

ICC Portugal Competition Commission

I Competition Congress in Portugal

November 16th, 2022



Recommendations for an increased competition and competitiveness of the national and european economy



Improvements in the Competition, Regulation and Supervision Court of the Portuguese Republic



Circular Economy



Adoption of guidelines by the Competition Authority regarding cooperation agreements between companies in the environmental sector



Amendments to the Portuguese Competition Law, giving greater prominence to the Judiciary



Simplification of national and European rules applicable to Portugal 2020, national Recovery and Resilience Plan and Portugal 2030



Reduce context costs and improve the competitiveness of enterprises.

INTRODUCTION

The International Chamber of Commerce (ICC) is the voice of the business world and considers the economy as a force for economic and sustainable growth worldwide. The ICC Portugal Competition Commission held its I Congress on 16th November, 2022, in Lisbon, with more than 200 participants, under the theme of Competition, in a **holistic and multidisciplinary vision of Competition**, apprehended and present in all areas of economic and social activity and with numerous facets, with a pivotal role to play in economic and sustainable development.

The presentations and debates, which involved representatives of Companies, Individuals, Members of International Organisations, Members of Parliament, Jurists, Judges, Economists, Magistrates, Journalists, Lawyers, Engineers, European Funds Managing and Auditing Authorities, Sectoral Regulatory Authorities and the Portuguese Competition Authority, are materialized in the following **Recommendations**, of an eminently practical nature for national and European public decision-makers.



Eduardo Maia Cadete

Chairman of the ICC Portugal Competition Commission

IMPROVEMENTS IN THE COMPETITION, REGULATION AND SUPERVISION COURT OF THE PORTUGUESE REPUBLIC





1.1. Urgent need to provide a building exclusively allocated to the Competition, Regulation and Supervision Court (new Palácio de Justiça III, in the municipality of Santarém, Central region of Portugal) given the limitations and lack of capacity of the current Palácio de Justiça II facilities. When the TCRS was installed, the court building was exclusively allocated to the TCRS, in 2014 it was cumulatively allocated to the District Court of Santarém, and the same physical facilities now also include all the civil jurisdictions of the District Court of Santarém, namely: Family and Minors, Labour, Executions, Commerce, Local Civil Court and Central Civil Court. The current facilities create numerous constraints to the TCRS in holding judicial hearings due to the lack of available courtrooms. At the same time, between October 2021 and October 2022, the TCRS received two hundred and twenty cases of misdemeanour cases, many of high complexity and with a high number of interveners, and one hundred and seventeen actions of civil cases, to which must be added, in both cases, the numerous pending cases.

There is a vacant building on the side of the current Palácio de Justiça II that can be rapidly refurbished to accommodate the TCRS, and the Santarém City Council has already publicly presented its willingness to cede the vacant building to the Ministry of Justice.

1.2. Opening of a public tender for the hiring of 1 legal advisor and 1 economic advisor to provide material assistance to the 3 judges of the TCRS in the good progress of the cases and in favor of a timely Justice.

1.3. Effective reinforcement of the TCRS Justice Officers. At the time of the Troika, the TCRS had eleven judicial officers. Currently it has six judicial officers, and the current resources are clearly scarce and insufficient, given the continuous increase in the number of cases brought before the TCRS and their increasing complexity and number of intervening parties.





- **Recipients**

-  **Portuguese Minister of Justice;**
-  **Portuguese Parliament** (Committee on Constitutional Affairs, Rights, Freedoms and Guarantees; Committee on Economy, Public Works, Planning and Housing);
-  **European Parliament** (Legal Affairs Committee and Human Rights Subcommittee);
-  **European Commission** (Directorate-General for Competition; Directorate-General for Justice).

2 CIRCULAR ECONOMY





2.1. Welcoming environmental sustainability and the circular economy into the tax rules. Under the current tax framework, a company donating goods in kind, including food and clothing, is more costly than destroying or rendering them useless because the donation is taxed, on the contrary, if the good is destroyed or made unusable, the cost of the good is deducted in full for corporate income tax purposes, as an expense and loss.

- **Recipients**

-  **Portuguese Minister for Finance;**
-  **Portuguese Parliament** (Budget and Finance Committee);
-  **European Parliament** (Committee on Economic and Monetary Affairs; Subcommittee on Taxation);
-  **European Commission** (Commissioner for the Economy).

