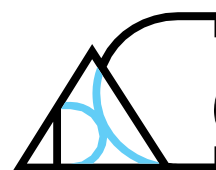


COMPETITION IN THE SELF-REGULATED LIBERAL PROFESSIONS

FOLLOW-UP OF THE *ADC'S ACTION PLAN*

Law No. 12/2023 AMENDS THE FRAMEWORK-LAWS APPLICABLE TO PUBLIC PROFESSIONAL ASSOCIATIONS AND PROFESSIONAL SOCIETIES (LAW NO. 2/2013 AND LAW NO. 53/2015) IN LINE WITH KEY PROPOSALS FROM THE *ADC'S ACTION PLAN*

May, 2023



Autoridade da
Concorrência

I. BACKGROUND

The Autoridade da Concorrência (AdC), the Organisation for Economic Co-operation and Development (OECD), the European Union (EU) and the Portuguese Government have all been advocating the importance of removing unnecessary or disproportionate legal or regulatory barriers to access to, and the exercise of, self-regulated liberal professional activities.

Removing unnecessary or disproportionate legal or regulatory barriers to access to, and the exercise of, self-regulated liberal professions promotes increased supply, competition and strengthens the conditions for innovation and new business models. This contributes to an increase in the quality of services, a better adjustment of supply to the needs of demand and more competitive prices for consumers. It should also be noted that the consumers of these services also include businesses, generating a multiplier effect on the economy.

On the other hand, the importance of removing unnecessary or disproportionate legal barriers to access to and exercise of self-regulated professions is also crucial, so that individuals are not restricted in their ability to redirect their professional careers and, if necessary, re-enter the labour market.

The relevant recent developments, with the adoption of **Law No. 12/2023, of 28th March**¹, justify and motivate the present Follow-up Note.

a. FOLLOW-UP OF THE IMPLEMENTATION OF THE *ADC'S ACTION PLAN*

As a result of the AdC/OECD Cooperation Project (2016-2018)², the AdC and the OECD analysed the legislation and regulation of a set of 13 self-regulated liberal professions³, resulting in OECD recommendations⁴, and an *AdC's Action Plan*⁵, with a set of legislative and regulatory proposals to implement those recommendations. It is important to emphasise the quantitative^{6,7} and qualitative benefits that would derive from a full implementation of these proposals in the economy.

In particular, the *AdC's Action Plan* contains priority proposals addressed to the public decision-maker, with transversal impact to the various self-regulated liberal professions, namely regarding the amendment of the two framework laws⁸, Law No. 2/2013⁹ and Law No. 53/2015¹⁰ and the amendment of the statutes of public professional associations and other laws, on access to and exercise of 13 self-regulated professions¹¹.



¹ See [Law No. 12/2023](#), of 28.03.2023, which amends [Law No. 2/2013](#), of 10.01.2013 and [Law No. 53/2015](#), of 11.06.2015. It entered into force on 26.04.2023 and produces effects on 26.06.2023.

² See AdC's page regarding the [AdC's Impact 2020 Project](#) (2016-2018).

³ List of the 13 self-regulated professions: legal (lawyers, solicitors, notaries, bailiffs); technical and scientific (engineers, technical engineers, architects); economic and financial (auditors, certified accountants, customs brokers, economists); and health (pharmacists and nutritionists).

⁴ See OECD, [Competition Assessment Project: Portugal](#) (2018), [Vol. II – Self-regulated professions](#).

⁵ See [AdC's Action Plan](#) (2018) and [AdC's key-proposals](#) for the self-regulated liberal professions (available in Portuguese).

⁶ The AdC/OECD Project estimated a positive impact on the national economy, in view of the implementation of the proposals for the 13 self-regulated liberal professions, of 128 M€/year (demand elasticity of - 2 and price reduction of 2.5%). Underestimated value, not including figures for health professions.

⁷ The AdC/OECD Project estimated the potential economic multiplier effects on the national economy, given the available data, in relation to the provision of "legal and accounting services", (Eurostat NACE M.69). In 2013, this value was 1.49 (1€ of additional demand and 1.49€ in the GVA of Portugal).

⁸ See [AdC's Action Plan](#) (2018), Annex 2; and [AdC's key-proposals](#).

⁹ See [Law No. 2/2013](#), of 10.01.2013 (legal regime of the public professional associations) (consolidated version).

¹⁰ See [Law No. 53/2015](#), of 11.06.2015 (legal regime of the professional societies) (consolidated version).

¹¹ See [AdC's Action Plan](#) (2018), Annexes 3 to 14, and [AdC's key-proposals](#).

Law No. 12/2023, of 28th March, which amends the two framework-laws applicable to all public professional associations and professional societies (Law No. 2/2013 and Law No. 53/2015) results from the evaluation of legislative initiatives from parliamentary groups¹², within the Parliament Working Group - Professional Associations¹³.

The AdC has contributed to the decision-making process, having issued comments for the consideration of the public decision-maker, in a competition perspective, for the evaluation of such set of legislative initiatives^{14,15}. It also participated in a Parliamentary Hearing, within the scope of the Working Group - Professional Associations¹⁶.

Moreover, it is also relevant to mention that Law No. 12/2023 results from the promulgation by the President of the Republic, of the Decree of the Parliament No. 30/XV/1st¹⁷, after a preventive review of its constitutionality carried out by the Constitutional Court¹⁸. The Constitutional Court ruled that none of the rules submitted for its consideration were to be found unconstitutional, as summarised below.

Box 1: Judgment of the Constitutional Court No. 60/2023

On 01.02.2023, the President of the Republic filed a request, within the Constitutional Court, for a preventive review of the constitutionality of rules of the Decree of the Parliament No. 30/XV/1st.

The request was **confined to rules amending Law No. 2/2013**. Not involving rules of Law No. 53/2015.

It was alleged a *"potential violation of the constitutional principles of equality and proportionality, of the guarantee of the exercise of political rights and of the self-regulation of public professional associations"*¹⁹.

