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Country Chapter on the rule of law situation in Portugal

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2021 Rule of Law Report
The rule of law situation in the European Union

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ABSTRACT

The efficiency of the Portuguese justice system remains a challenge, especially for administrative and tax courts. The Government is taking measures to address this challenge, in particular reinforcing administrative arbitration centres and creating rapid reaction teams. Measures are also under way to address the human resource deficit, and to invest in digitalisation. Following repeated concerns regarding the allocation of cases in courts, the High Council for the Judiciary is taking steps to improve case management, through enhanced transparency in the allocation system. Initiatives to strengthen the integrity in the justice system are ongoing, in particular through the preparation of codes of conduct for magistrates. Hierarchical relations within the prosecution service remain subject of discussion, and the issue is under consideration in the Supreme Administrative Court. Reforms of criminal procedure are under discussion to allow for a more timely treatment of complex cases. It is important that these issues are addressed in consultation with all relevant stakeholders and take into account European standards.

The Anti-Corruption Strategy for 2020-2024, approved by the Government, is awaiting a vote in the Parliament. It aims at answering a long-standing need to create a robust anti-corruption framework. The Government has proposed measures to ensure a more efficient treatment of complex corruption cases. While the efforts to improve the track record of investigations and prosecutions of corruption continue, prosecution authorities consider the lack of resources for police and prosecution to be a concern. A new amendment completed the 2019 reform of the asset declaration system, but the Transparency Entity mandated to verify disclosures is not yet operational. While revolving doors rules updated in 2019 still need to be implemented, new lobbying legislation is under discussion in Parliament and there are plans to revise the whistleblower legislation. Resources attributed to the Council for Prevention of Corruption remain limited. An Anti-Corruption Mechanism has been created to contribute to the prevention capacity. Corruption risks, including conflicts of interest, under the COVID-19 pandemic, have been the subject of several recommendations at national level.

The media regulator has seen its competences extended in line with the revised Audiovisual Media Services Directive to include video sharing platforms, media literacy, and new reporting and registry obligations. The Government put in place media-specific support measures to mitigate the difficulties faced by media due to the COVID-19 pandemic. The legislative framework ensures the protection of journalists. Nevertheless, there have been instances of threats and limitations to journalists' professional activities, including a case of surveillance seeking to identify journalists' sources, into which the Prosecutor-General's Office launched an investigation to be examined by the High Council of the Public Prosecution Service. Stakeholders also point to a lack of any systemic collecting of data related to threats or violence against journalists in particular online.

Measures to improve the transparency of law-making and the quality of legislation have been adopted. In particular, the new Parliamentary Rules of Procedure aim at strengthening stakeholders' involvement in the legislative process. The use of emergency powers by the Government during the state of emergency in the context of the COVID-19 pandemic was subject to authorisation by Parliament, and *ex post* control by Parliament, courts and the Ombudsperson. The COVID-19 pandemic and the emergency measures have had an impact on the work of civil society organisations, and specific support was allocated. A new law on the statute of public utility aims at streamlining the legislative framework. While civil society space is considered to be open, new challenges are emerging, in particular due to instances of hostility and pressure against civil society organisations and human rights defenders.

I. JUSTICE SYSTEM

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

Independence

The level of perceived judicial independence in Portugal is average to low, with no clear trend identified during the last five years. In 2021, the level of perceived judicial independence among companies decreased, with only 39% perceiving it to be 'fairly or very good', and is considered to be low[2]. Among the general public, the level of perceived judicial independence among the general public increased while remaining average, with 48% perceiving it to be 'fairly or very good'[3]. This represents an inversion of the decreasing trend registered since 2018.

The system of allocation of cases in courts was subject to scrutiny by the High Council for the Judiciary, which has adopted measures to improve its transparency. Although the allocation of cases is done electronically, through a system that provides random allocation, manual allocation is possible in exceptional circumstances[4]. In order to ensure the transparency of the situations in which manual distribution occurs and prevent irregularities, the High Council for the Judiciary adopted Regulation No. 269/2021, which establishes the principles, criteria, requirements and procedures for situations of modification, reduction or suspension of the distribution of cases in judicial courts[5]. The new regulation aims, in line with European standards[6], at ensuring the principles of the natural judge, legality, prohibition of transfer of the case, independence and impartiality of the courts. As referred to in the 2020

1 Execution of criminal sentences courts, maritime courts, intellectual property courts, competition, regulation and supervision courts, central instruction courts, arbitration tribunals and justices of the peace exist and their number and jurisdiction is mainly established in their respective legal regimes (Law No. 62/2013, of 26/8 and Law No. 78/2001, of 13/7).

2 Figure 50, 2021 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

3 Figure 48, 2021 EU Justice Scoreboard.

4 These include, for instance, reallocation of cases during sick leaves, or for the purposes of ensuring the caseload balance among judges or respond to incompatibilities.

5 The regulation is not applicable to Administrative and tax courts.

6 According to European standards, the allocation of cases should follow objective pre-established criteria (Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 24).

Rule of Law Report[7], allegations of interference with the random allocation of cases in courts led the High Council to conduct investigations as regards possible irregularities. In July 2020, following an investigation to the instances of manual allocation of cases in high courts from 2017 to 2020, the High Council found no evidence of unjustified manual allocation, and closed the investigation without any disciplinary proceedings[8]. However, following an investigation where irregularities in the allocation of cases in the Lisbon Court of Appeal were detected in three cases, with indications of abuse of power, the High Council decided to initiate disciplinary proceedings against judges, including the presiding judge and the former presiding judge of that court[9]. In April 2021, after new concerns emerged regarding the allocation of cases in the Central Instruction Court of Lisbon[10], the High Council ordered a new investigation[11], which revealed no facts pointing at the existence of disciplinary breaches[12].

Initiatives to strengthen the integrity in the justice system are ongoing. The Statute of Public Prosecution and the Statute of Judicial Magistrates[13] enshrine rules regarding the duties and incompatibilities applicable to prosecutors[14] and judges[15]. According to the respective statutes, the High Council for the Judiciary[16] and the High Council for the Public Prosecution[17] are competent to control the declarations of income and assets of magistrates, and to approve the necessary legal instruments for these effects. Accordingly, on 12 January 2021, the High Council for the Judiciary approved a Regulation on Declaratory obligations[18]. The High Council for the Public Prosecution has also approved a project for a code of conduct on 20 October 2020, which was subject to public consultation[19]. The final version of the code of conduct has not been adopted yet. A code of conduct of magistrates of the administrative and tax jurisdiction, aimed at defining a framework of ethical standards, principles and duties regarding the exercise of the judiciary function and the observance of obligations on the declaration of income, conflicting interests and in matters referring to institutional offerings and hospitality, is also pending approval by the High Council for Administrative and Tax Courts[20]. The High Council for Administrative and Tax Courts has also approved a Project for the Regulation on reporting obligations of magistrates of the administrative and tax jurisdiction on the matter of income, assets, interests, incompatibilities and impediments as well as procedures and inspections[21]. Moreover, in November 2020 the

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7 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 3.

