



BANCO DE PORTUGAL  
EUROSYSTEM

# ARREARS ON CREDIT

Prevention and settlement  
of arrears on credit  
agreements with  
household customers





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# Contents

Preliminary note | 5

Brief description of the regimes | 7

1. Arrears prevention | 10

2. Arrears management | 11

2.1. Arrears settlement general regime | 14

2.2. Arrears settlement extraordinary regime | 16

2.2.1. Customer rights | 17

2.2.2. Conditions for access to the extraordinary regime | 18

2.2.3. Very difficult economic situation | 19

2.2.4. Documents to be submitted | 21

2.2.5. Debt restructuring plan | 22

2.2.5.1. Description of the restructuring plan | 23

2.2.5.2. Non-viability of the restructuring plan | 23

2.2.6. Complementary measures | 24

2.2.7. Substitutive measures to foreclosure | 25

2.2.8. Conditions for applying substitutive measures | 25

2.3. Coordination between the OASP  
and the Extraordinary regime | 28

3. Assistance network for indebted consumers | 29

3.1. Scope | 29

3.2. Operating principles of entities in the Assistance Network  
for Indebted Consumers | 30

3.3. Entities making up the Assistance Network  
for Indebted Consumers | 30

Legislation and regulations | 31



## 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 institutions, have been published by Banco de Portugal on the Bank Customer Web-

site ([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

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 Out-of-court Arrears Settlement Procedure (OASP) (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.

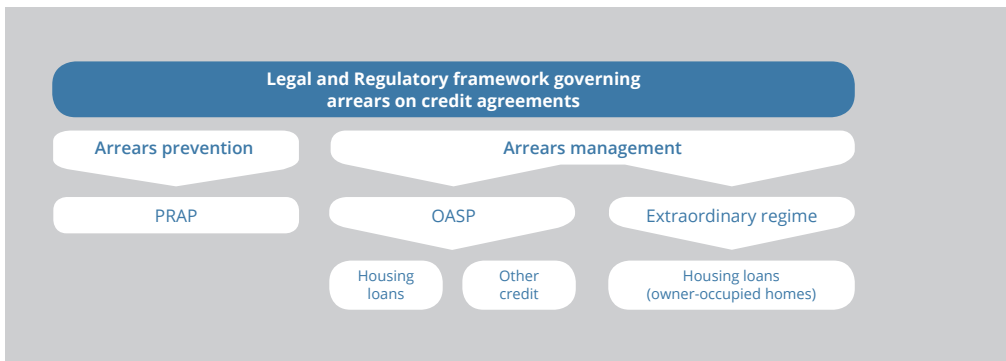
Household customers in a very difficult economic situation in arrears on payment of their housing credit instalments may benefit from the extraordinary regime for protection of housing loan borrowers (Law no. 58/2012 of 9 November 2012 as amended by Law no. 58/2014 of 25 August 2014).

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 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 per cent, or 60 per cent 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.

- lease of the property that serves as collateral for the housing credit, as a result of:
  - any of the borrower's household members being unemployed; or
  - 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 sei-

zure 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 fulfil 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 cus-

tomers 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 per cent 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.

### Example

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

Interest Rate =  $\frac{\text{overdue instalment amount} \times (\text{late payment interest} / 360)}{\text{no. of overdue days}}$

- a recovery of arrears fee may be charged only once, for each overdue instalment, and it may not exceed 4 per cent 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 per cent 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.

### Example

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 per cent) increased by a surcharge of 3 per cent.

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 per cent of the instalment's amount.

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

Total Amount to Pay = €350 +  $(€350 \times 0.07 / 360 \times 20)$  +  $(€350 \times 0.04)$  = €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 agreements. 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 31st and the 60th 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.

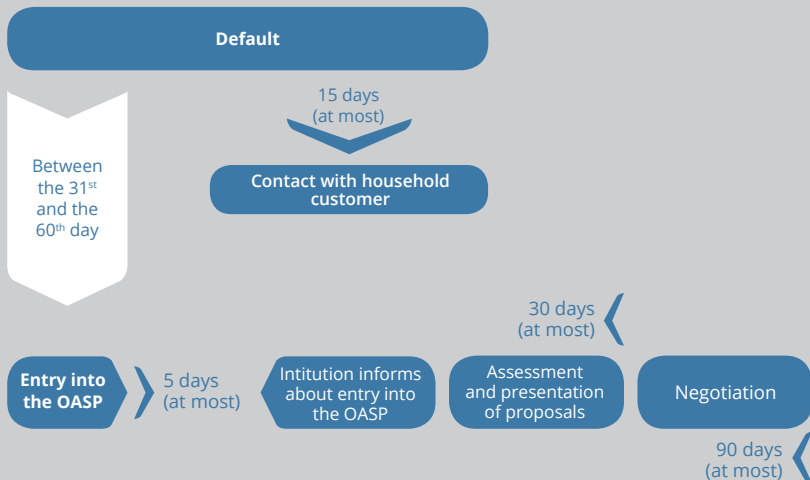
In the 30 days after this procedure (OASP) has been initiated, the credit institution should present the household customer in arrears with one or more settlement proposals. Within 15 days after receipt of the credit institution's proposal, customers may also propose solutions that they consider more 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 91st 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.

