM facts related to the activities of the CIS when they are likely to constitute a crime or an illicit act; affect the continuity of the exercise of financial intermediation activities or justify the refusal to certify the accounts or the issue of reserves.</p>
	<p><b>Winding down</b> There are specific rules for the winding down of a CIS, that involve authorization by the CMVM (DL 60/2002).</p>
Assessment	Implemented
Comments	
<b>Principle 19.</b>	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.
Description	For authorization purposes, UCITS and FII are required to present a prospectus that should include information on the legal structure and rights of investors, the operator, management rules and regulations, including valuation of assets, procedures for purchase, redemption and pricing of units, custodian, investment policy, risks, fees as well as annual accounts. Based on the investment policy selected, an indication must be given of the type of investor for whom the investment could be more suitable.

	<p>The prospectus is subject to review by the CMVM, which has the power to require complementary information and request any change it deems necessary (Article 17.2 of the DL 276/94).</p> <p>The simplified prospectus has to be presented to investors prior to the subscription of units, as well as any update to it (DL 252/2003 and 60/2002).</p> <p>Both the full prospectus and the simplified prospectus have to be kept up to date (Regulation 15/2003). Changes to the prospectus are subject to CMVM authorization</p> <p>Regulations require the CIS operator to publish monthly, with reference to the last day of the month immediately preceding the current month, the composition of the CIS portfolio, the net asset value, off balance sheet liabilities and the number of investment units in circulation (Article 35.2 of DL 276/94 and Article 3 of Regulation 03/2001). FII operators must publish with reference to the last day of each month, the detailed composition of assets in each FII they operate, the net assets value and the number of investment units in circulation (Article 42 of Regulation 08/2002).</p> <p>Regulations require the preparation of both an annual and semi annual report. As stated before, annual and half yearly accounts have to be presented with the opinion of an external, independent auditor. See Principle 18.</p> <p>For both the annual and half yearly accounts, CIS operators must publish an announcement presenting the annual accounts to the public in the Stock Exchange Bulletin, in a wide circulation national newspaper or on the CMVM's website. These announcements must state that CIS accounts are available at all locations where the CIS is marketed and that they can be sent without charge to investors who request them (Article 68 of DL 252/2003). Similar provisions apply to FII (Article 32 of DL 60/2002).</p> <p>See Principle 17 on off site and on site supervision.</p>
Assessment	Implemented
Comments	
<b>Principle 20.</b>	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.
Description	<p><b>Valuation of assets</b></p> <p>CMVM regulation 15/2003 defines the methods and criteria for the valuation of UCITS assets, as well as the costs that may be charged to a CIS.</p> <p>a) The assets must be valued at fair price, mark to market or other methods for unquoted assets (mainly criteria based on the value of bids disseminated through specialists. When this is not possible, use must be made of models based on fundamental analysis and the discounted cash flow methodology)</p> <p>b) The methodology and relevant criteria for valuation must be expressly stated in the management regulations which are contained in the full prospectus</p> <p>c) When valuing the same assets in the portfolios of the different CIS they administer,</p>

	<p>the CIS must adopt uniform criteria and assumptions in relation to each component.</p> <p>Under the terms of Article 29 of DL 60/2002, properties belonging to real estate funds are subject to valuation by at least two independent valuers:</p> <ol style="list-style-type: none"> <li>Prior to their acquisition and disposal</li> <li>Prior to the development of construction projects</li> <li>At intervals of not less than 2 years.</li> </ol> <p>In addition, the auditor's report must include a statement of the consistency of the valuation of assets (Article 67 of DL 252/2003 and Article 31 of DL 60/2002).</p> <p>NAV of CIS has to be calculated daily (75 DL 252/2003 and regulation 15/2003). Unit value for open end CIS must be published daily wherever the CIS is marketed (on the day following valuation), as long as the subscription periods lasts. As for FII, NAV is calculated and published with reference to the last day of each month and on all days on which redemptions and subscriptions are permitted (Article 24 of Regulation 08/2002).</p> <p><b>Misspricing</b></p> <p>All unit misspricing must be reported by the CIS or FII operator to CMVM and published in the places where the CIS is marketed (45 of Regulation 15/2003) In addition CIS and FII operators are required to compensate losses, when the difference is equal to or greater than 0.5 percent of the value of the investment unit.</p> <p><b>Suspension of redemptions</b></p> <p>Suspension of redemption is regulated by law. Operators may suspend redemptions when redemption of units exceeds 5 percent in a single day or in a period of not more than 5 consecutive days. In addition the operator must suspend redemptions whenever it is in the best interests of unit holders. The decision and the reasons have to be communicated to the CMVM, which determines the maximum period of suspension. Suspension can be carried out on the initiative of the CMVM or at the request of the operator (Article 77 DL 252/2003 and Article 37 DL 60/2002).</p> <p>As part of both its off-site and on-site supervision, CMVM supervises issues of valuation (see Principle 17)</p>
Assessment	Implemented
Comments	
<b>Principles for Market Intermediaries</b>	
<b>Principle 21.</b>	Regulation should provide for minimum entry standards for market intermediaries.
Description	<p>BdP authorizes and registers market intermediaries when they are either credit institutions or financial companies (e.g., Articles 199-C and 16 of the LFCIFC).</p> <p>Securities investment services, ancillary services of investment services, management of CIS and custody of their assets are subject to registration by CMVM, including the independent advisers, who are also authorized by CMVM (Articles 295, 301 SC). Authorization is based on the fulfillment of a set of criteria, that include minimum</p>

