



The Beginning of a new Legislature:

CONTRIBUTION

towards improving public management
and sustainable public finances

February 2022



T
C TRIBUNAL DE
CONTAS

TABLE OF CONTENTS

- INTRODUCTORY NOTE 5

- SUBJECT MATTERS AND AREAS 8
 - 1. Financial and budgetary framework amd accountability 9
 - 2. Economic functions 13
 - 3. Sustainable development 19
 - 4. Digital transition 23
 - 5. European funds 25
 - 6. Public procurement 29
 - 7. National security..... 33
 - 8. Health..... 37
 - 9. Labour and social security 41
 - 10. Education and higher education 45
 - 11. Local administration..... 51

- FINAL NOTE 54

- ANNEX – SOURCES 55

INTRODUCTORY NOTE

Portugal now begins a new Legislature, following elections on 30 January 2022.

The Court of Auditors is, according to the Constitution and the Law, a sovereign body, a supreme court, unique in its jurisdiction, whose mission is the external and independent control of public financial activity, as well as to enforce financial responsibilities.

Under the terms of the respective Organisation and Procedural Law of, the Court of Auditors is responsible, in particular, for *"(...) Evaluating the legality, as well as the economy, effectiveness and efficiency, according to technical criteria, of the financial management of public entities, including the organisation, functioning and reliability of internal control systems"*¹.

In turn, Article 11(2) of the same Law prescribes that the Court *"shall also cooperate, [...] with the other sovereign bodies, [...] seeking, as a rule through its support services, to disseminate the information necessary to prevent and repress waste, illegality, fraud and corruption in relation to public monies and values, both national and community"*.

Within this constitutional and legal framework, **contribute to the good management and sustainability of public finances** has been one of the Court of Auditors' strategic objectives.

Both the mission and the institutional vision are pursued through the a priori control of acts and contracts, conducting audits, issuing opinions on the State Accounts, verifying accounts, judging accounts and those responsible and the implementation of other actions and initiatives that promote the improvement of public finance management.

1 Cf. Article 5(1)(f), of Law 98/97 of August 26 – Organisation and Procedural Law of the Court of Auditors (LOPTC).

Control activities take the form of opinions on the Accounts of the State and the Autonomous Regions, audit reports and audits of accounts, judgements, decisions and other acts of the Court, which are communicated to those responsible and then made public. This activity also leads to a concrete and substantiated knowledge of public management trends over the years, which allows the identification of key areas where there is room for improvement and other areas where best practices prevail.

At the start of this new Legislature, the Court of Auditors reaffirms and shares with the Parliament and the Government an organized and systematized set of subject matters and areas in which the actions of the legislative and executive powers may result in consistent and sustainable improvements to public finances and public management in general.

The definition and rationale of these subject matters are based on **the Court's activity** in the recent past and, in particular, the conclusions and recommendations contained in its opinions, reports, judgments and decisions.

The Court of Auditors frequently alerts, in audit reports, to the risks associated with public management, as was the case, for example, in the June 2020 report "*Risks in the use of public resources in emergency management*".

This is also the practice followed by similar institutions of the Court of Auditors, such as Germany, the United States of America, France and New Zealand, which are reference institutions in the international community of external and independent financial control of public finances.

The 192 Supreme Audit Institutions and similar institutions members of the world organisation that brings them together - INTOSAI -, meeting at the 2019 Congress in the Russian Federation approved the Moscow Declaration that points to the relevance of permanently contributing to the improvement of management and public finances.

The United Nations, through its Resolutions A/66/209, of December 2011, and A/69/228, of December 2014, also recognises the role of the Supreme Audit Institutions and similar institutions in promoting efficiency, accountability, effectiveness and transparency in the Public Administration, in the pursuit of national and international development goals.

It is within this framework that, with a view to improving public management and the sustainability of public finances, some subject matters and areas of a general and structural nature are presented below which, according to the results of the activity of the Court of Auditors and in the light of the legal order in force, are worthy of special attention, given their topicality and relevance.

February 2022

The President,

A handwritten signature in blue ink, appearing to read 'José F. F. Tavares', with a stylized flourish at the end.

José F. F. Tavares

SUBJECT MATTERS AND AREAS

The subject matters and areas listed were identified considering the Court's activity, which points to the need to:

- ✓ Ensure governance guided by principles of good management, rule of Law and adopting criteria of economy, efficiency and effectiveness;
- ✓ Ensure strict compliance with the legal principles and rules concerning, namely, budget execution and control, public procurement, and the regimes of the Public Administration's employees;
- ✓ Continue efforts to implement the Budgetary Framework Law and the appropriate application of the approved accounting standards, namely the Accounting Standards System for Public Administrations (SNC-AP);
- ✓ Improve the internal control procedures of the entities subject to the financial control powers and jurisdiction of the Court.

In this sense, the concerns of the Court, of general scope, can be framed in 11 major pillars of intervention to which the Parliament and the Government are recommended to pay special attention:

1. Financial and budgetary framework and accountability
2. Economic functions
3. Sustainable Development
4. Digital transition
5. Use of European funds
6. Public procurement
7. National Security
8. Health
9. Labour and Social Security
10. Education and Higher Education
11. Local Government



1. FINANCIAL AND BUDGETARY FRAMEWOK AND ACCOUNTABILITY

In 2015, the public finances reform began, which is still ongoing, with the publication of Law No. 151/2015, of 11/09, which approved the Budgetary Framework Law (LEO) and Decree Law No. 192/2015, of 11/09, which approved the Accounting Normalisation System for Public Administrations (SNC-AP).

It is in this context in particular that the situations set out below arise.

State budget and financial reporting appropriate for informed public policy planning

The State's budgetary and financial reporting has remained structurally unchanged for more than 20 years, and no longer corresponds to the spirit of the Budgetary Framework Law.

Acceleration and prioritisation of the Framework Law

The course set out therein for public financial management involves providing the State Budget and the State General Account with complete information. To this end, the reform underway since 2016 should be accelerated and prioritised, with the timely implementation of the projects, namely the State Accounting Entity (aimed at the accounting recognition of revenues and expenses and the rights and obligations of the State as a sovereign entity), of a legal framework duly adapted to the new reality and with an effective articulation between the entities involved. In this context, it is necessary to carry out an inventory and appropriate valuation of the State's real estate and to have detailed information on financial assets, real estate assets and public debt. In these areas, the articulation between the information systems of the various public entities and the respective cost/benefit evaluation of the investments to be made is a priority.

Implementation of the Accounting Entity Status

Complete information on financial assets, real estate and public debt

The fiscal policy strategy for the coming years, which is likely to include the granting of large amounts of public support, is successful in signalling the commitment to fiscal sustainability. In this area, strengthening the quality of budgetary instruments is essential. This includes improvements to programmatic instruments such as program budgeting and medium-term budget programming. But also instruments at a more operational level, such as the reinforcement of compliance with the State Treasury unity principle

Improving the quality of budgetary instruments

Intergenerational equity involves taking care of the risk arising from the high level of public debt

(the successive State Budgets have made it possible to extend the number of entities exempt), clarification of the rules on the assignment of tax revenue to the Social Security Financial Stabilisation Fund (so as to avoid the errors verified in transfers made to the Fund) and the updating of the economic classifier of revenue and expenditure (so as to avoid undue recording of materially relevant operations, all the more so in the context of a period in which high flows from the European Union are expected).

