



# Seminar on Independence of Supreme Audit Institutions

## Roundtable 3 To More Independence

### The Court of Auditors of Portugal

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# SUMMARY

I. A brief perspective of Tribunal de Contas of Portugal (TCP) organisation

II. Historical Process Evolution

III. The Independence guarantees of Tribunal de Contas of Portugal

IV. Articulation between Internal and External Control

V. Main risk threatening SAI Independence

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## I. A brief perspective of Tribunal de Contas of Portugal (TCP) organisation

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 , independent, constitutional** body of the State, included in the **judicial bodies**.

## Historical Process Evolution

❑ Until 1990, the Court of Auditors was in main ruled by the 1915 regulations of the extinct Supreme Council of State Financial Administration

❑ In 1989, substantial alterations were made to the regulatory framework that had governed the organisation, operation and activity of the Court of Auditors.

These came in the wake of the constitutional revision process, which gave rise to the publication of Constitutional Law 1/89, and the legislative process of the reform of the Court, which culminated in the publication of Law 86/89

## Historical Process Evolution

The Constitution of the Portuguese Republic positions the Court of Auditors among the Courts (article 211), conferring on it the nature of a sovereign body and thus independent and only subject to the law.

### III. The independence guarantees of TCP

The independence of  
the Court of Auditors is  
guaranteed by

❖ **Constitutional nature of its powers**

❖ **Self-government**

❖ **Members Status**

### III. The independence guarantees of TC

## Constitutional nature of its powers

#### Article 214 (Court of Auditors)

1. The Court of Auditors is the senior organ for the scrutiny of the legality of public expenditure and for judging the accounts which the law requires to be submitted to it. It particularly has the competence to:

- a) Give an opinion on the General State Accounts, including the social security accounts;
- b) Give an opinion on the accounts of the Azores and Madeira Autonomous Regions;
- c) Enforce liability for financial infractions, as laid down by law;
- d) Exercise the other competences allocated to it by law.

2. Without prejudice to the provisions of Article 133(m), the term of office of the President of the Court of Auditors is four years.  
(...)

### III. The independence guarantees of TC

#### Self- government

- ❖ **Budgetary autonomy**
- ❖ **Independent planning of its activities and audit tasks**
- ❖ **Independence in choice of managers**



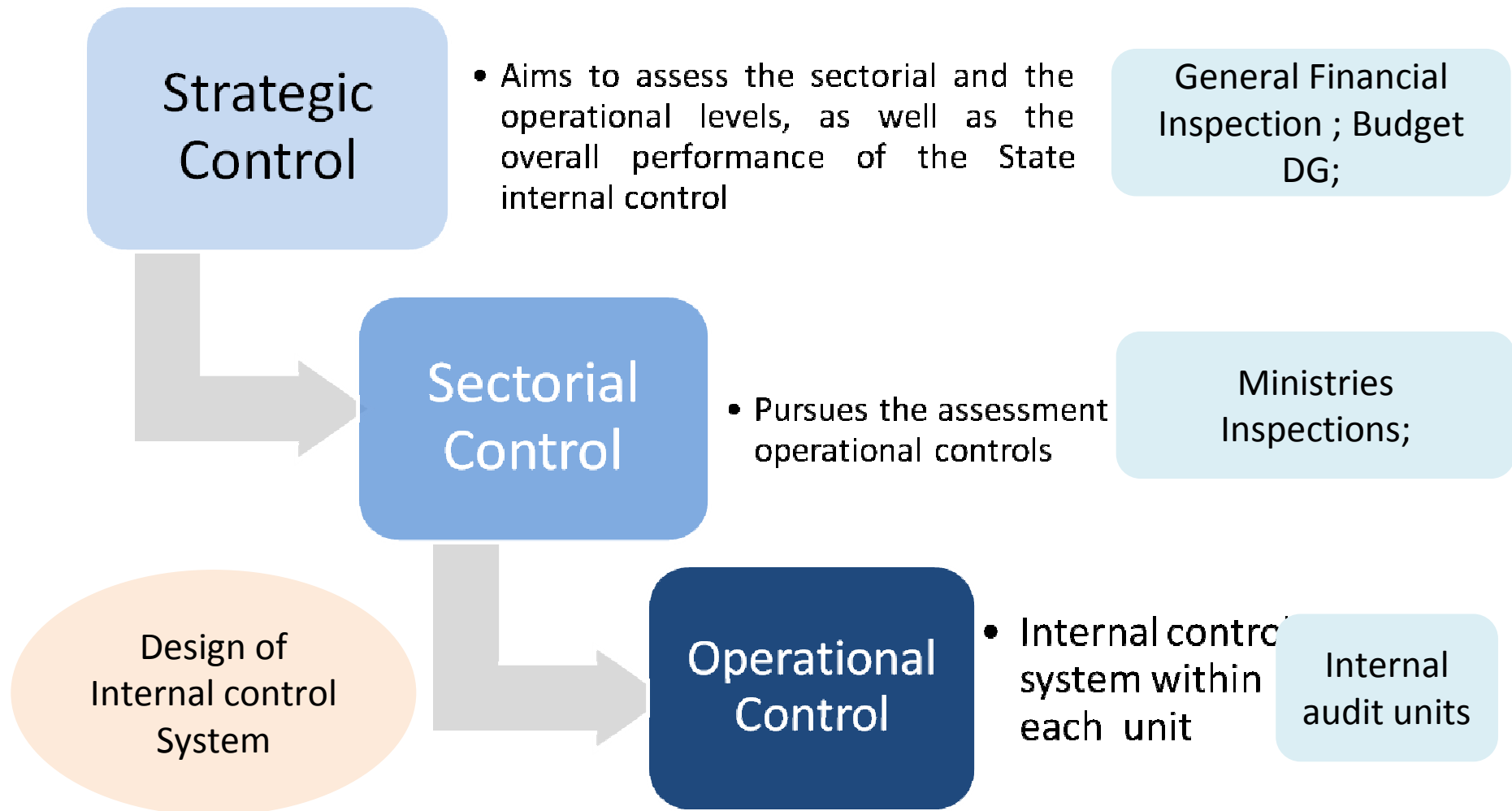
### III. The independence guarantees of TC

