

SDG16 PORTUGAL

Transparency International Portugal's findings on national progress towards SDG 16.4, 16.5 and 16.10

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EXECUTIVE SUMMARY AND MAJOR FINDINGS

In 2015, the Heads of State and Government and High Representatives of the countries represented at the United Nations decided the 2030 Agenda for Sustainable Development, based on new global 17 Sustainable Development Goals (SDGs) and 169 targets, which are integrated and indivisible. They build on the Millennium Development Goals (MDGs), but improve their framework and aim at achieving what these left incomplete. SDGs integrate the three dimensions of sustainable development (economic, social and environmental) and are based on universal goals to be implemented by all countries and not only by developing ones. Among those 17 SDGs, we call the attention to Goal 16 - “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”, which covers targets related to the fight against corruption and transparent institutions. Unlike the MDGs, the universalist agenda of the SDG framework recognises that we live in an interconnected world and that reducing corruption is an essential component of sustainable development which all countries have an obligation to address.

Portugal has shown itself proud for having been an active contributor to the 2030 Agenda and has postulates that it should be based “on genuine shared responsibilities [...] between developed and developing countries, in addition to the traditional North-South approach.”¹ The country’s contribution to the SDGs has been mainly based on an external policy perspective. It is its overseas development agency that is taking the lead on this process, proving that the government regards the SDG mainly as a developing world issue to which Portugal can contribute with expertise and resources. However, Portugal still has a long way to go in its own good governance and fight against corruption. Shortcomings in this field have consequences not only for its citizens and institutions, but also negative externalities to developing countries and to its own external policy. A transnational type of corruption is on the rise. It is largely associated with the growing role of Portuguese businessmen in emerging markets and involves the payment of bribes, commodities and such to foreign officials and their relatives, in exchange for facilitated investment conditions, tax exemptions, or non-compliance with local regulations. The OECD convention against bribery of foreign officials is yet to be enforced in an effective manner. In addition, failure to implement proper anti-money laundering mechanisms and tackle the placement of illicit funds coming from abroad. All this undermines the efforts of partner countries in the development of their own good governance and fulfilment of all other SDGs, as well as Portugal’s own external development policy.

On July 18th 2017, the Portuguese government presented its implementation report to the High-Level Political Forum on the SDGs at the United Nations Headquarters. The document, as previously established, focused solely on SDGs Goals 1, 2, 3, 5, 9, 14 and 17, as these were the selected ones for the 2017 Voluntary Reviews. Anti-corruption has not received sufficient attention in the national implementation plan. While it is true, as the government highlights, that the country has

1 - Sustainable Development Goals Knowledge Platform, Portugal:
<https://sustainabledevelopment.un.org/memberstates/portugal>

signed and ratified the main international anti-corruption instruments and that – from a legal point of view – it presents an overall satisfactory performance, the translation into practice has been ignored in the implementation report. However, there is a very significant and worrying gap between law and practice.

Transparency International Portugal has, therefore, taken the opportunity to provide an independent account of the Portuguese government's progress towards the specific SDG 16 targets on good governance and transparency (16.4, 16.5 and 16.10), which were only briefly touched upon on the implementation report. Despite this virtual absence in the government report, the fight against corruption has in fact been on the agenda of consecutive governments in the past decade. However, commitments have been rather vague and thus progress has proven slow. The Portuguese Government has not shown any political will in designing and implementing an anti-corruption strategy and action plan. Instead, anti-corruption efforts are generally incoherent last-minute reactions to scandals, and usually only on the legislative front.

What is missing is a serious and holistic evaluation of problems, as in the absence of reliable statistics on corruption cases or money-laundering alerts (STR), reforms are instigated without a clear idea of what is envisaged, what resources are required, and how different policies and authorities are to coordinate. Where concrete actions are taken, they most frequently derive from international commitments, namely the transposition into national law of intergovernmental conventions or EU directives. In practice, little is undertaken to increase the quality of government, to fight corruption or even assist other low-income countries to build stronger and better institutions. For instance, failure to prevent money laundering in Portugal and the promotion of external investment funds without any regard over their origin may contribute to the impoverishment of developing countries, as those countries' elites find Portugal a haven for their stolen assets and illicit funds. Portugal also needs to increase the transparency and integrity of its own institutions, particularly concerning political office holders, political financing and lobbying. Strong and trustworthy public institutions are the cornerstone of healthy democracies and contribute to the fulfilment of all other SDG.

SDG Target 16.4: By 2030 significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organized crime

With regards to efforts to reduce illicit financial flows and return stolen assets, Portugal's legal framework conforms with international treaties, enforcement lags. Public policies aimed at attracting investment are in tension with those which would strictly apply anti-money laundering (AML) provisions, and lack of prevention undermines AML efforts. Moreover, as of September 2017, Portugal did not have in place a beneficial owner register. The creation of a public register is expected in the coming months due to European Union obligations, but it is not clear which will data be available or in which format it will be provided. An asset recovery mechanism is in place, but to be truly effective it would require better regulation and more widespread implementation.

SDG Target 16.5: substantially reduce corruption and bribery in all its forms

In the field of anti-corruption reform, there is a gap between the progressively positive performance of the judiciary and the apparent lack of political will on the side of the executive and the legislative. For the past three years, Portugal witnessed an increase in the number of investigations and prosecutions relating to corruption at the highest political, administrative and business levels. These investigations indicate that while the judiciary is now taking some concrete steps, grand corruption had been largely overlooked for the past decades. Nevertheless, it is worth underlining that none of the major cases has yet reached trial. Moreover, the promising performance of the judiciary is yet to be matched by the political institutions. Portugal lacks a comprehensive and holistic action plan against corruption and recent legislative changes derive from international obligations.

Key concerns related to insufficient transparency and integrity in political and public institutions, political financing and lobbying, both at the de jure and de facto levels. Whistleblowing protection is another key component in the fight against corruption which has been completely disregarded by Portuguese authorities, since there is no dedicated law for whistleblowers. Public procurement shows an overall positive legal framework. However, the existence of loopholes and the abuse of exceptional cases, namely sole-sourcing, makes this an area with high risks of corruption, trading in influence, and collusion.

SDG Target 16.10: ensure public access to information and protect fundamental freedoms

Portugal is a free and democratic country that ensures constitutional protection of fundamental freedoms. Journalists, political activists and civil society organizations can act in full freedom. However, criminal laws against defamation may discourage those that are willing to speak out against abuses. Access of information is also guaranteed, but public institutions remain passive in their information disclosure.

The 2030 Agenda for Sustainable Development

Spearheaded by the United Nations, the Sustainable Development Goals (SDGs), also known as *Transforming our World: the 2030 Agenda for Sustainable Development*, is a set of 17 aspirational “global goals” and 169 targets adopted in 2015 by the 193 UN member states. All UN member states have committed to these global goals that are intended to steer policy-making and development funding for the next 15 years. Of particular relevance to the anti-corruption agenda is SDG 16 on sustainable governance, most notably targets 16.4 on illicit financial flows, 16.5 on bribery and corruption and 16.10 on access to information.

Global targets and indicators have been set for each goal with the expectation that they will be incorporated into national planning processes and policies. Countries are also encouraged to define national targets tailored to their specific circumstances and identify locally relevant indicators and data sources that will be used to measure progress towards achieving each of the SDG targets.

