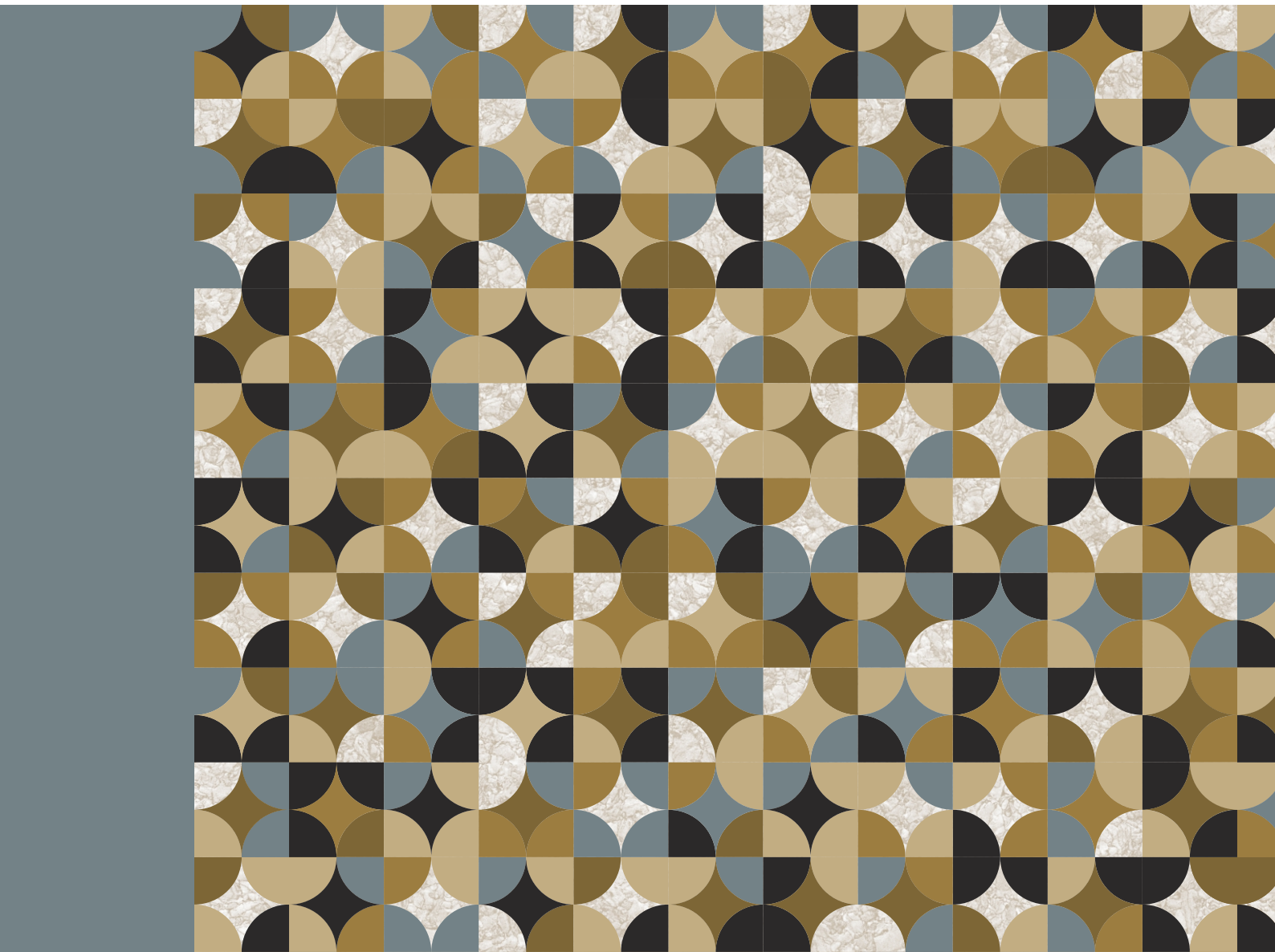
BANCO DE PORTUGAL
EUROSYSTEM

Legal Framework of Credit Institutions and Financial Companies



LEGAL FRAMEWORK OF CREDIT INSTITUTIONS AND FINANCIAL COMPANIES

(As approved by Decree-Law No 298/92 of 31 December 1992, and amended by Decree-Laws Nos 246/95 of 14 September 1995, 232/96 of 5 December 1996, 222/99 of 22 June 1999, 250/2000 of 13 October 2000, 285/2001 of 3 November 2001, 201/2002 of 26 September 2002, 319/2002 of 28 December 2002, 252/2003 of 17 October 2003, 145/2006 of 31 July 2006, 104/2007 of 3 April 2007, 357-A/2007 of 31 October 2007, 1/2008 of 3 January 2008, 126/2008 of 21 July 2008 and 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 Nos 317/2009 of 30 October 2009, 52/2010 of 26 May 2010 and 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, Decree-Laws Nos 88/2011 of 20 July 2011, 119/2011 of 26 December 2011, 31-A/2012 of 10 February 2012 and 242/2012 of 7 November 2012, Law No 64/2012 of 24 December 2012, Decree-Laws Nos 18/2013 of 6 February 2013, 63-A/2013 of 10 May 2013, 114-A/2014 of 1 August 2014, 114-B/2014 of 4 August 2014 and 157/2014 of 24 October 2014, Laws Nos 16/2015 of 24 February 2015, 23-A/2015 of 26 March 2015, Decree-Law No 89/2015 of 29 May 2015, Law No 66/2015 of 6 July 2015, Decree-Law No 140/2015 of 31 July 2015, Law No 118/2015 of 31 August 2015, Decree-Laws Nos 190/2015 of 10 September 2015 and 20/2016 of 20 April 2016, Law No 16/2017 of 3 May 2017, 30/2017 of 30 May 2017, Decree-Law No 107/2017 of 30 August 2017, Laws Nos 109/2017 of 24 November 2017, 35/2018 of 20 July 2018, 71/2018 of 31 December 2018, 15/2019 of 12 February 2019 and 23/2019 of 13 March 2019, Decree-Laws Nos 106/2019 of 12 August 2019 and 144/2019 of 23 September 2019, Laws Nos 50/2020 of 25 August 2020, 58/2020 of 31 August 2020, and 54/2021 of 13 August 2021, Decree-Law No 109-H/2021 of 10 December 2021, Law No 99-A/2021 of 31 December 2021, Decree-Law No 31/2022 of 6 May 2022 and Law No 23-A/2022 of 9 December 2022).

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General provisions

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Subject matter

1 - This Decree-Law governs:

(a) the access to the activity of and pursuit of the business of credit institutions and financial companies;

(b) the exercise of supervision of credit institutions and financial companies, supervisory powers and tools.

2 - *[Repealed]*.

Article 1-A
Credit institutions

1 - A credit institution is an undertaking that takes deposits or other repayable funds from the public and grants credits for its own account.

2 - An undertaking, other than a commodity and emission allowance dealer, a collective investment undertaking or an insurance undertaking shall also be a credit institution, which engages in dealing on own account or activities of underwriting financial instruments and/or placing financial instruments on a firm commitment basis shall also be a credit institution, where either of the following conditions is met:

(a) the total value of its consolidated assets is equal to or exceeds €30 billion;

(b) the total value of its assets is less than €30 billion but is part of a group in which the total value of the consolidated assets of all undertakings in the group that individually have a total assets of less than €30 billion and that carry out any of the activities referred to in this paragraph, is equal to or exceeds €30 billion; or

(c) the total value of its assets is less than €30 billion but is part of a group in which the total value of consolidated assets of all undertakings in the group carrying out any of the activities referred to in this paragraph is equal to or exceeds €30 billion, where the consolidating supervisor, in consultation with the supervisory college, so decides to protect potential risks of circumventing the rules and potential risks to financial stability in the European Union.

3 - For the purposes of subparagraphs *(b)* and *(c)* of the foregoing paragraph, where the undertaking is part of a group of a third-country group, the total assets of each branch of the third-country group authorised in the European Union shall be included in the combined total assets of all undertakings in the group.

Article 2
Credit institutions

[Repealed].

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Article 2-A
Definitions

1 - For the purposes of this Legal Framework:

(a) 'agency' shall mean a branch, located in Portugal, of a credit institution or financial company having its head office in Portugal, or a supplementary branch of a credit or financial institution having its head office abroad;

(b) 'extraordinary public financial support' shall mean State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union, or any other public financial support at supra-national level, which, if granted at national level, would constitute State aid that is provided in order to preserve or restore the viability, liquidity or solvency of credit institutions, investment firms dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, of one of the entities referred to in Article 152(2)*(a)* to *(c)* or a group of which such entities are part;

(c) 'low-risk assets' shall mean the assets included in the first or second categories mentioned in Table 1 of Article 336 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, or the assets deemed by the Banco de Portugal as having or offering similar liquidity and safety conditions;

(d) 'group-level resolution authority' shall mean the resolution authority in the EU Member State in which the consolidating supervisor is located;

(e) 'relevant third-country authority' shall mean a third-country authority responsible for carrying out functions comparable to those of supervision authorities or resolution authorities pursuant to Directives 2013/36/EU of the European Parliament and of the Council of 26 June 2013, and 2014/59/EU of the European Parliament and of the Council of 15 May 2014;

(f) 'consolidating supervisor' shall mean a competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and of institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies;

(g) 'financial holding company' shall mean a financial institution, the subsidiaries of which are exclusively or mainly institutions, investment firms or financial institutions, at least one of such subsidiaries being a credit institution or an investment firm, and which is not a mixed financial holding company;

(h) 'parent financial holding company in Portugal' shall mean a financial holding company having its head office in Portugal which is not itself a subsidiary of a credit institution, investment firm, or a financial holding company or mixed financial holding company authorised or set up in Portugal;

(i) 'EU parent financial holding company' shall mean a parent financial holding company having its head office in Portugal or in any EU Member State which is not a subsidiary of a credit institution or an investment firm, or a financial holding company or mixed financial holding company authorised or set up in any EU Member State;

(j) 'mixed financial holding company' shall mean a mixed financial holding company as defined in Article 2*(l)* of Decree-Law No 145/2006 of 31 July 2006, as amended by Decree-Laws Nos 18/2013 of 6 February 2013, and 91/2014 of 20 June 2014;

(k) 'parent mixed financial holding company in Portugal' shall mean a mixed financial holding company having its head office in Portugal which is not itself a subsidiary of a credit institution, an investment firm, or a financial holding company or mixed financial holding company authorised or set up in Portugal;

(l) 'EU parent mixed financial holding company' shall mean a parent mixed financial holding

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company in Portugal or any other EU Member State which is not a subsidiary of a credit institution or investment firm or of another financial holding company or mixed financial holding company set up in any Member State;

(m) 'mixed-activity holding company' shall mean a parent undertaking, other than a financial holding company, a credit institution, an investment firm or a mixed financial holding company, the subsidiaries of which include at least one credit institution or one investment firm;

(n) 'back-to-back transaction' shall mean a transaction entered into between two group entities for the purpose of transferring, in whole or in part, the risk generated by another transaction entered into between one of those group entities and a third party;

(o) 'financial contracts' shall include the following contracts:

(i) securities contracts, including:

(1) contracts for the purchase, sale or loan of a security, a group or an index of securities;

(2) options on a security or a group or index of securities;

(3) repurchase or reverse repurchase transactions on any such security, a group or index;

(ii) commodities contracts, including:

(1) contracts for the purchase, sale or loan of a commodity or a group or index of commodities for future delivery;

(2) options on a commodity or a group or index of commodities;

(3) repurchase or reverse repurchase transactions on any such commodity, group or index;

(iii) futures and forwards contracts, including contracts (other than a commodities contract) for the purchase, sale or transfer of a commodity or property of any other description, services or rights, for a specified price at a future date;

(iv) swap agreements, including:

(1) swaps and options relating to interest rates; spot or other foreign exchange agreements; currency; an equity index or equity; a debt index or debt; commodity indexes or commodities; weather conditions; emissions or inflation;

(2) total return, credit spread or credit swaps;

(3) any agreements or transactions that are similar to an agreement referred to in the foregoing subparagraphs and that are the subject of recurrent dealing in the swaps or derivatives markets;

(v) inter-bank borrowing agreements where the term of the borrowing is three months or less;

(vi) master agreements for any of the contracts or agreements referred to in points *i*) to *v*);

(p) 'senior management' shall mean those natural persons who exercise executive functions within a credit institution or financial company who are responsible, and accountable to the management body, for the day-to-day management of the institution;

(q) 'parent undertaking' shall mean an undertaking which effectively exercises a dominant influence over another undertaking;

(r) 'intermediate EU parent undertaking' shall mean:

(i) a credit institution authorised in accordance with the authorisation regime applicable to

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credit institutions;

(ii) a financial holding company or mixed financial holding company which has been granted authorisation in accordance with Article 35-B; or

(iii) where none of the institutions referred to in Article 132-D(1) is a credit institution or where the second intermediate parent undertaking has yet to be set up in connection with investment activities to comply with a mandatory requirement laid down in Article 132-D(2), the intermediate EU parent undertaking or the second intermediate EU parent undertaking may be an investment firm authorised under the investment firms framework, approved in the Annex to Decree-Law No 109-H/2021 of 10 December 2021, and subject to the resolution regime;

(s) 'investment firm' shall mean an undertaking which carries out and provides investment services and activities under the applicable law and is not a credit institution;

(t) 'resolution entity' shall mean any of the following:

(i) a legal person established in Portugal or in another EU Member State identified in the group resolution plan drawn up in accordance with Article 138-AF as an entity to which resolution measures will be applied;

(ii) a credit institution, an investment firm dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis or the entities referred to in Article 152(2)*(a)* to *(c)*, not part of a group subject to consolidated supervision by a supervisory authority of an EU Member State whose resolution plan drawn up in accordance with Article 138-AE provides for the application of resolution measures;

(u) 'host Member State' or 'host country' shall mean the EU Member State in which a credit institution, a financial company or a financial institution has a branch or performs services;

(v) 'home Member State' or 'home country', shall mean the EU Member State where the credit institution, financial company or a financial institution has been authorised;

(w)

(x) 'subsidiary' shall mean a legal person under a control relationship of another legal person, known as the parent undertaking, or on which it is deemed by the Banco de Portugal that the parent undertaking exercises a dominant influence. Any subsidiary of a subsidiary shall also be considered a subsidiary of the ultimate parent undertaking;

(y) 'critical functions' shall mean activities, services or operations the discontinuance of which is likely in one or more Member States, to lead to the disruption of services that are essential to the economy or to disrupt financial stability due to the size, market share, external and internal interconnectedness, complexity or cross-border activities of an institution or group, with particular regard to the substitutability of those activities, services or operations;

(z) 'group' shall mean a group of firms comprising at least one credit institution, investment firm or financial company, consisting of a parent undertaking and its subsidiaries, or of directly interconnected firms under the terms of Article 6 of Decree-Law No 158/2009 of 13 July 2009, or indirectly interconnected firms;

(aa) 'resolution group' shall mean:

(i) a resolution entity and its subsidiaries that:

(1) have not hitherto been identified as resolution entities;

(2) have not been subsidiaries of other resolution entities; and

(3) are not entities established in third countries not included in the resolution group in

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accordance with the resolution plan, and their subsidiaries;

(ii) credit institutions permanently affiliated to a central body and the central body itself when at least one of those credit institutions or the central body has been identified as resolution entity, and their respective subsidiaries;

(bb) 'third-country group' shall mean a group whose parent undertaking is established in a third country;

(cc) 'parent credit institution in Portugal' shall mean a credit institution which has a credit institution, an investment firm or a financial institution as a subsidiary or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution or investment firm or of a financial holding company or mixed financial holding company authorised or set up in Portugal;

(dd) 'EU parent credit institution' shall mean a parent credit institution having its head office in Portugal or another EU Member State which is not a subsidiary of a credit institution or investment firm or of a financial holding company or mixed financial holding company authorised or set up in any EU Member State;

(ee) 'financial institutions', other than a credit institution, insurance holding companies, mixed-activity insurance holding companies and holding companies in the purely industrial sector, shall comprise undertakings whose principal activity is either to acquire or manage holdings or to carry on one or more of the activities listed in Article 4(1)*(b)* to *(h)*, *(j)* and *(r)*, including payment institutions, investment firms, asset management companies, financial holding companies, mixed financial holding companies and investment financial holding companies;

(ff) 'core business lines' shall mean the business lines and associated services representing the value of a credit institution, or the group to which it belongs, namely in terms of results and trademark value;

(gg) 'micro, small and medium-sized enterprises' shall mean micro, small and medium-sized enterprises, within the meaning of Article 2 of the annex to Decree-Law No 372/2007 of 6 November 2007, as amended by Decree-Law No 143/2009 of 16 June 2009;

(hh) 'covered bond' shall mean a debt security, including a mortgage bond, issued by a credit institution and secured by cover assets to which bondholders have a direct recourse as preferred creditors under the applicable law;

(ii) 'participation' shall mean the rights in the capital of other undertakings, represented or not by equity or securities, provided they create a durable link with those undertakings and they are intended to contribute to the undertaking's activities; direct or indirect ownership of 20% or more of the voting rights or capital of a company shall always be considered as a participation;

(jj) [Repealed];

(kk) 'qualifying holding' shall mean a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which, for whatever reason, makes it possible for its holder to exercise a significant influence over the management of that undertaking. For the purposes of this definition, the provisions laid down in Articles 13-A and 13-B shall apply;

(ll) 'gender-neutral remuneration policy' shall mean a remuneration policy based on equal pay for male and female workers for equal work or work of equal value;

(mm) 'control relationship' shall mean a relationship between a parent undertaking and a subsidiary, or between any natural or legal person and an undertaking:

(i) when any of the following applies:

(1) the natural or legal person has a majority of the voting rights;

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(2) the natural or legal person, as shareholder, has the right to appoint or remove more than half of the members of the management or supervisory bodies;

(3) the natural or legal person has the right to exercise a dominant influence over the undertaking, pursuant to a contract entered into or to a provision in the undertaking's articles of association;

(4) the natural or legal person, as shareholder, controls alone the majority of the voting rights, pursuant to an agreement entered into with other shareholders;

(5) the natural or legal person has the power to exercise, or actually exercises, dominant influence or control over the undertaking;

(6) the legal person manages the undertaking as if both undertakings were a single entity.

(ii) within the meaning of the accounting standards to be applied to the institution, pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002;

(iii) for the purposes of *(i)*(1), (2) and (4) above, it is considered that:

(1) the voting rights and the rights of appointment or removal of a participant are equivalent to the rights of any other dependent on the parent undertaking, or constituting part of the same group, as well as those of any person acting in their own name but on behalf of the parent undertaking or of any other of the undertakings referred to;

(2) the rights must be reduced by the rights attached to shares held on behalf of a person who is neither the natural or legal person exercising the control nor any other of the undertakings referred to, or attached to shares held by way of security, provided that, in this case, such rights are exercised in accordance with the instructions received, or the holding of shares is part of the normal business of the company in regard to the granting of loans, and the voting rights are exercised in the interests of the person providing the security;

(iv) for the purposes of (i)(1) and (4) the total voting rights in the dependent undertaking must be reduced by the voting rights attached to the shares held by that undertaking itself, by a subsidiary of that undertaking, or by a person acting in their own name but on behalf of those undertakings;

(nn) 'close links" shall mean a situation in which two or more natural or legal persons are linked by:

(i) participation in the form of ownership, direct or indirect, of 20% or more of the capital or the voting rights of an undertaking; or

(ii) control; or

(iii) a permanent link of all of them to the same third party by means of a control relationship;

(oo) 'institutional protection scheme' shall mean a scheme that meets the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(pp) 'ancillary services company' shall mean a company the principal activity of which is ancillary to the principal activity of one or more credit institutions or financial companies, namely the holding or management of real estate or the management of IT services;

(qq) 'financial companies' shall mean companies, other than credit institutions and investment firms, the principal activity of which is to carry out one or more of the activities that banks are authorised to conduct, except accepting deposits from the public or other repayable funds;

(rr) 'branch' shall mean a place of business which has no legal personality and which carries out directly all or some of the transactions inherent in the business of the undertaking to which it belongs.

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2 - Where necessary to ensure that the supervisory requirements or powers laid down in this Legal Framework or in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 apply, for those purposes, on a consolidated or sub-consolidated basis, the terms 'credit institution', 'parent credit institution in a Member State', 'EU parent credit institution' and 'parent undertaking' shall also include:

(a) financial holding companies and mixed financial holding companies granted authorisation in accordance with Title II, Chapter IV-A;

(b) designated institutions controlled by an EU parent financial holding company, an EU parent mixed financial holding company, a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State where the parent company is not subject to authorisation in accordance with Article 35-D;

(c) financial holding companies, mixed financial holding companies or institutions designated in accordance with Article 35-H(3)*(d)*.

3 - For the purposes of Title VII-B and Title VIII:

(a) 'bail-inable liabilities' shall mean liabilities of the credit institution that do not arise from ownership of financial instruments or contracts that are, or have been at some time, eligible for the credit institution's own funds, in accordance with the applicable laws and regulations, and which are not excluded from the application of bail-in in accordance with Article 145-U(6);

(b) 'global systemically important institution' or 'G-SII' shall mean an entity that has been identified as such by the Banco de Portugal in accordance with this Legal Framework or by a relevant authority of an EU Member State in accordance with its domestic provisions;

(c) 'global systemically important institution established in a third country' or 'non-EU G-SII' shall mean a global systemically important banking group or bank that is not covered by the provisions of the foregoing subparagraph and that is included in the list of global systemically important banking groups and banks published by the Financial Stability Board;

(d) 'own funds instruments' shall mean Common Equity Tier 1 capital items, additional Tier 1 instruments and Tier 2 instruments of the credit institution.

4 - References to subsidiaries made in the Titles referred to in the foregoing paragraph shall cover credit institutions permanently affiliated to a central body, the central body itself and its subsidiaries, where relevant for meeting the minimum requirement for own funds and eligible liabilities on a consolidated basis at the resolution group level under Article 138-U mutatis mutandis.

Article 3
Types of credit institutions

The following are credit institutions:

(a) banks;

(b) *caixas económicas* (savings banks);

(c) Caixa Central de Crédito Agrícola Mútuo (Central Mutual Agricultural Credit Bank) and *caixas de crédito agrícola mútuo* (mutual agricultural credit banks);

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(d) credit financial institutions;

(e) mortgage credit institutions;

(f) [Repealed];

(g) [Repealed];

(h) [Repealed];

(i) [Repealed];

(j) [Repealed];

(k) other undertakings which, in meeting the definition in the preceding Article, are classified as credit institutions according to the law.

(l) [Repealed];

(m) investment firms which have granted authorisation under the special authorisation regime provided for in Article 21-A.

Article 4

Activities of credit institutions

1 - Banks may carry out the following activities:

(a) acceptance of deposits or other repayable funds;

(b) lending, including the granting of guarantees and other commitments, financial leasing and factoring;

*(c)*payment services, as defined in Article 4 of the legal framework governing payment services and electronic money;

(d) issuing and administering other means of payment not covered by the foregoing subparagraph, e.g. paper cheques, paper travellers' cheques and bankers' drafts;

(e) trading for own account or for account of customers in money market and foreign exchange instruments, financial futures and options, exchange and interest rate instruments, goods and transferable securities;

(f) participation in securities issues and placement and provision of related services;

(g) money broking;

(h) portfolio management and advice, safekeeping and administration of securities;

(i) portfolio management and advice in relation to other assets;

(j) advice to undertakings on capital structure, corporate strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;

(k) dealings in precious metals and stones;

(l) acquisition of holdings in companies;

(m) insurance mediation;

(n) credit reference services;

(o) safe custody services;

(p) leasing of movable property, under the terms authorised to financial leasing companies;

(q) provision of the investment services and carrying out the investment activities referred to in Articles 290 and 291 of the Securities Code;

(r) issuance of electronic money;

(s) other similar transactions not forbidden by law.

2 - Other credit institutions may only carry out those transactions permitted by the laws and regulations governing their activity.

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Article 4-A
Types of investment firms
[Repealed].

Article 5
Financial companies
[Repealed].

Article 6
Types of financial companies

1 - The following are financial companies:

(a) [Repealed];
(b) the financial institutions referred to in Article 2-A*(ee)*, including:

(i) credit financial institutions;
(ii) investment firms;
(iii) financial leasing companies;
(iv) factoring companies;
(v) mutual guarantee companies;
(vi) [*Repealed*];
(vii) regional development companies;
(viii) exchange offices;
(ix) [*Repealed*];
(x) microcredit financial companies;

(c)[Repealed];
(d) [Repealed];
(e) [Repealed];
(f) [Repealed];
(g) [Repealed];
(h) [Repealed];
(i) [Repealed];
(j) [Repealed];
(l) Other companies which correspond to the definition of financial company and are therefore classified as such by law.

2 - *[Repealed]*.

3 - For the purposes of this Decree-Law, insurance undertakings and pension fund management companies are not considered as financial companies.

4 - The activity of pawnbrokers is covered by special legislation.

5 - The entities regulated under the Legal Framework of Credit Securitisation, approved by Decree-Law No 453/99 of 5 November 1999, in its current wording, the Legal Framework of Collective Investment Undertakings, approved by Law No 16/2015 of 24 February 2015, in its current wording, and the Legal Framework of Venture Capital, Social Entrepreneurship and Specialised Investment, approved by Law No 18/2015 of 4 March 2015, in its current wording, are not financial companies.

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Article 7

Activity of financial companies

Financial companies may only carry out the operations permitted by the laws and regulations governing their activity.