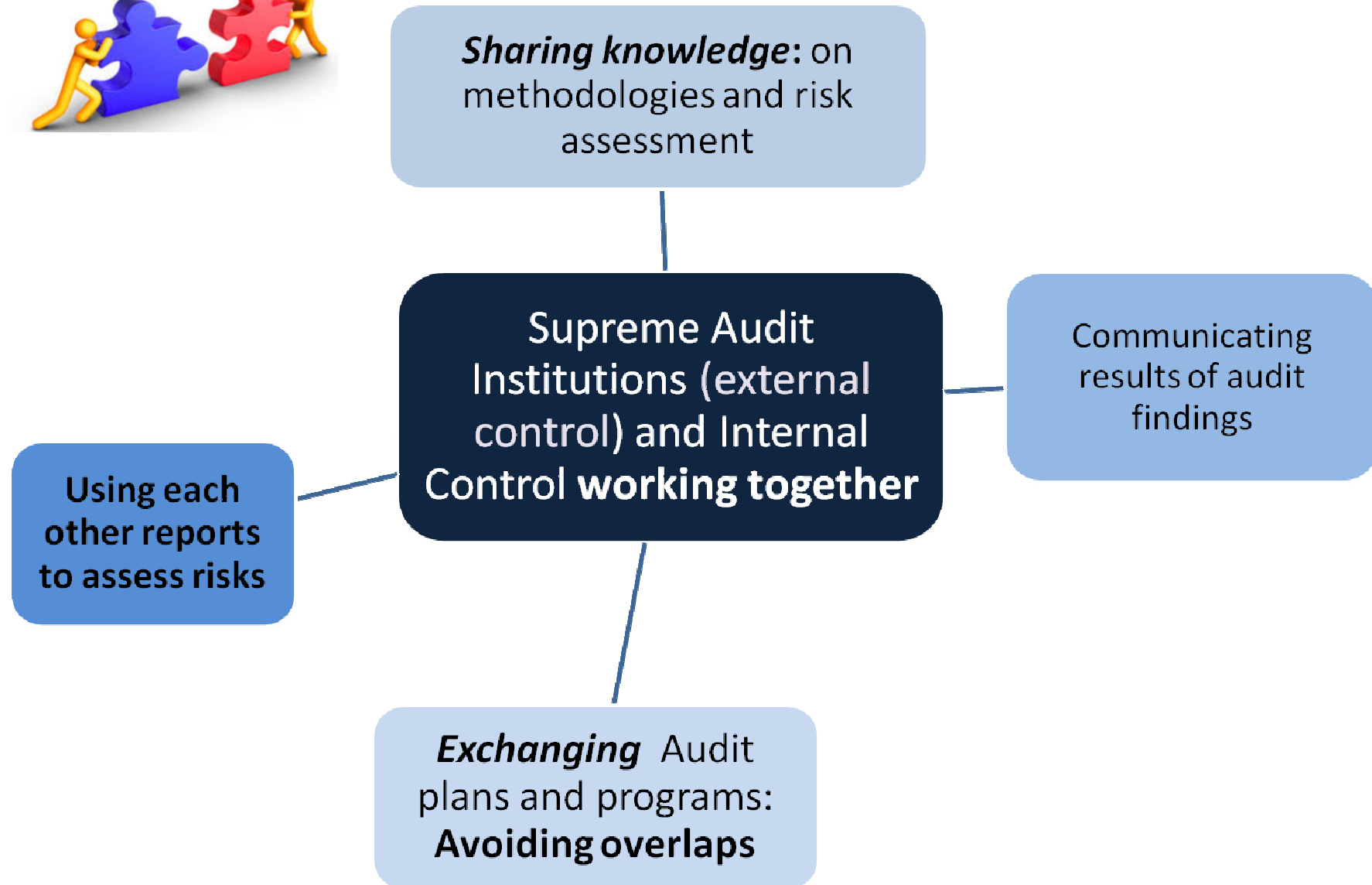
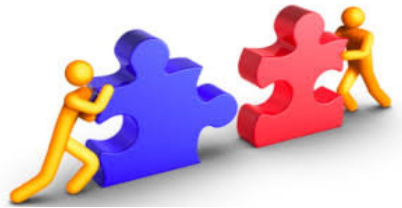
#### Members Status

