

**Information on initiatives and practices related to the topics for discussion at the
fourteenth session of the Working Group on the Prevention of Corruption
PORTUGAL**

Information in relation to strengthening the role of Supreme Audit Institutions in the prevention and fight against corruption (resolution 9/3 of the Conference of the States Parties to the United Nations Convention against Corruption)

The Court of Auditors of Portugal and the Organization for Economic Cooperation and Development (OECD), with the support of the European Commission, [have launched on January 30th](#) a project to use Artificial Intelligence within the workings of the Court of Auditors as regards public procurement.

The project aims to design a real-time treatment model for the massive volume of data on public procurement existing in the Court of Auditors and in strategic entities of the Portuguese Public Administration, resorting to algorithms and, in general, Artificial Intelligence.

More information as regards this project is being gathered and will be shared as soon as available.

Information in relation to good practices, lessons learned and challenges in periodically evaluating the efficiency and the effectiveness of anti-corruption measures and policies (resolution 9/6 of the Conference of the States Parties to the United Nations Convention against Corruption)

Information in relation to the interlinkages between preventive and law enforcement approaches (resolution 9/6 of the Conference of the States Parties to the United Nations Convention against Corruption)

Touching upon both these areas we would like to start by highlighting the importance of the **General Regime for the Prevention of Corruption (RGPC) and the new National Anticorruption Mechanism (MENAC)**, both approved by Decree-Law 109-E/2021, of 9 December (please check Annex 2).

The programme of the XXII Constitutional Government foresaw as one of its main objectives the fight against corruption, so as to make the State's action more transparent and fairer and to promote equal treatment between citizens and economic growth.

Considering the importance of this objective, on 21 February 2020, it was set up a commission entrusted with the definition of a national anti-corruption strategy, which, in this scope, consulted the Bar Association, the Notary Association, the Order of

Solicitors and Enforcement Agents, the Transparency and Integrity Association, the Criminal Forum and the Economy and Management of Fraud Observatory, and submitted a draft strategy which was reviewed and approved by the Council of Ministers and subsequently submitted for public consultation on 20 October 2020.

During this period, several contributions were received and a conference was organized by the Ministry of Justice on what it considered to be the main topics raised in the context of the public consultation, namely the prevention of corruption and the regulatory compliance programs.

On the 18 of March 2021, the Government approved the final version of the National Anti-Corruption Strategy (Strategy, please check Annex 1).

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.

The genesis of the legislative initiatives deriving from the Strategy and its objectives are, namely, to implement some of the proposals submitted therein, in particular with regard to guaranteeing a more effective and uniform application of the legal mechanisms related to the prosecution of corruption, improving the response time of the judicial system and the adequacy and effectiveness of the punishment.

But, also, to implement a general regime for the prevention of corruption (RGPC – please check Annex 2). The general regime for the prevention of corruption removes from the sphere of soft law the implementation of instruments such as compliance programmes, which should include risk prevention or management plans, codes of ethics and conduct, training programmes, reporting channels and the designation of a compliance officer.

Penalties, including administrative sanctions, are provided for, applicable to both the public and private sectors, for the non-adoption or partial or deficient adoption of compliance programmes.

This regime also establishes the implementation of internal control systems that ensure the effectiveness of the instruments included in the normative compliance programme, as well as the transparency and impartiality of the procedures and decisions.

The MENAC (please check Annex 2) is an independent administrative entity, with legal personality under public law and authority powers, endowed 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 corruption-related offences.

The duties of this entity comprise monitoring the application of the RGPC and imposing fines on violators; imposing fines on those who violate the law on the protection of whistle-blowers; implementing the national strategy to combat corruption in its preventive dimension – for example, developing of programmes and initiatives that promote a culture of integrity and transparency among young people; supporting public entities in the preparation of compliance programmes; and collecting and organising information related to the prevention and enforcement of corruption and related crimes.

The creation of a mechanism with such functions, as is well known, is also provided for in Article 6 of the United Nations Convention Against Corruption, which provides that States Parties shall ensure the existence of an independent body, equipped with the material and human resources necessary to develop corruption prevention policies and to improve information and knowledge on corruption prevention.

Human resources of MENAC

It has one President, a Vice-President and a Secretary-General, all having been appointed already. The MENAC staff map has already been published through Ordinance 292-A/2022, of December 9, and it is now assembling its team of work. Meanwhile, MENAC is being temporarily supported by graduated staff of the Ministry of Justice and the Ministry of Finance: by order of the President of MENAC, 2 senior advisors (1 from the General Secretariat of the Ministry of Justice and another from the General Secretariat of the Ministry of Finance), as well as 1 operational assistant, were already appointed, pursuant to article 3 of Decree 164/2022.

Strategic resources of MENAC

On January 25 of this year, two fundamental strategic documents were approved by MENAC:

- a) The Strategic Plan for 2023-2025
- b) The Activities Plan for 2023

Financial resources of MENAC

Financial resources allocated to MENAC are the ones determined in the State's Budget and the following own revenues:

- a) The proceeds of fines collected that, in accordance with the law, revert to its benefit;
- b) The subsidies, donations, inheritances, legacies and any donations made in its favor by public or private entities, accepted in legal terms;
- c) The product of the sale of its own assets or the constitution of rights over them;
- d) Proceeds from the sale of publications;
- e) The balance of the previous year's management.

In the State Budget Law for 2023 (Law n. 24-D/2022, of December 30) the allocation assigned to the MENAC is of € 2.103.558,00 and this shows up in Map 4¹ attached to the State Budget Law for 2023.

- a) A comparative piece of data: the Council for the Prevention of Corruption (CPC), which works with the logistical and financial support of the Court of Auditors and whose powers pass to MENAC, had an annual budget allocation in 2022 of €114,176.34.
- b) So, in 2023 there is an increase in financial means allocated to the prevention of corruption in accordance also with the increased powers that MENAC has in relation to the CPC.

Facilities of MENAC

As regards facilities, the Ministry of Justice made available, pursuant to article 2 of Ordinance n. 164/2022, of June 23, a property (located at Escadinhas de S. Crispim n. 7, 1149-049 Lisboa) and carried out the respective rehabilitation workings to allow the installation of MENAC.

First national awareness campaign of the MENAC

The recent national awareness campaign, carried out in December 2022, by the MENAC, including within the school framework, sought to encourage the repudiation of various forms of corruption, with the respective denunciation a result of the culture of integrity that is sought to be deepened. Please check [here](#).

¹ Due to an error in the publication of the Maps attached to the State Budget Law for 2023 this sum only shows up in Map 4 after the publication of the Declaration of Rectification n. 1-A/2023, of January 3 (*Diário da República 1st series page 38(-7)*).

The role of MENAC and whistleblowing

The new General Regime on the Prevention of Corruption adopted through the Decree-Law 109-E/ 2021 that also creates the MENAC establishes several obligations to legal persons 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 (Article 2).

These “covered entities”, in accordance with Article 5, have to adopt and implement a 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 program and a whistleblowing channel in order to prevent, detect and sanction acts of corruption and related offences carried out against or through the entity.

In accordance with Article 6(6) the covered entities shall ensure that the PPR is 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.

Article 7(5) establishes, for the codes of conduct, that the covered entities are due to ensure the publicity of the code of conduct to their employees, and should do so through the intranet and on its official webpage, if any, within 10 days of its implementation and respective revisions. In Article 20(3) and (4) administrative sanctions are established for the non compliance with such publicity obligations.

Portugal recently adopted a law that transposes the European Union Directive on whistleblowing (Law n. 93/2021, of December 20 – please check Annex 3) which establishes the general regime for the protection of whistleblowing. This legislation improves and reinforces the protection of individuals who report crimes to the authorities from disciplinary or discriminatory action.

Awareness raising and training activities have been and are being undertaken to publicise its existence, to raise awareness and to ensure an effective compliance with such measures: several entities in academia, lawyers, public sector, among others, are multiplying events focused on this matter.

Penalties and incentives for legal persons

On the other hand, Law 94/2021, of December 21, addressed the general regime of penalties applicable to the legal persons and similar entities, contained in Articles 90-A and forth of the Criminal Code (please check translated articles in Annex 4).

While maintaining the list of main, accessory and substitute penalties up until now provided for, the new law clarifies some aspects of their application, and gives relevance to the regulatory compliance programs, promoting the commitment of the private sector in the prevention, detection and prosecution of corruption.

Thus, in accordance with Article 90-A, the adoption and implementation, prior to the commission of the crime, of an appropriate compliance program to prevent the commission of the crime or related offences, should be the cause of the special mitigation of the penalty applied to the legal person or similar entity.

The adoption and implementation of these programs after the commission of the crime and until the trial hearing must be considered when determining the concrete measure of the penalty, as established by Article 90-B.

On the other hand, the criterion for applying the accessory penalties and the possibility of this type of penalty being applied together with a substitute penalty is clarified, in particular in cases where the legal person or similar entity has not adopted and implemented a compliance program. The criterion for choosing a substitute sentence is also explained, bearing in mind the relevance of the compliance programs.

Concerning the substitute penalty of judicial surveillance, in Article 90-E, it is established that the legal person or similar entity may be accompanied by a judicial representative, for a period of one to five years, so that the latter can monitor the adoption or implementation of an appropriate compliance program to prevent the committed crime and related offences.

The court may sentence the legal person or similar entity to a penalty of judicial surveillance, while ordering the adoption and implementation of an appropriate regulatory compliance program to prevent the commission of those offences, given the accessory nature of the penalty of judicial injunction – Articles 90-E and 90-G.

It is important to stress that the wording used in the new legislation, using the words “adoption” and “implementation”, purports to make it clear that it is not enough to design a program, it must be applied in practice.

Additional information is provided in the following annexes:

Annex 1 – Strategy

Annex 2 – RGPC and MENAC – Decree-Law 109-E/2021

Annex 3 – Whistleblowing Law – Law 93/2021

Annex 4 – Criminal Code & Code of Criminal Procedure – Specific articles

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ADDITIONAL INFORMATION

***Information in relation to strengthening the role of Supreme Audit Institutions in the
prevention and fight against corruption (resolution 9/3 of the Conference of the States
Parties to the United Nations Convention against Corruption)***

About the independence of the Portuguese Court of Auditors (*Tribunal de Contas*)

The Tribunal de Contas of Portugal (TdC) legal and regulatory framework ensures its independency in all the pillars included in INTOSAI P-10 (Mexico declaration) recommended by INTOSAI:

- The nature, mandate and main competencies of the Court are laid down in the Portuguese Constitution, being Tribunal de Contas a Supreme Court incorporated in the Judiciary branch;
- The members of the Court are Judges of the highest rank in the country, and, as such, are independent, have a mandate for life – secure of tenure – and legal immunity in the prosecution of their duties;
- The mandate of the Court of Auditors includes audits of all the types and combinations, performed *a priori*, in real time and *a posteriori*, and also the possibility of judging the responsibility of public managers (Jurisdictional competencies);
- The Court is free from direction or interference of the legislative and / or executive branches, having freedom of selection of audit topics, planning, programming, conducting, reporting, and follow-up of audits;
- The court benefits from self-government, being free to organise and manage its resources, in the scope of the law;
- Tribunal de Contas has unrestricted access to information in the scope of its mandate;
- The Court is free to decide the content and timing of audit reports and to publish and disseminate them, and also to issue the related recommendations;
- The Court has its own revenues, and also a budget coming from the State, and decides the destination of its assets.

As for the measures taken to promote examining, periodically or as necessary, the applicable financial and accountable frameworks and procedures, in order to determine their effectiveness in the fight against corruption

The Court of Auditors of Portugal issues, every year, a report and opinion on the General State Account where the compliance with the existing financial and accountable frameworks and its effectiveness are assessed.

The Court also has a competency for verifying all the individual accounts of Public entities in a larger sense (about 6.500 accounts per year are registered in the electronic platform eContas) to be analysed by the Court.

Through these works, TdC issues recommendations that are to be complied by the recipient entities in a determined deadline.

For instance, the Report and Opinion about the General State Account of 2021 includes recommendations on the following main subjects:

- i. The ongoing budgetary reform;
- ii. The budgetary process;
- iii. The Central Administration Account;
- iv. The Social Security Account;
- v. Sustainability of Public Finances;

Within these recommendations, it is possible to find specific ones related to the Control and Management systems, or accountable standards and practices that have potential to prevent and fight misbehaviours, especially corruption.

Measures taken to ensure that the audited entities respond to the findings of the audit reports and implement recommendations from the Supreme Audit Institution

TdC has in place a system for the follow-up of audit recommendations, that includes a deadline for the initial answer about each recommendation issued. The Court maintains a dialogue with the audited entities about the state of compliance with the recommendations issued and, every year, an indicator is calculated in relation to the 3 immediately former years (n^{-1} , n^{-2} e n^{-3}). The established goal is to reach at least 60 % of recommendations implemented.

You can find in the Annual Activity Report of the Court this indicator, along with the examples of the impact of the implementation of recommendations for the period in analysis.

In 2021, as a result of the activity developed by the Court within the scope of the issue of Opinions on the General State Account and on the Accounts of the Autonomous Regions of the Azores and Madeira, of audits and external and internal verifications of accounts concluded during the year, 411 recommendations were made.

The main Impacts resulting from the implementation of recommendations were improvements in the following domains:

- Integration into the budget perimeter of entities previously identified as omitted
- Degree of specification or budget relevance of income and expenditure
- Implementation of the principle of unity of treasury
- Processes for reporting social benefit debts to be reimbursed
- Compliance with the applicable accounting standards
- Recording, control and recovery of revenues
- Control and regularity of expenditure
- Reliability of internal control systems
- Regulation, regularity and transparency in granting financial support
- Compliance with the Public Procurement Code
- Evaluation and management of public real estate assets
- Autonomy contracts between the Ministry of Education and schools terminated
- Improvement in the control of public expenditure and in the economic and financial sustainability of public investments
- Recovery of undue payments
- Non-accumulation of unauthorised functions
- Guarantee that any conflicts of interest that may interfere with the procedures are timely reported and registered
- Adoption of Codes of Conduct
- Approval of the National Strategy for fighting poverty

Measures taken to promote integrity and honesty through the application of Codes of Conduct in Supreme Audit Institutions and in particular measures for aligning these codes of Conduct with ISSAI 130 (the Code of Ethics of INTOSAI)

The TdC approved in the last 4 years, a new Ethical Chart value oriented and, to concretise those values, a Code of Conduct for the members of the Court and a Code of Ethics for the Staff of the support services of the Court. All of them comply with ISSAI 130, for which revision in 2016 the Court contributed in a very in-depth manner.

All these documents are published in its website (<https://www.tcontas.pt/pt-pt/etica/Pages/etica.aspx>).

In the Court, all employees must read and sign a commitment declaration with the Code. There is training every year dedicated to Ethics and Integrity and in April, the *Integrity Day* is celebrated.

There is also guidance related to ethical matters and gifts allowed are registered in stricter terms than the ones foreseen by the Portuguese legislation.

The members of the Court are obliged to declare incomes and interests, as well as the top managers of the support services.

Recent rules were issued about the duties of suppliers of the Court and also of audit experts contracted for specific audit tasks, as foreseen in ISSAI 130.

Measures taken to build and strengthen relations between national legislatures and Supreme Audit Institutions

TdC delivers and presents the Reports and Opinions on the General State Account and on the Accounts of the Autonomous regions of Azores and Madeira to the respective Parliaments every year.

On the other hand, several times a year the Court is heard by the National parliament in relation to published audit reports.

It is also important to highlight that the Parliament asks the Court to perform audits in domains of its interest (maximum 2 per year) and, although TdC is free to deny these demands, usually does the audits requested.

The Court is also heard in the Parliament about the project of Budgetary Law, essentially to report on the implementations of its related recommendations.

Measures taken to promote transparency including by publishing findings of both the anti-corruption bodies and Supreme Audit Institutions...

All the products of the Court are published in its website. Press releases are prepared for several audit reports.

Measures taken... training, education and knowledge sharing

Encouraging the strengthening of skills and improvement of professional performance is a permanent concern of the Court.

This promotes the qualification, appreciation and progressive specialization of human resources, thus contributing to the improvement the effectiveness, efficiency and quality of the service provided.

For instance, in 2020 and given the exceptional circumstances arising from the pandemic situation, much of the professional training was carried out through the available electronic platforms, with only part of the first quarter being

conducted in person. Thus, the trend to direct the actions to the specific needs of the departments remained unchanged. There were 118 internal and external training actions.

The actions carried out covered several subject matters, in particular in the areas of auditing, improvement of skills, accounting, as well as several webinars in areas of interest to the Court. Continuity was also given to the initial training for Trainee Senior Verification Officials

In 2021, the average of training hours per specialised auditor was around 44 in 105 training courses.

Examples of recent Audit reports and / or other products concerning the prevention of corruption

[Contribution New Legislature 2022.pdf \(tcontas.pt\)](#)

[relatorio-oac004-2021.pdf \(tcontas.pt\)](#)

[Microsoft Word - UtilizRecPublicGestEmergencia \(tcontas.pt\)](#)

[report_audit12-2020_executive_summary.pdf \(tcontas.pt\)](#)

Council of Ministers' Resolution 37/2021

Summary: It approves the National Anti-Corruption Strategy 2020-2024

The programme of the XXII Constitutional Government includes the fight against corruption and fraud among its fundamental objectives, knowing that these phenomena undermine the citizens' trust in its institutions, weaken the economy by increasing context costs, deteriorate the State finances, erode the foundations of the social State and accentuate inequalities.

Combating corruption is key to strengthen the quality of democracy and achieve the full realisation of the Rule of Law, ensuring effective equal opportunities, promoting greater social justice, fostering economic growth, strengthening public finances and increasing the citizens' level of confidence in the democratic institutions.

Many legislative, organisational and managerial measures have been taken over the past 30 years to prevent and prosecute corruption and fraud.

First of all, Portugal has subscribed to and incorporated into its legal system the international instruments on the prevention and prosecution of corruption and money laundering produced within the international organisations of which it is part.

Since 1994, specific legislation has also been in force, allowing preventive measures to be taken in relation to crimes of corruption, embezzlement, economic participation in business, fraud and economic and financial offences with a transnational, international or organised dimension.

The creation in 1997 of the Technical Advisory Unit of the Public Prosecution Service was essentially aimed at meeting the specific needs to support the investigation of this type of crime.

Since 1998, the Public Prosecution Service has also been equipped with units directed to the investigation of this type of crime (Central Department of Criminal Investigation and Prosecution and Sections of Investigation and Prosecution). The Criminal Police, the criminal police body with reserved competence for its investigation, incorporates into its organisational structure a specialised national unit.

On the other hand, it should be referred that in 2002 Portugal was at the forefront as regards the establishment of an extended regime on the confiscation of assets in relation to economic and financial offences and that it also introduced a special system on the breach of secrecy by the competent judicial authorities and criminal police bodies in the investigation of corruption and related offences, facilitating the access to banking and financial information.

In the same year, the recording of voice and image without the consent of the person concerned within the scope of the investigation of these crimes was legally enshrined.

In 2008, the Anti-Corruption Council was established with the task of carrying out activities in the field of prevention of corruption and related offences.

However, the realisation that only a long-term vision, pooling efforts and generating dynamics at the level of the different powers of the State, the different areas of governance and the

private and social sectors will be able to tackle this phenomenon coherently and consistently, has determined the need to design a National Anti-Corruption Strategy (Strategy).

Assuming the preventive dimension as crucial, the Strategy identifies priorities and provides for a set of articulated and integrated actions, to enable the State to act upstream of the phenomenon — forming upstanding citizens aware of their rights, improving the Administration's capacity to respond and the mechanisms for transparency in public action, activating mechanisms for the early identification of risks of fraud and corruption, preventing the creation of contexts that generate corrupt practices — thus reducing the space of need for criminal reaction, understood as the last ratio.

In addition to the measures designed to increase transparency and accountability in the political, administrative and private sector, and to increase the quality of information, the Strategy adds, in order to improve the global response to the phenomena of corruption, the criminal investigation component, with the aim of improving conditions for investigations to be carried out within a reasonable time and guaranteeing the effectiveness of the punishment.

When the first version of the Strategy was generally approved, the document was submitted for public consultation until 20 October 2020. This resulted in important contributions from the citizens, civic associations, professional bodies, trade unions and business associations, judges and lawyers. The Strategy was also at the heart of debates and conferences.

Once the document was consolidated, it was important to approve its final version and implement the measures provided for therein, in particular to submit the corresponding legislative proposals to the Assembly of the Republic.

Hence:

Pursuant to Article 199(g) of the Constitution, the Council of Ministers decides:

1 - To approve the National Anti-Corruption Strategy 2020-2024, which is annexed to this resolution and which forms an integral part thereof.

