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ANNEX 22

**ANNEX**

**PORTUGAL**

*to the*

**EU Anti-Corruption Report**

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# **PORTUGAL**

## **1. INTRODUCTION – MAIN FEATURES AND CONTEXT**

### ***Anti-corruption framework***

**Strategic approach.** Over recent years, Portuguese governments have pursued a number of legislative and institutional anti-corruption measures. Investigations into high-profile allegations of corruption in defence procurement and party funding have contributed to a renewed public awareness of the outstanding issues. The Government has pledged to end the 'time of impunity' through amendments to criminal legislation, exploring the possibility of criminalising illicit enrichment and a new law on merit-based recruitment for senior management in public administration. Moreover, as part of the economic adjustment programme, the Government has committed to improve auditing procedures, banking supervision and accountability standards within public administration and state-owned enterprises. It also pledged to enhance supervision of public private partnerships (PPPs), increase transparency in public spending and the control over the ongoing privatisation process, renegotiate public private partnership contracts and restructure the defence sector.<sup>1</sup> These efforts could represent first steps towards the development of a national anti-corruption strategy. A more comprehensive effort is needed by law enforcement, internal and external control bodies and the judiciary with the aim of increasing efficiency in addressing corruption-related risks.

**Legal framework.** Parliament adopted an anti-corruption package in 2010, adding the violation of urban planning rules as a new type of crime, extending the prescription terms for corruption offences, setting up a central register of bank accounts and amending the party funding law.<sup>2</sup> An assessment by the Council of Europe Group of States against Corruption (GRECO) published in October 2013 pointed out that Portugal has implemented satisfactorily or dealt with in a satisfactory manner six of the thirteen recommendations on incriminations and party funding. Six other recommendations have been partly implemented and one has not been implemented to date.<sup>3</sup> Amendments to criminal law were adopted in early 2013, including an increase in sanctions for offences committed by holders of political office or senior public officials.<sup>4</sup> In early October 2013, an anti-corruption legislative proposal was submitted to Parliament, including amendments to the criminal code, the law on the responsibility of political and senior public officials and the law on bribery of foreign officials.<sup>5</sup> In relation to incriminations, the recent legislative proposals appear to address the remaining shortcomings noted by GRECO as regards the level of criminal sanctions for corruption offences in the private sector, the criminalisation of the active side of trading in influence, the limitation period for trading in influence, and the scope of corruption offences which do not cover foreign officials.

**Institutional framework.** Specialised agencies within the prosecution service (the Central Department of Investigation and Penal Action – DCIAP) and the police (the National Unit for Combating Corruption) have been designated to investigate corruption cases. The Court of Auditors also takes a leading role in fighting corruption. The Council for Prevention of Corruption (CPC), set up within the Court of Auditors in 2008, is tasked with coordination and analysis of prevention policies.<sup>6</sup> The Council recommended that all central and local

1 [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2011/pdf/ocp79\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2011/pdf/ocp79_en.pdf).

2 Law No. 26 of 30 August 2010 amending the Code of Criminal Procedure. Law 32 of 2 September 2010 amending the Criminal Code. Law 55 of 24 December 2010.

3 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)18\\_Interim\\_Portugal\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)18_Interim_Portugal_EN.pdf).

4 Law No. 4 of 14 January 2013.

5 Draft Law 453/XII.

6 Law No. 54 of 4 September 2008.

public bodies, including state-owned companies, prepare plans for the management of corruption-related risks.<sup>7</sup> Over 1 000 corruption prevention plans have been submitted to the CPC for assessment. The impact of these plans is yet to be assessed. The CPC does not have verification or sanctioning powers and cannot carry out checks on the substance of asset declarations or conflicts of interest. These tasks fall within the competence of the Constitutional Court and the Attorney General.

### *Opinion polling*

**Perception surveys.** In the 2013 Special Eurobarometer on Corruption<sup>8</sup>, 90% of Portuguese respondents stated that corruption is a widespread problem in their country (EU average: 76%), while 72% believed it had become worse over the past three years. 36% of Portuguese respondents say that they are personally affected by corruption in their daily life (EU average: 26%). In 2011, the Portuguese named corruption as one of the top problems affecting democratic institutions.<sup>9</sup>

**Experience of corruption.** Direct experience with petty bribery is rare, since less than 1% of the general population (EU average: 4%), and of business representatives admitted to having been asked or expected to pay a bribe in a number of specific sectors.<sup>10</sup> Portugal also scores better than the EU average when citizens are asked whether they have experienced or witnessed corruption.<sup>11</sup>

**Business surveys.** According to a 2013 Eurobarometer survey, 68% of businesses in Portugal (the second highest percentage in the EU) see corruption as an obstacle for doing business in their country (EU average: 43%).<sup>12</sup> 87% of respondents to the same survey said that favouritism and corruption hamper business competition (EU average: 73%), while 79% stated that bribery and the use of connections is often the easiest way to obtain certain public services (EU average: 69%) and 76% (highest percentage in the EU) that the only way to succeed in business is through political connections (EU average: 47%).