	<p>initial capital, suitability of shareholders, fit and proper requirements for the board of directors and supervisory boards of these firms, organizational structure and internal control, suitability of human and technical resources and financial capacity. BdP is given 6 months that could be prolonged for another 6 months to decide on authorizations. However the Law provides that its silence should be taken as a denial of the authorization.</p> <p>Registration by the CMVM is subject to demonstration of the capacity to fulfill the specific activities for which the entity is requiring registration. Persons performing control functions are subject to individual registration before the CMVM, based on the fulfillment of fit and proper requirements (Regulation 12/2000). The Law establishes tacit approval if the CMVM does not refuse registration within a period of 60 days (Article 299 of the SC).</p> <p>For the purposes of registration, the CMVM conducts an on-site inspection of the financial intermediary. The Department of Financial Intermediaries has developed a manual for these inspections. For each activity that the intermediary wishes to carry out (transmission and execution of orders, custody, etc), the manual contains a list of specific issues that have to be verified. The assessor was provided with copies of the manual as well as one specific example of an inspection carried out for purposes of registration. In the specific case reviewed, the report contained a list of “limitations” found in the intermediary that had to be addressed for registration.</p> <p>Independent advisers must have adequate professional qualifications (Article 25 Regulation 12/2000). Advisers are subject to certification by an entity and are required to attend a course and complete exams (Article 25 Regulation 12/2000). Advisers have to disclose the fact that they have been authorized by the CMVM, but are not required to disclose their specific qualifications.</p> <p>Decisions on authorization and registration are subject to judicial review.</p>
Assessment	Implemented
Comments	<p><b>Registration</b> Although the CMVM’s tacit approval provision has never been used, the assessor recommends that it be eliminated.</p> <p><b>Independent advisers</b> Given the fact that registration of investment advisers is based on fulfillment of fit and proper criteria, including attending courses and completing exams, the assessor does not believe that the lack of disclosure of their specific qualifications affects the implementation of the principle.</p>
<b>Principle 22.</b>	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	<p>All market intermediaries are required to comply with minimum capital requirements as required by Executive Order 95/94 and its amendments. Its amount differs according to the type of intermediary:</p> <p>a) Banks: EUR 17,500,000</p>

- b) Credit financial institutions: EUR 10,000,000
- c) Dealers: EUR 3,500,000
- d) Brokers: EUR 350,000
- e) Real estate investment funds management companies: EUR 375,000
- f) Securities investment fund management companies: EUR 250,000
- g) Credit securitization fund management companies: EUR 250,000
- h) Wealth management companies: EUR 250,000

All of them are subject to capital adequacy requirements, and most to liquidity provisions. In general, their own funds must be the highest of:

- a) Minimum capital
- b) Ongoing capital requirements
  - Credit risk
  - Trading book risks (position risk, settlement/counterparty risks)
  - Foreign exchange risk
  - Commodity risk
  - Other activities risk
- c) A quarter of the amount of the general fixed expenses of the previous year

There are specific prudential requirements for securities investment funds management companies (see Principle 17), as well as for real estate investment funds management companies and wealth management companies.

The BdP has developed a system of ongoing supervision, that includes both off-site monitoring and on-site inspections.

**Off-site:**

- a) Accounting information is sent to BdP on a monthly, quarterly, half yearly and annual basis (Regulation 4/96)
- b) Prudential information (data on prudential ratios and limits) is reported monthly (in the case of credit institutions and dealers) or quarterly (in the case of other financial firms), in standardized formats. The charts used for the calculation of own funds requirements as well as the identification of large exposures must be reported quarterly, within one month
- c) A report on the internal control system must be presented on a yearly basis by the management board accompanied by the opinion of the board of auditors on the adequacy of the system implemented.

