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**COMMISSION STAFF WORKING DOCUMENT**

**2022 Rule of Law Report  
Country Chapter on the rule of law situation in Portugal**

*Accompanying the document*

**Communication from the Commission to the European Parliament, the Council, the  
European Economic and Social Committee and the Committee of the Regions**

**2022 Rule of Law Report  
The rule of law situation in the European Union**

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## **ABSTRACT**

The Government is undertaking a series of long-awaited measures to address efficiency challenges in the Portuguese justice system, in particular in administrative and tax courts, and the creation of rapid reaction teams in these courts is bringing positive results. The finalisation of the legislative framework of the High Council for Administrative and Tax Courts remains pending. The use of digital tools continues to be fostered, including in the context of the Recovery and Resilience Plan. Measures to address the human resource deficit are under way, although some concerns remain in particular regarding non-judicial staff and public prosecutors. The Government and the High Council for the Judiciary continue to adopt new measures to address issues regarding the allocation of cases in courts, and new initiatives to support integrity in the justice system have been initiated. The envisaged reforms to the criminal procedure have been undertaken, although there are debates on whether the new rules on judicial impediments may have an adverse impact on the efficient treatment of criminal cases.

The National Anti-Corruption Strategy for 2020-2024 is being implemented. The operationalisation of the National Anti-Corruption Mechanism established in 2021 is underway. Concerns regarding the lack of resources for the prevention, investigation and prosecution of corruption-related cases remain, including in high-level cases. The legislative framework to fight corruption has been reinforced with particular focus on increasing effectiveness of criminal proceedings at the level of prosecution. Concerns on the effective implementation of rules on conflicts of interests for high-level officials persist, though work is underway to tackle this issue. New amendments to the system of asset declaration extend and strengthen the obligations on political and senior public office holders. Efforts are ongoing to address the fact that the Transparency Entity established in 2019 to monitor and verify these declaratory obligations is still not operational. Legislation on the protection of whistleblowers was adopted. Legislation on lobbying is still to be adopted by Parliament.

The media regulator plays a central role to monitor and support media freedom and pluralism, despite challenges in financial resources. Legislation on transparency of media ownership and institutional advertising remains solid. The public service media provider is independent, although there are challenges regarding its resources. Support measures granted in the context of the COVID-19 pandemic are reported to have had a positive effect on media, in particular on local and regional media, but concerns remain regarding the precariousness of the journalistic profession. The legislative framework for the protection of journalists remains strong but new alerts have been raised following cyber-attacks to media groups. A legislative provision on the protection against disinformation is under constitutional review.

New measures to improve the transparency of law-making and the quality of legislation are being implemented. The Constitutional Court scrutinised decisions of the General Electoral Board following the general elections. The emergency measures adopted in the context of the COVID-19 pandemic continue to be scrutinised, and there are reflections on the need for a new legal basis for adoption of emergency measures. The structure of the Office of the Ombudsperson has been reformed, in order to better adapt to its mandate. Civil society space continues to be considered as open, and civil society organisations continue to be involved in Government initiatives. Nevertheless, they still face challenges related to access to financing and isolated instances of hostility and pressure occur. Government and Parliament are leading initiatives to promote a rule of law culture.

## **RECOMMENDATIONS**

In addition to recalling the commitments made under the National Recovery and Resilience Plan relating to certain aspects of the justice system, it is recommended to Portugal to:

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

## **I. JUSTICE SYSTEM**

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

### **Independence**

**The level of perceived judicial independence in Portugal continues to be average among the general public and low among companies.** Overall, 47% of the general population and 39% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2022<sup>2</sup>. According to data in the 2022 EU Justice Scoreboard, the perceived judicial independence among the general public is similar to the level of 2021 (48%) and higher than in 2016 (33%). The perceived judicial independence among companies remains at the same level as in 2021.

**Measures were introduced to the system of allocation of cases in courts, in order to further improve its transparency.** As mentioned in the 2020 and 2021 Rule of Law Reports<sup>3</sup>, the system of allocation of judicial cases came under scrutiny following allegations of interference with the random allocation of cases. In this context, new measures to reinforce transparency continue to be implemented and came into practice in September 2021<sup>4</sup>. These regulations, adopted by the High Council for the Judiciary, establish the principles, criteria, requirements and procedures for situations of modification, reduction or suspension of the distribution of cases in ordinary courts<sup>5</sup>, and the criteria of transfer of judges, reallocation of cases and accumulation of functions<sup>6</sup>. Moreover, in August 2021, new legislation came into force introducing control mechanisms applicable to the electronic allocation of cases, both in

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

<sup>2</sup> Figures 50 and 52, 2022 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>3</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 3; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2.

<sup>4</sup> Information received from the High Council for the Judiciary in the context of the country visit to Portugal.

<sup>5</sup> Regulation No. 269/2021, of 22 March. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2.

<sup>6</sup> Regulation No 371/2021, of 3 May.

civil<sup>7</sup> and administrative and tax courts<sup>8</sup>. Among the control mechanisms introduced, it is foreseen that the allocation will be done daily, under the control of a presiding judge and in the presence of a prosecutor. In addition, the legal representatives of the parties have access to the detailed minutes documenting the allocation acts<sup>9</sup>. Although the new legislation still needs implementing regulation<sup>10</sup>, the new rules appear to be in line with European standards, which provide that the allocation of cases should follow objective pre-established criteria<sup>11</sup>, and have been positively assessed by stakeholders<sup>12</sup>.

**Initiatives to support integrity in the justice system continue to be implemented.** The 2021 Rule of Law Report took note that the High Council for the Judiciary had approved a regulation on declaratory obligations<sup>13</sup>. This regulation was, however, challenged by the Judges Union before the Supreme Court of Justice, through an interim administrative action<sup>14</sup>. The Supreme Court of Justice upheld the action in part and ordered the High Council for the Judiciary to issue rules to remedy the illegalities found<sup>15</sup>. Consequently, the obligation to issue a single declaration<sup>16</sup> by ordinary court judges has been repealed, and the High Council reported that all declarations made by judges would be devoid of effect and removed from databases<sup>17</sup>. The High Council has also prepared amendments to the regulation which, following public consultation<sup>18</sup>, were approved by the Council Plenary and came into force on 8 April 2022<sup>19</sup>. Following amendments to the Law on declaratory obligations of holders of political and public office, judges and public prosecutors are now also subject to these declaratory obligations<sup>20</sup>. The amendments also introduced the criminalisation of intentional concealment of income or assets acquired in the exercise of public functions, in line with a proposal presented by the Judges Union<sup>21</sup>. Regarding the Code of Conduct of Prosecutors, it has been adopted by the High Council for the Public Prosecution<sup>22</sup> and entered into force in April 2022<sup>23</sup>.

**Reforms to the system of criminal courts and procedure have come into force, although their impact on the effectiveness of criminal justice is being debated.** Concerns regarding

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<sup>7</sup> Law No 55/2021, of 13 August.

<sup>8</sup> Law No 56/2021, of 16 August.

<sup>9</sup> Input from Portugal for the 2022 Rule of Law Report, p. 4.

<sup>10</sup> Information received from the Ministry of Justice in the context of the country visit to Portugal.

<sup>11</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 24, and explanatory note 32.

<sup>12</sup> Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 9; Information received from the High Council for the Judiciary in the context of the country visit to Portugal.

<sup>13</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 3.

<sup>14</sup> Contribution from Magistrats Européens pour la Démocratie et les Libertés (MEDEL) – Portugal for the 2022 Rule of Law Report, p. 15.

<sup>15</sup> Supreme Court of Justice, judgment of 14 July 2021, Case No. 15/21.5YFLSB-A.

<sup>16</sup> Single declaration on income, assets, interests, incompatibilities and impediments.

<sup>17</sup> Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2022 Rule of Law Report, p. 35.

<sup>18</sup> High Council for the Judiciary, Public Notice No 220/2021, of 9 November 2021; Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2022 Rule of Law Report, p. 35.

<sup>19</sup> Regulation No 346/2022, of 7 April 2022, on declaratory obligations of magistrates.

<sup>20</sup> Law No 52/2019, of 31 July, approving the regime for the exercise of functions by holders of political and public office, as amended by Law No. 4/2022, of 6 January (see in particular Art. 13).

<sup>21</sup> Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 35.

<sup>22</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 3.

<sup>23</sup> Deliberation No. 473/2022, of 14 April.

the justice system's capacity to efficiently treat complex criminal cases<sup>24</sup>, commonly referred to as 'megaprocedures', prompted debates regarding the judicial organisation of the instruction courts at public, political and judicial level. Consequently, the Parliament, upon a Government initiative, proceeded with the reorganisation of the Central Court of Criminal Investigation<sup>25</sup>. This court absorbed the competences of the Criminal Investigation Court of Lisbon, which was formally disbanded. The Central Court of Criminal Investigation now counts with a pool of nine judges, instead of two, which is seen as a positive development<sup>26</sup>. Moreover, in the context of the adoption of the legislation implementing the Anti-corruption Strategy<sup>27</sup>, amendments were introduced to the Code of Criminal Procedure, aiming at simplifying and increasing efficiency in the processing of criminal cases. In particular, the rules on the separation and connection of criminal cases were clarified<sup>28</sup>, in order to avoid the limitations identified in complex criminal cases<sup>29</sup>. New grounds for judicial impediments were also introduced, which determine that the judge who intervened in any act of the investigative phase is barred from intervening in the subsequent phases of the procedure, including the trial and the appeal<sup>30</sup>. The new provision has been criticised, as it may lead to significant delays in procedures, since the judges who rendered any type of decision during the investigative phase will have to be replaced<sup>31</sup>. The situation may be particularly critical in single-judge courts, as these will have to be replaced by judges from courts from other judicial districts. In order to minimise the adverse impact of the new provision, the High Council for the Judiciary adopted orientations for the interpretations of the new rules on impediments<sup>32</sup>. The Government, after specifying that the provision on judicial impediments did not reflect the wording in the Government's initial legislative initiative<sup>33</sup>, has adopted a new legislative proposal, which has been presented to Parliament<sup>34</sup>. The High Council for the Judiciary has also announced it will present a proposal for an amendment to the provision<sup>35</sup>.

