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## **COMMISSION STAFF WORKING DOCUMENT**

### **2023 Rule of Law Report Country Chapter on the rule of law situation in Portugal**

*Accompanying the document*

#### **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

### **2023 Rule of Law Report**

#### **The rule of law situation in the European Union**

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## **ABSTRACT**

Measures to address efficiency challenges in the Portuguese justice system, in particular in administrative and tax courts, have been enacted, with others in preparation. The legislative framework of the High Council for Administrative and Tax Courts has been finalised. Challenges remain regarding the allocation of adequate human resources of the justice system, although the Government has initiated new recruitment procedures. Significant steps have been taken to strengthen the transparency of the allocation of cases, as the regulatory framework has been adopted and its implementation will be monitored. The rules on judicial impediments have been adapted in line with stakeholders' requests, but concerns remain regarding the abuse of procedural acts in criminal procedures. The High Council for the Judiciary has launched a reflection on the need to regulate 'revolving doors' in the judiciary. Appointments to the Constitutional Court were finalised, following prolonged delays. The efforts to further improve the digitalisation of the justice system continue.

Despite announced measures, stakeholders reported serious resource-related issues for preventing, investigating and prosecuting corruption. The Transparency Entity is expected to be operational in the second quarter of 2023. The National Anti-Corruption Mechanism (MENAC) has been instated in June 2023. The National Anti-Corruption Strategy for 2020-2024 is being implemented although its success also depends on the effective functioning of MENAC. Concerns have been raised as regards the treatment of foreign bribery cases. Application and monitoring of rules on conflicts of interest for high-level officials of the Parliament and in the Government continues to raise concerns. Discussions on a new bill concerning regulation of lobbying were initiated in the Parliament. Implementation of the new legislation on the protection of whistleblowers is ongoing. Efforts are being made on improving the gaps in the public procurement sector.

The strong legal framework protecting media freedom remains in place and the risks of government interference in the media continue to be considered low. The Regulatory Authority for the Media maintains its central role as regards media freedom and pluralism, although concerns are voiced regarding its resources. A comprehensive legislative framework is in place concerning transparency of media ownership and the access of journalists to public information, and there are safeguards protecting access to information and documents. The precariousness of the journalistic profession remains a cause for concern. The public service media provider is independent, but challenges remain regarding its resources. Tax incentives have been introduced to encourage subscriptions to written media. A legislative amendment to the Portuguese Charter of Human Rights in the Digital Age removed provisions, initially intended to safeguard against disinformation, that had attracted criticism as restraining media freedom.

The transparency of law-making and the quality of legislation continues to be improved, with measures under way, in particular, regarding impact assessments. A revision of the Constitution is in progress, which will include a discussion of the legal basis for the adoption of emergency measures. The changes implemented to the structure of the Office of the Ombudsperson are producing positive results. The civil society space continues to be considered as open. There have been some improvements regarding access to financing for civil society organisations, although challenges remain.

## **RECOMMENDATIONS**

Overall, concerning the recommendations in the 2022 Rule of Law Report, Portugal has made:

- Some progress on continuing the efforts to ensure adequate human resources of the justice system and to improve its efficiency, in particular of Administrative and Tax Courts, and full implementation regarding the finalisation of the legislative framework for the functioning of the High Council for Administrative and Tax Courts.
- Significant progress on continuing the efforts to strengthen the transparency of allocation of cases.
- Some progress on ensuring sufficient resources for preventing, investigating and prosecuting corruption and significant progress on ensuring the swift operationalisation of the New Anti-Corruption Mechanism.
- Some progress on ensuring the start of operations of the Transparency Entity in view of effective monitoring and verification of asset declarations.
- Significant progress on continuing the reforms to improve the transparency of law-making, particularly on the implementation of impact assessment tools.

On this basis, and considering other developments that took place in the period of reference, and in addition to recalling the commitments made under the National Recovery and Resilience Plan relating to certain aspects of the justice system, it is recommended to Portugal to:

- Continue efforts to ensure adequate human resources of the justice system, in particular regarding non-judicial staff, and to improve its efficiency, in particular of Administrative and Tax Courts.
- Continue efforts to strengthen the transparency of allocation of cases, in particular by monitoring the implementation of the new rules on electronic allocation.
- Continue efforts made to ensure sufficient resources for preventing, investigating and prosecuting corruption, including for the new Anti-Corruption Mechanism.
- Ensure the effective monitoring and verification of asset declarations by the Transparency Entity.
- Finalise the reforms to improve the transparency of law-making, particularly on the implementation of impact assessment tools.

## **I. JUSTICE SYSTEM**

The Portuguese justice system comprises the Constitutional Court, the Supreme Court of Justice and the ordinary courts of first and second instance, the Supreme Administrative Court, and the administrative and tax courts of first and second instance, and the Court of Auditors<sup>1</sup>. The High Council for the Judiciary, the High Council for Administrative and Tax Courts and the High Council for the Public Prosecution exercise disciplinary action over the respective magistrates and are entrusted with relevant managerial functions. Furthermore, they are competent to nominate, transfer and promote judges and prosecutors. Judges and prosecutors are appointed by the respective Council, following an open competition and according to the grades obtained in mandatory training courses at the Centre for Judicial Studies. The public prosecution service is independent from the judicial power and operates autonomously from the executive branch. It has its own governance system in which the Prosecutor General's Office is the highest body. Portugal participates in the European Public Prosecutor's Office (EPPO). The Bar Association is an independent legal entity governed by public law and, in the exercise of its public powers, performs regulatory functions.

### **Independence**

**The level of perceived judicial independence in Portugal continues to be average among the general public and is now average among companies.** Overall, 49% of the general population and 45% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023<sup>2</sup>. According to data in the 2023 EU Justice Scoreboard, no clear trend can be identified in the evolution of the perceived level of independence among the general public since 2016. Nevertheless, the perceived judicial independence among the general public has increased in comparison with 2022 (47%), as well as with 2016 (33%). The perceived judicial independence among companies has increased in comparison with 2022 (39%), as well as with 2016 (35%).

**There has been significant progress to strengthen the transparency of allocation of cases, as new implementing regulation has been adopted.** The 2022 Rule of Law Report recommended to Portugal to 'Continue the efforts to strengthen the transparency of allocation of cases'<sup>3</sup>. As noted in the 2022 Rule of Law Report, in August 2021, new legislation came into force introducing control mechanisms applicable to the electronic allocation of cases, both in civil and administrative and tax courts<sup>4</sup>. However, the application in practice of these control mechanisms awaited an implementing regulation, which has been prepared and came into force in May 2023<sup>5</sup>. The Government had previously indicated that a revision of the regime introduced in 2021 was under consideration<sup>6</sup>, which could have an impact on the implementing

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<sup>1</sup> Execution of criminal sentences courts, maritime courts, intellectual property courts, competition, regulation and supervision courts, central instruction courts, arbitration tribunals and justices of the peace exist and their number and jurisdiction is mainly established in their respective legal regimes (Law No. 62/2013, of 26 August and Law No. 78/2001, of 13 July).

<sup>2</sup> Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>3</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2.

<sup>4</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 3-4.

<sup>5</sup> Portaria No. 86/2023, of 27 March, amending the rules relating to the distribution, by electronic means, of cases in judicial courts and in administrative and tax courts.

<sup>6</sup> Input from Portugal for the 2023 Rule of Law Report, p. 3.

regulation, but this option was finally not pursued. Nevertheless, stakeholders have raised concerns regarding the new implementing regulation, warning of the excessive bureaucratic burden attributed to courts, calling for close monitoring of the new regime<sup>7</sup>. The Ministry of Justice has announced that current system will be subject to an evaluation six months after the beginning of its implementation<sup>8</sup>. As the preparation of the implementing regulation has been finalised, and it will allow the application of the system of allocation of cases, the application of which will continue to be monitored, there has therefore been significant progress on the implementation of the recommendation made in the 2022 Rule of Law Report<sup>9</sup>.

**The High Council for the Judiciary has launched a reflection on the need to regulate ‘revolving doors’ in the judiciary.** In July 2022, the High Council for the Judiciary created a working group to consider the issues related to the temporary exercise of political and public offices by judges, as well as the subsequent return to judicial functions<sup>10</sup>. The working group was also tasked with proposing amendments to the current legal regime on impediments, incompatibilities and secondments provided for in the Statute of Judicial Magistrates. This reflection stems from the number of judges seconded to non-judicial functions, including political offices, which also raises concerns regarding the management of human resources in courts<sup>11</sup>. The working group has finalised a proposal to amend the Statute of Judges, which was approved by the Plenary of the Council on 8 March 2023<sup>12</sup>. This proposal includes, among others, the creation of the legal figure of ‘unpaid leave’, the reduction of the maximum time limit for secondments, and the introduction of ‘cooling-off periods’<sup>13</sup>. These changes are expected to reduce the possibility for judges who are not exercising judicial functions for prolonged periods to meet the legal requirements<sup>14</sup> for appointment to the Supreme Court, a circumstance that has been criticised<sup>15</sup>. The High Council for the Judiciary has also called for the revision of the regime governing its organisation and functioning<sup>16</sup>, in order to ensure alignment with the new competences it was assigned following the adoption the new Statute of Judges in 2020<sup>17</sup>. However, no follow-up has been given to the proposals presented by the Council<sup>18</sup>.

**The regime of judicial impediments has been amended to revert to the previous system.** As noted in the 2022 Rule of Law Report<sup>19</sup>, the new grounds for judicial impediments

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<sup>7</sup> High Council for the Judiciary, Information No. 76/20223, of 29 March 2023; Observador, ‘Judges signal waste of work and money with new allocation of cases’, 11 May 2023.

<sup>8</sup> LUSA, ‘The new rules on electronic allocation of cases are already in place’, 11 May 2023.

<sup>9</sup> 2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 2.

<sup>10</sup> Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2023 Rule of Law Report, pp. 13-14.

<sup>11</sup> It is estimated that 10% of Portuguese judges are exercising non-judicial functions. Information received from the High Council for the Judiciary in the context of the country visit to Portugal. See also High Council for the Judiciary, 2022 Annual Report, pp. 75 ff.

<sup>12</sup> The deliberation of the Plenary of the High Council for the Judiciary was transmitted to the Minister of Justice on 9 March 2023.

<sup>13</sup> Currently not applicable (Figure 58, 2022 EU Justice Scoreboard).