With regard to the **alleged susceptibility of a violation of a "constitutional principle of self-regulation of public professional associations"**, the following grounds were put forward:

- Amendment of Art. 8 (9) ("Statutes" - Professional internship) of Law No. 2/2013: attribution of the function of *"final internship evaluation"* to *"non-registered"*. Ruled as not unconstitutional.
- Amendment of Art. 15 (2) (e) ("*Disciplinary Body*") of Law No. 2/2013: attribution of the disciplinary function to *"non-registered"*. Ruled as not unconstitutional.
- Amendment of Art. 20 ("*Service Recipients' Ombudsman*") of Law No. 2/2013: attribution of the function to *"non-registered"*. Ruled as not unconstitutional.
- Addition of Art. 15-A ("*Supervisory Body*") of Law No. 2/2013: reasons related to *"the combination of competence and composition"* in view of the *"assumption of functions of generic self-regulation, involving the*

¹² Between March and June, 2022, legislative initiatives were presented by the parliamentary groups and put out to public consultation [PjL No. 9/XV/1st (PAN); 1st version of PjL No. 108/XV/1st (PS); PjL No. 177/XV/1st (CH) and PjL No. 178/XV/1st (IL)]. In December, 2022, a *"replacement text"* was presented regarding one initiative [2nd version of PjL No. 108/XV/1st (PS)].

¹³ The [Working Group - Professional Associations](#), was created in the Committee on Economic Affairs, Public Works, Planning and Housing, of the Portuguese Parliament (CEOPPH), with a mandate between 06.07.2022 and 20.12.2022. It was approved the *"Final Text of PjL No. 9/XV/1st (PAN) and No. 108/XV/1st (PS)"*, of 22.12.2022; and the remaining initiatives were rejected. This *"Final Text"* resulted in the adoption of the *"Decree of the Parliament No. 30/XV/1st"*, dated of 22.12.2022.

¹⁴ See AdC's Comments, of July, 2022 ("[Comentários da AdC aos PjLs que visam a alteração da Lei n.º 2/2013 e da Lei n.º 53/2015](#)", de 05.07.2022).

¹⁵ By 2021, legislative initiatives had already been presented, by parliamentary groups, aiming to amend the two framework-laws (Law No. 2/2013 and Law No. 53/2015); see [here](#) the link for the Parliament procedure. The AdC had issued comments to the legislative proposals, from a competition perspective (see [AdC's Comments](#), of November, 2021). However, due to the dissolution of the Parliament these have [lapsed](#) (in March, 2022).

¹⁶ See [AdC's Parliamentary Hearing](#), in 29.11.2022 ([video](#); [initial intervention](#)).

¹⁷ See [Decree of the Parliament No. 30/XV/1st](#), dated of 22.12.2022, publicly available on 23.01.23 and sent for promulgation on 27.01.23. See [here](#) the link for the Parliament procedure.

¹⁸ See "[Autos de Fiscalização Preventiva](#)" No. 109/2023 (Request for a preventive review of constitutionality), of 01.02.2023 and [Judgement of the Constitutional Court No. 60/2023](#), of 27.02.2023 (available in Portuguese).

¹⁹ See Articles 13, 18, 47(1), 50, 269 and 367(4) of the [Constitution of the Portuguese Republic](#) (CRP).

control of legality" by holders who, *"in their majority, do not belong to the professional association"* and that allegedly would not be *"democratically elected"*. Ruled as not unconstitutional.

The Court considered that the aim was to *"combat a certain natural tendency ... to protect the exclusive interests of practicing professionals": "the independent status of the body is required ... [and] it is essential to make it eclectic and plural in terms of membership"* (p. 25); the aim is to *"combat a certain natural tendency to ... protect the exclusive interests of practicing professionals ..., whether by excluding new players in the sector ... through overly onerous conditions of access (barriers to entry), or by permissive or excessively benevolent exercise of disciplinary action ... which would impose the ... sacrifice of the public interest"* (p. 25).

On 27.02.2023, the Constitutional Court **ruled that none of the rules of the Decree of the Parliament No. 30/XV/1st submitted for its consideration were to be found unconstitutional.** We highlight the following General Considerations:

- **"There is no constitutional right to self-regulation of professional activities"** (p. 17). Public professional associations *"constitute regulatory instruments of administrative law at the disposal of the State"* (p. 17). Their *"constitution is subject to the reservation of law"* (p. 17). This *"functional decentralization ... translate[ed] into the attribution ... of powers of autonomous management of public tasks directly related to the group's own interests - either professional regulation (an interest coinciding with the public interest justifying the creation of the public professional association) or the representation and defense of the general interests of the profession"* (p. 12).
- **The creation of public professional associations is subject to "principles of specificity and exceptionality"** (p. 14). *«[its] constitution as a means of pursuing regulatory interests will depend on the fact that these "are not being adequately pursued by an administrative body", resorting to this solution by way of exception, "so that [its] creation only occurs in very limited cases, when self-administration is unequivocally the appropriate organizational form for the performance of a public task»* (p. 16).
- **"The European context in which Portugal finds itself is also unfavorable to a self-regulatory scope as wide as the one we find in the national legal framework"** (p. 22). The judgement lists advocacy and legal instruments adopted with the aim of promoting the elimination of legal barriers of access to, and exercise of, self-regulated professions, namely the 2017 and 2021 Commission Communications, the Recommendations of the Project AdC/OECD of 2018, and the Directive (EU) No. 2018/958.

As further detailed below in Section II, it is signalled the legislative amendments to the framework laws, Law No. 2/2013 and Law No. 53/2015, resulting from Law No. 12/2023, line with the results of the AdC/OECD Cooperation Project and the *AdC's Action Plan*²⁰.