**The High Council for the Judiciary has been partially renewed.** In 2021, in line with constitutional provisions<sup>36</sup>, two new members of the High Council for the Judiciary were appointed by the President of the Republic, one of the new members being a judge of the Supreme Court of Justice. Consequently, the High Council for the Judiciary is currently *de facto* composed by a majority of judges, although not all of them were elected by their peers. There are seven judges elected by their peers, in addition to one judge appointed *ex officio* (the President of the Supreme Court) and one currently appointed by the President of

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<sup>24</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 4.

<sup>25</sup> Law No. 77/2021, of 23 November.

<sup>26</sup> Information received from the Council for the Judiciary in the context of the country visit to Portugal; Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 31.

<sup>27</sup> Law 94/2021, of 21 December. See Section II – Anti-corruption Framework.

<sup>28</sup> Art. 11, Law 94/2021, amending Art. 24 of the Code of Criminal Procedure.

<sup>29</sup> Information received from the Ministry of Justice in the context of the country visit to Portugal.

<sup>30</sup> Article 40, Code of Criminal Procedure, as amended.

<sup>31</sup> Information received from the High Council for the Judiciary and the Judges Union in the context of the country visit to Portugal; Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 34.

<sup>32</sup> High Council for the Judiciary, Plenary Decision of 8 March 2022.

<sup>33</sup> Information received from the Ministry of Justice in the context of the country visit to Portugal. *Expresso* (2022), 'Ministry of Justice distances itself from the law on judicial impediments'.

<sup>34</sup> Legislative proposal No. 3/XV/1, submitted to Parliament on 12 April 2022 is currently being analysed by the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees. The High Council for the Judiciary and the Bar Association were consulted in the context of the legislative procedure.

<sup>35</sup> Information received from the High Council for the Judiciary in the context of the country visit to Portugal.

<sup>36</sup> Art. 218 (a) of the Constitution of the Portuguese Republic.

Republic<sup>37</sup>. This is considered to be a positive development<sup>38</sup>. It should be noted in this context that it would be necessary to have two additional judges elected by their peers in order to be fully in line with European standards<sup>39</sup>. In addition to concerns expressed by stakeholders regarding the Council's composition<sup>40</sup>, the Council of Europe's Group of States against Corruption (GRECO) has recommended the composition of the Council for the Judiciary, as well as of the Council for the Administrative and Tax Courts to be amended in line with these standards<sup>41</sup>.

**The finalisation of the legislative framework regulating the functioning of the High Council for Administrative and Tax Courts is pending.** Pursuant to the Statute of the Administrative and Tax Courts<sup>42</sup>, the structure and board of personnel of the High Council of Administrative and Tax Courts should be defined in legislation complementing the provision of the Statute. However, the legislation is still to be adopted and to enter into force since 2004. Consequently, the High Council continues to operate with the support of the human resources of the Supreme Administrative Court, and of members of the Cabinet of the President of the Supreme Court<sup>43</sup>. The absence of this legal framework implies the non-provision of the existence of a Vice-President and of a regime of full-time functions of the

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<sup>37</sup> The High Council for the Judiciary is composed of the President of the Supreme Court of Justice (who chairs), two members appointed by the President of the Republic, seven members elected by Parliament, and seven judges elected by their peers in accordance with the principle of proportional representation. Currently, the High Council for the Judiciary is composed by eight lay members and nine members who are judges. The High Council for Administrative and Tax Courts is composed of the President of the Supreme Administrative Court (who chairs), two members appointed by the President of the Republic, four members elected by the Parliament and four judges elected by their peers in accordance with the principle of proportional representation. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2.

<sup>38</sup> Contribution from the European Association of Judges for the 2022 Rule of Law Report, pp. 2 and 10.

<sup>39</sup> According to Council of Europe recommendations, not less than half the members of Councils for the Judiciary should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary (Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 27). See also CCJE, Opinion No. 24 (2021) on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, para. 29; 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, paras. 15 ff.

<sup>40</sup> Contribution from Magistrats Européens pour la Démocratie et les Libertés (MEDEL) – Portugal for the 2022 Rule of Law Report, p. 11.

<sup>41</sup> GRECO Fourth Evaluation Round – Second Interim Compliance Report, recommendation vi, para. 45; GRECO Fourth Evaluation Round – Interim Compliance Report, recommendation vi, para. 38. Portuguese authorities have referred that a number of factors mitigate this non-majority of judges in the composition of the Council for the Judiciary: i) the Council is always presided by a judge; ii) the President has legally a tie-brake vote; iii) only the judges serve their term in a full-time capacity; iv) the current management of the Council is delegated to the Vice-President (who is a Supreme Court Judge elected by all judges); v) the members serve mandates with different lengths, which makes it very difficult to exercise a strong influence in the Council's composition (GRECO Fourth Evaluation Round – Interim Compliance Report, recommendation vi, para. 42). Moreover, both the President and the Vice-President of the High Council for the Judiciary, to whom direction and management powers emanating from the Plenary are delegated, are judges; the direction and management of the High Council for the Judiciary's services are also ensured by a judge secretary, under the direction and supervision of the president, or vice-president (by delegation of the president); additionally, the members of the High Council for the Judiciary are assisted by a Cabinet composed of a chief of staff and four advisors, all of them judges; and finally, the inspectorate of the High Council for the Judiciary's inspection services is composed exclusively of judges.

<sup>42</sup> Art. 79 (1), Law No. 13/2002, of 19 February.

<sup>43</sup> High Council for the Administrative and Tax Courts, Annual Report 2020, p. 5.

members of the Council, as well as the absence of legal, technical and IT advisory cabinets, thus limiting the capacity to exercise of the broad mandate of the Council<sup>44</sup>. Currently, there are no legislative initiatives pending regarding the missing additional regulation<sup>45</sup>.

**Lawyers raised concerns regarding the respect for their professional secrecy.** The Bar Association has raised concerns that new obligations to communicate to the tax authority imposed on legal counsels<sup>46</sup> could amount to a violation of professional secrecy<sup>47</sup>. The Bar Association submitted a complaint to the Ombudsperson<sup>48</sup>, who challenged the law before the Constitutional Court<sup>49</sup>. The case is currently pending before the Constitutional Court<sup>50</sup>.

## Quality

**The Government is addressing the shortage of human resources allocated to the justice system, although challenges remain.** The expenditure on law courts has been increasing<sup>51</sup>. Responding to concerns regarding the deficit of judges and prosecutors in the justice system<sup>52</sup>, the Government is proceeding to increase the number of magistrates. In this context, 40 new judges of ordinary courts, 30 new judges of administrative and tax courts and 65 new prosecutors initiated professional training in September 2021, and a new recruitment procedure for 40 judges of ordinary courts, 20 judges of administrative and tax courts and 65 new prosecutors was launched in August 2021<sup>53</sup>. The increase in judges of administrative and tax courts is expected to be sufficient to attain the number established in the legal framework for the first time since the creation of this jurisdiction<sup>54</sup>, albeit some concerns remain<sup>55</sup> as to the deficit of over 200 prosecutors<sup>56</sup>. Moreover, the first 23 members of advisory support

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<sup>44</sup> Information received from the High Council for Administrative and Tax Courts in the context of the country visit to Portugal. See also High Council for the Administrative and Tax Courts, Annual Report 2020, p. 5. According to European standards, Councils should have appropriate means to operate independently and autonomously, should have its own premises, a secretariat, computing resources and should have its own staff according to its needs (CCJE, Opinion No. 24 (2021) on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, para. 29; Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras. 37 and 38).

<sup>45</sup> Information received from the Ministry of Justice in the context of the country visit to Portugal.

<sup>46</sup> Law No. 26/2020, of 21 July, transposing into national law Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation to reportable cross-border arrangements.

<sup>47</sup> Contribution from the Council of Bars and Law Societies of Europe (CCBE) for the 2022 Rule of Law Report, p. 56.

<sup>48</sup> Bar Association, Press release of 20 September 2021. Contribution from the Council of Bars and Law Societies of Europe (CCBE) for the 2022 Rule of Law Report, p. 56.

<sup>49</sup> Pursuant to Art. 281 (1)(a) and (2)(d) of the Constitution of the Portuguese Republic. The referral, submitted on 15 September 2021, can be consulted on [https://www.provedor-jus.pt/documentos/2021\\_09\\_15\\_Lei%2026%20de%202020\\_requerimento%20ao%20Tribunal%20Constitucional.pdf](https://www.provedor-jus.pt/documentos/2021_09_15_Lei%2026%20de%202020_requerimento%20ao%20Tribunal%20Constitucional.pdf).

<sup>50</sup> Information received from the Bar Association in the context of the country visit to Portugal.

<sup>51</sup> Figures 34 and 35, 2022 EU Justice Scoreboard.

<sup>52</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 5.

<sup>53</sup> Input from Portugal for the 2022 Rule of Law Report, p. 6. See also Figure 36, 2022 EU Justice Scoreboard.