<sup>14</sup> The time spent in the exercise of political function is considered for the effects of seniority (Art. 73(1)(a), Statute of the Judicial Magistrates).

<sup>15</sup> Information received from the High Council for the Judiciary in the context of the country visit to Portugal.

<sup>16</sup> As established by Law No. 36/2007, of 14 August.

<sup>17</sup> Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2023 Rule of Law Report, p. 27.

<sup>18</sup> Ibid.

<sup>19</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 4-5.

introduced in the 2021 reform of the criminal procedure led to significant criticism<sup>20</sup>. The new provisions on judicial impediments were, however, revoked, as the Parliament, following a legislative proposal of the Government, approved amendments to the Code of Criminal Procedure which reinstated the previously applicable system<sup>21</sup>. Stakeholders assess this development as positive<sup>22</sup>. However, concerns remain with regards to instances of abuse of procedural acts in criminal procedures, which lead to delays, particularly in complex procedures, commonly referred to as ‘mega procedures’<sup>23</sup>. Stakeholders have called for a revision of the criminal procedural law, with a view to avoid the use of procedural acts with merely dilatory purposes<sup>24</sup>.

**The framework regulating the functioning of the High Council for Administrative and Tax Courts has been finalised.** The 2022 Rule of Law Report recommended to Portugal to “[c]ontinue the efforts to [...] finalis[e] the legislative framework for the functioning of the High Council for Administrative and Tax Courts”<sup>25</sup>. As stated in the 2022 Rule of Law Report<sup>26</sup>, the finalisation of the legislative framework regulating the functioning of the High Council for Administrative and Tax Courts had been pending since its creation, in 2004. On 10 January 2023, the Minister of Justice announced a new legislative package which includes a draft decree-law<sup>27</sup> which, if approved, would establish the administrative and financial autonomy of the High Council, and define the organisation of its services<sup>28</sup>. The draft decree-law also foresaw that the High Council of the Administrative and Tax Courts would be assigned its own human resources<sup>29</sup>, thus no longer depending on the secondment of resources by the Supreme Administrative Court and on the support of member of the Cabinet of the President of the Supreme Administrative Court<sup>30</sup>. The Decree-Law was finally adopted on 5 May 2023 and came into force on 1 June 2023<sup>31</sup>. The reform is assessed positively by stakeholders<sup>32</sup>. As concrete steps have been taken in the preparation of the framework regulating the functioning

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<sup>20</sup> Judicial impediments are the grounds on which a judge can be prevented from acting in a judicial case. These are listed in Art. 40 of the Code of Criminal Procedure.

<sup>21</sup> Law No. 13/2022, of 1 August.

<sup>22</sup> Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2023 Rule of Law Report, p. 32. See also public communication by the President of the Supreme Court presented in the Opening Ceremony of the judicial year, 10 January 2023.

<sup>23</sup> See, for instance, public communication of the President of the Judges Union in the XII Congress of Portuguese Judges, 18 March 2023.

<sup>24</sup> Information received from the Supreme Court of Justice and the Judges Union in the context of the country visit to Portugal.

<sup>25</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p 2.

<sup>26</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 6-7.

<sup>27</sup> Proposal for a Decree-Law No. 368/XXIII/2022, of 17 January 2023. The draft was submitted to the High Council on 19 January 2023 for opinion, as part of the consultation process (contribution from the High Council for the Administrative and Tax Courts for the 2023 Rule of Law Report, p. 11).

<sup>28</sup> Contribution from the High Council for the Administrative and Tax Courts for the 2023 Rule of Law Report, p. 11.

<sup>29</sup> Input from Portugal for the 2023 Rule of Law Report, p. 4.

<sup>30</sup> 2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, pp. 6-7.

<sup>31</sup> Decree-Law No. 31/2023, of 5 May.

<sup>32</sup> Information received from the Supreme Administrative Court and High Council for the Administrative and Tax Courts in the context of the country visit to Portugal. According to European standards, Councils for the judiciary should have appropriate means to operate independently and autonomously, should have their own premises, a secretariat, computing resources and should have their own staff according to their needs (CCJE, Opinion No. 24 (2021) on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, para. 29; Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras. 37 and 38).

of the High Council for Administrative and Tax Courts, and the respective legislative procedure is finalised, it is considered that the recommendation made in the 2022 Rule of Law Report on this aspect has been fully implemented.

**New judges were appointed to Constitutional Court following prolonged delays.** The Constitutional Court is composed of 13 judges, 10 of which are selected and appointed by Parliament, and the remaining 3 judges are co-opted by the judges appointed by Parliament<sup>33</sup>. Judges of the Constitutional Court serve a non-renewable term of nine years. Whereas a procedure for the co-optation of one judge had been initiated in 2022, the candidate proposed did not gather support to ensure appointment<sup>34</sup>, and new procedures for appointment were not initiated until April 2023. On 14 April 2023, the judges appointed by Parliament co-opted three new judges<sup>35</sup>. At the time of the vote, the terms of office of all the three co-opted judges had already expired<sup>36</sup>, including those of the President and of the Vice-President. The situation of standstill led to public debate, with the then President of the Constitutional Court defending that a revision of the constitutional provision governing the system of appointment could be necessary to unblock the situation<sup>37</sup>. Pending the new appointments, the full composition of the Constitutional Courts remained ensured, as the judges whose term expired remained in function *ad interim*. While there is no legal deadline to initiate the co-optation procedure<sup>38</sup>, it was an important step to proceed with the appointments<sup>39</sup>. As recalled by the Venice Commission, the existence of anti-deadlock mechanisms, such as continuation in function *ad interim*, in order to ensure the functioning of state institutions, should not act as a disincentive to reaching an agreement<sup>40</sup>.

**Lawyers have raised concerns regarding the respect for their legally recognised rights and privileges.** Concerns have emerged regarding instances of lawyers being denied their professional rights and privileges, including, among others, the respect for the right to secrecy of communication<sup>41</sup> and the right of access to information, by public administration and courts<sup>42</sup>. Several judicial cases in which lawyers invoke the violation of their rights and privileges are currently pending<sup>43</sup>. In order to better deal with the increasing complaints received from legal counsels, the Bar Association has created a dedicated Commission to deal with matters pertaining to the protection of rights and privileges of lawyers. The Bar Association has also raised concerns regarding the impact of the draft law on professional

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<sup>33</sup> Art. 12(1), of the Organic Law of the Constitutional Court. The judges appointed by Parliament prepare a list of candidates and select the remaining three judges, through suffrage by secret ballot.

<sup>34</sup> Information received from the Constitutional Court in the context of the country visit to Portugal.

<sup>35</sup> The appointment of the new judges was followed by the selection of a new President of the Constitutional Court on 26 April 2023.

<sup>36</sup> In October 2021, June 2022 and March 2023, respectively.

<sup>37</sup> Público (2023), ‘Standstill in the selection of judges: President of the Constitutional Court admits targeted constitutional revision’, 23 March 2023.

<sup>38</sup> The deadline of 10 days established by Art. 17(1) of the Organic Law of the Constitutional Court is only applicable in the case of vacancies of co-opted judges.

<sup>39</sup> The President of the Republic has enumerated the system of appointments as one of the main difficulties faced by the Constitutional Court (Advocatus (2023), ‘Marcelo points to difficulties in the system for appointing judges to the Constitutional Court’, 2 March 2023).

<sup>40</sup> Venice Commission Opinion (CDL-AD(2013)028), paras. 5-8.

<sup>41</sup> Bar Association, Press release of 14 February 2023.

<sup>42</sup> Contribution from Council of Bars and Law Societies of Europe (CCBE) for the 2023 Rule of Law Report, p. 84.

<sup>43</sup> The Bar Association estimates at least 60 cases are currently pending (contribution from Council of Bars and Law Societies of Europe (CCBE) for the 2023 Rule of Law Report, p. 84).

associations on the independence of lawyers<sup>44</sup>. Following the request for preventive constitutional review submitted by the President of the Republic, the Constitutional Court found the draft provisions to be compatible with the Constitution<sup>45</sup>.

## Quality

**There has been some progress to ensure adequate human resources of the justice system, although the Government has initiated new recruitment procedures.** The 2022 Rule of Law Report recommended to Portugal to “Continue the efforts to ensure adequate human resources of the justice system”<sup>46</sup>. The Government opened competitions for the recruitment of 135 new magistrates in 2023 for the judiciary and the prosecution service<sup>47</sup>. Over 100 new candidate magistrates have started their initial training in 2023<sup>48</sup>. Despite the significant expected reinforcement, concerns remain that this increase may not be sufficient to completely address the needs of the system<sup>49</sup>. In particular, a remaining shortage of prosecutors is reported to affect the effective prosecution of corruption cases<sup>50</sup>. There are also several instances of vacancies in higher courts<sup>51</sup>, for which competitions are ongoing<sup>52</sup>. Moreover, stakeholders report that the lack of non-judicial staff remains particularly critical<sup>53</sup>, with an impact on the efficiency of justice<sup>54</sup>. In particular, according to a study conducted by the prosecution service, there is an estimated deficit of over 500 clerks in prosecution offices, which would contribute to delays in the execution of administrative procedural acts<sup>55</sup>. Concerns have also been raised due to the average age of the non-judicial staff, which is expected to lead to a high number of retirements in the next years, which, added to the fact that there have been no new recruitments in the recent years, may lead to an even higher shortage<sup>56</sup>. Judicial clerks’ unions have raised

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<sup>44</sup> Bar Association, Press release of 20 September 2022. Contribution from the Council of Bars and Law Societies of Europe (CCBE) for the 2023 Rule of Law Report, p. 56.

<sup>45</sup> Constitutional Court, judgment 60/2023 of 27 February 2023, Case No. 109/2023.

<sup>46</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2.

<sup>47</sup> Input from Portugal for the 2023 Rule of Law Report, p. 2.

<sup>48</sup> Ibid.

<sup>49</sup> Information received from the High Council for the Judiciary, the High Council for the Administrative and Tax Courts and the High Council for the Prosecution. See also High Council for the Administrative and Tax Courts, Annual Report 2021, p. 18.

<sup>50</sup> Contribution from Magistrats Européens pour la Démocratie et les Libertés (MEDEL) – Portugal for the 2023 Rule of Law Report, p. 14.

<sup>51</sup> According to the latest data available, in Administrative and Tax justice, neither the appeal courts nor the Supreme Administrative Court had their full composition ensured (High Council for the Administrative and Tax Courts, Annual Report 2021, pp. 16-18).

