

Tribunal de Contas

Organisation and Procedural Law of the Court of Auditors

Act 98/97, of 26 August, with the following amendments:

- 1st amendment: Act 87-B/98, of 31 December
- 2nd amendment: Act 1/2001, of 4 January
- 3rd amendment: Act 55-B/2004, of 30 December
- 4th amendment: Act 48/2006, of 29 August
- 5th amendment: Act 35/2007, of 13 August

ACT 98/97, of 26 August

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ACT 98/97¹

of 26 August

(Organisation and Procedural Law of the Court of Auditors)

In accordance with the terms of articles 164, paragraph d), 168, point 1, paragraph q), and 169, point 3 of the Constitution, the Assembly of the Republic decrees the following:

CHAPTER I

Functions, jurisdiction and powers

Article 1

Definition and jurisdiction

1 — The Court of Auditors examines the legality and regularity of public revenue and expenditure, assesses sound financial management and enforces liability for financial offences.

2 — The Court of Auditors has jurisdiction and powers of financial control within the scope of the Portuguese legal system, whether on national territory or abroad.

3 — Whenever there is a conflict of jurisdiction between the Court of Auditors and the Supreme Administrative Court, shall the Court of Appeal, presided over by the President of the Supreme Court of Justice and composed of two judges from each court, be responsible for deciding the respective conflict.

Article 2

Remit²

1 — The following entities are subject to the Court of Auditors jurisdiction and powers of financial control:

- a) The State and its services;
- b) The Autonomous Regions and their services;

¹ With the amendments introduced by the Act 87-B/98, of 31 December, Act 1/2001, of 4 January, Act 55-B/2004, of 30 December, Act 48/2006, of 29 August, which republished it and repealed the Act 14/96 and Act 35/2007, of 13 August.

² As amended by the Act 48/2006, of 29 August. “Article 2 — *Objective and Jurisdiction*” was the original version.

- c) Local authorities, their associations or federations and services, as well as metropolitan areas;
- d) Public institutes;
- e) Social Security Institutions.

2 — The following entities are also subject to the Court of Auditors jurisdiction and financial control powers³:

- a) Public associations, associations of public entities or associations of mixed public and private entities, which are mostly financed by public entities or subject to its management control;
- b) Public companies, including state owned companies⁴;**
- c) Regional, inter-municipal and municipal companies⁵;**
- d) Repealed⁶;**
- e) Repealed⁷;**
- f) Concessionaires companies for the management of the state owned companies, companies with public share capital or mixed private and public companies controlled by the public sector, concessionaires or managers of public services, and the concessionaries of public works⁸.**
- g) Private law foundations which annually and regularly receive funds from the State Budget or from the local authorities, as to the use of such funds.

³ As amended by the Act 48/2006, of 29 August. “2 — *The following entities are also subject to the Court of Auditors powers of financial control*” was the original version.

⁴ As amended by the Act 48/2006, of 29 August. “*b) Public companies*” was the original version.

⁵ As amended by the Act 48/2006, of 29 August. “*c) Companies formed under commercial law by the State by other public entities or by both in association*” was the original version.

⁶ As repealed by the Act 48/2006, of 29 August. “*d) Companies formed under commercial law, whose capital is shared by the private and public sectors, from Portugal and abroad, where the public sector holds directly he majority of share capital*” was the original version.

⁷ As repealed by the Act 48/2006, of 29 August. “*e) Companies formed under commercial law, whose capital is shared by the private and public sectors, from Portugal and abroad, where the public sector has direct control of the respective management, namely when it can nominate the majority of the members of the boards of directors, of management or of audit, when it can nominate a director, or when it disposes of golden shares, under the terms of article 15 of Act 11/90, of 5th April*” was the original version.

⁸ As amended by the Act 48/2006, of 29 August. “*f) Concessionaires companies for the management of public companies, companies with public share capital or mixed private and public companies controlled by the public sector, and concessionaires or managers of public services*” was the original version

3 — Entities of any nature are also subject to the Court of Auditors jurisdiction and financial control whenever the public sector owns part of their share capital or, in any manner, they benefit from public money or other public assets. Such control exists to the extent necessary for examination of the legality, regularity, and economic and financial accuracy of the mentioned public money and assets application⁹.

4 — Repealed¹⁰.

Article 3

Headquarters, regional sections and delegations

1 — The Court of Auditors has its headquarters in Lisbon.

2 — Regional Sections operate in the Autonomous Regions of the Azores and Madeira, with headquarters in *Ponta Delgada* and *Funchal* respectively.

3 — By law, the organisation and functioning of the Court of Auditors may, as far as the continent is concerned, be regionally decentralized.

4 — The Court may, whenever necessary, establish the location of several of its support services in other places within national territory, constituting regional delegations for this purpose, without prejudice to the unity of the Court jurisdiction and powers as defined by law.

Article 4

Territorial Jurisdiction

1 — The Court of Auditors, in its headquarters, accomplishes full powers of jurisdiction and financial control, deciding on questions which are not expressly attributed to the regional sections, and hears appeals against the respective decisions for matters of prior approval, financial liability and fines.

⁹ As amended by the Act 48/2006, of 29 August. “3 — Entities of any nature are also subject to the Court of Auditors control whenever the public sector owns part of their share capital or, in any manner, they benefit from public money or other public assets. Such control exists to the extent necessary for examination of the legality, regularity, and economic and financial accuracy of the mentioned public money and assets application” was the original version.

¹⁰ As repealed by the Act 48/2006, of 29 August. “4 — The financial control of the entities listed in the two previous points is subject to the terms of Act 14/96, of 20th April” was the original version

2 — The regional sections carry out jurisdiction and powers of financial control in the area of the respective Autonomous Regions, namely in regard to the entities cited in article 2 with headquarters in the area, as well as to public services of the central authorities which exercise activities in the area and have been granted financial and administrative autonomy.

Article 5

Essential substantive powers

1 — The Court of Auditors has the following special powers:

- a) To issue opinion on the General State Account, including that of Social Security, as well as on the account of the Assembly of the Republic;
- b) To issue opinion on the accounts of the Autonomous Regions, as well as on the accounts of the respective legislative assemblies¹¹;**
- c) To control previously the legality and the budgetary cover for acts and contracts of any nature which generate expenses or are representative of any, direct or indirect, costs and responsibilities, for the entities cited in point 1 of article 2 and for those of the entities of any nature created by the State or by any other public entities to carry out administrative functions originally incumbent on the Public Administration. These functions costs are incurrent by the budget transfer of the entity that created them, whenever follows a subtraction of acts and contracts to the Court of Auditors a priori control¹² ;**
- d) To verify the accounts of the bodies, services or entities which have to render accounts to the Court;
- e) To judge the enforcement of financial responsibilities for anyone managing and profiting from public monies, irrespectively of the nature of the organisation the latter belongs to in terms of the present law¹³ ;**

¹¹ As amended by the Act 48/2006, of 29 August. “*b) To give opinion on the accounts of the Autonomous Regions, as well as the accounts of the respective Regional Assemblies*” was the original version.

¹² As amended by the Act 48/2006, of 29 August. “*c) To control previously the legality and the budgetary provisioning for acts and contracts of any nature which generate expenses or are representative of any, direct or indirect, duties or responsibilities, for the entities cited in point 1 of article 2*” was the original version.

¹³ As amended by the Act 48/2006, of 29 August. “*e) To judge the enforcement of financial responsibilities of the entities cited in point 1 of article 2, through the judgement procedures of accounts or following audits, and also the setting of debits for the liable entities or the impossibility of verification or judgement of accounts. The Court may sentence liable entities to repay sums, and may also impose fines and other sanctions specified by law*” was the original version.

- f) To assess the legality, as well as the economy, effectiveness and efficiency, according to technical *criteria*, of the financial management of the entities referred to in points 1 and 2 of article 2, including the organisation, functioning and reliability of the systems of internal control;
- g) To audit of the entities cited in article 2, on its own initiative, or on the request of the Assembly of the Republic, or of the Government;
- h) To examine, within the national remit, the collection of the own resources for the European Union and the allocation of financial resources provided by the European Union, in accordance with applicable legislation. The Court may act, in this area, in Co-operation with the appropriate European Union authorities;
- i) To carry out any other powers bestowed by law on the Court;

2 — The Court, through its standing committee, also has the powers to approve the opinions elaborated on the request of the Assembly of the Republic or the Government on legislative projects in financial matters;

3 — The accounts cited in paragraphs a) and b) of point 1 are approved by the Plenary meetings of the Assembly of the Republic and of the Legislative Assemblies of the Autonomous Regions, respectively, which shall deliberate on the submission of the corresponding opinions of the Court of Auditors to the Public Prosecutor Service for the enforcement of eventual financial responsibilities, in accordance with the terms of articles 57, point 1 and 58, point 1.¹⁴

Article 6

Complementary substantive powers

In order to carry out its activities, the Court of Auditors also has the following powers:

- a) To approve the necessary internal regulations for its operation;

¹⁴ As amended by the Act 48/2006, of 29 August. “3 — *The accounts cited in paragraphs a) and b) of point 1 are approved by the Plenary meetings of the Assembly of the Republic and of the Regional Legislative Assemblies, respectively, which shall deliberate on the submission of the corresponding opinions of the Court of Auditors to the Public Prosecutor Service for the enforcement of eventual financial responsibilities, in accordance with the terms of articles 57, point 1 and 58, point 1, paragraph b)*” was the original version.

- b) To issue instructions which are indispensable for the exercise of its powers, to be observed by the entities cited in article 2.
- c) To elaborate and publish the annual report of its activities;
- d) To propose legislative and administrative measures which the Court deems necessary for the exercise of its powers;
- e) To make an allowance to accountable parties for differences of amounts which do not exceed the national minimum wage, when they arise from involuntary error.

CHAPTER II

Statutes and fundamental principles

Article 7

Independence

1 — The Court of Auditors is independent.

2 — The independence of the Court of Auditors is guaranteed by self-government, irremovability, exemption from liability of its judges and the fact that its members are exclusively subject to the law.

3 — Self-government is ensured by the terms of the present Act.

4 — Only in the procedures specially foreseen by law may the judges be subject, as a result of the exercise of their functions, to civil, criminal or disciplinary liability.

5 — With the exception of the procedures in which the fact constitutes a crime, liability for judicial decisions is always assumed by the State, having the State powers to bring a proceeding against the judge in question.

Article 8

Decisions

1 — The judges of the Court of Auditors shall decide according to the Constitution and the law and are not subject to orders or instructions.

2 — The jurisdictional decisions of the Court of Auditors are binding for all public and private entities.

3 — The execution of the condemnatory decisions, as well as the collection of emoluments and any other charges set by the Court of Auditors or by the Directorate-General are included within the powers of the Tributary Courts of 1st Instance, in accordance with tax foreclosure procedure.¹⁵

Article 9

Publication of acts

1 — The judgements establishing jurisprudence are published in the 1st series of the Official Journal.¹⁶

2 — The following documents are published in the 2nd series of the *Official Journal*:

- a) The report and opinion on the General State Account;
- b) The reports and opinions on the accounts of the Autonomous Regions
- c) The annual report of activities of the Court of Auditors;
- d) The instructions and regulations of the Court of Auditors;
- e) The values and the list of entities mentioned in article 40, paragraph a);¹⁷**
- f) The reports and the decisions that the Court of Auditors believes should be published, after communication to the relevant entities.

3 — The acts specified in paragraph b), as well as those specified in paragraphs d), e) and f) of point 2 in the regional sections are also published in the respective official journals.

4 — The Court of Auditors may also decide to disseminate its reports through any media channel, after communication to the interested entities.

¹⁵ As amended by the Act 48/2006, of 29 August. “3 — *The execution of the condemnatory sentences, as well as the collection of emoluments and any other charges set by the Court of Auditors or by the General-Direction are included in the remit of the Tributary Courts of 1st Instance, in accordance with tax foreclosure procedure*” was the original version.

¹⁶ As amended by the Act 48/2006, of 29 August. “1 — *The judgements which fix the terms of jurisprudence are published in the 1st series-A of the Official Journal.*” was the originally version.

¹⁷ As amended by the Act 48/2006, of 29 August. “e) *The values and the relations of entities cited respectively by article 38, point 1, paragraph a) and b) and article 40, paragraph a)*” was the original version.

Article 10

Co-operation

1 — In the performance of its functions, the Court of Auditors has the right to the co-operation of all public and private entities, by the same terms as judicial courts.

2 — All the entities cited in article 2 should provide the Court with information on the breaches of law, which the Court should appreciate, and which they should recognise in the performance of their functions.

Article 11

Principles and forms of co-operation

1 — Without prejudice to its independence in the performance of its jurisdictional duties, the Court of Auditors will co-operate with equivalent institutions, in particular with those of the European Union and its member States, in the defence of financial legality and a State based on democratic law. The Court may for this purpose develop joint initiatives where they prove necessary.

2 — The Court will also co-operate, in matters of information, training initiatives and other suitable manners, with other State bodies, public entities and services, entities involved in the management and application of public monies, securities and assets, the media and other interested civic organisation, particularly those which promote the defence of the rights and interests of tax-paying citizens. As a rule, the Court seeks to disseminate information via its support services in order to limit and avoid waste, illegality, fraud and corruption with regard to both national and European Union public monies and assets.

3 — The auditing acts of the Court of Auditors form part of an control system, both at the national and European Union level, for whose structure and operation the bodies and departments of internal control are especially relevant, in particular the examinations and audits of the ministries and the autonomous services. The President of the Court is empowered to encourage acts which are necessary for the exchange, co-ordination of criteria and combining of forces between all entities charged with financial control, without prejudice to the independence of the Court and to the hierarchical and operational branch offices of the internal control services.

4 — The Assembly of the Republic may request the Court of Auditors to provide it with information, reports or opinions related to the respective duties of financial control, namely with the presence of the President or of rapporteurs in committee sessions or by the technical collaboration of staff from the support services.

