

# Audiência Pública #12

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NEWSLETTER OF  
THE ADMINISTRATIVE  
ARBITRATION CENTER

MARCH  
2026



COUNTER

# 17.150

► Number of administrative and tax cases submitted to CAAD since its founding

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OPENING

## Columbus's egg?



**NUNO VILLA-LOBOS**  
CAAD PRESIDENT

In the week leading up to the Portuguese Parliament's approval of the Legal Framework for Tax Arbitration, an unlikely headline graced the cover of the Polish edition of "Newsweek". It was January 2011, and the article asked: was Christopher Columbus polish? The piece explored the curious theory of an azorean historian, based in the United States, according to which the navigator was the son of King Wladyslaw III and had been born in Madeira.

Fifteen years later, on the 18th of this month, moments before a session on tax arbitration led by MEP Kamila Gasiuk-Pihowicz, that very same question was raised in the European Parliament by Beata Gessel-Kalinowska. "Are you familiar with the Portuguese-

American historian Manuel Rosa?"

In fact, this was not the first time that Columbus had cropped up in the context of tax arbitration. Just as the navigator reached America by mistake, the Troika's (2011–2014) push to speed up tax proceedings also stemmed from a misconception: the belief that the amount to be disputed in court would revert to the public purse, unaware that, in Portugal, taxes are paid before any judicial challenge. Fortunately, in tax justice too, this misjudgement ultimately had a very positive impact, both qualitatively and quantitatively, as evidenced in the **LPL study**.

The reasons behind the effectiveness of our model have attracted growing interest from the international community. This has been the case in Brazil, where a draft bill inspired by the Portuguese model is at an advanced stage of the legislative process. The same applies to Cape Verde, through a law that mirrors Portuguese legislation. In Belgium, exploratory contacts have been made with the CAAD in the context of the Belgian government's coalition agreement.

And more recently, in Poland, arbitration has taken centre stage through the "Tax Arbitration in the EU" project run by the Institute of Law Studies, led by Professor Beata Gessel-Kalinowska, of which Mariana Melo Egídio, a researcher at the FDUL's Lisbon Public Law Centre, is also a part. Both are interviewed in this issue of the newsletter and help to situate the Portuguese experience within the European framework of tax arbitration.

Today, by inspiring debate in other countries, the portuguese model demonstrates that institutional innovation can bring legal systems closer together. As in the theories about the adventurers of the Age of Discovery, perhaps it is not so much nationality and origin that matter, but rather the final destination. Bringing new worlds to the world gave rise to the slow and precious process of globalisation. Finding and defining new ways of resolving tax disputes has helped the justice system to become more accessible to the public. It is not Columbus's egg, but it is a valuable contribution to our life in society.

## RECENT EVENTS



### CAAD Podcast

► This month's PodCAAD guest, the CAAD podcast, is Mariana Melo Egídio, guest lecturer at FDUL  
<https://www.caad.org.pt/comunicacao/podcast>

### CAAD President Shares Portuguese Insights at Brazilian Debates

► Nuno Villa-Lobos visited São Paulo for a series of meetings on tax arbitration. He took part in discussions at AMCHAM's Arbitration and Mediation Center, in partnership with IDP; at the São Paulo State Attorney General's Office; at CCMT, the Center for Consensual Tax and Customs Matters; at an open meeting of FGV Direito SP's Research Group; and also in an informal gathering at the law firm Demarest Advogados.

### Madeira Parliament Unanimously Recommends Linking AT to CAAD

► The Parliament of the Autonomous Region of Madeira unanimously approved a resolution recommending that the Tax and Fiscal Authority be placed under the jurisdiction of CAAD, strengthening administrative resolution mechanisms in the region.

The President of CAAD attended a tax arbitration session at the European Parliament in Brussels, serving as a key reference for an international project aimed at introducing this model in Poland. After the session, we had the chance to interview Professor **Beata Gessels-Kalinowska**, who coordinates the project at the Polish Academy of Sciences. Back in Lisbon, we spoke with **Mariana Melo Egídio**, guest lecturer at University of Lisbon School of Law and author of the study on CAAD's origins. Her research contributes to the Polish tax arbitration project and offers valuable insight into the development of Portugal's innovative model.

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BEATA GESSELS-KALINOWSKA

## “CAAD has already paved the way”

**How did the idea for this study emerge? Was it triggered by a specific situation, such as an assessment of a high number of pending cases in the tax courts in Poland?**

Actually, I learned about it by accident. I had just discovered that such an institution existed in Portugal

when I read an article written by Professor Brzeziński in Poland. I found the structure of this tax arbitration institution very interesting because, to me, it sounded like an oxymoron: arbitration is private, while tax is public, so they belong to different areas of law. Since then, I started digging deeper to understand its origins.

I discovered that it was created as a practical response to the financial crisis and as a way to speed up proceedings. In Poland, the length of legal proceedings is also a significant problem, it often takes much longer than it should.