<sup>52</sup> Contribution from the High Council for the Administrative and Tax Courts for the 2023 Rule of Law Report, p. 11.

<sup>53</sup> Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2023 Rule of Law Report, p. 32. Information received from the High Council for the Judiciary, the High Council for the Administrative and Tax Courts, the High Council for the Prosecution, the Professional Association of Judges, the Prosecutors Union and the Union of Legal Clerks in the context of the country visit to Portugal.

<sup>54</sup> Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2023 Rule of Law Report, p. 32.

<sup>55</sup> The number of administrative procedural acts pending is estimated to surpass 500 000 (information received from the High Council for Public Prosecution in the context of the country visit to Portugal). See also public communication by the Prosecutor General presented in the Opening Ceremony of the judicial year, 10 January 2023.

<sup>56</sup> Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2023 Rule of Law Report, p. 32. See also public communication by the President of the Supreme Court presented in the Opening Ceremony of the judicial year, 10 January 2023.



concerns regarding workload, low salaries and lack of update of the statute of legal clerks, which have led them to initiate a strike<sup>57</sup>. The Government has acknowledged these challenges and has initiated a competition for the recruitment of 200 new legal clerks<sup>58</sup>. Nevertheless, stakeholders highlighted that the lack of attractiveness of the career due to low salaries<sup>59</sup> and challenging working conditions can deter applicants<sup>60</sup>. Difficulties have also been reported regarding the recruitment of technical advisors for court offices, with fewer advisors being recruited than the number of vacancies available<sup>61</sup>. In this context, it is to be noted that, according to European standards, a sufficient number of judges and appropriately qualified support staff should be allocated to the courts<sup>62</sup>. While steps are being taken to address the shortage of resources of the justice system, further action remains outstanding in order to fully address this issue, in particular concerning the situation of non-judicial staff. Therefore, there has been some progress in addressing the recommendation made in the 2022 Rule of Law Report.

**The efforts to further improve the digitalisation of the justice system continue, with a particular focus on improving accessibility for citizens.** The use of digital technology by courts and prosecution continues to be widespread<sup>63</sup>, and digital solutions are in place which allow to initiate and follow proceedings in civil, commercial and administrative cases<sup>64</sup>. However, gaps remain regarding the general public's online access to judgments<sup>65</sup> and the arrangements for producing machine-readable judicial decisions<sup>66</sup>. Efforts are being made to improve this situation, and in first instance Administrative and Tax Courts a programme to ensure anonymisation is being developed in cooperation with Ministry of Justice. In higher Administrative and Tax Courts, anonymisation and pseudonymisation assisted by an algorithm, supervised by human means, has been put in place<sup>67</sup>. The Government also announced the roll-out of several projects aimed at improving the use of digital technologies, which include the provision of multimedia guides supporting the electronic interaction of citizens with courts, also regarding the online consultation of cases, as well as the completion and submission of applications, and the improvement of the interoperability among public services<sup>68</sup>. As mentioned in the 2022 Rule of Law Report<sup>69</sup>, new digital platforms for procedural acts to be performed by magistrates are in preparation and are expected to become operationalised in 2023<sup>70</sup>. However, the High Council for the Judiciary has called for the ownership and control

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<sup>57</sup> A partial strike has been in place since 10 January 2023.

<sup>58</sup> Information No. 1875/2023, of 27 January.

<sup>59</sup> The gross salary at entry level is EUR 854,30.

<sup>60</sup> Information received from the High Council for the Judiciary and the Union of Court Clerks in the context of the country visit to Portugal.

<sup>61</sup> The limited pool of candidates meeting the necessary requirements and the lack of attractiveness of the functions are considered to be at the origin for these difficulties (contribution from European Network of Councils for the Judiciary (ENCJ) for the 2023 Rule of Law Report, p. 32).

<sup>62</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 35.

<sup>63</sup> Figure 43, 2023 EU Justice Scoreboard.

<sup>64</sup> Figure 45, 2023 EU Justice Scoreboard.

<sup>65</sup> Figure 47, 2023 EU Justice Scoreboard. A GRECO recommendation in this regard remains partially implemented (GRECO Fourth Evaluation Round – Second Compliance Report, recommendation x, para. 60).

<sup>66</sup> Figure 48, 2023 EU Justice Scoreboard.

<sup>67</sup> Contribution from the High Council for the Administrative and Tax Courts for the 2023 Rule of Law Report, p. 14.

<sup>68</sup> Input from Portugal for the 2023 Rule of Law Report, p. 6.

<sup>69</sup> 2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 8.

<sup>70</sup> Ministry of Justice, Press release of 20 February 2023.

of the digital platform for the electronic management and processing of legal proceedings to be transferred from the Ministry of Justice to the judiciary<sup>71</sup>.

**A new training centre for judicial professions has been created.** The initial and continued training of magistrates<sup>72</sup> is ensured by the Centre for Judicial Studies, which is an autonomous entity functioning under the Ministry of Justice. While until now all the training sessions took place exclusively in the premises of the Centre for Judicial Studies, located in Lisbon, a new training centre has been created in Vila do Conde, a city located in the north of the country. This measure aims in particular to attract more applicants to the initial training of magistrates<sup>73</sup>. This measure is positively assessed by the High Council for the Public Prosecution, as it is considered that the current centralisation of the training in the capital acts as a deterrent to new candidates<sup>74</sup>. Regarding training of prosecutors, a new regulation establishing the rules and criteria for continued and international training has been approved by the High Council for the Public Prosecution<sup>75</sup>.

## Efficiency

**The efficiency of the justice system shows some improvement although challenges remain.**

The 2021 and 2022 Rule of Law Reports took note of some improvements regarding the efficiency of the justice system, while highlighting persisting challenges<sup>76</sup>. Data show that the disposition time for civil and commercial cases registered a decrease in all instances<sup>77</sup>, and that the clearance rate increased and rose above 100% in first instance<sup>78</sup>. In administrative cases, the disposition time has also decreased in all instances<sup>79</sup>, while remaining high, in particular in second instance, where it remains above 830 days<sup>80</sup>. Although the number of pending administrative cases in first instance remains high<sup>81</sup>, the rate of resolving remains above 100%, despite a slight decrease<sup>82</sup>. Portugal remains under enhanced supervision by the Committee of Ministers of the Council of Europe for the excessive length of proceedings before both civil and administrative jurisdictions<sup>83</sup>. In response to the decision adopted by the Committee at its last examination, which took place in September 2021, the Portuguese authorities submitted a revised action plan on 19 October 2022<sup>84</sup>, which has not yet been examined by the Committee.

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<sup>71</sup> Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2023 Rule of Law Report, p. 28.

<sup>72</sup> Including judges of ordinary courts and of administrative and tax courts, and public prosecutors.

<sup>73</sup> Input from Portugal for the 2023 Rule of Law Report, p. 6.

<sup>74</sup> Information received from the High Council for the Public Prosecution in the context of the country visit to Portugal.

<sup>75</sup> Input from Portugal for the 2023 Rule of Law Report, p. 6.

<sup>76</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 8-9; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 7.

<sup>77</sup> In first instance, from 280 days in 2020 to 253 days in 2021; in second instance, from 99 to 89 days; and in third instance, from 126 to 106 days (Figures 6 and 7, 2023 EU Justice Scoreboard).

<sup>78</sup> Figure 11, 2023 EU Justice Scoreboard.

<sup>79</sup> Figure 8, 2023 EU Justice Scoreboard.

<sup>80</sup> Figure 9, 2023 EU Justice Scoreboard.

<sup>81</sup> Figure 15, 2023 EU Justice Scoreboard.

<sup>82</sup> Figure 12, 2023 EU Justice Scoreboard.

<sup>83</sup> Committee of Ministers, Supervision of the execution of the European Court's judgments, case H46-20 Vicente Cardoso group v. Portugal (Application No. 30130/10).

<sup>84</sup> Secretariat of the Committee of Ministers, DH-DD(2022)1119: Communication from Portugal.

**There has been some progress in increasing the efficiency of Administrative and Tax Courts, as new measures are being discussed.** The 2022 Rule of Law Report recommended to Portugal to “Continue the efforts to ensure adequate human resources of the justice system and to improve its efficiency, in particular of Administrative and Tax Courts”<sup>85</sup>. As mentioned in the 2022 Rule of Law Report<sup>86</sup>, a working group was created in 2021 with the task of assessing and proposing strategies to increase the efficiency of Administrative and Tax Courts. The working group presented two reports proposing measures, some of which are already being implemented by the Government, including in relation to the extension of the digital platform for the electronic management and processing of legal proceedings to higher Administrative and Tax Courts<sup>87</sup>. A new working group was created in June 2022, which presented, in September 2022, a new action plan<sup>88</sup>. The Government is considering some of the measures proposed in this action plan, in particular regarding the simplification of the procedure in Administrative and Tax Courts<sup>89</sup>, but draft legislation has not yet been discussed in Council of Ministers<sup>90</sup>. The judges’ union has also created a working group that presented a report with detailed suggestions for the reform of Administrative and Tax Courts<sup>91</sup>. The Portuguese Recovery and Resilience Plan includes measures aimed at increasing the efficiency of Administrative and Tax Courts<sup>92</sup>, among which the creation of specialised sub-sections in the second instance Administrative and Tax Courts. A draft law is currently under discussion in Parliament<sup>93</sup>. The Government has also presented draft legislation for the creation of a new second instance Administrative and Tax Court, which is currently pending in Parliament<sup>94</sup>. While it is acknowledged that the Government is taking steps to improve the efficiency of Administrative and Tax Courts, significant work remains outstanding, including regarding the approval and implementation of the legislative acts prepared. Therefore, there has been some progress in addressing the recommendation made in the 2022 Rule of Law Report.

## **II. ANTI-CORRUPTION FRAMEWORK**

The institutional anti-corruption framework in Portugal has undergone major changes. The National Anti-Corruption Mechanism (MENAC) established in 2021 has been instated on 6 June 2023<sup>95</sup>. It is expected to contribute to improving the prevention capacity by taking over the tasks of the former Council for the Prevention of Corruption that previously operated under the Court of Auditors. The Transparency Entity<sup>96</sup>, established in 2019 and tasked with

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<sup>85</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2.

<sup>86</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 9.

<sup>87</sup> Input from Portugal for the 2023 Rule of Law Report, p. 2.

