

# ARREARS ON CREDIT

Prevention and settlement  
of arrears on credit  
agreements with  
household customers



**BANCO DE PORTUGAL**  
EUROSYSTEM





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## Preliminary note

Household customers have new rights in the prevention and settlement of arrears on credit agreements as a result of the coming into force of several legal and regulatory acts which establish rules and procedures to be complied with by credit institutions.

The new legal framework establishes a general regime which outlines measures aimed at the prevention and out-of-court settlement of arrears on credit agreements. It also establishes an extraordinary regime for protection of housing loan borrowers in a very difficult economic situation. In addition, safeguard measures were defined for borrowers as regards the termination, resumption and renegotiation of credit agreements to purchase an owner-occupied home and rules relating to late payment interest and fees have been amended.

All rules and regulations applicable to arrears on credit agreements, including the understandings to be followed by credit institu-

tions, have been published by Banco de Portugal on the Bank Customer Website ([www.clientebancario.bportugal.pt](http://www.clientebancario.bportugal.pt)). The new legal regimes are described in detail on the website so that household customers can fully understand them.

This information is also available on the website of the National Plan for Financial Education – “Todos Contam” ([www.todoscontam.pt](http://www.todoscontam.pt)) – in the section on the planning of the household budget. Further information on this issue can be found on the Consumer Website of the Directorate-General for Consumers ([www.consumidor.pt](http://www.consumidor.pt)).

This publication, which is available for download on the Bank Customer Website, summarises the main rights and duties of household customers in the prevention and settlement of arrears and includes all applicable rules and regulations. Banco de Portugal will update this publication whenever necessary.







## BRIEF DESCRIPTION OF THE REGIMES

1. Arrears prevention
2. Arrears management
3. Assistance Network for Indebted Consumers



Household customers facing difficulties in complying with their obligations under credit agreements have a series of rights established by law. These rights apply in the prevention and settlement of arrears on credit agreements.

## Household customer rights

### Arrears prevention

Credit institutions are required to implement procedures allowing for regular monitoring of credit agreements, so as to prevent their customers from entering into arrears. For that purpose, credit institutions shall develop a Pre-arrears Action Plan (PRAP) (Decree-Law no. 227/2012, of 25 October 2012).

Household customers who warn credit institutions about their payment difficulties, due, for example, to being unemployed or ill, have a right to receive from the credit institution a document with a description of their rights and duties. The credit institution should also inform them about the contacts to be used in communications with it.

Credit institutions should assess the household customers' creditworthiness and, where they consider that the latter have the means to avoid entering into arrears, they should put forward solutions that are suitable to the household customers' financial situation, objectives and needs.

### Arrears management

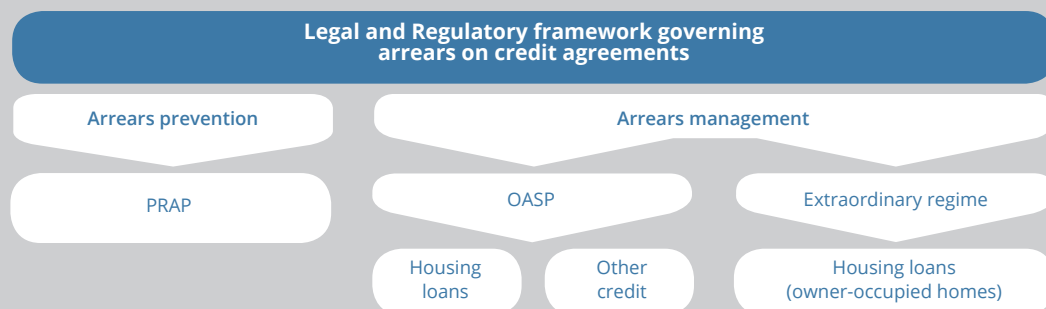
Household customers in arrears on obligations under their credit agreements have a right to be entered into the OASP – Out-of-court Arrears Settlement Procedure (Decree-Law no. 227/2012, of 25 October 2012).

The OASP applies to most credit agreements concluded with household customers. It does not depend on compliance with any conditions for access, nor request by the household customer, who may, nevertheless, do so.

Household customers have a right to receive a document informing them about their rights and duties under the OASP. Following the assessment of the household customers' creditworthiness, credit institutions shall present one or more restructuring proposals deemed suitable to the customers' financial situation.

During negotiation, the law grants household customers a series of guarantees. Among these, credit institutions are prohibited from terminating credit agreements, bringing legal proceedings against household customers with a view to redeeming credits or assigning the said credits to third parties.

Household customers in a very difficult economic situation in arrears on payment of their housing credit instalments may benefit from the extraordinary regime for protection of housing loan borrowers (Law no. 58/2012 of 9 November 2012 as amended by Law no. 58/2014 of 25 August 2014).



Access to this extraordinary regime depends on a request by household customers, who should meet a series of requirements.

Customers with access to this regime are entitled to debt restructuring if credit institutions verify that they have the financial capacity to pay the instalments of the restructured housing credit agreement.

The regime also envisages the adoption of exceptional measures, which may lead to a partial or full cancellation of the debt.

If entered into the extraordinary regime, household customers benefit from a series of guarantees, notably the prohibition of credit institutions from foreclosing the mortgage.

### Renegotiation of the housing credit agreement

Household customers with difficulties in paying housing credit instalments may request that credit institutions renegotiate the loan's financial conditions with a view to reducing the debt burden. However, renegotiation is only possible if there is agreement between the household customer and the credit institution.

In case of renegotiation, credit institutions cannot increase the charges on credit agreements for the purchase or construction of owner-occupied homes, notably through a rise in stipulated spreads, if such renegotiation has resulted from:

- a) A change in the credit holder due to divorce, legal separation, dissolution of a life partnership or death of either one of the spouses, so long as the loan's monthly instalment represents a debt burden for the new holder's household of less than 55%, or 60% in the case of households with two or more dependents.

The household's gross annual income corresponds to income received during the previous calendar year, no expenses being deducted.

- b) Lease of the property that serves as collateral for the housing credit, as a result of:
  - i) Any of the borrower's household members being unemployed; or
  - ii) A change in the place of employment of the borrower or any first-degree relative in a direct descending line to a location at a distance of more than 50 km, resulting in a change in residence.

The leasing agreement should include the following elements:

- reference to the fact that the property is mortgaged as collateral for a housing credit agreement; and
- the tenant's obligation to deposit the rent payment into the borrower's bank account associated with the loan.

### Assistance Network for Indebted Consumers (ANIC)

Household customers in pre-arrears or arrears on the payment of their credit instalments may receive information, advice and assistance from the entities making up the Assistance Network for Indebted Consumers.

These entities are accredited by the Directorate-General for Consumers, following an opinion issued by Banco de Portugal.

Recourse by the household customer to an entity belonging to the assistance network is free of charge.

### Household customer duties

Household customers should manage their credit liabilities responsibly, giving timely warning to credit institutions about a possible risk of default.

Household customers should cooperate with credit institutions in seeking solutions for the resolution of the arrears situation.

Household customers should give timely response to any requests of credit institutions and provide all necessary information and documents. If they fail to do so, household customers may cease to benefit from the rights and guarantees they are entitled to under the legislation in force.

## 1. Arrears prevention

Credit institutions should monitor the execution of their customers' credit agreements on a permanent and systematic basis, so as to identify possible signs of payment difficulties. They should also have structures in place to support household customers that communicate that they are having difficulties in credit payment and be ready to promote measures aiming at arrears prevention.

Household customers who warn credit institutions about the risk of defaulting on credit agreements, due, for example, to being unemployed or ill, should receive a document from credit institutions describing all their rights and duties. They should also be informed about the credit institutions' available contacts to receive communications.

Where they identify signs of default risk and where household customers warn of the existence of such risk, credit institutions should assess the customers' creditworthiness with a view to confirming the existence of an actual pre-arrears situation.

If default risk is confirmed, credit institutions should present a proposal to restructure the agreement's terms and conditions or propose credit consolidation, where applicable, should the customers be creditworthy.

For the purpose of assessing creditworthiness, customers should provide the information and documents requested by credit institutions within 10 days.

Credit institutions are obliged to monitor and promote the management of pre-arrears situations, by implementing a Pre-arrears Action Plan (PRAP).

Household customers may complain to Banco de Portugal if they consider that credit institutions, after having been warned about a pre-arrears situation, did not provide due support. They may also complain in a *Complaints Book* that credit institutions are required to have available at their branches.

## 2. Arrears management

Failure to pay credit agreement instalments on a timely basis has serious consequences for households. Household customers in arrears are subject to the payment of default interest, which add to their debt. In addition, credit institutions may bring legal proceedings to redeem their credit, which may lead to seizure

and subsequent forced sale of the household customers' assets.

Household customers currently have at their disposal a series of mechanisms intended to promote the out-of-court settlement of credit agreement arrears situations.

### General regime

The law provides for an Out-of-court Arrears Settlement Procedure (OASP) (approved by Decree-Law no. 227/2012, of 25 October 2012).

Under this procedure, household customers in arrears may benefit from a series of rights and guarantees aimed at promoting negotiation of out-of-court solutions for arrears resolution.

### Extraordinary regime

Household customers defaulting on instalments relating to a credit agreement to purchase or construct an owner-occupied home and who are in a very difficult economic situation, as well as guarantors who are called by the credit institution to fulfill the obligations arising from those contracts and who are in a very difficult economic situation, may benefit from the extraordinary regime for protection of housing loan debtors (approved by Law no. 58/2012 of 9 November 2012, as amended by Law no. 58/2014 of 25 August 2014).

Access to this regime depends on an express request from the household customer in arrears to the credit institution in question. Household customers who make such a request and prove that they meet the conditions for access as set forth in the law, are entitled to a debt restructuring plan proposed by the institution, where viable.

Under exceptional circumstances, the credit institution may also propose other measures that may lead to partial or full cancellation of the debt. The law envisages three measures:

- the transfer of the property in lieu of payment;
- the sale of the property to a real estate investment fund for residential rentals (Portuguese acronym: *FIIAH*); or
- its exchange for a lower value property.

### Rules applicable to late payment interest and fees

If a customer fails to comply with his/her contractual obligations, the credit institution may require the payment of late payment interest

and other fees and charges, which are added to the overdue principal.

In 2013, the rules applicable to late payment interest and fees have been revised (Decree-Law no. 58/2013 of 8 May 2013).

Presently, in arrears situations, credit institutions may only claim the payment of:

- Late payment interest. Resulting from the application of a maximum annual surcharge of 3%, which adds to the conventional interest. Late payment interest is calculated on a daily basis over the amount of the overdue instalment, for as long as non-compliance remains.

#### For instance:

Late payment interest rate = Conventional Interest Rate (IAR) + 3%

Interest Rate = overdue instalment amount x (late payment interest /360) x no. of overdue days

- A recovery of arrears fee may be charged only once, for each overdue instalment, and it may not exceed 4% of the instalment's amount, with a minimum value of EUR 12,00 and a maximum of EUR 150,00. If the instalment exceeds EUR 50,000.00, the fee may not be above 0.5% of its amount.
- The costs that the credit institution might have supported with third parties, on behalf of the customer after the overdue date, depending on the presentation of supporting documents.

#### For instance:

The household customer failed to pay on the contractual date the monthly instalment in the amount of EUR 350,00, entering in an arrears situation. In addition to the overdue instalment, the credit institution may require a late payment interest corresponding to the nominal annual percentage rate (4%) increased by a surcharge of 3%.

If the customer pays the overdue amount in 20 days, he/she must pay the value of the instalment increased by the late payment interest

corresponding to the period of default. Additionally, the credit institution may charge a fee corresponding to 4% of the instalment's amount.

Total Amount to Pay = Monthly Instalment + Late payment interest (20 days) + Fee

Total Amount to Pay = €350 + (€ 50 x 0.07/360 x 20) + (€350 x 0.04) = €350+ €1.36 + €14 = €365.36

### Rules when contacting customers

Credit institutions and entities hired by credit institutions are prohibited from making unfair, excessive or disproportionate contacts with household customers in pre-arrears or arrears on obligations under credit agreements.

In particular, these entities must not:

- convey wrong, inaccurate or misleading information;
- fail to identify the credit institution or service provider or not provide the respective contact details;
- be aggressive or intimidating;
- make contacts between 10 p.m. and 9 a.m. in the household customer's time zone, except where there is express prior agreement;
- use an address, telephone number, or any other contact detail that has not been provided by the household customer to the credit institution, except where the household customer's contact details are publicly available.

#### 2.1. Arrears settlement general regime

The negotiation model envisaged in the Out-of-court Arrears Settlement Procedure (OASP) is targeted at facilitating an agreement between the household customer and the credit institution to settle arrears situations while avoiding recourse to courts.

This negotiation model applies to most credit agreements concluded with household customers, with the exception of leasing agree-

ments. Credit institutions are responsible for launching this process (OASP) and access to the procedure does not depend on any conditions, nor on a request made by household customers, although they may do so.

The credit institution is required to enter the household customer in arrears into the OASP:

- immediately after a request by the household customer to do so;
- between the 31<sup>st</sup> and the 60<sup>th</sup> day following default; or
- as soon as the household customer, who has given prior warning about a risk of default, enters into arrears.

Household customers are informed by credit institutions that they have been entered into the negotiation model envisaged in the OASP within 5 days at most after this has occurred.

After the customer in arrears has been entered into this procedure (OASP), the credit institution assesses the arrears situation and the customer's creditworthiness. For this purpose, the customer must provide all the requested information and documents within 10 days.

In the 30 days after this procedure (OASP) has been initiated, the credit institution should present the household customer in arrears with one or more settlement proposals. Within 15 days after receipt of the credit institution's proposal, customers may also propose solutions that they consider more suitable. The credit institution is free to accept or refuse such proposals.

The customer that comes to an understanding with the credit institution is bound to the new payment conditions, and the arrears situation ends for all purposes.

In the course of the OASP the credit institution is prohibited from:

- terminating the credit agreement;
- initiating legal proceedings against the household customer with a view to redeeming the credit;
- assigning some or all of the credit to a third party.

The credit institution may, however, terminate the OASP at any time where:

- seizure or preventive seizure of the household customer's assets takes place;
- the household customer enters into an insolvency procedure;
- the household customer does not have the financial capacity to settle arrears;
- the household customer does not cooperate in seeking solutions to settle the arrears situation, notably as regards information supply or timely response to the proposals presented;
- the household customer commits acts which may jeopardise the credit institution's rights or guarantees, such as causing damage to the property used as collateral for the credit;
- the household customer refuses the proposals presented by the credit institution or the credit institution refuses the proposals presented by the household customer.

The OASP terminates automatically:

- upon full payment of the sums in arrears;
- upon agreement on settlement of the arrears situation;

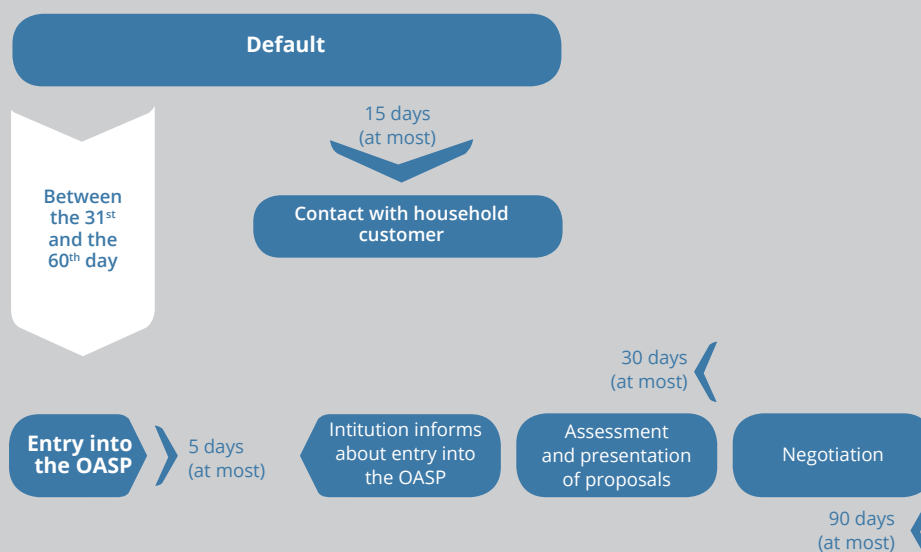
- on the 91<sup>st</sup> day after the household customer is entered into the OASP, unless the parties agree to extend this timeline;
- upon the household customer's declaration of insolvency.

When the institution concludes, as a result of the assessment of the household customer's creditworthiness, that the presentation of proposals is unviable, it should inform the customer of the fact. In this case, the credit restructuring procedure is terminated (termination of the OASP).

In case of termination of the OASP, household customers in arrears on housing credit agreements who are also borrowers in credit agreements with other institutions may request intervention of the Credit Mediator, maintaining the guarantees envisaged in the OASP for an additional 30 days.

## 2.2. Arrears settlement extraordinary regime

Household customers in arrears on credit agreements for owner-occupied homes who are in a particularly difficult economic situation may ask the credit institution for access to the extraordinary regime for protection of housing loan borrowers, if they meet a series of conditions





as provided for by law (Law no. 58/2012 of 9 November 2012, as amended by Law No. 58/2014 of 25 August 2014).

The guarantors who have been called by credit institutions to fulfil the obligations arising from those credit agreements and who are in a very difficult economic situation may also request access to this regime.

In order to have access to the extraordinary regime, household customers should submit a request to the credit institution with which they have signed a housing credit agreement.

The request may be submitted during the judicial proceedings for credit execution as long as other creditors (such as the tax authority or social security) have not lodged claims under the process. In that case, the request should be submitted by the end of the deadline for opposing the execution or before the sale of the property used as collateral for the loan.

The household customer must submit the documents required by law or only those requested by the credit institution to prove fulfilment of the access conditions to this regime within 20 days of the submission of the access request or of the credit institution's request.

Following receipt of the request or submission of the necessary documents, credit institutions

have 15 days to communicate to household customers if they meet the conditions for access to this regime.

The extraordinary regime for protection of housing loan borrowers is transitional, being in force until 31 December 2015.

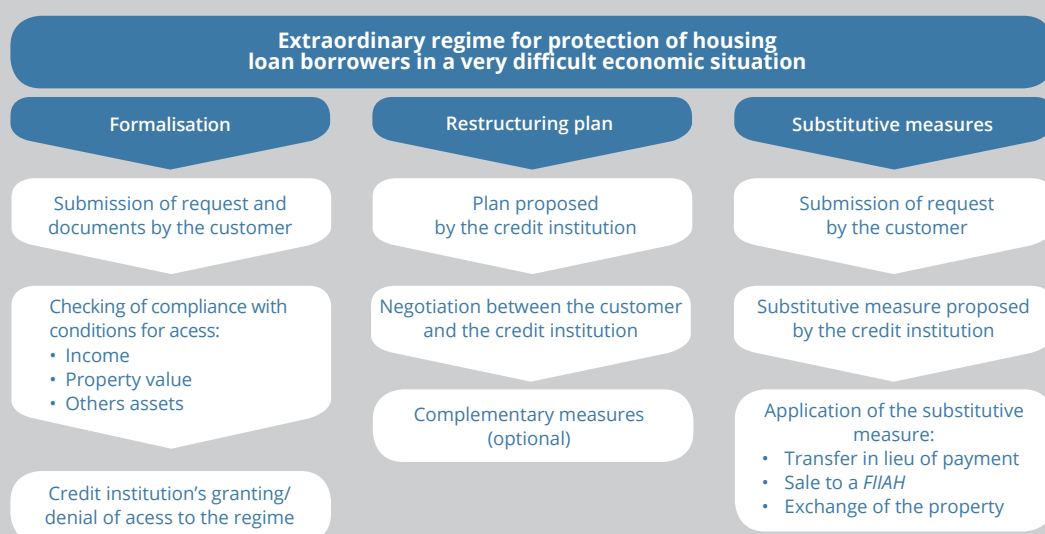
### Customer rights

Following receipt of the household customer's request and until the customer receives the response to the request for access to the extraordinary regime, the credit institution may not initiate a judicial proceeding to foreclose the mortgage. This guarantee remains in force if the request for access is granted.

Household customers who meet the conditions for access to the regime are entitled to a debt restructuring plan proposed by the credit institution. The credit institution must present this proposal within 25 days following communication that access to the regime has been granted.

If a judicial proceeding to foreclose the mortgage is under way, the granting of access to the regime also involves immediate suspension of the procedure, and the credit institution should communicate such fact to the court.

The credit institution is not required to propose a restructuring plan when it verifies that



its implementation is unviable. The credit institution may agree with the household customer to apply complementary measures.

Substitutive measures to foreclosure may also be applied, such as transfer of the mortgaged property *in lieu* of payment, sale of the property to a real estate investment fund for residential rentals (Portuguese acronym: *FIIAH*) or the exchange of the property for a lower value home.

### Conditions for access to the extraordinary regime

As long as they meet the conditions provided for by law, household customers may request access to the extraordinary regime for protection of housing loan borrowers immediately after defaulting on an instalment.

Conditions for access to the extraordinary regime are the following:

1. the household customer is in arrears on a credit agreement to purchase, build or make ordinary or extraordinary maintenance and repairs and improvements to an owner-occupied home.
2. the credit agreement is secured by mortgage on property that is the household customer's owner-occupied and sole home.
3. the property's fiscal value, at the time of the request for access, does not exceed:
  - EUR 100,000 in cases where the mortgaged property has a location coefficient of up to 1.4;
  - EUR 115,000 in cases where the mortgaged property has a location coefficient of 1.5 to 2.4;
  - EUR 130,000 in cases where the mortgaged property has a location coefficient of 2.5 to 3.5.
4. the customer's household is in a very difficult economic situation.

Household customers should immediately inform credit institutions if any of the conditions for access are no longer met.

### Very difficult economic situation

The law defines households as being in a very difficult economic situation when the following conditions are met:

#### Unemployment/Decline in income

Unemployment of at least one of the borrowers, of the spouse or cohabiting partner;  
or

Decline in household's gross annual income of at least 35%, where that decline has taken place in the 12 months before the submission of the request for access.

#### Example

A couple with one child with a gross annual income of EUR 18,000 in 2011 who presents a gross annual income in 2012 of EUR 11,700 has suffered a 35% decline in their income.