The high level of public debt constitutes a very significant risk to the sustainability of public finances. Intergenerational equity must be safeguarded, which means, among other things, incorporating complete information on the public financial report:

- ✓ the impact of support to companies and households in the form of government guarantees, capital injections, loans, asset purchases or debt assumptions;
- ✓ the analysis of the sensitivity of public accounts to changes in interest rate policies and the purchase of debt by the Eurosystem, which has been essential for Portugal to ensure (re)financing;
- ✓ the link between the year's budget execution, the implementation of the Recovery and Resilience Plan and progress in terms of the Sustainable Development Goals of the 2030 Agenda, namely those defined by Portugal as priorities.

Timely preparation of the consolidated account of the public group State - development of the Public Finance Management Information System (S3CP)

Consideration of a transitional period for the State General Account prepared on an accrual basis

Expediting the development of the project "internal control model and audit"

Delays are noted in the development of most of the projects for the implementation of the Budgetary Framework Law, directly related to the preparation of the CGE² on an accrual basis, particularly the incipient state of development of the S3CP - the main system supporting the preparation of the consolidated account.

The lack of an adequate pace of completion of the referred projects compromises the preparation of the Consolidated Account of the state public group within the legally established deadline, or, even if this deadline is met, it may involve increased risks of material distortion.

The international public accounting standard IPSAS 33 - First-Time Adoption of Accrual Basis IPSASs provides that, in certain complex circumstances, the transition process can take up to three years and that, during this period, assets and liabilities related to the adoption of the new accounting framework are recognised and measured. In fact, it will be important to consider, in a programmed and timely manner, the convenience of having the transitional period for the State General Account prepared on an accrual basis. A strategy and timetable for its implementation is also necessary, as well as an assessment of the relevance of any possible adjustment and compatibility with the deadlines set for the respective certification by the Court of Auditors.

Given the importance of the "Internal Control and Auditing Model" project for the effective implementation of the Budgetary Framework Law, it will be important to speed up its development, so that, in time and prior to certification by the CGE, it is possible to promote the:

² Conta Geral do Estado - General State Account.

The adoption of accounting standards and the implementation of accrual accounting and the account consolidation process are essential

- ✓ convening of audit officials, through their action and their powers, to contribute to the verification of the reliability of public accounts;
- ✓ appropriate allocation of responsibilities to the various control agents; and
- ✓ creation of effective mechanisms for articulation and communication.

The development of this project may also be an opportunity to increase the coverage, efficiency and effectiveness of controls aimed at the reliability of public accounts.

The Court has accompanied the reform of the accounting systems, in fruitful dialogue with all those involved, and has developed internally the procedures that are essential to the effective control of management and public accounts.

It is essential that the accounting model adopted becomes a reality for all Public Administration entities and bodies, and that accrual accounting and the process of account consolidation are put into practice, in order to fully comply with the principles of rigour and transparency in public accounts;

This will provide an accurate picture of the liabilities and contingent liabilities within the governance framework.



2. ECONOMIC FUNCTIONS

Over the last few years there has been a State intervention in various entities, with a significant impact on public finances.

The problems of the financial system are well known and have led the State to intervene on several occasions and in several institutions.

The decisions to reprivatise and buy back certain companies also represent a risk to the sustainability of public finances, along with others, such as those associated with some public-private partnerships.

This reality has merited the attention and action of the Court of Auditors, leading to some conclusions and recommendations, which are highlighted in the following lines.

Recording and periodic reporting of the accountability cycle for losses covered by public funding

Through the audits carried out in the control area of economic functions, significant risks that should be reduced have been identified, as recommended by the Court:

Risk of instability of the financial system, due to:

- ✓ the moral hazard of the public financing of this system, particularly the financing resulting from the operations to resolve BES³ and sell Novo Banco.

To reduce this risk, the Court recommended:

- ✓ the regular recording and reporting of the cycle of accountability for losses financed from public expenditure, identifying those responsible, the actions taken to recover the corresponding amounts and the results obtained.

Risk of unsustainability of public finances, due to:

- ✓ the impact of financing the financial system through public expenditure, as in the operations for the resolution of BES and the sale of Novo Banco;
- ✓ the costs arising from the inconsistency of state participation in strategic companies, as in the case of the reprivatization and subsequent repurchase of TAP⁴;
- ✓ the potential costs of contingent liabilities taken on, such as in public-private partnerships and other concessions, due to insufficient information reported.

³ Former Banco Espírito Santo.

⁴ TAP – Air Portugal.

Appropriate demonstration, verification and validation of the amounts to be financed

Adoption of mechanisms for sharing risks, responsibilities and benefits with private partners

Assessment of whether the essential purposes of the partnerships have been fulfilled

Correcting and preventing complacency and conflicts of interest

To reduce this risk, the Court recommended:

- ✓ in the financing of the financial system, that each amount to be financed is properly demonstrated, verified and validated before it is paid;
- ✓ within the scope of the State's participation in companies of a strategic nature, the adoption of adequate mechanisms for sharing risks, responsibilities and economic and financial benefits with the private partner and for greater monitoring and control to ensure the necessary transparency on the sustainability of the business, including, in the respective strategic plan, adequate information with sufficient projection, as well as cost-benefit and risk analyses;
- ✓ in the context of contingent liabilities, the certification of the universe of concession contracts, obtaining the necessary information to assess the performance of these contracts, assessing the information reported by public and private partners, and evaluating the fulfilment of the essential purposes of the partnerships.

Risk of complacency and conflicts of interest to the detriment of safeguarding the public interest, with the need to correct and prevent situations that translate, for example:

- ✓ into appointments to public positions with transition from regulated to regulatory entities;

Government of the National Resolution Authority with independence and without conflicts of interest

Application of the principle of segregation of duties

Improvement of the state of conservation of infrastructure and transport

Management System of the universe of infrastructures with periodic information on their status and inspection

- ✓ into the absence of a governance model for the National Resolution Authority, which ensures the legal requirement of independence in the exercise of its functions (of planning and applying resolution measures) and avoids potential conflicts of interest with the supervisory or other functions attributed to the Bank of Portugal;
- ✓ into the lack of independence / segregation of duties between decision-making and auditing bodies in the resolution and subsequent sale of Novo Banco.

To reduce this risk, the Court recommended:

- ✓ a governance model for the National Resolution Authority that prevents conflicts of interest;
- ✓ the application of the principle of segregation of duties.