### 2.2.1. 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

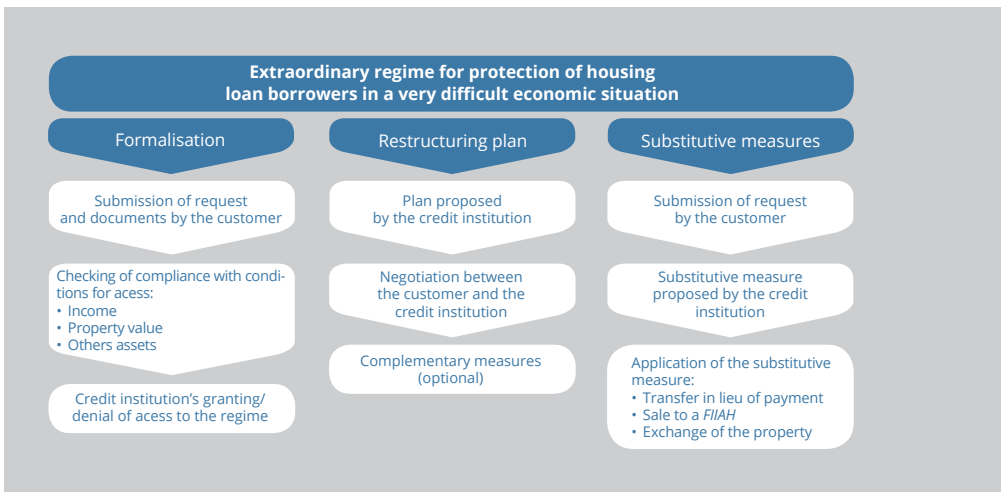
acronym: FIAH) or the exchange of the property for a lower value home.

### 2.2.2. 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.

### 2.2.3. 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 per cent, 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 per cent decline in their income.

### Debt burden

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

- 50 per cent if the borrower does not have dependents;
- 45 per cent if the borrower has dependents;
- 40 per cent 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.

### 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 per cent. With the gross annual income falling

to EUR 11,700, the debt burden rises to 65 per cent.

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

### 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).

## 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

### 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 per cent of the national minimum wage for each borrower (120 per cent where the household comprises only the borrower);
- 70 per cent of the national minimum wage for each of the household's adults (non-borrowers);
- 50 per cent 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:

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

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

### 2.2.4. 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;
- 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.

### 2.2.5. 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 outstand-

ing 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 per cent to households with 5 or more elements, 45 per cent if the borrower has dependents, or 50 per cent 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.

#### 2.2.5.1. 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 per cent 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 per cent;
- 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.

#### 2.2.5.2. 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 per cent to households with 5 or more elements, 45 per cent if the borrower has dependents, or 50 per cent 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.

### 2.2.6. 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 per cent to households with 5 or more elements, 45 per cent if the borrower has dependents, or 50 per cent 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.

### Restructuring plan

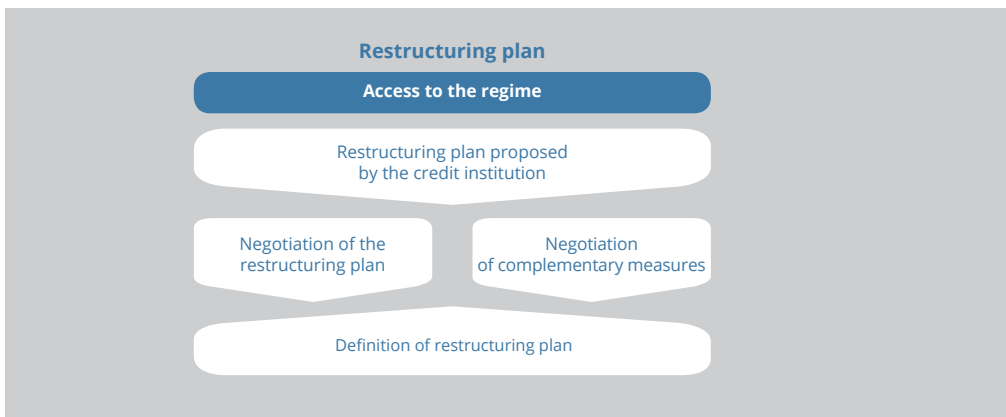
#### Access to the regime

Restructuring plan proposed by the credit institution

Negotiation of the restructuring plan

Negotiation of complementary measures

Definition of restructuring plan



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.