#### Debt burden

The household's debt burden for housing credit has increased to at least:

- 50% if the borrower does not have dependents;
- 45% if the borrower has dependents;
- 40% to households with 5 or more elements.

In the calculation of the household's debt burden, credit institutions must consider all credit agreements secured by mortgage on its owner-occupied home, such as, for example, the related loans.

If the request for access is submitted by a guarantor, credit institutions must consider, in addition to the costs of the secured credit, any expenses with mortgage credit agreements in which he/she acts as a borrower:

$$\text{Debt Burden} = \frac{\text{Monthly mortgage credit instalment} \times 12}{\text{Household's gross annual income}} \times 100$$

#### Example

In 2011, with a gross annual income of EUR 18,000 and a monthly housing credit instalment of EUR 632.41, the debt burden would

be 42%. With the gross annual income falling to EUR 11,700, the debt burden rises to 65%.

### Financial assets

The total value of the household's financial assets is less than half its gross annual income.

The financial assets include the value of bank deposits or other financial savings products and securities (shares and bonds for example).

### Property assets

The household's property assets comprise only the property that is their sole, owner-occupied home and, where applicable, garages and non-buildable property, up to the total amount of EUR 20,000.

### Gross annual income

The household's gross annual income does not exceed 14 times the sum of the following:

- 100% of the national minimum wage for each borrower (120% where the household comprises only the borrower);
- 70% of the national minimum wage for each of the household's adults (non-borrowers);
- 50% of the national minimum wage for each under-age member of the household.

### Example

For a household comprising a couple with a child that is under age, in which only one of the parents is borrower, the gross annual income may not exceed EUR 15,554, calculated as follows:

$$14 \times (1.00 \times \text{€}505 + 0.70 \times \text{€}505 + 0.50 \times \text{€}505) = \text{EUR } 15,554$$

For a household comprising only the borrower, the percentage of the value of the national minimum wage to use is 120%, meaning that the gross annual income may not exceed EUR 8,484 ( $14 \times (1.20 \times \text{€ } 505)$ ).

### Documents to be submitted

Household customers must submit the following documents to the credit institution in proof of their eligibility under the conditions for access to this regime:

- the latest proof of personal income tax payment for the borrower's household;
- the latest three salary statements;
- certificate of civil status showing the relationships between the household's members;
- certificate of fiscal residence of the household's members;

## Formalisation

### Default

Submission of request and documentation by the household customer

Checking of compliance with conditions for access by the credit institution

Income

Property value

Other assets

Granting of access to the regime

or

Denial of access to the regime

- ownership certificates issued by the land and commercial register for each household member;
- property registration certificate for the property owned by the household's members;
- written statement by the household customer of compliance with all requirements for implementation of the regime to be applied;
- statement issued by the Institute of Employment and Vocational Training in case of unemployment.

Credit institutions may allow household customers to forgo submission of some of the above-mentioned documents.

After submitting the request for access to the regime or after the credit institution's request, household customers have 20 days to provide the information and submit the required documents to the credit institution.

The issuance of certificates required to access the extraordinary regime is exempt from fees and emoluments.

### Debt restructuring plan

Credit institutions must present a debt restructuring proposal within 25 days of informing household customers that they have met the conditions for access.

The proposal presented must include payment methods for the outstanding sums which are suitable to the financial situation of the customer's household. The restructuring plan must not specify instalments involving a debt burden of over 40% to households with 5 or more elements, 45% if the borrower has dependents, or 50% otherwise.

The restructuring plan encompasses all the outstanding sums: principal outstanding, instalments, other due and unpaid charges and default interest. It may also include consolidation of other bank debt taken by the household customer even where this is not in default.

After presenting the restructuring proposal, credit institutions and household customers have 30 days to negotiate.

If the household customer refuses, does not formalize or pronounce about the credit institution's debt restructuring proposal, they forfeit the right to substitutive measures to foreclosure.

During the execution of the restructuring plan, household customers must prove each year that they still meet the conditions for access to the extraordinary regime. If any of the access conditions are no longer met or the household's economic situation deteriorates, credit institutions may alter the terms of the restructuring plan.

### Description of the restructuring plan

The restructuring plan proposed by credit institutions under the extraordinary regime must include at least one of the following measures:

- granting of a grace period for principal or principal and interest – with a minimum duration of 12 months and a maximum of 48 months;
- definition of a residual value in the repayment plan of up to 30% of the principal outstanding;
- reduction of the spread applicable during the grace period or, in the case of a residual value having been chosen, during a period of up to 48 months, with a minimum spread of 0.25%;
- lengthening of the loan period up to a maximum of 50 years, where the loan is paid off before the oldest borrower reaches 75 years of age;
- granting of an additional independent loan designed exclusively for the full or partial payment of mortgage credit instalments.

The restructuring plan that credit institutions agree with household customers may not worsen the other financial conditions of the credit agreement, with particular regard to the spread. Credit institutions also may not apply fees for renegotiating the contract.

### Non-viability of the restructuring plan

Credit institutions may deem the restructuring plan unviable when its application implies a debt burden for the customer's household

of over 40% to households with 5 or more elements, 45% if the borrower has dependents, or 50% otherwise.

Credit institutions are not required to propose a restructuring plan when they verify that its implementation is unviable.

In this case, within 25 days of informing household customers that they have access to the regime, credit institutions may:

- propose the application of complementary measures; or
- inform the customer that they have the right to substitutive measures.

When the restructuring plan is deemed unviable during its implementation, because the debt burden of the household exceeds one of the limits outlined above, credit institutions may propose the application of complementary measures to the customer. If it does not do so, the customer has the right to substitutive measures.

### Complementary measures

Credit institutions and household customers may agree to adopt complementary measures when any of the following situations occurs:

- implementation of the restructuring plan is unviable as it involves a debt burden for the household of over 40% to households with 5 or more elements, 45% if the borrower has dependents, or 50% otherwise;

- the household customer defaults on three consecutive instalments under the restructuring plan.

The complementary measures to be agreed may be any of the credit agreement restructuring solutions that have not yet been applied, or others, such as a grace period for principal and interest of up to 12 months or the partial reduction of the outstanding principal.

Adopting complementary measures is optional for credit institutions, even where customers request it.

Upon adopting complementary measures, credit institutions may not worsen the credit agreement's financial conditions, such as the spread. Credit institutions also may not apply fees for renegotiating the contract.

### Substitutive measures to foreclosure

Household customers have the right to substitutive measures to foreclosure when:

- the restructuring plan is unviable and the credit institution chooses not to propose complementary measures to the household customer; or
- the household customer defaults on three consecutive instalments under the restructuring plan and does not reach an agreement with the credit institution on adopting complementary measures.

## Restructuring plan

### Access to the regime

Restructuring plan proposed by the credit institution

Negotiation of the restructuring plan

Negotiation of complementary measures

Definition of restructuring plan

The substitutive measures laid down by law are as follows:

- transfer *in lieu* of payment of the mortgaged property;
- sale of the property to a real estate investment fund for residential rentals (Portuguese acronym: *FIIAH*);
- exchange of the property for a lower value home.

The application of a substitutive measure involves the termination of any mortgage foreclosure proceedings under way.

It is up to credit institutions to value the property for the purposes of applying substitutive measures. Valuation costs are borne by the household customers, who have the right to request the valuation report immediately.

### Conditions for applying substitutive measures

Household customers must submit a request to their credit institution within 30 days of the events giving rise to the application of substitutive measures, specifying that they wish those measures to be applied and declaring that the conditions for access to the extraordinary regime are met.

Within 30 days of receiving this request, credit institutions must present a substitutive measure proposal. However, credit institutions are not obliged to do this in the following circumstances:

- when the property in question secures another mortgage as collateral for customer's credit through other credit institutions; or
- when the mortgage guaranteeing the mortgage credit is not first-rank, except where it is pledged to the same credit institution.

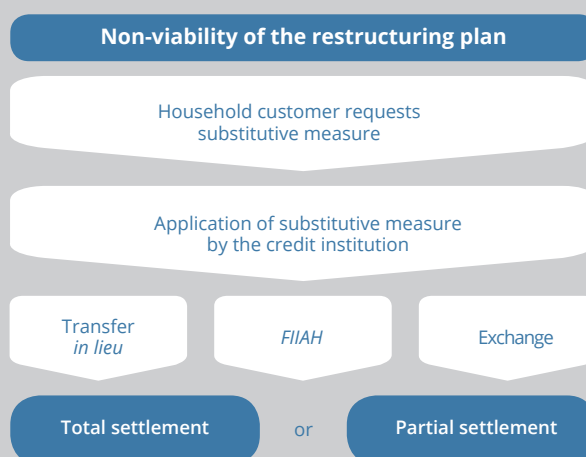
### Transfer *in lieu* of payment

Transfer of the property *in lieu* of payment involves the delivery of the property to the credit institution to settle the debt.

Transfer *in lieu* of payment only settles the entire debt when:

- the sum of the property's valuation, made for the purposes of applying substitutive measures, and the amounts already delivered by way of principal repayment is equal to or more than the value of the initial loan; or
- the valuation value of the property made for the purposes of applying the replacement measures is equal to or more than the principal outstanding.

## Substitutive measure



Where transfer *in lieu* of payment does not settle the entire debt, customers remain obliged to pay the difference between the principal outstanding and the valuation value of the property.

Having agreed transfer *in lieu* of payment, household customers have the right to remain in the property for six months, during which they are entitled to a grace period, paying interest only. To this end, customers must enter into a transfer *in lieu* of payment preliminary contract with the credit institution, and, where requested by the credit institution, grant it irrevocable power of attorney to enter into the transfer *in lieu* of payment definitive contract.

Should household customers refuse the proposed transfer *in lieu* of payment, they forfeit the right to other substitutive measures

#### **Sale of the property to a FIAH**

This measure involves sale of the property to a FIAH fund. The sum paid by the fund is delivered directly to the credit institution, which uses it to settle all or part of the household customer's debt.

- The sale of the property to a FIAH only settles the entire debt when:
- the sum of the amount paid by the FIAH to acquire the property and the amounts delivered by the household customer as principal repayments is equal to or more than the loan amount; or
- the amount paid by the FIAH to acquire the property is equal to or more than the principal outstanding.

Where sale of the property to the FIAH does not settle the entire debt, household customers remain obliged to pay the difference between the principal outstanding and the sale price of the property.

If the household customer refuses to sell the property to the FIAH, they will forfeit the right to another substitutive measure. In any case, the household customer may remain in the property acquired by the Fund as tenant and has an option to repurchase the property.

#### **Property exchange**

This measure allows household customers to exchange their property for another of lower value. With the exchange, the principal outstanding is reduced by the difference in value between the two properties. The property of lower value may belong to the credit institution or a third party interested in the transaction.

Household customers may refuse to exchange properties and, if so, the credit institution must propose one of the other substitutive measures.

### **2.3. Coordination between the OASP and the Extraordinary regime**

The procedure defined in the general regime for out-of-court settlement of arrears situations applies to most credit agreements entered into by household customers, with some exceptions. Meanwhile the extraordinary regime applies only to housing credit agreements for owner-occupied homes.

In certain situations, a housing credit agreement for owner-occupied homes may be included under the OASP and the extraordinary regime at the same time.

The two procedures may overlap when household customers present their request to access the extraordinary regime before entering the housing credit agreement into the OASP or during the execution of that procedure.

In such cases, the credit institution suspends the procedures outlined in the General Regime up to the date the decision over the request for access to the extraordinary regime was communicated to the household customer. The following situations may result:

- (a) If the request for access is accepted, the credit institution must adopt the procedures defined in the extraordinary regime;
- (b) If the request submitted before entry into the OASP is denied and where one of the situations which determine application of this procedure has occurred, the credit institution is required, on the same date on which it communicates the denial of the request to access the extraordinary regime,

to enter the credit agreement into the OASP and communicate this to the household customer;

(c) If the request submitted after entry into the OASP is denied:

(i) during the 30-day period for the assessment and presentation of proposals under the OASP, the credit institution is required to inform the household customer of the denial of the request to access the extraordinary regime. Within the time-frame mentioned, the credit institution

must also inform the customer of the result of their creditworthiness assessment, and where applicable, present them with suitable settlement proposals;

(ii) after the aforementioned 30-day period is over, the credit institution is required to inform the household customer, on the same date, of the denial of the request to access the extraordinary regime and the result of their creditworthiness assessment, presenting also, where applicable, suitable settlement proposals.

### 3. Assistance Network for Indebted Consumers

Household customers who face difficulties in complying with their obligations under credit agreements may use the Assistance Network for Indebted Consumers. This system comprises entities that have a remit of informing, advising and assisting household customers at risk of default or in arrears on credit instalments.

Access to these entities is free of charge. The accredited entities are published on the “Portal do Consumidor” (the Consumer Website) of the Directorate-General for Consumers. The list is also available on the “Portal do Cliente Bancário” (the Bank Customer Website).

#### Scope

The entities making up the Assistance Network for Indebted Consumers have the following remit:

1. to inform the household customers about their rights and duties in pre-arrears situations, under the Out-of-court Arrears Settlement Procedure (OASP) and under the extraordinary regime for protection of debtors in a very difficult economic situation;

2. to assist the household customers in analysing proposals presented by the credit institutions under the Pre-arrears Action Plan (PRAP), the OASP and the extraordinary regime, for example by assessing suitability of the proposals for

the household customers’ financial situation, objectives and needs;

3. to work with the household customers when negotiating with the credit institutions over proposals presented under the PRAP, the OASP and the extraordinary regime;

4. to provide information on indebtedness and over-indebtedness;

5. to support the household customers in assessing their creditworthiness.

These entities may not:

- interact with credit institutions as representatives of or on behalf of household customers, for example when the latter is negotiating the proposals presented under the PRAP and the OASP;
- adopt reconciliation, mediation or arbitration mechanisms to obtain agreements between household customers and credit institutions.

The work of the entities making up the Assistance Network for Indebted Consumers ends if legal proceedings are proposed by the credit institution involved in the credit agreement to which the assistance provided relates. The household customer must inform the entity of this fact.



### **Operating principles of entities in the Assistance Network for Indebted Consumers**

The entities making up the Assistance Network for Indebted Consumers must obey principles of independence, impartiality, lawfulness and transparency.

The assistance provided to household customers must be swift and must follow criteria of high technical rigour.

The process of advising and assisting household customers is confidential. All employees and staff of the entities making up the

assistance network and that participate in the process are subject to professional secrecy.

### **Entities making up the Assistance Network for Indebted Consumers**

The system is made up of legal entities, governed by public and private law, accredited by the Directorate-General for Consumers, following an opinion issued by Banco de Portugal. The request for accreditation is presented through the form provided on the Consumer Website (Executive Order no. 2/2013, of 2 January).





# LEGAL AND REGULATORY FRAMEWORK

1. Legal framework
2. Regulatory framework



# 1. Legal framework

## 1.1. General regime – Decree-Law no. 227/2012 of 25 October 2012

Responsible lending principles should guide the conduct of all credit institutions. The economic and financial crisis affecting most European countries has emphasised the importance of prudent, correct and transparent conduct of business 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 no. 24/96, of 31 July 1996, as amended by Decree-Law no. 67/2003, of 8 April 2003.

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 household 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 no. 144/2009, of 17 June 2009, the household 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 network 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 network 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 network 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 network is free of charge for consumers, which removes any barriers to access this future network.

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 household customers' difficulties in complying with their responsibilities.

Without prejudice to the tasks assigned to the Directorate-General for Consumers with respect to the assistance network, 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 household 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 network to assist household customers in arrears prevention and the out-of-court settlement of arrears situations arising from credit agreements.

#### Article 2

##### Scope

1. This Decree-Law shall hold force over the following types of credit agreements:

- (a) Credit agreements the purpose of which is to purchase, build or renovate first or second owner-occupied or to-let homes, as well as to purchase land to build owner-occupied homes;
- (b) Credit agreements secured by a mortgage on immovable property;
- (c) Credit agreements covered by Decree-Law no. 133/2009, of 2 June 2009, as amended by Decree-Law no. 72-A/2010, of 18 June 2010, except for leasing agreements where an obligation to purchase the object of the agreement is laid down either by the agreement itself or by any separate agreement;
- (d) Credit agreements falling under Decree-Law no. 359/91, of 21 September 1991, as amended by Decree-Laws no. 101/2000, of 2 June 2000, and no. 82/2006, of 3 May 2006, with the exception of agreements where one of the parties undertakes to allow the other the enjoyment of durable goods during a certain time in exchange for a certain sum, and where the right of the lessee to purchase the object of the agreement is envisaged, for an agreed period of time, possibly against payment, as set forth under the agreement;
- (e) Credit agreements in the form of overdraft facilities and where the credit has to be repaid within one month.

2. The provisions of this Decree-Law shall be without prejudice to the regime governing the Assistance Network for Indebted Consumers set forth by Executive Order no. 312/2009, of 30 March.

#### Article 3

##### Definitions

For the purposes of this Decree-Law:

- (a) «Household customer» shall mean a consumer within the meaning laid down in Article 2

- (1) of the Law on Consumer Protection, approved by Decree-Law no. 24/96, of 31 July 1996, as amended by Decree-Law no. 67/2003, of 8 April 2003, intervening as a borrower in a credit agreement;
- (b) «Fees» shall mean the monetary sums payable by household 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 household 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 household customers, such as taxes or payments to records and registrations offices;
- (e) «Credit institution» shall mean any entity empowered to carry out lending operations in Portugal, pursuant to the Legal Framework of Credit Institutions and Financial Companies approved by Decree-Law no. 298/92, of 31 December 1992, as amended by Decree-Law no. 246/95, of 14 September 1995, no. 232/96, of 5 December 1996, no. 222/99, of 22 June 1999, no. 250/2000, of 13 October 2000, no. 285/2001, of 3 November 2001, no. 201/2002, of 26 September 2002, no. 319/2002, of 28 December 2002, no. 252/2003, of 17 October 2003, no. 145/2006, of 31 July 2006, no. 104/2007, of 3 April 2007, no. 357-A/2007, of 31 October 2007, no. 1/2008, of 3 January 2008, no. 126/2008, of 21 July 2008 and no. 211-A/2008, of 3 November 2008, Law no. 28/2009, of 19 June 2009, Decree-Law no. 162/2009, of 20 July 2009, Law no. 94/2009, of 1 September 2009, Decree-Laws no. 317/2009, of 30 October 2009, no. 52/2010, of 26 May 2010 and no. 71/2010, of 18 June 2010, Law no. 36/2010, of 2 September 2010, Decree-Law no. 140-A/2010, of 30 December 2010, Law no. 46/2011, of 24 June 2011, and Decree-Laws no. 88/2011, of 20 July 2011, no. 119/2011, of 26 December 2011 and no. 31-A/2012, of 10 February 2012 (Legal Framework of Credit Institutions and Financial Companies);
- (f) «Obligations under the credit agreement» shall mean the principal repayment or interest payment obligations taken on by household 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 household 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. Household 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 credit agreements in which they are lenders and adopt the necessary measures and procedures, in accordance with the provisions of Articles 9 to 11, for preventing arrears on obligations under those credit 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****Household customer assistance**

1. Household 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 Assistance Network for Indebted Consumers, under the terms and conditions defined in this Decree-Law.

2. Credit institutions shall provide household 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 household 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 household 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 imposing fees**

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 household customer any expenses, as defined in Article 3 (d), provided that the relevant documentary justification is presented.

**CHAPTER II****Management of pre-arrears situations****Article 9****Credit monitoring**

1. Without prejudice to the adoption of other appropriate measures and procedures for the permanent and systematic monitoring of credit agreements, credit institutions shall:

- (a) Implement IT systems that identify, in a timely manner, the occurrence of facts which indicate a deterioration in the household 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 household customer's creditworthiness;
- (c) Establish the procedures to be adopted by their front-office employees when they are



informed personally by the household customer of facts which indicate a pre-arrears situation.

2. For the purposes of this Decree-Law, default as recorded in Banco de Portugal's Central Credit Register, the return and prohibition of the use of cheques and the corresponding insertion in the List of Cheque Defaulters, debts to the tax and social security authorities, insolvency, legal proceedings and disputes, attachment of bank accounts and arrears on other credit agreements concluded with the credit institution shall be considered, inter alia, as signs of deterioration in the household customer's creditworthiness.

#### **Article 10**

##### **Assessment and presentation of proposals**

1. Whenever the credit institution detects signs of deterioration in the household customer's creditworthiness in regard to the credit agreement or the household customer informs it of facts indicating a pre-arrears situation, it shall undertake due diligence to assess those signs, evaluating the existence of an actual pre-arrears situation and its extent.

2. For the purposes of the foregoing paragraph, the credit institution shall assess the household customer's creditworthiness and it may request the strictly necessary and appropriate information and documents for that purpose.

3. The household customer shall provide the information and documents requested by the credit institution within 10 days.

4. When the credit institution, following the assessment referred to in paragraph 2 above, concludes that the household customer has the financial capacity to repay the principal and pay the interest due on the credit agreement, in particular through the renegotiation of the credit agreement's terms and conditions or credit consolidation, it shall present the household customer with one or more proposals suitable to his financial situation, goals and needs.

5. The proposals mentioned in the foregoing paragraph shall be presented to the household customer via durable medium and credit institutions are obliged to observe the information requirements laid down in the specific legislation and regulations.

6. Without prejudice to the provisions of Article 9 (2), Banco de Portugal shall publish a Notice defining the criteria to assess the household customer's creditworthiness and its deterioration, to be used by credit institutions for the purpose of this Decree-Law.

#### **Article 11**

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

1. Credit institutions shall draw up and implement a pre-arrears action plan (PRAP), which shall detail the procedures and measures adopted concerning the monitoring of credit agreements and the management of pre-arrears 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 household customers' creditworthiness in regard to the credit agreement;
- (c) The procedures developed to gather, handle and analyse the information on household customers in an actual pre-arrears situation;
- (d) The procedures implemented for contacting household customers in an actual pre-arrears situation, including the time-frame for making the first contact after the facts mentioned in (b) above are discovered, which shall not exceed 10 days;
- (e) The alternatives that may be presented to household customers in an actual pre-arrears situation;
- (f) 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;

- (g) The training plans for the employees with responsibilities under the PRAP;
  - (h) 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. Banco de Portugal shall publish a Notice defining the relevant facts and procedures, under the terms of and for the purposes laid down in paragraphs 2 (a), (b), (c) and (d).