Within the regular follow-up, the following aspects are analyzed: compliance with prudential rules and regulations, solvency, liquidity, large exposures, indebtedness limits, measurement of own portfolio, economic and financial situation and financial ratios. In any case of non-compliance or imminent risk, the institution is required to provide clarifications and to correct the situation.

**On-site**

In addition to the regular monitoring, the Department includes on-site supervision as a

	regular part of their annual plan. The BdP uses financial and qualitative indicators to decide the priorities for inspection and a risk analysis already exists and is embodied in the planning of the supervisory work. However it still has not implemented a risk rating system, which is expected to deliver a more standard and eventually cost-efficient process for such activity. There are also general criteria that guide the selection, including that the five major banks are inspected at least once a year, and all the others at least every 2 years. Standalone firms are supervised more often than those that are part of a group. The Department has developed an Inspection Guide for the conduct of on-site supervision.
Assessment	Broadly implemented
Comments	BdP has not yet implemented a formal risk rating system reflecting the assessment of the risk profile of financial intermediaries. This risk rating system has already been designed and approved and is expected to achieve the full implementation of a consistent risk-based approach to supervision, as it will be used primarily as a basis for the definition of the institution's risk profile and its rating. This risk-rating system is expected to be implemented during 2006, as part of the efforts to implement Basel II.
<b>Principle 23.</b>	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.
Description	<p><b>Internal controls</b></p> <p>Current regulations require intermediaries to have internal control mechanisms, which are reviewed by the CMVM through a questionnaire and on-site visits. Regulations already approved and that will be effective in January 2006 will require them to carry out an assessment of their internal control systems and prepare a report annually. The assessment will have to be carried out by a person who can act independently. Those regulations require the existence of a compliance officer.</p> <p>Instruction 72/96 of BdP also requires credit institutions and financial companies to have an internal control system, adjusted to their size and to the nature and risk of the activities carried out, ensuring the control of the risks incurred (e.g. credit, interest rate, market and liquidity risks, settlement risk in foreign exchange transactions, operational, reputational, legal and compliance risks). In accordance with this Instruction, an annual Report on the internal control system is presented to BdP accompanied by the opinion of the board of auditors on the adequacy of the system implemented.</p> <p><b>Market conduct rules</b></p> <p>Financial intermediaries are required to set up concrete procedures to deal with complaints and keep records of the actual procedures for 5 years (Regulation 12/2000). There are rules for separation of assets (100, 306, 307 SC 68,69,70 Regulation 12/2000), know your customer from the financial perspective (Article 304 of the SC), as well as to provide written contracts. In this regard, current regulations require financial intermediaries to provide a written contract for registration or deposit of securities, transmission of orders in derivatives, portfolio management, and loans</p>

(in practice) and regulations already approved and effective 2006 grant non-institutional investors the right to demand a written contract in relation to the service provided (Regulation 12/2000). Financial intermediaries are also subject to information requirements regarding the risks associated with investments (Article 312 of the SC), as well as periodic reports on their account (Article 85 of the SC).

#### **Recordkeeping**

Article 308 of SC requires recordkeeping of documents arising from the execution of transactions. More generally, financial intermediaries are required to comply with AML provisions (See Principle 8).

#### **Supervision of financial intermediaries for market conduct purposes**

Supervision of financial intermediaries by CMVM is the responsibility of the Financial Supervision Department. The Department prepares an Annual Plan of activities that is approved by the board. In this regard, supervision is carried out through a variety of means that includes on-line supervision of websites, off-site supervision and on-site inspection.

#### **On-line supervision**

All internet websites are supervised once a year.

#### **Off-site**

Financial intermediaries are required to provide:

- a) Monthly: day trading operations, volume and number of orders received and executed, volume of transactions executed, volume of own trading, securities registered on their own account, amount of securities owned by third parties registered in accounts held by the intermediary; commissions charged for the services provided. In addition brokers and broker-dealers are required to provide monthly balance sheets and monthly profit and loss accounts.
- b) Yearly: annual accounts

Based on that information, the Department prepares a set of reports (with different periodicity), that cover the main activities performed by financial intermediaries, as well as information on their financial condition. The reports highlight the most relevant facts and when appropriate include specific follow-up actions. The Department has also developed a system of automatic warnings, triggered by abnormal variations (predefined) in the values reported for seven specific factors related to the volume and quota of orders received, financial condition of the intermediary, commissions received, and trading in its own account. Activity warnings are used to obtain clarifications.