8 Input from Portugal for the 2021 Rule of Law Report, p. 4; Annual Report 2020 – High Council for the Judiciary, p. 17.

9 Contribution from the High Council for the Judiciary for the 2021 Rule of Law Report, p. 12.

10 Prior concerns had been raised in 2019, which led to an investigation closed in 2019 without any disciplinary proceedings.

11 High Council for the Judiciary, press release of 14 April 2021.

12 High Council for the Judiciary, press release of 4 May 2021.

13 See also 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 3.

14 Law No. 68/2019, of 27 August 2019, Chapter II, Section I.

15 Law No. 67/2019, of 27 August 2019, Chapter II, Section I.

16 *Ibid.*, Art. 149(1)(x).

17 Law No. 68/2019, of 27 August 2019, Art. 21(3)(a).

18 In June 2020, the High Council for the Judiciary approved a project for a code of conduct. In January 2021, the project was divided into two parts – 'Code of conduct' and 'Code of Ethics'. The Council approved the first part under the designation 'Regulation on Declaratory obligations', and decided to postpone the appreciation of the 'Code of Ethics' (Input from Portugal for the 2021 Rule of Law Report, p. 4).

19 Input from Portugal for the 2021 Rule of Law Report, p. 4. See also Section II.

20 Contribution from the Portuguese Supreme and Administrative Court for the 2021 Rule of Law Report, p. 10.

21 *Ibid*.

Professional Association of Judges presented a comprehensive set of proposals to reinforce the transparency and integrity in the justice system, including, among others, the reinforcement of the reporting channels both for citizens and judges, especially for cases of undue influence, or attempts thereof[22]. The High Council for the Judiciary has so far not addressed the proposals presented by the Professional Association of Judges.

The regime of hierarchical instructions to prosecutors is under judicial review. As referred in the 2020 Rule of Law Report[23], the new Statute of Public Prosecution, which entered into force in 2020, contains provisions clarifying the limits of hierarchical intervention in criminal proceedings[24]. In November 2020, a new binding Directive from the Prosecutor General[25] established the possibility to give concrete orders in the criminal procedure to a prosecutor subordinate. According to the new directive, such orders should always be registered in writing, in the accompanying administrative file, and the possibility to refuse orders is ensured. Stakeholders within the judiciary have expressed concerns that this directive may interfere with the internal autonomy of prosecutors, and be in direct contradiction with the provisions of the Statute of Public Prosecution[26]. A case is currently pending before the Supreme Administrative Court following legal action introduced by the Union of Prosecutors[27].

Reforms to the system of criminal procedure to allow for a more timely treatment of complex criminal cases are under debate. In the context of criminal cases deemed of high complexity, a discussion has been launched as to the need to amend the rules governing the criminal procedure, in order to allow for a more expedite treatment of such cases[28]. There have been instances of complex cases, notably involving high-level corruption, in which, due to delays in the investigation and instruction phase, the offences became time barred and criminal charges have been dropped[29]. Stakeholders expressed concerns that the perception of the lack of capacity of the justice system to deal with prominent cases may lead to a negative perception of the public towards the system[30]. In this context, several proposals to modify the rules governing the criminal procedure are being discussed. In particular, the Government proposed to Parliament, in May 2021, measures to increase the efficiency of criminal prosecution and criminal trials[31]. These include the possibility of organising individual procedural measures[32], and allowing for the negotiation, within trial phase, of the maximum limit of the penalty subject to the confession of the facts contained in the indictment[33]. Furthermore, there are also discussions regarding the judicial organisation of the instruction courts, and in particular the Central Instruction Court. Currently, this specialised court, which counts with only two acting judges, is competent for the instruction of cases of complex or organised crimes, including corruption, and has jurisdiction over the whole national

[22] Associação Sindical dos Juízes Portugueses (2020), *Reforço da Transparência e Integridade na Justiça*.
[23] 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 3.
[24] Art. 97(4).
[25] Directive No. 4/2020, of 25 November.
[26] Contribution from Magistrats Européens pour la Démocracie et les Libertés (MEDEL) for the 2021 Rule of Law Report, pp. 57-58.
[27] Sindicato dos Magistrados do Ministério Público, press release of 6 April 2021.
[28] Contribution from the Portuguese High Council for the Judiciary for the 2021 Rule of Law Report, p. 11.
[29] See also Section II.
[30] *Ibid.;* Information provided in the context of the country visit to Portugal.
[31] See also Section II.
[32] Currently, the same procedural measures apply to all crimes.
[33] Legislative proposal No. 90/XIV/2, of 5 May 2021. Stakeholders contributions to the consultation on this legislation can be consulted online on the website of the Parliament.

territory[34]. Its broad competences and limited pool of judges are, in particular, a source of criticism[35]. In this context, on 4 May 2021, the High Council for the Judiciary announced to be favourable to changes to the current organisation and structure of the Central Instruction Court, excluding however the possibility to reinforce the number of judges[36]. A formal proposal in this regard will be presented by the High Council for the Judiciary to the Government[37]. On 17 June 2021 the Government approved a draft bill which will be submitted to Parliament proposing to dissolve the Lisbon Criminal Investigation Court and to integrate its powers in the Central Criminal Investigation Court. The proposed measure envisages the increase of the number of judges assigned to the latter Court (from the previous 2 to 9), ensuring the rationalisation of resources and strengthening the fight against economic and financial crime. It is important that the legal reforms are carried out in consultation with all the relevant stakeholders[38], and take into account the relevant European standards.

Quality

There have been increases in the human resources allocated to the justice system, but concerns remain. In December 2020, recruitment procedures for 40 judges and 65 prosecutors were launched[39]. However, stakeholders continue to report a significant deficit of judges and prosecutors[40]. In particular, tax and administrative courts report that the total number of judges in first instance tax and administrative courts remains significantly below the level established in the legal framework, with over 13% of the positions vacant[41]. At the end of 2019, 11 positions for the office of appeal judges in administrative and tax courts remained vacant[42]. The recruitment procedure for the creation of advisory cabinets to aid judges, which had been pending for several years[43], was launched in December 2020[44]. The first advisory cabinets are expected to be installed in September 2021[45], and the advisors will provide technical assistance and expertise in the areas of law, psychology, accounting, finances and economy. However, these cabinets will only be installed in first instance judicial courts, while stakeholders highlight the need to extend them to administrative and tax courts[46], where the disposition time and case backlogs are higher[47], and technical expertise is

[34] Law No. 62/2013, of 26 August, Arts. 116 and 120.
[35] Information provided in the context of the country visit to Portugal.
[36] High Council for the Judiciary, press release of 4 May 2021.
[37] Information received from the High Council for the Judiciary in the context of the country visit to Portugal. Calls for a wider revision of the instruction phase have also been discussed. On 7 April 2021, the President of the Supreme Court announced he would propose to the High Council a revision of the instruction phase, narrowing the possibilities to trigger this phase, but the High Council has not adopted an official position in this respect.
[38] Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, of 23 November 2007, para 87; CCJE Opinion No. 23 (2020) The role of associations of judges in supporting judicial independence, para. 41.
[39] Input from Portugal for the 2021 Rule of Law Report, p. 5.
[40] Contribution from MEDEL for the 2021 Rule of Law Report, pp. 58-59.
[41] High Council for the Administrative and Tax Courts, Annual Report 2019, p. 35; Contribution from the Portuguese Supreme and Administrative Court for the 2021 Rule of Law Report, p. 11. See also 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 4.
[42] Contribution from the Portuguese Supreme and Administrative Court for the 2021 Rule of Law Report, p. 11.
[43] 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 4.
[44] Input from Portugal for the 2021 Rule of Law Report, p. 5.
[45] Information received from the Ministry of Justice in the context of the country visit to Portugal.
[46] Information received from the Ministry of Justice in the context of the country visit to Portugal.

demanded in a high number of cases. The recruitment of technical advisers to support public prosecutors is also in preparation by the Public Prosecution Service[48]. However, budget constraints have hindered the development of the recruitment process[49].