Risk of inoperability of infrastructures and transportation, due to:

- ✓ the state of repair of 12% of the structures in operation under the direct jurisdiction of the company Infraestruturas de Portugal is below regular (10%) or has not been classified (2%) and does not include transport infrastructures under the management of other public entities or under concession contracts, whose risk of inoperability is important to know;
- ✓ the condition of the infrastructure being less than satisfactory for 33% of the assets in the rail network, including 62% of the track, and for 18% of the assets in the road network.

Creation and periodic dissemination of sectorial risk matrices

To reduce this risk, the Court recommended:

- ✓ the implementation of the necessary funding to improve the state of the infrastructure;
- ✓ improving the management of the risk of inoperability of transport infrastructure in order to reinforce users' confidence;
- ✓ the implementation of a system to manage the universe of transport infrastructures (whether managed by public entities or under concession) with periodic information on their condition and inspection, ensuring the timely assessment and effective prevention of the risk of their inoperability;
- ✓ the creation and periodic disclosure of sectorial risk matrices, as well as the measures taken and to be taken to mitigate this risk in cases where it is material.

Risk of ineffective reaction to the adverse impact of the pandemic on the housing and economic area, due to:

- ✓ lack of rigour in determining the needs arising from this impact;
- ✓ inadequate structure to effectively monitor and control (in an active and timely manner) the implementation of the measures to react to this impact;
- ✓ information provided on these measures is incomplete and insufficient;
- ✓ insufficient degree of financial implementation;
- ✓ ineffectiveness of the measures.

Rigorous determination of needs

Integration of measures in the respective budgetary programme

Complete, reliable and consistent reporting of information

Timely implementation, adequate monitoring and control

To reduce this risk, the Court recommended that:

- ✓ the needs arising from the adverse impact of the pandemic should be rigorously determined and reflected in measures and objectives (expressed by targets);
- ✓ the funding and duration of the measures shall be sufficient to achieve their objectives;
- ✓ the measures should be part of the respective budgetary programme (including its extra-budgetary cost);
- ✓ the information reported on the measures shall be complete, reliable and consistent;
- ✓ the implementation of the measures shall be timely and subject to appropriate monitoring and control;
- ✓ the measures shall be adequate and effective in achieving their objectives.



3. SUSTAINABLE DEVELOPMENT

On 25 September 2015, the United Nations Agenda 2030 was approved, in which the 193 member states, including Portugal, committed to pursuing the 17 Sustainable Development Goals (SDGs) included therein.

The International Organization of Supreme Audit institutions - INTOSAI - has called on member institutions not to neglect monitoring the implementation of the 2030 Agenda, encouraging these institutions to play a relevant role in this area.

The Court of Auditors is responsible for monitoring the application of public resources in achieving the SDGs to which Portugal has committed itself.

In addition to the specific pursuit of the SDGs, public policies and measures to promote sustainable development have been adopted in several areas, in the implementation of the constitutional and legal framework in force, which warranted the attention of the Court of Auditors, given the public financial resources involved.

Promotion of an information system to support the coordination of the pursuit of the SDGs

National sustainable development strategy, with clear definition of responsibilities

It is necessary to consider as a permanent concern the strengthening of efforts towards the implementation of a national strategy to pursue the SDGs in line with the 2030 Agenda, as well as the adequate structuring of an information system to support coordination in planning, implementing, monitoring, reviewing and reporting on the SDGs.

Steps have been taken to create the conditions for the implementation of the SDGs, given the political commitment and the existence of specific structures and competences for their implementation, as well as indicators that are already available and disseminated on a regular basis. However, it was found that there are still shortcomings in the commitment to the 2030 Agenda with regard to strategic planning, clear assignment of responsibilities for implementation, and the definition of national targets, since:

- ✓ A national sustainable development strategy in line with the 2030 Agenda has not been prepared, nor have detailed implementation plans been prepared that include a breakdown of the policies, measures and resources required to achieve the SDGs;
- ✓ Responsibilities for the achievement of targets and for the adoption of corrective measures in light of the results of the implementation monitoring indicators were not defined, nor were national targets adapted to the reality and circumstances of the country;
- ✓ The main strategic planning, programming and budget execution documents do not

Compliance with environmental programmes and objectives, with better coordination, articulation and operationalisation, provision of means of monitoring and improvement of indicators

allow identifying the policies, measures and financial resources that contribute to the achievement of each SDG.

In the context of promoting sustainable development, the audits carried out by the Court on environmental matters showed:

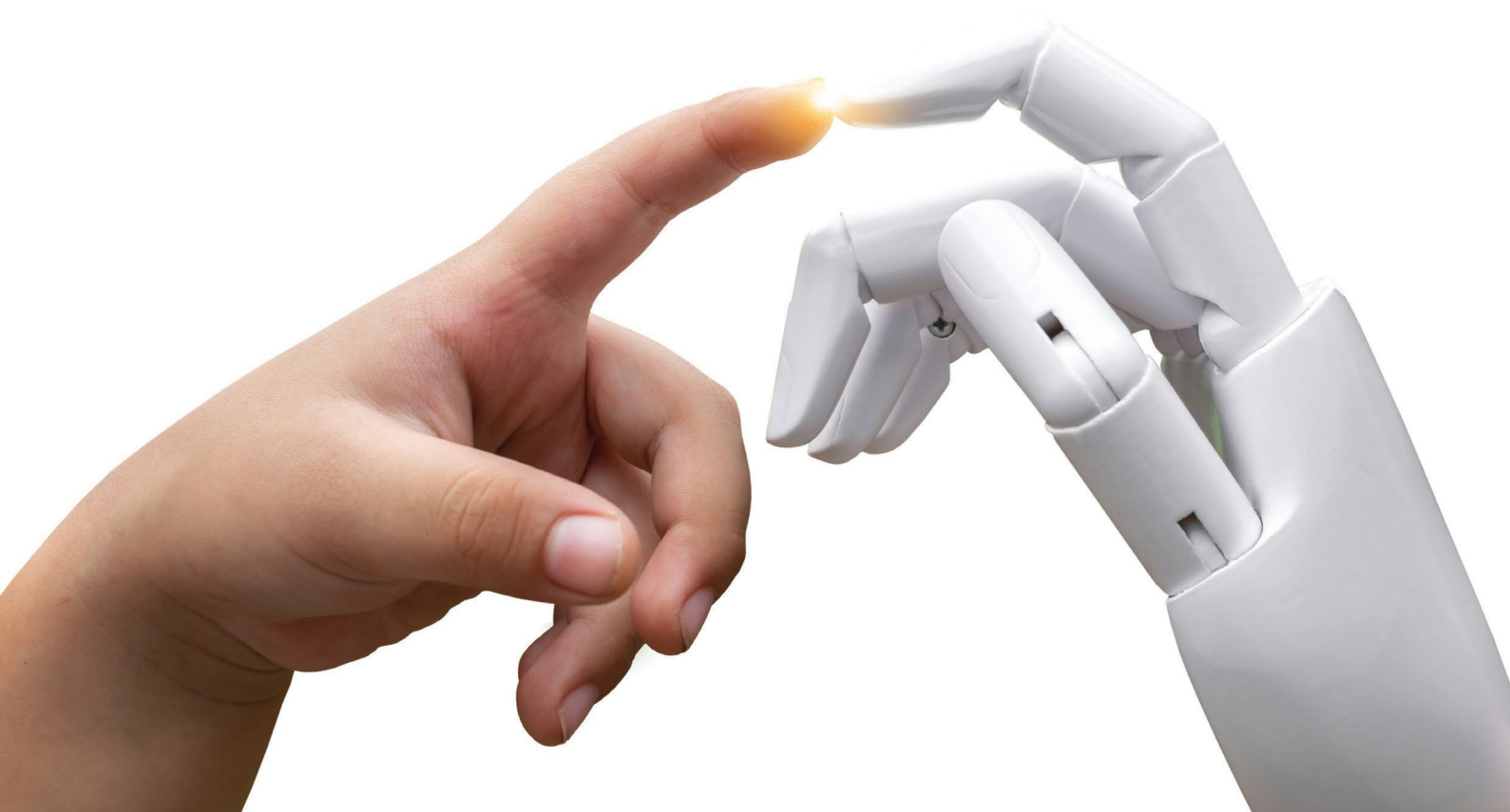
- ✓ Weaknesses in the pursuit of environmental programmes and objectives, notably in the areas of biodiversity protection, energy efficiency, combating desertification and soil protection, sustainable fisheries, air quality in large urban centres, the health effects of air pollution and waste management;
- ✓ Difficulties in the articulation and operationalisation of various programs in the environmental area and in the coordination of the various entities responsible for the classification, management and supervision of protected areas;
- ✓ Lack of means for effective monitoring and enforcement of protected areas;
- ✓ Need to improve the checks and indicators for monitoring soil quality, water management, and biodiversity conservation;
- ✓ Risks of non-compliance with international commitments, in particular under the United Nations Agenda 2030, especially with regard to protected areas, the neutrality of land degradation, the biological protection mode or recycling;
- ✓ Insufficient application of environmental criteria in public procurement.

