

## 2021-2022 ANTI-CORRUPTION LEGISLATIVE PACKAGE

### IN GENERAL

There has been an important improvement in the regulatory environment in Portugal, due to the approval of an Anti-Corruption Legislative Package that has addressed, namely:

- a. Prevention,
- b. Repression, and
- c. The quality of legislation and the transparency of legislative proceedings.

**Prevention** – with the approval of the:

- a. General Legal Regime for the Prevention of Corruption
- b. National Anti-Corruption Mechanism

**Repression** – with the approval of the:

- a. Law implementing measures of the National Anti-Corruption Strategy
- b. Whistleblower Protection Law
- c. Law extending the reporting obligations of holders of political and high-ranking public offices (*including illicit enrichment matters*)
- d. Law facilitating the use of financial and other information

**Quality of legislation and transparency of procedures** – with the approval of the:

- a. Legislative footprint in governmental legislative proceedings

### LOOKING INTO DETAILS REGARDING PREVENTION

**General Legal Regime for the Prevention of Corruption** – Decree-Law n. [109-E/2021, of December 9](#) (translation in Annex 1)

1. Companies (with the exception of micro and small companies), the State, autonomous regions, local authorities and other legal persons governed by public law, now have to adopt and implement compliance programs, with consequences for non-compliance;  
2. Therefore, public and private entities (medium and large companies) are now obliged to create:

- i. Corruption risk prevention plans, namely identifying areas most exposed to possible acts of corruption;
- ii. Codes of conduct;
- iii. Whistleblower reporting channels, to be established under the terms provided for in the whistleblower protection law, and
- iv. Training programs, namely helping managers and workers understand all the parts of the compliance program and knowing how to deal in the event of unlawful solicitations.

3. The new National Anti-Corruption Mechanism will be in charge of this piece of legislation, and will punish with fines the violation of these duties.

**National Anti-Corruption Mechanism** – [Decree-Law n. 109-E/2021, of December 9](#)  
(translation in Annex 1)

1. This will be an independent entity, with powers of authority, of initiative, of control and of sanctioning,
2. It will incorporate the presently Council for the Prevention of Corruption,
3. And it will have wide responsibilities, namely:
  - a. In the field of preventing corruption and related offences, being responsible for monitoring the enforcement of the **General Legal Regime for the Prevention of Corruption**, and imposing fines on the ones offending it;
  - b. Fining those violating the whistleblower protection law;
  - c. Implementing the national strategy on anti-corruption in its preventive dimension – for example, developing programs and initiatives that promote a culture of integrity and transparency among young people, an effort which is due to be made in cooperation with areas such as higher education and schools;
  - d. Supporting public entities in the preparation of compliance programs;
  - e. And collecting and organizing information relating to the prevention and enforcement of corruption and related crimes.

## **ANNEX**

### **TRANSLATION OF DECREE-LAW N. 109-E/2021, OF DECEMBER 9**

The English version is a translation of the original in Portuguese for information purposes only. In case of a discrepancy, the Portuguese original will prevail.

Decree-Law 109-E/2021, of 9 December 9

Summary: It establishes the National Anti-Corruption Mechanism and the general regime for the prevention of corruption

In the Program of the XXII Constitutional Government, a prominent place was given to anti-corruption policies, as an instrument to build a more just, egalitarian and inclusive society and to re-establish strong bonds of trust between the citizens, the communities and their democratic institutions.

Democracies are very complex in their organisation, particularly as regards the regulation of the economic activities and the interactions between the different spheres of activity, both public and private.

The phenomenon of corruption affronts the essence of democracy and its fundamental principles, in particular equality, transparency, free competition, impartiality, legality, integrity and the fair redistribution of wealth.

On the other hand, individual legal assets, by tradition, are more easily identifiable and protected, unlike macro-social legal assets, which are abstract and therefore more difficult to identify, requiring a higher level of protection.

Considering these factors, and under the aegis of the governing area of justice, a multidisciplinary working group was set up to assess the different dimensions of the phenomenon and to submit a proposal for a National Anti-Corruption Strategy.

On 18 March 2021, following a long period of reflection and extensive public hearing involving the academia, the judiciary, legal practitioners and other fields of knowledge, the Government approved the final version of the National Anti-Corruption Strategy 2020-2024 (Strategy), in accordance with the Council of Ministers Resolution 37/2021 of 6 April.

The Strategy, considering the prevention, detection and prosecution of corruption with the same degree of importance and necessity, sets up seven priorities: i) Improve knowledge, training and institutional practices on transparency and integrity; ii) Prevent and detect the risks of corruption in public action; iii) Commit the private sector in the prevention, detection and prosecution of corruption; iv) Strengthen the coordination between public and private institutions; v) Ensure a more effective and uniform application of the legal mechanisms related to the prosecution of corruption, improve the response times of the judicial system and ensure the adequacy and effectiveness of the punishment; vi) - Produce and disseminate from time to

time reliable information on the phenomenon of corruption; and vii) Cooperate at international level in the fight against corruption.

In recent decades, a considerable effort has been made to harmonise the legal frameworks around the world through the adoption of multilateral conventions. These conventions, however, mostly targeted the prosecution of corruption, not its prevention.

Along the same lines, Portugal has provided for a wide range of crimes related to corrupt practices or similar, either in the Criminal Code (e.g. undue receiving of an advantage, passive corruption, active corruption, embezzlement, economic participation in business and graft), or in sundry criminal laws, such as the one that specifies the crimes under the liability of political officeholders, the one which provides for corruption crimes committed in international trade and in the private activity, or which punishes anti-sporting behaviour.

Nonetheless, alongside the implementation of the proposed measures within the prosecution scope, it is essential to have an effective system to prevent the phenomena of corruption.

The source of this legislative initiative is therefore the Strategy, and its aim is to implement the proposal to create a general regime to prevent corruption.

This general anti-corruption regime removes from the domain of soft law the implementation of instruments such as the regulatory compliance programs, which should include risk prevention or management plans, the codes of ethics and conduct, the training programmes, the reporting channels and the appointment of a person responsible for the regulatory compliance.

Sanctions, in particular the administrative offences, applicable to both the public and the private sector are provided for failure to adopt or for the inadequate or incomplete adoption of the regulatory compliance programs.

This regime also determines the implementation of internal control systems that ensure the effectiveness of the instruments that are part of the regulatory compliance program, as well as the transparency and impartiality of procedures and decisions. It also provides for a specific sanctioning regime.

Amendments are also made to the legal regime on the inspection activity of the direct and indirect administration of the State in order to adapt it to the philosophy underlying this decree-law.

Bearing in mind the adaptation of all entities covered by this regime, it is established that it shall enter in force and take effect in a phased manner.

On the other hand, as provided for in the Strategy, it is set up the National Anti-Corruption Mechanism, an independent administrative entity, with legal personality governed by public law and powers of authority and endowed with administrative and financial autonomy, whose mission is to promote the transparency and integrity in the public action and ensure the effectiveness of the policies to prevent corruption and related offences.

The creation of such a mechanism is also provided for in article 6 of the United Nations Convention against Corruption of 31 October 2003, ratified by the Presidential Decree 97/2007 of 21 September 2007.

