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# First Evaluation Round

# Evaluation Report on Portugal

Adopted by the GRECO
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## I. INTRODUCTION

1. Portugal was the thirty-fourth GRECO member to be examined in the first evaluation round. The GRECO Evaluation Team (hereafter "GET") consisted of the following members: Ms Rachel Ferrari, Chief Superintendent (instructor at Institut des Hautes Etudes de la Sécurité Intérieure – Institute of Higher Internal Security Studies – France) and expert on police issues; Ms Nastja Franko, public prosecutor (Slovenia) and expert on judicial issues; Mr Carlos Ramos Rubio, special prosecutor (prosecution service's Anti-Corruption Division, High Court of Catalonia, Spain) and expert on general policy. This team, accompanied by a member of the Secretariat, visited Lisbon from 11 to 14 November 2002. Before to the visit the experts had been supplied with information in the form of a comprehensive reply to the evaluation questionnaire (Greco Eval I (2002) 45F).

2. Information resources (especially online) are well-developed, and the GET received a large number of documents on the spot (including technical documents in French and English). The GET appreciated the quality of the representatives whom they met and the support provided to the evaluation team over and above the hospitality. Meetings were held with representatives of the following authorities: Ministry of Internal Administration (General Inspectorate of Internal Administration (IGAI), Republican National Guard (GNR), Public Security Police (PSP), Aliens and Frontiers Department (SEF)), Ministry of Finance (meeting at Ministry of Finance with representatives of the General Finance Inspectorate and the General Inspectorate for Economic Activities), Ministry of Justice and the judicial authorities (Judicial Police, Lisbon Criminal Investigation Court, Central Criminal Investigation and Prosecution Department and the Office of the Chief Public Prosecutor of the Republic - including the Chief Public Prosecutor), the Centre for Legal Studies, the Court of Auditors and the Assembly of the Republic. The GET also met the Ombudsman and members of his staff. The GET appreciated the initiative of the Portuguese representatives accompanying it during its visits in absenting themselves during the meetings which the team had with representatives of civil society (University of Coimbra Justice Monitoring Unit, Civitas) and the press (a meeting was organised at the GET's request). The one- to two-hour meetings took place on the premises of those concerned.

3. It will be recalled that the GRECO agreed, at its 2nd plenary meeting (December 1999) that the first evaluation round would run from 1 January 2000 to 31 December 2001, and this round has been extended to the end of 2002 in order to evaluate the new members. At the 2nd plenary meeting it was also agreed that – under Article 10.3 of its Statute – the evaluation procedure would focus on the following aspects:

   - Guiding Principle 3: For those in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy;
   - Guiding Principle 7: Specialisation of persons or bodies in charge of fighting corruption, means at their disposal;
   - Guiding Principle 6: Immunity from investigation, prosecution or adjudication of corruption offences.

4. The chief object of this report is to evaluate the measures adopted by the Portuguese authorities – and, wherever possible, their effectiveness – to meet the requirements ensuing from Guiding Principles 3, 6 and 7. The first part of the report describes the situation regarding corruption in Portugal, general anti-corruption policy, institutions and authorities in charge of combating corruption – their functioning, structures, powers, expertise, resources and specialisation – and

any system of immunities preventing the prosecution of certain persons for corruption. The second part offers a critical analysis of the situation and assesses in particular whether the current system is fully compatible with the commitments arising out of Guiding Principles 3, 6 and 7. Lastly, the report offers a list of recommendations to Portugal in order that the country may improve its level of compliance with the guiding principles under consideration.

## II. GENERAL DESCRIPTION OF THE SITUATION

5. Portugal is a medium-size State (92 391 sq. km, including the Azores and Madeira) occupying the west of the Iberian Peninsula and having a border only with Spain. It has a population of slightly over 10 million. In 1974, a revolution triggered the transition to a democratic regime. Since 1997 three governments have succeeded each other, the last having been formed after the general election of April 2002. The country experienced considerable economic growth after joining the European Community in 1985. Successive governments have substantially deregulated and privatised the economy. Growth has remained above the EU average for the past ten years, with per capita GDP at some €17 000. The economy has been refocused on the service sector (services 60%, manufacturing 30%, agriculture 10% in today's economy). Unemployment stands at around 4.4% (2001 estimate). The country's administrative structure consists of 18 districts and 2 autonomous regions (the Azores and Madeira, which are free zones[1]).

### a. Corruption and its perception in Portugal

6. Portugal has provided statistics on corruption cases handled by the authorities.

| **Corruption offences recorded by the Judicial Police, the Public Security Police and the Republican National Guard (including the Revenue Police)** | | **Criminal cases tried and closed by the courts of first instance** | | |
|---|---|---|---|---|
| | | **Cases** | **Persons charged** | **Persons convicted** |
| 1993 | 149 | 35 | 47 | 29 |
| 1994 | 144 | 38 | 70 | 49 |
| 1995 | 173 | 40 | 47 | 32 |
| 1996 | 173 | 27 | 41 | 26 |
| 1997 | 152 | 52 | 67 | 46 |
| 1998 | 416 | 40 | 50 | 33 |
| 1999 | 353 | 32 | 43 | 24 |
| 2000 | 90 | 46 | 62 | 43 |
| 2001 | 97 | 50 | 69 | 39 |

7. With reference to the last column in the above table (*Persons convicted)*, additional information provided in the replies to the questionnaire shows that of the total 185 convictions for the 1997-2001 period, 25 entailed immediate imprisonment while the majority were fines (including prison

[1] The Portuguese authorities underline that Madeira enjoys only a preferential tax system, expressly authorised by the European Commission in 1987, 1991, 1994 and lastly in 2002. According to the Community Customs Code, since the free zone of Madeira benefits from the State subsidies system, this situation is subject to a preliminary approval. All other aspects are regulated by Portuguese legislation. In the same way, and in accordance with the Community Customs Code, the industrial free zone is delimited with regard to all activities involving the mobility and stocking of industrial products; this delimitation, however, does not apply to services provided in the following sectors: international, financial and shipping activities.

sentences converted into fines). Incidentally, some of the people whom the GET interviewed accounted for the sudden drop in 2000/2001 by the attendant police reform.

8. Portugal states that the most frequent forms of corruption are the acceptance or solicitation of bribes by public officials and bribery by entities outside government bodies. Over the past two years, investigations have tended to focus more on phenomena such as corruption in local government (municipalities), bribery in certain branches of central government such as the police, the tax authority and the courts (clerks), auction rooms, as well as corruption and misappropriation of funds in sport (since most sports clubs are held to be public agencies and use public funds legitimately awarded by various government bodies). This situation is to some extent apparent in the Judicial Police statistics on corruption cases (investigations) opened and closed in 2001 (see table below)[2]:

| | CASES OPENED | | CASES CLOSED | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Total | % | Committal for trial | Investig. | No further action | Joinder | Total | % |
| **CENTRAL GOVERNMENT** | **11** | 4.3 | 3 | 1 | 5 | 0 | **9** | 4.0 |
| **LOCAL GOVERNMENT** | **52** | 20.5 | 17 | 5 | 15 | 0 | **37** | 16.6 |
| **COURTS** | **6** | 2.4 | 3 | 1 | 3 | 0 | **7** | 3.1 |
| **POLICE** | **36** | 14.2 | 17 | 1 | 10 | 0 | **28** | 12.6 |
| **TREASURY** | **7** | 2.8 | 0 | 0 | 3 | 0 | **3** | 1.3 |
| **SOCIAL SECURITY** | **4** | 1.6 | 1 | 0 | 2 | 0 | **3** | 1.3 |
| **DOCTORS/LABORATORIES** | **69** | 27.2 | 46 | 2 | 33 | 0 | **81** | 36.3 |
| **PUBLIC INSTITUTES** | **5** | 2.0 | 2 | 0 | 1 | 0 | **3** | 1.3 |
| **SPORT** | **9** | 3.5 | 2 | 0 | 2 | 0 | **4** | 1.8 |
| **GEN. DIR. OF TRANSPORT** | **19** | 7.5 | 6 | 0 | 4 | 1 | **11** | 4.9 |
| **PRISONS** | **5** | 2.0 | 2 | 0 | 1 | 0 | **3** | 1.3 |
| **OTHER** | **31** | 12.2 | 15 | 2 | 16 | 1 | **34** | 15.2 |
| **TOTAL** | **254** | **100.0** | **114** | **12** | **95** | **2** | **223** | **100.0** |

9. Some of the people whom the GET interviewed confirmed that corruption remained a grey area. According to the Portuguese authorities no criminal case in Portugal has established a link between corruption and organised crime despite the indisputable links between the two phenomena.

10. With a score of 6.3 out of 10 (10 being the highest and 0 the lowest), Portugal is 25th in the *Corruption Perceptions Index 2002* published by Transparency International (with the same score

[2] The Portuguese authorities have provided the following commentary: "The first two columns show the total number of cases opened by the Judicial Police for corruption offences in 2001; the other six columns cover cases closed by the Judicial Police for the same type of offence during the same year, with the four middle columns showing what happened in each of these cases: committal for trial, investigation in other departments, no further action, or joinder to other cases.
"The number of cases closed is lower than the number of cases of opened, a fact which can and must be explained from two angles: there has been a statistical increase in cases pending, and the Judicial Police has also been more active in investigating unlawful acts of this sort – it has not confined itself to reported crime but has on its own initiative sought out high-risk areas in which to conduct investigations.
"The difference between the first table (serious indictable offences recorded by the Judicial Police, the public security police and the Republican National Guard) and the second table (compiled by the Judicial Police and relating to corruption investigations opened and closed in 2001) is explained by the fact that the latter, unlike the former, includes offences reported to the Public Prosecutor's Office as well as those of which the Office becomes aware in the course of its work and which it passes on to the Judicial Police for investigation."

in 2001 and 6.4 in 2000). A Portuguese chapter of this NGO has been in existence for some time; it has produced an attitude survey – completed in April 2001 – based on a sample of 7850 people. However, in the GET's opinion, the study is not very instructive.

11. Portugal does not say that it has adopted any specific anti-corruption policies or strategies. The existing anti-corruption arrangements are based mainly on:

- A system legally designated the "Internal Control System" (the SCI – governed by Decree-Law No. 166/98 of 25 June) and encompassing all the supervisory and internal-auditing bodies of the various ministries, the whole being co-ordinated by the Court of Auditors;
- A special judicial department (Central Directorate for Combating Corruption, Fraud, and Economic and Financial Crime – DCICCEF);
- Various legal provisions concerning conflicts of interest and impediments, etc.;
- at the level of the public prosecution service, apart from the Central Criminal Investigation and Prosecution Department which is in charge of strategic functions (analysis of crime trends, etc.), there is the Criminal Investigation and Prosecution Department of Lisbon, which comprises a specialised section dealing with corruption offences – the 9th section.

12. Portugal has ratified the Criminal Law Convention on Corruption introduced by the Council of Europe as well as the European Convention on Extradition and its two Additional Protocols. As for the Civil Law Convention on Corruption, an internal review is under way to ascertain whether it will be necessary to change the law for the purpose of signing and ratifying it. Portugal has also ratified the OECD Anti-Bribery Convention and various EU instruments (Protocol drawn up on the basis of Article K.3 of the Treaty on European Union; Convention on the Protection of the European Communities' Financial Interests, Convention implementing the Schengen Agreement, etc.). Various bilateral agreements concerning mutual legal assistance and extradition have been concluded with Portuguese-speaking countries as well as Australia, Canada, Mexico, Morocco and Tunisia. Treaties ratified by Portugal are directly applicable under the domestic legal system.