## 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 household 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 household customer of that fact, detailing the outstanding amounts, and undertake due diligence to ascertain the reasons underlying the arrears situation.

###### Article 13

###### Initial phase

1. The credit institution shall initiate the OASP, in case arrears persists, between the 31<sup>st</sup> and the 60<sup>th</sup> 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 household customer is in arrears on obligations under the credit agreement and requests, via durable medium, to enter into the OASP. For all purposes, the household customer is deemed to have entered into the OASP on the date on which the credit institution receives the aforementioned request;
- (b) The household customer enters into arrears after having informed the credit institution about the existence of a pre-arrears situation. For all purposes, that customer is deemed to have entered into the OASP on the date of default on the relevant obligation.

3. When the household 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 household 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 household 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 household 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 household customer's creditworthiness and it may request the 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 household customer shall provide the information and documents requested by the credit institution within 10 days.

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

- (a) Inform the household customer of the result of the assessment undertaken under the terms of the foregoing paragraphs, when it verifies that the household 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 household customer with one or more settlement proposals suitable to his/her financial situation, goals and needs, when it concludes that the household customer has the financial capacity to repay the principal and 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. When presenting proposals to household customers, credit institutions shall observe the information requirements laid down in the specific legislation and regulations.

## Article 16

### Negotiation phase

1. If the household customer refuses the proposals presented and the credit institution considers that other suitable alternatives to the household customer's situation exist, it shall present a new proposal.

2. When the household customer proposes amendments to the initial proposal, the credit institution shall communicate its acceptance or refusal, via durable medium, within 15 days, and may also present a new proposal, observing the provisions in Article 15 (5).

3. The household 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 91<sup>st</sup> day after the beginning of the OASP, unless the parties agree in writing to extend the procedure; or
- (d) Upon the household 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 household 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 household 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 household customer that have a proven significant impact on his/her financial capacity, whereby maintaining the OASP is no longer enforceable;

- (d) The household 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 household customer commits acts which may jeopardise the credit institution's rights or guarantees;
- (f) The household 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 household customer to the proposal presented, without prejudice to Article 16 (2).

3. The credit institution shall inform the household 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

### Household customer guarantees

1. From the date the household 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 household 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 household customers in the various phases of the OASP;
- (b) The procedures developed to gather, handle and analyse the information on household customers;

- (c) The alternatives to be proposed to household 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 personal files via durable medium for the household customers who have entered into the OASP, which shall contain all the relevant documentation under this procedure, namely the communications between the parties, the assessment report on the customer's creditworthiness and the proposals presented to the household customer.
2. Credit institutions shall retain the personal files for five years from termination of the OASP.

#### **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 involving the borrower.

## **SECTION II**

### **Mediation**

#### **Article 22**

##### **Mediation of arrears situations**

1. Without prejudice to Decree-Law no. 144/2009, of 17 July, where the parties have not reached an agreement that allows the arrears situation to be settled, the household 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 household 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 household 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 household customer is declared as insolvent;
- (b) Seizure or preventive seizure of the household 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 household 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 household 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 Assistance Network for Indebted Consumers

### SECTION I Entities comprising the assistance network

#### Article 23

##### Accreditation

The Assistance Network for Indebted Consumers is comprised of private or public legal

persons, who fulfil the conditions set out in this Chapter and are accredited by the General Directorate for Consumers, following an opinion of Banco de Portugal.

#### 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 household 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 household 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

Assistance Network for Indebted Consumers shall be regulated by an executive order of the Government members responsible for finance, justice and consumer protection.

## SECTION II

### Activity of entities comprising the network

#### Article 27

##### Sphere of activity

1. Entities comprising the Assistance Network for Indebted Consumers shall be entrusted with informing, advising and assisting household 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 Assistance Network for Indebted Consumers shall be entrusted, in particular, with:

- (a) Informing household customers in pre-arrears or arrears situations on their rights and duties;
- (b) Assisting household customers with respect to the analysis of proposals presented by credit institutions under the PRAP and the OASP, notably regarding their suitability to the household customers' financial situation, goals and needs;
- (c) Assisting household 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 household 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 household 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 household customers before credit institutions,

notably in the negotiation of the proposals presented under the PRAP and the OASP; and

- (b) Adopt mechanisms for conciliation, mediation or arbitration with a view to obtaining an agreement between household customers and credit institutions.

5. Intervention by entities comprising the Assistance Network for Indebted Consumers shall cease as soon as they are notified that legal proceedings related to the credit agreement at stake have been brought against the household customer.

6. For the purposes of the foregoing paragraph, the household 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 Assistance Network for Indebted Consumers, under paragraph 2 (c).

7. The household customer shall inform the entity to which he/she has resorted under the Assistance Network for Indebted Consumers whenever legal proceedings related to the credit agreement have been brought against him/her.

#### Article 28

##### Charges

Access to the assistance network shall be free of charge for household customers.

#### Article 29

##### Operating principles

1. Entities comprising the Assistance Network for Indebted Consumers shall ensure observance of the principles of independence, impartiality, legality and transparency throughout the procedure.

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

#### Article 30

##### Professional secrecy

1. The procedure of informing, advising and assisting household 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 assistance network.

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 Assistance Network for Indebted Consumers may also carry out financial education activities, in order to improve financial knowledge consumers'.

## **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.

#### **Article 34**

##### **Report of statistical data on the Assistance Network for Indebted Consumers**

1. The entities comprising the Assistance Network for Indebted Consumers shall provide to the General Directorate for Consumers a quarterly statistical data report on the treatment of requests for information, assistance and monitoring of household 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 Assistance Network for Indebted Consumers. The entities comprising the Assistance Network for Indebted Consumers 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. Infringement by credit institutions of the provisions of Article 7 (1), Articles 8 and 9, Article 10 (2), (4) and (5), Articles 11 and 13, Article 14 (1) to (4), Article 15 (1), (2), (4) and (5), Article 16 (1) and (2), Article 17 (2) and (3), Articles 18 to 21 and Article 33 of this Decree-Law shall constitute an offence punishable under Article 210 (m) and Article 212 of the Legal Framework of Credit Institutions and Financial Companies.

2. Negligence shall be punishable, with the applicable penalty limits 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. Banco de Portugal is the authority responsible for monitoring compliance by credit institutions with the provisions of this Decree-Law, and for the enforcement, where appropriate, of the applicable penalties.
2. The enforcement of the applicable penalties shall comply with the process set out by the Legal Framework of Credit Institutions and Financial Companies.

### 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. Household 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 household 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. Household 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.

### 1.2. Extraordinary regime – Law no. 58/2012 of 9 November 2012 (as amended by Law no. 58/2014 of 25 August 2014)

#### Establishes an extraordinary regime for protection of housing loan borrowers in a very difficult economic situation

The Assembly of the Republic, under the provisions laid down in Article 161 (c) of the Constitution, decrees the following:

## CHAPTER I

### Object and scope

#### Article 1

##### Object

This Law establishes an extraordinary regime for protection of housing loan borrowers in a very difficult economic situation.

#### Article 2

##### Scope

1. The regime established in this Law covers default on credit agreements to purchase, build or renovate owner-occupied homes by households in a very difficult economic situation and only when the property concerned is their sole dwelling and is covered by a mortgage.
2. Guarantors who are called to comply with the obligations of principal borrowers and fulfil the conditions laid down in Article 5, considering the expenses arising from the credit secured by it, as well as possible expenses associated with its own housing credit agreements, may require access to the measures provided in Chapter II of this Law.

(Amended by Law no. 58/2014 of 25 August 2014)

3. The regime established in this Law is binding on lending credit institutions, in cases where all criteria laid down in Article 4 are met.

(Renumbered by Law no. 58/2014 of 25 August 2014)

4. Credit institutions may voluntarily decide to apply, in part or in full, the regime established in this Law to other housing loan borrowers, in those cases where at least one of the criteria laid down in Article 4 is not met.

(Renumbered by Law no. 58/2014 of 25 August 2014)

5. Credit institutions may offer more favourable conditions to housing loan borrowers than those provided for in this Law.

(Renumbered by Law no. 58/2014 of 25 August 2014)

### Article 3

#### Definitions

For the purposes of this Law:

(a) «Household» shall mean:

- (i) A married/legally cohabiting couple (pursuant to Article 2020 of the Civil Code) and their first-degree relatives in the direct ascending or descending line by blood and/or marriage, as long as they live together in the same house and share expenses;
- (ii) A single, widowed, divorced or legally separated person and their first-degree relatives in the direct ascending or descending line by blood and/or marriage, as long as they live together in the same house and share expenses;

(b) «Partial grace period» shall mean the deferred payment, for the agreed period, of principal, as set out in the housing loan agreement;

(c) «Full grace period» shall mean the deferred payment, for the agreed period, of instalments (principal and interest), as set out in the housing loan agreement;

(d) «Location coefficient» shall mean the housing location coefficient, in accordance with Article 42 of *Código do Imposto Municipal sobre Imóveis* (Municipal Property Tax Code);

(e) «Fees» shall mean payments made to credit institutions by customers for services

provided by the former within the scope of their business or outsourced to third parties;

(f) «Related loans» shall mean credit agreements secured by mortgage either in full or in part on immovable property that simultaneously secures a housing loan agreement with the same credit institution;

(g) «Housing loans» shall mean credit agreements used to purchase, build or make ordinary or extraordinary maintenance and repairs and improvements to owner-occupied homes;

(h) «REIFRR» shall mean real estate investment funds for residential rentals, subject to the special regime set out in Articles 102 to 104 of Law no. 64-A/2008 of 31 December 2008;

(i) «Owner-occupied home» shall mean the centre of family life for borrowers or borrowers and their household;

(j) «Financial assets» shall mean the basket of securities as defined in Article 1 of *Código dos Valores Mobiliários* (Securities Code), bank deposits or other financial savings products;

(k) «Restructuring plan» shall mean the plan for restructuring the borrower's debt, whether due or otherwise, concerning a housing loan agreement and negotiated and approved according to the provisions laid down in Section III of Chapter II of this Law, as well as amendments resulting from the adoption of complementary measures;

(l) «Household gross annual income» shall mean all income received in the course of one year by a household, including social benefits, gross of charges;

(m) «Debt burden» shall mean the ratio of a monthly instalment of principal plus interest paid by households to one-twelfth of their gross annual income.

(n) «Numerous families» shall mean the households with five or more people.

(Added by Law no. 58/2014 of 25 August 2014)

## Article 4

### Applicability requirements

The regime established in this Law covers default on housing loan agreements, provided all of the following conditions are met:

- (a) The housing loan is secured by mortgage on the household's owner-occupied home and sole dwelling, in relation to which the loan was granted;
- (b) The borrower's household is in a very difficult economic situation, in accordance with Article 5;
- (c) The immovable property's tax value, at the time of the request for access, does not exceed:

(Amended by Law no. 58/2014 of 25 August 2014)

- (i) EUR 100,000 in cases where the mortgaged property has a location coefficient of up to 1.4;
- (ii) EUR 115,000 in cases where the mortgaged property has a location coefficient of 1.5 to 2.4;
- (iii) EUR 130,000 in cases where the mortgaged property has a location coefficient of 2.5 to 3.5;

(Amended by Law no. 58/2014 of 25 August 2014)

- (d) (Repealed by Law no. 58/2014 of 25 August 2014)

## Article 5

### Households in a very difficult economic situation

1. For the purposes of this Law, a household shall be deemed to be in a very difficult economic situation provided all of the following conditions are met:

- (a) At least one of the borrowers, their spouse or cohabiting partner is unemployed or the household's gross annual income has declined by at least 35%;
- (b) The household's debt burden with the housing loan has increased to at least:

- (i) 45% for households with dependents;
- (ii) 50% for households with no dependents;
- (iii) 40% to households considered numerous families;

(Added by Law no. 58/2014 of 25 August 2014)

- (c) The value of the financial assets of all household members is less than half of the household's gross annual income;
- (d) The household's real estate assets comprise only:

- (i) The owner-occupied home; and
- (ii) A garage and non-buildable immovable property, up to a total amount of EUR 20,000;

- (e) The household's gross annual income does not exceed 14 times the ceiling calculated on the basis of the household composition and corresponding to the overall sum of the following parts:

(Amended by Law no. 58/2014 of 25 August 2014)

- (i) For the borrower: 100% of the national minimum wage value or 120% where the household comprises only the applicant;
- (ii) For each of other adult household members: 70% of the national minimum wage value;
- (iii) For each underage household member: 50% of the national minimum wage value.

2. For the purposes of Article 5 (1) (a), household members shall be deemed to be unemployed when, having been employed or self-employed, are registered as job seekers.

(Amended by Law no. 58/2014 of 25 August 2014)

3. For the purposes of Article 5 (1) (a), the decline in income is relevant when it:

- (a) Results from work done for an entity where none of the household members have a qualifying holding, as defined in Article 13 of the Legal Framework of Credit Institutions and Financial Companies (*Regime Geral das*

*Instituições de Crédito e Sociedades Financeiras – RGICSF);*

(b) Occurred over a 12-month period before the request for access.

(Amended by Law no. 58/2014 of 25 August 2014)

4. For the purposes of Article 5 (1) (b), the household's debt burden is calculated taking into account all expenses arising from credit agreements secured by mortgage on the borrower's owner-occupied home, regardless of their purpose.

(Added by Law no. 58/2014 of 25 August 2014)

## Article 6

### Documentation

1. Other than as provided for the following paragraph, borrowers prove that they meet the requirements set out in Articles 4 and 5 by delivering the following documents to the credit institution:

- (a) The latest proof of personal income tax payment for the borrower's household, issued by the Tax and Customs Authority, and the last three salary statements;
- (b) Certificate of civil status, with evidence on the status of and connection between each household member;
- (c) Certificate of tax residence of household members;
- (d) Ownership certificates issued by the land and commercial register for each household member;
- (e) Property registration certificate for immovable property owned by household members;
- (f) Written statement by the borrower of compliance with all requirements for implementation of the regime set out in this Law.

2. The unemployment situation referred to in Article 5 (2) must be proven by the borrower by presenting a statement issued by the Institute for Employment and Vocational Training.

3. The borrower must immediately inform the credit institution should any of the requirements envisaged in Articles 4 and 5 cease to apply.

4. The proof and information requirements set out for the borrower in this Article are applicable, as appropriate, to any guarantor in a very difficult economic situation.

5. Credit institutions may exempt household customers from delivering all or part of the documents mentioned in Article 6 (1) (2).

(Added by Law no. 58/2014 of 25 August 2014)

6. For the purposes of this Law, the issuance of the certificates mentioned in this article is exempt from fees and emoluments.

(Added by Law no. 58/2014 of 25 August 2014)

## CHAPTER II

### Procedure and protection measures

#### SECTION I

#### General protection measures

### Article 7

#### Modalities

1. In case of default on a housing loan agreement covered by the regime set out in this Law, borrowers are entitled, in accordance with the following subparagraphs, to one or several protection measures:

- (a) Restructuring plan of debt resulting from the housing loan agreement;
- (b) Complementary measures to the restructuring plan;
- (c) Substitutive measures to foreclosure.

2. Unless the credit institution and the borrower agree otherwise, the substitutive measures laid down in Article 7 (1) (c) are subsidiary to the restructuring measures laid down in subparagraph (a), while the complementary measures laid down in subparagraph (b) are applied on a voluntary basis.

## **SECTION II**

### **Procedure for access to the borrowers' protection regime**

#### **Article 8**

##### **Access to the protection regime**

1. Access to the regime established in this Law may be obtained by the borrower by applying to the credit institution that has granted the housing loan.
2. The application referred to in the foregoing paragraph may be submitted before the deadline to challenge the foreclosure concerning the housing loan agreement and related loans or, if no other creditors have submitted claims, the foreclosure sale of the immovable property covered by the mortgage.
3. Within 15 days of either receipt of the application mentioned in paragraph 1 or delivery of documentation in accordance with paragraph 2, the credit institution must inform the borrower in writing, stating grounds, of the findings of the procedure used to verify compliance with the applicability requirements laid down in Articles 4 and 5 and, consequently, if the request to access the regime established in this Law has been granted or rejected.
4. The borrower must provide all information and deliver all documents requested by the credit institution for the purposes of this article within 20 days following their application or the request by the credit institution.

(Amended by Law no. 58/2014 of 25 August 2014)

#### **Article 9**

##### **Effects**

1. As soon as the borrower submits an application as laid down in Article 8 (1) together with the documentation referred to in Article 6 (1), the lending credit institution will be prevented from foreclosing the mortgage securing the credit until the protection measures laid down in this Law cease to apply.

2. The granting of access to the regime established in this Law, as laid down in Article 8 (3), has the following effects:

- (a) Notwithstanding the provisions of Article 15, it requires credit institutions to propose a restructuring plan to the borrower;
  - (b) It automatically suspends the foreclosure procedure concerning the housing loan agreement;
  - (c) It requires credit institutions to report that granting of access to the court in which the foreclosure is being dealt with.
3. Without prejudice to the credit institution's obligation, the borrower may also report to the court as laid down in Article 9 (2) (c).

## **SECTION III**

### **Plan to restructure housing loan debts**

#### **Article 10**

##### **Restructuring plan**

1. The credit institution shall propose to the borrower a plan to restructure the debt resulting from the housing loan agreement, which must include the implementation of at least one of the following measures:
  - (a) Granting of a grace period for the payment of monthly instalments by the borrower or establishment of a residual value in the repayment table;
  - (b) Extension of the loan repayment period;
  - (c) Reduction of the applicable spread during the grace period;
  - (d) Granting of an autonomous additional loan to temporarily support the payment of the housing loan instalments.
2. The restructuring plan proposal must be presented to the borrower within 25 days of approval of the application for access and should include payment solutions for outstanding amounts taking into account the household's financial situation, with the purpose of preventing or terminating default on

the housing loan agreement, and should not entail a debt burden for the household exceeding the limits established in Article 5 (1) (b).

3. The restructuring plan covers all amounts, whether due or otherwise, owed by the borrower under the housing loan agreement, namely instalments comprising principal, interest and fees.

4. The credit institution and the borrower may also agree on the consolidation of all or part of the bank debt incurred by the borrower.

5. The borrower must not refuse a consolidation of the housing loan and related loans nor refuse that the mortgage securing the related loans be the same as that securing the housing loan.

6. The consolidation of loans related to other agreements or other loans laid down in paragraphs 3 and 4 may be autonomous, according to the terms agreed between the credit institution and the borrower.

7. The adoption of the restructuring plan or any complementary measures must not, under any circumstance, lead to the revision or amendment of the remaining financial terms and conditions of the housing loan agreement, namely by increasing the spread and other credit charges, nor make it possible for the credit institution to charge additional fees for the renegotiation of the agreement, excluding those which, strictly and demonstrably, correspond to expenses accruing to third parties due to the implementation of such measures.

#### **Article 11**

##### **Partial grace period and residual value regime**

1. The partial grace period has a duration of between 12 and 48 months.
2. Alternatively or in addition to the partial grace period, the restructuring plan may establish a residual value of up to 30% of the outstanding principal, which is paid in the last instalment of the housing loan agreement.
3. The measures laid down in paragraphs 1 and 2 take effect from the date of entry into

force of the restructuring plan, although they may take effect as soon as instalments become overdue, provided that the borrower pays off any outstanding interest.

#### **Article 12**

##### **Limits to an extension of the repayment period**

1. The restructuring plan may provide for an extension of the repayment period for a housing loan for up to 50 years after the agreement has been signed.
2. The extension of the repayment period must provide for the loan to be paid off by the time the oldest borrower is 75.

#### **Article 13**

##### **Reduction of the spread applicable during the grace period**

1. The restructuring plan may provide for a reduction in the spread by up to 0.25%, applicable during the grace period or over a 48-month period, where the residual value regime referred to in Article 11 (2) is chosen.
2. In the situations mentioned in the foregoing paragraph, the agreed intervals for interest repayments continue to apply.

#### **Article 14**

##### **Granting of an additional loan**

1. The restructuring plan may provide for an additional loan to the borrower whose borrowed capital is to be used solely to repay, in full or in part, the instalments of the housing loan.
2. The borrowed capital is repaid directly and as the need arises to pay each instalment.
3. The additional loan is subject to the same contractual terms and conditions as the loan that is being restructured, namely as regards the interest rate, the interest rate regime and the collateral.
4. The additional loan amount and repayment table must be established taking into account the borrower's household commitments and disposable income, and may include an initial

grace period and a longer repayment period than was originally expected for the housing loan agreement to be restructured.

### **Article 15**

#### **Non-viability**

1. In situations where, even under the measures laid down in Article 11, 12 and 13, the borrower's compliance with the restructuring plan is presumed to be unviable in accordance with paragraph 2, the credit institution is not required to propose a restructuring plan to the borrower.

2. For the purposes of this Law, compliance with a restructuring plan is presumed to be unviable when this implies a debt burden for the borrower's household exceeding the limits established in Article 5 (1) (b).

3. In the case mentioned in paragraph 1, the credit institution may, within the deadline set out in Article 10 (2), propose a restructuring plan to the borrower providing for complementary measures in accordance with Article 19 (2).

4. If the credit institution chooses not to propose a restructuring plan in accordance with paragraphs 1 to 3, it is required, within the deadline set out in Article 10 (2), to notify the borrower in writing of:

- (a) The decision not to propose a restructuring plan; and
- (b) The acceptance of substitutive measures to foreclosure, as laid down in Section IV of this chapter.

### **Article 16**

#### **Approval of the restructuring plan**

1. After submitting the proposal, in accordance with Article 10 (1) and (2), the credit institution and the borrower shall have 30 days to negotiate and agree on changes to the restructuring plan proposed by the credit institution.

2. If the borrower refuses, does not sign or does not pronounce about the restructuring plan proposed by the credit institution, and

whose compliance is deemed to be viable in accordance with Article 15 (2), he/she loses the right to request substitutive measures, except if the credit institution maintains its intention to implement such measures.

(Amended by Law no. 58/2014 25 of August 2014).

### **Article 17**

#### **Credit institution's obligations over the execution of the restructuring plan**

Over the execution of the restructuring plan, the credit institution shall not, for default prior to the agreed restructuring plan:

- (a) Terminate the housing loan agreement;
- (b) Institute legal (enforcement or declaratory) proceedings, in order to obtain satisfaction for its claim.

### **Article 18**

#### **Annual revision of the restructuring plan**

1. During the term of this Law, the borrower must prove compliance, on an annual basis, with the applicability requirements laid down in Article 5.

