



## **UNOFFICIAL TRANSLATION**

**Decree Law 227/2012**

**of 25 October**

**(consolidated version)**

Responsible lending principles should guide the conduct of all credit institutions. The economic and financial crisis affecting most European countries has emphasized the importance of prudent, correct and transparent conduct by the above entities in all phases of the credit relationships they establish with their customers, in their quality as consumers, pursuant to the Law on Consumer Protection, approved by Law 24/96, of 31 July, as amended by Decree-Law 67/2003, of 8 April.

The deterioration of economic and financial conditions felt in different countries and the increase in credit default rates led the authorities to pay particular attention to permanent and systematic monitoring of credit agreements on the part of public and private institutions, to the development of measures and procedures aiming to promote the settlement of arrears situations, and also to the promotion of responsible conduct by credit institutions and bank customers, with a view to reducing household indebtedness levels.

This Decree-Law lays down a set of measures which reflect international best practices in promoting arrears prevention and the settlement of arrears situations arising from credit agreements concluded with consumers who, due to several factors, including unemployment and the anomalous fall in earnings resulting from the current economic environment, prove to be incapable of complying with their financial commitments.

In particular, this Decree-Law establishes that each credit institution must develop a Pre-Arrears Action Plan (PRAP), featuring procedures and measures for monitoring credit agreements. The main purpose of this measure is to enable the early discovery of pre-arrears indicators and assist consumers experiencing difficulties in complying with their obligations under credit agreements, and promote swift measures designed to prevent arrears situations.

It also defines an Out-of-court Arrears Settlement Procedure (OASP). This procedure requires credit institutions to distinguish between one-off or ongoing default, to assess consumers' creditworthiness and where viable, to present proposals which are suitable to each customer's financial situation, goals and needs.

Moreover, the Decree-Law also sets out that, in cases where the OASP does not end with an agreement between the parties, and the intervention from the Credit Mediator is requested, under Decree-Law 144/2009, of 17 June, the bank customer may in certain circumstances, continue to be entitled to the guarantees provided under the OASP. The mediation process conducted by the Credit Mediator is governed by above referred Decree-Law.



Given the information asymmetry between consumers and credit institutions, the effective implementation of these measures requires the creation of a system to assist consumers in financial difficulties, specifically by providing information, advice and assistance throughout the negotiation with credit institutions. Contributing to that purpose, this Decree-Law establishes a system to assist consumers, in the context of arrears prevention and settlement of arrears situations, with a view to informing, advising and assisting customers in pre-arrears or arrears on obligations arising from credit agreements. This assistance system shall include private or public legal persons fulfilling the conditions of access provided for in this Decree-Law and accredited for the purpose by the Directorate-General for Consumers, following an opinion of *Banco de Portugal*, thereby promoting the creation of a nationwide network. Recourse to the system is free of charge for consumers, which removes any barriers to access this future system.

Thus, this Decree-Law aims to promote appropriate protection of consumers' interests and prompt action by credit institutions to find measures that contribute to resolving bank customers' difficulties in complying with their responsibilities.

Without prejudice to the tasks assigned to the Directorate-General for Consumers with respect to the assistance system, *Banco de Portugal* is responsible for overseeing, assisting and regularly evaluating compliance with this Decree-Law, and defining the rules and regulations required to execute it, as well as the guidelines deemed necessary for the conduct of credit institutions.

Banco de Portugal and the Portuguese Banking Association have been heard.

A hearing of the National Consumption Council has been promoted.

Therefore:

Under Article 198(1) (a) of the Constitution, the Government decrees the following:

## CHAPTER I

### **General provisions**

#### Article 1

##### **Object**

1 - This Decree-Law defines principles and rules to be observed by credit institutions:

- a) in monitoring and managing pre-arrears situations; and
- b) in the out-of-court settlement of arrears situations concerning bank customers who have breached their contractual obligations to repay principal or pay interest, as regards the credit agreements mentioned in Article 2(1) below;

2 - This Decree-Law also establishes the creation of a system to assist bank customers in arrears prevention and the out-of-court settlement of arrears situations arising from credit agreements.

3 - This Decree-Law shall also apply, *mutatis mutandis*, to financial corporations, payment institutions and electronic money institutions, in respect of the credit agreements referred to in paragraph 1 of the following Article, which these entities shall be authorised to conclude in accordance with applicable regimes.



## Article 2

### Scope

1 - The provisions of this Decree-Law shall apply to the following credit agreements concluded with bank customers:

- a) Credit agreements relating to immovable property under Decree-Law No 74-A/2017 of 23 June 2017, as amended;
- b) (Repealed.)
- c) Consumer credit agreements under the provisions set forth in Decree-Law No 133/2009 of 2 June 2009, as amended;
- d) Consumer credit agreements entered into under the provisions set forth in Decree-Law No 359/91 of 21 September 1991, as amended;
- e) Credit agreements in the form of overdraft facilities and where the credit has to be repaid within one month.

