

Ministry of Justice

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1) As mentioned in the written input provided by the Portuguese authorities (hereinafter, the written input), the system of allocation of cases was recently scrutinised (point 4). Could you please update if further audits are foreseen in this respect, or if other initiatives to increase transparency are envisaged?

Following a recent decision of the Central Examining Court (*Tribunal Central de Instrução Criminal*) questioning possible irregularities on the allocation of the case where that decision was adopted, the High Council of the Judiciary announced that will carry out an investigation into whether or not there are new elements that are not known to the High Council (<https://www.csm.org.pt/2021/04/14/nota-a-imprensa-distribuicao-do-processo-operacao-marques-no-tribunal-central-de-instrucao-criminal/>).

Regarding new initiatives to increase transparency, it should be highlighted the recent adoption of [Regulation No. 269/2021](#) by the High Council of the Judiciary, which establishes the principles, criteria, requirements and procedures for situations of modification, reduction or suspension of the distribution of cases. Applicable to all jurisdiction courts, this Regulation provides for a uniform, rigorous and transparent treatment of the circumstances where those situations may occur and leading to change of the initial distribution. The general underlying principle of any of those situations entails the impossibility of replacement by another judge, randomness in the result and equality of the workload, ensuring the principles of the natural judge, legality, prohibition of transfer of the case, independence and impartiality of the courts.

2) With regards to the resources, the written input (point 12) refers to an increase in the budget allocated to the justice system. In this respect, could you please clarify if this allocation was preceded by consultations with relevant stakeholders, and what other categories, besides ICT, will be reinforced?

The legal framework that governs the State Budget and the Justice Modernisation Fund does not establish consultations with the relevant stakeholders prior to their elaboration/approval.

In the context of the 2021 State Budget, besides the ICT area already mentioned, it is worth also mention the criminal investigation function (Criminal Police, Public Prosecutor's Office and National Forensic Medicine Institute), whose respective budget amounts to nearly 282.7 million €, almost 7 million € more in relation to the previous State Budget. One of the budget lines that increased considerably compared to the previous year is the «acquisition of capital goods» of approximately of million 16,1 €. Under the budgetary law, these capital goods include

investments such as construction and renovation. In this regard, investments in courts, prisons and facilities for the Criminal Police are envisaged.

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3) Could you please provide a state of play of the creation and implementation of advisory cabinets to aid judges (point 12)? Could you elaborate on the main features of these cabinets, and expected outcomes with regards to the quality and efficiency of the justice system?

3.1. The recruitment of 54 technical advisers was opened on 28/12/2020 by the High Council for the Judiciary. After a CV assessment phase, interviews with the candidates are currently under way. It is expected that by mid-June, this step will be completed. These are the only selection methods; therefore, it is likely that the recruitment will be completed in a near future. The recruitment covers all the territory, concerns first instance courts and encompasses law, psychology, accounting, finances and economy expertise. The main tasks of these advisers is to:

- i. search legislation, case-law and legal doctrine necessary for the preparation of legal decisions;
- ii. summarise these decisions, legislation, case-law and doctrine of greatest scientific interest and to integrate them in files or databases;
- iii. collaborate in the organisation and updating of the court library.

It is expected that this technical expertise will allow judges to focus on hearings and decision of cases, thereby enhancing both efficiency and quality of justice.

3.2. The recruitment of technical advisers to support public prosecutors is currently in preparation by the Public Prosecution Service. The goal is to enrol 40 advisers distributed in areas such as urbanism, psychology, IT, economic and financial analysis. However, budget constraints have hindered the smooth development of the recruitment process.

4) Portugal is currently developing several projects aiming at improving the digitalisation and user-friendliness of justice, most notably “Tribunal + 360º”. Could you please provide a state of play of the roll-out of the project, and elaborate on its outcome regarding the efficiency of the justice system?

Regarding the «**Tribunal+**», this measure has been implemented in almost all the territory. By the end of 2021, 29 more measures are expected to be concluded. Thus, the total of judicial courts, such as general jurisdiction courts and proximity courts (*tribunais de competência genérica e juízos de proximidade*), covered by this measure will amount to 300.