The legal framework regarding corruption

13. Portuguese law defines various forms of corruption as offences, of which the table below gives an overview (see text of statutes in Appendix 1). The advantage – the object of bribery – may be pecuniary or intangible. The definition of a public official was recently widened by Law No. 108/2001 to satisfy the requirements of the international instruments to which Portugal is a party, especially those of the Council of Europe and the European Union. The definition covers all established public officials and all staff working (even temporarily) for the public administration or judiciary or for a public agency or statutory undertaker; it also includes European Union judges, prosecutors, officials, staff and the equivalent, as well as public officials of other countries in the Union, etc. The concept must, however, be distinguished from that of a "holder of political office"[3], since the latter are covered by special provisions. Furthermore, it should be underlined that, apart from the provisions criminalising corruption of officials from EU countries/institutions, corruption of foreign public officials is criminalised in Portuguese law only within the framework of international business transactions (see OECD Convention). Public officials of international organisations (other than the EU) and of which Portugal is a member are covered by the Portuguese provisions relating to corruption.

[3] Under Article 3 of Law 108/2001, the concept of political office covers the offices of President of the Republic and President of the Assembly, member of the Assembly or the European Parliament, members of the government (including the autonomous regions), etc. The list also includes political office-holders of the European Union and its Member States. See the full list in the appendix.

| Offence | Source | Penalty |
|---|---|---|
| Trading in influence | Criminal Code (CC), Article 335 | Depending on circumstances, fine or prison sentence (up to 6 months, up to 3 years, from 6 months to 5 years) |
| Voter bribery | CC, Article 341 | Fine of up to 120 days, or up to 1 year in prison |
| Passive bribery of a public official for the purposes of a lawful or unlawful act | CC, Articles 372 and 373 | - Unlawful: 1 to 8 years in prison, discharge for voluntary renunciation of offer or return of advantage; mitigation for assistance with identification of other persons responsible<br>- Lawful: Fine of up to 240 days, or up to 2 years in prison |
| Active bribery of a public official for the purpose a lawful or unlawful act | CC, Article 374 (1) and (2) | - Unlawful: 6 months to 5 years in prison<br>- Lawful: Fine of up to 60 days, or up to 6 months in prison<br>Both cases: Mitigation or discharge if act intended to protect the person or his family from the risk of a sentence or security measure (Article 364) |
| Passive bribery of a political office-holder for the purposes of a lawful or unlawful act | Law 34/87, Sections 16 and 17 + Law 108/2001 | - Unlawful: 2 to 8 years in prison<br>- Lawful: Fine of up to 300 days, or up to 3 years in prison |
| Active bribery of a political office-holder for the purposes of a lawful or unlawful act | Law 34/87, Section 18 (1) and (2) + Law 108/2001 | - Unlawful: 6 months to 5 years in prison<br>- Lawful: Fine of up to 300 days, or up to 6 months in prison |
| Granting of undue advantage by a political office-holder to a public official or other political office-holder | Law 34/87, Section 18 (3) + Law 108/2001 | 2 to 8 years in prison |
| Active and passive bribery in sport | Decree-Law 390/91, Sections 2, 3 and 4 | - Passive: Up to 2 years (competitor) or up to 4 years (umpire/referee, trainer, manager, etc.) in prison<br>- Active: Up to 3 or 4 years in prison (according to above distinction) |
| Active bribery harmful to international business | Decree-Law 28/84, Section 41-A + Laws 13/2001 and 108/2001 | 1 to 8 years in prison |
| Active and passive bribery in the private sector | Decree-Law 28/84, Section 41-B and C + Laws 13/2001 and 108/2001 | Active and passive: Fine or up to 3 years in prison |

14. The fines in the above table are based on a system of day-fines, the number of days being determined on grounds such as the offender's degree of guilt and the circumstances of the offence, and the amount on the basis of the offender's financial situation. By way of example, the amount of a day-fine varies between €10 and around €30 000 for offences under Article 374.2 of the Criminal Code. Furthermore, proceeds of corruption may be subject to confiscation orders.

Other relevant mechanisms

15. There are also other offences which the specialists met generally treat as corruption offences: extortion by a public official, embezzlement of public funds[4] and acquisition of illegal interests in public property (with which a public official is connected in the course of his duties).

16. Under the Criminal Code (Article 118), the relevant limitation periods are as follows:

- Ten years for offences incurring a maximum prison sentence of no less than five years and no more than ten years;
- Five years for offences incurring a maximum prison sentence of no less than one year but under five years;
- Two years in all other cases.

[4] This is theft committed by a public official to whom a good has been entrusted – a different offence from breach of trust.

17. The GET noted that the limitation period for instantaneous offences the effects of which continue as a result of the purely passive attitude of the offender runs only from the date on which they cease to be completed and, for persistent offences and repeat offences, only from the date on which the last act was committed. Complaints filed with the Constitutional Court against successive decisions during the criminal investigation do not suspend limitation periods.

18. "Money laundering" is a criminal offence in its own right, distinct from the handling of stolen goods, and governed by a 1993 and a 1995 decree-law several times amended. Bribery is a predicate offence for "money laundering" offences. Financial institutions, some non-financial institutions, and vulnerable professions must report suspicious transactions to the Money Laundering Investigation Squad, which acts as the financial intelligence unit for Portugal[5].

19. Article 299 of the Criminal Code criminalises the offence of criminal association (see Appendix).

20. As far as corruption, money laundering and trading in influence are concerned, it is possible to charge legal persons, companies or de facto associations only if the offences have been committed by their governing bodies or representatives on their behalf to the benefit of the collective interest and for the offences laid down in Decree-Law No 28/84 and cited in paragraph 2.1. (Section 3.1): active bribery harmful to international business (Section 41-A), and active and passive bribery in the private sector (Section 41-B and C).

21. Section 3 of Law No. 13/2001 introduces a special rule of jurisdiction for offences by a foreign public official, since it establishes that, without prejudice to the territorial application of criminal law and the provisions for international judicial co-operation, the provisions laid down in Section 41-A of Decree-Law No. 28/84 and in Laws No. 13/2001 and 108/2001 – on active bribery harmful to international business – apply to all acts committed by Portuguese citizens or foreigners found in Portugal, regardless of where such acts were committed. Furthermore, Portuguese criminal law applies to public officials of the Portuguese government who are guilty of corruption offences, regardless of where these offences were committed.

### b. Bodies and institutions responsible for combating corruption

22. Over the past few years Portugal has been striving to establish suitable systems for dealing with complex forms of crime. Some initiatives, such as the setting-up of an anti-corruption authority, have not been satisfactory (because this authority lacks judicial powers, its work has led to the conviction of only one person). A reform carried out in 1997 and 1998 for the public prosecution service and in 2000 for the police endeavoured to strengthen specialisation/technical expertise in these areas. The country is still looking for solutions to procedural problems, since procedure remains rather sensitive politically and historically, as the GET was informed.

### b1. The police

General

23. Portugal has organised its police system around a distinction between administrative police functions, consisting in crime prevention and public order, and judicial police functions, consisting in gathering the evidence of criminal offences. The administrative police function is under the responsibility of the Minister of Internal Administration, the work of the judicial police being

[5] After the GET's visit, the decree-law N° 304/2002, revising the Act establishing the Judicial Police, established the Financial Information Unit.

supervised by the judicial authorities. The Portuguese police system is based on 4 police forces (totalling some 50 000 people) – all present throughout the country – which are under the authority of different ministries and have different responsibilities: the Public Security Police, the Republican National Guard, the Aliens and Frontiers Department, and the Judicial Police. Steps were taken in 2000 and 2002 to clarify some of their responsibilities, and a framework law requires all police forces to co-operate with each other[6].

Public Security Police

24. The Public Security Police (PSP), coming under the authority of the Ministry of Internal Administration, is a uniformed civilian police force with a unitary nationwide structure. It has the task of maintaining law and order, preventing crime and the identification and arrest of offenders. Its jurisdiction covers cities and other urban areas. Geographically, it is organised into 18 metropolitan districts which co-ordinate the work of subordinate units at three separate levels of authority: police stations, police offices and sub-police stations. The current National Director is a member of the national legal service.

25. PSP staff (some 21 000 officers) are divided into three tiers: chief superintendents and superintendents recruited at university level; non-commissioned officers; and constables, recruited externally and receiving six months' initial training.

26. During the initial training provided either by the National Police College or the Institute of Forensic Science and Internal Security, students are taught the Criminal Code, the Code of Administrative Conduct and the rules of discipline. In-service training is also provided in the field under the responsibility of the district police chiefs. In addition to the laws applying to all citizens, in particular the Criminal Code, PSP staff are subject to disciplinary rules of their own.

Republican National Guard

27. The Republican National Guard (GNR) is a paramilitary police force which is under the dual control of the Ministry of Internal Administration and the Ministry of Defence. It was set up by a decree of 3 May 1911 to guarantee public order and peace and provide public and private protection, identify and arrest offenders. It does its work in rural areas (which make up some 95% of the country). The GNR has a central organisation with local units (territorial brigades, groups and sections). Two specialist units are attached to the GNR:

- The Traffic Police, created by a Decree-Law of 12 June 1970 to ensure compliance throughout the country with statutes and regulations governing inland transport and road traffic.
- The Revenue Police, incorporated into the GNR in 1993, is responsible for maritime border surveillance and has the task of identifying and arresting offenders who commit tax and customs offences.

28. GNR staff (some 26 000 officers) have a three-tier structure: officers, who come from the army; non-commissioned officers, selected from the army or recruited among civilians after a

[6] Law Nº. 21/2000, amended by the decree-law N°305/2002 established after the visit a coordination council in charge of, i.a. the definition of guidance to ensure communication between the various criminal police bodies, guaranteeing that criminal police bodies provide adequate support to the judicial authorities, and designing working and managerial methods aimed at a better coordination and greater efficiency.

competitive examination or a nine-month training course; corporals and privates, who are recruited from the army and attend a training course at the Guard's college.

29. The GNR Code of Conduct specifies in Article 10 that every member of the Guard must "vigorously confront and combat corruption".

Aliens and Frontiers Department

30. The Aliens and Frontiers Department (SEF) is a civil corps set up in 1986 and coming under the Ministry of Internal Administration. It is responsible for control of borders, together with residence and employment of foreigners on national territory, and for investigating offences facilitating illegal immigration as well as other related offences. Measures such as staff rotation, simplification of procedures, shared decision-making and the sharing of data capture have been introduced.

Judicial Police

31. The Judicial Police is a criminal investigation department, a branch of the administration of justice, with a line organisation under the control of the Minister of Justice and supervised in accordance with the law. It usually receives its orders from the Public Prosecutor's Office. By law, the Judicial Police has nationwide jurisdiction for the investigation of certain offences, including those related to organised crime and those of bribery, embezzlement of public funds, acquisition of illegal interests in public property, and maladministration of a public-sector economic unit. The criminal investigation departments of the PSP and GNR must immediately pass on to it any facts of which they are aware concerning preparation and perpetration of these offences, and until it takes action they can take only contingency or emergency measures to prevent completion of the offence and to secure evidence.