Article 12

Collaboration of the internal control bodies

1 — The internal control services, specifically the national inspectorates or any other control or auditing entity for the services and organisation of Public Administration, as well as entities integrating the state owned companies sector, are also subject to a special obligation to collaborate with the Court of Auditors.¹⁸

2 — The obligation to collaborate with the Court of Auditors, as cited in the previous point includes the following:

- a) To communicate to the Court annual and multi-annual business plans and respective reports of activities;
- b) To send reports of their actions following the decision of the minister or the competent body to judge them, whenever they can be of material interest for the Court action. Those reports should materialize the situations generating possible responsibilities with founded indication of the facts, the period they regard to, the full identification of the accountable parties, the violated rules, the involved amounts and the exercise of institutional and personal adversarial procedure, in accordance with the terms of article 13 of this law;**¹⁹
- c) To carry out acts, including the supervision of budgetary implementation and the management of entities subject to the Court powers of financial control, on the Court request, in consideration of the *criteria* and objectives set by the Court.

¹⁸ As amended by the Act 48/2006, of 29 August. “1 — *The internal control services, namely the general inspectorates or any other control or auditing entity for the services and organisation of Public Administration, as well as entities integrating the public business sector , are also subject to a special obligation to collaborate with the Court of Auditors.*” was the original version.

¹⁹ As amended by the Act 48/2006, of 29 August. “b) *To send reports of their actions, on the decision of the minister or the competent body, in accordance with the terms of article 10, whenever such reports contain material of interest for the Court action, concretising the legal and de facto situations, and including any possible financial infringements.*” was the original version.

3 — The decision mentioned in paragraph b) of the previous point may establish guidance for the internal control body which is responsible for the mentioned report as to a possible jurisdictional procedure, to be started under paragraph c) of point 1 of article 89.²⁰

4 — The President of the Court of Auditors may meet with the national-inspectors and auditors of the Public Administration in order to promote the exchange of information concerning the respective annual and multi-annual plans of activities and the harmonisation of the *criteria* for internal and external control.²¹

Article 13 **Adversarial System**

1 — In the procedures subject to its assessment, the Court of Auditors shall hear the accountable parties and the services, bodies and any other interested entities, which are subject to its powers of jurisdiction and financial control.

2 — Prior to constituting procedures to enforce the responsibilities as well as the fine procedures, it is granted to the accountable parties the right to be heard on the facts ascribed to them, the respective qualification, the legal system and the amounts to be returned or paid for. For this purpose, the mentioned accountable parties shall have access to the available information at the respective entities or bodies.²²

3 — Hearings will be held before the Court delivers a public judgement of simple advice, censorship or conviction.

4 — The allegations, answers or observations of the accountable parties, shall be referred to and summarized or transcribed in the documents, where they are commented on or in the acts of such individuals' judgement or sanction. In the case of reports on the General State Account, including that of Social Security, and on the accounts of the Autonomous Regions, those elements, together with the commentaries that they give rise to, should be published as an annex, and may also be published as an annex to other reports, whenever the Court judges this to be useful.

²⁰ Point added by the Act 48/2006, of 29 August.

²¹ Former point 3.

²² As amended by the Act 48/2006, of 29 August. “2 — *The accountable parties in procedures for the enforcement of responsibilities, and in procedures of fines, is ensured the right to be heard previously on the facts imputed to them, the respective qualification, the legal system to be applied and the sums to be repaid or paid*” was the original version.

5 — When, namely in procedures of internal examination, the Court limits itself to the appreciation of elements introduced in the cases by the accountable parties, and does not deliver upon them any judgment of criticism, censorship or conviction, the hearing is carried out at the moment of presentation to the Court of the case or the respective allegations.

6 — The accountable parties may appoint a lawyer at law.

CHAPTER III

Structure and Organisation of the Court of Auditors

SECTION I

Structure and Organisation

Article 14

Composition

1 — The Court of Auditors is composed of the following:

- a) In its headquarters, by the President and 16 Judges;
- b) In each regional section, by a Judge.

2 — The Court has support services available in its headquarters and regional sections, which are indispensable for the fulfilment of its functions.

Article 15

Specialised sections or chambers

1 — The Court of Auditors comprises at its headquarters the following specialised sections which have the jurisdiction foreseen by this law:

- a) **1st Section**
- b) **2nd Section**
- c) **3rd Section.**²³

²³ As amended by the Act 48/2006, of 29 August.

“Article 15 — Specialised Sections

1 — The Court of Auditors has three specialised sections in its headquarters:

- a) The 1st Section, in charge of a priori control, may, in certain cases, exercise concomitant control;*
- b) The 2nd Section, in charge of concomitant and successive control of verification, control and auditing;*
- c) The 3rd Section, in charge of the judgement of enforcement procedures of responsibilities and of fines” was the original version.*

2 — The number of judges of the sections is set by a deliberation of the general plenary sitting.

3 — The judges are placed in each of the sections by the general plenary sitting, after hearing the standing committee and the interested parties, and succeed in the cases attributed to the holder of the vacancy that they will fill.

4 — The judges of the Court who come from the bench shall priority be placed in the 3rd Section.

5 — Except in ponderous questions of a personal or functional nature, a judge may only change from section after three years of permanency in the same one.

SECTION II

Judges of the Court of Auditors

Article 16

Appointment and dismissal of the President

1 — The President of the Court of Auditors is appointed in accordance with the terms of the Constitution.

2 — When a judge of the Court itself is appointed as President, his respective place remains captive during his mandate as President.

Article 17

Deputy President

1 — The general plenary sitting of the Court will elect, from amongst its members, a Vice President, to whom the President may delegate powers and who is empowered to substitute the President in the exercise of his powers in the event of vacancy, absence or impediment.

2 — The Vice President holds office for three years, and may be re-elected.

3 — Election of the Vice President is made by secret ballot, where the judge who obtains over half the validly cast votes will be elected.

4 — If no judge receives this number of votes, a 2nd ballot will be held, in which only the two judges with the highest number of votes will compete. In the event of a tied vote, the more senior of the two will be elected.

5 — The standing committee may decide, on the proposal of the President, to reduce the terms of service to be attributed or allocated to the Vice President.

Article 18

Recruitment of Judges

1 — Judges will be recruited via a competitive examination, held before a jury presided over by the President of the Court of Auditors and also including the Vice President, the most senior judge and two university professors chosen by the Government, one trained in Law, the other in Economics, Finance, Organisation and Management or Auditing.

2 — The competition is valid during a year from the date of publication of the classification list.

3 — Special competitions may be opened for the selection of judges for the regional sections.

4 — Judges coming from magistratures should be appointed to Regional Sections with priority.²⁴

5 — The judges appointed to the regional sections who have served two years in office have right of preference to be appointed to the 1st vacancy which occurs in the headquarters.²⁵

6 — The general plenary sitting may decide, in the event of urgent need, that a judge in the headquarters may temporarily hold office in a regional section, for no longer than six months, in order to compensate for the absence of the incumbent judge, provided that the latter gives his consent.²⁶

Article 19

Appointment requirements

1 — Only individuals over 35 years of age may enter the competitive examination, and in

²⁴ Point added by the single article of the Act 1/2001, of 4 January.

²⁵ As renumbered by the single article of the Act 1/2001, of 4 January. In the original version it corresponded to point 4.

²⁶ As renumbered by the single article of the Act 1/2001, of 4 January. In the original version it corresponded to point 5.

addition to fulfilling the general requisites specified by law for the appointment of public officials they must also be:

- a) Judges from administrative and fiscal courts or from the Public Prosecutor Service, appointed to higher courts, with at least 10 years of service in the respective office and a classification higher than “Good”, as well as judges from the Court of Auditors of Macao;
- b) Doctors in Law, Economics, Finance or Organisation and Management or in other areas suitable for the exercise of office;
- c) Masters or graduates in Law, Economics, Finance or Organisation and Management or in other areas suitable for the exercise of office, with at least 10 years of service in the Public Administration and classified as “Very Good”, and where at least 3 years were spent exercising administrative duties at the level of director-general or its equivalent, or with teaching duties in higher university education in disciplines related to the matters dealt with by the Court of Auditors;
- d) Graduates in the areas cited in the previous paragraph who have exercised duties as deputy director-general or auditor-co-ordinator or its equivalent in the Court of Auditors for a period of at least 5 years;
- e) Masters or graduates in Law, Economics, Finance or Company Organisation and Management of recognised merit with at least 10 years of service in management positions in companies and 3 years as a member of the board of directors, board of management, statutory audit committee, or examination committees.

2 — Ranking will be made between the candidates in each of the recruitment areas listed in the previous point.

3 — Appointments are made by the ranking order of the candidates within each of the recruitment areas, whereby a vacancy will be filled by each of these areas in turn, in the order established in point 1.

Article 20

Criteria for the competitive examination

1 — The jury will rank the candidates by relative merit.

2 — In the competitive examination, the ranking will be made on the basis of the following general factors:

- a) Academic and professional classifications;
- b) Rankings obtained in competitions;
- c) Scientific or professional work;
- d) Professional activity;
- e) Any other factors which concern the suitability and capacity to adapt to the post to be filled.

3 — The general plenary sitting of the Court may appeal against the definitive acts of examination and appointment of judges. The rapporteur will be a judge of the 1st or 3rd Sections, selected by drawing lots.

4 — The appeal specified in the previous point is subsequently subject to the system of appeal decisions of the Supreme Court.

Article 21

Form of appointment

1 — The judges of the Court of Auditors tied to public office may be appointed on a definitive basis or as a permanent commission of service.

2 — The time of commission of service in the Court is considered, for all effects and purposes, to be provided in the place of origin.

Article 22

Taking office

1 — The President of the Court of Auditors takes office and makes an affirmation of honour before the President of the Republic.

2 — The Vice President and the judges take office and make an affirmation of honour before the President of the Court of Auditors.

Article 23²⁷

Extra plan Judges

1 — The appointment for other positions of Judges of the Court of Auditors, as a service commission, according to the law, requires the automatic creation of the same number of extra plan positions, which shall be extinguished when their holders are to occupy their plan positions.

2 — The extra plan positions shall be occupied according to the list of the call for application qualifications during the respective duration period or by means of a call for candidates to be opened according to articles 18 to 20.

3 — The judges appointed for extra plan positions shall occupy, according to the respective qualification, the vacant positions which may subsequently occur, even if the timeframe of the respective call for candidates has expired.

4 — The number of extra plan judges may not exceed 25% of the positions foreseen in it.

Article 24

Prerogatives

The judges of the Court of Auditors have honours, rights, category, treatment remuneration and other prerogatives equal to those of the Supreme Court. The full terms of the Statutes for Court Judges will be applied except when they are incompatible with the nature of the Court.

Article 25

Disciplinary Jurisdiction

1 — The general plenary sitting of the Court is responsible for the exercise of disciplinary jurisdiction over its judges, including matters which concern the exercise of other duties, and

²⁷ As amended by the single article of the Act 1/2001, of 4 January. “Article 23 — Recruitment of assistant judges

1 — The President may appoint, on the proposal of the standing committee, assistant judges for temporary service needs, after selecting candidates following the publication of the respective notice in the Official Journal.

2 — The candidates should have the general and specific requirements needed for appointment to such posts, and selection is carried out by the standing committee applying the competitive examination’s criteria, with the necessary adaptations.

3 — The assistant judges are appointed under commission of service for one year, renewable for a maximum of three years.” was the original version.

is specifically empowered to commence disciplinary proceedings, appoint the respective instructor, decide on the eventual preventive suspension and apply the respective sanctions.

2 — The decisions on disciplinary matters for judges will be always taken in the 1st instance by the standing committee, with the general plenary sitting holding the right of appeal.

3 — Except for the terms of the previous points, the disciplinary system established by law for court judges will apply to the judges of the Court of Auditors.

Article 26

Civil and criminal liability

The norms which regulate the enforcement of civil and criminal liability for judges of the Supreme Court will apply to the President and judges of the Court of Auditors, as well as the norms relative to the respective preventive imprisonment.

Article 27

Incompatibilities, impediments and suspicions

1 — The President and judges of the Court of Auditors are subject to the same incompatibilities, impediments and suspicions as court judges.

2 — The President and judges of the Court of Auditors may not exercise any duties in bodies of political parties, political associations or connected associations nor develop party-political activities of a public character; the status of any respective affiliation will be suspended while holding office in the Court.

Article 28

Distribution of official publications

1 — The President and judges of the Court of Auditors have the right to receive *Official Journal and the Assembly of the Republic Journal* free of charges.²⁸

2 — The judges of the regional sections will also have the right to receive, free of charge, the *Official Journal* of the respective Autonomous Regions.

²⁸ As amended by the Act 48/2006, of 29 August. “1 — *The President and judges of the Court of Auditors have the right to receive, free of charge, the Official Journal, 1st, 2nd and 3rd series and appendices and the Assembly of the Republic Journal, 1st and 2nd series*” was the original version.

SECTION III

The Pubic Prosecutor Service

Article 29

Intervention of the Pubic Prosecutor Service

1 — The Pubic Prosecutor Service is represented, within the headquarters of the Court of Auditors, by the Attorney General, who may delegate his functions to one or more of the assistant-attorney-generals.

2 — In the regional sections, the Pubic Prosecutor Service is represented by the judge who has been appointed for this purpose by the Attorney General and who is replaced, in his absence or impediment, by his legal substitute.

3 — In the collective body specified by point 1 of article 42, the Pubic Prosecutor Service is represented by the judge placed in the regional section who will prepare the opinion on the account of the Autonomous Region.

4 — The Pubic Prosecutor Service shall intervene officiously and in accordance with the procedure norms of the 1st and 3rd Sections, and shall be provided with all reports and opinions approved in the sequence of actions of verification, control and auditing at the time of the respective notification. The Pubic Prosecutor Service may request the delivery of all documents or cases which it deems necessary.

5 — The Pubic Prosecutor Service may attend the sessions of the 2nd Section, aiming at consulting the cases before the weekly ordinary session, and may issue an opinion on the legality of the issues resulting from them.²⁹

6 — Pubic Prosecutor Service may endeavour all complementary measures deemed necessary with regard to the facts included in the reports sent to them, so as to start possible jurisdictional procedures.³⁰

²⁹ Point added by the Act 48/2006, of 29 August.

