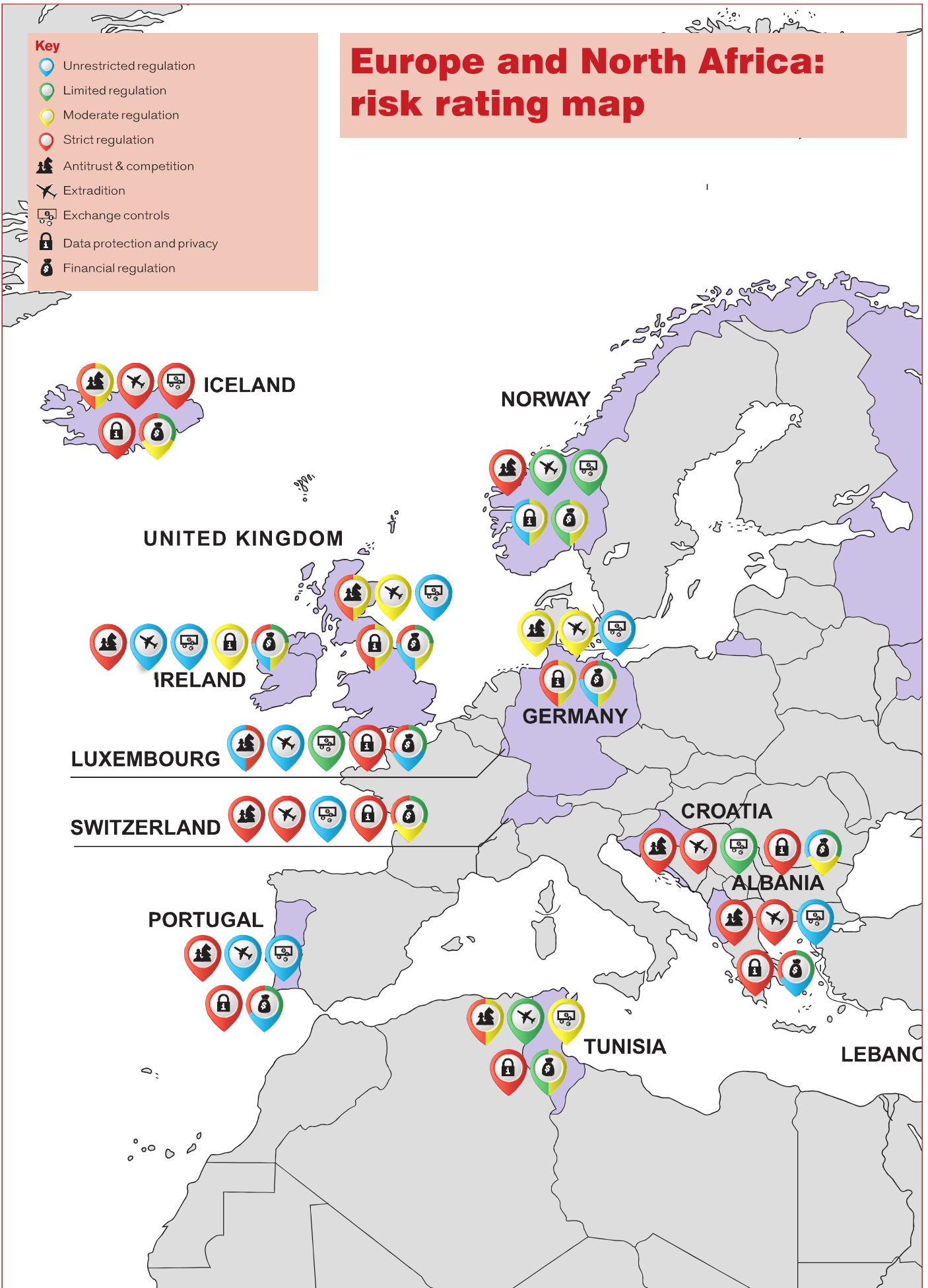


Europe and North Africa: risk rating map

- Key**
- Unrestricted regulation
 - Limited regulation
 - Moderate regulation
 - Strict regulation
 -  Antitrust & competition
 -  Extradition
 -  Exchange controls
 -  Data protection and privacy
 -  Financial regulation



Portugal

Eduardo Maia Cadete and Sara Santos Ferreira, Morais Leitão Galvão Teles, Soares da Silva

Section 1: ANTITRUST AND COMPETITION

1.1 At what level does your authority have jurisdiction to review and impose penalties for failure to notify deals that do not have local competition effect?



The local merger control regime allows the parties involved to notify the authority if they have significant sales in the jurisdiction, irrespective of whether the deal will have any substantive effect on local competition. Failure to notify carries penalties.

The national merger control regime (enshrined in law number 19/2012, May 8 2012) and the respective decisional practice of the NCA confirms the provided assessment – see article 37 onwards of the Competition Act and the NCA's decision in merger case *Ccent 07/2004 – Deutsche Beteiligungs, AG/Otto Sauer Achsenfabrik Keilberg GMBH & CO, KG*, paragraph 10. In a nutshell, the Portuguese merger control regime applies to foreign-to-foreign transactions to the extent that the transactions have, or may have, effects in the territory of Portugal, notably if the companies carry out activities in Portugal, in particular through sales of products or the provision of services to companies and consumers in the national territory. The parties to a transaction which fail to notify the NCA can be subject to a fine, per infringement, up to 10% of each participating company turnover in the preceding financial year – see article 68 onwards of the national Competition Act.