32. The Judicial Police has three central operational directorates (Central Directorate for Combating Organised Crime, Central Directorate for Combating Drugs Trafficking, and Central Directorate for Combating Corruption, Fraud, and Economic and Financial Crime - DCICCEF), four regional divisions (Lisbon, Porto, Coimbra and Faro) and eight local departments. Decentralised services can work on economic and financial cases with the approval of the central directorate. To analyse documents seized, the Judicial Police has a Department of Financial and Accounting Expertise, responsible for providing a wide range of expert opinion for investigations. Generally speaking, there is a decentralisation rule whereby an investigation takes place in the place where the offence was committed. A secure database has been set up for the Judicial Police. It does not yet cover all districts, but it is ultimately planned to interconnect with other police forces. Strategic research is carried out centrally, but the GET was unable to ascertain its scope or extent. Various agreements and practices also exist for exchange of information between the Judicial Police and the General Inspectorate for Economic Activities, the General Finance Inspectorate, Customs and the tax authorities. It was suggested that access to tax information was not always easy[7].

33. Set up in the 1990s, the Central Directorate for Combating Corruption, Fraud, and Economic and Financial Crime (DCICCEF) is responsible, amongst other things, for prevention, criminal investigation, and assistance to the judicial authorities for the following offences:

[7] Law No. 93/2003 of 30 April 2003 governs the conditions of real-time access to information which is relevant for the uncovering of tax offences by the judicial police and tax authorities (but not the Public Prosecution).

- Bribery, embezzlement of public funds, acquisition of illegal interests in public property, and influence-peddling;
- Maladministration of a co-operative or public-sector economic unit;
- Fraud in obtaining subsidies or grants, illegal use thereof, and fraud in obtaining loans with subsidised interest-rates;
- Organised breaches of economic and financial law using information technology;
- Transnational and international economic and financial offences;
- Counterfeiting currency, bills of exchange, revenue stamps, postage stamps and other like assets, and transferring them;
- Offences relating to the real-estate market;
- Fraudulent bankruptcy;
- Offences closely connected to the offences specified above.

34. The DCICCEF, like the other central directorates, is headed by a deputy national director and comprises a number of units, including the Central Corruption Investigation Unit (SCIAC), which currently has one criminal investigation co-ordinator, four chief inspectors and four squads totalling twenty-four inspectors. In the regional departments it has smaller units. It is the SCIAC investigates the corruption offences listed above. It has an officer/car ratio of 2:1. As for its technical support equipment – for wiretapping, video sound recording, mobile and static surveillance – the Unit has technology of some quality, which is allocated entirely to the DCICCEF, i.e. it is used by all the central directorate's units according to requirements and the priorities set out by the directorate.

35. The Judicial Police is under the responsibility of a national director appointed for three years by the Minister of Justice. He is assisted by ten deputy national directors (also appointed for three years) who run the directorates. The latter are judges or prosecutors on secondment, or police officers. Although they are under the authority of the director of the Judicial Police, they enjoy a certain operational independence from him. At the time of the GET visit a parliamentary commission of inquiry was investigating the dismissal of one deputy director and the resignation of the other, on 26 and 27 August 2002 respectively[8]. This occurred in the context of a preliminary investigation by the Judicial Police into the alleged disappearance of 150 identity papers from the Foreign Ministry, and differences of opinion on certain strategic issues[9]. In the Portuguese authorities' view, the opinion of the Deputy Director of the Judicial Police is largely unfounded.

36. Candidates for a career in criminal investigation begin at the rank of trainee inspector and consist of university graduates aged under 30 who have passed a competitive examination and attended training at the Judicial Police and Forensic Science Institute. This initial training includes modules on approaches to criminal investigation in the field of economic and financial crime, especially corruption and serious indictable offences committed by public officials. Judicial Police officers also receive general training enabling them to advance in their criminal investigation careers as well as special training in the field of economic crime.

[8] The record of the hearings of the deputy directors, the Minister of Justice and the Director of the Judicial Police is available (in Portuguese) on the Assembly of the Republic website:
http://www.parlamento.pt/comissoes/inquerito/ci_pjudiciaria/index.html

[9] According to one of the deputy directors, there was a need for strategic studies on organised crime and a general discussion of wiretapping practice and of control of hours in excess of 17½ hours of continuous duty, etc.

Control mechanisms

37. In a decision dated 28 February 2002, the Portuguese Council of Ministers approved the Code of Conduct for the Police Service, which applies to all members of the police. It also adopted a common strategy for all the police forces, intended to prevent favouritism.

38. Within the **PSP** the headquarters has a Professional Ethics and Discipline Office, and there are various such units within local commands, through which disciplinary action is taken against officers who have been in breach of their official duties. The PSP keeps a tally of disciplinary proceedings instituted: for the 1997-2000 period there were 22 proceedings for corruption (within the legal meaning of the term in Portugal), 10 for "personal favouritism", 2 for subornation and 20 for embezzlement of public funds. The **GNR** has a general inspectorate operating within the central command, together with various judicatory and discipline units among local commands. During the 1999-2002 period 46 proceedings were brought for acts of corruption, of which 21 have been wound up (6 convictions) and the 25 others are awaiting judgment. The **SEF** has an inspection office whose task is to carry out ordinary and special inspections within the department, undertake audits, searches and investigations, and prepare disciplinary proceedings. Without prejudicing the powers of this inspection office, the Act laying down the principles governing the organisation and structure of the SEF also establishes the obligation to notify the proper authorities as soon as possible of any facts indicating the commission of a serious indictable offence (including corruption) which they discover in the course of their supervisory and investigation work. For the 1999-2002 period some 360 proceedings were initiated, including two for corruption (one in 2001 and one in 2002). The **Judicial Police** has a disciplinary department, but the latter does not yet have powers of inspection. It is planned to give this unit such powers in the very near future. At the moment, the Judicial Police is subject to supervision and inspection by the General Inspectorate of Judicial Departments (see below).[10]

39. The PSP and GNR are also subject to general supervision by the **General Inspectorate of Internal Administration (IGAI)**. This external supervisory department for the police comes under the Ministry of Internal Administration and is headed by a member of the national legal service. The IGAI was set up by a decree-law in 1995 and began work in 1996. It carries out inspection, supervision, auditing and preparation of disciplinary proceedings. IGAI intervention is selective inasmuch as it is restricted to particularly serious and significant cases from the social point of view, especially those where police action has resulted in violation of fundamental civil rights. However, a large part of IGAI work consists in carrying out financial audits in departments as well as preparing disciplinary proceedings for excessive loss of asset value. As far as corruption is concerned the IGAI possesses experienced inspectors in this field, especially those coming from criminal investigation of economic and financial crime (2), the General Finance Inspectorate (2) and the national legal service (5). IGAI supervision of the PSP and the GNR is two-pronged:

- Direct supervision: The IGAI exercises direct supervision over the liability of PSP and GNR officers to disciplinary action for a breach of their official duty, especially for bribery. Article 8 of the PSP Disciplinary Rules and Article 13 of the GNR Disciplinary Rules list various types of conduct that violate the duty to behave with integrity, it being understood that some of them may simultaneously belong to the category of bribery offences, acquisition of illegal interests in public property, or favouritism. Thus whenever an officer commits any act of this sort he will be subject to disciplinary proceedings which (if he is proved responsible) will result in the application of a disciplinary sanction ranging from a simple reprimand to resignation. It should

[10] Since May 2003, the GIJD has been conducting a large scale inspection of the Judicial Police

be noted that the Act laying down the principles governing the organisation and structure of the GNR provides (Section 94) for the statutory measure of "exemption from service" for service personnel whose conduct departs from the moral, ethical and vocational standards exacted of them; this measure is frequently enforced, using the appropriate procedure, for officers who have committed acts of corruption. The statistics supplied to the GET show that the IGAI dealt with 73 disciplinary proceedings between 2000 and 2002 (17 resulted in sanctions, 24 were dropped, and 32 are pending), none for corruption.

- Indirect supervision: The IGAI also exercises continuous supervision over disciplinary action in PSP and GNR internal departments and liases with the judicial authorities whenever prosecutions are brought for the same acts which gave rise to disciplinary proceedings. Thus, whenever its staff apprise it of corrupt practices, the IGAI institutes disciplinary proceedings which may either be prepared and conducted directly by one of its own inspectors or be prepared by internal police departments with the IGAI then monitoring the proceedings and being kept informed of their progress and outcome.

### b2. The courts, judges hearing cases and investigating judges

40. The Portuguese courts have the following structure:

- Upper tier: Supreme Court of Justice, Constitutional Court, Supreme Administrative Court, Supreme Military Court, Court of Auditors
- Middle tier (four regions): the Courts of Appeal and Central Administrative Court
- Lower tier: Courts of first instance

41. In Portugal special courts have a negative connotation inherited from the past. There are no special chambers, and judges sit sometimes in the civil courts and sometimes in the criminal. It was further pointed out that specialisation might also create some management problems for small courts. Lisbon, Porto, Faro, Evora and Coimbra each have a criminal investigation court formed of investigating judges responsible for monitoring the legality of proceedings in cases requiring co-ordination. That of Lisbon has 11 judges, of whom four are permanently on duty (24 hours a day / 7 days a week) outside the normal working hours of the tribunals; its premises are in the same building as the prosecution service. The military courts were – theoretically – abolished following the constitutional reform of 1997; it had, however, been pointed out that the subsequent changes of government, and sundry logistical problems, had delayed this abolition.

42. Members of the national legal service are divided into investigating judges, judges hearing cases, and public prosecutors. Members of the various courts have independence, which is safeguarded by under the Portuguese Constitution. Their security of office, impartiality and non-liability is safeguarded by Law No. 21/85. Public prosecutors, however, have a special status (see below). Judges' careers are supervised by the High Council of the Bench.

43. The basic salary of a member of the national legal service is around €1500. Members of the national legal service are recruited by competitive examination (some 2000 candidates a year for 130 to 140 posts) and then trained for 32 months at the Centre for Legal Studies. The Centre also offers in-service training (18 to 20 seminars a year), as part of which it has, over the past few years, organised some relevant modules on corruption and economic crime. However, modules on organised crime seem to attract rather more interest. Promotion normally depends on merit and length of service; it takes no account of any specialisation or in-service training.

44. A General Inspectorate of Judicial Departments was set up in 2001 in connection with a reform aimed at improving the effectiveness of the judicial system in order to safeguard citizens' rights and safety. It has been given a supervisory function regarding the various departments of the Ministry of Justice (excepting the courts and members of the national legal service). To this end it conducts inspections, audits and investigations, considers complaints from the public, etc.

45. In various fields the Portuguese courts are experiencing considerable congestion, arising, it was suggested, from working methods that ought to be reviewed, questions of jurisdiction that ought to be settled beforehand, etc. Like other countries, Portugal is currently trying to develop non-judicial methods of settling disputes.

**b3. The Public Prosecutor's Office and public prosecutors**

46. The prosecution service is autonomous and organised hierarchically, with the Office of the Chief Public Prosecutor of the Republic at its head (himself appointed for a six-year term by the President of the Republic on a proposal from the government). He may only be revoked on a joint initiative by the Government and the President (which, in the light of the constitutional system, is highly unlikely). Once appointed, the Prosecutor General carries out his functions in total independence, without instructions or injunctions from any another authority. The prosecution service has a three-tier vertical structure (and four regions), with three types of public prosecutor representing the Public Prosecutor's Office and a total of 340 judicial circuits):

- For the tier comprising the Supreme Court, the Constitutional Court, the Supreme Administrative Court, the Supreme Military Court and the Court of Auditors: Office of the Chief Public Prosecutor, and Chief Public Prosecutor of the Republic. The Office of the Chief Public Prosecutor includes the central departments.
- For the tier comprising the four Appeal Court regions and the Central Administrative Court: Regional Offices of the Chief Public Prosecutor, represented by assistant chief public prosecutors;
- For the tier comprising the courts of first instance: Prosecutor's Offices in the principal towns of the judicial circuits, represented by public prosecutors and assistant public prosecutors (in circuit courts).