These amendments create the conditions for the implementation of other proposals of the *AdC's Action Plan*, which depend on the amendment of rules in the statutes of the professional associations analysed, as well as other specific legislation²¹.

b. THE DIRECTIVE (EU) NO. 2018/958 AND OTHER ADVOCACY DOCUMENTS

The EU has also been addressing recommendations for the reform of the regulation of professional services, to the various Member States, namely identifying with the aim of being removed barriers to the access and exercise of regulated liberal professions, to create a regulatory framework that promotes growth, innovation and employment.

²⁰ See [AdC's Action Plan](#) (2018), Annex 2; and [AdC's key-proposals](#).

²¹ See [AdC's Action Plan](#) (2018), Annexes 3 to 14, and [AdC's key-proposals](#).

Highlights include the 2017²² and the 2021²³ Communications of the European Commission. These documents contain a "*Restrictiveness Indicator*"²⁴ calculated for a number of professional services, including for four self-regulated liberal professions²⁵. The EC addresses recommendations to the various Member States, including Portugal, on various matters, including on qualification requirements, on shareholding and voting requirements, on restrictions on joint exercise of professions and on reserved activities.

Additionally, with the adoption of Directive (EU) No. 2018/958²⁶, transposed in the national legal system by Law No. 2/2021²⁷, it is determined the need to be performed a proportionality assessment prior to the adoption of legislative provisions limiting the access to, or the exercise of, a regulated or to be regulated profession. In particular, articles 4 and 10 of Law No. 2/2021 set principles and criteria for such purposes, as illustrated below.

Box 2: Law No. 2/2021: Principles and criteria to carry a proportionality assessment

Law No. 2/2021 is applicable to **all professions regulated** by public professional associations, including professions of the health sector.²⁸

It provides that restrictions on access to and exercise of a regulated profession must be **provided for by law**.²⁹

It provides that the adoption of legislative provisions restricting the access to or the exercise of a regulated profession must be preceded by a **proportionality assessment**, which must be: **proportionate, non-discriminatory and well-founded**.³⁰

The reasoning must be based "*on grounds of public policy, public security or public health, or on overriding reasons relating to the public interest, or to the personal capacity of individuals*."³¹

The reasoning must take into account, inter alia: "*the possibility of using less restrictive means to achieve the public interest objectives pursued*"; and "*the positive or negative effect of the legislative provisions, when combined with other provisions limiting access to or the exercise of the profession*", in terms of **appropriateness, necessity and proportionality**.³²

²² See [COM\(2016\) 820 final](#) ("*Reform recommendations for regulation in professional services*") and [SWD\(2016\) 436 final](#), of 10.01.2017.

²³ See [COM\(2021\) 385 final](#) ("*On taking stock of and updating the reform recommendations for regulation in professional services of 2017*") and [SWD\(2021\) 185 final](#), of 09.07.2021.

²⁴ The 2021 EC Communication refers that the "*indicator provides a quantitative basis for benchmarking the Member States' regulatory frameworks for the seven professions by measuring their restrictiveness (...). It follows a broadly similar methodology as the 2018 edition of the OECD Product Market Regulation (PMR) indicators. The types of regulatory requirements covered by the indicator remained unchanged since 2017, including: (1) regulatory approach: activities reserved to holders of specific qualifications, protection of title; (2) qualification requirements: years of education and training, mandatory state exam, continuous professional development obligations, etc.; (3) other entry requirements: compulsory membership or registration in professional body, limit to the number of licenses granted, other authorization requirements, etc.; (4) exercise requirements: restrictions on forms of company, shareholding and voting requirements, restrictions on joint exercise of professions, incompatible activities, etc.*" (see [COM\(2021\) 385 final](#), p. 5).

²⁵ The 2021 EC Communication refers that it focuses on architects, civil engineers, accountants, lawyers, patent agents, real estate agents and tourist guides due to "*their economic importance, their role in innovation and their contribution to vital economic ecosystems, as well as due to the potential gains from reforming regulations in these sectors. They belong to four key broader industries: business services, construction, real estate and tourism.*" (see [COM\(2021\) 385 final](#), p. 3).

²⁶ See [Directive \(EU\) No. 2018/958](#), of 28.06.2018 ("*Proportionality test before adoption of new regulation of professions*").

²⁷ See [Law No. 2/2021](#), of 21.01.2021 ("*Regime applicable to the assessment of proportionality prior to the adoption of legislative provisions limiting access to or exercise of a regulated profession, or to be regulated, transposing Directive (EU) No. 2018/958*").

²⁸ See Art. 2 (4) and Art. 10 (7) of Law No. 2/2021.

²⁹ See Art. 4 (3) of Law No. 2/2021.

³⁰ See Art. 4 (4) and Art. 10 of Law No. 2/2021.

³¹ See Art. 4 (6) of Law No. 2/2021.

³² See Art. 10 (2) (e) (f) of Law No. 2/2021.

Among others, the reasoning is required to assess: *"the relationship between the scope of the (...) reserved activities and the professional qualifications required"; "the relationship between the complexity of the tasks concerned and the need, for those carrying them out, to obtain specific professional qualifications, particularly as regards the level, nature and duration of the training or experience required"; "the possibility of obtaining the professional qualification by alternative routes"; "whether and why the activities reserved to certain professions may or may not be shared with other professionals"*.³³

This proportionality assessment has particular relevance considering specific legal attributions contained in Law No. 12/2023. The Parliament has requested the Government, within 120 days after the entry into force of this law, to *"submit a draft law amending the statutes of the public professional associations already created and other legislation applicable to the exercise of the profession, adapting them to the provisions of this law, and should expressly assess (...) the reservation of activity regimes in force (...)"*³⁴.

In this context, it is also highlighted that the Parliament has given to the AdC the specific attribution to, within 60 days after the entry into force of the present law, to *"send to the Government, (...) a report (...) with a recommendation regarding the maintenance, alteration or revocation of the reservation of activity regimes in force"*³⁵.

Moreover, the Parliament has also requested the Government, within 120 days after the entry into force of this law, to *"submit a draft law on the legal framework of multidisciplinary societies"*³⁶.