2. If the applicability requirements envisaged in Article 5 cease to apply, the credit institution may decide on a revision of the restructuring plan, provided that this revision does not entail a debt burden exceeding the limits established in Article 5 (1) (b).

3. Where a deterioration in the economic situation of the borrower's household results in an increase in their debt burden from the housing loan, the credit institution must propose, on the borrower's request, a revised restructuring plan that does not entail a debt burden exceeding the limits established in Article 5 (1) (b).

4. The revisions mentioned in the foregoing paragraph shall provide for solutions that are appropriate to the household's financial situation and likely to prevent default on the housing loan agreement in the future.

**Article 19****Complementary measures**

1. The credit institution and the borrower must open negotiations aimed at the adoption of complementary measures to the restructuring plan, if any of the following situations occurs:

- (a) In the course of its execution, the restructuring plan proves to be unviable, in accordance with Article 15 (2);
- (b) The borrower fails to pay three consecutive instalments according to the restructuring plan.

2. Complementary measures to the restructuring plan may be any of those envisaged in Article 10 (1) that have not yet been implemented, or other measures, namely a grace period of up to 12 months or the partial reduction in principal repayable.

3. The negotiations referred to in paragraph 1 may be opened at any time, at the request of either the borrower or the credit institution, and should be concluded within 30 days following receipt of the request.

4. The adoption of complementary measures envisaged in this Article is optional for credit institutions, even if requested by the borrower and if the restructuring plan proves to be unviable should they fail to be adopted.

**SECTION IV****Substitutive measures to foreclosure****Article 20****Application of substitutive measures**

1. For borrowers covered by the regime laid down in this Law, substitutive measures to foreclosure are applicable if any of the following situations occur:

- (a) The credit institution notifies the borrower of its decision not to propose a restructuring plan;
- (b) In the cases laid down in Article 16 (2);
- (c) The parties have not agreed, within the applicable deadline, on the adoption of

complementary measures, in accordance with Article 19.

2. Where paragraph 1 applies, the credit institution may only refuse the application of substitutive measures when:

- (a) The mortgage mentioned in Article 4 (1) (a) is not a first-rank mortgage, except where it is pledged to the same credit institution to secure a housing loan granted to the same borrower;
- (b) The immovable property covered by this mortgage is simultaneously pledged to any other mortgage securing other loans granted by other financial institutions to the borrower.

3. On the date of implementation of the substitutive measure, the immovable property shall be:

- (a) Free of liens or charges, including total or partial rental agreements, gratuitous loan agreements or other types of transfer, whether in return for payment or free of charge, with full vacant possession. For this purpose, real collateral on the immovable property pledged to the lending credit institution shall not be deemed as liens or charges;
- (b) Covered by a valid habitation certificate;
- (c) Fit for its intended purpose and in a good state of repair.

4. On the date of implementation of the substitutive measure, the land register documents, the registration documents in the Tax and Customs Authority and the habitation certificate must be brought in conformity with each other.

5. When it is not possible to immediately enforce the substitutive measure, solely due to non-compliance with paragraphs 3 and 4, and the borrower does not remove the cause of non-compliance within 60 days, the substitutive measure process shall be terminated without the application of any other measure.

(Amended by Law no. 58/2014 of 25 August 2014)



## Article 21

### Types of substitutive measures

The substitutive measures that are applicable to the cases laid down in the foregoing article are:

- (a) The transfer *in lieu* of payment of the mortgaged property;
- (b) The sale of the immovable property to a REIFRR, promoted and agreed upon by the credit institution, with or without rental and the option by the borrower for repurchase, and deliver of the proceeds of the sale to the credit institution, thereby settling the debt;
- (c) The exchange for a lower value home, whereby the loan agreement is revised and the value of the principal outstanding is reduced by the difference between the values of both homes.

## Article 22

### Definition of the substitutive measure

1. The borrower must present to the credit institution, within 30 days from the time when the situations mentioned in Article 20 (1) occurred, a written request for the application of substitutive measures, declaring the fulfilment, on that date, of the applicability requirements laid down in Articles 4 and 5 of this Law.
2. Within 30 days from receipt of the request laid down in the foregoing paragraph, the credit institution shall propose to the borrower one of the substitutive measures laid down in the foregoing article.
3. In response to the credit institution's proposal mentioned in the foregoing paragraph, the borrower may, without prejudice to the right to another substitutive measure, refuse:
  - (a) The exchange for a lower value home;
  - (b) The rental of the immovable property, in case the credit institution proposes its sale to a REIFRR.
4. Upon refusal by the borrower, in accordance with the foregoing paragraph, the credit institution must propose one of the remaining

substitutive measures, or the same measure minus the section refused by the borrower.

5. The borrower either accepts the credit institution's proposal mentioned in the foregoing paragraph or definitively forfeits the right to the application of substitutive measures.
6. All statements by the borrower and the credit institution, as laid down in paragraphs 3 to 5, must be communicated to the other party within 15 days of receipt.

## Article 23

### Effects of substitutive measures

1. The application of the substitutive measures laid down in Article 21 has the following effects: (Amended by Law no. 58/2014 of 25 August 2014)

- (a) In the case of transfer *in lieu* of payment, the debt is repaid in full where:
  - (i) The sum of the current valuation of the immovable property, for purposes of transfer *in lieu* of payment, and principal repayments is, at least, equal to the value of the principal initially borrowed, plus any additional capitalisation; or
  - (ii) The value of the current valuation of the immovable property, for purposes of transfer *in lieu* of payment, is equal to or greater than the principal outstanding;
- (b) In the case of sale of the immovable property to a REIFRR, the debt is repaid in full where:
  - (i) The sum of the value paid by the REIFRR to purchase the immovable property and the principal repaid by the borrower is, at least, equal to the value of the principal initially borrowed, plus any additional capitalisation; or
  - (ii) The amount paid by the REIFRR to purchase the immovable property is equal to or greater than the principal outstanding;
- (c) In the case of exchange for another home, the revision of the housing loan agreement in accordance with Article 27;

(d) Termination of legal proceedings to charge amounts due under the housing loan agreement.

2. Where the transfer of the property, carried out in accordance with Article 23 (1) (a) and (b), does not extinguish the debt in full, only the debt regarding the principal outstanding shall remain. The contractual terms and conditions applicable to the loan covered by this measure shall also apply to the principal outstanding.

3. The remaining debt mentioned in the foregoing paragraph shall not benefit from further real or personal collateral.

#### Article 24

##### Transfer *in lieu* of payment

For the purposes of compliance with the borrower's obligations under the home loan agreement, transfer *in lieu* of payment of the mortgaged property is made when the ownership of the property is transferred to the credit institution.

#### Article 25

##### Deferment of surrender of the property

1. Upon deciding on the transfer *in lieu* of payment, borrowers have the right to obtain deferment of surrender of the immovable property for an additional six-month period, during which they may use and enjoy the property.

2. In order to exercise this right, the borrower must enter into a promissory contract of transfer *in lieu* of payment with the credit institution and, where requested by the credit institution, grant it an irrevocable power of attorney to enter into the definitive contract.

3. During the period of deferment, the borrower is allowed a grace period on the principal and, therefore, is only obliged to pay interest due.

4. In case of late payment as laid down in the foregoing paragraph, the borrower automatically loses the right to defer the transfer *in lieu* of payment and the definitive contract may be concluded.

5. Paragraph 1 is not applicable to borrowers that have defaulted on more than three

consecutive instalments after the application of complementary measures.

#### Article 26

##### Sale of the property to a REIFRR

1. The credit institution under the obligation to apply substitutive measures, in accordance with the regime laid down in this Law, may propose the following alternative to the borrower:

(a) The borrower transfers the ownership of the property to a REIFRR for the price established in the applicable legislation and the mortgage securing the housing loan is thereby simultaneously terminated;

(b) The REIFRR pays to the lending credit institution the price established under a mandate granted by the borrower;

(c) The borrower has the right to remain in the property as a lessee, in accordance with the legislation applicable to REIFRR and in accordance with the borrower's rights laid down in the foregoing article.

2. The borrower may refuse to remain as a lessee of the REIFRR, but cannot refuse to sell the property to the REIFRR as transfer *in lieu* of payment.

#### Article 27

##### Home exchange

1. The credit institution under the obligation to apply substitutive measures, in accordance with the regime laid down in this Law, may also propose to the borrower the exchange of the mortgaged home for a lower value home belonging to the credit institution or a third party interested in the transaction.

2. The home exchange shall be accompanied by an agreement replacing the housing loan agreement or revising the existing contractual terms in order to facilitate borrowers' compliance with their obligations.

3. The difference between the values of the exchanged homes shall be deducted from the principal outstanding.

4. The borrower may, without prejudice to the right to another substitutive measure, refuse the exchange of homes as laid down in this Law.

5. In the case of refusal by the borrower in accordance with the foregoing paragraph, the credit institution shall propose to the borrower one of the remaining substitutive measures.

### CHAPTER III General provisions

#### Article 28

##### Insurance

1. The application of this Law shall not affect insurance agreements securing the payment of the housing loan instalments in the event of unemployment.

2. In the case envisaged in the foregoing paragraph, recourse to the types of measures laid down in this Law shall only take place after the deadline for payment of the instalments secured or covered by those agreements.

#### Article 29

##### Appraisal of the mortgaged property

Where the updated value of the immovable property must be calculated for the purposes of the regime laid down in this Law, the credit institution shall be responsible for this revaluation with recourse to an appraiser certified by the Securities Market Commission at the expense of borrowers and shall immediately provide them with the appraisal report.

#### Article 30

##### Effectiveness of registered communications

The communications laid down in this Law that are sent by registered post are considered served on the date of expedition.

#### Article 31

##### Exemption from costs

Requests for documents or certificates by the borrower, which are deemed necessary for access to the regime laid down in this Law, are

exempt from fees, expenses and any other charges usually charged by the credit institution.

#### Article 32

##### Tax regime

The law may adapt the tax regime applicable to the operations needed to apply the measures envisaged in this Law.

#### Article 33

##### Provision of information by the credit institution

1. When contacting household customers, credit institutions shall provide clear and simple information on the borrowers protection regime laid down in this Law.

2. Where requested by their customers, credit institutions must provide the necessary and pertinent information and clarifications on this Law and the regime established herein.

3. Credit institutions shall also, on their own initiative and on an individual basis, provide information on the regime laid down in this Law to customers who, based on the credit institution's best judgment and knowledge, may fulfil the regime's requirements.

4. All documents prepared by the credit institutions under the regime laid down in this Law must be written in a simple and clear manner.

#### Article 34

##### False statements

1. Making false statements on the conditions for access to the regime laid down in this Law shall terminate the measures that had already been implemented, without prejudice to the borrower's obligation to compensate the credit institution for damages, including loss of profits and costs incurred when negotiating and implementing measures. The credit institution may initiate judicial proceedings with a view to redeeming the credit.

2. Should any of the protection measures laid down in this Law be adopted, the practice laid down in the foregoing paragraph shall be deemed as credit fraud, in accordance with

Article 38 of Decree-Law no. 28/84 of 20 January 1984.

### Article 35

#### Binding effect

1. Where the housing loan agreement has been entered into by more than one borrower, all borrowers shall be bound for the purposes of this Law.

2. Where the regime laid down in this Law is applied to housing loan agreements secured by guarantors in a very difficult economic situation, all borrowers and their guarantors shall be bound for the purposes laid down therein.

### Article 36

#### Non-compliance by credit institutions

1. The following shall constitute an offence punishable under Article 210 of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law no. 298/92 of 31 December 1992, as amended by Law no. 28/2009 of 19 June 2009, and in accordance with Decree-Law no. 51/2007 of 7 March 2007, together with Decree-Law no. 171/2008 of 26 August 2008:

(a) The refusal to provide access to borrowers that request it, provided they fulfil all the requirements laid down in Articles 4 and 5, to any of the types of measures contained in the regime laid down in this Law;

(b) Infringement of Article 18.

2. Negligence shall always be punishable, with the applicable penalty limits being reduced by half.

3. Banco de Portugal is responsible for the enforcement of penalties regarding non-compliance with the regime laid down in this Law.

## CHAPTER IV

### Final and transitional provisions

### Article 37

#### Prevalence

This Law prevails over any incompatible legal, regulatory or contractual provisions.

### Article 38

#### Validity

1. The regime laid down in this Law shall remain in force up to 31 December 2015.

2. At the end of the initial period of validity, the overall impact of applying the regime laid down in this Law shall be assessed, with a view to its possible extension.

### Article 39

#### Assessment

1. An assessment committee is established to assess the impact of the regime laid down in this Law, as well as compliance by credit institutions with its provisions.

2. The assessment committee shall be comprised of the following members:

(a) One member appointed by the Minister of Finance, who shall chair the committee;

(b) One member appointed by the Minister of Economy;

(c) One member on behalf of Banco de Portugal, who shall be the secretary;

(d) One member on behalf of the Securities Market Commission;

(e) One member on behalf of the Portuguese Banking Association;

(f) One member on behalf of consumers, to be appointed by the Directorate-General for Consumers after the relevant associations have been heard.

3. The assessment committee establishes its own rules of procedure and meets when convened by its chairman, on their own initiative or on the initiative of two of its members.

4. The assessment committee shall only meet and deliberate if at least three of its members are present.

5. Banco de Portugal shall send to the assessment committee on a quarterly basis all information and documentation needed to perform its functions, as well as all complaints and information as laid down in the following two paragraphs.

6. Consumers and consumer associations may submit complaints to Banco de Portugal about compliance with the regime laid down in this Law.

7. Credit institutions shall submit to Banco de Portugal on a quarterly basis all information requested by the assessment committee, which shall include the number, volume and characteristics of the operations that have been requested, conducted and refused under the regime laid down in this Law.

8. The assessment committee shall prepare and publish a semi-annual assessment report on the impact of applying the regime laid down in this Law and on compliance by credit institutions with the provisions herein.

9. By 15 October 2015, the assessment committee must publish an overall assessment report, which must be sent to the Government and the Assembly of the Republic.

#### **Article 40**

##### **Application in time**

1. The regime laid down in this Law shall apply to:

- (a) All agreements concluded before its publication and which remain in force;
- (b) All agreements concluded before its publication, which have been terminated by the credit institution for default, where the deadline to challenge the foreclosure linked

to the housing loan agreement and related loans has not yet elapsed, or, if no other creditors have submitted claims, up to the foreclosure sale of the property covered by the mortgage.

2. Where the foreclosure procedure has already been initiated, the borrower shall annex to the process a copy of the request laid down in Article 8 (1), under penalty of forfeiting the right of access and the launch of the applicable procedural stages mentioned in the foregoing paragraph.

3. Where the validity of the regime laid down in this Law ceases in compliance with Article 38, the regime shall continue to apply to legal proceedings or out-of-court procedures initiated up to its expiry date.

4. Borrowers requesting the application of this Law may benefit from the provisions established herein for a period of three years starting on the date of the request, without prejudice to all amendments to the housing loan agreement agreed between the parties remaining in force after this deadline.

#### **Article 41**

##### **Entry into force**

1. This law enters into force on the day following its publication, without prejudice to the following paragraph.

2. The time limit for the lending credit institution to reply as laid down in Article 8 (3) starts 60 days from the date of publication of this Law.

#### **1.3. Law no. 59/2012, of 9 November 2012 – Safeguards for housing loans borrowers**

##### **Creates safeguards for housing loans borrowers and amends Decree-Law no. 349/98, of 11 November 1998**

The Assembly of the Republic, under the provisions laid down in Article 161 (c) of the Constitution, decrees the following:

**Article 1****Amendment to Decree-Law no. 349/98, of 11 November 1998**

Article 22 of Decree-Law no. 349/98, of 11 November 1998, as amended by Decree-Law no. 137-B/99, of 22 April 1999, Decree-Law no. 1-A/2000, of 22 January 2000, as amended and republished by Decree-Law no. 320/2000, of 15 December 2000, as amended by Decree-Law no. 231/2002, of 4 November 2002, Decree-Law no. 305/2003, of 9 December 2003, Law no. 60-A/2005, of 30 December 2005, and Decree-Laws no. 107/2007, of 10 April 2007 and no. 222/2009, of 11 September 2009, is reworded as follows:

**«Article 22**

[...]

1. ...
2. ...
3. ...
4. ...
5. The approval of the loans and the definition of its terms and conditions shall take into account the risk profile of the credit operation.»

**Article 2****Additions to Decree-Law no. 349/98, of 11 November**

Articles 7-A, 7-B, 23-A, 23-B, 28-A and 30-A are inserted in Decree-Law no. 349/98, of 11 November 1998:

**«Article 7-A****Specification of the housing loan instalments**

1. For the purposes of Article 783 (1) of the Civil Code, the borrower may specify the instalment corresponding to the credit agreement to purchase or build an owner-occupied home.
2. The lending credit institution must inform the borrower, in clear and simple language,

of the allocation rules applicable to borrowers who fail to specify the instalment to be paid as laid down in the foregoing paragraph.

3. After providing the necessary clarifications referred to in the foregoing paragraph, the lending credit institution shall ask the borrower to specify the instalment to be paid for the purposes of paragraph 1 of Article 783 of the Civil Code.

**Article 7-B****Termination for default**

1. Credit institutions may only withdraw or in any other way terminate a credit agreement to purchase or build an owner-occupied home for breach of contractual obligations, if at least three instalments become overdue.
2. Partial default on instalment payments is not taken into account for the purposes of the foregoing paragraph, provided that the borrower repays the principal and interest overdue before the next instalment date.

**Article 23-A****Extraordinary regime for loan collateral**

1. The lending credit institution and the borrower may, by mutual consent, make the loan conditional on the following special rules:
  - (a) In order to strengthen the guarantee constituted by the mortgage on the home to be purchased, built or renovated, including the land, only life insurance on the primary borrower and spouse and insurance on the immovable property are permitted;
  - (b) The foreclosure sale or transfer *in lieu* of payment following the borrower's default on the loan fully exonerate the borrower and extinguish the respective obligations under the credit agreement, regardless of the proceeds from the foreclosure sale or the value attributed to the immovable property for the purposes of

a transfer *in lieu* of payment or an alternative arrangement.

2. When negotiating a housing loan agreement, the lending credit institution must inform the borrower of this extraordinary regime and respective rules.

### **Article 23-B**

#### **Resuming the credit agreement**

1. Within the deadline to challenge the foreclosure concerning a credit agreement to purchase or build a home and related loans secured by a mortgage or up to the foreclosure sale of the immovable property covered by the mortgage, if no other creditors have submitted claims, the borrower is entitled to resume the credit agreement, provided that he/she pays off overdue instalments, as well as any interest due and expenditure incurred by the credit institution.

2. Should the borrower exercise the right to resume the credit agreement, its termination is considered invalid, with the mortgage credit agreement remaining in place on precisely the same terms and conditions as those originally stipulated, with possible amendments, without any novation of the agreement or the applicable collateral.

3. The lending credit institution is only obliged to resume the credit agreement twice during the lifetime of the agreement.

### **Article 28-A**

#### **Prohibition on increasing credit charges**

1. Lending credit institutions shall not increase credit charges, namely by increasing the applicable spread, in case of renegotiation of a credit agreement to purchase or build an owner-occupied home due to any of the following reasons:

(a) The borrower has celebrated with a third party a lease of the dwelling or part thereof after one of the following events:

(i) A change in the place of employment of the borrower or any non-descendent

household member to a location at a distance of no less than 50 km as the crow flies of the immovable property in question, resulting in a change in their tax residence;

(ii) If the borrower or any other household member is unemployed;

(b) In the scope of a renegotiation of the credit agreement following divorce, legal separation, dissolution of a life partnership or death of either one of the spouses when the new borrower proves that his/her household has an income ensuring a debt burden of less than 55%, or 60% in the case of households with one or more dependents.

2. Proof of change in the place of employment referred to in paragraph 1 (a) (i) may be given by producing an employment agreement or a certificate from the employer.

3. For the purposes of paragraph 1 (a) (ii), borrowers and household members shall be deemed to be unemployed when, having been previously employed, have been registered as job seekers for at least three months.

4. Proof of unemployment referred to in the foregoing paragraph is given by producing a statement issued by the Institute for Employment and Vocational Training.

5. The prohibition laid down in paragraph 1 is applicable provided that such lease agreement contains:

(a) A specific reference to the fact that the immovable property is mortgaged as collateral for a credit agreement to purchase, build or make ordinary or extraordinary maintenance and repairs and improvements to the borrower's owner-occupied home;

(b) The tenant's obligation to deposit the rent payment into the borrower's bank account associated with the loan.

6. The lease envisaged in paragraph 1 (a) terminates with the foreclosure sale or

transfer *in lieu* of payment of the mortgaged immovable property following default by the borrower, unless the bank and the borrower have, for the purposes of the lease, agreed on changes to the credit agreement's terms and conditions.

### Article 30-A

#### Valuation of dwellings

1. The lending credit institution issues a copy to the borrower or prospective borrower of any reports and other documents associated with valuations of the dwelling by the lending credit institution or a third party at its request.
2. Borrowers are entitled to any report or other valuation documents produced at their own expense.
3. The borrower or prospective borrower may send a written complaint to the lending credit institution in relation to the results and grounds of the valuation.
4. The lending credit institution must respond to the complaint made by the borrower or prospective borrower.
5. The borrower or prospective borrower may also ask the lending credit institution to conduct a second valuation of the dwelling.
6. The costs of the second valuation shall be borne by the borrower or prospective borrower.»

### Article 3

#### Transitional regime for transfers in lieu of payment

Credit agreements to purchase, build or make ordinary or extraordinary maintenance and repairs and improvements to an owner-occupied home entered into before this Law enters into force are eligible for the application of the transfer *in lieu* of payment as envisaged in a special law establishing an extraordinary regime for protection of housing loan borrowers.

### Article 4

#### Republication

Decree-Law no. 349/98, of 11 November 1998, which is attached to and forms part of this Law, is republished with the current wording.

### Article 5

#### Entry into force

This Law enters into force 30 days following its publication.

### Article 6

#### Application in time

1. Other than as provided in the following paragraph, this Law is applicable to all:
  - (a) Credit agreements entered into after its entry into force;
  - (b) Credit agreements in force as at the date of its publication;
  - (c) Legal proceedings instituted after its date of publication;
  - (d) Backlogged enforcement cases, except those where a foreclosure sale has already been made and meets the standards of the rule of law.
2. The addition of a paragraph 6 to Article 28-A of Decree-Law no. 349/98, of 11 November 1998 is applicable only to lease agreements entered into after this Law enters into force.

### 1.4. Decree-Law no. 58/2013 of 8 May 2013 – Interest capitalisation and late payment

This Decree-Law revises and updates certain features of the regime applicable to the classification of credit operations' term, conventional interest, interest capitalisation and late payment by debtors, which so far has been regulated by Decree-Law no. 344/78 of 17 November 1978, as amended by Decree-Laws no. 429/79 of 25 October 1979, no. 83/86 of 6 May 1986 and no. 204/87 of 16 May 1987.



Practice has shown the need to amend that legal act – in particular as regards delay by debtors in fulfilling the contractual obligations undertaken by them – by widening its scope, making it more suited to the current market reality and enabling its uniform application.

In fact, the regime laid down in Decree-Law no. 344/78 of 17 November 1978, as amended by Decree-Laws no. 429/79 of 25 October 1979, no. 83/86 of 6 May 1986 and no. 204/87 of 16 May 1987, was envisaged for a strongly regulated banking activity context, in which the vast majority of credit institutions were held by the State, with the banking sector closed to private initiative. With the progressive liberalisation of financial activity, the above-mentioned Decree-Law lost part of its purpose and many of its rules have long ceased to be applicable, leading to some unclear situations, which must come to an end.

In turn, some of the existing banking practices relating to default situations require legislative intervention, in order to increase the transparency of the retail banking market, making it more balanced.

Thus, while keeping the traditional credits' classification according to the respective terms and introducing new mechanisms disciplining the criteria for the calculation and collection of interest by credit institutions, the main focus of the present Decree-Law is on the regime applicable to bank customers' delay in fulfilling the contractual obligations of the credit agreements undertaken by them.

Recognising the particularities of this type of agreements and the consequences associated to default situations, which may affect in particular the bank customer, the regime set forth in this Decree-Law reflects, on the matters herein regulated, a deviation from the general framework applicable to delays in fulfilling the contractual obligations undertaken by the parties to an agreement.

The regime laid down in the present Decree-Law introduces some changes into interest capitalisation, enabling, by means of a written agreement between the parties, the capitalisation of

conventional interest, overdue and unpaid, for periods equal to or of more than one month. However, conventional interest that is included in overdue and unpaid instalments may only be capitalised once for each instalment.

Capitalisation of late payment interest is hereby prohibited, except within the scope of credit restructuring or consolidation processes, in which cases the parties may agree to add to principal the amount of overdue late payment interest.

As regards fees applicable to arrears, the regime laid down in Decree-Law no. 344/78 of 17 November 1978, as amended by Decree-Laws no. 429/79 of 25 October 1979, no. 83/86 of 6 May 1986 and no. 204/87 of 16 May 1987 must be simplified. Under that regime, interest arrears or, upon agreement between the parties, a penalty clause could be applied, which only differed in terms of the applicable surcharge. The present Decree-Law enshrines a uniform, more transparent and clear regime, under which only late payment interest may be applied in the case of arrears. Thus, no penalty clauses applicable in case of late payment may be established; notwithstanding, the parties may agree, under the general terms of law, on the existence of compensatory penalty clauses, applicable in the case of definitive breach of contract.

In turn, the present Decree-Law revises the upper limits applicable to the late payment interest surcharge and also clarifies that the base interest rate, to which is added the interest late payment surcharge, corresponds to the conventional interest rate established in the agreement.

As the commissioning of banking services is currently a usual practice followed by credit institutions, the multiple fees due in case of arrears situations are no exception to this rule. These fees have been often cumulatively applied on several moments of arrears, thereby causing a significant increase in amounts due by the customer. Besides, the amount of such fees may be very significant, making it more difficult to settle those agreements in an arrears situation.

Therefore, considering the compensatory nature of late payment interest, as well as the update of their upper limits, institutions' collection of fees relating to the debtor's arrears situation is hereby prohibited. Institutions may only require, based on arrears, a single fee for the recovery of due amounts, which shall be charged only once for each overdue and unpaid instalment.

Considering the impact of this legal discipline and the recognised long life of many credit agreements covered by this Decree-Law, it shall be applicable not only to agreements concluded after its entry into force, but also to agreements concluded before this date, in case of situations of late payment occurring after the entry into force of the provisions applicable to debtor's default. As regards these provisions, a longer *vacatio legis* is allowed, to enable the adaptation of institutions to the solutions enshrined in this Decree-Law.

Banco de Portugal, the Portuguese Banking Association, the Association of Specialised Credit Institutions and the Agency for Competitiveness and Innovation have been heard.

Therefore:

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

### Article 1

#### Object

This Decree-Law defines the rules applicable to the classification and determination of credit operations' term, conventional interest, interest capitalisation and late payment by debtors.

### Article 2

#### Scope

This Decree-Law shall apply to credit institutions, financial companies, payment institutions, electronic money institutions and other entities that are legally authorised to grant credit and are subject to Banco de Portugal's supervision.

### Article 3

#### Definitions

For the purposes of this Decree-Law:

- (a) 'Institutions' shall mean the entities mentioned in the previous Article;
- (b) 'Extension of a credit operation' shall mean the operation's due date deferral, established by agreement between the parties, and with relevance for the determination of a credit operation's term;
- (c) 'Renewal of a credit operation' shall mean an operation that, for the purpose of determining a credit operation's term, replaces a previous operation, upon a new agreement between the parties;
- (d) 'Conventional interest' shall mean interest that corresponds to a return on the principal or agreed upon as such;
- (e) 'Late payment Interest' shall mean interest paid to compensate the institution for losses resulting from the debtor's delay in performing his contractual obligations;
- (f) 'Fees' shall mean the monetary sums payable by customers to institutions as compensation for services provided by the latter, or contracted to third parties as part of their activity;
- (g) 'Expenses' shall mean any amounts borne by institutions, paid to third parties, on behalf of their customers, namely payments to registry offices, notary offices, or which have fiscal nature.

### Article 4

#### Classification of credit operations according to the respective term

1. Credit granted by institutions shall be classified as short, medium and long-term, regardless of its nature and legal form.
2. The credit terms referred to in the foregoing paragraph are considered to be:
  - (a) Short-term, when the respective maturity does not exceed one year;

- (b) Medium-term, when the respective maturity is higher than one year but does not exceed five years;
  - (c) Long-term, when the respective maturity exceeds five years.
3. The term of credit operations shall be suited to the nature and characteristics of the real operations that they will fund.

### Article 5

#### Determination of a credit operation's term

1. For the purpose of its classification and in accordance with Article 4 (2), the term of a credit operation starts on the date when funds are made available to their beneficiary and ends on the date established for the final and full settlement of the operation in question.
2. In case of an extension of the operation, for the purposes of the foregoing paragraph, the overall term of the operation shall correspond to the whole period of time between the start of the operation and its due date.
3. Where there is a renewal of the operation, a new period of payment starts from the date of that renewal.
4. The term of operations involving the discount of bills of exchange and promissory notes, as well as of other credit securities, corresponds to the period of time between the date when the operation took effect and its due date.
5. In the case of credit operations, the corresponding due date, or the criterion for determining that date, must be set.
6. The paragraphs above do not cover the opening of documentary credit, operations resulting from the use of credit cards and other credit operations, which, due to their nature, have an indefinite duration.

### Article 6

#### Determination and payment date of conventional interest

1. In the case of discount of bills of exchange and promissory notes, as well as of other

credit securities, institutions may charge interest in advance, by deducting that amount from the nominal value of credit securities.

2. Interest on the opening of credit operations, current account loans or other similar loans is calculated according to the amounts and periods of effective use of funds by the beneficiary, in accordance with the contracted interest rates.
3. For the other credit agreements, conventional interest is calculated on the basis of the amount due, at each moment, at the contracted rate and is paid according to the plan agreed upon by both parties for the payment of principal and interest.

### Article 7

#### Interest capitalisation

1. The capitalisation of conventional interest, overdue and unpaid, depends on a written agreement between the parties; this interest shall not be capitalised for periods of less than one month.
2. The enforcement of conventional interest capitalisation is not subject to notification to the debtor.
3. For the purposes of application of late payment interest, conventional interest included in each overdue and unpaid instalment may only be capitalised once.
4. In the case of agreements with a grace period during which no interest is paid, there shall be no capitalisation of conventional interest corresponding to periods of less than three months.
5. The capitalisation of late payment interest is allowed only upon written agreement between the parties and within the scope of credit agreements' restructuring or consolidation.

### Article 8

#### Late payment interest

1. In the case of a late payment by the debtor and as long as the amount in question remains unpaid, institutions may charge late payment interest, by applying a maximum annual surcharge of 3%, added to the conventional interest rate applicable to the operation; in any

amount exceeding that surcharge, it shall be reduced to that maximum limit.

2. The late payment interest referred to in the foregoing paragraph shall apply to overdue and unpaid principal, which may include the capitalised conventional interest, as provided for in Article 7.

### **Article 9**

#### **Prohibition to charge fees and expenses**

1. Without prejudice to the following paragraphs, institutions may not, on the basis of late payment by the debtor, charge any fees or other amounts, even as a penalty clause for late payment.

2. In addition to late payment interest, institutions may only charge to their customers a fee for the recovery of amounts due, which cannot exceed a maximum of 4% of the value of the overdue and unpaid instalment.

3. Where the fee established under the foregoing paragraph corresponds to an amount inferior to EUR 12,00 (twelve euros), institutions may charge a fixed fee of EUR 12,00 (twelve euros).

4. Where the fee established under the paragraph 2 corresponds to an amount superior to EUR 150,00 (one hundred and fifty euros), institutions cannot charge a higher fee than the mentioned value, considering, in the part that exceeds it, it shall be reduced to that maximum limit.

5. When the overdue and unpaid instalment does not exceed EUR 50,000.00 (fifty thousand euros), in addition to interest arrears, the recovery of arrears fee charged by institutions may not exceed 0.5% of its value, considering, in the part that exceeds it, it shall be reduced to that maximum limit and the limits laid down in the preceding paragraphs shall not apply.

6. The fee payable under paragraphs 2 and 3 of this Article may be charged only once, for each overdue and unpaid instalment, regardless of whether the customer remains in default.

7. The fees for the recovery of amounts due which are not paid by customers may only be

added to the amount of principal outstanding in the event of credit agreements' restructuring or consolidation.

8. The provisions of the foregoing paragraphs do not prevent the institution from passing on to customers expenses incurred after default, paid on their behalf to third parties, provided that the relevant documentary evidence is presented.

9. Values laid down in paragraphs 3 and 4 are updated annually in accordance with the consumer price index, depending on an Executive Order of the members of the Government responsible for the areas of finance and economy, to be published by 30 November of the previous year.

### **Article 10**

#### **Regulation and monitoring**

1. Banco de Portugal shall be responsible for issuing the regulations needed to implement this Decree-Law.

2. Banco de Portugal shall be responsible for monitoring compliance with this Decree-Law and with the regulations issued under the foregoing paragraph.

### **Article 11**

#### **Sanctions**

1. Infringement by credit institutions and financial companies of the provisions of Articles 4 to 9 of this Decree-Law and of regulations issued under Article 10 (1), shall constitute an offence punishable under Article 210 (m) and Article 212 of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law no. 298/92 of 31 December 1992.

2. Infringement by payment institutions and electronic money institutions of Articles 4 to 9 of this Decree-Law and of regulations issued under Article 10 (1), shall constitute an offence punishable in accordance with the provisions of Article 94 (1) (o) and Article 96 of the Legal Framework of Payment Services and Electronic Money, approved by Decree-Law no. 317/2009 of 30 October 2009, as amended by Decree-Law no. 242/2012 of 7 November 2012.

3. Negligence shall be punishable, with the applicable penalty limits reduced by half.
4. The attempted offence shall be punishable as a committed offence with a reduced penalty.
5. Banco de Portugal shall be responsible for assessing offences punishable under this Decree-Law, conducting the inquiry procedure, and applying the corresponding penalties.
6. The provisions of Title XI of the Legal Framework of Credit Institutions and Financial Companies shall apply to the establishment of responsibilities for the offences referred to in this Decree-Law and to the respective proceedings.

#### **Article 12**

##### **Repeal**

Decree-Law no. 344/78 of 17 November 1978, as amended by Decree-Laws no. 429/79 of 25 October 1979, no. 83/86 of 6 May 1986 and no. 204/87 of 16 May 1987 is repealed.

#### **Article 13**

##### **Application in time**

1. This Decree-Law shall apply to credit operations and agreements concluded after its entry into force, without prejudice to the following paragraph.
2. In the case of already existing credit agreements, Articles 7 to 11 of this Decree-Law shall apply to situations of late payment that occur after the entry into force of the above-mentioned regulations, regardless of whether a penalty clause for late payment has been laid down in those agreements.

#### **Article 14**

##### **Entry into force**

1. This Decree-Law shall enter into force on the 90th day following its publication, without prejudice to the following paragraph.
2. The provisions of Articles 7 to 9 shall enter into force on the 120th day following its publication.

## 2. Regulatory framework

### **2.1. Notice of Banco de Portugal no. 17/2012 – Procedures to be observed by credit institutions**

Decree-Law no. 227/2012, of 25 October 2012, lays down the principles and rules to be observed by credit institutions in monitoring pre-arrears situations and in the out-of-court settlement of arrears situations concerning credit agreements concluded with household customers.

The above Decree-Law sets forth that credit institutions shall develop a Pre-Arrears Action Plan (PRAP), establishing procedures and measures to prevent arrears situations, and sets out an Out-of-court Arrears Settlement Procedure (OASP) aimed at promoting negotiation between credit institutions and household customers leading to the out-of-court settlement of default situations. In addition,

Decree-Law no. 227/2012, of 25 October 2012 sets out the foundations for the development of an assistance network of accredited entities to inform, advise and support, on a free of charge basis, household customers in the context of arrears prevention and settlement of arrears situations.

Through this Notice, Banco de Portugal, exercising the regulatory powers entrusted to it by Decree-Law no. 227/2012, of 25 October 2012, develops and specifies the requirements that credit institutions shall observe in the prevention and out-of-court resolution of arrears on credit agreements concluded with household customers.

In particular, this Notice specifies the disclosure requirements as regards information on credit agreement default and the Assistance Network for Indebted Consumers and defines

rules and criteria for contacting household customers at risk of default or running into arrears on their obligations, as well as for assessing their creditworthiness.

Furthermore, this Notice specifies the requirements to take into consideration when preparing and implementing the PRAP and when applying the OASP and lays down the rules and procedures concerning the report to Banco de Portugal of the PRAP and the internal document on the implementation of the OASP.

Hence, in use of the powers entrusted to it by Articles 6 (2), 7 (2), 10 (6), 11 (4), 14 (5), 15 (2), 17 (5), 33 (1) and 38 of Decree-Law no. 227/2012, of 25 October 2012, Banco de Portugal lays down the following:

## CHAPTER I General provisions

### Article 1

#### Object

This Notice specifies the requirements that, by virtue of Decree-Law no. 227/2012, of 25 October 2012, credit institutions shall observe in the prevention and out-of-court settlement of arrears on credit agreements, notably as regards:

- (a) The public release of information on credit agreements default and the Assistance Network for Indebted Consumers;
- (b) The procedures to be carried out by credit institutions when drawing up and implementing the Pre-Arrears Action Plan (PRAP) and when applying the Out-of-court Arrears Settlement Procedure (OASP);
- (c) The provision of information to household customers in the course of the OASP;
- (d) The report to Banco de Portugal of the PRAP and the internal document describing the procedures adopted in the implementation of the OASP.

### Article 2

#### Definitions

1. For the purposes of this Notice:
  - (a) «Assistance Network for Indebted Consumers» shall mean an out-of-court network

comprised of entities accredited by the General Directorate for Consumers to provide, on a free-of-charge basis, information, advice and assistance to household customers within the scope of credit agreement arrears management;

- (b) «Extraordinary regime for settlement of housing loans default» shall mean the extraordinary regime for protection of housing loan borrowers in a very difficult economic situation, approved by Law no. 58/2012, of 9 November 2012;
- (c) «General regime for prevention and settlement of arrears situations» shall mean the legal regime laying down the rules and principles that credit institutions shall observe within the scope of prevention and out-of-court settlement of arrears on credit agreements signed with household customers and establishing the foundations for the development of the Assistance Network for Indebted Consumers, approved by Decree-Law no. 227/2012, of 25 October 2012.

2. Without prejudice to the provisions of the foregoing paragraph, the concepts used in this Notice shall be construed as in the general regime for prevention and settlement of arrears situations.

## CHAPTER II Credit agreement arrears management

### SECTION I Common provisions

#### Article 3

#### Public release of information on credit agreements default and the Assistance Network for Indebted Consumers

1. Credit institutions shall manage the public release of information on credit agreements default and the Assistance Network for Indebted Consumers.
2. For the purposes of the foregoing paragraph, credit institutions, through their branches, shall provide household customers, upon request,

with a document in paper form containing the information envisaged in Annex I to this Notice, and forming an integral part thereof.

3. Credit institutions shall provide the above document without prior request when the household customer notifies front-office employees in branches or by means of distance communication of a risk of default on obligations under a credit agreement or submits evidence suggesting deterioration of his/her creditworthiness.

4. The document referred to in paragraph 2 shall also be released in a specific autonomous area of the credit institutions' websites, duly highlighted in the respective homepage, offering direct access by interested parties with no need for prior registration.

#### Article 4

##### Contact with household customers in pre-arrears or arrears on obligations arising from credit agreements

1. In those cases where the general regime for prevention and settlement of arrears situations does not require communication via durable medium, credit institutions, under the procedures envisaged in the PRAP and in the course of the OASP, may contact household customers in person or by any means of distance communication.

2. Credit institutions and, where relevant, arrears management service providers, should refrain from making unfair, excessive or disproportionate contact with household customers in pre-arrears or arrears on obligations arising from credit agreements.

3. For the purposes of the foregoing paragraph, unfair, excessive or disproportionate contact shall mean, *inter alia*, face-to-face contact or contact by any means of distance communication that:

- (a) Conveys to household customers wrong, inaccurate or misleading information;
- (b) Does not accurately identify the credit institution or arrears management service provider or does not provide the respective contact details;
- (c) Is aggressive or intimidating;

(d) Takes place between 10 p.m. and 9 a.m. in the household customer's time zone, except where there is express prior agreement;

(e) Uses an address, telephone number, or any other contact detail that has not been provided by the household customer to the credit institution, except where the household customer's contact details are publicly available.

#### Article 5

##### Assessment of creditworthiness

1. Where, in accordance with the provisions of the general regime for prevention and settlement of arrears situations, it is necessary to assess the household customer's creditworthiness, credit institutions shall take into consideration the following factors in addition to any other details they deem relevant:

- (a) The household customer's age, family situation and professional situation;
- (b) The household customer's income, notably wages, compensation for the provision of services or social benefits;
- (c) The household customer's expenses, notably on obligations under credit agreements, including with other credit institutions;
- (d) The household customer's default on credit agreements with other credit institutions.

2. Where deemed strictly necessary and appropriate for assessing the household customer's creditworthiness, credit institutions may request evidence on the information provided, notably the following documents:

- (a) Latest available certificate indicating payment of personal income tax;
- (b) Copy of supporting documents attesting to income earned by the household customer, notably wages, compensation for the provision of services or social benefits;
- (c) Written declaration from the household customer certifying the information provided as accurate, complete and up-to-date.

3. In addition to the information obtained from the household customer, credit institutions may seek to obtain other information they deem necessary and appropriate for assessing the household customer's creditworthiness, namely by consulting credit registers with adequate coverage and informative detail, pursuant to the legislation in force, or by consulting other internal or external databases deemed useful for the purpose.

## SECTION II

### Management of pre-arrears situations

#### Article 6

##### Monitoring credit agreements and default prevention

1. With a view to ensuring permanent and systematic monitoring of credit agreements and promoting prevention of default on obligations under those credit agreements, credit institutions shall:

- (a) Implement IT systems that identify, in a timely manner, the occurrence of facts which indicate a deterioration in the household customer's creditworthiness, and issue the relevant warnings to the structural units specifically indicated in the PRAP for that purpose;
- (b) Define the procedures to be followed by their employees when they become aware of evidence suggesting the deterioration of the household customer's creditworthiness, who shall *inter alia* establish the obligation of communicating such information to the structural unit responsible for its processing and analysis;
- (c) Develop mechanisms allowing household customers to communicate any difficulties in complying with the obligations assumed, notably by setting up specific channels in their respective websites;
- (d) Define the procedures to be adopted by their front-office employees when they are informed, at branches or by means of distance communication, by the household

customer of facts which suggest a pre-arrears situation or conveys to them evidence of the deterioration of his/her creditworthiness. These procedures shall include *inter alia* the obligation envisaged in Article 3 (3) of this Notice and the duty to report such information to the structural unit responsible for its processing and analysis;

- (e) Ensure the integrated processing of information collected on the household customer who shows signs of creditworthiness deterioration or who directly warns about the existence of a pre-arrears situation and ensure its communication to the competent structural units;
- (f) Define the competent structural units for the performance of the following tasks, identifying the persons in charge and their contact details:
  - (i) Collection of information on the household customer;
  - (ii) Processing and analysis of such information;
  - (iii) Assessment of the default risk;
  - (iv) Assessment of the household customer's creditworthiness;
  - (v) Decision on the presentation of proposals to the household customer and on their content;
  - (vi) Contacts with the household customer;
  - (vii) Reporting to Banco de Portugal of information on the preparation and implementation of the PRAP, changes introduced over time and the outcome of its implementation;
- (g) Ensure that the first contact with the household customer occurs within 10 days after there are proven signs of deterioration in his/her financial capacity to comply with obligations under the credit agreement;
- (h) Prepare, when the household customer warns about the existence of a pre-arrears situation or there are signs of deterioration in his/her creditworthiness, a document



describing the elements and criteria on which the creditworthiness assessment was based, and the outcome of such assessment.

2. Signs of deterioration in the household customer's capacity to comply with obligations under a credit agreement shall be deemed to exist where, in view of the available information, the household customer is expected to default on said obligations, taking into account, inter alia, the facts indicated in Article 9 (2) of the General regime for prevention and settlement of arrears situations.