Pursuant to said article, the States Parties shall ensure the existence of an independent body endowed with the material and human resources necessary for the development of corruption prevention policies and for the improvement of information and knowledge on the prevention of corruption.

The Court of Auditors was consulted and most of its suggestions were accepted.

The provisions of this decree-law shall in no way jeopardise — under any circumstances — the powers of the Court of Auditors in particular, and, in general, the powers laid down by law for the courts and the Public Prosecution services.

The Court of Auditors, the National Association of Parishes, the National Association of Portuguese Municipalities, the Commission for the Coordination of Policies to Prevent and Combat Money Laundering and Financing of Terrorism, the National Data Protection Commission, the Portuguese Business Confederation, the National Council of Financial Supervisors, the High Council of the Judiciary, the High Council of the Public Prosecutors, the High Council of the Administrative and Tax Courts, the Bar Association and the governing bodies of the autonomous regions were heard.

The hearing of the Order of Solicitors and Enforcement Officers was promoted.

Hence:

Pursuant to Article 198(1)(a) of the Constitution, the Government hereby decrees the following:

#### Article 1

##### Object

The present decree-law:

- a) Establishes the National Anti-Corruption Mechanism (MENAC), an independent administrative entity, with legal personality governed by public law and powers of authority, endowed with administrative and financial autonomy, and active at national level in the prevention of corruption and related offences;
- b) Approves the general rules on the prevention of corruption (RGPC), annexed to this decree-law and of which it forms an integral part;
- c) Makes the third amendment to Decree-Law 276/2007 of 31 July 2007, as amended by Decree-Law 32/2012 of 13 February 2012 and by Law 114/2017 of 29 December 2017, approving the legal regime for the inspection of the direct and indirect administration of the State.

## Article 2

### Mission and duties

1 - MENAC's mission is to promote the transparency and integrity in the public action and to ensure the effectiveness of the policies to prevent corruption and related offences.

2 - MENAC has powers of initiative, control and sanction.

3 - The MENAC's duties are:

a) Develop, in liaison with the members of Government responsible for the areas of the Public Administration, of higher education and education, the adoption of programmes and initiatives aimed at creating a culture of integrity and transparency, covering all areas of public management and all levels of education;

b) Promote and monitor the implementation of the RGPC;

c) Support the public entities in the adoption and implementation of the regulatory compliance programs provided for in the RGPC;

d) Issue guidelines and directives for the adoption and implementation of regulatory compliance programs by the entities covered by the RGPC. These guidelines and directives must appear on the MENAC website, in an easily identifiable place and with search tools;

e) Plan the control and monitoring of the RGPC, in conjunction with the general inspections or similar entities and with the regional inspections in relation to the public sector;

f) Monitor, in liaison with the general inspections or similar entities and with the regional inspections, the execution of the RGPC;

g) Collect and organise information related to the prevention and prosecution of active or passive corruption, undue receiving and offer of advantage, trafficking in influence, fraud in obtaining or diverting subsidies, grants or credit, illegitimate appropriation of public goods, harmful administration, embezzlement, economic participation in business, abuse of power, breach of the duty of secrecy and laundering of advantages arising from these crimes, as well as acquisitions of real estate or securities as a result of the unlawful acquisition or use of inside information in the exercise of functions in the Public Administration or in the public business sector;

h) Produce and disseminate information on corruption and related offences on a regular basis and develop campaigns to prevent it;

i) Set up databanks and operate a communication platform to facilitate the exchange of information on strategies and best practices for the prevention, detection and prosecution of corruption and related offences between the public entities with responsibilities in the prevention and prosecution of corruption and related offences;

j) Prepare the annual anti-corruption report and submit it to the Government;

k) Coordinate the design and execution of the anti-corruption month programme

l) Establish, in liaison with the Prosecutor General's Office, a procedure for the retrospective analysis of completed criminal proceedings concerning corruption and related offences, with the aim of enhancing knowledge about these offences and improving practices of prevention, detection and prosecution;

m) Give an opinion, at the request of the Assembly of the Republic, of the Government or of the governing bodies of the autonomous regions, on the elaboration or approval of domestic or international normative instruments for the prevention or prosecution of the crimes referred to in subparagraph (g);

n) Assist the Government, at its request or on its own initiative, in the definition and implementation of policies related to the prevention, detection and prosecution of corruption and related offences;

o) Monitor, in conjunction with the relevant general inspections or similar entities and regional inspections, the quality, effectiveness and updating of the regulatory compliance instruments adopted by the Public Administration and the public business sector to prevent corruption and related offences;

p) Open, investigate and decide on proceedings related to the commission of administrative offences provided for in the RGPC and to apply the respective fines;

q) Develop, encourage or sponsor, by itself or in collaboration with other entities, studies, surveys, publications, training and other similar initiatives.

4 - MENAC cannot carry out activities or use its powers outside the scope of its duties, nor dedicate its resources to purposes unrelated to its mission.

### Article 3

#### Legal regime

MENAC shall be governed by this decree-law, by other legal provisions specifically applicable to it and by its rules of procedure.

### Article 4

#### Independence and impartiality

1 - MENAC and the holders of its management bodies act independently and impartially in the performance of their duties and in the exercise of the powers conferred upon them by law.

2 - MENAC and the holders of its management bodies may not, in the performance of their duties, receive or request guidelines or directives from the Government or from any public or private entity.

3 - The President and Vice-President of MENAC may only be removed from office by resolution of the Council of Ministers, on justified grounds, after hearing the President of the Court of Auditors and the Prosecutor General of the Republic.

4 - It is understood that there are justified grounds whenever there is a serious misconduct in the performance of their duties, in particular in cases of:

- a) Serious or repeated failure to comply with the legal provisions, in particular those contained in this decree-law, namely as regards the obligations of transparency and information on the activity of MENAC, and its rules of procedure;
- b) Failure to comply with the duty to perform duties on an exclusive basis or serious or repeated breach of the duty of confidentiality and professional secrecy;
- c) Substantial and unjustified non-compliance with MENAC's activity plan or budget.

#### Article 5

##### Duty of secrecy

The holders of MENAC's management bodies and their agents must maintain secrecy in relation to facts that they become aware of by reason of their duties, if such secrecy is required by virtue of the nature of those facts.

#### Article 6

##### Impediments

The holders of MENAC's management bodies and their agents are subject, in the performance of their duties, to the system on impediments provided for in the Code of Administrative Procedure, approved in an annex to Decree-Law 4/2015 of 7 January 2015, in its current wording.

#### Article 7

##### Cooperation and duty to collaborate

1 - To pursue its duties, MENAC establishes forms of cooperation:

- a) With the Public Prosecution Service;
- b) With the Criminal Police;
- c) With the Directorate-General for Justice Policy;
- d) With the Commission for the Coordination of Policies to Prevent and Combat Money Laundering and Terrorist Financing;
- e) With the Court of Auditors;
- f) With similar authorities of other States;
- g) With international organisations and their members in the fight against corruption and related offences;

h) With civil society associations dedicated to the study and monitoring of the phenomenon of corruption and related offences;

i) With other entities governed by public or private law.