#### **On-site supervision**

On-site supervision is part of the Annual Plan. During 2001/2002 the Department inspected all financial intermediaries, targeting 2 basic areas: internal organization and investor protection (written contracts, investor complaints and pre/post trade information). During 2003/2004 about 50 percent of financial intermediaries were

	<p>inspected and selection was based on their market share. The areas targeted were custody, conflicts of interest and AML procedures. During 2005 the Department has inspected financial intermediaries facing specific risk situations, or that were required to correct irregularities, tied agents and agents.</p> <p>The Department has developed manuals for the conduct of inspections of financial intermediaries, including investment advisers. The assessor was provided with copies of these documents as well as specific reports arising from the inspections carried out on different financial intermediaries. For each area covered in the inspection, the reports contained a detailed list of findings and the actions recommended to address the weaknesses found. It is important to note that in the cases that the assessor reviewed the main action recommended by the Department and taken by the board was the notification of the findings to the intermediary, with a deadline to address the irregularities found. The assessor was also provided with specific examples of the follow-up actions that the Department carried out in order to verify whether the irregularities found were subsequently addressed by the financial intermediary. Verification relies mainly on off- site mechanisms, however if required on-site inspections are also carried out and the Department prepares a detailed report on the current status of each irregularity. It is important to note that the findings of the inspection process are used to enrich the regulatory process. For example, in the area of AML, the Department found the existence of common deficiencies. Based on those findings the CMVM sent a circular with a typology of clients and transactions on securities that required more stringent internal control measures. It also recommended more stringent procedures for the establishment and maintenance of accounts with investors not located in Portuguese territory.</p> <p>Based on a proposal prepared by the Department, the CMVM's board already approved a new framework for the supervision of financial intermediaries fully in line with best practices on risk-based supervision. The system is based on a "high impact" approach similar to that used by the FSA, whereby financial intermediaries that show higher probabilities of incurring certain risk factors will be subject to a more intense scrutiny by the CMVM. Those risk factors include issues of internal control, significant changes in financial information, financial condition, complaints received by the CMVM, administrative proceedings and delays in requests for information made by the CMVM. The analysis of these indicators defines the financial intermediaries that will be subject to on-site inspection. Similar risk factors will be reviewed during the on-site inspection.</p>
Assessment	Implemented
Comments	The assessor considers that the approach taken by the CMVM has been reasonable, since it has included elements of risk both in the off-site supervision (activity warning system) as well as in the on-site supervision (market share). However, the assessor believes the implementation of the risk based approach would bring more efficiency to the supervisory process.

<b>Principle 24.</b>	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	<p><b>System to deal with the failure of financial institutions</b></p> <p>BdP has a system of continuous supervision of financial intermediaries in what relates to their financial stability, based on periodic information that the intermediaries are required to present as well as on on-site inspections (see Principle 22). The CMVM also keeps track of their financial condition through monthly information.</p> <p>BdP has been given power to require that financial institutions present a financial reorganization plan, to impose restrictions on the exercise of specific activities, and appoint interim members of the board, an auditing commission, among other rehabilitation measures (Articles 139 to 153 in relation to Article 198 of the LFCIFC). Finally it has the power to revoke the authorization to operate. The law specifically requires BdP to keep the CMVM informed of whatever measures it takes and wherever possible consult before taking them.</p> <p>In the area of its competence, the CMVM is empowered to give orders and formulate concrete recommendations. Moreover the law authorizes it to cancel the registration of an intermediary if it fails to remedy shortcomings and irregularities within the time frame established by the CMVM (Article 300 of the SC). Cancellation of registration requires the favorable opinion of BdP (Article 303 of the SC)</p> <p>BdP does not have a full written contingency plan to deal with the failure of a financial institution. However, it has worked on a set of key issues:</p> <ul style="list-style-type: none"> <li>contingency files concerning those institutions that were identified as being potentially systemic have been developed and are regularly updated. These files contain information, of a qualitative and quantitative nature, that could be relevant and should be readily available in a hypothetical situation of crisis and they can be accessed by all the supervisory experts;</li> <li>lists of emergency contacts of entities and authorities identified as potentially relevant in a crisis situation have been drawn up and are regularly updated</li> <li>prudential recommendations on contingency planning in credit institutions and financial companies have been issued (covering both a purely financial crisis and events of an operational nature).</li> </ul> <p>BdP has signed two specific multilateral MoUs on cooperation in financial crisis situations, the first one between banking supervisory authorities and central banks from EU Member States and the second one between those authorities and the EU finance ministries.</p> <p>Also the authorities advised that a specific manual for financial crisis management is being prepared. BdP and CMVM are also part of the FSF crisis management contact list.</p> <p>All changes in the registration status (suspension, cancellation) are disclosed.</p>