3. Credit institutions shall only resort to arrears management service providers to perform the tasks envisaged in paragraph 1 (f) (i) and (vi). In such case, they shall ensure that the service providers in question are adequately organised and have the suitable human and technical resources for that purpose, and to incorporate in the service agreements signed with those entities the obligations set out in the General regime for prevention and settlement of arrears situations and this Notice.

4. Credit institutions shall ensure that the structural unit responsible for the task envisaged in paragraph 1 (f) (vii) has the human and technical resources as well as all the information necessary to perform this task.

5. Credit institutions shall specify the elements indicated in paragraph 1 of this Article in the PRAP.

### SECTION III

#### Out-of-court settlement of arrears situations

##### Article 7

###### Notice of initiation of the OASP

1. The notice through which credit institutions inform household customers of initiation of the OASP shall be drafted in plain, intelligible language and be easily legible, containing the following data:

- (a) Identification of the relevant credit agreement;
- (b) Maturity date of obligations in arrears;

- (c) Total amount outstanding, with detail of the principal and late payment interest and fees;

- (d) Date of the household customer's entry into the OASP;

- (e) Credit institution's contact details to be used by the household customer to obtain additional information and negotiate possible proposed solutions for resolution of the default situation.

2. As a complement to the information in the foregoing paragraph, credit institutions shall append a document drafted in accordance with the model in Annex II to this Notice and forming an integral part thereof.

##### Article 8

###### Notice of termination of the OASP

The notice through which credit institutions inform household customers of termination of the OASP shall be drafted in plain, intelligible language and be easily legible, containing the following data:

- (a) Description of the facts leading to termination of the OASP or justifying the credit institution's decision to end said procedure, stating the respective legal grounds;

- (b) Consequences of termination of the OASP, in those cases where no agreement has been reached between the parties, notably the possibility of termination of the agreement and judicial enforcement of the credit;

- (c) In the case of a housing loan agreement, information relating to the regime described in Decree-Law no. 349/98, of 11 November 1998, as amended by Law no. 59/2012, of 9 November 2012, on the termination and the right to resume the credit agreement;

- (d) Should the household customer be covered by the extraordinary regime for settlement of housing loans default, and where it is set forth by said Law, reference to the household customer's right to the adoption of substitutive measures and the terms and conditions under which he/she may request such adoption;

- (e) Identification of situations in which the household customer may request intervention of the Credit Mediator while maintaining OASP-related guarantees;
- (f) Indication of the credit institution's contact details which the household customer may use to obtain additional information or negotiate solutions for settling the arrears situation..

## Article 9

### Procedural duties

1. Within the scope of implementation of the OASP, credit institutions shall:

- (a) Ensure the integrated processing of information collected on household customers in the OASP, ensuring transmission of such information to the structural unit responsible for its processing and analysis; and
- (b) Define the structural units responsible for the following tasks:
  - (i) Collection of information on the household customer;
  - (ii) Processing and analysis of such information;
  - (iii) Assessment of the arrears situation;
  - (iv) Assessment of the household customer's creditworthiness;
  - (v) Decision on the presentation of proposals to the household customer and on their content;
  - (vi) Contacts with the household customer;
  - (vii) Reporting to Banco de Portugal of information on the implementation of OASP-related procedures and the respective outcome.

2. Credit institutions shall only resort to arrears management service providers to perform the tasks envisaged in paragraph 1 (b) (i) and (vi). In such case, they shall ensure that the service providers in question are adequately organised and have the suitable human and technical resources for that purpose, and incorporate

in the service agreements signed with those entities the obligations set out in the General regime for prevention and settlement of arrears situations and this Notice.

3. Credit institutions shall ensure that the structural unit responsible for the task envisaged in paragraph 1 (b) (vii) has the human and technical resources as well as all the information necessary to perform this task.

4. Credit institutions shall specify the elements indicated in paragraph 1 in the internal document describing the procedures adopted within the scope of implementation of the OASP, identifying the persons in charge in the competent structural units for the tasks envisaged in paragraph 1 (b) and their contact details.

## CHAPTER III

### Reporting of information to Banco de Portugal

#### Article 10

#### Reporting of the the PRAP and the OASP implementation documents

1. With a view to complying with the provisions of Article 33 of the general regime for prevention and settlement of arrears situations, credit institutions shall send the PRAP and the internal document describing the procedures adopted within the scope of implementation of the OASP in a word or pdf file, via the BPnet website ([www.bportugal.net](http://www.bportugal.net)), through the "*Reporte de Incumprimento*" service under "*Supervisão*".

2. The above files shall be sent by file transfer with the names "PARI\_XXXX\_DDMMYYYY.docx/pdf" or "PERSI\_XXXX\_DDMMYYYY.docx/pdf", where XXXX corresponds to the credit institution's code, DD the day, MM the month and YYYY the year to which the information refers, for example "PARI\_0000\_01012013.pdf".

3. At least 15 days in advance of their application date, credit institutions shall also report to Banco de Portugal any change introduced

to the documents mentioned in paragraph 1, by incorporating in the document to be reported a description of the changes made and the date of their application.

## Article 11

### Entry into force

This Notice shall enter into force on 1 January 2013.

## Annex I

### Information to be released to the public on credit agreements default and the Assistance Network for Indebted Consumers

#### Excessive indebtedness risks

Loan instalments are regular expenses of household budgets. It is vital that household customers assess their creditworthiness beforehand to ensure they are able to pay instalments for loans they intend to take out.

For more information on household budget management please refer to the “Todos Contam” website at [www.todoscontam.pt](http://www.todoscontam.pt).

#### Default risk

A household customer is in arrears when he/she does not pay an instalment on the due date of the credit agreement signed.

Customers with loans in default are subject to penalties and seizure of assets.

The household customer should have a preventive attitude, anticipating a possible default situation. Should he/she anticipate difficulties in debt repayment, he/she must promptly warn the credit institution.

If the household customer communicates that he/she has difficulties in debt repayment, the credit institution is required under Decree-Law no. 227/2012, of 25 October 2012 to assess his/her default risk. The credit institution must put forward solutions to avoid default on the

credit agreement, where viable.

To inform [insert name of the credit institution] about the existence of difficulties in debt repayment, it is possible to [indicate available contacts or channels].

#### OASP

The OASP – Out-of-court arrears Settlement Procedure set up by Decree-Law no. 227/2012, of 25 October 2012 is designed to promote default resolution through solutions that are negotiated between the household customer and the credit institution.

Credit institutions are required to enter the credit agreement into the OASP between the 31<sup>st</sup> and the 60<sup>th</sup> day following the date on which the obligations became due. Credit institutions are also required to initiate the OASP when an instalment has not been paid, in those cases where the household customer has warned about a pre-arrears situation.

The household customer in arrears may request at any moment that the credit agreement be entered into the OASP.

In the five days after the OASP has been initiated, the household customer will be informed thereof, as well as of his/her rights and duties within the procedure.

#### Extraordinary regime for protection of housing loan borrowers in a very difficult economic situation

Customers with loans regarding first owner-occupied homes in default and in a particularly vulnerable situation may request the credit institution to give them access to the extraordinary regime, as long as they fulfil the legal requirements. This regime for protection of housing loan debtors in a very difficult economic situation has been approved by Law no. 58/2012, of 9 November 2012 and will be in force until 31 December 2015, with the possibility of being extended.

Under this regime, the credit institution is required to propose a debt restructuring plan to the household customer, where viable. In exceptional cases the credit institution should

put forward solutions leading to a partial or full cancellation of the debt.

### **Assistance Network for Indebted Consumers**

Household customers in pre-arrears or in arrears on payment of their instalments may receive information, advice and assistance from the Assistance Network for Indebted Consumers free of charge.

The assistance network for household customers shall be comprised of competent entities accredited by the Directorate-General for Consumers.

For more information on the assistance network, please refer to the “Portal do Consumidor”, at [www.consumidor.pt](http://www.consumidor.pt).

For further information on credit agreement default regimes please refer to [contact details provided by the institution], the Bank Customer Website, at <http://cliente bancario. bportugal.pt>, and the “Todos Contam” website, at [www.todoscontam.pt](http://www.todoscontam.pt).

### **Notes for completion of Annex I:**

1. The information in this Annex, regardless of the medium used, should be provided with a minimum size 10 font, with Arial as reference.
2. Credit institutions may change format (namely, using their logo and changing the colour and text format).
3. Information in brackets should be filled in by credit institutions.

## **Annex II**

### **Model of document that should accompany the notice of initiation of the OASP**

The OASP – Out-of-court Arrears Settlement Procedure, set up by Decree-Law no. 227/2012, of 25 October 2012 is designed to promote default resolution through solutions that are negotiated between the household customer and the credit institution.

### **Negotiation of solutions**

In the 30 days after the credit has been entered into the OASP (date indicated in this notice), the credit institution should assess the household customer’s creditworthiness, putting forward solutions to renegotiate the credit agreement or consolidate debts, where viable.

The household customer should respond to the proposal(s) within 15 days, and may present amendments or alternative proposals. The credit institution is not obliged to accept the household customer’s proposals.

### **Household customer guarantees**

In the course of the OASP, credit institutions may not:

- Terminate the credit agreement
- Pursue legal action against the household customer and
- Assign the credit to another entity other than a credit institution, except for securitisation purposes.

### **Household customer duties**

The household customer should cooperate with the credit institution in seeking solutions for the resolution of the arrears situation. For this, he/she should comply with the deadlines to deliver the documents and information requested (10 days) and respond to the credit institution’s proposal(s) (15 days).

### Termination of the OASP

The OASP terminates on the 91st day after its initiation, unless the parties agree to extend it, or upon the household customer's declaration of insolvency.

The credit institution may also terminate the OASP where:

- It concludes that the presentation of proposals is not viable
- Seizure or preventive seizure of the household customer's assets takes place
- A provisional receiver is appointed within the scope of an insolvency procedure
- The household customer does not cooperate in the course of the OASP
- The household customer or the credit institution refuses the proposal(s) presented
- The household customer commits acts which may jeopardise the credit institution's rights or guarantees.

The credit institution should inform the household customer of the grounds for terminating the OASP.

### Credit mediator

The household customer in arrears on a housing loan agreement who is also a borrower in other credit agreements may benefit from OASP guarantees for an additional 30 days' period should it request intervention of the Credit Mediator in the five days following termination of the OASP.

### Extraordinary regime for protection of housing loan borrowers in a very difficult economic situation

Customers with loans regarding first owner-occupied homes in default and in a particularly vulnerable situation may request the credit institution to give them access to the extraordinary regime, as long as they fulfil the legal requirements. This regime for protection of housing loan debtors in a very difficult economic situation has been approved by Law

no. 58/2012, of 9 November 2012 and will be in force until 31 December 2015, with the possibility of being extended.

Under this regime, the credit institution is required to propose a debt restructuring plan to the household customer, where viable. In exceptional cases the credit institution should put forward solutions leading to a partial or full cancellation of the debt.

### Assistance Network for Indebted Consumers

Household customers in pre-arrears or in arrears on payment of their instalments may receive information, advice and assistance from the Assistance Network for Indebted Consumers free of charge.

The assistance network for household customers shall be comprised of competent entities accredited by the Directorate-General for Consumers.

For more information on the assistance network, please refer to the "Portal do Consumidor", at [www.consumidor.pt](http://www.consumidor.pt).

For further information on credit agreement default regimes please refer to [contact details provided by the institution], the Bank Customer Website, at <http://cliente bancario. bportugal.pt>, and the "Todos Contam" website, at [www.todoscontam.pt](http://www.todoscontam.pt).

### Notes for completion of Annex II:

1. The information in this Annex, regardless of the medium used, should be provided with a minimum size 10 font, with Arial as reference.
2. Credit institutions may change format (namely, using their logo and changing the colour and text format).
3. Information in brackets should be filled in by credit institutions.

## 2.2. Instruction of Banco de Portugal no. 44/2012 – Reporting of information

### Subject: Reporting of information on credit agreements covered by the OASP and Extraordinary regime procedures

Decree-Law no. 227/2012, of 25 October 2012 establishes the principles and rules for the negotiation, between credit institutions and household customers, of solutions for the out-of-court settlement of arrears situations.

Additionally, Law no. 58/2012, of 9 November 2012 provides for an extraordinary regime for protection of housing loan borrowers in a very difficult economic situation.

In accordance with Article 35 of Decree-Law no. 227/2012, of 25 October 2012, Banco de Portugal is responsible for regularly evaluating the implementation of the principles and rules laid down therein. Similarly, Article 39 of Law no. 58/2012, of 9 November 2012 awards responsibility for evaluating the regime's impact to an evaluation committee whose administrative support is provided by Banco de Portugal.

The principles and rules laid down in the aforementioned legal documents, along with the procedures adopted by the credit institutions as part of credit agreement arrears management, must be evaluated following up-to-date, accurate and regular collection of information about the agreements covered.

Hence, in use of the powers entrusted to it by Article 35 of Decree-Law no. 227/2012, Article 39 of Law no. 58/2012 and Article 17 of its Organic Law, Banco de Portugal decrees the following:

#### 1. Object

Under the terms of this Instruction, credit institutions shall report information on the following credit agreements to Banco de Portugal:

- (a) Credit agreements entered into the Out-of-court Arrears Settlement Procedure (OASP), in accordance with Decree-Law no. 227/2012, of 25 October 2012;

- (b) Credit agreements covered by the extraordinary regime for protection of housing loan borrowers in a very difficult economic situation, in accordance with Law no. 58/2012, of 9 November 2012.

#### 2. Definitions

Notwithstanding the definitions comprised in Article 3 of Decree-Law no. 227/2012, of 25 October 2012 and Article 3 of Law no. 58/2012, of 9 November 2012, for the purposes of this Instruction:

- (a) «Credit category» shall mean the classification of the credit agreement according to paragraph 3 of this Instruction;
- (b) «Agreement in force» shall mean the credit agreement whose obligations remain enforceable, excluding terminated or revoked agreements;
- (c) «Credit agreement under the OASP» shall mean the credit agreement under assessment or negotiation within the OASP;
- (d) «Credit agreement with request for access to the extraordinary regime» shall mean the credit agreement whose borrower has presented a request to access the extraordinary regime under Article (8) 1 of Law no. 58/2012, irrespective of whether the agreement is covered by the regime or not;
- (e) «Credit agreement under the extraordinary regime» shall mean the credit agreement whose request for access to the extraordinary regime has been granted, including those that are under assessment or negotiation, those that have been renegotiated and the credit consolidation agreements drawn up under this regime;
- (f) «Renegotiated agreement» shall mean the credit agreement whose terms and conditions have been subject to alteration, excluding alterations that result from applying the agreement conditions initially defined;
- (g) «Credit consolidation agreement» shall mean the credit agreement that fully repays the principal and pays the interest, fees and other outstanding charges of multiple credit

agreements in which the household customer is the borrower, irrespective of the credit institutions which participate in them as lenders;

- (h) «Refinancing agreement» shall mean the credit agreement that fully repays the principal and pays the interest, fees and other outstanding charges of a credit agreement in which the household customer is the borrower;
- (i) «Additional loan» shall mean the credit agreement that pays instalments or other charges from other credit agreements;
- (j) «Obligations under the credit agreement» shall mean the principal repayment or interest payment obligations taken on by household customers under a credit agreement;
- (k) «Reference period» shall mean the period to which the duty of reporting applies and which corresponds to the calendar month.

### 3. Credit categories

For the purposes of this Instruction, the following credit categories should be taken into account:

- (a) Personal credit – credit with repayment schedule and term defined at the start of the agreement, apart from car credit. This kind of credit includes the following sub-categories:
  - (i) With no specific purpose – credit granted without a defined purpose for the amount borrowed;
  - (ii) Home – credit for acquiring furniture or equipment for the home;
  - (iii) Education – credit for financing education expenses;
  - (iv) Health – credit for financing health expenses;
  - (v) Renewable energy – credit for financing renewable energy equipment;
  - (vi) Consolidated credit without mortgage – credit not secured by mortgage on immovable property or by any other right over immovable property, whose

purpose is the concentration into a single loan and a single credit institution of two or more loans previously held by the borrower in more than one credit institution;

- (vii) Other – credit for financing a given good or service and which is not covered in the previous sub-categories, nor is a finance lease agreement.
- (b) Car credit – credit for acquiring cars or other vehicles with repayment schedule and term defined at the start of the agreement. This kind of credit includes the following sub-categories:
  - (i) Credit with ownership: new – credit for acquiring new vehicles, specifying ownership over the vehicle;
  - (ii) Credit with ownership: used – credit for acquiring used vehicles, specifying ownership over the vehicle;
  - (iii) Other: new – credit for acquiring new vehicles which does not fall into sub-category (i), nor is a finance lease or a long-term rental agreement;
  - (iv) Other: used – credit for acquiring used vehicles which does not fall into sub-category (ii), nor is a finance lease or a long-term rental agreement.
- (c) Credit card – agreement with no fixed term or with automatic renewal, without fixed repayment schedule, in which a maximum credit limit is set and under which credit is taken by means of a card. This kind of credit includes the following sub-categories:
  - (i) With free-float period – credit card which allows credit usage with no interest chargeable during a minimum period of 30 consecutive days, irrespective of the repayment method agreed with the consumer;
  - (ii) Without free-float period – credit card which does not allow credit usage during a minimum period of 30 consecutive days with no interest chargeable in at least one of the possible repayment

methods that may be agreed with the consumer;

- (iii) Deferred debit card – credit card whose debt balance is always paid in full by the consumer on a date agreed with the credit institution, with no interest chargeable.
- (d) Credit line – agreement with no fixed term or with automatic renewal, with fixed repayment schedule, in which a maximum credit limit is set.
- (e) Banking current account – agreement with fixed term, without fixed repayment schedule, in which a maximum credit limit is set.
- (f) Overdraft facility – credit usage facility linked to a current account, in which transactions are permitted up to a previously agreed credit limit in the absence of funds in that account. Overdraft facilities include the following sub-categories:
  - (i) With domiciliation of salary and repayment period of over one month – overdraft granted based on domiciliation of salary, with an agreement excluding compulsory repayment within the period of one month;
  - (ii) Without domiciliation of salary and repayment period of over one month – overdraft granted not based on domiciliation of salary, with an agreement excluding compulsory repayment within the period of one month;
  - (iii) With domiciliation of salary and repayment period of one month or less – overdraft granted based on domiciliation of salary, with an agreement including compulsory repayment within the period of one month;
  - (iv) Without domiciliation of salary and repayment period of one month or less – overdraft granted not based on domiciliation of salary, with an agreement including compulsory repayment within the period of one month.
- (g) Housing credit – credit agreement for purchasing, building and renovating first or second owner-occupied or to-let homes, as well as for purchasing land to build owner-occupied homes, under Article 1 (1) of Decree-Law no. 51/2007, of 7 March 2007.
- (h) Loans related to other agreements – credit agreement secured by mortgage either in full or in part on immovable property that simultaneously secures a housing credit agreement with the same credit institution, under Article 1 (2) of Decree-Law no. 51/2007, of 7 March 2007.
  - (i) Other loans secured by mortgage – credit agreement secured by mortgage on immovable property or by another right over immovable property, under Article 1 (3) of Decree-Law no. 51/2007, of 7 March 2007.

#### 4. Information to be reported

- (a) The number and amount of credit agreements in force, the credit agreements under the OASP and the extraordinary regime, and the negotiation procedures laid down therein shall be reported each month to Banco de Portugal.
- (b) When reporting the information described in the previous sub-paragraph, credit institutions shall follow the format of Charts 1 to 15 of Annex I to this Instruction, forming an integral part thereof, in which:
  - (i) Chart 1 must be filled in with aggregate information for all the credit agreements in force, at the end of the reference period;
  - (ii) Chart 2 must be filled in with aggregate information on the credit agreements under the OASP and the extraordinary regime, at the end of the reference period;
  - (iii) Each line in Chart 3 must correspond to information on each credit agreement entered into the OASP in the reference period;



- (iv) Each line in Chart 4 must correspond to information on each credit agreement renegotiated following the OASP in the reference period;
  - (v) Each line in Chart 5.A must correspond to information on each credit consolidation agreement entered into following the OASP in the reference period;
  - (vi) Each line in Chart 5.B must correspond to information on each agreement included in the credit consolidation agreement identified in the previous chart in the reference period;
  - (vii) Each line in Chart 6 must correspond to information on each refinancing agreement entered into following the OASP in the reference period;
  - (viii) Each line in Chart 7 must correspond to information on each additional loan granted following the OASP in the reference period;
  - (ix) Each line in Chart 8 must correspond to information on each credit agreement for which OASP was terminated in the reference period;
  - (x) Each line in Chart 9 must correspond to information on each credit agreement with request for access to the extraordinary regime in the reference period;
  - (xi) Each line in Chart 10 must correspond to information on each credit agreement whose request for access to the extraordinary regime in the reference period was denied;
  - (xii) Each line in Chart 11 must correspond to information on each housing credit agreement whose request for access to the extraordinary regime in the reference period was granted;
  - (xiii) Each line in Chart 12 must correspond to information on each housing credit agreement renegotiated following the extraordinary regime procedure in the reference period;
  - (xiv) Each line in Chart 13.A must correspond to information on each credit consolidation agreement entered into following the extraordinary regime procedure in the reference period;
  - (xv) Each line in Chart 13.B must correspond to information on each agreement included in the credit consolidation agreement identified in the previous chart in the reference period;
  - (xvi) Each line in Chart 14 must correspond to information on each additional loan granted following the extraordinary regime procedure in the reference period;
  - (xvii) Each line in Chart 15 must correspond to information on each terminated process in the extraordinary regime in the reference period;
- (c) The information held in the charts mentioned in the previous sub-paragraph must follow the concepts below:
- (i) CI code – registry code for the credit institution in Banco de Portugal, comprising four digits;
  - (ii) Agreement code – internal reference code given by the credit institution to the credit agreement, which must be on the agreement itself and must identify it unambiguously;
  - (iii) Tax identification number of the 1<sup>st</sup>/2<sup>nd</sup> borrower – tax number for the 1<sup>st</sup> and the 2<sup>nd</sup> borrower in the credit agreement;
  - (iv) Credit category – credit category code from Table A of Annex II and the definitions contained in paragraph 3 of this Instruction;
  - (v) Housing credit regime – code from Table B of Annex II to this Instruction, which corresponds to the regime under which the housing credit agreements falls;
  - (vi) Agreement start date – date on which the agreement was signed by the

- parties – the credit institution and the household customer;
- (vii) Initial credit amount – amount of credit initially granted. In the case of credit granted in tranches, only the amounts provided should be given;
- (viii) Amount in debt – principal outstanding under normal circumstances. Instalments overdue and unpaid should not be included, nor should arrears charges, namely default interest and fees;
- (ix) Interest rate type – code from Table C of Annex II to this Instruction, corresponding to the type of interest rate laid down in the agreement, which may be:
- Fixed interest rate: interest rate that remains constant throughout the agreement term;
  - Variable interest rate: interest rate that varies during the agreement term, according to the changing value of the corresponding index;
  - Mixed interest rate: interest rate associated to a credit agreement that combines fixed interest rate period(s) and variable interest rate period(s);
- (x) Variable rate index – code from Table D of Annex II to this Instruction, corresponding to the reference rate used to calculate the nominal annual rate in agreements with variable interest rate;
- (xi) Spread – value in percentage points that is added to the index value to calculate the nominal annual rate in agreements with variable interest rate;
- (xii) Grace period/deferment period – code from Table E of Annex II to this Instruction, which shows whether the agreement provides for any grace period or deferment period;
- (xiii) Default start date – date on which the customer failed to pay an obligation under the agreement for the first time (e.g. failure to pay an instalment, in part or in full);
- (xiv) Amount in arrears – instalment amounts outstanding and unpaid, along with arrears charges, including default interest and fees;
- (xv) OASP start date – date on which the OASP began for each credit agreement, according to the provisions of Article 14 (1) to (3) of Decree-Law no. 227/2012, of 25 October;
- (xvi) Reason for initiating the OASP – code from Table F of Annex II to this Instruction, corresponding to the reason for which the OASP was initiated for each credit agreement;
- (xvii) Reason for terminating the OASP – code from Table G of Annex II to this Instruction, corresponding to the reason for which each credit agreement was withdrawn from the OASP;
- (xviii) Amount renegotiated – amount to which alterations to the agreement conditions apply under a renegotiation;
- (xix) Receipt date of the request for access to the extraordinary regime – date on which the credit institution received the request from the household customer to access the extraordinary regime, under Article 8 (1) of Law no. 58/2012 of 9 November;
- (xx) Renegotiation/consolidation type under the extraordinary regime – code from Table H of Annex II to this Instruction, corresponding to the type of restructuring following the extraordinary regime procedure;
- (xxi) Reason for terminating the extraordinary regime procedure – code from Table I of Annex II to this Instruction, corresponding to the reasoning behind terminating the extraordinary regime procedure.
- (d) In the case of agreements in foreign currencies, the amounts given in the various charts must be converted into euro, with the date made clear in each field.

