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New elements in the organisation and functioning of the Public Administration and Administrative Justice

Questionnaire

Responses from Portuguese Supreme Administrative Court

I. New models of organisation and functioning in the Public Administration

The aim and scope of Part I of this questionnaire is:
(A) To examine collaboration with private individuals (who are not public servants) in the unilateral action taken by the Administration, and more specifically to study the delegation to private individuals of tasks traditionally performed by public servants during the procedure of issuing an administrative act. Participation, in general, of citizens/interested parties in administrative proceedings (e.g. preliminary hearings, participation and all forms of consultation), collaboration with private individuals in the Administration's contractual activity (works, supply and service contracts, concession contracts, public-private partnerships, etc.), privatisation of public-sector bodies and creation of legal entities governed by private law are not covered by this questionnaire.
(B) To study the integration of private-sector organisational models into the tools and operating methods of the Public Administration.

A. Delegation of administrative tasks to private individuals

1. General provisions

Does your legal system recognise the following forms of collaboration between private individuals and the Public Administration?

Tasks assigned to private individuals during the procedure of issuing [adopting] an administrative act X
Recruitment of private individuals who are not civil servants within the Administration's structure, e.g. executive managers, senior managers X

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2. Regarding the involvement of private individuals in administrative proceedings

i. If the involvement of private individuals in administrative proceedings (as indicated above) is provided for in your legislation, please mention specific provisions.

Constitutional provision X
General provision of a legislative nature X
Specific legislation X

Constitutional provision: The Constitution of the Portuguese Republic (CRP) recognises the existence of administrative agents (Article 266(2) of the CRP), who have always been referred to in case law as individuals acting under the hierarchical authority of administrative entities, even if they are not civil servants. This applies to prison guards when they implement punitive measures under the execution of sentences code, and to individuals performing tax enforcement duties, whether they are employed by the tax authorities or another entity with tax enforcement powers, such as a municipality in relation to the taxes it levies and collects.
Article 267(1) of the CRP also states that the Public Administration should be structured in a way that allows interested parties to participate in the effective management of services. For example, this can be achieved through public associations, such as professional associations. These associations are legally responsible for recognising, training, and exercising disciplinary power over their members (private professionals). This form of professional regulation is an example of private entities exercising public functions, in this case through public professional associations (Law No. 2/2013 of 10 January – General Regime for Public Professional Associations).
The Constitution also recognises administrative decentralisation as a form of private participation in service management (Article 267(2) of the CRP).
The most significant constitutional aspect of private entities' involvement in administrative activities emerged with the 1997 constitutional revision, which now incorporates private entities exercising public powers within the administrative structure (Article 267(6) of the CRP). This means that private entities can perform public functions under delegation acts.

General legal provision: The law (Administrative Procedure Code) does not contain any special rules for private individuals to exercise administrative activities. These private individuals operate under the same legal regime as administrative bodies.
We can find some interesting references in the different general regimes of administrative organisation:
Article 3(6) of Law No. 4/2004 (Principles and Rules Governing the Organisation of the Direct Administration of the State) states: 'With a view to increasing the efficiency of the allocation of public resources and improving the quantity and quality of the service provided to citizens, the performance of some of the functions of the direct administration of the State may, provided that

it complies with the Constitution and under terms and conditions to be laid down in a specific law, be delegated or granted to private entities for a fixed period.'
Articles 53 and 54 of Law No. 3/2004 (the Framework Law on Public Institutes) respectively provide for the possibility of concession and delegation of the powers of a public institute (an administrative legal entity with administrative and financial autonomy outside a hierarchical relationship) to private entities.
However, article 40(5) of Law No. 67/2013 (the Law on Independent Administrative Entities Regulating Economic Activity in the Private, Public, and Cooperative Sectors) states that these entities cannot grant or delegate concessions to private entities to exercise some of their powers.

Specific legislation: There are many special legal regimes governing situations in which public functions are performed by private individuals. This is why we have chosen to provide six examples.
(1) **Entities with decision-making powers**: According to Article 7 of Law No. 21/2023 of 25 May, the decision-making and management powers of IAPMEI, I.P. within the administrative procedure for recognising the legal status of start-ups and scale-ups are delegated to the private association 'Startup Portugal'.
(2) **Entities responsible for assessing and supervising the factual elements that inform decisions:** According to Article 6(1) of Decree-Law No. 144/2012 of 11 July, the technical supervision of motor vehicles and their trailers may be delegated to entities that manage inspection centres. These entities may be either legal or natural persons, as permitted by Article 3(2) of Law No. 11/2011 of 26 April.
(3) **Control entities**: According to Articles 18 and 20 of Decree-Law No. 61/2020 of 18 August, private entities may assume control functions associated with the certification of a designation of origin or geographical indication for wine products, provided they notify the Institute of Vine and Wine, I.P.
(4) **Entities participating in a collegiate administrative body**: According to Article 3 of Law No. 22/99 of 21 April, citizens may be recruited as electoral agents to perform the duties of polling station or polling section members in elections or referendums.
(5) **Entities that collaborate in the provision of public services through contracts** that remunerate private entities for providing services under conditions similar to those citizens receive from public entities. This applies to hospitals under public-private partnerships (Decree-Law No. 185/2002 of 20 August, which defines the legal framework for private management and financing of health partnerships), and to association contracts in education (Articles 9, 10 and 16 to 18 of the Statute of Private and Cooperative Education at non-higher education level, approved in the annex to Decree-Law No. 152/2013 of 4 November).

(6) **Arbitrators (individuals who exercise judicial powers in a private capacity) who decide on legal tax disputes** under the legal regime for tax arbitration (Articles 4 to 9 of the Legal Regime for Tax Arbitration, approved by Decree-Law No. 10/2011 of 20 January).

ii. Does national case-law or legislation define criteria pursuant to which the delegation of administrative tasks to private individuals is authorised?

As previously mentioned, there is no general legal framework governing private legal entities exercising administrative powers by delegation or concession, nor is there a legal framework governing the delegation of public powers to private entities.
The delegation of authority to administrative entities, whether by administrative act or by contract, depends on prior legal authorisation for such delegation. The legality of these delegation acts (regulated by the Code of Administrative Procedure – Decree-Law No. 4/2015 of 7 January) is assessed in the same way as other administrative activities.
Private entities may collaborate in material tasks in the context of service contracting (outsourcing) or service delegation by contract (service concession), both of which are regulated by the Public Contracts Code (Decree-Law No. 18/2008 of 29 January).

iii. How are administrative tasks delegated to private individuals? Please provide specific examples.

Directly by law .....… X

Example 1: Following the 'privatisation' of the profession, notaries acquired the status of liberal professionals with 'public faith' delegated by the State (Article 1 of the Notarial Statute [Decree-Law No. 26/2004 of 4 February]).

Example 2: Article 159 of Decree-Law No. 108/2018 of 3 December explicitly grants supervisory and enforcement powers for radiation protection tasks to the radiation protection officer as a certified professional.

By an administrative act .....… X

The official control functions associated with the certification of a designation of origin or geographical indication for wine products are delegated to private management entities, through a Notice from the Institute of Vine and Wine, I.P. (administrative act), pursuant to Article 18 of Decree-Law No. 61/2020, of 18 August.

By contract .....… X

The delegation of technical inspection powers for motor vehicles and their trailers is carried out through the conclusion of an administrative management contract between the Institute for Mobility

and Transport, I.P. (a public institute) and the private entity managing the inspection centre, pursuant to Article 3, No. 1 of Decree-Law No. 11/2011 of 26 July.

Other .....… □

iv. Which administrative tasks can be entrusted to private individuals [content of the tasks]? Please provide specific examples from legislation and case-law.

Preparation of the administrative act .....… □

Example 1: The functions of investigation and administrative procedures for the issuance and renewal of residence permits are carried out by lawyers, trainee lawyers or solicitors under the terms of the Regulation on the Selection of Lawyers, Trainee Lawyers and Solicitors. This activity arises from the Administration's (Agency for Integration, Migration and Asylum, I.P. – AIMA) inability to respond promptly to requests, which resulted in cooperation agreements being concluded between that Agency and the Bar Association and the Association of Solicitors and Enforcement Agents.

Example 2: Technical support provided to the National Road Safety Authority by private entities for decision-making in cases of road traffic offences.

Issuance [adoption] of the administrative act .....… □

Under the terms of Article 7(1)(a), subparagraph i) of Decree-Law No. 102/2021 of 19 November, Qualified Experts who are part of the Building Energy Certification System (SCE) are responsible for assessing the energy performance of buildings covered by the SCE by issuing pre-certificates and energy certificates.

Implementation of the administrative act .....… □

Under the terms of Articles 106 and 107 (particularly Articles 107(11) and 107(12)) of the Legal Regime for Urbanisation and Construction (approved by Decree-Law No. 555/99 of 16 December), private individuals can carry out decisions to demolish illegal constructions under the public works contract regime.

Other .....… □

v. What is the extent [range] of administrative tasks that can be entrusted to private individuals? Please provide specific examples from legislation and case-law.

Advisory tasks .....… □

Example 1: The Directorate-General for Agriculture and Rural Development (DGADR) is the competent authority responsible for ensuring official control of protected designations of origin

(PDOs) under Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004. Control bodies (private entities) collaborate in this control activity and may even carry it out by delegation. An example of this is the role played by TRADIÇÃO E QUALIDADE-Associação Interprofissional para Produtos Agro-alimentares de Trás-os-Montes (Tradition and Quality-Interprofessional Association for Agri-Food Products of Trás-os-Montes) in the certification process for Alheira de Mirandela PGI producers [Regulation (EU) 2024/1143 of the European Parliament and of the Council of 11 April 2024; Commission Implementing Regulation (EU) 2016/292 of 19 February 2016; and Normative Order No. 11/2018 of 20 August].

Example 2: The administrative process monitoring functions performed by interns working in the Ministry of Foreign Affairs' external peripheral services are regulated by Ordinance No. 259/2014 of 15 December, as currently worded, under the PEPAC-MNE programme.

Decision-making tasks .....…… □

The following are two examples relating to administrative decisions where the law does not allow for discretion:
Example 1: Qualified experts issue energy certificates pursuant to Article 7(1)(a)(i) of Decree-Law No. 102/2021 of 19 December, which is limited to the verification of technical and factual elements provided for by law.
Example 2: The private entity Startup Portugal decides on the issuance of the act of recognition of the legal status of start-up and scale-up pursuant to Article 7 of Law No. 21/2023 of 25 May, in its current wording, only verifying the company's compliance with the criteria provided for by law.
An example of decisions in which the legislator grants a margin of discretion is the regulation and discipline of sports by sports federations, pursuant to Article 11 of Decree-Law No. 248-B/2008 of 31 December.

Control and verification tasks:

Establishment of the facts .....…… □

- Forest resource guards, hired by private entities that manage or operate hunting or fishing areas, are competent under the terms of Article 2 of Decree-Law No. 9/2009 of 9 January to carry out tasks such as verifying the identity of hunters, fishermen and collectors of wild resources (e.g. mushrooms, fruits, aromatic, medicinal or condiment plants), as well as checking that they have the required documents for hunting, fishing and harvesting wild resources, and that their equipment is suitable for the respective activities.

Legal qualification of the facts ..... □

Example 1: Inspection of gas installations, gas appliance installations, gas distribution networks and branches (including equipment and other systems that use combustible gases), to verify the

installation and operating conditions of gas appliances and the conditions indicated in the design, as well as the ventilation systems of premises where gas appliances are located or intended to be installed, may only be carried out by gas inspection entities (EIG). These are private entities authorised by the DGEG to perform their duties as private services, as set out in Law No. 15/2015 of 16 February.

Example 2: The mandatory regular maintenance and inspection of elevators, freight elevators, escalators and moving walkways is ensured by an Elevator Maintenance Company (EMIE). This is a private entity that is duly recognised by the Directorate-General for Energy and Geology (DGEG) under Decree-Law No. 320/2002 of 28 December.

Other .....… □

vi. Are there any cases where the involvement of private individuals in administrative proceedings is prohibited?

No □
Yes (please specify ……..) X

Article 40(5) of the Framework Law on Regulatory Authorities forbids regulatory authorities from delegating their administrative functions to private entities, thus preventing the latter from being involved in the former's administrative activities.

If yes, which legal instrument provides for the corresponding prohibitions?

Constitution .....… □
Legislation .....… X
Other .....… □

Please indicate any relevant case-law.

We couldn't find any court decisions about illegalities in the delegation of powers that weren't allowed by law.

3. Qualifications and selection procedure for private individuals

i. What is the procedure provided for in the legislation for the certification of private individuals? Please mention specific examples.

Participation in examinations .....… X

The selection of experts for the procedures for declaring public utility and administrative possession in expropriation proceedings is carried out under the terms provided for in the Expropriation Code

and Articles 6, 9 and 9A of Decree-Law No. 125/2002 of 10 May. This selection is made through written and oral examinations, both for attendance of and completion of the training course.

Selection based on criteria .....… X

In accordance with the current wording of Articles 159(6) and (7) of Decree-Law No. 108/2018 of 3 December, the Radiological Protection Officer is certified based on their qualifications and academic training.

Other .....… □

ii. How are selected the private individuals who will be entrusted with a specific administrative task? Please give examples.

Random selection from a list/register .....… X

In accordance with the Regulations for the Selection of Lawyers, Trainee Lawyers, and Solicitors, lawyers and solicitors who cooperate in the investigation of administrative proceedings for the issuance and renewal of residence permits were selected by lottery from a list previously authorised by the Agency for Integration, Migration and Asylum.

Selection from a list/register based on criteria X

Election officials are selected based on their educational qualifications and age, in accordance with Article 5 of Law No. 22/99 of 21 April.

Absolute discretionary power of the Administration .....… X

Pursuant to Article 21 of Decree-Law No. 51/2021 of 15 June, the appointment of honorary consuls is made by order of the member of the Government responsible for foreign affairs, upon proposal by the ambassador accredited to the respective country.

Selection by the citizen [upon a declaration] .....… X

Example 1 - Pursuant to Articles 29(2)(e), 32(e) and 33(c) of Decree-Law No. 108/2018 of 3 December, as currently worded, the applicant interested in operating the radiological facility is responsible for identifying the Radiological Protection Officer who will perform the administrative functions of supervising and enforcing radiation protection measures.

Example 2 – The legal certification of accounts by the statutory auditor chosen by commercial companies under the terms of the respective code is an act of public verification. The state relies on the statutory auditor's signature to confirm the accuracy of a company's accounts for tax and market

purposes (Article 45 of the Statute of Statutory Auditors, approved by Law No. 140/2015 of 14 September).

Other .....… □

iii. Is there a legal provision and/or other instrument governing the actions of private individuals when performing administrative tasks? Please indicate specific provisions.

No □

If yes, X

General normative act (e.g. Code of Administrative Procedure) □

Pursuant to Article 2(1) of the Code of Administrative Procedure (Decree-Law No. 4/2015 of 7 January), the provisions concerning general principles, procedure and administrative activity are applicable to any entities, regardless of their nature, that act in the exercise of public powers or are specifically regulated by administrative law provisions. Therefore, private entities performing any administrative task are legally required to comply with the general principles of administrative law and the general rules relating to administrative procedure and activity.

Specific normative acts .....… X

Example 1: The professional duties set out in Article 8 of Decree-Law No. 102/2021 of 19 November, with which Qualified Experts must comply in order to perform the administrative tasks legally entrusted to them;

Example 2: The legally binding operation and incompatibility regime for managing entities of vehicle inspection centres under Articles 4, 8 and 23 of Law No. 11/2011 of 26 April. Inspectors and management at the Inspection Centre must not be involved in the manufacture, sale, maintenance or repair of vehicles, either directly or indirectly.

Example 3: the mandatory use of uniforms by forest rangers employed by private companies, as set out in Article 8 of Decree-Law No. 9/2009 of 9 January.

Codes of Conduct, good practices (soft law) X

Example 1: Code of Ethics of the Institute of Certified Public Accountants

Receiving gifts for oneself or a close family member is considered a 'threat of familiarity', except for those of insignificant commercial value.

A duty of integrity is imposed, requiring one not to sign a document containing false, materially erroneous or carelessly produced statements.

Example 2: In the case of elevator inspectors, the inspecting entity may not carry out inspections on installations whose maintenance is provided by the same company or companies belonging to the same business group.

Other .....… □

iv. How are the impartiality and integrity of private individuals guaranteed under the law? Please indicate specific provisions.

Incompatibilities .....… X

Example 1: the incompatibility regime applicable to members of sports federation bodies, as set out in Article 49 of Decree-Law No. 248-B/2008.

Example 2: the incompatibility regime applicable to lawyers, trainee lawyers and solicitors cooperating with the Agency for Integration, Migration and Asylum in investigating administrative proceedings relating to the issuance and renewal of residence permits, as set out in the Regulation on the Selection of Lawyers, Trainee Lawyers and Solicitors.

Impediments .....… X

The general regime of impediments provided for in Section III of the Administrative Procedure Code applies with general effect.

Example 1: Article 23 of Law No. 11/2011 of 26 April, as currently worded, establishes impediments that guarantee the impartiality of managing entities when inspecting vehicles.

Example 2: Article 16 of Decree-Law No. 125/2002 of 10 May, as currently worded, establishes impediments applicable to expert appraisers in expropriation proceedings.

Criminal or disciplinary liability .....… X

Disciplinary regime for vehicle inspection activities (Law No. 11/2011 of 26 April):

Violation of the duty of impartiality by an inspection technician is punishable by a fine ranging from €750 to €2,000. An additional penalty of disqualification from practising the activity may be imposed if there has been a previous conviction for the same offence (Articles 26 and 27).

- Violation of the duty of impartiality may result in the management entity of the inspection centre being fined between €1,500 and €3,740, or between €10,000 and €30,000, depending on whether it is a natural or legal person. As a last resort, the public supervisory authority (the Institute for Mobility and Transport) may order the administrative closure of the inspection centre.

Criminal regime: A notary is a public official who authenticates documents and ensures their archiving, as well as an independent and impartial liberal professional acting at the free choice of the interested parties (Decree-Law No. 26/2004 of 4 February). A notary who draws up a deed of sale for a property without verifying that taxes (e.g. the Municipal Tax on Onerous Transfer of Real Estate) have been paid, or without confirming the real identity of the buyers, is guilty of failing to combat money laundering.

He may also face disciplinary action, including permanent disqualification from practising his profession (disbarment) (Article 70(1)(e) of the relevant statute).

Other .....… □

v. What are the legal consequences in the event of an error, offence or failure on the part of the private individual?

Withdrawal of the certification	X
Disbarment from the professional association	X
Imposition of a fine or other penalty	X
Personal liability of the private individual (civil, criminal, disciplinary)	X
Revocation of the administrative act in the issuance of which the private individual collaborated	X
Civil liability of the State	X

Article 1(5) of the regime governing the non-contractual civil liability of the state and other public entities (approved by Law No. 67/2007 of 31 December) stipulates that this legal regime of civil liability for damages arising from the exercise of administrative functions also applies to the civil liability of private legal entities and their employees, officers, legal representatives or assistants, in relation to actions or omissions carried out in the exercise of public authority or in accordance with provisions or principles of administrative law.

Other □

4. Administrative checks [controls]

i. Does the Administration carry out checks on private individuals when they perform administrative tasks?

Yes	X
No	□

ii. If yes, at what stage are the checks carried out?

A priori X

Through authorisations, licences and signed contracts.

A posteriori X

Through control of decisions and activities

At any time X

Inspections

iii. How are checks activated?

Following a complaint/administrative appeal X

Ex officio X

iv. How extensive are the checks?

Checks based on sampling X

Mandatory checks for all actions □

v. What is the nature of the checks?

Of legality X (Mainly)

When an administrative remedy is available, this involves appealing to an administrative body that also controls the substance.

Of the substance, of appropriateness □

vi. What is the type of checks?

On persons X

On actions X

vii. Are the conclusions of private individuals binding on the Administration?

Yes X

No □

5. Judicial review

i. Can the actions of private individuals be subject to judicial review? Please indicate specific provisions or the relevant case-law.

No □

Yes X

If yes, what is the scope of the judicial review?

The review directly targets the action of the private individual (per se) X

The review indirectly targets the action of the private individual (appeal lodged against the final act of the Administration, whether explicit or implicit, e.g. appeal lodged against the tacit acceptance of the actions of private individuals by the Administration) .....… X

Except where the issue concerns the legality of authorising private entities to perform administrative activities, in which case the issue may cover aspects of legality, such as legal authorisation for collaboration, or substance, such as the private entity's lack of legal requirements to perform the activity, the control of these entities' actions follows the general regime for controlling administrative activities.

Indeed, Article 4(1)(d) of the ETAF stipulates that administrative courts have jurisdiction to supervise the legality of rules and other legal acts performed by any entity, regardless of its nature, when exercising public powers. Under subparagraph h), administrative courts have jurisdiction to hear cases of non-contractual civil liability involving any entity exercising public powers or whose actions are regulated by administrative law provisions or principles.

ii. What types of disputes arise when challenging the actions of private individuals?

administrative disputes	X
private disputes	□

iii. Please mention typical cases from national case-law concerning the delegation of administrative tasks to private individuals.

According to Article 51 of the Code of Procedure in Administrative Courts, it is possible to challenge acts performed by 'private law entities acting under administrative law rules'.

Supreme Administrative Court:
Ruling 14.03.2024 (046/23.0BECBR) - The administrative jurisdiction is responsible for assessing the legality of the actions of sports federations when a dispute arises that is alleged to be a violation of the statutory rules of sports associations.
Ruling 14.02.2013 (0134/12) - The Architects Association (public association) is responsible for "admitting and certifying the registration of architects, as well as granting the respective professional title" (Article 3(b) of the Statute of the Architects Association, as amended by Decree-Law No. 176/98 of 3 July). However, this does not include the possibility of rejecting the registration of degree holders in architecture recognised by the government without a concrete assessment of their ability to practise as architects.

Ruling 03.07.2025 (0909/23.3BELRA) - The state is not liable for delays to justice caused by an enforcement administrator's inaction. An enforcement administrator is a private entity responsible for conducting part of the enforcement proceedings.

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B. Integration of private-sector methods and organisational models into the functioning of the Administration

1. Recruitment of senior managers outside the hierarchy of the civil service

i. What are the objectives of recruiting private individuals as senior managers within the Administration?

The overall objective is to align public management with private management parameters, particularly within public entities operating in a competitive private sector (e.g. Caixa Geral de Depósitos, a publicly owned financial institution that competes with other banks in the market).

In such instances, Article 28(9) of the Public Manager Statute (approved by Decree Law No. 71/2007 of 27 March) permits managers recruited from the private sector to opt for the average remuneration they received during the previous three years of private employment. This exceeds the standard salary cap for civil servants, which is typically the salary of the Prime Minister.

ii. In which sectors of the Public Administration is it permissible to recruit senior managers who do not belong to the hierarchy of the civil service, and in which sectors is it prohibited?

Recruitment under the public management regime (Decree-Law No. 71/2007 of 27 March) is only permitted for the management or administrative bodies of public companies that are covered by the state business sector regime (Decree-Law No. 558/99 of 17 December).
This legal regime may also apply, on an exceptional basis, to the governing bodies of special public institutes (the Statute of Senior Staff in Central, Regional and Local Government Services and Bodies, approved by Law No. 2/2004 of 15 January), as well as to independent regulatory authorities (the Framework Law on Regulatory Entities, approved by Law No. 67/2013 of 28 August, Article 17), in cases expressly determined by their respective organic laws.

iii. What criteria does the Administration use to select external senior managers?

As for entities belonging to the state business sector, Article 12 of the Public Manager Statute stipulates that those selected must have at least a bachelor's degree, and selection must be based on suitability, professional merit, management skills, experience and a sense of public interest. Other evaluation criteria may be defined by regulation, such as leadership skills, collaboration, motivation, strategic orientation, results orientation, citizen orientation, public service orientation, change management, innovation management, social sensitivity, professional experience, and academic and professional training.

Regarding central, local and regional public administration services and bodies, as well as public institutes, Articles 18 and 19(4) of the Statute of Senior Staff of Central, Regional and Local State Administration Services and Bodies and the Framework Law on Public Institutes stipulate that those selected must have held a bachelor's degree for at least eight years, demonstrating technical competence, aptitude, professional experience and training appropriate to their specific duties.
Finally, with regard to regulatory bodies, Article 17 of the Framework Law on Regulatory Bodies stipulates that members of the board of directors shall be selected based on criteria of integrity, technical competence, aptitude, and professional experience and training appropriate to their specific duties.

iv. What is the nature of the duties of external senior managers?

Decision-making	X
Advisory	X
Other	X

v. Does error on the part of a senior manager give rise to:

Civil liability of the State	X
Personal liability of the manager (civil, criminal, disciplinary)	X

2. Organisational models

i. Does your country use New Public Management, Public Value Management, Digital Era Governance, or New Public Governance policies in the organisation of its Public Administration, for example, to digitise procedures, achieve objectives, ensure accountability, evaluate efficiency, promote the rational use and distribution of resources, control expenditure and ensure compliance with budget restrictions, codify legislation, promote career progression, train staff, etc.? Please provide specific examples.

All of the instruments mentioned above are used in Portugal.

Example 1: The Integrated Public Administration Assessment System (SIADAP), which is regulated by Law No. 66-B/2007 of 28 December, is a mandatory system that assesses performance at three levels on an annual or biannual basis: Services (organisations), managers (supervisors) and employees.
The score obtained (e.g. Excellent, Relevant or Adequate) determines career progression speed and access to performance bonuses.

The system is characterised by quotas, i.e. it limits the number of employees who can receive a maximum score (only a limited percentage of employees can receive an 'Excellent' or 'Relevant' score per service), making it a useful budget management tool.

Example 2: With government approval, a higher education institution may be established or transformed into a public foundation governed by private law (see Articles 129 and 134 of the Legal Framework for Higher Education Institutions, Law No 62/2007 of 10 September). The request for transformation must be based on the advantages of adopting this management model and legal framework for the pursuit of its objectives (greater efficiency). A study on the implications of this institutional transformation for the organisation, management, financing and autonomy of the institution or organic unit must accompany the proposal.

Example 3: Decree-Law No. 135/99 of 22 April establishes a set of measures for administrative modernisation.

Example 4: Decree-Law No. 10/2024 of January 8 is an example of a reform that simplifies licensing in the areas of urban planning, land use, and industry.

Example 5: Decree-Law No. 48/2011 of 1 April simplifies the rules for accessing and carrying out various economic activities under the 'Zero Licensing' initiative. Among other things, it eliminates the need for permits and prior inspections to open cafés or stores, replacing them with a simple notification to the 'Entrepreneur's Desk'.

Example 6 - Among the digitisation tools, the following are noteworthy:
i) The Digital Mobile Key Law (Law No. 37/2014 of 26 June), which provides ordinary citizens with a qualified digital signature. Legally, a signature made with a Digital Mobile Key on a mobile phone has the same legal value as a handwritten signature recognised by a notary. Another noteworthy tool is the AP Interoperability Platform (iAP), the digital 'highway' that connects the systems of different ministries (e.g. Social Security and Finance).

ii. Is there a specific provision for the organisation of the Administration based on the above-mentioned models (Constitution, legal provision, etc.)?

- Although the CRP, dating from 1976, does not use the term 'digitalisation', it establishes the principles that make debureaucratisation and digitalisation constitutional obligations today.

- Article 81(c) (Priority Tasks of the State) stipulates that the state must ensure the efficiency of the public sector.

- Article 267 (Structure of the Administration) states that:
Number 1 states that the public administration should be organised in a way that avoids bureaucracy, brings services closer to people, and ensures stakeholders' participation in its effective management, which can now be done more effectively through digital means.
Number 2 requires the law to establish appropriate forms of administrative decentralisation and deconcentration; in other words, it rewards reducing bureaucracy.

In the Administrative Procedure Code (CPA) (approved by Decree-Law No. 4/2015), several legal principles relevant to this topic can be found.

Article 5 (Principle of Good Administration):
The Administration must act according to the criteria of efficiency, economy and speed.
Article 14 (Principle of Electronic Administration):
o determines that bodies must use electronic means in their operations and in their relations with individuals. Paper becomes the exception.
Article 11 (Principle of Loyal Cooperation):
This establishes the basis for interoperability. Public services must collaborate with each other by exchanging data so as not to burden citizens.

Article 22(6) of Decree-Law No. 135/99 (Administrative Modernisation) incorporates the 'Only Once Principle', which prohibits the administration from requiring certificates or documents proving facts already known to any administrative service.

iii. In which public services and agencies is this type of organisation used?

The Administration stricto sensu	X
Public enterprises	X
Other public entities	X

iv. Are the policies for achieving the objectives designed:

At national level	X
At regional level	X
By subject-matter	X
By taking into account specific public entities	X
Other	□

v. Have specific objectives been set out for the action of the Administration? Please provide examples.

1. The National Digital Strategy 2030 (Council of Ministers' Resolution No. 207/2024).
It sets out specific targets for 2030 that the public administration (the 'state') must meet.

- 100% of key public services will be available online. The goal is for key services, such as renewing your citizen card, registering a birth or starting a business, to be fully digital.
- 100% of citizens will have access to their Digital Medical File, ensuring full interoperability in healthcare.
- 80% of the population will have basic digital skills. The State is responsible for creating training programmes to achieve this figure, as it is essential that digital technology does not exclude people.

2. Component 19 (C19) of the Recovery and Resilience Plan
It sets out very specific objectives:

· Simpler public services: Reform and digitise the 25 most frequently used public services (rule: 'digital by definition').

· Citizen's Bureau 3.0: Opening new Citizen's Bureaus with omnichannel service concepts (digital and integrated physical services). The Citizen's Bureau is a single multichannel service desk which brings together the provision of services from various public administration entities (central and local) and private entities that provide services of general interest in the same physical space, operating under an integrated management model.

· Interoperability: Implementation of a platform that enables services to communicate with each other (compliant with the 'Only Once' principle).

· Justice: Digitisation of administrative and tax courts to reduce procedural backlogs and waiting times.

3. The SIMPLEX Programme (annual): the new Simplex is geared towards short-term objectives and the elimination of specific barriers.

· The 'Simplex Urbanístico' (2024) aimed to reduce housing licensing times.

· Some of the measures adopted:

- Elimination of building and use permits for common cases
- Implementation of tacit approval (automatic approval of acts if the City Council does not respond within the deadline – positive value of silence)

If yes, is their accomplishment:

Optional	□
Mandatory	X

Does failure to meet these objectives lead to:

Personal consequences for the senior managers (depending on their management contracts) □

Legal consequences for the assessed organisation □

Financial consequences for the assessed organisation X (in some cases)

Are incentives of any kind provided for civil servants (e.g. remuneration) or public entities to ensure that these objectives are achieved? □

vi. Are there any indicators for evaluating the action of the Administration in relation to the following factors:

Compliance with the regulatory framework	X
Effectiveness	X
Efficiency	X
Economy	X
Achievement of strategic objectives	X
Other	□

II. Alternative methods for resolving administrative disputes

1. General provisions

i. Does your legislation provide for alternative dispute resolution (ADR) in cases involving public law/administrative law?

Arbitration	X
Mediation	X
Other ……..	□

ii. Are there categories of administrative disputes that are excluded from ADR by law or according to case-law?

* *Please elaborate on your answer, citing any relevant legislation and/or case-law*

Arbitration is only admissible when authorised by specific legislation. Thus, arbitration involving public/administrative law is possible in cases established by Articles 180 to 187 of the Code of Procedure in Administrative Courts.
(a) Articles 180 to 187 of the Code of Procedure in Administrative Courts, which govern the resolution of administrative law disputes through arbitration. The legal regime for administrative

arbitration is then governed by the general regime for commercial arbitration (Law No. 63/2011, or the Voluntary Arbitration Law). As a general rule, the arbitral tribunal decides according to the law, unless the law or an arbitration agreement authorises the use of equity. These decisions are subject to review and appeal to ensure uniformity of case law at the Supreme Administrative Court (Article 185-A of Code of Procedure in Administrative Courts).
(b) The Legal Regime for Arbitration in Tax Matters provides for a specific procedural regime for producing these arbitral decisions. Appeals for uniformity of jurisprudence may be lodged with the Plenary of the Tax Litigation Section of the Supreme Administrative Court.
(c) Article 476 of the Public Contracts Code (Decree-Law No. 18/2008) establishes various forms of alternative dispute resolution in the context of administrative contract litigation.
(d) Recourse to conciliation and mediation is admissible when the case falls within the powers of the parties, pursuant to Article 87-C of the Code of Procedure in Administrative Courts.

2. Settlement and Mediation

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is it permissible for the Administration and private individuals/legal entities to sign a settlement agreement or other similar document (without prior mediation)?

Yes	X
No	□

ia. If yes,
Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

These agreements are not regulated by legislation. However, they are admissible under the principles of administrative contracting and the contractual autonomy of the public administration (Article 200 of the Code of Administrative Procedure (CPA)), as well as under the legal admissibility of these agreements when they result from conciliation or mediation during pending legal proceedings (Article 87-C of the CPA) or arbitration proceedings (Article 41 of the Voluntary Arbitration Law).
Additionally, there is the option to prevent disputes during administrative proceedings by entering intraprocedural agreements (Article 57 of the CPA). These agreements may prevent administrative disputes during the procedure by enabling the parties to agree on the terms of the administrative procedure to be followed (paragraph 1) or prevent disputes regarding the content of the administrative decision by determining the discretionary content of the administrative act to be performed at the end of the procedure (paragraph 3).

Does this option only apply to the settlement of administrative disputes that are already under way, or can it also be used to prevent administrative disputes from arising in the first place?

It can be used to prevent legal and administrative disputes arising between the administration and private parties.

Do the law or case-law distinguish between application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)?

The scope of the agreements is limited to the powers of the parties in question, as set out in Article 87-C of the Code of Procedure in Administrative Courts and, in the case of intra-procedural agreements, Article 57 of the CPA. Judicial review of these agreements by the courts is limited to determining whether the final decision complies with the law, in accordance with the principle of the separation and interdependence of powers (Article 3(1) of Code of Procedure in Administrative Courts).

Is there a special procedure for initiating and conducting this alternative dispute resolution method, or are all matters left to the discretion of the parties involved?

There is no specific procedure for out-of-court settlements. Article 87-C of the Code of Procedure in Administrative Courts provides a process for referring disputes to conciliation and mediation during proceedings, which may result in an agreement between the parties. However, arbitration can only be used as an alternative means of dispute resolution if there is an arbitration clause or an arbitration agreement has been concluded, particularly in cases concerning administrative law. In the case of a tax dispute, the defendant must have previously agreed to that legal regime.

After signing a settlement agreement (or other similar document), is ratification by a court required?

Yes □

No □

If yes, by which court?

If an agreement is reached through mediation during legal proceedings, it shall be ratified by the court hearing the case pursuant to Article 87-C(5) of the Code of Procedure in Administrative Courts, Article 273(5) of the Code of Civil Procedure and Article 45 of Law No. 29/2013 of 19 April. If an agreement is reached through conciliation during legal proceedings, it may be ratified by the court hearing the dispute, pursuant to Article 290 of the Code of Civil Procedure. If the agreement is reached during arbitration proceedings, it may be ratified by the arbitral tribunal (see Articles 41 and 42 of the Voluntary Arbitration Law). Ratification by the judge is not mandatory if the agreement is reached out of court.

If no, can the legality of the settlement agreement (or other similar document) be examined by the judge on an incidental basis? Under what circumstances could the settlement be considered null and void and without legal effect?

After being signed and/or validated, as applicable, does the settlement agreement have the force of res judicata? Can the enforcement of this document be pursued?

Yes, the court's ratification pursuant to Articles 277(d) and 290 of the Code of Civil Procedure, Article 45 of Law No. 29/2013 of 19 April and Article 41 of the Voluntary Arbitration Law leads to the termination of proceedings and makes the agreement enforceable.

Which court has jurisdiction over disputes concerning such enforcement?

Administrative Courts

ib. If the signing of a settlement agreement or other similar document between the Administration and private individuals/legal entities is not permitted in your country, this prohibition results from:
a legislative provision □
a general principle of law □

ii. Does your country provide for a mediation procedure between the Administration and private individuals/legal entities for administrative disputes?

** The term 'mediation' is used here to refer to a procedure conducted by an independent and impartial third party, and not to administrative appeal procedures addressed to the Administration or to a body that is hierarchically dependent on the Administration.*

Yes	X
No	□

iia. If yes,

Is it expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Article 87-C of the Code of Procedure in Administrative Courts expressly allows for this in administrative disputes. However, it is not allowed in tax proceedings.

Is it mandatory or optional?

Optional

If it is optional, does it require:

The mutual agreement of the parties	X
Only the intention of the Administration	□
Only the intention of the private individual/legal entity	□

Specifically with regard to the State as a party to the dispute, is mediation initiated:

After approval by a special committee	□
By the administrative authority involved in the dispute	□
Other	X

In the case of mediation arising in the context of legal proceedings, it is initiated either by a joint request from the parties to the dispute, or by the judge to whom the dispute has been assigned (see Articles 87-C of the Code of Procedure in Administrative Courts and 273 of the Code of Civil Procedure). Extrajudicial mediation is initiated by agreement between the parties.

At what stage can a case be referred for mediation?

Necessarily before the introduction of legal proceedings	X

At any stage of the litigation proceedings X

Is there a specific piece of legislation governing the mediation process?

Yes X

No □

If yes, please specify:

In the case of mediation arising in the context of legal proceedings, both the Code of Civil Procedure and Law No. 29/2013 of 19 April shall apply. For extrajudicial mediation, the general principles set out in Law No. 29/2013 of 19 April shall apply. This law establishes the general principles applicable to mediation carried out in Portugal, as well as the legal regimes for civil and commercial mediation, mediators and public mediation.

Which principles of trial apply to the mediation process (hearing of the parties, adversarial principle, equality of arms, publicity, representation by a lawyer?

In accordance with the law (Articles 6, 7 and 9 of Law No. 29/2013 of 19 April), mediation is governed by the principles of equality of the parties, impartiality and independence of the mediator, and enforceability of the mediation agreement.

How is the impartiality of the mediator ensured?

Article 27 of Law No. 29/2013 of 19 April establishes a series of restrictions for mediators to ensure their independence, impartiality, and neutrality in relation to the parties and the subject matter of the dispute.

Is there any interim relief (stay of execution, etc.) during the mediation process? If yes, who is competent to hear the case?

No.

At the end of the mediation process,

If an agreement is concluded:

A document is drawn up X

Other possibility (please specify)

If an agreement is not concluded:

Is a time limit set for bringing the matter before the competent court?

Are the litigation proceedings already under way (if applicable) continued?

In the case of extrajudicial mediation, there is no deadline for the matter to be submitted to the relevant administrative court. However, in the case of mediation arising in the context of legal proceedings, the proceedings will resume, thus ending the suspension (Article 273(4) of the Civil Procedure Code).

In the event that a document is drawn up following mediation, do the rules concerning the settlement procedure (see above) apply, or are there differences? If yes, please specify.

Refer to the answer given previously.

iib. If no mediation process is provided for, is this exclusion provided for in:

a legislative provision □

a general principle of law □

3. Arbitration

** Please elaborate on your answers, citing any relevant legislation and/or case-law.*

i. In administrative disputes, is arbitration between the Administration and private individuals/legal entities permitted in your country?

Yes X

No □

ia. If yes,

Is this option expressly provided for in a legislative text (Constitution, law) or does it derive from a general principle of law?

Both Article 180(1) of the Code of Procedure in Administrative Courts and Article 1(5) of the Voluntary Arbitration Law explicitly permit the use of arbitration as an alternative method for settling administrative disputes. Furthermore, Portugal's Constitution (Article 209(2)) recognises arbitral tribunals as a category of court.

Does it concern both application for annulment (judicial review limited to the legality) and appeal on the merits (full judicial review of both legality and substance)? Are there any exceptions provided for by law or established by case-law?

The legislation stipulates that the arbitral tribunal may hear cases concerning the invalidity of administrative acts and rule on their annulment (Articles 180(1)(a) and (c) of the Code of Procedure in Administrative Courts). As with state courts, arbitral tribunals cannot rule on the appropriateness or timeliness of administrative action (Articles 3(1) and 185(2) of the Code of Procedure in Administrative Courts). However, nothing prevents arbitral tribunals from issuing equitable judgements in cases where issues of legality are not at stake (e.g. setting compensation for breach of obligations under an administrative contract).

Is it mandatory or optional?

Recourse to arbitration is optional. However, some services and administrative entities may be subject to the jurisdiction of institutionalised arbitration centres in accordance with terms and limits defined by a ministerial order (e.g. Ministerial Order No. 1120/2011 of 30 September) pursuant to Article 187 of the Code of Procedure in Administrative Courts.

ib. If arbitration is not permitted, is this prohibition due to

A legislative provision	□
A general principle of law	□

ic. If arbitration is optional, does it require:

The mutual agreement of the parties	X
The sole intention of the Administration	□
The sole intention of the private individual/legal entity	X

On the part of the State, is arbitration initiated:

After approval by a special committee	□
By the administrative authority involved in the dispute	X
Other	□

ii. For disputes arising from contracts between private individuals/legal entities and the State, do the common provisions relating to commercial arbitration (domestic or international) apply, or is there a special regime?
If there is a special regime, please briefly mention the elements that differentiate it from the commercial arbitration regime.

The primary applicable regime is that set out in Articles 180 to 187 of the Code of Procedure in Administrative Courts. The Voluntary Arbitration Law, which is the legislation applicable to commercial arbitration, applies on a subsidiary basis. Additionally, Article 476 of the Public Contracts Code sets out specific rules for contract-related disputes, particularly with regard to the option of an ad hoc arbitral tribunal (paragraph 3) and appeals against arbitral awards (paragraph 5).

iii. Is arbitration provided for in contracts falling within the scope of Directives 2014/24/EU and 2014/25/EU?
If yes, have any issues been raised regarding the application of the rules governing the performance of these contracts? How have the courts addressed such issues in the relevant case-law?

Yes, the directives have been transposed into the Public Procurement Code.
According to Article 476(1) of the Code, the arbitral tribunal may hear matters arising from pre-contractual procedures or the performance of contracts to which the Code applies. There are no issues to report.

iv. How are the independence and impartiality of the arbitrator ensured?

The arbitrators are chosen by the parties, who then select a chairperson.

If the parties are unable to reach an agreement, the arbitrator is selected by the state court (Article 10(2) of the Voluntary Arbitration Law). If the arbitral tribunal comprises three or more arbitrators, each party appoints an equal number of arbitrators, who then choose another person to chair the panel. If they cannot reach an agreement, the chair is selected by the state court (Articles 10(3) and 10(4) of the Voluntary Arbitration Law).

Lack of impartiality and transparency are two recurring criticisms of Portugal's administrative arbitration system.

In tax arbitration, a set of impediments applicable to arbitrators is provided for in Article 8 of Decree-Law No. 10/2011 of 20 January, as currently worded.

v. Is there any interim relief when an administrative dispute has been submitted to arbitration? If yes, which body is competent to hear the case?

Yes, in administrative disputes, the arbitral tribunal may issue interim measures and preliminary orders (Articles 20 to 23 of the Voluntary Arbitration Law). However, in tax disputes, the arbitral tribunal may only annul acts, leaving it to the courts to adopt interim measures if necessary.

vi. In arbitration concerning administrative disputes:

	yes / no
Is there an obligation to make publicly available the basic information and documents relating to the proceedings?	□ X
Is the participation of third parties permitted?	X □
Is legal representation mandatory?	X □
If yes, is legal aid available?	□ X
Is the hearing public?	□ X
Is the arbitral tribunal obliged to give reasons for its award?	X □
Is the arbitral award made publicly available?	X □

vii. During the proceedings, the applicable system is:

the adversarial system	X
the inquisitorial system	□

viii. What powers does the arbitral tribunal have?

Reviews the legality of administrative acts of a non-pecuniary nature	X
Reviews the legality of an administrative act of a pecuniary nature (fine, etc.)	X
Annuls/amends an administrative act of a non-pecuniary nature	X
Annuls/amends an administrative act of a pecuniary nature	X
Addresses only recommendations to the Administration	□
Restricts itself to awarding compensation for damages	□

Does the arbitral award have effect:

Erga omnes (with regard to all)	□
Inter partes (between the parties)	X

Is it considered 'case-law' for other cases? No

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If the answer to the last question is yes, please explain.

Can the validity of the arbitral award be challenged in court?

Yes	X
No	□

If yes, is the validity of the arbitral award reviewed directly or incidentally?

The parties may request the annulment of the arbitral award on the grounds set out in Article 46(3) of the Voluntary Arbitration Law. If the arbitration agreement provides for it, an appeal may be lodged in the same manner as for a court judgment delivered at first instance (Articles 39(4) and 59(1)(e) of the Voluntary Arbitration Law). In specific circumstances, an appeal can also be lodged with either the Constitutional Court (Article 185-A(2) of the Code of Procedure in Administrative Courts) or the Supreme Administrative Court (Article 185-A(3) of the Code of Procedure in Administrative Courts).

Is it possible to waive the right to judicial review?

The right to request the annulment of the arbitral award (Article 46(5) of the Voluntary Arbitration Law) and the right to appeal (Article 185-A(3) of the Code of Procedure in Administrative Courts) may not be waived by the parties.

Which courts have jurisdiction?

In the case of an application for annulment or an ordinary appeal against the arbitral award, it is the administrative courts that are responsible (see Articles 46(2) and 59(1)(e) and (g) of the Voluntary Arbitration Law). An appeal against a decision not to apply a rule on the grounds of its unconstitutionality, or an appeal against a decision to apply a rule whose unconstitutionality has been raised, is heard by the Constitutional Court (Article 185-A(2) of the Code of Procedure in Administrative Courts). An appeal against a decision based on Article 185-A(3)(a) and (b) of the Code of Procedure in Administrative Courts is heard by the Supreme Administrative Court.

What is the scope of the judge's review according to case-law?

If an application is made to annul the award, the administrative court may only annul the arbitral award on the grounds set out in Article 46(3) of the Voluntary Arbitration Law. The court is limited to verifying these grounds and is unable to consider the merits of the issue or issues decided by the award (Article 46(9) of the Voluntary Arbitration Law).
In the case of an appeal, the court of appeal shall hear the case under the same terms as an appeal against a decision at first instance (Article 149 of the Code of Procedure in Administrative Courts and Articles 39(4) and 59(1)(e) of the Voluntary Arbitration Law).
If an appeal is lodged with the Constitutional Court, the court may only consider the part in which it refuses to apply a rule on the grounds of its unconstitutionality, or applies a rule whose unconstitutionality has been raised (Article 185-A(2) of the Code of Procedure in Administrative Courts).
If an appeal is lodged with the Supreme Administrative Court, however, the court may hear the entire matter in dispute decided by the arbitral award (Article 185-A(3) of the Code of Procedure in Administrative Courts).

In arbitration, is the concept of public policy different, according to case-law, in cases where the State (or a legal person governed by public law) is a party to the arbitration? If yes, what are the differences compared with the concept of public policy in arbitral proceedings between private individuals?

No.

In arbitration, in addition to the rules of European competition and consumer protection law (see C-126/97, Eco Swiss China Time Ltd v Benetton International NV and C-168/05 Mostaza Claro v Centro Móvil Milenium SL, respectively), has case-law recognised other rules of EU law as rules of international public policy? If yes, please mention the relevant cases.

Although the publication of administrative arbitration decisions is legally mandatory, there is no database of them, and it is not possible to ascertain whether European law has been applied.

In contrast, arbitral tribunals in tax arbitration not only apply European law but are also considered by the Court of Justice of the European Union to be a 'referring court' (Ascendi case C-377/13). This complicates the task of the Supreme Administrative Court, which is the highest court in the administrative jurisdiction.

Which body has jurisdiction to hear disputes arising during the enforcement of an arbitral award? Has case-law dealt with special cases where enforcement has been contested on the grounds of the administrative nature of the dispute?

The administrative court of first instance acted pursuant to Article 157 of the Code of Procedure in Administrative Courts and Articles 42(7) and 59(9) of the Voluntary Arbitration Law.

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