<sup>88</sup> The action plan includes 50 measures focusing on 5 areas: better management; optimisation of the performance of higher courts; legislative changes for procedural simplification; faster digital transformation; and human resources development.

<sup>89</sup> Input from Portugal for the 2023 Rule of Law Report, p. 2.

<sup>90</sup> Information received from the Ministry of Justice in the context of the country visit to Portugal.

<sup>91</sup> Judges Union (2022), Administrative and Tax Justice – Quality and celerity: Stalemates and Solutions.

<sup>92</sup> Annex to the Council Implementing Decision on the approval of the assessment of the Recovery and Resilience Plan for Portugal, p. 161.

<sup>93</sup> Draft Law No. 75/XV. Contribution from the High Council for the Administrative and Tax Courts for the 2023 Rule of Law Report, p. 14.

<sup>94</sup> Draft Law No. 75/XV. Input from Portugal for the 2023 Rule of Law Report, p. 2.

<sup>95</sup> Ministerial Implementing Order No. 155-B/2023 of 6 June 2023.

<sup>96</sup> The Constitutional Court is currently responsible for the enforcement of the sanctioning framework provided in the Regime governing the exercise of functions by political officeholders and senior public officeholders (Law 52/2019 of 31 July 2019 as amended by Law 69/2020 of 9 November 2020 and Law 58/2021 of 18 August 2021) and the review of appeals against those sanctions. It is also responsible for ruling, on appeal, on

monitoring and verifying declarations of assets and interests of political office-holders and high-ranking appointed officials, is expected to start operating in the second quarter of 2023, as soon as the logistical issues linked with the new headquarters is settled. The Central Department of Criminal Investigation and Penal Action (DCIAP), established within the Public Prosecutors Service, is in charge of the investigation and prosecution of serious offences, including corruption and economic and financial crimes, and coordinates the inquiries that are carried out by the National Unit for Combating Corruption (UNCC), an investigative unit of the Criminal Police<sup>97</sup>.

**The perception of public sector corruption among experts and business executives is that the level of corruption in the public sector remains relatively low.** In the 2022 Corruption Perceptions Index by Transparency International, Portugal scores 62/100 and ranks 13<sup>th</sup> in the European Union and 33<sup>rd</sup> globally<sup>98</sup>. This perception has been relatively stable<sup>99</sup> over the past five years<sup>100</sup>. The 2023 Special Eurobarometer on Corruption shows that 93% of respondents consider corruption widespread in their country (EU average 70%) and 54% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>101</sup>. As regards businesses, 85% of companies consider that corruption is widespread (EU average 65%) and 57% consider that corruption is a problem when doing business (EU average 35%)<sup>102</sup>. Furthermore, 28% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)<sup>103</sup>, while 17% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)<sup>104</sup>.

**While the National Anti-Corruption Strategy for 2020-2024 is being implemented, its success also depends on the progress regarding effective functioning of MENAC.** As reported in the 2022 Rule of Law Report, a set of measures aimed at preventing and fighting corruption in both the public and private sectors was adopted in 2021 in order to implement the Anti-Corruption Strategy<sup>105</sup>. This Strategy can only be fully implemented once the MENAC is fully operational, as it is partly based on its new functions. Moreover, the efficiency of the implementation will largely depend on the resources allocated to the institutions responsible

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the fines imposed by the ECFP regarding breaches to the Law on the Financing of Political Parties (Law 19/2003).

<sup>97</sup> The UNCC is the specialized operational unit in charge of investigating corruption offences and related crimes such as bribery or embezzlement of public funds and has jurisdiction nationwide.

<sup>98</sup> Transparency International, Corruption Perceptions Index 2022, pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>99</sup> The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>100</sup> In 2018 the score was 64, while, in 2022, the score is 62. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>101</sup> Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

<sup>102</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

<sup>103</sup> Special Eurobarometer 534 on Corruption (2023).

<sup>104</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

<sup>105</sup> 2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 11.

for investigation, prosecution, and adjudication of corruption cases under the new regime<sup>106</sup>. EUR 64 million are being invested for the direct or indirect reinforcement of the fight against corruption and economic and financial crime by 2026<sup>107</sup>. In relation to the National Anti-Corruption Strategy, the OECD formulated conclusions on coverage<sup>108</sup>, quality<sup>109</sup> and extent to which the national strategy was consistently developed in an inclusive and transparent manner<sup>110</sup>.

**Major changes in the institutional set up regarding anti-corruption were carried out, with significant progress in relation to the full operationalisation of MENAC.** The 2022 Rule of Law Report recommended to Portugal to “[...] ensur[e] the swift operationalisation of the New Anti-Corruption Mechanism”<sup>111</sup>. The MENAC<sup>112</sup>, established in June 2022, is an independent entity with administrative and financial autonomy, whose mission is to promote transparency and integrity in public action and to ensure the effectiveness of policies to prevent corruption and related offences<sup>113</sup>. MENAC, instated on 6 June 2023<sup>114</sup>, has a budget of its own, with an estimated EUR 2,1 million in the State budget for 2023<sup>115</sup>. The MENAC Strategic Plan 2023-2025 and Activity Plan for 2023 were approved by the MENAC President on 25 January<sup>116</sup>. The Advisory Council met for the first time in September 2022 and the Monitoring Committee met in October 2022<sup>117</sup>. In December 2022, MENAC launched a first awareness-raising campaign on the prevention of corruption<sup>118</sup>. The coordination of anti-corruption activities among different public bodies, as well as the taking up of new tasks such as sanctioning powers, is likely to be challenging for MENAC in the context of the numerous tasks to be carried out by a relatively limited number of staff. Nevertheless, its functioning is expected to improve the implementation of a series of actions in this area, in particular

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<sup>106</sup> The strategy acknowledges the need to identify and analyse the reasons for delays in complex cases in order to better allocate resources. Information received from the Ministry of Justice in the context of the country visit to Portugal.

<sup>107</sup> Input from Portugal for the 2023 Rule of Law Report, p. 8.

<sup>108</sup> In terms of coverage, the National Anti-Corruption Strategy establishes strategic objectives to mitigate public integrity risks in almost all relevant areas, including in HRM, internal control, fraud and corruption, public procurement and in the private sector, public corporations, state-owned enterprises or public-private partnerships. Contribution from OECD for the 2023 Rule of Law Report, p. 15.

<sup>109</sup> In terms of quality, the national strategy contains outcome-level indicators for public integrity objectives, refers to international legal instruments on public integrity, and although it provides a clear statement and description of the objectives and priorities, it does not include a situational analysis identifying public integrity risks for all objectives. Contribution from OECD for the 2023 Rule of Law Report, p. 15.

<sup>110</sup> In terms of the extent to which the national strategy was consistently developed in an inclusive and transparent manner, Portugal fulfils four out of seven criteria, including a mandatory intergovernmental and public consultation process, but summaries and responses to the public consultation process were not published on the public consultation portal. Contribution from OECD for the 2023 Rule of Law Report, p. 15.

<sup>111</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2.

<sup>112</sup> Ministerial Implementing Order No. 155-B/2023 of 6 June 2023.

<sup>113</sup> The functions of this entity include: (I) monitor the application of the General Anti-Corruption Regime (RGPC) and impose fines on offenders; (II) imposing fines on those who infringe the law on whistleblower protection; (III) implement the national anti-corruption strategy in its preventive dimension – for example by developing programmes and initiatives that promote a culture of integrity and transparency among young people; (IV) supporting public authorities in drawing up compliance programmes; and (v) collect and organise information related to the prevention and prosecution of corruption and related crimes.

<sup>114</sup> Ministerial Implementing Order No. 155-B/2023, of 6 June 2023.

<sup>115</sup> State Budget Law No. 24-D/2022 of 30 December 2022.

<sup>116</sup> Input from Portugal for the 2023 Rule of Law Report, p. 4.

<sup>117</sup> Input from Portugal for the 2023 Rule of Law Report, p. 9.

<sup>118</sup> Input from Portugal for the 2023 Rule of Law Report, p. 12.

regarding and monitoring of the implementation of the general regime for the prevention of corruption and conflicts of interest<sup>119</sup>. As a result, both public and private entities will be put under MENAC mandatory compliance and preventive tools. In its supervision of public entities, MENAC will need to rely on the inspector-generals from various ministries (or equivalent entities) as well as the regional inspectors of Azores and Madeira to ensure that they fulfil their obligations stemming from the legislation. Despite the legal obligation, it is not clear how MENAC will supervise and enforce the applicable rules in relation to private companies and similar legal entities in practical terms, as the inspector-generals from the public sectors do not have the enforcement capacity over the private sector. While the MENAC already has its own budget and has been instated in June 2023, there are still some operational aspects to be implemented. As a result, there has been significant progress in addressing the recommendation.

**Some progress has been made with the announced measures to ensure sufficient resources for preventing, investigating and prosecuting corruption.** The 2022 Rule of Law Report recommended to Portugal “to ensure sufficient resources for preventing, investigating and prosecuting corruption”<sup>120</sup>. Stakeholders continue to report that the lack of resources at the level of the police and prosecution services remains an obstacle to prosecution of corruption-related cases<sup>121</sup>. Several high-level corruption-related cases are ongoing<sup>122</sup>. The authorities report that while the number of cases decreased, their complexity remains a challenge, especially in view of scarce resources<sup>123</sup>. In 2021, 20 convictions for corruption-related cases were issued (in comparison to 92 in 2020 and 88 in 2019)<sup>124</sup>. The Prosecutor’s Office informed on almost 4 000 new investigations in 2022<sup>125</sup>. At the same time, a series of recruitments meant to address the resources issue took place or have been launched<sup>126</sup>. During 2022, 197 new inspectors entered the National Anti-Corruption Unit of the criminal police (100 in March 2022 and 97 in September 2022). A competition for 65 forensic specialists is currently being carried out<sup>127</sup>. In the context of the National Anti-Corruption Strategy and the measures to strengthen the fight against corruption, fraud and economic and financial crime, the programme for recruiting staff for criminal investigation careers, specialists in the forensic and security field

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<sup>119</sup> Art. 2, Decree-Law No. 109-E/2021 of 9 December 2006. As a result, codes of conduct and other obligations will apply to entities with more than fifty employees but not to the Government; in accordance with the latest version of the Government’s code of conduct, approved in May 2022, those rules do not apply to the Ministers’ cabinets. Council of Ministers Resolution No. 42/2022, Approves the Code of Conduct of the XXIII Constitutional Government, Preamble.