<sup>54</sup> Information received from the High Council for Administrative and Tax Courts in the context of the country visit to Portugal.

<sup>55</sup> Information received from the Cabinet of the Prosecutor General and from the Prosecutors Union in the context of the country visit to Portugal; contribution from Magistrats Européens pour la Démocratie et les Libertés (MEDEL) – Portugal for the 2022 Rule of Law Report, pp. 12 and 13.

<sup>56</sup> Information received from the Cabinet of the Prosecutor General in the context of the country visit to Portugal; Public communication presented in the Congress of Public Prosecution, Vilamoura (Portugal), 25 and 26 March 2022.



teams to aid judges took functions in September 2021, and a new recruitment procedure to fill 30 new vacancies was launched in October 2021<sup>57</sup>. However, these support teams continue to exist only in first instance of ordinary courts despite calls for the need to extend them to administrative and tax courts<sup>58</sup>. Finally, challenges emerged for non-judicial staff in courts<sup>59</sup> where there are currently over 1 000 vacancies in first instance ordinary courts that have not been filled<sup>60</sup>. In this context, it is to be noted that, according to European standards, a sufficient number of judges and appropriately qualified support staff should be allocated to the courts<sup>61</sup>.

**Investment in the digitalisation of the justice system continues.** Digital tools continue to be used in the justice system, with procedural rules allowing the use of digital technology in courts for civil, commercial, administrative and criminal cases, although gaps remain<sup>62</sup>. Digital technology is being used by courts and prosecution services for a significant number of procedural acts<sup>63</sup>. Data show that there are also digital solutions available to initiate and follow proceedings<sup>64</sup>, and videoconference tools have been widely used during the COVID-19 pandemic<sup>65</sup>. New digital platforms with the aim to simplify the daily and managerial tasks of magistrates are also being developed, and the High Councils are involved in their implementation<sup>66</sup>. Moreover, the national Recovery and Resilience Plan (RRP) includes a component dedicated to the reform of the justice system, which focuses, among others, on the improvement of the use of digital tools in the justice system<sup>67</sup>. Portugal will also receive EU-funded technical assistance to advance its user-driven justice modernisation agenda and the development of key policy strategies<sup>68</sup>.

## Efficiency

**The efficiency of the justice system continues to face challenges, especially in Administrative and Tax Courts.** The 2021 Rule of Law Report took note of improvements regarding the efficiency of the justice system<sup>69</sup>. However, the positive trend was interrupted,

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<sup>57</sup> Input from Portugal for the 2022 Rule of Law Report, p. 6. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 5.

<sup>58</sup> Information received from the High Council for the Administrative and Tax Courts in the context of the country visit to Portugal; High Council for the Administrative and Tax Courts, Annual Report 2020, p. 8. It is reported that the creation of advisory cabinets in Administrative and Tax Courts is dependent of the adoption of the legislative framework regulating the functioning of the High Council for Administrative and Tax Courts (see Section I – Justice System – Independence).

<sup>59</sup> Information received from the High Council for the Judiciary, the Cabinet of the Prosecutor General and the Union of Judicial Administrative Officials in the context of the country visit to Portugal; Público (2022), ‘Courts in risk of rupture for lack of clerks’.

<sup>60</sup> Situation on 31 March 2022; Ministry of Justice, Staff map. See also CEPEJ (2020), Country profile Portugal - Scoreboard (2019 data).

<sup>61</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 35.

<sup>62</sup> Figure 42, 2022 EU Justice Scoreboard.

<sup>63</sup> Figure 43, 2022 EU Justice Scoreboard.

<sup>64</sup> Figure 46, 2022 EU Justice Scoreboard.

<sup>65</sup> Input from Portugal for the 2022 Rule of Law Report, p. 7.

<sup>66</sup> Ministry of Justice, Press release of 4 February 2022.

<sup>67</sup> Council implementing decision (10149/21) on the approval of the assessment of the recovery and resilience plan for Portugal, 6 July 2021.

<sup>68</sup> TSI Project ‘Modernisation of the justice sector in Portugal’. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 6.

<sup>69</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 7.

with the disposition time for civil and commercial cases registering an increase in first<sup>70</sup> and third instance<sup>71</sup>, and the rate of resolving decreasing for the third consecutive year and falling below 100% in first instance<sup>72</sup>. In administrative cases, the disposition time remains high, having registered a slight increase in first instance<sup>73</sup>, and further increasing in second instance, reaching over 870 days<sup>74</sup>. Although the number of pending administrative cases in first instance remains high<sup>75</sup>, a significant improvement is to be noted as regards the rate of resolving, which is above 120%<sup>76</sup>.

**A working group has been created with the task of assessing and proposing strategies to increase the efficiency of Administrative and Tax Courts.** Stakeholders continue to raise concerns regarding the efficiency of Administrative and Tax Courts<sup>77</sup>. In order to reflect on a strategy to overcome the challenges in Administrative and Tax Courts and increase their efficiency, the Government has created a multidisciplinary working group. The working group presented two interim reports<sup>78</sup>, defining strategic objectives and proposing measures to overcome the identified challenges regarding the efficiency of Administrative and Tax Courts. These are grouped according to five strategic axes: legislative amendments, judicial management, digital transformation, human resources, and optimisation of the functioning of higher administrative and tax courts<sup>79</sup>. The proposed measures have not yet been implemented<sup>80</sup>. The Portuguese Recovery and Resilience Plan also includes measures aimed at increasing the efficiency of administrative and tax courts<sup>81</sup>. According to European standards, the efficiency of judicial systems is an essential condition for legal certainty and public confidence in the rule of law<sup>82</sup>.

**Measures continue to be implemented 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<sup>83</sup>. In this context, on 24 June 2021, the Government adopted a new updated and consolidated action plan presenting measures to combat the excessive duration of

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<sup>70</sup> 280 days in 2020, from 200 days in 2019. Figure 7, 2022 EU Justice Scoreboard.

<sup>71</sup> 126 days in 2020, from 104 days in 2019. Figure 8, 2022 EU Justice Scoreboard.

<sup>72</sup> Figure 12, 2022 EU Justice Scoreboard.

<sup>73</sup> Figure 9, 2022 EU Justice Scoreboard.

<sup>74</sup> Figure 10, 2022 EU Justice Scoreboard.

<sup>75</sup> Figure 16, 2022 EU Justice Scoreboard.

<sup>76</sup> Figure 13, 2022 EU Justice Scoreboard.

<sup>77</sup> Information received from the High Council for Administrative and Tax Courts and the Judges Union in the context of the country visit to Portugal. See also contribution from Magistrats Européens pour la Démocratie et les Libertés (MEDEL) – Portugal for the 2022 Rule of Law Report, pp. 13 and 14, and High Council for the Administrative and Tax Courts, Annual Report 2020, p. 7.

<sup>78</sup> Working group on Administrative and Tax Courts, First Interim Report of 23 November 2021 and Second Interim Report of 21 February 2022. See also input from Portugal for the 2022 Rule of Law Report, p. 7.

<sup>79</sup> Input from Portugal for the 2022 Rule of Law Report, p. 7, and Working Group on Administrative and Tax Courts, Second Interim Report, p. 3.

<sup>80</sup> Information received from the Ministry of Justice in the context of the country visit to Portugal.

<sup>81</sup> In particular by setting up a legal framework promoting in and out-of-court settlements, the establishment of the legal framework for voluntary administrative arbitration, and the creation of specialised chambers in superior courts (Annex to the Council Implementing Decision on the approval of the assessment of the Recovery and Resilience Plan for Portugal, p. 161). The respective milestones should be met during the first trimester of 2023.

<sup>82</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 30.

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

proceedings<sup>84</sup>. While welcoming the efforts undertaken by the authorities, the Committee of Ministers reaffirmed its concerns regarding the worsening of the situation as regards the length of administrative and tax proceedings<sup>85</sup>. As described in the 2020 and 2021 Rule of Law Reports<sup>86</sup>, rapid reaction teams were created to deal with case backlogs in tax and administrative courts. The latest data available show that these teams have already resolved 63% of the administrative cases and over 58% of the tax cases initially assigned<sup>87</sup>. It is expected that the teams will be able to resolve all the pending cases that had entered the system before 2013 by the end of 2022<sup>88</sup>.

## II. ANTI-CORRUPTION FRAMEWORK

The institutional anti-corruption framework in Portugal remains generally unchanged since the publication of 2021 Rule of Law Report. 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<sup>89</sup>. As regards the prevention of corruption, a National Anti-Corruption Mechanism was established in 2021; it will contribute to improve the prevention capacity. 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, although efforts are being made in this regard.

**The perception among experts and the business community is that the level of corruption in the public sector remains relatively low.** In the 2021 Corruption Perceptions Index by Transparency International, Portugal scores 62/100 and ranks 9<sup>th</sup> in the European Union and 32<sup>nd</sup> globally<sup>90</sup>. This perception has been relatively stable over the past 5 years<sup>91</sup>. The 2022 Special Eurobarometer on Corruption shows that 90% of respondents consider corruption widespread in their country (EU average 68%) and 44% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>92</sup>. As regards businesses, 85% of companies consider that corruption is widespread (EU average 63%) and

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<sup>84</sup> Secretariat of the Committee of Ministers, DH-DD(2021)657: Communication from Portugal.

<sup>85</sup> Committee of Ministers, Decision CM/Del/Dec(2021)1411/H46-25, of 16 September 2021.

<sup>86</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 8; 2020 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 5.

<sup>87</sup> High Council for the Administrative and Tax Courts, Annual Report 2020, pp. 76-77.