2.2. National and/or European (television, digital and radio) awareness-raising campaign on the advantages of the circular economy and related reuse actions for citizens, businesses and the environment.

- **Recipients**

-  **Portuguese Minister for the Environment and Climate Action;**
-  **Portuguese Parliament** (Environment and Energy Committee);
-  **European Parliament** (Committee on the Environment, Public Health and Food Safety);
-  **European Commission** (Vice President, European Green Pact; Directorate-General for Climate Action).



3

ADOPTION OF GUIDELINES BY THE COMPETITION AUTHORITY REGARDING COOPERATION AGREEMENTS BETWEEN COMPANIES IN THE ENVIRONMENTAL SECTOR

3.1. There is an urgent need for the Portuguese Competition Authority to adopt guidelines on cooperation agreements between companies in the environmental sector. Nowadays, in order to face and try to solve environmental problems, companies need to find solutions together, but, at the same time, there is no room to interact among themselves about sustainable environmental alternatives, for fear of falling under the scrutiny of an investigation by the Competition Authority and of the correlative typification of the conduct as a practice restricting competition.

- **Recipients**



Portuguese Competition Authority;



Portuguese Parliament (Committee on Economy, Public Works, Planning and Housing).



4

AMENDMENTS TO THE PORTUGUESE COMPETITION LAW, GIVING GREATER PROMINENCE TO THE JUDICIARY

4.1. It is urgent and necessary to amend the procedural rules of the Competition Law, giving greater relevance to the Judiciary, including the express normative provision of:

- In proceedings involving practices restricting competition, an appeal on matters of fact from the decisions of the TCRS (with concomitant recording of the hearing in the 1st instance), to the Lisbon Court of Appeal and on matters of law to the Supreme Court of Justice.
- Elimination of the imprescriptibility of the processes of practices restricting competition in the judicial phase, an atypical figure, of dubious constitutionality and without parallel in the national legal system.

- **Recipients**



Portuguese Minister of Economy;



Portuguese Parliament (Committee on Constitutional Affairs, Rights, Freedoms and Guarantees; Committee on Economy, Public Works, Planning and Housing).

5

SIMPLIFICATION OF NATIONAL AND EUROPEAN RULES APPLICABLE TO PORTUGAL 2020, NATIONAL RECOVERY AND RESILIENCE PLAN AND PORTUGAL 2030

5.1. Simplification and consolidation of European legislation and reduction of administrative burdens.

5.2. Simplification, whenever feasible, of administrative processes at the stage of submission, approval, monitoring, implementation, validation and execution of operations.

5.3. Carrying out audits of projects whenever possible using tools that use Artificial Intelligence and that signal ex ante the highest risk operations.

- **Recipients**



Portuguese Minister for the Presidency;



Portuguese Parliament (Committee on Economy, Public Works, Planning and Housing);



European Parliament (Committee on Regional Development);



European Commission (Commissioner for Cohesion and Reform).






6

REDUCE CONTEXT COSTS AND IMPROVE THE COMPETITIVENESS OF ENTERPRISES.

6.1. Reducing excessive delays in the resolution of judicial proceedings, particularly in Administrative and Tax Courts, which specialize in judging citizens' and companies' disputes with the State, including tax disputes.

6.2. The Tax and Customs Authority should respect the judicial precedents of the Supreme Administrative Court and not adopt belligerent conduct with taxpayers against jurisprudence established by the Supreme Administrative Court, with the harmful effect of wasting (scarce) resources and unduly dragging out processes to the detriment of taxpayers.

• Recipients

-  **Portuguese Minister of Justice;**
-  **Portuguese Minister for Finance;**
-  **Portuguese Parliament** (Committee on Constitutional Affairs, Rights, Freedoms and Guarantees; Budget and Finance Committee);
-  **European Parliament** (Committee on Legal Affairs and the Subcommittee on Human Rights; Committee on Economic and Monetary Affairs; Subcommittee on Taxation);
-  **European Commission** (Directorate General Justice and Consumers| Commissioner for the Economy).



Contacts

geral@icc-portugal.com (ICC Portugal)



[ICC Portugal](#)



<https://www.icc-portugal.com/>