1.2 Does the antitrust regime extend to agreements or conduct taking place outside your jurisdiction and if so to what extent does there need to be a local effect?



The local antitrust regime covers all conduct which could have a potential effect on the local market irrespective of local presence.

The NCA and national courts, when applying the Competition Act antitrust regime – *maxime* articles 9 and 11, provisions which have as legal source articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union (TFEU) – follow closely EU case law. In this context, see the European Court of Justice ruling in the *Ahlström* case:

“It should be observed that an infringement of Article 85 (now 101 TFEU), such as the conclusion of an agreement which has had the effect of restricting competition within the common market, consists of conduct made up of two elements, the formation of the agreement, decision or concerted practice and the implementation thereof. If the applicability of prohibitions laid down under competition law were made to depend on the place where the agreement, decision or concerted practice was formed, the result would obviously be to give undertakings an easy means of evading those prohibitions. The decisive factor is therefore the place where it is implemented... Accordingly the Community's jurisdiction to apply its competition rules to such conduct is covered by the territoriality principle as universally recognized in public international law”.

Section 2: EXTRADITION

2.1 Do authorities in your jurisdiction have multilateral extradition treaties and how active are they in requesting the extradition of people for conduct taking place outside the jurisdiction?



Portugal is a party to some multilateral treaties that allow extradition for the practice of several crimes. In addition, there are also bilateral treaties in the areas of cooperation in criminal matters that specifically address extradition.

The *Procuradoria-Geral da República* or Attorney-General's office is the designated central authority for the purpose of receiving and transmitting any requests for and of extradition.

According to the available statistic data regarding requests for extradition formulated by Portugal one could argue that Portugal is not very active in requesting the extradition. However, within the framework of the European Arrest Warrant the arrest and transfer of suspects is more common and more often used.

Section 3: EXCHANGE CONTROLS

3.1 Do you control capital movements?



Except in international embargo circumstances, there are no legal restrictions on international capital movements and foreign exchange transactions. Nevertheless, as from July 2013, foreign investments made directly in Portugal in amounts equal to or exceeding €10,000 (\$13,000) must be reported to the Bank of Portugal. There is also a report obligation (to the custom authorities) when a natural person who, whilst entering or leaving Portuguese territory (from or to a territory of a non-EU member state) carries hard currency in an amount equal to or above €10,000.

Section 4: DATA PROTECTION AND PRIVACY

4.1 What are the extraterritorial data protection obligations in your jurisdiction?



We have a data protection law which requires, in certain circumstances, entities operating outside our jurisdiction to notify the authorities and to get consent from relevant individuals. The law restricts the international flow of data outside of our jurisdiction.

In accordance with paragraph 3 of article 4 of the Portuguese Personal Data Protection Law, personal data protection will apply to those operating outside the Portuguese jurisdiction that use automatic or non-automatic personal data processing means located in Portugal. In other words, for Portuguese law to be applicable there must be a link to the Portuguese jurisdiction. When the law is deemed to apply on entities operating outside the Portuguese jurisdiction, a notification must be sent to the national data protection authority (CNPD) and certain restrictions to the international flow of personal data from Portugal must be respected.

4.2 Do you have bank secrecy rules in place that apply to entities operating outside your jurisdiction?



Banks are subject to strict requirements that exceed normal contractual duties of confidentiality that might be owed to clients, and that prevent the disclosure of client data to third parties and the transfer of that data outside of our jurisdiction. Please refer to our remark to question 3.1.

Section 5: FINANCIAL REGULATION

5.1 How are banks supervised by their regulatory authorities in your jurisdiction and how has this changed in response to the economic crisis that started in western economies in 2008?



Banks are subject to strict supervision, and this has become much stricter since the start of the crisis.

5.2 Are there any restrictions on foreign ownership of banks in your jurisdiction?



There are no restrictions on ownership of shareholdings in banks, whether by foreign or domestic investors.

For the ownership of shareholdings in banks the foreign or domestic nature of the investors is not relevant. Nonetheless, any investor that wants to be a shareholder of a bank has to comply with certain requirements and, in broad terms, all the shareholders have to meet the conditions that ensure a sound and prudent management of the credit institution.



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Eduardo Maia Cadete joined the firm in 2001. He is a member of the European law and competition team.

His experience includes advising and representing clients (both defendants and plaintiffs), before the Portuguese Competition Authority and the European Commission, as well as before the General Court of the European Union, the Court of Justice and the European Court of Human Rights. His practice focuses on restrictive practices, merger control, state aid and sectorial inquiries, providing legal advice and representing companies active in the areas of financial services, media, pharmaceuticals and consumer products.

Maia Cadete is the President of the Alumni Association of European Studies of the Portuguese Catholic University.

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Sara Santos Ferreira joined the firm in 2006. She is member of the banking and finance team.

Santos Ferreira has experience in banking, acquired through continuous exposure to institutional credit activities (regulation side). She advises clients in the elaboration and adaptation of banking contracts to be signed with the public (bank account contracts and associated businesses, credit contracts including consumer credit, mortgage, documentary payments, and leasing contracts), contracts signed between businesses and other entities (service contracts, partnerships, and others), and on the international dimension of its activity. Santos Ferreira also carries out due diligence, with a focus on compliance with rules of conduct (banking conduct supervision) and

reporting rules to the Bank of Portugal (prudential supervision).

She also has experience on structured finance, having worked on various projects including highways, hospitals, factories, renewable wind energy farms, and others (project finance), as well as financing with the objective of acquiring other businesses (corporate finance).