As part of its follow-up and review mechanisms, the 2030 Agenda for Sustainable Development encourages member states to conduct regular national reviews of progress made towards the achievement of these goals through an inclusive, voluntary and country-led process. In addition, each year, certain state parties volunteer to report on national progress to the High-Level Political

Forum (HLPF), which met in July 2017 in New York. Portugal was among the 44 countries reporting this year.

While SDG 16 will not be reviewed in depth by the HLPF until 2019, integrity risks across the SDG framework make it essential to monitor national progress against corruption from the outset.

Rationale for this Shadow Report

While governments are expected to take the lead in reviewing progress towards the SDGs, national-level monitoring needs to go beyond the remit of governments to include civil society and other stakeholders.

This shadow report is based on data collected by Transparency International Portugal. The report has been developed to address three key issues related to the official SDG monitoring processes: the multi-dimensional nature of SDG targets, data availability and perceived credibility of data generated by government agencies. Collectively, these limitations provide a strong rationale for an independent appraisal of the government's anti-corruption efforts in the context of the Sustainable Development Goals.

Firstly, several of the targets under Goal 16 are multi-dimensional in the sense that they measure broad concepts like "corruption" which cannot be adequately captured by a single indicator. Moreover, the indicators in the official global set do not sufficiently cover the full ambition of the targets. For instance, target 16.5 seeks a substantial reduction in corruption and bribery "in all their forms", but the only approved global indicators measure bribery between public officials and the public or business. There are no measures of corruption within or between governments or other forms of non-governmental corruption. For some targets, the selected global indicators fail to capture critical aspects. For instance, target 16.4 seeks to combat all forms of organised crime, but there is no official indicator that measures organised crime nor an indicator related to strengthening the recovery and return of stolen assets.

This shadow report seeks to provide a more comprehensive picture of national anti-corruption progress across a range of policy areas.

Secondly, even where the official indicators are themselves capable of capturing progress towards SDG 16 targets, there is an absence of data to speak to these indicators. Many of the global SDG 16 indicators rely on data that is not regularly produced or currently have no established methodology or standards for data collection.

This shadow reporting exercise is partly an effort to compensate for insufficient coverage of and data availability for official SDG 16 indicators by presenting alternative indicators, data sources and proxies.

Finally, the official assessment of progress made towards the SDG targets will rely on data generated by government agencies, particularly national statistics offices. The reliability and credibility of official data may be open to question for two reasons. First, in some settings, national statistics offices may simply be overwhelmed by the task of producing data for 169 targets. Second, politically sensitive targets, such as those related to corruption and governance, require that governments assess their own efficacy; illicit financial flows (16.4) may involve government officials, corruption (16.5) may involve government elites, while governments may be restricting information, or even targeting journalists, trade unionists or civil society activists (16.10).

Given the challenges described above, independent analysis is vital to complement and scrutinise official government progress reports related to SDGs 16.4, 16.5 and 16.10. This shadow report is an attempt to do just that.

The information gleaned from the shadow reporting exercise and presented here in this report can be used as an input into two key processes. At the global level, this information can be used to

complement National Voluntary Reviews at the High Level Political Forum in July 2017. Nationally, this information can feed into the governmental SDG review processes taking place on a rolling basis in each country.

Methodology

The report aims to provide a broad assessment of national progress towards three SDG targets linked to anti-corruption and transparency – 16.4, 16.5 and 16.10. A number of policy areas are covered under each of these three SDG targets to provide a rounded overview in a way that goes beyond the narrow understanding of corruption captured by the official global indicators.

Each policy area was assessed against three elements. First, there was a scored evaluation of the country's *de jure* legal and institutional framework. Second, relevant country data from assessments and indices produced by civil society groups and international organisations was considered. Finally, researchers conducted a qualitative appraisal of the country's *de facto* efforts to tackle corruption.

Research for this shadow report was conducted between May and June 2017. Concerning the legal framework or statistics, public policies aimed at attracting investment are in tension with those which would strictly apply AML provisions. Secondary sources, such as media reports or previous studies based on interviews, were also widely used, although keeping in mind the relevance and up-to-date of their conclusions and information. International sources have also been used, i.e., reviews or analysis conducted by inter-governmental organizations or civil society organizations.

Statistics on judicial cases and open format data are difficult to obtain in Portugal, allowing only for very limited analysis and comparison of the implementation and enforcement of certain policies. Therefore, secondary sources, are crucial to understand how good governance is being dealt with in practice. Another challenge faced during the research period relates to the legal framework in place concerning areas such as the fight against money laundering, integrity of public officials or lobbying. These issues are being discussed in parliament and even though it appears likely that changes will be put in place in the short and medium term, it is not possible to predict how they will unfold.

National progress report

Portugal played an active role in the discussion and design of the SDGs, both at the United Nations and the European Union levels. At the national level, two different paths were adopted. On the one hand, the Ministry of Foreign Affairs was responsible for coordinating the national position for the 2030 Agenda. Contact points were named in each ministry, they are responsible for a designated SDG and will monitor its implementation. On the other hand, a group of non-governmental organizations of the Portuguese civil society, with the support of the overseas cooperation and language promotion – *Camões, Instituto da Cooperação e da Língua* – and the United Nations Regional Information Centre for Western Europe, conducted a public consultation on the implementation of the 2030 Agenda at the national and local levels in 2016. The Portuguese government selected strategic priorities for the implementation of the 2030 Agenda for Sustainable Development from SDGs 4, 5, 9, 10, 13 and 14.

Anti-corruption has not received sufficient attention in the national implementation plan.

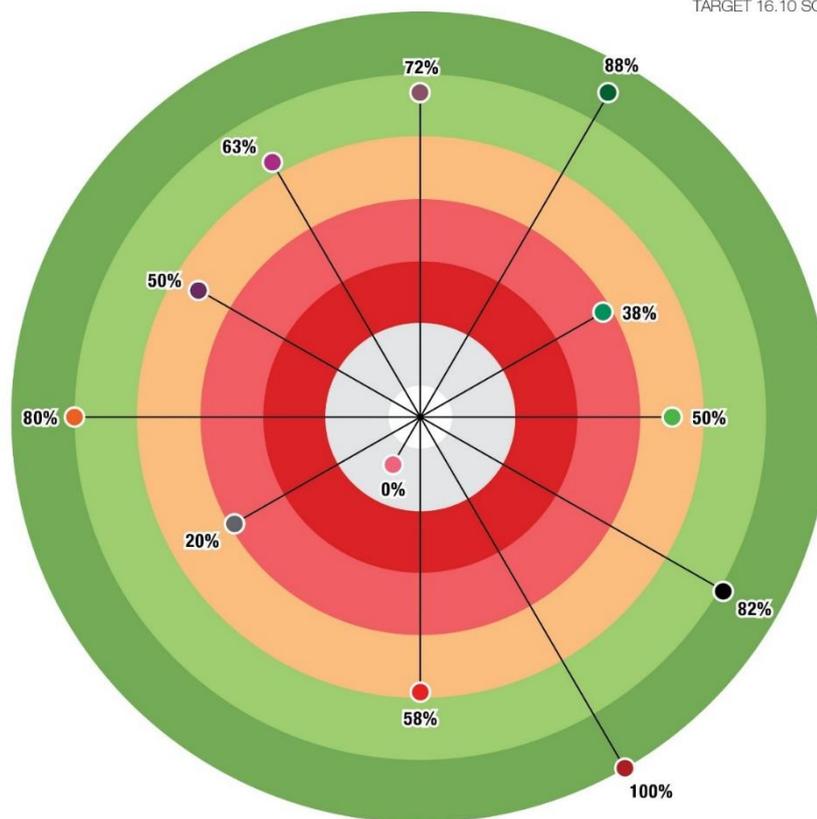
TRANSPARENCY INTERNATIONAL PORTUGAL'S FINDINGS ON NATIONAL PROGRESS TOWARDS SDG 16.4, 16.5 AND 16.10