<sup>88</sup> Information received in from the High Council for the Administrative and Tax Courts in the context of the country visit to Portugal.

<sup>89</sup> The UNCC is the specialized operational unit in charge of investigating corruption offences and related crimes such as bribery or embezzlement of public funds, and has jurisdiction nationwide.

<sup>90</sup> Transparency International (2022), Corruption Perceptions Index 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).

<sup>91</sup> In 2017 the score was 63, while, in 2021, the score is 62. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last 5 years.

<sup>92</sup> Special Eurobarometer 523 (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

55% consider that that corruption is a problem when doing business (EU average 34%)<sup>93</sup>. Furthermore, 32% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>94</sup>, while 16% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>95</sup>.

**The National Anti-Corruption Strategy for 2020-2024 is being implemented.** A set of legislative measures aimed at fighting and preventing corruption in both the public and private sectors has been adopted in order to implement the Anti-Corruption Strategy<sup>96</sup>. These include instruments to fight financial crime, active and passive corruption, and support for business compliance and whistleblower protection as well as a wide range of amended legislation in the area of criminal law and criminal procedural law, company law and crimes committed by public officials<sup>97</sup>. This legislative package was approved by Parliament in 2021 and entered into force in March 2022. Its adoption opens the way to an implementation phase which will also depend on the resources to be devoted to the institutions responsible<sup>98</sup>.

**New legislative measures envisage to increase the effectiveness of the judicial system in handling corruption offences and to accelerate criminal proceedings at the level of prosecution.** An amendment to the criminal code extended the limitation period for crimes of corruption, including high-level corruption, to 15 years<sup>99</sup>. The practical implementation of this measure needs a close monitoring given the reported concerns as regards prescription of complex corruption cases due to delays in the investigation and prosecution phases<sup>100</sup>. A set of legal texts has been amended with a particular focus on suspension or reduction of sentences, suspension of provisional proceedings, and determination of criminal liabilities,

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<sup>93</sup> Flash Eurobarometer 507 (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

<sup>94</sup> Special Eurobarometer 523 (2022).

<sup>95</sup> Flash Eurobarometer 507 (2022).

<sup>96</sup> Input from Portugal for the 2022 Rule of Law Report, pp. 9 and 12. For example, this legislative package 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).

<sup>97</sup> Art. 58, Law No. 68/2019, of 27 August. These include 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, and economic and financial infringements of an international or transnational dimension.

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

<sup>99</sup> Art. 118(1) (a) of the Criminal Code extends the limitation period of 15 years to the offences provided for Art. 20, Art. 23e(1) and Arts. 26 and 27 of Law No 34/87 of 16 July (embezzlement, economic involvement in business, abuse of power and breach of secrecy); Arts. 10-A and 12 of Law No 50/2007 of 31 August (undue offer or receipt of an advantage); Arts. 36 and 37 of the Military Justice Code (passive corruption for the commission of illegal acts and active corruption); In Art. 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 a period of 15 years is exceptionally provided for; crime of maladministration provided for in Art. 11 of Law No 34/87 of 16 July. Input from Portugal to the 2022 Rule of Law Report, p. 10.

<sup>100</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 10.

including for legal persons<sup>101</sup>. In addition, new provisions bring clarity to the concept of political office holder in the context of criminal law and introduce a specific prohibition to perform official duties to political office holders who commit a crime, including corruption<sup>102</sup>. A new law<sup>103</sup> facilitates the use of financial and other information (such as bank account information) by competent authorities for the purposes of preventing, detecting, investigating or prosecuting serious criminal offences.

**The lack of resources for investigation and prosecution of corruption-related offences remains a concern<sup>104</sup>.** Stakeholders report that the lack of resources at the level of the police and prosecution services is an obstacle to prosecution of corruption-related cases<sup>105</sup>. The lack of expertise and trainings, low levels of digitalisation and difficult access to databases as well as lack of financial independence are also reported as constraints. As reported in 2021, challenges remain concerning the treatment of high-level corruption cases<sup>106</sup>. The lack of statutory financial autonomy was publicly raised by the Prosecutor General as an obstacle to the overall independence of the Prosecution Office<sup>107</sup>. Both the Department of Investigation and Penal Action (DIAP) and the Central Department of Investigation and Penal Action (DCIAP), established within the Public Prosecutor's Service, also raise the issue of resources<sup>108</sup>. The lack of resources is also reported to have an impact on the quality of the investigations and prosecutions of corruption-related cases, causing significant delays, especially in complex and high-level corruption cases<sup>109</sup>. The problem persists despite a slight improvement in the DCIAP's resources in 2021 – the Central Investigation and Prosecution Department (DCIAP) has an overall table of 36 State Prosecutors specialising in the investigation of the organized crime, including corruption and related crimes. The Research departments and Criminal Proceedings (DIAP) in Porto, Coimbra, Lisbon and Évora counts with 37 magistrates. The UNCC has 12 Investigation Units with a staff of 97 criminal investigators. However, in addition to the investigators assigned to the UNCC, the

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<sup>101</sup> Input from Portugal for the 2022 Rule of Law Report, p. 13. Law No 34/87, of 16 July, determining the new Measures for crimes of responsibility of political office holders bring clarity to the concept of political office holder for the purpose of criminal law (Arts. 1, 4, 5, 16, 17, 18, 19a, 23, 27, 28, 34, 35, 37 and 39 of Law No 34/87 of 16 July are replaced); Law No 36/94 introducing new measures to combat economic and financial crime, including corruption, embezzlement, undue influence and economic participation in business. Amendments determine a responsible authority to carry preventive actions within the prosecutor's office and criminal police unit including the suspension of proceedings and establishment of injunctions with aim to mitigate penalties (Arts. 1, 2, 8 and 9 of Law No 36/94 of 29 September are replaced); Law No 20/2008 of 21 April 2008 establishing the new criminal regime for corruption in international trade and the private sector; Law No 50/2007 of 31 August 2007 establishing a new system of criminal liability for conduct liable to affect the truth, loyalty and correctness of competition and its outcome in sporting activity (Arts. 10 and 13 of Law No 50/2007 of 31 August are replaced); Changes in the legislation on corruption-foreign bribery (2018): Arts. 5 and 10 were replaced.

<sup>102</sup> Art. 27-A, Law No. 34/87, of 16 July, establishing a prohibition to hold public office for a period from 2 up to 10 years.

<sup>103</sup> Law No. 54/2021 of 13 August 2022. Input from Portugal to the 2022 Rule of Law Report, p. 13.

<sup>104</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 9.

<sup>105</sup> Information received from Transparency International, Office of the Prosecutor General, Judges Union, and Prosecutors Union in the context of the country visit to Portugal.

<sup>106</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 9-10.

<sup>107</sup> Public communication presented in the Congress of Public Prosecution, Vilamoura (Portugal), 25 and 26 March 2022.

<sup>108</sup> Público (2021), 'DCIAP director pressures Government and criticises lack of resources'. Public communication presented in the Congress of Public Prosecution, Vilamoura (Portugal), 25 and 26 March 2022.

<sup>109</sup> Information received from the Office of the Prosecutor General in the context of the country visit to Portugal.

Criminal Police has 193 additional staff spread across the national territory. With a view to strengthening Justice Police resources, a course for 120 inspectors was completed in 2021; a course for 100 Inspectors will start in 2022 and a competition will take place for a further 70 Inspectors, preventing a gradual increase in human resources in UNCC<sup>110</sup>. There are also concerns referring to the resources of the Inspectorate-General of Finance (IGF). The IGF has faced a progressive decrease of resources (from 2015 to 2021 there has been a 21.5% reduction of staff and there was a 1.1% reduction of budget from 2020 to 2021)<sup>111</sup>, which is becoming challenging, especially in view of new additional activities foreseen under the National Anti-Corruption Mechanism<sup>112</sup>.

**The general regime for the prevention of corruption has been established and work is ongoing for the implementation of the 2021 National Anti-Corruption Mechanism, which is expected to be operational in the second half of 2022.** In the context of the implementation of the National Anti-Corruption Strategy<sup>113</sup>, new legislation has been adopted which creates a National Anti-Corruption Mechanism and establishes the general regime for the prevention of corruption and conflicts of interest<sup>114</sup>. This general regime imposes on private companies, public undertakings and services forming part of the direct and indirect administration of the State<sup>115</sup>, with 50 or more employees, the obligation to adopt specific anti-corruption tools<sup>116</sup>. At the same time, it remains a concern that the scope of the regime will be too narrow in practice considering the overall number of entities under 50 employees<sup>117</sup>, including Government bodies which will not be bound by the new rules. Once operational, the Mechanism will function as an independent body with initiating, controlling and sanctioning powers. It will also carry the task of implementing the preventive dimension of the National Anti-Corruption Strategy<sup>118</sup>. Overall, the need for more specialised personnel and robust monitoring structures remains a challenge<sup>119</sup>. While the operationalisation of the

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<sup>110</sup> Input from Portugal for the 2022 Rule of Law Report, p. 9. In the State Budget for 2022 there are also funds allocated to: i) strengthening human resources to fight corruption, fraud and economic-financial crime, in particular in the Unit of Technical Assistance of the Attorney General's Office and in the Forensic Unit for Finance and Accounting, the Anti-Corruption Unit and the National Criminal Police Cybercrime and Technological Crime Unit; and ii) strengthening the training of magistrates and other stakeholders in the criminal investigation in the field of prevention and combat to corruption, fraud and economic and financial crime.

<sup>111</sup> Information received from IGF in the context of the country visit to Portugal.