	<p><b>Investors' compensation schemes</b></p> <p>The law requires all firms that provide investment services to participate in a compensation scheme. The legislator chose to establish a mechanism of responsibility rather than a contributory fund. Thus each participant accepts to contribute towards the payment of any compensation payable to the scheme. To guarantee this obligation, each participant has to pledge securities in favor of the scheme, which amount is mainly related to the value of the financial instruments held on behalf of clients and protected by the scheme. The scheme covers securities and money in relation to clients' investment operations with a limit of EUR 25,000 per investor. The scheme is operated by the Sistema de Indemnização aos Investidores (Investors' Indemnity System – SII), which is a corporate entity ruled by public law, endowed with administrative and financial independence, under the technical coordination of CMVM. The scheme began operation in January 2000. The SII presents an annual report that includes information on participants, compensation capacity, pledged securities as the financial statements of the scheme.</p> <p>It is important to note that Portugal has not had a single case of firm failure that triggered the operation of the scheme. Nevertheless the SII does have a contingency plan to deal with the default of an institution.</p> <p>The CMVM website contains a set of FAQ related to the investors' compensation scheme, including practice examples of its application, that provides investors with a good understanding of how the scheme works. It also contains the annual reports.</p>
Assessment	Implemented
Comments	<p><b>Extraordinary measures</b></p> <p>CMVM advised that in the law that will transpose the Directive on recovery and liquidation, provision is made for BdP to seek CMVM's opinion prior to presenting a proposal for the appointment of a judicial liquidator or liquidation committee, whenever the institution is registered with the CMVM.</p> <p><b>Contingency plans</b></p> <p>Both BdP and CMVM have advised that they are currently preparing contingency plans to deal with events of failure. It is important that those plans be fully coordinated.</p>
<b>Principles for the Secondary Market</b>	
<b>Principle 25.</b>	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	<p><b>Authorization</b></p> <p>Market operators and regulated markets are subject to authorization by the Minister of Finance, after consultation with the CMVM (Article 200 of the SC). All markets, whether regulated or un regulated are also subject to registration before the CMVM (Article 199 of the SC). Registration is conditional upon the demonstration by the operator that it has the human, technical and material resources to operate the market. Regulation 4/2001 develops those requirements, which include the existence of adequate internal control systems.</p>

	<p><b>Admission of members</b>  CMVM approves the rules for admission to trading (Article 227 of the SC). CMVM has access to the list of securities admitted to trading.</p> <p>Market operators are responsible for the admission of market members in accordance with the principle of equality and respect of healthy and fair competition (Article 203 of the SC). In order to comply with this principle the operator must guarantee equal response time for all market members, equal capacity to connect and remain connected to the system for all members, that inputs (volume and type of order) introduced into the system by its users are traded in a fair and equitable manner and that access to links and interfaces and other systems be identical for all market members.</p> <p><b>Fairness of order execution</b>  Market operators must disclose the rules for the regular functioning of the market approved to them and registered with the CMVM. Rules are published and disclosed in the bulletins of the operators –Euronext, Opex, MTS and on their websites (Article 201).</p> <p><b>Transparency</b>  There are no legal provisions for pre-trade transparency. However, the rules of all markets registered with the CMVM envisage an adequate level of transparency (see Principle 27). As for post trade transparency, information regarding the execution of transactions (quantities and prices) must be disclosed immediately (Article 222 SC)</p> <p><b>Recordkeeping</b>  Market operators must make a record of sessions on the day when they take place. A computerized record of all transactions must be kept for 5 years and a computer record of offers introduced to the system but not executed must be kept for 3 years (Regulation 5/2000).</p>
Assessment	Implemented
Comments	
<b>Principle 26.</b>	There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
Description	<p><b>Supervision by SROs</b>  All operators carry out supervision of the market and market participants under the oversight of the CMVM</p> <p><b>Euronext Lisbon</b>  Supervision of the market is carried out at two levels:  a) Lisbon segment: there is on-line monitoring by the Market Department.  b) Eurolist: The Market Department of the Paris segment carries out supervision of the whole market on-line and there is also an Enforcement Department, in</p>

Amsterdam, that carries out supervision on a next day basis.

All segments use the Aramis system to monitor the market. The system includes mechanisms for the protection of trading, such as limits on the static price and dynamic price and interruptions due to volatility, which allows the detection of abnormal transactions.

Actions between the local segment and Paris and Amsterdam are coordinated. As for market participants, Euronext has established a program based on a high impact approach: the biggest 40 intermediaries have to be supervised within 3 years, and the others within 4 years. This program is executed in coordination with the local segment.