Article 8

Principle of exclusiveness

1 - Only credit institutions may take deposits or other repayable funds from the public for their own account.

2 - Only credit institutions and financial companies may carry out on a professional basis the activities referred to in Article 4(1)*(b)* to (*i*) and (*r*) with the exception of the provision of advice activities referred to in *(i)*.

3 - The provisions of paragraph 1 do not prevent the following entities from taking repayable funds from the public, according to the applicable laws, regulations or statutes:

(a) the State, including public funds and institutes with legal personality and administrative and financial autonomy;

(b) autonomous regions and local authorities;

(c) the European Investment Bank and other public international organisations of which Portugal is a member and whose legal framework allows them to take repayable funds from the public within the national territory;

(d) insurance undertakings, in respect of capitalisation operations.

4 - The provisions of paragraph 2 do not prevent the professional exercise of the following activities:

(a) reception and transmission of orders and securities investment advice, by investment advisers;

(b) reception and transmission of orders and investment advice in relation to financial instruments, by investment advice firms;

(c) management of MTFs by MTF management companies and regulated market management companies;

(d) provision of payment services by payment institutions and electronic money institutions, pursuant to the laws and regulations governing their activity;

(e) provision of services included in the statutory purpose of exchange offices by payment institutions, according to the laws and regulations governing their activity;

(f) issuance of electronic money by electronic money institutions, according to the laws and regulations governing their activity;

(g) credit granting by specialised alternative investment undertakings, according to the laws and regulations governing their activity.

5 - The Banco de Portugal shall inform the European Commission and the European Banking Authority of the national laws authorising or allowing undertakings other than credit institutions to carry out the business of taking deposits and other repayable funds from the public.

Article 9

Repayable funds received from the public and granting of credit

1 – For the purposes of this Legal Framework, funds raised through the issuance of bonds under

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the provisions and within the limits of the Commercial Companies Code or other applicable legislation, are not considered repayable funds received from the public, nor are funds raised through the issuance of commercial paper, also under the provisions and within the limits of the applicable legislation.

2 - For the purposes of the foregoing Articles, the following are not considered as granting of credit:

(a) long-term loans and other forms of loans and advances between a company and its shareholders;

(b) credit granted by a company to its employees for social reasons;

(c) delayed or early payment agreed between the parties to contracts for the acquisition of goods or services;

(d) cash facilities, when legally permitted, between companies in a control or group relationship;

(e) the issue of tickets or cards for payment of goods and services supplied by the issuing company.

Article 10
Authorised undertakings

1 – The following undertakings are authorised to carry out the activities referred to in this Decree-Law:

(a) credit institutions and financial companies having their head office in Portugal;

(b) branches of credit and financial institutions having their head office abroad.

2 - Credit and financial institutions authorised in other EU Member States may, under this Decree-Law, provide services in Portugal included in the above-mentioned activities, on condition that they are authorised to provide them in their home country.

Article 11
Truthfulness of company and business names

1 – Only undertakings authorised as credit institutions or financial companies may include in their company or business name or use in their activity expressions which suggest an activity pertaining to credit institutions or financial companies, such as “bank”, “banker”, “credit”, “deposit”, “financial leasing”, “leasing” and ‘factoring’.

2 - These expressions shall always be used in such a manner as not to mislead the public regarding the scope of the operations which the undertaking is allowed to carry out.

Article 12
Decisions of the Banco de Portugal

1 - Judicial appeals against the Banco de Portugal’s decisions, taken within the scope of this Decree-Law, shall abide, in all aspects not specifically covered by the latter, by the provisions of the Statute of the Banco de Portugal.

2 - Regarding the judicial appeals mentioned in the foregoing paragraph as well as the judicial appeals against other decisions taken within the scope of specific legislation governing the activity of credit institutions and financial companies, it is presumed, in the absence of evidence to the contrary, that the suspension of enforcement seriously harms the public interest.

3 - Regarding the decisions referred to in paragraphs 1 and 2 above, from which damages to a third party have resulted, the personal civil liability of their authors can only be enforced if the Banco

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de Portugal claims the repayment from them, save if the respective conduct constitutes a crime.

Article 12-A
Time limits

1 - Unless otherwise provided for by a special rule, the time limits established in this Decree-Law are continuous, without prejudice to the provisions of the following paragraph.

2 - The 30-day or one-month periods established in this Decree-Law for the exercising of the competences conferred on the Banco de Portugal are interrupted whenever the Banco de Portugal requires the parties concerned to provide information deemed necessary for the preparation of the relevant proceeding.

3 - The interruption foreseen in the foregoing paragraph cannot under any circumstances exceed a total of 60 days, continuous or non-continuous.

4 - The time limit for delivering a decision in the administrative procedure to perform the acts referred to in Articles 23(1), 30-C(4) and 106(1) shall be 180 working days.

5 - The time limit laid down in the foregoing paragraph may be extended, upon reasoned decision, for one or more periods up to a maximum of 60 working days.

6 - In addition to other cases provided for by law, the time limit for the procedures referred to in paragraph 4 shall be suspended from:

(a) the notification for the hearing of the persons concerned until the expiry of the time limit for such purpose;

(b) the sending of requests for information or other elements to third parties or persons concerned until receiving a full response in respect of the content thereof.

7 - The cumulative period of the suspension provided for in subparagraph *(b)* of the foregoing paragraph may not exceed 90 working days.

Article 13
Definitions
***[Repealed]*.**

Article 13-A
Allocation of voting rights

1 – Voting rights shall be taken into account in the calculation of qualifying holdings, in addition to those rights attached to shares of which the participant has the ownership or the right of usufruct, as follows:

(a) rights held by third parties in their own name, but on behalf of the participant;

(b) rights held by an undertaking with which the participant is in a control or group relationship;

(c) rights held by holders of voting rights with whom the participant has entered into a voting agreement, except if, by virtue of this same agreement, the participant is bound to follow a third party's instructions;

(d) rights held, where the participant is an undertaking, by the members of its management and supervisory bodies;

(e) rights that the participant may acquire under an agreement entered into with the respective holders;

(f) rights attached to shares held by way of security, managed or deposited with the participant,

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where those rights have been attributed to the participant;

(g) rights held by holders of rights which have granted discretionary powers to the participant to exercise them;

(h) rights held by persons that have entered into any agreement with the participant aimed at either acquiring control of the undertaking or frustrating any change to its control, or otherwise constituting an instrument of concerted exercise of influence over that undertaking;

(i) rights allocatable to any person mentioned in one of the foregoing subparagraphs by application mutatis mutandis of the criteria laid down in any of the other subparagraphs.

2 - For the purposes of subparagraph 1*(b)* above, the voting rights attached to shares belonging to managed funds or portfolios shall not be considered allocatable to the undertaking in a control relationship with investment fund management companies, pension fund management companies, venture capital fund management companies or financial intermediaries authorised to provide portfolio management services for the account of third parties, nor to pension-fund-associated companies, provided that the management company or financial intermediary exercises such voting rights independently from the controlling undertaking or associated companies.

3 - For the purposes of subparagraph 1*(h)* above, agreements concerning the transferability of shares representing the share capital of the undertaking are deemed to be instruments of concerted exercise of influence.

4 - The presumption referred to in the foregoing paragraph may be rebutted before the Banco de Portugal on presentation of proof that the relationship established with the participant is independent of any actual or potential influence over the undertaking.

5 - For the purposes of paragraph 1 above, the calculation of voting rights shall be based on all the shares with voting rights, regardless of any suspension of the respective exercise.

6 - The calculation of qualifying holdings shall not consider:

(a) the voting rights held by investment firms or credit institutions as a result of the underwriting or placement of financial instruments on a firm commitment basis, provided that those voting rights are not exercised or otherwise used to intervene in the management of the undertaking and are disposed of within one year of acquisition;

(b) the shares that are traded exclusively for clearing and settlement purposes within the scope of the short and regular settlement cycle, in accordance with the provisions laid down in Articles 16-A(2) and 18(1) of the Securities Code (*Código dos Valores Mobiliários*);

(c) the shares held by custodians, acting in that capacity, provided that such custodians may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means;

(d) the holdings of a financial intermediary acting as a market maker being equal to or higher than 5% of the voting rights corresponding to the share capital, provided that the intermediary neither intervenes in the management of the undertaking, nor influences the latter to acquire such shares or favour its price.

Article 13-B
Allocation of voting rights attached to shares forming part of collective investment undertakings, pension funds or portfolios

1 - For the purposes of Article 13-A(2), an undertaking that controls the management company or financial intermediary and pension-fund-associated companies shall benefit from a derogation of aggregated allocation of voting rights, provided that:

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(a) they do not interfere, through direct or indirect instructions, in the exercise of voting rights attached to shares forming part of the investment fund, pension fund, venture capital fund or portfolio;

(b) the management company or financial intermediary shows autonomy in the decision-making processes concerning the exercise of voting rights.

2 - In order to benefit from the derogation of the aggregated allocation of voting rights, the undertaking that controls the management company or the financial intermediary shall:

(a) submit to the Banco de Portugal an updated list of all management companies and financial intermediaries under its control and, in the case of entities subject to foreign law, identify the respective supervisory authorities;

(b) submit to the Banco de Portugal a reasoned statement for each management company or financial intermediary, stating the compliance with the provisions of the foregoing paragraph;

(c) demonstrate to the Banco de Portugal, upon request, that the organisational structures of the relevant entities ensure the independent exercise of the voting rights; that the persons who exercise the voting rights do so independently; and that there is a clear written mandate which, in the cases where the controlling undertaking receives services provided by the controlled undertaking or holds direct holdings in assets managed by the latter, a contractual relationship between the parties is established in accordance with regular market conditions for similar cases.

3 - For the purposes of subparagraph 2*(c)* above, the relevant entities shall adopt written policies and procedures that appropriately prevent access to information on the exercise of voting rights.

4 - In order to benefit from the derogation of aggregated allocation of voting rights, pension-fund-associated companies shall submit to the Banco de Portugal a reasoned statement stating that they comply with the provisions of paragraph 1 above.

5 - Where the allocation is due to the holding of financial instruments which confer on the participant the right to acquire, exclusively on its own initiative, pursuant to an agreement, shares with voting rights, already issued by an issuer whose shares are admitted to trading on a regulated market, it suffices for the purposes of paragraph 2 above, that the undertaking mentioned therein submits to the Banco de Portugal the information listed in subparagraph 2*(a)*.

6 - For the purposes of paragraph 1 above:

(a) direct instruction shall mean any instruction given by the controlling undertaking or any other entity controlled by the latter which specifies how the voting rights are to be exercised in specific cases;

(b) indirect instruction shall mean any general or particular instruction, regardless of its form, given by the controlling undertaking or any other entity controlled by the latter, that limits the margin of discretion of the management company, financial intermediary and pension-fund-associated company with regard to the exercise of the voting rights in order to serve specific business interests of the controlling undertaking or any other entity controlled by the latter.

7 - As soon as, pursuant to paragraph 1 above, the Banco de Portugal concludes that the independence of the management company or financial intermediary is not proven and a qualifying holding in a credit institution is involved it shall, without prejudice to any applicable penalties, inform thereof the controlling undertaking of the management company or financial intermediary and the pension-fund-associated companies, as well as the management body of the undertaking.

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8 - The declaration of the Banco de Portugal mentioned in the foregoing paragraph involves the allocation to the controlling undertaking of all voting rights attached to the shares forming part of the investment fund, pension fund, venture capital fund or portfolio, with the corresponding implications, for as long as the independence of the management company or financial intermediary is not proven.

9 - Before issuing the declaration provided for in paragraph 7, the Banco de Portugal shall previously consult the Portuguese Pension Funds Supervisory Authority (Autoridade de Supervisão de Seguros e Fundos de Pensões), whenever it refers to voting rights attached to shares forming part of pension funds, or the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários – CMVM), whenever it refers to voting rights attached to shares of issuers of listed securities, admitted for trade on the regulated market or held by undertakings for collective investment or included in financial instrument portfolios within the scope of portfolio management contracts.

Article 13-C
Statutory limits to the holding or exercising of voting rights in credit institutions

1 – The maintenance or withdrawal of limits to the holding or exercising of voting rights of the shareholders of credit institutions shall be the object of a decision by the shareholders, at least once every five years.

2 – The decision mentioned in the foregoing paragraph, when proposed by the management body, shall not be subject to any limits to the holding or exercising of the voting rights, nor to any more stringent quorum or majority requirements than those provided for by law.

3 – The limits to the holding or exercising of voting rights in force shall expire automatically at the end of each period mentioned in paragraph 1 above if, by the end of that period, no decision has been taken on the subject mentioned therein.

4 – The decision to maintain the applicable limits may be explicit or tacit, through rejection of the proposed change or withdrawal.

5 – The provisions of the foregoing paragraphs do not apply to mutual agricultural credit banks or savings banks.

TITLE II
Authorisation of credit institutions having their head office in Portugal

CHAPTER I
General principles

Article 14
General requirements

1 - Credit institutions having their head office in Portugal shall:

(a) correspond to one of the types provided for in Portuguese law;

(b) take the form of a public limited company (*sociedade anónima*);

(c) have as their sole purpose the activities legally permitted under Article 4;

(d) have an initial capital not lower than the legal minimum capital, represented by nominal shares;

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(e) have their head office and effective management in Portugal;

(f) have robust governance arrangements in place, including a clear organisational structure with well defined, transparent and consistent lines of responsibility;

(g) have effective processes in place to identify, manage, monitor and report the risks the institution is or might be exposed to;

(h) have adequate internal control mechanisms in place, including sound administrative and accounting procedures;

(i) have remuneration policies and practices in place that are gender neutral, promoting and consistent with sound and prudent risk management;

(j) have management and supervisory bodies composed of members whose reputation, professional qualification, independence and availability, at an individual level or at the level of the bodies as a whole, provide guarantees of sound and prudent management of the credit institution.

2 – The conditions provided for in the foregoing subparagraphs (f) to (i) should be met in a comprehensive manner, proportionate to the risks inherent in the business model and the nature, scale and complexity of each credit institution's business, and shall take into account the technical criteria set out in Articles 86-A, 86-B, 90-A to 90-C, 115-A to 115-F, 115-H and 115-K to 115-V.

3 - On the setting-up date, the initial capital shall be fully subscribed and paid up to the amount of the legal minimum capital.

Article 14-A
Exemptions

1 - Credit institutions having their head office in Portugal which are permanently affiliated to a central body that supervises them and which also has its head office in Portugal, may be fully or partially exempted from the requirements and obligations of paragraph 2 below if, concerning such institutions and central body, the law provides that:

(a) the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body;

(b) the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts; and

(c) the management of the central body is empowered to issue instructions to the management of the affiliated institutions.

2 - The exemption referred to in the foregoing paragraph may apply to:

(a) the requirements laid down in Articles 15(2), 17(1)*(b)* and 115-J;

(b) [Repealed];

(c) [Repealed].

3 - This exemption should be without prejudice to the application of the obligations referred to in Article 115-J to the central body, provided that the whole as constituted by the central body together with its affiliated institutions is subject to those requirements and obligations on a consolidated basis.

4 - In case of exemption, Chapters I and II of Title III, Chapter II-C of Title VII, Article 116-AE(9) and (10) and Title VII-A shall apply to the whole as constituted by the central body together with its affiliated institutions.

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Article 15

Composition of the management body

1 - The management body of a credit institution shall consist of at least three members, with full powers to run the business of the institution.

2 - The day-to-day management of the institution shall be the responsibility of at least two members of the management body.

CHAPTER II

Authorisation procedure

Article 16

Authorisation

1 - The setting-up of credit institutions depends on an authorisation granted by the Banco de Portugal, on a case-by-case basis.

2 - *[Repealed]*.

3 - The European Banking Authority (EBA) shall always be notified of the authorisation and the particulars related to this authorisation, as well as of the deposit guarantee scheme in which the credit institution participates.

4 - *[Repealed]*.

5 - *[Repealed]*.

6 - *[Repealed]*.

Article 17

Application procedure

1 - Applications for authorisation shall be accompanied by the following elements:

(a) characterisation of the type of credit institution to be set up and a draft of the articles of association;

(b) programme of operations, including the type of operations to be carried out, geographical location, internal organisation, as well as material, technical and human resources to be used and prospective accounts for each of the first three business years;

(c) identity of the direct and indirect shareholders, whether natural or legal persons, that have qualifying holdings together with the respective amounts, including the identity of the ultimate beneficial owner or owners, as defined in Article 2(1)*(h)* of Law No 83/2017, of 18 August 2017, or, where no qualifying holdings exist, identity of the 20 largest shareholders;

(d) reasoned explanation on the adequacy for the shareholder structure to the stability of the credit institution;

(e) statement of commitment to the effect that on the date of setting-up and as a prerequisite of the same, the amount of capital stock required by law has been deposited with a credit institution;

(f) description of robust corporate governance systems;

(g) identification of the members of the management and supervisory bodies, accompanied by a justification from the applicants of their suitability to ensure the sound and prudent management of the credit institution;

(h) indication of the parent undertakings, financial holding companies and mixed financial holding companies within the group.

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2 - Robust corporate governance arrangements shall include:

(a) a clear organisational structure with well defined, transparent and consistent lines of responsibility;

(b) effective processes to identify, manage, monitor and report the risks the credit institution is or might be exposed to;

(c) adequate internal control mechanisms, including sound administration and accounting procedures; and

(d) remuneration policies and practices promoting and consistent with sound and prudent risk management and which are gender neutral.

3 - The arrangements, processes, procedures, policies, practices and mechanisms provided for in the foregoing paragraph shall be comprehensive and proportionate to the risks inherent in the business model and the nature, scale and complexity of each credit institution's business, taking into account the technical criteria set out in Articles 86-A, 86-B, 90-A to 90-C, 115-A to 115-F, 115-H and 115-K to 115-V.

4 - In the case of direct and indirect shareholders who are legal persons with qualifying holdings in the credit institution to be set up, the application shall be further accompanied by:

(a) articles of association or by-laws and a list of the members of the management body;

(b) balance sheet and accounts for the last three years;

(c) list of the partners of the legal person in question who have a qualifying holding therein;

(d) list of the undertakings in which the legal person in question has a qualifying holding, as well as an explanatory memorandum of the structure of the group to which that legal person belongs.

5 - The presentation of the documents mentioned in the foregoing paragraph may be waived when the Banco de Portugal is already aware of them.

6 - the Banco de Portugal may request additional information to the applicants and make all the inquiries deemed necessary.

Article 18

Subsidiaries of institutions authorised abroad

1 - The authorisation to set up a credit institution which is either a subsidiary of a credit institution authorised abroad, or a subsidiary of the parent undertaking of such a credit institution, shall be subject to prior consultation with the supervisory authority of the Member State in question.

2 - The provisions of the foregoing paragraph shall also apply where the institution to be set up is controlled by the same persons, whether natural or legal, as those who control a credit institution authorised in another country.

3 - The provisions of paragraph 1 shall also apply where the institution to be set up is either a subsidiary of an insurance undertaking or investment firm authorised abroad, or a subsidiary of the parent undertaking of an undertaking in those conditions, or if it is controlled by the same persons, whether natural or legal, as those who control an insurance undertaking authorised in another country.

Article 19

Decision

1 - The parties concerned must be notified of the decision within six months of the receipt of the application or, where applicable, of receipt of the additional information required from the

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applicants, but in any case within twelve months from the receipt of the initial application.

2 - Non-notification within the above-mentioned periods shall imply refusal of the application.

Article 19-A

Ongoing compliance with authorisation conditions

1 - Credit institutions having their head office in Portugal shall comply at all times with the conditions governing authorisation for the respective setting-up established in this Title.

2 - Credit institutions referred to in the foregoing paragraph shall immediately notify the Banco de Portugal of any material changes to the authorisation conditions provided for in paragraph 1.

Article 20

Authorisation refusal

1 - Authorisation shall be refused where:

(a) The application for authorisation is not accompanied by all the required information and documents;

(b) The application file contains inaccuracies or false statements;

(c) The credit institution to be set up does not comply with the provisions of Article 14;

(d) It is not demonstrated that governance arrangements, processes and mechanisms allow a sound, robust and effective risk management by the credit institution;

(e) The suitability of all shareholders is not demonstrated nor that they meet conditions to ensure a sound and prudent management of the credit institution in accordance with Article 103(1) and (2);

(f) The credit institution does not have sufficient technical means and financial resources for the type or volume of transactions which it intends to carry out;

(g) The effective supervision of the institution to be set up is prevented due to close links between the credit institution and other natural or legal persons;

(h) The effective supervision of the credit institution to be set up is prevented or severely hampered by virtue of laws or regulations of a third country governing one or more of the persons with which the credit institution has close links, or of difficulties involved in their enforcement;

(i) The members of the management or supervisory body do not meet the legal suitability requirements for the performance of their duties under Articles 30 to 33;

(j) The credit institution to be incorporated fails to demonstrate its capacity to comply with the obligations laid down in the applicable legislation, including the prevention of money laundering and terrorist financing.

2 - If there are deficiencies in the application file, the Banco de Portugal shall notify the applicants thereon, allowing them a reasonable period to address the deficiency, before refusing to grant authorisation.

3 - The economic needs of the market cannot constitute reason for refusal of authorisation.

Article 21

Lapsing of authorisation

1 - The authorisation lapses if the credit institution fails to commence its activity within a period of twelve months.

2 - The Banco de Portugal may, upon request of those concerned, extend the time limit laid down in the foregoing paragraph for another period of twelve months.

3 - The authorisation also lapses upon the winding up of the institution, without prejudice to the

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action required for its liquidation.

Article 21-A
Special authorisation regime

1 - The undertakings referred to in Article 1-A(2) and (3) and already authorised as investment firms shall submit an application for authorisation to the Banco de Portugal in accordance with Articles 14 and 16 on the date on which the first of the following events takes place:

(a) the average of monthly total assets, calculated over a period of 12 consecutive months, is equal to or exceeds €30 billion; or

(b) the average of monthly total assets, calculated over a period of 12 consecutive months, is less than €30 billion and the undertaking is part of a group in which the total value of the consolidated assets of all undertakings in the group that individually have total assets of less than €30 billion and that carry out one of the activities referred to in Article 1-A(2), is equal to or exceeds €30 billion, both calculated as an average over a period of 12 consecutive months.

2 - In the situations set out in the foregoing paragraph, the undertakings may continue to carry out the activities covered by their authorisation until they have obtained the authorisation as described in the foregoing paragraph.

3 - The Banco de Portugal shall ensure that the authorisation process is as streamlined as possible and that information from existing authorisations is taken into account.

4 - The authorisation to carry out activities as an investment firm shall be suspended with the granting of the authorisation provided for in this Article.

5 - The suspension provided for in the foregoing paragraph shall expire when authorisation as a credit institution is withdrawn, under the special regime laid down in Article 23-B.

Article 21-B
Modification of the corporate object

1 - An investment firm authorised as a credit institution in accordance with the foregoing Article may apply to the Banco de Portugal for its transformation into a bank.

2 - In the case referred to in the foregoing paragraph, the rules laid down in Article 34 shall apply mutatis mutandis.

Article 22
Withdrawal of authorisation

1 - The authorisation of a credit institution may be withdrawn on the following grounds, as well as on others provided for by law:

(a) The authorisation was obtained by making false statements or any other irregular means, regardless of the applicable sanctions;

(b) Any of the conditions governing the granting of authorisation for the respective setting-up ceases to be met;

(c) The activity of the credit institution does not correspond to the authorised statutory purpose;

(d) The credit institution ceases or reduces its activity to a negligible level for a period over six months;

(e) Serious irregularities are committed in the management, accounting procedures, or internal control of the credit institution;

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(f) The credit institution is unable to comply with its commitments, in particular, where it no longer provides security for the assets entrusted to it;

(g) The credit institution fails to fulfil the obligations arising out of its participation in the Deposit Guarantee Fund or in the Investor Compensation Scheme;

(h) The credit institution fails to comply with the laws and regulations governing its activity, or fails to observe the determinations of the Banco de Portugal, in such a way as to jeopardise the interests of the depositors and other creditors or the smooth operation of the money, financial or foreign exchange market;

(i) The credit institution expressly gives up the authorisation, except in the case of voluntary winding up as set out in Article 35-A;

(j) The members of the management and supervisory bodies, as a whole, do not give guarantees of sound and prudent management of the credit institution;

(k) The credit institution seriously or repeatedly fails to comply with the laws and regulations preventing money laundering and terrorist financing;

(l) Where the credit institution no longer complies with prudential own funds requirements, rules on large exposures or liquidity rules set out in Parts Three, Four or Six of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, with the exception of the requirements laid down in Articles 92-A and 92-B of that Regulation, as well as the additional own funds requirements or specific liquidity requirements imposed in accordance with Article 116-C(2)*(a)* or Article 116-AG respectively;

(m) The credit institution commits one of the breaches referred to in Article 211;

(n) Where the Banco de Portugal considers that the requirements laid down in Article 145-E (2)*(a)* and *(b)* are met, but that the requirement laid down in Article 145-E(2)*(c)* is not met.

2 – The withdrawal of authorisation on the grounds mentioned in subparagraph (1)(*j*) above is based on the finding that the members of the management or supervisory bodies, as a result of non-fulfilment of requirements, as set out in Article 32, ceased, as a whole, to give guarantees of sound and prudent management of the credit institution.

3 - The withdrawal of the authorisation granted to a credit institution which has branches in other EU Member States shall be preceded by consultation with the supervisory authorities of those States. On grounds of urgency, however, this consultation may be replaced by a mere notification of the withdrawal, accompanied by an explanation as to the reason for this simplified procedure.