This issue is not limited to tax litigation but affects the judicial system more broadly. I am also an arbitration practitioner, so arbitration is very familiar to me, and I have always believed that it could be a tool to shorten the duration of proceedings. This is how I started exploring this topic, and I found the concept so interesting that it is definitely worth further investigation.

### **What is the average decision time for tax cases in Poland?**

In the first instance, most cases are resolved within six months, but at the second instance, it can take more than two years. This is still not as long as in Portugal, but it could become a problem.

However, I also realized that the issue is not only the duration of proceedings. What I find particularly appealing about arbitration is the social dimension, it serves as a symbol of civil society. I believe that, in our countries and across the EU, building a strong civil society is very important, and arbitration in various areas can help promote this process.

### **At what stage is the study currently?**

Right now, I would say we are about halfway through the project.

We have fourteen areas of study, including comparative studies across various jurisdictions, the assessment of tax arbitration within the framework of civil society and social control over the administration, and research on macroeconomics, which I also consider very important. We are examining how tax arbitration impacts macroeconomic factors, the financial situation of budgets and the economy in general.

Just because something affects the budget doesn't necessarily mean it has a positive effect on a country's GDP; these are distinct considerations.

We have taken Poland as a laboratory for this research, under the auspices of the Polish Academy of Sciences, so we are analyzing Polish jurisdiction in detail. We are also addressing questions of arbitrability, how this institution fits within administrative law, civil procedure law, and European law, given that we are part of the EU legal system.

This research is now in the final stage of preparation. Over the next couple of months, we plan to publish our findings: partially in Poland, in the journal *Studia Iuridica* published by the Faculty of Law and Administration of the University of Warsaw, and partially in the journal *Arbitration: The Journal of International Arbitration, Mediation and Dispute Management* of the Chartered Institute of Arbitrators in London. Based on this material, we will organize a conference in Warsaw early next year to discuss all of these aspects. In the meantime, we also aim to prepare a framework for potential legislation that could incorporate tax arbitration in Poland, if the ratio legis could support such a decision.

### **In your view, what are the main constitutional and EU law constraints that must be addressed when introducing tax arbitration into a national legal system?**

From the perspective of the Polish Constitution, I do not see any specific obstacles, as it already provides a foundation for greater social participation in administrative and judicial functions. Although arbitration is not explicitly mentioned in the Constitution as a means of dispute resolution, as it is in Portugal, it is nevertheless a well-established and widely accepted mechanism.

**What I find particularly appealing about arbitration is the social dimension, it serves as a symbol of civil society. I believe that, in our countries and across the EU, building a strong civil society is very important, and arbitration in various areas can help promote this process.**

Designing an institution similar to CAAD to administer these proceedings is the most critical part of the work, essential to ensure transparency, independence, and impartiality. The second part concerns the European framework. In this respect, CAAD has already paved the way through the opinion of Maciej Szpunar, Advocate General of the CJEU, which clearly outlines the criteria that an institution must meet for an arbitration tribunal operating under it to be recognized as a court of a Member State.

Without the possibility of referring preliminary questions, there would be no effective mechanism to resolve tax disputes through this system.

### **From a macroeconomic perspective, how significant is the impact of faster tax dispute resolution on investment climate and legal certainty?**

I think this is very important, but these forms operate separately from the general judicial system. An effective dispute resolution system is a crucial tool for attracting investments into Poland. All of these indices, such as Doing Business rankings for Poland, Portugal, and other countries, published by the OECD and the Wor-

ld Bank, evaluate various aspects of dispute resolution and tax efficiency. These factors are among the key points assessed in those rankings.

### **How do you see the findings of this study shaping future developments in tax dispute resolution systems, particularly in terms of influencing policy choices, institutional design, or judicial practice?**

I think today's meeting was very important because, until now, I had considered this primarily an academic issue. However, once we started discussing it here in the European Parliament, with participants from the European Commission, the Parliament, and stakeholders, including users, it seems to have taken on a more significant role. This study could truly help advance the matter.

The fact that we are preparing a draft framework for this law in Poland (whether it will ultimately be adopted or not) already indicates that it could have a tangible impact on tax dispute resolution.

### **And do you think is going to be a reality in Poland and in other EU countries in the near future?**

So far this is an academic research project. Theoretically, providing such an institution, in any EU state, doesn't really require much European intervention, you know? As you can see, your institution was established without any directive or regulation. This is similar in other countries: we don't need much from the EU, perhaps just not to block it.

With the guidelines from the *Ascendi* case (the first case in which CAAD requested a preliminary ruling from the Court of Justice of the European Union) we see that, if certain parameters are met, the institution can be treated as a Member State court. You really don't need much EU support to make it work. This is our initiative: a bottom-up initiative.



MARIANA MELO EGÍDIO

**“The Portuguese model is truly original and relevant to other countries”**

**In this study presented to the European Parliament, what was your role as a researcher?**

The invitation was extended by Prof. Beata to the CAAD, and hence my involvement, at the invitation of the President, Dr Nuno Villa-Lobos, as I had already participated in another study by Lisbon Public Law, having experience in analysing the emergence and evolution of the CAAD.