### **MEDIP**

MTS supervises the market on-line. In addition monthly reports are given to a “wise men” committee, which advises the board on enforcement actions. As to market participants, the practice of MTS is to investigate and enforce rules concerning quotation requirements, while possible infringements to market conduct are communicated to the CMVM for its investigation.

### **Oversight by the CMVM**

The CMVM conducts oversight of markets and market operators through a system that combines off-site and on-site supervision.

### **Off-site:**

- a) Monthly information regarding its solvency ratio, in a standardized format, by the 20<sup>th</sup> day following the end of each month.
- b) Half yearly: financial information, with the audit report
- c) Annually: its management report, annual account and audit report. Also, a description of organizational and human resources; a report on internal controls with emphasis on the audit carried out on data processing systems, which has to be accompanied by the opinion of the auditing body; situations susceptible to improvement or corrections and measures adopted.
- d) On the day following its occurrence, a report detailing an incident in the market.

The

regulations also establish other cases where notification to the CMVM is mandatory, including the notification of sanctions.

### **Market monitoring**

CMVM monitors all markets under its supervision in real time (on-line) except for the derivatives market for which surveillance is carried out the following day. In the case of Euronext, the CMVM uses the Aramis system, which is the same systems used by Euronext for the surveillance of all segments of Eurolist. In addition, CMVM developed an alarm system independent of Aramis, based on Brownian motion, that detects abnormal variations in trading volumes and prices.

CMVM monitors both MEDIP and PEX on-line via extranet.

	<p>Monitoring of the markets is translated into a daily report on the performance of the markets, which in addition to a summary of the activity of the different markets includes a more detailed analysis of the most relevant facts and findings for a particular market. The report is submitted every day at 9 am and discussed with the board member, in order to decide on follow-up actions.</p> <p>The Department has developed a manual for on-line monitoring. It has also developed manuals related to the detection of market abuse and insider trading. In these two cases the manual includes guidelines as to how to detect the crime (the manual on market manipulation contains an annex with the different modalities of manipulation), procedures to investigate it as well as a basic format for the corresponding preliminary report.</p> <p><b>On-site</b> On-site inspections are part of the annual plan of activities of the Department of Market Supervision. In this regard, the Department conducted on-site supervision of MTS Portugal in 2001 and Euronext Lisbon in 2002 (2 on-site inspections). In the cases of MTS and the first inspection of Euronext, recommendations were given and their compliance monitored by the CMVM.</p> <p><b>Special case: Supervision of Euronext Lisbon</b> The supervision of Eurolist represents a challenge for the CMVM as well as for the regulators of the other countries where the market operates. They all signed an MoU for the coordination of the regulation and supervision of Euronext Markets and Clearnet (Portugal joined the MoU in 2003). The MoU has been operationalized through the creation of a committee of presidents, a secretariat, in charge of the flow of information, and technical committees.</p> <p>The group identified nine areas of risk: control infrastructure, relationship with regulators, market monitoring, operational/IT risk, internal audit, risk management, strategy/acquisitions, business continuity, integration/regulatory Grip. These areas are subject to analysis and when necessary, actions from Euronext have been required. This work has been translated into a risk log, which is a matrix that identifies the main risks, including the current situation, the issues to be addressed, how to address them and the calendar. This log is updated every three months. Based on the conversations and the documentation provided it appears that this concerted effort is being effective. For example, concerns regarding monitoring and enforcement were met with the creation of a supervision unit in Amsterdam that conducts next day supervision to complement on-line supervision carried out by Euronext Paris.</p> <p>Up to this moment, no joint on-site inspections have taken place. However CMVM foresees it for the future.</p>
Assessment	Implemented
Comments	As envisioned by the CMVM, joint inspections are needed to strengthen the oversight arrangements of the Euronext markets,, since many critical issues can only be