4 - The withdrawal of the authorisation granted to a credit institution having its head office in Portugal, which is a subsidiary of a cross-border group or the parent undertaking of a cross-border group shall comply with the provisions of Articles 145-AI and 145-AJ respectively.

5 - The withdrawal of authorisation implies the winding up and liquidation of the credit institution, save in the case mentioned in paragraphs 1*(d)* and *(i)* where the winding up and liquidation may be waived by the Banco de Portugal.

Article 23

Power of withdrawal and related procedures

1 - The withdrawal of authorisation is the responsibility of the Banco de Portugal.

2 - Reasons must be given for any withdrawal of authorisation and the withdrawal decision must be notified to the credit institution and communicated to the European Banking Authority, as well as to the supervisory authorities of the EU Member States in which the credit institution has branches or provides services.

3 - The Banco de Portugal shall duly publicise the withdrawal decision and shall take the

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necessary steps to ensure the immediate closure of all the institution's premises, which will remain closed until the liquidators have taken office.

4 – *[Repealed]*.

Article 23-A

Compilation of the application file and withdrawal of authorisation in special cases

[Repealed].

Article 23-B

Special regime for the withdrawal of authorisation

1 - The Banco de Portugal shall propose to withdraw the authorisation granted under Article 21-A to carry out activities as a credit institution by the undertakings referred to in Article 1-A(2) and (3) where:

(a) it uses its authorisation exclusively to engage in the activities referred to in Article 1-A(2);

(b) it has average total assets below the thresholds set out in Article 1-A(2) for a period of five consecutive years.

2 - The special regime for the withdrawal of authorisation shall apply only if there are no other grounds for withdrawal.

3 - In the event of withdrawal of authorisation under this Article, the decision to withdraw authorisation shall have no legal effect laid down in the legislation on the winding-up of credit institutions, financial companies and investment firms, and the suspension of the authorisation provided for in Article 21-A(4) shall cease and the undertaking may continue to operate as an investment firm, in accordance with the applicable legislation.

Article 24

Scope

[Repealed].

Article 25

Power of authorisation

[Repealed].

Article 26

Application procedure

[Repealed].

Article 27

Special authorisation requirements

[Repealed].

Article 28

Withdrawal of authorisation

[Repealed].

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Article 29

Affiliated savings banks and mutual agricultural credit banks

1 - The provisions of Article 14(1)*(b)* and *(d)* of this Chapter shall not apply to mutual agricultural credit banks.

3 - The provisions of Article 14(1)*(b)* and *(d)* shall not apply to affiliated savings banks.

Article 29-A

Intervention of the Portuguese Securities Market Commission

1 - Whenever the corporate object of a credit institution includes any type of intermediation in financial instruments, the Banco de Portugal, before deciding on the application for authorisation, shall request the Portuguese Securities Market Commission to provide information on the suitability of the shareholders.

2 - Where appropriate, the Portuguese Securities Market Commission shall provide the required information within two months.

3 - The withdrawal of authorisation of a credit institution referred to in paragraph 1 shall be immediately communicated to the Portuguese Securities Market Commission, which shall notify the European Securities and Markets Authority of the decision.

Article 29-B

Intervention of the Insurance and Pension Funds Supervisory Authority

1 - The granting of authorisation for the setting-up of a credit institution which is a subsidiary of an insurance undertaking subject to the supervision of the Insurance and Pension Funds Supervisory Authority or a subsidiary of the parent undertaking of an undertaking under the same conditions, shall be preceded by a consultation with that supervisory authority.

2 - The provisions of the foregoing paragraph shall also apply where the credit institution to be established is controlled by the same natural or legal persons as those who control an insurance undertaking under the conditions mentioned in the foregoing paragraph.

3 - If applicable, the Insurance and Pension Funds Supervisory Authority shall provide the required information within two months.

CHAPTER III

Suitability of the members of the management and supervisory bodies and the exercise of critical functions in credit institutions

Article 30

General provisions

1 – The suitability of the members of the management and supervisory bodies of credit institutions to perform their tasks is subject to assessment during the full length of the term of office.

2 - The suitability of the members of the management and supervisory bodies consists in their capacity to ensure at all times the sound and prudent management of the institutions, with a view, in particular, to safeguarding the financial system and the interests of their customers, depositors, investors and other creditors.

3 - For the purposes of the foregoing paragraph, the members of the management and supervisory bodies shall comply with the reputation, professional qualification, independence and availability requirements mentioned in the following Articles.

4 - In the case of collegiate bodies, the individual assessment of each member shall be

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accompanied by a collective assessment of the body as a whole, with a view to checking whether the body itself, considering its composition, has the adequate professional qualification and availability to comply with the respective legal and statutory functions, in all relevant fields of action.

5 - The assessment of the members of the management and supervisory bodies shall comply with the principle of proportionality, considering, inter alia, the nature, size and complexity of the institution's activities and the requirements and responsibilities associated with the actual functions to be performed.

6 - The internal policy of selection and assessment of the members of the management and supervisory bodies shall promote the diversity of qualifications and skills necessary to the exercise of the function, setting goals for the representation of men and women, and designing a policy intended to increase the number of people in the sub-represented group, with a view to reaching the mentioned goals.

7 - The Banco de Portugal collects and reviews information relating to diversity practices, reporting it to the European Banking Authority.

8 - The Banco de Portugal regulates the framework set out in this Chapter.

Article 30-A

Assessment by credit institutions

1 - Credit institutions are primarily responsible for assessing whether all the members of the management and supervisory bodies fulfil the necessary suitability requirements for the performance of their tasks.

2 - Each credit institution's general meeting shall approve an internal policy for selecting and assessing the suitability of the members of the management and supervisory bodies, which shall include at least the identification of those in the credit institution who are responsible for the suitability assessment, the assessment procedures adopted in this regard, the necessary suitability requirements, the rules on prevention, communication and resolution of conflicts of interest, and the vocational training available.

3 -The persons to be appointed to the management and supervisory bodies, prior to their appointment, shall submit to the credit institution, under the provisions of paragraph 5, a written statement with all relevant and necessary information to assess their suitability, including that required under the Banco de Portugal's authorisation process.

4 - The persons appointed shall notify the credit institution of any supervenient facts to the appointment or authorisation which may affect the content of the statement provided for in the foregoing paragraph.

5 - When the directorship is to be filled by means of an election, the statement referred to in paragraph 3 shall be submitted to the president of the credit institution's general meeting body, who is responsible for presenting it to the shareholders as part of the preparatory information for the general meeting, and informing shareholders of the suitability requirements for the persons to be elected. In the remaining cases, the statement shall be submitted to the management body.

6 - Should the credit institution conclude that the persons assessed do not meet the necessary suitability requirements to perform the task, they cannot be appointed or, in case of reassessment motivated by supervenient facts, the necessary measures shall be adopted to address the lack of requirements detected, the suspension from duties or the dismissal of the persons in question, except in any of those cases if said persons are authorised by the Banco de Portugal under the process laid down in the following Article.

7 - The results of any assessment or reassessment performed by the credit institution shall be part of a report which, in the case of assessment of persons for elective posts, should be put at the

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disposal of the general meeting as part of the respective preparatory information.

8 - The credit institution shall reassess the suitability of the persons appointed to the management and supervisory bodies when, over the course of their mandate, there are supervenient circumstances that may or may not determine non-compliance with the necessary requirements.

9 - The assessment report of the members of the management and supervisory bodies shall accompany a request for authorisation to the Banco de Portugal or, in the case of reassessment, be submitted immediately after completion.

Article 30-B

Assessment by the Banco de Portugal

1 - The suitability of the members of the management and supervisory bodies of credit institutions is assessed by the Banco de Portugal, within the scope of the authorisation process of the credit institution.

2 - Where there is a change in the members of the management and supervisory bodies, the credit institution shall request from the Banco de Portugal the respective authorisation for the exercise of functions.

3 - The credit institution, or any person concerned, may request from the Banco de Portugal authorisation for the exercise of functions prior to the appointment of the members of the management and supervisory bodies; this prior authorisation shall lose force 60 days after issue, if the application is not submitted pursuant to the provisions of Article 69 and following.

4 - The authorisation by the Banco de Portugal for the exercise of functions of the members of the management and supervisory bodies is a prerequisite for their taking up office.

5 - Where the application or documentation submitted contains insufficiencies or irregularities which can be remedied by the persons concerned, the latter will be given notice that they are required to do so within a reasonable time limit, failing which authorisation will be refused.

6 - Assessment by the Banco de Portugal is based on information provided by the person under assessment and the credit institution, obtained from direct inquiries and, where appropriate, from a face-to-face interview with the person concerned.

7 - Changes of members of the management and supervisory bodies, as well as term of office renewals, are deemed to be authorised if the Banco de Portugal does not issue an opinion within 90 days from the date of receipt of the relevant request duly completed. This time limit may be extended, upon reasoned decision, for one or more periods up to a maximum of 30 working days.

8 - Without prejudice to the provisions of the foregoing paragraph, final registration of appointment of a member of the management and supervisory bodies with the commercial register requires the Banco de Portugal's approval for the exercise of functions.

9 - The provisions of the foregoing paragraphs shall apply mutatis mutandis to the managers of branches and representative offices referred to in Article 45.

10- For the purposes of this Article, the Banco de Portugal may exchange information with the Portuguese Securities Market Commission and the Portuguese Insurance Institute, and with the supervisory authorities mentioned in Article 18.

11- When the activity of the credit institution includes intermediation in financial instruments, consultation with the Portuguese Securities Market Commission mentioned in the foregoing paragraph is mandatory.

12- The Banco de Portugal may, by means of a regulation, make the exercise of critical functions conditional on its authorisation.

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Article 30-C
Refusal and withdrawal of authorisation

1 - Lack of reputation, professional qualification, independence or availability of the members of the management and supervisory bodies is grounds for refusal of the respective authorisation for the exercise of functions.

2 - Refusal of authorisation on grounds of lack of some of the requirements mentioned in the foregoing paragraph shall be reported by the Banco de Portugal to the persons concerned and the credit institution.

3 - In case the term of office of the member in question has already started, the refusal of authorisation for the exercise of functions has the effect of termination of the term of office, in which case the credit institution shall report the termination of functions of the member in question to the commercial register.

4 - Authorisation for the exercise of functions may be withdrawn at any time, due to supervenient circumstances, which may determine non-fulfilment of the requirements underlying the authorisation.

5 - Authorisation is withdrawn when it can be demonstrated that it was obtained through false statements or any other irregular means, regardless of the applicable penalties.

6 - Withdrawal of authorisation for the exercise of functions has the effect of immediate termination of functions of the member in question. The Banco de Portugal shall report this fact to the person concerned and the credit institution, which shall adopt the appropriate measures so that such termination occurs immediately, and shall report the termination of functions of the member in question to the commercial register.

7 - For the purposes of paragraph 4, the Banco de Portugal shall in particular verify whether the reputation, professional qualification, independence or availability requirements are still fulfilled where it has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted, as defined in the applicable legislation on this matter, or where there is increased risk thereof in connection within that credit institution.

8 - The provisions of the foregoing paragraphs shall apply mutatis mutandis to the managers of branches and representative offices referred to in Article 45.

Article 30-D
Suitability

1 - In assessing suitability, account shall be taken of the manner in which the person usually does professional or private business or carries out their professional activity, particularly of any aspects which show an inability to make wise and judicious decisions, or a tendency not to meet obligations punctually or to behave in a manner incompatible with the maintenance of market confidence, taking into account all the circumstances that make it possible to assess the professional behaviour for the functions at stake.

2 - The suitability assessment is based on objective criteria, on the basis of information as complete as possible on the past functions of the persons concerned in their capacity as professionals, the most salient features in terms of their behaviour, and the context in which their decisions have been taken.

3 - In the assessment referred to in the foregoing paragraphs, account shall be taken, at least, of the following circumstances, depending on their seriousness:

(a) Evidence that the member of the management and supervisory body has not acted in a transparent or cooperative manner in any relationships with any national or foreign supervisory or

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regulatory authority;

(b) Evidence that, in connection with an institution in which the person under assessment held a management or supervisory position or owned a qualifying holding at the relevant time, money laundering or terrorist financing within the meaning of applicable anti-money laundering and terrorist financing legislation has been committed or attempted, or where there is an increased risk thereof;

(c) Refusal, withdrawal, cancellation or termination of the registration, authorisation, acceptance or licence for the exercise of any commercial, business or professional activity by a supervisory authority, professional body, or entity with similar functions, or removal from a post in a public entity;

(d) The reasons behind any dismissal, cessation of employment or removal from a post requiring a special confidence relationship;

(e) Prohibition, by a judicial authority, supervisory authority, professional body or entity with similar functions, from acting in the capacity of member of the board or manager of a corporation constituted under civil or commercial law or performing any functions therein;

(f) Inclusion of mentions of default in the central credit register, or any other similar register, by the competent authority for the purpose;

(g) Financial or corporate results obtained by corporations managed by the person in question or where the said person has been the holder of a qualifying holding, taking especially into account any proceedings regarding the recovery, winding up or liquidation, and the manner in which the person concerned has contributed to the situation leading to such proceedings;

(h) Personal insolvency, regardless of the respective qualification;

(i) Civil, administrative or criminal proceedings, as well as any other circumstances that, depending on the specific case, may have a significant impact on the financial soundness of the person in question;

(j) The professional curriculum and any potential conflicts of interest, when part of the professional career has been carried out in an entity directly or indirectly related to the financial institution concerned, whether by means of financial holdings or business relations.

4 - In accordance with the preventive purposes of this Article, in addition to the facts described in the foregoing paragraph and others of a similar nature, the Banco de Portugal must include in its judgement all and any circumstances it may legally take knowledge of, which, due to their seriousness, frequency or any other relevant characteristics, allow a prognosis of the guarantees provided by the person in question of sound and prudent management of the credit institution.

5 - For the purposes of the foregoing paragraph, at least the following situations shall be taken into account, depending on their seriousness:

(a) Declaration of insolvency, in Portugal or abroad, of the person concerned or of a company controlled by that person or in which such person had been a member of the board, a director or a manager *de jure* or *de facto* or a member of the supervisory body;

(b) Accusation, indictment or conviction, in Portugal or abroad, of crimes against property, falsification and falsity, crimes against the achievement of justice, crimes committed in the exercise of public functions, tax crimes, crimes specifically related to the exercise of financial and insurance activities and the use of means of payment or money laundering or terrorist financing, and also crimes provided for in the Commercial Companies Code;

(c) The accusation or conviction, in Portugal or abroad, for breach of legal rules governing the activity of credit institutions, financial companies, pension fund management companies, notably rules on the prevention of money laundering or terrorist financing, as well as rules governing the

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securities market and insurance or reinsurance activity, including insurance or reinsurance intermediation activity;

(d) Failure to comply with disciplinary, ethical or professional conduct rules, within the scope of regulated professional activities;

(e) Facts that may have led to the judicial dismissal, or judicial confirmation of dismissal for cause, of members of the management and supervisory bodies of any commercial company;

(f) Actions undertaken as member of the board, director or manager of any commercial company that may have determined a conviction for damage caused to the company, its members, social creditors or third parties.

6 - The conviction, even where final, for criminal offences, administrative offence proceedings or the like does not necessarily lead to the loss of suitability for the exercise of functions in credit institutions, and its relevance shall be weighed, namely, in accordance with the nature of the offence and its connection with financial activity, its occasional or repeated nature and the level of personal involvement of the person concerned, the benefit obtained by that person or those persons directly related to the said person, damage caused to institutions, their customers, their creditors or the financial system and also the possible breach of the duties related to the supervision of the Banco de Portugal.

7 - For the purposes of this Article, the Banco de Portugal exchanges information with the Portuguese Insurance Institute and the Portuguese Securities Market Commission, and with the supervisory authorities mentioned in Article 18.

8 - For suitability assessment purposes, the Banco de Portugal consults the penalties database of the European Banking Authority.

9 – [*Repealed*].

Article 31
Professional qualifications

1 - The members of the management and supervisory bodies must demonstrate that they possess sufficient expertise, skills, qualifications and experience needed to perform their tasks, acquired through academic qualification or specialised training that is appropriate for the directorships they are to occupy and through professional experience of a duration and level of responsibility compatible with the credit institution's characteristics, complexity, size and risk exposure.

2 – The previous training and experience must be sufficiently relevant to allow the holders of those directorships to understand the functioning and business of the credit institution, to assess its risk exposure and to analyse critically the decisions taken.

3 – The recognition of appropriate professional experience may be the object of prior consultation by the Banco de Portugal with the competent authority, which, in the exercise of its tasks, is in a position to deliver a reasoned opinion on the matter.

4 - The non-executive members of the management and supervisory bodies must possess the skills and qualifications to assess critically the decisions taken by the management body and to supervise this body's function effectively.

5 - The management and supervisory bodies shall:

(a) possess adequate collective knowledge, skills and experience to be able to understand the institution's activities, including the main risks to which they are exposed; and

(b) consist of members with an adequately broad range of experience.

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Article 31-A
Independence

1 - The independence requirement is intended to prevent the risk of subjecting the members of the management and supervisory bodies from undue influence from other persons or entities, promoting conditions conducive to the impartial performance of tasks.

2 - In assessing this requirement, all situations liable to affect independence are to be taken into account, including:

(a) directorships the person concerned occupies or has occupied in the credit institution in question or in another credit institution;

(b) consanguineous relationships or similar, or professional or economic relationships that the person concerned has with other members of the management or supervisory bodies of the credit institution, its parent undertaking or its subsidiaries;

(c) consanguineous relationships or similar, or professional or economic relationships that the person concerned has with a person who has a qualifying holding in the credit institution, its parent undertaking or its subsidiaries.

3 - The performance of duties in affiliated entities shall not in itself indicate that the member of the body acts without independence.

4 - The supervisory body must comprise a majority of independent members, pursuant to Article 414(5) of the Commercial Companies Code (*Código das Sociedades Comerciais*).

Article 32
Supervenient lack of suitability

1 - As soon as credit institutions learn of any supervenient facts in regard to the authorisation to perform tasks that may affect the reputation, professional qualification, independence or availability requirements for the authorised person, they must communicate such facts to the Banco de Portugal, under the same terms as those for reporting facts when presenting the authorisation request to perform tasks, pursuant to Articles 30 to 31-A and 33.

2 - The facts that occurred subsequently to the authorisation are deemed to be supervenient, as well as those that occurred previously but were only known subsequently.

3 – The obligation established in paragraph 1 above is deemed to have been met if the communication is made by the very persons to whom the facts are related.

4 – If, for any reason, the reputation, professional qualification, independence or availability requirements cease to be met by any member or, as a whole, by the management or supervisory bodies, the Banco de Portugal may decide to apply one or more of the following measures:

(a) Set a time limit for the adoption of measures appropriate to meet the non-fulfilled requirement;

(b) Suspend the authorisation granted to the member in question, for as long as necessary to remedy the identified non-fulfilment;

(c) Set a time limit for changing the allocation of responsibilities;

(d) Set a time limit for changing the composition of the body in question and submit to the Banco de Portugal all relevant and necessary information to assess the suitability and authorisation of the alternate members.

5 - The Banco de Portugal shall communicate the measures mentioned in the foregoing

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paragraph to the persons in question and to the credit institution, which shall take all measures necessary to ensure that they are implemented.

6 – Non-adoption of the measures by the person in question or the credit institution within the established time limit may determine the withdrawal of authorisation.

7 – The adoption of the measure mentioned in paragraph 4(*d)* and the occurrence of the circumstance provided for in the foregoing paragraph shall determine the corresponding registration annotation of the termination of service by the member in question.

8 – Any suspension of authorisation decided under paragraph 4(*b)* will only cease to be effective after the Banco de Portugal's decision.

9 – The provisions of this Article shall apply mutatis mutandis to the managers of branches and representative offices, as mentioned in Article 45.

Article 32-A
Temporary suspension of functions

1 – In justified cases of urgency and in order to prevent serious damage to the sound and prudent management of a credit institution or to financial system stability, the Banco de Portugal may decide on the temporary suspension of functions of any member of the respective management and supervisory bodies.

2 – The communication by the Banco de Portugal to the credit institution and the holder of the directorship in question, following the decision taken under the provisions of the foregoing paragraph, shall contain the indication that the temporary suspension of functions is of a preventive nature.

3 – The temporary suspension ceases to be effective:

(a) Upon a decision of the Banco de Portugal;

(b) Due to withdrawal of the authorisation granted to the person who has been suspended;

(c) As a result of adoption of one of the measures set out in Article 32(4);

(d) Within 30 days of the suspension date, where no proceeding has been started to adopt some of the decisions set out in subparagraphs (*b*) and (*c*); the credit institution and the holder of the directorship in question shall be duly notified.

Article 33
Accumulation of directorships

1 - The Banco de Portugal may oppose the members of the management or supervisory bodies of credit institutions performing management or supervisory functions in other entities if it deems that the accumulation is liable to hamper the performance of the functions already entrusted to them, in particular, where there are serious risks of conflicts of interest or because it results from lack of availability for the performance of the function, under terms to be regulated by the Banco de Portugal.

2 - In its assessment, the Banco de Portugal shall consider the specific circumstances of the case, the specific requirements of the directorship and the nature, scale and complexity of the credit institution's activities.

3 - Without prejudice to the provisions of paragraph 1, members of the management and supervisory bodies of significant credit institutions, depending on the size, internal organisation, nature, scope and complexity of their activities, shall be prohibited from accumulating more than one executive directorship with two non-executive directorships, or four non-executive directorships.

4 - For the purposes of the foregoing paragraph, a single directorship shall be understood as executive or non-executive directorships on the management or supervisory bodies of credit

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institutions or other entities which are included in the same perimeter of supervision on a consolidated basis or in which the credit institution has a qualifying holding.

5 - The provisions of paragraph 3 shall not apply to the members of the management and supervisory bodies of credit institutions benefiting from extraordinary public financial support and appointed by it in the context of such support.

6 - The limit provided for in paragraph 3 shall exclude the directorships held in entities whose principal corporate object is the performance of non-commercial activities, except if, due to their nature and complexity, or the size of the respective entity, there are serious risks of conflicts of interest or lack of availability for the performance of the function in the credit institution.

7 - The Banco de Portugal may authorise the members of the management and supervisory bodies covered by the provisions of paragraph 3 above to accumulate one additional non-executive directorship.

8 - The Banco de Portugal shall inform the European Banking Authority of the authorisations granted under the provisions of the foregoing paragraph.

9 - Credit institutions shall have rules on the prevention, communication and resolution of conflicts of interest, under terms to be regulated by the Banco de Portugal, which shall be an integral part of the internal assessment policy provided for in Article 30-A(2).

10 - In the case of directorships to be held in an entity subject to the Banco de Portugal's supervision, the power of opposition shall be exercised within the scope of the authorisation request submitted by the member.

11 - For the purposes of the foregoing paragraph, in the remaining cases, credit institutions must declare the intention of the persons concerned to the Banco de Portugal at least 30 days before the date foreseen for the taking up of the new functions; should the Banco de Portugal not issue its decision within this period, it shall be understood that it does not oppose the accumulation of directorships.

Article 33-A
Key function holders

1 - Credit institutions shall identify the directorships whose holders, while not belonging to the management or supervisory bodies, perform tasks with significant influence in the management of the credit institution.

2 - The directorships mentioned in the foregoing paragraph include, at least, those with responsibility for the compliance, internal audit, and risk control and management functions of the credit institution, as well as other functions that may be considered influential by the credit institution or defined through the Banco de Portugal regulations.

3 - The suitability of key function holders of credit institutions for the performance of their tasks is subject to assessment; the provisions set out in Articles 30, 30-A, 30-D and 31 to 32-A shall apply mutatis mutandis.

4 - Credit institutions shall be responsible for first checking compliance with the requirements in terms of reputation, professional qualification and availability of key task holders; the results shall be part of the report mentioned in Article 30-A(7).

5 - At any time, the Banco de Portugal may undertake a new suitability assessment of key function holders if it believes that their assessment by the credit institution was clearly insufficient or if justified by any supervenient circumstances.

6 - In the situation provided for in the foregoing paragraph, the Banco de Portugal shall apply mutatis mutandis the measures set out in Article 32(4) or set a deadline for credit institutions to take

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the appropriate measures, and shall communicate its decision to the persons in question and to the credit institution.

CHAPTER IV
Statutory changes and winding up

Article 34
Statutory changes in general

1 - Changes to the articles of association of credit institutions are subject to prior authorisation from the Banco de Portugal in respect of the following:

(a) Company or business name;
(b) Corporate object;
(c) Location of the head office, except where relocation takes place in the same municipality or to a neighbouring municipality;
(d) Capital stock, in cases where it is reduced;
(e) Creation of categories of shares or changes in the existing categories;
(f) Structure of the management or supervisory bodies;
(g) Limitation of the powers of the management or supervisory bodies;
(h) Winding up.

2 - Alterations to the corporate object involving a modification of the legal form of the institution shall be subject to the rules laid down in Chapters I and II of this Title. Other changes are considered authorised if the Banco de Portugal raises no objection within 30 days of the date of receipt of the application.

Article 35
Merger and splitting

1 - The merger of credit institutions, either among themselves or with financial companies, shall be subject to prior authorisation from the Banco de Portugal.

2 - The splitting of credit institutions shall also be subject to prior authorisation from the Banco de Portugal.

3 - Where relevant, the rules prescribed in Chapters I and II of this Title shall apply.