³⁰ Point added by the Act 48/2006, of 29 August.

SECTION IV

The support services of the Court of Auditors

Article 30

Guiding principles

1 — The Court of Auditors has administrative and technical support services, constituted by the Office of the President and the Directorate-General, including the support services of the regional sections.

2 — The organisation and the structure of the Directorate-General, including the support services of the regional sections, are foreseen by decree-law and shall observe the following principles and rules:

- a) Constitution of a special body for examination and control, integrating highly qualified careers of auditor, consultant and technical verifier who, in principle, will exercise their activities on an exclusiveness basis;
- b) The auditor shall carry out high-level control functions, namely the execution of audits and other control actions in the several areas of the Court of Auditors jurisdiction;
- c) The consultant shall execute high-level consulting functions, namely scientific and technical study and investigation to support the Court and the auditing teams;
- d) The technical verifier shall execute functions of study and application of scientific and technical methods and procedure, namely, in the scope of the instruction of *a priori* and successive control procedures.
- e) The remunerative statute for the careers of auditor and consultant shall be on a parallel with that of the judges;
- f) The remunerative statute for the careers of technical verifier shall not be inferior to that practised in the existing control and inspection services in Public Administration;
- g) Technical support units shall be constituted in accordance with the jurisdiction of each section and, within this one, according to specialised areas, to be approved by internal regulation;
- h) Initial and permanent training shall be provided for all officials from those careers;

- i) The support services in the headquarters are led by a director-general, and assisted by deputy director-generals;
- j) In each regional section, the support services shall be led by a deputy director-general;
- l) The Directorate-General and each regional section shall be also assisted by auditor-co-ordinators and chief-auditors, who for the purpose are on a parallel with directors of services and heads of section, respectively;
- m) The directing staff of the Directorate-General and of the support services of the regional sections includes the special examination and control body foreseen by paragraph a), and the regime for directing staff of the Civil Service will be subsidiary applied.
- n) The staff of the careers which is not included in the special examination and control body foreseen by paragraph a), shall have the right to a monthly supplement of permanent availability.

3 — The structure, nature and attributions of the Office of the President, as well as the regime for the respective staff foreseen by decree-law.

4 — The Office of the President shall ensure administrative support for the judges and the representative of the Public Prosecutor Service, being, for this effect, granted the necessary units.

5 — Until the date when the decree-law, referred to in point 2, takes effect the President of the Court of Auditors may attribute to the staff of the Directorate-General a monthly supplement of permanent availability, up to a maximum of 20% of the gross salary, to be paid from the Court coffers.

SECTION V

The financial and administrative management of the Court of Auditors

Article 31

Administrative and budgetary autonomy

1 — The Court of Auditors and its regional sections are granted administrative autonomy.

2 — The installation and operating costs of the Court, including those of the regional sections, shall be paid by the State, through the respective Budget.

3 — The Court shall prepare a draft budget and present it to the Government within the deadlines established for the elaboration of the draft law of the Budget, and shall also supply to the Assembly of the Republic the elements requested by the latter concerning this area.

Article 32

Administrative and financial jurisdiction of the Court

The Court, in general plenary sitting, has the following powers:

- a) To approve the draft of its annual budget, including those for the regional sections, as well as of the respective coffers, and the proposals for budgetary alterations, which do not fall within its powers;
- b) To present suggestions of legislative measures necessary for the Court operation, including that of the regional sections, and for the support services;
- c) To define the organisation and operational guidelines for its technical support services, including those of the regional sections.

Article 33

Administrative and financial powers of the President

1 — The President of the Court has the following powers:

- a) To supervise and guide the support services, including personnel management and financial management of the Court and of its regional sections, within the framework of self-government, exercising the same administrative and financial powers as a government minister;
- b) To guide the elaboration of the drafts of budget, as well as of the proposals for budgetary alterations which do not fall within his powers;
- c) To provide the support services of the Court with the orders and instructions required to improve the execution of the guidelines defined by the Court and to its effective operation.

2 — The exercise of the powers referred to in point 1 may be delegated to the Vice President and to the judges of the regional sections.

Article 34

Administrative Councils

1 — The Administrative Council is presided over by the director-general and includes two voting members, who exercise leading duties within the Directorate-General, one of which will be the responsible for the services of financial management.

2 — The two voting members of the Administrative Council shall be appointed by the President, under proposal of the director-general, and the respective substitutes should also be appointed.

3 — In the regional sections the Administrative Council is presided over by the deputy director-general and the two voting members, as well as the respective substitutes, shall be appointed by the judge, under proposal of the deputy director-general.

4 — The Administrative Councils are incumbent of the financial administration, which includes the normal management of the support services, and have, namely, the following powers:

- a) To authorise the expenditure which do not require the authorisation of the President;
- b) To authorise the payment of expenditure, irrespective of the entity which authorised the respective expense;
- c) To prepare the drafts of budget for the Court and the regional sections and the budget for the respective coffers, as well as the proposals for budget alteration which prove necessary;
- d) To manage the Coffer of the Court or of the respective regional sections.

5 — The presidents shall have the casting vote.

Article 35

Coffers of the Court of Auditors

1 — The Court of Auditors has coffers in its headquarters and regional sections, which are constituted as corporate entities with financial and administrative autonomy and their own assets.

2 — The revenue of the coffers are as follows:

- a) The emoluments collected by the services of the Court or by the Directorate-General;
- b) The product from the sale of books or magazines edited by the Court or from the services provided by the Directorate-General;
- c) Other revenue to be fixed by statute;
- d) Inheritances, bequests and donations.

3 — The expenses of the coffers are as follows:

- a) The current and capital expenditure which, in each year, cannot be covered by the appropriations inscribed in the State Budget;
- b) The salaries of the assistant judges employed in addition to the number of permanent staff judges, as well as the supplements owed to judges;
- c) The expenses resulting from the edition of books or magazines;
- d) The expenses derived from the carrying out of studies, audits, expert inspection and other services, when they cannot be accomplished by the permanent staff of the support services.

4 — All goods acquired using the appropriations inscribed in the budgets of the Court coffers are included in the respective own assets.

CHAPTER IV

The forms of financial control of the Court of Auditors

SECTION I

Planning

Article 36

Budgetary examination

1 — The Court of Auditors examines the implementation of the State Budget, including that of Social Security, and may for this purpose request necessary information from any entity, whether private or public.

2 — The information thereby obtained, either during the execution of the Budget or until the moment of the publication of the General State Account, may be communicated to the Assembly of the Republic, with whom the Court and its support services may agree the necessary proceedings for the co-ordination of the respective constitutional jurisdiction of examina-

tion over budgetary execution and for the appreciation of the report on the General State Account, both during its preparation and after its respective publication.

3 — The Assembly of the Republic may request intercalary reports from the Court on the results of the examination of the Budget during the year, as well as provision of any necessary clarifications for the appreciation of the State Budget and the report on the General State Account.

4 — The preparation and examination of the execution of the budgets of the Autonomous Regions by the regional sections, in co-ordination with the regional assemblies, are applied to the terms of the previous points, with the necessary adaptations.

Article 37

Three-year plan

1 — The general plenary sitting of the Court of Auditors will approve the plan for acts of examination and control over a period of three years, by October 30 of the year immediately prior to the start of the three-year period.

2 — In the headquarters the plan is established by the standing committee based on the three-year plans of the 1st and 2nd Sections.

3 — The three-year plan of each regional section is established by the respective judge and included as an appendix to the three-year plan of the headquarters.

Article 38

Annual plan of the 1st Section

1 — The plenary sitting of the 1st Section shall approve until December 15 of each year the respective annual plan, which is subordinated to the three-year action plan, and which namely includes:

- a) The list of the organisation or services which are partially or totally dispensed from *a priori* control in that year, based on the reliability of their decision system and internal control verified in the audits carried out by the Court;
- b) The list of the services or organisation which that year will be subject to concomitant control for expenditure arising from the acts or contracts which should not be delivered into *a priori* control.

2 — The dispense from *a priori* control foreseen by paragraph a) of the previous point may be repealed at any time based on the unreliability of the decision system and internal control of

the service or organisation as stated in the audits carried out by the Court.

3 — Repealed.³¹

4 — Repealed.³²

Article 39

Areas of responsibility of the 2nd Section

1 — Once the three-year plan of the Court is approved, the plenary sitting of the 2nd Section, before November 15 of this year, will decide upon areas of responsibility to be allocated to each judge, by drawing lots unless there is consensus.

2 — The preparation of the report and opinion on the General State Account may constitute one or more areas of responsibility.

3 — The technical support services should organisation themselves in function of the area of responsibilities of the judges.

Article 40

Annual plan of the 2nd Section

The plenary sitting of the 2nd Section will approve before December 15 of each year, the respective annual plan, which is subordinated to the three-year plan, and which will specifically include:

- a) The report on the entities which are exempted from submission of accounts on the basis of previously defined *criteria* of auditing principles and current practises. The report will aim to achieve a suitable balance between financial risk and disclosure; the priority to control of accounts which are more recent or involve higher sums and financial risk; and a guarantee that all services and organisation will be inspected at least once every four years;

³¹ As repealed by the Act 48/2006, of 29 August. “3 — *The dispense from a priori control does not prejudice the concomitant or successive control of the expenditure arising from the execution of the acts or contracts, nor to the eventual financial liability*” was the original version.

³² As repealed by the Act 48/2006, of 29 August. “4 — *The attribution of the audit’s direction to the judges, as referred to in paragraph b) of point 1, is made by drawing lots*”, was the original version.

- b) The report on the entities whose accounts will be subject to external auditing;
- c) The report on the entities whose accounts will be returned without internal examination by the support services, based on previously defined *criteria*;
- d) The value of the revenue or expenditure below which the entities subject to provision of accounts will be exempted from submitting accounts to the Court;
- e) The audits to be carried out independently of the verification of accounts cases;
- f) The acts to be carried out as part of the preparation of the report and opinion on the General State Account.

Article 41

Report and Opinion on the General State Account

1 — In the report and opinion on the General State Account, including Social Security, the Court of Auditors will assess the financial activity of the State during the year covered by the Accounts, in the areas of revenue, expenditure, treasury, use of public borrowing and national assets, specifically concerning the following aspects:

- a) Fulfilment of the Framework Law of the State Budget, and other complementary legislation concerning financial administration;
- b) Comparison between the budgeted revenue and expenditure and those actually implemented;
- c) The inventory and balance sheet of the State's assets and liabilities, as well as asset changes, specifically as a result of privatisation procedures;
- d) The financial flows between the State Budget and the business sector of the State, specifically concerning the legal destination of the revenue from privatisation;
- e) The implementation of multi-year plans of the State Budget, with special reference to the respective annual appropriation;
- f) The movement of funds for treasury operations, discriminated by type of operation;
- g) The direct responsibilities of the State, as a result of the assumption of responsibilities or use of public borrowing, or indirect responsibilities such as the granting of guarantees.
- h) The aid directly or indirectly provided by the State, specifically allowances, subsidies, tax benefits, credits, bonuses and financial guarantees;
- i) The financial flows with the European Union, as well as the degree of observance of agreements held with the European Union.

2 — The report and opinion on the General State Account delivers a judgement on the legality and financial correctness of the operations examined, and may comment on the economy, efficiency and effectiveness of management, and also on the reliability of the respective systems of internal control.

3 — The report and opinion on the General State Account may also include recommendations to the Assembly of the Republic or to the Government, in order to overcome deficiencies of budgetary management, treasury, national debt and state assets, as well as the organisation and operation of services.

Article 42

Accounts of the Autonomous Regions

1 — The report and opinion on the accounts of the Autonomous Regions is prepared by the respective regional section and, is subsequently, approved by a collective body established for this purpose by the President of the Court of Auditors and by judges of both regional sections.

2 — The collective body referred to by the previous point meets in the headquarters of the regional section responsible for the preparation of the report and opinion.

3 — The report and opinion on the accounts of the Autonomous Regions are subject to the terms of article 41, with the due adaptations.

Article 43

Annual report

1 — The activity developed by the Court of Auditors and by its support services is included in a report.

2 — The report is prepared by the President and approved by the general plenary sitting, after which it is published and presented to the President of the Republic, the Assembly of the Republic, to the Government and to the government bodies of the Autonomous Regions for the respective regional section, before May 31 of the year following that for which the report is prepared.

3 — For the preparation of the report cited in the previous points, the judges of the regional sections should submit to the President the respective report before April 30 of the year following that for which the report is prepared.

SECTION II

***A priori* control**

Article 44

Prior approval finality. Legal basis for the prior approval refusal

1 — *A priori* control aims to verify whether the acts, contracts or other instruments, which generate expenditure or represent direct or indirect financial liability, are according to the law and whether the respective duties are covered by the suitable budgetary appropriation.

2 — For instruments which generate public debt, *a priori* control aims to verify, namely, the observance of the limits and sub-limits of indebtedness and of the respective purposes, established by the Assembly of the Republic.

3 — Prior approval refusal must be founded on the discordance of the mentioned acts, contracts or any other instruments with the law which implies:

- a) Nullity;
- b) Duties without being covered by the suitable budgetary appropriation, or direct breach of financial norms;
- c) Illegality which alters or could alter the respective financial result.

4 — In the procedures foreseen by paragraph c) of the previous point, the Court, on the basis of a founded decision, may grant the prior approval and make recommendations to the services and organisation in order to overcome or avoid the future occurrence of such illegalities.

5 — Repealed.³³

³³ As repealed by the Act 87-B/98, of 30 December. “5 — *No appointment or staff contract may be published in the Official Journal without mention of the date of the respective prior approval, express or tacit, or of the declaration of conformity with the law or of the fact that a priori control is not required.*” was the original version.

Article 45³⁴

Prior approval effects

1 — The acts, contracts and other instruments subject to a priori control of the Court of Auditors may be effective before the prior approval or the compliance declaration, except as far as the payments resulting from them are concerned and notwithstanding the provisions of the following points.