	inspected in Paris.
<b>Principle 27.</b>	Regulation should promote transparency of trading.
Description	<p>The legal framework does not provide for pre-trading disclosure. However, the rules of all the markets authorized in Portugal do contain provisions in that regard.</p> <p>As for post-trading information, the law requires immediate disclosure of prices and quantities.</p> <p><b>Euronext Lisbon</b> Pre-trade: market participants see all buy orders (listed from highest to lowest) and sell orders (listed from low to high). For each order the system reports the quantity and price entered. To the public and market vendors: best offers and market depth. Post trade: Euronext publishes a daily bulletin with information regarding trading, describing for each security traded the opening, maximum, minimum and closing price, total amount of transactions executed during the day, and the best buying and selling orders.</p> <p><b>PEX</b> Pretrade: all bids and offers are displayed to market participants. The information comprises only price and quantity. Post trade: For each security traded, the operator provides to members: price and quantity of buying and selling proposals, price, quantity and time of the latest transaction performed, maximum, minimum and weighted average price and traded amount of the transactions effected during the daily session, list of transactions effected. To the public: PEX publishes a bulletin with listed securities, transactions and respective prices.</p>
Assessment	Implemented
Comments	Pre-trade transparency will be a legal requirement with the transposition of the EU Transparency Directive.
<b>Principle 28.</b>	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	<p>There is a system of administrative offenses for violations of the securities laws and regulations. Sanctions include warnings as well as fines, depending on the offenses: between EUR 2,500 and 250,000 for the less serious, EUR 12,500 to 1,250,000 for serious offenses and EUR 25,000 to 2,500,000 for the very serious offenses (Article 388 of the SC). In addition, the CMVM can imposed additional sanctions, including publicity of the sanction, loss of whatever was involved in the offense, temporary suspensions of the exercise of the profession, prevention from exercising management functions (Article 404 of the SC). The system is complemented by criminal sanctions for insider trading (Article 378 of the SC) and market abuse (Article 379 of the SC). In those cases the CMVM has the power to order the opening of a preliminary investigation and, once that is done, refer the matter to the competent judicial authority (Articles 382-387 of the SC).</p> <p>The CMVM has developed a regime conducive to the detection of manipulation and other unfair trading practices. The regime is built on different types of mechanisms, beginning with the approval of market rules by the CMVM and the establishment of</p>

	<p>reporting obligations on issuers, market participants and market operators, which are the main input for the off-site supervision that the CMVM conducts on the markets and market participants. In addition, the CMVM monitors regulated markets in real time, and when it detects possible instances of manipulation or other unfair trading practices, conducts the necessary preliminary investigations. This structure has been strengthened by the Enforcement Department, as a specialized unit to investigate complex cases. The CMVM can also make use of other types of measures such as halting of the market.</p> <p>Market operators have also been given the power to discipline members. Based on that power, market operators have included in their rules a disciplinary regime for its members.</p> <p>In practice, sanctions have been applied mainly by MTS, which imposed 5 sanctions for infringements of market rules in 2003. As indicated under Principles 7 and 26, as a result of concerns from the regulators, Euronext established a market supervision and compliance department in Amsterdam. The assessor was informed that this Department has already applied sanctions against Portuguese members of Euronext.</p>
Assessment	Implemented
Comments	
<b>Principle 29.</b>	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	<p><b>Monitoring of risks</b></p> <p>LCH Clearnet SA acts as a central counterparty and clearing agency for the Eurolist, including the Lisbon segment. LCH Clearnet has designed risk management mechanisms, that include capital requirements for clearing members, monitoring of positions open by members and requirements of margins and guarantees for the transactions carried out. It also has a clearing fund and its own capital as mechanism of last resort. Clearnet uses a system to monitor the risk posed by members and positions opened.</p> <p>Since LCH Clearnet SA is a bank registered in France, under the EU Directives its regulation and supervision is a responsibility of the French Authorities. However the French Authorities have entered into an MoU with the regulators of the other markets where Euronext provides clearing services (London, Brussels, Amsterdam, and Lisbon); in practice that has given them equal footing in regard to the definition of the regulations of the market as well as the review of the market rules proposed by Euronext. This memorandum also allows them to provide input into the supervisory process.</p> <p>For this purpose the Group defined a list of common information that Clearnet has to provide on a monthly basis and the secretariat distributes it to all regulators involved.</p> <ul style="list-style-type: none"> <li>a) Statistics of activity</li> <li>b) Solvency guidelines</li> <li>c) Liquidity report, including large risk exposures by members, by group</li> <li>d) Market risk</li> <li>e) Intraday margin calls</li> </ul>