## 5. Time frames applicable to the reporting of information

The information referred to in the previous paragraph shall be sent each month to Banco de Portugal within 10 working days of the end of each calendar month to which it relates.

## 6. Reporting format

- (a) The information shall be sent to Banco de Portugal as an Excel file, via the BPnet website ([www.bportugal.net](http://www.bportugal.net)), through the "Reporte de Incumprimento" service under "Supervisão".
- (b) Each table in Annex I to this Instruction shall be returned on a separate sheet within the same Excel file.
- (c) The file referred to above shall be sent by file transfer named "Incump\_XXXX\_MMYYYY.xlsx", where XXXX corresponds to the credit institution's code, MM the month and YYYY the year to which the information refers, for example "Incump\_0000\_012013.xlsx".
- (d) The Excel file template in Annex I to this Instruction is available from the BPnet website mentioned above.

## 7. Transitional provision

- (a) Notwithstanding paragraph 5 of this Instruction, credit institutions are only obliged to report to Banco de Portugal:

- (i) By 15 January 2013, the information:
  - In Chart 1, with reference to 31 December 2012;
  - In Charts 9 to 15, with reference to the period from 10 November 2012 to 31 December 2012.

- (ii) By 14 February 2013, the information:
  - In Chart 1, with reference to 31 January 2013;
  - In Charts 9 to 15, with reference to January 2013.

- (b) In reporting the information required by 14 March 2013, aside from that referred to in paragraph 5, credit institutions must also submit the information:

- (i) In Chart 2, with reference to 31 January 2013;
- (ii) In Charts 3 to 8, with reference to January 2013.

## 8. Entry into force

This Instruction shall enter into force on 1 January 2013.

## Annex I – Charts for reporting information



ANNEX TO THE NOTICE NO. 44/2012 - (BO NO. 12, 17.12.2012)

Themes  
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## Annex I – Charts for reporting information

Chart 1 – Aggregate information on agreements in effect: DD/MM/YYYY

Credit category <sup>1</sup>	Total agreements		Agreements in arrears		
	Number of agreements	Amount in debt (euro)	Number of agreements	Amount in debt (euro)	Amount in arrears (euro)
AA01					
AA02					
AA03					
AA04					
AA05					
AA06					
AA08					
AA11					
AA12					
AA13					
AA14					
AA15					
AA16					
AA17					
AA18					
AA19					
AA20					
AA21					
AA22					
AA23					
AA24					
AA25					
AA26					
AA27					
AA28					

<sup>1</sup> See codes in Table A – Credit categories.Chart 2 – Aggregate information on agreements in the OASP and the Extraordinary Regime:  
DD/MM/YYYY

	OASP	Extraordinary Regime
Number of agreements		
Number of borrowers <sup>1</sup>		
Amount in debt (euro)		
Amount in arrears (euro)		

<sup>1</sup> Total number of borrowers in credit agreements under the OASP or the Extraordinary Regime (as applicable) calculated without repeated tax identification numbers, not including guarantors.

Chart 3 – Credit agreement under the OASP: MM/YYYY

A	B	C	D	E	F	G	H	I	J	K	
1	CI Code	Agreement code	Tax identification number for 1 <sup>st</sup> borrower	Tax identification number for 2 <sup>nd</sup> borrower	Credit category <sup>1</sup>	Housing credit regime <sup>2</sup>	Agreement start date (dd/mm/yyyy)	Agreement end date <sup>3</sup> (dd/mm/yyyy)	Initial credit amount (euro)	Amount in debt <sup>4</sup> (euro)	Interest rate type <sup>5</sup>
2											
3											

continuation

L	M	N	O	P	Q	R	S	T	
1	Nominal Annual Rate (NAR) <sup>4</sup>	Variable rate index <sup>6</sup>	Spread <sup>4</sup>	Grace period / deferment period <sup>7</sup>	Default start date (dd/mm/yyyy)	Amount in arrears <sup>4</sup> (euro)	OASP start date (dd/mm/yyyy)	Reason for initiating the OASP <sup>8</sup>	OASP relating to guarantor? <sup>9</sup>
2									
3									

**Notas de preenchimento:**

- Leave the field blank when the information is not applicable.
- <sup>1</sup> See codes in Table A – Credit category.
- <sup>2</sup> See codes in Table B – Housing credit regime.
- <sup>3</sup> Where the agreement is of indeterminate length or renews automatically, insert the code "00".
- <sup>4</sup> On the OASP start date.
- <sup>5</sup> See codes in Table C – Interest rate type.
- <sup>6</sup> See codes in Table D – Variable rate index.
- <sup>7</sup> See codes in Table E – Grace period / deferment period.
- <sup>8</sup> See codes in Table F – Reason for initiating the OASP.
- <sup>9</sup> Where the OASP relates to a guarantor, insert "1". Otherwise, if the OASP relates to the borrowers, insert "0".

Chart 4 – Agreements renegotiated following the OASP: MM/YYYY

A	B	C	D	E	F	Renegotiation conditions <sup>2</sup>					M		
1	CI Code	Agreement code	Renegotiation date (dd/mm/yyyy)	Amount in debt <sup>1</sup> (euro)	Amount in arrears <sup>1</sup> (euro)	Amount renegotiated <sup>1</sup> (euro)	Spread <sup>3</sup> (if variable rate agreement)	Interest rate <sup>3</sup> (if variable rate agreement)	Agreement term <sup>4</sup>	Grace period for principal <sup>4</sup>	Grace period for principal and interest <sup>4</sup>	Principal deferred to the last instalment <sup>5</sup>	Other <sup>6</sup>
2													
3													
4													

**Notes for completion:**

- Leave the field blank when the information is not applicable.
- <sup>1</sup> On the renegotiation date.
- <sup>2</sup> Fill in all fields subject to change.
- <sup>3</sup> Change expressed in basis points per year. Negative changes preceded by the "-" sign.
- <sup>4</sup> Change of term expressed in months. Negative changes preceded by the "-" sign.
- <sup>5</sup> Change in the percentage of principal deferred to the last instalment expressed in basis points. Negative change preceded by the "-" sign.
- <sup>6</sup> If yes, insert "1", otherwise insert "0".

Chart 5.A – Credit consolidation agreements entered into following the OASP: MM/YYYY

	A	B	C	D	E	F	G	H	I	J	K
1	CI Code	Consolidation agreement code	Consolidation agreement start date (dd/mm/yyyy)	Consolidation agreement end date (dd/mm/yyyy)	Consolidated credit amount (euro)	Consolidation agreement interest rate type <sup>1</sup>	Consolidation agreement Nominal Annual Rate (NAR) <sup>2</sup>	Consolidation agreement variable rate index <sup>3</sup>	Consolidation agreement spread <sup>2</sup>	Grace period / deferment period <sup>4</sup>	Consolidation agreement secured by mortgage? <sup>5</sup>
2											
3											

**Notes for completion:**

- See codes in Table C – Interest rate type.

<sup>1</sup> See codes in Table C – Interest rate type.

<sup>2</sup> On the date the credit consolidation agreement was signed.

<sup>3</sup> See codes in Table D – Variable rate index.

<sup>4</sup> See codes in Table E – Grace period / deferment period.

<sup>5</sup> If yes, insert “1”, otherwise insert “0”.

Chart 5.B – Agreements included in credit consolidation following the OASP: MM/YYYY

	A	B	C	D	E	F
1	CI Code	Code of the agreement included in the consolidation <sup>1</sup>	Category for the credit included in the consolidation; <sup>2</sup>	Amount in debt for the agreement included in the consolidation (euro)	Amount in default for the agreement included in the consolidation (euro)	Consolidation agreement code
2						
3						

**Notes for completion:**

- Leave the field blank when the information is not applicable.

- Each line corresponds to a credit subject to consolidation. For example, three credits consolidated into a single agreement should be reported on three different lines. Each line should identify in column F the consolidation agreement as given in Chart 5.A for those three credits.

<sup>1</sup> Insert “OIC” when the agreement comes from another credit institution.

<sup>2</sup> See codes in Table A – Credit category. Should the agreement not fall into any of the categories defined in this table, insert “Outros”.

**Chart 6 – Refinancing agreements entered into following the OASP: MM/YYYY**

1	A	B	C	D	E	F	G	H	I	J	K	L	M
2	CI Code	Original agreement code	Agreement code	Agreement start date (dd/mm/yyyy)	Agreement end date (dd/mm/yyyy)	Initial credit amount (euro)	Interest rate type <sup>1</sup>	Nominal Annual Rate (NAR) <sup>2</sup>	Variable rate index <sup>3</sup>	Spread <sup>2</sup>	Grace period / deferment period <sup>4</sup>	Grace period duration (months)	Agreement secured by mortgage? <sup>5</sup>
3													
4													

**Notes for completion:**

- Leave the field blank when the information is not applicable.
- <sup>1</sup> See codes in Table C – Interest rate type.
- <sup>2</sup> On the date the refinancing agreement was signed.
- <sup>3</sup> See codes in Table D – Variable rate index.
- <sup>4</sup> See codes in Table E – Grace period / deferment period.
- <sup>5</sup> If yes, insert "1", otherwise insert "0".

**Chart 7 – Additional loans to pay instalments entered into following the OASP: MM/YYYY**

1	A	B	C	D	E	F	G	H	I	J	K	L	M
2	CI Code	Original agreement code	Agreement code	Agreement start date (dd/mm/yyyy)	Agreement end date (dd/mm/yyyy)	Total credit amount <sup>1</sup> (euro)	Interest rate type <sup>2</sup>	Nominal Annual Rate (NAR) <sup>3</sup>	Variable rate index <sup>4</sup>	Spread <sup>3</sup>	Grace period / deferment period <sup>3</sup>	Grace period duration (months)	Agreement secured by mortgage? <sup>6</sup>
3													
4													

**Notes for completion:**

- Leave the field blank when the information is not applicable.
- Where the additional loan is to pay instalments under more than one agreement, copy and paste the additional loan description for each original agreement in question.
- <sup>1</sup> Full amount of credit to be granted throughout the agreement term.
- <sup>2</sup> See codes in Table C – Interest rate type.
- <sup>3</sup> On the date the additional loan was granted.
- <sup>4</sup> See codes in Table D – Variable rate index.
- <sup>5</sup> See codes in Table E – Grace period / deferment period.
- <sup>6</sup> If yes, insert "1", otherwise insert "0".

Chart 8 – Credit agreements with termination of OASP: MM/YYYY

	A	B	C	D	E
1	CI Code	Agreement code	OASP termination date (dd/mm/yyyy)	Reason for termination <sup>1</sup>	Remaining amount in debt in case of payment in lieu (euro)
2					
3					

**Notes for completion:**

<sup>1</sup> See codes in Table G – Reason for OASP termination.

Chart 9 – Credit agreements with request for access to the Extraordinary Scheme: MM/YYYY

	A	B	C	D	E	F	G	H	I
1	CI Code	Agreement code	Credit category <sup>1</sup>	Tax identification number for 1 <sup>st</sup> borrower	Tax identification number for 2 <sup>nd</sup> borrower	Default start date (dd/mm/yyyy)	Receipt date of the request for access to the Extraordinary Regime (dd/mm/yyyy)	Amount in debt <sup>2</sup> (euro)	Amount in arrears <sup>2</sup> (euro)
2									
3									

**Notes for completion:**

- Leave the field blank when the information is not applicable.

<sup>1</sup> See codes in Table A – Credit category. Should the agreement not fall into any of the categories defined in this table, insert "Other".

<sup>2</sup> On the request receipt date for access to the Extraordinary Regime.

Chart 10 – Credit agreements with request for access to the Extraordinary Regime denied: MM/YYYY

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1			Reasons for denial of request for access <sup>1</sup>											
2	CI Code	Agreement code	It is not a housing credit agreement	It is not a permanent owner-occupied home	Asset value (Article 4 (c))	Unemployment situation (Article 5 (1) (a))	Reduction of income (Article 5 (1) (a))	Housing credit debt-to-income ratio (Article 5 (1) (b))	Financial assets (Article 5 (1) (c))	Immovable property (Article 5 (1) (d))	Gross annual income (Article 5 (1) (e))	Guarantors do not meet requirements (Article 4 (d))	Customer does not deliver documentation	Other
3														
4														

**Notes for completion:**

- Leave the field blank when the information is not applicable.

<sup>1</sup> Mark the reasons behind the denial with "1".



**Chart 11 – Housing credit agreements with request for access to the Extraordinary Regime granted: MM/YYYY**

	A	B	C	D	E	F	G	H	I	J	K
1	CI Code	Agreement code	Housing credit regime <sup>1</sup>	Agreement start date (dd/mm/yyyy)	Agreement end date (dd/mm/yyyy)	Initial credit amount (euro)	Interest rate type <sup>2</sup>	Nominal Annual Rate (NAR) <sup>3</sup>	Variable rate index <sup>4</sup>	Spread <sup>5</sup>	Grace period / deferment period <sup>6</sup>
2											
3											

**Notes for completion:**

- Leave the field blank when the information is not applicable.
- <sup>1</sup> See codes in Table B – Housing credit regime.
- <sup>2</sup> See codes in Table C – Interest rate type.
- <sup>3</sup> On the request receipt date for access to the Extraordinary Regime.
- <sup>4</sup> See codes in Table D – Variable rate index.
- <sup>5</sup> See codes in Table E – Grace period / deferment period.

**Chart 12 – Housing credit agreements renegotiated following an Extraordinary Regime procedure: MM/YYYY**

	A	B	C	D	E	F	G
1	CI Code	Agreement code	Renegotiation type <sup>1</sup>	Renegotiation date (dd/mm/yyyy)	Amount in debt <sup>2</sup> (euro)	Amount in arrears <sup>2</sup> (euro)	Amount renegotiated <sup>2</sup> (euro)
2							
3							
4							

*continuation*

	H	I	J	K	L	M	N
1	Renegotiation conditions <sup>3</sup>						
2	Spread <sup>4</sup> (if variable rate agreement)	Interest rate <sup>4</sup> (if variable rate agreement)	Agreement term <sup>5</sup>	Grace period for principal <sup>5</sup>	Grace period for principal and interest <sup>5</sup>	Principal deferred to the last instalment <sup>6</sup>	Other <sup>7</sup>
3							
4							

**Notes for completion:**

- Leave the field blank when the information is not applicable.
- <sup>1</sup> See codes in Table H – Renegotiation type following an Extraordinary Regime procedure.
- <sup>2</sup> On the renegotiation date.
- <sup>3</sup> Where more than one condition is renegotiated, fill in all the fields subject to change.
- <sup>4</sup> Change expressed in basis points per year. Negative changes preceded by the “-” sign.
- <sup>5</sup> Change of term expressed in months. Negative changes preceded by the “-” sign.
- <sup>6</sup> Change in the percentage of principal deferred to the last instalment expressed in basis points. Negative changes preceded by the “-” sign.
- <sup>7</sup> If yes, insert “1”, otherwise insert “0”.

Chart 13.A – Credit consolidation agreements following an Extraordinary Regime procedure: MM/YYYY

	A	B	C	D	E	F	G	H	I	J	K
	CI Code	Consolidation agreement code	Consolidation type <sup>1</sup>	Consolidation agreement start date (dd/mm/yyyy)	Consolidation agreement end date (dd/mm/yyyy)	Consolidated credit amount (euro)	Interest rate type for the consolidation agreement <sup>2</sup>	Nominal Annual Rate (NAR) for the consolidation agreement <sup>3</sup>	Variable rate index for the consolidation agreement <sup>4</sup>	Spread for the consolidation agreement <sup>5</sup>	Grace period / deferment for the consolidation agreement <sup>5</sup>
1											
2											
3											

**Notes for completion:**

- Leave the field blank when the information is not applicable.
- <sup>1</sup> See codes in Table H – Consolidation type following an Extraordinary Regime procedure.
- <sup>2</sup> See codes in Table C – Interest rate type.
- <sup>3</sup> On the date the credit consolidation agreement was signed.
- <sup>4</sup> See codes in Table D – Variable rate index.
- <sup>5</sup> See codes in Table E – Grace period / deferment period.

Chart 13.B – Agreements included in the credit consolidation following an Extraordinary Regime procedure: MM/YYYY

	A	B	C	D	E	F
	CI Code	Code of the agreement included in the consolidation <sup>1</sup>	Category for the credit included in the consolidation <sup>2</sup>	Amount in debt for the agreement included in the consolidation (euro)	Amount in arrears for the agreement included in the consolidation (euro)	Consolidation agreement code
1						
2						
3						

**Notes for completion:**

- Leave the field blank when the information is not applicable.
  - Each line corresponds to a credit subject to consolidation. For example, three credits consolidated into a single agreement should be reported on three different lines. Each line should identify in column F the consolidation agreement as given in Chart 13.A for those three credits.
- <sup>1</sup> Insert "OIC" when the agreement comes from another credit institution.  
<sup>2</sup> See codes in Table A – Credit category. Should the agreement not fall into any of the categories defined in this table, insert "Other".

**Chart 14 – Description of additional loans to pay instalments following an Extraordinary Regime procedure: MM/YYYY**

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	Description of additional loan												
2	CI Code	Original agreement code	Agreement code	Agreement start date (dd/mm/yyyy)	Agreement end date (dd/mm/yyyy)	Total credit amount <sup>1</sup> (euro)	Interest rate type <sup>2</sup>	Nominal Annual Rate (NAR) <sup>3</sup>	Variable rate index <sup>4</sup>	Spread <sup>5</sup>	Grace period / deferment period <sup>6</sup>	Grace period duration (months)	Agreement secured by mortgage? <sup>6</sup>
3													
4													

**Notes for completion:**

- Leave the field blank when the information is not applicable.

<sup>1</sup> Full nominal amount of credit to be provided throughout the agreement term.

<sup>2</sup> See codes in Table C – Interest rate type.

<sup>3</sup> On the date on which the additional loan was granted.

<sup>4</sup> See codes in Table D – Variable rate index.

<sup>5</sup> See codes in Table E – Grace period / deferment period.

<sup>6</sup> If yes, insert "1", otherwise insert "0".

**Chart 15 – Terminated Extraordinary Regime procedures: MM/YYYY**

	A	B	C	D	E
1	CI Code	Agreement code	Process termination date (dd/mm/yyyy)	Reason for terminating process <sup>1</sup>	Remaining amount in debt <sup>2</sup> (euro)
2					
3					

**Notes for completion:**

- Leave the field blank when the information is not applicable.

<sup>1</sup> See codes in Table I – Reason for terminating the Extraordinary Regime procedure.

<sup>2</sup> After termination of the Extraordinary Regime.