### *Background issues*

**Private sector.** Portugal has transposed all provisions of Framework Decision 2003/568/JHA concerning the definition of active and passive corruption in the private sector, as well as those regarding penalties applicable to natural and legal persons and liability of legal persons.<sup>13</sup> However, GRECO recommended increasing criminal sanctions for bribery and trading in influence in the private sector and matching the scope of criminalisation of trading in influence in the private sector with that in the public sector. A legislative proposal submitted to Parliament in October 2013 appears to follow these recommendations.<sup>14</sup> As regards foreign bribery, the OECD has expressed concern that there is 'little enforcement' of the OECD Anti-Bribery Convention in Portugal, with four pending cases in 2010-2011 and no new investigations.<sup>15</sup> According to the Portuguese authorities, three new foreign bribery

7 [http://www.cpc.tcontas.pt/documentos/recomendacao\\_cpc\\_20090701.pdf](http://www.cpc.tcontas.pt/documentos/recomendacao_cpc_20090701.pdf).

8 2013 Special Eurobarometer 397.

9 The other top problems named by the Portuguese respondents regarded confidence in politicians and the executive power, inefficiency of governance and social inequality. 2011 National Barometer for the Quality of Democracy: [http://www.bqd.ics.ul.pt/index.php?option=com\\_phocadownload&view=category&id=1&Itemid=75&lang=pt](http://www.bqd.ics.ul.pt/index.php?option=com_phocadownload&view=category&id=1&Itemid=75&lang=pt).

10 The sectors concerned: healthcare, police, customs, private companies.

11 Both in 2011 and 2013 Eurobarometer, 5% of Portuguese respondents admitted to having experienced or witnessed corruption in the last 12 months, as compared to an EU average of 8%.

12 2013 Flash Eurobarometer 374.

13 COM(2011) 309 final, Second Implementation report of FD 2003/568/JHA of 6 June 2011: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/report\\_corruption\\_private\\_sector\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/report_corruption_private_sector_en.pdf)

14 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)18\\_Interim\\_Portugal\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)18_Interim_Portugal_EN.pdf).

15 See comparative data on enforcement at

[http://www.transparency.org/whatwedo/pub/exporting\\_corruption\\_progress\\_report\\_2013\\_assessing\\_enforcement\\_of\\_the\\_oecd](http://www.transparency.org/whatwedo/pub/exporting_corruption_progress_report_2013_assessing_enforcement_of_the_oecd).

investigations have been initiated since January 2012. In the World Economic Forum's competitiveness reports, Portugal's ranking has dropped from 28th worldwide in 2000 to 51st in 2013.<sup>16</sup> Recent studies on the shadow economy estimated that in 2012 it reached 19.4% of GDP.<sup>17</sup>

**Privatisation.** As a result of the economic crisis, adjustment conditions have been agreed with the EU, the European Central Bank (ECB) and the International Monetary Fund (IMF), including structural reforms aimed at reducing the deficit and the weight of public debt. As part of international economic adjustment plans, Portugal committed to a swift, large-scale privatisation of state assets. Some of these privatisations have been subject to controversy on the grounds of alleged unlawful access to privileged information or insufficient transparency. The Portuguese Council for Prevention of Corruption (CPC) pointed to certain corruption-related risks in the privatisation process and recommended the setting up of monitoring committees at the beginning of the process.<sup>18</sup> The Government has established committees for ex-post monitoring. Parliament also set up a committee to follow the implementation of economic adjustment commitments. In 2013, the mandate of the Ombudsman was extended to private bodies exercising public authority or providing services of general interest, in view of the ongoing privatisation process.<sup>19</sup>

**Whistleblowing.** There are general provisions on protection of whistleblowers for public sector employees.<sup>20</sup> The Labour Code protects contracted staff from unfair action by employers when exercising rights such as reporting a crime. The law regulating public officials and civil servants contains similar provisions.<sup>21</sup> Moreover, the Criminal Procedure Code obliges public officials to report crimes discovered while carrying out their duties.<sup>22</sup> However, there are no specific mechanisms in the public institutions to ensure protection of whistleblowers in practice. Moreover, the scope of the current legal protection does not include private sector employees, the judiciary, or government or trade union officials. A bill adopted by Government in October 2013 proposes to extend the scope of protection of whistleblowers to the private sector. The bill also extends the application of the criminal code provisions on witness protection to whistleblowers. To further facilitate whistleblowing, DCIAP launched an online reporting tool in November 2010.<sup>23</sup> The OECD has noted more generally that more efforts are needed to ensure effective mechanisms to protect whistleblowers.<sup>24</sup>

**Transparency of lobbying.** There is no dedicated regulation of lobbying, requirement for registration of lobbyists or for disclosure of their contacts with public officials.