Measures to improve the quality of the justice system continue to be implemented, in particular with regards to digitalisation. The budget allocated to information and communication technologies in the justice system increased by 23.4% in 2021, and a dedicated fund to support projects aiming at modernising the justice system is in place[50], with an allocated budget of EUR 5.1 million[51]. The number of videoconference systems in courts has also increased, in order to respond to the increasing number of procedural diligences conducted remotely[52]. Procedural rules already allow the use of digital technology in courts for a significant number of acts in civil, commercial, administrative and criminal cases[53]. The implementation of the 'Justiça + Próxima' Programme, aiming at the modernisation of the justice system, has also continued in 2020 and 2021[54]. The measures foreseen in the 'Tribunal+' project, related to administrative simplification and optimisation of back office, have also been extended to more courts, and it is expected that the number of ordinary courts, such as general jurisdiction courts and proximity courts, covered will amount to 300 by the end of 2021. The 'Tribunal + 360º' project[55], which aims at implementing full digitalisation and a paperless system in courts, including regarding the submission of evidence, is still in the preparation phase. In the context of the national Recovery and Resilience Plan, Portugal has presented the reform 'Digital Transition in Justice', which will focus on improving the use of digital tools in the justice system, with particular emphasis in administrative and tax courts[56]. Portugal has also submitted a request for technical support for a project aimed at assisting the Ministry of Justice in advancing the country's user-driven justice modernisation agenda and the development of key policy strategies[57].

The COVID-19 pandemic has had a limited impact on the functioning of the justice system. In March 2020, deadlines in non-urgent cases in courts were suspended, and non-urgent acts were adjourned. However, according to the High Council for the Judiciary, ordinary courts have coped well with backlogs and the clearance rate has remained stable throughout 2020[58]. Measures already introduced during the first state of emergency continued to be in place[59], such as a law introduced on 19 March 2020 setting an exceptional regime for

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47 See also Section I.
48 Information received from the Ministry of Justice in the context of the country visit to Portugal.
49 *Ibid*.
50 Support is granted to projects related to equipment and modernisation of courts, training and scientific research.
51 Input from Portugal for the 2021 Rule of Law Report, p. 5.
52 *Ibid*.
53 Figure 40, 2021 EU Justice Scoreboard.
54 The project focuses on four pillars – efficiency, innovation, proximity and humanisation (2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 4).
55 *Ibid*.
56 Input from Portugal for the 2021 Rule of Law Report, p. 7. The estimated amount of this reform is EUR 267 million.
57 TSI Project "Modernisation of the justice sector in Portugal". The themes covered are: design and implementation of user-centred dispute resolution pathways and broader legal/justice services, digitalisation, digital competencies of justice sector stakeholders, and the availability, quality, accessibility and re-usability of justice data.
58 Conselho Superior da Magistratura, *Relatório Anual 2020,* p. 96.
59 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 5.

judicial procedures[60]. The law provides that the examination of witnesses and trial hearings should take place physically, following the recommendations of the health security measures set by the Ministry of Health. A Parliament Proposal to amend the law is still pending[61], allowing the use of long-distance communication systems activated from the courts for diligences that require the physical attendance of the parties.

Efficiency

The efficiency of the justice system registers improvements, but challenges remain in administrative and tax courts[62]. Portugal continues to register improvements regarding the efficiency of the justice system, in particular in civil and commercial cases, for which the disposition time in first instance has been consistently decreasing[63]. The trend of reduction of backlogs in civil and commercial cases has also continued[64]. However, in administrative cases, the disposition time remains high, despite a consistent decrease in recent years[65], and a positive rate of resolving, reaching over 840 days both in first and second instance[66]. Although the number of pending administrative cases in first instance has also been decreasing marginally, it remains comparatively high[67]. This issue has also been addressed by a country-specific recommendation in the context of the 2020 European Semester, regarding the need to improve the efficiency in tax and administrative courts[68].

The Government is taking initiatives to increase the efficiency of the justice system. Portugal remains under enhanced supervision by the Committee of Ministers of the Council of Europe for the excessive length of proceedings before both civil and administrative jurisdictions[69]. In this context, on 30 October 2020, the Government adopted an updated and consolidated action plan, presenting measures to combat the excessive duration of proceedings[70]. Moreover, administrative arbitration centres are being reinforced, in order to provide an alternative to administrative and tax courts, thus lowering the number of incoming and pending cases in these courts, and ensuring an effective remedy[71]. A temporary regime of incentives for the termination of judicial cases, applicable to all jurisdictions, is also in place[72]. Measures are also being adopted in order to increase the efficiency of insolvency proceedings[73]. In addition, in the context of the national Recovery and Resilience Plan,

60 Law 1-A/2020, of 19 March.
61 Parliament Law Proposal 30 XIV, on the "Professional Representation of Interests".
62 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 5.
63 Figure 7, 2021 EU Justice Scoreboard.
64 Figure 15, 2021 EU Justice Scoreboard.
65 Figures 9 and 10, 2021 EU Justice Scoreboard.
66 Figure 13, 2021 EU Justice Scoreboard.
67 Figure 16, 2021 EU Justice Scoreboard.
68 Council Recommendation of 20 July 2020 on the 2020 National Reform Programme of Portugal and delivering a Council opinion on the 2020 Stability Programme of Portugal.
69 H46-20 Vicente Cardoso group v. Portugal (Application No. 30130/10). It should be recalled that, according to Council of Europe recommendations, the efficiency of judicial systems is an essential condition for legal certainty and public confidence in the rule of law (Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 30).
70 Communication from Portugal concerning the case of Vicente Cardoso v. Portugal (Application No. 30130/10), DH-DD(2020)952, of 30 October 2020.
71 Input from Portugal for the 2021 Rule of Law Report, p. 7. See also figure 27, 2021 EU Justice Scoreboard.
72 By means of transaction, withdrawal, agreement and confession.
73 In particular, Ordonnance No. 126/2021, of 24/6, regulates the direct consultation, by judicial administrators, of the databases of the tax administration, social security, Caixa Geral de Aposentações, Salary Guarantee

Portugal has presented reforms and investment projects aiming at increasing the efficiency of the justice system[74]. As referred in the 2020 Rule of Law Report[75], rapid reaction teams were created to deal with case backlogs in tax and administrative courts. Data published in 2021 show that, in the first year of activity, these teams allowed for the resolution of one third of the cases that that had entered the system before 2013, exceeding the goals initially set[76]. However, stakeholders raise attention to the fact that the reinforcement of teams should also occur in second and third instances, in order to avoid a case backlog throughout the chain of the justice system[77].