2 - The provisions set forth herein shall not affect the regime applicable to over-indebtedness support systems, established by the Executive Order of the Banco de Portugal No 312/2009 of 30 March 2009, as amended.

## Article 3

### Definitions

For the purpose of this Decree-Law, the following shall mean:

- a) 'Bank customer' shall mean a consumer within the meaning laid down in Article 2(1) of the Law on Consumer Protection, approved by Decree-Law 24/96, of 31 July, as amended by Decree-Law 67/2003, of 8 April, intervening as a borrower in a credit agreement;
- b) 'Fees' shall mean the monetary sums payable by bank customers to credit institutions as compensation for services provided by the latter, or contracted to third parties as part of their activity;
- c) 'Credit agreement' shall mean an agreement signed between a bank customer and a credit institution having its head office or branch in the Portuguese territory that, pursuant to Article 2(1) above, falls under the provisions of this Decree-Law;
- d) 'Expenses' shall mean any amounts borne by credit institutions, payable to third parties, which credit institutions may legitimately pass on to bank customers, such as taxes or payments to records and registrations offices;
- e) 'Credit institution' any entity authorised to carry out credit operations in Portugal, under the terms of the Legal Framework of Credit Institutions and Financial Companies (RGICSF), approved by Decree-Law No 298/92 of 31 December 1992, as amended;
- f) 'Obligations under the credit agreement' shall mean the principal repayment or interest payment obligations taken on by bank customers under a credit agreement;
- g) 'Arrears management service provider' shall mean any natural or legal person who provides, under a contract with a credit institution, credit agreement arrears management services in that institution's name at a phase prior to recourse to legal proceedings;
- h) 'Durable medium' shall mean any instrument which enables the bank customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.



#### Article 4

##### **General principles**

1 - Credit institutions shall proceed with diligence and loyalty when complying with the provisions of this Decree-Law, adopting the appropriate measures for preventing credit agreement arrears and, where obligations under those agreements are not complied with, making the necessary effort for the settlement of arrears situations.

2 - Bank customers shall manage their credit obligations responsibly and act in good faith, alerting the credit institutions in good time to the risk of breaching obligations under credit agreements and working with credit institutions to find out-of-court alternatives for compliance with those obligations.

#### Article 5

##### **Credit agreement arrears management**

1 - Credit institutions shall monitor the execution of credit agreements in which they are lenders, by adopting, in the light of the provisions set out in Articles 9 to 11-C, the measures and procedures required to prevent bank customers from failing to comply with their obligations under said agreements.

2 - When the obligations under the credit agreements in which they are lenders are not complied with, credit institutions shall immediately set in motion the procedure laid down in Articles 12 to 21, in order to obtain, where possible, the out-of-court settlement of arrears situations.

#### Article 6

##### **Bank customer assistance**

1 - Bank customers in pre-arrears or arrears on obligations under credit agreements shall have the right to obtain, without charge, information, advice and assistance from the entities accredited for this purpose, within the scope of the out-of-court system to assist bank customers, under the terms and conditions defined in this Decree-Law.

2 - Credit institutions shall provide bank customers with information concerning the entities referred to in the foregoing paragraph, especially information on their activities and contact details, under the terms to be defined in a Notice published by *Banco de Portugal*.

#### Article 7

##### **Information on default of credit agreements**

1 - Without prejudice to the foregoing Article, credit institutions are obliged to provide information, in particular pre-contractual information, to bank customers and other interested parties about the risks of excessive indebtedness and the consequences of credit agreement default, as well as the procedures in place for the settlement of arrears situations arising from the rules laid down in this Decree-Law.

2 - For the purposes of the foregoing paragraph, *Banco de Portugal* shall publish a Notice defining the information to be provided by credit institutions to bank



customers and to the public about the risks of excessive indebtedness, the consequences of arrears on credit agreements and the procedures in place for the settlement of arrears situations, as well as the appropriate means for its release.

#### Article 8

##### **Prohibition from charging fees and increasing the interest rate**

1 - Credit institutions are prohibited from imposing fees concerning the renegotiation of credit agreements under this Decree-Law, specifically for the analysis and formalisation of that renegotiation.

2 - The provisions of the foregoing paragraph do not prevent the institution from passing on to the bank customer any expenses, as defined in Article 3(d), provided that the relevant documentary justification is presented.