## 2. ISSUES IN FOCUS

### *Prosecution of corruption*

The prosecution of corruption is key to the credibility of an effective and dissuasive anti-corruption framework. Public perceptions indicate concern in this area. In the 2013 Special

16 [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2013-14.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf)

17 [http://ec.europa.eu/europe2020/pdf/themes/06\\_shadow\\_economy.pdf](http://ec.europa.eu/europe2020/pdf/themes/06_shadow_economy.pdf).

18 2012 Annual Activity Report of the CPC: [http://www.cpc.tcontas.pt/documentos/relatorios/Rel\\_Actv\\_CPC\\_2012.pdf](http://www.cpc.tcontas.pt/documentos/relatorios/Rel_Actv_CPC_2012.pdf).

See also the recommendations of the Portuguese Council for Prevention of Corruption (Recomendação do CPC, de 14 de Setembro de 2011, sobre Prevenção de riscos associados aos processos de privatizações;

[http://www.cpc.tcontas.pt/documentos/recomendacao\\_cpc\\_20110914.pdf](http://www.cpc.tcontas.pt/documentos/recomendacao_cpc_20110914.pdf) regarding the risks associated with privatisations.

19 <http://dre.pt/pdf1sdip/2013/02/03400/0097900986.pdf>.

20 Law 19/2008 and Decree-Law 190/2003.

21 Law 59 of 11 September 2008.

22 Article 242 of the Criminal Code.

23 <http://www.smmp.pt/?p=19482>

24 <http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/44424102.pdf>.

Eurobarometer on Corruption, 17% of Portuguese respondents considered that there are enough successful prosecutions to deter people from corrupt practices (EU average: 26%), while 77% said that high-level corruption cases are not pursued sufficiently (EU average: 73%).<sup>25</sup>

The Ministry of Justice has reported 549 convictions for corruption and related offences during the last decade.<sup>26</sup> Out of these, 50 public officials convicted were given a prison sentence. The procedures appear to be lengthy, with only 8.5% of 838 corruption-related cases investigated during 2004-2008 having concluded with court decisions by 2010. Of these, 6.9% had reached a conviction by 2010 in the first instance only.<sup>27</sup> Police statistics<sup>28</sup> on corruption cases from 2007 to 2012 show a decrease in the number of new, completed and pending cases of corruption.<sup>29</sup> The number of corruption cases in which first instance court decisions had been reached during 2007-2011 also decreased, from around 60 cases in 2007 to 49 in 2011, while the number of defendants increased from 105 in 2007 to 149 in 2011.<sup>30</sup> The average duration of first instance proceedings varied between 14 months in 2007 to 12 months in 2011.<sup>31</sup> There are examples of cases involving allegations of high-level corruption or illegal party funding where judicial proceedings have lasted over six years. Complex corruption cases are often not finalised in a speedy manner and rarely lead to enforcement of final dissuasive sanctions.<sup>32</sup> The delays and relatively small proportion of dissuasive sentences imposed have led to concerns about the capacity of the judicial system to pursue cases effectively.

Regarding prosecution, issues have been raised concerning the capacity of the specialised Central Department of Investigation and Penal Action (DCIAP) and the National Unit for Combating Corruption of the judicial police (UNCC) to step up the number and quality of investigations.<sup>33</sup> The Economic Adjustment Programme for Portugal of June 2011 includes a commitment to a more sustainable and transparent budget for the judiciary. A Judicial Reform Map is being implemented.<sup>34</sup> The operational independence of the prosecution services is guaranteed by the Constitution and by law.<sup>35</sup> There were, however, cases where changes in the composition of prosecution teams investigating high-profile cases raised some concern. The Court of Auditors appears to have sufficient resources to perform effectively. Better cooperation between, on the one hand, the Court of Auditors and other control mechanisms and, on the other hand, law enforcement, could further improve effectiveness of detection and prosecution of corruption.

25 2013 Special Eurobarometer 397.

26 Approximately 60 convictions per year:

[http://www.siej.dgpi.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow\\_634832407639218750](http://www.siej.dgpi.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_634832407639218750).

27 A corrupção participada em Portugal 2004-2008. Resultados globais de uma pesquisa em curso [Final Report]. Lisbon: PGR/DCIAP and CIES-ISCTE.

28 General Directorate of Judicial Police (DGPJ) – Thematic Statistical Bulletin, May 2013 – statistics on corruption 2007-2012.