<sup>120</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2

<sup>121</sup> Information received from the Office of the Prosecutor General, Judges Union, Prosecutors Union and Transparency International in the context of the country visit to Portugal.

<sup>122</sup> Public Prosecution, Press release ‘Espírito Santo Indictments’, of 21 July 2022; Lusa, ‘BES case instruction postponed to January’, 24 November 2022; ECO, ‘Rui Pinto, Operation Lex and E-Toupeira. Media cases make rentrée on the stage of Justice’, 1 September 2022. Observador, ‘Manuel Pinho and Ricardo Salgado accused of corruption. António Mexia and João Manso Neto continue to be investigated’, 15 December 2022.

<sup>123</sup> Information received from the Prosecutor General’s Office in the context of the country visit to Portugal. See also Section I – Justice System, Quality.

<sup>124</sup> Input from Portugal for the 2023 Rule of Law Report, Annex I.

<sup>125</sup> Information received from the Prosecutor General’s Office in the context of the country visit to Portugal.

<sup>126</sup> Information received from the Criminal Police in the context of the country visit in Portugal.

<sup>127</sup> Recruitment of 25 candidates for the training course for forensic specialists of the Criminal Police (Notice No. 24250/2022); recruitment of 150 candidates for the training course for judicial police inspectors (Notice No. 24251/2022); and recruitment of 20 candidates for the judicial police security training course (Notice No. 24252/2022).

of the Criminal Police, was approved for the five-year period from 2022 to 2026<sup>128</sup>. As a result, by 2026, another 1 100 new posts are expected to be created for strengthening criminal investigation, forensic and security careers in the Criminal Police.<sup>129</sup> The Inspectorate-General of Finance (IGF) has faced a progressive decrease of human resources (from 2015 to 2022 there has been a 13% reduction of staff while there has been a small increase of 1.8% in budget from 2021 to 2022)<sup>130</sup>, but 20 new additional inspectors have been recruited in 2022 and additional 20 inspectors are to be recruited in 2023<sup>131</sup>. Overall, various measures ensuring the necessary resources to the relevant authorities have been announced, but not yet fully introduced in practical terms. Therefore, there has been some progress in addressing the recommendation on the need to ensure sufficient resources for preventing, investigating and prosecuting corruption including by ensuring the swift operationalisation of the New Anti-Corruption Mechanism.

**The treatment of foreign bribery cases raises concerns.** According to the OECD, detection of foreign bribery cases remains low and authorities prematurely closed cases without investigating relevant allegations thoroughly and proactively. Also, the OECD raised a long-standing call regarding the legal framework and considered also that the sanctions for foreign bribery against natural and legal persons do not appear effective, proportionate or dissuasive<sup>132</sup>. The authorities report a few cases under investigation and two convictions on foreign bribery up until now. In 2022, Transparency International identified issues related to lack of resources, lack of expertise in economic crimes and slowness of the judicial system in dealing with cases of corruption in international trade<sup>133</sup>. As a result, Portugal has been downgraded from ‘moderate oversight’ to ‘limited oversight’ in comparison to the assessment of 2020.

**Concerns remain regarding the application and monitoring of rules on conflict of interests for high-level officials of the Parliament.** The Parliamentary Working Group on the Application of the Code of Conduct assessed the application of the code<sup>134</sup> with regards to the acceptance of hospitalities, both national and foreign, and their registration by Members of Parliament<sup>135</sup>. It concluded that very few Members of Parliament registered accepted hospitalities, despite the obligation to do so<sup>136</sup>. Cases of MPs in a situation of potential conflicts of interest keep arising even when declarations were provided<sup>137</sup>. So far, the GRECO call for adequate supervisory mechanisms, including sanctions for improper acts, which are not envisaged in the Code of Conduct for the Members of Parliament, remains partially unaddressed<sup>138</sup>.

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<sup>128</sup> Ministerial Implementing Order No. 245/2022 of 27 September.

<sup>129</sup> Input from Portugal for the 2023 Rule of Law Report, p.8.

<sup>130</sup> Information received from IGF in the context of the country visit to Portugal.

<sup>131</sup> Input from Portugal for the 2023 Rule of Law Report, p. 8.

<sup>132</sup> OECD (2022), Implementing the OECD Anti-Bribery Convention Phase 4 Report: Portugal, p. 5.

<sup>133</sup> Transparency International (2022), Exporting Corruption 2022 Report.

<sup>134</sup> Art. 20(1), Law No. 7/93, of 1 March. Parliament, Resolution No. 210/2019.

<sup>135</sup> Information received from the Services of the Assembly of the Republic in the context of the country visit to Portugal.

<sup>136</sup> It is not allowed for the MPs to accept gifts and hospitalities above EUR 150. Regime governing the exercise of functions by political officeholders and senior public officeholders, the Code of Conduct for the Members of the Assembleia da República, and the ‘Critérios Orientadores em matéria de Ofertas e Hospitalidade’.

<sup>137</sup> Público, ‘PSD deputy manages credit recovery company in violation of the law’, 1 November 2022.

<sup>138</sup> GRECO Fourth Evaluation Round - Second Compliance Report, p. 4-5.

**Limitations concerning rules on ‘revolving doors’ remain unaddressed.** As regards the rules on ‘revolving doors’, there has been no progress in addressing the issue of monitoring breaches of post-employment restrictions, which creates concerns as to their enforcement<sup>139</sup>. Currently, the rules on revolving doors are only applicable to the Government and nine independent regulatory agencies<sup>140</sup>. Despite a commitment from the Anti-Corruption Strategy to change the current rules<sup>141</sup>, no initiative in this regard is currently envisaged<sup>142</sup>. There have been cases of persons moving between political office and private companies, and between regulators and the financial sector. Such cases are not covered by the current rules<sup>143</sup>.

**Integrity issues with regard to Government officials are still under the spotlight.** In May 2022, a Code of Conduct was approved for the new Government that took office in March 2022<sup>144</sup>. It offers guidelines on gifts and hospitality, conflicts of interests and the use of public resources but it does not provide for any enforcement mechanism in cases of breaches of the rules<sup>145</sup>. Despite the guidelines, the declaration of gifts and hospitality remains an issue for some high-level Government officials<sup>146</sup>. In January 2023, following a series of high-profile cases involving Government officials and several ongoing criminal investigations in relation to integrity issues, the Government introduced an integrity questionnaire before appointments to the cabinet. The purpose is to collect information on the basis of a questionnaire with 36 questions about potential conflicts of interest, criminal investigations, and assets, which covers the last three years of activities and extends to family members<sup>147</sup>. The impact of the questionnaire remains doubtful in terms of preventing any reputational risks since, as stressed by the authorities, it is not meant to prevent the candidates from joining the Government<sup>148</sup>. It remains, therefore, unclear how the answers to the questionnaire are to be interpreted in terms of ethical standards and what follow-up will be given to it. Some members of Parliament insist that the integrity questionnaire should also be applicable to the current Government, the

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<sup>139</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 12.

<sup>140</sup> According to the Framework Law on Regulatory Agencies, board members are banned from working in regulated companies for two years but are entitled to a financial compensation during that period. Art. 19, Law No. 67/2013, of 28 August.

<sup>141</sup> National Anti-Corruption Strategy 2020-2024. Resolution of the Council of Ministers No. 37/2021, of 6 April.

<sup>142</sup> Several bills addressing the issue of revolving doors are currently pending in Parliament. Input from Portugal for the 2023 Rule of Law Report.

<sup>143</sup> E.g., the most recent case has been of a former Environment Minister hired as a consultant on energy and environment affairs by an institute linked to a large law firm. *Expresso*, ‘Matos Fernandes, former Environment Minister, hired by Abreu Advogados’ institute’, 12 July 2022.

<sup>144</sup> It is addressed primarily to members of the Government, but its application is extended to the staff of the cabinets of members, to all senior managers of the public administration under the direction of the Government, as well as to managers and managers of institutes and public undertakings. It includes rules, in particular on conflicts of interest (Articles 6 and 7) and on gifts and hospitalities (Articles 8, 9 and 10). Council of Ministers Resolution No. 42/2022 of 9 May

<sup>145</sup> General Secretariat of the Presidency of the Council of Ministers, ‘About us: Transparency.Government’.

<sup>146</sup> Despite these rules, the Prime Minister and the deputy-minister, the Parliament’s Speaker and the President of the Republic refused to disclose the travel expenses and the hospitality offered by the Qatari government during the Football World Cup (*Observador*, ‘Government, Presidency and Parliament refuse to say how much it cost for five politicians to travel to Qatar on Falcon and commercial flights’, 10 January 2023).

<sup>147</sup> Resolution of the Council of Ministers No. 2-A/2023: Establishes a questionnaire prior to the integration of new members in the Government.

<sup>148</sup> Lusa (2023), ‘Questionnaire for government officials is not an elimination test, reinforces Mariana Vieira da Silva’, 24 January 2023.



Government has informed that it is applicable only to the future government members and not the current ones<sup>149</sup>.

**There has been some progress in ensuring the operationalisation of the Transparency Entity.** The 2022 Rule of Law report recommended to Portugal to “ensure the start of operations of the Transparency Entity in view of effective monitoring and verification of asset declarations”<sup>150</sup>. The reform to entrust monitoring and verification of asset declarations of political and senior public officials to the Transparency Entity, established in 2019<sup>151</sup>, has not yet been finalised. This delay has also been raised by GRECO<sup>152</sup>. On 15 February 2023, three members of the Transparency Entity took office<sup>153</sup> and the digital platform to handle asset declarations is at the final testing phase<sup>154</sup>, expected to be completed in the second quarter of 2023<sup>155</sup>. However, the Entity’s headquarters have not been installed due to the necessary renovation works, despite repeated calls from the Constitutional Court for the situation to be addressed<sup>156</sup>. The Government expects to achieve progress as regards the operationalisation of the Transparency Entity in the second quarter of 2023<sup>157</sup>. As a result, the verification of declarations on paper is still being conducted by the representative of the public Prosecution in the Constitutional Court, which raised concerns as to efficiency and completeness<sup>158</sup>. In view of the above, some progress has been made on the recommendation to ensure the start of operations of the Transparency Entity.