47. Since 1998 the four Appeal Court regions have had a Criminal Investigation and Prosecution Department (DIAP in Portuguese), which may itself contain specialist sections; this is the case in Lisbon, where there is a section for economic and financial cases. The DIAPs direct and (if necessary) co-ordinate investigations, and it is they who bring the charges.

48. In 1998 (1999 in practice) a Central Criminal Investigation and Prosecution Department (DCIAP) was established within the prosecution services; its jurisdiction applies to the entire national territory and it collaborates with the Central Criminal Investigation Court when a case involves various judicial districts. The DCIAP, headed by an assistant chief public prosecutor, currently comprises 6 public prosecutors (8 are provided for by statute). They will soon be backed up by judiciary officials and police officers. The department is responsible for investigation, co-ordination and prevention work:

- Investigation: The DCIAP intervenes if a case covers several regions or if a specific case is passed on by the Chief Public Prosecutor owing to its complexity (or for other reasons) in the following fields: terrorism, drugs trafficking, money laundering, bribery, embezzlement (misappropriation of public funds) and fraudulent conversion, fraudulent bankruptcy, fraud in

obtaining subsidies/grants/loans, organised or international breaches of economic and financial law, etc. (reflecting the powers of the DCICCEF within the Judicial Police). The DCIAP usually works with the investigating judge of the region concerned or else with the criminal investigation court if the case involves different regions.

- Co-ordination: The DCIAP studies and carries out the necessary types of co-ordination between the various departments.
- Prevention: This type of work began in May 2002 when general data was gathered from the 340 circuits concerning corruption cases then pending and not yet tried. Case files were analysed one by one and the data entered in a computer system (case analysis). This work should make it possible to issue alerts and amend legislation.

49. In 1997 the Office of the Chief Public Prosecutor also saw the establishment of a Technical Support Unit (NAT) responsible for providing support in the fields of economics, finance, banking, accounting, and securities markets; the Unit consists of 6 people, most of whom are senior officials from the General Finance Inspectorate. It is always possible – depending on requirements and the case in hand – to request that more such experts be made available.

50. The prosecution service is integrated, which means that a case can be given to a public prosecutor on the basis of his capabilities, etc. In practice, cases are shared "haphazardly" between public prosecutors, regardless of experience or workload. It is nevertheless possible to provide an additional prosecutor if a case is complex or if the appointed prosecutor already has a heavy workload. As far as corruption cases in the district of Lisbon are concerned (the most numerous), these are given to the DIAP's section specialised in this kind of case – as indicated earlier.

51. The current status of the Public Prosecutor's Office is the result of a process which has gradually sought to detach public prosecution from the influence of political power, with the autonomy of public prosecutors eventually being safeguarded by the Constitution in 1989 (Article 219 of the Constitution establishes that the Public Prosecutor's Office shall have autonomy and its own regulations by law). Thus, the Prosecutor General can receive no instructions from a member of government or from any other authority. Disqualification rules further prohibit prosecutors from any other public or private activities, including political ones (with the exception of unpaid teaching and unpaid legal research).

52. Despite the fact that the national legal service is a hierarchy, its members, defined as such by the Constitution, have the prerogative of stability in the execution of their duties: their appointment, assignment, transfer, suspension, promotion and retirement or resignation can take place only in the circumstances provided by law and through the High Council of the Public Prosecution Service. The latter consists of seven judges or prosecutors elected by their peers, five members elected by the Assembly of the Republic, two members appointed by the government and the four assistant chief public prosecutors who represent the Public Prosecutor's Office at the appeal courts. The Council is also assisted by inspectors. There are no bridges between the careers of public prosecutor and judge other than towards the end, when an assistant chief public prosecutor can become a Supreme Court judge.

53. Under Article 219 of the Portuguese Constitution, criminal proceedings come under the jurisdiction of the Public Prosecutor's Office and are guided by the principle of mandatory prosecution. However, the Portuguese authorities pointed out that that their prosecution system follows a liberal approach of the mandatory prosecution principle: for certain corruption-related offences and once enough circumstantial evidence has been collected that the person under

investigation has committed an unlawful act of corruption, it is possible for the Public Prosecutor's Office not to bring charges, pursuant to the rules on provisional stay of proceedings (CCP, Article 281) and on termination of proceedings with a discharge (CCP, Article 280), explained below:

- provisional stay of proceedings: Under Section 9 of Law No. 36/94 of 29 September, the Public Prosecutor's Office may, for an offence of active bribery and with the investigating judge's approval, provisionally suspend the proceedings for up to two years by imposing injunctions and rules of conduct on the person under investigation, if a number of conditions are all satisfied[11]: If, once the stay of proceedings has elapsed, the person under investigation has respected the injunctions and rules of conduct, the case will be dropped. If he has not, the Public Prosecutor's Office will prefer the indictment and the proceedings will continue (CCP, Article 282.3)
- termination with discharge: for a number of corruption offences, once the police investigation has been completed, the Public Prosecutor's Office may, with the investigating judge's approval and provided that the standard conditions for discharge have also been met, decide to drop the proceedings if the transaction has been reported/the offer renounced, the consideration returned, etc.[12]

54. Public prosecutors are held liable for performance of their duty and compliance with the directives, orders and instructions that they receive; to this end, prosecutors of lower rank are subordinate to prosecutors of higher rank. Article 79 of the Public Prosecution Service Regulations (Law No. 60/98) introduces a number of limitations: public prosecutors may insist on being given directives in writing and that the latter take this form automatically if they concern specific proceedings. They may also refuse any intervention by their superiors that offends against their legal conscience, although in the case of intervention by the Chief Public Prosecutor of the Republic, they can do so only on the grounds of unlawfulness. Finally, Article 79 does however provide that unjustified exercise of the right to refuse constitutes a disciplinary offence. Finally, the High Prosecutorial Council has exclusive competence in disciplinary and career matters related to prosecutors.

55. Cases may be transferred or removed from courts by the circuit prosecutor or Chief Public Prosecutor in order to pool investigations in a particular case or if a case is locally sensitive[13].

56. The prosecution service, like the courts, is allocated a heavy workload; in March 2001 the Lisbon DIAP, with its 58 members, had some 30 000 applications pending (according to the website of Portugal's Professional Association of Public Prosecutors).

### b4. Corruption investigations and specific relations between the police, the prosecution service and the investigating judge during pre-trial proceedings

57. Criminal proceedings entail three stages: two mandatory (police investigation and trial) and one optional (the judicial investigation).

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[11] 1) Agreement of the person under investigation; 2) The person under investigation has reported the offence or made a decisive contribution to discovery of the truth; 3) The injunctions and rules of conduct can be expected to meet the prevention requirements arising in that particular case adequately.

[12] See in Appendix 1 the wording of Article 374 (1) and (2) of the Criminal Code and Section 19 (1) and (2) of Law No. 34/87; similar provisions exist for corruption in sport: Section 2.3 of Decree-Law 390/91.

[13] This recently happened with a corruption case concerning a provincial governor who was a member of a political party. Discontinuance of the proceedings at local level created controversy in the media. The Chief Public Prosecutor took over the case and gave it to the Lisbon DCIAP, which amply confirmed the decision of the local prosecutor's office and only brought to light a case of tax evasion.

58. A corruption case file usually starts with a report from a private individual, a public official or a government department to the police authorities (automatically the Judicial Police) or direct to the public prosecutor. The Judicial Police may also take cognisance of unlawful practices on its own initiative. It thereupon informs the Public Prosecutor's Office (its specialist bodies), which opens a judicial investigation, delegating to the Judicial Police the authority to investigate the reported situation. The Judicial Police conducts the investigation by holding hearings, collecting all the evidence, and carrying out searches, wiretapping and even detentions, all under closest supervision by the investigating judge (acting as the guardian of fundamental freedom and liberties). It is the Judicial Police that decides on the technical resources, but the aims of the investigation are decided in common. Once the investigation has been completed, the Judicial Police draws up a final report enabling the Public Prosecutor's Office to decide whether or not to commit the case for trial. The Judicial Police works under the direct orders of the public prosecutor and must report to him.

59. Any person may sue for damages in criminal proceedings brought by the Public Prosecutor's Office for offences of corruption, embezzlement of public funds, acquisition of illegal interests in public property, and fraud in obtaining subsidies or grants, and illegal use thereof. These parties are entitled to:

- Apply for a judicial investigation – a stage handled by an investigating judge and which is intended to provide judicial evidence for the decision either to commit the case for trial or to take no further action;
- Participate in the police and judicial investigations by offering evidence and applying for steps in the proceedings;
- Appeal against court decisions affecting them, even if the Public Prosecutor's Office has not done so.

60. Secondly, if there has been no application for a judicial investigation, the party claiming damages or the complainant may also, under Article 278 of the Code of Criminal Procedure (CCP), apply within thirty days to the immediate superior of the public prosecutor who ordered discontinuance of the proceedings to intervene in order to have the indictment preferred or the investigations continued.

61. Special investigative methods are regulated partly by the Criminal Procedure Code and partly by ordinary laws. For corruption investigations the following special investigative methods may be used provided that certain conditions are met: interception of telecommunications (message traffic, telephone calls, and communications other than by telephone (e-mail, etc.)), seizure of correspondence, voice and image recording, undercover operations, controlled deliveries (only within the scope of international co-operation) and verification of bank accounts. Apart from controlled deliveries (authorised by the public prosecutor), all the above-mentioned investigation techniques must be authorised by the investigating judge and used only if the investigation concerns certain categories of offence (relating to trafficking in drugs, arms or explosives, and smuggling) as well as offences carrying a maximum prison sentence of over three years (including some corruption offences). Wiretapping is considered an important tool of investigation for corruption offences and economic and financial crime. Until mid 2002, the requirement in Article 188.1 (stating that the investigating judge must be informed immediately of recordings and the content of communications) raised certain problems of interpretation as to the concept of immediacy. Since, it is admitted that a reasonable period of time is needed for the transcription of the recorded information before submission to the judge.

62. As regards arrangements for collaboration with the courts, and as we have seen above, if a person under investigation has reported the offence and/or made a decisive contribution to discovery of the truth, the rules for provisional stay of proceedings or termination with discharge may be applied. At the trial stage, collaboration of the accused in discovery of the truth may also be taken into account by the court in determining the length and nature of the sentence. Lastly, for the offences of active and passive bribery specified in Sections 16, 17 and 18 of Law No. 34/87 (Political Office-holders Liability Act), it is provided that the sentence may be specially mitigated if the accused has lent concrete assistance in the gathering of decisive evidence for the purpose of identifying or catching other persons responsible.

63. Law 93/99 governs the use of witness protection measures (concealment of true identity, use of teleconferencing, physical protection, comprehensive programme with change of identity and protection of family, etc.). It was pointed out that this law still required certain implementing measures and that the most extensive measures (change of identity after the trial) will apply only to cases concerning offences carrying prison sentences of over eight years (thus excluding most economic and financial crime).

64. On various occasions the GET came across reservations concerning the current criminal investigation procedure, especially when it deals with "white collar" criminals well defended by procedure-skilled barristers: possibilities of challenging every decision of the investigating judge related to the individual steps of the investigation, complexity of procedure and an extremely formal application of mechanisms, etc. More specifically, although most of the people interviewed favoured the employment of certain investigative techniques (including for corruption cases), their use and exploitation seem to be sometimes rendered difficult by certain rules of a procedural nature. It also appears that, because of their workload, public prosecutors tend to delegate part of their work to the Judicial Police. Finally, the GET was told that the (non-judicial) police is not always informed of the follow-up given to its investigations (bringing of charges, sentencing), and there are no institutional channels for feedback.