29 There was a 38.6% decrease in the number of cases from 2007 to 2012 corresponding to an annual decrease rate of 11.5%. There was a similar decrease in the number of completed cases: i.e. 30.5% from 2007 to 2012, with an annual decrease rate of 8.7%.

30 General Directorate of Judicial Police (DGPJ) – Thematic Statistical Bulletin, May 2013 – statistics on corruption 2007-2012.

31 Idem.

32 <http://www.transparencia.pt/wp-content/uploads/2011/07/Corrupção-Fora-de-Prazo-Vs.-Imprensa.pdf>.

33 According to Transparency International's National Integrity System assessment published in 2012, investigative authorities, and in particular the specialised units of public prosecution departments focusing on corruption-related offences, work under strained financial conditions.

34 [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2011/pdf/ocp79\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2011/pdf/ocp79_en.pdf).

35 Constitution of the Portuguese Republic, Seventh Revision [2005], Chapter IV. Law 60/98 (27 August 1998) on Status of the Public Prosecution Department.

## *Financing of political parties*

Financing of political parties in Portugal relies mostly on state funding. Since 2005, a single authority, the Entity for Accounts and Political Financing (ECPF), has supervised party accounts. It is attached to the Constitutional Court and has *ex officio* auditing powers. In 2010, GRECO commended Portugal on its detailed legal framework governing funding for political parties, including detailed rules on private financing, limits on donations and a ban on corporate donations. Nevertheless, GRECO also identified at the same time shortcomings in relation to the publication of parties' accounts, which were published with significant delays and in a non-user-friendly format, notably with respect to the funding of electoral campaigns. As a result, it made a number of recommendations, including improved monitoring and better training on implementation of the law.<sup>36</sup> In October 2013, GRECO concluded that the majority of its recommendations on party funding had been implemented satisfactorily.<sup>37</sup> However, it recommended introducing more frequent reporting on income and expenditure related to electoral campaigns, and strengthening the capacity of the Constitutional Court to efficiently ensure the monitoring process of annual party and electoral accounts in due time. It also recommended analysing third party contributions to the various political stakeholders.

In December 2010, Parliament adopted legislative amendments on party funding<sup>38</sup> which raised a number of new issues. New sources of funding were introduced which may pose some risks in terms of circumvention of supervisory mechanisms, such as contributions from electoral candidates without a ceiling and a new type of public subsidy to political groups in Parliament paid directly to parties. Fundraising activities are no longer recorded in full and loans are not fully transparent. The amendments also introduced a new form of indirect subsidy which contained a provision that applied retroactively and validated transfers from regional parliaments to political parties that were not allowed under the previous law and had been previously declared illegal by the Constitutional Court.<sup>39</sup>

In the context of austerity measures, the subsidies and the limit to expenditure in electoral campaigns were subsequently reduced, and thresholds for subsidies for outdoor advertising were introduced.<sup>40</sup> Moreover, in early 2013, a new regulation on standardisation of procedures for political parties' accounts was adopted. It aims to increase transparency by introducing a common format<sup>41</sup> for the presentation of the accounts of political parties and electoral campaigns,<sup>42</sup> and also covering the internal structures of political parties, including regional and local divisions. The political parties' annual accounts are published by the ECPF on its website within five to eight days of their submission.

Some of the corruption-related cases that have come to the public's attention in recent years concerned allegations of illicit political financing. While the ECPF has taken steps to intensify its supervisory activity, its powers to apply administrative sanctions remain limited. In recent years, the Constitutional Court has started imposing some heavier fines in cases where irregularities in party funding were found. In one case, the Constitutional Court sentenced a company to EUR 600 000 in fines in relation to illegal party financing.<sup>43</sup> The CEO and the party treasurer were also fined in the same case.

36 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)6\\_Portugal\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)6_Portugal_Two_EN.pdf)  
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)6\\_Portugal\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)6_Portugal_Two_EN.pdf)

37 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)18\\_Interim\\_Portugal\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)18_Interim_Portugal_EN.pdf) .

38 Law No. 55 of 24 December 2010.

39 Decisions: 515/2009 and 498/2010.

40 Law No. 1 of 3 January 2013.

41 <http://www.tribunalconstitucional.pt/tc/file/regulamento%202013.pdf?src=1&mid=1971&bid=1303> .

42 Regulation 16 of 10 January 2013.

43 Tribunal Constitucional, Acórdão 371/2007. Lisboa, 27.06.2007.

<http://www.tribunalconstitucional.pt/tc/acordaos/20070371.html>.