Article 35-A
Voluntary winding up

1 - Any planned voluntary winding up of a credit institution shall be communicated to the Banco de Portugal at least 90 days before the date of its implementation.

2 - The provisions of the foregoing paragraph shall apply to any planned closure of branches of credit institutions having their head office in non-European Community (EC) countries.

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CHAPTER IV-A
Financial holding companies and mixed financial holding companies

Article 35-B

Authorisation of financial holding companies and mixed financial holding companies

1 – Parent financial holding companies and parent mixed financial holding companies in a Member State, EU parent financial holding companies and EU parent mixed financial holding companies, established in Portugal, shall be subject to authorisation by the consolidating supervisor.

2 – The provisions of the foregoing paragraph shall also apply to financial holding companies and mixed financial holding companies, established in Portugal, which are subject, on a sub-consolidated basis, to this Legal Framework and to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

3 – The authorisation referred to in the foregoing paragraphs may be granted only where:

(a) the internal arrangements and distribution of tasks within the group are adequate for the purpose of complying with the requirements imposed by this Legal Framework and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, on a consolidated or sub-consolidated basis and, in particular, are effective to:

(i) coordinate all the subsidiaries of the financial holding company or mixed financial holding company including, where necessary, through an adequate distribution of tasks among subsidiary institutions;

(ii) prevent or manage intra-group conflicts; and

(iii) enforce the group-wide policies set by the parent financial holding company or parent mixed financial holding company throughout the group;

(b) the structural organisation of the group of which the financial holding company or mixed financial holding company is part does not prevent in any way the effective supervision of the subsidiary institutions or parent institutions as concerns the individual, consolidated and, where appropriate, sub-consolidated obligations to which they are subject, in particular by taking account of:

(i) the position of the financial holding company or mixed financial holding company in a multi-layered group;

(ii) the shareholding structure; and

(iii) the role of the financial holding company or mixed financial holding company within the group;

(c) the requirements for the identification and suitability of qualifying shareholders, as well as the legal requirements for the suitability of the members of their management and supervisory bodies under Articles 30 to 31 and 32 are complied with; and

(d) the conditions for refusal laid down in Article 20(1)*(e)*, *(g)*, *(h)*, *(i)* and *(j)* are not met.

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4 – Financial holding companies and mixed financial holding companies shall provide the Banco de Portugal with the information required to monitor the structural organisation of the group and compliance with the requirements set out in the foregoing paragraph on an ongoing basis.

5 – Where the financial holding company or mixed financial holding company does not have its head office in Portugal, the Banco de Portugal shall share the information provided under the foregoing paragraph with the competent authority in the Member State where the company is established.

6 – Where the authorisation of a financial holding company or mixed financial holding company takes place concurrently with the assessment of the acquisition of a qualifying holding in a credit institution, the competent authority for those purposes shall coordinate, as appropriate, with:

(a) the consolidating supervisor; and

(b) the competent authority in the Member State where the financial holding company or mixed financial holding company is established, where it is not the authority referred to in the foregoing subparagraph.

7 – In the situation referred to in the foregoing paragraph, the time limit for assessing the acquisition of a qualifying holding may be suspended until the authorisation procedure of the financial holding company or mixed financial holding company is completed.

8 – Financial holding companies and mixed financial holding companies shall ensure on that the members of the management and supervisory bodies are of good repute and possess sufficient skills, experience and expertise to perform their tasks an ongoing basis.

9 – The Banco de Portugal may regulate information to be provided for the purposes of paragraph 4.

Article 35-C

Application procedure

1 – For the purposes of paragraphs 1 and 2 of the foregoing Article, financial holding companies and mixed financial holding companies shall provide the Banco de Portugal and, where different, the competent authority in the Member State where they are established with the following information:

(a) the structural organisation of the group of which the financial holding company or the mixed financial holding company is part, with a clear indication of its subsidiaries and, where applicable, parent undertakings, and the location and type of activity undertaken by each of the entities within the group;

(b) the identification of at least two persons effectively directing their business, as well as information relating to the legal requirements for the suitability of members of the management and supervisory bodies;

(c) proof of compliance with the requirements on the identification and suitability of qualifying shareholders, where the financial holding company or mixed financial holding company has a credit institution as its subsidiary;

(d) the internal organisation and distribution of tasks within the group;

(e) any other information that may be deemed necessary for the decision provided for in paragraph 3 of the foregoing Article.

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2 – The Banco de Portugal may regulate the information accompanying the application for authorisation provided for in paragraphs 1 and 2 of the foregoing Article.

Article 35-D

Exemption from authorisation

1 – Financial holding companies and mixed financial holding companies may be exempt, upon request, from the authorisation provided for in Article 35-B where they demonstrate that:

(a) their principal activity is to acquire holdings in subsidiaries or, in the case of a mixed financial holding company, its principal activity with respect to institutions or financial institutions is to acquire holdings in subsidiaries;

(b) they have not been designated as a resolution entity in any of the group's resolution groups in accordance with the resolution strategy determined by the relevant resolution authority;

(c) a subsidiary credit institution:

(i) is designated as responsible to ensure the group's compliance with prudential requirements on a consolidated basis; and

(ii) is given all the necessary means and legal authority to discharge those obligations in an effective manner;

(d) they do not engage in taking management, operational or financial decisions affecting the group or its subsidiaries that are institutions or financial institutions; and

(e) there is no impediment to the effective supervision of the group on a consolidated basis.

2 – Companies exempted from authorisation under the foregoing paragraph shall not be excluded from the scope of consolidation laid down in this Legal Framework and in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

3 – Article 35-B(4) and (5) shall apply mutatis mutandis.

4 – Where the Banco de Portugal establishes that paragraph 1 is not met or has ceased to be met, the financial holding company or mixed financial holding company shall apply for authorisation in accordance with Article 35-B.

5 – The Banco de Portugal may regulate the information accompanying the application for exemption.

Article 35-E

Decision

1 – An authorisation or exemption decision shall, in any event, be taken within six months of receipt of the application.

2 – Authorisation shall be refused if the conditions laid down in Article 35-B(3) are not met.

3 – Where the Banco de Portugal refuses to grant the authorisation or exemption requested, it shall notify the applicant of the decision and its reasoning within four months of receipt of the application, or if the application is incomplete, within four months of receipt of the complete information necessary for the decision to be taken, but not later than the time limit laid down in paragraph 1.

4 – The decision refusing authorisation may be supplemented, if necessary, by the measures provided for in Article 35-H.

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Article 35-F

Joint decision

1 – For the purposes of Articles 35-B and 35-D and the application of the measures referred to in Article 35-H, where the consolidating supervisor is different from the competent authority in the Member State where the financial holding company or mixed financial holding company is established, the two authorities shall cooperate and act in concert.

2 – When the Banco de Portugal is the consolidating supervisor, it shall assess the requirements referred to in Articles 35-B(3), 35-D(1) and (4) and 35-H, as applicable, and shall forward that assessment to the competent authority in the Member State where the financial holding company or mixed financial holding company is established.

3 – The two authorities shall endeavour to adopt a joint decision within two months of receipt of that assessment.

4 – The joint decision shall be duly reasoned in writing and communicated to the financial holding company or mixed financial holding company by the consolidating supervisor.

5 – In the event of disagreement, the consolidating supervisor or the competent authority in the Member State where the financial holding company or the mixed financial holding company is established shall refrain from taking a joint decision and shall refer the matter to the European Banking Authority, in accordance with EU legislation.

6 – The European Banking Authority shall make its decision within one month of receipt of the referral to the European Banking Authority.

7 – In the cases provided for in paragraphs 5 and 6, the competent authorities concerned shall adopt a joint decision in conformity with the decision of the European Banking Authority.

8 – In the situation referred to in paragraph 5, the matter shall not be referred to the European Banking Authority after the end of the two-month period or after a joint decision has been reached.

Article 35-G

Decisions on mixed financial holding companies

1 – In the case of mixed financial holding companies, where the consolidating supervisor or the competent authority in the Member State where the mixed financial holding company is established is different from the coordinator determined in accordance with Article 17 of Decree-Law No 145/2006 of 31 July 2006, the agreement of the coordinator shall be required for the purposes of decisions or joint decisions referred to in Article 35-B(3), Article 35-D(1) and (4) and Article 35-H, as applicable.

2 – Where the agreement of the coordinator is required, disagreements shall be referred to the European Banking Authority or the European Insurance and Occupational Pensions Authority, which shall take its decision within one month of receipt of the referral.

3 – Any decisions taken in accordance with the foregoing paragraphs shall be without prejudice to Decree-Law No 145/2006 of 31 July 2006 and to the legal rules governing the taking-up and pursuit of insurance and reinsurance activities, approved in the Annex to Law No 147/2015 of 9 September 2015.

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Article 35-H

Implementation of supervisory measures

1 – Where the Banco de Portugal has established that the conditions set out in Article 35-B(3) are not met nor have ceased to be met, the financial holding company or mixed financial holding company shall be subject to appropriate supervisory measures to ensure or restore, as appropriate, continuity and integrity of consolidated supervision, as well as compliance with the requirements laid down in this Legal Framework and in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on a consolidated basis.

2 – In the case of a mixed financial holding company, the supervisory measures shall, in particular, take into account the effects on the financial conglomerate.

3 – For the purposes of paragraph 1, the Banco de Portugal may:

(a) suspend the exercise of voting rights attached to the shares of the subsidiary institutions held by the financial holding company or mixed financial holding company;

(b) issue injunctions or penalties against the financial holding company, mixed financial holding company or members of the management and supervisory bodies and managers in accordance with this Legal Framework;

(c) issue instructions or directions to the financial holding company or mixed financial holding company to transfer the participations in its subsidiary institutions to its shareholders;

(d) designate on a temporary basis another financial holding company, mixed financial holding company or institution within the group as responsible for ensuring compliance with the requirements laid down in this Legal Framework and in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on a consolidated basis;

(e) restrict or prohibit distributions or payments to shareholders;

(f) require financial holding companies or mixed financial holding companies to divest from or reduce holdings in institutions or other financial sector entities;

(g) require financial holding companies or mixed financial holding companies to submit a plan on returning to compliance in the short term.

TITLE III

Activity abroad of credit institutions having their head office in Portugal

CHAPTER I

Establishment of branches and subsidiaries

Article 36

Requirements for establishment in an EU country

1 - A credit institution having its head office in Portugal wishing to establish a branch within the territory of another EU Member State shall notify the Banco de Portugal of this intention in advance, providing the following information:

(a) Country in which the proposed branch is to be established;

(b) Programme of operations, setting out, inter alia, the types of business envisaged and the structural organisation of the branch;

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(c) Address of the branch in the host country;

(d) Identification of the branch managers.

2 - The day-to-day management of the branch shall be entrusted to at least two managers, who are subject to all the requirements imposed on the members of the management body of credit institutions.

3 - The opening of new establishments in a Member State where the credit institution already has a branch only requires communication of the new address, pursuant to Article 40.

Article 37

Assessment by the Banco de Portugal

1 - Within three months of receipt of the information referred to in the foregoing Article, the Banco de Portugal shall communicate that information to the supervisory authority of the host country, certifying also that the activities envisaged are covered by the authorisation, and shall inform the institution concerned accordingly.

2 - The amount and composition of the institution's own funds and the solvency ratio shall also be communicated, as well as a detailed description of the deposit guarantee scheme of which the institution is a member and which is intended to ensure the protection of depositors in the branch.

3 - Whenever the programme of operations includes any type of intermediation in financial instruments, the Banco de Portugal, before informing the supervisory authority of the host country, shall request the Portuguese Securities Market Commission to provide an opinion, which shall be delivered within one month.

Article 38

Refusal of communication

1 - Where there are reasoned doubts on the adequacy of the administrative structure or on the financial situation of the institution, the Banco de Portugal shall refuse the communication.

2 - The refusal shall be justified and communicated to the institution concerned within the deadline referred to in paragraph 1 of the foregoing Article.

3 - If the Banco de Portugal does not make the communication within the time limit established in Article 37(1) it will be assumed that the communication has been refused.

4 - The European Commission and the European Banking Authority shall be informed of the number and type of cases in which there has been a refusal.

Article 39

Scope of activity

On condition that the provisions of the foregoing Articles are complied with, the branch may carry out in the host country the activities listed in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, which the institution is authorised to carry out in Portugal and that are mentioned in the programme of operations referred to in Article 36(1)*(b)*.

Article 40

Change in any of the particulars communicated

1 - In the event of a change in any of the particulars referred to in Article 36(1)*(b)* to *(d)* or in the deposit guarantee scheme referred to in Article 37(2), the credit institution shall give written notice of the change in question to the Banco de Portugal and to the supervisory authority of the host country at least one month in advance.

2 - The provisions of Articles 37 and 38 shall apply and the period mentioned in Article 37(1) and

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(3) shall be shortened to one month and 15 days respectively.

Article 40-A
Supervision of significant branches

1 - When a branch of a credit institution having its head office in Portugal is considered as significant, the Banco de Portugal shall communicate the following information, which is essential for the exercise of supervisory tasks, to the competent authorities of the host Member State where that significant branch is established:

(a) Adverse developments in the credit institution or in other entities of a group, which could seriously affect the credit institution;

(b) Significant penalties and exceptional measures taken by the Banco de Portugal, including the imposition of additional capital requirements under Article 116-C and the imposition of limits to the use of the Advanced Measurement Approach for the calculation of the own funds requirements, pursuant to Article 312(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(c) The outcome of the risk assessment of the credit institution;

(d) The joint decisions taken under specific prudential requirements;

(e) Any decisions taken within the scope of the supervisory powers set out in Articles 116-C, 116-G and 116-AG;

(f) Imposition of any specific liquidity requirements.

2 - The Banco de Portugal shall carry out the tasks referred to in Article 135-A(1)*(c)* in cooperation with the competent authorities of the host Member State.

3 - The provisions of Article 137-A(1) shall apply mutatis mutandis.

4 - Where the provisions of Article 135-B are not applicable, the Banco de Portugal, as the competent authority supervising credit institutions with significant branches in other Member States, establishes and chairs a college of supervisors to facilitate the cooperation under the foregoing paragraphs of this Article and Article 122-A. The provisions of Article 135-B(5), (8) and (9) shall apply mutatis mutandis.

5 - The Banco de Portugal shall consult the competent authorities of the host Member States, about the operational steps required for the immediate application of the recovery plans to address liquidity shortfalls by the credit institution, where relevant for liquidity risks in the host Member State's currency.

Article 41
Scope

The provisions of Articles 36 to 40 shall not apply to mutual agricultural credit banks nor to savings banks (*caixas económicas*) that do not take the legal form of public limited companies (*sociedades anónimas*), except for *Caixa Económica Montepio Geral*.

Article 42
Branches in third countries

1 - A credit institution having its head office in Portugal wishing to establish branches in non-EC countries shall observe the provisions of Article 36 and of this Article.

2 - The Banco de Portugal may refuse the application with reasoned grounds, namely where the administrative structure and financial situation of the credit institution are deemed inadequate for

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the plan, or due to obstacles preventing or hindering the control and inspection of the branch by the Banco de Portugal.

3 - The decision shall be taken within three months, and the absence of a decision shall be considered as a refusal.

4 – Reasoned grounds must be given for the refusal, which shall be notified to the institution concerned.

5 - The branch may not carry out transactions which the institution is not authorised to carry out in Portugal or which are not mentioned in the programme of operations referred to in Article 36(1)(*b*).

6 - In the event of a change in any of the particulars referred to in Article 36(1)*(b)* to *(d)*, the credit institution shall give written notice of the change in question to the Banco de Portugal at least one month in advance.

Article 42-A

Subsidiaries in third countries

1 - A credit institution having its head office in Portugal and wishing to establish a subsidiary in a non-EC country shall previously notify the Banco de Portugal of this intention, under the terms to be established by the Banco de Portugal by means of a Notice.

2 - The Banco de Portugal may refuse the application with reasoned grounds, namely where the financial situation of the institution is deemed inadequate for the plan.

3 - The decision shall be made within three months, and the absence of a decision shall be considered as a refusal.

CHAPTER II

Provision of services

Article 43

Freedom to provide services in the European Union

1 - A credit institution having its head office in Portugal and wishing to initiate, in another EU Member State, the provision of services listed in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, which it is authorised to provide in Portugal and which are not provided by a permanent establishment of that institution in the country of residence of those for whom such services are intended, shall previously notify the Banco de Portugal thereof, specifying the activities which it proposes to carry out in that Member State.

2 - Within one month of receipt of the notification referred to in the foregoing paragraph, the Banco de Portugal shall send that notification to the supervisory authority of the host Member State, certifying that the activities envisaged are covered by the authorisation.

3 - The provision of services referred to in this Article shall be carried out in accordance with the regulations governing foreign exchange transactions.

4 - The information provided for in paragraph 2 shall also be communicated to the Portuguese Securities Market Commission where operations carried out in the host Member State include any type of financial intermediation.

CHAPTER III

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Acquisition of qualifying holdings

Article 43-A
Qualifying holdings in companies having their head office abroad

A credit institution having its head office in Portugal and wishing to acquire, directly or indirectly, holdings in credit institutions having their head office abroad or in financial institutions representing 10% or more of the capital of the target entity or 2% or more of the capital of the acquiring institution, shall previously communicate this intention to the Banco de Portugal, under the terms to be established by means of a Notice.

CHAPTER IV
Provision of investment services and activities

Article 43-B
Provision of investment services and activities in the European Union

The following shall apply to credit institutions having their head office in Portugal, for the provision of investment services and activities in the European Union:

(a) the notifications provided for in Article 36(1) and Article 43(1) shall also be sent to the Portuguese Securities Market Commission and include:

(i) information of whether a credit institution proposes to use tied agents in the host Member State, and if so, their identity and their home Member State;

(ii) if the credit institution has no branch and the tied agent is established in the host Member State, information on a programme of operations setting out, inter alia, the investment services and activities as well as the ancillary services to be offered, a description of the intended use of the tied agent and an organisational structure, including reporting lines, indicating how the agent fits into the corporate structure of the credit institution;

(iii) the address in the host Member State from which documents may be obtained, and the names of those responsible for the management of the tied agents;

(b) following the notifications referred to in Article 37(1) and 43(2), the identity of tied agents established in Portugal or the host Member State, as applicable, shall be communicated to the supervisory authority of the host Member State.

(c) If the Banco de Portugal or the Portuguese Securities Market Commission are notified that a credit institution having its head office in Portugal is not complying with provisions on the activity whose supervision is not incumbent on the supervisory authority of the host Member State, the Banco de Portugal or the Portuguese Securities Market Commission shall take the necessary and appropriate measures to end the conduct.

Article 43-C
Provision of investment services and activities through tied agents

1 - The establishment of tied agents and the provision of services and investment activities through tied agents in other EU Member States by credit institutions having their head office in Portugal shall be governed mutatis mutandis by the provisions of Articles 36, 37(1), 38(1) to (3), 39, 40-A and 43, in accordance with the following:

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(a) the notifications referred to in Article 36(1) and Article 43(1) shall also be sent to the Portuguese Securities Market Commission;

(b) the communications and certificates referred to in Article 37(1) and Article 43(2) shall only be forwarded to the supervisory authority of the host Member State where the Banco de Portugal and the Portuguese Securities Market Commission support the claim;

(c) the communication referred to in Article 37(1) shall be accompanied by the necessary explanations concerning the accredited investor compensation scheme of which the credit institution is a member;

(d) in Articles 39 and 43, the reference to activities contained in the list set out in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 shall be replaced by a reference to investment services and activities and ancillary services set out in Sections A and B of Annex I to Directive 2014/65/UE of the European Parliament and of the Council of 15 May 2014. Ancillary services can only be provided together with an investment service and/or activity;

(e) the supervisory authority of the host Member State shall be informed of the changes introduced in the scheme referred to in (c) above;

(f) the notifications provided for in Article 36(1) and Article 43(1) shall include:

(i) information of whether a credit institution proposes to use tied agents in the host Member State, and if so, their identity and their home Member State;

(ii) if the credit institution has no branch and the tied agent is established in the host Member State, information on a programme of operations setting out, inter alia, the investment services and activities as well as the ancillary services to be offered, a description of the intended use of the tied agent and an organisational structure, including reporting lines, indicating how the agent fits into the corporate structure of the credit institution;

(iii) the address in the host Member State from which documents may be obtained, and the names of those responsible for the management of the tied agents;

(g) in the event of a change in any of the particulars communicated in accordance with Article 36(1) or Article 43(1) with the changes provided for in this paragraph, the credit institution shall give written notice of that change to the Banco de Portugal and the Portuguese Securities Market Commission at least one month before making the change. This communication shall be forwarded to the supervisory authority of the host Member State;

(h) following the notifications referred to in Article 37(1) and 43(2), the identity of tied agents established in Portugal or the host Member State, as applicable, shall be communicated to the supervisory authority of the host Member State.

2 - Responsibility for informing the supervisory authority of the host Member State as provided for in *(b)*, *(c)*, *(e)*, *(f)*, *(g)* and *(h)* of the foregoing paragraph shall lie with the Portuguese Securities Market Commission.

3 - The use of a tied agent established in another EU Member State shall be treated as equivalent to the branch of the credit institution already established in that Member State, and, where the credit institution has not established a branch, the rules laid down for the establishment of a branch shall apply.

4 - For the purposes of the foregoing paragraphs, the supervisory authority of the host Member State means the authority which, in the EU Member State concerned, has been designated as the contact point pursuant to Directive 2014/65/UE of the European Parliament and of the Council of 15 May 2014.

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5 - If the Banco de Portugal or the Portuguese Securities Market Commission are notified that a credit institution having its head office in Portugal is not complying with provisions on the activity whose supervision is not incumbent on the supervisory authority of the host Member State, the Banco de Portugal or the Portuguese Securities Market Commission shall take the necessary and appropriate measures to end the conduct.

6 - The measures taken under the foregoing paragraph shall be communicated by the Portuguese Securities Market Commission to the supervisory authority of the host Member State and the European Securities and Markets Authority.

Article 43-D

Cooperation with other entities

1 - The Portuguese Securities Market Commission shall immediately forward to the Banco de Portugal the information and requests for information which it receives from competent authorities of other countries which fall within the Banco de Portugal's remit.

2 - If the Banco de Portugal becomes aware that acts contrary to the provisions governing investment services and activities carried out by entities not subject to its supervision are being or have been committed on the territory of another Member State by entities not subject to its supervision, it shall communicate this to the Portuguese Securities Market Commission, which in turn shall notify the competent authority of the said Member State, without prejudice to any action within the scope of its powers.

3 - If the Banco de Portugal receives a notification similar to that laid down in the foregoing paragraph, it shall inform the Portuguese Securities Market Commission of the results of the action taken and other relevant developments. This information shall be forwarded to the notifying authority.

Article 43-E

Limits to cooperation

1 - The Banco de Portugal shall refuse to exchange information or cooperate in inspections to branches to a competent authority of another Member State where such action could adversely affect Portuguese sovereignty, security or public policy.

2 - The Banco de Portugal may refuse to exchange information or cooperate in inspections to branches to a competent authority of another Member State where judicial proceedings have already been initiated or a final judgement has already been delivered in respect of the same facts and the same persons before the Portuguese courts.

3 - In case of such a refusal, the Banco de Portugal shall notify the requesting authority accordingly, providing as detailed information as possible by law.

TITLE IV

Activity in Portugal of credit institutions having their head office abroad

CHAPTER I

General principles

Article 44

Applicable law

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The activity within Portuguese territory of credit institutions having their head office abroad shall be subject to Portuguese law, namely the regulations governing external and foreign exchange transactions.

Article 45
Management

The managers of branches or representative offices in Portugal of credit institutions not authorised in other EC Member States shall be subject to all the suitability and experience requirements established by law for the members of the management bodies of credit institutions having their head office in Portugal.

Article 46
Use of company or business name

1 - Credit institutions having their head office abroad and established in Portugal may use the same company or business name used in their home country.

2 - If this use is likely to mislead the public as far as the transactions which the credit institution may carry out are concerned, or to lead to confusion with other company or business names which enjoy legal protection in Portugal, the Banco de Portugal shall determine that a specific addition be made to the company or business name in order to avoid misunderstandings.

3 - In their activity in Portugal, credit institutions having their head office in EC countries and not established in Portugal may use their original company or business name, provided that no doubts are raised as to the applicable legislation and without prejudice to the provisions of paragraph 2.

4 – *[Repealed]*.

Article 47
Withdrawal and lapsing of authorisation in the home country

Should the Banco de Portugal be informed that the authorisation for a credit institution having a branch or providing services within Portuguese territory has been withdrawn or has lapsed in its home country, it shall take the appropriate measures to prevent the institution concerned from initiating new operations and to safeguard the interests of depositors and other creditors.

CHAPTER II
Branches

SECTION I
FREEDOM OF ESTABLISHMENT IN PORTUGAL

Article 48
Scope

The provisions of this Section shall apply to the establishment in Portugal of branches of credit institutions authorised in other EU Member States or in Member States belonging to the European Economic Area and subject to the supervision of the competent authorities of those States.

Article 49
Requirements for establishment

1 - As a prerequisite for the establishment of a branch, the Banco de Portugal shall receive, from

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the supervisory authority of the home country, notification of the following:

(a) Programme of activities setting out, inter alia, the types of operations envisaged and the structural organisation of the branch, and a certificate stating that such operations are covered by the credit institution's authorisation;

(b) Address of the branch in Portugal;

(c) Identity of those responsible for the management of the branch;

(d) Amount of the credit institution's own funds;

(e) Credit institution's solvency ratio;

(f) Detailed description of the deposit guarantee scheme of which the credit institution is a member and which ensures the protection of depositors in the branch;

(g) Detailed description of the Investor Compensation Scheme (*Sistema de Indemnização aos Investidores*) of which the credit institution is a member and which ensures the protection of investors who are customers of the branch.

2 - The management of the branch shall be entrusted to at least two managers, with appropriate powers to deal with and definitively settle, in Portugal, all matters pertaining to its activity.

3 - The opening of new establishments in Portugal by a credit institution having a branch in Portugal only requires communication of the new address, pursuant to Article 51.

Article 50
Organisation of supervision

1 - Within two months of receiving the information mentioned in the foregoing Article, the Banco de Portugal shall organise the supervision of the branch in all matters under its competence, after which it shall inform the credit institution that the latter may establish the branch, and if necessary it will indicate the conditions under which, in the interest of the general good, the branch shall carry out its activity in Portugal.

2 - On receipt of a communication from the Banco de Portugal, or in the event of expiry of the period provided for in the foregoing paragraph, the branch may be established and, once duly registered, may commence its activity.

3 - Where the programme of operations includes any type of financial intermediation, the Banco de Portugal shall send the information provided for in paragraph 1 to the Portuguese Securities Market Commission.

Article 51
Notice of changes

1 - In the event of a change in any of the particulars referred to in Article 49*(a)* to *(c)* and *(f)*, the credit institution shall give written notice of the change in question to the Banco de Portugal at least thirty days before making the change.

2 - The provisions of paragraph 1 of the foregoing Article shall apply, and the period therein provided for shall be shortened to one month.

Article 52
Authorised activities

As long as the provisions of the foregoing Articles are complied with, the branch may carry out in Portugal the activities listed in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, that the credit institution is authorised to carry on in its home country

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and which are included in the programme of operations referred to in Article 49(1)*(a)*.

Article 53
Irregularities

1 - Where the Banco de Portugal ascertains that a branch does not comply, or is at serious risk of not complying, with the Portuguese rules governing the supervision of liquidity, the implementation of monetary policy or the compulsory reporting of information on its activities within Portuguese territory, the Banco de Portugal shall require the institution concerned to remedy that irregular situation or to take measures to avoid the risk of non-compliance.

2 - If the branch or the credit institution fails to take the appropriate measures, the Banco de Portugal shall inform the supervisory authority of the home country accordingly and request it to take all appropriate measures promptly.

3 - If the supervisory authority of the home country does not take the measures requested, or if they prove inadequate and the branch persists in breaching the rules in force the Banco de Portugal may:

(a) After informing the supervisory authority of the home country, take appropriate measures to prevent or to punish further irregularities, namely to prevent the branch from initiating new transactions in Portugal;

(b) Refer the matter to the European Banking Authority and request its assistance pursuant to Article 19 of Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24 November 2010.

4 - The European Commission and the European Banking Authority shall be informed of the number and type of cases in which measures have been taken under paragraph *(a)* above.

5 - Before following the procedure laid down in the foregoing paragraphs, the Banco de Portugal may, in cases of emergency, take any precautionary measures deemed necessary to protect against financial instability liable to seriously threaten the collective interests of depositors, investors and others to whom the branch provides services, including the suspension of payments, promptly informing the supervisory authorities of the EU Member States concerned, the European Commission and the European Banking Authority of such measures.

6 - The provisions of the foregoing paragraphs shall not prevent the competent Portuguese authorities from taking all preventive or repressive measures against the infringement of the rules provided for in paragraph 1, or against the infringement of other rules adopted in the general interest.

7 - When an appeal is lodged against a decision pursuant to this Article, it is presumed, unless it is proved otherwise, that the suspension of the decision's enforcement will seriously injure the public interest.

8 - Any precautionary measure under paragraph 5 shall cease to have effect when the home Member State takes reorganisation measures, or when the Banco de Portugal considers that such measures are no longer justified.

Article 54
Responsibility for debts

1 - The branch's assets may back any debts incurred in other countries by the credit institution, but only after settling all debts contracted in Portugal.

2 - Any bankruptcy or liquidation decision taken by foreign authorities in respect of the credit

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institution shall not apply to its Portuguese branches until the provisions of the foregoing paragraph have been complied with, even when such a decision has been examined by the Portuguese courts.

Article 55
Accounting and book-keeping

The credit institution shall keep all accounts of transactions carried out within the Portuguese territory centralised in its earliest-established branch in Portugal, the use of the Portuguese language being compulsory in book-keeping.

Article 56
Business associations

Credit institutions authorised in other EC Member States which have a branch in Portugal may be members of Portuguese business associations in the respective sector, under the same terms and with the same rights and obligations as their equivalent bodies having their head office in Portugal, including the right to be appointed to the respective bodies.

Article 56-A
Significant branch

1 - The Banco de Portugal may make a request to the consolidating supervisor, or to the competent authorities of the home Member State, for a branch established in Portugal of a credit institution having its head office in another EU Member State to be considered significant.

2 - That request shall provide reasons for considering the branch to be significant with particular regard to the following:

(a) Whether the market share of the branch in terms of deposits exceeds 2% in Portugal;

(b) The likely impact of a suspension or closure of the operations of the credit institution on systemic liquidity and on the payment, clearing and settlement systems in Portugal; and

(c) The size and importance of the branch in terms of number of customers within the context of the Portuguese banking or financial system.

3 - The Banco de Portugal and the competent authority of the home Member State, as well as the consolidating supervisor, where applicable, shall do everything within their power to reach a joint decision on the designation of a branch as significant.

4 - Without prejudice to paragraph 7, in the absence of a joint decision within two months of receipt of a request under paragraph 1, the Banco de Portugal shall take its own decision on whether the branch is significant within a further period of two months.

5 - In taking the decision referred to in the foregoing paragraph, the Banco de Portugal shall take into account any views and reservations of the competent authority of the home Member State and, where applicable, the consolidating supervisor.

6 - The decisions referred to in paragraphs 3 to 5 of this Article shall be set out in a document containing the full reasons, shall be transmitted to the competent authorities, and shall be recognised as binding and applied by the competent authorities in the EU Member States concerned.

7 - Where, before the end of the initial two-month period referred to in paragraph 4 or before taking a joint decision pursuant to paragraph 3, any of the competent authorities concerned has referred the matter to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November de 2010, the Banco de Portugal shall await the decision of the European Banking Authority and take its own decision accordingly.

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8 - The designation of a branch as significant shall not affect the supervisory rights and responsibilities of the competent authorities.

9 - The provisions of the foregoing paragraphs shall also apply mutatis mutandis to the requests sent to the Banco de Portugal by the competent authorities of the home Member State for a branch of a credit institution subject to the supervision of the Banco de Portugal to be considered significant.

10 - If the Banco de Portugal considers the operational steps taken by the credit institution to implement liquidity recovery plans to be inappropriate, it shall refer the matter to the European Banking Authority and request its assistance pursuant to Article 19 of Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24 November 2010.

SECTION II
THIRD COUNTRIES

Article 57
Applicable provisions

1 - The establishment in Portugal of branches of credit institutions not covered by Article 48 shall be subject to the provisions of this Section, and to those of Articles 17(3), 19, 21, 22, 49(2) and (3), 54 and 55.

2 - The provisions of the foregoing paragraph shall also be subject to the following:

(a) cooperation arrangements that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting depositors, investors and other creditors, are in place between the Banco de Portugal, the Portuguese Securities Market Commission and the competent supervisory authorities of the third country where the credit institution is established;

(b) the third country where the credit institution is established has signed an agreement with Portugal, which fully complies with the standards laid down in Article 26 of the Model Tax Convention on Income and on Capital Organisation for Economic Co-operation and Development (OECD) and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements.

3 - Portugal shall not apply to branches of credit institutions having their head office in a third country, when commencing or continuing to carry out their business, provisions which may result in a more favourable treatment than that accorded to branches of credit institutions having their head office in the EU Member States.

Article 58
Authorisation

1 - The establishment of the branch is subject to authorisation to be granted by the Banco de Portugal.

2 - The application for authorisation shall be accompanied by the information referred to in Article 49(1) and, in addition, by the following:

(a) Evidence of the branch's capacity to provide security for the funds entrusted to it, as well as of the adequate technical means and financial resources for the type and volume of transactions it intends to undertake;

(b) Indication of the planned geographical location of the branch;

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(c) Prospective accounts for each of the first three business years of the branch;

(d) Copy of the articles of association of the credit institution;

(e) Statement of commitment to carry out the deposit referred to in Article 59(2).

3 - The Banco de Portugal may refuse authorisation:

(a) in the cases referred to in Article 20(1)*(a)*, *(b)* and *(f)*;

(b) where it considers that the requirements laid down in this Article and in the foregoing Article have not been met.

4 - The Banco de Portugal shall notify the European Banking Authority of the following:

(a) all authorisations granted and any subsequent changes to such authorisations;

(b) total assets and liabilities of the branches of credit institutions having their head office in a third country, as periodically reported under Article 58-A(1)(b);

(c) the name of the third-country group to which the authorised branch belongs.

Article 58-A

Reporting obligation to the Banco de Portugal

1 – The branches of credit institutions having their head office in a third country and authorised under paragraph 1 of the foregoing Article shall report to the Banco de Portugal, at least annually, as applicable, all information that credit institutions having their head office in Portugal are required to report to the Banco de Portugal, including the following information:

(a) total assets and liabilities corresponding to the activities of the branch;

(b) information on the liquid assets available to the branch, in particular availability of liquid assets in the domestic currency;

(c) own funds that are at the disposal of the branch;

(d) deposit protection arrangements available to depositors in the branch;

(e) risk management arrangements;

(f) governance arrangements, including key function holders for the activities of the branch;

(g) changes in relation to the credit institution having its head office in a third country resulting from decisions of the relevant third-country competent supervisory authority, in particular concerning the suitability of its qualifying shareholders and the members of the management body of the credit institution concerned;

(h) recovery plans covering the branch; and

(i) any other information considered by the Banco de Portugal to enable monitoring of the activities of the branch.

2 – The branch, the credit institution having its head office in a third country and its qualifying shareholders shall provide the Banco de Portugal with the information the latter considers necessary for the exercise of supervision, without prejudice to the reporting obligations laid down in the foregoing paragraph.

3 – The branches referred to in paragraph 1 shall immediately notify the Banco de Portugal if there are changes to the activities that the credit institution is entitled to pursue in its home country.

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Article 59

Earmarked capital

1 - The capital earmarked for operations to be carried out by the branch shall be sufficient to cover those operations and no less than the minimum amount required by Portuguese law for credit institutions of the same type having their head office in Portugal.

2 - The earmarked capital shall be deposited with a credit institution prior to the registration of the branch with the Banco de Portugal.

3 - The branch shall invest in Portugal the amount of capital earmarked for operations in Portugal, as well as its reserves, deposits and other locally raised funds.

4 - The credit institution shall be responsible for transactions carried out by its branch in Portugal.

CHAPTER III
Provision of services

Article 60

Freedom to provide services in Portugal

The credit institutions authorised in their home country to provide the services listed in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 may provide such services within Portuguese territory, even if they are not established in Portugal.

Article 61

Requirements

1 - As a prerequisite for the commencement of the provision of services in Portugal, credit institutions shall notify the competent authority of the home Member State, which shall forward this communication to the Banco de Portugal.

2 - The Banco de Portugal may instruct the entities referred to in this Section to inform the public as to their legal form, characteristics, major activities and financial situation.

3 - The provisions of Article 53 shall apply mutatis mutandis.

CHAPTER III-A
Provision of investment services and activities

Article 61-A

Provision of investment services and activities in Portugal by credit institutions having their head office in the European Union

1 - The provision of investment services and activities in Portugal by credit institutions having their head office in other Member States of the European Union shall be governed by the following:

(a) the communications provided for in Article 49(1) and paragraph 1 of the previous Article shall include:

(i) information on whether a credit institution proposes to use tied agents in Portugal, and, if so, their identity;

(ii) if the credit institution has no subsidiary in Portugal and the tied agent is established in Portugal, a description of the intended use of the tied agent and an organisational structure,

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including reporting lines, indicating how the agent fits into the corporate structure of the credit institution;

(b) Article 56-A shall apply only to credit institutions which are authorised to provide investment services and activities of dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis.

2 - The use of a tied agent established in Portugal shall be treated as equivalent to the branch of the credit institution already established in Portugal, and, where the credit institution has already established a branch, the rules laid down for its establishment shall apply.

3 - For the purposes of this Article, the supervisory authority of the home Member State means the authority which, in the EU Member State concerned, has been designated as the contact point pursuant to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014.

Article 61-B

Provision of investment services and activities in Portugal through a tied agent

1 - The establishment of tied agents and the provision of investment services through a tied agent in Portugal by credit institutions having their head office in other EU Member States shall be governed mutatis mutandis by the provisions of Articles 44, 46 to 49, 50(2), 52, 54 to 56-A, 60, 61(1) and (2), in accordance with the following:

(a) The responsibilities incumbent upon the Banco de Portugal pursuant to Articles 46, 47, 49, 50(2) and 61 (1) and (2) shall be entrusted to the Portuguese Securities Market Commission;

(b) Article 49(1)*(d)*, *(e)* and *(f)* shall not be applicable;

(c) in Articles 52 and 60, the reference to activities contained in the list set out in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 shall be replaced by a reference to investment services and activities and ancillary services set out in Sections A and B of Annex I to Directive 2014/65/UE of the European Parliament and of the Council of 15 May 2014. Ancillary services can only be provided together with an investment service and/or activity;

(d) the communications provided for in Article 49(1) and Article 61(1) shall include:

(i) information on whether a credit institution proposes to use tied agents in Portugal, and, if so, their identity and their home Member State;

(ii) if the credit institution has no subsidiary in Portugal and the tied agent is established in Portugal, a description of the intended use of the tied agent and an organisational structure, including reporting lines, indicating how the agent fits into the corporate structure of the credit institution;

(e) Article 56-A shall apply only to credit institutions which are authorised to provide investment services and activities of dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis.

2 - The use of a tied agent established in Portugal in shall be equivalent to a branch of the credit institution already established in Portugal and, where the credit institution has already established a branch, the rules laid down for its establishment shall apply.

3 - In the cases set out in the foregoing paragraph, the Portuguese Securities Market Commission

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shall inform the Banco de Portugal of the communications provided for in Articles 50(2), 51 and 61(1).

4 - The Portuguese Securities Market Commission shall publish the identity of tied agents established in the host Member State that perform investment services and activities in Portugal.

5 - The Portuguese Securities Market Commission shall communicate to the Banco de Portugal any act performed pursuant to this Article.

Article 61-C

Measures concerning the provision of investment services in Portugal

1 - Where the Banco de Portugal or the Portuguese Securities Market Commission have reasonable grounds for believing that, regarding the activity in Portugal of credit institution having their head office in another EU Member State, the provisions governing the activity that fall within the remit of the home Member State are not being complied with, they shall refer those findings to the competent supervisory authority.

2 - If, despite the provisions of the foregoing paragraph, the credit institution persists with its conduct, in particular if measures taken by the competent authority of the home Member State prove inadequate, the Banco de Portugal or the Portuguese Securities Market Commission, after informing the competent authority of the home Member State, shall take the appropriate measures needed to protect the interests of investors and the proper functioning of the markets. This shall include the possibility of preventing offending credit institutions from initiating any further transactions in Portugal. The European Commission shall be informed of such measures without delay.

3 - Where it is ascertained that a branch operating in Portugal is in breach of the provisions governing the activity whose supervision is incumbent on the Portuguese Securities Market Commission, the latter shall require the branch concerned to cease its conduct.

4 - If the branch concerned fails to take the necessary steps under the foregoing paragraph, the Portuguese Securities Market Commission shall take all appropriate steps to ensure that the branch concerned ceases its conduct. The nature of those measures shall be communicated to the competent authority of the home Member State.

5 - If, despite the measures taken under the foregoing paragraph, the branch persists with its conduct, the Portuguese Securities Market Commission may, after informing the competent authority of the home Member State, take appropriate measures to cease the conduct and, insofar as necessary, to prevent that branch from initiating any further transactions in Portugal. The European Commission shall be informed of such measures immediately.

6 The provisions referred to in paragraph 3 relate to the registration of operations and keeping of documents, general reporting requirements, the best execution of orders, handling of customer orders, information on firm quotes and transactions concluded outside a regulated market or a multilateral trading facility, as well as information on transactions reported to the Portuguese Securities Market Commission.

7 - In the exercise of its supervisory powers regarding the matters provided for in the foregoing paragraph, the Portuguese Securities Market Commission may, in respect of credit institutions authorised in other EU Member States that have established a branch in Portugal, examine branch arrangements and request such changes as are strictly needed, as well as information that for the same purposes may be required from credit institutions having their head office in Portugal.

8 - The Banco de Portugal and the Portuguese Securities Market Commission may require credit institutions authorised in other EU Member States that have established a branch in Portugal, to

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submit periodical reports, for statistical purposes, on the transactions carried out in Portugal. The Banco de Portugal, as part of its duties and powers in terms of monetary policy, may also require them to produce the information that, for the same purpose, may be required from credit institutions having their head office in Portugal.

Article 61-D
Cooperation

Articles 43-D and 43-E shall apply mutatis mutandis to cooperation in respect of investment services and activities of credit institutions having their head office in other Member States.

CHAPTER IV
Representative offices

Article 62
Registration

1 - The establishment and operation in Portugal of representative offices of credit institutions having their head office abroad is subject, notwithstanding the applicability of the relevant legislation on commercial registration, to prior registration with the Banco de Portugal, which involves the presentation of a certificate issued by the supervisory authorities of the home country specifying the legal system governing the credit institution by referring to the law applicable thereto.

2 - The activities of representative offices shall start within three months of registration with the Banco de Portugal; the latter may, if there are reasoned grounds, extend this time limit for another three months.

Article 63
Scope of activity

1 - The activities of representative offices shall be strictly dependent on the credit institutions which they represent; therefore they can only ensure the interests of these institutions in Portugal and provide information on the activities in which they intend to participate.

2 - In particular, representative offices are forbidden to:

(a) Carry out directly transactions that fall within the scope of the activity of credit institutions;
(b) Acquire shares or holdings in Portuguese undertakings;
(c) Acquire real estate other than the premises required for their installation and operation.

Article 64
Management

The managers of representative offices shall be entrusted with appropriate powers to deal with and definitively settle, in Portugal, all matters pertaining to their activity.

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TITLE V
Registration

Article 65
Registration requirement

1 - Credit institutions shall not commence their activity without being subject to a special registration with the Banco de Portugal.

2 - Where the corporate object of the credit institution includes any type of intermediation in financial instruments, the Banco de Portugal shall inform and make available to the Portuguese Securities Market Commission the registration referred to in the foregoing paragraph, together with the corresponding annotations, changes or cancellations.

Article 66
Items subject to registration

The registration of credit institutions having their head office in Portugal covers the following particulars:

(a) Company or business name and, where applicable, the brand or trade name;
(b) Corporate object;
(c) Date of setting-up:
(d) Location of head office;
(e) Capital stock;
(f) Paid-up capital;
(g) Identity of the shareholders with qualifying holdings, as well as of their beneficial owners;
(h) Identity of the members of the management and supervisory bodies as well as of those who chair the general meeting of shareholders;
(i) Delegation of management powers, including the allocation of responsibilities or executive functions to the members of the management bodies;
(j) Date of commencement of activities;
(k) Provision of services in accordance with Article 43;
(l) Location and date of the setting-up of branches, subsidiaries, agencies and representative offices;
(m) Identity of the managers of branches and representative offices established abroad;
(n) Inter-shareholder agreements referred to in Article 111;
(o) Any changes in the above particulars.

Article 67
Institutions authorised abroad

The registration of credit institutions authorised abroad which have a branch or a representative office in Portugal covers the following particulars:

(a) Company or business name and, where applicable, the brand or trade name;
(b) Date from which it may establish itself in Portugal;
(c) Location of head office;
(d) Location of branches, agencies and representative offices in Portugal;
(e) Capital earmarked for transactions to be carried out in Portugal, where required;

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(f) Activities which the institution may carry out in the home country and activities which it intends to carry out in Portugal;

(g) Identity of the managers of the branches and representative offices;

(h) Any changes in the above particulars.

Article 68

Institutions not established in Portugal

The Banco de Portugal shall publish a list of credit and financial institutions having their head office in EC countries and not established in Portugal which are entitled to provide services in the country.

Article 69

Registration of members of the management and supervisory bodies

1 - Members of the management and supervisory bodies shall be registered, following their authorisation by the Banco de Portugal, by means of an application on the part of the credit institution, including the date of taking up office and, in the case of the prior authorisation referred to in Article 30-B(3), it shall be accompanied by a copy of the minute specifying the decision on the appointment of the persons concerned.

2 - *[Repealed]*.

3 - *[Repealed]*.

4 - In the event of re-appointment, this fact will be added to the registration, upon request of the credit institution.

5 - *[Repealed]*.

6 - *[Repealed]*.

7 - *[Repealed]*.

8 - The provisions of the foregoing paragraphs shall apply mutatis mutandis to the managers of the branches and representative offices referred to in Article 45.

9 - *[Repealed]*.

Article 70

Supervenient facts

1 - *[Repealed]*.

2 - *[Repealed]*.

3 - *[Repealed]*.

4 - Where the Banco de Portugal, based on facts reported by the credit institution, under the circumstances provided for in Article 32 or any others that may come to its knowledge, decides to take some of the preventive measures referred to in the same Article, these shall be included in the registration by means of:

(a) Annotation to the registration of the temporary suspension of the member of the management or supervisory bodies from exercising functions during the suspension period;

(b) Lifting of the suspension after the adoption of the measures referred to in Article 32;

(c) Cancelling the annotation to the registration, after withdrawal of authorisation of the member in question or when such member has been replaced, whichever occurs earlier.

5 - *[Repealed]*.

6 - *[Repealed]*.

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7 - *[Repealed]*.

Article 71
Time limits, supplementary information and certificates

1 - Save for the provisions of the following paragraph, the time limit to apply for any registration is 30 days from the date on which the facts to be registered occurred.

2 - The initial registration of credit institutions, the registration of the application for the establishment in Portugal of entities having their head office abroad as well as any others without whose effectiveness the carrying out of the activity or exercise of functions in question is not allowed, shall not be subject to time limits.

3 - When the application or documentation submitted contains insufficiencies or irregularities which can be remedied by the persons concerned, these will be given notice that they are required to do so within a reasonable time limit, failing which registration will be refused.

4 - Registration is considered to have been made if the Banco de Portugal raises no objection within 30 days of the date on which the application was properly filed or, if it asked for supplementary information, within 30 days of receipt thereof.

5 - Certificates of registration will be issued to whomever demonstrates a legitimate interest.

Article 72
Registration refusal

In addition to other reasons provided for by law, registration will be refused in the following cases:

(a) When it is clear that the fact to be registered is not supported by the documents presented;

(b) When it is demonstrated that the fact reported in the document is already registered or is not subject to registration;

(c) When any legally required authorisation is missing;

(d) When the nullity of the fact is clear;

(e) When it is demonstrated that any of the requirements for the necessary authorisation for the setting-up of the institution or for the pursuit of its activity is not met.

TITLE VI
Banking conduct supervision

CHAPTER I
Rules of conduct

Article 73
Technical competence

Credit institutions shall ensure high levels of technical competence in all the activities which they carry out and provide their business organisation with the human and material resources required to ensure appropriate conditions of quality and efficiency.

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Article 74

Other duties of conduct

In their relations with customers and other credit institutions, the members of the management board and the staff of credit institutions shall act with diligence, neutrality, loyalty, discretion and scrupulous regard for the interests entrusted to them.

Article 75

Diligence criterion

The members of the management body of credit institutions, as well as the holders of senior and other management directorships or of equivalent directorships shall perform their functions with the diligence of a discerning and methodical manager, in accordance with the principle of risk-sharing and safe investment, and take into account the interests of the depositors, other investors and of all customers in general.

Article 76

Powers of the Banco de Portugal

1 - The Banco de Portugal may establish, by means of a Notice, whatever rules of conduct it considers necessary to complement and develop those set out in this Decree-Law.

2 - With a view to ensuring compliance with the rules of conduct laid down in this Legal Framework and in other legal acts, the Banco de Portugal may, in particular, issue specific recommendations and determinations as well as apply fines and additional penalties, within the general framework of the procedures laid down in Article 116.

3 - The provisions of this Title shall not prejudice the powers conferred on other supervisory authorities, and shall govern the conduct of credit institutions relating to the creation and marketing of retail banking products and services.

CHAPTER II

Relationships with customers

Article 77

Duty of information and assistance

1 - Credit institutions shall inform their customers of the remuneration they offer for the funds received as well as the characterising features of the products offered and of charges for services provided and other costs to be borne by customers in a clear way.

2 - In particular, institutions authorised to grant consumer credit shall provide their customers, before the signature of loan contracts, with adequate information, in printed or other durable formats, on credit conditions and total cost, as well as on obligations and risks associated with default; furthermore, these institutions shall ensure that credit mediating companies provide such information under the same terms.

3 - To ensure transparency and comparability of the products offered, the information provided for in the foregoing paragraph shall be provided to customers during the pre-contractual phase and include the characterising features of the products offered, namely the annual percentage rate of charge, illustrated through representative examples.

4 - The Banco de Portugal regulates, by means of Notices, the minimum requirements that credit institutions must meet when disclosing to the public the conditions under which they provide services.

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5 - Contracts signed between credit institutions and their customers shall contain all the required information and be written in a clear and concise way.

6 - The Banco de Portugal lays down, by means of Notices, mandatory rules on the content of contracts between credit institutions and their customers, aimed at ensuring the transparency of conditions for the provision of the corresponding services.

7 - The breach of the duties laid down in this Article constitutes an administrative offence punishable in accordance with the provisions of Article 210(*h*) of this Legal Framework.

8 - Credit institutions must send, in January of each year, at no cost, an invoice/receipt listing all fees and charges associated with the demand deposit account borne in the previous calendar year, to the respective holder.

9 – The invoice/receipt mentioned in the foregoing paragraph is a complete listing of all fees and charges associated with the demand deposit account, without prejudice to the invoicing and reporting obligations provided for in tax law.

10– The statement of fees mentioned in paragraph 8 shall contain the following information:

(a) the unit fee charged for each service and the number of times the service was used during the period covered, and where the services are combined in a package, the fee charged for the package as a whole, the number of times the package fee was charged during the period covered and the additional fee charged for any service exceeding the quantity covered by the package fee, if existing;

(b) the total amount of fees charged during the relevant period for each service, each package of services provided and services exceeding the quantity covered by the package fee;

(c) the interest rate applied to the overdraft facility or to overrunning associated with the payment account and the total amount of interest charged relating to the overdraft during the relevant period, where applicable;

(d) the credit interest rate applied to the payment account and the total amount of interest earned during the period covered, where applicable;

(e) the total amount of fees charged for all services provided during the period covered.

11– The statement of fees mentioned in paragraph 8 shall also:

(a) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;

(b) adopt the standardised presentation format and the common symbol established in the implementing technical standards adopted by the European Commission;

(c) be accurate, not misleading and expressed in the currency of the payment account or, if agreed by the consumer and the payment service provider, in another currency;

(d) contain the title 'statement of fees' at the top of the first page next to a common symbol to distinguish the document from other documentation;

(e) be written in Portuguese, or, if agreed by the consumer and the payment service provider, in another language.

Article 77-A
Customer complaints

1 - Without prejudice to the rules applicable to complaints presented to credit institutions under the legislation in force, the customers of these institutions may submit complaints directly to the Banco de Portugal on the grounds of a breach of the provisions governing their activities.

2 - It shall be incumbent on the Banco de Portugal to examine the complaints, regardless of their

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form of presentation, and to define the procedures and deadlines for the assessment of the complaints referred to in the second half of paragraph 1, observing in both cases the principles of impartiality, swiftness and free of charge.

3 - When assessing complaints, the Banco de Portugal shall identify the types of complaint and shall take the necessary measures to check compliance with the rules falling under its competence. The Banco de Portugal shall also implement the appropriate measures to ensure that institutions take remedial action to address non-compliance detected, without prejudice to the initiation of administrative offence proceedings where the conduct of institutions complained against justifies it, namely due to its seriousness or repeated occurrence.

4 - Without prejudice to the rules applicable to complaints submitted to credit institutions within the scope of the legislation in force, the Banco de Portugal shall publish an annual report on complaints of credit institutions' customers, regardless of their form of presentation, specifying their areas of incidence and the institutions complained against, as well as providing information on the handling of those complaints.

Article 77-B
Codes of conduct

1 - Credit institutions or their representative associations shall adopt codes of conduct and inform customers about their existence, at least on their website. The said codes shall include the principles and rules of conduct governing the various aspects of their relationship with customers, including the mechanisms and internal procedures adopted for the appraisal of complaints.

2 - The Banco de Portugal shall issue Instructions regarding the codes of conduct referred to in the foregoing paragraph and shall also establish guidelines for that purpose.

Article 77-C
Advertising

1 - Advertising by credit institutions and their business associations shall be subject to the general law and, in relation to intermediation in financial instruments, to the provisions of the Securities Code.

2 - Reference to the guarantee of deposits or to the compensation of investors in advertising shall be merely factual and shall not contain any value judgement nor make comparisons with deposit guarantee or investor compensation facilities provided by other institutions.

3 - In particular, advertising relating to credit contracts shall be illustrated through representative examples, whenever possible.

4 - The Banco de Portugal regulates, by means of Notices, the information and transparency duties that must be complied with in advertising by credit institutions, regardless of the advertising medium used.

5 - Credit institutions authorised in other EC Member States may advertise their services in Portugal under the same terms and conditions as institutions having their head office in Portugal.

Article 77-D
Intervention by the Banco de Portugal

1 - In relation to advertising which does not comply with the law in force, the Banco de Portugal may:

(a) Order the changes deemed necessary to remedy irregular situations;

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(b) Order the suspension of the advertising in question;

(c) Determine the immediate publication, by the responsible party, of an appropriate rectification.

2 - In the event of non-compliance with the determinations mentioned in subparagraph *(c)* of the foregoing paragraph, the Banco de Portugal may, without prejudice to any applicable penalty, act as a substitute for the offender.

Article 77-E

Special obligations in the retail marketing of financial products and instruments by credit institutions

1 - In the retail marketing of their own or third-party financial products and instruments, and prior to the conclusion of the respective contract or take-up of the product, credit institutions shall provide all the appropriate information to their customers, on paper or another durable medium, on the conditions, costs, charges and risks associated with the product, more specifically, on its return and the losses that may eventually occur.

2 - To ensure transparency and comparability of the products offered, the information provided for in the foregoing paragraph shall be provided to customers during the pre-contractual phase and include the characterising features of the products being offered, their issuing body and all relevant information, to enable the customer to take an informed decision.

3 - The Banco de Portugal may issue, by means of a Notice, the necessary regulatory standards for the implementation of the provisions of this Article.

4 - Without prejudice to other supervisory instruments, the Banco de Portugal may suspend the retail marketing of financial products and instruments where credit institutions fail to comply with the provisions of the foregoing paragraphs.

Article 77-F

Remuneration and assessment of staff who deal with the retail marketing of financial products and instruments

1 - To prevent potential damage to customers and minimise the risk of conflicts of interest, credit institutions shall adopt a specific remuneration and assessment policy for all staff that have direct or indirect contact with customers in the retail marketing of financial products and instruments.

2 - The persons referred to in the foregoing paragraph shall always act in the best interest of the customer.

3 - For the purposes of the foregoing paragraphs, without prejudice to provisions in force relating to employment, credit institutions shall not remunerate or assess their staff on the basis of any kind of incentive in the retail marketing of specific financial products or instruments.

4 - The Banco de Portugal may establish, by means of a Notice, the rules as may be necessary for the implementation of this Article.

CHAPTER III
Professional secrecy

Article 78

Duty of professional secrecy

1 - Members of the management or supervisory bodies of credit institutions, their staff, legal

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representatives, agents and other persons providing services to them on a temporary or permanent basis shall not reveal or use information on facts or data regarding the activity of the institution or its relationship with customers which come to their knowledge solely as a result of the performance of their duties or the provision of their services.

2 - In particular, the names of customers, deposit accounts and transactions in those accounts, as well as other bank operations, are subject to professional secrecy.

3 - The duty of professional secrecy shall not end with the termination of functions or services.

Article 79

Exceptions to the duty of professional secrecy

1 - Facts or data regarding the relationship between a customer and the institution may be disclosed upon the customer's authorisation, transmitted to the institution.

2 - With the exception of the case provided for in the foregoing paragraph, the facts and data subject to secrecy may only be disclosed:

(a) To the Banco de Portugal, within the scope of its responsibilities;

(b) To the Portuguese Securities Market Commission, within the scope of its responsibilities;

(c) To the Portuguese Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões* - ASF), within the scope of its responsibilities;

(d) To the Deposit Guarantee Fund, the Investor Compensation Scheme and the Resolution Fund, within the scope of their responsibilities;

(e) To the judicial authorities, within the scope of criminal proceedings;

(f) To parliamentary committees of inquiry of the Portuguese Parliament (*Assembleia da República*), to the extent strictly necessary to fulfil their mandate, which must specifically include the investigation or scrutiny of the actions of the authorities responsible for the supervision of credit institutions or for laws on such supervision;

(g) To the tax authorities, within the scope of their responsibilities;

(h) Where any other legal provision expressly limits the duty of professional secrecy.

3 - *[Repealed]*.

Article 80

Duty of professional secrecy on the part of the Banco de Portugal

1 - All persons performing or who have performed functions within the Banco de Portugal, as well as those providing or who have provided services to it on a temporary or permanent basis, shall be bound by the obligation of professional secrecy regarding the information which has come to their knowledge exclusively in the course of their functions or during the provision of those services, and may not reveal or use the information so obtained.

2 - Facts and data subject to secrecy may only be disclosed when permission has been transmitted to the Banco de Portugal by the person concerned, or under the terms laid down in the criminal law and in the law of penal procedure.

3 - Exception shall be made for the disclosure of confidential information on credit institutions within the scope of corrective and resolution measures, the appointment of a temporary administration or winding up proceedings, save for information regarding persons who have taken part in the institution's financial recovery or restructuring.

4 - For statistical purposes, data may be disclosed in abridged or aggregated form, such that individual institutions or persons cannot be identified.

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5 - Exception shall also be made for the disclosure of centralised data by the Banco de Portugal to other entities, under the respective legislation.

Article 81
Cooperation with other entities

1 - Notwithstanding the provisions of the foregoing Articles, the Banco de Portugal may also exchange information with the Portuguese Securities Market Commission, the Portuguese Insurance and Pension Funds Supervisory Authority, the Central Mutual Agricultural Credit Bank, the National Council of Financial Supervisors, as well as with authorities, bodies, and persons with a similar function in other EU Member States, and also with the following entities belonging to an EU Member State:

(a) The Portuguese Insurance and Pension Funds Supervisory Authority, the Portuguese Securities Market Commission and the National Council of Financial Supervisors;

(b) Authorities, bodies and persons with functions similar to those of the entities referred to in the foregoing subparagraph in another EU Member State;

(c) The Central Mutual Agricultural Credit Bank;

(d) Bodies which administer deposit guarantee schemes or investor protection schemes, as regards the information necessary to the exercise of their functions;

(e) [Repealed];

(f) Entities involved in the liquidation of credit institutions, financial companies, financial institutions and authorities responsible for the supervision of these entities;

(g) Persons responsible for carrying out statutory audits of the accounts and external auditors of credit institutions, financial companies, insurance undertakings, financial institutions and authorities responsible for the supervision of these persons;

(h) Supervisory and resolution authorities of EU Member States, regarding the information required for the exercise of supervisory and resolution functions respectively of credit institutions and financial companies;

(i) Central banks of the European System of Central Banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their statutory tasks, including the implementation of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of the stability of the financial system;

(j) Other authorities responsible for supervising payment systems;

(k) Bodies responsible for maintaining the stability of the financial system in macroprudential terms;

(l) Bodies responsible for restructurings intended to maintain the stability of the financial system;

(m) Institutional protection schemes referred to in Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, and the authorities responsible for their supervision;

(n) Entities responsible for the implementation, monitoring and funding of resolution and recapitalisation measures;

(o) Clearing houses or any other similar body recognised by national law to ensure contract clearing or settlement services in one of the respective national markets;

(p) Authorities responsible for verifying compliance of credit institutions and financial institutions

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with legislation on the prevention of money laundering and terrorist financing and, in the context of that legislation, with the Central Department for Criminal Investigation and Prosecution of the Public Prosecutor's Office, the Financial Intelligence Unit and financial intelligence units of other Member States;

(q) Competent authorities or bodies responsible for the application of rules on structural separation within a banking group.

2 - The Banco de Portugal may also exchange information with the following entities, if relevant for the exercise of their respective tasks:

(a) The European Banking Authority, as regards information specified in relevant European Directives and Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010;

(b) The European Systemic Risk Board, pursuant to Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010;

(c) The European Securities and Markets Authority, pursuant to the relevant European Directives and Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November de 2010;

(d) The European Insurance and Occupational Pensions Authority set out in Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010;

(e) The member of Government responsible for finance, when the exchange of such information is related to the implementation of resolution measures, and also when it refers to a decision or issue requiring, under the law, the notification or consultation of that member of Government, or may imply the use of public funds;

(f) The tax administration, within the scope of its responsibilities;

(g) The parliamentary committees of inquiry of the Portuguese Parliament (*Assembleia da República*), to the extent strictly necessary to fulfil their mandate;

(h) The Portuguese Parliament (*Assembleia da República*), in strict compliance with the terms set forth in the special legal framework on transparency and scrutiny of operations regarding the capitalisation, resolution, nationalisation or liquidation of credit institutions, which directly or indirectly benefit from public funds.

3 - Within the scope of cooperation agreements, the Banco de Portugal may exchange information with supervisory authorities of non-EU Member States, on a reciprocity basis, regarding the information required for supervision on an individual or consolidated basis of credit institutions having their head office in Portugal and of similar institutions having their head office in those countries.

4 - The Banco de Portugal may also exchange information with authorities, organisations and persons performing duties similar to those of the entities mentioned in paragraph 1*(a)* to *(d)*, *(f)*, *(g)*, (i) and *(j)* in non-EU countries, the provisions of the foregoing paragraph being applicable.

5 - All authorities, bodies and persons involved in the exchange of information mentioned in the foregoing paragraphs are bound by the obligation of professional secrecy.

6 - Information received by the Banco de Portugal on the exchange of information may only be used:

(a) To check the conditions for the access to the activity of credit institutions and financial companies;

(b) To supervise, on an individual or consolidated basis, the activities of credit institutions, with

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particular regard to the monitoring of liquidity, solvency, large exposures and other capital adequacy requirements, administrative and accounting organisation and internal control mechanisms;

(c) To impose penalties;

(d) Within the scope of appeals lodged against decisions of the member of Government responsible for finance or of the Banco de Portugal, in the exercise of their supervisory and regulatory tasks;

(e) For the purposes of monetary policy and operation or oversight of payment systems;

(f) To ensure the proper functioning of clearing systems in relation to default or potential default by market participants;

(g) Within the scope of parliamentary inquiries whose mandate specifically includes the investigation or scrutiny of the actions of the authorities responsible for the supervision of credit institutions or for laws on such supervision.

7 - The Banco de Portugal shall only disclose the information that originates from an entity in another EU Member State or in non-EU countries with the express consent of such entity and, if that is the case, exclusively for the authorised purposes.

Article 81-A
Database of bank accounts

1 - The Banco de Portugal organises and manages a database of deposit, payment, credit, financial instruments accounts and safes, called database of bank accounts, which are domiciled in the Portuguese territory and held with credit institutions, financial corporations, payment institutions, electronic money institutions and post office giro institutions which are entitled under national law to provide payment services, hereinafter referred to as participating entities.

2 - The database of bank accounts contains the following information:

(a) Identification of the account by IBAN, where applicable, and of the participating entity in which it is domiciled;

(b) Identification of the account holders, beneficial owners and persons authorised to operate the account, including persons authorised by proxy, legal representatives or other representatives;

(c) Identification of safes associated with the account;

(d) Account opening and closing date.

3 - The foregoing paragraph shall apply mutatis mutandis to safes not associated with the accounts.

4 - The participating entities shall submit the information referred to in paragraph 2 to the Banco de Portugal at the frequency set in the Banco de Portugal regulations.

5 - Without prejudice to the following paragraph, the information contained in the accounts database may be reported to any judicial authority under any criminal proceedings, as well as to the authorities responsible for preventing and combating money laundering and terrorist financing within the scope of the tasks conferred upon them by Law No 83/2017 of 18 August 2017.

6 - Within the scope of the tasks conferred upon them by Law No 83/2017 of 18 August 2017, the Financial Intelligence Unit and the Central Department for Criminal Investigation and Prosecution shall access the information contained in the accounts database directly, immediately and in an unfiltered manner.

7 - For the purposes of the foregoing paragraph, the measures that are necessary to ensure effective safeguarding of the information and personal data processed, namely any physical and

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logical security measures, shall be laid down in a protocol to be concluded with the Banco de Portugal.

8 - In the cases provided for in Law No 54/2021 of 13 August 2021, the Central Department for Criminal Investigation and Prosecution, the Criminal Police, the Financial Intelligence Unit and the Asset Recovery Office shall access the information contained in the accounts database directly, immediately and in an unfiltered manner.

9 - The information contained in the database of bank accounts identifying the participating entities in which the accounts are domiciled may also be transmitted, preferably by electronic means, to:

(a) The Portuguese Tax and Customs Authority, within its responsibilities regarding debt recovery and also in the situations in which the said authority, under the terms of the law, provides for the derogation of bank secrecy;

(b) Instituto da Gestão Financeira da Segurança Social, I. P. (social security financial management institute), within its responsibilities regarding debt recovery and the granting of socioeconomic support;

(c) The law enforcement officers, under the terms of the applicable legislation, and the judicial officials, within the scope of enforcement proceedings for the payment of a fixed amount, when in these proceedings, their functions may be equivalent to those of the law enforcement officers;

(d) The Asset Recovery Office, within its responsibilities regarding financial or asset investigation, without prejudice to the foregoing paragraph.

10 - The provisions of the foregoing paragraphs shall be without prejudice to the data subject right of access to personal data concerning the data subject, in accordance with Regulation (EU) 2016/679 of the European Parliament of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and other data protection legislation.

11 - The information contained in the database of bank accounts may be used by the Banco de Portugal, within the scope of its responsibilities.

12 - Responsibility for the information contained in the database of bank accounts rests with the reporting participating entities. It is also exclusively incumbent upon them to correct or change such information, on their own initiative or at the request of their customers, whenever errors or omissions are detected.

13 - The Banco de Portugal may access the information contained in the tax identification database, managed by the Portuguese Tax and Customs Authority, to check the correctness of the name and taxpayer number of account holders or of persons authorised to operate accounts, communicated by the participating entities, under the terms of a protocol to be signed between the Banco de Portugal and the Portuguese Tax and Customs Authority.

14 - The Banco de Portugal regulates the aspects required for the enforcement of the provisions of this Article, namely access restrictions to centralised information and reporting duties of the participating entities.

Article 82

Cooperation with third countries

The cooperation agreements referred to in Article 81(3) may only be concluded if the information to be disclosed is subject to guarantees of professional secrecy at least equivalent to those established in this Legal Framework and whose purpose is the performance of supervisory functions

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entrusted upon the entities in question.

Article 82-A

Cooperation with international bodies

1 – Notwithstanding Articles 80, 81 and 82, the Banco de Portugal may transmit or share information with the following bodies:

(a) the International Monetary Fund and the World Bank, for the purposes of assessments for the Financial Sector Assessment Program;

(b) the Bank for International Settlements, for the purposes of quantitative impact studies;

(c) the Financial Stability Board, for the purposes of its surveillance function.

2 – The Banco de Portugal may only share confidential information with the bodies referred to in the foregoing paragraph where:

(a) the body has made an explicit request to the Banco de Portugal;

(b) the request falls within the scope of the tasks performed by the requesting body in accordance with its statutory mandate;

(c) the request is sufficiently precise as to the nature, scope, and format of the required information, and the means of its disclosure or transmission;

(d) the requested information is strictly necessary for the performance of the specific tasks of the requesting body and does not go beyond its statutory tasks;

(e) the information is transmitted or disclosed exclusively to the persons directly involved in the performance of the relevant specific task; and

(f) the persons having access to the information are subject to professional secrecy rules at least equivalent to those referred to in Article 80.

3 – The Banco de Portugal may only transmit aggregate or anonymised information and may only share other information at its premises.

4 – Where the disclosure of information involves processing personal data, any processing of such data by the requesting body shall comply with the requirements laid down in European Union legislation on the protection of personal data.

Article 83

Information on risks

Regardless of what has been established in respect of the Central Credit Register service, credit institutions may, under the duty of secrecy, set up a reciprocal information system in order to ensure the security of transactions.

Article 84

Breach of professional secrecy

Without prejudice to other applicable penalties, breach of the duty of professional secrecy is punishable under the Criminal Code (*Código Penal*).

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CHAPTER IV
Conflicts of interest

Article 85
Credit to members of corporate bodies

1 – Without prejudice to the provisions of paragraphs 6 and 7 below, credit institutions shall not grant credit, in any form or type, including the provision of guarantees, either directly or indirectly, to members of their management or supervisory bodies, nor to companies or other collective bodies directly or indirectly controlled by them.

2 - The indirect nature of credit granting shall be deemed to exist when the beneficiary is married or related by consanguinity in the first degree, to any member of the management or supervisory bodies, or a company directly or indirectly controlled by one or more of such persons. This presumption may be rebutted prior to credit granting before the management board of the credit institution concerned, upon which its verification is incumbent, subject to prior communication to the Banco de Portugal, under the terms to be defined by means of an Instruction.

3 - For the purposes of this Article, the acquisition of shareholdings in companies or other collective bodies referred to in the foregoing paragraphs is considered to be equivalent to credit granting.

4 - The provisions of the foregoing paragraphs shall not apply to transactions of a social nature or purpose, or arising out of the staff policy, as well as to credit granted via credit cards associated with a deposit account, under conditions comparable to those applied to other customers with similar risk and profile.

5 - [*Repealed*]

6 – The Banco de Portugal may determine the application of the provisions of Article 109 to the members of other bodies which are deemed by the Banco de Portugal to perform similar functions, and to companies or other collective bodies controlled by them.

7 - The provisions of paragraphs 1 to 4 above shall not apply to credit granting operations, the beneficiaries of which are credit institutions, financial companies or holding companies included in the perimeter of supervision on a consolidated basis to which the credit institution concerned is subject, nor to pension fund management companies, insurance undertakings, brokers and insurance mediators controlling or being controlled by any entity included in the same perimeter of supervision.

8 - The members of the management or supervisory bodies of a credit institution shall not participate in the appraisal and decision about whether or not to grant credit to companies and other collective bodies not included in paragraph 1, of which they are managers or in which they have a qualifying holding, nor in the appraisal and decision-making process concerning operations covered by paragraph 7 above. In all these situations, the approval by at least two thirds of the remaining members of the management body as well as the favourable opinion of the supervisory body shall be required.

9 - The transactions carried out under this Article, as regards beneficiaries and amounts, shall be reported in the annual financial statements of the credit institution concerned.

Article 85-A
Information to the Banco de Portugal

Credit institutions shall properly document and make available to the Banco de Portugal, upon request, data on loans to the following persons:

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(a) members of the management and supervisory bodies;

(b) spouse, registered partner, child or parent of a member of the management and supervisory bodies;

(c) a commercial entity, in which a member of the management body or a member of the supervisory board or their close family member as referred to in the foregoing subparagraph:

(i) has a qualifying holding of 10% or more of capital or of voting rights;

(ii) can exercise significant influence;

(iii) holds senior management positions; or

(iv) is member of the management body.

Article 86

Other operations

The members of the management body, directors and other staff, advisers and legal representatives of credit institutions shall not intervene in the appraisal and decision-making process regarding operations in which they, their spouses or legal partners, or relatives by consanguinity in the first degree, as well as companies or other collective bodies directly or indirectly controlled by any of these persons or bodies, are directly or indirectly the persons concerned.

Article 86-A

Organisational and administrative arrangements

1 - Credit institutions shall put in place organisational and administrative arrangements proportionate to the nature, scale and complexity of their business that enable the identification of potential conflicts of interest in an effective way, the adoption of appropriate measures to prevent or minimise the risk of their occurrence, and the adoption of reasonable measures intended to prevent an actual conflict of interest from adversely affecting the interests of their customers.

2 - Where credit institutions find, with reasonable confidence, that the organisational and administrative arrangements in place are not sufficient to prevent risks to customer interests, they shall clearly and accurately disclose to the customer the origin and nature of the conflicts of interest in question as well as the steps taken to mitigate those risks, before the customer purchases any products or services.

3 - The disclosure referred to in the foregoing paragraph shall be made on paper or another durable medium and shall include sufficient detail, taking into account the nature of the customer, to enable the customer to take an informed decision.

4 - The organisational and administrative arrangements implemented by credit institutions pursuant to the foregoing paragraphs shall enable the identification, prevention and mitigation of situations of conflicts of interest arising between customers and credit institutions, including the members of their management bodies, staff, persons providing services to them on a temporary or permanent basis, and any firms with which they are in a control or group relationship, or between one customer and another arising, or likely to arise, from the receipt of inducements from third parties, the credit institution’s own remuneration and other incentive structures.

Article 86-B

Staff remuneration and assessment

1 — Credit institutions should put in place remuneration and assessment policies for natural persons that have direct contact with customers when marketing deposits and credit products, as

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well as for natural persons that are directly or indirectly involved in the management and supervision of said persons.

2 — The remuneration and assessment policies for the persons referred to in the foregoing paragraph shall not jeopardise their ability to act in the best interest of their customers. In particular, they shall ensure that any inducement through remuneration, or sales targets or otherwise do not provide an incentive to said persons to promote their own interests or those of the credit institutions to the detriment of customers.

3 — Credit institutions shall periodically, and at least annually, assess their remuneration policy, and, where necessary, take any appropriate steps to ensure that it gives due consideration to the rights and interests of customers and does not create incentives affecting the interests of customers.

CHAPTER V
Protection of competition

Article 87
Protection of competition

1 - The activities of credit institutions, as well as of their business associations, shall be subject to the legislation governing the protection of competition.

2 - Legitimate agreements between credit institutions as well as concerted practices whose purpose is the carrying out of the following operations are not considered as competition-restraining practices:

(a) Participation in the issuance and placement of transferable securities or similar instruments;

(b) Granting of credit or other large-scale financial support to an undertaking or group of undertakings.

3 - In the application of the legislation governing the protection of competition to credit institutions and their business associations, account shall always be taken of best practices in relation to their respective activity, particularly with respect to risk or solvency.

Article 88
Cooperation of the Banco de Portugal and the Portuguese Securities Market Commission

In the proceedings initiated for competition-restraining practices against credit institutions or their business associations, the opinion of the Banco de Portugal shall compulsorily be requested and forwarded to the Competition Authority; in cases involving intermediation in financial instruments, the opinion of the Portuguese Securities Market Commission is also required.

Article 89
Advertising

[Repealed].

Article 90
Intervention by the Banco de Portugal

[Repealed].

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CHAPTER VI
Internal organisation of credit institutions

Article 90-A
Records and archive

1 - Credit institutions shall arrange for records to be kept of all services, activities and operations undertaken by them, which shall be sufficient to allow verification of credit institutions' compliance with all obligations to which they are subject, in accordance with the applicable rules, including those with respect to customers.

2 - Credit institutions shall establish a record for each customer, setting out, in particular, up-to-date information on the rights and obligations of the parties pursuant to any agreements concluded, on the basis of the respective supporting documents.

3 - Without prejudice to other legal and regulatory texts, the records and documents referred to in this Article shall be kept in a durable medium that prevents it from being changed and that allows for future reference and the unchanged reproduction of the information stored.

4 - Credit institutions shall record and store all contract-related communications with the customers for a period of five years, and the Banco de Portugal may establish, by means of a Notice, that said records must be kept for a period of up to seven years.

5 - For the purposes of the foregoing paragraph, the records shall include the recording of telephone conversations and electronic communications.

6 - Credit institutions shall ensure that all communications between persons providing services to them on a temporary or permanent basis and their customers for the purposes of concluding agreements are carried out through the use of equipment provided or authorised by them.

7 - The Banco de Portugal may require access to existing recordings held by credit institutions.

8 - The records kept by credit institutions shall be provided to the customers involved, upon request.

Article 90-B
Obligations of credit institutions in the creation of deposits and credit products

1 - Credit institutions shall establish and apply specific procedures for the governance and monitoring of deposits and credit products, applicable to the creation, combination or significant change in said products, so as to ensure that the interests, objectives and characteristics of their consumers are taken into account, to prevent potentially harmful situations for consumers and to minimise the risk of conflicts of interest.

2 - The governance and monitoring procedures referred to in the foregoing paragraph shall be proportionate to the nature, scale and complexity of the business of the credit institutions, and shall take into consideration the potential risk to the customer and the complexity of the products concerned.

3 - Credit institutions responsible for the creation, combination or significant change in the products referred to in paragraph 1 shall periodically revise and update their governance and monitoring procedures.

4 - All the steps taken in the context of specific governance and monitoring procedures shall be duly documented and recorded for audit purposes, and credit institutions shall make them available to the Banco de Portugal, upon request.

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Article 90-C

Obligations of credit institutions in the marketing of deposits and credit products

1 - Credit institutions shall establish and apply specific procedures for the governance and monitoring of deposits and credit products, applicable to the marketing of said products, whether created by them or another credit institution, so as to ensure that the interests, objectives and characteristics of their consumers are taken into account, to prevent potentially harmful situations for consumers and to minimise the risk of conflicts of interest.

2 - The governance and monitoring procedures referred to in the foregoing paragraph shall be appropriate and proportionate to the nature, scale and complexity of the business of credit institutions in the context of the marketing of the products concerned, and credit institutions shall periodically revise and update said procedures, so as to ensure that they remain fit for purpose.

3 - Where several credit institutions cooperate in the marketing of deposits or credit products, the credit institution that establishes a direct relationship with consumers shall carry legal responsibility for compliance with the obligations set out in this Article.

4 - All the steps taken in the context of the marketing of the products referred to in paragraph 1 shall be duly documented and recorded for audit purposes, and credit institutions shall make them available to the Banco de Portugal, or the credit institutions that created, combined or significantly changed the products or services concerned, upon request.

Article 90-D

Intervention by the Banco de Portugal on deposits and credit products monitoring and governance procedures

1 - Without prejudice to other supervisory instruments, the Banco de Portugal may suspend the marketing of deposits or credit products where credit institutions have not developed or applied an effective product approval process or otherwise failed to comply with Articles 90-B and 90-C, and there is a risk that this omission would seriously jeopardise the interest of bank customers.

2 - The adoption of the measure mentioned in the foregoing paragraph shall meet the necessity, suitability and proportionality principles, preceded by a hearing of the institution concerned, except where this jeopardises the measure's purpose or effectiveness.

3 - The duration of the suspension from marketing deposits and credit products shall be established by the Banco de Portugal, up to a maximum of 180 days, and may be extended within this period, should the assumptions laid down in paragraph 1 continue.

TITLE VII
Prudential supervision

CHAPTER I
General principles

Article 91

Oversight

1 - The oversight of the money, financial and foreign exchange markets, and in particular the coordination of the activities of market operators with the Government's economic and social policy, shall be the responsibility of the Minister of Finance.

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2 - Whenever a disturbance arises in the money, financial and foreign exchange markets, which seriously jeopardises the domestic economy, the Government may, by joint executive order of the Prime Minister and the Minister of Finance, upon consultation with the Banco de Portugal, require that appropriate action be taken, namely the temporary suspension of certain markets or of certain types of transactions, or even the temporary closure of credit institutions.

Article 92
Responsibilities of the Banco de Portugal in its role as the central bank

1 - Pursuant to its Statute, the Banco de Portugal shall be responsible for:

(a) The guidance and control of the money and foreign exchange markets, as well as for the regulation, oversight and promotion of the smooth operation of payment systems, namely within the scope of its participation in the European System of Central Banks;

(b) The collection and compilation of the monetary, financial, foreign exchange and balance of payments statistics, particularly within the scope of its cooperation with the European Central Bank.

2 – Other responsibilities conferred on the Banco de Portugal by this Legal Framework shall not prejudice its independence in the performance of its central banking tasks and as a member of the European System of Central Banks.

Article 93
Supervision

1 - The supervision of credit institutions, financial holding companies and mixed financial holding companies, in particular their prudential supervision, including that of their activities abroad, shall be incumbent on the Banco de Portugal, in accordance with its Statute and with this Legal Framework.

2 - The provisions of the foregoing paragraph shall not prejudice the supervisory powers conferred on the Portuguese Securities Market Commission.

3 - The Banco de Portugal shall, in the exercise of its powers, assess the potential impact of its decisions on the stability of the financial system in all other EU Member States concerned, in particular, in emergency situations, based on the information available at the relevant time.

4 - In the exercise of its duties, the Banco de Portugal shall take into account the convergence in respect of supervisory tools and practices in the application of the laws and regulations adopted pursuant to Directive 2013/36/EC and Regulation (EU) No 575/2013, both of the European Parliament and of the Council of 26 June 2013, namely in connection with participation in the European System of Financial Supervision.

5 - For the purposes of the foregoing paragraph, the Banco de Portugal shall:

(a) Cooperate with the supervisory authorities and other entities as parties to the European System of Financial Supervision (ESFS), in accordance with the principle of sincere cooperation set out in Article 4(3) of the Treaty on European Union, ensuring in particular the flow of appropriate and reliable information between them and other parties to the ESFS;

(b) Participate in the activities of the European Banking Authority and in the colleges of supervisors;

(c) Make every effort to comply with the guidelines and recommendations issued by the European Banking Authority and to respond to warnings and recommendations issued by the European Systemic Risk Board;

(d) Cooperate closely with the European Systemic Risk Board.

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6 – The pursuit of the other legal tasks of the Banco de Portugal shall neither interfere with nor inhibit the performance of its legal supervisory powers, namely within the scope of the European Banking Authority or the European Systemic Risk Board.

Article 93-A
Disclosure of information

1 - The Banco de Portugal shall disclose the following information:

(a) The texts of the legal and regulatory acts and general guidance adopted in Portugal in the field of prudential regulation;

(b) The options and discretions foreseen in Community legislation that have been exercised;

(c) The general criteria and methodologies used for the purposes of Article 116-A, including the criteria for the application of the principle of proportionality referred to in paragraphs 3 and 6 of that Article;

(d) Aggregate statistical data on key aspects of the implementation of the prudential framework, including the number and nature of supervisory corrective measures taken in accordance with Article 116-C(1) and the administrative penalties imposed in accordance with Title XI;

(e) The general criteria and methodologies adopted to review compliance with the requirements applicable to investor institutions and sponsors, pursuant to Articles 405 to 409 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(f) Without prejudice to the obligation of professional secrecy, a summary description of the outcome of the supervisory review and description of the measures imposed in cases of non-compliance with the foregoing paragraph, identified on an annual basis.

2 - The disclosure of information provided for in the paragraphs *(a)* to (*d*) above shall be sufficient to enable a comparison of the approaches adopted by the competent authorities of other EU Member States.

3 - The information provided for in paragraphs (*a*) to (*d*) above shall be published in a uniform format to that used by the competent authorities of the other EU Member States and regularly updated. The information shall be accessible at a single electronic location.

4 – Where the Banco de Portugal exercises the discretion laid down in Article 7(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, it shall publish the following information:

(a) The criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(b) The number of parent credit institutions which benefit from the exercise of the discretion laid down in Article 7(3) of the above-mentioned Regulation and the number of those which incorporate subsidiaries in a third country;

(c) On an aggregate basis for Portugal:

(i) The total amount of own funds on a consolidated basis of the parent credit institutions which benefit from the exercise of the discretion laid down in Article 7(3) of said Regulation which are held in subsidiaries in a third country;

(ii) The percentage of total own funds on a consolidated basis of the parent credit institutions which benefit from the exercise of the discretion laid down in Article 7(3) of said Regulation,

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represented by own funds which are held in subsidiaries in a third country;

(iii) The percentage of total own funds required under Article 92 of said Regulation on a consolidated basis of the parent credit institutions which benefit from the exercise of the discretion laid down in Article 7(3) of said Regulation, represented by own funds which are held in subsidiaries in a third country.

5 - Where the Banco de Portugal exercises the discretion laid down in Article 9(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, it shall disclose the following information:

(a) The criteria it applies to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities;

(b) The number of parent credit institutions which benefit from the exercise of the discretion laid down in Article 9(1) of said Regulation and the number of such parent credit institutions with subsidiaries in a third country;

(c) On an aggregate basis for Portugal:

(i) The total amount of own funds of the parent credit institutions which benefit from the exercise of the discretion laid down in Article 9(1) of said Regulation which are held in subsidiaries in a third country;

(ii) The percentage of total own funds of the parent credit institutions which benefit from the exercise of the discretion laid down in Article 9(1) of said Regulation represented by own funds which are held in subsidiaries in a third country;

(iii) The percentage of total own funds required under Article 87 of said Regulation of the parent credit institutions which benefit from the exercise of the discretion laid down in Article 9(1) of said Regulation represented by own funds which are held in subsidiaries in a third country.

CHAPTER II
Prudential rules

Article 94
General principle

Credit institutions shall invest their available funds in such a way as to ensure appropriate levels of liquidity and solvency at all times.

Article 95
Share capital

1 - The Minister of Finance shall establish by means of an executive order, upon consultation of the Banco de Portugal or under its proposal, the minimum share capital of credit institutions.

2 - The initial share capital of credit institutions which have resulted from the modification of the corporate object of a company, or of a merger of two or more companies, or of a splitting, shall not be less than the minimum prescribed in accordance with the provisions of the foregoing paragraph; likewise their own funds shall not be less than the prescribed minimum.

Article 96
Own funds

1 - The Banco de Portugal shall establish by means of Notices the items which may be included in the

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own funds of credit institutions and of the branches referred to in Article 57, defining their characteristics.

2 - The own funds may not fall below the amount of the initial capital required pursuant to Article 95.

3 - Should the own funds fall below the level prescribed, the Banco de Portugal may, where the circumstances justify it, grant the institution concerned a limited period of time to remedy the situation.

4 - Own funds items shall be available to credit institutions for use to cover risks or losses and, according to their nature, are broken down by permanence, subordination, loss absorption capacity and timeliness and, where applicable, the ability to defer or cancel payments.

5 - Article 35 of the Commercial Companies Code shall not apply to credit institutions.

Article 97
Reserves

1 - A fraction of not less than 10% of the net profits of a credit institution for each fiscal year shall be earmarked for the building-up of a legal reserve, up to an amount equal to the share capital or to the sum of its established free reserves or the carried forward results, if higher.

2 - Credit institutions shall also build up special reserves to strengthen their net worth or to cover losses that their profit and loss account cannot support.

3 - The Banco de Portugal may establish, by means of a Notice, general or specific criteria for the building-up and investment of the reserves mentioned in the foregoing paragraph.

Article 98
Security of credit granting
***[Repealed]*.**

Article 99
Regulatory power

1 - It shall be the responsibility of the Banco de Portugal to establish, by means of a Notice, the relationship to be observed between balance-sheet items and to establish prudential limits to the carrying out of operations which credit institutions are authorised to carry out, in both cases either in individual or consolidated terms, and in particular:

(a) The relationship between own funds and total assets and off-balance-sheet items, weighted or not by risk coefficients;

(b) Limits to the underwriting of transferable securities issues for indirect subscription or to the guarantee of placement of the issues of such securities;

(c) Limits to and forms of coverage of resources from third parties and of any other liabilities towards third parties;

(d) Limits to the concentration of risks, in order to mitigate the risks of losses prejudicial to the solvency of credit institutions resulting from excessive exposures to a single client or group of connected clients or any other form of exposure or group of exposures resulting in excessive concentration of exposures;

(e) Minimum limits to provisions for the cover of credit risks and of any other risks or liabilities;

(f) Time limits and methods for the depreciation of premises and equipment, of setting-up or assignment of leasing costs, and other costs of a similar nature.

2 - Furthermore, it is incumbent on the Banco de Portugal to regulate the issues referred to in Article 17(1)*(f)*. In this case, the Banco de Portugal shall consult the Portuguese Securities Market Commission, whenever the corporate object of the institutions concerned encompasses any

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investment activity or service.

Article 100
Holdings and own funds

***[Repealed]*.**

Article 101
Holdings in undertakings

1 - Without prejudice to the provisions of paragraph 4 below, credit institutions shall not own, directly or indirectly, for a continuous or non-continuous period of more than three years, a holding in an undertaking giving them more than 25% of the voting rights corresponding to the capital of that undertaking.

2 - Indirect holding means the ownership of shares or other equity holdings by persons or under any such conditions determining equal voting rights for the purposes of a qualifying holding.

3 - The limit established in paragraph 1 above shall not apply to a credit institution's holdings in other credit institutions, financial companies, financial institutions, ancillary services companies, credit securitisation companies, insurance undertakings, subsidiaries of insurance undertakings held according to the law applicable to the latter, brokers and insurance mediators, pension fund management companies, venture capital companies and holding companies which only have equity holdings in the companies referred to above, as well as credit institutions' holdings in real estate investment funds for housing rental and real estate investment companies.

4 - The period referred to in paragraph 1 above is of five years for indirect holdings owned through venture capital companies and holding companies.

Article 102
Communication of qualifying holdings

1 - Any natural or legal person who plans to own, directly or indirectly, a qualifying holding in a credit institution shall inform the Banco de Portugal of such intention in advance.

2 - Acts involving increases in a qualifying holding must also be previously communicated to the Banco de Portugal, whenever a proportion reaching or exceeding 10%, 20%, one third or 50% of the capital or of the voting rights held in the institution concerned may result from them, depending on the situation, or when the latter becomes a subsidiary of the acquiring entity.

3 - The communication provided for in the foregoing paragraphs shall be made whenever the initiative or set of initiatives intended by the person in question may result in any of the situations mentioned, even if the outcome is not entirely guaranteed.

4 - The Banco de Portugal shall determine, by means of a Notice, the data and information that must be submitted together with the communication provided for in paragraphs 1 and 2 above.

5 – For the purposes of this Article, the proposed acquirer shall inform the Banco de Portugal of the identity of the payee or beneficial owners, as defined in Article 2(5) of Law No 25/2008 of 5 June, the qualifying holding in question, as well as any subsequent changes to that holding.

6 - For the purposes of the foregoing paragraph, and without prejudice to the provisions of Article 93, the Banco de Portugal may request from the proposed acquirer of a qualifying holding any information relating to the beneficial owner or owners, and may suspend their voting rights due to lack of reply within the established deadline.

7 - The Banco de Portugal shall acknowledge receipt in writing to the proposed acquirer of the communication, if the latter is accompanied by all the required data and information, as well as of the date of expiry of the assessment period set out in Article 103(4), within two working days

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following receipt of the said communication.

8 - If the communication under this Article is not accompanied by all the required data and information, the Banco de Portugal shall inform the proposed acquirer in writing of the missing data or information, within two working days following the receipt of the said communication.

Article 102-A
Ex officio declaration

1 - The Banco de Portugal may, at any time and irrespective of the enforcement of other measures provided for by law, declare any holding in the capital or in the voting rights of a credit institution as having a qualifying nature, whenever it comes to its knowledge that relevant actions or facts have occurred in relation to such holdings, whose communication to the Banco de Portugal has been omitted or incorrectly made by the respective holder.

2 - the Banco de Portugal may also, at any time, declare any holding in the capital or in the voting rights of a credit institution as having a qualifying nature, whenever actions or facts liable to change the influence exercised by the respective holder on the management of that credit institution come to its knowledge.

3 - The appraisal mentioned in the foregoing paragraph may be carried out on the initiative of the persons concerned. In this case, the decision of the Banco de Portugal shall be taken within 30 days of receipt of the request.

Article 103
Assessment

1 - The Banco de Portugal may oppose the plan to acquire or increase a qualifying holding if it deems that it has not been demonstrated that the proposed acquirer fulfils the conditions to ensure the sound and prudent management of the credit institution or if the proposed acquirer has provided incomplete information.

2 - For the purposes of the foregoing paragraph, the Banco de Portugal assesses the conditions to ensure the sound and prudent management of the credit institution, in regard to the suitability of the proposed acquirer, their likely influence on the credit institution and the financial soundness of the plan, against all of the following criteria:

(a) The suitability of the proposed acquirer, taking into particular account the provisions of Article 30-D, in the case of a natural person;

(b) The reputation, professional qualification, independence and availability of any member of the management body of the credit institution, to be appointed as a result of the proposed acquisition, as prescribed in Articles 30 to 33-A;

(c) The financial soundness of the proposed acquirer, in particular in relation to the type of business pursued or envisaged in the credit institution;

(d) Whether the credit institution will be able to comply and continue to comply with the applicable prudential requirements and, in particular where it belongs to a group, whether the group has a structure that makes it possible to exercise effective supervision, effectively exchange information with the competent authorities and determine the allocation of responsibilities among the competent authorities;

(e) Whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 is being or has been committed or attempted, or where the proposed acquisition could increase the risk thereof.

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3 - The Banco de Portugal may, at any time, request additional data and information from the proposed acquirer and make the inquiries deemed necessary, no later than the 50th working day of the period of time mentioned in the following paragraph.

4 - Without prejudice to the provisions of paragraphs 5 and 6 below, the Banco de Portugal shall inform the proposed acquirer of its decision within 60 working days of receipt of the information required under Article 102(7).

5 - The request for additional data or information made in writing by the Banco de Portugal interrupts the assessment period, for the period between the date of the request for information and the receipt of a response by the proposed acquirer.

6 - The interruption mentioned in the foregoing paragraph shall not exceed:

(a) 30 working days, if the proposed acquirer has its residence or head office in a third country or is subject to non-EU regulations or if the proposed acquirer is not subject to supervision under Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, or of Directives 2009/65/EC of the European Parliament and of the Council of 13 July 2009, 2009/138/EC of the European Parliament and of the Council of 25 November 2009, and 2004/39/EC of the European Parliament and of the Council of 21 April 2004;

(b) 20 working days, in all other cases.

7 - The Banco de Portugal shall give written notice to the proposed acquirer of receipt of data and information required under paragraph 5 and of the new date of expiry of the period mentioned in paragraph 4, within two working days as of receipt of the said data and information.

8 - If the Banco de Portugal decides to oppose the plan, it:

(a) Shall inform the proposed acquirer, in writing, of its decision and of the reasons thereof, within two working days of that decision and prior to the expiry of the period mentioned in paragraph 4;

(b) May make accessible to the public the reasons for the decision, on its own initiative or upon request of the proposed acquirer.

9 - Without prejudice to the provisions of paragraphs 5 and 6 above, if the Banco de Portugal does not oppose the proposed acquisition within the period mentioned in paragraph 4, it shall be deemed to be approved.

10 - When the Banco de Portugal does not oppose, it may set a reasonable time limit on the carrying out of the proposed transaction, which shall be of one year except where otherwise provided for.

11- The decision by the Banco de Portugal shall indicate any views or reservations expressed by the competent authority within the scope of the cooperation process provided for in Article 103-A.

Article 103-A
Cooperation

1 - The Banco de Portugal requests the opinion of the competent authority of the home Member State, whenever the proposed acquirer corresponds to one of the following types:

(a) Credit institution, insurance undertaking, reinsurance undertaking, investment firm or management company of units of collective investment undertakings (UCITs) within the meaning of Decree-Law No 63-A/2013 of 10 May 2013, authorised in another Member State;

(b) Parent undertaking of an entity mentioned in the foregoing subparagraph;

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(c) Natural or legal person controlling an entity mentioned in subparagraph *(a)*.

2 - At the request of the competent authorities of other Member States, the Banco de Portugal provides any information which is essential for the assessment of proposed acquisitions of qualifying holdings, as well as any other relevant information, upon request.

3 - The Banco de Portugal requests the opinion of the Portuguese Insurance Institute where the proposed acquirer corresponds to one of the types listed in paragraph 1 above authorised by the Portuguese Insurance Institute.

4 - The Banco de Portugal requests the opinion of the Portuguese Securities Market Commission where the corporate object of the credit institution includes any type of intermediation in financial instruments or when the proposed acquirer corresponds to one of the types listed in paragraph 1 above authorised by the Portuguese Securities Market Commission.

5 - The Banco de Portugal informs the European Commission and the competent authorities of other EU Member States of any acquisition of holdings in a credit institution whenever the participant is a non-national natural person of an EU Member State, or a legal person having its head office in a non-EU country and, by virtue of the holding, the credit institution would become its subsidiary.

6 - The Banco de Portugal shall consult the European Banking Authority's database of administrative penalties to carry out the assessment of the proposed acquirer.

Article 104
Subsequent communication

1 - The acts or facts resulting in the acquisition of a holding which represents 5% or more of the capital or of the voting rights of a credit institution shall be communicated to the Banco de Portugal within 15 days of their occurrence.

2 - In the case foreseen in the foregoing paragraph, the Banco de Portugal shall inform the person concerned, within 30 days, if it considers the acquired holding as a qualifying holding.

3 - The acts resulting in the acquisition of the proposed qualifying holding or of the proposed increase of a qualifying holding which are subject to prior communication under the terms of Article 102(1) and (2), shall also be communicated to the Banco de Portugal within 15 days of their occurrence.

Article 105
Suspension of voting rights

1 - Without prejudice to other applicable penalties and save for the provisions laid down in the following paragraph, the Banco de Portugal may determine the suspension of the voting rights attached to a qualifying holding in a credit institution, to the extent necessary and appropriate to prevent the influence over the management which has been obtained through the act resulting in the acquisition of or increase in the said holding, provided that any of the following applies:

(a) The person concerned has failed to comply with the duty of communication laid down in Article 102;

(b) The person concerned has acquired or increased a qualifying holding after providing the information required under Article 102 but before the Banco de Portugal has issued its opinion under the terms of Article 103;

(c) The Banco de Portugal has opposed the plan to acquire or increase a holding.

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2 - If in the situations referred to in subparagraph 1*(a)* above the missing communication is made before the suspension of voting rights is decided, the Banco de Portugal must act in accordance with the powers entrusted to it by Article 103; if the same communication is made after the decision to suspend voting rights, such suspension will terminate if the Banco de Portugal raises no objection.

3 - In any of the events foreseen in the foregoing paragraphs, the Banco de Portugal may, as an alternative, stipulate that the suspension shall apply to entities which directly or indirectly have voting rights in the participated credit institution, if this measure is deemed adequate to ensure sound and prudent management conditions and does not cause serious restriction to the carrying on of other economic activities.

4 - The Banco de Portugal shall also stipulate the extent to which the suspension covers the voting rights exercised by the participated institution in other credit institutions, with which it is under a direct or indirect control or dominant influence relationship.

5 - The decisions taken under the provisions of the foregoing paragraphs shall be notified to the person concerned, under the general terms, and communicated to the management body of the participated credit institution and the chair of its shareholders' meeting, together with the determination that the chair shall act in such a way as to prevent the exercise of the suspended voting rights, according to the provisions of the following paragraph. Where the corporate object of the credit institution includes any type of intermediation in financial instruments, the decisions shall be communicated to the Portuguese Securities Market Commission and where the person concerned is an entity subject to the supervision of the Portuguese Insurance Institute, this institute shall be notified.

6 - The chair of the shareholders' meeting, to whom the decisions referred to in the foregoing paragraph are communicated, must ensure, in the performance of the functions entrusted to the chair, that the suspended voting rights are not exercised, under any circumstances, in the shareholders' meeting.

7 - If, notwithstanding the provisions of the foregoing paragraph, it is verified that the suspended voting rights have been exercised, the decision taken can be annulled, save if there is evidence that it would have been taken and would have been similar even if the said rights had not been exercised.