As for the «**Tribunal+ 360.º**», this project is still in the preparation phase. As we explained in broad terms in the 2020 Report, this project concerns the development of a proof of concept (PoC) for the "Court of the Future" by exploring solutions based on the digital only paradigm. The intention is to dematerialise all information on paper at the entrance, for proceedings to take place exclusively electronically (including the submission of evidence), for court registries to adapt to different organisational models (either crosscutting or specialized), for video recording to be carried out, for automatic transcription and translation to occur, etc. The physical layout and architecture of the various spaces will be designed to enhance the role of the various stakeholders (including judges' assistants), to facilitate interactions and to adapt to the digital paradigm.

It will allow experimenting and testing technological, functional, organisational, procedural and architectural solutions, producing prototypes and establishing standards for the Courts of the Future, covering all the stakeholders of the judicial ecosystem.

5) The 2020 Rule of Law Report chapter on Portugal took note of the reforms on the judicial map and on courts specialisation. In this respect, could you provide a state of play regarding the creation and implementation of the new tax and administrative specialised chambers, in particular regarding their distribution in the judicial map?

1 September 2020 marks the date of entry in operation of a set of new tax and administrative specialised chambers (<https://dre.pt/application/file/a/134309878>). These chambers are established in several major cities (Lisbon, Sintra, Almada, Aveiro, Braga, Leiria and Oporto). This geographical distribution is combined with the areas/matters where the number of pending cases was higher such as public procurement and reviews in administrative infraction procedures.

6) Could you please elaborate further on the measures adopted and foreseen to increase efficiency in courts, in particular those applicable to administrative and tax courts?

In order to increase the efficiency and responsiveness of the courts, in particular that of the administrative and tax courts, the following measures are envisaged:

a) Institution of a temporary general incentive regime for the extinction of the instance applicable to all jurisdictions, by legal-procedural business (transaction, withdrawal, agreement and confession);

b) Institution of voluntary administrative arbitration for the judgment of disputes arising from legal-administrative relations whose object is:

- i. Issues regarding the validity of administrative acts and rules, in the cases expressly provided for by law;
- ii. Issues relating to contracts, including the validity of administrative acts relating to their execution;
- iii. Issues regarding non-contractual civil liability for an act of administrative function, including the realization of the right of recourse and the arbitration of compensation due under the law;
- iv. Issues regarding the validity of administrative acts and rules related to the formation of contracts;
- v. Issues related to the formation and substantive regime of bonds arising from public employment legal relationships, except when they result from an accident at work, an occupational disease or involve other personal interests;
- vi. Relative legal relationships with public or private forms of social protection.

c) Reinforcement of mechanisms for the control of jurisdictional activity by the Superior Council of Administrative and Tax Courts, providing it with a support structure and resources adequate to better and more effective supervision and management of judges' productivity;

d) Regulation and provision of dematerialized access to the electronic process by entities that assume the role of tax enforcement bodies (finance and social security services and municipalities) through the provision of a portal and electronic interoperability with the Tax Authority and Social Security, following the recent creation of specialized courts in this jurisdiction;

e) The Special Pending Recovery Teams will be reinforced, accelerating the reduction of procedural pending;

f) Reinforcement of the number of magistrates assigned to the jurisdiction, through recruitment by the training school;

g) The definition and implementation of the internal advisory model for magistrates will be carried out, for which the Statute of Judicial Officials will be revised, allowing the adoption of flexible models of work organization and management, with specialized training for magistrates and court officials, starting with a pilot in administrative and tax jurisdiction (as well as in Commercial Courts);

h) Creation of specialized sections in the High Administrative and Tax Courts;

i) Creation of a multidisciplinary Working Group to define and monitor legal intervention actions, streamlining procedures, simplifying procedures and technological modernization in Administrative and Tax Courts, also taking advantage of the synergy and results obtained through the Assistance Instrument Technician (DGReform) specialized in the scope of “*Development of digitization in the Justice system*”, which will focus especially on this jurisdiction.