Currently there are no ethical codes applicable to elected officials at central and local level and no accompanying sanctions for integrity breaches (other than those of a criminal nature) that would ensure the promotion of high integrity standards. There is one code of conduct for government officials.<sup>44</sup> Such codes of conduct for elected officials accompanied by regulatory provisions on sanctions applicable in case of breaches of ethical rules would enhance integrity and accountability standards and ensure a wider range of non-criminal penalties for unethical behaviour which is to the detriment of public interest. It would also ensure more effective implementation of integrity rules through self-regulatory solutions, given the particularities of non-criminal sanctions applicable to elected officials as compared to other categories of public officials (i.e. appointed officials, civil servants, etc).

### *Conflicts of interest and asset disclosure*

At national level, both MPs and ministers are obliged by law to declare all actual and potential conflicts of interest. The declarations are recorded in a public register which is available online.<sup>45</sup> Steps have been taken to ensure the declarations were in electronic format. In addition, elected officials must comply with incompatibility<sup>46</sup> and asset disclosure rules.<sup>47</sup> All MPs, ministers, other elected and high-ranking appointed officials must declare their assets to the Constitutional Court at the beginning and at the end of their mandate.<sup>48</sup> These declarations are detailed but exclude assets owned by elected officials' families and connected persons.

The Constitutional Court and the Attorney General are responsible for the verification of all declarations.<sup>49</sup> Legislative amendments in 2010 extended the scope of the declarations and the Constitutional Court decided on a wide interpretation of this scope.<sup>50</sup> In the case of MPs, the Ethics Commission is responsible for integrity and disciplinary aspects. MPs may be forced to leave their office if the Ethics Commission finds any incompatibility or impediment. The frequency of checks by the above-mentioned institutions is however unclear and the authorities report few cases of dismissals.<sup>51</sup> The Attorney General has stressed that in order for the verification mechanism to be more effective there is a need to strengthen the Constitutional Court's capacity and to improve inter-institutional cooperation and exchange of information.<sup>52</sup>

The Council for Prevention of Corruption (CPC) has drawn attention to the issue of revolving door practices. There are cases where ministers in charge of public works have taken up leading positions in the companies with whom they signed contracts in their previous capacity. Later, these companies have sought to be included in public private partnerships. Consequently, the CPC recommended the creation of conflicts of interest monitoring and

44 <http://dre.pt/pdf1sdip/2008/09/17400/0626006274.pdf>.

45 Law No. 24/95, August 18; Law No. 28/95, August 18; Law No. 3/2001, February 23; Amd. No. 9/2001, March 13; Law No. 45/2006, August 25; Law No. 43/2007, August 24.

46 Incompatibilities refer to the multiple holding of positions.

47 Law 64 of 26 August 1993.

48 Law No. 4/83, April 2; Law No. 38/83, October 25; Law No. 25/95, August 18; Law No. 19/2008, April 21; Law No. 30/2008, July 10; Law No. 38/2010:

[www.parlamento.pt/Legislacao/Documents/Legislacao\\_Anotada/ControlePublicoRiquezaTitularesCargosPoliticos\\_Simples.pdf](http://www.parlamento.pt/Legislacao/Documents/Legislacao_Anotada/ControlePublicoRiquezaTitularesCargosPoliticos_Simples.pdf).

49 Legislative amendments introduced through Law 19/2008 allowed for an enhanced cooperation between the Attorney General and the Constitutional Court as far as verification of asset declarations is concerned.

50 Law No. 38 of 2 September 2010. Decision of the Constitutional Court No. 302/2011:

<http://www.tribunalconstitucional.pt/tc/acordaos/20110302.html>.

51 The Attorney General reports only four cases in 2011 in which dismissal was requested from the administrative courts. Often the officials in question decide to resign before the handing down of a decision:

[http://www.pgr.pt/pub/relatorio/2011/Relatorio-do-Ministerio-Publico\\_2011.pdf](http://www.pgr.pt/pub/relatorio/2011/Relatorio-do-Ministerio-Publico_2011.pdf).

52 2011 Annual Activity Report of the Attorney General: [http://www.pgr.pt/pub/relatorio/2011/Relatorio-do-Ministerio-Publico\\_2011.pdf](http://www.pgr.pt/pub/relatorio/2011/Relatorio-do-Ministerio-Publico_2011.pdf).

management mechanisms, particularly with regard to revolving door practices.<sup>53</sup>

At local level, conflicts of interest are not uniformly regulated. Local elected officials are obliged to declare conflicting interests only if municipal assemblies have adopted legislation regarding this question.

In relation to civil servants,<sup>54</sup> there are regulations on asset disclosure, conflict of interest and incompatibilities.<sup>55</sup> A general Ethical Charter for Public Administration has been in place since 1997, stipulating the fundamental principles of public service: legality, justice, impartiality, loyalty and integrity.<sup>56</sup>

Legislation adopted in 2013 on the staff regulations for judicial administrators established rules on incompatibilities, together with criteria for excluding people with convictions for corruption from such positions.<sup>57</sup> Both the Ombudsman<sup>58</sup> and the Council for Prevention of Corruption recommended the adoption of a comprehensive code of ethics for public administration. The Ministry of Justice decided to incorporate such a code in the code of administrative procedures which is currently undergoing reform.