3 - Credit institutions shall not increase the interest rate on credit agreements under agreements entered into with bank customers, aimed at preventing or remedying events of default.

## CHAPTER II

### **Management of pre-arrears situations**

#### SECTION I

##### **General obligations**

#### Article 9

##### **Credit monitoring**

1 - Credit institutions shall ensure the ongoing and systematic monitoring of the performance of credit agreements entered into by them, by taking the necessary steps, at minimum intervals to be set by the Banco de Portugal, to identify signs of deterioration in bank customers' creditworthiness to comply with their obligations under these credit agreements.

2 - For the purposes of the preceding paragraph, and without prejudice to the adoption of other acts and procedures appropriate for the ongoing and systematic monitoring of credit agreements execution, credit institutions shall be bound to:

a) Implement IT systems that identify, in a timely manner, the occurrence of facts which indicate a deterioration in the bank customer's creditworthiness, and issue the relevant warnings;

b) Define the procedures to be followed by their employees when they become aware of the occurrence of facts which indicate the deterioration in the bank customer's creditworthiness.

3 - Credit institutions shall provide appropriate support to bank customers who report facts that may indicate a risk of non-compliance with their obligations arising from credit agreements, by registering such communication and taking all steps provided for in Articles 11 and following.

4 - For the purpose of this Decree-Law, the following shall be deemed to be signs of deterioration in a bank customer's financial capacity to perform its obligations arising from a credit agreement: any default recorded in the Central Credit



Register of the Banco de Portugal, returned cheque and prohibition of cheque usage and corresponding placement on the List of Cheque Defaulters, tax and social security debts, insolvency, legal proceedings and disputes, attachment of bank accounts, unemployment, loss of income or a significant downturn in the sector of economic activity within which the bank customer carries out its business, as well as any event of default on other agreements entered into with the credit institution.

Article 10

**(repealed)**

Article 11

### **Pre-Arrears Action Plan**

1 - Credit institutions shall be bound to draw up and implement a Pre-Arrears Action Plan (PRAP), by detailing the procedures and measures adopted to monitor the execution of credit agreements and the management of default risk situations.

2 - In particular, the PRAP shall specify:

- a) The procedures adopted for permanent and systematic monitoring of credit agreements;
- b) The facts that, under the procedures mentioned in (a) above, are deemed to indicate the deterioration in the bank customers' creditworthiness in regard to the credit agreement;
- c) Procedures to be adopted by their front-office employees, in person or through remote communication means, where they become aware, upon information given by the bank customer, of any fact indicating pre-arrears on obligations arising from credit agreements;
- d) Procedures developed for the collection, processing, analysis and recording of information on bank customers showing signs of a risk of default;
- e) Procedures implemented for contacting bank customers showing pre-arrears signs, including, in particular, the time-frame for making the first contact after one of the facts referred to in subparagraph b) is detected, or the awareness of the facts referred to in subparagraph c), which shall not exceed 10 days;
- f) Remedies that may be made available to bank customers in a pre-arrears situation;
- g) The structural units responsible for carrying out the procedures and actions laid down in the PRAP, detailing their respective powers and describing the mechanisms for cooperation with other structural units or entities potentially involved in those procedures and actions;
- h) The training plans for the employees with responsibilities under the PRAP;
- i) The arrears management services providers, should they exist, responsible for carrying out PRAP procedures and measures, with detail on the services provided and the mechanisms for cooperation with the structural units or other entities potentially involved in those procedures and measures.

3 - Credit institutions shall make the PRAP available to their employees so that it may be consulted immediately and permanently.

4 - The Banco de Portugal establishes, upon notice, the relevant facts and procedures under the terms and for the purposes of paragraph 2(a), (b), (c), (d) and (e).





## SECTION II

### **Pre-arrears management procedures**

#### Article 11-A

##### **Assessment of signs of deterioration in bank customer's creditworthiness**

1 - Where the credit institution identifies signs of deterioration in the bank customer's financial capacity to comply with its credit agreement or the bank customer provides it with facts that indicate a pre-arrears situation, it shall take due diligence to assess these signs with a view to determining the existence and extent of a pre-arrears situation.

2 - For the purposes set out in the previous paragraph, the credit institution shall assess the creditworthiness of the bank customer and may request any information and documentation strictly necessary and suitable for this purpose.

3 - The bank customer shall provide the information and deliver the documents requested by the credit institution within no later than 10 days.

#### Article 11-B

##### **Submission of proposals**

1 - Where the credit institution determines that there is a pre-arrears situation and that the bank customer has the financial capacity to comply with its obligations arising from the credit agreement, it shall submit to the customer one or more proposals suitable to its financial situation, goals and needs, within a maximum period of 15 days after the elements set out in paragraph 3 of the previous Article have been made available.