Finally, it should also be noted that, in 2020 and 2021, and with regard to administrative and tax jurisdiction, the following measures were adopted:

i. In the first half of 2020, the publication of arbitration decisions in administrative and tax matters began, reinforcing the transparency of these decisions;

ii. Since 7 January 2020, structured forms have been available for the presentation (mandatory) of legal documents by agents in the context of mass procedures, having been extended since 13 October 2020 to the remaining administrative processes on an optional basis (and, when used), with a reduction in the justice rate);

iii. Since September 2020, the TAF Specialization reform has started, with specialized judgments on certain matters: in administrative courts: common administrative chambers, social administrative chambers and public procurement chambers; in tax courts, common tax chambers and tax enforcement and administrative offenses chambers, which will be unequivocal advantages from the point of view of procedural speed, the quality of decisions and, also, the jurisprudential uniformity;

iv. In January 2021, a portal was made available for submission of procedural documents by the Tax Enforcement Bodies and electronic interoperability with the financial services when they act in this function.

7) The Commission is aware that a new 2020-2024 National Anti-Corruption Strategy was approved in April. In this regard, could you highlight the main priorities and the specific measures envisaged as regards transparency and Integrity?

The 2020-2024 Anti-Corruption Strategy approved by the Government on 18 March 2021 (hereinafter the “Strategy”), aims to improve the levels of prevention, detection and prosecution of corruption, defining seven priorities:

1. improve public sector knowledge, training and practices in terms of transparency and integrity;
2. prevent and detect corruption risks within the public sector;
3. involve the private sector in preventing, detecting and prosecuting corruption;
4. improve liaison between public and private entities;
5. improve procedural and sanctioning mechanisms referring corruption crimes and decrease average duration of criminal proceedings;
6. improve the quality of information and statistics produced in respect of corruption;
7. improve international cooperation on fighting corruption.

Regarding transparency and integrity, the Strategy predicts the following measures:

- Introduce the subject of prevention and detection of corruption in elementary, middle and high schools’ curricula;
- Foster university studies on the prevention, detection and repression of corruption and promote the introduction of the subject in university curricula;
- Regarding the selection and training of public administration directors and workers: introducing basic ethical dilemmas in their entrance exams and periodically creating and providing training modules, for directors and other workers, related to the prevention, detection and repression of corruption;
- Reinforce the rules of advertising and transparency and the regime of impediments and conflicts of interest referring public procurement procedures;
- Determine that administrative decisions that exceed a certain value must be made by at least two people;
- Create channels so that Public Administration directors and workers can propose to the Government improvements to administrative procedures;

- Digitization of communications and public services: implement the action plan for the digital transition in order to reduce the need for individuals to travel to services and standardize public administration behaviours; develop computer solutions that issue alerts in situations of suspicious behaviour and shield the public administration's computer systems from unauthorized access, internal or external;
- Facilitate access to information: make available to the individual, when addressing a request to the public administration, information about those responsible for the assessment of the individual's request and the amount to be paid for such request; create informative guides describing the services provided by the public administration, the requirements for the acceptance of requests, average decision deadlines and associated payments; creation, in the case of services provided digitally, of a standardized procedural form, which offers the individual the possibility of knowing the elements of the procedure: e.g., deadlines, costs and means to appeal;
- Advertising and awareness campaigns: public sector marketing campaigns with examples of typical acts of corruption, to encourage the repudiation of these acts;
- Create a legal regime for corruption prevention imposing the adoption by public and private entities of compliance programs, providing for sanctions, namely administrative fines, for non-compliant entities;
- Create an anticorruption entity responsible *inter alia* for monitoring the legal regime for corruption prevention and for the collection and treatment of information related to corruption. This entity is also responsible for the issuance of an annual anti-corruption report allowing for better knowledge of the phenomenon.

8) Following the recent approval of the strategy, could you provide us with an overview of the next steps of the institutional implementation process, in particular as regards the monitoring and reporting on the implementation of the strategy? How will the coordination of the different institutional actors be ensured?

The Government approved, on 29 April, a set of legislative proposals, to be presented to the parliament for a final decision, regarding the prevention, detection and repression of corruption, initiating the process of implementing the Strategy.