2 - Establish that this Resolution shall enter in force on the day following that of its publication.

Presidency of the Council of Ministers, 18 March 2021. — The Prime Minister, António Luís Santos da Costa.

ANNEX

(as referred to in paragraph 1)

National Anti-Corruption Strategy 2020-2024

Introduction

The programme of the XXII Constitutional Government includes among its fundamental objectives the fight against corruption, making State action more transparent and fair, promoting the equal treatment of citizens and fostering economic growth.

The fight against corruption is crucial to strengthen the quality of democracy and to achieve the full realisation of the Rule of Law and must be carried out in a holistic and balanced manner.

For a good anti-corruption strategy, it is essential to act upstream of the phenomenon, preventing the existence of contexts that create corrupt practices.

By choosing prevention as a key vector to tackle this phenomenon, the Government undertook, inter alia, to establish a national anti-corruption report, to assess the permeability of the laws to the risks of fraud, to reduce legal obscurities and bureaucratic burdens, to oblige administrative bodies to adhere to a code of conduct or to adopt their own codes of conduct, to provide some administrative bodies with an internal control department that ensures the transparency and impartiality of procedures and decisions, to improve public procurement procedures, and to oblige medium-sized and large companies to have plans to prevent corruption risks and related offences.

The achievement of the objectives and the fulfilment of the commitments assumed by the Government in its programme, implies an activity of design, planning and implementation that requires the participation of different entities and professionals, rallying various theoretical and practical knowledge.

In this context, it was considered necessary to set up, under the direct dependence of the Minister of Justice, a working group to define a national, comprehensive and integrated anti-corruption strategy, covering the moments of prevention, detection and prosecution of the corruption phenomenon.

Such a working group, headed by an academic and comprising judges, investigators from the Criminal Police (PJ), representatives of the Council for the Prevention of Corruption (CPC), the inspector general of Justice Services and technicians from the Ministry of Justice (from the Ministerial Office and the Directorate-General for Justice Policy), was set up by order of the members of the Government in the areas of finance and justice, of 21 February 2020, having presented the outcome of its work on 17 July 2020.

In the process of drafting the strategy, representatives of the Bar Association, the Notary Association, the Order of Solicitors and Enforcement Agents, the Transparency and Integrity Association, the Criminal Forum and the Economy and Management of Fraud Observatory were heard.

Some of the contributions made during these hearings were incorporated in the final document of the strategy submitted to the Minister for Justice by the working group.

Based on the document submitted by the working group, the initial version of the National Anti-Corruption Strategy 2020-2024 (Strategy) was prepared by the Ministry of Justice, which was approved by the Council of Ministers on 3 September 2020.

This was followed by a period of public consultation which ended on 20 October 2020.

The care taken to open the debate to various experts, professional associations and to the public in general was based on the idea that levels of corruption can only go down if action is taken to prevent, detect and prosecute these behaviours, involving and engaging the whole society, through its institutions, public and private organisations and the citizens.

At the end of the deadline for the submission of contributions, it was possible to observe, in a true demonstration of civic concern and commitment — which in itself fully justified the option of submitting the document to public scrutiny — the interested, thoughtful and dedicated

participation of various citizens and organisations, carried out through the ConsultaLEX platform, the press or directly with the Ministry of Justice.

Reflections and contributions were submitted by associations and groups of judges and lawyers, civic, business and professional associations, in particular the Portuguese Psychologists' Association, the Bar Association, the Transparency and Integrity Association, the Union Association of Portuguese Judges, the Union of the Public Prosecutors, the Portuguese Business Confederation (CIP), the Portuguese Business Association (AEP) and the Portuguese National Delegation of the International Chamber of Commerce, as well as by academics, judges, journalists and citizens.

Executive summary

The problem

What is corruption?

There is no definition of corruption common to all countries. Yet, it is common ground that in a corrupt conduct there is an abuse of public power or function in order to benefit a third party against payment of a sum or other type of advantage.

The Portuguese Criminal Code provides, in Articles 372 to 374-B, for crimes of undue receiving of advantage and crimes of corruption. Corruption crimes are essentially presented in two configurations: active corruption and passive corruption, depending on whether the agent is, respectively, offering/promising or requesting/accepting an undue patrimonial or non-patrimonial advantage, each being distinguished according to the act requested or to be performed, whether or not contrary to the duties of the office of the corrupted public official.

However, the concept of corruption reaches a broader sense in society, encompassing other conducts, also criminalised, committed in the course of public duties, such as the embezzlement, economic participation in business, the request of undue advantage, abuse of power, prevarication, trafficking in influence or money laundering.

From a more social and less legal perspective of the phenomenon, the non-governmental organisation Transparency International defines corruption as "the abuse of an entrusted power for private gains".

The phenomena of corruption, in their different configurations, undermine the fundamental principles of the Rule of Law, weaken the citizens' credibility and trust in the institutions and threaten social and economic development, fostering inequality, reducing investment levels, hindering the proper functioning of the economy and weakening public finances.

These phenomena affect the core of democracy, wounding its fundamental principles, in particular those of equality, transparency, integrity, free economic initiative, impartiality, legality and the fair redistribution of wealth.

They have deep harmful economic effects, such as the increase in public expenditure, through interventions devoid of real interest and for the benefit of certain persons, the retraction of investors or the distortion of competition rules.

By betraying the rules on the proper functioning of the State, the corruption phenomena cause an erosion on the rules of good governance and inevitably degrade the relationship between rulers and those ruled.

The perception of the existence of corruption phenomena has created and grew in the public opinion — fuelled by feelings of frustration or by anti-democratic drives — the idea that every exercise of political activity presumes the intention of exploiting the public thing for private purposes. In short, the lack of commitment to the common good.

This perception favours the loss of confidence in the values of democracy and weakens the institutions that represent the powers of the State.

The prevention, detection and prosecution of corruption have been established by different international bodies as core objectives of their intervention, considering the global dimension of the phenomenon and its effects on sustainable development.

The present framework...

Portugal has subscribed to and has in force, in its domestic legal system, the normative instruments elaborated by the international organisations of which it is part, which have as their object the prevention and prosecution of corruption and money laundering.

On a strictly internal level, in order to prevent, detect and prosecute the commission of acts of corruption and make their fight more effective, Portugal has progressively adopted extensive criminal, criminal procedure and regulatory legislation in several areas that potentially create risks of corruption.

For more than a decade, it has had specific legislation on the means of obtaining evidence and on the access to information with regard to criminal investigation, as well as in matters of extensive confiscation of assets, whenever it is established that the value of the assets of the criminal agent is not consistent with his lawful income (1).

Since 1994, legislation has been in force to enable the Public Prosecution Service and the PJ to carry out preventive actions in relation to crimes of corruption, embezzlement, economic participation in business, fraud in obtaining or diversion of subsidies, subventions or credits and economic and financial offences with a transnational, international dimension or committed in an organised manner (2).

Since 1997, it has established and has in operation the Technical Advisory Centre at the Public Prosecution Service (PGR), with advisory and technical functions in economic, financial, banking, accounting and securities market matters (3). Since 1977, the PJ had a unit dedicated to carrying out expertise in economic and financial matters — now called the Financial and Accounting Expertise Unit (UPFC).

It has set up a Financial Intelligence Unit (UIF) in the PJ, whose specific powers are the collection, centralisation, processing and dissemination at national level of information related to the prevention and investigation of crimes of laundering of illicit advantages, terrorist financing and taxation. The UIF also ensures internal cooperation and articulation with the judicial authorities, supervisory and inspection authorities and financial and non-financial entities, as provided for in Law 83/2017 of 18 August 2017, in its current wording; and, at international level, cooperation with financial intelligence units or similar structures.

In 2008 it set up the CPC, an independent administrative body to carry out activities in the field of prevention of corruption and related offences (4).

In 2011, under PJ, it has set up an Asset Recovery Office (GRA) with a multidisciplinary composition — involving the PJ, the Institute of Registries and Notaries, I.P., and the Tax and Customs Authority (AT) — with the task of carrying out financial and patrimonial investigations to identify, locate and seize assets arising from the commission of crimes that generate economic proceeds (5).

At the organisational-operational level, it provided the Public Prosecution Service with units dedicated to the investigation of this type of crime [Central Department of Criminal Investigation and Prosecution (DCIAP) and specialised sections of investigation and prosecution] and, within the organisational structure of the PJ, an autonomous specialised national unit with reserved competence in this field — the National Anti-Corruption Unit (UNCC).

The judicial authorities, and in particular the Public Prosecution Service, have direct and online access to a relevant set of information available in the Administration's databases, such as civil and criminal identification, tax administration, commercial, land and motor vehicle registries or the central registry of the beneficial owner.

The UIF and DCIAP, within the scope of their duties in the fight against money laundering and terrorist financing, have also immediate and unfiltered access to the Banco de Portugal's bank accounts database.

More recently, the ability to obtain evidence in a digital environment has been strengthened, by setting up and providing the PJ unit with equipment to investigate computer crimes in an IT environment.

The Recovery of Assets resulting from crime was also improved, by simplifying procedures and making the administration and management of the seized assets more profitable.

In the area of prevention, one cannot fail to recognize the adoption of corruption risk management plans and their monitoring, which today have a very large number of administrative bodies and structures that adopt and regularly update them. The CPC has played a decisive role in the design and updating of these plans.

At the end of the last legislature, an extensive set of measures was adopted, at the parliament level, with the aim of enhancing transparency and ensuring high levels of integrity in the exercise of political and public functions.

Nonetheless, in the set of social certainties acquired, the conviction remains that:

- a) the corruption phenomena are systemic and criss-cross broad sectors of political, administrative and private activity;
- b) the State, through its inspection bodies, has failed to effectively prevent, detect and prosecute corruption.

And the truth is that, for a long time, there have been difficulties in knowing the real extent of the phenomenon and the level of incidence in the different areas of activity, both public and private.

Strictly speaking, there is also no system that allows an effective assessment of the degree of efficiency and responsiveness of the various institutions already involved in the prevention and prosecution of corruption.

The data available by the PGR and the Directorate-General for Justice Policy (DGPJ) - an entity whose mission, in the whole system, is to produce information intended for official justice statistics - reveal insufficiencies and, sometimes, inconsistencies.

All this means that, despite the successive interventions made, both at the normative level and in the organizational and resources scope, it remains evident the absence of a coordinated, coherent and consistent line of action that involves the preventive and prosecution dimensions and enhances the synergies resulting from the activities of the various institutions, whose aim is to combat corruption, ensure better knowledge and use of the available means, as well as the production of quantified, qualified and updated information able to meet the needs of knowledge and characterisation of the phenomenon, safeguarding as well the reporting requirements to which the country is bound.

In short, there is still a need for a transformative action capable of generating a society hostile to corruption and able to tackle it effectively.

The way

Assuming the principle that the criminal intervention should be considered as the ultimate ratio and that the repressive capacity of the State will never be sufficient if there is no upstream intervention able to address the roots of the problem, the Strategy focuses mainly on the prevention of the phenomena of corruption.

Education, higher education and government structures of the Public Administration are called upon to assume the role of guarantor in the acquisition of personal skills and institutional tools that neutralise the possibility of reproducing the environments in which corrupt practices thrive.

The business sector is also called to participate in this joint effort.

The creation of a general regime to prevent corruption, involving obligations for the public and private sectors and establishing consequences for non-compliance, is the response identified to ensure the effectiveness of prevention.

The implementation of this regime, the need to collect, process and periodically disseminate information converge towards the creation of a Mechanism for the Prevention of Corruption and Related Offences.

In the repressive dimension, in addition to the usefulness of bringing together, in a single document, the successive in-sundry legislative interventions, of a procedural scope, the need for adjustments that focus, among others, on the connection of procedures, the regime on the mitigation and waiver of the sentence, the optimization of the effects of the full and unreserved confession and the criminal liability of legal persons has been identified.

Corruption - Data and figures

1 - The 2019 data collected and analysed by the PGR show a record of 2155 new investigations into corruption and related offences (a phenomenon covering active and passive corruption, trafficking in influence, illegitimate appropriation of public goods, harmful administration, embezzlement, economic participation in business and abuse of power), corresponding to a decrease with little statistical significance compared to 2018, when 2586 investigations were recorded. As regards the commission of these crimes, 170 charges were brought, 33 procedures were provisionally suspended and 1152 investigations were filed.

In the same period, 204 new investigations were opened to investigate the crime of money laundering, which represents a decrease in relation to 2018 (387) and 2017 (494). In relation to this type of crime 49 charges were brought and 61 filing orders were issued.

Although the fact that an association between espionage and corruption is not commonly established, the truth is that, when committed by a public official, dealing with matters related to his functional activity and involving economic considerations, it also has, at its core, a breach of the official's integrity and probity.

A set of crimes is identified, with emphasis on the trafficking in human beings and on the aid given to illegal immigration, whose practice is largely facilitated by corruption networks.

Portugal's geostrategic position, its history, its role as a gateway to Europe and Europe's privileged interlocutor with other continents, its inclusion within the European Union and in critical international organisations in the field of science, security and defence, entail specific risks for the country, which cannot be dissociated from the phenomena of corruption.

2 - The Financial Action Task Force (GAFI), in the last evaluation made to Portugal in 2017, considered that the country has a sound system to prevent and combat money laundering and terrorist financing, as a result of which Portugal was subject to the "regular follow-up" process (lower intensity follow-up and monitoring process).

The 1st Cycle of Mutual Evaluations of the Council of Europe Group of States against Corruption (GRECO) was launched in 2000 and dealt with independence, expertise and the means available to national bodies responsible for preventing and combating corruption; the 2nd Mutual Evaluation Cycle, initiated in 2003, focused on the identification, seizure and loss of proceeds from corruption, audit systems and conflicts of interest in the Public Administration, prevention on the use of legal persons as instruments for corruption, tax and financial legislation to fight corruption, organised crime and money laundering; the 3rd Mutual Evaluation Cycle, initiated in 2007, dealt with the criminalisation of corruption and transparency in the financing of political parties; the 4th Mutual Evaluation Cycle, which started at the end of 2012 and until recently underway, focused on preventing corruption in relation to members of parliaments, judges and public prosecutors; the 5th Mutual Evaluation Cycle, launched in March 2017, currently underway, focuses on the authorities that have executive functions and law enforcement agencies.

Portugal has successfully completed the implementation of the recommendations issued under the 3rd Cycle and was subject to evaluation under the 4th cycle of mutual evaluations in December 2015. In December 2017, GRECO prepared a First Compliance Report on Portugal with the Recommendations contained in the Evaluation Report and, more recently, an Interim Compliance Report in June 2019. In the last implementation exercise in June 2019, Portugal managed to improve the result of five recommendations that went from not implemented to partially implemented.

In 2018 and 2019, Portugal ranked 30th in the Corruption Perception Index (CPI) of the non-governmental organization Transparency International, having occupied the 33rd place in 2020, out of 180 countries. In the year 2020, Denmark and New Zealand were, *ex aequo*, ranked first.

3 - Corruption can have direct financial impacts on the State accounts, preventing the amount corresponding to additional expenditure or uncollected revenue from being channelled towards health, social security, education, security, justice, culture or the modernisation of the Public Administration, thereby jeopardising the objective dimension of the fundamental rights that is incumbent upon the State.

The lack of reliable data on the manifestations of the corruption phenomena, as well as a structure responsible for their processing, makes it difficult to quantify the costs of corruption at national level. It is, however, certain that corruption has financial costs that weaken the State's ability to act.

Vision

Despite Portugal's efforts to combat corruption, its characteristics still require a specialised, multidisciplinary, integrated and coordinated approach between the various bodies and entities involved in the prevention, detection and prosecution of corruption.

Such an approach must involve and make State institutions, citizens, companies and civil society organisations co-responsible for the prevention through knowledge, training and information, combined with a current, timely and effective repressive dynamic.

From a systemic perspective, the legislative apparatus, the education system, the private sector, the public administration as a whole and, in particular, the bodies with specific functions in preventing corruption, including general inspections and equivalent entities and regional inspections, as well as, in the most repressive dimension, the judiciary, will be called to intervene in this strategy.

The great goal is to transform, by strengthening the values of citizenship in its various dimensions; creating transparent, accessible institutions respected by the citizens; improving the financial capacity of the State, its ability to manage and control public funds and changing the internal and external perception on the permeability of national institutions to corruption and fraud.

The strategy pursues, in the long term, the objectives which are now summarised:

Promoting transparency and integrity as common values, which are part of a culture shared by all citizens;

Strengthening public institutions and the trust that the citizens must place in them;

Promoting and ensuring equal treatment and opportunities for all citizens;

Improving the health of the public finances, of the business environment and of the performance of the economy;

Strengthening internal security with regard to external threats.

Priorities

Considering the main risks and the strongest obstacles to effectively deal with the phenomena of corruption, the following priorities are identified:

- 1 - Improve knowledge, training and institutional practices on transparency and integrity.
- 2 - Prevent and detect the risks of corruption in public action.
- 3 - Commit the private sector in the prevention, detection and prosecution of corruption.
- 4 - Strengthen the coordination between public and private institutions.
- 5 - 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.
- 6 - Produce and disseminate from time to time reliable information on the phenomenon of corruption.
- 7 - Cooperate at international level in the fight against corruption.

Priorities

Improve knowledge, training and institutional practices on transparency and integrity

1 - Educate for citizenship — the importance of the School

If we are able to instil in our children and young people the sense of integrity, we will increase our chances of success in tackling corruption.

Corruption and related criminal phenomena have deep historical and cultural roots. Its persistence in the Portuguese society is facilitated by a still heavy and opaque bureaucratic apparatus, by the existence of public officials with low adherence to standards of probity and is fuelled by the fragility of feelings of self-censorship of those who do not hesitate to seek advantages that are not due to them and who sometimes even dare to boast of their ability to pay the price and competence to circumvent the rules.

The truth is that there is a lack of a robust dimension of formal education in this respect. Education for equality. Education for integrity and probity. The school has a key role here, instilling children and young people with an ethic of citizenship that generates feelings of repudiation in relation to such practices.

The commitment to early training therefore assumes a dimension of urgency if we want to build a social fabric endowed with a critical sense and a clear perception of the phenomenon, in its meaning as a violation of the fundamental principles of democracy and its effects on the social, economic, cultural and even reputational levels of the country.

The CPC has developed successive initiatives in the school environment, through the creation of several educational projects for all primary and secondary education cycles. Examples of such projects are “Images Against Corruption” (already in the 8th edition) and “It's better to prevent” (in the 2nd edition).

But it is important to go further, ensuring the creation of a sustained program for primary and secondary education, adjusted to each cycle, that would materialise the centrality that this theme justifies, in accordance with the provisions of Decree-Law 55/2018 of 6 July 2018, which lays down the guiding principles for the design of the curriculum of these teaching cycles. Considering the National Strategy for Citizenship Education, it is important to ensure, specifically, that the subject is comprised in the fields of Citizenship Education and worked by all students in the discipline of Citizenship and Development, within the scope of the 1st group. Documents should be elaborated for this purpose in order to be used as reference by the schools.

The universities and polytechnics, without prejudice to their scientific and pedagogical autonomy, should also play a relevant role in the prevention of corruption, offering curricular units or segments of curricular units dedicated to the subject, even in the context of courses not directly linked to the theme, where the focus to give to the training can be evaluated, according to the course and even the professional opportunities it provides.

An institution such as the Foundation for Science and Technology, I.P., the national public agency for science, technology and innovation, should promote, together with other entities, investigation and development programmes on the prevention, detection and prosecution of corruption, of an interdisciplinary nature and oriented to stimulate the scientific investigation in this field (covering, for example, the conceptualisation and use of advanced information processing and data science systems, including artificial intelligence methodologies). The opening of competitions for studies on this subject or the creation of scholarships provide incentives to deepen the interest in the investigation and to improve knowledge of the phenomenon in its various dimensions. These programmes will also promote collaboration between investigating teams and institutions and the deepening of relationships with institutions and stakeholders in the judicial system.

Teaching and knowledge will be central to the process of change that one wants to induce.

2 - Train for integrity

Head managers and public officials of the Administration

The Public Administration must cultivate integrity as a virtue, work it as a competence and assume it as a functional requirement.

A Public Administration composed of officials endowed with high ethical standards is a key condition to reduce the risks of corruption.

The establishment of a public employment relationship, the entry into certain professions and the appointment to certain positions must adopt high standards of demand, not only at the technical level but also in that of ethics. The possibility of introducing modules in admission tests that allow an initial assessment on the knowledge and degree of assimilation by candidates of the values and principles reflecting integrity would constitute a first obstacle to the access to public functions by citizens who do not meet the minimum ethical standards.