II. ANTI-CORRUPTION FRAMEWORK

There have been no major developments as regards the institutional anti-corruption framework in Portugal since the previous reporting period. The Central Department of Criminal Investigation and Penal Action (DCIAP), established within the Public Prosecutors Service, is in charge of the investigation and prosecution of serious offences, including corruption and economic and financial crimes, and coordinates the investigations that are carried out by the National Unit for Combating Corruption (UNCC), an investigative unit of the Criminal Police[78]. As regards the prevention of corruption, an Anti-Corruption Mechanism has been established in 2021 to contribute to the prevention capacity. A new head of the Council for the Prevention of Corruption has been appointed, following the new leadership in the Court of Auditors. The Council for the Prevention of Corruption operates under the Court of Auditors. The Transparency Authority, established in 2019, has competences in monitoring and verifying declarations of assets and interests of political office-holders and high-ranking appointed officials but is not yet operational.

The perception among experts and business executives is that the level of corruption in the public sector remains relatively low. In the 2020 Corruption Perceptions Index by Transparency International, Portugal scores 61/100 and ranks 10th in the European Union and 33th globally[79]. This perception has been relatively stable[80] over the past five years[81].

Fund, land commercial, vehicle, civil registries and other similar registries or archives, in order to obtain information regarding the identification of the debtor and the identification and location of its assets.

74 Annex to the Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Portugal (COM(2021) 321 final) of 16h June 2021. In particular, under Component 18 of the recovery and resilience plan, Portugal envisages the creation of specialised chambers in the second and third instance administrative and tax courts, as well as speeding up insolvency proceedings and adapting them to 'digital by default' principle.

75 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 5.

76 High Council for the Administrative and Tax Courts, Annual Report 2019, p. 76.

77 Information received in the context of the country visit to Portugal.

78 The UNCC is the specialized operational unit in charge of investigating corruption offences and related crimes such as bribery or embezzlement of public funds, and has jurisdiction nationwide.

79 Transparency International, Corruption Perceptions Index 2020 (2021), pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

80 In 2015 the score was 64, while, in 2020, the score is 61. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

81 The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

The National Anti-Corruption Strategy for 2020-2024 has been approved by the Government and was accompanied by a proposal to revise the criminal legal framework. After being subject to a public consultation in October 2020[82], the strategy was approved by the Council of Ministers on 18 March 2021[83]. The strategy aims at creating a coherent and robust anti-corruption framework[84] and includes measures to better detect, prevent and prosecute corruption, and to ensure that the judicial system can timely and efficiently respond and impose adequate sanctions on offenders. As a first step in its implementation, on 29 April 2021 the Government approved a set of proposals to amend existing legal provisions[85], notably in the criminal law area[86]. The establishment of a new entity, the National Anti-Corruption Mechanism, independent from the Government and the Parliament, has been approved on 25 May 2021 by a Government Decree-Law[87]; this law also approves the general regime for the prevention of corruption (RGPC). The mechanism will monitor the implementation of the preventive framework and impose administrative fines for non-compliant entities[88].

The Government has proposed measures to increase the efficiency of criminal prosecution, as challenges remain concerning the treatment of high-level corruption cases. The Department of Investigation and Penal Action (DIAP), established within the Public Prosecutor's Service, remains responsible for investigating serious offences, including high-level corruption and financial crimes[89]. The Central Department of Investigation and Penal Action (DCIAP) is comprised of 40 prosecutors of the Republic, seven of whom are dedicated to the investigation of corruption related crimes and of economic and financial international or transnational infringements[90]. The National Police National Unit for Combating Corruption of the Criminal Police is specialised in investigating economic and financial crime, including corruption, and acts under the coordination of DCIAP in investigating complex cases[91]. Efforts to improve the track record of investigations and

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82 The public consultation ran from 3 September 2020 until 23 October 2020 and culminated in a stocktaking conference on 21 November 2020 where the contributions of the consultation were presented and debated.

83 Resolution of the Council of Ministers No. 37/2021, Approving the National Anti-Corruption Strategy.

84 See European Commission, 2020 Country Report Portugal, SWD (2020) 521 final, p. 64.

85 This concerns amendments to the Penal Code, the Penal Procedure Code, the Commercial Companies Code, Law No. 34/87, of 16 July 1987 (which establishes the responsibility of political office holders regime), Law No. 36/94, of 29 September 1994 (which establishes measures to combat corruption and economic and financial crime), Law No. 50/2007, of 31 August 2007 (which establishes the criminal liability regime for behaviours that may affect the truth, loyalty and correctness of the competition and its result in sporting activity), and Law No. 20/2008, of 21 April 2008 (which establishes the criminal regime of corruption in the international trade and the private sector).

86 Law no. 68/2019, of 27 August, Art. 58 – Jurisdiction. These includes crimes such as Money laundering; corruption, embezzlement and economic participation in business; harmful administration in an economic unit of the public sector; fraud in obtaining or embezzling a subsidy, subsidy or credit; economic and financial offences committed in an organised manner using computer technology; economic and financial infringements of an international or transnational dimension.

87 Decree-Law No. 960/XXII/2021.

88 These entities include private companies (with the exception of micro and small companies) the State, autonomous regions (i.e., Azores and Madeira), local authorities and other legal persons of public law (National anti-Corruption strategy 2020-2024, p. 41).

89 Law no. 68/2019, of 27 August, Art. 58 – Jurisdiction

90 The Regional Departments of Investigation and Penal Action (Coimbra, Évora, Lisbon and Porto) have 36 Prosecutors of the Republic. Input from Portugal for the 2021 Rule of Law Report, p. 9.

91 The National Unit for Combating Corruption (UNCC) is, under the terms of DL 137/2019, of 13 September, a central criminal investigation unit, headquartered in Lisbon and with competence for the entire national territory. Outside Lisbon, the central investigation units exercise their competences through extensions based

prosecutions of corruption continue. Only in 2020, the Criminal Police received 503 criminal cases[92], and finalised 553. In the same year, the Criminal Police transmitted 90 proposals for indictment in corruption-related cases[93]. As regards the application of sanctions for corruption offences, suspended sentences remain relatively high, with only 15% of those convicted for corruption being sentenced to prison in 2019 and, 54% receiving suspended prison sentences[94]. The most severe obstacles to prosecution of corruption-related cases appear to be due to the continuous lack of resources at the level of the police and prosecution services[95]. This in turn results in significant delays, such as in the investigation and instruction phases, and notably in some prominent complex corruption cases involving high-level officials that could not be finalised before the statute of limitation expired[96]. With a view to overcome this persistent problem, the Government has proposed measures to speed up large indictments and cases in trials under the National anti-corruption strategy[97], although the strategy does not specify concrete measures as regards the allocation of resources[98].