Firstly, it is worth highlighting the approval of the Law Proposal that amends the Penal Code, the Penal Procedure Code, the Commercial Companies Code, Law No. 34/87, of 16

July, which establishes the responsibility of political office holders regime, Law No. 36/94, of 29 September, which establishes measures to combat corruption and economic and financial crime, Law No. 50/2007, of 31 August, which establishes the criminal liability regime for behaviours that may affect the truth, loyalty and correctness of the competition and its result in sporting activity and Law No. 20/2008, of 21 April, which establishes the criminal regime of corruption in the international trade and the private sector.

One of those legislative proposals (amending namely the Criminal Code and the Criminal Procedure Code), envisages standardization of legal solutions for those who, having committed corruption crimes (whether or not predicted under the Criminal Code), are willing to cooperate with the authorities, notably by enhancing the defence of effective regret, encouraging the breaking of pacts of silence among the agents of corruption crimes. This measure was predicted under the Strategy.

Other measures predicted under the Strategy are also predicted under this legislative proposal, such as:

- Facilitate the organization of separate proceedings for crimes somehow related, in order to avoid the trial of highly complex and dense proceedings;
- Allow for the negotiation, within trial stage, of the maximum limit of the applicable penalty, subject to the confession of the facts one is indicted for;
- Increasing expiration time (15 years) for crimes related with corruption;
- Allowing for a maximum of 10 years ban from political offices for those who, while holding the office, perpetrated corruption crimes;
- Predict criminal liability of legal persons regarding crimes of corruption perpetrated with political offices holders.

Please refer to our answer under query 13) for further detail on other legislative proposals the Government will present to the parliament regarding corruption crimes and whistleblowers protection.

At the same time, the Government approved the creation of the anti-corruption entity (the National Anti-Corruption Mechanism) and the establishment of legal regime for corruption prevention.

The National Anti-Corruption Mechanism independent from the Government and the Parliament will be essentially dedicated to the prevention of corruption.

To this end, it will monitor the legal regime for corruption prevention, imposing administrative fines on non-compliant entities and subjects.

The Government will propose to the Parliament that the National Anti-Corruption Mechanism is made responsible for monitoring the new whistle-blowers protection regime and for imposing administrative fines to those who violate the rules set forth under this regime (please refer to our answer under query 13).

In addition to these powers, the National Anti-Corruption Mechanism will also have the power to, namely:

- Develop programs and initiatives to promote a culture of integrity and transparency, together with the ministries for public administration and education;
- Support public entities in the adoption of compliance programs;
- Collect and organize information related to the prevention and prosecution of corruption and related crimes.

With regard to the legal regime for corruption prevention, we note that private companies (with the exception of micro and small companies) the State, autonomous regions (i.e., Azores and Madeira), local authorities and other legal persons of public law will have the obligation to adopt and implement regulatory compliance programs.

The National Anti-Corruption Mechanism will also have the power to monitor and report on the implementation of other measures of the Strategy and coordinate the different institutional actors.

9) Could you please elaborate on the modifications brought by Law 69/2020 as regards monitoring and verification of asset disclosure and the incompatibilities regime? What are the practical implications of the revision?

Additional information to be provided by the Parliament.

Under the terms of Law No. 69/2020, of 9 November the first amendment was made to Law No. 52/2019, of 31 July, which approves the regime for the exercise of functions by holders of political office and senior public office, harmonising the content of the single declaration of income, assets, interests, incompatibilities and impediments with the form in the respective annex.

As a result, article 13 of Law No. 52/2019, of 31 July was amended by adding paragraph 6, which states that:

"6 - The publication, in accordance with article 17, of the elements included in the field relative to the register of interests integrated in the single declaration, must allow the posts, functions and activities exercised in accumulation with the mandate and those exercised in the previous three years to be displayed autonomously."

The wording of the annex to Law No. 52/2019, of 31 July, which contains the model of the single declaration of income, assets and interests referred to in paragraph 1 of its Article 13, has also been amended.