	<p>f) Reports on failures, buy- ins/sell-outs, except for Portugal, since settlement is carried out via Interbolsa.</p> <p>As regards Interbolsa, the CMVM conducts both off-site and on-site inspections through the Department of Market Supervision.</p> <p><b>Off-site</b> Interbolsa provides the CMVM with:</p> <ul style="list-style-type: none"> <li>a) Monthly balance sheets and profit and loss accounts.</li> <li>b) Annual accounts and a report on internal control</li> <li>c) Biweekly reports on discrepancies and reconciliation of accounts</li> <li>d) Monthly report on discrepancies on holdings by intermediaries.</li> <li>e) Report on settlement failures.</li> </ul> <p><b>On-site</b> In 2004 the Department of Market Supervision conducted an on-site inspection of Interbolsa. The main issues that were reviewed included: an analysis of the impact of the migration of Euronext cash market into a single platform and the use of Clearnet for clearing purposes, verification of the competitiveness of Interbolsa settlement systems especially in cross border settlement, security of its operational system, compliance with prudential regulations and the medium-term business perspective. As a result, Interbolsa was asked to take corrective actions. The Department has given proper follow-up to the actions taken by Interbolsa. In fact, at the time of the assessment many of them had already been corrected.</p> <p><b>Default procedures</b> Market rules define the procedures for default. These rules are public and available on the websites of the market operators.</p>
Assessment	Implemented
Comments	Effectiveness of mechanisms to monitor risks faced by LCH Clearnet was not evaluated.
<b>Principle 30.</b>	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.
Description	Interbolsa provides settlement services for Euronext Lisbon. All its rules are public and available on its website, as well as the answer to the CPPS/IOSCO self assessment. As a CSD and settlement provider Interbolsa is subject to a registration process before CMVM.
Assessment	Not assessed.
Comments	

Table 1. Summary Implementation of the IOSCO Objectives and Principles of Securities Regulation

Assessment Grade	Count	Principles Grouped by Assessment Grade List
Implemented	26	1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29
Broadly implemented	2	10, 22
Partially implemented	1	2
Non-implemented	-	
Not applicable	1	30

Table 2. Recommended Plan of Action to Improve Implementation of the IOSCO Objectives and Principles of Securities Regulation

Reference Principle	Recommended Action
Principle 1	Conclude review of MoU and publish it on the website.
Principle 2	Approve permanent provisions that exclude the possibility that the Government could freeze as well appropriate CMVM's surpluses.
Principle 4	1) The BdP should adopt a more systematic approach towards public consultation. 2) The CMVM should continue its plan to set up an Internal Audit Department. 3) The CMVM could consider a more general program for investors' education.
Principle 7	The CMVM should consider joint inspections of Euronext.
Principle 10	1) The BdP should complete a risk rating system for supervision of financial intermediaries. 2) The CMVM should continue its efforts to implement a more vigorous enforcement policy. 3) The CMVM could consider the inclusion of a closing meeting with the board of the financial intermediary as part of the regular procedure for on-site inspections.
Principles 11, 13	Amend provisions of the SC to clarify authorization to exchange information and cooperate with foreign authorities.
Principle 14	Shorten the deadline for presentation of annual accounts.
Principles for Collective Investment Schemes (P 17–20)	Given the growth of the industry, it is important that the CMVM keeps the CIS industry under close scrutiny, as commented under Principle 17.
Principle 21	Eliminate positive silence for the registration of financial intermediaries with the CMVM.
Principle 22	The BdP should complete the risk rating system.

Principle 24	The CMVM should elaborate contingency plans to deal with market disruption, and coordinate this with BdP. In addition BdP should finish the preparation of its manual for financial crises.
Principle 26	The CMVM should consider joint inspections of Euronext.

## V. AUTHORITIES' RESPONSE

31. The authorities broadly concur with the Assessment and welcome the overall judgment that the Portuguese framework is highly compliant with the IOSCO Principles.
32. The CMVM emphasized that there is already a provision in the Annual Budget for 2006 that addresses the problems that the CMVM faced in the past regarding its budget.
33. The CMVM has already made public the commitment to carry out regulation impact assessments from 2007 onward.
34. The CMVM emphasized that its Board of Directors has already changed its enforcement policies, to make more use of administrative fines. In addition, a reform to the Securities Code—approved during the course of the second visit— makes it mandatory for the CMVM to disclose the sanctions imposed in the case of very serious infractions through its information system. From January to August 2006, 19 administrative fines have been imposed amounting to EUR 2,710,000.
35. The CMVM noted that as soon as the Transparency Directive is transposed into Portuguese legislation (January 2007) the timeline to make public consolidated accounts will be shortened to four months after the accounts closing date, which is in line with the new EU law.
36. The CMVM also stressed that other recommendations have already been implemented, including setting up the Internal Audit Department, and the closing meeting with the board of financial intermediaries. In addition, no financial intermediary has been registered under the rule of positive silence; however its elimination is included in an amendment to the Securities Code already underway. Finally the CMVM believes that it has full powers to exchange information but acknowledges that the law could be clarified.
37. The BdP acknowledges that the IMF's recommendations are generally adequate and is pleased that some of them actually back up existing work, such as the full implementation of a comprehensive risk rating system, which BdP considers will enhance its current approach for risk assessment of supervised credit institutions.