The Council for the Prevention of Corruption (CPC) continues its activities in the area of corruption prevention. It issues recommendations on corruption risks prevention and monitors their implementation. In the reporting period, the CPC carried out 86 pedagogical visits to public entities throughout the country, focusing in particular on entities which are operating in high-risk areas and where there is a need to raise awareness about preventing irregularities in public spending[99]. During the COVID-19 pandemic, the Council concentrated its efforts on raising awareness on preventing corruption in healthcare and in budget execution, particularly at the local level. While the new anti-corruption strategy highlights the need for more capacities for the prevention of corruption, for the time being, the resources allocated to the Council remain limited[100]. It remains to be seen whether the recently created Anti-Corruption Mechanism, that will integrate the Council for the Prevention of Corruption, will contribute to an increased capacity to prevent corruption[101].

While improvements to the system of integrity for high-level officials were introduced in 2019, the impact of conflicts of interest rules and codes of ethics remains to be seen.

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at the premises of the deconcentrated criminal investigation units. The UNCC has 12 research units and 106 staff who are criminal investigators.

92 These are new cases, reopened cases and cases starting an autonomous investigation that correspond to crimes, which have not been recorded by criminal police bodies, but by other bodies, usually the Public Prosecutor's Office.

93 Criminal Police case movement for corruption in 2019; Input from Portugal for the 2021 Rule of Law Report, Annex I.

94 For data on 2017-2018, see 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 7. The data here refers to convictions in criminal cases at the trial stage at the judicial courts of first-instance; Input from Portugal for the 2021 Rule of Law Report, Annex I. For more information consult the web-database of the Directorate-General for Justice Policy (2019), Justice Statistics: Corruption.

95 Information received in the context of the country visit to Portugal; contribution from Magistrats Européens pour la Démocracie et les Libertés (MEDEL) for the 2021 Rule of Law Report, p. 58; Público (2020), "Lack of human resources explains slowness of justice in corruption cases says PGR", Público, 6 January 2020.

96 Information received in the context of the country visit to Portugal.

97 Information received by the Ministry of Justice in the context of the country visit to Portugal. See also Section I.

98 The strategy acknowledges the need to identify and analyse the reasons for delays in complex cases in order to better allocate resources. Information received by the Ministry of Justice in the context of the country visit to Portugal.

99 Information received in the context of the country visit to Portugal.

100 Staff includes: 3 assistants, 1 adviser and 2 consultants and 1 teacher.

101 Decree-Law No. 960/XXII/2021.

Since 2019, codes of conduct regulating ethics, conflicts of interest and incompatibilities[102] are in place for Government officials[103]. Regarding members of Parliament, a code of conduct is also in force[104], and the Parliamentary Committee on Transparency and Member's Statute monitors and enforces the Member's Code. In April 2021, the Committee created a Working Group on the application of the Code[105] and published Guidelines on the acceptance of gifts and hospitality by members of Parliament and recommendations on incompatibilities[106]. However, the assessment of the effectiveness of the conflicts of interest prevention system is pending[107]. The Group of States against Corruption (GRECO) welcomed these improvements but calls for adequate supervisory mechanisms, including sanctions for improper acts, which are not envisaged in the Code[108]. In October 2020, a draft code of ethics for prosecutors was approved and is currently under public consultation[109]. For judges, a Regulation on Declaratory obligations was approved in summer 2020[110].

New rules have been introduced to harmonise the system of asset declaration for political and high-level officials. According to new provisions adopted in November 2020 political office-holders and high-ranking appointed officials are now obliged to present in a single document the declaration of their income, assets, interests, incompatibilities and impediments[111]. The reform also foresees the creation of an online digital platform for the publication of declarations, with a view to provide information about posts, duties and outside activities performed during the term of office and the previous three years. However, the reform does not resolve the lack of frequent and substantive checks of single declarations, as advised by GRECO[112]. Furthermore, GRECO remains concerned by the lack of sanctions for minor breaches of reporting obligations[113]. The new Transparency Entity, initially envisaged to be set up in 2020 as part of the Constitutional Court[114], will be responsible once

[102] Law No. 7/93, of 1 March 1993, Art. 20 (1). Since 2019, the system of incompatibilities for high-ranked officials was reviewed to broaden the scope of incompatible public functions to public undertakings and any other company where the State is shareholder.

[103] Resolution of the Council of Ministers No. 184/2019.

[104] Resolution of the Parliament of the Republic No. 210/2019.

[105] In the Context of the country visit to Portugal, the Commission was informed that the Committee has issued a report on the application of the Code and so far, no breach of the Code has been verified. The report should be published in the website: https://www.parlamento.pt/sites/COM/XIVLeg/14CTED/GTACC/Paginas/Composicao.aspx.

[106] *Ibid*.

[107] GRECO Fourth Evaluation Round on corruption prevention in respect of members of Parliament, judges and prosecutors – Second Interim Compliance Report Portugal, p. 6.

[108] *Ibid*., p. 4.

[109] Public Prosecutor (20 October 2020), Draft code of conduct For Public Ministry Magistrates - Public Consultation

[110] See also Section I.

[111] Law 69/2020, of 9 November 2020, Art.1. Additionally, Law 69/2020 of November 9, established public access to the information contained in the register of interests within the "Declaração Única", including posts, functions, and activities held in accumulation with the mandate, as well as those held in the three previous years of high public and political officials

[112] GRECO Fourth Evaluation Round on corruption prevention in respect of members of Parliament, judges and prosecutors – Second Interim Compliance Report Portugal, p. 8.

[113] *Ibid*., p. 7.

[114] Art. 4 of Organic Law No. 4/2019, of 13 September 2019, provides that it is up to the Government to include in the proposed State Budget for 2020, in the general charges of the State relating to the Constitutional Court, the funds necessary for the creation and functioning of the Entity for Transparency, as well as for the creation of the electronic platform provided for by law.

operational for verifying the declarations of political and senior public officials[115]. However, it has not yet started its activities due to a lack of both resources and facilities[116].

While revolving doors rules still need to be implemented, new lobbying legislation is under discussion in Parliament. The revolving doors rules were updated in 2019[117]. Post-employment rules, including a three-year cooling-off period, currently apply to political and senior office holders, including cabinet members and boards of state-owned companies[118]. Sanctions for non-compliance consist of a three-year disqualification from performing duties in a public office[119]. It is the duty of the Constitutional Court and Prosecutor's Office to apply the law. However, there is still no entity responsible for monitoring breaches of post-employment restrictions, which creates concerns as to their enforcement[120]. As regards lobbying, efforts to pass new legislation regulating lobbying activities are ongoing[121]. Three parliamentary groups have submitted draft legislation[122] aiming to amend the proposed rules so as to overcome the concerns which led to the President veto in 2019[123]. While the parliamentary process is ongoing, there is no information about its timeline for approval and implementation. GRECO has stressed the need to clarify the scope of permissible contacts between members of Parliament and third party interests, which remains to be addressed[124].