Thus: with regard to Public Prosecutors, Regulation No. 805/2020 - Regulation on the declaration of income, assets, interests, incompatibilities and impediments of Public Prosecutors has been published on 24 September 2020 and may be viewed at:

<http://www.ministeriopublico.pt/pagina/regulamento-sobre-declaracao-de-rendimentos-patrimonio-interesses-incompatibilidades-e>

Pursuant to these regulations and in accordance with the provisions of Article 9(1), all Public Prosecutors are required to fill in a model declaration of income, assets, interests, incompatibilities and impediments within 60 days, as from 1 October 2020.

The model declaration has been made available and published on the SIMP (Public Prosecution Service Information System) website (internal access).

This model declaration is in accordance with the model attached to Law No. 52/2019, of 31 July, amended by Law No. 69/2020, of 9 November.

Moreover, in accordance with the provisions of Article 8 of said regulation and under the heading "Access and publicity of the information contained in the declarations" it reads:

1 - The information contained in the single declarations presented is of public access under the terms of article 17 of Law No. 52/2019, of 31 July.

Considering that only in exceptional cases are Public Prosecutors authorized to exercise any activity in addition to their functions, that if they do so they must declare this in the aforementioned statement and that this statement is, under the terms of the aforementioned article 8(1), of public access, we consider that the aforementioned legislative amendments have no practical implications".

In short: Law No. 69/2020, of 9 November, harmonised the content of the single declaration of income, assets, interests, incompatibilities and impediments with the respective form. The changes introduced deal with the following:

- The declaration of income, assets, interests, incompatibilities and impediments, which must be submitted by holders of political office and those holding high public office, which is accessible to the public, subject to the necessary limitations, must now allow for the offices, functions and activities carried out in accumulation with the mandate and those carried out in the previous three years to be viewed separately.
- The model for the single declaration of income, assets and interests will be amended.

On 15 March 2021, Regulation (extract) No. 226/2021 (Regulation on Declaratory Obligations) was published, unanimously approved at the Plenary Session of the Supreme Judicial Council on 12 January 2021, under the provisions of Article 149(1)(x) of the Statute of Judicial Magistrates, as amended by Law No. 67/2019, of 27 August.

This diploma establishes the rules applicable to judicial magistrates arising from Law No. 52/2019, of 31 July (in accordance with the wording introduced by Law No. 69/2020, of 9 November) which regulates the regime for the exercise of functions by holders of political office and senior public office, their declaratory obligations and the respective penalty regime.

On 16 March 2021 began the 60 working day period for the delivery of the Income Declaration by the judicial magistrates in exercise of judicial functions and in service commissions foreseen in paragraphs 2 and 3 of article 61 of the Statute of Judicial Magistrates, which ends on 1 July 2021."

A resposta à questão deve ser dada pela Assembleia da República. Todavia, em complemento e considerando as respostas recebidas por parte dos conselhos superiores, deixa-se uma proposta de resposta relativa à situação dos referidos conselhos.

In addition to the clarifications that may be offered on this matter by the Assembly of the Republic, taking into account the contributions received in the Ministry of Justice, both from the High Judicial Council and the High Council of the Public Prosecutor's Office, it was clarified that the regime that judges and magistrates of the Public Prosecutor's Office must comply with in relation to the single declaration of income, assets, interests, incompatibilities and impediments is in conformity with the amendment introduced by Law No. 69/2020, of 9 November.

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10) Could you update us on the enforcement of rules as regards 'revolving doors'; have you seen any positive developments as regards this practice? What specific monitoring and management mechanisms are in place to track potential conflicts of interest as regards revolving door practices?

Information to be provided by the Parliament.

11) In the COVID-19 context, has the pandemic had any effect affecting specific sectors such as post-employment or lobbying practices? In this regard, has the government taken any mitigating measures?

Additional information to be provided by the Parliament.

The effects of the pandemic in matters of corruption have been the object of concern, from the outset, on the part of the Council for the Prevention of Corruption, which published a Recommendation on the Prevention of Risks of Corruption and Related Infringements within the framework of the response measures to the pandemic outbreak of Covid-19. In this Recommendation, the Council considers relevant that all decision makers and operators in the field of public management maintain the care of a culture promoting the highest levels of transparency, ethics and integrity, through the adoption of measures of prevention and mitigation of risks in their conduct, including the strengthening of the instruments of internal control. This Recommendation is addressed to all public bodies and entities and to all other entities, regardless of their nature, which intervene in the management or control of public money and other public values.