The need for the Parliament to amend the statutes of all public professional associations already created and other laws, in matters of access to, and exercise of, self-regulated liberal professions, creates a window of opportunity for the public decision-maker to also implement other key-proposals from the AdC's Action Plan³⁷.

C. THE PORTUGUESE GOVERNMENT RECOVERY AND RESILIENCE PLAN

Furthermore, the Portuguese Government's *Recovery and Resilience Plan* (2021)³⁸ also foresees the implementation of a set of reforms and investments, including a reform to reduce unnecessary regulatory restrictions to the access of, and the exercise of, self-regulated professions (RE-r16: *"Reducing restrictions in highly regulated professions"*)³⁹.

In this context, it is to highlight that in its advocacy paper, as a contribute for the economic recovery⁴⁰, the AdC also stressed the importance of not losing the opportunity to implement the proposals of its *Action Plan*, which are even more important in the context of economic recovery.

II. FOLLOW-UP OF THE ADC'S ACTION PLAN: LAW NO. 12/2023 WELCOMES LEGISLATIVE AMENDMENTS IN LINE WITH KEY-PROPOSALS CONCERNING THE AMENDMENT OF LAW NO. 2/2013 AND LAW NO. 53/2015

Amendments to the framework laws, Law No. 2/2013 and Law No. 53/2015, resulting from Law No. 12/2023, are in line with the results of the AdC/OECD Cooperation Project and the *AdC's Action Plan*⁴¹, as detailed below.

³³ See Art. 10 (4) (a) (b) (c) (d) of Law No. 2/2021.

³⁴ See Art. 5 (3), *"Transitional provision"*, of Law No. 12/2023. It entered into force on 26.04.2023.

³⁵ See Art. 5 (4), *"Transitional provision"*, of Law No. 12/2023. It entered into force on 26.04.2023.

³⁶ See Art. 5 (8), *"Transitional provision"*, of Law No. 12/2023. It entered into force on 26.04.2023.

³⁷ See [AdC's Action Plan](#) (2018), Annexes 3 to 14, and [AdC's key-proposals](#).

³⁸ See <https://recuperarportugal.gov.pt/plano-de-recuperacao-e-resiliencia/>

³⁹ See <https://recuperarportugal.gov.pt/qualificacoes-and-skills-c6/?lang=en>

⁴⁰ See AdC, *"The Role of Competition in Implementing the Economic Recovery Strategy"*, of 15.06.2021.

⁴¹ See [AdC's Action Plan](#) (2018), Annex 2; and [AdC's key-proposals](#).

These amendments create the conditions for the implementation of other proposals of the *AdC's Action Plan*, which depend on the amendment of rules in the statutes of the professional associations analysed, as well as other specific legislation⁴².

Provisions included in the Statutes of professional bodies may create, even if inadvertently, obstacles to access to, and the exercise of, self-regulated professions. Indeed, they are likely to give rise to questions as to their potential negative impact on competition, in terms of their potential to limit the number or range of businesses, to limit the ability of professionals to compete with each other, to limit the incentive of the same professionals to compete with each other and to limit the choice of consumers, end clients or businesses between highly qualified professionals⁴³.

Being necessarily up to the legislator or the public decision-maker to define the public interest objectives it intends to achieve, the promotion of the implementation of the *AdC's Action Plan* aims to contribute to a more informed public decision process, from a competition perspective.

Box 3: Follow-up of the *AdC's Action Plan*: Law No. 12/2023 welcomes legislative amendments in line with key-proposals concerning the amendment of Law No. 2/2013 and Law No. 53/2015

- Separation of regulatory and representative functions in public professional associations.
- Reevaluation of reserved activities, with the purpose of altering or revoking those that are inappropriate, unnecessary or disproportionate.
- Alteration of characteristics of professional internships (object, duration, evaluation model and associated costs) towards their proportionality.
- Reduction of restrictions on the offer of multidisciplinary activities by professional societies.
- Elimination of restrictions on the ownership and on the management of professional societies.
- Elimination of the possibility for the statutes of public professional associations to derogate the principles of the framework-laws in matters of access to, and the exercise of, self-regulated liberal professions.
- The need to amend the statutes of all public professional associations and other laws/regulations, in matters of access to, and exercise of, self-regulated liberal professions.

❖ *Law No. 12/2023: provisions in line with key-proposals from the AdC's Action Plan: separation of regulatory and representative functions in public professional associations*

Box 4: Separation of regulatory and representative functions in public professional associations

- In *AdC's Action Plan*, the AdC proposed that such separation could be ensured by an independent body, external or internal, but effectively separated from the other bodies of the public professional association. This body would assume the regulatory function of the profession on key matters, such as access to, and exercise of, the profession. The board of this body would be composed of representatives of the profession, and individuals of outstanding merit from other regulatory bodies or organisations, representatives of consumer organisations and academic representatives.

⁴² See *AdC's Action Plan* (2018), Annexes 3 to 14, and *AdC's key-proposals*.

⁴³ See AdC's guidelines for competition impact assessment (CIA) of public policies ("*Linhas de Orientação da AdC sobre a Avaliação de Impacto Concorrencial de Políticas Públicas*", of July, 2018, in Portuguese), which contains a CIA Checklist, developed in the context of the AdC Impact 2020 Project and, to that extent, replicates the OECD Checklist in its OECD Guide to CIA (*Competition Assessment Toolkit*). The Checklist illustrates how a regulatory provision may have four types of effects on competition, namely by (A) limiting the number or range of suppliers, (B) limiting the ability of suppliers to compete, (C) reducing the incentive of firms to compete, and (D) limiting consumer choice and available information.