COUNTRY LEGAL SCORECARD*

PORTUGAL

SDG AGGREGATE VALUE

TARGET 16.4 SCORE **63%**
 TARGET 16.5 SCORE **60%**
 TARGET 16.10 SCORE **72%**



VALUES

- 81% – 100%
- 61% – 80%
- 41% – 60%
- 21% – 40%
- 0% – 20%
- 0%

POLICY AREA (clockwise)

- Anti-Money Laundering
- Beneficial Ownership
- Asset Recovery
- Anti-Corruption Framework and Institutions
- Private Sector
- Transparency and Integrity in Public Administration
- Transparency in Lobbying
- Whistleblowing
- Transparency in Party & Election Campaign Finance
- Fiscal Transparency
- Integrity in Public Procurement
- Access to Information

KEY MESSAGES

While showing encouraging scores in some SDG targets, particularly those arising from the transposition of international and EU law into national legal order, Portugal performs poorly in key fields. Integrity and transparency in the public life is far from satisfactory, as conflict of interest, revolving doors and opaque lobbying are rampant and the political will to address these issues appears weak. Another concerning topic is the complete lack of protection of whistleblowers, in the absence of a dedicated law and monitoring mechanisms that can ensure support and safeguards to those that come forward. Across SDG targets, practice needs to match the quality of the legal framework.

This scorecard is an appraisal of the de jure situation in a given country and does not assess compliance with the legislative framework or the effectiveness of its implementation. Please also note that, as different data is available in different countries and not all questions are applicable in each jurisdiction, country scores cannot be compared. The legal scorecard is simply intended to demonstrate areas at national level in which reform of the legislative and institutional framework is most urgently needed.

Recent developments

Target 16.4: By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime

Portugal's compliance with the best international standards on the combat against illicit flows appears sufficient in the terms of legal framework. The country complies with the recommendations of the FAFT-GAFI group, the transposition of EU directives and the OECD conventions. For instance, the 4th Anti Money-Laundering (AML) Directive is currently in the process of transposition into national law and Portuguese MEPs have been active in the negotiations of the 5th AML Directive in the European Parliament.

Nevertheless, there are still loopholes in the law that may facilitate those who seek to launder illicit funds, namely bearer shares, lack of transparency over nominee directors, the possibility of cash payments in large sums (for real estate, for instance) and the concealment of beneficial owners. This last aspect is expected to be addressed by the transposition of the 4th AML directive and the establishment of the beneficial owners register. However, at the time of the drafting of this report, the law had been passed but the database was yet to be set in place.

In practice, efforts against illicit financial flows present poor results. There is little enforcement on the obligations of so-called designated non-financial businesses and professions (DNFBPs) who are important actors in addressing money laundering risks. We have also found that there is insufficient understanding of the concept of beneficial ownership and difficulties in the cooperation between national authorities. Finally, other public policies undermine the efforts of anti-money laundering stakeholders: The Golden Visas programme, designed to attract foreign investment, or the Free Trade Zone in Madeira, also known as the Madeira offshore zone, a lack of effective AML mechanisms, their supervision and transparent decision-making procedures result in increased risks of money laundering.

In the past years, the Portuguese economy also became a safe shelter for foreign politically exposed persons (PEPs) to hide their assets of dubious origins, with the complicity of Portuguese authorities. This is particularly true for Angolan officials, for instance.² Poor AML efforts and the free flow of funds from high-risk countries not only decrease Portugal's internal performance, they also contradict its external policy on development assistance and thus undermines its credibility.

2 - Costas, José et als (2014), Os Donos Angolanos de Portugal, Bertrand Editora; Filipe, Celso (2014), O Poder Angolano em Portugal

Target 16.5: Substantially reduce corruption and bribery in all their forms

For the past three years, Portugal has witnessed an increase in the number of investigations and prosecutions relating to corruption at the highest political and administrative level. High-profile cases involve senior politicians and businessmen who have maintained close links between each other, resulting in serious risk of state capture. The uncovering of major corruption cases inside the judiciary and tax enforcement authorities is both a sign that the public prosecution is finally digging into grand corruption, but at the same time it is a sign that the phenomenon may have entrenched deeply in the state structures. These investigations may help explain why Portuguese people state having little direct experience with bribery, but still perceive corruption and favouritism as a major national problem.

On what concerns the anti-corruption framework, significant progress has been made towards implementing UNCAC and GRECO recommendations, in particular through the adoption of an anti-corruption package in 2015. Despite the advancement, the legislative package left aside three crucial issues: the illicit enrichment offense, the protection of whistle-blowers and asset recovery.

The absence of a dedicated law and mechanisms for the protection of whistle-blowers is a severe limitation in the fight against corruption. The optional dismissal of sanctions for effective repentance raises several doubts. If the dismissal is optional and not automatic, the defendant does not have a prior guarantee that he will benefit from the dismissal if he cooperates with the investigation. Although an Asset Management Office exists, it has not been able to fully fulfil its mandate due to lack of regulation.

Portuguese institutions have yet to design a concrete and holistic anti-corruption strategy. So far, anti-corruption reforms are only carried out through the adoption of ad hoc legislation or limited practices which are not coordinated between authorities or planned for the long term. Despite this scenario, there are a few initiatives that can provide some guidance for current and future action against corruption. The government's General Framework Plans (GFP) provides some guidelines, but proposals over corruption prevention and prosecution seem somewhat vague or barely exist. The fight against corruption has been established as a priority in successive GFPs, but have also failed to result in an Action Plan that would outline concrete reform steps.

Close personal and financial ties between politicians and private businesses is one of the main reasons for the waste of public money, bad management of public affairs and the steady decline in citizens' trust in its political institutions. These ties between officials and businesses are deeper in the sectors where Government intervention is bigger and more profitable, such as public works, health and the environment. This proximity leads to the capture of law-making, decision-making and regulatory processes by large economic groups. The current legal framework on transparency and integrity of public and political officials, of lobbying and of party and campaign financing is visibly inadequate, outdated or even non-existent. In practice, the situation proves even worse: insufficient monitoring and enforcement mechanisms and resources and an obvious lack of political will to improve the state of matters.

Target 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

Fundamental freedoms and access to information are largely protected in Portugal. Nevertheless, there is still room for improvement. Despite being able to work in a safe environment where freedom of expression rules, journalists and activists still face risks of defamation lawsuits, which might hold severe professional and financial consequences. Contrary to its European peers, Portugal has a record number of convictions for defamation and, consequently, the European Court of Human Rights has ruled several times against the country over failure to protect freedom of speech. Institutions subject to the Freedom of Information Law should be more proactive in making information and data available and respond to requests in a timelier manner.

The use of open data should be more widespread across public administration and similar entities. This would provide civil society with more instruments for monitoring political and public institutions and thus strengthen public accountability.