<sup>112</sup> Information received from IGF in the context of the country visit to Portugal.

<sup>113</sup> National Anti-Corruption Strategy for 2020-2024.

<sup>114</sup> Decree-Law No. 109-E/2021, of 9 December.

<sup>115</sup> These entities include private companies (with the exception of micro and small enterprises) 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).

<sup>116</sup> Those are: risk prevention programmes, codes of conduct, reporting channels and appropriate training programmes for the prevention of corruption and related offences. In particular, the regime obliges entities to adopt codes of conduct, adequate reporting channels, internal control systems and training programmes focused on risk prevention. It also introduces fines for administrative offences up to EUR 44 891 81 for legal person and EUR 3 740 98 for natural persons for non-compliance with the regime.

<sup>117</sup> According to information provided by *Statista* the number of micro and small (<50) enterprises in PT is the larger: up to 902 856, compared to 5 688 Medium sized in 2021. *Statista* (2021), SMEs in Portugal 2021.

<sup>118</sup> The Mechanism will be an independent body which will integrate the Council for Prevention of Corruption and continue the Council's task of ensuring the effectiveness of policies to prevent corruption with the additional power to sanction. The Mechanism is supposed to cooperate and support anti-corruption authorities including the Prosecutor's Office, Criminal Police and the Court of Auditors. The tasks of the Mechanism will be carried by the Board composed of specialised officials. The activities of the Mechanism will be monitored by the Court of Auditors. Input from Portugal to the 2022 Rule of Law Report, p. 9.

<sup>119</sup> Information received from the Ministry of Justice in the context of the country visit to Portugal.

Mechanism is ongoing, the sanctioning regime under the general regime of prevention of corruption will only come into force by June 2023<sup>120</sup>.

**Concerns remain regarding the monitoring of rules on conflicts of interests for high-level officials.** While integrity rules are in place for Government officials<sup>121</sup> and Members of Parliament<sup>122</sup>, concerns regarding their effective implementation remain unaddressed<sup>123</sup>: GRECO called for adequate supervisory mechanisms, including sanctions for improper acts, which are not envisaged in the Code of Conduct for the Members of Parliament<sup>124</sup>. The monitoring work of the Parliamentary Committee on Transparency<sup>125</sup> and Members' Statute continues, while the conclusions of the assessment of the effectiveness of the conflict prevention system are not yet available<sup>126</sup>. As regards the rules on 'revolving doors', there has been no progress in addressing the issue of monitoring breaches of post-employment restrictions, which creates concerns as to their enforcement<sup>127</sup>.

**New amendments to the system of asset declaration extend and strengthen declaratory obligations for political and senior public office holders, although the verification authority is not yet operational.** Complementing the existing requirement<sup>128</sup> to submit a single consolidated declaration of interest and assets, new regulations foresee penalties for unjustified enrichment<sup>129</sup>. According to the law, as of 10 December 2021, declarations should include a detailed description of any asset advantage, reduction in liabilities or increase in future assets when the value exceeds 50 times the national minimum wage<sup>130</sup>. The Transparency Entity<sup>131</sup> established in 2019, will be responsible, once operational, for monitoring and verifying the asset declarations of political and senior public officials<sup>132</sup>. It was initially envisaged to be set up in 2020, but it is not yet operational, and there is no timeline for its entry into function<sup>133</sup>. Efforts are currently being made to set up a digital

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<sup>120</sup> Art. 28(1), Decree-Law No. 109-E/2021, of 9 December. Information received from the Ministry of Justice in the context of the country visit to Portugal.

<sup>121</sup> Law 52/2019, of 31 July. 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 - Resolution of the Council of Ministers No. 184/2019.

<sup>122</sup> Law No. 7/93, of 1 March, Art. 20(1). Parliament, Resolution of the No. 210/2019.

<sup>123</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 10 and 11.

<sup>124</sup> GRECO Fourth Evaluation Round - Second Interim Compliance Report, p. 6.

<sup>125</sup> In the context of the country visit to Portugal, the Commission was informed by the Services of the Assembly of the Republic 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>.

<sup>126</sup> Information received from the Ministry of Justice in the context of the country visit to Portugal.

<sup>127</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 12.

<sup>128</sup> Art. 1, Law No. 69/2020, of 9 November. Additionally, Law No. 69/2020, of 9 November, 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 3 previous years of high public and political officials.

<sup>129</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 11-12; Law No. 4/2022, of 6 January 2022.

<sup>130</sup> New sanctions incorporate the penalties of imprisonment of up to 5 years for failing to submit a declaration, omitting income and properties, including any unjustified enrichment (Input from Portugal for the 2022 Rule of Law Report, p. 14).

<sup>131</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 12.

<sup>132</sup> Art. 5 of Organic Law No. 4/2019, of 13 September, 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.

<sup>133</sup> Information received from the Constitutional Court in the context of the country visit to Portugal.

platform to handle asset declarations<sup>134</sup>. The issue of the facilities where the headquarters of the Entity should be installed has not yet been completely resolved, although the Government has provided a building for the headquarters of the Entity for Transparency, and the procedures for the necessary renovation works are advancing<sup>135</sup>.

**While legislation on lobbying remains to be adopted, the Government is implementing a system of ‘legislative footprint’ to monitor transparency in decision-making processes.**

There was no agreement reached on the proposed lobbying legislation that was under discussion in Parliament<sup>136</sup> during the legislature that was interrupted in December 2021. However, the Government has approved a resolution aimed at enhancing the transparency of the decision-making procedure, by implementing a system of ‘legislative footprint’<sup>137</sup>. This initiative will enable citizens to monitor interactions between decision-makers and interest representatives throughout the legislative procedures due to the mandatory registration of these interactions including from the drafting of laws and policies to their final approval<sup>138</sup>. It is expected to bring transparency to the decision-making process, as it requires interest representatives to be registered in order to take part in any legislative process. The Government expects that bringing decision-makers closer to citizens and giving transparency to the origin and nature of policies is expected to be a positive step towards the regulation of lobbying. 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<sup>139</sup>. However, the scope of the contacts allowed between Members of the Parliament and third interest parties is defined by the Portuguese Constitution<sup>140</sup>, imposing on the Members of the Parliament a set of duties in the exercise of their mandate<sup>141</sup>.

**New legislation on the protection of whistleblowers was adopted.** The new rules<sup>142</sup> were introduced on 20 December 2021 with the aim to align national legislation with the Whistleblowers Directive<sup>143</sup> and further improve the legal framework<sup>144</sup>. Overall, in 2020, there was a slight decrease of whistleblowers complaints (18.3 % less than in 2019 and 35.2 % less than in 2018)<sup>145</sup>. The analysis of the complaints submitted through the application

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<sup>134</sup> Information received from the Constitutional Court in the context of the country visit to Portugal.

<sup>135</sup> Information received from Portugal as a follow-up to the country visit.

<sup>136</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 12.

<sup>137</sup> Council of Ministers Resolution No. 143/2021, of 3 November.

<sup>138</sup> See also Section IV.

<sup>139</sup> GRECO Fourth Evaluation Round - Second Interim Compliance Report, p. 4. It is the competence of the Committee for the Transparency and Statute of the Members of Parliament (CTED) to ensure compliance with the rules mentioned, and to this end, it may carry out inquiries into facts which may constitute serious irregularities committed in breach of the duties of the Members of the Parliament, either at the request of the Members of the Parliament *ex-officio* or by determination of the President of the Parliament (please see article 27-A(j) of the Statute of the Members of Parliament).

<sup>140</sup> Arts. 155 and 159. See also Art. 14 of the Statute of the Members of Parliament and Arts. 3 to 9 of the Code of Conduct of Members of Parliament.

<sup>141</sup> Art. 14(2) of the Statute of the Members of Parliament.

<sup>142</sup> Law No. 93/2021, of 20 December.

<sup>143</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union Law.

<sup>144</sup> The rules introduce measures on prohibition of retaliation as well as establishment of specific reporting channels and the establishment of procedures for the analysis of reports that ensure the confidentiality and security of information. Also, further enshrining measures to protect and support whistleblowers were introduced.

<sup>145</sup> In 2020, the number of complaints received, including through this system, was 1.607, of which 603 were submitted by identified complainants (37.5 %). Information received from the Ministry of Justice in the context of the country visit to Portugal.



resulted in the opening of 232 investigations and 18 preventive investigations, with 507 complaints being sent to other bodies and 785 being closed<sup>146</sup>.

**Several institutions continued to monitor corruption risks related to the measures adopted in the context of the COVID-19 pandemic.** The Court of Audit monitored the implementation of the emergency law measures<sup>147</sup>. As a result, new reports were issued<sup>148</sup>. It is not yet clear if the Council for the Prevention of Corruption recommendation on the Prevention of Risks of Corruption and Related Infringements<sup>149</sup> was followed in practice by all the public bodies and entities intervening in the management or control of public money and other public values to which it was addressed<sup>150</sup>. The Inspectorate General of Finance issued an audit report about the measures taken to support the media sector during the COVID 19 pandemic, and published an e-book<sup>151</sup> on best practices and lowering the risks linked to corruption in the area of public procurement which is overall regarded as a high-risk area<sup>152</sup>.

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

The fundamental principles underpinning media freedom and pluralism are anchored in the Portuguese Constitution<sup>153</sup> and a comprehensive legal framework exists to protect journalists in the exercise of their profession<sup>154</sup>. The establishment of an independent regulatory body is also mandated in the Constitution<sup>155</sup>. The revised Audiovisual Media Services Directive (AVMSD) was transposed in 2020<sup>156</sup>. No major legislative developments have taken place since the publication of the 2021 Rule of Law Report.