### b5. Other bodies, institutions and mechanisms

*i) General mechanisms*

65. Under Article 386 of the Criminal Code every public official is required to report any grounded suspicion of offence (including corruption) which he/she discovers in the course of his/her duties (article 242 of the Penal Procedure Code providing for the modalities of reporting offences). In practice, however, in the police representatives' opinion, this mechanism is not always effective. There are no special telephone lines or other channels for members of the public to report corruption offences. Every government department has a complaints book, but anonymous information reported via this means is not and cannot be taken into consideration by the authorities.

66. The financing of political parties and electoral campaigns is regulated by a law of 1998 (twice amended since), which sets limits on private donations and lays down the rules for public funding.

67. Public procurement is regulated by various general and sectoral provisions dating from 1999 and 2001 and based on EU standards. Transactions exceeding €124 699.47 must be put out to open tender or a tender limited to certain supplier profiles if the schedules are particularly technical. The steps in the tendering procedure are subject to pre- and concurrent auditing by the Court of Auditors as well as ex post auditing by the General Finance Inspectorate. Other bodies, such as

the General Directorate of National Buildings and Monuments or the Real-Estate Market Institute are also involved in this auditing. The Court of Auditors has had occasion to uncover numerous types of irregularity (direct award in defiance of the law, award of contracts at rates considerably higher than those laid down in the call for tenders or absence of initial rate, incorrect publication of calls for tenders, unjustified reductions in the performance bond, failure to comply with spending authority rules, etc.).

68. Laws 9/90, 12/96 and 3/2001 introduced a system of disqualifications and impediments for holders of political office and high public office including parliamentarians, together with the main directors of public entities; under Decree-Law 196/93 this system was extended to persons appointed by holders of political office and high public office. Laws 64/93 and 28/95 provide for rules applicable after "members of sovereign bodies" and political office-holders have left office, as well as a register of interests of parliamentarians and members of the government, kept by Parliament and available to the public. Such registers are optional for the municipalities. The public sector as a whole also has rules on disqualifications and impediments (Decree-Law 184/89), as do the staff and accountants of the Court of Auditors (Decree-Law 440/99) and the statutory auditors. Finally, in addition to various sectoral codes of conduct (police, statutory auditors, etc.), a "Charter of Ethics for the Public Service" was adopted in 1993, replaced in 1997 by the "Code of Ethics: Ten Ethical Principles of Public Administration" (which seems to have been the result of negotiation).

*ii) Internal control bodies: the General Finance Inspectorate (IGF)*

69. Most government departments have internal inspectorates with management-control functions which verify the application of public funds and review the legality of departmental work[14]. They form a complex and co-ordinated system of bodies – some of which report to the government and others of which do not – that Portugal calls its national and community control system. Its purpose is to review the legality of general government activity and provide financial control over direct and indirect government as well as all public and private entities whose budgets are partially covered by central government. This system, known as the "Internal Control System" is co-ordinated at the top by the Court of Auditors. The Portuguese authorities emphasised that the various inspectorates helped to detect and prevent corruption and that they were responsible for passing cases on to the judicial authorities. Various laws stipulate that the public officials in the various departments are required to provide the inspectors with all the information the latter need to perform their duties. Refusal to collaborate properly and opposition to the inspectors' work may, depending on the circumstances, make the offender liable to financial, disciplinary, civil and criminal action as provided for by law. As for the inspectors, it is their duty to inform the competent bodies of the facts that they discover in the course of their work if these facts are likely to be of importance for the taking of disciplinary, financial, civil, criminal or administrative action. Furthermore, when the inspectors learn of the existence of an offence, they must also inform their superiors.

70. As for the General Finance Inspectorate (IGF) in particular, which has 576 regular staff of which 331 are inspectors (actually 242 staff altogether at the time of the visit), it provides a cross-

[14] General Finance Inspectorate; General Inspectorate of the Ministry of Labour and Solidarity; General Inspectorate of Regional Administration; General Inspectorate of Public Administration; Inspectorate of the European Social Fund Department; General Inspectorate of Judicial Departments; General Inspectorate of Internal Administration; General Inspectorate of Health; Diplomatic and Consular Inspectorate; General Inspectorate for Public Works, Transport and Communications; General Inspectorate of National Defence; General Inspectorate of the Public Security Police; Board of Assessors and Inspectors of the Republican National Guard.

checking audit – of the legality, rationality and effectiveness – of public expenditure, local authorities, tax revenue collection and public enterprises. It also audits Community financing and is able to use the investigative methods of the tax authorities (hearings, documentary and on-the-spot checks, sealing of premises, etc.). The IGF has autonomy for its work. It generally acts[15] on the basis of:

- An activity plan
- An order from the Minister
- A request from another authority or government department

71. If it suspects that an offence has been committed, the IGF informs the prosecution service, which can then ask it for targeted assistance. The IGF co-ordinates its work with the Court of Auditors, given the similarity of their powers, and with the Tax Inspectorate. It also sometimes intervenes in joint administrative investigation teams. In the framework of the hundreds of cases handled, it has dealt with six corruption cases in the course of its work from 1999 to 2002 (one following a request for collaboration from the prosecution service, and the five others being passed on to it).

*iii) Court of Auditors (Tribunal de Contas)*

72. The Portuguese Court of Auditors is distinguished by a broad sphere of competence: financial auditing and auditing of public finances both centrally and locally, pre-auditing of public contracts, and disciplinary powers in financial matters (for corporate bodies governed by public law). These functions are reflected by specialised divisions. The Court of Auditors has two regional divisions (the Azores and Madeira) and employs a total of 300 assistant auditors and 19 judges (from the Supreme Court and entitled to the same safeguards). It is statutorily independent of the Government and Parliament, and its president is appointed by the President of the Republic.

73. Audits give rise to recommendations to the entities concerned and general recommendations in the published annual report. A division of the prosecution service is attached to the Court of Auditors and initiates proceedings which may lead to fines (e.g. for late delivery of documents) or return of funds – in the case of improper subsidies – sometimes coupled with criminal penalties (1 or 2 annually).

74. The Court of Auditors co-operates with other departments (such as the IGF) for the purposes of exchanging information, co-ordinating audits, drawing up common methodologies, etc. Its role and working methods are based on the recommendations of the International Organization of Supreme Audit Institutions (INTOSAI)[16].

*iv) Ombudsman (Provedor de Justiça)*

75. The Provedor de Justiça (Ombudsman), whose statutes date from 1977, is appointed by Parliament and is independent. His role is similar to that of ombudsmen in other countries: external scrutiny of government – which in Portugal also covers public enterprises, independent administrative authorities and relations between individuals. The Ombudsman receives between 5500 and 6500 complaints annually, submitted very informally (visit in person, e-mail, etc.). A large proportion of these complaints come from public-sector staff (working conditions, social welfare) owing to the fact that, according to the Ombudsman, the system of government is badly

[15] It is not entirely clear to the GET whether the IGF can begin an investigation on its own initiative.

[16] Especially those of the 16th Congress in Uruguay (1998) on the role of SAIs in preventing and detecting fraud and corruption.

organised and badly run, with many and complex rules. Another important source of complaints is the slowness of the courts: but the Ombudsman can only ask how a case stands[17] (rather than the reasons for the delay), and it was pointed out that the judiciary was a very uncommunicative body. A third important source of complaints is from local residents who have been refused a licence, planning permission or a permit, or who complain of nuisance. It was stated that in some 60% of cases, positive action was taken following intervention by the Ombudsman.

76. The Ombudsman expressed a wish to have access to more information on the reasons for the delays of court cases. In addition, due to the high number of complaints, priority is currently given to individual plaintiffs (the human resources available being insufficient to undertake general and cross-cutting studies, for example on modernisation of government –described as too inflexible).

*v) Civil society and the media*

77. The GET met representatives from Civitas (an NGO) and the Portuguese Justice Monitoring Unit (the OPJP, attached to the Social Studies Centre of Coimbra University), as well as a journalist. The media in Portugal are diversified, and the GET was told that despite a trend towards the formation of large groups, this was not reflected in excessive pressure from the magnates. The problem is different at local level, where the media are more dependent on advertisers and public notices, since the national papers are not really interested in local matters.

78. Judging by surveys and press comment, corruption is still perceived to be rife, although in actual fact relatively few court proceedings are instituted. The media report a lot of crime cases (and the authorities' successes), which may explain the raised awareness. OPJP research shows that many court proceedings fail and that working methods as a whole should be reviewed (pro-activity, investigative methods, greater expertise, etc.) in order to complement the recent (positive) changes in the police and prosecution service. It would appear that the prevailing work ethos still opposes interdepartmental mechanisms and that the judiciary (perceived as a rather closed world) has fairly strong reservations with regard to reforms. Moreover, case studies produced by the OPJP have demonstrated various shortcomings in court proceedings[18] although there is a lobby of judges generally opposed to change.

## c. Immunities

79. The general rule in the existing Portuguese legal and constitutional systems is that holders of political office and public office are liable to criminal proceedings for acts and omissions committed in the execution of their duties (Article 117.1 of the Constitution), the penalties for and effects of which may include dismissal from office and loss of their mandate. Portuguese law nevertheless provides for immunity of the holders of certain political offices and of certain high public offices in the government hierarchy. It draws a distinction between non-liability (for votes and words delivered in Parliament) and parliamentary immunity (preventing prosecution for offences not connected with public functions). The latter type of immunity applies to (corruption) offences only in certain circumstances, depending on the severity of the possible penalty. There is also a specific procedural regime. Inviolability is enjoyed by the President of the Republic, MPs, members of Government and of the Council of State, the Provedor de Justiça, and judges of the

[17] Under his statutes, he must go through the High Council of the Bench, but in practice he contacts the courts directly.

[18] All procedural steps can be challenged by the investigating judge; numerous appeals (without suspensive effect) to the Constitutional Court; allocation of cases to judges by drawing lots; extensive preliminary discussions (included in the limitation period) concerning questions of court jurisdiction, etc.

Constitutional Court. Inviolability and the specific procedural regime cease to apply at the end of a term of office.

Modalities

80. For holders of the offices of President of the Republic, member of the Assembly of the Republic and member of the Portuguese national government, withdrawal of immunity is a matter for the Assembly of the Republic. Authorisation of the withdrawal is mandatory (other than in cases of *flagrante delicto* and if the offence carries a maximum prison sentence of over 3 years) in order to:

- examine them as deponents or persons under investigation
- detain or imprison them,
- allow the criminal proceedings to continue after committal for trial.

81. Withdrawal of immunity from the President of the Republic must be on a proposal from one-fifth of the members of the Assembly of the Republic and be approved, after discussion, by a majority of two-thirds of the members entitled to vote (Constitution, Article 130.2). Decisions to withdraw immunity from members of the Assembly of the Republic are taken in plenary session and are preceded by a hearing of the member concerned and of the Parliamentary Committee on Ethics[19]. As regards withdrawal of immunity from a member of the national government, the decision to suspend this member, in order that the criminal proceedings may continue, is taken by secret ballot with an absolute majority of the members of the Assembly of the Republic present and is preceded by an opinion from a committee set up specially for the purpose. The immunity withdrawal rules for members of the regional assemblies of the Azores and Madeira are identical in substance to those for members of the Assembly of the Republic. The same parallel can be drawn between members of the regional government and members of the national government.