**Discussions on the new bill concerning regulation of lobbying started in the Parliament.** While the resolution<sup>159</sup> implementing a pilot project of ‘legislative footprint’ stemming from the National Anti-Corruption Strategy was completed in 2022, there has been so far no report on its implementation. The Government plans to submit the follow-up project to the Council of Ministers but there is no timeline for such a submission<sup>160</sup>. The discussions on the regulation of lobbying have been initiated by parliamentary groups, although the success of the future

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<sup>149</sup> SicNoticias, ‘Scrutiny mechanism: Government approves ‘34-question questionnaire’ for new members’, 12 January 2023; Observador, ‘Marcelo: “It is obvious that questionnaire applies” to current rulers’, 12 January 2023.

<sup>150</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p.2.

<sup>151</sup> Art. 5 of Organic Law No. 4/2019, of 13 September, provides that until the establishment of the Transparency Entity, single declarations of income, assets and interests continue to be filed with the Constitutional Court and scrutinised under the previous regime.

<sup>152</sup> GRECO, Fourth round of Evaluations, Second Compliance Report on Portugal, p. 6.

<sup>153</sup> Público, ‘Three years later, Transparency Entity will have temporary facilities by the end of the year’, 8 November 2022.

<sup>154</sup> Information received from the Constitutional Court in the context of the country visit to Portugal.

<sup>155</sup> Constitutional Court, Press release of 17 January 2023 regarding the Transparency Entity.

<sup>156</sup> The second phase of renovation works is expected to be finalised by August 2023. Constitutional Court, Press release, of 17 January 2023 regarding the Transparency Entity, and Press release of 21 April 2023.

<sup>157</sup> Information received from the Constitutional Court in the context of the country visit to Portugal.

<sup>158</sup> The current way the verification process is conducted is considered inefficient and partial only in practical terms despite the legal obligation. Expresso, ‘TC Only a third of the statements of politicians inspected’, 13 January 2023; Público, ‘Half of Jamila Madeira’s income statements to the TC without... income’, 18 January 2023.

<sup>159</sup> 2020-2024 National Anticorruption Strategy, p. 20; Council of Ministers Resolution No. 143/2021: Approves the pilot project to implement the principle of the ‘legislative footprint’ within the scope of the governmental legislative procedure.

<sup>160</sup> The pilot project for the implementation of the ‘legislative footprint’ principle consisted in rendering mandatory registration of any intervention by external entities in the legislative process throughout the whole legislative process. Input received in the context of the 2023 Rule of Law Report, p. 30.

legislation based on the current legislative bills remains unclear<sup>161</sup>. The future legislation is expected to address concerns raised by GRECO on the need to clarify the scope of permissible contacts between members of Parliament and third-party interests<sup>162</sup>.

**Implementation of the new legislation on the protection of whistleblowers is ongoing.** New rules<sup>163</sup> were introduced on 20 December 2021 with the aim to align national legislation with the Whistleblowers Directive<sup>164</sup>. MENAC is expected to have a central role in enforcing and sanctioning non-compliance with the general regime for the protection of whistleblowers<sup>165</sup>. Currently, all entities concerned have internal reporting channels and follow-up on reports of corruption and related offences. In 2022, the IGF's reporting channels became operational, as a team was set-up to monitor and deal with complaints of infringements and a specific training in this regard was provided to all IGF staff<sup>166</sup>.

**Efforts are being made to improve the gaps in the public procurement sector.** Public procurement remains a risk area for corruption. The Flash Eurobarometer on Businesses' attitudes towards corruption in the EU shows that 25% of companies in Portugal (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years<sup>167</sup>. As part of implementing the 2015 Budgetary Framework Law, Portugal plans, among others, to adopt new procurement models for the central public procurement system<sup>168</sup>. The OECD is currently carrying out a project with the Court of Audit in order to strengthen its auditing capacities and risk analysis with a focus on the Government's public procurement activity<sup>169</sup>. The project seeks to improve the Court's use of artificial intelligence and machine learning to assess risks of irregularities in public procurement. The project will result in an analytical tool for leveraging new procurement data sources and a report with recommendations to support the Court of Audit to effectively implement the new framework<sup>170</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

The fundamental principles underpinning media freedom and pluralism are anchored in the Portuguese Constitution<sup>171</sup> and a comprehensive legal framework exists to protect journalists in the exercise of their profession<sup>172</sup>. The establishment of an independent regulatory body is

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<sup>161</sup> Information received from the Services of the Assembly of the Republic in the context of the country visit to Portugal.

<sup>162</sup> GRECO Fourth Evaluation Round - Second Compliance Report, p. 4.

<sup>163</sup> Law No. 93/2021, of 20 December.

<sup>164</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union Law.

<sup>165</sup> Law No. 93/2021 of 20 December (see in particular Arts. 27 and 29, Law No. 93/2021 of 20 December and Art. 8 of the RGPC).

<sup>166</sup> In 2023, IGF put in place specific audits for monitoring the compliance of central administration entities within the Finance Ministry, municipalities and entities from the state-owned enterprises with the obligations established in the general regime for the prevention of corruption and conflicts of interests. Input from Portugal for the 2023 Rule of Law Report, p. 14.

<sup>167</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). This is 1 percentage points below the EU average.

<sup>168</sup> 2023 European Semester Country Report for Portugal, p. 9.

<sup>169</sup> Contribution from OECD in the context of the 2023 Rule of Law Report, p. 15.

<sup>170</sup> Ibid.

<sup>171</sup> Arts. 37 and 38, Constitution of the Portuguese Republic.

<sup>172</sup> Portugal ranks 9<sup>th</sup> in the 2023 Reporters without Borders World Press Freedom Index compared to 7<sup>th</sup> in the previous year.

also mandated in the Constitution<sup>173</sup>. A solid legal framework<sup>174</sup> is in place regarding the transparency of ownership across all media markets. Access to information and documents held by public authorities is safeguarded through legislation<sup>175</sup>. No major legislative developments have taken place since the publication of the 2022 Rule of Law Report.

**The Regulatory Authority for the Media maintains its central role as regards media freedom and pluralism, although concerns are voiced regarding resources.** The regulatory authority (*Entidade Reguladora para a Comunicação Social*, ERC) has an array of essential tasks as it monitors all entities pursuing media activities in Portugal. In line with the revised Audiovisual Media Services Directive, the ERC is preparing the regulation of video sharing platforms (new bylaws and other measures specific to video sharing platforms)<sup>176</sup>. The 2023 Media Pluralism Monitor (MPM) report for Portugal mentions that the ERC has raised concerns in recent years of underfunding and delays in budget allocations by the Government<sup>177</sup>. The 2023 MPM suggests the need to strengthen the independence of the ERC<sup>178</sup>.

**A comprehensive legislative framework is in place to regulate the transparency of media ownership, and further improvements are under consideration.** The Constitution requires this transparency and mandates ERC to monitor it in implementation of the specific law that regulates this matter<sup>179</sup>. However, the 2022 Media Pluralism Monitor noted that some entities showed low levels of transparency, and it was difficult to identify whether these cases are sanctioned in practice<sup>180</sup>. The ERC is in the process of assessing the provisions regulating the transparency of media ownership, to ensure that accurate information is provided<sup>181</sup>. The legislation will also be examined to ascertain whether some of its aspects require revision. The ERC is also improving the Transparency Portal in order to make it more efficient and readable<sup>182</sup>. Moreover, since 1 March 2023, ERC has implemented a new Registry Portal<sup>183</sup> as a new tool to facilitate the registration of media outlets and the introduction of data. The Government plans to review the legislation on institutional advertising<sup>184</sup>. More entities may be subjected to these rules. The Government Program for 2022-2026 contemplates the review of the Press Law and provisions on incentives for regional and local media.<sup>185</sup>

**Access to information and documents held by public authorities is safeguarded through legislation.** The Constitution guarantees the right of journalists to access sources of

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<sup>173</sup> Art. 39, Constitution of the Portuguese Republic.

<sup>174</sup> Law No. 78/2015, of 29 July.

<sup>175</sup> Law No. 26/2016, of 22 August.

<sup>176</sup> Information received from ERC in the context of the country visit to Portugal.

<sup>177</sup> 2023 Media Pluralism Monitor, country report for Portugal, pp.12 and 23.

<sup>178</sup> Ibid.

<sup>179</sup> Law No. 78/2015, of 29 July.

<sup>180</sup> 2022 Media Pluralism Monitor, country report for Portugal, p. 13 and 2023 Media Pluralism Monitor, country report for Portugal, p. 14.

<sup>181</sup> Information received from ERC in the context of the country visit to Portugal.

<sup>182</sup> Information received from ERC in the context of the country visit to Portugal.

<sup>183</sup> ERC, Press release of 1 March 2023.

<sup>184</sup> Information received from the Secretariat General of the Presidency of the Council of Ministers in the context of the country visit to Portugal.

<sup>185</sup> Information received from the Secretariat General of the Presidency of the Council of Ministers in the context of the country visit to Portugal.

information<sup>186</sup>, and access to administrative documents and administrative information is regulated by rules of general application<sup>187</sup>. Non-respect of the right of access to administrative documents can be appealed to the Administrative and Tax Courts. A complaint may also be filed before the independent administrative Commission for Access to Administrative Documents, but opinions on complaints are not binding on public institutions.

**Concerns regarding the precariousness of the journalistic profession remain.** Stakeholders highlighted the economic difficulties on media market for both media and journalists, with falling advertising revenues, a lack of local media and one fourth of the country lacking local or regional news sources<sup>188</sup>. The 2023 Media Pluralism Monitor shows important level of media concentration<sup>189</sup>, which stakeholders consider to have an important impact on editorial independence and self-censorship<sup>190</sup>. As regards the financial and economic situation of the media sector a study has been published by ERC<sup>191</sup>. It highlights how companies owning several media fare better than those owning just one. Stakeholders also showed concern about the shift in share ownership within the news agency LUSA<sup>192</sup>, affirming that higher participation of private media<sup>193</sup> may lead to private interference<sup>194</sup>. Stakeholders outlined that strikes are taking place to protest low salaries<sup>195</sup>, as well as requesting better working conditions<sup>196</sup>. Regarding the cyber-attacks suffered by several media websites in 2022<sup>197</sup>, these remain under investigation. Only one alert on the Council of Europe Platform to promote the protection of journalism and safety of journalists has been filed since the publication of the 2022 Rule of Law Report<sup>198</sup>, which concerns the assault on a photo-journalist by a football fan. This alert has already received the reply and explanations from the Portuguese authorities<sup>199</sup>. Stakeholders report that instances of verbal and physical aggressions to journalists covering sports events are occurring increasingly frequently<sup>200</sup>.