2 - The proposals referred to in the previous paragraph may include, in particular, the following solutions:

a) The conclusion of a new credit agreement with the purpose of refinancing the debt of the existing credit agreement;

b) A change in one or more of the following conditions of the credit agreement, including through:

i) the extension of the repayment period;

ii) a grace period for repayment of principal or repayment of principal and interest;

iii) deferral of the payment of part of the principal to a future period;

iv) reduction of the interest rate applicable to the credit agreement over a given period of time;

c) The consolidation of several credit agreements;

3 - The proposals shall be submitted to the bank customer by means of communication on a durable medium, and the credit institutions shall be bound to comply with the information duties provided for in specific legislation and regulations.

4 - The credit institution shall not be bound to submit any proposal if the customer does not cooperate, in particular with regard to the provision of information or the availability of documents requested that enable the credit institution to become actually aware of the financial situation of the bank customer, including the reasons that gave rise to the financial hardship and the prospects for future evolution of that situation.



5 - Credit institutions shall monitor the effectiveness of the remedies agreed upon with bank customers, by regularly assessing the suitability of these remedies to their creditworthiness, goals and needs and by proposing, where appropriate, other remedies.

#### Article 11-C

##### **Personal files**

1 - Credit institutions shall create, on a durable medium, personal files for bank customers covered by the procedures set out in the OASP, which shall contain all relevant data, in particular any communication between the parties, the financial capacity assessment report of these customers and, where applicable, the proposals submitted to them, as well as the record of the reasons for not submitting proposals, and also the evaluation as to the effectiveness of the solutions agreed.

2 - Credit institutions shall keep personal files for a period of five years following the end of the adoption of OASP procedures.

### CHAPTER III

#### **Settlement of arrears situations**

##### SECTION I

##### **Out-of-court arrears settlement procedure**

#### Article 12

##### **Out-of-court arrears settlement procedure**

Credit institutions shall undertake due diligence to implement the out-of-court arrears settlement procedure (OASP) in relation to bank customers who are in arrears on obligations under a credit agreement.

#### Article 13

##### **Preliminary contacts**

Within 15 days after an obligation falls into arrears, the credit institution shall inform the bank customer of that fact, detailing the outstanding amounts, and undertake due diligence to ascertain the reasons underlying the arrears situation.

#### Article 14

##### **Initial phase**

1 - The credit institution shall initiate the OASP, in case arrears persists, between the 31st and the 60th day following the date in which the relevant obligation became due.

2 - Without prejudice to the foregoing paragraph, the credit institution shall initiate the OASP where:

a) The bank customer is in arrears on its obligations under the credit agreement and requests, through a durable medium, to be included in the OASP; the credit





institution shall ensure that this entry takes place on the date on which the credit institution receives the aforementioned request;

b) The bank customer, after having informed of the risk of non-compliance with its obligations arising from the credit agreement, enters into default, and the credit institution shall ensure that the entry of that customer in the OASP is made on the date of said default.

3 - When the bank customer enters into arrears on obligations under other credit agreements entered upon with the same credit institution during the OASP, the credit institution shall aim to obtain settlement of the arrears situation through a single procedure and shall inform the bank customer of such fact in accordance with the following paragraph.

4 - Within five days of the occurrence of the events outlined in this Article, the credit institution shall inform the bank customer, via durable medium, of the beginning of the OASP.

5 - *Banco de Portugal* shall publish a Notice defining the information to be included in the communication referred to in the foregoing paragraph.

## Article 15

### **Assessment and proposal phase**

1 - The credit institution shall undertake due diligence to ascertain whether the arrears situation is due to specific, one-off circumstances, or if it reflects the bank customer's incapacity to comply, on an ongoing basis, with those obligations under the terms of the credit agreement.

2 - For the purposes of the foregoing paragraph, the credit institution shall assess the bank customer's creditworthiness and it may request the bank customer to provide the strictly necessary and appropriate information and documentation for that purpose, in accordance with the procedures to be laid down in a Notice published by Banco de Portugal.

3 - Except where there is an acceptable motive, the bank customer shall provide the information and documents requested by the credit institution within 10 days.

4 - Within 30 days of the entry of the bank customer into the OASP, the credit institution shall, via durable medium:

a) Inform the bank customer of the result of the assessment undertaken under the terms of the foregoing paragraphs, when it verifies that the bank customer does not have the financial capacity to resume compliance with the obligations under the credit agreement, nor to settle the arrears situation, in particular through the renegotiation of the credit agreement's terms and conditions or credit consolidation, and agreement under the OASP is unfeasible; or

b) Present the bank customer with one or more settlement proposals suitable to his/her financial situation, goals and needs, when it concludes that the bank customer has the financial capacity to repay the principal or pay the interest due on the credit agreement, in particular through the renegotiation of the credit agreement's terms and conditions or credit consolidation.