- ❖ **Irremovability of its members**
- ❖ **Exemption from liability of its judges**
- ❖ **Exclusively subject to the law of its members**



# IV. Articulation between Internal and External Control







A special  
collaboration  
obligation

## Article 12º of the Portuguese Court of Auditor Procedural Law

Collaboration of the internal control bodies

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



## Article 12

### Collaboration of the internal control bodies

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

a) To communicate to the Court annual and multi-annual business plans and respective reports of activities;

b) To send reports of their actions following the decision of the minister or the competent body to judge them, whenever they can be of material interest for the Court action. Those reports should materialize the situations generating possible responsibilities with founded indication of the facts, the period they regard to, the full identification of the accountable parties, the violated rules, the involved amounts and the exercise of institutional and personal adversarial procedure, in accordance with the terms of article 13 of this law;





## Article 12

### Collaboration of the internal control bodies

c) To carry out acts, including the supervision of budgetary implementation and the management of entities subject to the Court powers of financial control, on the Court request, in consideration of the criteria and objectives set by the Court.

3 – The decision mentioned in paragraph b) of the previous point may establish guidance for the internal control body which is responsible for the mentioned report as to a possible jurisdictional procedure, to be started under paragraph c) of point 1 of article 89.

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

## V. Main risks threatening SAI Independence

**Potential imbalance in the relationship with other State powers**

- **It is important to strengthen the connexion with the Parliament;**
- **However, this should not turn into a dependence relationship, within which the SAI loses its power to plan activities and control tasks**

## V. Main risks threatening SAI Independence

**Possibility of Government intervention related to the financial management of the SAI, eventually limiting its activities**

- **It is necessary to ensure the SAI has Budgetary autonomy through the existence of its own assets and revenues;**
- **The SAI budget must be preferably agreed directly with the parliament, and not with the Government**

## VI. More independence – How to get it?

- **Charging fees for the services delivered by the SAI?**
- **Introducing a tax related to the activities of financial external control?**
- **Preserving the planning autonomy ?**



## The eight pillars defining the independence of Supreme Audit Institutions

<b>1. Legal Status</b>	In order to guarantee the appropriate and effective legal position of SAIs within the state, independence of SAIs has to be defined clearly in <b>constitution and legislation</b> , including provisions for its <i>de facto</i> application.
<b>2. Resources</b>	SAIs should have available necessary and reasonable human, material and monetary resources and should manage their own <b>budgets without interference or control from government and its authorities</b> .
<b>3. Head of SAI</b>	The condition for appointment of SAI <b>heads</b> and members of collegial institutions should be specified in legislation. The independence of heads of SAIs and members of collegial institutions can only be ensured if they are given appointments with <b>sufficiently long and fixed terms</b> with removal only by a process independent from the executive. This allows them to carry out their mandates without fear of retaliation.





## The eight pillars defining the independence of Supreme Audit Institutions

### 4. Operations

In order to fulfill their mandate effectively, SAIs have to be independent in the **choice of audit issues**, in their audit planning and in the implemented audit methods, as well as in the conduct of their audits and in the organisation and management of their offices. Therefore SAIs should be free from direction or interference from the legislature or the executive while fulfilling their audit tasks

### 5. Access to information

Auditors are entitled to be granted **free, timely and unrestricted access to all documents and information** they might need for the proper discharge of their responsibilities.

### 6. Reporting audit results

SAIs should report on the results of their audit work at least once a year; however they are free to report more often, if considered necessary.



## The eight pillars defining the independence of Supreme Audit Institutions

<b>7. Content and timing of audit reports</b>	SAIs should be <b>free to decide the content of their audit reports</b> and to publish and disseminate their reports, once they have been formally tabled or delivered to the appropriate authority.
<b>8. Effective follow-up mechanisms</b>	SAIs should have independent procedures for follow-up audits to ensure that audited entities properly address their observations and recommendations and that corrective actions are taken.