82. . Members of the Council of State cannot be detained or imprisoned without the Council's authorisation, other than for a case of *flagrante delicto* punishable by a heavy sentence. No criminal proceedings can be brought against a member of the Council of State without a decision by the Council, except in the case of a serious indictable offence punishable by a heavy sentence. Furthermore, the Ombudsman, who is a member of the Council of State, cannot be detained or imprisoned without authorisation from the Assembly of the Republic, other than for a case of *flagrante delicto* punishable by a heavy sentence. If criminal proceedings have been instituted against the Ombudsman and he has been finally charged, the Assembly of the Republic must decide whether or not he should be suspended in order for the proceedings to continue, other than for a serious indictable offence punishable by a heavy sentence. If criminal proceedings are instituted against a Constitutional Court judge who is accused of a serious indictable offence committed in the execution of his duties, the subsequent course of the proceedings will depend on a decision by the Assembly of the Republic.

83. Moreover, judges and prosecutors cannot be imprisoned or detained prior to an order appointing the date of the trial at which they may answer the charges against them, except in cases of *flagrante delicto* for a serious indictable offence punishable by a prison sentence of over three years.

[19] Information provided after the visit, at the GET's request, shows that for the period from November 1999 to November 2002 (eighth and ninth legislatures) the total number of applications for withdrawal of immunity from members of the Assembly was 53, of which 36 were authorised by the Assembly.

84. Holders of political office, together with judges and prosecutors, are subject to a special procedural regime enabling them to be prosecuted or tried according to a procedure constituting an exception to general law (aimed at strengthening the protection of the general interest) : the special rules of procedure set out in Law No. 34/87 of 16 July 1987, including no jury, separate trial, and freedom to amend the witness . Derogatory regulations are also applicable concerning the court with jurisdiction for the police investigation, judicial investigation and trial, and concerning the manner (in writing) and place (their homes or the headquarters/seats of their departments) of their examination. For offences committed in the execution of their duties and under their responsibility, the President of the Republic and the President of the Assembly of the Republic answer to a plenary sitting of the Supreme Court of Justice (Constitution, Articles 33.1 and 34.2). The Prime Minister answers to a plenary sitting of the Lisbon Court of Appeal, with the right of appeal to the Supreme Court of Justice (Constitution, Article 35.3). The court with jurisdiction for the police investigation, judicial investigation and trial of judges and prosecutors for a criminal offence is the court in the category immediately above that of the judge or prosecutor, although for judges and public prosecutors of the Supreme Court of Justice, this will be the same court.

85. Under the 1961 Vienna Convention, to which Portugal is a party, a diplomatic agent of a foreign State enjoys immunity from the criminal jurisdiction of the receiving State, including for corruption offences, and cannot be detained, questioned or even tried. However, he may be declared *persona non grata* and required to leave Portuguese territory, or the receiving State may be asked to withdraw immunity from its diplomatic agent in view of the offence committed. There is so far no record of any applications for withdrawal of immunity from jurisdiction or of agents having been declared *persona non grata* for serious corruption offences. In the case of acts of corruption committed by Portuguese diplomats in the States where they perform their duties, they are liable, under criminal law, to criminal proceedings in Portugal.

86. In general, officials and other staff of the State and of other public bodies are responsible in civil, criminal and disciplinary proceedings for their acts and omissions when performing their duties, and no action or proceedings shall be dependent, at any stage, on prior approval from a superior authority (Constitution, Article 271). Exceptions to this responsibility principle are justified by the object of safeguarding independence of the office-holders in performing the duties assigned to them: judges with regard to their decisions, and parliamentarians for the votes and opinions delivered in the execution of their duties.

87. The GET was informed of the setting-up, within the Assembly of the Republic, of a Committee for the Reform of the Political System, whose task is to study methods of modernising the political system, including the current status of holders of political office and high public office.

## III. ANALYSIS

### a. General anti-corruption policy

88. The GET was favourably impressed by Portugal's efforts to modernise its approach to complex offences, including corruption and its various forms.

89. The GET welcomed the effort made – in particular by the judicial authorities and the Ministry of Justice (with the assistance of research bodies) – to promote innovative approaches such as case and file analysis in order to understand patterns of crime and to make proposals for improving the work of the courts. These innovative approaches are complemented by the regular

efforts to compile comprehensive empirical data (statistics) enabling the authorities to have an overview of the trend in corruption cases. Available data show that the number of convictions for corruption offences is quite significant. These were complemented by proceedings ending in disciplinary (administrative) sanctions. Furthermore, as some of the non-governmental representatives emphasised, many criminal cases brought to light by the authorities were reported by the media.

90. On the other hand, there is no strategic framework for permanent co-ordination in the corruption field. The overall approach is built on laws that are the result of wide consultation conducted by the criminal policy unit of the Ministry of Justice.

91. The GET further noted that although local government and the building and construction industry were high-risk sectors as in many countries little information or analysis was made available during the visit on these sectors, other than the information furnished by the Court of Auditors, which probably had the most comprehensive view.

92. On the whole the GET noted that the emphasis was mainly on "petty corruption". During the visit, several interlocutors confirmed that fighting street corruption was a priority (reflected in current investigations, especially those relating to the Traffic Police). Others emphasised that petty corruption was present in various areas of government and stressed the need to improve measures of prevention. It also seems that more complex forms of corruption – especially those connected with gangs – are still not properly recognised. Studies by the Legal Policy and Planning Office of the Ministry of Justice – in association with the Justice Monitoring Unit of the University of Coimbra – and reports from the Court of Auditors and a few other non-judicial institutions would thus seem to have been more conducive to an understanding and grasp of the phenomenon of corruption than the judicial authorities. Various sector-based systems apparently ensure proper co-operation and information exchange between certain institutions on the basis of partnerships and written agreements, for example. In the GET's opinion, this co-operation ought to be extended and more general advantage be taken of the various sources of expertise available, in particular those of the various supervisory bodies involved in the national "Internal Control System".

93. The GET also welcomed the availability of numerous statistics, despite the fact that the computerisation of the courts and prosecution services was still incomplete at the time of the visit.

94. The GET considered that there were some solid working foundations which ought to be exploited fully and more systematically with the help of the various players concerned. To this end it would be desirable to encourage an ethos of co-operation, especially between the police and other areas of government, in order to promote a dynamic, multidisciplinary and less legalistic approach to corruption within the framework of a comprehensive policy. This would also allow feedback on the results of cases.

95. In view of the above considerations, **the GET therefore recommended establishing a general review system (regular interdepartmental meetings, etc.) for the purpose of conducting research and developing a comprehensive strategy to combat complex forms of crime, including corruption. Technical authorities, such as the Court of Auditors or the IGF, might usefully be involved.**

## b. Institutions, bodies and services responsible for preventing, investigating, prosecuting and judging corruption offences

### b1. Police, Public Prosecutor's Office and courts

Police

96. From the attention paid to supervision of certain police authorities, it has emerged that the police is – or was – a body heavily affected by corruption. The GNR and PSP for their part are subject to both internal control and duplicate control by the IGAI, which devotes the greater part of its attention to them. The disciplinary statistics supplied, together with various other information, seem to confirm that this administrative investment was necessary and that control – at least ex post facto – has been effective. Moreover, at the time when the GET was visiting Portugal, a widespread practice of extortion/blackmailing (with the threat of fines) by the Traffic Police had just been uncovered (involving several dozen officers). The GET welcomed the fact that the Portuguese authorities were paying so much attention to this form of petty corruption, inasmuch as police officers were the main representatives of government with whom the public was in daily contact. Public confidence and the perception of corruption were thus bound up with the integrity of the police. On the other hand, the GET noted that members of the Judicial Police – although considerably fewer in number than their uniformed counterparts – were not subject to such control, since there were sometimes substantial opportunities for "gain" in the work of the Judicial Police, which came into contact with the most profitable criminal activities, including organised crime. At the time of the GET's visit the Judicial Police disciplinary department had no powers of inspection and for the time being it is for the General Inspectorate of Judicial Services (set up in 2001) to carry out inspections. Plans do exist to remedy this shortcoming. **The GET therefore recommended giving powers of inspection to the disciplinary department of the Judicial Police and introducing mechanisms to monitor the integrity of officers working in certain fields (organised crime, etc.).**

97. The GET noted that the Judicial Police (and more specifically the DCICCEF), because of its limited jurisdiction, had been able to develop a certain specialisation in corruption investigations. It also made use of non-police experts employed by the police. The GET welcomed this. This corruption expertise should not be thwarted by a shortage of staff and material resources (especially IT).

98. Furthermore, the GET wondered about the management of four such large police forces and their level of co-operation. The Judicial Police has had sole authority to deal with certain cases – including corruption cases – but for this it depends a great deal on cases reported by the other police forces, which have countrywide networks and therefore privileged access to information. Database interconnection, as currently planned, should thus reduce the risk of losing information.

99. In view of the above considerations, **the GET recommended completing interconnection of the various police databases and examining the specific characteristics of Judicial Police work in order to adjust working methods accordingly.**

100. **The GET also recommended to enhance the human, material and other means necessary for the police to carry out, to the full, their functions in the fight against corruption.**

Public prosecutors and criminal investigation

101. The GET welcomed Portugal's efforts to provide its prosecuting authorities with specialisation and the necessary expertise to handle the most complex offences. This creates a continuous chain of expertise from the Judicial Police to the prosecution services. The work done by the Central Criminal Investigation and Prosecution Department (DCIAP) in terms of investigation and prevention, even if still at an early stage, is also to be welcomed. Combined with the research being carried out by the Justice Monitoring Unit of the University of Coimbra, it should enable Portugal in the near future to have a powerful tool for analysing and identifying high-risk sectors and cases. It also testifies to a change in working methods through the development of pro-active approaches. However, it is a pity that, for certain offences, DCIAP jurisdiction seems to rest on a narrow interpretation of the concept of organised crime, which means that its expertise is not available for wide-ranging cases in which associated criminals or crime rings are implicated without necessarily forming part of an organised structure.

102. Criminal proceedings remain a field in which reforms are politically sensitive, as the GET was told. The Portuguese authorities' specifically wish to maintain a high level of protection for personal freedoms. This said, the GET noted that criminal proceedings were complex, suffered from a high degree of formality and were ill-adapted to dealing with complex offences, including corruption offences. Some of the people the GET met pointed out that despite the number of cases recorded, relatively few came to trial. It was indicated that over the past few years numerous actions had been brought against ministers, trade unionists, mayors, contractors, etc. Many of the cases had to be dropped because of the time bar. One of the problems with white-collar crime is that some lawyers exploit the current system which provides opportunities for challenging every individual decision of the investigating judge during the investigation phase, as well as the filing of appeals before the Constitutional Court (without interrupting the running of statutory limitation).

103. The GET also received conflicting assessments of collaboration between the various police authorities and between the police and public prosecutors. However, the Judicial Police would seem to be an exception, perhaps because, under its statutes, it is headed by members of the judiciary.

104. In the light of the above considerations, **the GET recommended reviewing the investigation procedure for serious offences, including corruption offences, and:**

- **examining the best possible way of remedying the problems associated with the possibility of challenging every individual decision of the investigating judge during the investigation phase,**
- **reconsidering the non-suspensive nature, for purposes of statutory limitations, of appeals filed before the Constitutional Court, in order to avoid procedural abuses aimed at preventing sensitive cases from going to trial**

Judges

105. Despite congestion in the courts, it sometimes seems that a lot of time is wasted in discussions concerning questions of jurisdiction (up to a year – a period included in the limitation period). Furthermore, because of the absence of a chamber system the courts have no genuine specialisation in criminal law and even less in economic and financial crime. The GET was told that the establishment of such chambers might be rejected under the constitution and one

alternative might be to appoint deputy public prosecutors to assist judges already inundated by cases or for complex cases (although cases are allocated by drawing lots). Such an initiative would help to compensate for the current lack of any form of financial or accounting expertise available to judges.