2 - MENAC may request the competent member of Government that the general inspections or similar entities and the regional inspections carry out inspection and auditing actions.

3 - All public and private entities have the duty to provide MENAC with information that is necessary for the strict performance of its duties, without prejudice to the State, justice, lawyer, banking, supervision, medical, journalistic and religious secrecy or any other legally regulated.

## Article 8

### Bodies

The MENAC bodies are:

a) The President;

b) The Vice-President;

c) The Advisory Council;

d) The Monitoring Committee;

e) The Sanctions Committee.

## Article 9

### President

1 - The President of MENAC is appointed by resolution of the Council of Ministers upon a joint proposal from the President of the Court of Auditors and the Prosecutor General of the Republic, from among persons who enjoy recognised suitability, technical competence, aptitude, professional experience, training and independence.

2 - The appointment resolution must contain a curriculum note of the person appointed.

3 - The President of MENAC is equivalent, for remuneration purposes, to the President of the High Council of the Public Finance Council, provided for in Law 54/2011 of 19 October 2011, as amended, subject to the provisions of the following paragraph.

4 - In the event that the appointed person has a legal relationship of public employment with the central, regional or local Public Administration, or performs duties with other public entities, he/she may opt, with the express authorisation contained in the act of appointment, for the remuneration status corresponding to the post of origin.

5 - The term of office of the President of MENAC is unique and lasts for six years.

6 - The successor of the President shall be appointed within 60 days prior to the end of his/her term of office.

7 - The outgoing President remains in office until the term of office of his/her successor begins.

## Article 10

### Powers of the President

The President of MENAC is responsible for:

- a) Ensure the pursuit of the duties entrusted to MENAC, by guaranteeing its good performance through the optimization of human, financial and material resources;
- b) Convene and chair the Advisory Council and direct its meetings;
- c) Coordinate the activities of the committees;
- d) Approve a three-year strategic plan, an annual activity plan and an annual report and submit it to the Government by 30 April of the following year;
- e) Impose fines and ancillary penalties in administrative proceedings;
- f) Ensure the representation of MENAC and, at the request of the Government, the representation of the State in national and international bodies and forums in the context of relations with similar international entities;
- g) Designate the Secretary-General of MENAC;
- h) Adopt the rules of procedure of MENAC;
- i) Approve the MENAC budget proposal, and submit it to the Government within the time limits set out for the elaboration of the draft Budget law. It must also provide the Assembly of the Republic with the elements requested on this matter;
- j) Exercise any other powers entrusted to it by the rules of procedure.

## Article 11

### Vice-President

1 - The Vice-President of MENAC is appointed by resolution of the Council of Ministers, upon proposal from the President of MENAC.

2 - The Vice-President of MENAC assists the President of MENAC, exercises the powers delegated to him/her and replaces him/her in his/her absences and impediments.

3 - The appointment resolution must contain a curricular note of the appointed person.

4 - The remuneration of the Vice-President of MENAC shall be 80% of the remuneration which the President, in accordance with the first part of article 9(3), receives or would receive, subject to the provisions of the following paragraph.

5 - If the appointed person has a legal relationship of public employment with the central, regional or local Public Administration, or performs duties with other public authorities, he/she may opt, with the express authorisation contained in the act of appointment, for the remuneration status corresponding to the post of origin.

6 - The term of office of the Vice-President of MENAC is unique and lasts for six years.

## Article 12

### Advisory Council

1 - The Advisory Council is a collegiate body responsible for:

a) Give an opinion on the proposal for a three-year strategic plan, on the proposal for an annual activity plan and on the proposal for the MENAC annual report, in addition to other matters referred to it by the President of MENAC;

b) Submit recommendations and suggestions within the scope of the MENAC duties.

2 - The Advisory Council shall meet ordinarily twice a year. It may also meet extraordinarily, at the request of the President of MENAC, if exceptional circumstances so warrant.

3 - The participation in meetings of the Advisory Council shall not entitle its members to any remuneration, allowance or attendance fee.

## Article 13

### Composition of the Advisory Council

1 - The Advisory Council comprises:

a) The Inspector General of Finance;

b) The Inspector General of the Justice Services;

c) The Inspector General for Agriculture, the Sea, the Environment and Land Planning;

d) The Inspector General of the Economic and Food Safety Authority;

e) The Inspector General of Education and Science;

f) The Inspector General of Health Activities;

g) The Secretary-General of the Economy;

h) The Director of Legal Services, Audit and Inspection of the General Secretariat of the Presidency of the Council of Ministers;

i) A regional inspector for each Autonomous Region, designated by the competent regional body;

j) A public prosecutor representing the Prosecutor General of the Republic;

k) A representative of the Bar Association;

l) A person of recognised merit who has distinguished himself/herself in the investigation and study of the phenomena of corruption and related offences, co-opted by the other members, for a term of three years;

m) A representative appointed jointly by the corporate organisations with a seat on the Standing Committee for Social Concertation, for a term of office of three years.

2 - The President of MENAC may, on his/her own initiative or upon proposal from any of the members of the Advisory Council, invite to attend the meetings of this Council, without the right to vote, persons whose contribution he deems important to the matters to be considered at each meeting.

## Article 14

### Monitoring Committee

The Monitoring Committee is the body responsible for the development of MENAC missions. It shall, inter alia, be responsible for:

a) Draw up, together with the President of MENAC, the annual activity plan and to monitor its execution;

b) Set up and keep up-to-date a system for collecting reliable data on the effectiveness of the RGPC;

c) Establish the databank and operate and update the platform provided for in article 2(3)(i);

d) Prepare the proposal for the annual anti-corruption report;

e) Prepare the proposed activities for the anti-corruption month;

f) Propose the adoption of recommendations aimed at enhancing transparency and probity;

g) Concentrate and disseminate information aimed at improving corruption prevention levels;

h) Coordinate the performance of the general inspections or similar entities and of the regional inspections in order to improve the execution of the activity plans related to the prevention of corruption;

i) Prepare the draft budget.

## Article 15

### Composition of the Monitoring Committee

1 - The Monitoring Committee is composed of the Vice-President of MENAC, who chairs it, and six inspectors.

2 - Four of the inspectors referred to in the preceding paragraph shall be designated in turn by the general inspections or similar entities represented in the Advisory Council, the other two being designated by the regional inspections represented in that same Council.

3 - The inspectors referred to in paragraph 1 are appointed for a three-year term of office, renewable for a maximum of two times.

4 - The rotation is carried out in such a way as to ensure continuity in the duties of two inspectors.

## Article 16

### Sanctions Committee

The Sanctions Committee is the body responsible for the exercise of MENAC powers in matters related to penalties and is, in particular, responsible for:

- a) Analyse information on non-compliance with the RGPC, obtained at the initiative of MENAC or of the general inspections or similar entities and the regional inspections;
- b) Determine the opening of investigation proceedings concerning non-compliance with the obligations arising from the RGPC;
- c) Indict or carry out similar acts, to propose the imposition of fines and ancillary penalties in administrative proceedings and to promote their collection thereof.

