



## NEGÓCIOS ESTRANGEIROS

### Aviso n.º 68/2021

*Sumário:* A República Portuguesa e os Estados Unidos da América assinaram um Acordo relativo à Partilha de Bens Declarados Perdidos ou de Bens de Valor Equivalente, em Lisboa, a 17 de dezembro de 2019, aprovado pela Resolução da Assembleia da República n.º 89/2020, de 26 de novembro, e ratificado pelo Decreto do Presidente da República n.º 61/2020, de 26 de novembro, ambos publicados no *Diário da República*, 1.ª série, n.º 231, de 26 de novembro de 2020.

A República Portuguesa e os Estados Unidos da América assinaram um Acordo relativo à Partilha de Bens Declarados Perdidos ou de Bens de Valor Equivalente, em Lisboa, a 17 de dezembro de 2019, aprovado pela Resolução da Assembleia da República n.º 89/2020, de 26 de novembro de 2020, e ratificado pelo Decreto do Presidente da República n.º 61/2020, de 26 de novembro de 2020, ambos publicados no *Diário da República*, 1.ª série, n.º 231, de 26 de novembro de 2020.

Antes da conclusão das suas formalidades constitucionais internas, as Partes identificaram duas discrepâncias textuais sem significado quanto à entrada em vigor do Acordo, entre as versões portuguesa e inglesa do Acordo, em particular, no n.º 3 do artigo 14.º e no artigo 15.º do Acordo suprarreferido, pelo que se julgou conveniente proceder à sua retificação.

Por ordem superior se torna público que, em 29 de setembro de 2021 e em 13 de outubro de 2021, o Ministério dos Negócios Estrangeiros de Portugal e a Embaixada dos Estados Unidos da América em Lisboa emitiram notas verbais através das quais, em conformidade com a alínea b) do n.º 1 do artigo 79.º da Convenção de Viena sobre Direito dos Tratados, procederam à retificação do texto da versão em língua inglesa do n.º 3 do artigo 14.º e do artigo 15.º do Acordo suprarreferido. Em conformidade, o texto da versão inglesa retificada do Acordo publica-se em anexo.

Direção-Geral de Política Externa, 25 de novembro de 2021. — A Subdiretora-Geral, *Cristina Castanheta*.

### **AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE UNITED STATES OF AMERICA REGARDING THE SHARING OF CONFISCATED ASSETS OR THEIR EQUIVALENT VALUE**

The Portuguese Republic and the United States of America (hereinafter referred to as “the Parties”):

Considering the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna, December 20, 1988;

Considering the International Convention for the Suppression of the Financing of Terrorism, done at New York, December 9, 1999;

Considering the United Nations Convention against Transnational Organized Crime, done at New York, November 15, 2000;

Considering further the United Nations Convention against Corruption, done at New York, October 31, 2003;

Recognizing the Recommendations of the Financial Action Task Force (FATF);

Recognizing further the longstanding cooperation between the United States of America and the Portuguese Republic, in particular in the area of judicial cooperation in criminal matters; and

Recognizing the principles of equality, sovereignty, reciprocity and mutual respect;

have agreed as follows:

#### Article 1

#### Objective

This Agreement defines a framework for the sharing of confiscated assets or their equivalent value between the Parties.

## Article 2

### Scope of application

This Agreement is intended solely for the purposes of mutual legal assistance between the Parties and does not give rise to any rights in favor of third parties.

## Article 3

### Definitions

For the purposes of this Agreement:

(a) “Assets” shall mean money and property of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such property, including the proceeds from a crime, or assets of an equivalent value if provided for by law, and the instrumentalities of a crime, which are in the possession of a Party, and which comprise the net proceeds realized as a result of a confiscation;

(b) “Confiscation” shall mean any action under domestic law resulting in:

i) In the case of the United States of America, a forfeiture judgment of a federal court, which judgment is no longer subject to appeal, or an administrative forfeiture decision of a federal department or agency, either of which extinguishes title to assets of any kind related to or proceeding from crime, or of assets of an equivalent value, and which vests title to those assets in the United States of America;

ii) In the case of the Portuguese Republic, a confiscation order for the State made by a criminal court in the framework of a criminal proceeding in respect of the proceeds or instrumentalities of a crime, or of assets of an equivalent value, which is final and not subject to appeal;

(c) “Cooperation” shall mean any assistance, including law enforcement, legal or judicial assistance, which includes the enforcement of a restraining order or confiscation order of the other Party, and which has contributed to, or significantly facilitated, a confiscation in the territory of the other Party.

## Article 4

### Circumstances in which assets may be shared

Whenever a Party is holding confiscated assets and considers that it has received cooperation from or provided cooperation to the other Party, it may, at its discretion and in accordance with its domestic law, share those assets with the other Party upon its own initiative or based on a request received pursuant to article 5.

## Article 5

### Requests for asset sharing

1 — A Party may make a request for asset sharing from the other Party in accordance with the provisions of this Agreement when the cooperation provided by the requesting Party has led to a confiscation.

2 — In any case, a request for asset sharing shall be made in writing no later than one year from the date the requesting Party takes notice of a confiscation of the assets, unless otherwise agreed between the Parties.

3 — The request made under paragraph 1 of this article shall set out the circumstances of the cooperation to which it relates, and shall include sufficient information to enable the requested Party to identify the case, the assets, and the official entities involved.