2 — In the procedures provided for in the previous point, the prior approval refusal involves the jurisdictional ineffectiveness of the respective acts, contracts and other instruments only after the notification date of the respective decision to the interested services or organisation.

³⁴ As amended by point 2 of the Act 87-B/98, of 30 December. However, point 1 of the same Act repealed point 4 of this article. “1 — No act, contract or juridical instrument subject to a priori control by the Court of Auditors may be executed or originate any payment before the prior approval or a declaration of conformity with the law, except when retroactive effects attributed to it in accordance with the law and the following points.

2 — The following contracts may, however, take full effect before the prior approval, except the payment of the respective price:

- a) Contracts for public works;
- b) Contracts for acquisition of goods and services, in the event of manifest urgency declared in a founded dispatch of the entity holding the originary authority to approve the respective expenditure;
- c) Contracts of adhesion.

3 — The appointments and administrative employment contracts, in cases of urgent service convenience declared in a founded dispatch of the entity holding the originary authority to the respective approval, may take effect before the prior approval, when they concern the start of office and the respective processing of allowances.

4 — The loans raised in the external market may take effect before the prior approval, if they obtain a favourable opinion from the Bank of Portugal in relation to their urgency in the light of exchange and interest rates' favourable conditions.

5 — In the cases foreseen by points 2, 3 and 4, the prior approval refusal implies juridical ineffectiveness of the respective acts, contracts and any other instruments only after the date of the respective decision's notification to the services or organisation.

6 — In the cases foreseen by point 2, the accomplished works or the goods or services acquired after the celebration of the contract and till the date of the prior approval may be paid after such notification, provided that the sum does not exceed the financial planning contractually established for the same time period.

7 — The authority for the declaration of urgency foreseen by point 2, paragraph b) and point 3 may not be delegated.” was the original version.

3 — The works carried out or the goods or services purchased after the celebration of the contract until the notification date of the prior approval refusal may be paid after the mentioned notification, provided that the respective value does not exceed the programming established by contract for that period.

4 — Repealed.

Article 46

Incidence of *a priori* control

1 — The following items are subject to the a priori control of the Court of Auditors pursuant to paragraph c) of point 1 of article 5:³⁵

- a) All acts resulting in an increase of the funded public debt of the services and funds of the State and the Autonomous Regions with administrative and financial autonomy, and other entities mentioned in paragraphs c) to e) of point 1 of article 2, as well as all acts which change the general conditions of the prior approved loans³⁶;
- b) The contracts for public works, acquisition of goods and services, as well as other purchase of assets involving expenses under the provisions of article 48, when put in writing according to the law³⁷;**
- c) The drafts of contracts of an amount equal or greater than the one established in the budgetary laws according to the article 48, whose expenses, or part of them, have to be paid at the date of their signature³⁸.**

³⁵ As amended by the Act 48/2006, of 29 August. “1 — In accordance with the terms of article 5, point 1, paragraph c), the documents, which represent, grant or execute the following acts and contracts, should be delivered to the Court of Auditors for a priori control purposes:” was the original version.

³⁶ As amended by the article 76 of the Act 55-B/2004, of 30 December. “a) General bonds and all the acts which result in an increase in the public debt founded from the entities cited in point 1 of article 2, and also the acts which modify the general conditions of prior approved loans.” was the original version.

³⁷ As amended by the Act 48/2006, of 29 August. “b) The contracts converted into the written form for public works, acquisition of goods and services, as well as other acquisition of assets which imply expenditure:” was the original version.

³⁸ As amended by the Act 48/2006, of 29 August. “c) The draft contracts of the same or superior value to the established by the budgetary laws in terms of article 48 which are celebrated by deed and whose charges must be paid at the time of its conclusion” was the former version.

2 — For the purposes of paragraphs b) and c) of the previous point, the agreements, protocols or other instruments resulting or that may result in financial or property costs are considered to be contracts.³⁹

3 — The Court and its support services exercise their respective powers of a priori control in an integrated manner with the concomitant and successive control.⁴⁰

4 — *A priori* control is exercised through a prior approval or the declaration of conformity with the law, and emoluments are due in both cases.⁴¹

5 — For the purposes of point 1 the documents representing, bearing or implementing the acts and contracts listed there should be sent to the Court of Auditors.⁴²

Article 47

A priori control: exemptions

1 — From the provisions of the previous articles are exempted the following:

- a) **The acts and contracts practiced and signed by entities mentioned in n.ºs 2 and 3 of article 2, notwithstanding the provisions of paragraph c) of point 1 of article 5, as well as the acts of the Government or the Regional Governments which do not result in budgetary or treasury expenses and are exclusively related to the guardianship and management of those entities;**⁴³
- b) The definitive titles of contracts which are preceded by prior approved drafts.
- c) The lease contracts, as well as those for the supply of water, gas and electricity or celebrated with companies providing cleaning services, security for premises or technical assistance;
- d) **The additional contracts to the prior approved ones;**⁴⁴

³⁹ As amended by the Act 48/2006, of 29 August. “2 — *The Court and its support services exercise the respective a priori control powers in an integrated manner with the forms of concomitant and successive control, seeking to make such exercise flexible and promoting its progressive selectivity, in conformity with the terms of articles 38 and 48.*” was the original version.

⁴⁰ Point added by the Act 48/2006, of 29 August.

⁴¹ Former point 3.

⁴² Point added by the Act 48/2006, of 29 August.

⁴³ As amended by the Act 48/2006, of 29 August. “*a) The acts and contracts practised or celebrated by the entities cited in article 2, points 2 and 3, as well as the acts of the Government and of the regional governments which do not give rise to budgetary or treasury charges and are exclusively related to the guardianship and management of those entities.*” was the original version.

⁴⁴ Paragraph added by the Act 48/2006, of 29 August.

- e) The contracts intended to establish conditions for recovery of State credits;⁴⁵
- f) Other acts, diplomas, dispatches or contracts especially foreseen by law.⁴⁶

2 – Contracts mentioned in paragraph d) of the previous point are sent to the Court of Auditors within 15 days counting from when it begins to be implemented.⁴⁷

Article 48⁴⁸

Exemption of a priori control

The budget laws establish, to be in force during each budgetary year, the contract value, excluding the amount of the value added tax due, below which the contracts mentioned in paragraphs b) and c) of point 1 of article 46 are exempted from a priori control.

SECTION III

Concomitant control

Article 49

Concomitant control

1 — The Court of Auditors may carry out concomitant control:

- a) By means of audits by the 1st Section to the proceedings and administrative acts involving staff expenses and to contracts which are not to be sent for a priori control according to the law, as well as the implementation of the prior approved contracts⁴⁹;
- b) Through audits carried out by the 2nd Section on the financial activities exercised before the termination of the respective management.

2 — If, in the procedures foreseen by the previous point, there are findings of illegality in

⁴⁵ Former paragraph d.

⁴⁶ Former paragraph e.

⁴⁷ Point added by the Act 48/2006, of 29 August.

⁴⁸ As amended by the Act 48/2006, of 29 August. “*The budget laws will establish, for each budgeting year, the contract value excluding the amount of the value added tax due, below which the contracts mentioned in paragraph b) of point 1 of article 46 are exempted of previous supervision.*” was the former version

⁴⁹ As amended by Act 48/2006, of 29 August. “*a) By means of audits of 1st Section to administrative procedures with regards to acts which involve staff costs and contracts which are not submitted to a priori control according to the law or a Court decision.*”, was the former version

the pending procedures or in an act or contract which has not yet been executed, the entity responsible for authorising the expense should be notified in order to send the mentioned act or contract to *a priori* control, and not execute it before the prior approval, on penalty of financial liability.

3 — The audit reports carried out under the terms of the previous points may be instruments of the verification procedure of the respective account or serve as the basis for the enforcement procedure for responsibilities or fines⁵⁰.

SECTION IV

Successive control

Article 50

Successive control in general

1 — Within the scope of the successive control, the Court of Auditors shall verify the accounts of the entities foreseen by article 2, evaluate the respective systems of internal control, appreciate the legality, economy, efficiency and effectiveness of the financial management and ensure the examination of the national co-partnership to the resources for the European Union, and the application of financial resources provided by the European Union.

2 — Within the scope of the successive control of the State direct public debt, the Court of Auditors checks if debt limits and other general conditions established by the Assembly of the Republic for each financial year are being complied with⁵¹.

3 — The loans and financial transactions for direct public debt management, as well as the respective costs resulting, namely, from capital amortizations or payment of interest are subject to Court of Auditor successive control⁵².

4 — The Portuguese Treasury and Government Debt Agency shall notify monthly the Court of Auditors on the loans and financial transactions for the State direct public debt management carried out according to the provisions of this law⁵³.

⁵⁰ Renumbering in accordance with article 82 of the Act 87-B/98.

⁵¹ Point added by point 2 of the Act 48/2006, of 29 August.

⁵² Point added by point 2 of the Act 48/2006, of 29 August.

⁵³ Point added by point 2 of the Act 48/2006, of 29 August.

Article 51

The entities which render accounts

1 — The following entities are subject to the elaboration and rendering of accounts:

- a) The Presidency of the Republic;
- b) The Assembly of the Republic;
- c) The courts;
- d) The regional assemblies;
- e) Other constitutional bodies;
- f) The services of the State and of the Autonomous Regions, including those located abroad, whether corporate entities or not, irrespective of their juridical nature, endowed with administrative autonomy or administrative and financial autonomy, including autonomous funds and organisation in the process of being installed;
- g) The General Staff of the Armed Forces and the respective branches⁵⁴;**
- h) The *Santa Casa da Misericórdia* and its Gaming Department;
- i) The Management Institute for Public Credit;
- j) The National Pension Fund;
- l) Tourism boards and regions;
- m) Local authorities, their associations and federations and their autonomous services, metropolitan areas and district assemblies;
- n) The Administrative Councils or administrative or management committees, boards of a permanent, transitory or eventual character, other directors or accountable parties for public funds or other state assets or of establishments which pertain to the State, even though they have their own revenue;
- o) The entities foreseen by point 2 of article 2;
- p) Other entities or organisation to be determined by law.

⁵⁴ As amended by the Act 48/2006, of 29 August. “g) *The General Staff of the Armed Forces and the respective branches, as well as the military units*”, was the original version

2 — The following are also subject to the elaboration and rendering of accounts:

- a) The services which exercise functions as bank of the Treasury Directorate-General, the Customs Directorate-General and Excise Directorate-General;
- b) The establishments with treasury functions;
- c) The coffers of any nature of all public organisation and services, irrespective of the origin or destination of their revenue.

3 — The general plenary sitting of the 2nd Section may set the annual amount of revenue or expenditure below which the entities referred to in the previous points are dispensed from sending the accounts to the Court.

4 — The plenary sitting of the 2nd Section may annually deliberate upon the dispense from sending the accounts by some of the entities referred to in points 1 and 2 based on the reliability of the decision and internal control systems, as stated in previous audits or in accordance with the selection criterion of the actions and entities to be included in the respective annual plan.

5 — The accounts dispensed from sending to the Court under the terms of points 3 and 4 may be subject to verification and the respective entities subject to audits, through deliberation of the plenary sitting of the 2nd Section, during a period of five years.

Article 52

Provision of accounts

1 — The accounts will be provided for each economic year and will be prepared by the officials in charge of the respective board of directors, or if these have terminated their duties, by those who have replaced them, without prejudice to the duty of reciprocal collaboration.

2 — In the event that within an economic year there is a substitution of the official in charge or of the totality of the officials in charge of the collective administrations, accounts will be provided in relation to each board of directors.

3 — The partial substitution of the directors in collegiate administrations due to the pre-suspension or finding or any financial offence will lead to the provision of accounts, which will end on the date on which the director was substituted.

4 — The accounts shall be sent to the Court of Auditors up until April 30th of the year following that they regard to.⁵⁵

⁵⁵ As amended by the Act 48/2006, of 29 August. “4 — *The accounts will be sent to the Court of Auditors up until May, 15th of the year following that for which they regard to.*” was the original version

5 — In the procedures specified in points 2 and 3 the deadline for the presentation of accounts will be 45 days after the date of the substitutions of the officials in charge.

6 — The accounts will be prepared and documented in accordance with the instructions approved by the Court.

7 — The unjustified failure to submit accounts within the deadlines set in points 4 and 5 may, without prejudice to the corresponding penalty, lead to an audit being carried out, intended to examine the circumstances of the default committed and the possible omission of drawing up of the said accounts, proceeding to the reconstitution and examination of the respective financial management in order to fix, if possible, the restitutions owed by the officials in charge.

Article 53

Internal verification

1 — The accounts which are not subject to external verification under the terms of the following article may be subject to internal verification.

2 — Internal verification includes the analysis and checking of the accounts only for numerical statement of the operations carried out, which integrate the debit and the credit of the management team with evidence of the opening and closing balances and, if that be the case, the declaration of extinction of the liability of secured treasurers.

3 — Internal verification is carried out by the support services, which shall set the emoluments due. This verification shall be homologated by the 2nd Section.

Article 54

External verification of accounts

1 — External verification of accounts aims to appreciate, namely:

- a) Whether the operations carried out are legal and regular;
- b) Whether the respective systems of internal control are reliable;
- c) Whether the accounts and the financial statements elaborated by the entities, which have rendered them, faithfully reflect the entities' revenue and expenditure, as well as their financial and patrimonial situation;
- d) Whether they are elaborated in accordance with the established accounting rules.

2 — External verification of the accounts will be made using auditing methods and techniques decided, in each case, by the Court.

3 — The procedure of external verification of accounts is concluded by the elaboration and approval of a report, which must include, namely, the following elements:

- a) The entity whose account is being verified and the financial period which it concerns;
- b) The accountable parties for its presentation, as well as for the financial management, in the event that they differ;
- c) The numerical statement referred in point 2 of article 53;
- d) The methods and techniques of verification used and the universe of selected operations;
- e) The opinion of the accountable parties in the scope of the adversarial principle;
- f) The judgement on the legality and regularity of the operations examined and on the consistency, integrity and reliability of the accounts and the respective financial statements, as well as any on the impossibility of their verification, if that be the case;
- g) The concreteness of legal and *de facto* situations, which integrate any eventual financial offences and their accountable parties, if that be the case;
- h) The appreciation of the economy, efficiency and effectiveness of the financial management, if that be the case;
- i) The recommendations in order to overcome the defects in the respective financial management, as well as in the organisation and operation of the services;
- j) The emoluments due and other charges to be borne by the audited entities.