Regardless of the type of tests made to enter into public office, the subsequent training in all sectors of the Administration should incorporate contents with a strong component of preparation for probity and for the prevention of corrupt practices.

To this end, priority should be given to the institutional involvement of entities with responsibilities in the training of head managers and public officials, such as the National Institute of Administration, I.P. (INA, I.P.), the Directorate-General for the Administration and Public Employment and other entities with the capacity to carry out training activities, such as the Foundation for Studies and Training in the Local Authorities or the Institute of Public Management and Administration, as well as equivalent structures existing in the Autonomous Regions of the Azores and Madeira and the Centre for Judicial Studies, in relation to the judiciary.

The courses and programmes provided for in the Order 146/2011 of 7 April, in particular, the Advanced Public Management Course, the Public Management Training Program and the Senior Management Course in Public Administration should be enhanced with the inclusion of contents oriented to the prevention and detection of corruption.

The existence, implementation, updating and observance of regulatory compliance programs (corruption risk maps, codes of conduct, manuals of good practices) must be included in the evaluation processes, so as to ensure the effectiveness of these programmes in the dynamics of the Administration.

In order to implement regulatory compliance programs, regular training should also be promoted to enable head managers and public officials to detect corruption phenomena and react to them, as well as actions able to contribute to the incorporation of prevention or risk management plans and codes of ethics or conduct.

The training, in addition to allowing the incorporation of the instruments in force in the service or body in which the head manager or the public official is inserted, is also a means to set forth the typical dilemmas of the public official who is subject to a corrupt proposal or a possible conflict of interest. The reflection on this type of situations, in the abstract, can favour ethical decision-making in specific cases and contribute to the strengthening of an organisational culture more committed to public ethics.

The promotion of the training of instructors in the field of ethics and good practices in public services is also of great importance, considering here also the intervention of the INA, I.P. The increase in the availability of instructors will allow further training, strengthening organisational values, the assimilation of codes of ethics and conduct, the identification of situations of conflict of interest and risk mapping.

Without prejudice to the more centralised intervention referred to above, the Public Administration services and bodies must create internal structures capable of developing their own training activities, taking into account the specificities of their activity.

3 - To reinforce transparency and the dimension of integrity in the exercise of the political activity and high public office

The institutions

The Parliament has a Parliamentary Committee on Transparency and on the Statute of the Members of Parliament, set up by Law 7/93 of 1 March (6), with the aim of guaranteeing the exercise of the parliamentary mandates with effective transparency and freedom.

At the end of the last parliamentary term, between June and September 2019, four legislative acts (7) were adopted as a result of the work of the Ad hoc Commission for the Strengthening

of Transparency in the Exercise of Public Functions, set up within the Assembly of the Republic in 2016.

These legislative acts have introduced amendments to the subsidy regime that supports the political activity of the Members of Parliament, to the Statute of the Members of Parliament – in particular in the part regarding the rules on incompatibilities, reporting obligations and registration of interests - and to the regime on the exercise of functions by holders of political and high public office, regulating, in particular, the impediments to intervene in certain administrative and contracting procedures, the performance of certain duties during and after the term of their offices as well as the reporting obligations and the respective sanctioning regime - having been created an entity - the Entity for Transparency - with the objective of monitoring the single declaration of income, assets and interests of holders of political and high public offices.

Declarative obligations

The holders of political and high public office were already subject to declarative obligations.

The judges and the public prosecutors, as a result of the amendments carried out to the regime on the exercise of functions by holders of political and high public offices are subject to the declarative obligations laid down therein - single declaration of income and assets, interests, incompatibilities and impediments (Article 5 of Law 52/2019, of 31 July, Article 7-E of the Statute of the Judges and Article 6(3) of the Statute of the Public Prosecutor).

This legislative intervention ensured the universality of the declarative obligations on the part of the holders of all sovereign bodies.

The creation of a single declaration of income, assets, interests, incompatibilities and impediments and the provision for its electronic submission, reducing the complexity of procedures, contributes to improving the conditions on the compliance with the declarative obligations.

The intentional failure to submit the single declaration or its update, after notification, is now punishable by the crime of qualified disobedience, with a prison sentence of up to three years.

The falsehood, due to inconsistency between the assets or incomes that the holder of political office, high public office or magistrate was obliged to declare in a value of more than 50 minimum monthly wages, and the elements declared, with the purpose of concealing them, is also punished with a prison sentence of up to three years.

The effectiveness of the compliance with the declarative regime provided for political officeholders infers the existence of effective monitoring mechanisms. The creation of the Entity for Transparency was designed to guarantee the required control. It is necessary to complete its installation as soon as possible in order to ensure the fulfilment of the tasks assigned to it, and to allow an early evaluation of the added-value of the model adopted.

It is also essential to make the monitoring of the single declaration by the High Councils effective; they must publicise the terms and frequency of this control.

Given that the judges are, in the courts, the holders of sovereign power, and that access to the position depends on a competitive examination and a probationary period, it is important that

in the selection and training the Centre for Judicial Studies gives the required emphasis to matters of integrity and probity, first at the level of the competition procedure and, subsequently, on training.

“Revolving Doors”

The legal definition of a system on impediments applicable to political officeholders after leaving office prevents the risk of the so-called “revolving doors”.

As a result of a set of legislative initiatives adopted by Parliament at the end of 2019, executive political officeholders may not, for a period of three years as of the date of expiry of their term of office, exercise functions in private companies which are active in the sector directly supervised by them and which, during that term, have been subject to privatisation, have benefited from financial incentives or schemes of incentives and tax advantages of a contractual nature, or in respect of which they have been directly involved, unless it is a company or activity carried on at the time of the investiture.

They are also forbidden to exercise, for a period of three years as of the date of expiry of their term of office, any subordinate work or consultancy duties in international organisations with which they have established institutional relations on behalf of the Portuguese Republic, with the exception of the institutions of the European Union, organisations of the United Nations and in cases where they return to previous careers, of admission by competition procedure or referral by or on behalf of the Portuguese State.

The representatives or advisors mandated by the Republic and regional governments in procedures related to the concession or disposal of public assets are also forbidden to exercise functions in concessionary or acquiring entities in the three years following the date of concession or disposal of assets in which they have intervened.

Hence, a minimum control of the transition process to the private sector is ensured at the end of the exercise of political functions of an executive nature.

It will, nonetheless, be possible to improve the robustness of the responses identified to sanction breach of those rules. The provision of a financial penalty of a considerable value - with a ceiling equivalent to the total amount of the remuneration received as a political officeholder - would certainly have a greater deterrent potential.

Financing of the political parties

Party funding is an issue identified as critical in the area of transparency in the functioning of the democratic institutions.

The Organic Law 1/2018, of 19 April, has amended Law 19/2003 of 20 June 2003 (Law on the Financing of Political Parties and Electoral Campaigns) and Organic Law 2/2005 of 10 January 2005 (Law on the organisation and functioning of the Entity for the Political Accounts and Financing), increasing the level of scrutiny demand and clarifying the responsibilities of the Political Accounts and Financing Entity. This is not a problem of legislative omission, but of the timely and systematic application of the law.

The proper functioning of the Political Accounts and Financing Entity is a precondition for carrying out an adequate control of compliance with the financing rules of the political parties and electoral campaigns. It is important to make a rigorous and independent assessment on the operating conditions of said Entity, in order to identify the constraints that faces and to adopt the adequate solutions to overcome them. Only after this phase has been completed can the Law on the Financing of Political Parties and Electoral Campaigns be evaluated in order to understand whether it comprehensively covers the means of party funding.

With regard to the financing of political parties, it is also important to promote a more efficient publication of their accounts, in a standardised and easily accessible manner, in particular in relation to the electoral periods.

The procedures

Clear legislation, tearing the veil of opacity that stands between the citizens and the legislative process, creates societies that are more participatory and more confident in their institutions.

Despite the advances that have been made, particularly in the institutional scope, there is still a significant area for progress in the component of the legislative process and administrative procedures.

The introduction of mandatory registration of any involvement of external entities in the legislative process, from the design stage, with the establishment of a “legislative footprint” principle, is a measure that must be implemented to enhance transparency.

Draft legislation on the regulation of the activity commonly known as lobbying is pending before the Assembly of the Republic.

Other initiatives, also in the field of legislative production, are along the same lines of increased transparency, such as the deepening of the experience, already underway, in assessing the permeability of laws to the risks of fraud, corruption and related offences, such as the requirement of a prior assessment of the policy measures from the perspective of corruption or *clear legislation*, imposing a legislative evaluation to identify and prevent the creation of legal obscurities, normative contradictions or legal mazes that favour the “facilitating” administrative behaviours, particularly through the use of data science and of digital environments for legislative simulation.

Portugal’s accession to the Open Government Partnership (8), in December 2017, the establishment of the National Open Administration Network and the elaboration and approval, in December 2018, of the First National Open Administration Plan, assuming specific commitments to act and disseminate international best practices in this area, were decisive steps towards the establishment of a more transparent public administration, closer to the citizens and more capable of responding to their needs.

The promotion of the Network, as well as the updating and implementation of the Plan will introduce a new model of relationship between the Administration and the citizens, more participatory, simple and accessible.

The II National Open Administration Plan is under development.

Public procurement is one of the areas where amendments to the legal framework are warranted in order to make procedures more transparent and thus reduce the contexts that facilitate corruption.

This result can be achieved, *inter alia*, through wider publicity of the contractual procedure; the improvement of the system on impediments; a stricter densification of the principle of impartiality, extending the conflict of interest to the stage of preparation of the public procurement procedure; a better selection of related entities for the purpose of choosing those invited to participate in the procedure; the determination of the obligation of contracting entities to ensure that the operators with whom they have a relationship guarantee respect for the applicable rules in terms of preventing and combating corruption.

Despite the implementation of the Open Contracting Data Standard at the level of the public procurement, it is important to intervene by fully implementing it in the public procurement database and in the Public Procurement Observatory, improving thus the quality of the information and structuring it in terms that facilitate the extraction and processing of the data provided.

Transparency in the governance of public funds

The use of European or other funds designed to support the implementation of public policies should be monitored through appropriate, publicised and scrutinised government structures.

The main European funds are already linked, in their implementation, to governance models that guarantee the existence of internal control and scrutiny systems, both by national authorities and by the relevant European bodies. However, these models need to be improved by enhancing transparency through the publication of the processes and by implementing mechanisms that allow not only to anticipate fraud situations and implement the principles of segregation of management functions and prevention of conflicts of interest, but also to ensure accountability and strengthen audits and preventive actions among beneficiaries.

The governance model of the Recovery and Resilience Plan (PRR) provides for the existence of structures at three levels: a level of policy coordination, a level of monitoring and a level of technical coordination and monitoring. The audit functions are carried out by the Inspectorate-General of Finance (IGF), together with the bodies responsible for the prevention of corruption and fraud.

This model proves to be suitable for the prevention and detection of conflicts of interest, fraud and corruption through an internal control system that allows the confirmation of the physical and financial implementation of interventions and the prevention and early detection of irregularities.

In order to ensure greater transparency, provision is made for a mechanism to enable individualised information on the financed investments to be consulted, facilitating as well the processing of such information by different aggregates.

The area related to the allocation of public subsidies by the State and other public legal persons must also be subject to intervention, given the need to create a general regime that complements that of Law 64/2013, of 27 August.

As an example of the practice that aims to enhance transparency, ensure a healthier use of the public money and promote the involvement and trust of the citizens in public procedures, the integrity pact concluded between the Transparency International Association and the Directorate-General for Cultural Heritage should be highlighted with regard to conservation and restoration works to be carried out in the Monastery of Alcobaça. This integrity pact was the first to be concluded in Portugal in December 2018. According to Transparency International, the Integrity Pact is “a simple, flexible and adaptable instrument that allows the implementation of good contracting standards without the need for legal reforms and can be applied to a wide variety of public contracts”. The conclusion of these pacts can be considered in future projects.

On the other hand, administrative decisions that grant economic advantages above a certain amount must be taken by more than one decision-maker, thereby enshrining the ‘four eyes’ principle. It must also be publicised in order to ensure an adequate scrutiny.

The judicial sales are still a segment that justifies an increase in transparency. Transparency reasons require the strengthening of the privileged character of the electronic auction as a sales modality. The sale of goods by private negotiation (Article 811 of the Code of Civil Procedure) should not be a subsidiary modality as soon as the first attempt to sell by electronic auction is frustrated due to the lack of bidders.

4 - Reduce bureaucracy

Increase efficiency

An excessive bureaucratic mesh delays the decisions of the Public Administration and makes it difficult to access information and to decide on the citizens’ wishes in good time.

The development of transparent, effective and accountable institutions at all levels is one of the targets included in the Sustainable Development Goals of the United Nations 2030 Agenda (Objective 16 Peace, Justice and Strong Institutions).

The numbness of the interactions between the Public Administration and the citizens can create incentives for corrupt practices, either to speed up procedures or to dispense with formal requirements. The complexity of the procedures can be used to create “difficulties” and to suggest or demand compensation under the pretext of removing obstacles.

It is necessary to eliminate the administrative barriers and the regulatory complexity that make it difficult to decide, in a timely manner, on the citizens' wishes and that condition their access to information and to the decision-making process.

The successive generations of the SIMPLEX programme have given a very valuable contribution towards the simplification and reduction of the bureaucracy in the relationship between the Administration and the citizens, eliminating bureaucratic acts and administrative barriers, and promoting the citizens’ trust in the Public Administration. The new edition of the program, which has been launched in the meantime, deepens this path.

The Strategy for Innovation and Modernisation of the State and Public Administration 2020-2023, approved by the Government in June 2020, also provides tools with great potential to bring the Public Administration closer to the citizens.

As there is an unavoidable need for formal rules to guarantee the equality of the citizens vis-à-vis the Public Administration and to reduce the risk of arbitrary decisions, simple and efficient

procedures should be implemented, so as to bring the citizen closer to the Administration and foster relationships of trust.

Those employed in public functions who apply laws and regulations on a daily basis in the various sectors of the State's activity are in a privileged position to identify internal constraints and to perceive the difficulties felt by those who have to go to the public services.

The method adopted in the preparation of the Strategy for Innovation and Modernisation of the State and Public Administration 2020-2023, with the establishment of participatory workshops involving public officials from the various areas of the Administration, is aligned with this idea.

We should deepen the principle by creating dedicated channels of communication between bodies and services and the corresponding supervising entity, available, for example, on intranet networks, through which proposals can be made to improve procedures and identify acts required by law or regulation that appear to be useless or excessively burdensome, thereby facilitating their elimination or modification.

The creation of these channels promotes a culture of greater proximity and inclusion in the transformation processes within the Administration.

In addition, in order to promote efficiency, while enhancing transparency, the presence in all public entities of internal control standards — guaranteeing impartiality and compliance with legality —, duly publicised, should be ensured, in particular in the areas of procurement or inventory security. In this respect, financial management systems will be integrated with inventory and contracting systems within the direct and indirect administration of the State, extending these tools to the regional and local administration.

5 - Digitalise communications and computerise the services provided

Facilitating the citizens' access to public services and simplifying and dematerialising administrative proceedings improves the State's communication with the citizens.

The focus on a dynamic public sector at the level of information and communication technologies, as well as on modernisation and technological innovation, makes it possible, overall, to increase the efficiency and quality of the services provided and is therefore one of the Government's main designs for the digital transition, as reflected in the Digital Transition Action Plan (9).

The digitalisation of the communications between the Public Administration and the citizens facilitates the access to public services and makes it possible to standardise procedures by means of their IT template. Eliminating the need of the citizens to travel to services can help reduce the opportunities for inappropriate approaches and corrupt practices.

The III Pillar of the Digital Transition Action Plan, dedicated to the Digitalisation of the State, includes among its measures the digitalisation of the 25 public services most used by the citizens and companies, with the aim of guaranteeing simplification and online access to these services, ensuring their dematerialisation and the universal access to digital public services.

This measure is expected to actively contribute to the reduction of bureaucratic barriers in the public services and to optimise other channels of remote contact with the Public Administration, while promoting decarbonisation and significantly improving the environment.

The Public administration must therefore, in line with the goals of the Digital Transition Action Plan, continue to increase the provision of IT services.

The progressive computerisation of the services provided allows, on the other hand, the creation of intelligent systems to identify behaviour patterns associated with corrupt practices.

Indeed, there are multiple situations that, in the abstract, involve the risk of association with illicit practices. By way of illustration, it is possible to refer the creation of many undertakings or associations, by the same person, in a short period of time, without a valid justification being identifiable.

It is therefore imperative to develop IT solutions equipped with alert systems for suspicious situations.

The venality translated into the exchange of favours or the acceptance of undue advantages poses a huge risk to the State, especially in a context in which the digital transition — with the dematerialisation of information flows and proceedings, and the trend towards the interoperability of public information systems — favours the almost indiscriminate access of public officials to information available in the Administration systems.

The structuring of IT systems must address the risk of access to, and improper or abusive use of information provided by the citizens.

The security of the information, with a view to limit the access to collection needs, is essential for the citizens' trust in the digital transition process of the Public Administration.

6 - Facilitate access and improve the quality of information

A better informed citizen is a citizen more capable of identifying and reacting to inefficiencies, errors or impositions without legal or regulatory basis.

The public services and bodies should make available, in a simple way and in accessible sources, the information that the citizens need to satisfy their wishes.

The adoption, in the SIMPLEX Programme, of a measure aimed at offering citizens, when making a request, relevant information on the estimated time for decision-making, the identification of those responsible for the decision and the technicians involved in the procedure, as well as the amount to be paid for the service provided, will overcome the information gap that is currently being experienced in several sectors.

At the same time, the services and bodies of the Public Administration should develop information guides describing the services they provide, the requirements of the provision, the average decision-making time and the associated costs.

If the citizens have a practical guide that is easy to consult and in an accessible language that identifies the steps to be taken in response to a particular request to the Public Administration, they will be able to more easily monitor and analyse the interactions with the Administration, reducing the risk of undue requests. This measure also makes it possible to gradually develop relationships of trust between the citizens and the Public Administration, promoting stability, predictability and uniformity in the performance of the public services and bodies.

These guides must be in various formats - available on the website of the public services and bodies, on their premises or even accessible by telephone - in order to ensure that all citizens, regardless of their condition, have access to information.

In December 2019, the DGPI published two guides on the access to law and justice (citizens and companies) (10). In addition to a general approach and information on the access to the justice services, the “company guide” specifically addresses the issue of corruption.

A standardized procedural form should also be developed, applicable to the various administrative procedures, to offer the person the possibility of knowing immediately, and in a simplified way, the elements of the procedure in question, such as the deadline, the cost, the forms of administrative and judicial reaction, the IT steps to monitor the status of the procedure and the procedural and simplification mechanisms to be used. In the administrative procedures that operate through an electronic platform, this form must be generated automatically whenever the application to initiate the procedure is submitted.

7 - Awareness campaigns

December, anti-corruption month

Raising the citizens' awareness on the dimension, characteristics and effects of the phenomenon of corruption implies the design of campaigns which, in an accessible language, warn against the inappropriate everyday behaviour associated with corruption, thus contributing to its better detection, while encouraging its rejection. This approach is also essential for the creation of more demanding, attentive and less tolerant citizens of corrupt behaviour.

These campaigns may be carried out, inter alia, through posters available at the various front-desks of the public services and bodies, in which, in addition to the aforesaid examples, the means to report illegal requests, acceptances, donations or promises are explained.

To increase the impact of these campaigns, wider institutional advertising means, such as television, radio and newspapers, should also be used.

The United Nations declared 9 December the international day against corruption. To enhance this, December will be used to carry out actions against corruption. An annual programme that brings together initiatives in the various areas of governance will also be organised.

Prevent and detect risk of corruption in public action

1 - General instruments

The definition of clear frameworks, in terms of incompatibilities, impediments and ineligibility deriving from the exercise of political office; the implementation of rules that maximize transparency and facilitate the scrutiny of the legislative activity and the exercise of executive functions, at central, regional and local levels, in particular with regard to legislative procedures capable of generating economic advantages for specific sectors and large State contracts; the adoption of behavioural ethics standards translated into public Codes of Conduct, favour the prevention of improper conducts.

The adoption of Codes of Conduct with simple instructions in terms of conflicts of interest, acceptance of invitations, offers of goods and services and refusal of active or omitted behaviour guided by the pursuit of self-interest is a measure that can be considered by the various sovereign bodies and by the bodies of the regional and local power as suitable to prevent the corruption phenomena.

The Codes of Conduct have a clarifying function and have great potential to limit practices that erode the image of rigor and integrity of those called to hold political and high public offices.

The legislation introduced in 2019, by action of the Eventual Commission for the Strengthening of Transparency in the Exercise of Public Functions, introduced the obligation to approve Codes of Conduct, by the Assembly of the Republic, in relation to Members of Parliament, services and members of cabinets; by the Government, in relation to its members, offices and entities of the Public Administration and the public business sector of the State; by the executive bodies of the local authorities; by the governing bodies of the autonomous and regulatory entities and by the High Councils, within the framework of their respective autonomy, in relation to the magistrates.

The mandatory adoption of these Codes of Conduct, together with the incompatibilities and impediments regimes, guarantee the existence of a common standard of ethical demand in the exercise of political office and public activity.

The XXI Constitutional Government had already approved, in September 2016, a Code setting out a set of principles for the action of the Executive members and providing specific rules on matters such as conflicts of interest, acceptance of invitations or similar benefits and receiving of gifts.

This Code of Conduct was updated in 2019, already under the XXII Constitutional Government, in line with the provisions of the aforementioned Law 52/2019, of 31 July, one of the four legislative acts on transparency approved by the Parliament at the end of the last legislature.

The Codes of Conduct must be reviewed at the beginning of the legislature, at the beginning of both the functions of the Government and the executive bodies of the local authority, with the introduction of mechanisms that reinforce transparency and improve the quality of the conditions of public scrutiny.

The holders of political office, the members of their cabinets and the judges become aware of the corresponding codes of conduct in an act following their entry into office. The promotion, at least annually, of sessions that involve debate on the content and levels of compliance with the Codes of Conduct will ensure a better assimilation of the rules of the statute in the ethical and deontological scope.

Adoption of regulatory compliance programs in the public sector (public compliance programs)

On the other hand, the adoption of regulatory compliance programs (compliance programs) as a way of promoting ethics in the public action complements the training obligations and facilitates the creation of a true corruption prevention system.

The content of these programs, while drawing on the experience of the private sector, must be adapted to the specific characteristics of the bodies and services of the direct and indirect administration of the State, autonomous regions, local authorities and the business public sector, involving the functions: preparation - identify, define and structure; implementation - inform, encourage and organize; consolidation and improvement - react, sanction and improve.

Within this logic, the programs shall include the following components

- a) Risk analysis and risk prevention or management plans;
- b) Code of ethics or conduct;

- c) Mechanisms to control compliance with standards;
- d) Training of recipients and dissemination of the compliance program;
- e) Mechanisms to detect non-compliance, in particular through the creation of internal reporting channels;
- f) Sanctions for non-compliance;
- g) Internal investigations;
- h) Appointment of the person responsible for the regulatory compliance program;
- i) Periodic evaluation, whenever justified;
- j) Documentation on the activity.

Risk analysis and risk prevention and management plans

The public institutions and the State services and bodies must assess the risks of corruption and bribery associated with the type of activity they carry out, the nature of the services they provide and the context in which these services are provided.

To this end, they will have to prepare risk prevention or management plans, where the services or acts most permeable to bribery, to the use or embezzlement of funds and personal favouring or that of third parties are identified, as well as the measures to be adopted to reduce risks and ways of reacting to illicit practices.

In the preparation of these risk prevention or management plans, the so-called "Deming cycle" has been taken as a reference, which translates into four relevant moments in the process of identifying risks and preventing illegal acts.

The first moment - planning - is designed to identify, at all hierarchical levels, the risks associated with the nature of the body's activity and the services it provides, as well as the appropriate measures to prevent these risks.

The second moment - doing - consists of putting into practice the preventive measures identified at the time of planning, ensuring that the employees have the necessary training to understand these measures.

The third moment - checking - concerns the confirmation of the application of preventive measures by the employees of the services and public bodies, providing for the existence of channels to report practices that do not respect the plan, or that may constitute acts of corruption.

The fourth and last moment - acting – is designed to analyse the effectiveness (or lack of it) of the risk prevention or management plan, as well as any reported violations, and the preparation of a report that allows the improvement, if necessary, of the plan and the measures implemented.

The CPC has already warned of the need to launch the second generation of risk prevention and management plans.

Code of ethics or conduct

Associated with the elaboration of risk prevention or management programs is the elaboration of codes of ethics or conduct, which briefly, objectively and clearly, describe the behaviours expected of all employees.

These instruments must be simple, easily understandable by the recipients and adapted to the specificities of their activity. In order to achieve these results, it is recommended that all interested stakeholders be involved in the elaboration process.

At the same time, manuals of good practices should be developed, as well as measures to control conflicts of interest.

Reporting channels

The existence of reporting channels and an adequate protection of the persons that report breaches of the regulatory compliance plans are essential to ensure that those who comply with the law do not become the target of retaliation. Taking into account, in particular, legal instruments in force in the European Union, as exemplified by 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, the institutions, services and public bodies must create channels for internal reporting of regulatory breaches or acts of corruption.

Person responsible for the regulatory compliance program

For the good practical application of the regulatory compliance program, it is essential to institutionalize one or more people responsible for the program, depending on the size of the institution, body or service, who shall monitor its implementation and updating in an independent manner and with freedom as regards the decision-making vis-a-vis the universe of the program's recipients.

The functional responsibilities of those who assume this type of position are already, in some way, recognized in Portugal, in particular when the person *responsible for the regulatory compliance* is provided for by Law 83/2017, of 18 August, which establishes measures to combat money laundering and terrorist financing. Drawing inspiration from the aforementioned law and considering the goal of this Strategy, the person *responsible for the regulatory compliance* in the various services and bodies will, in particular:

Participate in the definition of the risk prevention or management plans and issue a prior opinion on them, ensuring their continuous adequacy, sufficiency and updating;

Participate in the definition, follow up and evaluation of the training policy given to head managers and public officials;

Ensure the concentration of all information regarding the design, implementation and review of the risk prevention or management programs, including reports of practices that do not comply with the plan.

2 - General Regime for the Prevention of Corruption

The coordination of all the components above mentioned must be materialized in a General Regime for the Prevention of Corruption (RGPC). With this RGPC it will be possible to remove from the domain of soft law, in general terms, the implementation of instruments such as the risk prevention or management plans, codes of ethics and conduct, reporting channels and the appointment of a person responsible for the regulatory compliance. To this end, it is proposed that sanctions be provided, in particular administrative offences, applicable to both the public and the private sector.

3 - The Corruption Prevention Mechanism

To ensure the effectiveness of anti-corruption policies, the implementation of prevention mechanisms and the operation and the effectiveness of the system, the existence of an autonomous Mechanism (or Agency) is required, which shall aggregate competence and have powers of initiative, control and sanction.

This Mechanism must be an independent entity, operating in close coordination with sectoral inspections, and shall have the purpose of guaranteeing the effectiveness of corruption prevention policies.

Within the scope of its mission, the Mechanism will be responsible for controlling the implementation of the RGPC, for checking the respective offences, processing administrative offences and imposing the corresponding fines, being also responsible for establishing a link between the public and private entities involved in matters related to the prevention and prosecution of corruption.

In addition, the Mechanism will also be responsible for the collection, processing and regular production of information on the phenomenon of corruption and for the preparation of the Anti-Corruption Report.

The Mechanism shall also be entrusted with the management of the communication platform to share good practices and with the management of the annual activity program, which should include, in particular, events and awareness-raising campaigns to provide the citizens with a more effective information on their rights and strengthen their repudiation on the corruption phenomena.

The Mechanism will work in coordination with the academia, other centres of knowledge and skills and non-governmental organizations in the production of specialized knowledge and of models and information contents for public dissemination.

4 - General inspections, equivalent entities and regional inspections

The general inspections, equivalent entities and regional inspections play a fundamental role in the system related to the prevention of corruption within the Public Administration. Those in charge can be part of the Mechanism and their activity plans must have a strong component to identify actions or omissions, reflecting the relaxation of preventive action in matters of corruption. These bodies already carry out very relevant activities in this area, facilitated by the action of the CPC, which regularly issues recommendations on corruption prevention plans and related tools.

In this line, the General Inspectorate of the Justice Services (IGSJ) began, in 2018, a deep internal reflection, having contributed to the implementation of a *strategy to consolidate a policy on the*

prevention of corruption in the Public Administration, embodied in a document consisting of two parts:

A *regulatory project*, able to be applied to the generality of services, bodies and other structures of different governmental areas, systematizing and densifying scattered orders, emphasizing some procedures, establishing others and setting deadlines so far not fixed;

The *identification of the main risks qualified as high or others especially exposed to the phenomena of corruption and other related offences* within the Ministry of Justice, and examples of good practices that, within this governmental area, would enable preventive measures to be taken to eliminate or mitigate the identified risks.

In the *regulatory project*, it was foreseen that the sectoral inspection services, taking into account their transversal nature, would disseminate among the services and bodies of their respective governmental area examples of good practices that would allow the development of preventive measures designed to eliminate or mitigate the identified risks.

At the same time, valuing the broader view of the bodies involved in the various inspection areas, but also the close knowledge of the realities of each one, the aim was to reinforce the role of the sectoral inspections, as guarantors of the permanent updating of the plans to prevent corruption and related offences.

It should also be referred that, with the incorporation of the General Inspection of the Local Administration into the IGF, in December 2011, the task of supervising the local authorities was concentrated in the latter body. The specific characteristics of the local administration call for a differentiated attention able to capture, in addition to controlling the financial administration of public revenue and expenditure, the dimensions of ethics and transparency associated with the exercise of functions in the bodies and services of the local authorities.

5 - Strengthening the effectiveness of the work of the Court of Auditors

To strengthen the control and financial inspection of the Court of Auditors is also a means to promote greater transparency and foster integrity in the action of the Administration's services and bodies, subject to its jurisdiction. The legislation that defines the powers of the Court of Auditors already reflects some inadequacy as regards the budgetary discipline, the public accounting system, as well as the evolution of the economy, society and institutions.

It is therefore important to review the Law on the Organization and Procedure of the Court of Auditors, so as to make its action more effective.

With regard to the prior inspection on the legality of the acts and contracts, the amount of exemption from this inspection was updated by Law 27-A/2020, of 24 July; now the Court of Auditors concentrates its resources on the analysis of those acts and contracts that have the highest value.

The Court's sphere of competence should also be extended, in order to cover, in particular, the entities whose activity is mostly financed by public money, or which are subject to public management control.

With regard to the financial liability, the possibility of subjecting legal persons to the regime already foreseen for natural persons should be considered.

Commit the private sector in the prevention, detection and prosecution of corruption

“The 10th principle of the United Nations Global Compact states that “Companies must fight corruption in all its forms, including extortion and bribery”. We urge companies to develop policies and concrete programmes to address all forms of corruption. We challenge companies to work collectively and join civil society, the United Nations and governments to realize a more transparent global economy.”

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Companies must play a central role in the promotion and defence of ethics in the relationships between the public and private sector, as well as in trade relations within the private sector, an area in which the phenomenon of corruption is also incident. There are no corrupted persons without corruptors.

By imposing high behavioural standards on their administrations, employees and service providers, the companies fight and discourage the emergence of corruptors.

The adoption and implementation of regulatory compliance programs by companies have been pointed out as a pathway for a greater commitment on the part of the private sector in the fight against corruption.

Regulatory compliance programs are designed to prevent and prosecute practices that are contrary to the standards in the company, against the company or through the company. With this aim, the programs prove to be an effective tool to prevent, detect and prosecute offences of an administrative and criminal nature and, particularly, to prevent, detect and prosecute the phenomenon of corruption, both in the public and private sector.

To ensure that regulatory compliance programs serve the political-criminal objective of preventing, detecting and prosecuting the phenomenon of corruption, they must be mandatory in large and medium-sized companies and consequences must be provided for their non-adoption (for example, (e.g., failure to satisfy the condition of access to a public procurement procedure, as mentioned above, and the establishment of administrative sanctions). It should also be set up, in the name of effectiveness, that regulatory compliance programs and their consequent relevance should depend on the legal setting of the content to which they must necessarily comply. The current trend is to standardise such programs, in particular by means of a law that specifies their content.

Within the scope of what has been characterized as a phenomenon of regulated self-regulation, the legal framework of the regulatory compliance programs in the private sector is part of the RGPC.

On the other hand, it is important to give positive significance to the adoption or improvement of regulatory compliance programs in relation to the criminal and administrative liability of the legal persons and equivalent entities, just like it happens in other countries, where the substantive and procedural relevance of the compliance programs are reflected in the exemption from criminal or administrative liability of the legal entities, in the determination of the penalty in a broad sense, in the consensual and amicable dispute resolution and in the application of precautionary measures. Among others, there are other examples of such relevance in Europe such as Articles 31 bis and 31 quater of the Spanish Criminal Code, sections

6 and 7 of the United Kingdom's "Bribery Act 2010", Articles 131-39-2 of the French Criminal Code and 41-1-2 of the French Criminal Procedure Code and Articles 6, 12, 17 and 49 of the Italian Legislative Decree 231 of 8 June 2001 (Disciplina della responsabilita' amministrativa delle persone giuridiche, delle societa' and delle associazioni anche prive di personalita' giuridica); and in Latin America, Articles 8 and 9 of the Argentine Law of 1 December 2017, (Ley de responsabilidad penal de las personas jurídicas por delitos de cohecho, concusión y otros delitos), Articles 3, 6 and 17 of Chilean Law 20 393, of 2 December, 2009 (Ley de responsabilidad penal de las personas jurídicas en los delitos de lavado de activos, financiamiento do terrorismo y delitos de cohecho) and Article 7 of Brazilian Law 12 846, of 1 August 2013 (Law on administrative and civil liability of legal entities for the practice of acts against the Public Administration, national or foreign).

The adoption or improvement of the regulatory compliance programs is encouraged due to their positive impact on the criminal and administrative liability of the legal persons and equivalent entities. By exempting them from liability, mitigating their punishment and providing different and less restrictive solutions and procedural means, the State promotes an entrepreneurial culture of regulatory compliance based on the criminal and administrative liability of legal persons and equivalent entities. With gains as well from the point of view of the prevention, detection and prosecution of unlawful behaviour by individual persons, in particular due to the possibility of reporting through the company's channel, and consequent internal investigation, and its contribution to the criminal or administrative liability of the person concerned.

The relationship between the criminal and administrative liability of the legal entities and the regulatory compliance programs motivates the introduction of amendments in the national legal system, even if the model of imputing the fact to the legal person or equivalent entity adopted in the Criminal Code, in ancillary criminal legislation and in legislation on administrative offences (base model of hetero-liability) is not reviewed, notwithstanding the increased relevance of such programs when the model of self-responsibility is adopted.

Without reviewing the provisions of Article 11 of the Criminal Code, amendments that give substantive relevance to the regulatory compliance programs are warranted, in particular, in terms of determining the penalty in a broad sense (determination of the applicable penalty, determination of a specific measure and choice of the penalty), reviewing the scope of the main, accessory and substitute penalties applicable to the legal persons and equivalent entities.

In addition to these changes, it is important to consider others that give procedural relevance to the regulatory compliance programs. In order to be able to do so, however, it is necessary to fill a gap that has long been identified by Portuguese doctrine and jurisprudence - the provision of specific rules of a criminal procedural nature when the defendant is a legal person or equivalent entity, just like it happens in the legal systems that make legal entities criminally and administratively liable (for example, in the French, Spanish, Chilean, Argentinian, German and Italian legal systems).

The Portuguese doctrine and jurisprudence have identified such a need, in particular, regarding the status of defendant, the representation of the accused legal person or equivalent entity in criminal proceedings, the coercive measures and the financial guarantee, statements through the legal representative and in particular the right to silence, jurisdiction by connection, notifications, the *in absentia* declaration, the second-degree appeal against a conviction, the regime of semi-public and private crimes, the dismissal in case of waiver of sentence and the provisional stay of proceedings.

Bearing in mind the experience of comparative law, the criminal procedural relevance of the regulatory compliance programs is translated, in particular, in the coercive measures applied to the legal person or equivalent entity, given that they can have a positive impact on the procedural requirements of a precautionary nature that justify them, and in the consensual procedural solutions such as the provisional stay of proceedings (for example, provisional stay of proceedings with an injunction on the legal person to adopt a regulatory compliance program or to improve it). It may also occur in the use of the evidence produced in internal investigations. To this end the procedural law must expressly lay down the conditions under which such evidence may be valued in the criminal or administrative proceedings.

While pursuing the objective of committing the private sector in the fight against the phenomenon of corruption, now specifically in its detection and prosecution, the usefulness of the central registry of the beneficial owner should be expanded - in particular by cross-checking data with the banking institutions and consequent detection of declarative discrepancies and report to the authorities – in order to make it possible, in a simpler and more efficient way, to disregard the legal personality and to act against the beneficial owner of a given organization. The existence of reporting channels is an instrument of the greatest importance in the prevention of corruption between private parties, criminalised by Law 20/2008, of 21 April, whose expression, as mentioned, is not inconsequential.

Enhance the coordination between public and private institutions

The success of the anti-corruption policies depends, to a large extent, on a fruitful cooperation between a set of public institutions and between these and private ones. To this cooperation, are convened in particular:

The entities that make up the Internal Control System of the State's Financial Administration (and, within this, the strategic control, which is entrusted to the IGF - Audit Authority, as well as the sectoral control, under the remit of the sectoral inspections), regarding in particular the preventive work they carry out in relation to the phenomenon of corruption;

The Court of Auditors, as an entity entrusted with the external control of the State's action and of the public sector, and on which the experience of the CPC is based;

The courts, the Public Prosecution Service and the criminal police bodies with reserved competence in the prevention and prosecution of corruption;

Private organizations whose purpose is to study and understand corrupt practices.

The establishment of a permanent exchange of information on good practices and on new strategies for the prevention, detection and prosecution of the corruption phenomena certainly leads to greater efficiency in the performance of connected institutions. The exchange of information could be facilitated through the creation of “digital banks” and of a communication platform to bring together several institutions.

The creation of such a platform will be made easier with the funds from the Recovery and Resilience Mechanism.

With the same goal, a meeting should be organized every two years, involving public and private, national and international institutions, where they can express their assessment on the state of the Country with regard to the effectiveness of the anti-corruption policies, and submit

proposals to improve the prevention, detection and repression tools. The Anti-Corruption Mechanism will be responsible for creating, operating and monitoring the above mentioned communication platform and for organizing and promoting the aforesaid meeting of the institutions.

The creation of a platform with the objectives outlined above is not unprecedented.

In the specific field of sports, the Council of Europe Convention on the Manipulation of Sports Competitions, signed and ratified by Portugal and in force as of 1 September 2019, establishes the obligation of each State to identify a national platform designed to handle the manipulation of sports competitions.

This platform should, in particular, in accordance with national law, function as an information centre, collecting and conveying to the competent organizations and authorities information relevant to the fight against the manipulation of sports competitions; coordinate the fight against manipulation of sports competitions; receive, centralize and analyse information on irregular and suspicious bets in sports competitions held in the national territory and, where appropriate, issue alerts; transmit information about possible breaches of the law or sports legislation to public authorities or sports organizations and/or sports betting operators; and cooperate with all relevant organizations and authorities, at a national and international level, including with the national platforms of other States.

The platform should also ensure that conditions are created for those who want to report safely.

This platform should involve the government areas and the public and private entities relevant in the field of sports and sports betting and in the prevention, detection and sanctioning regarding the manipulation of sports competitions.

It is necessary to implement and/or reinforce the coordination mechanisms and create privileged communication channels between institutions that share information needs or specific interests, which occurs, in particular, between sectoral inspection areas (general inspections and equivalent entities and regional inspections), and the AT and UNCC within the PJ.

Being able to benefit from the abovementioned coordination and from the strategies developed and instituted by the aforesaid entities, the regulatory authorities, professional public associations and other competent entities in certain sectors of activity should also be held accountable for imposing additional measures on the sectors they supervise, promoting good practices in sectors such as finance, construction, sports and essential public services.

To ensure a more effective and uniform application of the legal mechanisms to prosecute corruption, improves the response time of the judicial system and guarantees the adequacy and effectiveness of the punishment

Although Portugal has successively adopted extensive criminal and criminal procedure legislation to prevent and prosecute the phenomena of corruption, some adjustments should be made in order to ensure a more effective and uniform application of the legal mechanisms to prosecute corruption, improve the response time of the judicial system and guarantee the adequacy and effectiveness of the punishment.

The dispersion of legislative acts on related subjects does not favour a systemic interpretation nor does it allow the best use of the available legal instruments.

The successive interventions that have been made did not always ensure the harmony and internal coherence of the prosecution system.

The initiatives described below have the aim to improve the quality of the legislation in terms of prosecution, facilitating the clarification of the crime, bringing justice within a reasonable time, and reducing the scope of impunity.

1 - Unification and standardization of rules, compilation of legislation, updating and standardisation of legal concepts, regulatory impact assessment

It is necessary to review the various legislative acts that have as their object the prosecution of corruption and related offences (such as Law 36/94, of 29 September, Law 5/2002, of 11 January, and Law 19/2008, of 21 April), preferentially by aggregating in a single legislative act the solutions provided for therein, as this facilitates the search, interpretation and application of the law.

With regard to the statute of limitations in criminal proceedings, it appears that, in some cases, Article 118(1/a) of the Criminal Code only contemplates the types of crime provided for in that Code, incoherently leaving out those provided for in special legislation.

The 15-year statute of limitations for criminal proceedings must also be extended to the crimes provided for in Article 20, Article 23(1) and Articles 26 and 27 of Law 34. /87, of 16 July (embezzlement, economic participation in business, abuse of powers and breach of secrecy), in Articles 10-A and 12 of Law 50/2007, of 31 August (offering or undue receiving of an advantage), in Articles 36 and 37 of the Military Justice Code (passive corruption for the commission of illegal acts and active corruption) and Article 299 of the Criminal Code, where the purpose or activity of the criminal association is directed towards the commission of one or more crimes for which an exceptional period of 15 years is provided.

It is also important to ponder on the inclusion of Article 11 (prevarication) of Law 34/87, of 16 July, among those crimes.

Considering the evolution observed in the business public sector, in the military justice system and in the concept of holder of a high public office, it is crucial to review the provisions of Article 386 of the Criminal Code, regarding the concept of public official, in order to better comply with the requirements set out in the principle of criminal legality.

The concept of public official in Article 386 has changed since 1995 (2001, 2007, 2010 and 2015). However, a review of the concept is still warranted, as has been pointed out by doctrine and jurisprudence. Recently, the Supreme Court of Justice ruled on the matter through Decision 3/2020, of 18 May.

With regard to the confiscation of proceeds and advantages of a typical unlawful act and extended confiscation of assets, it is essential to fill the consistent gap on the lack of procedural rules for cases of confiscation of assets without conviction (Article 110(5) of the Criminal Code), given the manifested insufficiency of Article 335(5) of the Criminal Procedure Code.

Ex-post legislative impact assessments should be carried out systematically, so that subsequent legislative amendments can be properly supported, in particular when the innovative laws have been in force for a short time.

Not always the less satisfactory results of the laws are attributable to the laws themselves, as shown below.

As far as the confiscation of proceeds and advantages of a typical unlawful act respects, the creation, by Law 45/2011 of 24 June 2011, and the subsequent establishment of the GRA and the Asset Administration Office (GAB), not exhausting the possibilities of public prosecutors to act in the context of the confiscation of assets, constitutes an extremely important instrument in this area. However, despite the unanimous recognition of the special and general preventive effects of these solutions with regard to economic and financial crime, it appears that the use of these instruments by the judges is still quite unequal, particularly by reference to certain parts of the country, where these data suggest a lack of practice or awareness on its use.

Thus, according to the PGR data, during 2019, GRA was requested to intervene in 112 cases (12 in the Lisbon region, 68 in the Porto region, 14 in the Coimbra region, 11 in the Évora Region and 7 in DCIAP).

The 112 interventions of the GRA, at national level, predominantly concerned tax offenses (25), drug trafficking (23), qualified abuse of trust and against social security (17), fraud (12), money laundering (10), embezzlement (9), corruption (8), trafficking in human beings (6), fraud in obtaining subsidy (3), intentional insolvency (3) incitement to prostitution and other sexual offenses (3), in addition to cases of harmful administration, criminal association, smuggling, counterfeiting, computer crimes, car trafficking, qualified theft or aiding illegal immigration.

Assets and amounts totalling (EUR) 28 610 373.60 were seized or attached, and the Public Prosecution Service, in the charges/liquidations drawn up, requested the restitution of patrimonial advantages resulting from the commission of crimes in the amount of (EUR) 36 940 739.91.

The GAB was requested to intervene in 90 situations (12 in the Lisbon region, 51 in the Porto region, 15 in the Coimbra region, 10 in the Évora region and 2 in the DCIAP). The global value of the goods delivered was (Euro) 19,221,167.00.

The PGR Project Monitoring Office has submitted an application to the Internal Security Fund to promote a project to train and empower the public prosecutors in the area of asset recovery in criminal proceedings, with a special focus on the practical use of specific legal instruments for this purpose, including as well the international judicial cooperation for the identification, seizure and recovery of assets located in another State.

2 - Waiver of sentence, mitigation of sentence and provisional stay of proceedings

The complexity of the economic and financial crime, the difficulties inherent to its investigation, the need to resort to more effective means of investigation, as well as its consequences on the lives of the citizens, on the State's finances and on the economy, justify not only that the State, as legislator, waives or mitigates the sentence of the defendant who reports the crime or actively collaborates in the discovery of the truth, but also that the State acknowledges the provisional stay of proceedings regarding the crime of active corruption.

Indeed, the granting of a less severe criminal treatment — in particular with the special mitigation of the sentence, the waiver of the sentence or even the provisional stay of proceedings — is already registered in the institutes in force in the national legal system. This is the case, at present, of the Criminal Code and of in sundry legislation for certain crimes, particularly with regard to the crime of corruption and other related offences.

In the law in force, however, there are reasons to introduce amendments that take into account the need to ensure a more effective and uniform application of the so-called "plea bargaining" on corruption, overcoming unjustified obstacles to the application of the respective legal system, as well as certain inaccuracies which have been pointed out by the doctrine.

The defendants who decide to break the corruptive pact see their sentence waived when they report the crime before criminal proceedings are lodged. If, after the initiation of the criminal procedure, they contribute decisively to the discovery of the truth in the inquiry or pre-trial phase, the sentence may be waived. The sentence is specially mitigated if the defendants actively collaborate in the discovery of the truth until the end of the trial hearing in the first instance, making a relevant contribution to the proof of their responsibility or to the proof of the responsibility of others.

Waiver of the sentence and special mitigation of the sentence

The regimes on the waiver and special mitigation of the sentence, in terms of corruption of public officials, corruption of holders of political or high public office, corruption of sports agents and corruption in international trade and in the private sector must be standardized, and the Criminal Code should also be aligned with ancillary legislation.

The waiver of the sentence should be prevented when there is a mere omission of the negotiated act; this always requires the collaboration of the agent of the crime, not limited by the "maximum period of 30 days after the commission of the act".

Provision should be made for a differentiated regime on corruption for unlawful acts or omissions: in cases of corruption for unlawful acts or omissions, the waiver of the sentence shall only be admissible if the act or omission contrary to the duties of the office has not yet been carried out; in the other cases, there may be a waiver of sentence even if the act or omission not contrary to the duties of the office has been committed or there has been undue receiving or offering of an advantage.

If the agent reports the crime in all its aspects before criminal proceedings are initiated, the waiver should become mandatory. Such shall always occur with the involvement of a judge, of a pre-trial phase or a trial, in order to validate its assumptions.

If the agent collaborates decisively in the discovery of the truth during the inquiry or pre-trial phase, even if he has not reported the crime before criminal proceedings are lodged, the waiver of the sentence may be allowed if the assumptions of subparagraphs a) b) and c) of paragraph 1 of Article 74 of the Criminal Code are met.

If the assumptions of subparagraphs a), b) and c) of paragraph 1 of Article 74 of the Criminal Code are met, even in cases where the waiver of the sentence is mandatory, the case may still be filed if the sentence is waived aside, as provided for in Article 280 of the Code of Criminal Procedure, otherwise, it is at trial that the defendant must be discharged from sentence.

The waiver of the sentence should also cover crimes that, not being committed against eminently personal property, derive from the crimes of receiving or offering undue advantage or corruption, or that were intended to continue or hide these crimes or their proceeds, provided that the agent has reported them or has decisively contributed to their discovery.

The judicial decision that decrees the waiver of the sentence is a convictional sentence, in accordance with Article 375(3) of the Code of Criminal Procedure. Hence, the extended regime on the confiscation of assets is not jeopardised (Article 12 of Law 5/2002, of January 11), nor the possibility of applying accessory penalties or the effects of said penalty.

The sentence is specially mitigated if the defendants actively collaborate in the discovery of the truth until the end of the trial hearing in the first instance, contributing in a relevant way to the proof of their responsibility or to the proof of the responsibility of others.

Provisional stay of proceedings

The application of this institute should be extended to the crimes of undue offer of advantage, and its use in the pre-trial phase should be admissible. The incorporation of the undue offer of an advantage is part of a logic of equal treatment in relation to active corruption, considering the similarity of the two legal types.

On the other hand, it must be made clear that an injunction to adopt or implement regulatory compliance programs that are appropriate to prevent the commission of undue receiving or offering of advantage or corruption can be relied upon against a defendant who is a legal person.

The decisions regarding the provisional stay of proceedings, in this type of crime, must be publicised in the legal databases of the Institute of Financial Management and Justice Equipment.

The judicial decisions that declare the confiscation of assets must also be publicised, in accordance with Article 268(1/e) of the Code of Criminal Procedure.

3 - Ancillary sentence on the interdiction to perform a duty

The adequacy and effectiveness of the punishment of corruption crimes implies that the regime on the interdiction to perform a duty, provided for in Article 66 of the Criminal Code, should be amended in order to raise the maximum limit of the period of interdiction, which may go up to 10 years, and the interdiction to perform a duty applied to a manager or administrator of a commercial company convicted of undue offer of advantages or corruption to a period between 2 and 10 years.

4 - Crimes under the liability of political officeholders and holders of high public offices

The Law on the Liability of Political Officeholders (Law 34/87, of 16 July), exists in compliance with Article 117(3) of the Constitution of the Portuguese Republic according to which “the law shall lay down the special crimes for which political officeholders may be held liable, together with the applicable sanctions and the effects thereof”.

The meaning of this constitutional imposition is not compatible with the option taken in 2010 to include holders of high public office in the Law on the Liability of Political Officeholders.

Considering the genesis and *raison d'être* of the Law on the Liability of Political Officeholders and the need to remove the legal doubts raised by the 2010 amendment, the reference to "holders of high public office" of said law is transferred to the Criminal Code, maintaining, however, the aggravated criminal framework.

Liability of the legal persons and equivalent entities for crimes under the liability of political officeholders

Article 11 of the Criminal Code, as amended in 2007, made legal persons criminally liable for the commission of corruption crimes provided for in the Criminal Code. This liability did not, however, correspond to the liability for corruption crimes by political officeholders. This gap has to be filled with the addition of a new Article to Law 34/87, of 16 July (Article 6.^o-A), from which the criminal liability of legal persons and equivalent entities for the crime of active corruption (Article 18(1) and (2)) and of undue offer of advantage (Article 16(2)) arises.

Ancillary penalties applied to political officeholders

The Criminal Code provides for the possibility of applying an accessory penalty together with the main or substitute penalty in relation to corruption and similar offences committed by holders of public offices, public officials and administrative agents. However, this possibility is not provided for political officeholders, which are covered by special legislation. In the name of the general and special preventive effectiveness, the political officeholder is now unable to be elected or appointed to political office for a period identical to that proposed for those officials and agents, under the terms provided for in the Criminal Code.

5 - Criminal liability of legal persons and equivalent entities

It is urgent to provide for specific rules of a criminal procedural nature in terms of the criminal liability of the legal persons and equivalent entities, considering, in particular, the substantive and procedural relevance of the regulatory compliance programs.

Standardization and autonomy of regimes

As it is politically-criminally desirable that the general regime on the criminal liability of the legal persons and equivalent entities be the one provided for in the Criminal Code, it is necessary to standardise the regimes, given that, following the amendments introduced in 2007, not all the rules of the ancillary legislation were amended in the sense of the general rules provided for in Article 11 of the Code. Examples of this are Articles 3 of Decree-Law 28/84, of 20 January (economic offences and offences against public health), and Article 7 of the Law 15/2001, of 5 June (General Regime on Tax Offences).

It is also politically-criminally desirable that the Criminal Code should contain the general regime of penalties applicable to legal persons and equivalent entities. The penalties provided for in ancillary legislation should therefore be reviewed, as they are not consistent with those provided for in the Criminal Code, according to the tri-partition between main, accessory and substitute penalties. Examples of lack of consistency with the general regime are Article 7 and Article 8(b) of Decree-Law 15/2001, of June 5th.

Substantive relevance of the regulatory compliance programs

Without amending the provisions of Article 11 of the Criminal Code related to the model of imputing the fact to the legal person, substantive relevance should be given to programs of regulatory compliance in terms of determining the sentence in a broad sense, similarly to what

happens in several legal systems (Spanish, French, Argentinian and Chilean, Italian and Brazilian, within the scope of the administrative liability of legal persons). This understanding is already that of the Portuguese doctrine, which, in the absence of express rules, suggests Articles 70, 71 and 72 of the Criminal Code to accept the relevance of such programs in determining the penalty of the legal person and equivalent entity.

Regarding the main penalty of a fine, relevance should be given to the adoption of the regulatory compliance program by the legal person convicted before the commission of the crime, or after its commission and until the trial hearing.

The judicial injunction, provided for in Article 90-G, should become the main penalty, with a formulation closer to the reality of the regulatory compliance programs, similar to Article 131-39-2 of the French Criminal Code, introduced in 2016.

The substitute penalty of judicial surveillance, provided for in Article 90-E, must serve the purpose of monitoring the effective compliance with a program of regulatory compliance. The passage of this penalty to the main sentence may be considered.

6 - Commercial Companies Code

The Commercial Companies Code must be amended in order to reflect the mandatory adoption of regulatory compliance programs, with regard to medium and large companies. Such programs are simultaneously instruments of prevention and prosecution of corruption.

The direct relevance of some criminal provisions that are part of the Commercial Companies Code on corruption matters, namely those referring to the crimes of illicit acquisition of quotas or shares (Article 510) and false information (Article 519) is undeniable. These are punished, however, with manifestly derisory penalties. Such is, indeed, a criticism that is made, in general, of the penalties provided for the crimes typified in this Code, along with others that justify a corrective intervention. In this regard, the non-criminalization of the behaviour such as fraudulent bookkeeping, which is of great instrumental importance in terms of economic and financial crime, should be referred.

7 - “Mega-cases”

The experience and knowledge acquired in recent years in criminal investigation, namely by the Public Prosecution Service and the PJ, allow today, without any major obstacles, to establish the path of the crime.

Yet, despite the increasing preparation, specialization and investigation training of this type of crime, the truth is that in these criminal cases there are often very large delays, both in the investigation phase and at the trial phase.

The delay in solving these cases is socially unbearable, and lowers the citizens' trust in justice, politics and on the various State institutions. In addition, the preventive effect of the punishment depends to a greater extent on the readiness of justice other than on the severity of the penalties. Moreover, the passing of time and its effects on the evidence collected significantly reduce the probability of achieving, in the end, good results, which necessarily leads to the frustration of all those involved in the successful pursuit of these procedures, including the citizens.

Rules on the connection and severance of proceedings

The Criminal Procedure Code already contains rules that make it possible to reduce the size of the so-called "mega-cases". Such does not mean that the legislator cannot improve the established regime on the connection and severance of proceedings in order to clarify the situations in which such can happen.

Article 30 of the Criminal Procedure Code provides for the severance of proceedings, namely when "the connection could represent a serious risk to the punitive intention of the State" and when "the connection could excessively delay the trial of any of the defendants" [subparagraphs b) and c) of paragraph 1 of Article 30 of the Code of Criminal Procedure], which may occur in situations where the connection leads to the danger of the deadlines set for the different procedural stages being exceeded.

In order to clarify this matter, it is necessary to amend Article 24 of the Criminal Procedure Code, expressly establishing the possibility of the court not to order the connection when it foresees that, as a result of this, the deadlines exceed the maximum duration of the pre-trial phase. A similar intervention must be made to Article 264 of the Criminal Procedure Code, providing for the possibility of the Public Prosecution Service not to order the connection when it foresees that it will lead to non-compliance with the maximum duration of the inquiry.

Simplify the production and submission of evidence at the several procedural phases

Comprised in the Criminal Information System of the Public Prosecution Service - SIC-MP - the PGR is currently developing an investigation management computer platform - ProMP - with features that allow the audio and video recording of the procedural acts carried out in the inquiry.

The electronic case processing system - MP-Codex -, private to the Public Prosecution Service, under construction, and the new interface of the CITIUS system for judges - MAGISTRATUS -, in an advanced stage of development, have features that facilitate not only the recording of the procedural acts, in video and audio, but also the referencing, treatment, organization and submission of evidence at the hearing, in more complex cases.

The PGR acquired the right to use the SIIP application, already used successfully in complex cases, an application that, based on digitalised evidence, allows its management, organization and association, ensuring faster access, interconnection and submission at the pre-trial and trial stage.

The ongoing projects were co-financed by the Justice Modernization Fund and the Internal Security Fund. The possibility of accessing funds available through the Recovery and Resilience Mechanism, within the framework of the digital transition, will make it possible to speed up the conclusion of the procedures.

The Central Criminal Pre-trial Inquiry Court

The Central Criminal Pre-Trial Inquiry Court is, par excellence, the one in which a good part of the so-called "mega-cases" are concentrated.

Its current configuration, with two judges, induces a lower degree of randomness in the distribution of cases and generates a public perception on the personalisation of the methods and decisions, which is contrary to the image of objectivity of justice. This perception is exacerbated by the fact that the procedures that are running therein have an increased degree of media coverage due to the seriousness of the facts, as their practice involve criminal activity in different regions at the national level, or due to its transnational character and, often, by the social and/or institutional positioning of their agents.

It is therefore necessary to identify a solution which, while respecting the differentiation of the court and its national jurisdiction, makes it possible to overcome the constraints identified.

The increase in the number of judges assigned to carrying out the missions of the Central Criminal Pre-Trial Court is the consensual agreed solution.

The composition of the Court must hence be reconsidered.

Preliminary hearing for procedural scheduling

Despite all the legislative and procedural management measures that can be adopted, it is not always possible to prevent the procedures from reaching a large-scale dimension.

In these cases, when such procedures reach the pre-trial or trial stage, it will be necessary, by the investigating judge or the trial judge, to make a complex scheduling of the procedural acts to be carried out. Such scheduling is subsequently notified to the different — and often numerous — procedural parties. If the scheduling of the different dates is made quickly, the situations of incompatibilities and impossibility of agenda among the various parties can be anticipated and prevented, and the continuous holding of the hearing is thus favoured.

Although the procedural scheduling agreed with the procedural parties is not excluded by our criminal procedural law, it should be expressly provided for the possibility of carrying out such a schedule in the Code of Criminal Procedure as regards the pre-trial debate and the trial hearing.

8 - Investigation methods

Difficulties in gathering evidence are known when it comes to the investigation of corruption and other related offences and, in general, economic and financial and entrepreneurial crime. In these procedures, the evidence has a strong documentary component, which, in addition to the frequent need to carry out financial and computer expertise and the subsequent analysis of all these elements, also contributes to the delay in completing the investigations.

It is recognised that a great effort has been made in the adoption of measures aimed at endowing the investigation with more resources and training through, inter alia, the use of evidence produced in internal investigations, covert actions, the breach of banking and tax secrecy and searches and researches in the digital environment.

As has already been mentioned, in the context of the criminal investigation, the Public Prosecution Service has now direct and online access to a relevant set of information available in the Administration's databases, such as the civil and criminal identification, tax administration, commercial, land and motor vehicle registries or the central registry of the beneficial owner.

The access to the data contained in Banco de Portugal's bank account database is now also possible either through a reasoned request by the judicial authorities in the context of criminal proceedings, or directly, immediately and not filtered by the UIF and DCIAP, in the context of its duties in the fight against money laundering and terrorist financing.

In this respect, work is ongoing on the transposition into national law of Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences.

This Directive lays down measures to facilitate access to and use of financial and bank account information, in particular that contained in Banco de Portugal's bank account database, by the competent authorities in order to prevent, detect, investigate and prosecute serious criminal offences, including the economic and financial crime.

The mandatory adoption of regulatory compliance programs by medium and large companies will certainly also facilitate the criminal investigation by means of evidence that can be produced in the course of internal investigations (evidence produced in the company and by the company, without the difficulties of access for those who have to produce it from outside).

It is also important to revisit the Cybercrime Law in order to better regulate the investigation methods in the digital environment, including online searches, while safeguarding that such methods must necessarily comply with the requirements of the Constitution regarding the protection of personal rights.

Recent examples of these new means of obtaining evidence are found in Spanish law (Article 588 septies a of the Ley de Enjuiciamiento Criminal, included in the chapter "registros remotos sobre equipos informáticos") and in German law (Paragraphs 100a (Telekommunikationsüberwachung) and 100b (Online-Durchsuchung) of the Strafprozessordnung).

9 - Reporting channels and adequate whistle-blower protection mechanisms

Corruption phenomena are characterised by their invisibility or opacity, and there are numerous obstacles to the investigation, which are reflected in solutions that make it possible to erase their "trace".

In order to facilitate the reporting of this type of offence, where there is no concretely determined victim and where "silence pacts" are frequent, the reporting has become an autonomous instrument of the criminal policy against corporate crime in general, and against corruption in particular. At present, the institutionalisation of a reporting channel is also part of the regulatory compliance programs, because it is one of its integral characteristics. In this case and in the other, one of the ways not to discourage the reporting, promoting the values of transparency and integrity, is to ensure adequate protection to the whistle-blowers; their contribution to the effective enforcement of the law and, to that extent, to the strengthening of the Rule of Law is undeniable.

The importance of the protection of whistle-blowers is already recognised in the United Nations Convention against Corruption, which refers in its Article 33 (Protection of Reporting Persons) that "each State Party shall consider incorporating into its domestic legal system appropriate measures to ensure protection against any unjustified treatment for any person who reports in

good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention”.

The Directive (EU) 2019/1937 was published in the Official Journal of the European Union of 26 November 2019. This Directive establishes common minimum standards on the protection of persons who report breaches of Union law and must be transposed by 17 December 2021. The transposition work is ongoing.

In the Portuguese legal system, there are already scattered rules on whistle-blowers, in particular those provided for in Law No 93/99 of 14 July (witness protection), Law No 19/2008 of 21 April (Article 4), on the fight against corruption, in Law No 83/2017 of 18 August 2017 (Article 108(5)), in the context of the fight against money laundering and terrorism, or in the Securities Code, in the General Regime of Credit Institutions and Financial Companies and in the General Framework for Collective Investment Undertakings. However, there is a need to articulate and reconcile such rules, in particular by means of a law establishing the legal regime for the protection of whistle-blowers.

The PGR has an electronic reporting system, placed on its website, with the name “Corruption: Report here”. This service is a receiver of reports of corruption and related offences committed in the context of public or private activities. Each whistle-blower is provided with an electronic access key to “access his communication and become aware of the investigation and other data of interest to him”. The whistle-blower may be asked to cooperate in order to clarify doubts or provide “additional information”. Through this access key, the whistle-blower can consult the status of the procedure and obtain information about it, in particular on the opening of the investigation, its closure, the defendants’ status, etc.

This portal has been an important means to obtain reports of crime, as is apparent from the data on the number of reports submitted and the number of inquiries and prevention actions instituted — always safeguarding that a relevant percentage of such reports corresponds to situations that are unlikely to constitute crime reporting.

According to the data collected by the PGR, in 2019, the number of reports received, in particular through this electronic reporting system, was 1966, of which 695 were submitted by identified whistle-blowers (35.4%). Its analysis led to the initiation of 249 inquiries and 31 preventive investigations, 787 reports were sent to other entities and 896 filed. Comparing 2019 with the previous two years, there is a decrease in incoming reports (20.7% less than in 2018 and 1.2% less than in 2017). In 2019 the number of inquiries opened corresponded to 12.7% of the registered reports and the preventive investigations to around 1.6%, respectively equal to and slightly lower than those recorded in 2018 (12.7 % and 1.8 %), and in both cases higher than in 2017 (9.1% and 1.3% respectively), which are consistent with the variation in the number of reports lodged every year.

Another example that can be referred is the work carried out between PJ, the Union of European Football Associations and Sportradar, in which scope the reporting platform of the Portuguese Football Federation was created, in the “Area of Integrity” of its website, which allows the submission of reports (with the possibility of anonymity), where cases of sports corruption and manipulation of results (match fixing) are reported.

10 – Plea bargaining on the applicable sentence

As a possible solution to the obstacles of celerity and efficiency in solving certain types of criminal proceedings, doctrine and jurisprudence have dealt with the theme of “negotiated justice”, which is an irreversible trend of criminal justice in some countries.

Among us, the starting point of this discussion was given by *Figueiredo Dias*, first at conferences and then in a paper published in 2011 (Plea Bargaining in Criminal Procedure — The “End” of the Rule of Law or A New “Beginning”?). Some Portuguese courts have gone along the path of plea bargaining in criminal sentences, relying essentially on the work referred to, on provisions of our Criminal Procedural Code and, at district level, on the Public Prosecution guidelines.

An amendment to the Code of Criminal Procedure to provide for the possibility of concluding a plea bargaining on the applicable sentence, at the trial stage, based on the free, complete and unreserved confession of the acts imputed to the defendant, regardless of the nature or seriousness of the alleged crime, is an option that we must follow. The plea bargaining should address the issue of the sanction rather than the issue of guilt, and should be without prejudice to the confiscation of assets, which has particular preventive relevance in crimes where illicit profit needs to be tackled.

The purpose of concluding a plea bargaining should focus mainly on the procedural economy and celerity, dismissing the evidence related to the alleged facts and only considering the confessed facts, proceeding immediately to the taking of evidence relevant to the determination of the sentence. In other words, a configuration of the institute that rewards, through the reduction of the applicable sentence, those who collaborate by holding another or other defendants liable should be excluded.

11 - Human and technical resources

It is important to recognise the efforts that have been made over the years to improve the capacity of the criminal investigation in terms of human resources and access to information. Examples include providing the PJ unit with equipment to investigate computer crimes and those committed in a IT environment; the judicial authorities’ direct access to a relevant set of information in public databases, in particular in AT; the implementation of the central registry database of the beneficial owner; improving the activity of recovering crime proceeds, simplifying procedures and making the administration and management of seized assets more profitable.

In recent years, an effort has been made to fill the human resources gap by regularising the annual recruitment of public prosecutors and the opening of recruitment competitions for the PJ.

What has just been said does not dispense with the need to maintain the investment effort in human and technical resources, in particular through specialized training and the implementation of certain IT tools.

As regards the crimes that involve specific investigation techniques and the use of forensic means, the PJ should concentrate the capacities appropriate to the response needs that may be felt.

The reorganisation of the PJ’s services operated in 2019 guarantees the most modern police model adapted to the new demands of crime.

Particular attention must be paid to the UPFC, as well as to the UNC3T, a unit that deals with computer crime and crimes committed using computer means, resorting to a methodology commonly used in economic and financial crime as well as in other forms of crime.

In very demanding and specific areas such as the public procurement, public-private partnerships, subsidy or subvention fraud or tax evasion, only the expertise of the various stakeholders and the construction of an integrated network of cooperation between entities will improve the results of the investigations and make the different interventions more efficient and effective.

The obvious burden faced by units with expertise functions in the economic, financial and accounting areas is being overcome by strengthening the human resources. It is important to set up competence centres and to establish knowledge networks, integrating experts and specialists from the internal control system of the State's financial administration, the Technical Advisory Unit of the PGR and the UPFC. Moreover, it is necessary to reinforce the training of the judges and other stakeholders in the criminal investigation, providing them with basic knowledge to enable them to grasp the meaning of the most common realities they face in the universe of the economic and financial crime.

The use of IT tools, such as CITIUS, which has facilitated and reduced the costs of communications between procedural parties, has allowed a more efficient case processing. We must now invest in other IT solutions, with analytical and information processing capacities, able to facilitate the understanding and assimilation of the content of criminal proceedings. The new interfaces on the judicial processing systems, the Magistratus and MP Codex applications, which are at an advanced stage of development, incorporate these functionalities. The use of such tools is an inevitability if technology is to be used to simplify the activities of the courts and of the Public Prosecution Service.

Produce and disseminate on a regular basis reliable information on the phenomenon of
corruption

The regular production of accurate and detailed information on the preventive activity, on the reporting made and on the investigations initiated, as well as on the outcome of investigations and the difficulties experienced in their course, is an effective tool to strengthen the fight against corruption and bring perceptions closer to reality. Indeed, experience shows us that the occurrence of a more publicised corruption case gives the public perception a more comprehensive view of the scope of the phenomenon. A longer delay in solving a more complex case influences the perception of the global response time of the formal control instances. The identification of areas with the highest occurrence of the corruption phenomena makes it possible to better guide the preventive activity, rationalising the allocation of available resources and increasing the system's level of effectiveness. Obtaining, analysing and processing data that make it possible to understand, overall and as closely as possible, the outlines of these crimes and the effectiveness of their investigation and punishment are central to the understanding of this reality.

You can only do it well if you know it well

Data on how criminal investigations are initiated, the type of whistle-blowers, the means of evidence used, the average length of each stage of the proceedings, the percentage of cases

that are filed and those that are taken to trial, those that end with convictions and acquittals, the large areas of the administration most affected by this type of phenomenon with identification of the sectors of activity or areas of regulation, degrees of hierarchy of the agents and nature of the powers exercised, the associated organisational weaknesses and the amounts involved are deemed crucial to the composition of a portrait of corruption and should be included in these analyses. And the same can be said of information that makes it possible to draw generic profiles of the corrupters and corrupted persons.

All this information, properly processed, must be easily and publicly accessible, while always safeguarding the anonymity of those concerned. This allows a more comprehensive view of the problem on the part of policy-makers and administrative authorities, and a greater scrutiny by the citizens regarding the options taken.

The existence and availability of information promotes and favours the occurrence of more rigorous searches, studies and analyses on the subject, facilitates the retrospective methodology on the analysis of cases and enhances the advantages associated with it.

Given the relevance of this type of data, both for the understanding of the phenomenon and its impact, as well as for the elaboration of prevention, detection and prosecution solutions adapted to its characteristics, it is imperative to maintain the adoption of credible, reliable and consistent information collection criteria.

Justice statistics — one of the areas of the official statistics produced by the DGPJ, within the scope of the powers delegated to it by the National Statistical Institute, I.P. — comprise data from various sources — mostly services of the Ministry of Justice — traditionally organised in four thematic areas: courts, registries and notary, police forces and investigation support bodies as well as other statistics. The data processed by DGPJ are always sent by other entities, either via CITIUS or through another established communication channel.

The data collected and disclosed by the PGR originate from communications made by the Criminal Investigation and Prosecution Departments and the Regional Public Prosecutors' Offices.

In this framework, the data available by the two entities referred to above, DGPJ and PGR, reflect different realities or perspectives of analysis.

In addition to these inconsistencies, deriving from lack of coordination and harmonisation of criteria in the collection of information, there are insufficiencies and inaccuracies which may result from the recording and updating — in databases and software used in the courts and other judicial bodies — of the relevant data related to each case, in particular the correct indication at the start of the inquiries of all the offences concerned, the identification details of all the parties involved, the dates of the facts or where they were committed.

It is also important that the information be updated in the procedural registration databases, as changes occur or new data emerge.

To ensure the effectiveness of these procedures, it is imperative that the bodies with managing powers of the structures that carry out these registers — PGR, High Council of the Judiciary, Directorate-General for the Administration of Justice, PJ — take steps to ensure that relevant data and information are properly recorded and updated throughout the inquiry and at the subsequent stages of the procedure, establishing execution guidelines and monitoring their implementation.

On the other hand, it is essential that the criminal policy report submitted by the Prosecutor General periodically to the Government and to the Assembly of the Republic be able to specify data on the mechanisms legally in force in the context of prosecution of corruption. The PGR perspective will provide an assessment on the existing mechanisms as well as a study regarding their change, if necessary.

Anti-corruption report

In addition to the aforesaid, an anti-corruption report should be drawn up every year to ensure a better understanding of the extent of the corruption phenomena, their level of incidence in the various areas and the adequacy of responses, which will help to draft active prevention and prosecution policies.

The report will include information on the crimes recorded by the law enforcement authorities and on the cases concluded in the Public Prosecution Service and in the judicial courts of 1st instance, stating the method of completion, information on the number of convicted defendants, the sentences applied and the confiscation of assets, if any. The report may also contain summaries of the facts related to breaches of the general regime on the prevention of corruption, specifying the quality of the offenders and the penalties applied, and on the corruption crimes and related offences that gave rise to the final convictions, with the necessary anonymization of data, in addition to an assessment on the legal deficiencies and obscurities that hinder the action of the formal supervisory bodies.

The processing of these data and the preparation of the report should be entrusted to the Anti-Corruption Mechanism.

Cooperate, at an international level, in the fight against corruption

“Corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential”, and “a comprehensive and multi-disciplinary approach is required to prevent and combat corruption effectively,”

United Nations Convention against Corruption

The commission of crimes of corruption, embezzlement, trafficking in influence, corruption in international trade and a whole range of other behaviours characteristic of economic and financial crime generates, throughout the world — and Portugal does not escape this reality — a substantial and highly valuable volume of assets.

Such assets are subsequently introduced into the “legitimate” financial market through transactions that constitute the practice of another crime that is intrinsically related to them: the laundering crime. Money laundering is an illegal activity that has not shown signs of slowing down, pointing the forecasts to its growth, despite the stagnation of the world economy in recent years. This is why recognition of this close link has been ensured in the United Nations Convention against Corruption (Articles 14 — Measures to combat money laundering — and 23 — Laundering of proceeds of crime) and also, among other legal instruments, in the GAFI Recommendations.

The eradication of the corruption phenomena in the public sector, in the private sector, in international trade or in the sports field is one of the greatest responsibilities and challenges of States, of the international community and of the citizens themselves.

The prevention and prosecution of corruption and money laundering are therefore an integral part of the priorities of international organisations and bodies to which Portugal is a part - such as the United Nations, the Organization for Economic Cooperation and Development (OECD), the Council of Europe - which, in order to help States create national policies in these areas, established mechanisms to periodically check the application and functioning of the conventions or international standards in these matters. As a member of these organisations and bodies, Portugal has ratified all criminal conventions on corruption.

Regarding the European normative instruments, it has been recently published the Law 58/2020 of 31 August, transposing into the Portuguese legislation, the Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May de 2018, which amends Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 December October 2018 on combating money laundering through criminal law.

With this transposition, the national legal system is equipped with substantive and procedural regulatory mechanisms deemed adequate for the prevention and prosecution of the crime of money laundering, being harmonised with the main instruments of international law, as well as in line with the recommendations and guidelines of GAFI. In particular, the scope of the typical offenses provided for in Article 368-A (money laundering) of the Criminal Code was extended, as well as the criminal framework for offenders if they are one of the entities provided for in Article 3 or in Article 4 of the Law 83/2017, of 18 August, and commit the crime in the course of their professional activities. According to the December 2017 Mutual Evaluation Report on Portugal, produced by the GAFI, “the applicable criminal sanctions are proportionate and dissuasive”.

It is important to actively pursue the work carried out within the international organisations of which Portugal is a part, in order to improve standards of transparency and accountability in the field of money laundering and improve the ability to recover assets.

The transnational character of this type of phenomenon, the fact that there are still multiple spaces that host fortunes that stem from crime, the ease with which electronic transactions are carried out, determine that the fight against these phenomena increasingly assumes a multinational character.

The cooperation between States and between them and the international organisations dedicated to the study and monitoring of this phenomenon is crucial to the success of the response that has to be given at the local level and which must be global.

Therefore, and within the scope of the national anti-corruption strategy, it is important to define courses of action that include the obligation to cooperate closely with other States and with the aforementioned international organisations, in the implementation of common standards of action. These obligations are particularly important within the framework of the European Union and the Community of Portuguese-Speaking Countries (CPLP), spaces in which the dialogue and cooperation must be strengthened, in particular as concerns the sharing of information and the exchange of specialized knowledge based on the different investigation

experiences and study of the phenomenon. This cooperation will also imply, in a relevant way, the concertation of strategies aimed at preventing the circulation, in the international financial market, of capital that proceeds from crime.

The creation of these cooperation ties within the framework of the international community creates a pressing environment on all States to follow the development of anti-corruption strategies, thus contributing to an international environment hostile to the phenomenon of corruption.

(1) Law 5/2002, of 11 January.

(2) Law 36/94, of 29 September.

(3) Law 1/97, of 16 January.

(4) Law 54/2008, of 4 September.

(5) Law 45/2011, of 24 June, approved in accordance with the Council Decision 2007/845/JHA, of 6 December.

(6) With the amendments introduced by several legislative acts, in particular Law 60/2019, of 13 August, that has made the last amendment to the Statute of the Members of Parliament.

(7) Law 44/2019, of 21 June (subsidies to support the political activity of the Members of Parliament); Law 52/2019, of 31 July (approves the regime on the exercise of functions by holders of political offices and high public offices); Law 60/2019, of 13 August (thirteenth amendment to the Statute of the Members of Parliament) and Organic Law 4/2019, of 13 September (Statute of the Entity for Transparency).

(8) Multilateral initiative, launched in September 2011 by the heads of State and Government of eight countries (South Africa, Brazil, United States of America, Philippines, Indonesia, Mexico, Norway and United Kingdom), which aims to ensure concrete commitments from governments to promote transparency, foster public participation, fight corruption and use new technologies to strengthen participatory democracy.

(9) Approved by the Council of Ministers' Resolution 30/2020, of 21 April.

(10) <https://dgpj.justica.gov.pt/Noticias-da-DGPJ/Guias-de-acesso-ao-direito-e-a-justica-para-cidadaos-e-empresas> .

ANNEX 13

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

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.

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.

Law 93/2021, of 20 December

Summary: Establishes the general regime for the protection of whistleblowers, 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.

Pursuant to article 161 (c) of the Constitution, the Assembly of the Republic decrees the following:

CHAPTER I

General Provisions

Article 1

Object

This law establishes the general regime for the protection of whistleblowers, transposing into national law 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.

Article 2

Scope of application

1 - For the purposes of this law, the following shall be considered an offence:

(a) the act or omission contrary to rules contained in the acts of the European Union referred to in the Annex to Directive (EU) 2019/1937 of the European Parliament and of the Council, to national rules implementing, transposing or complying with such acts or to any other rules contained in legislative acts implementing or transposing them, including those providing for crimes or administrative offences, concerning the fields of:

- i) Public procurement;
- ii) Financial services, products and markets and prevention of money laundering and terrorist financing;
- iii) Product safety and compliance;
- iv) Transport safety;
- v) Environmental protection;
- vi) Radiation protection and nuclear safety;
- vii) Food and feed safety, animal health and animal welfare;
- viii) Public health;
- ix) Consumer protection;
- (x) Protection of privacy and personal data and security of network and information systems;

(b) the act or omission contrary to and detrimental to the financial interests of the European Union referred to in Article 325 of the Treaty on the Functioning of the European Union (TFEU), as specified in the applicable Union measures;

(c) the act or omission contrary to the internal market rules referred to in Article 26(2) TFEU, including competition and state aid rules, as well as corporate tax rules;

(d) violent crime, especially violent and highly organised crime, as well as the crimes provided for in Article 1(1) of Law 5/2002, of 11 January establishing measures to combat organised and economic-financial crime; and

(e) the act or omission contrary to the purpose of the rules or norms covered by paragraphs (a) to (c).

2 - In the fields of national defence and security, only the act or omission contrary to the procurement rules contained in the European Union acts referred to in part i.A of the annex to Directive (EU) 2019/1937 of the European Parliament and of the Council, or contrary to the purposes of these rules, shall be considered an infringement for the purposes of this law.

Article 3

Articulation with other regimes

1 - The provisions of this law are without prejudice to the whistleblower protection regimes provided for in sector-specific European Union acts referred to in part ii of the annex of Directive (EU) 2019/1937 of the European Parliament and of the Council, or in the legislative acts of execution, transposition or which comply with such acts, whereby in all matters not provided for in such acts, or where this is more favourable to the whistleblower, the provisions of this law shall apply.

2 - The provisions of this law shall not prejudice the application of other whistleblower protection provisions more favourable to the whistleblower or to the persons referred to in Article 6 (4), as the case may be.

3 - The provisions of this law shall not prejudice the application of national or European Union law on:

(a) The protection of classified information;

(b) The protection of religious secrecy and the professional secrecy of doctors, lawyers and journalists;

(c) Legal confidentiality.

4 - The provisions of the present law shall not prejudice the rules of criminal procedure or of administrative offence procedure in its administrative or judicial phase.

5 - The provisions of this law shall not prejudice:

(a) the right of employees to consult their representatives or trade unions nor the protective rules associated with the exercise of that right;

(b) The autonomy and the right of trade unions, employers' associations and of employers to conclude a collective work regulation instrument.

Article 4

Object and content of the denunciation or public disclosure

A denunciation or public disclosure may concern offences committed, in the course of being committed or which may reasonably be expected to be committed, as well as attempts to conceal such offences.

Article 5

Whistleblower

1 - A natural person who publicly denounces or discloses an infraction based on information obtained within the scope of their professional activity, irrespective of the nature of that activity and the sector in which it is exercised, shall be considered as a whistleblower.

2 - For the purposes of the preceding paragraph, the following may be considered as whistleblowers:

(a) workers in the private, social or public sector;

b) Service providers, contractors, subcontractors and suppliers, as well as any persons acting under their supervision and direction;

c) Shareholders and persons belonging to administrative or management bodies or to supervisory or controlling bodies of legal persons, including non-executive members;

(d) Volunteers and interns, remunerated or unremunerated.

3 - The circumstance that the denunciation or the public disclosure of an infraction is based on information obtained in a professional relationship terminated in the meantime, as well as during the recruitment process or during another phase of pre-contractual negotiation of an established or non-existent professional relationship, shall not impede the consideration of a natural person as a whistleblower.

Article 6

Protection conditions

1 - A whistleblower shall benefit from the protection provided by this law if, in good faith and having serious grounds to believe that the information is true at the time of the denunciation or public disclosure, he or she reports or publicly discloses an infraction under the terms established in chapter ii.

2 - Anonymous whistleblowers who are subsequently identified shall benefit from the protection provided by this law, provided they meet the conditions set out in the preceding paragraph.

3 - A whistleblower who submits an external complaint without observing the precedence rules provided for in paragraphs (a) to (e) of Article 7 (2) shall benefit from the protection conferred by this law if, at the time of submission, he/she was unknowingly, without fault, of such rules.

4 - The protection conferred by this law shall be extended, with the necessary adaptations, to:

(a) a natural person who assists the whistleblower in the denunciation procedure and whose assistance must be confidential, including trade union representatives or workers' representatives;

(b) Third parties connected to the whistleblower, such as work colleagues or family members, who may be the target of retaliation in a professional context; and

(c) Legal persons or similar entities that are owned or controlled by the whistleblower, for which the whistleblower is employed or otherwise connected in a professional context.

5 - A whistleblower who reports an infraction to the competent institutions, organs or bodies of the European Union shall benefit from the protection set out in this law under the same conditions as a whistleblower who makes an external complaint.

CHAPTER II

Means of denunciation and public disclosure

SECTION I

Precedence between the means of denunciation and public disclosure

Article 7

Precedence between the means of denunciation and public disclosure

1 - Reports of infractions shall be submitted by the whistleblower through the internal or external reporting channels or made public.

2 - The whistleblower may only resort to external reporting channels when:

(a) There is no internal denunciation channel;

(b) The internal denunciation channel only accepts the submission of complaints by employees, and the whistleblower is not one;

(c) He/she has reasonable grounds to believe that the breach cannot be effectively known or resolved internally or that there is a risk of retaliation;

(d) He/she has initially lodged an internal complaint without having been informed of the measures envisaged or taken following the complaint within the time limits set out in Article 11; or

(e) The breach is a criminal offence or an administrative offence punishable by a fine of more than EUR 50 000.

3 - The whistleblower may only publicly disclose an infraction when:

(a) He/she has reasonable grounds to believe that the breach may constitute an imminent or manifest danger to the public interest, that the breach cannot be effectively known or addressed by the competent authorities, having regard to the specific circumstances of the case, or that there is a risk of retaliation including in the case of external reporting; or

(b) He/she has filed an internal denunciation and an external denunciation, or directly an external denunciation under the terms of this law, without appropriate measures being taken within the time limits provided for in articles 11 and 15.

4 - A natural person who, outside the cases provided for in the preceding paragraph, reports an offence to a media organ or journalist shall not benefit from the protection conferred by this law, without prejudice to the applicable rules on journalistic confidentiality and protection of sources.

5 - The provisions of this law shall not prejudice the obligation to report under article 242 of the Code of Criminal Procedure.

SECTION II

Internal whistleblowing

Article 8

Obligation to establish internal whistleblowing channels

1 - Legal persons, including the State and other legal persons governed by public law, employing 50 or more workers and, irrespective of that, entities falling within the scope of the European Union acts referred to in part i.B and ii of the Annex to Directive (EU) 2019/1937 of the European Parliament and of the Council, hereinafter referred to as obliged entities, shall have internal whistleblowing channels.

2 - Obligated entities that are not governed by public law and that employ between 50 and 249 workers may share resources with regard to the receipt of denunciations and the respective follow-up.

3 - The provisions of the previous paragraphs are applicable, with the necessary adaptations, to branches situated in national territory of legal persons with registered offices abroad.

4 - The State has at least one internal whistleblowing channel in each of the following entities:

- (a) Presidency of the Republic;
- (b) Assembly of the Republic
- (c) Each ministry or governmental area;
- (d) Constitutional Court;
- (e) Supreme Council of the Judiciary;
- (f) High Council of Administrative and Fiscal Courts;
- (g) Court of Auditors;
- (h) Prosecutor General's Office;
- (i) Representatives of the Republic in the autonomous regions.

5 - The autonomous regions shall have one internal whistleblowing channel in the regional legislative assembly and one internal whistleblowing channel for each regional secretary.

6 - Local authorities that employ 50 or more workers but have less than 10,000 inhabitants are not required to have reporting channels.

7 - Local authorities may share reporting channels for the receipt of whistleblowing and their follow-up.

Article 9

Characteristics of internal whistleblowing channels

1 - The internal whistleblowing channels allow secure submission and follow-up of whistleblowing, in order to ensure the completeness, integrity and conservation of the whistleblowing, the confidentiality of the identity or anonymity of the whistleblowers and the confidentiality of the identity of third parties mentioned in the whistleblowing, and to prevent access by unauthorised persons.

2 - Internal whistleblowing channels shall be operated internally, for the purpose of receiving and following up complaints, by persons or services designated for the purpose, without prejudice to the following paragraph.

3 - The whistleblowing channels may be operated externally, for the purpose of receiving complaints.

4 - In the situations provided for in paragraphs 2 and 3, independence, impartiality, confidentiality, data protection, secrecy and absence of conflict of interest shall be guaranteed in the performance of the functions.

Article 10

Form and admissibility of internal denunciation

1 - The internal whistleblowing channels allow, namely, the presentation of written and/or verbal complaints by employees, either anonymous or with identification of the whistleblower.

2 - If verbal whistleblowing is admissible, the internal reporting channels allow for presentation by telephone or other voice message systems and, at the request of the whistleblower, in a face-to-face meeting.

3 - The whistleblowing may be submitted using electronic authentication means with a citizen card or digital mobile key, or using other electronic identification means issued in other Member States and recognised for this purpose under Article 6 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014, provided that, in any case, the means are available.

Article 11

Follow-up of internal whistleblowing

1 - Obligated entities shall, within seven days, notify the whistleblower of the receipt of the whistleblowing and inform him/her, in a clear and accessible manner, of the requirements, competent authorities and the form and admissibility of the external whistleblowing, in accordance with articles 7(2), 12 and 14.

2 - Following the complaint, the obliged entities shall perform the appropriate internal acts for the verification of the allegations contained therein and, where appropriate, for the

termination of the reported infraction, including through the opening of an internal investigation or the communication to the competent authority for the investigation of the infringement, including the institutions, organs or bodies of the European Union.

3 - Obligated entities shall communicate to the whistleblower the measures envisaged or adopted to follow up on the complaint and the respective grounds, within a maximum period of three months from the date of receipt of the complaint.

4 - The whistleblower may request, at any time, that the obliged entities communicate the result of the analysis carried out on the complaint within 15 days after the respective conclusion.

SECTION III

External complaint

Article 12

Competent authorities

1 - External complaints shall be submitted to the authorities that, in accordance with their attributions and competences, should or may have knowledge of the matter in question in the complaint, including:

(a) The Public Prosecutor's Office

b) The criminal police bodies

c) The Bank of Portugal

d) The independent administrative authorities

e) Public institutes;

f) Inspectorates-general and similar entities and other central services of the State's direct administration endowed with administrative autonomy

g) Local authorities; and

h) Public associations.

2 - When the complaint is submitted to an authority with no jurisdiction, the complaint shall be automatically forwarded to the competent authority, and the complainant shall be notified thereof, and, in this case, the date on which the competent authority received the complaint shall be considered the date of receipt of the complaint.

3 - In cases where there is no competent authority to deal with the complaint or in cases where the complaint is addressed to a competent authority, the complaint shall be addressed to the National Anti-Corruption Mechanism and, if the latter is the authority addressed, to the Public Prosecutor's Office, which shall follow up the complaint, namely by opening an enquiry whenever the facts described in the complaint constitute a crime.

4 - If the infraction concerns a crime or a misdemeanour, external complaints may always be submitted through the external complaint channels of the Public Prosecutor's Office or the criminal police bodies, as regards the crime, and of the competent administrative authorities or police and supervisory authorities, as regards the misdemeanour.

Article 13

Characteristics of external whistleblowing channels

1 - The competent authorities shall establish channels for external denunciation, independent and autonomous from other communication channels, to receive and follow up on denunciations, that ensure the completeness, integrity and confidentiality of the denunciation, prevent access by unauthorised persons and enable its conservation in accordance with Article 20.

2 - The competent authorities shall designate the officials responsible for handling complaints, which shall include:

(a) providing all persons concerned with information on the complaint procedures, ensuring the confidentiality of advice and the identity of the persons;

(b) Receiving and following up complaints;

(c) Providing substantiated information to the complainant on the measures envisaged or adopted to follow up on the complaint, and requesting additional information if necessary.

3 - The officials referred to in the preceding paragraph shall receive specific training for the purpose of handling complaints.

4 - Every three years, the competent authorities shall review the procedures for receiving and following up complaints, taking into account their experience as well as that of other competent authorities.

Article 14

Form and admissibility of external complaint

1 - The external complaint channels allow for written and/or verbal complaints to be submitted anonymously or with identification of the complainant.

2 - External complaint channels shall allow verbal complaints to be submitted by telephone or other voice message systems and, at the request of the complainant, in a face-to-face meeting.

3 - If complaints are received through channels not intended for the purpose or by persons not responsible for their processing, they shall be immediately forwarded, without any modification, to the responsible official.

4 - Complaints shall be filed without further action when the competent authorities, through a reasoned decision to be notified to the complainant, consider that:

a) The reported infraction is of minor gravity, insignificant or manifestly irrelevant;

b) the complaint is repeated and contains no new elements of fact or law which justify taking a different approach to the first complaint; or

c) The complaint is anonymous and there is no evidence of an infraction.

5 - The provisions of the preceding paragraph are without prejudice to the provisions of criminal and administrative offence proceedings.

Article 15

Follow-up of external complaint

1 - The competent authorities shall notify the complainant of the receipt of the complaint within seven days, unless the complainant expressly requests otherwise or unless they have reasonable grounds to believe that the notification may compromise the protection of the identity of the complainant.

2 - Following a complaint, the competent authorities shall take the appropriate actions to verify the allegations contained in the complaint and, where necessary, to bring about the cessation of the reported infraction, including by initiating an investigation or proceeding or by communicating to a competent authority, including European Union institutions, bodies, offices or agencies.

3 - The competent authorities shall inform the complainant of the measures envisaged or adopted to act on the complaint and the reasons therefor within a maximum period of three months from the date of receipt of the complaint, or six months when justified by the complexity of the complaint.

4 - The complainant may request, at any time, that the competent authorities communicate the result of the analysis carried out on the complaint within 15 days of its conclusion.

Article 16

Obligation to inform

Competent authorities shall publish on their websites, in a separate, easily identifiable and accessible section, at least the following information:

- a) Conditions for benefiting from protection under this law or under the whistleblower protection regimes provided for in the sector-specific acts of the European Union referred to in Part ii of the Annex to Directive (EU) 2019/1937 of the European Parliament and of the Council or in legislative acts implementing, transposing or giving effect to such acts, where applicable;
- b) Contact details of the external reporting channels, including e-mail and postal addresses and telephone numbers, indicating whether telephone communications are recorded;
- c) Procedures applicable to reports of infringements, including how the competent authority may ask the complainant to clarify the complaint made or to provide further information, including in situations of anonymity, and the time limit within which the authority must provide the complainant with reasoned information on the actions planned or taken to follow up on the complaint;
- d) Confidentiality regime applicable to complaints, particularly regarding the processing of personal data;
- e) Type of measures that can be taken to follow up on complaints;
- f) remedies and procedures to protect against retaliation;
- g) the availability of confidential counselling for persons considering making a complaint; and
- h) the conditions under which the complainant does not incur liability for breach of confidentiality or other duties under Article 24.

Article 17

Annual Reports

The competent authorities shall submit to the Assembly of the Republic, by the end of March of each year, an annual report containing:

- a) The number of external denunciations received;
- b) The number of proceedings initiated on the basis of such denunciations and their outcome;
- c) The nature and type of infractions reported;
- d) What else they consider relevant to improve the mechanisms for lodging and following up complaints, for the protection of whistleblowers, related persons and persons targeted, and the sanctioning action.

SECTION IV

Provisions applicable to internal and external reports

Article 18

Confidentiality

- 1 - The identity of the whistleblower, as well as the information that directly or indirectly allows the identity of the whistleblower to be deduced, shall be of a confidential nature and access shall be restricted to the persons responsible for receiving or following up reports.
- 2 - The confidentiality obligation referred to in the preceding paragraph extends to anyone who has received information on reports, even if not responsible or incompetent for its receipt and processing.
- 3 - The identity of the whistleblower shall only be disclosed as a result of legal obligation or judicial decision.
- 4 - Without prejudice to the provisions of other legal provisions, the disclosure of information is preceded by written communication to the whistleblower indicating the reasons for disclosing the confidential data in question, except where the provision of that information compromises the related investigations or legal proceedings.
- 5 - Reports received by the competent authorities containing information subject to commercial confidentiality shall be treated only for the purpose of following up the report, and those who have knowledge thereof shall be bound by secrecy.

Article 19

Processing of personal data

- 1 - The processing of personal data under this law, including the exchange or transmission of personal data by competent authorities, complies with the provisions of the General Data Protection Regulation, approved by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, Law 58/2019, of 8 August, which ensures the implementation, in the national legal order, of Regulation (EU) 2016/679, and Law 59/2019, of 8 August, which approves the rules on the processing of personal data for the purpose of prevention,

detection, investigation or prosecution of criminal offences or the enforcement of criminal sanctions.

2 - Personal data that is manifestly not relevant for the processing of the report shall not be retained and shall be deleted without undue delay.

3 - The provisions of the preceding paragraph are without prejudice to the duty to retain reports submitted verbally, when such retention is made by recording the communication in a durable and retrievable support.

Article 20

Record keeping of the reports

1 - The obliged entities and the competent authorities responsible for receiving and processing reports under the terms of this law shall keep a record of the reports received and preserve it, at least for a period of five years and, regardless of such period, during the pendency of judicial or administrative proceedings relating to the report.

2 - The provisions of the preceding paragraph are without prejudice to the archival conservation rules of the judicial courts and administrative and tax courts.

3 - Complaints submitted verbally, through a recorded telephone line or other recorded voice message system, shall be recorded, after obtaining the consent of the reporting person, by means of:

(a) by making a recording of the conversation in a durable and retrievable form; or

(b) through a complete and accurate transcript of the conversation.

4 - If the channel of verbal complaint used does not allow its recording, the obliged entities and the competent authorities shall draw up a reliable record of the communication.

5 - In case the complaint is presented in a face-to-face meeting, the obliged entities and the competent authorities shall ensure, after obtaining the whistleblower's consent, the recording of the meeting by:

a) Recording the communication on a durable and retrievable medium; or

b) Reliable minutes.

6 - In the cases referred to in paragraphs 3 to 5, the obliged entities and the competent authorities allow the whistleblower to see, rectify and approve the transcript or minutes of the communication or meeting, and sign it.

CHAPTER III

Protection measures

Article 21

Prohibition of retaliation

1 - Acts of retaliation against the whistleblower are prohibited.

2 - An act or omission shall be deemed an act of retaliation if, directly or indirectly, occurring in a professional context and motivated by an internal or external report or public disclosure, it

causes or may cause the whistleblower, in an unjustified manner, material or non-material damage.

3 - Threats and attempts of the acts and omissions referred to in the previous paragraph shall also be considered acts of retaliation.

4 - Whoever commits an act of retaliation shall compensate the whistleblower for the damage caused.

5 - Independently of the civil liability to which it may give rise, the whistleblower may request the measures appropriate to the circumstances of the case in order to avoid the occurrence or expansion of the damage.

6 - The following acts, when practised within two years after the report or public disclosure, shall be presumed to have been motivated by internal or external report or public disclosure, until proven otherwise:

a) Changes in working conditions, such as functions, hours, place of work or remuneration, non-promotion of the employee or breach of labour duties;

b) Suspension of an employment contract;

c) Negative performance evaluation or negative reference for employment purposes;

d) Failure to convert a fixed-term employment contract into an indefinite-term contract, whenever the employee had legitimate expectations of such conversion;

e) Non-renewal of a fixed-term employment contract;

f) Dismissal;

g) Inclusion in a list, based on an industry-wide agreement, that may lead to the impossibility of the whistleblower finding employment in the sector or industry in question in the future;

h) Termination of a supply or service contract;

i) Revocation of an act or termination of an administrative contract, as defined in terms of the Code of Administrative Procedure.

7 - The disciplinary sanction applied to the whistleblower up to two years after the whistleblowing or public disclosure shall be presumed to be abusive.

8 - The provisions of the preceding paragraphs shall be correspondingly applicable to the persons referred to in Article 6 (4).

Article 22

Measures of support

1 – Reporting persons are entitled, under the general terms, to legal protection.

2 - Reporting persons may benefit, under the general terms, from witness protection measures in criminal proceedings.

3 - The competent authorities shall provide the necessary assistance and collaboration to other authorities in order to guarantee the protection of the reporting person against acts of

retaliation, including through certification that the reporting person is recognised as such under the terms of this law, whenever the whistleblower so requests.

4 - The Directorate-General for Justice Policy shall make information on the protection of reporting persons available on the Justice Portal, without prejudice to the mechanisms for accessing the law and the courts.

CHAPTER IV

Judicial protection

SECTION I

General provisions

Article 23

Effective judicial protection

Reporting persons shall enjoy all guarantees of access to the courts to defend their legally protected rights and interests.

Article 24

Responsibility of the reporting person

1 - The report or public disclosure of a breach, made in accordance with the requirements imposed by this law, does not constitute, in itself, grounds for disciplinary, civil, misdemeanour or criminal liability of the reporting person.

2 - Without prejudice to the secrecy regimes safeguarded by the provisions of Article 3, paragraph 3, the person who reports or publicly discloses a breach in accordance with the requirements imposed by this law shall not be liable for the violation of any restrictions on the communication or disclosure of information contained in the report or public disclosure.

3 - A person who reports or publicly discloses a breach in accordance with the requirements imposed by this law shall not be liable for obtaining or having access to the information that motivated the report or public disclosure, except in cases where obtaining or having access to the information constitutes a crime.

4 - The provisions of the preceding paragraphs are without prejudice to the possible liability of the reporting person for acts or omissions not related to the report or public disclosure, or which are not necessary for the report or public disclosure of a breach under the terms of this law.

Article 25

Protection of the person concerned

1 - The regime provided for in this law does not prejudice any rights or procedural guarantees recognised, in general terms, to the persons who, in the report or in the public disclosure, are referred to as authors of the offence or are associated to it, namely the presumption of innocence and the guarantees of defence in criminal proceedings.

2 - The provisions of this law regarding the confidentiality of the identity of the reporting person shall also apply to the identity of the persons referred to in the preceding paragraph.

3 - The person referred to in Article 6(4) (a) shall be jointly and severally liable with the reporting person for any damage caused by the report or public disclosure made in violation of the requirements imposed by this law.

4 - The Directorate-General for Justice Policy shall make available information about the rights of the person concerned on the Justice Portal, without prejudice to the mechanisms for access to the law and the courts.

Article 26

Unavailability of rights

1 - The rights and guarantees provided for in this law may not be subject to waiver or limitation by agreement.

2 - Contractual provisions that limit or hinder the lodging or follow-up of reports or the public disclosure of breaches under the terms of this law shall be null and void.

SECTION II

Administrative offences

Article 27

Administrative offences and fines

1 - It is a very serious administrative offence to:

- a) Impeding the lodging or following up of a report in accordance with the provisions of Article 7;
- b) Engaging in retaliatory acts, under the terms of article 21, against the persons referred to in article 5 or in article 6 (4);
- c) Failing to comply with the duty of confidentiality as set out in Article 18;
- d) Communicating or publicly disseminating false information.

2 - The administrative offences provided for in the preceding paragraph are punishable by fines of between 1000 (euro) and 25 000 (euro) or of 10 000 (euro) and 250 000 (euro) depending on whether the agent is a natural or legal person.