- Law No. 12/2023 provisions, amending Law No. 2/2013, are in line with key-proposals for legislative amendment of the *AdC's Action Plan* and contribute to **mitigate the conflict of interest inherent in the self-regulation system** and **protect the public interest**, namely:
- Addition of a new provision in Law No. 2/2013, **strengthening the competences** of the already previewed **internal "supervisory body"**⁴⁴, in **regulatory matters**, concerning **access to, and exercise of, the profession**: **(i)** competences relating to the characteristics of the **professional internships** (object, duration, evaluation model and associated costs) towards their proportionality (see below further information on this topic)⁴⁵; **(ii)** and, with regard to disciplinary matters, competence *"regularly monitor the activity of the disciplinary body, namely through the annual review of its activity report and the issuing of generic recommendations on its procedures"*⁴⁶, although **losing its competence of instance of appeal** in disciplinary matters⁴⁷.
- Addition of a new provision in Law No. 2/2013, **strengthening the independence of the internal "supervisory body"** (as mentioned, a body already existing in the framework-law): **(i)** reaffirming the **independence** in the performance of its functions⁴⁸; **(ii)** reaffirming the competence for *"supervising over the legality of the activity carried out by the [other] bodies of the public professional association"*⁴⁹; **(iii)** attributing *"powers of control, namely with regard to the regulation in matters of exercise of the profession"*⁵⁰; **(iv)** imposing a mandatory composition of a **majority of non-registered members** in a public professional association (*"40% registered; 40% non-registered, from the academic world; and 20% non-registered, personalities of recognised merit"*)⁵¹, whose president will be elected from among the non-registered members⁵².
- Amendment of provisions of Law No. 2/2013, guaranteeing that: **(i)** the attributions of the public professional associations, in the **context of their regulatory powers, are limited, as regards access to, and the exercise of, the profession, to those that are expressly and exhaustively provided for by law**⁵³; **(ii)** thus, in matters of access, provision is made for *"recognition of professional qualifications and, where appropriate, traineeships"*; and, **(iii)** as regards the exercise of the profession, regulatory powers are limited to *"disciplinary and ethical"* matters⁵⁴ (e.g., excluded matters related to reserved activities⁵⁵).
- Amendment of provisions of Law No. 2/2013, guaranteeing that: **(i)** the **"supervisory body"** and the **"disciplinary body"** are **"independent in the exercise of their functions"**⁵⁶; **(ii)** and ensuring that the **"disciplinary body"** *"must include personalities of recognised merit with knowledge and experience relevant to the respective activity, who are not members of the public professional association"*⁵⁷.

⁴⁴ See Art. 15 (2) (c) (10) and Art. 18 (7) of Law No. 2/2013, in its original version. The "supervisory body" is already provided for in the framework-law, assuming a set of characteristics and competences that are not innovative in relation to Law No. 12/2023, such as: independence in the performance of its functions; possibility to include members not registered in the profession; exercise of supervisory powers, namely in disciplinary matters, in the last instance.

⁴⁵ See new Art. 15-A (2) (a) (b) (d) of Law No. 2/2013, as amended by Law No. 12/2023.

⁴⁶ See new Art. 15-A (2) (c) of Law No. 2/2013, as amended by Law No. 12/2023.

⁴⁷ See Art. 15 (2) (c) and Art. 18 (7) of Law No. 2/2013, in its original version.

⁴⁸ See Art. 15 (10) and new Art. 15-A (1) of Law No. 2/2013, as amended by Law No. 12/2023.

⁴⁹ See new Art. 15-A (1) of Law No. 2/2013, as amended by Law No. 12/2023.

⁵⁰ See new Art. 15-A (1) of Law No. 2/2013, as amended by Law No. 12/2023.

⁵¹ See new Art. 15-A (3) of Law No. 2/2013, as amended by Law No. 12/2023.

⁵² See new Art. 15-A (6) of Law No. 2/2013, as amended by Law No. 12/2023.

⁵³ See Art. 5 (1) (c) (3) of Law No. 2/2013, as amended by Law No. 12/2023.

⁵⁴ See Art. 5 (1) (c) (3) of Law No. 2/2013, as amended by Law No. 12/2023.

⁵⁵ See Art. 30 *new* (4) and Art. 8 (1) (e) of Law No. 2/2013, as amended by Law No. 12/2023.

⁵⁶ See Art. 15 (10) of Law No. 2/2013, as amended by Law No. 12/2023.

⁵⁷ See Art. 15 (2) (e) of Law No. 2/2013, as amended by Law No. 12/2023.

❖ *Law No. 12/2023: provisions in line with key-proposals from the AdC's Action Plan: reevaluation of the reserved activities*

Box 5: Reevaluation of reserved activities, with the purpose of altering or revoking those that are inappropriate, unnecessary or disproportionate

- A "Transitional provision" providing for the AdC to issue a **report**, addressed to the Government, on the **reassessment of the competitive impact of reserved matters**, with a recommendation "on the maintenance, modification or repeal of the existing regimes on reserved activities" of all the public professional associations, within 60 days after Law No. 12/2023 enters into force⁵⁸.
- A "Transitional provision" providing for the Government, "after consultation with each public professional association, to present a **draft law amending the statutes of the public professional associations** already created and **other legislation applicable to the exercise of the profession**, in order to adapt them to the regime provided for in [Law No. 12/2023] expressly assessing whether the **reservation of activities regimes** in force comply with the provisions of article 30 of Law No. 2/2013 [as amended by Law No. 12/2023]", within 120 days after Law No. 12/2023 enters into force⁵⁹.
- That same "Transitional provision" providing that such proposals, of the Government, should expressly "include the provisions that define the **own acts of each professions**"⁶⁰.
- Amendment of provisions of Law No. 2/2013, guaranteeing that: **(i)** the "reserved activities should expressly be provided for by law, based on overriding reasons of constitutionally protected public interest, in accordance with **criteria of adequacy, necessity and proportionality**, with an exhaustive list of such reserved activities"⁶¹; and **(ii)** forbidding the public professional associations to "establish, by any means, reserved activities or define own acts of the profession, other than those set out in their statutes"⁶².

❖ *Law No. 12/2023: provisions in line with key-proposals from the AdC's Action Plan: alteration of characteristics of the professional internships towards their proportionality*

Box 6: Alteration of characteristics of professional internships (object, duration, evaluation model and associated costs) towards their proportionality

- Amendment of provisions of Law No. 2/2013, ensuring, as a general rule, that the characteristics of the professional internships are to be settled out in the **law**, specifically, in the **statutes** of each public professional association (that must be amended and approved by the Parliament), with the "limits defined in Law No. 2/2013"⁶³.
- Amendment of provisions of Law No. 2/2013, with regard to the object of the professional internships: **(i)** ensuring that it is **necessary** "only when the traineeship does not form an integral part of the course leading to the necessary academic qualification", **avoiding the duplication of traineeships** (academic and professional) with the same content⁶⁴; **(ii)** ensuring it does **not consist of a mere repetition of the subjects or course units** already taught and assessed in the academic qualification course⁶⁵; **(iii)** that it may be offered in the "**distance learning modality**"⁶⁶; and **(iv)** ensuring that public professional associations do not unnecessarily hinder or prevent access to internships, expressly providing that they "may not refuse to recognise academic and professional qualifications obtained abroad that are duly

⁵⁸ See Art. 5 (4), "Transitional provision", of Law No. 12/2023. It entered into force on 26.04.2023.

⁵⁹ See Art. 5 (3), "Transitional provision", of Law No. 12/2023. It entered into force on 26.04.2023.

⁶⁰ See Art. 5 (5), "Transitional provision", of Law No. 12/2023. It entered into force on 26.04.2023.

⁶¹ See Art. 30 (1) of Law No. 2/2013, as amended by Law No. 12/2023.

⁶² See Art. 30 new (4) and Art. 8 (1) (e) of Law No. 2/2013, as amended by Law No. 12/2023.

⁶³ See Art. 8 (1) and Art. 24 (6) (a) of Law No. 2/2013, as amended by Law No. 12/2023.

⁶⁴ See Art. 8 (1) (c) of Law No. 2/2013, as amended by Law No. 12/2023.

⁶⁵ See Art. 8 (5) of Law No. 2/2013, as amended by Law No. 12/2023.

⁶⁶ See Art. 8 (5) of Law No. 2/2013, as amended by Law No. 12/2023.

*recognised in Portugal, in accordance with the law, EU law or an international convention, nor subject the holders of these qualifications to tests, examinations or other access conditions*⁶⁷.

- Amendment of provisions of Law No. 2/2013, with regard to the duration of the professional internships: **(i)** establishing as a rule, a period of a **maximum of 12 months** *"from the date of registration and until its integration as a full member"*, allowing, on an exceptional basis, the period of up to 18 months, provided that it is *"duly justified by the nature and complexity of the training"*, and other exceptions *"arising from EU law*⁶⁸; **(ii)** establishing as rule, at least **"one training period per semester"**⁶⁹.
- Amendment of provisions of Law No. 2/2013, with regard to the evaluation model of the professional internships: **(i)** establishing that the final evaluation of the internship **is not limited to peer review**, being *"the responsibility of an independent jury, which must include personalities of recognised merit, who are not members of the professional public association"*⁷⁰.
- Amendment of provisions of Law No. 2/2013, with regard to costs of the professional internships: **(i)** ensuring the proportionality of the fees in relation to the costs, stating that they must *"comply with the criteria of adequacy, necessity and proportionality"*⁷¹.
- Addition of a new provision in Law No. 2/2013, granting the **"supervisory body"** with competences concerning the characteristics of the professional internships: **(i)** competence to contribute to evaluate its **necessity** and *"dependent on a proposal from the executive collegiate body, determine[e] the rules of the professional internship, including the final evaluation model, as well as the fixing of any fee relating to the conditions of access to registration with the professional association"*⁷²; **(ii)** competence to **"verify the non-overlapping of the subjects to be taught during the training period and, eventually, to be assessed in the final exam with the subjects or curricular units which integrate the course conferring the necessary academic qualification"**, taking into account the *"binding opinion of A3ES [Agency for Evaluation and Accreditation for Higher Education]"*⁷³; **(iii)** competence to **"regularly monitor the training activity of the public professional associations, in particular the carrying out of internships for access to the profession, and the activity of recognition of competences obtained abroad, namely through the annual assessment of the respective activity reports and the issuing of generic recommendations on its procedures"**⁷⁴.
- Amendment of a provision and addition of a new provision in Law No. 2/2013, establishing the right to a **remunerated professional internship**, subject to cumulative conditions: **(i)** the remuneration is only due if *"it implies the provision of work"* and if there is *"a beneficiary"*⁷⁵; **(ii)** the determination of the amount must observe the *"constitutional and legal criteria (...), namely the principle of equal working conditions"*⁷⁶; **(iii)** definition of other relevant aspects in the statutes of each public professional association⁷⁷. The AdC has no position on the mode of funding to be used for the remuneration of the professional internships. Notwithstanding, it considers that the proposal may contribute to the reduction of barriers to entry, especially relevant in times of crisis.

❖ *Law No. 12/2023: provisions in line with key-proposals from the AdC's Action Plan: reduction of restrictions on the offer of multidisciplinary activities by professional societies*

Box 7: Reduction of restrictions on the offer of multidisciplinary activities by professional societies

⁶⁷ See Art. 8 (10) of Law No. 2/2013, as amended by Law No. 12/2023.

⁶⁸ See Art. 8 (2) (a) of Law No. 2/2013, as amended by Law No. 12/2023.

⁶⁹ See Art. 8 (1) (d) of Law No. 2/2013, as amended by Law No. 12/2023.

⁷⁰ See Art. 8 (9) and Art. 24 (6) (c) of Law No. 2/2013, as amended by Law No. 12/2023.

⁷¹ See Art. 8 (7) of Law No. 2/2013, as amended by Law No. 12/2023.

⁷² See new Art. 15-A (2) a) of Law No. 2/2013, as amended by Law No. 12/2023.

⁷³ See new Art. 15-A (2) (b) of Law No. 2/2013, as amended by Law No. 12/2023.

⁷⁴ See new Art. 15-A (2) (d) of Law No. 2/2013, as amended by Law No. 12/2023.

⁷⁵ See Art. 8 (8) and new Art. 8-A (1) (2) of Law No. 2/2013, as amended by Law No. 12/2023.

⁷⁶ See Art. 8 (8) and new Art. 8-A (3) of Law No. 2/2013, as amended by Law No. 12/2023.

⁷⁷ See Art. 8 (8) of Law No. 2/2013, as amended by Law No. 12/2023.

- Amendment of provisions of Law No. 2/2013 and of Law No. 53/2015, guaranteeing the **maintenance, in the law, of the general rule that multidisciplinary is not prohibited**⁷⁸.
- Addition of a new provision in Law No. 53/2015, concerning the corporate object of companies, introducing, as a general rule, that "*multidisciplinary companies of professionals **may also be created for the exercise of professions organised in more than one public professional association***"⁷⁹.
- Amendment of provisions of Law No. 2/2013, ensuring that the establishment of multidisciplinary societies is subject to the fulfilment of a set of **cumulative conditions: (i)** "[the] *society guarantees the application of the **regime of incompatibilities and impediments***"; **(ii)** "*as well as the prevention of **conflicts of interest***"; **(iii)** and also guarantees "*the **technical independence, the protection of client information and the observance of the deontological duties** applicable to each professional activity developed*"; **(iv)** and that "[the] company has an internal system to safeguard **professional secrecy**"⁸⁰.
- Amendment of provisions of Law No. 2/2013, regarding the statutes of all public professional associations, in order to: **(i)** eliminate the possibility for the statutes to prohibit or restrict the multidisciplinary, *i.e.*, that they may not derogate from the general rule that allows the possibility of multidisciplinary societies; and **(ii)** to introduce an obligation on the statutes to subject its regime of incompatibilities and impediments to a **test of necessity and proportionality** "*to the objective of ensuring the independence, impartiality and integrity of the profession and, where justified, the professional secrecy, and cannot be replaced by **less restrictive alternatives** of professional freedom*"⁸¹.
- A "*Transitional provision*" which provides for the Government to propose to the Parliament, a "**draft law on the legal framework of multidisciplinary societies**", within 120 days after Law No. 12/2023 enters into force⁸².

❖ *Law No. 12/2023: provisions in line with key-proposals with key-proposals from the AdC's Action Plan: elimination of restrictions on the ownership and on the management of professional societies*

Box 8: Elimination of restrictions on the ownership and on the management of professional societies

- Amendment of provisions of Law No. 2/2013 and Law No. 53/2015, eliminating restrictions on the ownership (capital and voting rights) of professional societies, namely by: **(i) revoking the obligation for the majority of the voting share capital or a majority of the voting rights**, as applicable, to be owned by its professional members^{83,84}; **(ii)** allowing for the detention of capital by those who **do not have the professional qualifications** required for the exercise of the professions organised in a public professional association, being subject to the "*deontological duties, namely the duty of secrecy*" by non-professionals⁸⁵; **(iii) revoking the possibility for the statutes of public professional associations to derogate the general rule and adopt restrictions**⁸⁶.
- Amendment of provisions of Law No. 2/2013 and Law No. 53/2015, eliminating restrictions on the management of professional societies, namely: **(i) repeal of the obligation that "one of the managers**

⁷⁸ See Art. 25 (1), Art. 26 (4), Art. 27 (2) (3) (4) and Art. 29 of Law No. 2/2013; Art. 7 (3) of Law No. 53/2015; all as amended by Law No. 12/2023.

⁷⁹ See Art. 7 (3) of Law No. 53/2015; and Art. 27 (2) (3) (4) of Law No. 2/2013; all as amended by Law No. 12/2023.

⁸⁰ See Art. 27 (2) of Law No. 2/2013, as amended by Law No. 12/2023.

⁸¹ See Art. 29 of Law No. 2/2013, as amended by Law No. 12/2023.

⁸² See Art. 5 (8), "*Transitional provision*", of Law No. 12/2023. It entered into force on 26.04.2023.

⁸³ See new drafting of Art. 27, that has eliminated previous wording of Art. 27 (3) (a) of Law No. 2/2013, as amended by Law No. 12/2023; and Art. 7 (b), "*Repeal provision*", of Law No. 12/2023, that repealed Art. 9 (2) of Law No. 53/2015.

⁸⁴ The AdC signalled, in its *Action Plan*, the need to consider for the specificities of European law; hence, in compliance with Directive (EC) No. 2006/43/EC (Audit Directive), although the majority of the voting rights must be held by auditors, the majority of the share capital may be held by individuals or investing entities.

⁸⁵ See Art. 27 (4) of Law No. 2/2013, as amended by Law No. 12/2023.

⁸⁶ See new drafting of Art. 27, that has eliminated previous wording of Art. 27 (4) of Law No. 2/2013, as amended by Law No. 12/2023; and Art. 7 (b), "*Repeal provision*", of Law No. 12/2023, that repealed Art. 9 (2) and Art. 55 of Law No. 53/2015.

or directors be a member of the respective public professional association or, if registration is optional, meet the requirements for access to the profession in national territory⁸⁷; **(ii)** allowing for the possibility of being a manager or an administrator for those who do **not have the professional qualifications** required for the exercise of the professions organised in a public professional association, being subject to the “*deontological duties, namely the duty of secrecy*” by non-professionals⁸⁸; and **(iii) revoking the possibility for the statutes of public professional associations to derogate the general rule and adopt restrictions**⁸⁹.

- With regard to the objective of eliminating restrictions on the management of professional societies, the AdC reiterates the opportunity for the public decision-maker to **repeal of Art. 9 (3) of Law No. 53/2015**⁹⁰.