4 — The Public Prosecutor Service will only be notified of the final approved report, without prejudice to the terms of article 29, point 4 and article 57, point 1.

Article 55

Audits

1 — The Court may, in addition to the necessary audits for external verification of the accounts, carry out at any moment, on its own initiative or on request from the Assembly of the Republic or from the Government, audits of any type or nature for specific acts, procedures or aspects of the financial management of one or more entities subject to its powers of financial control.

2 — The auditing procedures shall be concluded by the elaboration and approval of a report, subject to the terms of article 54, point 3, paragraphs d) to j) and point 4.

Article 56

Recourse to auditing firms and technical consultants

1 — Whenever it proves necessary, the Court of Auditors may use the services of auditing firms or technical consultants in order to carry out tasks which are indispensable for the exercise of its duties, when such tasks cannot be performed by the support services of the Court or be requisitioned from any of the entities cited in article 2.

2 — The auditing firms referred to in the previous point, should be certified, and benefit from the same prerogatives as the administrative officials of the Directorate-General in the performance of their tasks.

3 — When the State Audit Curt carries out audits on request of the Assembly of the Republic or the Government, the payment due to the said companies and consultants will be paid for by the services or entities subject to examination, in addition to legally due emoluments.

4 — The terms of the previous point are applicable in cases in which the Court of Auditors needs to sign service agreements for Co-operation in the audits to be carried out by its support services.

5 — In the event that there are various entities inspected, the Court will set in relation to each a part-share of the payment for the services contracted.

CHAPTER V

Enforcement of financial liabilities

SECTION I

Types of procedure

Article 57⁵⁶

Reports

1 — Whenever the reports of the Court control actions, as well as those of the internal control bodies actions show facts constituting financial liability, the respective cases are sent to the Public Prosecutor Service, notwithstanding the provisions of point 3 of article 5 and those of article 89.

2 — The reports of the internal control bodies actions do not require the approval of the 1st or 2nd Section of the Court for the purposes of enforcing responsibilities by the 3rd Section, and are sent to Public Prosecutor Service by order of the competent judge.

3 — When the Public Prosecutor Service declares that no jurisdictional procedure is required, the respective case is then returned to the sending entity.

4 — The terms of point 1 are also applicable to audits carried out as part of the preparation of the report and opinion on the General State Account and the accounts of the Autonomous Regions.

5 — For the enforcement of responsibilities for the offences mentioned in point 1 of article 66, other reports and information prepared by the Court support services may also serve as a basis to start the respective procedure, by means of an application submitted by the director general addressed to the competent section.

⁵⁶ As amended by the Act 48/2006, of 29 August. “1 — Whenever the reports of external verification of accounts or audits relative to the entities cited in article 2, point 1, demonstrate facts which constitute financial liability, the respective procedures should be sent to the Public Prosecutor Service, in order to facilitate the start of eventual jurisdictional proceedings, without prejudice to the terms of point 3 of article 5.

2 — Whenever the results of acts of internal examination reveal acts which constitute financial liability, the Court may refuse to authorise the return of the accounts and decide to implement an audit of the respective entity.

3 — The terms of point 1 are also applicable to audits carried out as part of the preparation of the report and opinion on the General State Account and the accounts of the Autonomous Regions.” was the original version.

Article 58

Types of procedures:

1 — The enforcement of financial responsibilities takes place by means of judgement of accounts and of financial responsibilities procedures.⁵⁷

2 — The judgement of accounts procedure aims to enforce the financial responsibilities demonstrated in reports of external verification of accounts, with ratification, if that be the case, of the numerical statement referred to in point 2 of article 53.

3 — The judgement of financial liability procedure aims at enforcing financial responsibilities resulting from facts evidenced in the reports of the Court control actions prepared apart from the procedure of external verification of accounts or in reports of internal control bodies.⁵⁸

4 — The fines mentioned in article 66 are applied in the respective procedures of the 1st and 2nd Sections or, if that is the case, in an autonomous procedure.⁵⁹

5 — Repealed.⁶⁰

⁵⁷ As amended by the Act 48/2006, of 29 August. “1 — Financial responsibilities are enforced through the following procedures:

- a) Judgement of accounts;
- b) Judgement of financial responsibilities;
- c) Setting of charges for the accountable parties or of the impossibility of judgement's declaration;
- d) Fines” was the originally version.

⁵⁸ As amended by the Act 48/2006, of 29 August. “3 — The judgement of financial liability procedure aims enforcing financial responsibilities arising from facts evidenced in audit reports prepared apart from the procedure of external verification of accounts.” was the original version.

⁵⁹ As amended by the Act 48/2006, of 29 August. “4 — The setting of charges procedure for the accountable parties or the procedure of the impossibility of verification or judgement of the account declaration aims to enforce the financial responsibilities resulting from the failure to render accounts to the Court or, when they are rendered, to declare the impossibility of passing judgement on the consistency, reliability and integrality of the mentioned accounts and the eventual existence of facts, which constitute financial liability, and require the appropriate enforcement, in any case.” was the original version.

⁶⁰ As amended by the Act 48/2006, of 29 August. “5 — The autonomous procedures for fines are used in the situation foreseen by in Section III (“Sanctionary Liability”) or other situations where fines may be applied as foreseen by the law and for which there is not separate procedure.” was the original version.

SECTION II

Recovery financial liability

Article 59⁶¹

Restitution for arrears, embezzlements and improper payments

1 — In the event of arrears, embezzlement of monies or of public assets and also of undue payments, the Court of Auditors may condemn the accountable party to reconstitute the sums comprised by the offence, without prejudice to any other type of liability in which the same person may incur.

2 — There is arrears when, irrespectively of the agent's action to that purpose, sums of money or other assets belonging to the State or other public entities have disappeared.

3 — Embezzlement of money or public assets occurs whenever their disappearance results from the voluntary action of any public agent who has access to the former due to the exercise of the public duties they are appointed at.

4 — For restitution purposes, all illegal payments which may cause damage to the public treasury are considered to be improper payments, including those corresponding to an effective consideration which is not suitable or proportional to the carrying out of the powers of the entity in question or to the normal uses of a certain activity.

5 — Whenever the violation of financial rules, including in the public procurement scope, results in the obligation for the public entity to pay a compensation, the Court may sentence the accountable parties with the repayment of the corresponding amounts.

6 — The restitution includes overdue interest on the respective amounts, which are calculated according to the system for tax debts, counted from the date of the offence, or, if it is impossible to determine such a date, from the last day of the respective direction.

⁶¹ As amended by the Act 48/2006, of 29 August. "1 —

2 — *Improper payments for the effect of restitution are considered to be illegal payments which cause damage to the State or the public entity for not having an effective consideration.*

3 — *The restitution includes overdue interest on the respective amounts, which are calculated according to the system for tax debts, counted from the date of the infringement, or, if it is impossible to determine such a date, from the last day of the respective management.*

4 — *There is no ground for restitution, without prejudice to the application of other sanctions foreseen by law, when the respective amount is compensated with the unfounded enrichment that the State benefits from the practice of the illegal act or its effects."* was the original version.

Article 60⁶²

Restitution for non-collection of revenue

In cases of practice, authorization or sanctioning, with fraud or serious guilt, involving the non liquidation, collection or delivery of revenue violating all applicable legal rules, the Court of Auditors may sentence the responsible subject with the repayment of the non collected amounts to the prejudice of the State or public entities.

Article 61

Accountable parties

1 — In the cases cited in the previous articles, responsibility for the restitution of the respective amounts falls on the agent or agents in charge of the act.

2 — The responsibility specified in the previous point falls on the members of the Government under the terms and conditions established for civil and criminal liability in article 36 of Decree-Law 22 257, of 25 February 1933.

3 — Recovery financial liability also applies to managers, directors or members of the bodies of administrative and financial management or their equivalents and revenue collectors for services, organisation and other entities subject to the jurisdiction of the Court of Auditors.

4 — This liability may also apply to officials or agents who in the information they provided to members of the Government or managers, directors or other administrators, did not clarify the matters that fell within their powers, in conformity with the law.

5 — The liability specified in the previous points only applies if the act was carried out with guilt.

6 — It is incumbent on the aimed parties to ensure the procedural cooperation and good faith with the Court, and they are guaranteed the free access to all available information required for the exercise of the adversarial principle, for the purpose of making proof of the use of public money and other public assets at their disposal legally and regularly in compliance with the principles of sound financial management⁶³.

⁶² As amended by the Act 48/2006, of 29 August. *“In the cases of deceitful practice, authorisation or sanctioning which imply the non settlement, collection or delivery of revenue in breach of applicable legal norms, the Court of Auditors may convict the accountable party to reconstitute the non-obtained sums which cause prejudice to the State or public entities.”* was the original version.

⁶³ Point added by the Act 48/2006, of 29 August.

Article 62

Direct and subsidiary liability

1 — The liability enforced in accordance with the terms of the previous articles may be either direct or subsidiary.

2 — Direct liability applies to the agent or agents of the action.

3 — Subsidiary financial liability for restitution applies to members of the Government, managers, directors or members of the bodies of administrative and financial management or their equivalent, and revenue collectors for services, organisation and other entities subject to the jurisdiction of the Court of Auditors, if such a person was unaware of the fact when:

- a) As a result of his or her permission or order, the agent practised the offence without verification being made of the offence or impediment of the individual to whom the corresponding duties pertained;
- b) As a result of his or her indication or appointment, a person already proved and recognised to be of low moral standing, was designated for the post through which the offence was practised;
- c) In carrying out examination duties allocated to him or her, there were proceedings of grave error, specifically when the recommendations of the Court in order to establish internal control were not respected.

Article 63

Joint liability

Without prejudice to the terms of the next article, if there are various individuals financially responsible for the acts under the terms of the previous articles, their direct and additional liability is jointly held and the payment of the total sum to be restituted by any of the accountable parties cancels the proceedings underway or stops them from commencing, without prejudice to the right of appeal.

Article 64

Assessment of guilt

1 — The Court of Auditors assesses the degree of guilt according to the circumstances of the case, taking into consideration the duties with regard to the post or nature of each accountable party main functions, the volume and funds involved, the material amount of the

public money or funds damage, the compliance degree of possible Court recommendations and the human and material resources existing in the service, body or entity subject to the jurisdiction of the former⁶⁴.

2 — When negligence is verified, the Court may reduce or discharge the liability incurred by the offender, and should include within the decision the reasons justifying such a reduction or discharge.

SECTION III

Sanctionary Liability

Article 65

Sanctionary financial liabilities

1 — The Court of Auditors may levy fines in the following cases:

- a) The non settlement, collection or delivery of revenue owed to the coffers of the State;
- b) The breach of the norms on the elaboration and execution of budgets, as well as the assumption, authorisation or payment of public expenditure or commitments;
- c) The non enforcement or improper retention of discounts, which by law must be made to staff;
- d) The breach of legal norms or regulations relative to management and control of the budget, treasury and assets;
- e) The advances on account of payments in cases which are not expressly foreseen by law;
- f) The use of public loans for ends not foreseen by law, as well as the exceeding of legal limits for the capacity of indebtedness;
- g) The improper use of funds moved for treasury operations in order to finance public expenditure;

⁶⁴ As amended by the Act 48/2006, of 29 August. “1 — *The Court of Auditors will evaluate the degree of guilt in harmony with the circumstances of the case, and in consideration of the powers of office or the nature of the principal duties of each responsible, the volume of securities and funds moved, the material amount of injury to public funds or securities and the human and material means which exist in the service, organisation or entity subject to the Court jurisdiction.*” was the original version.

- h) For the implementation of the contracts to which the prior approval has been refused or the contracts which have not been submitted to a priori control whilst they were legally subject to it⁶⁵;**
- i) For the use of money or other public assets for purpose rather than those legally provided for⁶⁶;**
- j) For repeated and non justified non-compliance with the Court injunctions and recommendations⁶⁷;**
- l) For the violation of legal or regulatory rules regarding the admission of staff⁶⁸.**

2 — Fines mentioned in the previous point have as a minimum limit the amount corresponding to 15 UC and maximum limit the amount corresponding to 150 UC⁶⁹.

3 — If the accountable party pays off the fine previously to the judgement, the amount to be settled is the minimum⁷⁰.

4 — If the offence is committed through deceit, the minimum limit of the fine is equal to a third of the maximum limit⁷¹.

5 — If the offence is committed through negligence, the maximum limit will be reduced to half⁷².

6 — The application of fines does not prejudice the enforcement of liability for any restituted sums due, if that be the case⁷³.

7 — Provided that the accountable parties are not guilty of deceit, the Court of Auditors may convert the restitution into the payment of a fine of a lesser financial amount, within the limits foreseen by points 2 and 3⁷⁴.

⁶⁵ Paragraph added by the Act 48/2006, of 29 August.

⁶⁶ Paragraph added by the Act 48/2006, of 29 August.

⁶⁷ Paragraph added by the Act 48/2006, of 29 August.

⁶⁸ Paragraph added by the Act 48/2006, of 29 August.

⁶⁹ As amended by the Act 48/2006, of 29 August. “2 — *These fines have as minimum limit the half of the monthly net salary and as maximum limit the half of the annual net salary of the accountable parties, or, when the accountable party do not receive a salary, the corresponding salary of a director-general*” was the original version.

⁷⁰ Point added by the Act 35/2007, of 13 August.

⁷¹ Former point 3.

⁷² Former point 4.

⁷³ Former point 5.

⁷⁴ Former point 6.