**The Regulatory Authority for the Media continues to play a central role as regards media freedom and pluralism but faces some challenges regarding resources.** The regulatory authority (*Entidade Reguladora para a Comunicação Social*, ERC) is fully independent<sup>157</sup>. It monitors all entities that pursue media activities in Portugal<sup>158</sup> and ensures

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<sup>146</sup> In 2020, the number of investigations opened on the basis of complaints submitted in the application corresponded to 14.4 % of the complaints registered and the preventive investigations amounted to around 1.1 %. These percentages for investigations show a slight increase compared to those in 2018 and 2019 (12.7 %), confirming the downward trend in the number of preventive investigations initiated (1.8 % in 2018 and 1.6 %) in 2019. In 2019, 249 investigations and 31 preventive investigations were opened, while 787 complaints were sent to other entities and 896 were closed (information received from the Ministry of Justice in the context of the country visit to Portugal). The data refers to numbers relating to the channel for complaints set up by the Public Prosecutor's Office.

<sup>147</sup> Information received from the Court of Audit in the context of the country visit to Portugal.

<sup>148</sup> Court of Audit, Risks in the use of public resources in the management of emergencies (COVID-19); In February 2022 the Court of Audits published a report about fraud and non-compliance which highlights important limitations in monitoring.

<sup>149</sup> 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.

<sup>150</sup> 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.

<sup>151</sup> IGF, Autoridade de Auditoria, *Gestão dos Riscos na Contratação Pública*.

<sup>152</sup> Information received from the IGF in the context of the country visit to Portugal.

<sup>153</sup> Arts. 37 and 38, Constitution of the Portuguese Republic.

<sup>154</sup> Portugal ranks 7th in the 2022 Reporters without Borders World Press Freedom Index compared to 9th in the previous year.

<sup>155</sup> Art. 39, Constitution of the Portuguese Republic.

<sup>156</sup> Law 74/2020, of 19 November.

<sup>157</sup> 2022 Media Pluralism Monitor, country report for Portugal, pp. 6-7.

a series of essential tasks as foreseen in its constitutional mandate<sup>159</sup>. During 2021, it received EUR 4 000 000 (in arrears for the 2015-2019 contributions due by the telecom regulator) and has opened the recruitment for three new posts. However, given the extent and importance of its mission, there are concerns that the ERC may be underfunded<sup>160</sup>.

**The comprehensive legislative framework regulating the transparency of media ownership has been further extended.** A solid legal framework is in place regarding the transparency of ownership across all media markets, including online. The Constitution requires this transparency and mandates ERC to monitor it in implementation of the specific law that regulates this matter<sup>161</sup>. In January 2022, regulatory provisions entered into force, extending to on-demand services and video sharing platforms the requirement to register a set of information with the Regulatory Authority for the Media. Consequently, legislation on media transparency will be applicable to on-demand services providers<sup>162</sup>. The 2022 Media Pluralism Monitor report for Portugal (MPM 2022) continues to register low risk in transparency of media ownership<sup>163</sup>. It however notes some exceptions where the law is not always effective<sup>164</sup>. Some entities show low levels of transparency, and it is difficult to identify whether these cases are sanctioned in practice<sup>165</sup>. Moreover, the Transparency Portal<sup>166</sup> does not always provide the required information on some companies<sup>167</sup>.

**Access to information and documents held by public authorities is safeguarded through specific legislation.** This legislation aims at facilitating the performance of journalistic functions. While the Constitution guarantees the right of journalists to access sources of information<sup>168</sup>, rules of general application<sup>169</sup> regulate access to administrative documents and administrative information. Non-respect of the right of access to administrative documents can be appealed to the Administrative and Tax Courts. A complaint may also be filed before the independent administrative Commission for Access to Administrative Documents, but opinions on complaints are not binding on public institutions.

**The public service media provider is independent, but there are challenges regarding its resources.** *Rádio e Televisão de Portugal* (RTP), the public service media provider, is established by law<sup>170</sup>. Its internal governance organs are the Independent General Council (IGC) and the Management Board (MB). The IGC is a general overseeing body and is mainly responsible for choosing the MB and monitoring the adequacy of its strategic project. It is

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<sup>158</sup> Art. 6, Law No. 53/2005 (Statutes of ERC). See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 9.

<sup>159</sup> Art. 39, Constitution of the Portuguese Republic.

<sup>160</sup> 2022 Media Pluralism Monitor, country report for Portugal, pp. 6, 7 and 21.

<sup>161</sup> Law No. 78/2015, of 29 July.

<sup>162</sup> Regulatory Decree 7/2021, of 6 December.

<sup>163</sup> 2022 Media Pluralism Monitor, country report for Portugal, pp. 8 and 12.

<sup>164</sup> 2022 Media Pluralism Monitor, country report for Portugal, pp. 12-13.

<sup>165</sup> 2022 Media Pluralism Monitor, country report for Portugal, p. 13.

<sup>166</sup> The Transparency Portal was created by ERC on December 2019 in order to aggregate all the information on media ownership and make it available to the public.

<sup>167</sup> 2022 Media Pluralism Monitor, country report for Portugal, p. 13.

<sup>168</sup> Article 38(2)(b), Constitution of the Portuguese Republic. The Statute of Journalists, approved by Law No. 1/99, of 13 January, contains provisions aimed at ensuring this right (Art. 8).

<sup>169</sup> Law No 26/2016, of 22 August.

<sup>170</sup> Law No. 8/2007, of 14 February.

composed of six members<sup>171</sup> nominated for 6 years, and it does not have management responsibilities. The MB is composed of three members nominated by the IGC, taking office after being heard by the Parliament. The law establishes the conditions under which the members of the IGC and the MB could be deposed. Additionally, the law establishes a 30-member Opinion Council (OC), whose members are elected for a four-year period, which is renewable. 10 of them are nominated by the Parliament, and the remaining 20 by a variety of civil society organisations. The OC is meant to act as a link for RTP to the interests of Portuguese society and to monitor that it fulfils its obligations as a public service. RTP is financed by an audiovisual contribution tax (82%), and publicity and sales of programmes (18%)<sup>172</sup>. However, given that RTP offers a wide and diverse spread of services and has plans for some new channels, concerns were voiced regarding insufficient financing<sup>173</sup>.

**There are concerns regarding the precariousness of the journalistic profession.** Despite some improvement compared to 2020, the general situation of professionals in the Portuguese media is still relatively challenging, with the small advertising market not being enough to support all operators in the market<sup>174</sup>. This translates into downward pressure on salaries and indirectly affects editorial freedom for journalists, except in the public service media<sup>175</sup>. Regarding the economic support measures in the framework of the COVID-19 pandemic, these are reported to have had a positive effect on media, as stakeholders noted that these exceptional support measures taken by the Government (advance purchase of an institutional advertising) had the welcome effect that, for the first time, institutional advertising reached local and regional media significantly (25%)<sup>176</sup>.

**Standards for the protection of journalists remain high.** As mentioned in previous editions of the Rule of Law Report<sup>177</sup>, the Criminal Code, in particular following the amendments introduced in 2018<sup>178</sup>, gives journalists protection in the exercise of their profession. As in previous years, the MPM 2022 considers this an area of low risk<sup>179</sup>. The European Court of Human Rights found in January 2022<sup>180</sup> that the 2012 conviction of the journalist Freitas Rangel for statements about associations of judges and prosecutors breached the European Convention<sup>181</sup>. Since 2021 Rule of Law Report, the Council of Europe Platform to promote the protection of journalism and safety of journalists has

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<sup>171</sup> Two nominated by the Government, two nominated by the Opinion Council (see below) and two co-opted by the first four.

<sup>172</sup> Information received from RTP in the context of the country visit to Portugal; RTP, 2020 Financial Statement Report, p. 153.

<sup>173</sup> Information received from RTP in the context of the country visit to Portugal.

<sup>174</sup> 2022 Media Pluralism Monitor, country report for Portugal, p. 6.

<sup>175</sup> Information received from the Journalists' Professional License Committee and the Journalists Union in the context of the country visit to Portugal.

<sup>176</sup> Information received from the Journalists' Professional License Committee and the Journalists Union in the context of the country visit to Portugal.

<sup>177</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 14; 2020 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 11.

<sup>178</sup> Which include journalists in the categories of professions granted enhanced protection, and qualified aggressions against journalists as 'public crimes'.

<sup>179</sup> 2022 Media Pluralism Monitor, country report for Portugal, pp. 7, 9 and 21.

<sup>180</sup> Judgment of the European Court of Human Rights of 11 January 2022, *Freitas Rangel v. Portugal*, 78873/13.

<sup>181</sup> The Court found in particular that the fine and the damages had been wholly disproportionate and had to have had a chilling effect on political discussion. The domestic courts had failed to give adequate reasoning for such interference with the applicant's free speech rights, which had not been necessary in a democratic society.

registered two alerts for Portugal<sup>182</sup>. The first one concerns a court proceeding presented by an Angolan politician, seeking important financial compensation for his name appearing in the Portuguese edition of a book on corruption written by a British journalist. The Portuguese Government has duly replied to the alert<sup>183</sup>. The second concerns the 2 January 2022 cyber-attacks on the websites of the newspaper Expresso and all the channels of the SIC TV station<sup>184</sup>. The attackers demanded a ransom to be paid. The OSCE Representative on Freedom of the Media expressed concern about these acts, stressing that they constituted a clear violation of the right to freedom of expression and that the spreading false information illegally through these channels has a clear intent to use the reach of media to cause chaos<sup>185</sup>. The incident is being investigated by national law enforcement and Portugal's National Cybersecurity Centre. Weeks later, similar attacks took place against another media group (Cofina). The Journalist Union, the Journalists' Professional License Committee and ERC condemned these attacks and urged the authorities to investigate them<sup>186</sup>.

**A legislative provision on the protection against disinformation is under constitutional review.** Parliament adopted in May 2021 the Portuguese Charter of Human Rights in the Digital Age<sup>187</sup>. Its Article 6<sup>188</sup>, providing for the possibility to create registered fact-checking structures overseeing registered media outlets, received criticism and opposition from stakeholders, for its possible impact on the rights to the freedom of expression and information<sup>189</sup>. This led the President of the Republic to request the assessment of the constitutionality of that rule for violation of the right to freedom of expression<sup>190</sup>. The case is currently pending before the Constitutional Court.

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

Portugal is a representative democratic republic with a directly elected President and a unicameral Parliament. The President of the Republic, elected by direct popular vote, has significant constitutional and political powers, including the competence to dissolve Parliament<sup>191</sup>. The Prime Minister has the competences to direct the Government's general policy and to coordinate and orient the actions of all the Ministers<sup>192</sup>. Parliament and Government share legislative competence. The Members of Parliament and the Parliamentary Groups, the Government, the Regional Assemblies and a group of at least 20 000 citizens have the right of legislative initiative. The Constitutional Court, which is part of the judiciary, is competent to review the constitutionality of laws and to control the constitutionality of the

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<sup>182</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, Portugal.

<sup>183</sup> Alert No. 192/2021, Council of Europe, Platform to promote the protection of journalism and safety of journalists, Portugal.

<sup>184</sup> Alert No. 40/2022, Council of Europe, Platform to promote the protection of journalism and safety of journalists, Portugal.

<sup>185</sup> OSCE Representative on Freedom of the Media, Press Release of 13 January 2022.

<sup>186</sup> Journalists Union, Press releases of 3 January 2022 and 10 February 2022; Journalists' Professional License Committee, Press release of 12 January 2022; ERC, Press release of 12 January 2022.

<sup>187</sup> Law No. 27/2021.

<sup>188</sup> In particular, Art. 6(6), providing for the creation of fact-checking structures by duly registered media and encouraging the award of quality seals by trusted entities endorsing with public utility status.

<sup>189</sup> Journalists Union, Press release of 9 June 2021; Journalists' Professional License Committee, Complaint to the President of the Republic and to the Ombudsperson of 30 June 2021.

<sup>190</sup> President of the Republic, Press release of 29 July 2021.

<sup>191</sup> Art. 133(e), Constitution of the Portuguese Republic.

<sup>192</sup> Art. 201, Constitution of the Portuguese Republic.

omission to adopt the necessary legislative measures to execute constitutional norms<sup>193</sup>; it also has other important competences, including on electoral matters and control of asset, interest disclosure and incompatibility declarations<sup>194</sup>. The independent Ombudsperson is tasked with safeguarding and promoting the freedoms, rights and guarantees of citizens, and has the right to challenge the constitutionality of laws.

**Parliament and Government are implementing measures to improve the quality of legislation and increase the transparency of the legislative procedure.** Following the approval of the new Rules of Procedure of Parliament<sup>195</sup>, in July 2021, the Conference of Leaders<sup>196</sup> adopted guidelines on the interpretation of some of these new rules. By setting clear timelines for the debates on legislative proposals, and clarifying the deadlines applicable to fast-track procedures<sup>197</sup>, these rules aim at reinforcing the quality of parliamentary legislation and the procedure's transparency, in particular by allowing a better knowledge of the context of the bills prior to their discussion<sup>198</sup>. Regarding the legislative power entrusted to the executive, the national anti-corruption strategy envisages measures to improve the transparency of the legislative procedure<sup>199</sup>. In this context, the Council of Ministers approved a resolution<sup>200</sup> that implements a system of 'legislative footprint' within the governmental legislative procedure, establishing the mandatory recording of any intervention of external entities in the legislative process, from the stage of conception and drafting of the legislative act until its final approval<sup>201</sup>. The resolution also approved a pilot-project which will allow the follow-up by citizens of all the interactions throughout the legislative processes initiated by the Government<sup>202</sup>. Although there are also efforts to improve the use of both *ex ante*<sup>203</sup> and *ex post* Regulatory Impact Assessments (RIAs), *ex post* RIAs remain rare, with only two currently underway<sup>204</sup>. Public consultations are not envisaged as part of RIA procedure. Under a project financed by the EU through the Technical Support Instrument, the use of artificial intelligence in performing RIAs will be explored<sup>205</sup>. The quality of law-making is an important factor for investor confidence and a

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<sup>193</sup> Art. 223(1), Constitution of the Portuguese Republic.

<sup>194</sup> Art. 223(2)(c), (g), (h), Constitution of the Portuguese Republic; Arts. 11-A and 106 to 110, Law on the Constitutional Court.

<sup>195</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 16.

<sup>196</sup> Organ composed by the President of Parliament and the presidents of parliamentary groups.

<sup>197</sup> In particular, the guidelines clarify that the responsible parliamentary committee shall pass its reasoned opinion and send it to the President within a time limit of 30 days from the date of the admissibility order, and bills shall only be discussed and put to the vote on the general principles in the plenary session after the time limit of 30 days following the date of the admissibility order and not the date of their submission as a bill. Moreover, it determines that proposers of the bill in fast-track procedures may only replace the text of a bill up to 48 hours before its discussion on the general principles, and the replacement must be notified immediately to parliamentary groups and other members of Parliament. After the discussion, the text can no longer be replaced.

<sup>198</sup> Information received from the Services of the Assembly of the Republic in the context of the country visit to Portugal.

<sup>199</sup> See Section II – Anti-corruption framework.

<sup>200</sup> Resolution of the Council of Ministers No. 143/2021, of 3 November.

<sup>201</sup> Input from Portugal for the 2022 Rule of Law Report, pp. 14 and 26.

<sup>202</sup> Input from Portugal for the 2022 Rule of Law Report, p. 14.

<sup>203</sup> According to the regime on the functioning and organisation of the current Government, draft Government legislative acts should be subject to a prior assessment of legislative impact, seeking to estimate the variation in benefits and charges imposed on the life of persons and activities of enterprises, in particular small and medium-sized enterprises, as well as other non-economic impacts (Art. 53(1), Decree-Law No. 32/2022, of 9 May).

<sup>204</sup> Information received from UTAIL in the context of the country visit to Portugal.

<sup>205</sup> Project supported by European Commission (DG REFORM).

reason for concern about effectiveness of investment protection for 25% of companies in Portugal<sup>206</sup>.

**The Constitutional Court reviewed the electoral process.** Following the rejection by Parliament of the State Budget Bill in October 2021, the President of the Republic dissolved the Parliament and called general elections<sup>207</sup>, which took place on 30 January 2022. In the context of the counting of the votes of the Europe electoral circle<sup>208</sup>, the General Electoral Board declared the votes of 150 voting assemblies of this electoral circle to be null and void<sup>209</sup>. Consequently, the Constitutional Court was seized<sup>210</sup>. In a judgment of 15 February 2022<sup>211</sup>, the Constitutional Court partially upheld the appeal, revoking the decision of the General Electoral Board of the Europe electoral circle. The Constitutional Court declared null the votes of the voting assemblies affected by the decision, and determined the repetition of the vote in the concerned voting assemblies. The Constitutional Court affirmed that the constitutional control envisaged in electoral matters is not primarily intended to safeguard individual rights, but to ensure the legality of the electoral process, which is essential for the democratic legitimacy of the political power<sup>212</sup>. The new parliamentary term started after this review and the subsequent repetition of the vote<sup>213</sup>. During the dissolution period<sup>214</sup>, Parliament ceased its regular functioning, with no plenary sessions taking place, and meetings of Parliamentary Committees limited to those necessary for the final drafting of the bills<sup>215</sup>. Consequently, the legislative activity decreased significantly in the first trimester of 2022.

**The emergency measures adopted in the context of the COVID-19 pandemic were subject to scrutiny, and reflections are ongoing on a new legal basis for emergency measures.** While the state of emergency ceased to apply in April 2021, the Government has declared since then situations of calamity, alert, and contingency at different occasions<sup>216</sup>. Currently, the situation of alert remains applicable<sup>217</sup>. Since March 2020, the Government has submitted to Parliament 26 reports containing the relevant information on the strategy to

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<sup>206</sup> Figure 55, 2022 EU Justice Scoreboard.

<sup>207</sup> Decree of the President of the Republic No. 91/2021, of 5 December.

<sup>208</sup> Art. 12(4), Law No. 14/79, of 16 May, as amended. Voter residing abroad are group in two electoral circles, one of them covering all European countries.

<sup>209</sup> This decision was prompted by the fact that local Electoral Boards decided to accept as valid votes that were not accompanied by the photocopy of the identity document, as prescribed in law (Art. 79-G (6) Law No. 14/79, of 16 May, as amended), consequently considering them together with the remaining votes for the final counting. The General Electoral Board considered that such votes should be considered null and void and, given that it was no longer possible to identify the votes that had been incorrectly considered valid, declared the nullity of all votes. The decision affected a universe of approximately 160 000 votes.

<sup>210</sup> Case No. 180/2022. The Constitutional Court is competent to decide on electoral matters pertaining to the parliamentary elections (Art. 117, Law No. 14/79, of 16 May, as amended).

<sup>211</sup> Constitutional Court, judgment 133/2022 of 15 February 2022, Case No. 180/2022.