❖ *Law No. 12/2023: provisions in line with key-proposals from the AdC's Action Plan: elimination of the possibility for the statutes to derogate the provisions and principles of the framework-laws*

Box 9: Elimination of the possibility for the statutes of public professional associations to derogate the provisions and principles of the framework-laws in matters of access and exercise of self-regulated liberal professions

- A “*Repeal provision*” that **eliminates the possibility for the statutes of public professional associations or other laws to derogate the general rules and principles of the framework-law** and adopt restrictions, in matters of **access and exercise of the activity**⁹¹. In particular, it eliminates the possibility to be adopted legal barriers in matters of: **(i)** “*numerus clausus in access to the profession, including to any speciality, whether or not coupled with territorial restrictions based on population or geographical distances between professionals or their companies*”⁹²; **(ii)** “*territorial restrictions or restrictions on the number of establishments*”⁹³; **(iii)** “*price fixing*”⁹⁴; **(iv)** “*an absolute ban on advertising*”⁹⁵.
- A “*Repeal provision*” that **eliminates the possibility for the statutes of public professional associations or other laws to derogate the general rules and principles of the framework-law** and adopt restrictions, in matters of: **requirements for the establishment and functioning of professional societies**, and registration requirements for professional membership organisations⁹⁶.

⁸⁷ See new drafting of Art. 27, that has eliminated previous wording of Art. 27 (3) (b) of Law n.º 2/2013, as amended by Law No. 12/2023.

⁸⁸ See Art. 27 (4) of Law No. 2/2013, as amended by Law No. 12/2023.

⁸⁹ See new drafting of Art. 27, that has eliminated previous wording of Art. 27 (4) of Law No. 2/2013, as amended by Law No. 12/2023; and Art. 7 (b), “*Repeal provision*”, of Law No. 12/2023, that repealed Art. 55 of Law No. 53/2015.

⁹⁰ The AdC takes the opportunity to promote the implementation of another proposal from its *AdC's Action Plan*: the repeal of Art. 9 (3) of Law No. 53/2015 (under this provision “*At least one of the managers or directors of the professional corporation, performing executive functions, must be legally established in the national territory for the exercise of the profession concerned*”). Its implementation will be in line with Law No. 12/2023, and its amendments to Law No. 2/2013, namely with regard to Art. 27 (3) (b) of Law No. 2/2013, in its initial version, which was eliminated (which required that “*One of the managers or directors must be a member of the respective public professional association or, if registration is optional, meet the requirements for access to the profession in national territory*”). Thus, the maintenance of Art. 9 (3) of Law No. 53/2015 may contradict the objectives Law No. 12/2023.

⁹¹ See Art. 7 (a), “*Repeal provision*”, of Law No. 12/2023, that repealed Art. 33 (1) of Law No. 2/2013.

⁹² See Art. 7 (a), “*Repeal provision*”, of Law No. 12/2023, that repealed Art. 33 (1), *ex vi* Art. 24 (7), all of Law No. 2/2013.

⁹³ See Art. 7 (a), “*Repeal provision*”, of Law No. 12/2023, that repealed Art. 33 (1), *ex vi* Art. 26 (3), all of Law No. 2/2013.

⁹⁴ See Art. 7 (a), “*Repeal provision*”, of Law No. 12/2023, that repealed Art. 33 (1), *ex vi* Art. 26 (3), all of Law No. 2/2013.

⁹⁵ See Art. 7 (a), “*Repeal provision*”, of Law No. 12/2023, that repealed Art. 33 (1), *ex vi* Art. 32 (1), all of Law No. 2/2013.

⁹⁶ See Art. 7 (b), “*Repeal provision*”, of Law No. 12/2023, that repealed Art. 55 of Law No. 53/2015.

- ❖ *Law No. 12/2023: provisions in line with key-proposals from the AdC's Action Plan: the need to amend the statutes of all public professional associations and other laws/regulations in matters of access and exercise of self-regulated liberal professions*

Box 10: The need to amend the statutes of all public professional associations and other laws/regulations, in matters of access and exercise of self-regulated liberal professions

- A "Transitional provision" foreseeing that "public professional associations already established" must "**adopt the necessary measures to comply with the provisions** of [Law No. 12/2023]", namely, under their regulatory powers⁹⁷.
- A "Transitional provision" providing for the Government, "*after consultation with each public professional association, to present a **draft law amending the statutes of the public professional associations** already created and **other legislation applicable to the exercise of the profession**, in order to adapt them to the regime provided in [Law No. 12/2023]*", within 120 days after Law No. 12/2023 enters into force⁹⁸.
- This same "Transitional provision" refers, generically, for the need to be "*amended the **statutes of the public professional associations** already created*", hence, expectably also to implement the amendments to provisions in **matters of access to the profession**⁹⁹.
- The need for the Parliament to amend the statutes of all public professional associations already created and other laws, in matters of access to, and exercise of, self-regulated liberal professions, **creates a window of opportunity for the public decision-maker to implement other key-proposals from the AdC's Action Plan**¹⁰⁰.

- ❖ *Law No. 12/2023: provisions in line with key-proposals from the AdC's Action Plan: specific attribution to the AdC for the purposes of evaluation of the creation of new public professional associations*

Box 11: Evaluation of the creation of new public professional associations

- Amendment of a provision of Law No. 2/2013, foreseeing the issuance of an **opinion** from interested parties, among which the AdC, for the purposes of evaluating the **creation of new** public professional associations¹⁰¹.

⁹⁷ See Art. 5 (2), "Transitional provision", of Law No. 12/2023. It entered into force on 26.04.2023.

⁹⁸ See Art. 5 (3), "Transitional provision", of Law No. 12/2023. It entered into force on 26.04.2023.

⁹⁹ See Art. 5 (3) (5) (6), "Transitional provision", of Law No. 12/2023. It entered into force on 26.04.2023.

¹⁰⁰ See [AdC's Action Plan](#) (2018), Annexes 2; 3 to 14, and [AdC's key-proposals](#).

¹⁰¹ See Art. 3 (2) (b) of Law No. 2/2013, as amended by Law No. 12/2023.