## Article 17

### Composition of the Sanctions Committee

1 - The Sanctions Committee is composed of the Vice-President of MENAC, who chairs it, and four inspectors.

2 - Two of the inspectors referred to in the preceding paragraph shall be designated in turn by the general inspections or similar entities represented in the Advisory Council, the remaining two being designated by the regional inspections represented in that same Council.

3 - The inspectors referred to in paragraph 1 are appointed for a three-year term of office, renewable for a maximum of two times.

## Article 18

### Exclusivity and remuneration status

1 - The President and the Vice-President shall perform their duties on an exclusive basis.

2 - The inspectors who are members of the Monitoring Committee and of the Sanctions Committee carry out their duties exclusively at MENAC, maintaining their original remuneration

status, under the responsibility of the respective general inspection service or similar or regional inspection service.

3 - The persons referred to in the preceding paragraphs cannot be jeopardised in the stability of their employment, in their career and in the social security system they benefit from, as well as in their rights, allowances and subsidies and any other social benefits which they enjoyed in their original professional position. The return to the legal and functional situation which they exercised at the time of their appointment is ensured, without prejudice to the provisions of the law on the reorganisation of services, where applicable.

4 - The length of service provided at MENAC shall, for all purposes, including seniority and promotion, be regarded as being provided in the categories and career that the persons referred to in paragraphs 1 and 2 occupied at the time of appointment, while retaining all rights, allowances, social benefits, remuneration and any other corresponding to those categories and careers, and may not, by reason of non-work, be prejudiced by changes in the remuneration position which they have acquired in the meantime, nor in the competitions which they might enter.

5 - During the performance of their duties at MENAC, the persons referred to in paragraphs 1 and 2 shall not be subject to performance evaluation, and may not be adversely affected in their career, seniority, remuneration or any other effects associated with said evaluation.

## Article 19

### Support services

1 - The map of MENAC technical and administrative support personnel is fixed by order of the members of the Government responsible for the areas of finance and Public Administration, once the President of MENAC is heard. The personnel map may only be filled in through mobility instruments.

2 - The personnel have the remunerations of the place of origin.

3 - MENAC has a Secretary-General, a 1st degree senior management position, who is responsible for the administrative and financial management of the support service, including the appointment of staff, under the supervision of the President of MENAC, for a six-year term.

4 - MENAC may hire technical advisers in accordance with the terms to be defined in the order referred to in paragraph 1.

## Article 20

### Revenue and expenditure regime

1 - MENAC shall have the revenue from appropriations allocated to it by the State Budget.

2 - MENAC has also the following own revenue:

a) The proceeds of the collected fines which, by law, accrue to them;

- b) The subsidies, donations, inheritances, legacies and any gifts given to them by public or private entities, legally accepted;
  - c) The proceeds from the sale of its own assets or the constitution of rights over them;
  - d) The proceeds from the sales of publications;
  - e) The previous year's management balance.
- 3 - MENAC expenses are those that result from charges arising from the pursuit of its duties.

#### Article 21

##### Binding and representation of the National Anti-Corruption Mechanism

MENAC is represented, in particular in court or in the practice of legal acts, by the respective President and Vice-President, if powers have been delegated to that end, or by representatives specially appointed by the MENAC President or by the Vice-President, within the limits of their delegated powers.

#### Article 22

##### Audit by the Court of Auditors

MENAC shall be subject to the jurisdiction and financial control of the Court of Auditors.

#### Article 23

##### Judicial supervision

Sanctions for administrative offences imposed by MENAC are open to challenge before the judicial courts.

#### Article 24

##### Evidence of criminal and financial offences

1 - When the offences found show evidence of a criminal offence, MENAC shall report them to the authorities responsible for their investigation.

2 - When the offences found show evidence of a financial offence, MENAC shall report them to the Court of Auditors.

#### Article 25

Amendment to Decree-Law 276/2007, of 31 de July

Article 5 of Decree-Law 276/2007 of 31 July 2007, as amended, is replaced by the following:

“Article 5

[...]

1 - ...

2 - ...

3 - ...

4 - In the exercise of their respective duties, the inspection services may, in accordance with the provisions of the protocols referred to in the following paragraph, access the information contained in the databases of the public legal persons, preferably in a direct and remote manner.

5 - The conditions for accessing and processing the information provided for in paragraphs 3 and 4, in particular the categories of employees authorised to access the information, the form of communication or access, the nature and category of the data that can be consulted and the rules related to the retention of the information obtained shall be defined by protocols to be concluded between the respective entities, subject to authorisation from the National Data Protection Commission.”

Article 26

Installation of the National Anti-Corruption Mechanism

The rules related to the installation of MENAC are determined by order of the members of the Government responsible for the areas of finance and justice.

Article 27

Repealed norm

Law 54/2008 of 4 September 2008 is hereby repealed.

Article 28

Entry into effect

1 - Without prejudice to the following paragraph, the provisions of Chapter IV of the RGPC shall take effect one year after the entry into force of this decree-law.

2 - In the case of private law entities covered by the RGPC which, on the date of entry into force of this decree-law, are classified as medium-sized companies, in accordance with the criteria set out in the annex to the Decree-Law 372/2007 of 6 November 2007, in its current wording, the

provisions of Chapter iv of the RGPC shall take effect two years after the entry into force of this decree-law.

3 - The provisions of the preceding article shall take effect as of the date of installation of MENAC.

#### Article 29

##### Entry into force

This decree-law shall enter in force 180 days after its publication.

Reviewed and approved by the Council of Ministers on 2 December 2021. — Pedro Gramaxo de Carvalho Siza Vieira - João Rodrigo Reis Carvalho Leão - Francisca Eugénia da Silva Dias Van Dunem - Alexandra Ludomila Ribeiro Fernandes Leitão - Tiago Brandão Rodrigues - Marta Alexandra Fartura Braga Temido de Almeida Simões - João Saldanha de Azevedo Galamba - Hugo Santos Mendes.

Promulgated on 6 December 2021.

To be published.

The President of the Republic, Marcelo Rebelo de Sousa.

Open to referendum on 9 de dezembro de 2021.

The Prime Minister, António Luís Santos da Costa.

#### ANNEX

[referred to in article 1(b)]

### General Regime for the Prevention of Corruption

#### CHAPTER I

##### General provisions

##### Article 1

##### Object

The General Regime for the Prevention of Corruption (RGPC) is established.

## Article 2

### Scope of application

1 - The present regime is applicable to legal persons with registered office in Portugal employing 50 or more employees and to branches in national territory of legal persons with registered office abroad employing 50 or more employees.

2 - This regime is also applicable to services and legal persons of the direct and indirect administration of the State, the autonomous regions, local authorities and the public business sector employing 50 or more employees, and also to independent administrative entities with functions of regulation of economic activity in the private, public and cooperative sectors and to the Bank of Portugal, without prejudice to the provisions of paragraph 4.

3 - The legal persons, branches and services covered by the preceding paragraphs are abbreviated to covered entities.

4 – The Bank of Portugal shall not be subject to the provisions of this regime as regards matters concerning its participation in the performance of the tasks entrusted to the European System of Central Banks.

5 - The services and legal persons of the direct and indirect administration of the State, the autonomous regions, local authorities and the public business sector that are not considered covered entities shall adopt instruments for the prevention of risks of corruption and related offences appropriate to their size and nature, including those promoting administrative transparency and the prevention of conflicts of interest.

## Article 3

### Definition of corruption and related offences

For the purposes of this regime, corruption and related offences shall be understood to mean the crimes of corruption, receiving and offering an undue advantage, embezzlement, economic participation in business, graft, abuse of power, prevarication, trafficking in influence, laundering or fraud in obtaining or diverting a subsidy, grant or credit, as provided for in the Criminal Code, approved in the annex to Decree-Law 48/95 of 15 March, as amended, Law 34/87 of 16 July, as amended, the Military Code of Justice, approved in annex to Law 100/2003 of 15 November, Law 50/2007 of 31 August, as amended, Law 20/2008 of 21 April, as amended, and Decree-Law 28/84 of 20 January, as amended.

## CHAPTER II

### Mechanism for the Prevention of Corruption

## Article 4

### Monitoring and competence

1 - The application of the present regime is monitored by the National Anti-Corruption Mechanism (MENAC), which is responsible for, without prejudice to the other competencies foreseen in the law:

a) To issue guidelines and directives to which the design and terms of execution of the compliance programs must obey;

b) To assess the application of this regime;

c) To define the planning of the control and supervision of this regime;

d) To supervise compliance with the provisions established in this regime, without prejudice to the competence of other entities;

e) To initiate, investigate and decide upon the proceedings relating to the practice of the administrative offences provided for in the present regime;

f) To manage the information on the compliance with the provisions established in this regime.

2 - The requests, communications, notifications or any other statements within the scope of this regime may be made electronically, without prejudice to the provisions applicable to administrative offence proceedings.

3 - For the purpose provided in the previous number, MENAC uses electronic authentication mechanisms, including those of the Citizen's Card and Mobile Digital Key, with the possibility of using the System for Certification of Professional Attributes (SCAP), as well as the electronic identification means issued in other Member States that are recognized for this purpose under article 6 of Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July 2014.

4 - Electronic documents may be signed with recourse to qualified electronic signatures, including those of the Citizen's Card and Mobile Digital Key, with the possibility of recourse to SCAP, or others that are on the European Union Trusted Lists, without prejudice to the provisions of article 4 of Law 37/2014, of 26 June, in its current wording.

5 - The communications or notifications to the interested parties in the procedures, including in administrative offence proceedings, in the terms foreseen in article 25(13), can be made through the Public Service of Electronic Notifications whenever the notified person has adhered to it, in the terms of Decree-Law 93/2017, of 1 August.

## CHAPTER III

### Measures to prevent corruption

#### SECTION I

#### General provisions

#### Article 5

## Regulatory compliance program and person responsible for regulatory compliance

1 - Covered entities shall adopt and implement a regulatory compliance program that includes, at least, a plan for the prevention of risks of corruption and related offences (PPR), a code of conduct, a training programme and a whistleblowing channel in order to prevent, detect and sanction acts of corruption and related offences carried out against or through the entity.

2 - Covered entities shall designate, as a senior manager or similar, a person responsible for regulatory compliance who guarantees and controls the application of the regulatory compliance program.

3 - The person responsible for regulatory compliance shall exercise his or her functions independently, permanently and with autonomous decision making, and the respective entity must ensure that he or she has the internal information and the human and technical resources necessary for the good performance of his or her function.

4 - Where the entities covered are in a group relationship, a single person responsible for regulatory compliance may be designated.

## Article 6

### Prevention plan for risks of corruption and related offences

1 - Covered entities shall adopt and implement a PPR covering their entire organisation and activity, including administrative, managerial, operational or support areas, and containing:

a) Identification, analysis and classification of the risks and situations that may expose the entity to acts of corruption and related offences, including those associated with the performance of duties by the members of the management and administrative bodies, considering the reality of the sector and the geographical areas in which the entity operates;

b) Preventive and corrective measures to reduce the probability of occurrence and impact of the risks and situations identified.

2 - The PPR shall include the following:

a) The areas of activity of the entity with risk of committing acts of corruption and related offences;

b) The probability of occurrence and foreseeable impact of each situation, in order to allow for the grading of risks;

c) Preventive and corrective measures to reduce the probability of occurrence and impact of the risks and situations identified;

d) In situations of high or maximum risk, the most exhaustive prevention measures, with priority being given to their execution;

e) Designation of the general person responsible for the execution, control and revision of the PPR, who may be the person responsible for regulatory compliance.

3 - In the event of the covered entities being in a group relationship, a single PPR may be adopted and implemented to cover the entire organisation and activity of the group, including administrative, managerial, operational or support areas of the group entities.

4 - The implementation of the PPR is subject to control, carried out under the following terms:

a) Preparation, in the month of October, of an interim evaluation report on identified situations of high or maximum risk;

b) Preparation, in April of the following year, of an annual assessment report, containing namely the quantification of the degree of implementation of the preventive and corrective measures identified, as well as the forecast for their full implementation.

5 - The PPR is reviewed every three years or whenever a change occurs in the attributions or organic or corporate structure of the entity that justifies the review of the elements referred to in paragraphs 1 or 2.

6 - Covered entities shall ensure that the PPR and the reports referred to in paragraph 3 are made public to their employees, and they must do so via the intranet and their official Internet site, if any, within 10 days of their implementation and respective revisions or preparation.

7 - The public entities covered shall communicate the PPR and the reports referred to in paragraph 3 to the members of the Government responsible for the respective management, superintendence or supervision, for information purposes, and to the inspection services of the respective governmental area, as well as to MENAC, within 10 days from their implementation and respective revisions or preparation.

8 - The public entities covered that are not under the direction, supervision or remit of a member of the Government shall communicate the PPR and the reports foreseen in paragraph 3 only to MENAC, within 10 days from their implementation and respective revisions or preparation.

9 - The communications foreseen in paragraphs 7 and 8 are made through the electronic platform to be created for the purpose, managed by MENAC.

## Article 7

### Code of Conduct

1 - The entities covered shall adopt a code of conduct that establishes the set of principles, values and rules of action of all managers and employees in terms of professional ethics, taking into account the criminal provisions on corruption and related offences and the risks of exposure of the entity to these crimes.

2 - The code of conduct shall identify, at least, the disciplinary sanctions which, under the law, may be applied in the event of non-compliance with the provisions contained therein and the criminal sanctions associated with acts of corruption and related offences.

3 - A report shall be drawn up for each offence containing the identification of the breached provisions, the sanction applied, as well as the measures adopted or to be adopted, namely within the scope of the internal control system provided for in article 15.

4 - The code of conduct is reviewed every three years or whenever there is a change in the attributions or organic or corporate structure of the entity that justifies the review of the elements referred to in paragraph 1.

5 - The covered entities ensure the publicity of the code of conduct to their employees, and should do so through the intranet and on their official webpage, if any, within 10 days of its implementation and respective revisions.

6 - The public entities covered shall communicate their code of conduct and the report provided for in paragraph 3 to the members of the Government responsible for the respective direction, supervision or remit, and to the inspection services of the respective governmental area, as well as to MENAC, within 10 days from its implementation and respective revisions or elaboration.

7 - The public entities covered that are not under the direction, supervision or remit of a member of the Government communicate their code of conduct and the report foreseen in paragraph 3 only to MENAC, within 10 days from its implementation and respective revisions or elaboration.

8 - The communications foreseen in paragraphs 6 and 7 are made through the electronic platform to be created for the purpose, managed by MENAC.

## Article 8

### Whistleblower channels

1 - Covered entities have internal whistleblowing channels and follow up on reports of acts of corruption and related offences under the provisions of the legislation transposing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

2 - Covered entities shall be liable for the offences provided for in the legislation transposing Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, in particular as regards non-compliance with the provisions of the previous paragraph, under the terms provided for in such legislation.

## Article 9

### Training and communication

1 - Covered entities shall ensure the implementation of internal training programmes for all their managers and employees so that they are aware of and understand the implemented policies and procedures for the prevention of corruption and related offences.

2 - The content and frequency of training of managers and employees shall take into account the different exposure of managers and employees to identified risks.

3 - The hours of the training provided for in paragraph 1 count as hours of continuous training that the employer must ensure to the employee.

4 - The covered entities shall endeavour to make the policies and procedures referred to in paragraph 1 known to the entities with which they have a relationship.

#### Article 10

##### Evaluation system

Covered entities shall implement mechanisms for evaluating the compliance program, covering the controls laid down in articles 6, 15 and 17, as applicable, with a view to assessing its effectiveness and ensuring its improvement.

#### Article 11

##### Responsibility of the administrative or managing body

The administrative or managerial body of the entities covered shall be responsible for the adoption and implementation of the compliance programs provided for in this regime, without prejudice to the competence conferred by law on other bodies, managers or employees.

### SECTION II

#### Provisions applicable to public entities

#### Article 12

##### Administrative transparency

1 - Without prejudice to the provisions of articles 6 and 7 and other legal provisions guaranteeing the right to information and administrative transparency, the public entities covered shall publish at least the following elements on the intranet and on their official Internet site:

- a) Organic law and other enabling diplomas, management and supervisory bodies, organic structure and organisation chart;
- b) Strategic and operational framework documents and a list of the main services provided to the public in the mission area;
- c) Activities plan, budget and accounts, activities report and social balance;
- d) Legal framework documents or documents involving the interpretation of the law in force relating to the mission areas;
- e) Basic information on citizens' rights and obligations and on the procedures to be observed in their relationship with the Public Administration;
- f) Descriptive guides on the most relevant administrative procedures regarding the goods or services provided;
- g) Up-to-date price lists for the goods or services provided;

- h) Multi-annual commitments and late payments and receipts;
- i) List of benefits and subsidies granted, with an indication of the respective value;
- j) List of donations, inheritances, gifts or donations received, with an indication of the respective value;
- k) Notices on the recruitment of managers and employees, as well as the orders for the appointment of managers;
- l) Notices about the most relevant pre-contractual procedures;
- m) Contacts for interaction with citizens and companies, including a form for complaints and suggestions;
- n) Information on procedural or management systems accredited by the Portuguese Institute of Accreditation, I. P., if applicable.

2 - In the dissemination of information referred to in the previous paragraph, data accessibility, use, quality, comprehensibility, timeliness and integrity must be ensured.

3 - The information mentioned in paragraph 1 e) is available on the ePortugal Portal as the sole portal for access to services provided by the Public Administration.

4 - The publication, disclosure and availability, for consultation or other purposes, of information, documents and other content that, due to its nature and in legal terms, can or should be made available to the public, without prejudice to the simultaneous use of other means, must be available in open formats, that allow for machine reading, to be placed or indexed in the Public Administration Open Data Portal, at [www.dados.gov.pt](http://www.dados.gov.pt).

## Article 13

### Conflict of interests

1 - The public entities covered shall adopt measures to ensure the exemption and impartiality of the members of the respective administrative bodies, their managers and employees and to prevent situations of favouritism, namely within the scope of the internal control system provided for in article 15.

2 - The members of the administrative bodies, managers and employees of the public entities covered shall sign a declaration of non-existence of conflict of interests in accordance with the model to be defined by statutory instrument of the Government members responsible for the areas of Justice and Public Administration, in the procedures in which they intervene regarding the following matters or areas of intervention:

- a) Public procurement;
- b) Granting of subsidies, grants or benefits;
- c) Urban, environmental, commercial and industrial licensing;
- d) Sanctioning procedures.

3 - Members of the administrative bodies, managers and employees of covered public entities who find themselves in a situation of conflict of interest or who reasonably foresee that they will find themselves in a situation of conflict of interest shall communicate the situation to their hierarchical superior or, in his/her absence, to the person responsible for regulatory compliance, who shall take the appropriate measures to avoid, remedy or terminate the conflict.

4 - A conflict of interest is considered to be any situation in which it is reasonably possible to seriously doubt the impartiality of the conduct or decision of the member of the administrative body, manager or employee, under the terms of articles 69 and 73 of the Code of Administrative Procedure, approved in annex to Decree-Law 4/2015, of 7 January, in its current wording.

5 - The administrative body or manager of the public entity covered shall enforce the provisions of the preceding paragraphs.

## Article 14

### Accumulation of functions

1 - Without prejudice to the provisions of articles 19 and following of the General Labour Law in Public Functions, approved in annex to Law 35/2014, of 20 June, in its current wording (LTFP), the public entities covered shall disclose to employees holding a public employment contract, namely on the intranet, all rules, minutes and procedures to be observed in requests for authorisation, change and termination of accumulation of functions.

2 - The said entities must review the authorisations for accumulation of functions granted whenever this is justified by a change in the functional content of the employee with a public employment contract.

## Article 15

### Internal control system

1 - The public entities covered shall implement an internal control system proportional to the nature, dimension and complexity of the entity and the activity pursued by it and based on adequate risk management, information and communication models in all areas of intervention, namely those identified in the respective PPR.

2 - The internal control system includes, namely, the organisational plan, policies, methods, procedures and good practices on control defined by those in charge, which contribute to ensure the development of activities in an orderly, efficient and transparent manner.

3 - The internal control system aims to ensure, namely:

- a) Compliance with and legality of the deliberations and decisions of the holders of the respective bodies;
- b) Compliance with the defined policies and objectives;
- c) Compliance with legal and regulatory provisions;

- d) Adequate risk management and mitigation, taking into account the PPR;
- e) Respect for the principles and values set out in the code of conduct;
- f) The prevention and detection of situations of illegality, corruption, fraud and error;
- g) Safeguarding assets;
- h) The quality, timeliness, integrity and reliability of the information;
- i) The prevention of favouritism or discriminatory practices;
- j) The adequate mechanisms for planning, execution, review, control and approval of operations;
- k) The promotion of competition;
- (l) Transparency of operations.

4 - The internal control system shall be included in procedure manuals, based on the best national and international practices.

5 - For the purpose of evaluating the respective adequacy and effectiveness, the public entities covered shall promote regular monitoring of the implementation of the internal control system, namely through random audits, reporting their results and possible constraints to the superior and implementing the necessary corrective or improvement measures.