8 — 1st and 2nd Sections of the Court of Auditors may, at once, exempt the liability for financial offence only susceptible of fine when:

- a) There is enough evidence that the fault may only be ascribed to its author as negligence;**
- b) There has not been a prior recommendation of the Court of Auditors or any other internal control body to the audited entity to correct the irregularity of the adopted proceedings;**
- c) It is the first time the Court of Auditors or an internal control body has censured its author for such practice⁷⁵.**

Article 66

Other offences

1 — The Court may also levy fines in the following cases:

- a) The unjustified absence to send accounts to the Court, the unjustified absence to send them on time or its presentation with deficiencies which make impossible or extremely difficult its verification;
- b) The unjustified absence to provide on time documents, which by law must be sent;
- c) The unjustified absence to provide requested information, to send-requested documents or to appear for making a statement;
- d) The unjustified absence of the due collaboration with the Court;
- e) The non observance of the legal periods of time for the refer to the Court of cases relative to the acts or contracts, which take effect before the prior approval;
- f) The introduction within cases of elements, which may lead the Court into error in its decisions or reports.

⁷⁵ As amended by the Act 35/2007, of 13 August. “8 — 1st and 2nd Sections of the Court of Auditors may, at once, exempt the liability for financial offence only susceptible of fine when the latter has been paid voluntarily and:

- a) *If there is enough evidence that the fault may only be ascribed to its author as negligence;*
- b) *There has not been a prior recommendation of the Court of Auditors or any other internal control body to the audited entity to correct the irregularity of the adopted procedure;*
- c) *It is the first time the Court of Auditors or an internal control body has reproached its author for such practice ”, was the original version.*

2 — Fines mentioned in the previous point have as a minimum limit the amount corresponding to 5 UC and as a maximum limit the amount corresponding to 40 UC.⁷⁶

3 — If the offences foreseen by this article are committed through negligence, the maximum limit will be reduced to half.

Article 67

System⁷⁷

1 — Repealed⁷⁸.

2 — The Court of Auditors classifies the fines taking into consideration the seriousness of the facts and their consequences, the degree of guilt, the material amount of the public funds damaged or at risk, the hierarchical level of the responsible subjects, their economic situation, the existence of past records and the compliance degree with possible Court recommendations⁷⁹.

3 — The sanctionary liability is subject, with the necessary modifications, to the terms of articles 61 and 62.

Article 68

Qualified disobedience

1 — In the cases of non production of accounts or documents, the decision establishes a reasonable deadline so that the accountable parties may deliver the them to the Court⁸⁰.

⁷⁶ As amended by the Act 48/2006, of 29 August. “2 — *The fines foreseen by point 1 of this article have as minimum limit the amount of PTE 50,000 and as maximum the amount of PTE: 500,000*”, was the original version.

⁷⁷ As amended by the Act 48/2006, of 29 August. “Article 67 — *Procedures for fines*” was the original version.

⁷⁸ As repealed by the Act 48/2006, of 29 August. “1 — *The infringements specified in this section are subject to an autonomous procedure for fines, if they were not recognised in the executing proceedings of financial responsibility specified in paragraphs a) to c) of point 1 of article 58*” was the original version.

⁷⁹ As amended by the Act 48/2006, of 29 August. “2 — *The Court will rank the fines in consideration of the seriousness of the infringement and its consequences, the level of guilt, the material amount of the public securities injured or at risk, the hierarchical level of the accountable parties, their economic situation and the existence of precedents*” was the original version.

⁸⁰ As amended by the Act 48/2006, of 29 August. “1 — *In the case of the failure to present accounts or documents, the sentence will set a reasonable deadline in which the accountable party may deliver them to the Court*” was the original version.

2 — The failure to fulfil the order specified in the previous point constitutes a crime of qualified disobedience, and the Public Prosecutor Service is responsible for initiating the respective legal proceedings in the appropriate court.

SECTION IV

Causes of the termination of responsibilities

Article 69

Termination of responsibilities

1 — Proceedings for financial liability of restitution are terminated at any time by the prescription and payment of the sum to be restituted.

2 — Proceedings for sanctionary responsibilities, in accordance with the terms of articles 65 and 66 are terminated:

- a) By prescription;
- b) By death of the responsible;
- c) By granting of an amnesty;
- d) By payment⁸¹.**
- e) By exemption of the liability under the provisions of point 7 of article 65⁸².**

Article 70

Deadline for the initiation of proceedings

1 — The deadline for the initiation of proceedings is 10 years for recovery financial responsibilities and 5 years for sanctionary responsibilities.

2 — The deadline for the initiation of proceedings is calculated from the date of the offence, or in the event that it cannot be determined, from the last day of the respective board of directors.

3 — The deadline for the initiation of proceedings is suspended between the date when the accounts enter the Court or when the audit is commenced and the date that the accountable party is heard. This suspension may not exceed two years.

⁸¹ As amended by the Act 48/2006, of 29 August. “*d) By payment during the jurisdictional stage*” was the original version.

⁸² Paragraph added by the Act 48/2006, of 29 August

4 — In the cases mentioned in point 2 of article 89, the procedure deadline is suspended for the period elapsing until the exercise of the right to action or the possibility of that exercise, under the conditions mentioned there⁸³.

CHAPTER VI

Operation of the Court of Auditors

SECTION I

Meetings and decisions

Article 71

Meetings

1 — The Court of Auditors in its headquarters, meets in general plenary sitting, plenary sitting of the section, in sub-section and in daily session of prior approval assessment.

2 — The general plenary sitting is composed of all the judges including those of the regional sections.

3 — The plenary sitting of each section is composed of all the judges that belong to the section.

4 — The sub-sections form part of the normal operations of the 1st and 2nd Sections and are composed of three judges, where one is the rapporteur and the other two assistants in the order of preference established by drawing lots annually in the general plenary sitting, except in the case of the terms specified by article 84, point 3.

5 — For the purposes of a priori control, two judges will meet every week in a daily session of prior approval assessment.

Article 72

Sessions

1 — The Court of Auditors meets in general plenary sitting, after being convened by the President or on the request of at least a 3rd of its members, whenever it is necessary to decide upon matters that falls within the Court respective jurisdiction.

2 — The sections meet in plenary sitting at least once a week and whenever convened by the President or on the request of its respective judges.

⁸³ Point added by the Act 48/2006, of 29 August

3 — The examination sessions take place every working day, even during judicial holiday periods.

4 — The sessions of the general plenary sitting and those of the 1st and 2nd Sections have the director-general or deputy director-general as secretary, who may intervene on the request of the President or any judge in order to present clarifications on the matters listed on the agenda, and who is also responsible for preparing the minutes.

Article 73

Decisions

1 — The plenary sitting, general or of the sections, function and decide on the basis of at least half their members.

2 — The Sub-Sections of the 1st and 2nd Sections, as well as the collective body specified in article 42, point 1 only function and decide on the basis of all their respective members, and when presided over by the President who will only vote in the case of a tied vote.

3 — The daily session of prior approval assessment may only function when both judges are present.

4 — In the absence of quorum for the plenary sitting of a section, the President may appoint judges from the other sections necessary for its functioning and respective decisions.

SECTION II

Powers

Article 74

Powers of the Court of Auditors President

1 — The President of the Court of Auditors has the following powers:

- a) To represent the Court and guarantee its relations with the other Sovereign organisation, the public authorities and the media;
- b) To preside over sessions of the Court, directing and guiding the proceedings;
- c) To present proposals to the general plenary sitting and to the plenary sittings of the 1st and 2nd sections for deliberation on the matters of the respective powers;

- d) To schedule the ordinary sessions and convene extraordinary sessions after having heard the judges;
- e) To order the organisation of the task agenda for each session, taking into consideration the indications provided by the judges;
- f) To vote the opinion on the General State Account, the judgements for the establishment of jurisprudence, the Court internal regulations and whenever there is a tie vote among judges⁸⁴;**
- g) To elaborate the annual report of the Court;
- h) To exercise the powers of guidance and general administration of the support services of the Court, in accordance with the terms of article 33.
- i) To preside over the collective body sessions where the reports and opinions on the accounts of the Autonomous Regions are approved and vote on them;
- j) To appoint judges;
- l) To allocate judges' holidays, after hearing them;
- m) To appoint, by choice, the management staff of the support services;
- n) To perform the other functions foreseen by law.

2 — The President is replaced, in the event of his absence and impediments, by the Vice President and, in his absence, by the most senior judge.

Article 75

Jurisdiction of the general plenary sitting

The general plenary sitting has the following powers:

- a) To approve the report and opinion on the General State Account;
- b) To approve the annual report of the Court;
- c) To approve the budgetary drafts and three-year action plans;
- d) To approve the internal regulations and instructions of the Court which do not fall under the powers of each of the sections;

⁸⁴ As amended by the Act 48/2006, of 29 August. "*f) To vote the opinion on the General State Account and whenever there is a tie vote among judges*" was the original version.

- e) To exercise the disciplinary power over the judges;
- f) To establish jurisprudence in extraordinary appeal;
- g) To appreciate any other matters, whose importance or generality justify it;
- h) To perform the other functions foreseen by law.

Article 76

Standing committee

1 — There will be a standing committee, presided over by the President and composed of the Vice President and a judge from each section elected by their peers for a period of three years, in whose meetings the director-general will act as secretary, without voting right.

2 — The standing committee is convened by the President and has consultative and deliberative powers in the cases foreseen by law.

3 — In cases of urgency, the powers referred to in the previous article, with the exception of paragraphs a), e) and f), may be exercised by the standing committee, convened for the purpose by the President, without prejudice to the subsequent ratification by the general plenary sitting.

4 — The judges of the regional sections have sit in the standing committee, with voting right, whenever matters of their powers are being discussed.

Article 77

Jurisdiction of the 1st Section

1 — The 1st Section in plenary sitting has the following powers:

- a) To judge the appeals against the decisions of the sub-sections, regional sections and delegations, including the part relative to emoluments;
- b) To approve instructions on the organisation of *a priori* control procedures to be sent to the Court;
- c) To approve the regulation of its internal operations;
- d) To approve the reports of the audits when there is a lack of unanimity in the sub-section or when, though, there is such unanimity the President considers to widen the discussion in order to establish uniform *criteria*;
- e) To approve, under proposal of the President, the monthly scale of the two judges who, by turn, have to meet each week in daily session of prior approval;

f) To deliberate upon any other matters foreseen by the present Act.

2 — The 1st Section in sub-section has the following powers:

- a) To decide upon the prior approval refusal, as well as, in the cases in which there are not agreement amongst the judges, scaled by turn, on the grant, exemption or dispense of prior approval amongst the judges whose turn it is to meet every week in daily session of prior approval assessment;
- b) To judge the appeals for setting emoluments by the Directorate-General;
- c) To order audits relative to the exercise of prior or concomitant control and to approve the respective reports;
- d) To inform the Public Prosecutor Service of the cases of financial offences detected in the exercise of the prior or concomitant control.

3 — In daily session of prior approval, the judges, scaled by turn, by mutual consent, may grant or recognise the exemption or dispense of the prior approval, as well as request additional elements or information of the respective services or organisation.

4 — It is incumbent on the judges of 1st Section to apply the fines mentioned in point 1 of article 66 with regard to cases where they are judges-rapporteurs⁸⁵.

Article 78

Jurisdiction of the 2nd Section

1 — The 2nd Section in plenary sitting has the following powers:

- a) To order the external verification of accounts or the carrying out of audits, which have not been included in the plan of action;
- b) To order the audits requested by the Assembly of the Republic or by the Government and to approve the respective reports;
- c) To approve the regulations of its operations;
- d) To approve the auditing manuals and the verification procedures to be adopted by the respective support services;
- e) To approve the instructions on the manner in which the entities should organise their management accounts and supply the necessary elements or information for successive control;

⁸⁵ Point added by the Act 48/2006, of 29 August.

- f) To approve the reports of verification of accounts cases or of the audits when there is a lack of unanimity in the sub-section or when, though, there is such unanimity, the relater or the President considers widening the discussion in order to establish uniform *criteria*;
- g) To deliberate upon other matters foreseen by law.

2 — The sub-section of the 2nd Section has the following powers:

- a) To approve the reports of external verification of accounts or of audits which should not be approved by the plenary sitting;
- b) To homologate the internal verification of accounts which should be returned to the services or organisation;
- c) To order the external verification of accounts following internal verification;
- d) To request the co-operation of bodies of internal control;
- e) To approve the resource to auditing firms and technical consultants.

3 — The attribution of the actions foreseen by paragraph a) of point 1 is allocated, by a deliberation of the plenary sitting, to the judge, whose area of responsibility integrates the respective entity or with whom its object has the most affinities.

4 — The judge, in the scope of the respective area of responsibility, has, namely, the following powers:

- a) To approve the plans and methods to be adopted in the procedures of external verification of accounts and in the audits;
- b) To order and, if that be the case, to preside over the diligences required for the instruction of the respective procedures;
- c) To present a founded proposal to the sub-section in order to request the co-operation of the bodies of internal control or resource to auditing firms or technical consultants;
- d) To co-ordinate the elaboration of the report draft for the external verification of accounts and for audits to be presented and approved by the sub-section;
- e) **To apply the fines mentioned in point 1 of article 66.**⁸⁶

⁸⁶ Paragraph added by the Act 48/2006, of 29 August.

Article 79

Jurisdiction of the 3rd Section

1 — The 3rd Section in plenary sitting has the following powers:

- a) To judge the appeals against the decisions reached by 1st instance, in the headquarters and regional sections, including those concerning emoluments;
- b) To judge the appeals against the decisions of the emoluments set in the verification of accounts and audit cases of the 2nd Section and of the regional sections;
- c) **To judge the appeals of the decisions to apply the fines sentenced in 1st and 2nd Sections and regional sections⁸⁷;**
- d) **To judge the requests against the transited decisions *in rem judicatam* delivered by the plenary sitting or in 1st instance⁸⁸.**

2 — The judges of the 3rd Section have the powers to the preparation and judgement in 1st instance of the procedures foreseen by article 58.

3 — The procedures which fall under the jurisdiction of the 3rd Section are decided in 1st instance by a single judge.

CHAPTER VII

Procedure in the Court of Auditors

SECTION I

Applicable legislation

Article 80

Applicable legislation

Procedure in the Court of Auditors is governed by the terms of the present Act and in addition:

- a) For matters concerning the 3rd Section, by the Code of Civil Procedure;

⁸⁷ Paragraph added by the Act 48/2006, of 29 August.

⁸⁸ Former paragraph c.

- b) By the Code of Administrative Procedure in relation to the administrative proceedings of the Directorate-General of the Court of Auditors, except when this is acting in the area of examination and financial control in the preparation and execution of judicial acts;
- c) By the Code of Criminal Procedure, in relation to sanctions.

SECTION II

A priori control

Article 81⁸⁹

Refer the cases to the Court

1 — The cases to be remitted to Court of Auditors for a priori control should be informed by the services or bodies in compliance with the instructions published in 2nd series of Official Journal.

2 — The cases regarding acts and contracts with effect before the prior approval are remitted to Court of Auditors within 20 days counting from the date it becomes effective, unless otherwise provided.

3 — The President of the Court may, at the request of the interested entities, extend the deadlines up to 45 days, when there is a reason that justifies this.

4 — Unless there be any adverse legal provision, or delegation of powers, it is incumbent

⁸⁹ As amended by the Act 48/2006, of 29 August.

“Article 81— Submission of procedures to the Court

1 — The procedures to be submitted to the Court of Auditors for a priori control should be managed by the respective services and organisation in conformity with the instructions published in the Official Journal.

2 — The procedures relative to acts and contacts which take effect before the prior approval is granted, except where there is a ruling to the contrary, should be submitted to the Court of Auditors within a maximum of 30 days:

- a) The date on which the parties concerned took office, in the case of appointments and employment contracts;*
- b) The date of consignment, in the case of a contract job;*
- c) The date of the start of execution of the contract, in remaining cases.*

3 — In the case of appointments and employment contracts of organisation and services granted administrative autonomy and who are based outside the Lisbon metropolitan area, the deadline specified in the previous point is 60 days.

4 — The President of the Court of Auditors may, on request of the interested entities, extend the stated deadlines to 90 days, when there is a justified cause.” was the original version.

on the most senior director of the service or the president of the executive body or the administration to refer the cases to a priori control, as well as subsequently sending the latter, under the terms of point 2 of the following article.

Article 82

Examination of procedures

1 — The preliminary examination of prior approval procedures by the Directorate-General should be made within a maximum of 15 days after the date of recorded delivery and by chronological order, and the same cases may be returned to the services or organisation for the provision of any informational service.

2 — In cases when the respective acts or contracts become effective before the prior approval, the returned cases are remitted to the Court again within 20 days counting from reception date.⁹⁰

3 — After the deadline for preliminary examination has expired, the cases should be subject to a declaration of their conformity with the law, or in the event of doubts on the legality of the respective acts or contracts, these should be presented to the 1st daily session of prior approval assessment.

4 — The failure to observe the deadline in point 2 as well as those of article 81 do not provide foundations for the prior approval refusal, but they cause the immediate cessation of all expenditure arising from the acts or contracts, on penalty that the procedure will be enforced for the respective financial liability.

Article 83

Declaration of conformity

1 — Whenever the analysis of the procedure produces no doubts concerning the legality of the act or the contract, specifically when it is identical to others already certified, whether in relation to the de facto situation or the applicable norms, a declaration of conformity with the law may be issued by the Directorate-General.

⁹⁰ As amended by the Act 48/2006, of 29 August. “2 — *In the cases in which the respective acts or contracts take effect before the granting of the prior approval, the returned procedures should be submitted once more to the Court of Auditors within a deadline of 30 days after the date of their receipt*” was the original version.

2 — General obligations of established debt and the contracts and other instruments which contribute to public debt are not susceptible to a declaration of conformity with the law, nor are the acts or contracts submitted to the Court after expiry of the deadlines specified in article 81 and article 82, point 2.

3 — The list of the prior approval cases duly identified with the respective declaration of conformity will be ratified by the judges whose turn is to sit in the daily session of prior approval assessment.

Article 84

Doubts concerning legality

1 — The cases in which there are doubts of the legality of the respective acts, contracts and other legal instruments are presented in the 1st daily session of prior approval assessment with a report which should at least contain the following:

- a) A brief description of the object of the act or contract subject to examination;
- b) The permissible legal norms;
- c) The concrete facts and the legal precepts which form the basis of the doubt or obstacle to the granting of a prior approval;
- d) The identification of judgements or decisions of the Court in identical situations;
- e) The indication of the decision deadline for the purposes of a possible tacit prior approval;
- f) The emoluments due.

2 — If there are grounds for the prior approval refusal, or if there is not agreement between the judges of the daily session as specified in point 3 of article 77, the case will be submitted to the plenary sitting for decision.

3 — In the sub-section, the rapporteur of the case will be the judge who was the rapporteur in the daily session of prior approval assessment, the assistants will be the other judge of the daily sessions and the next judge who follows in the order of precedence.

Article 85

Tacit prior approval

1 — The acts, contracts and other legal instruments submitted to the Court of Auditors for *a priori* control are considered to be certified or declared in conformity with the law if there is

no decision of prior approval refusal within a deadline of 30 days after the date of its recorded delivery.

The services and organisation may start execution of the acts or contracts 5 working days after the end of the said time period, if they have not received any communication as specified in the following point.

2 — The decision of prior approval refusal, or at least a message to such effect, should be communicated on the same day on which it is made.

3 — The time period for the tacit prior approval will extend during judicial holidays but will not include Saturdays, Sundays or public holidays, and is suspended on the date of written notice requesting any elements or informational service until the date of the recorded delivery at the Court of the written notice confirming satisfaction of this request.

4 — The recorded dates specified in points 1 and 3 should be communicated to the services and organisation.

Article 86

Plenary sitting of the 1st Section

1 — The decisions of the plenary sitting of the 1st Section are taken on the basis of a majority of votes of the members of the sub-section or Section, as appropriate.

2 — In order to ensure the unity of the application of the law, and given the legal importance of the question, its novelty, the differences of opinion which it arouses, or when justified by other important reasons, the President may widen the discussion and the vote on the decision to the other judges.

3 — **Repealed⁹¹.**

SECTION III

Successive control

Article 87

Procedures of successive control

1 — The procedures for the preparation of the report and the opinion on the General State

⁹¹ As repealed by the Act 48/2006, of 29 August. “3 — *In the case referred to in the previous point, the approved decision will be published in the Official Journal if the Court believes this to be appropriate*” was the original version.

Account and the reports on the examination of the accounts and audits are included in the operational regulations of the 2nd Section.

2 — The procedures for the verification of accounts and the audits adopted by the support services of the Court as part of the procedures referred to in point 1 are included in the auditing manuals and examination procedures approved by the 2nd Section.

3 — The adversarial principle in the verification of accounts and audits procedures is to be carried out in writing.

4 — In the procedures of verification of accounts and audits, the Court may:

- a) Order the appearance of the accountable parties in order to provide information or clarification;
- b) Carry out examinations, checks, assessments or other services through the use of experts with specialised knowledge.

Article 88

Plenary sitting of the 2nd Section

The decisions of the 2nd Section are subject, with the necessary adaptations, to the terms of points 1 and 2 of article 86.

SECTION IV

Jurisdictional procedure

Article 89⁹²

Powers to request a trial

1 — The trial of cases referred to article 58 based on the reports mentioned in article 57, irrespectively of the juridical qualifications of the facts included in the respective reports, may be requested:

- a) By the Public Prosecutor Service;
- b) By management bodies, superintendence or guardianship on the aimed entities, regarding the reports of the Court control actions;
- c) By the internal control bodies responsible for the reports mentioned in paragraph b) of point 2 of article 12.

⁹² As amended by the Act 48/2006, of 29 August.

“Article 89 — Powers to request a trial

The Public Prosecutor Services has the power to request a judgement for the procedures referred to in article 58, independently of the legal qualifications of the facts contained in the respective reports” was the original version.

2 — The right of action provided for in paragraphs b) and c) of the previous point is of a subsidiary nature and can be exercised within 30 days counting from the publication of the order of the Public Prosecutor Service stating no jurisdictional procedure is required.

3 — The entities mentioned in paragraphs b) and c) of point 1 may be represented by individuals with a degree in Law with duties of juridical support.

Article 90

Requisites of the request

1 — The request should include the following:

- a) Identification of the defendant, with an indication of the name, residence and place or registered office where the public organisation or entity exercises the respective activity, as well as the respective net monthly salary;
- b) The request and description of the facts and the legal reasons upon which the service of documents is founded;
- c) Indication of the amounts that the defendant should be obliged to retribute once convicted, as well as the precise amount of the fine to be applied;
- d) In the event that there has been external examination of the accounts, an opinion on the ratification of the closing balance contained in the respective report.

2 — The request may lead to cumulative requests, as well as for different offences, subject to the corresponding legal liability.

3 — The available evidence of the facts generating responsibility should be submitted along with the request. No more than three witnesses may be indicated for each fact⁹³.

Article 91

Finality, deadline and form of the service of documents

1 — If there is no basis for preliminary denial, the defendant is the person served to either contest or pay the amounts demanded on a voluntary basis within a deadline of 30 days.

2 — The service of documents is personal, and made through the delivery to the person to

⁹³ As amended by the Act 48/2006, of 29 August. “3 — *All evidence will be presented with the writ of summons with an indication of the facts aimed to be proved, and with no more than three witnesses indicated for each fact*” was the original version.

be served of a registered letter with recorded delivery, or through a personal act of an official of the Court, always with a copy of the service of documents delivered to the party served.

3 — The service of documents and notifications are also subject to all the rules contained in the Code of Civil Procedure.

4 — The judge may, however, on the request of the person served, grant a reasonable extension of the deadline referred to in Point 1, up to the limit of 30 days, when the circumstances of the case in question, namely the complexity or the volume of the issues to be examined, justify it.⁹⁴

5 — The voluntary payment of the amount demanded in the request of the Public Prosecutor Service within the time period for serving a notice of intention to defend is exempted from emoluments.

Article 92

Requisites of the pleading

1 — The pleading is submitted by articles⁹⁵.

2 — Together with the notice of intention to defend, the defendant should present all the means of proof, with the rules and limits of point 3 of article 90, without prejudice to the power to alter or amend the defence up until 8 days before the trial.

3 — Irrespective of the fact that the defendant formally contests the writ of summons, he or she may present evidence with an indication of the facts of the case, provided that this is done within the time period specified in the previous point.

4 — The failure to contest the writ of summons does not lead to sanctionary effects.

5 — The defendant has to be represented by a lawyer to be appointed according to the applicable legislation if the former does not brief one.⁹⁶

⁹⁴ As amended by the Act 48/2006, of 29 August. “4 — *The judge may, however, on the request of the person to be served, grant a reasonable extension of the deadline referred to in Point 1, up to the limit of 30 days, when the circumstances of the case in question, namely the complexity or the volume of the issues to be examined, justify it*” was the original version.

⁹⁵ As amended by the Act 48/2006, of 29 August. “1 — *The pleading is to be presented in writing and is not subject to special formalities*” was the original version.

⁹⁶ As amended by the Act 48/2006, of 29 August. “5 — *The defendant may be represented by a lawyer*” was the original version.

Article 93

Hearing and Trial

The hearing and trial are subject to the system of summary procedure contained in the Code of Civil Procedure, with the necessary adaptations.

Article 94

Sentence

1 — The judge is not bound by the amount indicated in the application, but may sentence a higher or lower one⁹⁷.

2 — In the event of a verdict to retribute sums in order to enforce financial liability, the sentence will set the date from which interest is due for any delays in the respective payment.

3 — In the cases in which there has been external verification of the management account, the sentence will ratify the closing balance contained in the respective report.

4 — In the cases referred to in the previous point, in the event that there is a verdict to retribute amounts, the ratification of the closing balance and the termination of the respective liability will only occur after the full payment of the amounts.

5 — Sentences imposing restitution or fines will set the emoluments due from the defendant.

Article 95

Payment in instalments

1 — The payment of the amount of the sentence may be authorised in up to four quarterly instalments, if requested before the adjudication of the sentence in *res judicata*, whereby each instalment will include the respective interest due, should this be the case.

2 — The failure to pay any instalment will oblige the immediate payment of the other instalments and the subsequent commencement of tax foreclosure procedure.

⁹⁷ As amended by the Act 48/2006, of 29 August. “As amended by the Act 48/2006, of 29 August. “1— *The judge is not bound by the amount indicated in the Public Prosecutor Service application, but may sentence a higher or lower one*” was the original version.

SECTION V

Appeals

Article 96

Ordinary appeals

1 — The final decision of refusal, granting and exemption of prior approval, as well as decisions concerning emoluments, including those imposed by the regional sections, may be contested by an appeal to the 1st Section served by the following entities:

- a) The Public Prosecutor Service, concerning any final decisions;
- b) The author of the act or the entity which authorised the contract for which a prior approval was denied;
- c) In the event of decisions on emoluments, the individuals subject to the charges.

2 — Interlocutory orders for procedures which fall under the powers of the 1st and 2nd Sections may not be appealed against, and neither may the decisions which approve reports of verification of accounts or audits, except in the latter procedures, in relation to that which concerns the setting of emoluments and other charges.

3 — In the procedures of the 3rd Section there is only a right to appeal against final decisions passed in 1st instance.

Article 97

Form and deadline for the presentation of an appeal

1 — The appeal is presented by a statement of appeal sent to the President of the Court, which should include the legal and de facto foundations of the appeal and the conclusions which have been formed within a deadline of 15 days after notification of the decision against which the appeal is made.

2 — The appeal is distributed by drawing lots amongst the judges of the respective section, whereby the judge who served as the rapporteur of the decision to appeal may not be the rapporteur of the appeal itself, and also may not intervene in the respective trial.

3 — After the appeal having been distributed, filed and attached to the case on which it was delivered the decision under appeal, the rapporteur is given forty eight hours to decide whether to preliminary accept or reject the appeal.

4 — An appeal against final decisions of prior approval refusal or of conviction for liability sanctions has a suspending effect.