4 — Upon receipt of a request for asset sharing made in accordance with the provisions of this article, the requested Party shall:

- (a) Consider whether to share assets as set out in article 4 of this Agreement; and
- (b) Inform the requesting Party of the outcome of that consideration and the reasons underlying the outcome.

## **Article 6**

### **Sharing of assets**

1 — When the Party holding assets proposes to share those assets with the other Party, it shall:

- (a) Determine, at its discretion and in accordance with its domestic law, the proportion of the assets to be shared which, in its view, represents the extent of the cooperation afforded by the other Party; and
- (b) Transfer a sum equivalent to that proportion to the other Party in accordance with article 7 of this Agreement.

2 — Unless otherwise agreed by the Parties, the Parties would not share assets when the value of the assets is below € 40,000 in value or its equivalent in U.S. dollars.

3 — To the extent permitted by their respective domestic law, the Parties anticipate that in ordinary cases in which one Party has executed, enforced or otherwise recognized a confiscation that was obtained primarily by the investigative and litigating efforts of the other Party, sharing shall be in equal proportions.

4 — However, if, in providing cooperation, a Party has expended extraordinary resources to execute, enforce, or otherwise recognize the other Party's confiscation, or has provided substantial evidence or investigative resources to support or to obtain that confiscation, then the other Party shall take such efforts into account in making its determination of the proportion to be shared in accordance with paragraph 1(a) of this article.

5 — The Party sharing the confiscated assets may add interest or other increase in value accrued since the restraint of the asset and may deduct the expenses required to obtain the confiscation and to maintain the assets as well as to enforce the confiscation. Unless otherwise agreed by the Parties, deduction of expenses shall be limited to expenses external to the Parties such as those required for the use of a non-government practitioner, and shall not include internal costs of litigation by government attorneys or internal administrative and management efforts.

6 — Where there are identifiable victims of the criminal conduct underlying the confiscation, consideration of the rights of those victims shall take precedence over asset sharing between the Parties, except:

- (a) Where, following consultation pursuant to article 11 and on a case-by-case basis, the Party that has obtained primarily the confiscation, as referenced in paragraph 3 of this article, determines that the number of victims and the value of confiscated assets are such that each victim's portion would be de minimis; or
- (b) Where the value of confiscated assets exceeds the victim's losses, in which event the excess may be shared.

## **Article 7**

### **Transfer of shared assets**

1 — Unless otherwise agreed by the Parties, any sum to be shared pursuant to article 6, paragraph (1) (b) of this Agreement shall be transferred:

- (a) In the currency of the Party sharing the assets; and
- (b) By means of an electronic transfer of funds.



2 — Transfer of any sum shall be made:

(a) When the United States of America is the receiving Party, to the United States of America, and sent to the pertinent office or designated account of the U.S. Department of Justice or the U.S. Department of the Treasury as specified by those Departments;

(b) When the Portuguese Republic is the receiving Party, to the Asset Management Office of the Institute for Financial Management and Equipments of Justice, Ministry of Justice; or

(c) To any such recipient or recipients as the receiving Party may from time to time specify by notification for the purposes of this article.

## **Article 8**

### **Terms of transfer**

Once the assets have been transferred, the Party sharing the assets shall be relieved of all liability related to the assets, and shall relinquish any and all rights or title to and interest in the assets.

## **Article 9**

### **Channels of communication**

Communications between the Parties pursuant to the provisions of this Agreement shall be conducted by:

(a) On the part of the United States of America, the Office of International Affairs or the Money Laundering and Asset Recovery Section of the U.S. Department of Justice, or the Executive Office for Asset Forfeiture of the U.S. Department of the Treasury;

(b) On the part of the Portuguese Republic, the Prosecutor General's Office; or

(c) Such other nominees as a Party may from time to time for its own part specify by notification under this article.

## **Article 10**

### **Language**

The requests referred to in article 5 and related documents, made in accordance with the provisions of this Agreement, shall be written in the language of the requesting Party and shall be accompanied by a translation in the language of the requested Party.

## **Article 11**

### **Consultations**

The Parties shall consult on a regular basis or at the request of one of the Parties in order to assess the interpretation, application, or implementation of this Agreement.

## **Article 12**

### **Settlement of disputes**

Any dispute concerning the interpretation or application of this Agreement shall be resolved by consultations between the Parties and shall not be referred to any third party for settlement.

## **Article 13**

### **Amendments**

1 — This Agreement may be amended by written agreement of the Parties.

2 — The amendments shall enter into force in accordance with the terms specified in article 15 of this Agreement.



**Article 14**

**Duration and termination**

- 1 — The present Agreement shall remain in force for an indefinite period of time.
- 2 — Either Party may, at any time, terminate this Agreement by notification in writing through diplomatic channels.
- 3 — The present Agreement shall terminate one hundred and eighty days after the date of receipt of such notification.

**Article 15**

**Entry into force**

This Agreement shall enter into force on the date of receipt of the later of the written notifications between the Parties, through the diplomatic channels, conveying the completion of the internal procedures of each Party required for that purpose.

**Article 16**

**Registration**

This Agreement shall be registered with the United Nations in accordance with article 102 of the Charter of the United Nations.

Signed at Lisbon, this 17th day of December 2019, in duplicate, in the English and Portuguese languages, both texts being equally authentic.

For the Portuguese Republic:

*Teresa Ribeiro*, Secretary of State of Foreign Affairs and Cooperation.

For the United States of America:

*George Glass*, Ambassador of the United States of America in Portugal.

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