TARGET 16.4: BY 2030, SIGNIFICANTLY REDUCE ILLICIT FINANCIAL AND ARMS FLOWS, STRENGTHEN THE RECOVERY AND RETURN OF STOLEN ASSETS AND COMBAT ALL FORMS OF ORGANIZED CRIME

Anti-money laundering

Score card: 88%

Basel Institute on Governance's Basel Anti-Money Laundering Index score: 139th in 2016 and 141st in 2015.

Tax Justice Network's Financial Secrecy Index: 78th position, with a secrecy score of 39.3

Portugal shows a robust legal framework regarding anti-money laundering, overall in line with FAFT-GAFI recommendations, European Union directives and OECD agreements. FAFT-GAFI has been conducting Portugal's 4th Round of Mutual Evaluations and results are expected to be published by October. Parliament is discussing the transposition of the 4th AML/CFT Directive. Therefore, new developments on this front are expected until the end of 2017.

3 - It is worth noting that, for the purpose of the Financial Secrecy Index, Tax Justice Network only considers Madeira, since the island is a Free Trade Zone.

Throughout 2015, Portugal has conducted the national risk assessment on money laundering and terrorism financing and has published its executive summary.⁴ According to some stakeholders, sensitive data was behind the decision of not publishing the full report. Periodic and sectorial assessments have to be conducted by the institutional stakeholders that form the Anti-Money Laundering Commission,⁵ but such reports so far have not been made public. Another shortcoming we encountered in our assessment is insufficient statistical information provided to the public, a problem that has been long identified in the collection of data concerning anti-money laundering and corruption related issues.

There is no centralized statistical information collection effort regarding money laundering. Data is dispersed among different institutions, frequently the only available sources are non-verifiable media reports, as often there are no official documents available to the public and sometimes data from different institutions is contradictory. In addition, for statistical purposes, in cases which address more than one type of crime, only the most serious one is taken into consideration, thus numbers relating to prosecutions and convictions for money laundering (ML) and other crimes may understate the actual number of cases.

In 2016, the Council for the Prevention of Corruption received 9 communications over ML, 7 of which were dropped before the opening of an investigation and 2 were dropped during the investigation. In 2015, there were 5 ML communications.⁶

According to media reports citing official sources, in 2016, 38 suspicious transactions were frozen with an overall value of 21.6 million euros and 2.3 million dollars. In 2015, 64 banking operations were suspended, amounting to 47.1 million euros and 9.5 million dollars.⁷

4 - Avaliação Nacional De Riscos De Branqueamento De Capitais E De Financiamento Do Terrorismo, available at <http://www.portugal.gov.pt/pt/o-governo/arquivo-historico/governos-constitucionais/gc20/os-ministerios/mf/documentos-oficiais/20151125-mf-avaliacao-risco-branqueamento-capitais.aspx>

5 - The AML Commission is composed by 25 institutions, which can be consulted here: <http://portalbcft.pt/pt-pt>

6 - Conselho de Prevenção da Corrupção (2017), Comunicações recebidas no CPC em 2016, 2015 <http://www.cpc.tcontas.pt/documentos/analises.html>

7 - Oliveira, M. (28th December 2016), "Quase 4300 alertas por suspeitas de branqueamento em dez meses", Público: <https://www.publico.pt/2016/12/28/economia/noticia/quase-4300-alertas-por-suspeitas-de-branqueamento-em-dez-meses-1756283>

Beneficial ownership transparency

Score card: 38%

Open Company Data Index produced by Open Corporates Score: 20/100

Despite the satisfactory legal definition of beneficial owner and the obligations placed upon financial and non-financial bodies and professions, transparency over beneficial ownership is very poor. The country's performance in these targets is far from satisfactory.

There is no beneficial owner register and the existing company register does not provide the necessary information about the ownership of companies or trusts. Companies operating in Portugal must be recorded in the National Register of Legal Persons (RNPC) and in the Commercial Register. Registration must be done at the time of incorporation and when the company performs relevant corporate acts. In addition, the Ministry of Justice also provides a free online consultation platform: The Online Publication of Corporate Act, which contains all relevant management acts, including financial reports, and changes in the board of director. This platform, however, is not provided in an open data friendly format and thus any search can only be done by name or fiscal number of the company.⁸

The legal concept of trust does not exist under Portuguese law, which doesn't impede a foreign law legal arrangements to participate in domestic business, by being a national bank account holder for instance. The Free Trade Zone in Madeira is granted a special status where trusts incorporated under foreign jurisdictions, with non-resident settlor and managed by a trustee based in Madeira, can be recognised and authorised to perform business activities. In this case only, the trust must provide a wide range of information. However, most of the information, particularly regarding individuals controlling the trust, is not available to the public. Access to this information can only be granted to criminal authorities through judicial order and, in certain cases, an additional permission by the Minister of Finance.⁹

Moreover, the understanding of the concept of beneficial owner appears very fragile among DNFBPs, with negative consequences on their ability to fulfil their AML obligations.¹⁰

Portugal is the process of transposing the 4th AML/CFT Directive, which imposes the creation of a beneficial owner register. Therefore, it is expected that in the coming months the transparency levels will increase. However, there are no guarantees that the law that establishes the register will not have loopholes or that the database itself will be user-friendly.

8 - Online Publication of Corporate Act (Publicação Online de Acto Societário): <https://publicacoes.mj.pt/Index.aspx>

9 - Decree-Law No 352-A/88 of 3rd October

10 - Coroado, S. (2017), Beneficiários Efetivos e Transparência Fiscal, Transparência e Integridade, Lisboa

Recovery of stolen assets

Score card: 50%

In 2012, the Asset Recovery Office (GRA) was established.¹¹ However, its scope of action regarding assets is yet to be regulated. According to some media reports, since its inauguration, the GRA has recovered 222 million Euros, but there is no official data actively released by authorities.¹²

The 2015-2017 Criminal Policy established as a priority the identification, location and seizure of goods or products related to crimes, to be implemented by the Asset Recovery Office (GRA). The objectives, priorities and guidelines package for 2015-2017 and for 2017-2019 (currently under discussion in parliament) establish asset recovery as a priority. However, there is a lack of milestones and objectives for this goal.¹³

There are no severe legal restrictions on sharing information with foreign authorities. The Public Prosecutor (PGR) is the central body for reception and transmission of Mutual Legal Assistance requests. However, urgent request can be made to the Criminal Police (PJ) through INTERPOL or EUROPOL. International cooperation works well, both among criminal authorities and among supervisory agencies. Mechanisms vary depending on the competent authority and the bilateral or multilateral agreements governing the relationship between countries.¹⁴

11 - Gabinete de Recuperação de Activos: <https://www.policiajudiciaria.pt/PortalWeb/page/%7B36E09639-02FE-49B4-A280-F430E68CAC53%7D>

12 - Morais, N. (12 Sep 2016), Estado impedido de lucrar com bens de criminosos, JN: <http://www.jn.pt/justica/interior/estado-impedido-de-lucrar-com-bens-de-criminosos-5384068.html>

13 - Law no 72/2015 of 22 June, art. 12: <http://www.ministeriopublico.pt/destaque/objetivos-prioridades-e-orientacoes-de-politica-criminal-para-o-bienio-de-2015-2017>

14 - Coroado, S. (2017), Beneficiários Efetivos e Transparência Fiscal, Transparência e Integridade, Lisboa

TARGET 16.5: SUBSTANTIALLY REDUCE CORRUPTION AND BRIBERY IN ALL THEIR FORMS

Experience and perceptions of corruption

2% of respondents state they paid a bribe to receive any one of 8 services in the past 12 months, according to the 2016 edition of Transparency International's Global Corruption Barometer. To the question "Have you or another member of your household paid a bribe to any one of eight public services in the past 12 months?", 3% of respondents stated having done so to the road police. At the same time, 51% of respondents stated that corruption or bribery is one of the three most important problems the government should address. In addition, 14% state that the government performs "very badly" at fighting corruption within the State, 21% describe the performance as "fairly bad".