Following commitments made in a Memorandum of Understanding on Economic and Financial Policies, recent legislation aims at a more objective recruitment process for public officials, including at middle management, setting criteria for transparency, impartiality and merit.<sup>59</sup>

### ***Public procurement***

Public procurement accounts for an important share in the Portuguese economy. Public works, goods and services in Portugal accounted for about 19.6% of GDP in 2011. The value of calls for tender published in the Official Journal as a percentage of total expenditure on public works, goods and services was 10.9% in 2011.<sup>60</sup>

The legal framework for public procurement in Portugal provides for guarantees of transparency, non-discrimination and fair competition. Amendments to the public procurement code were adopted in July 2012 aiming at improving public contract award practices to ensure a more transparent and competitive business environment.<sup>61</sup> The amendments address, in particular, the system for awarding additional works and services, and eliminate exemptions permitting direct awards. The Court of Auditors' regulations were amended in 2012 to strengthen its auditing powers and notably its capacity to perform ex ante and ex post control of public contracts.<sup>62</sup>

### ***Good practice: transparency of procurement procedures***

*The e-procurement programme was launched in June 2003 as a centralised and high-quality platform that promotes efficiency and competition through increased transparency, as well as savings in the public procurement process. Through enhanced transparency, the use of e-*

53 Conselho de Prevenção da Corrupção, Recomendação do CPC de 7 de Novembro de 2012, in [http://www.cpc.tcontas.pt/documentos/recomendacao\\_conflictos\\_interesse.pd](http://www.cpc.tcontas.pt/documentos/recomendacao_conflictos_interesse.pd).

54 Professional officials who are neither elected nor appointed politically.

55 Law 12A of 27 February 2008.

56 Resolution of the Council of Ministers 47/1997.

57 Law No. 22 of 26 February 2013.

58 [http://www.provedor-jus.pt/site/public/archive/doc/Rec\\_1B2012.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Rec_1B2012.pdf).

59 Law No. 8 of 18 January 2012.

60 [http://ec.europa.eu/internal\\_market/publicprocurement/docs/modernising\\_rules/public-procurement-indicators-2011\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/public-procurement-indicators-2011_en.pdf).

61 Decree Law 149/2012 published on 12 July 2012.

62 Lei de Organização e Processo e Regulamento Geral do Tribunal de Contas (versão consolidada - Janeiro de 2012), <http://www.tcontas.pt/pt/apresenta/legislacao/LOPTC.pdf>



*procurement creates the framework for enhanced prevention and detection of irregularities affecting the procurement process, including potential corrupt practices.*

*The portal <http://www.ancp.gov.pt/EN/Pages/Home.aspx> offers the possibility of downloading the entire bid documentation and specifications free of charge. It also disseminates calls for tender, receives suppliers' queries and manages all information exchange online. A Contract Management Tool allows for uploading of public contracts, the monitoring of contracts concluded and e-invoicing. The Information Management System also helps collect, store and organise statistics on the procurement process.*

*Since 2008, after the entry into force of the Public Contracts Code, Portugal put in place a national web portal, BASE ([www.base.gov.pt](http://www.base.gov.pt)) that centralises information on public contracts. The Institute of Construction and Real Estate (InCI) is responsible for the management of this portal. BASE receives data from the electronic edition of the Portuguese Official Journal and from the certified electronic platforms concerning open and restricted pre-award procedures. All public contracting authorities use the reserved area of the portal to record contract data, upload the contracts and record information on their performance. From 2008 to 2011, BASE only publicised contracts relating to direct awards. Since January 2012, and as a result of measures adopted under the Adjustment Programme, BASE must advertise all contracts resulting from all types of procedures subject to the Public Contracts Code. It also publishes information on contract performance. The publication of contracts in both BASE and in the Official Gazette is now mandatory for direct awards, increases of 15% in the price of already concluded contracts and potential penalties. The information available does not enable the public to monitor intermediate proceedings. However, such information is recorded in the database and is accessible to the auditing authorities.*

According to the 2013 Eurobarometer business survey on corruption,<sup>63</sup> 78% of the Portuguese respondents consider that corruption is widespread in public procurement managed by national authorities (EU average: 56%) and 83% in the case of local authorities (EU average: 60%). The respondents whose companies participated in public tenders for the last three years perceived the following practices as widespread: specifications tailor-made for particular companies (72%); abuse of negotiated procedures (63%); conflicts of interest in the evaluation of the bids (67%); collusive bidding (65%); unclear selection or evaluation criteria (68%); abuse of emergency grounds to avoid competitive procedures (74%); amendment of contractual terms after conclusion of contract (62%); and involvement of bidders in the design of the specifications (57%). These perception indicators, while not necessarily directly related to corruption, illustrate risk factors that increase the vulnerability to corruption in public procurement procedures.