106. In this connection, it appears from discussions on the spot that the training of judges in the field of economic and financial crime is particularly important, and it is fortunate that the National Centre for Legal Studies organises seminars on corruption, economic offences, investigative methods, etc. Various publications are also available. Given that the prosecution service already has a certain degree of expertise as well as technical support, the attendance of judges on these courses should be developed and encouraged in order to guarantee a continuous chain of technical expertise in the handling of cases. The access to posts within second instance courts and the Supreme Court is based on a competition and professional assessment mechanisms do exist; it was however indicated to the GET that the current career system is largely (some interlocutors said "only") based on length of service, and it might therefore be expedient to consider introducing a greater proportion of merit by making attendance on post-recruitment courses a criterion for advancement. Modules on investigation work and use of special investigative techniques would also open up to discussion a number of problems connected with criminal procedure (see above). Appropriate expertise in the courts would usefully complement this initiative.

107. The GET nevertheless continued to think that the ideal solution would be to set up specialist chambers for economic and financial crime, including serious corruption cases within the ordinary courts. It would be adequate if there were such chambers in Lisbon and/or Porto: national jurisdiction would then allow them to hear cases that were too complex or sensitive to be handled locally.

108. In view of the above, **the GET recommended considering the advisability of setting up specialist chambers for economic and financial offences (including corruption) within the ordinary courts.**

109. **It also recommended taking at least some steps to increase specialisation of judges and improve human resources/expertise in the field of complex offences such as corruption.**

Independence of judicial authorities

110. As regards the independence of judicial authorities, the members of the judiciary interviewed clearly stated that over the past few years they had encountered no interference in the exercise of their functions. Both public prosecutors and judges seem very attached to their independence, and there are important legal and institutional safeguards to protect judicial independence. The GET was not informed either of any particular debate on the issue of the independence of judicial authorities. This being so, certain interlocutors underlined that the lack of certain resources (human resources, access to certain information) could have an impact on the independence of their work. The GET noted that all the posts in the DCIAP had not yet been filled and that this service had encountered difficulties to conduct its activities relating to the systematic analysis of corruption files. In view of the above, **the GET recommended the Portuguese authorities to strengthen the means (material, human, access to information and others) put at the disposal of judges and prosecutors with a view to ensuring their effective functional independence.**

### b2. Information sources

111. The GET was not aware of the work of any intelligence services that could prove of genuine assistance to an investigation by supplying relevant background information on a case when investigators encountered gangs with connections to organised crime.

112. The Judicial Police have taken their operating methods to an advanced stage (using information from the press, suspicions or reports). Even if there are no hotlines or other channels enabling the public to report information, anonymous reports are taken into account[20] (with the exception of administrative complaints). Finally, the GET noted with interest the obligation imposed on public officials – in the broad sense and including IGF staff – to report to the law-enforcement authorities any offences that they discover in the exercise of their duties (Article 386 of the Criminal Code and Article 242 of the Code of Criminal Procedure regarding reporting modalities). In spite of this obligation, the GET realised that there were very few such reports. Consequently, **the GET recommended to raise the awareness of public officials about their obligation to report criminal offences (Article 386 of the Criminal Code and Article 242 of the Code of Criminal Procedure), drawing their attention to the procedures and mechanisms in place to comply with this obligation**

113. The GET welcomed the introduction of incentives to collaborate with the courts which would entitle the persons involved to discharge or remission of sentence in exchange for important information and testimony in corruption cases. The GET noted with interest the various witness-protection measures adopted in 1999, which are also applicable to corruption offences. It hoped that the remaining implementing regulations would be passed quickly.

### b3. Other anti-corruption institutions and mechanisms

114. The GET appreciated the existence of inspectorates in most government departments and the introduction of disciplinary rules and codes of conduct. This initiative might, however, be extended to focus more on the risks of corruption, since the statistics supplied to the GET show very few cases (IGAI: 73 proceedings for the years 2000, 2001 and 2002, none of which concerned corruption; SEF Inspection Office: 244 proceedings for the last three years, two of which involved corruption). The figures provided by the IGF (6 cases handled between 1999 and 2002) were hardly more revealing. Yet corruption is still perceived to be fairly widespread, not only by the media and the public but also by partners working with the public sector from day to day. The GET found it hard to decide whether this perception was justified or not. In any case, discussion and awareness-building are probably required as part of the "internal control system", in parallel with the incentives recommended above. **The GET therefore recommended including discussion and awareness-building in the "Internal Control System" with regard to the risks and handling of corruption.**

115. It also seemed that the General Finance Inspectorate (IGF) might be suffering from a lack of resources, in particular human resources[21]. **The GET recommended assessing what the IGF required (especially in term of human resources) for proper performance of its work and adjusting its resources accordingly.**

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[20] In 2000 the Judicial Police received 18 anonymous complaints for acts of corruption, in 2001 there were 60 and in 2002 there were 102.

[21] The Portuguese authorities confirmed that on 31 December 2002, due to budgetary restrictions, 257 staff were appointed, out of 576 foreseen by statutory regulations. 29 new inspectors were recruited in 2002 to fill the gap.

116. The GET welcomed the quality of the work done by the Court of Auditors, its expertise and the extent of its supervision. Public procurement remains a high-risk sector, but the Court seems able to detect "made-to-measure awards" (for a supplier/service provider or a product), since the practice of splitting transactions in order to remain beneath a cost threshold entails certain procedural requirements. It also seems to carry out effective auditing of unlawful grants (especially to sports clubs). Its power to impose penalties (fines and/or return of funds) appears effective (the GET was told that 50% of fines imposed on local authorities were paid voluntarily. The Court of Auditors is aware of the role that it can play in uncovering corruption offences (as recommended by INTOSAI, for example): it passes on its suspicions to the ordinary prosecution service, and its collaboration/co-ordination with other departments (including with the IGF for intelligence) seemed good. As the Portuguese authorities emphasised, the public-sector inspection and auditing system is indeed complex and it is fortunate that the Court of Auditors is responsible for a certain degree of co-ordination.

### c. Immunities

117. The existing system of immunities in Portugal, together with the mechanisms for withdrawing immunity, does not seem to excessively hamper the investigation, prosecution or trial of the persons concerned. The immunities and privileges provided for the holders of certain political offices and certain high public offices in the governmental hierarchy, and also for certain authorities (judges and public prosecutors) are clearly defined: they are designed solely to prevent any undue pressure being brought to bear on the execution of certain duties. Moreover, the GET noted the absence of any particular controversy at present surrounding the question of immunities. According to some GET interviewees, the main impediment in economic and financial cases involving politicians arose from procedural obstacles and the time bar.

118. The GET also noted that a significant number of requests to lift the immunity of MPs were declined (17 for the period 1999-2002). The Portuguese authorities argued that this is due to the fact that the requests concerned offences which were not sufficiently important, from the point of view of the general interest, to justify the lifting of the immunity. They stressed that it is compulsory to lift the immunity when the offence is punishable with more than three years' imprisonment, whereas in all the other cases, the lifting of the immunity is left to the discretion of Parliament. This being so, the GET noted that there are some corruption offences which are punishable with sanctions below that limit (see table in paragraph 17). It would be therefore useful to establish a certain number of guidelines to assist Parliament in the exercise of its discretionary powers in the field of immunities. The GET recalled that immunities should not offer any shield against criminal offences of corruption or corruption related offences. Therefore, **the GET recommended to adopt guidelines on the lifting of immunities**.

## IV. CONCLUSIONS

119. The GET noted with interest the efforts made by Portugal over the last years to improve its battery of measures against corruption both in the preventive and in the law enforcement areas. Portugal has thus replied firmly to the challenge of corruption. In spite of that, the perception is that corruption remains at a relatively high level.

120. The Portuguese authorities have already made considerable progress with specialisation and expertise of both judicial and administrative authorities. The GET thus greatly welcomed the case analysis being carried out at university level and, more recently, by the judiciary. The GET also met staff who were very well informed about experience abroad. The challenge for Portugal will

be to continue this work and refine existing mechanisms to ensure that not so many possibly corruption-related proceedings are time-barred or set aside on account of formal defects. The GET was conscious of the weight of the country's history and the concern to protect personal freedoms. But it is clear that an effort must still be made to enable the authorities calmly and effectively to apprehend complex cases concerning not only corruption but also bankruptcies, business crime, etc. Some preliminary work seems necessary in order to pool the experience of the various departments and get the exact measure of the task; co-operation between authorities seems to be quite good overall, and it would be a pity not to take advantage of this potential. At the same time, existing prevention and detection mechanisms should be made more effective within the various government departments.

121. In view of the above, GRECO addressed the following recommendations to Portugal:

**i) to establish a general review system (regular interdepartmental meetings, etc.) for the purpose of conducting research and developing a comprehensive strategy to combat complex forms of crime, including corruption. Technical authorities, such as the Court of Auditors or the IGF, might usefully be involved;**

**ii) to give powers of inspection to the disciplinary department of the Judicial Police and introduce mechanisms to monitor the integrity of officers working in certain fields (organised crime, etc.);**

**iii) to complete interconnection of the various police databases and examine the specific characteristics of Judicial Police work in order to adjust working methods accordingly;**

**iv) to enhance the human, material and other means necessary for the police to carry out, to the full, their functions in the fight against corruption;**

**v) to review the investigation procedure for serious offences, including corruption offences, and:**

- **examining the best possible way of remedying the problems associated with the possibility of challenging every individual decision of the investigating judge during the investigation phase by providing, for example, for the exercise of the right to appeal at the end of the investigating phase,**
- **reconsidering the non-suspensive nature, for purposes of statutory limitations, of appeals filed before the Constitutional Court, in order to avoid procedural abuses aimed at preventing sensitive cases from going to trial;**

**vi) to consider the advisability of setting up specialist chambers for economic and financial offences (including corruption) within the ordinary courts;**

**vii) to take at least some steps to increase specialisation of judges and improve human resources/expertise in the field of complex offences such as corruption;**

**viii) to strengthen the means (material, human, access to information and others) put at the disposal of judges and prosecutors with a view to ensuring their effective functional independence;**

**ix) to raise the awareness of public officials about their obligation to report criminal offences (Article 386 of the Criminal Code and Article 242 of the Code of Criminal Procedure), drawing their attention to the procedures and mechanisms in place to comply with this obligation;**

**x) to include discussion and awareness-building in the "Internal Control System" with regard to the risks and handling of corruption;**

**xi) to assess what the IGF requires (especially in terms of human resources) for proper performance of its work and adjust its resources accordingly;**

**xii) to adopt guidelines on the lifting of immunities.**

122. Furthermore, GRECO invites the Portuguese authorities to take account of the comments made by the experts in the analysis part of this report.

123. Finally, and in accordance with Rule 30.2 of its Rules of Procedure, the GRECO invites the Portuguese authorities to report to it on the implementation of the above recommendations by 31 December 2004.

## APPENDIX I

## Relevant provisions of the Portuguese Criminal Code (CC)

**Criminal association – Article 299 of the Penal Code**

1. Whoever promotes or establishes a group, organisation or association whose aim or activity is directed to the commission of offences, shall be punished by 1 to 5 years' imprisonment.

2. The same sanction is applicable to whoever is part of, or supports such a group, organisation or association, notably by providing it with weapons, ammunitions, instruments of crime, protection of meeting premises, or by any other form of support in the recruitment of new members.

3. Whoever assures the function of head or leader of a group, organisation or association mentioned under the previous paragraphs, shall be punished by 2 to 8 years' imprisonment.