4. DIGITAL TRANSITION

The topic of digital transition has been on the national and European agenda, given its importance for the modernisation of economies and Public Administrations.

In 2020, the "Action Plan for the Digital Transition of Portugal" was approved, which has as one of its strategic pillars the Digitalisation of the State.

The digital transition presents opportunities for improving public management, but also entails associated risks, which justify the monitoring it has been subject to by the Court of Auditors.



Essentiality of the autonomy of public entities in relation to the management of information systems which they have

It is important to highlight the issue of the imperative guarantee of autonomy of public entities in relation to the management of information systems implemented or to be implemented. In the digitalisation processes in which they are involved, the sovereign bodies and the Public Administration should not impair "in house" control of all technological intervention capacity. Likewise, still in relation to this subject, the matter related to security requirements in the cyber domain is relevant.

Dematerialisation of the rendering of accounts process

Conditions have been created for the dematerialisation of the rendering of accounts process for all entities subject to this legal duty (also covering companies, associations, cooperatives and foundations), regardless of the accounting system adopted. To this end, the Court remains open to collaboration with all entities.



5. EUROPEAN FUNDS

European funds have a significant weight in national public finances. The Recovery and Resilience Plan for Portugal provides for a total amount of 16.644 M€, divided into three investment areas - Resilience, Climate Transition and Digital Transition - plus the amounts of the Multiannual Financial Framework for the period 2021-2027.

The national application of European funds and the respective management and control systems are audited by the Court of Auditors, which also monitors the control actions carried out in our country by the European Court of Auditors.

Slow absorption of
European funds

With a view to drawing lessons for future financing, it should be noted that, in previous multi-annual financial frameworks, there was a lengthy absorption of European funds and difficulty in meeting the programme objectives. This difficulty stems from factors of a recurrent nature, associated, among other things, with:

- ✓ Late start of the programmes;
- ✓ Time-consuming definition and development of information systems, including difficulties in interoperability between them;
- ✓ Insufficient human resources;
- ✓ Delay in issuing regulations or guidelines;
- ✓ Difficulty in articulating the competence and actions of different entities;
- ✓ Complexity in the articulation of funding components from different funds;
- ✓ Lack of attractiveness of some types of support;
- ✓ Constraints in the public contracting phase of the investments;
- ✓ Delays in obtaining permits and prior opinions;
- ✓ Difficulty of intermediate bodies to respond within the time limits to tasks delegated by managing authorities.

Significant risks
throughout the process
of using the European
funds

The audits also highlighted risks at the level of programme management, monitoring, control, implementation and closure, which represent alerts for the future implementation of European funds and their control. The following was observed:

Progress under the Europe 2020 strategy, albeit with weaknesses on the reliability of information

Requirement for a continued and enhanced effort to mitigate the effects of climate change

- ✓ Lack of alignment of programmes, measures and indicators with the commitments of the 2030 Agenda;
- ✓ Lack of operationalisation between the strategies defined and the European funding instruments allocated to them; insufficient and deficient information systems;
- ✓ Weaknesses in programme management and coordination of project implementation;
- ✓ Delays in their execution;
- ✓ Weaknesses in monitoring and control;
- ✓ Risks in the achievement of the envisaged priorities and results and room for improvement in the procedures for preventing fraud and corruption, with an increased concern now for public procurement.

The results achieved in Portugal regarding the objectives of the Europe 2020 strategy show progress, except in the area of R&D and innovation. Although Portugal has shown good results in the areas of employment and the fight against poverty compared to the programmed schedule, they may not be sufficient in the long term due to the effects of the Covid-19 crisis.

The education indicators show significant progress, but the Court's audits have raised doubts about the reliability of the information and highlighted the need for more effective public policies. The targets for greenhouse gas emissions, energy efficiency and renewable energy have performed well, but concerns about the effects of climate change require continued and reinforced efforts in this area.



6. PUBLIC PROCUREMENT

In line with the other economies of the European Union, in Portugal, public procurement accounts for an average of 25 to 30% of annual public expenditure, which represents around 15% of GDP.

In 2020, the public procurement processes were subject to exceptional legislation - Decree-Law 10-A/2020 of 13 March - foreseeing expedited procedures for the necessary acquisitions to address the Covid-19 pandemic. In 2021, the regime of special public contracting measures came into force, approved by Law No. 30/2021 of 21 May, with the aim of speeding up the process of executing European funds.

Public procurement is an area in which, in addition to the concomitant and successive control, the Court exercises the function of a priori control, ensuring compliance with the law in the use of public, national, and European Union funds.

This activity by the Court of Auditors makes it possible to prevent and avoid the effects of contracts and other instruments that generate expenses or represent direct or indirect financial responsibilities that are null and void, illegal as a result of the violation of financial rules and/or susceptible of altering their financial result, as well as those that are not budgeted, or that exceed the limits of indebtedness and its respective purposes.

Risks to the management of public money associated with the maintenance of extraordinary and special public procurement regimes.