### 2.2.7. 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.

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: FIAH);

- 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.

### 2.2.8. 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.

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.

### Substitutive measure

#### Non-viability of the restructuring plan

Household customer requests substitutive measure

Application of substitutive measure by the credit institution

Transfer *in lieu*

FIAH

Exchange

Total settlement

or

Partial settlement

### 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:

- if the request for access is accepted, the credit institution must adopt the procedures defined in the extraordinary regime.
- 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.
- if the request submitted after entry into the OASP is denied:
  - 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;

- 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 (ANIC). 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).

#### 3.1. 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.

### 3.2. 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.

### 3.3. 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).



## Legislation and regulations

### **Decree-Law no. 226/2012, of 18 October 2012**

Extends the legal framework applicable to housing loans (laid down in Decree-Law no. 51/2007, of 7 March 2007) to all credit agreements concluded with household customers which are secured by mortgage or other right on immovable property.

### **General Regime (Decree-Law no. 227/2012, of 25 October 2012)**

Sets out the principles and rules to be complied with by credit institutions in the prevention and out-of-court settlement of arrears on credit agreements concluded with household customers. Under this legal framework, credit institutions are required to develop and implement a Pre-Arrears Action Plan (PRAP) and to implement an Out-of-court Arrears Settlement Procedure (OASP) for the negotiation, between credit institutions and household customers, of solutions towards the out-of-court settlement of arrears situations. Additionally, it creates an Assistance Network for Indebted Consumers.

### **Extraordinary Regime (Law no. 58/2012, 9 of November 2012 (Amended by Law no. 58/2014, of 25 August 2014))**

Establishes an extraordinary regime for protection of borrowers of credit agreements to purchase, build or renovate owner-occupied homes who are in a very difficult economic situation.

### **Law no. 59/2012, of 9 November 2012**

Amends Decree-Law no. 349/98, 11 of November 1998 and creates additional safeguards for housing loans borrowers related to (i) the limitation of the right to terminate the credit agreement in case of default, (ii) the borrower's right to resume a terminated credit agreement and (iii) the prohibition to increase the existent spread in case of renegotiation of the credit agreement following divorce, legal separation, dissolution of a life partnership or death of either one of the spouses.

**Notice of Banco de Portugal  
no. 16/2012, of 17 December 2012**

Extends the information duties of credit institutions in the negotiation, conclusion and execution of housing loans to all credit agreements concluded with household customers which are secured by mortgage or other right on immovable property.

**Notice of Banco de Portugal  
no. 17/2012, of 17 December 2012**

Details the obligations that, by virtue of Decree-Law no. 227/2012, of 25 October, credit institutions shall comply with in the prevention and out-of-court settlement of arrears on credit agreements.

**Instruction of Banco de Portugal  
no. 44/2012, of 17 December  
2012**

Requires credit institutions to report to Banco de Portugal information on (i) credit agreements entered into the Out-of-court Arrears Settlement Procedure (OASP), in accordance with Decree-Law no. 227/2012, of 25 October and (ii) 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.

**Instruction of Banco de Portugal  
no. 45/2012, of 17 December  
2012**

Establishes, in accordance with the amendments introduced by Decree-Law no. 226/2012, the models of the standardized information that credit institutions shall provide preceding the conclusion of housing loans and other credit agreements secured by mortgage or other right on immovable property.

**Circular letter no. 93/2012/  
DSC, of 28 December 2012**

Releases guidelines related to the coordination between the Out-of-court Arrears Settlement Procedure, regulated by Decree-Law no. 227/2012, of 25 October 2012, and the procedure set out in Law no. 58/2012, of 9 November 2012.

**Executive Order no. 2/2013,  
of 2 January 2013**

Establishes the regime and procedure applicable to the accreditation

of the entities comprising the Assistance Network for Over-indebted Consumers (ANIC).

**Decree-Law no. 58/2013,  
of 8 May 2013**

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.



