



Through Decree-Law No 74-A/2017 of 23 June 2017, which partly transposed into Portuguese law Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property, the legislator has enshrined the duty of creditors to assess consumers' creditworthiness in connection with the granting of credit relating to residential immovable property and of credit secured by a mortgage or equivalent guarantee.

Specifically, the aforementioned decree-law lays down that creditors shall assess the consumer's ability and propensity to repay the credit before a credit agreement is concluded, as well as before any increase in the total amount of credit. Furthermore, the creditor shall only conclude a credit agreement where the outcome of the consumer's creditworthiness assessment indicates that the obligations resulting from the credit agreement are likely to be met in accordance with the agreement's terms and conditions.

The duty to assess the consumer's creditworthiness is also enshrined in connection with the provision of consumer credit. In fact, pursuant to Article 10 of Decree-Law No 133/2009 of 2 June 2009, as currently worded, creditors are obliged to assess the consumers' creditworthiness before the credit agreement is concluded and during the lifetime of the credit agreement, if the parties decide to increase the total amount of credit.

Through this Notice, Banco de Portugal lays down procedures and criteria to be observed by creditors in the assessment of consumers' creditworthiness, both in connection with the granting of credit relating to residential immovable property and of credit secured by a mortgage or equivalent guarantee, and consumer credit agreements covered by the provisions of Decree-Law No 133/2009 of 2 June 2009, as currently worded.

In defining the procedures and criteria laid down in this Notice, Banco de Portugal took into consideration the guidelines on the creditworthiness assessment of mortgage credit agreements issued by the European Banking Authority in August 2015 in the context of the implementation of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property.

Therefore, in the exercise of the powers conferred upon it by the provisions of Article 76 (1) of the Legal Framework of Credit Institutions and Financial Companies (*Regime Geral das Instituições de Crédito e Sociedades Financeiras* – RGICSF), approved by Decree-Law No 298/92 of 31 December 1992, as currently worded, and of Article 16 (7) of Decree-Law No 74-A/2017 of 23 June 2017, Banco de Portugal determines the following:

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## Article 1

### Purpose and scope

1 – This Notice lays down the procedures and criteria to be complied with in the assessment of consumers' creditworthiness by the entities authorised, on a professional capacity, to grant credit in Portugal.

2 – The provisions of this Notice shall apply to credit agreements governed by Decree-Law No 74-A/2017 of 23 June 2017 (hereinafter called 'Decree-Law No 74-A/2017') and by Decree-Law No 133/2009 of 2 June 2009, as amended by Decree-Laws Nos 72-A/2010 of 18 June 2010, 42-A/2013 of 28 March 2013 and 74-A/2017 of 23 June 2017 (hereinafter called 'Decree-Law No 133/2009'), with the following exceptions:

- (a) Credit agreements in the form of overrunning, as defined in Article 4 (1) (e) of Decree-Law No 133/2009; and
- (b) Credit agreements intended to prevent or address arrears situations, namely through refinancing or consolidation of other credit agreements, as well as through the renegotiation of the terms and conditions of already existing credit agreements.

## Article 2

### Definitions

For the purposes of this Notice, the following shall mean:

- (a) 'Assessment of creditworthiness', the assessment of the consumer's ability and propensity to comply with the obligations arising from the credit agreement;
- (b) 'Consumer', a natural person acting with purposes other than those of his or her commercial or professional activity in the credit agreements covered by the provisions laid down in Decree-Law No 74-A/2017 and Decree-Law No 133/2009;
- (c) 'Credit agreement', an agreement whereby an institution grants or promises to grant credit to a consumer under the form of a loan, payment deferment, revolving credit or any other equivalent financing agreement, including financial leasing;
- (d) 'Mixed interest rate credit agreement', a credit agreement under which the parties agree on a period during which a fixed interest rate is applied followed by a variable interest rate period;
- (e) 'Institution', credit institutions and financial companies having their head office or branches in the Portuguese territory and, regarding the credit agreements concluded under the terms and conditions and in accordance with the limits set out in the legal framework governing payment services and electronic money (*Regime Jurídico dos Serviços de Pagamento e da Moeda Eletrónica*), approved by Decree-Law No 317/2009 of 30 October 2009, as amended by Decree-Law No 242/2012 of 7 November 2012, payment institutions and electronic money institutions having their head office or branches in the Portuguese territory;
- (f) 'Total amount of credit', maximum limit or total amounts made available through a credit agreement;
- (g) 'Obligations arising from the credit agreement', any financial obligations undertaken by the consumer under a credit agreement, including repayment of principal and payment of interest, fees, taxes and other charges, including the payment of the insurance premiums required under a credit agreement;