**Two journalists on trial for allegedly violating the secrecy of justice were acquitted.** The journalists were prosecuted for allegedly violating the secrecy of justice in relation to their

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<sup>186</sup> Art. 38(2)(b), Constitution of the Portuguese Republic. The Statute of Journalists, approved by Law No. 1/99, of 13 January, contains provisions aimed at ensuring this right (Art. 8).

<sup>187</sup> Law No. 26/2016, of 22 August.

<sup>188</sup> Stakeholders referred to these regions as ‘media desert’ (information received from the Journalists’ Professional License Committee in the context of the country visit to Portugal).

<sup>189</sup> 2023 Media Pluralism Monitor, country report for Portugal, pp. 15-16.

<sup>190</sup> Information received from the Journalists’ Professional License Committee in the context of the country visit to Portugal. Regarding editorial independence, see also 2023 Media Pluralism Monitor, country report for Portugal, pp. 18 and 23.

<sup>191</sup> ERC (2023), *Análise Económica e Financeira ao Setor dos Media em Portugal no ano 2021*.

<sup>192</sup> LUSA is the largest news agency in Portugal, as well as the largest news agency in the Portuguese language.

<sup>193</sup> Share structure: 50.15% State owned, 0.03% RTP, and the remainder owned by private media. LUSA website.

<sup>194</sup> Information received from the Journalists’ Professional License Committee in the context of the country visit to Portugal.

<sup>195</sup> In LUSA, where salaries have been frozen for 12 years (Journalists Union, Press release of 15 March 2023).

<sup>196</sup> Journalists Union, Press release of 11 March 2023.

<sup>197</sup> 2021 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 15.

<sup>198</sup> Council of Europe Platform to promote the protection of journalism and safety of journalists.

<sup>199</sup> Letter from the Permanent Representation of Portugal to the Council of Europe (in French).

<sup>200</sup> Information received from the Journalists’ Professional License Committee in the context of the country visit to Portugal. See also Union of Journalists, Press release of 8 April 2023 on Aggression to photo-journalist, and Press release of 13 February 2023; Journalists’ Professional License Committee, Press release of 23 February 2023.

reporting in 2018 about an anti-corruption operation<sup>201</sup>. As mentioned in the 2021 Rule of Law Report, in the context of these criminal procedures, the journalists were placed under surveillance without judicial warrant<sup>202</sup>. On 28 February 2023, the Central Criminal Court of Lisbon acquitted the journalists, and found that the journalists had sought to perform their duties and inform citizens about a matter of public interest in a responsible manner<sup>203</sup>. One of the journalists subsequently filed a case against the prosecutor who ordered their illegal surveillance, and that case is still pending<sup>204</sup>. As regards SLAPPs, no concerns have been raised by stakeholders.

**The public service media provider is independent, although there are challenges regarding its resources.** Rádio e Televisão de Portugal (RTP), the public service media provider, is established by law<sup>205</sup>. No significant changes to the law have taken place since the publication of the 2022 Report on Rule of Law. Concerns were voiced regarding the financial resources of RTP<sup>206</sup>, given that the majority of funds for RTP come from an audiovisual tax, that, pursuant to law, should be annually indexed to the inflation, but that has effectively not been updated on several occasions<sup>207</sup>. An RTP report<sup>208</sup> provides comparative data vis-à-vis other EU member states that further supports the concerns about financial resources. The Minister of Culture established a committee of experts to draw up a White Paper in view of the future revision of the public service broadcasting contract. After consultation of more than 100 stakeholders, the committee made public the White Paper in May 2023. The document stresses the importance of the public service broadcaster and puts forward some 75 recommendations.<sup>209</sup>

**Tax incentives have been introduced to encourage the subscription of written media.** The 2023 budget law includes provisions for the reimbursement of VAT for subscriptions to newspapers and written media in the 2024 income tax<sup>210</sup>. The objective is to make these media, which foster the development of a finer and more critical approach to information, more attractive for the public, thus contributing to the growth of share of knowledgeable media users and establishing a favourable ecosystem for quality media. This measure has been welcomed by some<sup>211</sup>.

**A legislative amendment removed the criticised wording of Article 6 of the Portuguese Charter of Human Rights in the Digital Age adopted in 2021<sup>212</sup>.** The aim of the provision in question was to protect against disinformation, where Article 6(6) of the Charter provided

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<sup>201</sup> 2021 Rule of Law Report, country chapter on the rule of law situation in Portugal, pp. 14.

<sup>202</sup> Ibid.

<sup>203</sup> International Press Institute (2023), ‘Portugal: Acquittal of journalists represents important legal victory for press freedom’.

<sup>204</sup> Ibid.

<sup>205</sup> Law No. 8/2007, of 14 February.

<sup>206</sup> Information received from RTP in the context of the country visit to Portugal, and 2023 Media Pluralism Monitor, country report for Portugal, pp. 18 and 24.

<sup>207</sup> Art. 4, Law No. 30/2003 on the financing of RTP.

<sup>208</sup> RTP, Report on the Fulfilling of the Public Service Obligations and Strategic Project - 2021.

<sup>209</sup> Information received from the Secretariat General of the Presidency of the Council of Ministers in the context of the country visit to Portugal.

<sup>210</sup> Law No. 24-D/2022, of 30 December, approving the State budget for 2023.

<sup>211</sup> Information received from the Journalists’ Professional License Committee and ICNOVA in the context of the country visit to Portugal.

<sup>212</sup> Law No. 27/2021.

for ‘support of the state to the creation of registered fact-checking structures overseeing registered media outlets, and the attribution of quality labels given by trustworthy public entities’. This provision received criticism and opposition from stakeholders, for its possible impact on the freedom of expression and information<sup>213</sup>. The 2022 Rule of Law Report took note of these criticisms and the subsequent request for constitutional review<sup>214</sup>. The Constitutional Court did not decide on the substance of the request, as the law was amended before it examined the request<sup>215</sup>. The amending law simplified the protection regime against disinformation, ensuring its articulation with the European Action Plan against Disinformation, and the contested provisions were repealed<sup>216</sup>. These developments were well received by journalist representatives<sup>217</sup>.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Portugal is a representative democratic republic with a directly elected President and a unicameral Parliament. The President of the Republic, elected by direct popular vote, has significant constitutional and political powers, including the competence to dissolve Parliament<sup>218</sup>. The Prime Minister has the competences to direct the Government’s general policy and to coordinate and orient the actions of all the Ministers<sup>219</sup>. Parliament and Government share legislative competence. The Members of Parliament and the Parliamentary Groups, the Government, the Regional Assemblies, and a group of at least 20 000 citizens have the right of legislative initiative. The Constitutional Court, which is part of the judiciary, is competent to review the constitutionality of laws and to control the constitutionality of the omission to adopt the necessary legislative measures to execute constitutional norms<sup>220</sup>; it also has other important competences, including on electoral matters and control of assets, interest disclosure and incompatibility declarations<sup>221</sup>. The independent Ombudsperson is tasked with safeguarding and promoting the freedoms, rights and guarantees of citizens, and has the right to challenge the constitutionality of laws.

**There has been significant progress to improve the transparency of law-making, as impact assessment rules were adapted to further improve the quality of legislation and increase the transparency of the legislative procedure.** The 2022 Rule of Law Report recommended to Portugal to ‘[c]ontinue the reforms to improve the transparency of law-making, particularly on the implementation of impact assessment tools’<sup>222</sup>. The quality of law-making and frequent changes in legislation remains a significant reason for concern about the

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<sup>213</sup> Journalists Union, Press release of 9 June 2021; Journalists’ Professional License Committee, Complaint to the President of the Republic and to the Ombudsperson of 30 June 2021.

<sup>214</sup> 2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 19.

<sup>215</sup> Constitutional Court, Decision of 7 March 2023 on the Complaint Against Provisions in the Portuguese Charter of Human Rights in the Digital Era, Case No. 84/2021.

<sup>216</sup> Law No. 15/2022, of 11 August. See also Input from Portugal for the 2023 Rule of Law Report, p. 32.

<sup>217</sup> Information received from Journalists’ Professional License Committee and ICNOVA in the context of the country visit to Portugal.

<sup>218</sup> Art. 133(e), Constitution of the Portuguese Republic.

<sup>219</sup> Art. 201, Constitution of the Portuguese Republic.

<sup>220</sup> Art. 223(1), Constitution of the Portuguese Republic.

<sup>221</sup> Art. 223(2)(c), (g), (h), Constitution of the Portuguese Republic; Arts. 11-A and 106 to 110, Law on the Constitutional Court.

<sup>222</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2.

effectiveness of investment protection among companies in Portugal<sup>223</sup>. Due to the delays at the beginning of the new legislature<sup>224</sup>, the Parliament's initiatives to improve the quality of legislation and increase the transparency of the legislative procedure remain in a preparatory phase. In particular, a technical working group was created to review and update, until the end of the parliamentary term, the Parliament's legal drafting technical guide. The Rules of Procedure, adopted in July 2020, are also being reviewed<sup>225</sup>. Regarding the legislative power entrusted to the Government, the improvement of the quality of legislation has been defined as one of the priorities of its programme<sup>226</sup>, which commits to approve a yearly legislative plan, setting out the calendar of the main legislative initiatives, as well as the approval of a common code on legislative drafting for all institutions with legislative power<sup>227</sup>. The duty to subject all legislative proposals to impact assessment has also been inscribed in the organic law of the Government<sup>228</sup>. All legislative proposals from the Government have been subject to *ex ante* impact assessment<sup>229</sup>. Moreover, the questionnaire used for impact assessment regarding risks of fraud and corruption has been revised and is now mandatory<sup>230</sup>. New dedicated questionnaires on conflicts of interest have also been introduced<sup>231</sup>. While some of the commitments of the Government still require practical implementation and work remains in progress in Parliament, the concrete measures adopted and already implemented by the Government regarding the improvement of impact assessment indicate significant progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**A Constitutional revision is under discussion in Parliament.** Following the presentation of proposals by all eight parties with parliamentary representation, discussion on an ordinary<sup>232</sup> revision of the Constitution started in Parliament in January 2023. For this purpose, an Ad Hoc Committee for Constitutional Revision was created. Among the 393 amendment proposals affecting 186 articles of the Constitution<sup>233</sup> there are proposals relevant for the organisation of the justice system, including on the composition of the High Council for the Judiciary<sup>234</sup> and the High Council for the Public Prosecution, as well as on the system of appointment of the

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<sup>223</sup> Figure 54, 2023 EU Justice Scoreboard indicates that 'Frequent changes in legislation or concerns about quality of the law-making process' are of concern to 20% of companies in Portugal.