5 - The proposals referred to in subparagraph b) of the preceding number may include the following solutions:

a) The conclusion of a new credit agreement with the purpose of refinancing the debt of the existing credit agreement;

b) A change in one or more of the following conditions of the credit agreement, including through:



- i) the extension of the repayment period;
  - ii) a grace period for repayment of principal or repayment of principal and interest;
  - iii) deferral of the payment of part of the principal to a future period;
  - iv) reduction of the interest rate applicable to the credit agreement over a given period of time;
- c) The consolidation of several credit agreements;
- 6 - All communications and proposals set out in paragraphs 4(a) and (b) include express information on the existence of an out-of-court support network for bank customers, its composition and responsibilities, in accordance with Article 27(1) and (2).
- 7 - Without prejudice to the provisions set forth in the preceding paragraph, in submitting proposals to bank customers, credit institutions shall comply with all other duties of information set out in specific legislation and regulations.
- 8 - Credit institutions shall monitor the effectiveness of the remedies agreed upon with bank customers, by regularly assessing the suitability of these remedies to their creditworthiness, goals and needs and by offering, where appropriate, other remedies.

#### Article 16

##### **Negotiation phase**

- 1 - If the bank customer refuses the proposals presented and the credit institution considers that other suitable alternatives to the bank customer's situation exist, it shall present a new proposal.
- 2 - Where the bank customer proposes changes to the initial proposal, the credit institution shall notify the customer of its acceptance or rejection, within a maximum period of 15 days, on a durable medium, and may also submit a new proposal, in accordance with the provisions of paragraph 7 of the preceding Article.
- 3 - The bank customer shall respond to the proposals presented within 15 days of receiving them.

#### Article 17

##### **Termination of the OASP**

- 1 - The OASP terminates:
- a) Upon full payment of the sums in arrears or upon termination, for any other reason provided for by law, of the relevant obligation;
  - b) Upon agreement between the parties on the full settlement of the arrears situation;
  - c) On the 91st day after the beginning of the OASP, unless the parties agree in writing to extend the procedure; or
  - d) Upon the bank customer's declaration of insolvency.
- 2 - The credit institution may, on its own initiative, terminate the OASP where:
- a) Seizure or preventive seizure of the bank customer's assets takes place in favour of third parties;
  - b) A judicial decision is issued appointing a provisional receiver, under the terms and for the purposes of Article 17-C(3) (a) of the Código da Insolvência e da Recuperação de Empresas ("Insolvency Code");
  - c) The credit institution concludes, as a result of the assessment undertaken under Article 15, that the bank customer does not have the financial capacity to



settle the arrears situation, notably due to the existence of enforcement measures or tax execution procedures against the bank customer that have a proven significant impact on his/her financial capacity, whereby maintaining the OASP is no longer enforceable;

d) The bank customer does not cooperate with the credit institution, particularly in regard to providing information or documents requested by the credit institution under Article 15 within the deadlines set therein and in responding, in a timely manner, to the proposals presented under Article 16;

e) The bank customer commits acts which may jeopardise the credit institution's rights or guarantees;

f) The bank customer refuses the proposal presented by the credit institution, without prejudice to Article 16(1); or

g) The credit institution refuses the amendments suggested by the bank customer to the proposal presented, without prejudice to Article 16(2).

3 - The credit institution shall inform the bank customer, via durable medium, of the termination of the OASP, describing the legal basis for such termination and why it considers that this procedure cannot be maintained.

4 - The OASP's termination takes effect only after the communication referred to in the foregoing paragraph, except where the ground for termination is that laid down in paragraph (1)(b).

5 - *Banco de Portugal* shall publish a Notice defining the information to be included in the communication referred to in paragraph 3.

## Article 18

### **Bank customer guarantees**

1 - From the date the bank customer enters into the OASP to the date of the OASP's termination, the credit institution is prevented from:

- a) Terminating the credit agreement;
- b) Initiating legal proceedings against the bank customer;
- c) Assigning a part or all of the credit to a third party; or
- d) Transferring its contractual position to a third party.

2 - Without prejudice to Article 18(1) (b), (c) and (d), the credit institution may:

- a) Use appropriate precautionary procedures to ensure validity of its credit;
- b) Transfer the credit for securitisation purposes; or
- c) Transfer the credit or its contractual position to another credit institution.