(h) 'Durable medium', any instrument which enables the consumer 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; and

(i) 'Variable interest rate', interest rate based on an index, which changes automatically and periodically, plus a base or contractual spread.

### **Article 3**

#### **General duties**

In compliance with the provisions of this Notice, the institutions shall act with diligence and loyalty, promoting responsible granting of credit, taking into consideration the financial situation, the objectives and the needs of consumers and the nature, amount and characteristics of the credit agreement.

### **Article 4**

#### **Duty to assess the creditworthiness of the consumer**

1 – Institutions are obliged to assess the creditworthiness of consumers:

- (a) Before a credit agreement is concluded;
- (b) Before any increase in the total amount of credit during the lifetime of a credit agreement.

2 – The provisions of subparagraph (b) above shall not apply to situations where the increase in the total amount of credit and the respective conditions have been initially agreed upon by the parties, when the credit agreement was concluded.

3 – The institutions shall provide evidence of compliance with the duties set out in this Notice.

### **Article 5**

#### **Elements to be taken into consideration in the assessment of creditworthiness**

1 – The assessment of creditworthiness shall be carried out on the basis of necessary, sufficient and proportionate information on the consumer's income and expenses and other financial and economic circumstances.

2 – In the consumer's creditworthiness assessment, the institution shall take into consideration, inter alia, the following elements:

- (a) Nature, amount and characteristics of the credit agreement;
- (b) Consumer's age and professional situation;
- (c) Income received by the consumer;
- (d) Consumer's regular expenditure;
- (e) Compliance with the obligations undertaken by the consumer through other credit agreements, specifically taking into consideration the information contained in credit register databases, under the legislation in force, with adequate coverage and detailed information.

**Article 6**  
**Information and documents**

1 – The institution shall request the consumer to provide the information deemed necessary for the creditworthiness assessment, as well as the documents required to prove that said information is true and up-to-date.

2 – The institution shall expressly warn the consumer that non-provision of said information or non-supply of the requested documents, as well as the provision of false or outdated information will result in credit not being granted or, where applicable, the total amount of credit not being increased.

3 – Where the assessment of creditworthiness is intended to increase the total amount of credit, the institution shall update the financial information it possesses on the consumer, complying with the provisions of this Article.

4 – The provisions of this Article shall not prejudice compliance with the applicable rules governing the protection of personal data.

**Article 7**  
**Calculation of the consumer's income**

1 – The assessment of creditworthiness shall preferably be based on the income received by the consumer which, due to its amount and periodicity, has a regular nature, including without limitation the income received as a salary, the remuneration for the provision of services or welfare payments.

2 – The institution shall take into consideration the income received by the consumer, at least, in the three months before the creditworthiness assessment, as well as the trend of income in the said period.

3 – The assessment of creditworthiness shall not be based on expectations about an increase in the income received by the consumer.

4 – Where the consumer is a self-employed person or has seasonal or irregular income, the institution shall take additional steps, as required, to calculate the level of income to be taken into consideration to assess the creditworthiness.

**Article 8**  
**Calculation of the consumer's regular expenditure**

1 – The institution shall take into consideration in the assessment of creditworthiness a reasonable and prudent amount for the consumer's regular expenditure.

2 – In ascertaining the consumer's regular expenditure, the institution shall take into consideration personal and household expenses, in addition to charges associated with compliance with the obligations arising from the credit agreement in question and the obligations undertaken by the consumer through other credit agreements.

3 – The assessment of creditworthiness shall not be based on expectations of a reduction in the consumer's regular expenditure.

## Article 9

### Estimate of the consumer's regular income and expenditure

1 – The institution may estimate the consumer's regular income and expenditure, based on information deemed sufficient, in the case of a credit agreement to be concluded for an amount equal to or lower than the equivalent to tenfold the guaranteed monthly minimum wage.