In Transparency International's Corruption Perceptions Index 2016, Portugal scored 62 points on a scale of 0 (highly corrupt) to 100 (very clean), ranking 29th out of 176 countries.

In this line, the 2015 Flash Eurobarometer Businesses' attitudes towards corruption in the EU shows that corruption is a problem for businessmen (49%, EU average 40%) and 89% consider it is a common problem in Portugal (EU average 71%). While only 4% of respondents admitted having been asked to pay a bribery, a majority consider that having family and friends (50%, EU average 43%) or political connections (66%, EU average 44%) helps to conduct business.

Anti-Corruption Framework and Institutions

Score card: 82%

Apart from illicit enrichment and concealment, the Portuguese legal framework is largely in line with the offences listed in the UNCAC.¹⁵ In the case of concealment, national law does not clearly define and ban it, but there are other legal provisions that can be considered to adequately address the offense. The illicit enrichment offense has been a trickier issue over the years. Parliament has attempted to legislate, but bills have been rejected by the Constitutional Court, on the grounds that it may violate the principle of the presumption of innocence. In line with UNCAC requirements, Portugal established an anti-corruption agency designated as the Corruption Prevention Council

15 - UNDOC (2013), Country Review Report of Portugal; Sousa, L., Marques, D. and Serafini, P. (2012), UN CONVENTION AGAINST CORRUPTION CIVIL SOCIETY REVIEW: PORTUGAL 2012, Transparência e Integridade

(CPC), under the umbrella of the Court of Audits.¹⁶ In practice, the CPC is characterized as a closed entity with little activity and without any visibility. Its most relevant activity has been the creation of Anti-Corruption Plans in cooperation with Public Administration bodies, which are mostly formal documents with little impact in practice¹⁷.

Tribunal de Contas (TdC) is the Portuguese Supreme Audit Institution.¹⁸ Formally, TdC serves simultaneously as a prevention body, overseeing public finances and expenditures and as a detection organism, providing the Public Prosecutor with indications of crimes or other unlawful conduct in activities involving public bodies. In practice, it focuses its activities on the formal aspect and little on the qualitative feature of public spending. There is a lack of training and resources to deepen its work.¹⁹ In the past few years, TdC has, nevertheless, taken stronger stances in its auditing reports. It is yet to be analysed whether its recommendations are actually taken into consideration.²⁰

Regarding the judiciary, recent investigations over corruption, trading in influence and money laundering involving senior political and public officials and high-level businessmen suggest that the judicial authorities have been able to work with a high level of political independence. This is particularly clear after 2012, when leadership in the structure of the Public Prosecution changed. Nevertheless, in a 2015 assessment, GRECO expressed concern over both the independence and integrity of judges and prosecutors in Portugal. GRECO called attention to the judiciary's significant vulnerability to undue political interference due to the composition of the judicial councils responsible for the appointments, promotion and disciplinary action, to the lack of financial autonomy and to recent reforms of the judiciary's organizational structure.²¹

As previously underlined, statistics on enforcement actions and court cases are difficult to obtain and analyse in Portugal, due to shortcomings relating to data gathering and processing methods. Nevertheless, according to the available data of the Ministry of Justice, the following number of corruption cases of corruption over the years have been the following:²²

- Corruption Cases Investigated by the Public Prosecutor and Police Forces: 73 (2015), 84 (2014)
- Corruption Cases concluded in Court: 31 (2015), 31 (2014)

16 - Conselho de Prevenção da Corrupção: <http://www.cpc.tcontas.pt/>

17 - European Commission (2014), Annex PORTUGAL to the EU Anti-Corruption Report, Brussels, 3.2.2014 COM(2014) 38 final ANNEX 22; Marques, D. and Coroado, S. (2012), Sistema Nacional de Integridade Portugal, Transparência e Integridade, A.C.

18 - Tribunal de Contas: <http://www.tcontas.pt/>

19 - Marques, D. and Coroado, S. (2012), Sistema Nacional de Integridade, Transparência e Integridade;

20 - Diário de Notícias (2011), O Estado a que o Estado chegou, Gradiva, pp. 188-191; Paulo Morgado (2011), Transparência na Administração Pública in Transparência, Justiça, Liberdade, Rui Costa Pinto Edições, pp. 41-54

21 - GRECO (2016), FOURTH EVALUATION ROUND: Corruption prevention in respect of members of parliament, judges and prosecutors

22 - DGPJ, Estatísticas de Justiça: <http://www.dgpj.mj.pt/sections/estatisticas-da-justica/index/>

Private Sector corruption

Score card: 100%

In line with the requirements of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, bribery of a foreign public official is a clearly defined criminal offence. There is, however, limited enforcement of the ban on foreign bribery.

The main inadequacies in the Portuguese enforcement system do not relate to foreign bribery cases in particular, but to general problems, such as a lack of human and material resources for investigation, and lack of expertise in and training on the enforcement of measures relating to economic crimes. The sluggishness and complexity of the judicial system is also considered an obstacle to the effective prosecution of corruption. A lack of cooperation within national judicial authorities also hinders effective enforcement. In addition, difficulties in regards to the cooperation with foreign authorities have been reported. In the 2013 Phase 3 Report, the OECD Working Group was “seriously concerned that Portugal’s enforcement of the foreign bribery offence has been extremely low” and “gravely concerned that Portuguese authorities repeatedly fail to investigate foreign bribery allegations thoroughly and proactively”.²³

Collusion is also a criminal offence under Portuguese law. The Competition Authority (AdC) is the main body concerned with preventing and investigating collusive practices.²⁴ However, it was only recently that AdC launch a large-scale campaign to tackle the problem. The impact of these efforts cannot be assessed at this point.²⁵

Transparency of corporations varies considerably across entities. The degree of information disclosure on owners depends on the type of legal entity concerned (public or private liability companies, etc.). Private limited liability companies are required to maintain and, in some cases, publicly disclose through the company registry information on the legal owners of the quotas (private liability companies) and annual accounts. However, they may not necessarily be natural persons. Listed public liability companies, under the supervision of CMVM, the stock market regulator, are required to collect and report information. Shareholders of listed companies are also required to publicly disclose through the CMVM’s information disclosure system website on any of those relevant changes to legal and beneficial ownership when they occur as well as to declare when they administer shares on behalf of a third person. There are no policies or public incentives for companies to adopt integrity measures.²⁶

23 - OECD Phase 3 Report (June 2013); Transparency International (2014), Exporting Corruption, Transparency International

24 - Autoridade da Concorrência: <http://www.concorrenca.pt>

25 - Autoridade da Concorrência, Combate ao Conluio na Contratação Pública: <http://www.concorrenca.pt/CombateAoConluionacontratacaopublica/>

26 - Coroado, S. (2017), Beneficiários Efetivos e Transparência Fiscal, Transparência e Integridade, Lisboa

Transparency and integrity in public administration

Score card: 58%

Transparency and integrity in public life, i.e., in the political sphere and public administration, are very insufficient, raising strong concerns and affecting citizens' trust in their national institutions. Ethics issues have been overlooked by both politicians and civil servants. The legal framework is weak and practice is even more worrying. According to GRECO, "Insufficient attention to the issues of integrity, accountability and transparency is inherent to the regimes that apply to [parliament]" and "the entire system for the prevention, disclosure, ascertainment and sanctioning of conflicts of interest with the Assembly is apparent".²⁷ GRECO adds that there is a "lack of recognition by MPs of the value of comprehensive, well-articulated and publicly available principles and standards of professional conduct."²⁸

Political office holders and senior public officials are subject to laws and regulations that differ from those that cover civil servants. Concerning the 'revolving door' – the movement of people the public and the private sector that may result in conflicts of interest – the public administration and the judiciary do not have a clear or effective policy, apart from economic and financial regulatory agencies. Regarding the former, there are laws that regulate conflict of interest, asset control and revolving doors.²⁹ However these are outdated, very limited in scope and have a significant number of shortcomings.

For example, cooling off periods are limited to very particular situations, sanctions are not strong enough and there are no ethical supervisory body or reporting obligations. For instance, a three-year cooling off period is only applied in cases involving a company that has been privatized or benefited from public subsidies or tax benefits decided by the individual. The cooling off period in this situation is not applied when a minister is going back to the company he or she worked for prior to his or her political office. All other cases are also not subject to any quarantine periods. Therefore, in practice revolving doors between public and private sector are widespread and conflict of interest can be said to be institutionalized.³⁰

High-level public officials are required to declare their interests and their assets at the beginning and end of their mandate. The law establishing the regime of public control over the wealth of political office holders was amended in 2010.³¹ Asset declarations are no longer made annually but only at the beginning and end of term. In addition, the law establishes that financial assets of less than 50 minimum monthly salaries (EUR 23,750) do not need to be declared. This allows office holders to split large amounts in various applications below that reference value so they are not obliged to declare them. Interest declarations of members of parliament and the government are published on the parliament's website. At the local level, the creation of an interest register is optional.

27 - GRECO (2016), FOURTH EVALUATION ROUND: Corruption prevention in respect of members of parliament, judges and prosecutors.

28 - Idem

29 - Legal regime of incompatibilities and impediments of public office holders: Law no 64/93, of 26th August;

30 - Peixoto, M. (6th Feb 2017), Porta-giratória: entra público, sai privado, Eco: <https://eco.pt/2017/02/06/porta-giratoria-entra-publico-sai-privado/>

31 - Law 38/2010 of 2 September

Asset declarations from political office holders and high-level public officials are deposited in the Constitutional Court. They are publicly available, but consultation has to be made on-site, since declarations are paper based. The Public Prosecutor is the designated authority responsible for overseeing compliance with revolving door rules and for examining the veracity of asset declaration. According to GRECO, the PP's Office employs only four prosecutors to scrutinize the asset declarations of some 15 000-16 000 political office holders.³² There are no statistics on enforcement or sanctions to office holders related to interest or asset declarative obligations.

In late 2016, a controversial case brought up the issue of compliance with declarative obligations. Some recently nominated board members of a state-owned bank - CDG - refused to file declarations, claiming they were out of the scope of the law. After weeks of controversy, the Constitutional Court ruled that they were obliged to do so and privacy issues were not relevant enough not to render declarations public. Some individuals respected the CC's ruling, but others (particularly foreign board members) are yet to present their declarations. The case is not yet closed.³³

The Parliamentary Ethics Committee, which has been "downgraded" to a sub-committee in the current legislature, has a limited and passive role, only taking into consideration the legal and not the ethical aspects of incompatibilities and revolving doors.³⁴ It not only fails in its supervisory role, as its decisions are drafted in order to benefit and justify the choices of individuals that are known to be in dubious or controversial situations, as was particularly clear in controversial situations involving MPs and their parallel professional activities.³⁵

Gifts and hospitality offered to public officials has also been insufficiently addressed, from both the de jure and de facto perspectives. Following a scandal involving hospitality offered to cabinet members, in late 2016 the government drafted its own Code of Conduct. The Code was simply designed to respond to the scandal and it is not satisfactory in terms of scope, sanctions or enforcement mechanisms.³⁶ Since April 2016, an ad hoc parliamentary committee for the transparency of public life has been discussing the possibility of regulating gifts and hospitality for MPs, but these efforts have made no significant progress while the present research was being conducted.³⁷

32 - GRECO (2016), FOURTH EVALUATION ROUND: Corruption prevention in respect of members of parliament, judges and prosecutors.

33 - Tribunal Constitucional (2017), ACÓRDÃO Nº 32/2017:
<http://www.tribunalconstitucional.pt/tc/acordaos/20170032.html>

34 - Subcomissão de Ética:
<http://www.parlamento.pt/sites/COM/XIIILEG/1CACDLG/SE/Paginas/RelatoriosActividade.aspx>

35 - Sol (7th April 2016), Contratação de Maria Luís está conforme a lei, diz subcomissão de Ética, Sol. available at: <https://sol.sapo.pt/artigo/503508/contratacao-de-maria-luis-esta-conforme-a-lei-diz-subcomissao-de-etica-> ; Lusa (6th April 2017), Subcomissão de Ética concluiu pela inexistência de incompatibilidades de sete deputados, Jornal de Negócios. Available at: <http://www.jornaldenegocios.pt/economia/politica/detalhe/subcomissao-de-etica-concluiu-pela-inexistencia-de-incompatibilidades-de-sete-deputados>

36 - Governo de Portugal, Código de Conduta: <http://www.portugal.gov.pt/pt/ministerios/mpma/docs/20160908-mpma-codigo-conduta.aspx>

37 - Comissão Eventual para o Reforço da Transparência no Exercício de Funções Públicas:
<http://www.parlamento.pt/sites/com/XIIILEg/CERTEFP/Paginas/default.aspx>

There are a few instruments that aim to ensure the good conduct of employees, such as the Code of Administrative Procedure, the Ethics Charter of the Public Administration, the Deontological Charter of the Public Service or the Disciplinary Statute. Except for medical doctors and their relationship with pharmaceutical companies, there is no disclosure obligations concerning civil servants. The Council for the Prevention of Corruption has promoted the creation of Risk Evaluation and Prevention Plans among public bodies. The instrument is now widely used, but it has no effectiveness or added value. It has been seen as a formal obligation and has failed to identify and prevent corruption cases in the Public Administration.

Lobbying transparency

Score card: 0%

Interest groups, corporations and individuals seeking to influence public decisions in Portugal can do so without any restrictions, as lobbying is not regulated.³⁸ There is no lobbying register, legislative footprint or meetings register. The absence of regulation has pushed lobbying into opaque practices. Informal contacts are quite common and believed to be the most effective way of achieving results. Even if not always illicit, lobbying is conducted in the shadows, paving the way to illegitimate behaviour. Construction and public works, the financial sector and the energy industry have been pointed out as the areas of activity where risky lobbying practices are most severe, due to their disproportionate financial means and a network of political connections.³⁹ Despite promises for regulation by different political parties, there is no law or policy framework for lobbying.

Whistle-blowing

Score card: 20%

Society has a dual attitude in regards to whistle-blowers. Sometimes whistle-blowers are perceived as snitches, an attitude linked to times of the dictatorship. However, the economic crisis has help shift societal perceptions, and today whistle-blowers are increasingly regarded as heroes. Nevertheless, there is no dedicated law that provides comprehensive protection to whistle-blowers. As a result, they remain extremely vulnerable to defamation and civil liability for moral damages. Portuguese law only includes a general principle of protection against unfair treatment of public officials and employees of state-owned companies.⁴⁰ The European Court of Human Rights has sentenced Portugal over 20 times due to cases where individuals were convicted of defamation. Despite this, there are still several cases in court every year.⁴¹

38 - GRECO (2016), FOURTH EVALUATION ROUND: Corruption prevention in respect of members of parliament, judges and prosecutors.

39 - Coroado, S. (2014), Lifting the Lid on Lobbying; the influence market in Portugal, *Transparência e Integridade*

40 - TI: Whistleblowing in Europe: Legal Protections for Whistleblowers in the EU

41 - Renascença (17 July 2017), Portugal está longe da Europa ao criminalizar a injúria e a difamação: http://rr.sapo.pt/noticia/86470/portugal_esta_longe_da_europa_ao_criminalizar_a_injuria_e_a_difamacao

There are no formal reporting channels in place and whistle-blowers typically must report a supervisor at work. The Public Prosecutor's Office has a dedicated mechanism for reporting corruption, which allows anonymous reporting. In 2015, 1476 complaints were received through the reporting mechanism. In the same period, 1484 complaints received there were analysed, which led to the establishment of 110 inquiries and 28 preventive investigations, 505 complaints were forwarded to other entities.⁴²

Party and Campaign finance transparency

Score card: 80%

Political financing has been the object of several incremental amendments since 1993, when the first regulation was passed. The 2003 Law of Political Financing instituted a single supervisory body under the Constitutional Court's remit with proactive auditing competences: The Entity for Accounts and Political Financing (ECFP).⁴³

Payments to parties must be titled by check or bank transfer and deposited in bank accounts exclusively created and used for that purpose. Anonymous donations are prohibited and cash donations are only allowed if the value is below 25% of a national monthly minimum wage (EUR 125 approximately). These petty donations are limited to an annual ceiling of 50 national monthly minimum wages, approximately EUR 25,000. A ban on company donations introduced in 2000 has not solved the problem of substantial corporate contributions because companies can conceal illicit donations. Moreover, the regulatory framework does not impose serious penalties on those companies or businessmen who circumvent the law and decide to cover campaign costs indirectly.

The current supervisory model is not sufficient to counter corruption in political financing. The ECFP lacks many crucial features: institutional independence; adequate resources to fulfil its mandate and reach decisions in a timely manner (since it is understaffed, underfinanced and lacks expertise); investigative powers; and cooperation with other authorities; competitive rules of appointment based on merit and specialization; political support; a complaints system and a communication strategy.⁴⁴ Despite this severe lack of human and financial resources, the Constitutional Court and the ECFP fulfil their role in analysing and applying sanctions to political parties and candidates in relation to the reported accounts. The implementation of the law, however, still falls short in two aspects: The first related to monitoring and sanctioning of illegal funding, which dedicated bodies do not seem to have any way of controlling. The second related to criminal sanctions applied by Courts, which are barely enforced. In the last decades, several cases raised suspicions and even led to criminal

42 - Ministério Público (2016), CRIMES DE CORRUPÇÃO E CRIMINALIDADE CONEXA: Relatório Síntese 2014-2016

43 - Entidade das Contas e Financiamentos Políticos: www.tribunalconstitucional.pt/tc/contas.html

44 - Botelho, L. (2nd March 2017), Tribunal Constitucional preocupado com fiscalização das contas das autárquicas, Público. Available at <https://www.publico.pt/2017/03/02/politica/noticia/tribunal-constitucional-preocupado-com-fiscalizacao-das-contas-das-autarquicas-1763721>

investigations due to illicit political funding.⁴⁵ However, in only one case charges were proven and the defendants sentenced to pay a fine.⁴⁶

Despite the ban on anonymous donations, information about donors and the volume of donations is not published before the election and is not easily accessible afterwards. It is necessary to request consultation of this information from the ECFP, since donors' identities are not part of the accounts published online. Electoral campaign accounts are due up to 90 days after the payment of public subsidies. Annual party accounts and electoral campaign accounts are published on the website of the ECFP but are not fully standardized and cannot easily be exported or analysed.

Fiscal transparency

Score card: 50%

2015 Open Budget Survey Score: 64/100 (the country also shows adequate practices of budget oversight by the legislature (70/100) and by the Court of Audits (64/100)).

Portugal provides substantial public information regarding its budget and overall fiscal transparency. Authorities fulfil their legal obligations and make publicly available the pre-budget statement, the executive's proposal, the enacted budget, the in-year reports, the year-end report and the audit report. There is not, however, a mid-year review and a citizens' budget is not compulsory.⁴⁷

Public procurement and government contracting

Score card: 63%

Public procurement is one of the areas where corruption risks are most likely to occur, as procedures are not fully transparent at all government levels and scrutiny by citizens is difficult. These deficiencies are found at all stages of those procedures and in all types of contract, be they public private partnerships (PPP), concessions or other public investments. As an administrative procedure, public procurement is subject to some common principles, such as transparency, non-discrimination and free competition. The publication of public procurement procedures, including the full contract, is mandatory for contracts of any value. Such disclosure shall be exempted in the case of simplified arrangements. Information regarding contracts should be published in a central website, www.base.gov.pt. The failure to publish a contract may render it unenforceable.

45 - Marques, D. and Coroado, S. (2012), Sistema Nacional de Integridade, Transparência e Integridade; GRECO (2015), Third Evaluation Round: Second Compliance Report on Portugal

46 - As an example: Tribunal Constitucional, ACÓRDÃO Nº 420/2016: <http://www.tribunalconstitucional.pt/tc/acordaos/20160420.html>

47 - International Budget Partnership (2016), Open Budget Survey: <http://www.internationalbudget.org/opening-budgets/>

However, the existing legal framework lacks appropriate mechanisms to ensure proper accountability and effective monitoring of the awarding of contracts. Generally, the works and specifications contracted are dubiously defined and the awarding process lacks clarity. Therefore, all contracts above a certain threshold should be available to the public and subject to an implementation assessment every three months that would scrutinize every evidence of cost and schedule overruns, as well as any other substantive changes in the execution process. In practice, this is not always the case, as there are no mechanisms in place that can ensure that all monitoring steps are taken and all information is published on the Base, the main web platform. The central database itself presents a few shortcomings: there is no oversight that ensures contracts are indeed published and data is not available in open formats that would facilitate further analysis.