The current whistleblower protection system is under revision. The National anti-corruption strategy envisages the improvement of the legal framework for whistleblower protection, dating from 2008[125], with new safeguards including public compliance programmes and reinforced reporting channels and protection tools[126]. The Council for the Prevention of Corruption is responsible for monitoring the system of complaints and referring

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

[116] GRECO Fourth Evaluation Round on corruption prevention in respect of members of Parliament, judges and prosecutors – Second Interim Compliance Report Portugal, p. 8.

[117] Law No 52/2019, of 31 July 2019, introduced several reforms including inter alia the prohibition for board members of state-owns companies to hold positions in the acquiring or concessionaire entities up to three years from the date of sale or grant of the assets in which they are involved; and a three-year cooling-off period for cabinet members during which they are prohibited from performing any subordinate work or consultancy functions in international organisations with which they have established institutional relations in a public service. See 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 9.

[118] Law No. 52/2019, of 31 July 2019, Art. 10.

[119] Law No. 52/2019, of 31 July 2019, Art. 11(3).

[120] Information received in the context of the country visit to Portugal.

[121] Information received by the Parliament in the context of the country visit to Portugal. See also input from Portugal for the 2021 Rule of Law Report, pp. 13-14.

[122] Legislative Proposal 253/XIV/1.

[123] Efforts to promote a bill regulating lobbying activities failed after the President returned for re-examination a bill approved by parliament in June 2019. See 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 9.

[124] GRECO Fourth Evaluation Round on corruption prevention in respect of members of Parliament, judges and prosecutors – Second Interim Compliance Report Portugal, p. 4.

[125] Law No. 19/2008, of 21 April 2008. In addition to the referred general rule, there are also other dispersed rules on whistleblowers, namely those provided in Law No. 93/99, of 14 July (witness protection); in Law No. 83/2017, of 18 August 2017 as updated by Law no. 58/2020, of 31 August 2020 (in Art. 108, para. 5), under the scope of the fight against money laundering and terrorism; or in the Securities Code, the General Regime of Credit Institutions and Financial Companies and the General Regime of Collective Investment Undertakings.

[126] Input from Portugal for the 2021 Rule of Law Report, pp. 14-15.

them to the Attorney General, who is responsible for the investigation of corruption-related cases[127]. The Public Prosecutor's Office administers an electronic whistleblowing system for reporting cases, including corruption and related crimes committed in the public and private sectors[128].

Several institutions have raised awareness about the need to address corruption risks triggered by the COVID-19 pandemic. Within the context of emergency measures to respond to the pandemic outbreak, the Council for the Prevention of Corruption published a recommendation on the Prevention of Risks of Corruption and Related Infringements[129]. The recommendation highlights the need for all decision-makers and public officials to maintain the highest levels of transparency, ethics and integrity, and asked for the adoption of measures to prevent and mitigate corruption risks in the exercise of their public activities[130]. Parliament adopted a Resolution on prevention of risks of corruption and related offences in the context of COVID-19 including risks of conflicts of interest, requesting to ensure transparency and integrity in specific risk areas such as public procurement, health and infrastructure[131]. The Court of Audit is also developing several audit actions addressing the increased risks in the use of public resources in the context of the COVID-19 pandemic[132].

III. MEDIA PLURALISM AND MEDIA FREEDOM

Freedom of expression and information as well as media freedom and pluralism are protected by the Constitution[133]. Article 39 of the Constitution mandates the establishment of an independent regulatory body, which monitors the activities of media outlets in radio, press and audiovisual[134]. Legislation was adopted to transpose the revised Audiovisual Media Services Directive. The Penal Code[135] gives journalists protection while exercising their activities on a par with other "protected persons" (judges, lawyers, witnesses, security personnel and sports referees).

The Regulatory Authority for the Media acquired new competences and strengthened its interactions with media stakeholders. The specific law establishing the regulatory authority for the media (*Entidade Reguladora para a Comunicação Social*, ERC)[136] has not experienced significant changes. However, the regulatory authority for the media's competences have been broadened in in the context of the transposition of the revised Audiovisual Media Services Directive (AVMSD), as Portugal modified the Law on

[127] In 2019, the Council for the Prevention of Corruption handled and analysed a total of 796 communications (783 judicial communications plus 13 audit reports) representing an increase of around 31.7 % compared to the total of 604 reports registered in 2018.

[128] In 2019, 249 investigations and 31 preventive investigations were opened, while 787 complaints were sent to other entities and 896 were closed.

[129] Council for the Prevention of Corruption (2020), Recommendation - Prevention of Corruption Risks and Related Infringements as part of the response measures to the pandemic outbreak of COVID-19.

[130] This Recommendation is addressed to all public bodies and entities and to all other entities, regardless of their nature, which intervene in the management or control of public money and other public values.

[131] Resolution of the Parliament of the Republic No. 4/2021.

[132] Court of Audit, Risks in the use of public resources in the management of emergencies (COVID-19).

[133] Arts. 37-38.

[134] Law No. 53/2005, Statutes of ERC, Art. 6, states: 'all entities that pursue media activities, within the jurisdiction of the Portuguese State, are subject to the surveillance and intervention of the regulatory board (...)'.

[135] Art. 132 (2) (l).

[136] Statutes of ERC (Law No. 53/2005, of 8 November 2005).

Television and on Demand Audiovisual Services in this context[137]. The new competences regard, among others, cooperation with other regulatory authorities within the EU, video sharing platforms, and additional reporting and registry tasks (e.g. lists of providers of on-demand audiovisual services, broadcasters and video-sharing platform providers). Some of these new competences will require new structures and technical resources. Given the important role that it plays in the media sector, the regulatory authority for the media has strengthened its interactions with the most relevant stakeholders (e.g. Journalists' Professional License Committee, Portuguese Press Association, Union of Journalists), and participates in the meetings of the recently created Advisory Council of Journalism[138]. This Advisory Council has discussed points of the legislative framework in need of being updated.

As reported last year, the transparency of media ownership is ensured. As a result of the effective implementation by the regulatory authority for the media of the specific law[139] that regulates the transparency of ownership across all media markets, including online, the 2021 Media Pluralism Monitor country report for Portugal (MPM 2021) registers low risk in this area[140]. The MPM 2021 reports a high level of news media concentration, particularly due to a limited number of players controlling the media industries[141]. Nevertheless, in a recent study, the regulatory authority for the media assesses the media landscape as diverse and plural[142].

The Government put in place media-specific support measures to mitigate the difficulties faced by media due to the COVID-19 pandemic. These measures took the form of the advance purchase of an institutional advertising package worth EUR 15 million[143]. Since more than half of that amount went to the three major media groups, this lead to some concerns and calls from stakeholders and academics for a discussion on a fairer and sustained policy to support quality journalism[144]. Apart from this exceptional support package, there are no direct subsidies to media other than public service media[145]. Stakeholders stressed the deterioration of working conditions, as 30 local media outlets disappeared since the beginning of the pandemic, budget cuts were implemented by several media groups[146] and 80 staff from a large media group were dismissed despite support from the state. Transparency of state advertising continues to be comprehensively regulated[147] with supervision of compliance ensured by the regulatory authority for the media.

Standards for the protection of journalists remain high. Amendments to the Penal Code in 2018 gave journalists greater protection while exercising their activities. Following these amendments, journalists were included in the categories of professions granted enhanced protection, and aggressions against journalists are considered "public crimes", thus not

[137] Law 74/2020, of 19 November 2020.
[138] Information received from ERC in the context of the country visit to Portugal.
[139] Law 78/2015, of 29 July.
[140] 2021 Media Pluralism Monitor country report for Portugal, p.11.
[141] High levels of ownership concentration can be detected in TV, Radio, and Print Media. It is a challenge to obtain complete and up-to-date information about the online media markets. See 2021 Media Pluralism Monitor country report for Portugal, pp. 11, 19.
[142] ERC, Regulatory Report 2019 (Transparency of Media), p. 241.
[143] *Ibid.*, p. 12. Decree-Law 20-A/2020, of 6 May 2020 and Council of Ministers Resolution No. 38-B/2020, of 15 May 2020.
[144] *Ibid.*, p. 17.
[145] *Ibid.*, p. 12.
[146] Reporters Without Borders, 2021 World Press Freedom Index, country report for Portugal.
[147] Law No. 95/2015, of 17 August 2015.

requiring the victim's formal complaint to be prosecuted. Such aggressions remain relatively rare in Portugal, although media stakeholders point to a lack of any systemic collecting of data related to threats or violence against journalists, which may lead to under-reporting of violence, in particular online[148]. According to the MPM 2021, legislation and jurisprudence appear to effectively protect journalists[149].

Journalists have recently faced some threats and limitations to their professional activities. In January 2021, it was revealed that four Portuguese journalists were placed under police surveillance at the request of a public prosecutor seeking to identify the journalists' sources[150]. The order was issued without a warrant from an investigating judge. Stakeholders expressed concern regarding the seriousness of this conduct, and called for the prompt reaction of the Prosecution Services to ensure the freedom of the press[151]. While the Prosecution Service considered that no wrongdoing had taken place, the Prosecutor-General's Office launched an investigation to be examined by the High Council of the Public Prosecution Service. One of the journalists has filed a criminal complaint against the public prosecutor and the policemen involved[152]. It has also been reported that several journalists were threatened and insulted during an anti-lockdown protest[153]. A new case of intimidation and threats against a journalist has been reported in April 2021[154]. Criminal investigations have been opened on those cases. Stakeholders have also voiced strong concerns about the harassment of journalists on social media, a trend that affects female journalists in particular. The Council of Europe Platform to promote the protection of journalism and safety of journalists registered two recent alerts for Portugal[155]. The first alert concerns the surveillance case mentioned above, and has been resolved following a reply submitted by Portugal in March 2021[156]. The other alert has to do with threats and abuse of journalists by the supporters of a political candidate[157].

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Portugal is a representative democratic republic with a directly elected President and a unicameral Parliament. In the semi-presidential regime, the President of the Republic, elected by direct popular vote, has significant constitutional and political powers, including the competence to dissolve Parliament[158]. The Prime Minister has the competences to direct the Government's general policy and to coordinate and orient the actions of all the Ministers[159]. Parliament and the Government share legislative competence. The members of Parliament and the parliamentary groups, the Government, the regional assemblies and a group of at least 20 000 citizens have the right of legislative initiative. The independent Ombudsperson is

[148] Information received in the context of the country visit to Portugal.
[149] 2021 Media Pluralism Monitor country report for Portugal, p. 9.
[150] 2021 Media Pluralism Monitor country report for Portugal, p. 16.
[151] ERC, press release of 13 January 2021.
[152] Letter of the Permanent Representative of Portugal to the Council of Europe of 22 March 2021.
[153] Reporters Without Borders, 2021 World Press Freedom Index, country report for Portugal.
[154] ERC, press release of 28 April 2021.
[155] Council of Europe Platform to promote the protection of journalism and safety of journalists – Country profile Portugal.
[156] Council of Europe - Media freedom alerts.
[157] Council of Europe, Platform to promote the protection of journalism and safety of journalists – Country profile Portugal.
[158] Art. 133(e) of the Constitution of the Portuguese Republic.
[159] Art. 201 of the Constitution of the Portuguese Republic.

tasked with safeguarding and promoting the freedoms, rights and guarantees of citizens, and has the right to trigger constitutional review.

Parliament took forward measures to improve the transparency of law-making and the quality of legislation. On 1 September 2020, new Rules of Procedure came into force, which aim at reinforcing the quality of parliamentary legislation and the procedure's transparency, strengthening respect for the deadlines established for the discussion on draft legislation and therefore also widening the opportunities for stakeholders' involvement in the law-making process[160]. According to the new rules, Government bills must be accompanied not only by the studies and documents that substantiated them, but also by the advisory opinions of stakeholders. The new rules also enable the President of Parliament to propose to the other organs with legislative power[161] an interinstitutional agreement on common guidelines for the quality of drafting of legislation, even though this prerogative has not been used yet. Furthermore, Parliament published updated versions of its legal drafting technical guide and of its stakeholder's public consultation technical guide in May and October 2020, respectively.

Efforts are ongoing to implement *ex-ante* impact assessment tools. The legislative initiative of the Government is subject to an impact assessment of the economic costs and benefits of the legislative proposal. Portugal made impact assessments a systematic ex-ante tool from the beginning of 2017[162]. To support the implementation of Regulatory Impact Assessment ("RIA"), the Council of Ministers established the Technical Unit for Legislative Impact Assessment (UTAIL) within the Legal Centre of the Council of Ministers (JurisAPP)[163] Under a current project[164], UTAIL is developing a system to gather a standardised set of statistical information on administrative regulatory costs in order to make the RIA system more accurate and efficient. At the moment, no public consultation is envisaged as part of the RIA procedure. Under Portuguese law[165] public consultation takes place for most legislative acts either through *direct consultation*, where the proposing ministry consults directly with the relevant public or private entities, or through *public consultation*, where the draft act is published on the Government Portal ConsultaLex[166].

[160] Rules of Procedure of the Assembly of Republic No. 1/2020, of 31 August, which came into force on 1 September 2021.

[161] The Government, the Autonomous Regions Legislative Assemblies, the President of the Republic.

[162] Resolution of the Council of Ministers No. 44/2017.

[163] JurisAPP is a public body integrated in the Presidency of the Council of Ministers, being, nevertheless, detached from the governmental structure. UTAIL acts as an oversight body that supports the implementation of RIA by developing the impact assessment methodology, providing technical support and training to the ministerial cabinets and other public administration organisations, and producing a final report for each impact assessment analysis. Following a project on regulatory impact assessment Decree Law 169-B/2019, which establishes the organisation of the new Portuguese Government, explicitly stipulates that RIA should be taken into account, and relevant departments consulted when members of the Government define their positions in the context of legislative discussions in the Council of the EU, and is compulsory for government initiatives. Moreover, this Decree provides that the content of RIA should cover both economic and non-economic aspects.

[164] "Standardised Statistical Information for Better Regulation project (SIBER project)" project supported by European Commission – DG REFORM.