## Annex II – Descriptive tables for agreements



## ANNEX TO THE NOTICE NO. 44/2012 - (BO NO. 12, 17.12.2012)

Themes  
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## Annex II – Descriptive tables for agreements

Table A – Credit category

Credit category	Code		
Personal credit (agreements defined in Decree-Law no. 133/2009)	With no specific purpose	AA01	
	Home	AA02	
	Education	AA03	
	Health	AA04	
	Renewable energy	AA05	
	Consolidated credit without mortgage	AA06	
	Other	AA08	
	With ownership: new	AA11	
	With ownership: used	AA12	
	Other: new	AA13	
Consumer credit	Other: used	AA14	
	With free-float period	AA15	
	Without free-float period	AA16	
	Deferred debit card	AA17	
	Credit card	AA18	
	Credit line	AA19	
	Banking current account	AA20	
	Overdraft facility	With domiciliation of salary and repayment period of over one month	AA21
		Without domiciliation of salary and with repayment period of over one month	AA22
		With domiciliation of salary and repayment period one month or less	AA23
Agreements defined under the housing credit scheme	Without domiciliation of salary and repayment period one month or less	AA24	
	Housing credit	AA25	
	Loans related to other agreements	AA26	
	Other loans secured by mortgage	AA27	
Consumer credit agreements defined in Decree-Law no. 359/91	Personal credit	AA28	
	Car credit	AA28	

**Table B – Housing credit regime**

Credit regime	Code
General credit regime	B01
Subsidised credit regime	B02
Credit regime for the disabled	B03

**Table C – Interest rate type**

Interest rate type	Code
Fixed rate	C01
Variable rate	C02
Mixed rate	C03

**Table D – Variable rate index**

Type of variable rate index	Code
3-month Euribor	D01
6-month Euribor	D02
12-month Euribor	D03
Other	D04

**Table E – Grace period / deferment period**

Grace period / deferment period	Code
Without grace period or deferment period	E01
Grace period for principal	E02
Grace period for principal and interest	E03
Deferment of principal	E04
Grace period and deferment of principal	E05

**Table F – Reason for initiating the OASP**

Reason for initiating the OASP	Code
Credit agreement default – elapsing of 31 and 60-day period (Article 14 (1), Decree-Law no. 227/2012)	F01
By request of the customer in arrears (Article 14 (2) (a), Decree-Law no. 227/2012)	F02
For default of a credit agreement when the customer had already alerted for the risk of default (Article 14 (2) (b), Decree-Law no. 227/2012)	F03
For default of credit agreement when another agreement with the same institution was already in default (Article 14 (3), Decree-Law no. 227/2012)	F04
Other	F05

**Table G – Reason for terminating the OASP**

Reason for terminating the OASP	Code
Payment of amounts in arrears	G01
Request for access to the Extraordinary Regime granted	G02
Renegotiated agreement	G03
Credit consolidation agreement	G04
Refinancing agreement	G05
Additional loan	G06
Payment <i>in lieu</i>	G07
Insolvency of the customer	G08
Attachment carried out or seizure sanctioned on the customer's assets in favour of third parties	G09
Household customer without financial capacity to settle the arrears situation	G10
Household customer refused the proposal to settle the arrears situation	G11
Credit institution refused the changes to its proposal suggested by the household customer	G12
Bank customer did not cooperate with the credit institution (e.g. failure to provide documentation)	G13
Over 90 days elapsed since entry into the OASP (without agreement)	G14
Other	G15

**Table H – Renegotiation / consolidation type following an Extraordinary Regime procedure**

Renegotiation / consolidation type following an Extraordinary Regime procedure	Code
Application of the restructuring plan (without complementary measures)	H01
Application of the restructuring plan (with complementary measures)	H02
Modification of the restructuring plan arising from the regular evaluation	H03

**Table I – Reason for terminating the Extraordinary Regime procedure**

Reason for terminating the Extraordinary Regime procedure	Código
Payment <i>in lieu</i> of the mortgaged immovable property	I01
Sale of immovable property to a real estate investment fund for residential rentals (REIFRR): with rental	I02
Sale of immovable property to REIFRR: without rental	I03
Exchange for a home of lower value	I04
Household customer's refusal to apply substitutive measures	I05
False declarations made by household customer	I06
Non-application of substitutive measures, due to a 2 <sup>nd</sup> mortgage on immovable property	I07
Non-application of substitutive measures, due to other obligations existing on the immovable property	I08
Full payment of amount in debt	I09
Failure to meet legal requirements of residence in the regular evaluation	I10
Other	I11

### 2.3. Circular letter no. 93/2012/DSC – Coordination between the OASP and the Extraordinary regime

**Subject: Coordination between the Out-of-court Arrears Settlement Procedure, regulated by Decree-Law no. 227/2012, of 25 October, and the procedure set out in Law no. 58/2012, of 9 November**

Decree-Law no. 227/2012, of 25 October (“General Regime”) created an Out-of-court Arrears Settlement Procedure (OASP), under which credit institutions are obliged to negotiate solutions to settle arrears situations arising from credit agreements with household customers.

In parallel, Law no. 58/2012, of 9 November sets out an extraordinary regime for the protection of housing loan debtors in a very difficult economic situation (“Extraordinary regime”). The extraordinary regime lays down the adoption by credit institutions of extraordinary measures to settle default situations arising from credit agreements to purchase, build or renovate (with ordinary and extraordinary maintenance and repairs) first owner-occupied homes (hereafter referred to as “housing loan agreements”), provided household customers request access to it and fulfil its requirements.

Considering that, in certain circumstances, housing loans agreements may, at the same time, be subject to the procedures laid down in the General Regime and in the extraordinary regime for the out-of-court settlement of arrears situations and with a view to promoting adequate coordination between these procedures, Banco de Portugal, under Article 17 of its Organic Law, communicates the following guidelines:

1. Where the household customer requests access to the extraordinary regime prior to the entry of the housing loan agreement into the OASP, the credit institution shall abstain from practicing the acts laid down in Article 14 and following of the General Regime regarding this credit agreement up to the date of

communication to the household customer of the decision on his/her request for access to the extraordinary regime.

1.1. Where the request for access to the extraordinary regime is granted, the credit institution shall analyse and negotiate solutions to settle the arrears situation arising from the housing loan agreement in accordance with the extraordinary regime.

1.2. Where the request for access to the extraordinary regime is denied, the credit institution shall be obliged to enter the housing loan agreement into the OASP if one of the situations determining this entry has occurred in the meantime, in accordance with Article 14 (1) and (2) of the General Regime.

In this case, the credit institution shall communicate to the household customer the entry of the housing loan agreement into the OASP on the same date it informs him/her that the request for access to the extraordinary regime has been denied.

In turn, if, on the date the credit institution decides to deny access to the Extraordinary Regime, none of the situations determining the entry of the credit agreement into the OASP has yet occurred, under Article 14 (1) and (2) of the General Regime, the credit institution shall only be obliged to enter the credit agreement into the OASP and inform the household customer of such fact, in accordance with the General Regime, after one of those situations occurs.

2. Where the household customer requests access to the extraordinary regime after the entry of the housing loan agreement into the OASP, the credit institution shall abstain from practising the acts laid down in Articles 14 and following of the General Regime regarding this housing loan agreement up to the date of communication to the household customer of the decision on the request for access to the extraordinary regime.

Nevertheless, the request for access to the extraordinary regime does not interrupt or suspend the OASP deadlines.

2.1. Where the request for access to the extraordinary regime is granted, the credit institution shall analyse and negotiate solutions to settle the arrears situation arising from the housing loan agreement in accordance with the extraordinary regime.

2.2. Where the request for access to the extraordinary regime is denied and the deadline of 30 days established in Article 15 (4) of the General Regime to assess and present proposals under the OASP has not yet elapsed, the credit institution, in addition to informing the household customer of the denial, is obliged, within this deadline, to communicate the result of the assessment of his/her creditworthiness and, where applicable, to present adequate settlement proposals.

2.3. Where the request for access to the extraordinary regime is denied and the deadline mentioned in paragraph 2.2. has already elapsed, the credit institution is obliged to inform the household customer, on the same date, of the denial and the result of the assessment of his/her creditworthiness, and, where applicable, to present adequate settlement proposals.

3. The guidelines of the previous paragraphs shall not affect entry into the OASP or use of this procedure regarding other credit agreements in which the household customer is a borrower, in accordance with the General Regime.

Sent to:

Banks, Caixa Central de Crédito Agrícola Mútuo (Central Mutual Agricultural Credit Bank), Caixa Económica Montepio Geral (savings bank), Caixa Geral de Depósitos, Caixas de Crédito Agrícola Mútuo (Mutual Agricultural Credit Banks), Caixas Económicas (savings banks), Credit Financial Institutions and Branches of Credit Institutions whose head office is an EU country or third country.

## 2.4. Executive Order no. 2/2013, of 2 January – Assistance Network for Indebted Consumers

**Decree-Law no. 227/2012 of 25 October 2012 lays down a set of measures to promote default prevention and the settlement of arrears situations arising from credit agreements concluded with consumers.**

Decree-Law no. 227/2012 of 25 October 2012 lays down a set of measures to promote default prevention and the settlement of arrears situations arising from credit agreements concluded with consumers.

It also establishes the creation of an Assistance Network for Indebted Consumers, in their quality as consumers, within the meaning of Article 2 (1) of the Law on Consumer Protection, approved by Law no. 24/96, of 31 July 1996, as amended by Decree-Law no. 67/2003, of 8 April 2003, intervening as borrowers in a credit agreement. This network is comprised of entities entrusted with informing, advising and assisting household customers in the context of arrears prevention and settlement of arrears situations.

Against this background, the present Executive Order, in compliance with the provisions of Article 26 of Decree-Law no. 227/2012, of 25 October 2012, establishes the regime and procedure applicable to the accreditation of entities comprising the Assistance Network for Indebted Consumers.

In accordance with this Executive Order and in line with Decree-Law no. 227/2012, of 25 October 2012, the Directorate-General for Consumers shall be responsible for accrediting the entities comprising this assistance network, following an opinion of Banco de Portugal.



In order to enter this network, the interested entity shall apply to the Directorate-General for Consumers, by submitting a special form duly accompanied by documents attesting compliance with the conditions and requirements set out in Decree-Law no. 227/2012, of 25 October 2012. This document also regulates the procedures to be followed after the request has been submitted.

This Executive Order also establishes that the entities comprising the Assistance Network for Indebted Consumers shall provide a quarterly statistical data report on the treatment of requests for information, advice and assistance of household customers. This will make it possible to monitor the performance of those entities and to evaluate the operation of the Assistance Network for Indebted Consumers. Based on these data, the Directorate-General for Consumers shall, every six months, prepare a report on the operation of this assistance network.

Without prejudice to other financing sources, the entities accredited within the scope of this Executive Order may submit their applications to the Consumer Rights Protection Fund, created by Executive Order no. 1340/2008, of 26 November 2008, as amended by Executive Order no. 39/2012, of 10 February and regulated by Joint Decision 1994/2012, of 30 January, of the Minister of State and Finance and the Minister of Economy and Employment, published in the *Diário da República* no. 31, Series II, of 13 February 2012.

Banco de Portugal, the National Commission for Data Protection and the Directorate-General for Consumers have been heard.

Therefore:

Under Article 26 of Decree-Law no. 227/2012, of 25 October 2012, the Government, the Minister of State and Finance, the Minister of Justice, and the Minister of Economy and Employment decree the following.

## **Article 1**

### **Object**

This Executive Order establishes the regime and procedure applicable to the accreditation of the entities comprising the Assistance Network for Indebted Consumers, hereinafter referred to as the "Network", set out in Decree-Law no. 227/2012, of 25 October 2012.

## **Article 2**

### **Entities comprising the Network**

1. The Network is comprised of private or public legal persons fulfilling the general conditions set out in Article 24 of Decree-Law no. 227/2012, of 25 October 2012, whose employees or other collaborating individuals comply with the requirements of Article 25 of the same Decree-Law, and who are, for the purpose, accredited by the Directorate-General for Consumers, following an opinion of Banco de Portugal.
2. The private or public legal persons comprising the Network shall be recognised as suitable to perform the tasks envisaged in Articles 27 and 32 of Decree-Law no. 227/2012, of 25 October 2012.

## **Article 3**

### **Submitting the request for accreditation**

1. The request for accreditation to be submitted by the requesting entity to the Directorate-General for Consumers shall be accompanied by:
  - (a) Access code to the permanent business registration certificate, if any, tax identification number and e-mail address;
  - (b) Any document attesting its regular situation in tax and social security terms;
  - (c) Identification of the person responsible for coordinating the service to be provided;
  - (d) Detailed description of the procedures to be adopted in the exercise of the activities listed in Article 27 of Decree-Law no. 227/2012, of 25 October 2012.

2. The request for accreditation, with respect to the person responsible for coordinating the service and the employees of or other individuals collaborating with entities requesting accreditation and providing assistance to household customers, shall include:

- (a) Simple copy recto/verso of the identity document and tax identification number;
- (b) Detailed curriculum vitae;
- (c) Qualification certificate;
- (d) Certificates of technical knowledge in the financial, economic and banking areas;
- (e) Up-to-date criminal record;
- (f) Questionnaire, duly filled in, as per the template annexed to this Executive Order.

3. The request for accreditation shall be submitted through the appropriate template, available on “Portal do Consumidor” website, at <http://www.consumidor.pt>.

#### **Article 4**

##### **Technical knowledge in the financial, economic and banking areas**

For the purposes of the provisions of Article 25 (1) (c) of Decree-Law no. 227/2012, of 25 October 2012, the employees of or other individuals collaborating with entities requesting accreditation are deemed to have adequate technical knowledge in the financial, economic and banking areas when they hold adequate vocational training or academic qualifications, whose curriculum includes general and specific training in the financial, economic and banking areas.

#### **Article 5**

##### **Examination of the request for accreditation**

1. The Directorate-General for Consumers shall be responsible for examining the request for accreditation.
2. For the purposes of the foregoing paragraph, the Directorate-General for Consumers shall verify, within ten working days as of the date the request is received, whether the

items submitted with the request for accreditation are adequate, and prepare the respective examination report.

3. The Directorate-General for Consumers may ask the entity requesting accreditation to submit, within five working days, the additional information or complementary items deemed necessary for examining the request for accreditation.

4. Any request for additional information or complementary items suspends the deadline mentioned in paragraph 2 of this Article.

#### **Article 6**

##### **Opinion of Banco de Portugal**

1. After the deadline established in Article 5 (2) above, the Directorate-General for Consumers shall request the opinion of Banco de Portugal, for the purpose of the provisions of Article 23 and Article 25 (1) (a) and (c) of Decree-Law no. 227/2012, of 25 October 2012. To this effect, a copy of the respective examination report and all the relevant documents shall be provided.

2. Banco de Portugal shall forward its opinion to the Directorate-General for Consumers within ten working days, as of the date on which the items mentioned in the foregoing paragraph are received.

3. Banco de Portugal may request the Directorate-General for Consumers to provide complementary information, and take all necessary steps to issue its opinion.

4. Any request for complementary information suspends the deadline mentioned in paragraph 2 of this Article.

#### **Article 7**

##### **Decision and communication to the entity requesting accreditation**

1. Within five working days as of the date on which the opinion of Banco de Portugal is received, the Directorate-General for Consumers shall notify the entity requesting accreditation of its decision, for the purposes of hearing the parties, under the terms of the Administrative Procedure Code.

2. Within five working days after conclusion of the procedure mentioned in the foregoing paragraph, the Directorate-General for Consumers decides on the request for accreditation and communicates its decision in writing to the requesting party.

3. The Directorate-General for Consumers shall publish on the “Portal do Consumidor” website a list of the entities that, after being accredited under the terms of this Executive Order, shall be part of the Network.

### **Article 8**

#### **Continuous training of the accredited entities**

The employees of or other individuals collaborating with entities requesting accreditation shall regularly engage in training initiatives within the financial, economic and banking areas, to be provided by entities indicated by the Directorate-General for Consumers.

### **Article 9**

#### **Changes subsequent to accreditation**

1. The entities comprising the Network shall send to the Directorate-General for Consumers the items listed in Article 3 (2) of this Executive Order, regarding the employees or other collaborating individuals who, after accreditation, wish to start their functions with those entities, as regards assistance to household customers, as set out in Decree-Law no. 227/2012, of 25 October 2012.

2. The entities comprising the Network shall maintain an updated record of all employees or other individuals providing assistance to household customers, in the context of default prevention and settlement of arrears situations arising from credit agreements.

3. Any changes to the record mentioned in the foregoing paragraph or the occurrence of any facts that may change the conditions and requirements underlying the accreditation shall immediately be communicated to the Directorate-General for Consumers by the entities comprising the Network.

### **Article 10**

#### **Reassessment and termination of accreditation**

1. In case of subsequent non-compliance with the conditions and requirements underlying accreditation, or signs of non-compliance with the regulations set out in Chapter IV of Decree-Law no. 227/2012, of 25 October 2012, the Directorate-General for Consumers shall reassess accreditation.

2. When reassessing accreditation, and with regard to the subsequent non-compliance with the conditions or requirements that have been the object of a prior opinion of Banco de Portugal, the Directorate-General for Consumers shall request an opinion of Banco de Portugal, under the terms of Article 6 of this Executive Order.

3. The reassessment set out in this Article may result in termination of the accreditation made under this Executive Order.

### **Article 11**

#### **Data reporting**

1. The entities comprising the Network shall provide a quarterly statistical data report to the Directorate-General for Consumers on the treatment of requests for information, advice and assistance to household customers, as well as on any financial training initiatives.

2. For the purpose of the foregoing paragraph, the Directorate-General for Consumers shall provide a template for the collection of the required information on the “Portal do Consumidor” website.

3. Based on the statistical data reported by the entities comprising the Network, the Directorate-General for Consumers shall, every six months, deliver a report to the Government member responsible for consumer protection.

### **Article 12**

#### **Protection of personal data**

The treatment of personal data envisaged in this Executive Order shall be subject to the legal system established by the Law of the

Protection of Personal Data, approved by Law no. 67/98, of 26 October 1998, in particular as regards:

- (a) The right of access to and rectification of personal data in the Annex to this Executive Order;
- (b) The obligation of entities identified in this Executive Order to notify the National Commission for Data Protection on the treatment of personal data on household customers.

### **Article 13**

#### **Entry into force**

This Executive Order shall enter into force on the day following that of its publication.

Annex  
Questionnaire on Academic and Professional Qualifications and Eligibility

**Questionnaire on Academic and Professional Qualifications and Eligibility**

1. PERSONAL INFORMATION

Full name \_\_\_\_\_

Date of birth \_\_\_ / \_\_\_ / \_\_\_\_\_ (day/month/year)

District \_\_\_\_\_ County \_\_\_\_\_

Country \_\_\_\_\_ Nationality \_\_\_\_\_

Identity document \_\_\_\_\_ no. \_\_\_\_\_

Issued by \_\_\_\_\_ on \_\_\_ / \_\_\_ / \_\_\_\_\_

Tax identification number \_\_\_\_\_ Financial Services Branch Code \_\_\_\_\_

Current personal address (Street / no. / floor) \_\_\_\_\_ - \_\_\_\_\_

Town/city \_\_\_\_\_ Postcode \_\_\_\_\_ - \_\_\_\_\_ Country \_\_\_\_\_

Telephone no. \_\_\_\_\_ Fax \_\_\_\_\_

E-mail \_\_\_\_\_

Additional information – Yes No

2. ACADEMIC AND PROFESSIONAL QUALIFICATIONS

Change – Yes  No

Academic qualifications:

COURSE	INSTITUTION	GRADUATION YEAR

Technical knowledge in financial, economic and banking areas:

COURSE	INSTITUTION	GRADUATION YEAR

Relevant professional experience for the role:

ORGANISATION	ACTIVITY TYPE	ROLES PERFORMED	PERIOD IN WHICH ROLE WAS PERFORMED

Additional information – Yes  No

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. PROFESSIONAL SITUATION

Change – Yes  No

**Professional activity performed along with informing, advising and monitoring bank customers:**  
 Entity \_\_\_\_\_  
 Activity type \_\_\_\_\_  
 Role \_\_\_\_\_  
 Period in which role was performed \_\_\_\_\_  
 Contractual relationship type \_\_\_\_\_

**Additional information – Yes  No**   
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. ELIGIBILITY

Change – Yes  No

Answer the following questions “Yes” or “No” (mark with an X):	Yes	No
4.1. Have you ever been convicted under criminal proceedings in Portugal or abroad?		
4.2. Are any criminal proceedings ongoing against you in any court in Portugal or abroad?		
4.3. Have you ever been convicted under misdemeanour proceedings for deeds related to carrying on professional activities in the area of finance in Portugal or abroad?		
4.4. Are any misdemeanour proceedings ongoing against you by any governmental authority for deeds related to carrying on professional activities in the area of finance in Portugal or abroad?		
4.5. Have you ever been a suspect under misdemeanour proceedings brought by <i>Banco de Portugal</i> ?		
4.6. Have you ever been convicted in Portugal or abroad for violations of laws or regulations governing the activity of credit institutions, financial institutions or other institutions subject to supervision by <i>Banco de Portugal</i> ?		
4.7. Has any company controlled by you or in which you have held a managerial or auditory role been a suspect under misdemeanour proceedings brought by <i>Banco de Portugal</i> ?		
4.8. Has any company controlled by you or in which you have held a managerial or auditory role been convicted in Portugal or abroad for violations of laws or regulations governing the activity of credit institutions, financial institutions or other institutions subject to supervision by <i>Banco de Portugal</i> ?		
4.9. Have you ever been declared bankrupt in Portugal or abroad?		
4.10. Has any company controlled by you or in which you were a member of the management or auditory bodies ever been declared bankrupt in Portugal or abroad?		
4.11. Are any bankruptcy proceedings ongoing against you in Portugal or abroad?		
4.12. Are any bankruptcy proceedings ongoing against any company controlled by you or in which you have held a managerial or auditory role in Portugal or abroad?		
4.13. Have you ever been penalised for violating rules of conduct applying to the carrying on of your professional activity?		

**Where you have answered yes to any of the questions above give the facts as applicable leading to the bringing of proceedings, the type of crime or misdemeanour, the verdict date, the sentence or penalty handed down, the court or entity which issued the verdict or penalty, the court or entity conducting the proceedings, the stage of the proceedings or their outcome, the name of the companies involved in the bankruptcy proceedings, the roles held and if relevant your point of view on the facts in question.**  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**5. ADDITIONAL INFORMATION**

<p>To which point does the additional information relate?</p> <p>_____</p> <p>_____</p> <p><b>Information</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
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**6. FINAL POINTS**

The information requested in this questionnaire aims to provide an understanding of the academic and professional qualifications and eligibility of the employees of and other individuals collaboration with the entities making up the System

<p style="text-align: center;"><b>DECLARATION</b></p> <p>The below-signed declares that the information provided above is the truth and does not omit any facts that may be relevant for the accreditation of the entity that is part of / wishes to be part of the System.</p> <p>Furthermore, the below-signed declares that he/she is aware that providing false declarations constitutes grounds for refusal or termination of accreditation, without prejudice to any application of penalties.</p> <p>He/she also commits to communicating to the entity that is part of the System all facts that may alter any of the answers provided in this questionnaire within 15 days of their occurrence.</p> <p>Date ___ / ___ / _____</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">(Signature)</p> <p>Appended: photocopy of identification document</p>
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