There is a disproportionate use of sole-sourcing of goods, services and public works. This type of procurement can be used to form the following contracts: a) Public works of less than 150,000 euros; b) Acquisitions of goods and services of less than 75,000 euros; c) Other contracts with a value of less than 100,000 euros. Exceptions to these rules can be based on extreme urgency, in cases when there is only one supplier or when in a previous contest no offers were presented. In practice, sole-sourcing is the go-to procedure. In 2014, they account up to 50,5% of the total of public procurement contracts (in 2011, they accounted for only 43%) and are worth over 8 billion Euros.⁴⁸ Irregularities in the award of sole-sourcing contracts are common and concerning.⁴⁹

48 - Ribeiro, Luís Reis (2015), Ajustes diretos são o novo normal da contratação pública, Dinheiro Vivo, 4 Sep 2015. Available at http://www.dinheirovivo.pt/economia/interior.aspx?content_id=4762464&page=-

49 - As an example: Tribunal de Contas (2017), Relatório nº 7/2017 - 2ª Secção. Available at: http://www.tcontas.pt/pt/actos/rel_auditoria/2017/2s/rel007-2017-2s.shtm

TARGET 16.10: ENSURE PUBLIC ACCESS TO INFORMATION AND PROTECT FUNDAMENTAL FREEDOMS, IN ACCORDANCE WITH NATIONAL LEGISLATION AND INTERNATIONAL AGREEMENTS

Protection of fundamental freedoms

Freedom House's Freedom in the World Rating: Portugal was considered a free country with a score of 97/100 both in 2017 and 2016

World Press Freedom Index: Portugal ranked 18 in 2017 (23 in 2016)

The protection of fundamental freedoms is guaranteed by the Constitution and ensured in practice. There are no documented cases of any kind of serious threats or attacks against journalists, associated media personnel, trade unionists, human rights and civil society advocates or other people who investigated, uncovered and advocated against corruption.

Nevertheless, Portuguese law criminalizes defamation, and when the individual in question is an official, the penalty is increased. According to Reporters Without Borders, from January 2005 to January 2017, the European Court of Human Rights ruled 21 times that Portugal had violated article 10 of the European Declaration of Human Rights, which protects free speech.⁵⁰ This is three times the average for European Union member nations. Fourteen of the 21 cases concerned journalists prosecuted for defamation.⁵¹ In addition, in 2015, an International Press Institute report noted that

50 - Reporters Without Borders (2017), World Press Freedom Index: <https://rsf.org/en/portugal>

51 - Idem

“the mere threat of criminal prosecution, particularly for journalists without access to adequate legal representation, can be sufficient to produce self-censorship. This is particularly the case under Portuguese law, which offers increased protection to those in positions of power.”⁵² This is the case due to the by high levels of compensation in civil defamation cases.

Access to information

Score card: 72%

Right-To-Information Rating: 73

Access to information is a principle enshrined in articles 37 and 268 of the Portuguese Constitution. The Freedom of Information Law, recently enacted to accommodate new EU regulation on environmental information and the reuse of information, ensures the right of access to all materials held by or on behalf of public bodies, namely the executive branch, the legislature, the judicial branch, state-owned enterprises and other public authorities including constitutional, statutory and oversight bodies (such as an election commission or an information commission).⁵³ Only private bodies that receive significant public funding are not included in the legal framework. The exceptions to the right of access are consistent with international standards. It is also permissible to refer requesters to information which is already publicly available, for example online or in published form. There is a mandatory public interest override so that information must be disclosed where this is in the overall public interest, even if this may harm a protected interest. There are ‘hard’ overrides (which apply absolutely), for example for information about human rights, corruption or crimes against humanity. Requests must be responded to within 10 working days.

CADA, the Information Commission, holds powers to review complaints, to issue opinions on access to administrative documents, on the communication of documents between departments and agencies of the Public Administration, on the application of this law, as well as on the elaboration and application of complementary regulation on its own initiative or at the request of public bodies and to pronounce itself on the system of registry and classification of documents.⁵⁴ CADA does not have the power to inspect the premises of public bodies. In practice, the Commission is generally liberal in its decisions and accepts most requests under the FOIA. However, deliberation is slow. In 2014 and 2015, CADA opened 800 and 830 processes, respectively. Among the 2015 processes, 633 were complaints and 192 were opinion requests. Local governments are the branch of government that origin the most complaints, followed by the education and science area.⁵⁵

Despite the legal obligation to proactively publish information, public bodies do not seem to have a coherent or homogeneous practice of publish information. Some bodies are very transparent, while

52 - International Press Institute (2015), Briefing: Criminal Defamation in Portugal: <https://ipi.media/briefing-criminal-defamation-in-portugal/>

53 - Law no 26/2016, 22nd August

54 - Comissão de Acesso a Documentos Administrativos (CADA): <http://www.cada.pt/>

55 - Comissão de Acesso a Dados Administrativos (2016), "Actividade da CADA em 2015": <http://www.cada.pt/modules/news/index.php?storytopic=13>

other fail considerably in having available information. Absence of user-friendly mechanisms are also a problem.

Open Government Data (optional)

2015 Open Data Barometer: 31st position, with a score of 41,38

Open Data Index: in 2016, Portugal ranked 46 (54 in 2015) with a score of 37% (34% in 2015)

Portugal performs rather poorly in the Open Data Index. For the purpose of this report, the most concerning areas are government spending, electoral results and company register. National statistics and public procurement show the best results, although these areas still present problems.⁵⁶

There are a few civil society projects that use open government data and/or, other publicly available data sources to strengthen government accountability and help deter and/or detect corruption, but their use and impact by the public and the media public vary considerably. Possibly the most well-know is Má Despesa Pública (Bad Public Expenditure).⁵⁷

56 - Open Knowledge International (2016), Open Data Index 2016: <http://index.okfn.org/place>

57 - Má Despesa Pública: <http://madespesapublica.blogspot.pt/>

RECOMMENDATIONS

Transparency International Portugal recommends that the Portuguese government adopt a variety of measures, both legal and de facto, that will be indispensable for the implementation of SDG 16, but that will also contribute to the fulfilment of most of the remaining SDGs. Good governance and anti-corruption measures are crucial to the achievement of other goals, as it contributes to an efficient use of resources in key fields, such as education and the reduction of poverty, and a more inclusive society. In addition, recommendations also address the external policy aspect of the Portuguese SDG policy. Overall, Transparency International Portugal calls for better qualitative data on corruption and illicit funds issues, more transparency in public policies and institutions, as well as more committed implementation of legal frameworks.

Target 16.4: By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime

- The creation of a beneficial ownership register for both companies, foundations, associations and trusts operating in Portugal. Information should be in an open-data, searchable and exportable format and access should be public and at a reasonable cost. The management of the register should be subject to accountability mechanisms.
- The coordination of the anti-money laundering efforts with other public policies, namely foreign investment attraction programmes, the Madeira Free Trade Zone and the national external policy, in order to have a coherent and holistic approach to tackle illicit financial flows.
- Sectorial reports of the National Risk Assessment Commission and statistics on STRs, money laundering investigations and convictions must be updated and publicly available on a regular basis.

Target 16.5: Substantially reduce corruption and bribery in all their forms

- The transparency of public decision-making should be increased through the creation of a legislative footprint and the publishing of cabinet and senior public official agendas, in a similar way to the parliamentary committees. A comprehensive lobby register is desirable, but should not be regarded as the sole solution to the risks posed by lobbying activities.
- Parliament should reinforce the laws on conflict of interest, applying the law to members of Ministers' cabinets, and extending cooling-off periods. Public authorities, namely the Ethics Committee and the Public Prosecutor, should enforce the law.
- Increased transparency over political and electoral campaigns' accounts, namely the real-time disclosure of donor and the publication of financial accounts in an open, searchable and exportable format.
- The creation of a dedicated law for the protection of whistle-blowers, as well as monitoring mechanisms for the implementation of the legal provisions, relevant sanctions in case of non-compliance, financial and legal support.

Target 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

- Defamation should no longer be considered a criminal offense.
- Increase the proactivity in information disclosure and promote the use of open government data by public institutions.
- More accessible and comprehensible language of administrative and legislative documents, in line with national literacy levels.

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