3 - Should the credit institution transfer the credit or its contractual position under (c) above, the recipient credit institution shall continue the OASP, resuming it at the same stage as on the date on which the credit or contractual position were transferred.

4 - In the 15 days following the notification on the OASP's termination, the credit institution is also prevented from practising the acts referred to in the foregoing paragraphs, in the case of the agreements envisaged in Article 2(1)(a) and if the termination of that procedure was caused by any of the situations listed in Article 18(1) (c) and (2) (c), (f) and (g).



## Article 19

### **Procedural duties**

1 - Credit institutions shall draw up an internal document that describes, in simple and clear terms, the procedures adopted under the implementation of the OASP.

2 - Without prejudice to the inclusion of other information, the document to be drawn up by credit institutions shall specify:

a) The procedures for contacting bank customers in the various phases of the OASP;

b) Procedures for collecting, processing, analysing and recording information on bank customers;

c) The alternatives to be proposed to bank customers in arrears situations;

d) The structural units, or, where appropriate, the arrears management services providers responsible for carrying out procedures and measures outlined in the OASP, indicating the respective responsibilities with necessary detail and describing the mechanisms defined for cooperation with other structural units or entities potentially involved in those procedures and measures; and

e) The training plans for the employees with responsibilities under the OASP.

3 - Credit institutions shall make the document mentioned in the foregoing paragraphs available to their employees so that it may be consulted immediately and permanently.

## Article 20

### **Personal files**

1 - Credit institutions shall create, on a durable medium, personal files for bank customers covered by the procedures set out in the OASP, which shall contain all relevant data, in particular any communication between the parties, the financial capacity assessment report of those customers and, where applicable, the proposals submitted to them, as well as the record of the reasons for not submitting proposals, and also the evaluation as to the effectiveness of the remedies agreed.

2 - Credit institutions shall keep personal files for a period of five years following the end of the adoption of OASP procedures.

## Article 21

### **Guarantor**

1 - Where the credit agreement is covered by a guarantee, and within 15 days after an obligation falls into arrears, the credit institution shall inform the guarantor of that fact, detailing the outstanding amounts.

2 - The credit institution invoking a guarantor to comply with the obligations under the credit agreement in arrears shall initiate the OASP with that guarantor whenever the latter requests it, via durable medium, within 10 days of the aforementioned invocation. For all purposes, the OASP is deemed to have started on the date on which the credit institution receives the aforementioned communication.

3 - At the time the guarantor is invoked to comply with the obligations under the credit agreement in arrears, the credit institution shall inform the guarantor about the right described in the foregoing paragraph, mentioning the conditions for its exercise.



4 - The provisions of Article 14(4) and Articles 15 to 20 shall apply to the OASP initiated on request of the guarantor, duly adapted, regardless of it being a procedure autonomous from the OASP.

## SECTION II

### Mediation

#### Article 22

##### Mediation of arrears situations

1 - Without prejudice to Decree-Law 144/2009, of 17 July, where the parties have not reached an agreement that allows the arrears situation to be settled, the bank customer who, within 5 days of the notification established in Article 17(3), requests the intervention of the Credit Mediator shall be entitled to the guarantees described in Article 18, provided that all of the following conditions are satisfied:

- a) The termination of the OASP was caused by any of the situations referred to in Article 17(1) (c), (2) (c), (f) and (g);
- b) The credit agreement subject to the OASP was a home loan, as defined in Article 2(1) (a);
- c) The bank customer is also a borrower in credit agreements granted by different credit institutions.

2 - The guarantees described in Article 18 shall apply during the 30 days following the notification addressed by the Credit Mediator to all credit institutions mentioned in the application submitted by the bank customer.

3 - The guarantees described in the foregoing paragraph may cease, where decided by the credit institution, if any of the following events occurs:

- a) The bank customer is declared as insolvent;
- b) Seizure or preventive seizure of the bank customer's assets takes place in favour of third parties;
- c) A judicial decision is issued appointing a provisional receiver, under the terms and for the purposes of Article 17-C(3) (a) of the Código da Insolvência e da Recuperação de Empresas ("Insolvency Code"); or
- d) Enforcement measures or tax execution procedures have been brought against the bank customer that have a proven significant impact on his/her creditworthiness, whereby maintaining the mediation process is no longer enforceable.

4 - For the purposes of the foregoing paragraph, the credit institution shall inform the Credit Mediator, via durable medium, that the guarantees of the bank customer have ceased, describing the relevant legal basis and why it considers that they cannot be maintained. The guarantees are deemed to be ceased on the date on which the Credit Mediator receives the aforementioned communication.

5 - The rules established in this Article are also applicable, mutatis mutandis, to the guarantor of credit agreements referred to in Article 1(2) (a) who has requested the OASP under the foregoing Article.