<sup>224</sup> As noted in the 2022 Rule of Law Report, following the dissolution of the Parliament in December 2021, the regular parliamentary activity ceased until the beginning of the new legislature, in March 2022, leading to a delay in the regular legislative activity (2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 21).

<sup>225</sup> Information received from the Services of the Assembly of the Republic in the context of the country visit to Portugal.

<sup>226</sup> Input from Portugal for the 2023 Rule of Law Report, p. 32.

<sup>227</sup> Portuguese Government (2022), Programme of Government 2022-2026, p. 38.

<sup>228</sup> Art. 53, Decree-Law No. 32/2022.

<sup>229</sup> Input from Portugal for the 2023 Rule of Law Report, p. 32.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid.

<sup>232</sup> Parliament can initiate a revision of the Constitution five years after the previous revision. Beyond this timeframe, extraordinary revisions of the Constitution can be initiated under the proposal of a majority of four fifths of Members of Parliament.

<sup>233</sup> Information received from the Services of the Assembly of the Republic in the context of the country visit to Portugal.

<sup>234</sup> It should be recalled that currently the High Council for the Judiciary is not composed by a majority of judges elected by their peers. Since 2021, 9 of the Council's 17 members are career judges: 7 elected by their peers, 1 appointed *ex-officio* (President of the Supreme Court of Justice, elected by judges of that Court) and one judge appointed by the President of the Republic (2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 6).

Prosecutor General. Different proposals have been presented regarding the creation of a constitutional provision with express reference to the possibility of declaring the state of emergency due to health emergencies<sup>235</sup>. A majority of two thirds is required for the approval of amendments to the Constitution<sup>236</sup>.

**The emergency measures adopted in the context of the COVID-19 pandemic were lifted, and a new legal basis for emergency measures is under discussion.** The situation of alert ceased to apply on 30 September 2022 and was not extended further<sup>237</sup>. The Government lifted the majority of the restrictive measures adopted in the context of the COVID-19 pandemic and repealed most of the legislative acts adopted by the Government for this purpose<sup>238</sup>. Regarding the measures approved by Parliament, the Government presented a draft law to Parliament<sup>239</sup>, with the objective to lift all laws published in the context of the COVID-19 pandemic. The proposal is currently under discussion in Parliament<sup>240</sup>. As mentioned in the 2022 Rule of Law Report<sup>241</sup>, the previous Government initiated reflections regarding a new legal basis for emergency measures. In this context, a working group proposed that a new provision should be added to the Constitution<sup>242</sup>, expressly authorising deprivation of liberty in the case of the lawful detention of persons for the prevention of spreading of infectious diseases<sup>243</sup>.

**On 1 January 2023, Portugal had 15 leading judgments of the European Court of Human Rights pending implementation, a decrease of two compared to the previous year<sup>244</sup>.** While Portugal's rate of leading judgments from the past 10 years that remain pending was at that time at 39% (compared to 41% in 2022), the average time that the judgments have been pending implementation was 5 years and 1 month (compared to 3 years and 10 months in 2022)<sup>245</sup>. The oldest leading judgment, pending implementation for 11 years, concerns the

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<sup>235</sup> On the reflection on the legal basis for the adoption of exceptional measures to fight the pandemic under the constitutional framework, see also the following paragraph.

<sup>236</sup> Art. 286(1), of the Constitution of the Portuguese Republic.

<sup>237</sup> Decree-Law No. 66-A/2022, of 30 September, and Resolution of the Council of Ministers No. 96/2022, of 24 October.

<sup>238</sup> Resolution of the Council of Ministers No. 73-A/2022. Input from Portugal for the 2023 Rule of Law Report, p. 27.

<sup>239</sup> Proposal for a Law No. 45/XV/1.

<sup>240</sup> Information received from the Services of the Assembly of the Republic in the context of the country visit to Portugal. The proposal was approved in first reading on 23 March 2023, and in the Constitutional Affairs Committee on 19 May 2023.

<sup>241</sup> 2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, pp. 21-22.

<sup>242</sup> Art. 27, Constitution of the Portuguese Republic, 'Right to liberty and security'.

<sup>243</sup> Information received from the Office of the Ombudsperson in the context of the country visit to Portugal.

<sup>244</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>245</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 6.



fairness of criminal proceedings<sup>246</sup>. On 15 June 2023, the number of leading judgments pending implementation remains 15<sup>247</sup>.

**The reorganisation of the Office of the Ombudsperson has shown positive results.** The Ombudsperson is accredited with ‘A’ status by the UN Global Alliance of National Human Rights Institutions (GANHRI)<sup>248</sup>. As noted in the 2022 Rule of Law Report<sup>249</sup>, the structure of the supporting services to the Ombudsperson was reformed in 2021. Following its operationalisation in 2022, the Office of the Ombudsperson assesses this reform positively<sup>250</sup>. In particular, it is reported that the reform has allowed a more effective management of the workload and to focus on priority areas<sup>251</sup>. It is also reported that the reform has enabled a better integration of the duties of the Ombudsperson as a National Human Rights Institution, as well as increased the capacity to detect systemic failures of public administration<sup>252</sup>. On the basis of the reported results, the reform appears to be positive and in line with the applicable European standards<sup>253</sup>. Regarding the complaints handled, the Office of the Ombudsperson reports an increase in the number of complaints submitted by foreign citizens, in particular regarding long residence permit waiting time. In this context, contacts have been initiated with the Immigration and Border Service, and the Office remains seized regarding this matter<sup>254</sup>.

**Stakeholders report some improvements in the financing available to civil society, but challenges in this regard remain.** The civil society space continues to be considered to be open<sup>255</sup>. Whereas the 2022 Rule of Law Report referred to challenges regarding availability of funding<sup>256</sup>, stakeholders report that the situation has been gradually improving, and that, in 2022, there has been an increase of the budget of the biggest call for proposals<sup>257</sup>. However, concerns persist in this regard, as funding opportunities remain mostly project-based and driven by pre-established priorities<sup>258</sup>, not allowing the development of long-term projects and

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<sup>246</sup> Judgment of the European Court of Human Rights of 5 July 2011, *Moreira Ferreira v. Portugal*, 19808/08, pending implementation since 2011.

<sup>247</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>248</sup> Global Alliance of National Human Rights Institutions (GANHRI), Sub-Committee on Accreditation (SCA) (2017), Accreditation Report – November 2017.

<sup>249</sup> 2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, pp. 22-23.

<sup>250</sup> Information received from the Office of the Ombudsperson in the context of the country visit to Portugal. Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2023 Rule of Law Report, pp. 479-480.

<sup>251</sup> Moreover, the newly created triage unit has allowed for a more effective screening of complaints and, through the preparation of weekly reports to the Head of Institution, also ensured better monitoring of their follow-up, and allowing the reallocation of resources among existing units where needed. The weekly reports also function as early-warning mechanism allowing the Ombudsperson to monitor complaints received from especially vulnerable citizens, which may require immediate intervention and thus the adoption of precautionary measures. Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2023 Rule of Law Report, pp. 479-480.

<sup>252</sup> Ibid.

<sup>253</sup> In particular, Recommendation CM/Rec(2019)6 of the Committee of Ministers of the Council of Europe on the development of the Ombudsman institution, para. 6, and Venice Commission, Principles on the Protection and Promotion of the Ombudsman Institution (‘The Venice Principles’), CDL-AD(2019)005, para 22.

<sup>254</sup> Information received from the Office of the Ombudsperson in the context of the country visit to Portugal.

<sup>255</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>256</sup> 2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, pp. 22-23.

<sup>257</sup> Contribution from the Platform of Development Non-Governmental Organisations for the 2023 Rule of Law Report, p. 19.

<sup>258</sup> Ibid.

strategies. Moreover, structural problems remain regarding the fund-raising capacity, which worsened subsequent to the economic crisis<sup>259</sup>. In the philanthropic sector, there are efforts ongoing to improve the capacity of civil society organisations (CSOs) and awareness raising to the role of civil society in the promotion of civic participation, protection of human rights and monitoring of public policies<sup>260</sup>. CSOs continue to be actively involved in government initiatives, in particular in the areas of civic participation and migration<sup>261</sup>. Positive examples are also reported regarding inclusive consultation in the development sector, while calls for further improvement remain<sup>262</sup>.

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<sup>259</sup> Information received from the Gulbenkian Foundation in the context of the country visit to Portugal. See also Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2023 Rule of Law Report, p. 484.

<sup>260</sup> Gulbenkian Foundation, Programme Active Citizens.

<sup>261</sup> Input from Portugal for the 2023 Rule of Law Report, pp. 38-39.

<sup>262</sup> Contribution from the Platform of Development Non-Governmental Organisations for the 2023 Rule of Law Report, p. 20.

## **Annex I: List of sources in alphabetical order\***

\* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).*

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## **Annex II: Country visit to Portugal**

The Commission services held virtual meetings in February 2023 with:

- Bar Association
- Central Department of criminal action and investigation (DCIAP)
- Constitutional Court
- Council for the Prevention of Corruption
- Court of Audit
- Criminal Police
- GPEARI – Gabinete de Planeamento, Estratégia, Avaliação e Relações Internacionais
- Ministério das Finanças
- Gulbenkian Foundation
- High Council for the Administrative and Tax Courts
- High Council for Public Prosecution
- High Council for the Judiciary
- ICNOVA – Nova University of Lisbon
- Inspectorate-General of Finance
- Journalists’ Professional License Committee
- Judges Union (ASJP)
- Media Authority – Regulatory Entity for Social Communication
- Ministry of Culture
- Ministry of Foreign Affairs
- Ministry of Justice
- National Anti-Corruption Mechanism
- Observatory of Economy and Fraud Management
- Office of the Prosecutor General
- Office of the Ombudsperson
- Platform of NGOD
- Prosecutors Union (SMMP)
- RTP – Radio and Television of Portugal
- Secretariat General of the Presidency of the Council of Ministers
- Services of the Assembly of the Republic
- Supreme Administrative Court
- Supreme Court of Justice
- Transparency International – Portugal
- Union of Judicial Administrative Officials
- UTAIL - Technical Unit for Legislative Impact Assessment

\* The Commission also met the following organisations in a number of horizontal meetings:

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum

- Free Press Unlimited
- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU