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## **COMMISSION STAFF WORKING DOCUMENT**

### **2024 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**

### **2024 Rule of Law Report**

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

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## **ABSTRACT**

Efficiency in dealing with civil and commercial cases has continued to improve, and new measures aimed at strengthening the functioning of Administrative and Tax Courts have been implemented and more efforts are underway to address remaining challenges. Transparency in the allocation of cases has been significantly strengthened, with a new electronic system being effectively implemented. Some steps have been taken to ensure adequate human resources for the justice system, while serious concerns remain, in particular regarding the shortage of legal clerks. There are challenges regarding the adequacy of general criminal procedure legislation to efficiently deal with complex criminal procedures, and the Government is taking initiatives to address the matter. High-visibility criminal cases have led to public discussions. The use of digital technologies by courts is widespread and continues to be encouraged. A new multiannual plan for the renovation of court buildings is in place, while concerns regarding court and prosecution premises emerged.

The Government adopted the new Anti-Corruption Agenda. The Anti-Corruption Mechanism has taken up the majority of its tasks. Corruption cases are being investigated as a matter of priority and steps were taken to ensure sufficient resources for preventing, investigating, and prosecuting corruption. New legislation on revolving doors introduced stricter penalties. A new Code of Conduct applicable to the Government and high-level officials was adopted. There was some further progress in relation to ensuring effective monitoring and verification of asset declarations by the Transparency Entity. The legal framework for political party financing has come under public scrutiny. The Government announced plans to regulate lobbying through the creation of a transparency regime and a Code of Conduct. While the current legislative framework regarding whistleblower protection is being efficiently implemented, the strengthening of the protection of whistleblowers in cases of corruption was announced. Concerns regarding the transparency of decision-making in public procurement remain.

The Media Regulatory Authority further consolidated its central role, having been attributed new powers on state advertising. There have been no changes to the legislative framework in place concerning transparency of media ownership, but a specific high-profile case has triggered discussion. Public service media continues to face financial difficulties due to the lack of updating of the audiovisual tax. Tax incentives to encourage the subscription of written media had a positive effect, but there are calls for structural measures. Precarious working conditions for journalists continue to be a concern and instances of threats and abuse to journalists in the exercise of their profession have increased.

New steps have been taken to improve the transparency of law-making and the quality of legislation, while the regulation of impact assessment is still pending. Due to the dissolution of Parliament and early termination of the legislature, the revision of the Constitution was not finalised. The Office of the Ombudsperson continues to perform its functions effectively and its autonomy is ensured. The civil society space continues to be considered as open. There were further improvements regarding access to financing for civil society organisations, although challenges remain.

## **RECOMMENDATIONS**

Overall, concerning the recommendations in the 2023 Rule of Law Report, Portugal has made:

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

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

- Step up efforts to ensure adequate human resources of the justice system, in particular regarding judicial clerks, and continue efforts to improve its efficiency, in particular of Administrative and Tax Courts.
- Take measures to ensure the adequacy of the general criminal procedure legislation to efficiently deal with complex criminal proceedings.
- Continue efforts made to ensure sufficient resources for preventing, investigating and prosecuting corruption, including for the new Anti-Corruption Mechanism.
- Ensure the effective monitoring and verification of asset declarations by the Transparency Entity.
- Finalise the reforms to improve the transparency of law-making, particularly on the implementation of impact assessment tools.

## **I. JUSTICE SYSTEM**

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

### **Independence**

**The level of perceived judicial independence in Portugal continues to be average among both the general public and companies.** Overall, 53% of the general population and 44% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2024<sup>2</sup>. Judicial independence as perceived by the general public has increased in comparison with 2023 (49%), as well as in comparison with 2020 (40%). The perceived judicial independence among companies has slightly decreased in comparison with 2023 (45%), as well as in comparison with 2020 (45%)<sup>3</sup>.

**There has been significant further progress to strengthen the transparency of allocation of cases, as the new electronic system is being effectively implemented.** The 2023 Rule of Law Report recommended to Portugal to '[c]ontinue efforts to strengthen the transparency of allocation of cases, in particular by monitoring the implementation of the new rules on electronic allocation'<sup>4</sup>. The implementing regulation of the new system of electronic

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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 51 and 53, 2024 EU Justice Scoreboard, and 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> 51% of the companies in Portugal are either fairly or very confident that their investments are protected by the law and courts in the Member State. 29% of the surveyed companies see the quality, efficiency or independence of justice as one of the main reasons for concern about investment protection in the country. Figures 55 and 56, 2024 EU Justice Scoreboard.

<sup>4</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2. The 2022 Rule of Law Report had also recommended to Portugal to 'Continue the efforts to strengthen the transparency of allocation of cases' (2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2). In the 2023 Rule of Law Report, the Commission concluded that significant progress was made on the recommendation.

allocation of cases, applicable both in ordinary and administrative and tax courts<sup>5</sup>, required an evaluation of the system within six months of its full operationalisation<sup>6</sup>. The evaluation was completed and presented in July 2024<sup>7</sup>. The new electronic system is being effectively implemented and, although stakeholders have not been involved in the evaluation, stakeholders do not report concerns regarding the transparency of case allocation<sup>8</sup>. However, challenges remain regarding the excessive burden for courts, particularly as judges<sup>9</sup> and prosecutors<sup>10</sup> have to be present in the room while the judicial officials electronically allocate cases, even though they do not influence the actual allocation and do not perform any formal control over it<sup>11</sup>. As the application of the system of allocation of cases is being effectively implemented there has been significant further progress on the recommendation made in the 2023 Rule of Law Report.

**The High Council for the Judiciary continues to call for changes to the legislative framework governing its organisation and functioning.** As mentioned in the 2023 Rule of Law Report<sup>12</sup>, the High Council for the Judiciary submitted to the Ministry of Justice, in 2022, a proposal for the revision of the regime governing its organisation and functioning<sup>13</sup>. The proposed amendments are deemed necessary to better allow the Council to exercise its functions as the administrative body of courts, also in light of the changes to the functioning and powers of the Council introduced by the new Statute of Judges, which came into force in 2020<sup>14</sup>. Despite reminders by the Council<sup>15</sup>, the Ministry of Justice did not initiate any process to address the proposed amendments<sup>16</sup>. Regarding the proposal from the Council to regulate ‘revolving doors’ in the judiciary, following its transmission to the Ministry of Justice in March 2023<sup>17</sup>, there have been no further developments at Government level<sup>18</sup>.

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<sup>5</sup> In force since May 2023, see 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 3-4.

<sup>6</sup> Art. 7, Portaria No. 86/2023, of 27 March, amending the rules relating to the distribution, by electronic means, of cases in judicial courts and in administrative and tax courts.

<sup>7</sup> At the request of the Ministry of Justice, the evaluation was publicly presented on 15 July 2024 by the CES - Centre for Social Studies of the University of Coimbra.

<sup>8</sup> Information received from the High Council for the Judiciary and from the Judges Union in the context of the country visit to Portugal.

<sup>9</sup> Information received from the High Council for the Judiciary, the Supreme Court of Justice and the Judges Union in the context of the country visit to Portugal.

<sup>10</sup> High Council for Public Prosecution, Information Bulletin No. 16/2023, p. 6.

<sup>11</sup> Concerns have also been raised regarding the fact that the parameters of the allocation algorithm have not been disclosed (Information received from the High Council for the Judiciary in the context of the country visit to Portugal).

<sup>12</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 4.

<sup>13</sup> As established by Law No. 36/2007, of 14 August.

<sup>14</sup> Among others, the proposal suggests amendments to the internal organisation of the Council, with the creation of a Directorate for Data Protection Services and the redefinition of the Directorate for Information Technology Services, as well as the restructuring of the existing internal organisation. A revised version of the proposal was submitted to the Ministry of Justice in August 2023. See Proposal for the revision of Law 36/2007, of 14 August, establishing the regime governing the organisation and functioning of the High Council for the Judiciary, of 11 July 2023, and contribution from European Network of Councils for the Judiciary (ENCJ) for the 2024 Rule of Law Report, p. 34.

<sup>15</sup> Ibidem.

<sup>16</sup> The High Council for the Judiciary does not have legislative initiative. However, the Government is currently reviewing policy in this regard. Information received from the High Council for the Judiciary in the context of the country visit to Portugal.

<sup>17</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 4. Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2024 Rule of Law Report, p. 14.

However, the Government is currently reviewing policy in this regard. Regarding the composition of the High Council for the Judiciary and of the High Council for Administrative and Tax Courts, in December 2023, the Council of Europe’s Group of States Against Corruption (GRECO) recalled their recommendation to Portugal that not less than half the members of the Council for the Judiciary, as well as of the Council for the Administrative and Tax Courts, should be judges chosen by their peers<sup>19</sup>. In this respect, the authorities have reiterated that there are other legislative safeguards, beyond the composition of the two councils, that sufficiently ensure their independence<sup>20</sup>. As mentioned in the 2022 Rule of Law Report<sup>21</sup>, the High Council for Administrative and Tax Courts and the High Council for the Judiciary are not composed by a net majority of judges elected by their peers, but the latter is currently *de facto* composed by a majority of judges, as the President of the Republic, who is entitled to appoint two members, also appointed a judge<sup>22</sup>. GRECO has requested Portugal to report on the progress of this recommendation by the end of 2024<sup>23</sup>. It is recalled that, in line with European standards, not less than half the members of judicial councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary<sup>24</sup>.

**High-visibility criminal investigations have led to public discussions regarding the work of the public prosecution.** Following the announcement of criminal investigations involving

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<sup>18</sup> The Government is currently reviewing policy in this regard.

<sup>19</sup> This recommendation was addressed in 2015 – see GRECO Fourth Evaluation Round – Evaluation Report Portugal, recommendation vi, i), recalled in GRECO Fourth Evaluation Round – Third interim compliance report, paras. 36-40. See also Figure 57, 2024 EU Justice Scoreboard.

<sup>20</sup> These include: (i) the President and the Vice-President of the Councils are judges; (ii) the direction and management of the Councils’ services are ensured by a judge secretary; (iii) the members of the Councils are assisted by a Cabinet composed of a chief of staff and four advisors, all of them judges and (iv) the inspectorate of the Councils’ inspection services is composed exclusively by judges. See GRECO Fourth Evaluation Round – Third interim compliance report, para. 38.

<sup>21</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 5-6.

<sup>22</sup> There are seven judges elected by their peers, in addition to one judge who an *ex officio* member of the Council (the President of the Supreme Court) and one judge currently appointed by the President of the Republic. The High Council for the Judiciary is composed of the President of the Supreme Court of Justice (who also chairs the Council), 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 of 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 also chairs the Council), two members appointed by the President of the Republic, four members elected by 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>23</sup> GRECO Fourth Evaluation Round – Third interim compliance report, para. 83.

<sup>24</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 27. According to the Venice Commission, while judges may make up half or the majority of a council, the parameters set out in Recommendation CM/Rec(2010)12 are only met if these members were elected by their peers, and not if some of these judges are members *ex officio* (CDL-AD(2020)035, para. 44) 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.

public office holders<sup>25</sup>, public discussions emerged regarding the work of the public prosecution, including critical remarks by politicians<sup>26</sup>. Criticism<sup>27</sup> was particularly directed at publicising investigations and individual criminal probes before an indictment decision<sup>28</sup>. While prosecutors welcomed the public debate<sup>29</sup>, they warned that the public criticism was mostly based on individual decisions and could be perceived by magistrates as an attempt to influence their work<sup>30</sup>. Moreover, whereas no formal proposals have been presented, there have been public calls for a reform of the public prosecution<sup>31</sup>, and stakeholders have raised concerns that individual cases may be instrumentalised and lead to reforms aiming at limiting the autonomy of the public prosecution, with the risk of tampering with the functioning of the justice system<sup>32</sup>. The Bar Association also raised concerns regarding the impact of public discussions on ongoing cases<sup>33</sup>. Leaks of information protected by secrecy of justice in ongoing investigations have also led the President of the Republic to call for a reflection concerning the reform of criminal justice<sup>34</sup>. In June 2024, two parliamentary groups requested the summoning of the Prosecutor General to provide information before Parliament<sup>35</sup>. In line with European standards, ‘states should take appropriate measures to ensure that public prosecutors are able to perform their professional duties and responsibilities without unjustified interference’, while ‘the public prosecution should account periodically and publicly for its activities as a whole and, in particular, the way in which its priorities [a]re carried out’<sup>36</sup>.

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<sup>25</sup> Including, in particular, members of the Central Government (Cabinet of the Prosecutor General, Press release of 7 November 2023) and of the Government of the Autonomous Region of Madeira (Cabinet of the Prosecutor General, Press release of 16 February of 2024).

<sup>26</sup> Contribution from Magistrats Européens pour la Démocratie et les Libertés (MEDEL) – Portugal for the 2024 Rule of Law Report, p. 12. See also RTP, ‘After political crises. Multiple critics to the public prosecution’, 16 February 2024.

<sup>27</sup> RTP, ‘Public prosecution. Union considers critics to Prosecutor General unjustified.’, 13 November 2023.

<sup>28</sup> Following the announcement by the Cabinet of the Prosecutor General of suspicions of the involvement of the Prime Minister in facts being investigated, the Prime Minister announced his resignation, which was accepted by the President of the Republic on 7 December 2023, who subsequently decided to dissolve the Parliament. The facts remain under investigation, and there has been no formal indictment.

<sup>29</sup> Diário de Notícias, ‘Scrutiny of Prosecution? Some call for Prosecutor General to be heard on report that is already mandatory’, 4 January 2024.

<sup>30</sup> Information received from the Office of the Prosecutor General, the Prosecutors Union and Judges Union in the context of the country visit to Portugal. See also Prosecutors Union, ‘The political speech and the attacks to Prosecution and the Prosecutor General’, 8 January 2024.

<sup>31</sup> While no legislative changes have been proposed, there are public calls for a reform of the Prosecution Service, which have been brought to the attention of the President of the Republic (see RTP, ‘Marcelo meets representatives of the manifest calling for justice reform’, 15 May 2024; Advocatus, ‘Manifest from 50 sound names calls for “justice reform”, criticises Prosecutor General and says that Prosecution has “uncontrolled power”’, 2 May 2024).

<sup>32</sup> For concerns expressed by the Prosecutor General, see public communication of the Prosecutor General in the XIII Congress of the Prosecutors Union, 29 February 2024; for concerns expressed by the President of the Supreme Court of Justice, see Nascido do Sol, ‘President of the Supreme Court of Justice: Corruption is installed in Portugal’, 3 November 2023.

<sup>33</sup> Contribution from Council of Bars and Law Societies of Europe (CCBE) for the 2023 Rule of Law Report, p. 129. See also Press release of 15 November 2023.

<sup>34</sup> Eco, ‘Marcelo defends that leaks are ‘important point’ of the reform of the sector’, 24 June 2024.

<sup>35</sup> Público, ‘PAN presents request to summon PG to Parliament. BE; PCP and Livre agree’, 24 June 2024; SIC Notícias, ‘BE wants to hear PG in Parliament on the Prosecution activities report’, 24 June 2024.

<sup>36</sup> Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe, para. 11.

**Parliament adopted a new statute of the Bar Association, which introduces changes to access to the initial training of lawyers.** On 19 January 2024, Parliament adopted a law amending the Statute of the Bar Association<sup>37</sup>. The Bar Association has been critical of some of the changes introduced, particularly those on the organisation of the initial training for lawyers<sup>38</sup>, and those affecting the definition of acts reserved to lawyers<sup>39</sup>. Whereas the President of the Republic had vetoed the amendments<sup>40</sup>, these were ultimately adopted by Parliament and is already in force<sup>41</sup>. In relation to concerns regarding the respect for lawyers' legally recognised rights and privileges referred to in the 2023 Rule of Law Report<sup>42</sup>, the Council of Bars and Law Societies of Europe reported new instances where such rights and privileges had been denied by public officials<sup>43</sup>. Moreover, the Bar Association is aware of cases of threats to lawyers and is providing legal assistance to lawyers who are victims of crimes in the exercise of or related to their functions<sup>44</sup>.

## Quality

**There has been some further progress in ensuring adequate human resources for the justice system, while serious concerns remain, in particular regarding the shortage of legal clerks.** The 2023 Rule of Law Report recommended to Portugal to '[c]ontinue efforts to ensure adequate human resources of the justice system, in particular regarding non-judicial staff [...]'<sup>45</sup>. As mentioned in the 2023 Rule of Law Report, the Government opened in 2023 a competition for the recruitment of 200 new legal clerks<sup>46</sup>. Stakeholders considered this number insufficient to address the needs identified<sup>47</sup>, in particular in light of the high number

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<sup>37</sup> Law No. 6/2024, of 19 January. Some of the changes were introduced in the context of Reform RE-r16: 'Reducing restrictions in highly regulated professions' of the Portuguese Recovery and Resilience Plan (see Annex to the Council Implementing Decision on the approval of the assessment of the Recovery and Resilience Plan for Portugal, p. 71). See also input from Portugal for the 2024 Rule of Law Report, pp. 4-5.

<sup>38</sup> Reducing the training period from 18 to 12 months, eliminating the requirement of a final exam, and establishing mandatory remuneration of trainee lawyers (Contribution from Council of Bars and Law Societies of Europe (CCBE) for the 2024 Rule of Law Report, pp. 129-130).

<sup>39</sup> Contribution from Council of Bars and Law Societies of Europe (CCBE) for the 2024 Rule of Law Report, p. 129.

<sup>40</sup> President of the Republic, Press Releases of 11 and 13 December 2023. The reasons for the veto refer to doubts regarding the provisions governing the training for access to the profession, as well as to the regime on the acts reserved to lawyers.

<sup>41</sup> Regarding the concerns raised by the Bar Association, see also 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 6-7.

<sup>42</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 6.

<sup>43</sup> Contribution from Council of Bars and Law Societies of Europe (CCBE) for the 2024 Rule of Law Report, p. 129.

<sup>44</sup> Criminal cases involving arson, hijack, attempted murder, slander, defamation, physical assault, forgery, offence to a legal person, harm with violence, usurpation of functions and intimidation. Contribution from Council of Bars and Law Societies of Europe (CCBE) for the 2024 Rule of Law Report, p. 128.

<sup>45</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2. In the 2023 Rule of Law Report, the Commission concluded that some progress was made on the recommendation.

<sup>46</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 7-8. See also input from Portugal for the 2024 Rule of Law Report, p. 2.

<sup>47</sup> The High Council for the Judiciary estimates the deficit of clerks to amount to 1000 (Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2024 Rule of Law Report, p. 36), whereas a deficit of over 500 clerks in prosecution offices is reported (2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 8). The Union of 'Funcionários Judiciais' estimates a deficit of 1800 clerks, both in courts and prosecution services (Information received from the Union of 'Funcionários Judiciais' in the context of the country visit to Portugal). The High Council for the Judiciary reports that



of expected retirements<sup>48</sup>. Following the competition, two training sessions were organised<sup>49</sup> for successful candidates, and they will take on their functions after the 18-month training period. However, 186 of the 200 candidates have initiated the professional training<sup>50</sup>, and it is reported that over 70 of them have already withdrawn from the training courses<sup>51</sup>. There are currently over 1100 vacancies in first instance ordinary courts<sup>52</sup> and 59 vacancies in first instance Administrative and Tax Courts that have not been filled<sup>53</sup>. According to stakeholders, factors contributing to the lack of attractiveness of the profession, such as low salaries<sup>54</sup>, limited career progression possibilities, and high workload, played a role in the withdrawals<sup>55</sup>. However, in May 2024 the Government announced the recruitment of 108 legal clerks to work in the courts, using the reserve that resulted from the previous external competition, held in 2023. In addition, with a view to the entry of new legal clerks, an extraordinary recruitment process was opened<sup>56</sup>, with new legal clerks expected to join in September 2024. Moreover, whereas in October 2023 the Government presented a proposal for a new statute of legal clerks and initiated discussions with trade unions<sup>57</sup>, the revision was halted due to the dissolution of Parliament announced in November 2023. Consultations with the trade unions have resumed under the new legislature. The revision of the current statute for legal clerks is under way and authorities expect it to be finalised by the end of 2024 or beginning of 2025. Stakeholders consider that the deficit of legal clerks significantly impacts the efficiency and quality of the justice system<sup>58</sup>, and that this impact was intensified by the successive strikes since January 2023<sup>59</sup>. Stakeholders also continue to raise concerns

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there are instances of courts where the rate of vacant posts is above 60% (Information received from the High Council for the Judiciary in the context of the country visit to Portugal).

<sup>48</sup> It is estimated that 390 clerks will retire in 2024 (Information received from the Union of ‘Funcionários Judiciais’ in the context of the country visit to Portugal). The average age of legal clerks is over 50 (Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2024 Rule of Law Report, p. 36).

<sup>49</sup> In September and December 2023.

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

<sup>51</sup> Information received from the Union of ‘Funcionários Judiciais’ in the context of the country visit to Portugal. See also Público, ‘One third of the new legal clerks have dropped out after less than six months’, 12 February 2024.

<sup>52</sup> Over 15% of the posts foreseen in the staff map. In several judicial circles, over 25% of the posts remain vacant. Situation on 27 February 2024. Ministry of Justice, Staff map.

<sup>53</sup> Over 17% of the posts foreseen in the staff map. Situation on 27 February 2024. Ministry of Justice, Staff map.

<sup>54</sup> The gross salary at entry level was increased to EUR 915,47.

<sup>55</sup> Information received from the Union of ‘Funcionários Judiciais’ and the Union of ‘Oficiais de Justiça’ in the context of the country visit to Portugal. See also ‘National Enquiry on the Work and Living Conditions of Legal Clerks in Portugal’.

<sup>56</sup> The deadline for candidates to submit applications was 5 July 2024.

<sup>57</sup> Ministry of Justice, Press release ‘Statute proposal increases remuneration of legal clerks’, of 2 October 2023. Trade unions were critical of the proposal, and the High Council of the Judiciary raised concerns regarding some aspects of the proposal (Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2024 Rule of Law Report, p. 36).

<sup>58</sup> Information received from the High Council for the Judiciary, High Council for the Administrative and Tax Courts, High Council for the Public Prosecution, Judges Union, Prosecutors, Union of ‘Funcionários Judiciais’, Union of ‘Oficiais de Justiça’ and Business Roundtable Portugal in the context of the country visit to Portugal. See also Jornal de Notícias, ‘Lisbon Court warns of rupture due to lack of clerks’, 23 February 2023.

<sup>59</sup> The Union of ‘Funcionários Judiciais’ appealed a decision to implement minimum service levels for one of the strikes; the case is currently pending before the Lisbon Administrative Court (Case No. 40/2023/DRCT-ASM). The Bar Association has publicly supported the trade unions on their strikes (contribution from

regarding the insufficient number of legal and technical advisers<sup>60</sup>. Concerning judges and prosecutors, new recruitments took place in 2023<sup>61</sup> and the evolution is deemed positive in Administrative and Tax Courts<sup>62</sup>. However, following complaints presented by first instance judges seeking promotion to second instance Administrative and Tax Courts, the Supreme Administrative Court declared that the High Council for the Administrative and Tax Courts violated the principles of impartiality and transparency in the handling of the competition procedure, and determined the annulment of the competition<sup>63</sup>. A deficit of prosecutors continues to be reported<sup>64</sup>, and there are concerns regarding the workload of judges in ordinary courts<sup>65</sup>. In this context, it is recalled that, according to European standards, a sufficient number of judges and appropriately qualified support staff should be allocated to the courts<sup>66</sup>. Overall, while the Government is currently reviewing policy in this regard, there has been some further progress on this part of the recommendation made in the 2023 Rule of Law Report.

**A new multiannual plan for the renovation of court buildings is in place, while concerns regarding working conditions and security in court and prosecution premises emerged.** The Government has adopted the ‘Multi-annual plan for investment in the Justice area 2023-2027’<sup>67</sup>, which envisages multiple investments into the maintenance and renovation of buildings used by courts and other justice services<sup>68</sup>. As this plan does not cover all court

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Council of Bars and Law Societies of Europe (CCBE) for the 2024 Rule of Law Report, p. 129). See also 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 5.

<sup>60</sup> Information received from the High Council for the Administrative and Tax Courts, the Supreme Court of Justice and the Office of the Prosecutor General 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 2024 Rule of Law Report, p. 13.

<sup>61</sup> 52 ordinary court judges, 31 Administrative and Tax Court judges, and 52 prosecutors (TAF) (input from Portugal for the 2024 Rule of Law Report, p. 2).

<sup>62</sup> Information received from the High Council for the Administrative and Tax Courts and Supreme Administrative Court in the context of the country visit to Portugal.

<sup>63</sup> Supreme Administrative Court, judgment of 6 June 2024, case 02/24.1BALSB, *AA v Conselho Superior dos Tribunais Administrativos e Fiscais*. In particular, due to the fact that the jury altered the evaluation criteria for promotion after the deadline for the application to the competition had elapsed, and at a stage where the submitted applications had already been transmitted to the jury. Pursuant to the judicial decision, the procedural acts performed so far in the competition are annulled. In its judgment, the Supreme Administrative Court also ordered the evaluation of the candidates be repeated by a jury with a different composition. Although the Supreme Administrative Court did not assess the existence of fraud, it considered that the mere suspicion of the possibility of fraud was sufficient to determine the annulment and substitution of the jury. In a separate decision, referring to the same competition, the Supreme Administrative Court also decided that the candidates should be granted access to the motivated opinions of the jury, which had been initially denied by the High Council for the Administrative and Tax Courts.

<sup>64</sup> The situation is worsened by the high number of retirements and high average age of the new prosecutors entering the system (Information received from the High Council for the Public Prosecution in the context of the country visit to Portugal). Professional associations estimate a deficit of 200 prosecutors (contribution from Magistrats Européens pour la Démocratie et les Libertés (MEDEL) – Portugal for the 2024 Rule of Law Report, p. 13). A recent study warned of the risk of burnout among prosecutors due to high workload (‘Study on the working conditions, professional distress and well-being of public prosecutors’).

<sup>65</sup> Information received from the Judges Union in the context of the country visit to Portugal. The High Council for the Judiciary has set up an occupational health service to prevent health risks associated with burnout (Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2024 Rule of Law Report, p. 46).

<sup>66</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 35.

<sup>67</sup> Resolution of the Council of Ministers No. 119/2023, of 9 October.

<sup>68</sup> Input from Portugal for the 2024 Rule of Law Report, p. 2.

buildings, other focused investments into the maintenance and renovation of court buildings are also envisaged<sup>69</sup>. However, stakeholders deem the envisaged overall investments insufficient to address all the issues identified<sup>70</sup>. Stakeholders have also voiced concerns regarding security in court and prosecution premises<sup>71</sup>, including those used by the EPPO<sup>72</sup>. Moreover, stakeholders warn that the limited space available in some courts leads to different services sharing the same spaces, raising concerns regarding the compliance with the legal obligations to safeguard the confidentiality of the lawyer-client communications<sup>73</sup>. Challenges regarding the material resources allocated to courts and prosecution services have also been raised<sup>74</sup>. It is noted that the expenditure in the justice system in 2022 decreased in relative terms (compared to 2021) and remained average<sup>75</sup>. According to European standards, each state should allocate adequate resources, facilities and equipment to the courts to enable them to work efficiently<sup>76</sup>.

**The use of digital tools continues to be encouraged, although some challenges remain particularly as regards online access to judgments.** According to the 2024 EU Justice Scoreboard, the use of digital technologies by courts and prosecution remains generally widespread<sup>77</sup>. Digital solutions, which allow to initiate and follow proceedings, are broadly in place for in civil, commercial and administrative cases<sup>78</sup>, but are more limited for criminal cases<sup>79</sup>. Measures aimed at modernising the IT system for criminal investigation are included in the Recovery and Resilience Plan<sup>80</sup>. Some further challenges remain, particularly regarding electronic communication tools in courts<sup>81</sup>. A new digital platform for procedural acts to be performed by magistrates in all instances and jurisdictions (*Magistratus*) became operational in 2023, and continues to be improved<sup>82</sup>. While stakeholders assess the functioning of the new platform positively<sup>83</sup>, concerns have been raised regarding the fact that the ownership and control of the platform, which contains all the procedural data, remains assigned to the

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<sup>69</sup> Information received from the Ministry of Justice in the context of the country visit to Portugal.

<sup>70</sup> Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2024 Rule of Law Report, p. 35.

<sup>71</sup> Information received from the High Council for the Public Prosecution, the Judges Union and Prosecutors Union in the context of the country visit to Portugal.

<sup>72</sup> Contribution from European Public Prosecutor's Office for the 2024 Rule of Law Report, pp. 44-45.

<sup>73</sup> Information received from the High Council for the Public Prosecution and the Bar Association in the context of the country visit to Portugal.

<sup>74</sup> Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2024 Rule of Law Report, p. 35; contribution from Magistrats Européens pour la Démocratie et les Libertés (MEDEL) – Portugal for the 2024 Rule of Law Report, p. 13.

<sup>75</sup> Figures 33 and 34, 2024 EU Justice Scoreboard.

<sup>76</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 33.

<sup>77</sup> Figures 43, 44, 46 and 47, 2024 EU Justice Scoreboard.

<sup>78</sup> Figure 47, 2024 EU Justice Scoreboard.

<sup>79</sup> Figure 48, 2024 EU Justice Scoreboard.

<sup>80</sup> Annex to the Council Implementing Decision on the approval of the assessment of the Recovery and Resilience Plan for Portugal, p. 162.

<sup>81</sup> Figure 45, 2024 EU Justice Scoreboard. Challenges also remain regarding arrangements for producing machine-readable judicial decisions. Figure 50, 2024 EU Justice Scoreboard.

<sup>82</sup> Its operationalisation was accompanied by training of magistrates (Input from Portugal for the 2024 Rule of Law Report, p. 6). See also 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 8.

<sup>83</sup> Information received from the High Council for the Administrative and Tax Courts in the context of the country visit to Portugal.

Ministry of Justice<sup>84</sup>. A new platform allowing lawyers to access the digital platforms used in common and Administrative and Tax Courts was also operationalised (*eTribunal*), but full interoperability of the platform with others is still to be ensured<sup>85</sup>. While new databases, including for decisions with European Case Law Identifier (ECLI), have been created<sup>86</sup>, online access to judgments remains limited, especially for first instance decisions<sup>87</sup>. The publication of all judicial decisions is listed as a priority in the new Anti-corruption Agenda, adopted in June 2024<sup>88</sup>. A GRECO recommendation in this regard remains only partially implemented<sup>89</sup>.

## Efficiency

**There has been some further progress in increasing the efficiency of Administrative and Tax Courts as new measures continue to be implemented and more efforts are underway to address remaining challenges.** The 2023 Rule of Law Report recommended to Portugal to ‘[c]ontinue efforts to improve [the] efficiency [of the justice system], in particular of Administrative and Tax Courts’<sup>90</sup>. According to the 2024 EU Justice Scoreboard, the disposition time in first instance Administrative and Tax courts has been decreasing since 2020, while remaining comparatively high, at 747 days<sup>91</sup>. However, in higher instances the disposition time remains among the highest in the EU<sup>92</sup>, and over 1000 days are needed to resolve a case in second instance. Despite the high disposition time, the clearance rate at first instance remains above 100% and has further increased<sup>93</sup>. There have also been improvements regarding the case backlog at first instance, although it remains comparatively high<sup>94</sup>. As mentioned in the 2023 Rule of Law Report<sup>95</sup>, a number of measures aimed at increasing the efficiency of Administrative and Tax Courts are underway, including in the context of the Recovery and Resilience Plan<sup>96</sup>. In this context, a temporary legal

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<sup>84</sup> Stakeholders consider that this aspect of ownership and control of the platform by the Ministry of Justice to challenge the principle of separation of powers. Contribution from European Network of Councils for the Judiciary (ENCJ) for the 2024 Rule of Law Report, p. 36.

<sup>85</sup> Information received from the Bar Association in the context of the country visit to Portugal. See also Input from Portugal for the 2024 Rule of Law Report, p. 6.

<sup>86</sup> Input from Portugal for the 2024 Rule of Law Report, p. 6.

<sup>87</sup> Figure 49, 2024 EU Justice Scoreboard.

<sup>88</sup> Portuguese Government, Anti-corruption Agenda, Measure No. 28.

<sup>89</sup> GRECO Fourth Evaluation Round – Third interim Compliance Report, recommendation x, para. 55.

<sup>90</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2. In the 2023 Rule of Law Report, the Commission concluded that some progress was made on the recommendation.

<sup>91</sup> From 847 in 2021 to 747 days in 2022 (Figure 8, 2024 EU Justice Scoreboard). The long disposition times are considered to be a deterrent for individuals and businesses to challenge administrative decisions before courts (Information received from Business Roundtable Association in the context of the country visit to Portugal).

<sup>92</sup> From 836 days in 2021 to 1064 days in 2022, for second instance; from 261 days in 2021 to 300 days in 2022, in third instance (Figure 9, 2024 EU Justice Scoreboard). These increases may be explained by the increase in the resolution rate at first instance, as a consequence of the positive work of the rapid reaction teams, as well as of the positive trend in filling the existing vacancies in higher courts (information received from the Ministry of Justice and from the Supreme Administrative Court in the context of the country visit to Portugal; see also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 10).

<sup>93</sup> From 107% in 2021 to 112% in 2022 (Figure 12, 2024 EU Justice Scoreboard).

<sup>94</sup> From 0,6 cases per 100 000 inhabitants in 2012, to 0,5 cases per 100 000 inhabitants in 2022 (Figure 15, 2024 EU Justice Scoreboard).

<sup>95</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 10.

<sup>96</sup> Annex to the Council Implementing Decision on the approval of the assessment of the Recovery and Resilience Plan for Portugal, p. 161.

regime to encourage in-court and out-of-court settlement has been put in place<sup>97</sup>. Since September 2023, specialised chambers exist in second instance Administrative and Tax Courts<sup>98</sup>, which are expected to lower the current disposition time<sup>99</sup>. While the creation of a new second instance court has been provided for by law<sup>100</sup>, its operationalisation remains pending<sup>101</sup>. While stakeholders welcome the efforts undertaken to improve the efficiency of these courts and recognise the positive evolution, they continue to call for more resources for Administrative and Tax Courts to ensure the consistency of the improvements<sup>102</sup>. According to European standards, the efficiency of the justice system is a necessary condition for the protection of every person's rights, legal certainty and public confidence in the rule of law<sup>103</sup>. Portugal remains under enhanced supervision by the Committee of Ministers of the Council of Europe for the excessive length of proceedings before both civil and administrative jurisdictions<sup>104</sup>. In light of the above, there has, overall, been some further progress on this part of the recommendation made in the 2023 Rule of Law Report.

**The efficiency in dealing with civil and commercial cases has continued to improve.** As mentioned in the 2023 Rule of Law Report<sup>105</sup>, efficiency in civil and commercial cases had already been improving. In 2022, the disposition time has further decreased in first and third instances<sup>106</sup>, and the clearance rate remained above 100%, with the system resolving more cases than those incoming<sup>107</sup>. The case backlog in first instance has also been decreasing, while remaining relatively high<sup>108</sup>. The steady decrease of the length of civil proceedings before first instance courts has been welcomed by the Committee of Ministers of the Council of Europe<sup>109</sup>.

**There are concerns that general criminal procedure legislation is not tailored to efficiently deal with complex criminal proceedings.** As mentioned in the 2023 Rule of Law

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<sup>97</sup> Law No. 30/2023, of 5 May. See Component 18, TD-C18-r33, Milestone 18.2, of the Recovery and Resilience Plan for Portugal, and input from Portugal for the 2024 Rule of Law Report, p. 3.

<sup>98</sup> Input from Portugal for the 2024 Rule of Law Report, p. 3. See also Component 18, TD-C18-r33, Milestone 18.1, of the Recovery and Resilience Plan for Portugal. The use of this legal regime is reported to be low, and therefore is not having, at the moment, a relevant impact on the functioning of Administrative and Tax Courts (Information received from the High Council for the Administrative and Tax Courts in the context of the country visit to Portugal).

<sup>99</sup> Information received from the High Council for the Administrative and Tax Courts in the context of the country visit to Portugal.

<sup>100</sup> Input from Portugal for the 2024 Rule of Law Report, p. 3.

<sup>101</sup> The new court will be installed in Castelo Branco (Information received from the High Council for the Administrative and Tax Courts and from the Ministry of Justice in the context of the country visit to Portugal).

<sup>102</sup> Information received from the High Council for the Administrative and Tax Courts and the Judges Union in the context of the country visit to Portugal.

<sup>103</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 30.

<sup>104</sup> Committee of Ministers, Supervision of the execution of the European Court's judgments, case H46-20 *Vicente Cardoso group v. Portugal* (Application No. 30130/10).

<sup>105</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 9.

<sup>106</sup> Figures 6 and 7, 2024 EU Justice Scoreboard.

<sup>107</sup> Figure 11, 2024 EU Justice Scoreboard.

<sup>108</sup> From 3,5 cases per 100 000 inhabitants in 2012, to 1,7 cases per 100 000 inhabitants in 2022. Figure 14, 2024 EU Justice Scoreboard.

<sup>109</sup> Committee of Ministers, 1411<sup>th</sup> DH meeting (14-16 September 2021) – Notes. In response to the decision adopted by the Committee at its last examination, which took place in September 2021, the Portuguese authorities submitted a revised action plan on 19 October 2022, which has not yet been examined by the Committee.

Report, stakeholders have called for a revision of the criminal procedural law to avoid the use of procedural acts for merely dilatory purposes<sup>110</sup>. Challenges in this regard continue to exist, particularly related to complex criminal cases, commonly referred to as ‘mega procedures’<sup>111</sup>. Stakeholders consider that the general criminal procedure legislation is not tailored for such complex cases to be dealt with in a timely manner and report recurring instances of abuse of procedural acts by the parties, in particular related to the withdrawal or recusal of the judge to whom the case has been allocated<sup>112</sup>. The delays resulting from dilatory procedural acts<sup>113</sup> could result in certain crimes becoming time barred<sup>114</sup>. Moreover, such cases often attract media attention<sup>115</sup>, leading the public to perceive criminal justice as lengthy<sup>116</sup>. The President of the Supreme Court of Justice publicly advocated for procedural changes to address these issues<sup>117</sup>. The United Nations Human Rights Committee also recommended that Portugal should reduce the length of investigations and legal procedures to improve judicial efficiency<sup>118</sup>. The Anti-corruption Agenda sets out the intention to establish measures to improve the efficiency in criminal proceedings<sup>119</sup>, which require extensive legislative changes<sup>120</sup>.

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

The institutional anti-corruption framework in Portugal has undergone major changes in the past years. The National Anti-Corruption Mechanism (MENAC), established in 2021 and operational since 2023, promotes transparency and integrity in public action and ensures the effectiveness of policies to prevent corruption, and is competent to implement the General

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<sup>110</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 4-5.

<sup>111</sup> Information received from the Supreme Court of Justice and the Judges Union in the context of the country visit to Portugal.

<sup>112</sup> Pursuant to Art. 42 (1) and (3), regarding withdrawal, and Art. 43 of the Code of Criminal Procedure, regarding recusal. The appeal from the decision of non-withdrawal has suspensive effect. In 2022, out of 118 recusal challenges, only 13 were admitted (Reply from the High Council for the Judiciary to the judicial independence questionnaire distributed by the European Network of Councils for the Judiciary, February 2024).

<sup>113</sup> Information received from the Supreme Court of Justice, Judges Union and Prosecutors Union in the context of the country visit to Portugal.

<sup>114</sup> See, e.g., *Advocatus*, ‘Operação Marquês. Court of Appeal rules on the time barring of 22 crimes’, 28 January 2024.

<sup>115</sup> See, e.g., *Expresso*, ‘3718 days of Operação Marquês: the long chronology of a complex case that started with a mediatic detention at the airport’, 25 January 2024; *Observador*, ‘Case BES/GES. Hearing of Ricardo Salgado and other 18 defendants starts on 28 May’, 16 January 2024.

<sup>116</sup> In 2022, the average length of criminal cases (trial phase) was 8 months, compared to 9 in 2021. Data available at: <https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/tribunais.aspx>.

<sup>117</sup> Communication in the context of the Inauguration of the 2023 Judicial Year, 10 January 2023. See also, *Nascer do Sol*, ‘President of the Supreme Court of Justice: Corruption is installed in Portugal’, 3 November 2023.

<sup>118</sup> United Nations Human Rights Committee, ‘Report on follow-up to the concluding observations of the Human Rights Committee - CCPR/C/138/2/Add.3’, pp. 4-5; Contribution from United Nations Human Rights Regional Office for Europe (OHCHR) for the 2024 Rule of Law Report, p. 72.

<sup>119</sup> Portuguese Government, Anti-corruption Agenda, Measures No 19, 20 and 21.

<sup>120</sup> These concern, in particular, the improvement of the inquiry phase of criminal procedures, to avoid the use of procedural acts for dilatory purposes, the improvement of the appeals regime and the update of the legal regime for gathering, preservation and use of electronic evidence. It should also be highlighted that the High Council for the Judiciary developed a structure named ALTEC aimed at supporting the handling of these complex criminal proceedings. In order to be applied, certain non-cumulative conditions must be met (over i) 100 defendants/witnesses; ii) 500 transcriptions of wiretaps; and iii) 50 volumes). A team of 2 judges and 24 other professionals is involved in this project.

Corruption Prevention Regime, which is applicable to public and private entities. The Transparency Entity<sup>121</sup> is tasked with monitoring and verifying declarations of assets and interests of political office-holders and high-ranking appointed officials. The Constitutional Court is currently responsible for ruling, on appeal, on the fines imposed for breaches to the Law on the Financing of Political Parties<sup>122</sup>. The Central Department of Criminal Investigation and Penal Action (DCIAP), established within the Public Prosecutors Service, is in charge of the investigation and prosecution of serious offences, including corruption and economic and financial crimes, and coordinates the inquiries that are carried out by the National Unit for Combating Corruption (UNCC), an investigative unit of the Criminal Police<sup>123</sup>.

**The perception among experts and business executives is that the level of corruption in the public sector remains relatively low.** In the 2023 Corruption Perceptions Index by Transparency International, Portugal scores 61/100 and ranks 12<sup>th</sup> in the EU and 34<sup>th</sup> globally<sup>124</sup>. This perception has been relatively stable over the past five years<sup>125</sup>. The 2024 Special Eurobarometer on Corruption shows that 96% of respondents consider corruption widespread in their country (EU average 68%) and 61% of respondents feel personally affected by corruption in their daily lives (EU average 27%)<sup>126</sup>. As regards businesses, 83% of companies consider that corruption is widespread (EU average 65%) and 51% consider that corruption is a problem when doing business (EU average 36%)<sup>127</sup>. Furthermore, 33% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)<sup>128</sup>, while 22% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%)<sup>129</sup>.

**While the new strategic framework is in preparation, the Government adopted the new Anti-corruption Agenda.** The National Anti-Corruption Strategy 2020-2024 is being implemented through its legal framework as well as public and private sector compliance programmes<sup>130</sup>, backed by financial support<sup>131</sup>. However, for some civil society organisations the effectiveness of the implementation is not clear given the lack of regular evaluations and

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<sup>121</sup> Regulation no. 258/2024, of 6 March 2024.

<sup>122</sup> Law 19/2003, of 20 June.

<sup>123</sup> The UNCC is the specialised operational unit in charge of investigating corruption offences and related crimes such as bribery or embezzlement of public funds and has jurisdiction nationwide.

<sup>124</sup> Transparency International, Corruption Perceptions Index 2023 (2024). 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>125</sup> In 2019 the score was 62, while, in 2023, the score is 61. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>126</sup> Special Eurobarometer 548 on Citizens' attitudes towards corruption in the EU (2024). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 534 (2023).

<sup>127</sup> Flash Eurobarometer 543 on Businesses' attitudes towards corruption in the EU (2024). The Eurobarometer data on businesses' attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 524 (2023).

<sup>128</sup> Special Eurobarometer 548 on Citizens' attitudes towards corruption in the EU (2024).

<sup>129</sup> Flash Eurobarometer 543 on Businesses' attitudes towards corruption in the EU (2024).

<sup>130</sup> 2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 11.

<sup>131</sup> State Law budget 2024 allocated funds for a project focusing on the 'Development of the National Anti-Corruption Strategy Monitoring Information System'.

reporting<sup>132</sup>. Following the entry into force in June 2023 of the system of penalties for public entities under the General Regime for the Prevention of Corruption (RGPC)<sup>133</sup>, the monitoring of compliance with the relevant obligations by entities with inspection powers, remaining under MENAC's responsibility, was reinforced. A monitoring report on the implementation of the strategy is expected to be prepared by MENAC and published by 30 November 2024<sup>134</sup>, which is considered key by stakeholders to make the new strategy focused and relevant<sup>135</sup>. A working group created by the Government for the purpose of elaborating of the new Strategy 2025-2028 is expected to also consider a dedicated Action Plan<sup>136</sup> for its future implementation<sup>137</sup>. In April 2024 the new Government presented its programme that include a number of measures for both prevention and repression of corruption<sup>138</sup>. On 20 June 2024, the Government adopted the Anti-corruption Agenda<sup>139</sup>, which includes 32 measures based on four key pillars: effective punishment, procedural speed, public sector protection and prevention. The measures are intended to be implemented ahead of the adoption of the new National Anti-Corruption strategy<sup>140</sup>.

**Some further progress was achieved with regard to the resources of the Anti-Corruption Mechanism (MENAC), which has taken up the majority of its tasks, while there are areas where its competences have not yet been exercised.** The 2023 Rule of Law Report recommended to Portugal to '[c]ontinue efforts made to ensure sufficient resources [...] for the new Anti-Corruption Mechanism'<sup>141</sup>. In 2023, MENAC<sup>142</sup> took over the competences of the former Council for the Prevention of Corruption. It is an independent

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<sup>132</sup> Information received from the Transparency International and Observatory of Economy and Fraud Management in the context of the country visit to Portugal. Both the issue of evaluation and reporting are expected to be addressed by the new Strategy for the period 2025-2028. Written input from Portugal to the 2024 Rule of Law Report.

<sup>133</sup> In the context of the implementation of the National Anti-Corruption Strategy, the general regime for the prevention of corruption and conflicts of interest imposes on private companies, public undertakings and services forming part of the direct and indirect administration of the State, with 50 or more employees, the obligation to adopt specific anti-corruption tools. General Regime for the Prevention of Corruption, Annex to Decree-Law No. 109-E/2021 of 9 December 2009. 2022 Rule of Law Report, country chapter on the rule of law situation in Portugal, p. 13.

<sup>134</sup> Input from Portugal for the 2024 Rule of Law Report, p. 11. Article 215 of the Law No 82/2023 of 29 December.

<sup>135</sup> Público, 'Anti-corruption measures launched in 2021 have never been assessed', 21 April 2024.

<sup>136</sup> Information received from the Ministry of Justice in the context of the country visit to Portugal.

<sup>137</sup> As recommended by GRECO. GRECO Fifth Evaluation Round – Evaluation Report, para. 41 – Recommendation ii.

<sup>138</sup> Programme of the 24<sup>th</sup> Constitutional Government, pp.78-82.

<sup>139</sup> Portuguese Government, Anti-corruption Agenda.

<sup>140</sup> The measures in the Anti-corruption Agenda include *i.a.* regulating lobby activities, fight against illicit enrichment, reinforcing the protection of whistleblowers, implementation of risk plans for the State bodies and entities, reinforce the use of legal offices of the state, avoiding the use of external legal advice or the scrutiny of the decisions of the state bodies and entities (legislative footprint). Público, 'Anti-corruption package: protection of whistleblowers, fewer resources and more assets reverted to the State', 20 June 2024. The technical report accompanying the agenda was published on 2 July 2024 and is currently undergoing a 30-day public consultation. Written input from Portugal for the 2024 Rule of Law Report.

<sup>141</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2. The 2022 Rule of Law Report had also recommended to Portugal to 'Ensure sufficient resources for preventing, investigating and prosecuting corruption including by ensuring the swift operationalisation of the New Anti-Corruption Mechanism'. In the 2023 Rule of Law Report, the Commission concluded that some progress was made on the recommendation.

<sup>142</sup> Ministerial Implementing Order No. 155-B/2023 of 6 June 2023.



entity with administrative and financial autonomy, whose mission is to promote transparency and integrity in public action and to ensure the effectiveness of policies to prevent corruption and related offences<sup>143</sup>. MENAC is competent to implement the General Corruption Prevention Regime<sup>144</sup>, which is applicable to public and private entities with over 50 employees. During the first year of its activity, MENAC issued a Guide on the Instruments of the General Corruption Prevention Regime<sup>145</sup> aiming at raising the level of compliance with the new rules, which currently the authorities consider to be low<sup>146</sup>, and adopted the Training Plan for integrity, transparency and corruption prevention 2024-2025<sup>147</sup>. While last year, no violations of the rules guiding the General Corruption Prevention Regime were found and, consequently, no sanctions were imposed by the Sanctions Committee for breaches<sup>148</sup>, on 20 May 2024, the Sanctions Commission decided to open the first investigation procedures for breaches of the General Regime for the Prevention of Corruption<sup>149</sup>. On 1 February 2024, MENAC addressed a recommendation to the Government on the need to adopt the tools to prevent corruption risks and related offences<sup>150</sup>. In 2023, MENAC received 17 reports denouncing corruption<sup>151</sup> while the online reporting channel started operating on 11 June 2024<sup>152</sup>. The electronic platform for the reception, automatic processing and storage of compliance instruments is still in the tendering process, but MENAC expects it to be operational at the end of 2024<sup>153</sup>. The Transparency Unit of the Presidency of the Council of Ministers, acting in its inspection role and as part of the MENAC Advisory Council, carried out a prior verification of 49 public entities, regarding the compliance with the requirements referred to in article 5 of the General Regime<sup>154</sup>. Also, a round investigating public entities is expected to be carried out by the Advisory Council (composed by the Inspectors-General of

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<sup>143</sup> The functions of this entity include: (I) monitor the application of the General Anti-Corruption Regime (RGPC) and impose fines on offenders; (II) imposing fines on those who infringe the law on whistleblower protection; (III) implement the national anti-corruption strategy in its preventive dimension – for example by developing programmes and initiatives that promote a culture of integrity and transparency among young people; (IV) supporting public authorities in drawing up compliance programmes; and (v) collect and organise information related to the prevention and prosecution of corruption and related crimes.

<sup>144</sup> Decree-Law No. 109-E/2021, of 9 December.

<sup>145</sup> This Guide aims to provide general advice to public bodies and private entities, and it is a compliance tool aimed at standardisation. It does not discuss different methodological approaches, risks, or shortcomings in developing and implementing these compliance instruments. The Instruments of the General Regime for the Prevention of Corruption: Some Indications and Explanatory Notes on Methodological Care for the Preparation, Adoption and Dynamisation MENAC. Available at: <https://mec-anticorruptcao.pt/wp-content/uploads/2023/12/guia-n1-2023.pdf>.

<sup>146</sup> Information received from the Inspectorate-General of Finance (IGF) in the context of the country visit to Portugal, in view of the results of the audit work developed in this subject.

<sup>147</sup> Training Plan for integrity, transparency and corruption prevention 2024-2025 of 5 June 2024.

<sup>148</sup> Input from Portugal for the 2024 Rule of Law Report, p. 9.

<sup>149</sup> Written input from Portugal to the 2024 Rule of Law Report.

<sup>150</sup> Recommendation 1/2024.

<sup>151</sup> The number of complaints indicated corresponds to those received at MENAC in traditional ways by email and by post. Information received from MENAC in the context of the country visit to Portugal.

<sup>152</sup> Written input from Portugal to the 2024 Rule of Law Report.

<sup>153</sup> Information received from MENAC in the context of the country visit to Portugal. MENAC Recommendation No 2/2023 on the procedures to be followed by entities when sending the instruments relating to regulatory compliance programmes to MENAC has already been published in the Official journal (*Diário da República*, 2nd series, 7 July 2023). MENAC has already received these instruments and has started its analysis and monitoring of compliance in that part of the General Regime for the Prevention of Corruption.

<sup>154</sup> As stated in the 2023 Activity Report of the Internal Control System of State Financial Administration, page 24.

the different Ministries) in 2024<sup>155</sup>. MENAC took up the majority of its tasks, but only in so far as the oversight of the implementation of the General Regime<sup>156</sup> is concerned. However, in principle its mandate is more extensive<sup>157</sup> and there is a need for guidance in certain areas<sup>158</sup>, including sectoral studies and tailored recommendations<sup>159</sup>. Therefore, MENAC has been carrying out studies, such as the analysis of judicial decisions communicated by the Public Prosecutor's Office and the Courts in 2023, and has also produced recommendations, such as Recommendation 7/2024 of 28 May on the monthly monitoring of the implementation of the instruments of the General Regime for the Prevention of Corruption by entities, and also the Training Plan for Integrity, Transparency and the Prevention of Corruption 2024-2025<sup>160</sup>. All MENAC bodies are established<sup>161</sup>, however the recruitment procedures for the remaining 13 vacancies show that there are some challenges to fill the posts<sup>162</sup>. For 2024, MENAC has been allocated a budget of EUR 2,55 million (compared to EUR 2,1 million for 2023)<sup>163</sup>. The Anti-corruption Agenda adopted on 20 June 2024 foresees restructuring and strengthening of resources of the MENAC<sup>164</sup>. Stakeholders have raised questions over the capacity of MENAC to exercise the tasks foreseen by its mandate<sup>165</sup>. In light of these developments, some further progress has been made on the recommendation made in the 2023 Rule of Law Report.

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<sup>155</sup> Art. 2, Decree-Law No. 109-E/2021, of 9 December. As a result, codes of conduct and other obligations apply to entities with more than fifty employees but not to the Government; in accordance with the code of conduct of the previous Government, approved in May 2022, those rules do not apply to the Ministers' cabinets. Council of Ministers Resolution No. 42/2022, Approves the Code of Conduct of the XXIII Constitutional Government, Preamble. Written input from Portugal for the 2024 Rule of Law Report.

<sup>156</sup> The Law on Criminal Policy for the 2023-2025 Biennium, adopted on 28 August 2023, makes a general reference to MENAC but it does not set any priorities, objective or guidelines, for the coordination between the preventive work. Law 51/2023 of 28 August 2023.

<sup>157</sup> 'Creating databases and operating a communication platform that facilitates the exchange of information on strategies and good practices for the prevention, detection and repression of corruption and related offences between public entities with responsibilities in this domain'. Art. 2 (j) of the Decree-Law no. 109-E/2021, of 9 December.

<sup>158</sup> Especially in the light of the GRECO recommendation on the need to develop a plan for the prevention of risks of corruption specific to persons with top executive functions, which should be subject to regular monitoring by the National Anti-Corruption Mechanism (GRECO Fifth Evaluation Round, para. 48, recommendation iv).

<sup>159</sup> Corrado, S. (2022), The new anticorruption law in Portugal: from a failed past into an uncertain future. *La Ley compliance penal*, 5.

<sup>160</sup> Written input from Portugal for the 2024 Rule of Law Report.

<sup>161</sup> Chair; Vice-President; Advisory Board (composed of 13 members); Monitoring Committee (composed of six Inspectors); and Sanctions Commission (four Inspectors). The Sanctions Commission was the last body to be established and took office on 2 October 2023. Input from Portugal for the 2024 Rule of Law Report, p. 8.

<sup>162</sup> Out of 27 posts, 13 posts are filled, and 14 vacancies remain vacant. Input from Portugal for the 2024 Rule of Law Report, p. 8. Overall, the public service in Portugal does not offer attractive conditions of employment and this issue has also an impact on the ongoing recruitment in MENAC. Information received from the MENAC in the context of the country visit to Portugal. Público, 'Anti-corruption agency justifies inaction with difficulty in recruiting staff', 21 April 2024.

<sup>163</sup> On 21 July 2023, MENAC concluded a financing contract with the Mission Structure "RECUPERAR PORTUGAL" for the "Economic Justice and the Environment of Business/MENAC", falling under Component C18 – Economic Justice and Business Environment, of the Recovery and Resilience Plan (RRP) for the development of the monitoring information system of the National Anti-Corruption Strategy.

<sup>164</sup> Portuguese Government, Anti-corruption Agenda, Measure No. 16.

<sup>165</sup> Information received from Transparency International and OBEGEF in the context of the country visit to Portugal.

**Some further progress was made with measures to ensure sufficient resources for preventing, investigating and prosecuting corruption.** The 2023 Rule of Law Report recommended to Portugal to ‘[e]nsure sufficient resources for preventing, investigating and prosecuting corruption’<sup>166</sup>. While the issue of resources at the level of the police and prosecution services remains a challenge to the prosecution of corruption-related cases, some stakeholders reported the first positive impact of the measures on the fight against corruption<sup>167</sup>. Firstly, the recruitment procedures in both the police and the prosecution were announced<sup>168</sup>. Those efforts are supported by the 2024 state budget which foresees an increase of the Justice budget by EUR 543 million compared to 2023, with a total of EUR 1.961 billion<sup>169</sup>. Secondly, as a result, the number of employed and subsequently trained police officers is increasing<sup>170</sup>. On 1 November 2023, the Judiciary Police had 338 persons involved in corruption-related investigations (out of overall 1358 employees involved in investigations)<sup>171</sup> and 70 persons in financial, accounting and IT units (in comparison to 43 in 2019)<sup>172</sup>. The limited number of technical advisers continues to be raised as a concern by prosecutors<sup>173</sup>. The issue of insufficient resources also concerns the adjudication of corruption-related cases<sup>174</sup>. Overall, various measures ensuring the necessary resources to the relevant authorities were announced and the recruitment and training of the new staff is ongoing, but the completion of these processes initiated in 2023 will have to be ensured

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<sup>166</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2. The 2022 Rule of Law Report had also recommended to Portugal to ‘Ensure sufficient resources for preventing, investigating and prosecuting corruption including by ensuring the swift operationalisation of the New Anti-Corruption Mechanism’. In the 2023 Rule of Law Report, the Commission concluded that some progress was made on the recommendation.

<sup>167</sup> Information received from the Prosecution Service and the Judicial Police in the context of the country visit to Portugal.

<sup>168</sup> According to the multi-year plan (2023-2027), recruitment of 750 criminal investigators, 250 forensic police members, and 100 security force workers is expected between 2022 and 2026 (Portaria No. 245/2022). On 15 February 2024, the Judiciary Police held a graduation ceremony for 80 inspectors. A further 150 inspectors will graduate in the last quarter of 2024. A recruitment drive for 150 inspectors, forensic specialists and security personnel was recently completed. Written contribution from the Judiciary Police in the context of the country visit to Portugal.

<sup>169</sup> 2024 State Budget Justice. Available at <https://oe2024.gov.pt/justica/>

<sup>170</sup> The Public Prosecutor’s Office has been reinforced through appointment of specialists. Currently DCIAP’s management is composed of 49 magistrates, while the Technical Advice Unit (NAT) has been reinforced by two more specialists and is still expected to recruit two more technicians in the near future, which would expand the team to 19 persons. Input from Portugal for the 2024 Rule of Law Report, p. 7. Statistical data relating to corruption-related offences 2023.

<sup>171</sup> Increase from 259 employees (in 2019) to 338 in 2023. Also, on 29 October 2023 the Judiciary Police was reinforced with 600 persons coming from the Foreigners and Borders Service that will be training in investigations. Input from Portugal for the 2024 Rule of Law Report, p. 7.

<sup>172</sup> Input from Portugal for the 2024 Rule of Law Report, p. 7. NB: the Ministerial Order No 245/2022 of 27 September 2022 in the context of the National Anti-Corruption Strategy 2020-2024, the programme for recruiting staff for the careers of criminal investigation, forensic and security specialist at the Public Prosecutor’s Office is ongoing for the period 2022-2026. Ministry of Justice, Press release of 20 November 2023, ‘135 vacancies open for new magistrates’.

<sup>173</sup> Information received from the High Council for the Public Prosecution and the Prosecutors Union in the context of the country visit to Portugal. See also contribution from Magistrats Européens pour la Démocracie et les Libertés (MEDEL) – Portugal for the 2024 Rule of Law Report, p. 13.

<sup>174</sup> While the recruitment of new magistrates has been launched in November 2023, there is still a need to address the lack of additional staff, particularly clerks, which results in delays in administrative procedural acts. See also Pillar I – Justice System, Quality. Ministry of Justice, ‘135 vacancies open for new magistrates’, 20 November 2023.

during the new legislature. Therefore, some further progress has been made on the recommendation made in the in the 2023 Rule of Law Report.

**Corruption cases are being investigated as a matter of priority.** Overall, investigations of corruption related offences are prioritised<sup>175</sup>, and the DCIAP opened 4631 new investigations concerning corruption-related offences in the period between 1 January and 23 November 2023 (in comparison to 3598 in 2022)<sup>176</sup>. There are currently 12 ongoing cases concerning foreign bribery, including three cases opened since July 2023<sup>177</sup> and the recommendations put forward by OECD<sup>178</sup>, mentioned in the 2023 Rule of Law Report<sup>179</sup>, are currently being considered. According to the first MENAC Annual Report, more than half of suspected corruption cases concern the local government<sup>180</sup>. A criminal investigation was launched in 2023 regarding potential corruption involving politicians<sup>181</sup>. The cooperation with the EPPO is going well, the number of European Delegated Prosecutors was raised from 4 to 6 and in 2023 the EPPO investigated 13 corruption cases which accounts for 6% of the total number of EPPO cases in Portugal<sup>182</sup>.

**New legislation on revolving doors introduced stricter penalties.** Following a public debate triggered by an investigation into a possibly high-level corruption case<sup>183</sup>, new legislation<sup>184</sup> on revolving doors was adopted and entered into force on 20 February 2024. The new rules cover holders of executive political positions<sup>185</sup> and prohibit employment in the private sector in certain cases<sup>186</sup>. The ban on taking up new public functions for breaching the rules was increased from three to five years<sup>187</sup>. In addition, companies hiring former government officials in breach of the current rules are prevented from benefiting from

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<sup>175</sup> Special priority is to be given to investigating the offences of corruption, trafficking in influence, embezzlement, and economic participation in business, including those committed by political or high-level public office holders. Directive 1/2023 of 14 December 2023.

<sup>176</sup> Statistical data relating to corruption-related offences 2023.

<sup>177</sup> Written contribution from the Judiciary Police in the context of the country visit to Portugal. According to the directive 1/2023, of 14 December, any investigations, reports, contributions or complaints on the foreign bribery are expected to be immediately transmitted to DCIAP.

<sup>178</sup> OECD (2022), Implementing the OECD Anti-Bribery Convention Phase 4 Report: Portugal.

<sup>179</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 14.

<sup>180</sup> Anti-Corruption Mechanism Annual Report 2023.

<sup>181</sup> The investigation is referred to as *Operation Influencer*: SIC Notícias, ‘Legalising lobbying? Operation Influencer brings the issue back into debate’, 14 November 2023. Cabinet of the Prosecutor General, Press release of 7 November 2023

<sup>182</sup> A large case has been opened in Porto against 12 suspects and 15 companies, following an investigation into a massive scheme of intra-Community VAT fraud (Admiral investigation). Input from Portugal for the 2024 Rule of Law Report, p. 11. See also the EPPO’s 2023 Report, p. 49.

<sup>183</sup> The case of the former Secretary of State for Tourism who moved from the Government to the private company to which she granted previously tourist utility status sector. Portugal Resident, ‘“Illegal” ‘revolving door’ manoeuvre sees ex-Secretary of State ensconced in project she championed’, 8 January 2023.

<sup>184</sup> Law No. 25/2024, of 20 February, amending Law 52/2019 (Regime for the exercise of functions by political and high public office holders).

<sup>185</sup> Art. 3, Law No. 52/2019, as amended.

<sup>186</sup> Art. 1, Law No. 52/2019, as amended. The new rules apply to holders of executive political positions who, after government functions, cannot take up positions for three years in private companies operating in the sector which they previously held (even through having shares), and which, during their term of office, have been privatised, have benefited from financial or contractual incentives, or in respect of which the policy was directly involved.

<sup>187</sup> Art. 11.3, Law No. 52/2019, as amended.

financial or tax incentives for a period between three and five years<sup>188</sup>. However, currently no specific entity has been entrusted the role of addressing breaches of post-employment restrictions<sup>189</sup>.

**A new Code of Conduct applicable to the Government and high-level officials was adopted.** As mentioned in the 2023 Rule of Law Report<sup>190</sup>, concerns had been expressed regarding the supervision and monitoring of integrity issues and the lack of a related enforcement mechanism with regard to Government officials<sup>191</sup>. Since the 2023 Rule of Law Report, the integrity questionnaire introduced last year appears not to have brought added value in terms of corruption prevention, and the criticism regarding its application increased<sup>192</sup> particularly in light of the criminal investigations which ultimately led to the resignation of the Prime-Minister, and subsequent dissolution of Parliament<sup>193</sup>. In April 2024, the new Government adopted its Code of Conduct which explicitly refers to the possibility of dismissal in case of violation of the Code and foresees the creation of a whistleblowing channel and a corruption risk prevention plan<sup>194</sup>. The Code applies to the members of the Government as well as to the members of their cabinets, to all senior managers of the public administration under the direction of the Government, as well as to managers and managers of institutes and state-owned enterprises<sup>195</sup>. A number of measures regarding integrity were listed in the programme of the new Government adopted in April 2024<sup>196</sup>. Some of these measures have been put in place, such as a new training plan on integrity standards, confidential counselling on ethical issues to all cabinet staff, a new training plan to provide

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<sup>188</sup> Art. 11.4, Law No. 52/2019, as amended. Those changes are in line with the recent GRECO recommendations, as long as an effective enforcement mechanism is established. GRECO Fifth Evaluation Round, para. 96, recommendation v.

<sup>189</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 12.

<sup>190</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 14-15.

<sup>191</sup> The 2019 Regime for the exercise of functions by holders of political offices and high public offices determines that all political office holders, judges, prosecutors, and senior public officials must submit declarations of interests and assets. Political office holders, senior public officials and the members of the judges and prosecutors high councils must submit the statements to the Constitutional Court. Law No. 52/2019 of 31 July: Approves the regime for the exercise of functions by holders of political and high public offices, Arts. 2 – 5 and 13 – 21; in addition, MPs and government members must submit a declaration of interests to Parliament, which publishes them on the official website.

<sup>192</sup> The doubts concerning the questionnaire are also related to the use of personal data of the persons in question. *Expresso*, Constitutionals raise “doubts” about Government questionnaire, 20 January 2023.

<sup>193</sup> See also Pillar I – Justice System, Independence, and Pillar IV – Other institutional issues related to checks and balances. Portuguese Government, Press release of 7 November 2023, ‘The dignity of the office of Prime Minister is not compatible with suspicion of his integrity’.

<sup>194</sup> Council of Ministers Resolution No. 64/2024, of 24 April. Overall, GRECO issued a number of recommendations for all persons with top public functions in view of revising the current integrity system to make it clearer, enforceable and the relevant information publicly available in a timely manner. GRECO Fifth Evaluation Round – Evaluation report, paras. 53, 62 and 90, recommendation i. GRECO also recommended that Portugal should ensure that similar disclosure requirements of income, assets, interests, incompatibilities, and disqualifications applying to members of the Government be extended to all persons with top executive functions. GRECO Fifth Evaluation Round – Evaluation report, para. 100. Recommendation xii.

<sup>195</sup> Article 2 of the Council of Ministers Resolution No. 64/2024, of 24 April.

<sup>196</sup> Those are e.g. regulating lobbying, including creation of the lobby register and the transparency register code of conduct, rendering publication of the meetings of all political and senior public office holders with interest groups, adopting a legislative footprint. Programme of the 24<sup>th</sup> Constitutional Government, p. 79.

formal training on integrity to all members of Government and cabinet staff, not only by direct counselling upon appointment, but also at regular intervals<sup>197</sup>.

**There was some further progress in relation to ensuring effective monitoring and verification of asset declarations by the Transparency Entity.** The 2023 Rule of Law Report recommended to Portugal to ‘[e]nsure the effective monitoring and verification of asset declarations by the Transparency Entity’<sup>198</sup>. On 6 March 2024, the reform to entrust monitoring and verification of asset declarations of political and senior public officials to the Transparency Entity established in 2019<sup>199</sup> entered into force<sup>200</sup>. Civil society organisations expect this reform to be a turning point in terms of transparency and effectiveness<sup>201</sup>. The task for the verification of asset declarations, previously exercised by the Constitutional Court, passed to the Transparency Entity. The Transparency Entity remains independent in executing its primary function<sup>202</sup>, but it is administratively and financially dependant on the Constitutional Court. The Transparency Entity has its own staff<sup>203</sup>, headquarters (Palácio dos Grilos, in Coimbra), and the digital platform to handle asset declarations is now operational<sup>204</sup>. However, some concerns related to the functioning of the Entity have been raised, in particular in relation to the geographical distance from the Constitutional Court, the current lack of the interoperability of the platform, in particular with the Bank of Portugal and the potentially burdensome manual checks of the information insterted in the platform<sup>205</sup>.

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<sup>197</sup> As recommended by GRECO. GRECO Fifth Evaluation Round – Evaluation Report, Recommendation vi.

<sup>198</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2. The 2022 Rule of Law Report had also recommended to Portugal to ‘Ensure the start of operations of the Transparency Entity in view of effective monitoring and verification of asset declarations.’ (2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2). In the 2023 Rule of Law Report, the Commission concluded that some progress was made on the recommendation.

<sup>199</sup> Art. 5 of Organic Law No. 4/2019, of 13 September, provides that until the establishment of the Transparency Entity, single declarations of income, assets and interests continue to be filed with the Constitutional Court and scrutinised under the previous regime.

<sup>200</sup> Regulation No. 258/2024, of 6 March. The Regulation standardising procedures for the computerised registration of single declarations of income, assets, interests, incompatibilities and impediments for political office holders, high-level public office and equivalent was published on 6 March 2024 and entered into force on the same day.

<sup>201</sup> The use of the electronic platform, now mandatory by law, makes is expected to be safer, faster and more efficient to verify the filing and the formal conformity between successive declarations by the same declarant (declarations when entering office, when updating assets, when leaving office, and three years after leaving office). Information received from the Transparency International and Observatory of Economy and Fraud Management in the context of the country visit to Portugal.

<sup>202</sup> The Transparency Entity is an independent body, which means that the Constitutional Court has no power to control the way in which it carries out its functions. The role of the Constitutional Court is a judicial one and will be limited to deciding appeals against decisions of the Transparency Entity.

<sup>203</sup> The President and the two members took office on 15 February 2023 and are now in office. The staff currently consists of eight members, including the three managers, and an additional IT technician is soon to be employed. Input from Portugal for the 2024 Rule of Law Report, p. 9.

<sup>204</sup> The development of the Electronic Platform for Processing the Single Declaration of Income, Heritage, Interests, Incompatibilities and Impairments, the contract of which was signed on 9 May 2022, has been completed and its provisional acceptance took place on 30 May 2023. A training event in this regard took place from 9 to 13 October 2023. The use of the Electronic Platform in testing environment has already taken place. Input from Portugal for the 2024 Rule of Law Report, p. 9.

<sup>205</sup> Information received from the Transparency Entity in the context of the country visit to Portugal. This would also be in line with the GRECO recommendation on ensuring substantive checks with the related proportionate sanctions in cases of breaches. GRECO Fifth Evaluation Round – Evaluation report, para. 104. In parallel, GRECO recommended ensuring effective functioning of the Transparency Entity as a matter of priority. GRECO Fifth Evaluation Round – Evaluation report, para. 104. Recommendation xiv.

While the Transparency Entity started operations in legal terms, the task of ensuring effective monitoring and verification of asset declarations remains to be confirmed<sup>206</sup>. In view of the above, some progress has been made on the recommendation made in the 2023 Rule of Law Report.

**The legal framework for political party financing has come under public scrutiny.** In July 2023, an investigation launched by the judiciary police triggered a public debate over the alleged lack of clarity of the laws on political financing<sup>207</sup>. It concerned suspicions regarding alleged use of funding allocated to parliamentary groups to finance the activities of political parties<sup>208</sup>. As a result, some parliamentary groups called for amendments to the law on political party financing, in order to clarify these aspects<sup>209</sup>. While no bills were yet proposed in this regard, the Government programme includes extending anti-corruption rules to political parties, among others, making it compulsory to implement risk prevention plans<sup>210</sup>.

**The Government announced plans to regulate lobbying, through the creation of a transparency regime and a Code of Conduct.** Portugal remains without rules on lobbying, despite long standing GRECO recommendations<sup>211</sup>. In 2023, the lack of regulation on lobbying was the subject of criticism. Stakeholders have underlined the lack of progress in this area and have urged the Government to introduce the relevant measures as a matter of priority<sup>212</sup>. The discussions on a new bill that took place in early 2024 before the dissolution of the Parliament were not conclusive<sup>213</sup> but the first consultations with the political groups in the new Parliament indicate a common interest in regulating lobbying<sup>214</sup>. While no concrete proposals have been put forward so far, a number of measures regarding lobbying were listed in the programme of the new Government presented in April. The regulation of lobbying was announced in the Anti-corruption Agenda of June, which includes a Code of Conduct for

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<sup>206</sup> It is, therefore, expected that following the parliamentary elections on 10 March and the submission of the relevant declarations by the new Members of Parliament and members of the Government within 60 days from the date they enter office, the Transparency Entity will monitor and verify them.

<sup>207</sup> This happened in the context of an investigation involving one political party and its previous leadership. The unclarity regards using funds from the parliament dedicated to paying advisors of parliamentary groups, which were used to pay party employees who did not work on parliament's premises. CNN, 'PSD confirms searches in national and Porto headquarters', 12 July 2023.

<sup>208</sup> Observador, 'PS wants to clarify that the law allows resources to be shared between parties and parliamentary groups', 14 July 2023.

<sup>209</sup> RTP, 'PS will propose an amendment to the law on party financing', 14 July 2023.

<sup>210</sup> Programme of the 24<sup>th</sup> Constitutional Government, p. 81.

<sup>211</sup> GRECO Fifth Evaluation Round – Evaluation report, para. 70.

<sup>212</sup> Information received from Transparency International and OBEGEF in the context of the country visit to Portugal. See also Transparency International, Analysis by Transparency International reveals that the fight against corruption in Portugal is not advancing and has flaws in terms of integrity in politics, 30 January 2024. Transparency International, TI Portugal proposes to the parties a list of measures to prevent corruption, 8 February 2024. While it is difficult to determine the content of the future regulation, it seem probable that it may be impacted by the current heated political debate with regard to the defining lines between lobbying and influence peddling. RTP Notícias, 'There's nothing irregular about it', 9 November 2023. Politico, 'Politicians should refrain from negotiating at the table, judges advise', 18 April 2024.

<sup>213</sup> Information received from the Services of the Assembly of the Republic in the context of the country visit to Portugal.

<sup>214</sup> Eco, 'Parties agree to point batteries at the regulation of lobbying', 22 April 2024.

lobbying, as well as a register of interest representatives and meetings that took place with public officials<sup>215</sup>.

**While the current legislative framework regarding whistleblower protection is being efficiently implemented, strengthening of the protection of whistleblowers in cases of corruption was announced.** The Inspectorate-General of Finance (IGF), providing both internal and external reporting channels<sup>216</sup>, received 35 whistleblower reports through the external reporting channel by 19 November 2023 (against 22 reports in 2022)<sup>217</sup>. As regards the single regional channel<sup>218</sup>, created by the Government of the autonomous region of Madeira, 37 reports were received in 2023<sup>219</sup>. In the first eleven months of 2023, the number of reports received through the external channel available on the Public Prosecutor's Office Portal<sup>220</sup> was 1 748 (492 complainants were subsequently recognised as whistleblowers)<sup>221</sup>. The Anti-corruption Agenda adopted on 20 June 2024 announced strengthening the protection of whistleblowers in cases of corruption (including in retaliatory and unfounded judicial proceedings)<sup>222</sup>. GRECO recommended strengthening the protection of whistleblowers within the Public Security Police and the National Republican Guard, particularly by fully implementing internal reporting channels as well as by conducting dedicated training and awareness-raising activities about whistleblower protection measures for all levels of hierarchy and chains of command<sup>223</sup>.

**Concerns regarding the transparency of decision-making in public procurement remain.** The Flash Eurobarometer on Businesses' attitudes towards corruption in the EU shows that 24% of companies in Member States (EU average 27%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years<sup>224</sup>. The recent criminal investigation leading to the dissolution of Parliament revealed integrity risks linked to the National Interest Projects (PINs), which constitute an exceptional regime linking Governments and businesses. Based on the current rules, administrative procedures in relation to those projects are processed more quickly and effectively, namely through priority appraisal, as well as the simultaneous processing of managerial procedures or the reduction of procedural deadlines, in cases where this is decisive for the effective implementation of the project. PIN classification and monitoring are

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<sup>215</sup> Those are e.g. regulating lobbying, including creation of the lobby register and the transparency register code of conduct, rendering publication of the meetings of all political and senior public office holders with interest groups, adopting a legislative footprint. Programme of the 24<sup>th</sup> Constitutional Government, p. 79.

<sup>216</sup> Law No. 93/2021, of 20 December.

<sup>217</sup> Ten of the complaints were forwarded from external entities, 15 from IGF's competence centres, nine without referral and one repeated complaint. Input from Portugal for the 2024 Rule of Law Report, p. 13.

<sup>218</sup> Official website: <https://canaldenuncias.madeira.gov.pt/>

<sup>219</sup> In the Regional Administration of the Azores a waiver channel was set up across all the departments of the regional government, which is part of the project "Call for Public APR – New Generation", a measure which aims to increase effectiveness and efficiency and to enhance the value of the public service provided in the Azores, focusing the public administration's action on the current needs and expectations of citizens and businesses. Input from Portugal for the 2024 Rule of Law Report, p. 14.

<sup>220</sup> Official website: <https://simp.pgr.pt/dciap/denuncias/index2.php>

<sup>221</sup> Statistical data relating to corruption-related offences 2023. Available at: [https://www.ministeriopublico.pt/sites/default/files/documentos/pdf/corrupcao\\_e\\_crimes\\_conexos\\_2023.pdf](https://www.ministeriopublico.pt/sites/default/files/documentos/pdf/corrupcao_e_crimes_conexos_2023.pdf)

<sup>222</sup> Portuguese Government, Anti-corruption Agenda, Measure No. 16.

<sup>223</sup> GRECO Fifth Evaluation Round – Evaluation report, para. 210. Recommendation xxvii.

<sup>224</sup> Flash Eurobarometer 543 on Businesses' attitudes towards corruption in the EU (2024). This is 3 percentage points below the EU average.



made by a Monitoring Committee (CPAI) of representatives of several public agencies and government members<sup>225</sup>. In parallel, stakeholders raise concerns related to possible discretionary decision-making when approving PIN projects<sup>226</sup> and lack of sufficient scrutiny over the ongoing ones<sup>227</sup> as well as concerns related to environment protection<sup>228</sup>. At the end of October 2023, 49 projects had the PIN status (for the amount of EUR 21 265 million), four of which have enjoyed that status for 20 years<sup>229</sup>. In 2022 and 2023, 25 new investments gained the PIN status and accounted for 20 per cent of all PIN projects since the mechanism was created which constitutes a significant acceleration in the approval rate at which these projects are approved<sup>230</sup>.

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

The fundamental principles underpinning media freedom and pluralism are enshrined in the Portuguese Constitution<sup>231</sup> and a comprehensive legal framework exists protecting journalists in the exercise of their profession<sup>232</sup>. The establishment of an independent regulatory body is also mandated in the Constitution<sup>233</sup>. A solid legal framework<sup>234</sup> is in place regarding the transparency of ownership across all media markets. Access to information and documents held by public authorities is safeguarded through legislation<sup>235</sup>.

**The Media Regulatory Authority further consolidated its central role, having been attributed new powers on state advertising.** Following the entry into force of amendments to the Law on State Institutional Advertising, the Media Regulatory Authority (ERC) has seen its powers strengthened, namely in the context of the obligations of communication and transparency in the acquisition of advertising space by state authorities<sup>236</sup>. In July 2023, ERC submitted two proposals to amend the Radio Law<sup>237</sup> and the Press Law<sup>238</sup> to the Assembly of

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<sup>225</sup> The Council of Ministers decides the approval, amendment, suspension or ratification of territorial management instruments necessary to implement PINs. Decree-Law No. 154/2013, of 5 November.

<sup>226</sup> Contribution received from the Transparency International and Observatory of Economy and Fraud Management in the context of the country visit to Portugal.

<sup>227</sup> In at least one of the cases, Quinta da Barrosinha, in Alcácer do Sal, the project is already completed and operational but it constitutes, however, a different investment from the one approved in 2008. Rádio Renascença, ‘There are investments that have been PIN for almost 20 years’, 6 December 2023.

<sup>228</sup> Some of these projects have controversial licensing processes, such as the Douro Marina Hotel, whose construction was in the news for jeopardising the region’s classification as a UNESCO World Heritage Site. Rádio Renascença, ‘There are investments that have been PIN for almost 20 years’, 6 December 2023.

<sup>229</sup> Rádio Renascença, ‘There are investments that have been PIN for almost 20 years’, 6 December 2023.

<sup>230</sup> In view of IGF’s responsibilities as Audit Authority of the European funds, namely in the audits concerning certified operations, PIN projects are also audited, with the aim of validating the legality and regularity of the expenditure. Annex to the input from Portugal for the 2024 Rule of Law Report.

<sup>231</sup> Arts. 37 and 38, Constitution of the Portuguese Republic.

<sup>232</sup> Portugal ranks 7<sup>th</sup> in the 2024 Reporters without Borders World Press Freedom Index compared to 9<sup>th</sup> in the previous year.

<sup>233</sup> Art. 39, Constitution of the Portuguese Republic.

<sup>234</sup> Law No. 78/2015, of 29 July.

<sup>235</sup> Law No. 26/2016, of 22 August.

<sup>236</sup> Law No. 19/2023 of 12 May 2006, which extends the scope of Law No. 95/2015 on institutional advertising. See also input from Portugal for the 2024 Rule of Law Report, p. 18.

<sup>237</sup> Law No. 54/2010, of 24 December.

<sup>238</sup> Law No. 2/99, of 13 January.

the Republic<sup>239</sup> for consideration and discussion. As regards the Radio Law, the proposal identifies a number of aspects that should be revised with a view to address doubts of interpretation of the law, difficulties of application of the law, and to allow for greater dynamism of the activity of the radio. For the Press Law, the proposal aims to expand the scope to cover online media as well. The follow up for these two proposals will depend on further action during the new legislature. Regarding the resources allocated to the media regulator, the MPM 2024 for Portugal considers that although somewhat inadequate, they allow the ERC to perform its function<sup>240</sup>.

**The breach of the provisions on transparency of media ownership by one media group triggered discussions on the need to amend the legislative framework.** The monitoring of transparency of media ownership is an area under the responsibility of the ERC<sup>241</sup>. As indicated in the 2023 Rule of Law Report there were concerns about the veracity of the information provided in some cases<sup>242</sup>. The acquisition of one of the largest media organisations in Portugal, by an investment fund, which was followed by a series of highly controversial decisions (including asset seizure, non-payment of salaries, and collective dismissals) prompted journalists to protest, bringing the issue into public discussion and to the political level in Parliament<sup>243</sup>. Despite the discussions, no further amendments to the legislative framework were pursued<sup>244</sup>. These events prompted ERC to open an administrative case concerning the non-compliance with the Transparency Law<sup>245</sup>, finding breaches of the law and suspending the voting rights of the investment fund in the media company<sup>246</sup>, although the ERC's actions were seen as coming late<sup>247</sup>. The media landscape in Portugal is highly concentrated and the MPM 2024 for Portugal thus sees a high risk for media plurality<sup>248</sup>.

**The public service media provider continues to face challenges regarding its resources.** Rádio e Televisão de Portugal (RTP), the public service media provider, offers a variety of channels and faces the need to adapt its offer to the changing needs and consumption habits

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<sup>239</sup> This submission was made under the provisions in Art. 25 of the ERC's Statutes, which establish that the Entity, on its own initiative, may suggest or propose measures of a political or legislative nature in matters pertaining to its remit.

<sup>240</sup> Media Pluralism Monitor 2024 for Portugal, p. 13.

<sup>241</sup> Law No. 78/2015, of July 29, which regulates the promotion of transparency of ownership, management, and financing of entities that carry out media activities. ERC collects and verifies the information reported by entities under the legal provisions of transparency and displays it in the Transparency Portal. The Portal is also a gateway for interaction with users because it is the channel to reply to several information requests addressed to ERC. The Portal is continuously evaluated, and improvements introduced to facilitate the consultation of data and interaction with users. Similarly, the restructuring of the Transparency Platform and its back office continues, to facilitate usability by regulated entities when reporting the elements required under the transparency regime.

<sup>242</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 18.

<sup>243</sup> A Parliamentary Inquiry Commission was created; further information available at: <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheAudicao.aspx?BID=148707>.

<sup>244</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 18.

<sup>245</sup> Art. 14, Transparency law.

<sup>246</sup> ERC's decision suspended, as well, the patrimonial rights and imposed financial safeguard measures. ERC, Deliberation of 19 March 2024.

<sup>247</sup> Information received from the Union of Journalists and the Journalists Professional License Commission, in the context of the country visit to Portugal.

<sup>248</sup> Media Pluralism Monitor 2024 for Portugal, p. 15.

of its public<sup>249</sup>. At the same time, it needs to ensure compliance with legal obligations, like media literacy. However, there are challenges to financial resources, that do not allow it to keep up with those developments and missions<sup>250</sup>. In particular, the fact of not updating the annual audiovisual tax since 2017 has an ever-increasing annual impact with a cumulated loss of income of EUR 55,46 million for the 2017-2023 period<sup>251</sup>. Its human resources are also strained, as the hiring of new staff, including to compensate for retirements and terminations, is subject to the general rules of recruitment applicable to the civil service<sup>252</sup>. Preliminary work has been done at working group level to prepare a new concession contract with RTP, in line with the conclusions of the 2023 White Paper on the public service media<sup>253</sup>.

**There is now wide support for the LUSA News Agency.** While some concerns had been voiced in the past as to the shareholding structure of the news agency<sup>254</sup>, at present there is a wide consensus among stakeholders in support of the agency as it is seen as playing an essential role in parts of the country where news would not otherwise reach the public<sup>255</sup>. Nevertheless, concern has been voiced about the risk that LUSA content could increasingly be used by some outlets as a way of replacing the work done by in-house journalists<sup>256</sup>. While in August 2023 the Government had shown interest in acquiring new participations in the news agency<sup>257</sup>, this possibility was not achieved<sup>258</sup>. However, the current Government intends to execute said acquisition until the end of 2024<sup>259</sup>.

**Tax incentives to encourage the subscription of written media had a positive effect.** As mentioned in the 2023 Rule of Law Report<sup>260</sup>, provisions were introduced in the 2023 budget law for the reimbursement of VAT for subscriptions to newspapers and written media against the 2024 income tax<sup>261</sup>. According to the authorities, the incentives have totalled around EUR 568 000<sup>262</sup>. This measure has been considered as positive, although journalist representatives consider it insufficient to address the problem of the huge decrease in the sales and in the number of newspapers' readers<sup>263</sup>. Journalists stress that there is a need for a structural approach, encompassing support for the media access, media literacy and its

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<sup>249</sup> According to the European Parliament's Flash Eurobarometer: News & Media Survey 2023, 65% of respondents in Portugal stated that they trust public TV and radio stations, below the EU average of 48%.

<sup>250</sup> Information received from RTP in the context of the country visit to Portugal.

<sup>251</sup> RTP, 'Memorandum on updating the value of the audiovisual tax'. This is in spite of the fact that the amount collected by virtue of the audiovisual tax has continually increased in the relevant period.

<sup>252</sup> Information received from RTP in the context of the country visit to Portugal.

<sup>253</sup> Information received from the Secretariat General of the Presidency of the Council of Ministers in the context of the country visit to Portugal and White Paper on public service media.

<sup>254</sup> Feared as too private, as noted in 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 19. Concerns regarding the possibility of public interference were voiced later in 2023, when the Government announced interest in taking up shares from private shareholders.

<sup>255</sup> Information received from Journalists Trade Union in the context of the country visit to Portugal.

<sup>256</sup> Information received from the Journalists Professional License Commission, in the context of the country visit to Portugal.

<sup>257</sup> Currently owned by the Global Media Group – see paragraph on transparency of media ownership.

<sup>258</sup> Portuguese Government, Press release of 30 November 2023.

<sup>259</sup> Written contribution from the Portuguese Government in the context of the country visit to Portugal.

<sup>260</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 20

<sup>261</sup> Law No. 24-D/2022, of 30 December, approving the State budget for 2023.

<sup>262</sup> Information received Secretariat General of the Presidency of the Council of Ministers in the context of the country visit to Portugal.

<sup>263</sup> Information received from Journalists Trade Union in the context of the country visit to Portugal.

financing<sup>264</sup>. The current Government intends to address these concerns until the end of 2024<sup>265</sup>.

**Concerns about the precarity of journalist posts and deteriorating working conditions have increased, leading to a journalists' strike.** While journalists have been complaining for some years about the deterioration of the working conditions<sup>266</sup>, a change in the ownership of Global Media Group<sup>267</sup>, one of the biggest national media groups, triggered a strong reaction from journalists<sup>268</sup>. While other minor cases (concerning layoffs in particular) also happened in 2023, this case had a triggering effect. Decisions concerning asset management, non-payment of salaries for two months, allegations of interference with editorial freedom, and the announcement of collective dismissals were contested and strongly opposed by journalists<sup>269</sup>, with punctual strikes and an important effort to make the situation widely known to the public and brought to the political sphere. The media regulator initiated an investigation into the impact of the restructuring of the Global Media Group, having concluded that there were several instances of wrongdoing by the administration<sup>270</sup>. Following months of instability, a restructuring process is underway with negotiations ongoing for the acquisition of several of Global Media Group's outlets by Portuguese investors<sup>271</sup>. For the first time in seven years, a Congress of Journalists was convened 18-21 January 2024 to face the 'state of emergency for national journalism'<sup>272</sup>. For the first time in 40 years, Portuguese journalists went on a general strike on 14 March 2024<sup>273</sup>. According to the Journalists' Trade Union, more than 40 national, regional, and local media outlets participated<sup>274</sup>, including the LUSA News Agency. The strike was called amid concerns regarding low salaries, precariousness and what is considered to be a sharp deterioration of working conditions. The President of the Republic, as well as leaders of political parties with parliamentary representation expressed their solidarity to the journalists on strike<sup>275</sup>.

**While there is a strong legal framework regarding the practice of journalism and the right to inform, as well as guaranteeing protection of the fundamental right not to reveal sources, concerns have been expressed regarding the increasing number of threats to journalists.** Portugal possesses a strong legal framework on various aspects of the safety of journalists<sup>276</sup>. However, the Council of Europe Platform to promote the protection

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<sup>264</sup> Information received from Journalists Trade Union in the context of the country visit to Portugal; see also Congress of Journalists, Conclusions of the 5<sup>th</sup> Congress of Journalists.

<sup>265</sup> Written contribution from the Portuguese Government in the context of the country visit to Portugal.

<sup>266</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 19.

<sup>267</sup> Global Media Group is an important group because of the geographical spread, the variety, the history and the reputation of the media outlets it owns.

<sup>268</sup> European Federation of Journalists, 'Portugal: Solidarity with strikers from Global Media Group', 12 January 2024.

<sup>269</sup> Information received from the Journalists Trade Union in the context of the country visit to Portugal.

<sup>270</sup> Including of illegitimate attempts to interfere with the editorial freedom and autonomy of different news outlets of the group. ERC, Press release 'ERC concludes investigation on the impact of the restructuring of Global Media Group on the pluralism of information and editorial lines', of 30 May 2024.

<sup>271</sup> Diário de Notícias, 'ERC greenlights acquisition of Global Media outlets by Notícias Ilimitadas'.

<sup>272</sup> Information available at: <https://congressojornalistas.pt/sobre/>.

<sup>273</sup> Journalists Trade Union, 'General strike of journalists silences forty media organs', 14 March 2024.

<sup>274</sup> Ibidem.

<sup>275</sup> Renascença, 'Marcelo highlights "fundamental role of journalism" on strike day', 14 March 2024; Público, 'BE, PCP, Livre and PAN attended the journalists' strike and called for their "value"', 15 March 2024.

<sup>276</sup> Media Freedom Rapid Response assessment for Portugal: <https://www.mfrr.eu/portugal-press-freedom-remains-robust-even-as-media-face-resource-strains/>.

of journalism and safety of journalists has registered four alerts since the adoption of the 2023 Rule of Law Report, three of which are still active<sup>277</sup> and all concern journalists being physically attacked while covering events. Stakeholders expressed concerns that this appears to be a trend<sup>278</sup>. The Media Freedom Rapid Response monitor for Portugal reported five more alerts since July 2023, which also concerned such incidents and verbal attacks<sup>279</sup>. An instance of violence by police has been reported<sup>280</sup>. A criminal investigation was also initiated following the attack on the headquarters of an online newspaper and radio<sup>281,282</sup>. No SLAPP cases were reported since the publication of the 2023 Rule of Law Report<sup>283</sup>.

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

Portugal is a representative democratic republic with a directly elected President and a unicameral Parliament. The President of the Republic, elected by direct popular vote, has significant constitutional and political powers, including the competence to dissolve Parliament<sup>284</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>285</sup>. Parliament and Government share legislative competence. The Members of Parliament and the Parliamentary Groups, the Government, the Regional Assemblies, and a group of at least 20 000 citizens have the right of legislative initiative. The Constitutional Court, which is part of the judiciary, is competent to review the constitutionality of laws and to control the constitutionality of the omission to adopt the necessary legislative measures to execute constitutional norms<sup>286</sup>; it also has other important powers, including on electoral matters and control of assets, interest disclosure and incompatibility declarations<sup>287</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. The Commission for Citizenship and Gender Equality and the Commission for Equality in Labour and Employment are the equality bodies.

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<sup>277</sup> For comparison, one alert was registered between July 2022 and July 2023. Council of Europe Platform to promote the protection of journalism and safety of journalists.

<sup>278</sup> Information received from Journalists Trade Union in the context of the country visit to Portugal.

<sup>279</sup> Available at: <https://www.mfrr.eu/monitor/>.

<sup>280</sup> The Public Security Police initiated an investigation on the alleged police aggressions (Diário de Notícias, 'PSP opens inquiry on the aggressions to protesters and journalists consider pressing charges', 6 February 2024). Journalists Trade Union, 'SJ indignant at aggressions from PSP to journalists', 6 February 2024. See also Council of Europe Platform to promote the protection of journalism and safety of journalists, 'Two Journalists Attacked by PSP Officers while Covering Protest', Alert No. 26/2024.

<sup>281</sup> Observador, 'Headquarters of Observador were vandalised. Charges pressed before the PSP', 20 May 2024. Journalists Trade Union, 'SJ condemns attack against Observador and calls for guarantees to protect journalists', 21 May 2024.