2 – The institution may use the possibility envisaged in the foregoing paragraph in case of an increase in the total amount of credit during the lifetime of the credit agreement, provided that:

(a) The total amount of credit resulting from the increase is equal to or lower than the amount equivalent to tenfold the guaranteed monthly minimum wage; or

(b) The total amount of credit resulting from the increase is only available to the consumer on a temporary basis, for a period of up to three months.

3 – In the situations envisaged in the foregoing paragraphs, the institution shall also take into consideration the information on the consumer contained in the credit register databases under the legislation in force, with adequate coverage and detailed information.

## Article 10

### Future events impacting the assessment of creditworthiness

1 – In the assessment of the consumer's creditworthiness, the institution shall take into consideration any future events that, being predictable, may have a negative impact on the consumer's overall indebtedness and on its capacity to comply with the obligations arising from the credit agreement, in particular those foreseen in this Article.

2 – Where the credit agreement remains in force after the term of the consumer's employment or provision of services' contract and where the consumer's bound to the credit agreement lasts beyond the statutory retirement age, the institution shall take into consideration a future potential reduction in the income received by the consumer.

3 – Where the consumer intervenes in other credit agreements as warrantor or guarantor, the institution shall take into consideration a potential rise in expenditure resulting from the payment by said consumer of charges arising from the relevant credit agreements, if the principal debtor fails to pay them.

4 – In the case of credit agreements with variable or mixed interest rate, the institution shall assess the impact of a rise in the index on which the rate applicable is based, as defined in an Instruction of Banco de Portugal.

5 – Where the credit is a deferred interest credit or when the repayment of principal is deferred, the institution shall consider the consumer's ability to comply with its obligations arising from the credit agreement after the deferral period.

6 – Where the credit agreement envisages the deferred payment of part of the loan amount, the institution shall consider, in the light of information available, the consumer's ability to pay, at the end of the agreement, the amount which payment had been deferred.

## **Article 11**

### **Outcome of the assessment of creditworthiness**

1 – The institution shall only conclude the credit agreement or increase the total amount of credit when it is clear from the outcome of the assessment of creditworthiness that the consumer is likely to comply with the obligations arising from the credit agreement.

2 – The institution shall inform the consumer, without undue delay, of the decision not to conclude the credit agreement or, where applicable, not to increase the total amount of credit.

3 – Where the decision not to conclude the credit agreement or not to increase the total amount of credit is supported by data contained in credit register databases, the institution shall also comply with the information duties provided for by law.

## **Article 12**

### **Individual processes**

1 – The institutions shall create, on a durable medium, individual processes for the consumers whose creditworthiness has been assessed.

2 – Without prejudice to the requirements provided for by law, the individual processes shall contain all relevant information for the assessment of the consumer's creditworthiness and shall include a description of the criteria used, the elements and documents taken into consideration and the process conclusion.

3 – The institutions shall keep the individual processes during the lifetime of the credit agreement and for the subsequent five years.

## **Article 13**

### **Internal procedures**

1 – The institutions must prepare and implement internal procedures for the assessment of consumers' creditworthiness ensuring compliance with the legal provisions applicable, as well as with the provisions laid down in this Notice.

2 – The internal procedures shall specify, in particular:

- (a) The information and documents to be provided by the consumers;
- (b) The method and criteria used in the assessment of consumers' creditworthiness;
- (c) The units of structure having responsibility in the process of assessment of consumers' creditworthiness, describing the respective competences;
- (d) The procedures to be adopted by the staff members involved in the credit granting process, within the scope of the assessment of consumers' creditworthiness.

3 – The institutions shall update their internal procedures whenever necessary.

4 – The institutions shall ensure the disclosure of the internal procedures to the staff members involved in the credit granting process, in a way that allows their immediate and permanent consultation.

**Article 14**  
**Entry into force**

This Notice shall enter into force:

- (a) On 1 January 2018 regarding the credit agreements covered by the provisions laid down in Decree-Law No 74-A/2017;
- (b) On 1 July 2018 regarding the credit agreements covered by the provisions of Decree-Law No 133/2009.

20 September 2017. – The Governor, *Carlos da Silva Costa*.