3 - It constitutes a serious administrative offence:

- a) Failing to have an internal reporting channel in accordance with the terms set out in Article 8 and Article 9(2) and (3);
- b) Having an internal reporting channel without guarantees of completeness, integrity or conservation of reports, or confidentiality of the identity or anonymity of the reporting persons or the identity of third parties mentioned in the report, or without rules preventing access to unauthorised persons, under the terms of Article 9(1);
- c) Receiving or following up on a report in breach of the requirements of independence, impartiality and the absence of conflicts of interest, under the terms of Article 9(4);
- d) Have an internal reporting channel that does not guarantee the possibility of reporting to all employees, does not guarantee the possibility of submitting a report with the identification of

the reporting person or anonymously, or does not guarantee the submission of the report in writing, orally, or both, under the terms of Article 10, paragraph 1 and the first part of Article 10 (2);

e) Refuse to meet face-to-face with the reporting person where an oral report is admissible under the terms of the final part of Article 10(2);

f) Failing to notify the reporting person of the receipt of the report or the requirements for lodging an external report pursuant to Article 7(2) within the timeframe set out in Article 11(1);

g) failure to inform or incomplete or inaccurate communication to the reporting person of the procedures for submitting external reports to the competent authorities under Articles 12 and 14 within the time limits set out in Article 11(1);

h) Failing to inform the reporting person of the outcome of the examination of the report, if the reporting person so requests, within the timeframe set out in Article 11(4);

i) Not having an external reporting channel, under the terms of Article 13(1);

j) Having an external reporting channel that is not independent and autonomous, or that does not ensure the completeness, integrity, confidentiality or preservation of the report, or that does not prevent access to unauthorised persons, under the terms of Article 13(1);

k) Failing to designate officials responsible for handling reports, under the terms of Article 13(2);

l) Failing to provide training to the officials in charge of handling reports pursuant to Article 13(3);

m) Failing to review every three years the procedures for receiving and following up complaints to ascertain whether corrections are needed or improvements can be made, pursuant to Article 13(4);

n) Not having an external reporting channel that allows, simultaneously, the submission of written, verbal, identified or anonymous reports, under the terms of Article 14 (1) and the first part of Article 14 (2);

o) Refuse a face-to-face meeting with the reporting person, under the terms of the final part of Article 14 (2);

p) Failing to publish the elements referred to in Article 16 (a) to (h) on a separate, easily identifiable and accessible section of their respective websites;

q) Failing to register or to keep the report received for at least five years, or during the pendency of judicial or administrative proceedings relevant to the report received, pursuant to Article 20 (1);

(r) Recording reports by the means set out in Article 20(3) and (5) without the consent of the reporting person;

(s) Not allow the reporting person to view, rectify or approve the transcript or minutes of the communication or meeting, under the terms provided for in Article 20(6).

4 - The administrative offences provided for in the preceding paragraph are punishable with fines of between 500 (euro) and 12,500 (euro) or of 1,000 (euro) to 125,000 (euro), depending on whether the agent is a natural or legal person.

5 - Attempt is punishable and the maximum limits of the fines identified in paragraphs 2 and 4 are reduced by half.

6 - Negligence is punishable and the maximum limits of the fines identified in paragraphs 2 and 4 are reduced by half.

Article 28

Concurrent offences

If the same fact constitutes both a crime and one of the administrative offences referred to in the previous article, the agent shall always be punished as a crime.

Article 29

Competence for processing and application of fines

1 - The processing of the administrative offences referred to in Article 27 and the application of the corresponding fines shall be incumbent upon the National Anti-Corruption Mechanism, without prejudice to the provisions set out in the following paragraph.

2 - Where the administrative offences provided for in Article 27 are committed by natural persons, legal persons or equivalent entities subject to the regimes provided for in Article 3(1), the processing of such administrative offences and the application of the corresponding fines shall be the responsibility of the authorities which have sanctioning powers under the terms of specific sectorial acts of the European Union or national legislative acts providing for the protection of reporting persons.

3 - In the cases provided for in the previous number, where there is more than one authority with sanctioning powers, the determination of the competent authority shall be made in accordance with the rules provided for in specific sectorial acts of the European Union or in national legislative acts where the protection regimes for reporting persons are provided for or, in their absence, in accordance with the terms of the general regime of the illicit offense of mere social order, approved by Decree-Law 433/82, of 27 October.

Article 30

Subsidiary regime

In all matters of administrative offences not provided for in this law, the provisions of the general regime of mere administrative offences, approved by Decree-Law 433/82, of 27 October, shall apply.

CHAPTER V

Final provision

Article 31

Entry into Force

This law shall enter into force 180 days after its publication.

Approved on 26 November 2021.

The President of the Assembly of the Republic, Eduardo Ferro Rodrigues.

Promulgated on 9 December 2021.

To be published.

The President of the Republic, Marcelo Rebelo de Sousa.

Referendum on 13 December 2021.

The Prime Minister, António Luís Santos da Costa.

CRIMINAL CODE

Article 11

Liability of the natural and legal persons

1 – Except for the provisions of paragraph 2 below and in the special cases provided for by law, only natural persons can be held criminally liable.

2 – Legal persons and equivalent entities, with the exception of the State, of other legal persons exercising public authority prerogatives and of international organisations of public law, are held liable for the crimes falling within articles 144-B, 150, 152-A, 152-B, 156, 159 and 160, in the articles 163 to 166, when the victim is a minor, and within articles 168, 169, 171 to 177, 203 to 206, 209 to 223, 225, 226, 231, 232, 240, 256, 258, 262 to 283, 285, 299, 335, 348, 353, 359, 363, 367, 368-A and 372 to 377, when committed:

a) On their behalf or on their own initiative and in their direct or indirect interest by persons who have a leading position therein; or

b) By whoever acts on their behalf or on their own initiative and in their direct or indirect interest under the authority of the persons referred to in subparagraph a) above, due to a breach of the supervision or control duties incumbent upon them.

3 – (Repealed.)

4 – Are deemed to have a leading position both the bodies and representatives of the legal person and any person with the power to exercise control of their activity, including non-executive members of the management body and members of the supervisory body.

5 – Civil companies and de facto associations are deemed to be entities equivalent to legal persons for purposes of their criminal liability.

6 - The liability of legal persons and equivalent entities is excluded when the agent acted against orders or specific instructions given by a person entitled thereto.

7 - The liability of legal persons and equivalent entities does not exclude the individual liability of the respective agents, nor does it depend upon their being liable therefore.

8 - The criminal liability of a legal person or an equivalent entity is not extinct following a demerger or a merger, and the following persons shall remain liable for the commission of the crime:

a) The legal person or equivalent entity within which the merger has taken place; and

b) The legal persons or equivalent entities resulting from the demerger.

9 — Without prejudice to the right of recourse, the persons holding a leading position are subsidiary responsible for the payment of any fines and compensations to which the legal person or equivalent entity has been sentenced in respect of criminal offences.

a) Committed in the period in which such persons held their position, without their express opposition thereto;

b) Committed at a prior time, where the insufficiency of the property of the legal person or equivalent entity to cover payment is their sole responsibility; or

c) Committed at a prior time where the final decision to impose the said payment has been notified during the period of tenure and the lack of payment is attributable to them.

10 – In case several persons are held liable under the preceding paragraph, they become jointly and severally liable.

11 – Where the fines or compensations are imposed on an entity without legal personality, their payment shall be made out of the joint property and, in the absence or insufficiency thereof, jointly and severally out of each partner's property.

Article 90-A

Applicable penalties and determination of the penalty

1 - For the crimes provided for in article 11(2), the main penalties of fine or dissolution are applicable to legal persons and equivalent entities.

2 - For the same crimes and those provided for in special legislation, the following accessory penalties may be applied to legal persons and equivalent entities:

a) Judicial injunction;

b) Prohibition to exercise the activity;

c) Prohibition to enter into certain contracts or contracts with certain entities;

d) Deprivation of the right to subsidies, grants or incentives;

e) Closure of the establishment;

f) Publicity of the convictional sentence.

3 - For the same crimes and those provided for in special legislation, the following substitute penalties may be applied to legal persons and equivalent entities, as an alternative to the fine:

a) Admonition;

b) A security given for good conduct;

c) Judicial surveillance.

4 - The court specially mitigates the penalty, in accordance with article 73, and in addition to the cases expressly provided for by law, under the provisions of article 72, considering the circumstance that the legal person or equivalent entity has adopted and implemented, before the commission of the crime, a program of regulatory compliance adequate to prevent the commission of the crime or crimes of the same type.

5 - The court applies an accessory penalty together with the main or substitute penalty, whenever this proves to be adequate and necessary to achieve the purposes of the punishment, in particular because the legal person has not yet adopted and implemented a regulatory compliance program adequate to prevent the commission of the crime or crimes of the same type.

6 - The court replaces the fine penalty with an alternative penalty that adequately and sufficiently achieves the purposes of the punishment, considering, in particular, the adoption or implementation by the legal person or equivalent entity of a regulatory compliance program adequate to prevent the commission of the crime or crimes of the same type.

Article 90-B

Fine penalty

1 - The minimum and maximum limits of the fine penalty applicable to legal persons and equivalent entities are determined with reference to the prison sentence provided for natural persons.

2 - One month in prison corresponds, for the legal persons and equivalent entities, to a 10-day fine.

3 - Whenever the penalty applicable to natural persons is exclusively or alternatively a fine, the same day-rate system is applicable to legal persons or equivalent entities.

4 - The fine penalty is fixed in days, in accordance with the criteria set out in article 71(1). It may be considered the fact that the legal person has adopted and implemented, after the commission of the crime and until the date of the trial hearing, a program of regulatory compliance with suitable control and supervision measures to prevent crimes of the same nature or to significantly reduce the risk of their occurrence.

5 - Each day-rate corresponds to an amount between (Euro) 100 and (Euro) 10 000, which the court sets according to the economic and financial situation of the convicted person and his duties towards the employees, being applied the provisions of article 47(3 to 5).

6 - At the end of the period for the payment of the fine or of any of its instalments without such being made, it takes place an act of enforcement against the property of the legal person or equivalent entity.

7 - A fine that is not voluntarily or coercively paid cannot be converted into subsidiary imprisonment.

Article 90-E

Judicial surveillance

1 - If the legal person or equivalent entity is to be subject to a fine of no more than 600 days, the court may limit itself to determining that it be accompanied by a judicial representative, for a period of 1 to 5 years, so that the latter can supervise the activity that led to the conviction, as well as monitor the effective compliance with a regulatory compliance program with suitable control and supervision measures to prevent crimes of the same nature or to significantly reduce the risk of their occurrence.

2 - The court may limit itself to determining the follow-up of the legal person or equivalent entity by a judicial representative, for a period of one to five years, so that the latter can monitor the adoption or implementation of an adequate regulatory compliance program to prevent the commission of the crime or of crimes of the same type.

3 - The judicial representative does not have management powers in the legal person or equivalent entity.

4 - The judicial representative informs the court of the evolution of the activity of the legal person or equivalent entity every six months or whenever he deems necessary.

5 - The court revokes the penalty of judicial surveillance and orders the compliance with the fine penalty determined in the sentence if the legal person or equivalent entity:

a) Commits a crime, after conviction, for which it is to be convicted and shows that the purposes of the judicial surveillance penalty could not, through it, be achieved; or

b) Fails to adopt or implement the regulatory compliance program.

Article 90-G

Judicial injunction

1 - The court may order the legal person or equivalent entity:

a) The adoption and enforcement of certain measures, in particular those necessary to stop the illegal activity or avoid its consequences; or

b) The adoption and implementation of a regulatory compliance program with suitable control and supervision measures to prevent crimes of the same nature or to significantly reduce the risk of their occurrence.

2 - The court determines the period within which the injunction must be carried out as of the date on which the sentence becomes final.

3 - The judicial injunction penalty may be combined with the accessory penalties on the prohibition to enter into contracts and deprivation of the right to subsidies, grants or incentives.

Article 116

Waiver and withdrawal of complaint

1 – The right to file a complaint may not be exercised upon express waiver of the holder thereof, or if he has carried out acts from which the waiver is necessarily assumed.

2 – The offended party may withdraw the complaint, provided that the defendant does not oppose to it, until publication of the judgment at the first instance. Withdrawal prevents the complaint from being renewed.

3 – The withdrawal of the complaint in relation to one of the co-participants in the crime benefits the others, unless they oppose it, in the cases where they also cannot be pursued without a complaint.

4 - The provisions of the preceding paragraph apply in the case of joint liability of the natural and legal person or equivalent entity.

5 – After completing 16 years of age, the offended party may request that the proceedings be closed, in the conditions provided for in paragraphs 2 and 3, upon exercise of the right to file a

complaint pursuant to article 113(4) or if the criminal proceedings have been initiated according to article 113(5/a).

CRIMINAL PROCEDURE CODE

Article 196

Term of identity and residence

1 - The judicial authority or the criminal police body shall impose a term of identity and residence in the proceedings on all those constituted as defendants, even if they have already been identified under the terms of article 250.

2 - For the purpose of being notified by ordinary postal service, under the terms of article 113(1/c), the defendant shall indicate his or her residence, place of work or other domicile of his choice.

3 - The term shall state that the person was informed of:

a) The obligation to appear before the competent authority or to remain at its disposal whenever the law requires it or whenever he is duly summoned to do so;

b) The obligation not to change residence or leave it for more than five days without notifying the new residence or the place where he can be found;

c) That the subsequent notifications shall be made by ordinary post to the address indicated in paragraph 2 above, unless the defendant communicates another address, through a request delivered or sent by registered mail to the registry where the case is running at the time;

d) That failure to comply with the provisions of the preceding paragraphs legitimates their representation by a legal counsellor in all the procedural acts at which they have the right or duty to be present, as well as the holding of a hearing in their absence, under the terms of article 333;

e) That, in case of conviction, the term of identity and residence will only be extinguished with the extinction of the sentence.

4 - In the case of a legal person or equivalent entity, the term must contain the company identification, the headquarters or place of operation of the administration and its designated representative in accordance with article 57(4) to (9);

5 - The term given by the legal person or equivalent entity shall also state that information was given on:

a) The obligation to appear, through its representative, before the competent authority or to remain at its disposal whenever the law obliges it to do so or to be duly notified;

b) The obligation to communicate within a maximum period of 5 days, changes to the company identification, namely in cases of demerger, merger or extinction, or any facts that imply the substitution of its representative, without prejudice to the effectiveness of the acts practiced by the previous representative;

c) The obligation to indicate an address where they can be notified by ordinary post and that subsequent notifications will be made at that address and by that means, except if they communicate another address, by means of a request delivered or sent by registered post to the registry where the case is running at that moment;

d) The obligation not to change the headquarters or place where the administration usually operates without notifying the new headquarters or place of operation of the administration;

e) That failure to comply with the provisions of the preceding paragraphs legitimates his representation by a legal counsellor in all the procedural acts at which he has the right or duty to be present, as well as the holding of a hearing in his absence, under the terms of article 333.

f) That, in case of conviction, the term shall only be extinguished with the extinction of the sentence.

6 - The representative may request substitution when facts occur that seriously impede or hinder the compliance with the duties and exercise of the rights of the represented party, and the substitution of the representative does not prejudice the term already provided by the represented party.

7 - In the event of demerger or merger of the legal person or equivalent entity, the legal representatives of the new persons or entities must provide a new term.

8 - The application of the measure referred to in this article is always cumulative with any other measure provided for in this book.

Article 197 Security

1 - If the imputed crime is punishable with a prison sentence, the judge may impose on the defendant the obligation to provide a security.

2 - If the defendant is unable to provide a security or has serious difficulties or inconveniences in providing it, the judge may, of his own motion or upon request, replace it with any other coercive measure(s), with the exception of preventive custody or house arrest, legally applicable to the case, which will be added to others that have already been imposed.

3 - In fixing the amount of the security, the precautionary purposes for which it is intended, the seriousness of the alleged crime, the damage caused by it and the socio-economic condition of the defendant are taken into account.

4 - If the legal person or equivalent entity is a defendant, the judge may impose the obligation to provide a security.

Article 199

Suspension of the exercise of profession, function, activity and rights

1 - If the imputed crime is punishable with a maximum prison sentence of more than 2 years, the judge may impose on the defendant, cumulatively, where applicable, with any other coercive measure, the suspension of the exercise:

- a) Of profession, function or activity, public or private;
- b) Of parental authority, guardianship, trusteeship, administration of assets or the issuance of credit instruments, whenever the prohibition of the respective exercise may be decreed as an effect of the imputed crime.

2 - When it concerns a public function, a profession or activity the exercise of which depends on a public title or on an authorisation or homologation of the public authority, or the exercise of rights provided for in subparagraph b) of the preceding paragraph, the suspension shall be communicated to the administrative, civil or judicial authority usually competent to decree the respective suspension or interdiction.

3 - If the legal person or equivalent entity is a defendant, the judge may impose the suspension of the exercise of activities, the administration of assets or issuance of securities, control of bank accounts, the right to apply for public contracts and the right to subsidies, grants or incentives granted by the State, autonomous regions, local authorities and other public legal persons.

Article 200

Prohibition and imposition of conducts

1 - If there is strong evidence of the commission of an intentional crime punishable with a prison sentence of more than 3 years, the judge may impose on the defendant, cumulatively or separately, the obligations to:

- a) Not to remain, or not to remain without permission, in the area of a certain town, parish or municipality or in the residence where the crime was committed or where the offended persons, their relatives or other persons on whom further crimes may be committed live;
- b) Not to go abroad, or not to leave without permission;
- c) Not to leave the town, parish or municipality where they live, or not to leave without permission, except to predetermined places, namely to their place of work;
- d) Not make contact, by any means, with certain people or not to frequent certain places or certain environments;
- e) Not to acquire, use or hand over weapons or other objects and utensils in his possession that are capable of facilitating the commission of another crime, within the time limit fixed for him;
- f) Subjects himself, with prior consent, to treatment in an appropriate institution for the dependency from which he suffers and which has facilitated the commission of the crime.

2 - The permissions referred to in the previous paragraph may, in urgent cases, be requested and granted verbally and a note shall be made in the proceedings.

3 - Prohibition of the defendant from going abroad shall imply that any passport in his possession be handed over to the custody of the court and that the competent authorities be notified with a view to refusal or non-renewal of passports and border control.

4 - The obligations under paragraphs a), d), e) and f) of subsection 1 may also be imposed on the defendant by the judge, if there is strong evidence of the crime of threat, coercion or persecution, within 48 hours.

5 - For the purposes of the provisions of the preceding paragraph, when the obligation under subparagraph d) is at stake and when it proves to be indispensable for the victim's protection, technical means of remote control may be applied, and the prior hearing of the suspect may be waived, in which case, if necessary, the defendant status will be made at the time of notification of the coercive measure.

6 - The application of an obligation or obligations that imply the restriction of contact between parents are immediately communicated to the representative of the Public Prosecution Office who performs functions in the competent court, for the purpose of establishing, as a matter of urgency, the respective regulation process or alteration of the regulation of the exercise of parental responsibilities.

7 - If the defendant is a legal person or equivalent entity, the judge may impose a prohibition of contacts, a prohibition of acquiring or using certain objects and the obligation to deliver certain objects.

Article 204

General Requirements

1 - No coercive measures, other than those provided for in Article 196, may be applied unless, at the time of the application of the measure, there is:

a) Escape or danger of escape;

b) Danger of disturbing the course of the inquiry or the pre-trial stage of the proceedings and, namely, danger to the acquisition, conservation or veracity of the evidence; or

c) Danger, due to the nature and circumstances of the crime or the personality of the defendant, that he will continue the criminal activity or seriously disturb public order and tranquillity.

2 - No coercive measure, with the exception of that provided for in article 196, may be applied to a legal person or equivalent entity that is a defendant if, at the time of application of the measure, there is no specific danger of disturbing the investigation or the proceedings or danger of continuing the criminal activity.

3 - In the case provided for in the preceding paragraph, the adoption and implementation of a compliance programme shall be taken into account when assessing the danger of continuing the criminal activity and may determine the suspension of the coercive measure.

Article 342

Identification of the defendant

1 - The presiding judge shall first ask the defendant for his name, filiation, parish and municipality of birth, date of birth, marital status, profession, place of work and residence and, if necessary, shall ask him to show an official identification document.

2 - The presiding judge shall warn the defendant that failure to answer the questions put to him, or the falsity of such answers, may incur in criminal liability.

3 - If the legal person or equivalent entity is a defendant, the presiding judge shall ask its representative for the company identification and headquarters or place of normal operation of the administration, as well as, with regard to the representative, his name, filiation, parish and district of birth, date of birth, marital status, profession, place of work and residence and, if necessary, shall ask him to show an official identification document.

4 - If the defendant is a legal person or equivalent entity, the presiding judge warns his representative that lack of answer to the questions asked or the falsity of the same can make him incur in criminal liability, in relation to the identification elements referring to him, and can make the represented entity incur in criminal liability, in relation to the identification elements referring to it.