The extraordinary regime for public procurement established by Decree-Law 10-A/2020 of 13 March remains in force for "COVID-19 acquisitions" with the inherent risks for the management of public funds. However, under the specific legislation for COVID-19, more than 50% of the amounts involved were awarded directly.

The Court has already drawn attention to the fact that, once the emergency situation had ceased, the validity of the rules contained in Chapter II of the above-mentioned Decree-Law concerning public procurement should be reassessed.

In turn, the implementation of the special measures for public procurement, approved by Law 30/2021, of 21 May, so far shows risks in relation to the fractioning of expenses, deficient reasoning for the adoption of such special measures, potential undue favouring of contractors, or its adoption without proper communication to the Court of Auditors and possible deficient execution of contracts.

The Court views with concern the regime for waiving the cost/benefit analysis for the contracts provided for in Article 36(4) of the CCP, as amended by Law 30/2021, an analysis which is fundamental to the sound management of public affairs.

The Court also considers that the generalised exemption from the obligation to adopt competitive bidding procedures departs from the constitutional and administrative principles applicable in the Portuguese legal system and from the CJEU's case-law, according to which the principles of the European Treaties also apply to contracts below the thresholds for application of the European public procurement directives.

Relationship
between arbitral
tribunals and State
courts

It also appears to be worth considering, in light of the Constitution, the adoption of legal norms that define the relationship between the decisions of the arbitration courts and those of the State courts, namely the Court of Auditors, ensuring in particular the respect for financial legality.

7. NATIONAL SECURITY

In the area of National Defence, the execution of the Military Programming Law should be highlighted, in which an amount of 335M€ was foreseen for 2021 for the re-equipment and modernisation of the Armed Forces.

As far as the area of civil protection and disaster management is concerned, the topic of preventing and fighting rural fires stands out, given its financial, economic, social and environmental impact, which justifies the monitoring it has been subject to by the Court of Auditors.



Proper implementation of the LPM (National Defence)

The audit work shows the need for an adequate budgetary, physical and financial execution of the Military Programming Law (LPM), within a framework of compliance with the applicable rules of the public procurement regime and the legal requirements regarding the building of military capabilities, with a view to achieving the strategic objectives of national defence.

Rural fires

As regards preventing and fighting rural fires, the Court noted the need for intervention measures on the territory, in terms of forest, vegetation and fuel management. The objectives related to information and communication systems must also be fully complied with, as well as the reinforcement of air and human resources trained and equipped to fight fires.

Improving the effectiveness of Municipal Plans for the Defence of Forests against Fires (PMDFCI)

The process of preparing and approving the plans revealed shortcomings and, in many cases, they did not constitute an effective instrument for planning forest-fire protection actions, nor did they rigorously delimit the responsibilities of public entities (central and local government) and private entities in their implementation. The PMDFCI were not duly monitored and the overall physical and financial execution of the measures is unknown, which makes it impossible to assess and quantify their effective impact on the defence of forests against wildfires. It was concluded that changes are needed to strengthen the operability and effectiveness of the PMDFCI.

Drafting of a legislative framework regulating humanitarian aid and solidarity.

There is also the matter of humanitarian aid in disaster situations, where the Court has recommended that the legislative bodies consider drawing up a comprehensive legislative framework governing humanitarian and solidarity aid, containing, in particular, applicable ethical principles, rules on the definition of aid criteria, coordination and control procedures and rules on transparency, accountability and financial control.

8. HEALTH

Health care is one of the areas that has been under the most pressure, due to the pandemic situation. But in addition to this exceptional factor, the health implications of demographic change are also of particular note.

The issues regarding the resources allocated to the National Health Service, namely regarding access to health care, financial balance and quality of service, reach dimensions that have a strong impact on the lives of citizens.



Recapitalisation of the NHS, given its weak economic and financial situation

The Court of Auditors has alerted to the frail economic and financial situation of the National Health Service (NHS), resulting from the accumulation of negative annual net results. This cannot be dissociated from the programme contracts signed with the NHS hospital units, which provide, from the outset, for insufficient income to cover the estimated costs of the activity developed.

This underfunding of the programme contracts leads to an increase in debts to suppliers, which has been mitigated over the years with additional capital injections into the NHS.

In this context, the Court has recommended that measures leading to the recapitalisation of the NHS be taken, based on medium and long-term financial and investment restructuring plans, in accordance with programme and multi-annual budgeting.

Limitations that still exist in access to the NHS

Access to health care in the SNS has been the object of successive public policies and administrative measures, focused on the supply of health care and the review of procedures and processes. However, there are still limitations in access to the NHS, such as the existence of users without a family doctor or the occurrence of waiting times for scheduled care that exceed the maximum response times guaranteed to NHS users, as set out in the Charter of Rights of Access to Health Care.

Expansion of
performance indicators
and user satisfaction
surveys

These constraints have already been the subject of recommendations by the Court to set up time-bound action plans to address them. In the current context, the trend towards an increase in the average waiting time for surgery that has been observed since 2010 is particularly relevant, associated with the decrease in the planned activity of the NHS in the context of the response to the COVID-19 pandemic.

Quality in health care provision is one of the principles set out in the Basic Law on Health, which should guide the actions of the NHS.

In this context, the Court has already recommended the expansion of the performance indicators used to monitor the activity of NHS providers. It has also repeatedly recommended that user satisfaction surveys be conducted and published in all NHS hospital units.

There are governance mechanisms in place in the NHS which, although guided by accountability and transparency objectives, present some implementation flaws, undermining their effectiveness.

The consolidated financial statements of the NHS present material misstatements that affect the true and fair view of its financial position and financial performance.

Implementation of the established governance mechanisms, namely through the effective application of the accounting standards

The Court highlights the need for effective application of the accounting rules in force, as well as the monitoring and control of the legality of the financial and asset management of the Ministry of Health's entities, ensuring that the members of the respective supervisory bodies are appointed and that the accounts of the entities are subject to statutory auditing within the legal deadline for the rendering of accounts.



9. LABOUR AND SOCIAL SECURITY

The sustainability of Social Security is an issue of the utmost importance, considering the challenges that are presented, namely those resulting from demographic evolution.

In 2020, the reduction in the number of active beneficiaries and the increase in the number of social benefits (namely old age and survivor's pensions, with the population aged 65 years or over increasing by 1.4%) continued, contributing to increase the structural budgetary pressure on the Social Security System.

Improvement in the management of Social Security assets, a decisive asset for the sustainability of the contributory system

Regulation of the framework and operation of the Social Security single treasury

The Court has identified insufficiencies in the Social Security databases that continue to constitute effective constraints on the rigorous granting and suspension of social benefits, with a significant impact on the amount of benefits unduly processed and paid.

Also, in terms of the Social Security Information Systems, given the weaknesses identified in the Social Security Account, it is considered a priority to promote the development of the IT systems, which is even more pertinent given the importance of making social support available in a timely and urgent manner, as happened in the context of the pandemic.