6 - The intervention of the Credit Mediator is subject to the terms and conditions established in specific legislation.



## CHAPTER IV

### Out-of-court system to assist bank customers

#### SECTION I

#### Entities comprising the out-of-court system

##### Article 23

**(repealed)**

##### Article 23-A

#### **Network composition**

1 - Unless otherwise reported to the Directorate-General for Consumers (DGC), the information and arbitration centres for consumer disputes, regardless of their designation, authorised to carry out information, mediation, conciliation and arbitration activities, shall form part of the out-of-court support network for bank customers.

2 - Upon recognition by the DGC, after prior opinion of the Banco de Portugal, any legal person, governed by public or private law, meeting the conditions laid down in this Chapter, may also become part of the out-of-court support network for bank customers.

3 - The out-of-court support network for Bank Customers shall be coordinated by the DGC, and cooperation mechanisms may be established with the Banco de Portugal, under the terms of a protocol to be entered into by both entities.

##### Article 24

#### **General conditions**

As at the date of request for accreditation, the requesting entity shall meet all of the following conditions:

- a) Be legally established;
- b) Be in compliance with its tax and social security obligations;
- c) Appoint one person in charge of the service to be provided.

##### Article 25

#### **Employees**

1 - Employees or other individuals collaborating with entities requiring accreditation who provide assistance to bank customers on arrears prevention and the settlement of arrears situations concerning credit agreements shall comply with all of the following requirements:

- a) Be recognised as suitable to perform the tasks in question;
- b) Have completed compulsory education;
- c) Have adequate technical knowledge in the financial, economic and banking areas.

2 - It shall indicate lack of suitability if the person in question is in one of the situations envisaged in Article 30(3) of the Legal Framework of Credit Institutions and Financial Companies.



3 - The provisions of this Article shall also apply to the employees taking up duties with the entities after their accreditation when they provide assistance to bank customers on arrears prevention and the settlement of arrears situations concerning credit agreements.

#### Article 26

##### **Regulations**

The regime and procedure applicable to the accreditation of entities comprising the out-of-court system to assist bank customers shall be regulated by an executive order of the Government members responsible for finance, justice and consumer protection.

#### Article 26-A

##### **Training**

It is the responsibility of the DGC and the Banco de Portugal, within their remit, to foster training initiatives in financial, economic and banking matters for the entities that are part of the out-of-court support network for bank customers."

#### SECTION II

##### **Activity of entities comprising the system**

#### Article 27

##### **Sphere of activity**

1 - Entities comprising the out-of-court system to assist bank customers shall be entrusted with informing, advising and assisting bank customers in pre-arrears situations or who are in a negotiation process with the credit institution due to arrears on obligations under credit agreements.

2 - Entities comprising the out-of-court system to assist bank customers shall be entrusted, in particular, with:

- a) Informing bank customers in pre-arrears or arrears situations on their rights and duties;
- b) Assisting bank customers with respect to the analysis of proposals presented by credit institutions under the PRAP and the OASP, notably regarding their suitability to the bank customers' financial situation, goals and needs;
- c) Assisting bank customers in the negotiation process before credit institutions under the PRAP and the OASP;
- d) Providing other information on indebtedness and over-indebtedness;
- e) Assisting bank customers in the assessment of their creditworthiness, taking into account the information they provide for that purpose.

3 - The entities referred to in paragraph 1 may also assist bank customers under other measures applicable to arrears situations, established in specific legislation.

4 - The above entities shall not:

- a) Act in representation or on behalf of bank customers before credit institutions, notably in the negotiation of the proposals presented under the PRAP and the OASP; and





b) The adoption of conciliation, mediation or arbitration mechanisms under the PRAP and the OASP.

5 - The provisions of paragraph b) of the preceding number shall not hamper the conduct of the activities provided for in paragraphs 1 and 2 by information, mediation and arbitration centres for consumer conflicts referred to in paragraph 1 of Article 23-A.

6 - Intervention by entities comprising the out-of-court system to assist bank customers shall cease as soon as they are notified that legal proceedings related to the credit agreement at stake have been brought against the bank customer.

7 - For the purposes of the foregoing paragraph, the bank customer shall inform the credit institution with which he/she has a credit agreement that he/she has resorted to an entity belonging to the out-of-court system to assist bank customers, under paragraph 2 (c).

8 - The bank customer shall inform the entity to which he/she has resorted under the out-of-court system to assist bank customers whenever legal proceedings related to the credit agreement have been brought against him/her.

#### Article 28

##### **Charges**

Access to the out-of-court system shall be free of charge for bank customers.