<sup>282</sup> Regarding the case of the journalists who were prosecuted for allegedly violating the secrecy of justice in relation to their reporting in 2018 about an anti-corruption operation (Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 19-20), following the acquittal at first instance, the decision was overturned in second instance by the Lisbon Appeal Court. The Court sentenced them to a fine of 150 days and EUR 1500, as it considered there had been an error of judgment in the court of first instance. See Público, 'Appeal Court annuls decision and sentences journalists for violating the secrecy of justice', 15 November 2023.

<sup>283</sup> Information received from Journalists Trade Union in the context of the country visit to Portugal.

<sup>284</sup> Art. 133(e), Constitution of the Portuguese Republic.

<sup>285</sup> Art. 201, Constitution of the Portuguese Republic.

<sup>286</sup> Art. 223(1), Constitution of the Portuguese Republic.

<sup>287</sup> Art. 223(2)(c), (g), (h), Constitution of the Portuguese Republic; Arts. 11-A and 106 to 110, Law on the Constitutional Court.

**There has been some further progress to improve the transparency of law-making, while the regulation of impact assessment is still pending.** The 2023 Rule of Law Report recommended to Portugal to ‘[f]inalise the reforms to improve the transparency of law-making, particularly on the implementation of impact assessment tools’<sup>288</sup>. In July 2023, the Parliament’s Rules of Procedure were amended, expressly addressing the reinforcement of the quality of parliamentary legislation and the procedure’s transparency. The new rules envisage the implementation of *ex ante* impact assessment tools<sup>289</sup>. However, with the dissolution of Parliament on 15 January 2024, the regulation to put this into practice has not been finalised<sup>290</sup>. The new rules of procedure envisage the creation of a new tool for participation in the legislative procedure, aiming to extend this to all parliamentary draft legislation<sup>291</sup>, and clarify the constitutional duty of consultation<sup>292</sup>. The new rules also emphasise the need to comply with the legislative procedure’s deadline and aim to reinforce the quality of legislation that incorporates EU law into national law<sup>293</sup>. Work is still ongoing on the revision and update of Parliament’s legal drafting technical guide<sup>294</sup>. Regarding the legislative power entrusted to the Government, the *ex ante* impact assessment of all legislative drafts continues to be ensured, while the *ex post* impact assessment is limited to selected legislative acts<sup>295</sup>. The involvement of stakeholders in the legislative process continues to be ensured<sup>296</sup>, either through public consultation<sup>297</sup>, or through the direct consultation of the interested parties<sup>298</sup>. There have been positive steps in this regard, and the programme of the new Government embraces this objective<sup>299</sup>. The Anti-corruption Agenda also envisages the development of the ‘legislative footprint’ system, establishing the

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<sup>288</sup> This followed the 2022 Rule of Law Report, where it had been recommended to ‘continue the reforms to improve the transparency of law-making, particularly on the implementation of impact assessment tools’<sup>288</sup>, and in relation to which significant progress was achieved; 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 2.

<sup>289</sup> Art. 131-A, ‘*Ex-ante* impact assessment’: ‘Without prejudice to the *ex-ante* impact assessment regimes laid down by law, the Plenary shall pass a resolution, following a proposal by the President of the Assembly of the Republic and after consulting the Conference of Leaders, on the rules and procedures for assessing the impact of legislation’.

<sup>290</sup> A study is ongoing on Parliaments’ practices on *ex ante* impact assessment, through the European Centre for Parliamentary Research and Documentation (Information received from the Services of the Assembly of the Republic in the context of the country visit to Portugal).

<sup>291</sup> In Portugal, 20% of the surveyed companies perceive the frequent changes in legislation or concerns about quality of law-making process as a reason for the lack of confidence in investment protection. Figure 56, 2024 EU Justice Scoreboard.

<sup>292</sup> In relation to the consultation of federations and confederations that represent the matter to be legislated, in the areas of disability, consumers rights, family, education.

<sup>293</sup> In particular, by imposing the Government bill to be accompanied by a correlation table between the bill’s provisions and those of the Directive. Furthermore, the Government shall provide the Parliament with an annual report on the measures and procedures adopted or to be adopted for the transposition of Directives.

<sup>294</sup> Information received from the Services of the Assembly of the Republic in the context of the country visit to Portugal.

<sup>295</sup> Input from Portugal for the 2024 Rule of Law Report, p. 21.

<sup>296</sup> According to the Commission recommendation on promoting engagement and effective participation of citizens and civil society organisations in a democracy (C/2023/8627 final), an enabling environment for civil society organisations, is important to allow them to effectively engage in public policymaking.

<sup>297</sup> Open to the general public, via the dedicated platform: <https://www.consultalex.gov.pt/>.

<sup>298</sup> Input from Portugal for the 2024 Rule of Law Report, p. 21.

<sup>299</sup> The Programme of Government envisages the continuation of the ‘legislative footprint’ project and of the traceability of administrative acts. See Portuguese Government, ‘Programme of the XXIV Government’, p. 80).

mandatory recording of any intervention of external entities in the legislative process<sup>300</sup>. Overall, since some of the steps undertaken would have to be continued or finalised by the new executive and during the new legislature, there has been some further progress on this part of the recommendation made in the 2023 Rule of Law Report.

**The Constitutional revision initiated in 2023 could not be completed due to the dissolution of Parliament.** As mentioned in the 2023 Rule of Law Report, a revision of the Constitution had been initiated in January 2023<sup>301</sup>. Whereas the revision was expected to be finalised by the end of January 2024<sup>302</sup>, the two major parliamentary groups concluded there were no political conditions for the conclusion of the revision in view of the dissolution of Parliament<sup>303</sup>, which occurred on 15 January 2024. This led to the suspension of all regular parliamentary activity<sup>304</sup> although it was possible to finalise the majority of pending legislative initiatives<sup>305</sup>.

**On 1 January 2024, Portugal had 16 leading judgments of the European Court of Human Rights pending implementation, an increase of one compared to the previous year<sup>306</sup>.** While Portugal's rate of leading judgments from the past 10 years that remain pending was at that time at 44% (compared to 39% in 2023), the average time that the judgments have been pending implementation was 5 years and 9 months (compared to 5 years and 1 month in 2023)<sup>307</sup>. The oldest leading judgment, pending implementation for over 12 years, concerns the fairness of criminal proceedings<sup>308</sup>. As regards the respect of payment deadlines, on 31 December 2023 there were 16 cases in total awaiting confirmation of

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<sup>300</sup> Portuguese Government, Anti-corruption Agenda, Measure No. 2. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 20.

<sup>301</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, pp. 22-23.

<sup>302</sup> Information received from the Services of the Assembly of the Republic in the context of the country visit to Portugal.

<sup>303</sup> Pursuant to Art. 133(e), Constitution of the Portuguese Republic. See also input from Portugal for the 2024 Rule of Law Report, p. 27.

<sup>304</sup> During the dissolution period, no plenary sessions take place, and only the Standing Committee remains active, holding sessions every fortnight. Despite its lack of legislative powers, the Standing Committee may exercise its power to monitor the activities of the Government and the Administration, holding debates with the Prime Minister and the members of Government during the dissolution. Parliamentary Committees may only meet for the final drafting of the bills passed until the date of dissolution (Information received from the Services of the Assembly of the Republic in the context of the country visit to Portugal).

<sup>305</sup> With the exception of the Draft on Regulation of Lobbying – see also Pillar II – Anti-corruption Framework.

<sup>306</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>307</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 2024. See the Contribution from the European Implementation Network for the 2024 Rule of Law Report, p. 7.

<sup>308</sup> Judgment of the European Court of Human Rights of 5 July 2011, *Moreira Ferreira v. Portugal*, 19808/08, pending implementation since 2011.

payments (compared to 15 in 2022)<sup>309</sup>. On 1 July 2024, the number of leading judgments pending implementation had increased to 17<sup>310</sup>.

**The Office of the Ombudsperson continues to exercise its functions effectively.** The Ombudsperson is accredited with ‘A’ status by the UN Global Alliance of National Human Rights Institutions (GANHRI)<sup>311</sup>. As mentioned in the 2023 Rule of Law Report<sup>312</sup>, the operationalisation of the new structure for the supporting services to the Ombudsperson led to positive results and continues to be assessed as allowing the institution to perform its functions effectively<sup>313</sup>. Following this restructuring, the Office of the Ombudsperson has sufficient budgetary and human resources to perform its functions and to fulfil its mission and mandate independently<sup>314</sup>. In November 2023, the Office of the Ombudsperson was transferred to new premises, responding to a long-standing request to be located in a more central area, and thus improve accessibility to people<sup>315</sup>. The Ombudsperson continues to receive a high number of complaints submitted by foreign nationals, particularly regarding long residence permit waiting time<sup>316</sup>. The Ombudsperson has also launched three major own-initiative investigations, focusing on the analysis of the public services<sup>317</sup>, detention conditions<sup>318</sup>, and the restructuring of the border and migration services<sup>319</sup>, which includes recommendations<sup>320</sup>.

**Civil society organisations continue to operate without constraints.** The civil society space continues to be considered as open<sup>321</sup>. There are isolated cases of harassment of members of civil society organisations active in the support of minorities<sup>322</sup>. The UN Committee on the Elimination of Racial Discrimination addressed recommendations to

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<sup>309</sup> Council of Europe (2024), Supervision of the execution of judgments decisions of the European Court of Human Rights – 17<sup>th</sup> Annual Report of the Committee of Ministers – 2023, p. 138.

<sup>310</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>311</sup> Global Alliance of National Human Rights Institutions (GANHRI), Sub-Committee on Accreditation (SCA) (2024), Accreditation Report – April 2024. The periodic accreditation of the Portuguese NHRI was considered by the SCA in April 2024.

<sup>312</sup> 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 24.

<sup>313</sup> Information received from the Office of the Ombudsperson in the context of the country visit to Portugal.

<sup>314</sup> Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2024 Rule of Law Report, p. 414.

<sup>315</sup> Information received from the Office of the Ombudsperson in the context of the country visit to Portugal. See also Office of the Ombudsperson, Press release of 16 November 2023. Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2024 Rule of Law Report, pp. 413-414.

<sup>316</sup> Information received from the Office of the Ombudsperson in the context of the country visit to Portugal. See also 2023 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 24.

<sup>317</sup> Full report available at: [provedor-jus.pt/documentos/Relatório\\_Atendimento\\_ao\\_Cidadão.pdf](https://www.provedor-jus.pt/documentos/Relatório_Atendimento_ao_Cidadão.pdf). Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2024 Rule of Law Report, p. 416.

<sup>318</sup> Full report available at: <https://www.provedor-jus.pt/documentos/Relat%C3%B3rio%20Tem%C3%A1tico%20sobre%20a%20PSP.pdf>. See also contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2024 Rule of Law Report, p. 416.

<sup>319</sup> Full report available at: <https://www.provedor-jus.pt/documentos/Relat%C3%B3rio%20SEF072023.pdf>.

<sup>320</sup> Contribution from the European Network of National Human Rights Institutions (ENNHRI) for the 2024 Rule of Law Report, pp. 415-416.

<sup>321</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>322</sup> Contribution from Front Line Defenders for the 2024 Rule of Law Report, p. 2. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Portugal, p. 23.



Portugal in this regard, particularly regarding the protection of human rights' defenders and the accountability of perpetrators<sup>323</sup>. The Government has set up several initiatives in the area of migration and minorities rights in which the participation of civil society organisations is envisaged<sup>324</sup>. Stakeholders report an increase in the number of funding opportunities launched by the Government in 2023, although these remain mostly project-based and driven by pre-established priorities<sup>325</sup>.

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<sup>323</sup> United Nations Committee on the Elimination of Racial Discrimination, 'Concluding observations on the combined eighteenth and nineteenth periodic reports of Portugal - CERD/C/PRT/CO/18-19', para. 38; Contribution from United Nations Human Rights Regional Office for Europe (OHCHR) for the 2024 Rule of Law Report, pp. 73-74.

<sup>324</sup> In particular the creation of the new Agency for Integration, Migrations and Asylum, the National Plan for the Implementation of the Global Pact on Migration, and the National Strategy for the Integration of Roma Communities (input from Portugal for the 2024 Rule of Law Report, pp. 23-24).

<sup>325</sup> Information received from the Platform of Development Non-Governmental Organisations 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 2024 Rule of Law report can be found at [https://commission.europa.eu/publications/2024-rule-law-report-targeted-stakeholder-consultation\\_en](https://commission.europa.eu/publications/2024-rule-law-report-targeted-stakeholder-consultation_en).*

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

The Commission services held virtual meetings in February 2024 with:

- Bar Association
- Business Roundtable Portugal
- Central Department of criminal action and investigation (DCIAP)
- Constitutional Court
- Court of Audit
- Criminal Police (Polícia Judiciária)
- High Council for the Administrative and Tax Courts
- High Council for Public Prosecution
- High Council for the Judiciary
- ICNOVA – Nova University of Lisbon
- Inspectorate-General of Finance
- Journalists’ Professional License Committee
- Journalists’ Union
- Judges Union (ASJP)
- Media Authority – Regulatory Entity for Social Communication
- MENAC
- 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 (SMMP)
- RTP – Radio and Television of Portugal
- Secretariat General of the Presidency of the Council of Ministers
- Services of the Assembly of the Republic
- Supreme Administrative Court
- Supreme Court of Justice
- Transparency Entity
- Transparency International – Portugal
- Union of ‘Funcionários Judiciais’
- Union of ‘Oficiais de Justiça’

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

- Amnesty International EU
- Centre for Democracy and Technology Europe
- Centre for European Volunteering
- Civil Liberties Union for Europe
- Civil Rights Defenders

- Civil Society Europe
- Culture Action Europe
- Democracy Reporting International
- European Centre for Non-Profit Law
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- International Federation for Human Rights
- International Planned Parenthood Federation
- International Press Institute
- Irish Council for Civil Liberties
- JEF Europe
- Open Society Foundations
- Philanthropy Europe Association
- PICUM
- Reporters Without Borders
- SOLIDAR
- Transparency International EU