In its 2009 report, the Council for Prevention of Corruption (CPC) pointed to corruption risk areas in public procurement: weak monitoring and verification of conflicts of interest and favouritism, insufficient awareness among civil servants of corruption-related risks, limited monitoring of contractual amendments, and weak verification mechanisms in the post-award and implementation phase.<sup>64</sup> While elected and appointed senior officials are subject to rules on asset disclosure and declaration of interests, public procurement officials are not covered by that obligation.<sup>65</sup>

63 2013 Flash Eurobarometer 374.

64 Report of the Corruption Prevention Council (CPC) on the Questionnaire on Management Assessment of Risks of Corruption and Related Offences regarding public procurement and public subsidies, 2009: [http://www.cpc.tcontas.pt/documentos/relatorio-sintese\\_avaliacao\\_gestao\\_riscos\\_corrupcao.pdf](http://www.cpc.tcontas.pt/documentos/relatorio-sintese_avaliacao_gestao_riscos_corrupcao.pdf).

65 Controlo Público da Riqueza dos Titulares de Cargos Políticos, Law 4 of 2 April 1983, and subsequent amendments through Law 38 of 25 October 1983, Law 25 of 18 August 1995, Law 19 of 21 April 2008, Law 30 of 10 July 2008, Law 38 of 2 September 2010.

More recently, concerns were raised in the area of public-private partnerships (PPPs). PPPs have been widely used by the Government to launch public works which are then managed by private investors through concessions. The works ranged from hospitals and water systems to road construction. In early 2012, legislation was adopted to strengthen the supervision of the process, by setting up a technical unit for project monitoring.<sup>66</sup> The staff of this new unit are subject to the legislation concerning asset disclosure, conflict of interest and incompatibilities applicable to all public officials. There is also a three year cooling-off period, barring them from taking any job or providing any service to entities that are or were partners in PPP processes with the involvement of the unit.

The Court of Auditors recently released a report on PPPs in the road sector stating that auditors had discovered parallel contracts between the state-owned road management company (*Estradas de Portugal*), the private partners and the banking institutions that financed the business deal.<sup>67</sup> The Court stressed that the rather complex model of management and financing of the road sector has obstructed financial control. It added that the existing PPP models require stricter control and supervision by the management bodies. The DCIAP has recently launched an inquiry into allegations of illicit economic advantage, maladministration, corruption and trading in influence in the signing of a number of motorway concessions, their implementation and renegotiation. In addition, the prosecutors launched criminal investigations into former Government officials over the negotiation and renegotiation of concessions that allegedly provided the recipients with unexpected benefits. A parliamentary inquiry committee was also set up. Overall, the revolving door practices between government and administration positions involving decision-making and supervision responsibilities for PPPs and private companies in charge of those PPPs are cause for concern.<sup>68</sup> The Court of Auditors has also reported weaknesses related to some PPPs at local level, pointing to insufficient transparency in the tenders, shortcomings in project evaluation, unclear reasoning of the award decision and delays in the setting up of monitoring committees.<sup>69</sup> Currently, a number of PPPs are being renegotiated by the Government, in particular road PPPs, with the objective of reducing public authorities' financial liability. Significant savings are expected for 2013 and beyond.<sup>70</sup>

### *Urban development*

Portugal has 308 municipalities and 3 092 communities which have responsibility for urban planning. Urban planning has been recognised by the Portuguese authorities among the sectors most vulnerable to corruption. This is illustrated by the fact that in 2010 a legislative amendment made violation of urban planning regulations a separate criminal offence.<sup>71</sup> Moreover, the law on the functioning of the Council for Prevention of Corruption (CPC) stipulates that territorial planning is among the sectors that present the highest corruption risks and should be closely analysed by CPC.<sup>72</sup> The Ombudsman has intervened in cases of abuse of power and illegal acts in the area of urban planning and construction licences at municipal level.<sup>73</sup> The factors contributing to an increased risk of corruption in this area include: potentially high profits, complex regulatory frameworks including urban municipal plans, the wide discretionary powers of local authorities in re-zoning decisions, project approvals and

66 Decree Law 111 of 23 May 2012.

67 Tribunal de Contas, 2012, Auditoria ao Modelo de Gestão, Financiamento e Regulação do Setor Rodoviário, Relatório n.º 15/2012 – 2.ª Secção, p. 10-11. Available at: <http://static.publico.pt/docs/politica/auditoriaPPP.pdf>.