5 — An appeal against a final decision of conviction for financial liability to reconstitute funds only has a suspending effect if the judicial bond is paid.

6 — The constitution of a lawyer is not obligatory except in the case of appeals which fall under the powers of the 3rd Section.

7 — In the event of the dismissal of the appeal, there is no prepayment of costs, but emoluments are due.

Article 98

Claim against non-admission of an appeal

1 — The appellant may make a claim to the plenary sitting of the section against the order rejecting the appeal, within a deadline of 10 days, detailing the reasons why the appeal should be admitted.

2 — The rapporteur may redress the dismissal order and facilitate the continuation of the appeal.

3 — If the rapporteur supports the preliminary order of rejection of the appeal, he will order that the claim be sent to the plenary sitting.

Article 99

Procedure

1 — Once the appeal is admitted, the judicial actions are sent for examination to the Public Prosecutor Service for 15 days, in order to issue an opinion, provided that the Public Prosecutor Service is not the appellant.

2 — If the Public Prosecutor Service is the appellant, and the appeal is admitted, the entity directly affected by the decision being appealed against should be notified to respond within 15 days.

3 — If in the opinion of the Public Prosecutor Service new questions are raised, the appellant is notified to make a statement within 15 days.

4 — Once the opinion has been issued or the deadline of the previous point has expired, the judicial actions are only sent for examination for three days to the remaining judges if the actions have not been dispensed with.

5 — At any time during the procedure the rapporteur may order the diligences which are indispensable for deciding the appeal.

Article 100

Trial

1 — The rapporteur presents the case to the session with a plan of judgement, the President presides over the discussion and has the casting vote.

2 — In procedures of *a priori* control the Court may acknowledge questions relevant for the granting or refusal of the prior approval, even if not addressed in the decision being appealed against or in the allegations of the appellant, when such questions are raised by the Public Prosecutor Service in the respective opinion, in accordance with the terms of point 3 of article 99.

Article 101

Extraordinary appeals

1 — If in the same legislative domain two decisions were made in different cases in the plenary sittings of the 1st or 3rd Sections or the regional sections, concerning matters of granting or refusing a prior approval and financial liability, and relative to the same fundamental question of law are based on opposite solutions, an extraordinary appeal may be made against the more recent decision taken in order to settle the issue of jurisprudence.

2 — In the appeal request, individual details should be provided of both the previous decision having obtained the force of *res judicata* which stands in opposition, and the decision being claimed against, on penalty of the request being rejected.

3 — Extraordinary appeals are subject, with the necessary adaptations, to the system of ordinary appeal, except for the terms of the following articles.

4 — The provisions of the Civil Procedure Code apply to the extraordinary appeals referred to in paragraph d) of point 1 of article 79 for the appeal for review, with the necessary adjustments⁹⁸.

⁹⁸ As amended by the Act 48/2006, of 29 August. “4— *The provisions of the Civil Procedure Code apply to the extraordinary appeals referred to in paragraph c) of point 1 of article 79 for the appeal for revision, with the necessary adjustments*” was the original version.

Article 102

Preliminary question

1 — Once the appeal request has been distributed and filed, attached with the case containing the decision having obtained the force of *res judicata* which allegedly stands in opposition, the rapporteur has five days to decide whether to issue an order of preliminary admission or rejection.

2 — If the appeal is given preliminary admission, the case is sent for examination to the Public Prosecutor Service in order to issue an opinion on the opposition of the decisions and the sense of jurisprudence to be set.

3 — If the rapporteur judges that there is no opposition of the decisions, he will send the judicial proceedings for examination by the judges of the section, after which he will present a plan of judgement to the respective plenary sitting.

4 — The appeal is considered to be finished if the plenary sitting of the section determines that there is no opposition of decisions.

Article 103

Trial of the appeal

1 — After the existence of opposition of the decisions having been verified, the proceedings are sent for examination to the other judges of the general plenary sitting and to the President for five days, after which the rapporteur will present the proceedings for trial in the 1st session.

2 — The judgment of the section which recognises the existence of opposition between the decisions does not prevent the general plenary sitting from making the reverse decision.

3 — The doctrine of judgement which fixes jurisprudence will be obligatory for the Court of Auditors while the law has not been changed.

CHAPTER VIII

Regional Sections

Article 104

Substantive jurisdiction

The judge of the regional section has the following powers:

- a) To exercise the powers specified in paragraphs b) and e) of article 6, with the necessary adaptations, within the scope of the respective autonomous region;
- b) To prepare and submit for approval to the general plenary sitting the internal regulations and annual plans of prior and successive control;
- c) To exercise the other powers attributed to him by law.

Article 105

Ordinary session

1 — The powers of the 1st and 2nd Sections are exercised, with the necessary adaptations, by the judge of the regional section in ordinary weekly session, covering the proceedings of prior and successive control, together with the obligatory assistance of the Public Prosecutor Service and the participation, as assistants, of the deputy director-general and the auditor-coordinator, or in their absence or impediment, the respective legal substitutes.

2 — The Public Prosecutor Service and the assistants have the right to inspect the proceedings before the ordinary weekly session, and may issue an opinion on the legality of the questions which therein arise.

3 — The terms of the Act 23/81 of August 19 and the complementary legislation remain in force, in respect to the assistants of the regional sections provided that they do not conflict with the precepts of the present Act.

Article 106

A priori control

1 — In matters of *a priori* control, the regional sections operate on a daily basis with the judge and two assistants, who alternate on a weekly basis, and proceedings which give rise to doubts concerning the granting or refusal of prior approval, must be decided in ordinary weekly session.

2 — Auditing reports which form part of concomitant control must be approved in ordinary weekly session, as well as any reports which serve as the basis for autonomous proceedings to levy fines.

3 — The proceedings of prior and concomitant control are subject, with the necessary adaptations, to the system specified in this Act for the 1st Section, excepting the terms of article 83.

Article 107

Successive control

1 — The following must be approved in ordinary weekly session:

- a) Reports of verification of accounts and audits which provide evidence of financial responsibilities to be enforced through trial proceedings, under the terms of article 57;
- b) Audit reports carried out on request of the regional legislative assembly, or by the regional government, as well as audits which are not included in the respective annual plan;
- c) Approval of any reports which serve as the basis for autonomous proceedings to levy fines.

2. — The other powers may be exercised by the judge of the regional section on a daily basis, as part of the respective proceedings.

3 — Continuous and successive control procedures are subject, with the necessary adaptations, to the system specified in this Act for the 2nd Section.

Article 108

Jurisdictional proceedings

1 — The commencement and preparation of legal proceedings for financial liability as specified in article 58 which concern the regional section are subject to the terms of articles 89 and 95 of the present Act, with the adaptations specified in the following points.

2 — After appeal has been made or the respective time period has expired, the judge of the regional section will allocate the proceedings to the judge of the other regional section.

3 — After submission of the proceedings, photocopies of the main items of evidence should be sent to the judge to whom the proceedings have been allocated.

4 — A judge from the other regional section is responsible for presiding over the hearing of production of evidence and will deliver the final sentence, travelling to the regional section for this purpose whenever it proves necessary.

Article 109

Appeals

1 — Appeals against final decisions are made in the regional section, and the judge which delivered the decisions has the power to admit or reject the appeals.

2 — If the appeal is admitted, the proceedings are sent, under registered post, to the headquarters of the Court of Auditors, where they will be allocated, submitted to proceedings and judged.

3 — Appeals are subject, with the necessary adaptations, to the terms of articles 96 onwards.

CHAPTER IX

Final and transitional terms

Article 110

Pending proceedings in the 1st Section

1 — In relation to prior approval procedures and requests for the reapplication of prior approval refusal which still do not have a final decision, the present Act takes effect from the day after its publication.

2 — Pending proceedings of annulment of prior approvals will be archived, and the possible illegalities of the respective acts or contracts may be appreciated through successive control.

Article 111

Pending proceedings in the 2nd Section

1 — The present Act applies to pending proceedings in the jurisdictional stage of the powers of the 2nd Section, without prejudice to the terms of the following points.

2 — The reports of the trial proceedings of accounts and audits, with or without the intervention of the Public Prosecutor Service, which provide evidence of fraud or embezzlement of public funds or securities or improper payments, once approved in the plenary sitting of the sub-section, must be presented to the Public Prosecutor Service, for the purposes of the terms of articles 89 onwards.

3 — Financial liability for restitution of funds of article 60 may only be enforced by the Court in relation to facts which occur after the present Act takes effect.

4 — The other types of pending proceedings already allocated to a judge of the 2nd Section may only continue their terms if there is evidence of financial offences sanctioned by the prevailing legislation at the date of the respective acts and by the present Act.

5 — The financial offences specified in points 2 and 4 are subject to the most favourable system of liability which will be enforced in accordance with the terms of articles 89 onwards.

6 — Pending appeals of decisions made in proceedings which fall under the powers of the 2nd Section while the Act 86/89 of September 8 was in force will be reallocated and judged in the 3rd Section.

7 — Pending proceedings in the jurisdictional stage in the 2nd Section which are not specified in the previous points, as well as those which, although not yet in the jurisdictional stage, demonstrate evidence of financial offences covered by amnesty or statutory limitation, may be archived on the order of the judge of the respective area, after consultation with the Public Prosecutor Service.

Article 112

Deputy President

The mandate of the Vice Presidents presently holding office will terminate with the election of the Vice President in accordance with the terms of the present Act.

Article 113

Accounts of the Court of Auditors

The examination of the accounts of the Court of Auditors is subject to the terms of the law for all the accountable parties bearing financial liability, and is carried out in the following manner:

- a) Integration of the respective accounts related to the implementation of the State Budget in the General State Account;
- b) Annual external verification of the accounts of coffers and possible enforcement of financial responsibilities, by the relevant sub-sections and section of the Court;
- c) Publication of consolidated accounts as an appendix to the report specified in article 43.
- d) Submission of the Court management to an audit by a specialised auditing firm, chosen by tender, whose report will be published together with the accounts referred to in the previous paragraph.

Article 114⁹⁹

Temporary terms

1 — In addition to the terms of article 46, submissions should be made to the Court of Auditors, on a temporary basis, for *a priori* control purposes, of documents which represent, act as deeds or grant execution of the following acts and contracts:

- a) Until December 31, 1997 the draft contracts for amounts equal or above a sum to be fixed in accordance with the terms of article 48, as well as the acts relative to promotions, advancement, reclassification and transitions which result exclusively from restructuring of the services of central, regional and local administration, whenever this implies an increase in the respective salary scale;
- b) Until December 31, 1998, administrative appointment contracts, as well as all 1st appointments to the full-time staff of the central, regional and local administration.

2 — As of 1st January 1998 all acts mentioned in paragraphs a) and b) of point 1 of article 46 as well as in paragraph b) of the previous point may become effective before the seal approval, except for the payment of the respective price, where appropriate. The provisions of point 2 and point 3 of article 45 apply to the prior approval refusal.¹⁰⁰

3 — The following are excluded from the *a priori* control specified in the previous points:

- a) Certificates of appointment issued by the President of the Republic;
- b) The act of appointment of members of the Government, of regional governments and of the staff of the respective secretarial staffs;
- c) The acts relative to promotions, advancement, reclassification and transitions of staff, excepting those which result from restructuring of the services of central, regional and local administration;

⁹⁹ The Act 48/2006, of 29 August, embodies a temporary provision with the following wording:

Article 2 — Temporary Law

The amendments of procedural nature to Act 98/97 of 26 August, introduced by this Act apply to pending cases in the Court of Auditors.

¹⁰⁰ As amended by the Act 48/2006, of 29 August. “2 — From January 1, 1998 the acts referred to in paragraphs a) and b) of point 1 of article 46, as well as paragraph b) of the previous point, may take full effect before the granting of the prior approval, except the payment of the respective price, where this is the case, and applying to the prior approval refusal the terms of point 5 of article 45” was the original version

- d) The appointment of judges of any court and judges of the Public Prosecutor Service;
- e) Any appointment of military staff in the Armed Forces;
- f) Certificates of permutacion, transfer, detachment, requisition or other instruments of staff mobility;
- g) Fixed term employment contracts.

4 — For the purposes of paragraph b) of point 1 of article 46 of the present Act, submission to the Court of Auditors should only be made of contracts celebrated by the direct and indirect administration of the State, the direct and indirect administration of the Autonomous Regions and by local government, and municipal federations and associations which exceed an amount to be defined annually.

5 — For 1997, the amount referred to in the previous point is fixed at 600 times the sum which corresponds to the index 100 in the index scale of the general regime of public service, rounded up to the next highest amount of PTE 100,000.

6 — All assistant judges on duty at 31 December 2000 shall be appointed as extra establishment plan judges, and point 3 of article 23 shall apply to them, notwithstanding the right of application of other better qualified candidates.¹⁰¹

Article 115

Repealing Norm

All legal rulings contained in any laws which are contrary to the terms of the present Act are repealed, specifically:

- a) The regulations of the Supreme Council of Financial Administration of the State, approved by the Decree 1831 of August 17, 1915;
- b) The Decree 18962 of October 25, 1930;
- c) The Decree 22 257 of February 25, 1933 excluding article 36.
- d) The Decree 26341 of February 7, 1936;
- e) The Decree 29174 of November 24, 1938;

¹⁰¹ Point added by the single article of the Act 1/2001, of 4 January.

- f) The Decree-Law 36 672 of December 15, 1947;
- g) The Decree-Law 146-C/80 of May 22;
- h) The Law 23/81 of August 19, without prejudice to the terms of article 105 of the present Act;
- i) The Act 8/82 of May 26;
- j) The Decree-Law 313/82 of August 5;
- l) The Act 86/89 of September 8;
- m) Articles 41 and 42 of Decree-Law 341/83 of July 21.

Approved on June 26, 1997

President of the Assembly of the Republic, *António de Almeida Santos*.

Proclaimed on August 1, 1997.

Published as law.

President of the Republic, JORGE SAMPAIO.

Counter-celebrated on August 5, 1997.

Acting Prime-Minister, *António Manuel de Carvalho Ferreira Vitorino*.