12) Could you please update us on any further developments as regards the drafting, voting and approval procedure of the lobbying legislation? In particular, what are the next steps following the general approval of the three drafts laws tabled by political parties?

Information to be provided by the Parliament.

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- 13) The Commission takes note of the information provided regarding the measures to encourage the reporting of corruption and protect whistle-blowers. In this regard, could you elaborate on the practical implementation of the existing provisions and measures to protect whistle-blowers? What gaps have been identified in this area by the dedicate task force referred to in point 19 and 22 of the written input?

In the context of the protection of whistle-blowers in force, the provisions of Law No. 19/2008, of 21 April, approving measures to combat corruption, in particular on the guarantees of whistle-blowers, stand out. In addition to the referred general rule, there are also other dispersed rules on whistle-blowers, namely those provided in Law No. 93/99, of 14 July (witness protection); in Law No. 83/2017, of 18 August (in Article 108, paragraph 5), under the scope of the fight against money laundering and terrorism; or in the Securities Code, the General Regime of Credit Institutions and Financial Companies and the General Regime of Collective Investment Undertakings. Thus, as highlighted in the Strategy, the tasks to be developed in this area focus on the need to articulate and make such rules compatible, namely through a diploma that establishes the legal regime of protection of whistle-blowers and a diploma that provides for the regime that transposes the Directive (EU) 2019/1937.

In this regard, as mentioned before, it should also be considered that the Council of Ministers of 29 April approved a set of diplomas for the prevention and fight against corruption, from which we now highlight two draft laws, to be submitted to the Parliament, which transpose the following European Union Directives into national law:

- (i) Directive (EU) 2019/1937, on the protection of persons who report violations of Union law. The aim of this proposal is to ensure an effective and balanced level of protection for whistle-blowers of breaches of Union law and of certain types of crimes, including corruption and corruption related crimes by way of, on the one hand, the establishment of reporting channels and, on the other hand, the prohibition of any form of retaliation and the establishment of measures to protect and support whistle-blowers;
- (ii) Directive (EU) No 2019/1153, which lays down rules aimed at facilitating the use of financial and other information for the prevention, detection, investigation

or prosecution of certain crimes, including corruption and corruption related crimes.

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14) Could you provide an overview of the implementation of political party financing rules at both national and local level and the measures foreseen in the upcoming Act on political party financing?

The main diplomas regulating the financing of political parties and electoral campaigns are provided in the Law 19/2003, of 20 June (Law on Financing Political Parties and Electoral Campaigns) and in the Organic Law No. 2/2005, of 10 January (Law on the Organization and Functioning of the Entity of Political Accounts and Financing). After consulting the Entity of Political Accounts and Financing, it was clarified that, at this moment, the rules of supervision of the financing of political parties and electoral campaigns have been applied by the Entity of Political Accounts and Financing in a framework of normality, in relation to the legal regime in force, both at national and local level.

15) High-profile criminal cases, in particular related to high-level corruption, have recently come under the attention of public opinion. Are there any initiatives foreseen to improve the general public's perception of the functioning of the justice system?

The renewal of citizens' trust in institutions and particularly in the judicial system is one of the main goals that the Government intends to achieve with the measures proposed in the National Anti-Corruption Strategy.

In particular, the Government proposed some measures to the parliament to increase the efficiency of criminal prosecution and criminal trials, such as facilitating the organization of individual proceedings for some related crimes (instead of having the same proceedings for all those crimes) and allowing for the negotiation, within trial phase, of the maximum limit of the penalty subject to the confession of the facts contained in the indictment.

It is also mentioned on the Strategy the need to develop IT solutions that allow for a more efficient management and assessment of evidence, specially at trial stage.

It should be stressed, however, that the occurrence of a lengthy high-profile corruption case does not signify that all criminal proceedings initiated in Portugal have excessive or unreasonable resolution times.

Nevertheless, as underlined in the Strategy, the reasons that lead to relevant delays in resolving more complex cases must be identified and analysed, in order to better allocate resources and search for other solutions to increase the level of efficiency of the system.