4. The sanctions indicated may be specially mitigated or not applied, should the person concerned hinder, or seriously attempts to hinder the continuation of the group, organisation, or association, or communicates its existence to the authorities so that the latter can prevent the commission of offences.

**Trading in influence – Criminal Code, Article 335**

1. Whoever either directly or through an intermediary with the latter's consent or ratification, solicits or accepts, for himself or a third party, a pecuniary or intangible advantage or the promise of such an advantage, to use his real or supposed influence with any public entity shall be punished with:

a) A prison sentence of 6 months to 5 years if he is not liable to a heavier sentence under another statutory provision if the purpose was to obtain an unlawful favourable decision;
b) A prison sentence of up to 6 months or a fine of up to 60 days if he is not liable to a heavier sentence under another statutory provision if the purpose was to obtain a lawful favourable decision.

2. Whoever either directly or through an intermediary with the latter's consent or ratification, gives or promises a pecuniary or intangible advantage to the persons specified in the preceding paragraph and for the purposes laid down in subparagraph a), shall be punished with a prison sentence of up to 3 years or a fine.

**Voter bribery – Criminal Code, Article 341.1 (b)**

1. Whoever, in connection with an election specified in Article 338.1 (namely an election to elect a sovereign body government, a body of an autonomous region or a body of local government):

a) (...)
b) Buys or sells a vote;
shall be punished with a prison sentence of up to 1 year or a fine of up to 120 days.

**Passive bribery of a public official for the purposes of an unlawful act – Criminal Code, Article 372**

1. A public official who either directly or through an intermediary with the latter's consent or ratification, solicits or accepts, for himself or a third party, any undue pecuniary or intangible advantage, or the

promise of such an advantage, for the purposes of any act or omission inconsistent with his duties, even if preceding such solicitation or such acceptance, shall be punished with a prison sentence of 1 to 8 years.

2. If the official, before committing this act, voluntarily renounces the offer or promise that he had accepted, or returns the advantage or, in the case of a fungible good, its value, he shall be discharged.

3. The sentence shall be specially mitigated if the official provides effective assistance in the gathering of decisive evidence for the purpose of identifying or catching other persons responsible.

**Passive bribery of a public official for the purposes of a lawful act – Criminal Code, Article 373**

1. A public official who either directly or through an intermediary with the latter's consent or ratification, solicits or accepts, for himself or a third party, any undue pecuniary or intangible advantage, or the promise of such an advantage, for the purposes of any act or omission consistent with his duties, even if preceding such solicitation or such acceptation, shall be punished with a prison sentence of up to 2 years or a fine of up to 240 days.

2. The same penalty shall be incurred by any public official who either directly or through an intermediary with the latter's consent or ratification, solicits or accepts, for himself or a third party, any undue pecuniary or intangible advantage from a person who has had, has, or may in future have, any claim on him depending on the execution of his public duties.

**Active bribery – Criminal Code, Article 374**

1. Whoever either directly or through an intermediary with the latter's consent or ratification, gives or promises to a public official, or with his knowledge to a third party, any undue pecuniary or intangible advantage for the purposes set out in Article 372, shall be punished with a prison sentence of 6 months to 5 years.

2. If the purposes are those specified in Article 373, the official shall be punished with a prison sentence of up to 6 months or a fine of up to 60 days.

3. [Reference back to the provisions of Article 364: The penalties specified in this article are specially mitigated, possibly even extending to a discharge, if the act was committed with the aim of preventing the official, his spouse, an adoptive parent or adopted child, his blood relatives or relatives by marriage to the second degree, or the person with whom he is cohabiting, from being exposed to the risk of a sentence or a security measure.]

**Definition of a public official for the purposes of criminal law – Criminal Code, Article 386**

1. For the purposes of criminal law, the term “public official” shall include:

a) Civil servants;
b) Administrative officers; and
c) Any person, even if temporarily or provisionally, whether paid or unpaid, on a voluntary or a compulsory basis, who is called to exercise or participate in exercising an activity forming part of the public administration or the judiciary or, in the same circumstances, to perform duties in public agencies or to participate in them.

2. The following are deemed to be public officials: administrators, members of supervisory bodies and workers in enterprises that are state-controlled, fully state-owned or in which the State has a majority holding, and also in statutory undertakers.

3. The following are also deemed to be public officials for the purposes of Articles 372 to 374:

a) European Union judges, prosecutors, officials, staff and the equivalent, irrespective of their nationality or place of residence;
b) National public officials of other Member States of the European Union if the offence has been committed wholly or partly on Portuguese territory;
c) All persons exercising the same functions as those described in paragraph 1 within any international organisation under public law of which Portugal is a member, if the offence has been committed wholly or partly on Portuguese territory.

4. Treatment as a public official, for the purposes of criminal law, of any person holding political office is governed by a special law.

**Bribery by a holder of political office and bribery of a holder of political office (Law No. 34/87 combined with Law No. 108/2001)**

Article 3

1. For the purposes of this law, the following are political offices:

a) President of the Republic;
b) President of the Assembly of the Republic;
c) Member of the Assembly of the Republic;
d) Member of the Government;
e) Member of the European Parliament;
f) Minister of the Republic for an autonomous region;
g) Member of a government body of an autonomous region;
i) Member of a representative body of local government;
j) Civil governor

2. For the purposes of Sections 16 to 19, political office-holders of the European Union, irrespective of their nationality or place of residence, shall be treated as national holders of political office, as shall be political office-holders of other Member States of the European Union if the offence has been committed wholly or partly on Portuguese territory.

**Passive bribery for the purposes of an unlawful act (Law No. 34/87, Section 16, combined with Law No. 108/2001)**

1. A holder of political office who, in the course of his duties, either directly or through an intermediary with the latter's consent or ratification, solicits or accepts, for himself or a third party, any undue pecuniary or intangible advantage, or the promise of such an advantage, for the purposes of any act or omission inconsistent with his duties, even if preceding such solicitation or such acceptance, shall be punished with a prison sentence of 2 to 8 years.

2. If the criminal sentence for the bribery is heavier than that specified in the preceding paragraph, it will be the heavier sentence that will apply to the bribery.

**Passive bribery for the purposes of a lawful act (Law No. 34/87, Section 17, combined with Law No. 108/2001)**

1. A holder of political office who, in the course of his duties, either directly or through an intermediary with the latter's consent or ratification, solicits or accepts, for himself or a third party, any undue pecuniary or intangible advantage, or the promise of such an advantage, for the purposes of any act or omission consistent with his duties, even if preceding such solicitation or such acceptance, shall be punished with a prison sentence of up to 3 years or a fine of up to 300 days.

2. The same penalty shall be incurred by any holder of political office who either directly or through an intermediary with the latter's consent or ratification, solicits or accepts, for himself or a third party, any undue pecuniary or intangible advantage from a person who has had, has, or may in future have, any claim on him depending on the execution of his public duties.

**Active bribery (Law No. 34/87, Section 18, combined with Law No. 108/2001)**

1. Whoever either directly or through an intermediary with the latter's consent or ratification, gives or promises to a holder of political office, or with his knowledge to a third party, any undue pecuniary or intangible advantage for the purposes set out in Section 16, shall be punished with a prison sentence of 6 months to 5 years.

2. If the purposes are those specified in Section 17, the political office-holder shall be punished with a prison sentence of up to 6 months or a fine of up to 60 days.

3. A holder of political office who, in the course of his duties, either directly or through an intermediary with the latter's consent or ratification, gives or promises to a public official or other political office-holder, or with his knowledge to a third party, any undue pecuniary or intangible advantage for the purposes set out in Section 16, shall be punished with the prison sentence specified in that section.

**Bribery in sport (Decree-Law No. 390/91)**

This relates to fraudulent behaviour:

**- by a sports competitor**[22]: Whoever, as a sports competitor, either directly or through an intermediary with the latter's consent or ratification, solicits or accepts, for himself or a third party, any undue pecuniary or intangible advantage, or the promise of such an advantage, in consideration of an act or omission designed to falsify or distort the result of a sporting event, shall be punished with a prison sentence of up to 2 years (Section 2.1);

**- by an umpire/referee or the equivalent**: If the acts described in the preceding section are committed by an umpire/referee or the equivalent, whose function is to assess, judge or determine the application of the technical and disciplinary rules peculiar to sport, the penalty shall be imprisonment of up to 4 years (Section 3.1);

**- by a manager, trainer, fitness coach, coach, doctor or physiotherapist**: The same penalty (up to four years in prison) shall be incurred by whoever commits the acts described in the preceding section

[22] *Sports competitor* is understood to mean *"anybody who, individually or as part of a team, participates in a sporting event"* (Section 1a).

in his capacity as a manager, trainer, fitness coach, coach, doctor, physiotherapist or employee involved in any activity supporting the sports competitor (Section 3.2).

This decree-law further specifies the following offences:

- Whoever either directly or through an intermediary with the latter's consent or ratification, gives or promises to a sports competitor any undue pecuniary or intangible advantage for the purposes specified in Section 2 (to falsify or distort the result of a sporting event), shall be punished with imprisonment of up to three years (Section 4.1);
- If the act described in the preceding paragraph is committed with regard to any of the persons specified in Section 3 (manager, trainer, fitness coach, coach, doctor, physiotherapist or employee involved in any activity supporting the sports competitor), the penalty shall be imprisonment of up to four years.

Article 6 (Decree-Law No. 390/91)

Persons committing the offences specified in this Decree-Law may incur the following ancillary penalties:

a) Suspension, for a period between six months and three years, from participation in sporting events;
b) Exclusion from official subsidies for a period between one and five years;
c) Suspension from his duties or activity for a period between two to six years for an umpire/referee or the equivalent, for a member of a body of a federation, association, league or similar organisation, and for a manager of a sports club or a member of a body of a sports company.

**Active bribery harmful to international business (Decree-Law No. 28/84, Section 41-A, combined with Laws 13/2001 and 108/2001)**

1. Whoever either directly or through an intermediary with the latter's consent or ratification, gives or promises to a national or foreign public official or political office-holder, or with his knowledge to a third party, any pecuniary or intangible advantage in order to obtain or retain a market, a contract or other improper advantage in the conduct of international business, shall be punished with a prison sentence of one to eight years.

2. For the purposes of the preceding paragraph, foreign public official means any person performing public duties for a foreign country, whether that person holds an office (in particular administrative or judicial) to which he was appointed or elected, or whether he performs duties for an enterprise, a public agency or a statutory undertaker, either locally or nationally, as well as any official or agent of a international or supranational organisation under public law.

3. For the purposes of paragraph 1, foreign political office-holders are those defined as such by the law of the State for which they hold office.

**Passive bribery in the private sector (Decree-Law No. 28/84,** Section **41-B, combined with Laws 13/2001 and 108/2001)**

1. Whoever performs duties, including management duties, for any private-sector entity even if established in breach of the law, and either directly or through an intermediary, solicits or accepts, for himself or a third party, any pecuniary or intangible advantage, or the promise of such an advantage, in consideration of an act or omission constituting a breach of his duties and resulting in distortion of

competition or economic loss to a third party, shall be punished with a prison sentence of up to three years or a fine.

**Active bribery in the private sector (Decree-Law No. 28/84,** Section **41-C, combined with Laws 13/2001 and 108/2001)**

1. Whoever either directly or through an intermediary with the latter's consent or ratification, gives or promises to the persons specified in the preceding section (Section 41-B), or with their knowledge to a third party, any pecuniary or intangible advantage for the purposes and with the consequences specified, shall be punished with a prison sentence of up to three years or a fine.