



Tribunal de Contas (Court of Auditors)

THE TRIBUNAL DE CONTAS (COURT OF AUDITORS) TODAY

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1. General legal framework

1.1. Constitutional framework

The 1976 Constitution of the Portuguese Republic (CPR) includes the *Tribunal de Contas* (Court of Auditors) on the list of Courts,¹ qualifying it as a sovereign body – on a par with the President of the Republic, the Portuguese Parliament and the Government.²

Defined as a true Court, the general constitutionally established principles for Courts are applied to it, of which we emphasise the following ones:

- The principle of independence and exclusive subjection to the law (art. 203);
- The right to co-operation from other entities (art. 202);
- The principles that decisions must be grounded, that they are obligatory and that they must prevail (art. 205);
- The principle of publicity (art. 206).

The independence of both the President and the Judges essentially guarantees the independence of the *Tribunal de Contas* (Court of Auditors). Therefore, the independence of the former is constitutionally protected by the independence of the latter.

The principle of the Judges' independence determines not only their immovability and irresponsibility, but also their freedom from any orders and

¹ See point 1 of article 209 of the CPR.

² Under the terms of paragraph 1 of article 110 of the CPR «*the President of the Republic, the Portuguese Parliament, the Government and the Courts.*» are sovereign bodies.



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instructions from other authorities. Thus, it also determines the definition of a specific appointment regime, guaranteeing that exemption and impartiality will prevent the bench of this Court, and that of others, from being occupied according to the interests of the Government or Administration.³

The *Tribunal de Contas* (Court of Auditors) is defined as «*the supreme body which examines the legality of public expenditure and rules on the accounts which the law has ordered to be submitted to the Court*»⁴. Moreover, the constituent legislator has elected the *Tribunal de Contas* (Court of Auditors) to the category of a specialised financial court, profoundly different from other courts with regard to competencies.

In reality, and as can be seen in article 214, the Constitution immediately emphasises that the Court does not only hold jurisdictional functions. It also has other functions, namely «*to give an opinion on the General State Account*».

Furthermore, its constitutionally established competency may be extended by law, as expressly provided for by the Constitution.⁵

In conclusion, at a structural and operational level, the *Tribunal de Contas* (Court of Auditors) is a *court*, or more precisely, a *financial court*. It is a *sovereign body*, an *independent, constitutional body of the State*, which is *not included in the Public Administration*, in particular, in the *State/Administration*.

³ See article 216 of the CPR.

⁴ See article 214 of the CPR.

⁵ Under the terms of paragraph d) of article 214 it falls upon the Tribunal de Contas (Court of Auditors) to exercise «*the many competencies attributed to it by law*».



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1.2. Common normative framework

The constitutional principles referred to above are found in the Organisational and Functioning Law of the *Tribunal de Contas* (Court of Auditors),⁶ approved by Law no. 98/97, of 26 August⁷, which was amended and republished by Law no. 48/2006, of 29 August.

Thus, and in keeping with the provisions of the Constitution, Law no. 98/97 also consecrated the guarantees of the independence of the Court, the self-government, immovability and exemption from liability of its Judges and their exclusive subjection to the law.

On the other hand, the very same Law clearly reinforced the constitutionally defined competency framework, with the end objective of establishing an external control system, which will correspond effectively to the need to control public funds and assets, thus ensuring or guaranteeing that these are legally, regularly and properly managed. This competencies framework has been deepened in the course of time, throughout amendments to the OFLCA, namely those occurred in 2006, by the Law 48/2006, of 29 of August.

With the above as its *ratio*, the following are the fundamental guidelines of the mentioned diploma, in its valid version:

– The consecration of the pursuit of the public money and assets principle, wherever they are, that is, besides the rank of the entities which have

⁶ Hereinafter referred to as OFLCA.

⁷ Although this is the fundamental diploma regarding the organisation and operation of the Tribunal de Contas (Court of Auditors), there are others which are equally important. This is the case of: Law no. 66/96, of 31 May, which defines the legal regime for the Court's emoluments; Decree-Law no. 440/99, of 2 November, which in keeping with the principle of the self-government of the Tribunal de Contas (Court of Auditors), defines the status of the Court's support services and the regime of the respective personnel. Finally, let us note the Regulations for the organisation and functioning of the Directorate-General of the Court, approved by Order of the President no. 46/00-GP, under the terms of point 6 of article 5 of Decree-Law no. 440/99.



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their custody, with the subsequent enlargement of the scope of the *Tribunal de Contas* (Court of Auditors) jurisdictional control;

- The existence of an integrated system of prior, concomitant and successive control;

- A decrease in the scope of *a priori* control, accompanied by a reinforcement of concomitant control powers;

- The reinforcement of successive control, in particular within the sphere of the Court recommendations, introducing consequences whenever recommendations are not complied with, in a repeated and unjustified way;

- Clarification as to the nature of the control, through the express consecration of management evaluation according to criteria of economy, efficiency and effectiveness, as well as the possibility of carrying out any and all types of audits;

- The introduction of selectivity criteria to *a priori*, concomitant and successive control;

- The consecration of auditing as a preferred financial control method;

- The consecration of the *Tribunal de Contas* (Court of Auditors) as a supreme institution in a national co-ordinated and integrated control system;

- The reinforcement of co-operation with the Parliament, the Government and the internal control system bodies;

- The express prevision of relations with the mass media.



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2. Institutional model

2.1. Composition

The *Tribunal de Contas* (Court of Auditors) has its Headquarters in Lisbon, where there are three specialised Chambers. It also has two Regional Chambers with generic competency: one in the Autonomous Region of the Azores and another in the Autonomous Region of Madeira.⁸

At its headquarters, the Court is composed by the President and 16 Judges, and by one Judge in each Regional Chamber.⁹

The appointing and exonerating the President of the Court system stems directly from the Constitution of the Republic¹⁰ - *appointment and exoneration by the President of the Republic, under the proposal of the Government* - where the mandate at the last constitutional review was set at four years, renewable.¹¹

Judges of the *Tribunal de Contas* (Court of Auditors) have a category, rights and prerogatives identical to those of the Supreme Court of Justice. They are recruited by competing in a public examination before a Jury, whose composition is set in the Law, and are appointed by the President of the Court.¹²

⁸ The two Regional Divisions were created by Law no. 23/81, of 19 August. However, they only started to operate six years later.

⁹ See article 14 of the OFLCA.

¹⁰ See paragraph m) of article 133 of the CPR.

¹¹ Approved by Constitutional Law no. 1/97, of 20 September.

¹² See articles 18 to 20 of the OFLCA.



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2.2. Organisation

In terms of the functions and powers legally and constitutionally bestowed upon it, the *Tribunal de Contas* (Court of Auditors) has five Chambers: three specialised Chambers at Headquarters and two Chambers with generic competency, one in each Autonomous Region.

The purposes of the specialised Chambers are as follows:

– The *1st Chamber* exercises *a priori* control competencies, concomitant control of acts and contracts and may, in certain cases, apply fines and relieve financial accountability¹³;

– The *2nd Chamber* exercises both successive and concomitant control of financial activity and may, in cases foreseen by law, apply fines and relieve financial accountability¹⁴;

– The *3rd Chamber* exercises the jurisdictional function and rules on cases regarding the enforcement of financial accountabilities or fines, upon request of the competent entities.

As a result of the option to decentralise the State, the Constitution of the Portuguese Republic foresees the existence of the Autonomous Regions (the Azores and Madeira), which are both politically and administratively autonomous.

It should be noted that the autonomy of the Autonomous Regions is on an entirely different level from that of local authority administration, thus representing the emergence of a new phenomenon in the Portuguese constitutional structure of allocating substantially political roles to directly elected regional bodies.

¹³ Articles 65, no. 7 and 66 of OFLCA.

¹⁴ Articles 65, no. 6 and 66 of OFLCA.



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Therefore, and as there are no other SAIs in Portugal apart from the *Tribunal de Contas* (Court of Auditors), control of financial activities applied by the bodies of those Regions requires that the Court operate in a decentralised manner through a Regional Chamber located in each one.

The competency of each of the Regional Chambers is defined in article 104 of the OFLCA. Furthermore, within the area of the respective Region, the powers conferred upon the specialised Chambers at Headquarters correspond in particular to the mentioned Regional Chambers.¹⁵

In order to carry out its functions, the *Tribunal de Contas* (Court of Auditors) has support services at both its Headquarters and Regional Chambers, which will be referred to further on.

2.3. Functioning

With regard to the permanent staff of this organisation, the *Tribunal de Contas* (Court of Auditors) meets in a *Chamber Plenary Sitting*, a *Sub-Chamber Plenary Sitting*, a *Sub-chamber* and a *Daily Session of Seal Approval*.¹⁶

All Judges, including those of the Regional Chambers, are part of the Chamber Plenary Sitting and meet whenever it is necessary to decide upon matters subject to their competency.

Under the terms of the competency legally attributed to it, the Chamber Plenary Sitting defines the fundamental guidelines for the control actions carried out by the Court and decides upon matters of special importance, particularly

¹⁵ Under the terms of articles 104, 105 and 108 of the OFLCA.

¹⁶ See article 71 of the OFLCA.



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the competency to approve the report and opinion on the General State Account, the annual report and triennial action plan of the Court.¹⁷

The Plenary of each Chamber comprises the respective Judges, where the number of Judges for each Chamber is defined by the Full Chamber Plenary Sitting.¹⁸

The Chambers meet in Plenary once a week and whenever the President of the Court convenes them, upon his own initiative or upon request of the respective Judges.¹⁹

In their turn, the Sub-chambers are integrated into the normal operation of the 1st and 2nd Chambers of the Court and are composed of three Judges.

The competency of the 1st and 2nd Chambers is divided among the Plenary Sitzings, the Sub-chambers and, in the case of the 1st Chamber, the Daily Session of Seal Approval.

In a Daily Seal Session, when the Judges of the 1st Chamber are in agreement, they can concede or acknowledge the exemption or dispensation of seal approval and request further information or elements from the respective services and bodies.²⁰ Thus, Judges of the Daily Seal Session cannot refuse, nor concede, exempt or grant seal approval if they are not in agreement. Should an agreement not be reached, the decision falls upon the 1st Chamber, in Sub-Chamber.

The 1st Chamber, in Sub-chamber, is also competent to order the carrying out of audits related to the execution of *a priori* and concomitant

¹⁷ See articles 75 and 37 of the OFLCA.

¹⁸ See point 3 of article 73 and point 2 of article 15, both in the OFLCA.

¹⁹ See point 2 of article 72 of the OFLCA.

²⁰ See point 3 of article 77 of the OFLCA.



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control. Furthermore, said Chamber approves the respective reports,²¹ and notifies the Public Prosecution Service of cases of financial transgressions detected upon exercising its control actions.

The 1st Chamber judges are also responsible for, in relation to the processes that they act as rapporteurs, applying fines to the enforcement of not financial accountabilities²².

Many other matters fall under the competency of the Plenary Sitting. Of note are the appeals to final decisions regarding seals proffered at Headquarters - in a Daily Seal Session and in Sub-chamber - and in the Regional Chambers, the approval of internal regulations²³ and instructions on the organisation of the *a priori* control cases to be remitted to the Court.^{24 25}

Within the scope of the legally defined competency of the 2nd Chamber, it falls upon the Sub-chamber to approve the external verification of accounts and audit reports provided there is unanimity,²⁶ to ratify the internal verification of the accounts which must be returned to the services and bodies and to order the external verification of accounts following internal verification. A Sub-chamber may also decide to request the co-operation of internal control bodies and to have recourse to auditing companies and technical consultants.²⁷

In its turn, the Plenary Sitting exercises many powers included in the competency of the 2nd Chamber. It falls upon this Chamber Sitting to order the

²¹ In the absence of unanimity in the Sub-chamber, or where there is unanimity but the President decides to broaden the debate in order to standardise criteria, such competency will fall upon the Plenary Sitting of the 1st Chamber.

²² Articles 66 and 77, no. 4 of the OFLCA.

²³ Approved by Resolution no. 5/98 -1st Chamber, of 17 February.

²⁴ Approved by Resolution no. 7/98/MAY.19-1st S/PL, of 19 May.

²⁵ Regarding the competencies of the Plenary Sitting and the Sub-chamber of the 1st Chamber, see article 77 of the OFLCA for further developments.

²⁶ In the absence of unanimity, or where there is unanimity but the relater or the President decide to broaden the discussion in order to standardise criteria, such competency is exercised by the Plenary Sitting of the 2nd Chamber.

²⁷ See point 2 of article 78 of the OFLCA.



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external verification of accounts or to carry out audits not included in the action programme,²⁸ as well as audits requested by the Parliament or the Government. The Plenary Sitting is also competent to approve regulations regarding its operation,²⁹ the audit manuals and the verification procedures to be adopted by the respective support services, as well as the instructions as to how entities must organise their management accounts and provide elements or information necessary for their examination.

The 2nd Chamber judges, who are assigned to responsibility areas, have the power, besides the inherent coordination and control tasks, to apply fines to the enforcement of not financial accountabilities³⁰.

The 3rd Chamber of the Court is charged with ruling on cases regarding the enforcement of financial responsibilities. It functions in Sub-chamber Plenary Sitting and in 1st instance, with a single Judge. In 1st instance, all processes are decided which fall under the competency of this Chamber, and the Plenary Sitting has competency to rule on appeals to the decisions proffered in 1st instance, in the Headquarters and in the Regional Chambers.

The Plenary Sitting also has competency to judge the appeals against the emoluments set in verification of accounts cases and in audit cases of the 2nd Chamber and the Regional Chambers, and the petitions to appeal against

²⁸ Following the principle of selectivity, the Plenary Sitting of the 2nd Chamber approves the respective annual programme up until 15 December each year, in subordination to the triennial action programme approved by the Full Plenary. It includes namely, a list of the entities dispensed from remitting their accounts according to previously defined criteria, a list of entities whose accounts will be the object of external verification, the audits to be carried out irrespective of account verification processes, the list of entities whose accounts will be returned with and without internal verification according to previously defined criteria, the actions to be carried out within the scope of drawing up the report and opinion on the General State Account, and the revenue or expenditure figure below which entities subject to providing accounts are dispensed from remitting these (art. 40 of the OFLCA).

²⁹ Approved by Resolution no. 3/98-2nd Chamber, of 4 June.

³⁰ Articles 66 and 77, no. 4 of OFLCA.



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transited decisions *in rem judicatam* reached by the Plenary Sitting or in 1st instance.³¹

2.4. Support services

As a corollary to its independence and in subordination to its self-government, the *Tribunal de Contas* (Court of Auditors) has technical and administrative support services. These are constituted by the Office of the President and by the Directorate-General and include the support services of the Regional Chambers.

The organisation and structure of the Directorate-General, including the support services of the Regional Chambers, are defined in Decree-Law no. 440/99, of 2 November, in compliance with the general principles defined in the OFLCA.

Among the principles established in the latter diploma, we emphasise the following: the existence of a special body for examination and control, integrating highly qualified careers; the definition of a remunerative statute compatible with the nature of the functions exercised; and the constitution of technical support units according to the competencies of each Chamber and, with regard to the 2nd Chamber, according to specialised areas to be approved by internal regulations.³²

Thus, and taking into account the duty to ensure technical-operational and instrumental support to the Court, the Directorate-General is divided into two broad areas: the instrumental support area and the technical-operational support area.

³¹ See article 79 of the OFLCA.



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The instrumental support area comprises services of a qualified nature, and includes the Departments for Financial and Asset Management, Personnel Management and Training, Information Systems and Technologies, Archives, Documentation and Information, External Relations and the Secretariat of the Court.

The technical-operational support area, whose operation depends on the Court, carries out various functions: operational, consulting, studies, research and planning.

Operational functions are carried out by the Departments for Auditing, for Internal Verification of Accounts and for *A Priori* and Concomitant Control.

Consulting, study, research and planning functions are ensured by the Department for Consultancy and Planning.

The support services of the Regional Chambers also take on the same nature and carry out the same functions as the support services of the Directorate-General, with the necessary adaptations. Their organisation and operation are defined by order of the President, once the Judges in the Regional Chambers have been heard and considering the rules governing the organisation and operation of the support services of the Directorate-General.

The definition of material competency, of the organisation and operation of the departments which comprise the support services falls upon the President,³² taking into account the organisation and operation guidelines established by the Court. Currently, Order no. 46/2000-GP, of 27 April³⁴ includes said departments related to Headquarters, and Order no. 56/2000-GP, of 7 June, includes those related to the Regional Chambers of the Azores and Madeira.

³² See point 2 of article 30 of the OFLCA.

³³ Under the terms of point 6 of article 5 of Decree-Law no. 440/99, of 2 November.



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2.5. Human resources

Taking as our reference the statistical data regarding 2006, the *Tribunal de Contas* (Court of Auditors), Headquarters and the Regional Chambers, has a total of 18 judges, including the Counsellor President and its Support Services have 568 employees (481 in the headquarters, 45 in the Azores Regional Chamber and 42 in the Madeira Regional Chamber) carrying out its work.

2.6. Financial resources

The financing of the *Tribunal de Contas* is assured by an appropriation of the State Budget and by the *Tribunal de Contas* (Court of Auditors) itself, through its private Coffers.

3. CONTROL ACTIONS

3.1. Object of control

The attributions legally bestowed upon the *Tribunal de Contas* (Court of Auditors) correspond to the need for auditing public funds, public revenue and expenditure and public assets, with a view to ensuring that *exercising the administration of those resources complies with the Legal Order, judging, if necessary, the inherent financial responsibility.*

³⁴ Published in the II Series of the DR (Government Gazette), no. 108, of 10 May under no. 9675/2000.
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Thus, such attributions give rise to two types of power to be exercised by the Court: the power of financial control, on the one hand, and jurisdictional power, on the other.

In the pursuit of these attributions, the Law has defined the material competency of the *Tribunal de Contas* (Court of Auditors) based on the concept of public funds or assets, under such terms that their usage may not be excluded, even occasionally, from their field of performance.

It is therefore understandable that the number of entities subject to Court action is vast, and generally encompasses any and all entities in charge of public funds or assets, irrespective of their legal nature. Let us take a closer look at the entities subject to the jurisdiction and control of this Court.

3.2. The entities controlled

The *Tribunal de Contas* (Court of Auditors) exercise the function of financial and jurisdictional control in relation to those entities which are part of the Public Administrative Sector (PAS) and of the Public Business Sector (PBS) and, in general, to all those entities that administrate or use public moneys (article 2 of Law 98/97).

3.3. Types of control

Taking into account the framework provided by the Constitution of the Republic and by the Organisational and Procedural Law of the *Tribunal de Contas* (Court of Auditors), the examination or financial control function



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comprises the application of fundamental powers which, according to the criteria for examination or control implementation, can be presented as follows:

- powers of *a priori* control;
- powers of concomitant control;
- powers of successive or *a posteriori* control

Through its powers of *a priori* control, the *Tribunal de Contas* (Court of Auditors) verifies if the acts, contracts and other instruments which generate expenses or are representative of direct and indirect financial responsibilities as set out by law³⁵, are in compliance with the laws in force and if the respective expenses can be covered by the allocated budget.³⁶

The competency related to this type of control is carried out by means of seal approval concession or refusal in the legal acts subject to said control or through a declaration of conformity.

Seal approval concession falls under the competency of the 1st Chamber in the daily sessions of seal approval.

Although dependent on ratification by the Court,³⁷ the declaration of conformity falls upon the Support Services of the Court and occurs when there are no doubts as to the lawfulness of the act or contract.

Should a seal approval or declaration of conformity be refused, the respective act or contract becomes null and void.

The entities described in no. 1 of article 2, as well as “*the entities of any nature created by the State or by any other public entities to perform functions originally provided by the Public Administration, with costs incurred for transfer of the budget from the entity which has created them, whenever an*

³⁵ See article 46 of Law no. 98/97.

³⁶ See point 1 of article 44 of Law no. 98/97.

³⁷ Under the terms of that set out in point 3 of article 15 of the Internal Regulations of the 1st Chamber (Resolution no. 5/98-1st Chamber, of 17 February).



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abstraction of acts and contracts to the Court of Auditors a priori control occurs.

Within the scope of its powers of concomitant control, the *Tribunal de Contas* (Court of Auditors) accompanies the application of acts, contracts, budgets, programmes and projects and, in general, the financial activity carried out before the closing of the respective management. All entities cited in article 2 of Law no. 98/97 are subject to this kind of control, that is, those entities comprising the Public Administration, be they part of the Public Business Sector or the many entities responsible for managing public resources.

Within the scope of successive or *a posteriori* control, carried out following the end of the financial year or the closing of management and once the annual accounts have been drawn up, the powers of the Court are vaster and consolidate the following types of control:

- evaluation of the application of the State Budget and of the Autonomous Regions, through drawing up opinions on the respective accounts;³⁸
- carrying out audits of the accounts of PAS entities so as to evaluate the respective internal control systems, taking into consideration the legality, efficiency and effectiveness of their financial management;³⁹
- carrying out any and all types of audits related to legality, sound financial management and internal control systems, based on certain acts, procedures and partial aspects of financial

³⁸ Under the terms of paragraphs a) and b) of point 1 of article 5, and article 41 of Law no. 98/97.

³⁹ See paragraph d) of point 1, article 5, and articles 40 and 54, all in Law no. 98/97.



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management, or the sum of these aspects, in the entities cited in article 2;⁴⁰

- internal verification of accounts limited to «*analysing and conferring the accounts only to numerically demonstrate the operations carried out, which integrate the debit and credit of the management team, showing the opening and closing balances and, if that be the case, a declaration of extinction of liability of the secured treasurers.*».⁴¹

From the above, it can be concluded that auditing is the fundamental means for ensuring the control action of this Court.

3.4. Control procedures used

The Organisational and Procedural Law of the *Tribunal de Contas* (Court of Auditors) consecrates auditing as a preferred method for applying financial control over the entities subject to its powers of control.

From this perspective, carrying out any type of audit is a fundamental activity of this Court. Over the past few years, in particular, a process has evolved progressively highlighting this type of action.

In order to exercise its functions, the Court has recourse to various types of auditing, of which we emphasise the following:

- Financial audits;
- Operational or performance audits;

⁴⁰ See paragraphs f) and g) of point 1 of article 5 and article 55, both in Law no. 98/97.

⁴¹ Under the terms of article 53 of Law no. 98/97.



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- Integrated audits;
- Guided audits;
- Audits of projects or programmes;
- Systems audits;
- Environmental audits.

For reasons related to the credibility of the audits themselves and in order to safeguard the responsibility of those who perform them, these audits must be carried out in accordance with norms which specify the methods and techniques to be used, as well as the phases to be observed.

Within this context, the Court has been concerned with defining the guiding norms which guarantee the high technical quality and efficiency of audits.

Such norms were to be found for the first time in the Auditing Manual Project completed in 1995.

The changes brought about by implementing the Organisational and Procedural Law led to the drawing up of the current *Manual of Auditing and Procedures*, approved in the Plenary Sitting Session of the 2nd Chamber in January 1999, under the terms of paragraph d) of point 1 of article 78 of Law no. 98/97.⁴²

This Manual reflects general auditing principles which are internationally accepted and defined in the auditing norms of professional organisations of auditors, namely the *International Federation of Accountants* (IFAC) and the *Fédération des Experts Comptables Européens* (FEE). It also reflects the move toward harmonisation which has been felt at an international level through the support of the *International Organization of Supreme Audit Institutions*



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(INTOSAI), which resulted in the definition of control norms aimed at supreme audit institutions.⁴³

In agreement with the above, the Manual defines a set of guiding principles as to how audits should take place. These principles highlight the need for adequate planning and a correct application conveniently supervised and duly documented.

Under the terms of said Manual, the adequate planning of audits depends on compliance with a set of rules, namely:

- «1 The definition of the auditing objectives and compliance with the competencies of the Tribunal de Contas (Court of Auditors) or the needs of entities which justify these;*
- 2 The indication of the nature and scope of the audit;*
- 3 The identification of the type of entity audited and its objectives, as well as those operations which are most relevant and the greatest risk areas, always taking into account the principle of materiality;*
- 4 Knowledge of the main systems, practices and management controls of the audited entity and the preliminary evaluation aimed at identifying strong and weak points;*
- 5 The methods and techniques to be used in verification work;*
- 6 The scheduling of auditing work;*
- 7 The quantification of human resources;*
- 8 Action budgeting.»*⁴⁴

⁴² This normative precept acknowledges that the Plenary Sitting of the 2nd Chamber has the competency to approve *«the manuals on auditing and verification procedures to be adopted by the respective support services.»*.

⁴³ Furthermore, and given Portugal's integration in the European Union, the Court also took into account the norms included in the Auditing Manual of the European Tribunal de Contas (Court of Auditors) when drawing up its Auditing Manual.

⁴⁴ See *in Manual de Auditoria e de Procedimentos*, volume I, edition Tribunal de Contas (Court of Auditors), Lisbon, 1999, pp. 110.



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Carrying out audits correctly also depends on a set of procedures identified in the Manual, with the objective of testing the reliability of internal control systems, compliance with the Law and respect for the principles of economy, efficiency and effectiveness in financial management.

3.5. Evaluation of results

The control action developed by the Court follows the planning principle.

For this purpose, the Full Plenary of the Court draws up a *triennial programme*, up until 30 October of the year immediately preceding the start of the triennium. The programme of the Regional Chambers is drawn up autonomously by the respective Judge and is an annex to the *triennial programme* of the Headquarters.⁴⁵ These programmes define the control actions to be carried out throughout that period of time.

In accordance with this programme, the 1st and 2nd Chambers approve the respective *annual programmes* up until 15 December of each year. These programmes include the bodies or services to be examined that year or those which dispense control.⁴⁶

This action which is carried out throughout the year is the object of an evaluation which is included in the *activity report* drawn up annually by the President and approved by the Full Plenary.

Like the above-mentioned *triennial programme*, this report is an invaluable management instrument and an important means of informing citizens

⁴⁵ See article 37 of the OFLCA.

⁴⁶ See articles 38 and 40 of the OFLCA.



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and its representative bodies of the actions carried out by the Court each year. Thus, the report is published in the Official Government Gazette⁴⁷ and presented to the President of the Republic, Parliament, Government and, with regard to the respective Regional Chamber, to the self-governing bodies of the Autonomous Regions.⁴⁸

4. ACTS ADDRESSEES

The acts produced by the *Tribunal de Contas* (Court of Auditors) are naturally addressed to certain entities.

The interim reports on the application of the State Budget, as well as the report and opinion on the *General State Account*, are addressed to Parliament. The same can be said, with the necessary adaptations, as to the destination of the reports on the application of regional budgets, as well as the reports and opinions on the regional accounts produced by the Regional Chambers of the *Tribunal de Contas* (Court of Auditors), which are aimed at the Regional Legislative Assemblies.

In turn, the audit reports are aimed at the audited entities and the respective people in charge and to the bodies which govern or supervise them.

These reports are also sent to the [Public Prosecution Service](#), operating alongside the Court, so that the latter may promote financial responsibility actions, throughout the 3rd Chamber of the Court, in cases where said reports show illegal financing and the respective audited entity is subject to the

⁴⁷ Under the terms of paragraph c), point 2, article 9 of the OFLCA.

⁴⁸ See point 2 of article 43 of the OFLCA.



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jurisdictional power, i.e. it is included in the list cited in point 1, article 2 of the OFLCA.⁴⁹

Finally, decisions on seal approval concession or refusal are addressed to the author of the act or the entity which authorised it.

5. PUBLICITY OF ACTS

5.1. Types of acts produced and publication system

In accordance with the provisions established in article 9 of Law no. 98/97, the acts produced by the *Tribunal de Contas* (Court of Auditors) are, generally speaking, subject to the principle of publicity. The legislator, who takes into consideration the nature of the various types of acts produced by the Court, establishes the regime for their publication.

Thus, the Judgements by the Court setting jurisprudence are published in the I Serie of the *Diário da República* (Official Government Gazette), whereas in the II Series one publishes the Report and Opinion on the *General State Account*, the Annual Report on the Activities of the Court, instructions and regulations, as well as the list of entities exempted from bringing in the accounts, in accordance with the defined criteria.

The orders delivered by the Public Prosecution Service not applying for jurisdictional proceeding, that is, aiming the financial accountabilities discharge, are also monthly published⁵⁰.

⁴⁹ See point 1, article 57 of the OFLCA.

⁵⁰ Order no. 41/06-GP, of 16 November 2006.



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With regard to the many acts, the Court has the faculty of deciding to publish them once it has notified the interested entities.

In the same way, and under the same terms, acts of the competency of the Regional Chambers of the *Tribunal de Contas* (Court of Auditors) are also published in the proper Official Journals (Azores and Madeira Autonomous Regions).⁵¹

5.2. Relations with the *media*

Apart from the official publicising, acts produced by the *Tribunal de Contas* (Court of Auditors) can also be disseminated through any and all mass media, should the Court deem it opportune or convenient to do so and once the interested entities have been notified thereof.⁵²

This faculty is intrinsically connected to the affirmation of the *Tribunal de Contas* (Court of Auditors) as an independent and external financial control body with the fundamental mission to inform citizens as to how financial resources and public assets are being managed.

The most frequently used mass media is the written word, and the Court divulges information which will be journalistically processed (rulings, press releases, etc.), and non-processed information fully or partially available (rulings, opinions, reports, etc.). In certain cases, one also has recourse to other types of communication.

⁵¹ In accordance with that set out in point 3 of article 9 of the OFLCA.

⁵² Under the terms of point 4 do article 9 of the OFLCA.



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For this purpose, the Court has a *nucleus for the media and press*. This nucleus is found in the Office of the President and contact with the *media* is established through it.

Contact can also be established through the Court's *site* on the *Internet*⁵³, where one can find all information related to the organisation and its operation or the activity carried out by it.

6. INSTITUTIONAL RELATIONS

6.1. Relations with Parliament

Under the terms of the Constitution and the Law, Parliament is the preferred addressee of the *Tribunal de Contas* (Court of Auditors) activity.

This reality can be immediately seen in the fact that, under the terms of the Constitution of the Republic, Parliament can only assume the *General State Account* through the *Tribunal de Contas* (Court of Auditors).⁵⁴

In reality, and even though it is a typically consulting act, the Opinion of the *Tribunal de Contas* (Court of Auditors) is an important instrument in analysing the State's Account, inasmuch as it evaluates the respective financial activity, culminating in the issuing of a decision as to the regularity and legality of the budget's application, as well as on the economy, efficiency, and effectiveness of the management carried out and the reliability of the internal control systems.

⁵³ www.tcontas.pt.

⁵⁴ See paragraph d) of article 162 of the CPR.



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Within the scope of this performance, the Court technically assists Parliament.

In the same way, one may view the collaborative relation that can arise between these two bodies under the terms of point 2 of article 36 of Law no. 98/97, which consecrates the possibility of the Court notifying Parliament of information it has gathered, be it during the budget's application or up until the publishing of the *General State Account*.

Furthermore, within the scope of applying the State Budget, and with the objective of increasingly close relations with Parliament, the main addressee of the Court's activity, the Law foresees that Parliament may request that the Court «provide intercalary reports on the Budget control results throughout the year, as well as any clarifications necessary for the evaluation of the State Budget and the report on the General State Account»,⁵⁵ or, further still, «notify it of information, reports or opinions related to the respective financial control functions».⁵⁶

Beyond the strict domain of the budget's application, Parliament may also request that the Court carry out audits of the activity carried out by any and all entities, public or private, subject to its powers of control.⁵⁷

Equally important, is the participation of the *Tribunal de Contas* (Court of Auditors) in drawing up legislative projects of a financial nature upon Parliament's request for consultative opinions.⁵⁸

⁵⁵ Under the terms of point 3 of article 36 of the OFLCA.

⁵⁶ As foreseen in point 4 of article 11 of the OFLCA.

⁵⁷ See paragraph g), point 1 of article 5 and point 1 of article 55, both in the OFLCA.

⁵⁸ See point 2, article 5 of the OFLCA.



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6.2. Relations with the Government

Another sovereign body with which the *Tribunal de Contas* (Court of Auditors) has special relations is the Government.

In effect, the Law foresees that upon Government request, the Court can carry out at any given moment any and all audits of certain acts, procedures or aspects of financial management developed by any entity subject to the latter's powers of control.⁵⁹

On the other hand, and similar to that which happens within the scope of its relations with Parliament, the Court may be called upon by the Government to issue an opinion on the contents of legislative projects of a financial nature.

The Court may also, upon its own initiative, propose to the Government the adoption of legislative measures it considers necessary for exercising its competencies.⁶⁰

6.3. Relations with the Public Prosecution Service

In compliance with the Constitution of the Republic⁶¹ and the Organic Law of the Public Prosecution Service, Law no. 98/97 foresees the intervention of the latter Body before the *Tribunal de Contas* (Court of Auditors), represented at Headquarters by the Attorney General (who may delegate his/her functions to one or more assistant public prosecutors), and represented in the Regional Chambers by the magistrate appointed by the Attorney General for this

⁵⁹ See paragraph g), point 1, article 5 of the OFLCA.

⁶⁰ See paragraph d) of article 6 of the OFLCA.

⁶¹ See articles 219 and 220 of the CPR.



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purpose and who, in cases of absence or impediment, is replaced by his/her legal substitute.⁶²

The Public Prosecution Service intervenes officiously in the 1st and 3rd Chambers, and as set out in point 4 of article 29 of Law no. 98/97, «*all reports and opinions approved following verification, control and auditing actions*» must be submitted to it and may attend the 2nd Chamber sessions. It should be previously notified of the processes, so that it could deliver opinion on the legality of the questions posed by them. It must be pointed out that the Public Prosecution Service has the pre-eminence competency to request judgement to the enforcement of financial liabilities. The remaining entities endowed with this competency – internal control bodies (Inspection bodies, Audit bodies), in relation to the respective reports; and the bodies of management, superintendence and custody on the concerned ones, in the case of Court of Auditors reports – may only request judgement subsidiarily, that is, when it has not been requested by the Public Prosecution Service.

Thus, the relationship between the *Tribunal de Contas* (Court of Auditors) and the Public Prosecution Service is really significant.

So as to ensure the necessary technical and administrative support for the competency of the Public Prosecution Service and upon the latter's request, the Directorate-General provides the necessary staff and other specific support, namely the drawing up of studies and opinions.⁶³

⁶² See points 1 and 2 of article 29 of the OFLCA.

⁶³ See art. 21 of the Regulations for the Organisation and Functioning of the Directorate-General of the Tribunal de Contas (Court of Auditors), approved by Order no. 46/00-GP, of 27 April.



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6.4. Relations with internal control bodies

The control of the public financial activity is also exercised by other control instances, inasmuch as they are external entities in relation to the entities examined but included in the concept and internal control action of the Administration.

This type of control is legally structured so as to be technically independent. However, and as it is dependent on the Government, which is partly committed to that public management, it is not entirely independent in relation to the State and the civil service.

Under these terms, it is imperative that one clarifies and demarcates the functions inherent to the *Tribunal de Contas* (Court of Auditors) and to the internal control bodies, so that the control activity of the former may fit together with the complementary actions of the latter. In this way, there will be efficient and rational gains in this vast global financial control, leaning towards an integrated and co-ordinated system.

Taking this objective into account, the Law no. 98/97 establishes a framework for relating with the internal control bodies, whose essential aspects are as follows⁶⁴:

- Informing the *Tribunal de Contas* (Court of Auditors) of their annual and pluri-annual activity programmes and the respective activity reports;
- Sending reports on their control actions when these contain matters of interest to the performance of the *Tribunal de Contas* (Court of Auditors), including the obligation of, in those reports, materialize the situations that originated



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eventual responsibilities, according to the article 12 of the OFLCA;

- Carrying out actions upon the Court's request, taking into account the criteria and objectives set by the latter.

It should also be noted that, after the amendments introduced in the Law 98/97, of 26 of August, by the Law 48/2006, of 29 of August, the internal control bodies became detainees of the right of action, although with a subsidiary nature, in the scope of the account judgement and financial liabilities processes.

The President of the *Tribunal de Contas* (Court of Auditors) takes on the role of co-ordinator in promoting the exchange of information related to the respective annual and pluri-annual programmes and in harmonising the criteria for internal and external control.⁶⁵

6.5. Relations with other foreign SAIs

Over the last decade especially, the *Tribunal de Contas* (Court of Auditors) has developed relations with national control institutions so as to establish mutual collaboration, confront systems and exchange experiences in the field of auditing methods and procedures.

In fact, point 3, article 11 of Law no. 98/97, highlights the importance of said articulation and co-operation by including the Court's actions in a control system at a national and community level, without prejudice to its independence in relation to the many institutions.

⁶⁴ See articles 11 and 12 of the OFLCA.

⁶⁵ Under the terms of point 3, article 11 of the OFLCA.



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These requirements are greater regarding the complexity, changes and dimension of the public financial activity in today's States, which emphasise the control experiences in each country, as well as the relations, co-operation and the mutual academic and technical exchange among the Supreme Audit Institutions

Thus, within the international scope, the *Tribunal de Contas* (Court of Auditors) has held bilateral relations with its counterpart institutions in the Member States of the European Union and with the *Tribunal de Contas* (Court of Auditors) of the Community of Portuguese-Speaking Countries. It has also maintained regular contact with other external control institutions in Latin America, Eastern Europe and the Far East.

Furthermore, the *Tribunal de Contas* (Court of Auditors) has also co-operated with financial control bodies in NATO, the OECD and the WEU (Western European Union), as well the World Bank.

6.6. Relations with international auditing organisations

The *Tribunal de Contas* (Court of Auditors) has also developed relations with international auditing organisations.

The exchange of ideas, experiences and information, together with the carrying out of joint actions at international and community levels are mainly aimed at making it possible for the *Tribunal de Contas* (Court of Auditors) to contribute to an improved public financial life, through the exercise of its functions.



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The *Tribunal de Contas* (Court of Auditors) is a member of various international organisations and is, namely:

- Founding member of the world-wide *International Organization of Supreme Audit Institutions* (INTOSAI) – established in 1953, currently on its Board of Directors and liaison agent in relation to goal 1 - *Accountability and Professional Standards* - of the Strategic Plan 2005-2010;
- Founding member of the Organisation for the SAIs of the Community of Portuguese-Speaking Countries;⁶⁶
- Founding Member of the *European Organisation of Supreme Audit Institutions* (EUROSAI), established in 1990, currently as an observer member of its Board of Directors;
- Associate member of the *European Organisation of Regional Audit Institutions* (EURORAI);
- Acceding member of the *Organization Latino Americana y Del Caribe de Entidades Fiscalizadoras Superiores* (OLACEFS), since 1988;
- Member of the *European Evaluation Society* (EES), since 1995.

The Court of Auditors is also auditor of the following international organisations:

- European Molecular Biology Scientific Organisations;
- European Space Agency (ESA);
- Western European Union.

⁶⁶ Of which the SAIs of Angola, Brazil, Cape Verde, Guinea-Bissau and São Tomé e Príncipe are also a part.