The transparency, sound financial management and sustainability of Social Security are affected by the management of its assets. In fact, the proceeds from the sale of Social Security properties revert to the Social Security Financial Stabilisation Fund to ensure the sustainability of the contributory system and to cover, if necessary, pension expenditure.

In this regard, the Court found the following evidence in its actions:

- ✓ the processes of disposal of real estate need to be supported by economic and financial studies, with special emphasis on the selection of the real estate for sale purposes, the procedures, the base value of the sale and the timetable;

Development of Social Security information systems

- ✓ The rent control and monitoring procedures must ensure efficiency in rent collection, debt recovery and timely action in the event of non-compliance;
- ✓ The process of regularising the ownership and registration and valuation of Social Security real estate presents delays and weaknesses that affect the completeness and reliability of the financial information, which exposes the Social Security sector to the risks of fraud, corruption and favouritism.

Development of a monitoring system for vocational training

Despite the Court's recommendations, the regulation of the framework and functioning of the Social Security's single treasury has not yet been published and a monitoring system for vocational training that would allow its impact on employability to be integrated and measured, so as to promote the alignment of the supply of training with the qualification needs of the labour market, has yet to be developed.



10. EDUCATION AND HIGHER EDUCATION

The area of education and higher education is one of the most important in the State Budgets.

Over the last few years, public policies have been adopted to improve the qualifications of the Portuguese, such as measures to combat early school leaving, to promote educational success and to increase the number of students attending higher education. Such measures are particularly relevant to qualify the active population, in an adverse demographic context, so it is important to examine whether, and to what extent, the public money used has made it possible to achieve the defined objectives.

In terms of the legality of the application of public money, there are still non-conformities, some of which are detrimental to the public purse, and these need to be resolved.

The Court has drawn attention to weaknesses identified in control actions aimed at the assessment of public policy measures in the areas of education and higher education related, respectively, to autonomy contracts, school textbooks, early school leavers and distance learning, and to the increase in graduates and funding of higher education. The weaknesses mainly concern the design, implementation, monitoring and control of the measures, evidencing their ineffectiveness or making their assessment unfeasible, highlighting, among the main ones, the following:

- ✓ There are no strategic and operational plans with the planned measures and actions, the estimated resources and costs, the steps for implementation and evaluation, the expected results and impacts;
- ✓ The measures are not designed to achieve the defined goals and the objectives are not specific or measurable or lack usefulness, timeliness and relevance. The concepts are not densified or consolidated and there are no indicators, or they are not explicit or uniform;
- ✓ The management and control systems are ineffective because they do not provide timely, accurate, reliable and essential information on the implementation of the measures and there is no systematic monitoring and control covering all the support and commitments;
- ✓ Budgetary programming is not detailed enough and appropriations are not always sufficient, compromising the principle of transparency and the budgetary process.

Enhance management efficiency, the good use of public funds and the sustainability of public finances

These weaknesses are recurrent and transversal to most of the measures, and therefore reflect risk factors that may affect most of the public policies implemented with national and European funds. Given the urgency of action, namely with a view to the timely implementation of the RRP, it is expected that the warning about such weaknesses and the need for their correction will contribute to mitigate risks and improve the design and monitoring and control of public policies, thereby increasing management effectiveness, the proper use of public money and the sustainability of public finances.

In the Audit reports of the area of higher education regarding funding, the regime of exclusive dedication and remuneration supplements, the Court identified the non-compliance with legal frameworks and the existence of outdated legal regimes that potentiate non-conformities in their application, raising the need for their amendment or revision, as recommended to the Minister in charge, namely:

Comply with or promote the amendment of the Law on the Financing of Higher Education

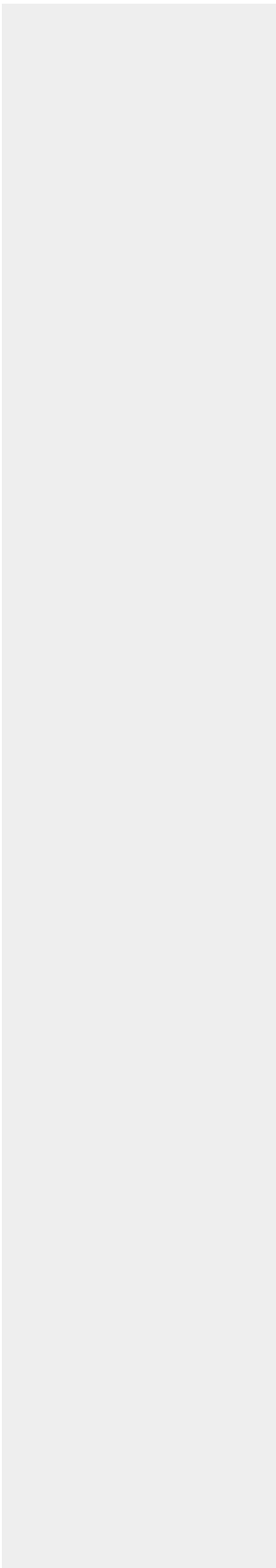
- ✓ Since 2016, the funding of Higher Education Institutions (HEIs) has been based on Legislature Contracts, entered into with the Government, and not on the formula provided for in the Basic Financing Law (Law 37/2003, of 22 August), given that: i) the Contracts, dependent on the Government's duration, do not guarantee, beyond the legislature, the stability and predictability of the financing relevant for the autonomous and strategic management of the HEIs; ii) the understanding that the Law is inadequate should not lead to diverse solutions without promoting its amendment. The Court therefore

Review the regimes of exclusive dedication and remuneration supplements for holders of management positions

recommended compliance with the Law or the necessary steps to amend it.

With the dissolution of the Assembly of the Republic and the scheduling of elections, an early end was put to the 22nd Constitutional Government. Consequently, the Legislature Contract for 2020-2023 ends with the inauguration of the XXIII Constitutional Government and funding is placed in crisis, which gives full pertinence to the recommendation that, however, has not yet been accepted.

- ✓ The regime of exclusive dedication contained in the professional statutes of HEI professors has been improved, but doubts have remained, highlighting the need for the legally provided exceptions to be more precise. Moreover, the rules for assessing compliance with the regime are set out in Decree-Law 1/83, of 3 January, which has been in force for about 40 years and needs to be updated (e.g. proof of income received through a declaration of a tax abolished 30 years ago). In this sense, the Court recommended that efforts be made to introduce the necessary improvements in the regime of exclusive dedication and in the rules for measuring compliance with it, so far without success.
- ✓ The regime of remuneration supplements for the holders of management positions in HEIs (Decree-Law 388/90, of 10 December), which is more than 30 years old, is out-of-date in view of the profound evolution of HEIs and is not in accordance with the rules of the Legal Regime of HEIs (RJIES



- Law 62/2007, of 10 September). RJIES⁵ (RJIES - Law 62/2007, of 10 September) and furthermore, the remuneration system of the holders of the HEI's governing and management bodies and of its organic units has not been established by decree-law, as provided for under Article 107 of RJIES. This legal framework has generated inconsistencies in the application of the supplement scheme (e.g. equating management positions in organic units with those in teaching units with the attribution of supplements with a higher value, or not legally provided for), for which the Court recommended that steps be taken to fix the remuneration scheme in compliance with article 107 of RJIES or, in the meantime, to revise the supplement scheme.