The aim was to map, in an article to be published in international journals in English, tax arbitration within the scope of the CAAD, seeking to summarise the Portuguese case since its creation and to understand, in the light of the Constitution, the options underlying its design.

**What aspects were considered in this analysis?**

Issues such as the nature of the arbitral tribunal before the Court of Justice and specific aspects of the regime were also addressed, namely the selection of arbitrators, the arbitral procedure, the necessity of appointment and the potential influence of such appointment, as well as the possibility of choice by the parties, including the regime governing costs and fees.

This is, in essence, an introduction, hence the title “Portugal, an original model of tax arbitration,” which highlights the originality of the Portuguese case, not only as a unique solution but also as a possible basis for adaptation by other countries, in the context of a project on tax arbitration in the European Union.

This study, which forms part of an international project recently discussed in Brussels, focuses primarily on the origins and foundations of the solution adopted, rather than on its efficiency. It is descriptive in nature and seeks to provide insights so that researchers from other legal systems may draw comparisons and adapt the elements they deem appropriate to their respective tax

arbitration regimes. For this study, thanks to Dr Nuno Villa-Lobos, I had the opportunity to access essential unpublished documentation, enabling me to understand the process of choosing the legal nature of the CAAD and the alternatives considered at the time. One of these alternatives, although ultimately rejected, was to create an arbitration office within the Ombudsman’s Office. Interestingly, this is where I now work as a deputy.

**Why was that option ultimately ruled out?**

Given the nature and functioning of the Ombudsman’s Office, integrating an arbitration centre within its remit would have been problematic: it is an independent body with no decision-making power, although it can issue recommendations and monitor fundamental rights. Integrating an arbitration mechanism in that context would have undermined the intended model, since arbitration requires decision-making power and the capacity to resolve disputes.

On the other hand, we are talking about the creation of the CAAD in 2009 and its extension to tax arbitration in 2011. At the time, Portugal was facing a severe economic crisis, with high unemployment and a need for external financial assistance, which put pressure on the judicial system: there was a backlog and excessive bureaucracy in the tax courts, with an increase in disputes.

**And how did this context influence the creation of the CAAD?**

The memorandum of understanding with the troika drove the need for alternative dispute resolution mechanisms that were swifter and better organised. The legislative process included authorisation in the State Budget Law, followed by the approval of the RJAT, a decree-law of 2011,

with consultations with the Superior Council of Administrative and Tax Courts, the Bar Association and the Superior Council of the Judiciary. The entire process aimed to strengthen the protection of taxpayers’ rights, speed up the resolution of disputes and reduce the backlog of cases in the administrative and tax courts.

**Professor Beata Gessels’ study sets the stage for future tax arbitration legislation in Poland. The Portuguese model, particularly the CAAD, is recognised for its originality.**

**What unique features of the CAAD explain this international interest?** There are several factors that explain this interest. Firstly, the historical context combined political will and international economic constraints that favoured the development of tax arbitration. Secondly, previous experience in administrative arbitration, particularly since the 2004 reform and the creation of the CAAD, gave it the character of an ‘experimental laboratory’, operating outside the typical structure of state courts.

The CAAD is, in essence, a form of alternative tax dispute resolution created by the legislature — through the RJAT — which is voluntary for taxpayers but binding on the State and the Tax Authority. This initial participation by various entities explains the model’s acceptance by different legal actors and practitioners.

**Your research is set to be published in two leading journals. What impact will this publication have on the international recognition of the study and the CAAD model?**

The original study was split into two parts due to its length. Publication in specialised international journals allows the model and knowledge to be disseminated across very dif-

ferent organisations and contexts, including geographically. Given the current reach of online publications and through conferences and other academic events, I hope the study will serve as a starting point for adaptations by other countries and contribute as an initial reference.

**The CAAD model is hybrid, combining public and private aspects. Prof. Beata Gessels states that “arbitration is an oxymoron”. What is your opinion on this, especially considering the strong regulation and the link to the public sector?**

I understand the designation as a hybrid model: legally, the CAAD is a private-law association, but its creation and operation result from public influence. The decision stemmed from a memorandum of understanding and a legislative and political choice by the government of the time, which became a legislative decision to proceed with tax arbitration.

**How is this public influence reflected in practice?**

Even today, all these forms of arbitration have a public root: the State’s choice of alternative dispute resolution methods. Although the CAAD mediates the selection of arbitrators and allows for some discretion on the part of the entities, there are incentives for arbitrators to be appointed by the association’s ethics committee. CAAD decisions are subject to appeal and may be reviewed in certain respects by the state courts. Furthermore, the CAAD has incorporated pioneering mechanisms for pre-judicial referral to the Court of Justice, strengthening its link with the judicial system.

It is, therefore, a hybrid model, in which the public element prevails in its creation, operation and legal framework, without eliminating the scope for the parties’ discretion.