[165] Decree-Law No. 274/2009, of 2 October 2009.

[166] https://www.consultalex.gov.pt.

The emergency measures adopted in the context of the COVID-19 pandemic are being gradually lifted. In 2020, the state of emergency was in force from 18 March to 3 May[167]. From May to November 2020, the Government declared at different occasions situations of calamity, alert, and contingency, less stringent regimes which allow the Government to adopt restrictive measures to prevent or react to situations of danger, including regarding public health, or re-establish normality in case of exceptional circumstances[168], on the basis of ordinary legislation[169]. On 6 November 2020, the President of Republic declared a further state of emergency, which was then extended, and remained in force until 30 April 2021[170]. During the state of emergency, Parliament continued in session, and data show that it continued to exercise its control and legislative activity regularly[171]. Since 15 March 2021, a gradual phasing out plan is in place.

The use of emergency powers was subject to scrutiny by Parliament, courts and the Ombudsperson. The declaration and extension of the state of emergency is the prerogative of the President of the Republic, upon consultation of the Government and authorisation by Parliament[172]. The Government must also submit to Parliament one report for each period of state of emergency, regarding its application, thus enabling the Parliament to exercise also an *ex post* control of the measures adopted[173]. Parliament is currently analysing the reports pertaining to the declaration and extension of the state of emergency between November 2020 and April 2021[174]. Furthermore, an *ad-hoc* parliamentary committee was created to monitor the measures adopted to respond to the COVID-19 pandemic. The Ombudsperson was also called to respond to a significant number of complaints referring to COVID-19-related measures[175]. In this context, the Ombudsperson issued several recommendations to different public authorities and requested clarifications[176], while also requesting the constitutional review of one provision on the support regime applicable to retailers[177]. Administrative and tax courts were also called to review emergency measures. In particular,

[167] See also 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 13 – Parliament has analysed three reports and approved three resolutions, regarding the first declaration of the emergency regime and its two renewals (March to April 2020).

[168] All the legislation pertaining to the declaration and extension of the situation of calamity, alert, and contingency have been compiled in a dedicated online section of the official journal – https://dre.pt/legislacao-covid-19-areas-tematicas#1.

[169] Law No. 27/2006 on Civil Protection.

[170] All the legislation pertaining to the declaration and extension of the state of emergency have been compiled in a dedicated online section of the official journal – https://dre.pt/legislacao-covid-19-areas-tematicas#12.

[171] Input from Portugal for the 2021 Rule of Law Report, p. 20. Statistics on control and legislative activity of Parliament available at SE.02.Dezembro2020.Versao.final.pdf (parlamento.pt).

[172] Constitution of the Portuguese Republic, Arts. 134(d) and 138.

[173] These reports are submitted to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees which is responsible, together with the specific contribution of all the other specialised permanent committees, for the analysis of the compliance of the Government's reports with the President's decree and the Government's regulation of the state of emergency. This appreciation leads to a draft of a Parliament's Resolution, which is prepared by the Committee and approved in a plenary sitting.

[174] See also 2020 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 13.

[175] Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2021 Rule of Law Report, p. 267.

[176] *Ibid.*, pp. 267-268.

[177] The case is currently pending. The referral, submitted on 20 November 2020, can be consulted on 2020_11_20_Tribunal_Constitucional.pdf (provedor-jus.pt).

the Supreme Administrative Court decided on 12 appeals referring to COVID-19-related measures, the majority of which was declared inadmissible[178].

New challenges are emerging for civil society. Although the civil society space is considered to be open[179], instances of hostility and pressure, in particular by some political parties and movements, against civil society organisations active in the support of minorities have been registered[180]. In this context, stakeholders report a deterioration of social peace and dialogue[181]. In October 2020, several UN Special Rapporteurs initiated a dialogue with Portugal, regarding a case of threats and harassment of human rights defenders, and reaffirmed the importance of ensuring a safe and enabling environment for all human rights defenders, in particular those advocating for equality and non-discrimination and documenting racist speech and behaviour, and related human rights violations[182]. In order to reinforce the policies on combating racism and discrimination, the Portuguese Government created a working group on the prevention and combat of racial discrimination, in which the civil society is represented[183]. The COVID-19 pandemic and the associated emergency measures have also had an impact on the activity of civil society organisations, which has led to calls for extraordinary public financial support[184]. In this context, the Government and a high number of municipalities provided extraordinary financial support to such organisations so as to guarantee their regular work[185].

A new law on the statute of public utility has been approved in Parliament. Upon the Government's legislative initiative[186], Parliament approved in April 2021 a new statute granting legal persons recognised as pursuing objectives of general interest particular rights, including access to specific funding or tax exemptions. Although concerns were raised regarding the inclusiveness of the formal consultation process of the new law, for which a limited number of civil society organisations was formally invited to submit their opinion[187], the broader participation of stakeholders was possible through an open consultation[188]. The new law aims at consolidating and streamlining the legislative framework applicable to legal persons benefiting from the statute of public utility, and implements a system of oversight of their activities, to be performed by the Secretariat General of the Presidency of the Council of Ministers, and compliance with legal duties[189].

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[178] Information received in the context of the country visit to Portugal.

[179] Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

[180] Contribution from ENNHRI for the 2021 Rule of Law Report, p. 262.

[181] CIVICUS, Country profile – Portugal.

[182] Contribution from OHCHR – Portugal for the 2021 Rule of Law Report, p. 6; see also Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, letter of 23 October 2020, AL PRT 1/2020.

[183] Contribution from ENNHRI for the 2021 Rule of Law Report, p. 262; see also Portuguese Government, press release of 8 January 2021.

[184] Information received in the context of the country visit to Portugal.

[185] *Ibid.*, p. 12.

[186] Legislative proposal No. 72/XIV/2.

[187] CIVICUS, Country profile – Portugal.

[188] The open consultation took place from 21 October 2020 to 24 November 2020, via the official portal www.consultalex.gov.pt.

[189] The legal duties applicable to the legal persons benefiting from the statute of public utility are listed in Art. 12 of the new law, and include, among others, reporting obligations to the Secretariat General of the

Annex I: List of sources in alphabetical order*

** The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation.*

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Annex II: Country visit to Portugal

The Commission services held virtual meetings in May 2021 with:

- Academic experts
- Bar Association
- Central Department of criminal action and investigation (DCIAP)
- Court of Audits
- Council for the Prevention of Corruption
- Regulatory Authority for the Media
- High Council for the Magistracy
- High Council for Administrative and Tax Courts
- Inspectorate-General of Finance
- Journalists' Professional License Committee
- Journalists Union
- Judges Union
- Ministry of Culture
- Ministry of Foreign Affairs
- Ministry of Justice
- Office of the Prosecutor General
- Ombudsperson
- Platform of NGOD
- Prosecutors Union
- Services of the Assembly of the Republic
- Supreme Administrative Court
- Supreme Court of Justice
- Transparency International – Portugal

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

- Amnesty International
- Center for Reproductive Rights
- CIVICUS
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights

- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute
- Netherlands Helsinki Committee
- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International
- Reporters without Borders
- Transparency International EU