However, until now, only the alteration to the supplement's regime operated by Decree-Law 27/2021, of 16 April has been registered, which consecrated a transitory norm to rule out questions of legality, from the date the incumbents took office until April 2021, but did not rule out the need to be adequate under RJIES nor does it imply the legality of attributing new supplements to be examined under the non-transitory regime.

⁵ Legal Framework of Higher Education Institutions in Portugal.



11. LOCAL ADMINISTRATION

The transfer of powers to the Local Authorities is a process of the utmost importance, with implications in several areas, and entailing several risks.

One of the essential factors for the success of this process, as in all reform processes, is the continuous evaluation of the way it has been implemented and the integration of the results of this evaluation in the political options that will be taken in this regard.

This process occurs in a scenario in which the municipalities as a whole are showing a favourable trend of their financial situation, although some risks persist in terms of indebtedness, and it is certain that their commitment to fight the effects of COVID 19 has put pressure on the accounts and exposed substantial differences in their response capacity.

Difficulties in finding essential information for monitoring the process of transferring powers to Local Authorities

Based on the existing legal framework the implementation of this process, which is part of the National Reform Programme, requires a new financial and competence framework for Local Authorities, Intermunicipal Communities and Metropolitan Areas, has been phased in and has been developed more intensively over the last three years.

The Court of Auditors encountered difficulties in obtaining essential information for the assessment of this process, in particular with regard to:

- ✓ the quantification of the resources used in exercising the powers to be transferred and the justification of the means accompanying them;
- ✓ the definition of effectiveness, efficiency and quality targets;
- ✓ the criteria used in measuring compliance with legal requirements, namely no increase in the overall public expenditure;
- ✓ costs and quality indicators achieved in centralised versus decentralised powers;
- ✓ amounts entered and implemented for each sectoral programme.

Only by producing adequate information available will it be possible to ensure the transparency of the process, its evaluation and monitoring by the competent bodies, thus avoiding discretion and enabling the necessary political options to be taken by the bodies legitimised to do so.

Risks inherent to the financial sustainability of Municipalities aggravated by the COVID-19 pandemic

On the other hand, it should be noted that the actions of local authorities in the fight against the pandemic that is still going on is of great importance. However, one cannot fail to notice that the scale of the measures taken differed from municipality to municipality, mainly according to the respective financial capacity. Thus, it seems necessary to consider reassessing the criteria for the distribution of resources, considering the extent and intensity of the needs, as well as the financial weakness of some municipalities, particularly those in the interior of the country.

Risk of overlapping or competing powers with financial impact

Although the municipalities as a whole are showing a trend towards improvement in their financial situation, serious cases of indebtedness and adjustment needs persist, which must be given greater attention by the public entities involved, and greater care must be taken with the quality of municipal management and the reliability of the accounts.

FINAL NOTE

The Court of Auditors issues more than 300 recommendations each year as a result of its oversight, control and audit activity. Thus, this Contribution does not exhaust all the aspects to be improved in public management, nor all the matters and areas requiring development and improvement.

This document highlights areas where the actions of the Parliament and the Government are of greater relevance.

Moreover, there are other bodies and entities that are part of the national control system, especially the internal control bodies, which also contribute a great deal to good public management.

In line with what is established in article 11 of the Organizational and Procedural Law of the Court and in Article 8 of Decree-Law 166/1998, of 25 June, which establishes the Internal Control System of the State Financial Administration, we believe that public management would benefit significantly from the deepening of information exchange and cooperation between the internal control bodies and the Court of Auditors.

In addition to the external and independent control carried out by the Court of Auditors, public performance cannot do without an integrated and strong internal control system, considering a high degree of autonomy, which makes it possible to ensure that public policies are complied with and put into effect in an effective and transparent manner.

The Court also cooperates closely with the European Court of Auditors as regards European public resources.

This Contribution aims to provide the Parliament and the Government, at the beginning of this new Legislature, with a support instrument towards the good governance of public resources, thus constituting a step for the Court of Auditors to *promote accountability, quality and responsibility in public finances*.

ANNEX — Sources

The issues dealt with in this contribution are essentially derived from the following opinions, reports and decisions of the Court of Auditors:

FINANCIAL AND BUDGETARY FRAMEWORK AND ACCOUNTABILITY

Opinions on the State General Account - 2016 to 2020

Audit Report 13/2016 - 2nd Section - Audit on the Implementation of the SNC-AP - Interim Report I

Audit Report 6/2017 - 2nd Section - Audit on the Implementation of the SNC-AP
- Interim Report II

Audit Report 22/2017 - 2nd Section - Audit on the Implementation of the SNC-AP and Consolidation of Accounts (CGE) - Interim Report III

Audit Report 23/2017 - 2nd Section - Audit on the implementation of the State Accounting Entity - Interim Report IV

Audit Report 8/2018 - 2nd Section - Audit on the Implementation of the SNC-AP and ECE - Interim Report V

Audit Report 13/2019 - 2nd Section - Audit on the Implementation of the SNC-AP and ECE - Interim Report VI

Audit Report 25/2019 - 2nd Section - Audit on the Implementation of LEO
- evolution until August 2019 - Interim Report VII

Audit Report 11/2021 - 2nd Section - Audit on the implementation of the Multi-annual Budgetary Planning Framework

Report 14/2021 - 2nd Section - Audit on the implementation of LEO and SNC-AP
- follow-up on recommendations

Audit Report 16/2021 - 2nd Section: Operational effectiveness of the S3CP internal controls aimed at the reliability of the information submitted (2018-2020)

- Central Administration and Social Security entities

Resolution 2/2021 of 24 December, of the General Plenary of the Court of Auditors

ECONOMIC FUNCTIONS

Audit Report 10/2018 - 2nd Section: TAP Reprivatisation and Repurchase

Audit Report 01/2020 - 2nd Section: Operationality of Infrastructures and Transport

Audit Report 02/2020 - 2nd Section: Financing the Civil Aviation Regulatory Activity

Audit Report 12/2020 - 2nd Section: Bank Resolution Prevention in Portugal

Audit Report 07/2021 - 2nd Section: Public Financing of Novo Banco

Audit Report 13/2021 - 2nd Section: Reacting to the Adverse Impact of the Pandemic on the Housing Sector

Opinion on the State General Account 2020 - Part II - 5.3. Public-Private Partnerships and Other Concessions

Opinion on the State General Account 2020 - Part II - 6. Evaluation of Pandemic Response Measures in the Economic Area

SUSTAINABLE DEVELOPMENT

Opinions on the State General Account - 2016 to 2020

Report No. 25/2017 - 2nd Section: Environmental Funds: Portuguese Carbon Fund, Water Resources Protection Fund and Environmental Intervention Fund