#### Article 29

##### **Operating principles**

1 - Entities comprising the out-of-court system to assist bank customers shall ensure observance of the principles of independence, impartiality, legality and transparency throughout the procedure.

2 - The procedure to assist bank customers shall be swift and comply with strict technical criteria.

#### Article 30

##### **Professional secrecy**

1 - The procedure of informing, advising and assisting bank customers shall be confidential, and all intervening parties shall be bound by professional secrecy as regards the facts of which they become aware in that context.

2 - The obligation of secrecy shall not cease with the termination of office or provision of services.

#### Article 31

##### **Guarantors**

1 - Where credit institutions initiate the OASP with the credit agreement's guarantor, the latter may resort to the out-of-court system.

2 - The rules in this Chapter shall apply to the cases provided for in the foregoing paragraph, duly adapted.



### SECTION III

#### **Financial education**

##### Article 32

#### **Financial education activities**

The entities comprising the out-of-court system to assist bank customers may also carry out financial education activities, in order to improve their financial knowledge.

### CHAPTER V

#### **Supplementary, transitional and final provisions**

##### Article 33

#### **Report by credit institutions**

1 - Within 30 days of this Decree-Law entering into force, credit institutions shall submit to Banco de Portugal the documents described in Articles 11 and 19, under the terms to be defined in a Notice published by Banco de Portugal.

2 - Credit institutions must also inform Banco de Portugal, at least 15 days in advance of their application date, of any alteration subsequently introduced to the documents mentioned in the foregoing paragraph.

3 - Credit institutions shall be bound to report to the Banco de Portugal quantitative information on the implementation of the mechanisms envisaged in this Decree-Law, under terms to be regulated by the Banco de Portugal.

##### Article 34

#### **Report of statistical data on the out-of-court system to assist bank customers**

1 - The entities comprising the out-of-court system to assist bank customers shall provide to the General Directorate for Consumers a quarterly statistical data report on the treatment of requests for information, assistance and monitoring of bank customers.

2 - Based on these data, the General Directorate for Consumers shall, every six months, deliver a report to the Government member responsible for consumer protection.

##### Article 35

#### **Assessment**

1 - Implementation of the rules and principles laid down in this Decree-Law shall be assessed by Banco de Portugal, which must publish the assessment results on a regular basis

2 - Without prejudice to the provisions of the foregoing paragraph, the General Directorate for Consumers shall be responsible for assessing the out-of-court system to assist bank customers. The entities comprising the out-of-court system to assist bank customers shall provide all the clarifications and information requested by the General Directorate for Consumers within the time-frame set for the purpose, which shall not be less than 10 days.



## Article 36

### **Sanctions**

1 - Any breach to the provisions set forth in Article 7(1), Articles 8 to 11, Article 11-A(1)(2), Article 11-B(1)(3)(5), Articles 11-C and 13, Article 14(1) to (4), Article 15((1)(2)(4)(6)(7) and 8, Article 16(1)(2). Article 17(2) and (3), Articles 18 to 21 and in Article 33 shall be deemed to be an administrative offence punishable under the terms of Article 210(m) and Article 212 of the RGICSF, and under the terms of Article 150(1)(y) and Article 152 of the Legal Framework Governing Payment Services and Electronic Money (RJSPME) approved by Decree-Law No 91/2018 of 12 November 2018.

2 - Negligence shall be punishable, and the upper limit of fines shall be reduced by half.

3 - The attempted violation shall be punishable with an exceptional mitigation of the penalty applicable to actual violation.

## Article 37

### **Competence**

1 - It is the responsibility of the Banco de Portugal to monitor the compliance with obligations arising out of this Decree-Law, as well as to impose, where appropriate, the corresponding fines and accessory penalties.

2 - The imposition of fines and ancillary sanctions shall follow the procedure laid down in the RGICSF and the RJSPME.

## Article 38

### **Regulations**

Without prejudice to the responsibilities specifically attributed to it, Banco de Portugal shall be responsible for defining the regulations needed for the execution of this Decree-Law.

## Article 39

### **Application in time**

1 - Bank customers who are in arrears on their obligations under credit agreements on the date this Decree-Law enters into force shall automatically enter into the OASP, where the obligations' due date fell more than 30 days before the above date.

2 - In the situations referred to in the foregoing paragraph, the credit institution shall inform the bank customers of their entry into the OASP within 15 days of this Decree-Law entering into force, under the terms of Article 14(4).

3 - Bank customers who are less than 31 days in arrears on their obligations under the credit agreement on the date this Decree-Law enters into force shall enter into the OASP under the terms defined in Article 14(1).

## Article 40

### **Entry into force**

This Decree-Law shall enter into force on 1 January 2013.