<sup>212</sup> Constitutional Court, judgment 133/2022 of 15 February 2022, Case No. 180/2022, para. 15.

<sup>213</sup> On 12 and 13 March in person, and until 23 March for postal voting.

<sup>214</sup> From 5 December 2021 to 28 March 2022.

<sup>215</sup> Exceptionally, the Parliamentary Committee on Transparency and Members' Statute and the Committee on European Affairs were allowed to meet, subject to authorisation by the President of Parliament. The Standing Committee, chaired by the President of Parliament, Vice-Presidents and members appointed by all parties represented in Parliament, which replaces the plenary when the Parliament is not in full session, functioned during this period, and held nine meetings.

<sup>216</sup> Input from Portugal for the 2022 Rule of Law Report, p. 27. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 17, and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 13.

<sup>217</sup> Resolution of the Council of Ministers No. 47/2022, of 30 May.

combat the pandemic, which were prepared by the State of Emergency Monitoring Structure, coordinated by the Ministry of Interior<sup>218</sup>. These reports were subject to debate and approval in Parliament. The Constitutional Court<sup>219</sup>, as well as ordinary courts, were also called to review emergency measures. In particular, the Supreme Administrative Court decided on four appeals referring to COVID-19-related measures, dismissing all the claims<sup>220</sup>. The Ombudsperson, besides responding to numerous complaints related to emergency measures, also undertook sectorial studies on issues raised by the COVID-19 pandemic<sup>221</sup>, including on the legal basis for the adoption of exceptional measures to fight the pandemic under the constitutional framework<sup>222</sup>. The studies' results led the Government to establish a working group, entrusted with the task of preparing legislation for the adoption of exceptional measures. The group delivered a draft bill to the Government in November 2021, which was not discussed in Parliament due to its dissolution<sup>223</sup>.

**On 1 January 2022, Portugal had 17 leading judgments of the European Court of Human Rights pending implementation<sup>224</sup>.** While Portugal's rate of leading judgments from the past 10 years that remain pending was at that time at 41%, the average time that the judgments have been pending implementation was 3 years and 10 months<sup>225</sup>. The oldest leading judgment, pending implementation for 11 years, concerns the fairness of criminal proceedings<sup>226</sup>. On 1 July 2022, the number of leading judgments pending implementation has decreased to 15<sup>227</sup>.

**The internal structure of the Office of the Ombudsperson has been reformed in order to better reflect its mandate.** The Ombudsperson is accredited with 'A' status by the UN Global Alliance of National Human Rights Institutions (GANHRI)<sup>228</sup>. In 2021, the Government adopted a new Act on the Ombudsperson's Office<sup>229</sup> to reform the structure of

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<sup>218</sup> Input from Portugal for the 2022 Rule of Law Report, p. 27.

<sup>219</sup> Contribution from the Conference of European Constitutional Courts for the 2022 Rule of Law Report, pp. 24-27. The availability of judicial review of emergency measures, including by the Constitutional Court, is an important guarantee, in line with European standards (Venice Commission, Interim Report on the measures taken in the EU member States as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights (CDL-AD(2020)018-e), paras. 77 and 78).

<sup>220</sup> Information received from the Supreme Administrative Court in the context of the country visit to Portugal.

<sup>221</sup> Covering three areas: the situation of the homeless; the implications of the pandemic in education; and the impact of the pandemic at the level of the rule of law.

<sup>222</sup> Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 433.

<sup>223</sup> Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 429.

<sup>224</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>225</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 64.

<sup>226</sup> Judgment of the European Court of Human Rights of 5 July 2011, *Moreira Ferreira v. Portugal*, 19808/08, pending implementation since 2011.

<sup>227</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>228</sup> Global Alliance of National Human Rights Institutions (GANHRI), Sub-Committee on Accreditation (SCA) (2017), Accreditation Report – November 2017.

<sup>229</sup> Decree-Law No. 80/2021, of 6 October.

the supporting services to the Ombudsperson and better ensure compliance with the Paris Principles<sup>230</sup>. The legislation was subject to an extensive consultation process, in which the Ombudsperson was actively involved<sup>231</sup>. The new organisation explicitly reflects two dimensions of its mandate, namely its work on the National Human Rights Institutions and the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>232</sup>. The new Act formalises the existence of three new departments that add up to the existing Complaints Unit, which was also re-structured. The new departments have specific competences in the fields of prevention against torture, international relations and development of studies and projects<sup>233</sup>. A new triage unit has also been established, which is expected to help deal with the increasing number of complaints in an efficient manner<sup>234</sup>. Although the number of recommendations pending follow-up increased in 2021<sup>235</sup>, it is reported that the practice confirms the complete respect regarding the independence and integrity of the Ombudsperson institution in the performance of its duties, and that there are no systematic threats, forms of harassment or intimidation to the Ombudsperson's heads and staff<sup>236</sup>. However, there is still no focal point in Parliament which would facilitate swift follow-up on the Ombudsperson recommendations to Parliament<sup>237</sup>.

**Civil society space remains open, despite certain challenges.** The civil society space continues to be considered to be open<sup>238</sup>. Whereas, in the course of 2021, restrictions on rights and freedoms were imposed due to the COVID-19 pandemic, these resulted from general measures, not ones targeting specifically human rights defenders or civil society organisations (CSOs)<sup>239</sup>. CSOs continue to be actively involved in Government initiatives, in particular in the areas of civic participation and gender equality<sup>240</sup>. However, isolated acts against CSOs active in the support of minorities continue to occur<sup>241</sup>. In December 2021, the UN Working Group of Experts on People of African Descent urged the Government to adopt effective measures to prevent reprisals against anti-racism human rights defenders<sup>242</sup>. In this context, it is to be noted that, in July 2021, the Government approved the National Plan Against Racism and Discrimination, which had been prepared with CSOs<sup>243</sup>. CSOs also

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<sup>230</sup> Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 426.

<sup>231</sup> Input from Portugal for the 2022 Rule of Law Report, pp. 27 and 28.

<sup>232</sup> Input from Portugal for the 2022 Rule of Law Report, p. 27.

<sup>233</sup> Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 426.

<sup>234</sup> Information received from the Office of the Ombudsperson in the context of the country visit to Portugal.

<sup>235</sup> Input from Portugal for the 2022 Rule of Law Report, p. 28.

<sup>236</sup> Information received from the Office of the Ombudsperson in the context of the country visit to Portugal; Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2021 Rule of Law Report, p. 425. See also Venice Commission, Principles on the Protection and Promotion of the Ombudsman Institution ('The Venice Principles'), CDL-AD(2019)005, para 24.

<sup>237</sup> Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 427.

<sup>238</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>239</sup> Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 426.

<sup>240</sup> Input from Portugal for the 2022 Rule of Law Report, Annex A.

<sup>241</sup> Contribution from Front Line Defenders for the 2022 Rule of Law Report, p. 5.

<sup>242</sup> Contribution from the UN Human Rights Regional Office for Europe – Portugal for the 2022 Rule of Law Report, p. 2.

<sup>243</sup> Input from Portugal for the 2022 Rule of Law Report, p. 31.



continue to face challenges related to the availability of public and private funding and the reduced diversity of funding sources<sup>244</sup>. The dissolution of Parliament following the rejection of the 2022 state budget sparked concerns of delays in the allocation of funding to CSOs<sup>245</sup>.

**Several initiatives to foster a rule of law culture are ongoing.** The Government is leading initiatives for the promotion of a rule of law culture aimed at high school students, integrated in the National Strategy for Civic Education<sup>246</sup>, and specific information campaigns have been developed to improve the understanding of the functioning of the justice system<sup>247</sup>. Moreover, Parliament approved new legislation in the field of preventing and combating corruption, which will reinforce specific training in schools on issues of civic participation and the rule of law<sup>248</sup>. The parliament is also cooperating with the Ministry of Education and the Regional Governments of Azores and Madeira in the ‘Young People’s Parliament’ initiative, which aims to promote the interest of young people in civic and political participation and to publicise the significance of parliamentary representation and its decision-making process<sup>249</sup>.

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<sup>244</sup> Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2022 Rule of Law Report, p. 426.

<sup>245</sup> CIVICUS, Country profile – Portugal.

<sup>246</sup> Input from Portugal for the 2022 Rule of Law Report, p. 32.

<sup>247</sup> Information received from the Ministry of Justice in the context of the country visit to Portugal.

<sup>248</sup> Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 41.

<sup>249</sup> Information received from the Services of the Assembly of Republic in the context of the country visit to Portugal.

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

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

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

The Commission services held virtual meetings in March and April 2022 with:

- Bar Association
- Central Department of criminal action and investigation (DCIAP)
- Constitutional Court
- Council for the Prevention of Corruption
- Court of Audit
- High Council for the Administrative and Tax Courts
- High Council for Public Prosecution
- High Council for the Judiciary
- Inspectorate-General of Finance
- Journalists' Professional License Committee
- Journalists Union
- Judges Union
- Media Authority – Regulatory Entity for Social Communication
- Ministry of Foreign Affairs
- Ministry of Justice
- Observatory of Economy and Fraud Management
- Office of the Prosecutor General
- Office of the Ombudsperson
- Platform of NGOD
- Prosecutors Union
- Secretariat General of the Presidency of the Council of Ministers
- Services of the Assembly of the Republic
- Supreme Administrative Court
- Supreme Court of Justice
- Transparency International – Portugal
- Union of Judicial Administrative Officials
- UTAIL - Technical Unit for Legislative Impact Assessment

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

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute (OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders

- Transparency International Europe