Report No. 3/2018 - 2nd Section: Audit on Energy Efficiency in Public Buildings

Report No. 17/2018 - 2nd Section: Audit on Marine Protected Areas

Report No. 12/2019 - 2nd Section: Audit on the *Mar* 2020 Operational Programme

Report No. 19/2019 - 2nd Section: Audit of the National Action Programme to Combat Desertification

Report No. 20/2019 - 2nd Section: Audit of the REVITA Fund

Report No. 7/2020 - 2nd Section: Audit on Green Public Procurement

Report No. 8/2020 - 2nd Section: Air quality audit

Report No. 8/2021 - 2nd Section: Audit of Agro-Environmental Measures

USE OF EUROPEAN FUNDS

Report No. 2/2017- 2nd Section: Support for the fight against pine wood nematode

Report No. 20/2017 - 2nd Section: Audit of support for research and innovation

Report No. 5/2018 - 2nd Section: Audit on the Social Inclusion and Employment Operational Programme - Youth Employment Initiative

Report No. 16/2018 - 2nd Section: Audit of the incentive schemes of Portugal 2020 - debt recovery model

Report No. 12/2019 - 2nd Section: Audit to the *Mar* 2020 Operational Programme

Report No. 8/2021 - 2nd Section: Audit of Agro-Environmental Measures

Report No. 12/2021 - 2nd Section: Audit on Portugal 2020

PUBLIC PROCUREMENT

Court of Auditors' Activity Report 2020

Report 2/2020 - 1st Section

OAC Reports No. 3/2020, No. 6/2020 and No. 4/2021

OAC Report No. 1/21-PG

NATIONAL SECURITY

Report No. 20/2019 - 2nd Section: Audit of the REVITA Fund

Report No. 4/2021 - 2nd Section: Audit of DECIR (Special Device for Combating Rural Fires)

HEALTH

Report No. 8/2015 - 2nd Section: Follow-up audit on the recommendations made in the Report of the audit focused on the consolidation of accounts and analysis of the economic and financial situation of the NHS - 2011

Report No. 11/2016 - 2nd section: Follow-up Audit on the Recommendations Made in the Audit Report on the Performance of Functional Units of Primary Health Care

Report No. 27/2017 - 2nd Section: Audit of the Consolidated Account of the Ministry of Health - Fiscal Years 2015 and 2016

Report No. 20/2018 - 2nd Section: Audit of the Consolidated Account of the Ministry of Health - financial year 2017

Reports No. 15/2017 and No. 5/2020-OAC - 2nd Section: Waiting times and recovery from missed activity during the pandemic of COVID-19

Reports No. 24/2019 and No. 5/2021-OAC - 2nd Section: Performance audit on the management contract of the Hospital de Vila Franca de Xira in PPP. Audit on Value for Money obtained by the State and Synthesis Report - Public-Private Partnerships in NHS hospitals

Reports No. 30/2013, No. 8/2015, No. 27/2017 and No. 20/2018 - 2nd Section: Audits on the Consolidated Account of the Ministry of Health

LABOUR AND SOCIAL SECURITY

Report No. 8/2019 - 2nd Section: Audit on death benefits of the welfare system

Report No. 26/2019 - 2nd Section: Audit of the management of assets of *Segurança Social - Instituto de Gestão Financeira da Segurança Social, I.P.*

Report No. 15/2020 - 2nd Section: Audit to the *Instituto de Informática, I.P. - Segurança Social*

Report No. 15/2021 - 2nd Section: Audit to the *Centro de Formação Profissional das Pescas e do Mar - FOR-MAR*

EDUCATION AND HIGHER EDUCATION

OAC Panoramic Report No. 07/2021 - 2nd Section - "Demography and Education: despite the increase in the qualification of the population, public policy measures in education contain weaknesses that should be minimised, especially in an adverse demographic context".

It comprises the following Audit Reports:

- ✓ Audit Report No. 9/2019 - 2nd Section - "Autonomy contracts between the Ministry of Education and schools: with 60% of objectives not met and an ineffective control system, it is an instrument that needs to be reformulated"
- ✓ OAC Report No. 06/2021 - 2nd Section - "Follow-up on Recommendations: Report No. 9/2019 - 2nd Section"
- ✓ Audit Report No. 15/2019 - 2nd Section - "Measure "Gratuitousness of School textbooks": in the 2018/2019 school year students received textbooks, but the Measure was under-budgeted and the low reuse of textbooks threatens its sustainability"
- ✓ Audit Report No. 6/2021 - 2nd Section - "Follow-up of the recommendations of the audit on the Measure "Free textbooks": the Measure has been improved, but under-budgeting remains and sustainability is compromised by the suspension of the re-use of textbooks as a result of the pandemic"

- ✓ Audit Report No. 6/2020 - 2nd Section - "Higher Education Financing Model: Legislature Contracts 2016-2019"
- ✓ Audit Report No. 10/2020 - 2nd Section - "Early School Leaving: good progress has been made in reducing early school leaving, but it is necessary to know its real dimension in order to better combat it"
- ✓ Audit Report No. 17/2020 - 2nd Section - "Target of 40% of graduates aged 30-34 in 2020"
- ✓ Audit Report No. 9/2021 - 2nd Section - "Distance learning and digitalisation in schools during the pandemic: a rapid response adapted to the pandemic, but limited by insufficient skills and digital media requiring investment"
- ✓ OAC Report No. 2/2020 - 2nd Section - "System for monitoring the regime of exclusive dedication of teachers by Higher Education Institutions: needs improvement"
- ✓ Audit Report No. 2/2021 - 2nd Section - "Remuneration Supplements in Higher Education Institutions", as well as the subsequent Reports on the establishment of financial responsibilities

LOCAL GOVERNMENT

Audit Report No. 1/2019 - 2nd Section - "Audit of the Municipal Plans for the Defence of Forests against Fires and Special Municipal Operational Plans - Municipality of Pombal"

Audit Report No. 16/2019 - 2nd Section - "Audit of the Municipal Plans for the Defence of Forests against Fires and Special Municipal Operational Plans - Municipality of Águeda"

Audit Report No. 23/2019 - 2nd Section - "Audit of the Municipal Plans for the Defence of Forests against Fires and Special Municipal Operational Plans - Global Report"

Audit Report No. 14/2019 - 2nd Section - "Audit of the financing by Municipalities of Fire Brigades and Associations - Municipality of Bragança".

Audit Report No. 18/2019 - 2nd Section - "Audit of the Financing by Municipalities of Fire Brigades and Associations - Municipality of Odemira"

OAC Report No. 7/2020 - 2nd Section - Impact of COVID-19 measures on Mainland Local Government entities"

OAC Report No. 8/2021 - 2nd Section - "Impact of COVID-19 Measures on Mainland Local Government Entities

Audit Report No. 1/2022 - 2nd Section - "Audit on the Implementation of Financial Adjustment Plans of Local Authorities - Municipality of Fundão