## Article 16

### Promotion of competition in public procurement

The public entities covered shall adopt the measures which, according to the circumstances, prove to be appropriate and feasible in order to promote competition in public procurement and to eliminate administrative constraints to public procurement, discouraging the use of direct adjustments, namely:

- a) Timely planning of needs, in order to concentrate the respective contracting in the minimum of procedures;
- b) Adequate management of multi-year contracts for the acquisition of goods and services of a continuous nature, such as those relating to security, cleaning, food and equipment maintenance, so that the procedures for their renewal are initiated at a time that allows for their effective conclusion before the previous ones expire;
- c) Setting adequate time limits and identification of tacit acts regarding authorizations and opinions prior to public procurement;
- d) Adherence to centralised purchasing mechanisms.

## SECTION III

## Provisions applicable to legal persons governed by private law

### Article 17

#### Internal control procedures

- 1 - The private entities covered shall implement internal control procedures and mechanisms covering the main corruption risks identified in the PPR.
- 2 - For the purposes of the provisions of the preceding paragraph, the objectives and approach defined in article 15 may be considered.
- 3 - For the purposes of public procurement, the procedures and internal control mechanisms must be included in appropriately advertised procedure manuals.

### Article 18

#### Prior assessment procedures

- 1 - Without prejudice to the provisions of article 6, the private entities covered implement prior risk assessment procedures in relation to third parties acting on their behalf, to suppliers and clients.
- 2 - The procedures must be adapted to the risk profile of the entity under assessment and able to allow the identification of beneficial owners, the risks in terms of image and reputation, as well as commercial relationships with third parties, in order to identify possible conflicts of interest.

### Article 19

#### Exercise of public powers or administrative functions

For legal persons governed by private law, when exercising, in any capacity, public powers or materially administrative functions, the provisions of article 13 are applicable, with the necessary adaptations.

## CHAPTER IV

### Sanctioning regime

#### SECTION I

##### Administrative offence regime

#### Article 20

##### Administrative offences

1 - Without prejudice to the civil, disciplinary or financial liability that may arise, it shall be punishable as an administrative offence:

- a) The failure to adopt or implement the PPR or the adoption or implementation of a PPR that lacks one or more of the elements referred to in article 6(1) and (2);
- b) Failure to adopt a code of conduct or the adoption of a code of conduct that does not take into account the criminal law provisions regarding corruption and related offences or the risks of the entity's exposure to these crimes under article 7(1);
- c) Failure to implement an internal control system, in accordance with the provisions of article 15(1).

2 - The administrative offences referred to in the preceding paragraph are punishable by fines:

- a) From (euro) 2000.00 to (euro) 44 891.81, in the case of a legal person or similar entity;
- b) Up to (euro) 3740.98, in the case of natural persons.

3 - The following also constitute administrative offences:

- a) Failure to prepare the PPR control reports under the terms of article 6(4);
- b) Failure to review the PPR in accordance with article 6(5);
- c) Failure to advertise the PPR and respective control reports to employees, under the terms of article 6(6);
- d) Failure to communicate the PPR or the respective control reports pursuant to article 6(7) and (8);
- e) Failure to prepare the report as provided for in article 7(3) or preparation of the report without identifying some or all the elements provided for in that paragraph;
- f) Failure to review the code of conduct in accordance with article 7(4);
- g) Failure to advertise the code of conduct to employees in accordance with article 7(5);
- h) Failure to communicate the code of ethics and the relevant reports in accordance with article 7 (6) and (7).

4 - The administrative offences referred to in the previous number are punishable with fines:

- a) From (euro) 1000.00 to (euro) 25,000.00, in the case of a legal person or similar entity;
- b) Up to (euro) 2500.00, in the case of natural persons.

5 - If the administrative offences provided for in this article are committed negligently, the minimum and maximum limits of the fines shall be reduced by half.

6 - The payment of the fine shall not exempt the offender from fulfilling the duty in question, where possible.

7 - The proceeds from the imposition of fines shall revert to the following entities:

- a) 50 % for the State;

b) 50 % for MENAC.

## Article 21

### Liability for administrative offences

1 - Natural persons and legal persons or similar entities shall be liable for the commission of the administrative offences provided for in this system, under the terms of the following paragraphs.

2 - Legal persons or similar entities are liable for the administrative offences provided for in this decree-law when the facts have been committed by the members of their bodies, agents, representatives or employees in the exercise of their respective functions or in their name and on their behalf.

3 - The liability of a legal person or similar entity is excluded when the agent acts against its express orders or instructions.

4 - The members of the management body or directors of legal persons or similar entities, the person responsible for compliance with the regulations, as well as those responsible for the direction or supervision of areas of activity in which any administrative offence is committed, are liable for the administrative offences provided for in this decree-law when they commit the facts or when, knowing or having knowledge of their commission, they fail to adopt adequate measures to immediately put an end to them.

5 - The liability of legal persons does not exclude or depend upon the individual liability of the agents referred to in the preceding paragraph.

## Article 22

### Subsidiary liability

1 - The members of the management body or directors of legal persons or similar entities are subsidiary liable for:

a) The payment of fines imposed for administrative offences committed prior to the term of office, where the assets of the legal person or similar entity have become insufficient for payment due to their own fault;

b) The payment of fines imposed for administrative offences committed prior to the same period of time, where the final decision imposing such fines is notified during the term of office and the lack of payment is imputable to them.

2 - Where there are several persons liable under the terms of the preceding paragraph, their liability shall be joint and several.

3 - Insufficient assets shall be presumed, namely, in the case of declaration of insolvency and dissolution and closure of liquidation.

## Article 23

### Accessory sanctions

1 - Legal persons governed by private law that commit any of the administrative offences provided for in article 20(1), may be subject to the accessory sanction of publication of the conviction, according to the seriousness of the fact and the respective culpability.

2 - The publication of the conviction shall be carried out, in full or in extracts, at the offender's expense, namely in a national, regional or local newspaper, depending on which is more appropriate, as well as on the official MENAC webpage for a period of 90 days.

## Article 24

### Suspension of the process

1 - When the offence constitutes a curable irregularity, there is no high degree of guilt or previous conviction for an offence of the same nature, the administrative offence procedure is suspended, and the offender notified to, within the established period, remedy the irregularity in which he/she incurred.

2 - If the irregularity is remedied, the process is closed and cannot be reopened.

3 - The lack of remedy within the prescribed period determines the continuation of the process.

## Article 25

### Notifications

1 - Notifications are made by registered letter, without prejudice to the provisions of paragraphs 3 and 10.

2 - Notifications referred to in the previous paragraph shall be deemed to have been made on the third day following that of registration or on the first following working day, when the latter is not the case, and the commencement of the notification shall be included in the act of notification.

3 - Whenever it is a question of communicating the notice of illegality or the decision imposing a fine, accessory sanction or admonition to the defendant, the notifications shall be made by registered letter with acknowledgement of receipt or in person, if necessary through the police authorities, without prejudice to the provisions of paragraph 9.

4 - Notifications are addressed to the addressees' head office or domicile.