68 'Corrupção' by Luis de Sousa published by Fundação Francisco Manuel dos Santos, 2011, pages 52-53.

69 [http://www.tcontas.pt/pt/actos/rel\\_auditoria/2012/1s/audit-dgtr-rel004-2012-1s.pdf](http://www.tcontas.pt/pt/actos/rel_auditoria/2012/1s/audit-dgtr-rel004-2012-1s.pdf).

70 [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2012/pdf/ocp124\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/pdf/ocp124_en.pdf).

71 Articles 278 and 382 of the Criminal Code introduced through Law No. 32 of 2 September 2010 which entered into force on 1 March 2013.

72 Article 7 of Law 54/2008.

73 <http://www.provedor-jus.pt/?idc=16&idi=15214>.

licensing procedures, and weak checks-and-balances.<sup>74</sup> Preventive mechanisms in this area need further improvement as the powers of local authorities have increased in the past two decades without a proportional increase in checks and balances or control mechanisms.

According to a study coordinated by the DCIAP, out of 838 court cases on corruption analysed in 2004-2008, 345 involved local government authorities and municipal enterprises and were related to urban development, commercial licensing and public procurement.<sup>75</sup> The CPC noted that in 2012 almost half of corruption-related court decisions involved local level administrations.<sup>76</sup> Overall, the number of investigations has increased, but very few mayors or councillors have been convicted through final court decisions.

A recent reorganisation of public administrative structures led to the incorporation of the Inspectorate-General of Local Administration (IGAL) into the Inspectorate-General of Finance (IGF) with the aim of unifying control mechanisms at local administration level, in line with the Plan for the Rationalisation and Improvement of Central Administration (PREMAC).

### 3. FUTURE STEPS

The key institutions in preventing and tackling corruption in Portugal are facing the same resource pressure as the whole of public administration in Portugal and therefore, in the context of the State reform which is currently being introduced, attention should be paid to anti-corruption work.

Various initiatives over the last decade have demonstrated a degree of political commitment to address corruption, including the adoption of new legislation. The economic crisis has also led to an increase in the population's vigilance towards corruption. However, there is no comprehensive national anti-corruption strategy in place. Effective prosecution and adjudication of high-level and complex corruption cases remains a challenge. While some progress has been made with regard to supervision of party funding, more steps could be taken to support integrity-related policies for elected officials. Urban planning and construction remain among the sectors most vulnerable to corruption. With respect to privatisations, some measures have already been taken to increase transparency and mitigate corruption-related risks, but further efforts could be made to secure strengthened anti-corruption safeguards.

The following points require further attention:

- Setting a track record of successful **prosecution** of corruption allegations, notably by ensuring that law enforcement, the prosecution and the judiciary are equipped to effectively deal with complex corruption cases and by strengthening cooperation between control mechanisms and law enforcement bodies.
- Further strengthening preventive action on **party funding**, taking account of the outstanding GRECO recommendations. Developing codes of conduct for **elected officials at central and local levels**, with adequate accountability and sanctioning tools to address possible violations of these codes. Consider establishing ethical codes within political parties or ethics pacts between parties. Putting in place minimum

74 TIAC (2012), *Corrupção e Urbanismo: as preocupações da TIAC.*: <http://www.transparencia.pt/wp-content/uploads/2012/03/CORRUP%C3%87%C3%83O-E-URBANISMO-AS-PREOCUPA%C3%87%C3%95ES-DA-TIAC.pdf>.

75 *Estudo da Corrupção em Portugal - A Realidade Judiciária - Um enfoque Sociológico*: <http://www.cies.iscte.pt/projectos/ficha.jsp?pkid=365>.

76 [http://www.cpc.tcontas.pt/documentos/relatorios/relatorio\\_comunicacoes\\_recebidas\\_2012.pdf](http://www.cpc.tcontas.pt/documentos/relatorios/relatorio_comunicacoes_recebidas_2012.pdf).

standards on conflicts of interest, revolving door practices, incompatibilities and asset disclosure for **local elected and appointed officials**; ensuring an effective monitoring mechanism and dissuasive sanctioning in this regard.

- Further strengthening transparency and ex ante and ex post verification of **public procurement** procedures, together with monitoring of the execution phase of public contracts, including contracts concluded by state-owned companies and public private partnerships. Enhancing prevention, detection and awareness-raising concerning conflicts of interest within public procurement. Ensuring uniform application of asset disclosure rules to public procurement officials.
- Assessing a representative sample of **urban planning** decisions on projects concluded recently at local level to identify risk factors and further improving the effectiveness of preventive measures, including transparency of decision-making. Further strengthening control mechanisms in this sector.