5 - The notification referred to in paragraph 3 is considered to have been made on the date on which the acknowledgement of receipt is signed and is considered to have been made in the person of the addressee when the acknowledgement of receipt has been signed by a third party present at the addressee's head office or domicile, it being assumed that the letter was delivered to him or her in due time, and this information should be included in the act of notification.

6 - Whenever the addressee refuses to receive or sign the notification, the agent shall certify the refusal and the notification shall be deemed served.

7 - When the addressee of the notification referred to in paragraph 3 cannot be found, notification shall be served by means of an announcement published in one of the newspapers in the area of the addressee's registered office or last known residence in the country or, if there is no newspaper in the area or if the addressee does not have his/her registered office or residence in the country, in one of the Lisbon daily newspapers.

8 - The diploma that orders the notification may be printed and signed by seal.

9 - Receipt by the interested party of a copy of the minutes or certificate of the act he or she is attending shall constitute notification.

10 - The notifications are made through the Public Service of Electronic Notifications whenever the notifying party has adhered to it, in the terms of Decree-Law 93/2017, of 1 August.

## Article 26

### Notifications to the agent and witnesses

1 - Notifications to defendants who have appointed an agent are, whenever possible, made in person and at their professional domicile.

2 - The notice of illegality and the decision imposing a fine, accessory sanction or admonition shall always be notified to the defendant and his/her representative.

3 - When the notification is aimed at summoning witnesses or other procedural participants, the defendant's representative who indicated them shall also be notified so that, if he or she so wishes, he or she may attend the act or procedure, indicating the date, place and reason for attendance.

4 - For the purposes of the previous paragraph, whenever the defendant calls a witness, he or she shall provide the elements necessary for their notification, namely address and postal code.

5 - The notifications referred to in the preceding paragraphs shall be made by registered letter with acknowledgement of receipt or in person, if necessary through the police authorities, and the provisions of paragraphs 4, 5 and 6 of the previous article shall apply to them.

## Article 27

### Right to a hearing and defence of the defendant

1 - Once sufficient evidence of an administrative offence has been gathered, a notice of illegality shall be drawn up, containing the identification of the defendant, the facts alleged, including, if possible, the place, time and motive of their commission, the degree of participation that the agent had in them and any relevant circumstances for determining the sanction, the applicable rules and sanctions and the time limit for the presentation of the defence.

2 - The defendant may, within 15 working days, submit a written defence and offer evidence.

3 - Up to a maximum of seven witnesses may be called and the names of witnesses exceeding this number shall be considered unwritten.

## Article 28

### Voluntary payment

1 - Regardless of the amount of the fine, voluntary payment is admissible at any stage of the process, but always before the decision, the fine being settled at the minimum, without prejudice to the costs that may be due.

2 - Voluntary payment of the fine shall not exclude the possibility of application of accessory sanctions.

3 - Payment of fines and costs shall be made by electronic means through the Public Administration payment platform.

## Article 29

### Appearance of witnesses

1 - Witnesses shall be heard at the headquarters of the administrative authority where the instruction of the procedure takes place or at a delegation of this authority, if any.

2 - Witnesses who unjustifiably fail to appear at the day, time and place designated for the diligence of the procedure, shall be fined by the administrative authority, which may vary from 1/4 of a procedural unit of account (CU) up to 3 CU.

3 - Absence due to a fact that is not imputable to the absentee and prevents him or her from attending the procedural act shall be considered justified.

4 - The impossibility to attend shall be communicated five days in advance if it is foreseeable, and until the third day after the day designated for the performance of the act if it is unforeseeable; the communication shall include the indication of the respective reason and the foreseeable duration of the impediment, under penalty of the absence not being justified.

7 - If witnesses fail to appear at a second summons after failing to appear at the first, the penalty payment to be applied by the administrative authority may vary between 1 CU and 4 CU.

8 - Payment shall be made within 10 working days of notification, under penalty of foreclosure, and the notification issued by the administrative authority shall serve as enforcement order.

## Article 30

### Absence of the defendant, witnesses and other intervening parties

The absence or inability to appear of the defendant, witnesses or other intervening parties shall not prevent the administrative offence proceeding from continuing to run.

#### Article 31

##### Subsidiary law

In cases not covered by the law, the provisions of the regime for administrative offences, established by Decree-Law 433/82, of 27 October, in its current wording, shall be observed.

## SECTION II

### Disciplinary liability

#### Article 32

##### Disciplinary offences and end of service on secondment

1 - Without prejudice to civil, criminal or administrative offence liability, the breach of the duties established in articles 6, 7, 8, 13 and 15 by holders of high public entities covered by this regime constitutes an offence of a disciplinary nature, punishable in accordance with the Labour Code, approved in the annex to Law 7/2009 of 12 February, in its current wording, or the LTFP, depending on the case, and may determine the termination of the respective service on secondment, under the terms of the Statute of the Holders of High Public Office, approved by Law 2/2004, of 15 January, in its current wording.

2 - The holders of management positions or similar positions in independent administrative entities with functions of economic activity regulation in the private, public and business sectors and of the Bank of Portugal and the employees of any of the entities covered who fail to report offences or provide false or erroneous information, related to this regime, of which they become aware during the exercise or by virtue of their functions, without prejudice to the civil, criminal or administrative offence liability applicable in the case, shall also incur in disciplinary offences.

3 - The provisions of this article shall not apply to the termination of office of the holders of the management bodies of independent administrative entities with functions of regulation of economic activity in the private, public and business sectors and of the Bank of Portugal.

#### Article 33

##### Duty of communication

For the purposes of the previous article, MENAC or the general-inspections or similar entities and the regional inspections, as the case may be, will communicate to the entity with disciplinary competence the breach, by the covered entities, of the duties imposed by the present regime.

## CHAPTER V

### General inspections and similar entities and regional inspections

#### Article 34

##### Inspection and audit

1 - Without prejudice to the provisions of article 4, the general-inspections or similar entities and the regional inspections shall be responsible for carrying out periodic inspections and audits of the services or organisms of the respective governmental area in order to assess compliance with the provisions established in the present regime concerning the existence of regulatory compliance programs.

2 - The planning of the inspections and audits referred to in the previous number is communicated to MENAC for the purpose of articulation of the respective activity plans.

3 - From the inspections and audits carried out, the respective report is prepared under the terms foreseen in the respective regulations, which is communicated to MENAC and to the entity with disciplinary competence.

4 - Without prejudice to the provisions of the preceding paragraph, the general-inspections or similar entities and the regional inspections shall communicate to MENAC, within 15 working days, the beginning of the practice of an administrative offence foreseen in the present regime.

## CHAPTER VI

### Final provisions

#### Article 35

##### Articulation with other regimes

1 - The provisions of the present regime are without prejudice to the obligations contained in other legal or regulatory provisions for the adoption and implementation of regulatory compliance programs, elements thereof, or internal control systems, in terms more demanding than those provided for in the present regime.

2 - The provisions of this regime shall not apply when there is a provision of European Union law or international law that provides otherwise and is applicable to a public entity.

3 - The provisions of the present regime shall not prejudice the powers of control and jurisdiction of the Court of Auditors over the matters and entities regulated herein.