8 - The possibility of annulment may be challenged under the terms of the general law, or by the Banco de Portugal.

9 - If the exercise of the suspended voting rights has been a determining factor in the election of the management or supervisory bodies, the Banco de Portugal shall, while the proceedings to annul the decision are pending, refuse the relevant registrations.

Article 106

Suspension on account of supervenient facts

1 - The Banco de Portugal, on the grounds of relevant facts which come to its knowledge after the acquisition of a qualifying holding, or its increase, in a credit institution and which give rise to grounded fears that the influence exercised by its holder can harm the sound and prudent management of that credit institution, can provide for the suspension of the voting rights corresponding to the said holding.

2 - The decisions taken pursuant to paragraph 1 above shall be subject to the provisions of paragraphs 4 and following of Article 105 mutatis mutandis.

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Article 107
Reduction of qualifying holdings

1 - Any natural or legal person intending to dispose of a qualifying holding in a credit institution, or to reduce it so that the proportion of the voting rights or of the capital held would fall below any of the thresholds of 20%, one third or 50%, or so that the institution would cease to be its subsidiary, shall inform the Banco de Portugal in advance, indicating the new proportion of the holding.

2 - Where there is a reduction of a qualifying holding in a credit institution to a threshold below 5% of the capital or the voting rights of that credit institution, the Banco de Portugal shall communicate to its holder, within 30 days, whether it considers the resulting shareholding as a qualifying holding.

3 - The situations provided for in this Article shall be subject to the provisions of Article 104 mutatis mutandis.

Article 108
Notification by credit institutions

1 - On becoming aware of any changes falling under the provisions of Articles 102 and 107, credit institutions shall promptly inform the Banco de Portugal thereof.

2 - In April of each calendar year, credit institutions shall inform the Banco de Portugal of the identity of their direct and indirect qualifying shareholders, indicating the share capital and voting rights attached to each holding.

Article 109
Credit granted to qualifying shareholders

1 - The amount of credit granted, in any form or type, including the provision of guarantees, to a person who owns, directly or indirectly, a qualifying holding in a credit institution or to companies directly or indirectly controlled by such a person, or belonging to the same group as such a person, shall not exceed, on the whole and at any time, 10% of the institution's own funds.

2 - The total amount of credit granted to all qualifying shareholders and to the companies referred to in the foregoing paragraph shall not exceed, at any time, 30% of the credit institution's own funds.

3 - The transactions referred to in the foregoing paragraphs shall depend on the approval by a qualified majority of at least two thirds of the members of the credit institution's management body and on the favourable opinion of its supervisory body.

4 - The provisions of Article 85(2) and (3) shall apply mutatis mutandis to the transactions referred to in the foregoing paragraphs. The presumption provided for in Article 85(2) is only rebuttable in the cases of relatives by consanguinity or related by affinity in the first degree, or of judicially separated couples.

5 - The provisions of this Article shall not apply to the granting of credit of which the beneficiaries are credit institutions, financial companies or holding companies which are included in the perimeter of supervision on a consolidated basis to which the credit institution concerned is subject, nor to pension fund management companies, insurance undertakings, brokers and other insurance mediators that control or are controlled by any entity included in the same perimeter of supervision.

6 - The amounts of credit referred to in this Article shall always be aggregated for the purposes of calculating the respective limits.

7 – The amount of credit granted, in any form or type, including the provision of guarantees, to a person who holds, directly or indirectly, a qualifying holding in a credit institution and the company

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directly or indirectly controlled by such a person, and the entities where the credit institution has a holding, shall be reported in the annual financial statements of the credit institution in question.

Article 110
List of shareholders

1 - A list of shareholders indicating their holding in the share capital shall be published, at least five days before the date set for the shareholders' general meetings, in two of the most widely-read newspapers of the area where the credit institution has its head office.

2 - The list must only include those shareholders whose holdings exceed 2% of the share capital.

3 - The provisions of the foregoing paragraphs shall not apply to general meetings held under the terms of Article 54 of the Commercial Companies Code.

Article 111
Registration of inter-shareholder agreements

1 - Inter-shareholder agreements between shareholders of credit institutions relating to the exercise of voting rights shall be registered with the Banco de Portugal; otherwise they will be considered ineffective.

2 - Registration may be applied for by any of the parties to the agreement.

Article 112
Acquisition of real estate

1 - Credit institutions shall not, except with the authorisation of the Banco de Portugal, acquire real estate other than that required for their setting-up and operation or for the pursuance of their corporate object.

2 - The Banco de Portugal shall lay down the rules, particularly the accounting rules, which must be complied with by credit institutions in the acquisition of real estate.

Article 113
Fixed assets ratio and acquisition of shareholdings

The Banco de Portugal may set, by means of a Notice, the limits on the value of the credit institutions' fixed assets, as well as on the total value of shares and other equity holdings of any companies not included in the assets referred to above that credit institutions may hold.

Article 114
Acquisitions in repayment of own credit

The limits provided for in Articles 100 and 101 may be exceeded and the restriction imposed under Article 112 may be disregarded as a result of acquisitions in repayment of the institution's own credit. The resulting situations shall be remedied within a period of two years, which, where there are reasoned grounds, may be extended by the Banco de Portugal, under the conditions established by the latter.

Article 115
Accounting and publication rules

1 -Without prejudice to the powers of the Portuguese Accounting Standards Board (*Comissão de Normalização Contabilística*) within this scope and to the provisions of the Securities Code, it shall be incumbent on the Banco de Portugal to set forth accounting rules to be applied to institutions subject

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to its supervision, as well as to define the data which those institutions shall submit to the Banco de Portugal and those which they shall publish.

2 - Credit institutions shall draw up consolidated accounts according to the provisions of the applicable legislation.

3 - The institutions subject to the supervision of the Banco de Portugal shall publish their accounts under the terms and with the frequency defined in a Notice of the Banco de Portugal, which may require the respective legal certification.

CHAPTER II-A
Governance

Article 115-A
Governance arrangements

1 - Within the scope of their powers, credit institutions' management and supervisory bodies shall define, oversee and be responsible for the implementation of governance arrangements that ensure effective and prudent management of the institution, including the segregation of duties in the organisation and the prevention of conflicts of interest.

2 - In defining governance arrangements, the management and supervisory bodies, within the scope of their functions shall:

(a) Assume the overall responsibility for the institution and approve and oversee the implementation of the institution's strategic objectives, risk strategy and internal governance;

(b) Ensure the integrity of the accounting and financial reporting systems, including financial and operational controls and compliance with the law and relevant standards;

(c) Oversee the process of disclosure and reporting obligations to the Banco de Portugal;

(d) Be responsible for providing effective oversight of senior management.

3 - Without prejudice to the other powers provided for by law, credit institutions' management and supervisory bodies shall define, approve and oversee the governance arrangements relating to:

(a) the policy as to services and products, in accordance with the risk tolerance level of the credit institution;

(b) the organisation of the credit institution for the purposes of creating and marketing deposits and credit products, including the qualifications, skills, expertise and knowledge of its staff, the resources and corporate governance and monitoring procedures, taking into account the nature, scale and complexity of its business; and

(c) the remuneration policy of natural persons that, on behalf of the credit institution, have direct contact with customers when marketing deposits and credit products, as well as natural persons that are directly or indirectly involved in the management and supervision of said persons, aiming to encourage responsible business conduct, fair treatment of customers, and the prevention of conflicts of interest.

4 - The management and supervisory bodies shall monitor and periodically assess the effectiveness of the credit institutions' governance arrangements, the adequacy and the implementation of the strategic objectives in the creation and marketing of deposits and credit products, the effectiveness of governance and monitoring procedures in place, and, within the scope

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of their powers, take appropriate steps to address any deficiencies that may have been detected.

5 - In particular, the senior management of credit institutions, with the support of the risk management and compliance functions, shall:

(a) continuously monitor compliance of operations carried out in the creation and marketing of deposits and credit products with the established governance and monitoring procedures;

(b) periodically assess the adequacy of governance and monitoring procedures regarding deposits and credit products against the objectives laid down in Article 90-B(1) and Article 90-C(1), proposing to the management body a review of said procedures should they prove inadequate.

6 - Without prejudice to the provisions of the foregoing paragraphs, compliance reports sent to the management and supervisory bodies shall contain information on the deposits and credit products created and marketed by the credit institution and its marketing strategy, and should be available to the Banco de Portugal, upon request.

7 - Each member of the management and supervisory bodies shall act with honesty, integrity and independence to critically, effectively and proactively assess the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making.

Article 115-B

Nomination committee

1 - Credit institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities shall establish a nomination committee composed of members of the management body who do not perform any executive function, or members of the supervisory body.

2 - With respect to the management and supervisory bodies, the nomination committee shall:

(a) Identify and recommend candidates to fill vacancies, evaluate the balance of knowledge, skills, diversity and experience, and prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected;

(b) Decide on a target for the representation of men and women on those bodies and prepare a policy on how to increase the number of the underrepresented gender in order to meet that target;

(c) Periodically, and at least annually, assess the structure, size, composition and performance of those bodies and make recommendations with regard to any changes;

(d) Periodically, and at least annually, assess the knowledge, skills and experience of individual members of those bodies and of the bodies collectively, and communicate to them the results;

(e) Periodically review the policy of the management body for selection and appointment of senior management and make recommendations to them.

3 - In performing its duties, the nomination committee shall take account of the need to ensure that the management body's decision-making is not controlled by any one individual or small group of individuals in a manner that is detrimental to the interests of the institution as a whole.

4 - The nomination committee shall be able to use any forms of resources that it considers to be appropriate, including external advice, and shall receive appropriate funding to that effect.

5 - The objective and policy for the representation of the underrepresented gender mentioned in Article 435(2)*(b)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, as well as the respective implementation, shall be published in compliance with

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paragraph 2*(c)* of the same Article.

Article 115-C
Remuneration policy

1 - Credit institutions shall lay down and implement remuneration practices that result from sound and prudent remuneration policies for all their employees, consistent with their risk profile and risk tolerance.

2 - The remuneration policy shall cover at least the following categories of staff whose professional activities have a material impact on the credit institution's risk profile:

(a) Members of the management and supervisory bodies;

(b) Senior management;

(c) Staff members with responsibility over the credit institution's material business units;

(d) Heads of the internal control functions;

(e) Staff working within a material business unit whose activity is of a kind that has a significant impact on the relevant business unit's risk profile and whose remuneration, in the preceding financial year, is equal to or greater than €500,000 and equal to or greater than the average remuneration awarded to the members of the institution's management and supervisory bodies and senior management.

3 - The credit institution shall establish and apply the total remuneration policy, including salaries and discretionary pension benefits, for the persons referred to in the foregoing paragraph, in a manner that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities, and which shall:

(a) Promote and be consistent with a sound and effective risk management, notably by not encouraging risk-taking that exceeds the institution's level of tolerated risk;

(b) Be in line with the business strategy, objectives, values and long-term interests of the institution, and incorporate measures to avoid conflicts of interest;

(c) Grant remuneration to staff performing internal control functions in accordance with achieving the objectives linked to their functions, regardless of the performance of the business areas they control;

(d) Establish that the remuneration of the heads of the internal control functions is directly overseen by the remuneration committee or, where such a committee has not been established, by the supervisory body;

(e) Make a clear distinction between criteria for setting basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility for the functions performed, and criteria for the variable remuneration component, based on the credit institution's sustainable performance and risk-adjusted performance and individual performance;

(f) Be gender-neutral.

4 - The management body or the remuneration committee, if established, shall submit annually to the approval of the general meeting the remuneration policy concerning the staff mentioned in paragraph 2*(a)* above.

5 - The management body shall regularly approve and review the remuneration policy concerning the staff mentioned in paragraph 2*(b)* to *(e)* above.

6 – The implementation of the remuneration policy shall be, at least annually, subject to central

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and independent internal review by the remuneration committees, if existing, by the non-executive members of the management body or the members of the supervisory body, with the aim of ensuring compliance with the remuneration policies and procedures adopted by the competent corporate body.

Article 115-D

Remunerations in credit institutions that benefit from extraordinary public financial support

In the case of institutions that benefit from extraordinary public financial support, the remuneration policy shall be subject to the following principles during the intervention period:

(a) No variable remuneration is paid to members of the management body of the institution unless there are serious and objective reasons that would justify such payment;

(b) Remuneration shall be restructured in a manner aligned with sound risk management and long-term growth of the credit institution, including establishing limits to the remuneration of the members of the management body;

(c) Variable remuneration is strictly limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from extraordinary public financial support.

Article 115-E

Variable remuneration components

1 - When defining the variable remuneration components of the staff mentioned in Article 115-C(2), credit institutions shall make sure that such elements do not limit the ability of the institution to strengthen its capital base and shall also take into account all types of current and future risks.

2 - For the purposes of the foregoing paragraph, where the remuneration is performance-related:

(a) The total amount of remuneration is based on a combination of the assessment of the performance of the individual, taking into account financial and non-financial criteria, and of the business unit concerned and of the overall results of the credit institution;

(b) The assessment is set in a multi-year framework in order to ensure that the assessment process is based on longer-term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the underlying business cycle of the credit institution and its business risks;

(c) The measurement of performance used to calculate variable remuneration components includes an adjustment for all types of current and future risks and takes into account the credit institution's cost of capital and liquidity required.

3 - At least 50% of any variable remuneration component, including the deferred portion, shall consist of balanced proportions of the following:

(a) Shares or equivalent ownership interests, subject to the legal structure of the credit institution;

(b) Share-linked instruments or equivalent non-cash instruments, subject to the legal structure of the credit institution concerned;

(c) Other additional Tier 1 instrument or Tier 2 instruments or other instruments that can be fully converted to Common Equity Tier 1 instruments or written down, which in each case adequately

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reflect the credit quality of the credit institution and are appropriate to be used for the purposes of variable remuneration.

4 - The Banco de Portugal may, by means of a regulation, place restrictions on the types and characteristics of the instruments mentioned in the foregoing paragraph or prohibit the use of certain instruments, as appropriate.

5 - Without prejudice to the following paragraph, the instruments referred to in paragraph 3 shall be subject to an appropriate retention policy by the credit institution, substantiated in an appropriate period of unavailability through retention by the credit institution, designed to align incentives with the longer-term interests of the institution.

6 - The variable remuneration component, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the institution as a whole, and justified on the basis of the performance of the institution, the business unit and the individual concerned.

7 - The credit institution shall defer the payment to the employee of a substantial portion of the variable remuneration component over a period which is not less than four to five years and align it correctly, depending on the business cycle, the nature of the business, its risks and the activities of the member of staff concerned, by at least:

(a) 40% of the variable remuneration component;

(b) 60% in the case of a particularly high variable remuneration component.

8 - The right to the payment of the deferred portion of the variable remuneration shall vest no faster than on a pro-rata payment.

9 – For the members of the management body and senior management of institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities, the deferral period of the variable remuneration component should not be less than five years.

10 – For the purposes of paragraph 7*(b)*, a variable remuneration component of more than €1,000,000 shall always be considered to be a particularly high amount.

11 - Without prejudice to the general principles of national contract and labour law, the total variable remuneration shall generally be amended in compliance with the following paragraphs where subdued or negative financial performance of the institution occurs, taking into account both current remuneration and reductions in payouts of amounts previously earned.

12- The total variable remuneration shall be subject to malus or clawback arrangements. The credit institution shall set specific criteria for their application, making sure that such criteria shall in particular cover situations where the staff member:

(a) Participated in or was responsible for conduct which resulted in significant losses to the institution;

(b) Failed to meet appropriate standards of fitness and propriety.

(c) Participated in or was responsible for the marketing of financial products or instruments to retail investors.

13 - For the purposes of the foregoing paragraph:

(a) Malus shall mean the arrangement through which the institution may fully or partly reduce the variable remuneration that has been deferred and whose payment is not vested yet;

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(b) Clawback shall mean the arrangement through which the institution retains the variable remuneration whose payment is already vested.

14 - Payments relating to the early termination of a contract reflect performance achieved over time and do not reward failure or misconduct.

15 - Remuneration relating to compensation of new staff members as a result of the early termination of contracts in previous employment must align with the long-term interests of the credit institution, including the implementation of rules related to performance, retention, deferral and clawback arrangements.

16 - Guaranteed variable remuneration shall occur only when hiring new staff, and where the institution has a sound and strong capital base and is limited to the first year of employment.

17 - The policy on discretionary pension benefits shall be in line with the credit institution's business strategy, objectives, values and long-term interests.

18 - The discretionary benefits shall take the form of the instruments referred to in paragraph 3 above, and shall be governed by the following:

(a) where the employment relationship terminates before retirement, discretionary pension benefits shall be held by the credit institution for a period of five years, after which remuneration payable shall become vested in the relevant person;

(b) where the person reaches retirement, discretionary pension benefits previously earned and vested shall be paid to the employee after a five-year retention period.

19 - Staff members are required to comply with the rules set out in this Article; namely, they undertake not to use personal hedging strategies that may undermine the risk alignment effects embedded in their remuneration arrangements, and not to be paid variable remuneration through vehicles or methods with a similar effect.

20 - Paragraphs 3, 7, 8, 9 and 18 shall not apply to:

(a) credit institutions that are not large institutions as defined in point (146) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and whose on-balance-sheet and off-balance-sheet assets are, on average and on an individual basis, equal to or less than €5,000,000,000 over the four-year period immediately preceding the given financial year;

(b) employees whose annual variable remuneration does not exceed €50,000 and does not represent more than one third of that individual's total annual remuneration.

Article 115-F

Ratio between the fixed and the variable component of the remuneration

1 - Credit institutions shall set the appropriate ratios between the fixed and the variable component of the total remuneration of their staff, as referred to in Article 115-C, where the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component.

2 - Without prejudice to the provisions of paragraphs 3 and 4, the variable remuneration component shall not exceed 100% of the fixed component of the total remuneration for each individual.

3 - Credit institutions may approve a higher maximum level for the variable remuneration component than established in the foregoing paragraph, provided the overall level of the variable component shall not exceed 200% of the fixed component of the total remuneration for each individual.

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4 - Any approval of a higher ratio in accordance with the foregoing paragraph shall be carried out in accordance with the following procedure:

(a) The credit institution shall submit to the general meeting, on the date of the invitation, a detailed proposal for the approval of a maximum ratio for the variable remuneration component, including the proposed maximum ratio, the number of staff affected and their functions, and shall be able to demonstrate that the proposed higher ratio does not conflict with the institution's obligations, especially the requirement to maintain a sound capital base;

(b) The general meeting shall act upon the proposal referred to in the foregoing subparagraph, by a majority of at least 66% provided that at least 50% of the shares or equivalent ownership rights are represented or, failing that, shall act by a majority of 75% of the ownership rights represented;

(c) Staff who are directly concerned by the higher maximum levels of variable remuneration shall not be allowed to exercise, directly or indirectly, any voting rights they may have as shareholders.

5 - The credit institution shall, without delay, inform the Banco de Portugal of the proposal submitted to shareholders and of the decisions adopted, and the Banco de Portugal shall use the information received to benchmark the practices of institutions in that regard and provide the European Banking Authority with that information.

6 - When setting the ratio between the fixed and the variable component of total remuneration, credit institutions may apply a discount rate, calculated in line with the principles set out by the European Banking Authority under the provisions of the second subparagraph of Article 94(1)*(g)*(*iii*) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, to a maximum of 25% of the total variable remuneration provided it is paid in instruments that are deferred for a period of no less than five years.

Article 115-G

Communication and disclosure of the remuneration policy

1 - The Banco de Portugal shall:

(a) collect:

(i) the information disclosed by credit institutions on remuneration policies and practices in accordance with the criteria for disclosure established in subparagraphs *(g)*, *(h)*, *(i)* and *(k)* of Article 450(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013; and

(ii) the information provided by credit institutions on the gender pay gap;

(b) use that information to benchmark remuneration trends and practices.

2 - Credit institutions shall inform the Banco de Portugal of the number of staff that are remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million, including their job responsibilities, the business area involved and the main elements of fixed and variable salary and contributions to discretionary pension benefits.

3 - The Banco de Portugal shall define by means of regulations:

(a) The rules to be observed in terms of the remuneration policies of the institutions subject to its supervision;

(b) Information obligations to the Banco de Portugal on the remuneration policy.

4 - The Banco de Portugal communicates the information referred to in paragraphs 1 and 2 above

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to the European Banking Authority.

5 - The processing of the information referred to in the foregoing paragraphs shall comply with the provisions of European Union and national legislation on the protection of personal data.

Article 115-H

Remuneration committee

1 - Credit institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee composed of members of the management body who do not perform any executive functions or members of the supervisory body.

2 - The remuneration committee shall exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

3 - The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the institution concerned and which are to be taken by the management body.

4 - Within the scope of its activity, the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the credit institution and the public interest.

Article 115-I

Duty of disclosure on the website

1 - Credit institutions and financial companies that maintain a website shall explain therein how they comply with the requirements of Articles 115-A to 115-F and 115-H, as well as with rules on policies relating to requirements in terms of suitability, professional qualification, availability and independence of the members of the management and supervisory bodies.

2 - The Banco de Portugal regulates the content, level of detail and form of presentation of the information to be disclosed under the foregoing paragraph.

CHAPTER II-B
Internal capital

Article 115-J

Internal capital adequacy assessment process

1 - Credit institutions shall have in place sound, effective and comprehensive strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that they consider adequate to cover the nature and level of the risks to which they are or might be exposed.

2 - Credit institutions shall regularly review those strategies and processes to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of their activities.

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CHAPTER II-C
Risks

Article 115-K
Treatment of risks

1 - The credit institution's management body has overall responsibility for risk, and shall:

(a) Approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the institution is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

(b) Ensure that adequate resources are allocated to the management of all material risks addressed in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(c) Devote sufficient time to consideration of risk issues;

(d) Be actively involved in the valuation of assets, the use of external credit ratings and internal models relating to those risks.

2 - For the purpose of the proper performance of the duties mentioned in the foregoing paragraph, credit institutions shall have in place internal procedures for communication with the management body.

Article 115-L
Risk committee

1 - Credit institutions that are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities shall establish a risk committee composed of members of the management body who do not perform any executive function and have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the institution.

2 - In credit institutions not covered by the foregoing paragraph, the functions of the risk committee may be exercised by the supervisory body, whose members shall have the appropriate knowledge, skills and expertise necessary to carry out those functions.

3 - Without prejudice to Article 115-K (1), the risk committee shall:

(a) Advise the management body on the institution's overall current and future risk appetite and strategy;

(b) Assist the management body in overseeing the implementation of that strategy by senior management;

(c) Review whether the conditions of products and services offered to clients take fully into account the institution's business model and risk strategy and present a remedy plan to the management body, where those conditions do not properly reflect risks;

(d) Examine whether incentives provided by the remuneration system take into consideration risk, capital, liquidity and expectations regarding earnings, including their timing.

4 - The supervisory body and the risk committee, where one has been established, shall have access to information on the risk situation of the credit institution and, if necessary and appropriate,

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to the risk management function of the credit institution and to external expert advice, and shall determine the nature, the amount, the format, and the frequency of the information on risk it shall receive.

Article 115-M
Risk management function

1 - Credit institutions shall have a sufficiently resourced risk management function independent from the operational functions. The risk management function shall:

(a) Ensure that all material risks are identified, measured and properly reported;
(b) Be involved in elaborating the institution's risk strategy;
(c) Be involved in all material risk management decisions.

2 - The head of the risk management function shall be an independent senior manager with distinct responsibility for the risk management function. Where the nature, scale and complexity of the activities of the institution do not justify a specially appointed person, another senior person within the institution may fulfil that directorship, provided there is no conflict of interest.

3 - The head of the risk management function shall be able to report directly to the supervisory body and shall not be removed without prior approval by the latter.

Article 115-N
Credit and counterparty risk

1 - The process for approving, amending, renewing, and re-financing credits is clearly established and based on sound and well-defined criteria.

2 - Credit institutions shall have internal methodologies and procedures that enable them to assess the credit risk of exposures to individual debtors, securities or securitisation positions and credit risk at the portfolio level not relying solely or mechanistically on external credit ratings.

3 - Where own funds requirements are based on a rating by an External Credit Assessment Institution (ECAI) or based on the fact that an exposure is unrated, this shall not exempt institutions from additionally considering other relevant information for assessing their allocation of internal capital.

4 - Credit institutions shall implement effective systems for the ongoing administration and monitoring of the various credit-risk-bearing portfolios and exposures of institutions, including for identifying and managing problem credits and for making adequate value adjustments and provisions.

5 - Credit institutions shall ensure that diversification of credit portfolios is adequate given an institution's target markets and overall credit strategy.

Article 115-O
Residual risk

Credit institutions shall have in place written internal policies and procedures ensuring that the residual risk that recognised credit risk mitigation techniques that prove to be less effective than expected is controlled.

Article 115-P
Concentration risk

Credit institutions shall ensure that the concentration risk arising from exposures to each counterparty, including central counterparties, groups of connected counterparties, and

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counterparties in the same economic sector, geographic region or from the same activity or commodity, the application of credit risk mitigation techniques, and including in particular risks associated with large indirect credit exposures, is addressed and controlled, including by means of written policies and procedures.

Article 115-Q
Securitisation risk

1 - The risks arising from securitisation transactions in relation to which the credit institutions are the investor, originator or sponsor, including reputational risks, such as the ones that may arise in relation to complex structures or products, are evaluated and addressed through appropriate policies and procedures, to ensure that the economic substance of the transaction is fully reflected in the risk assessment and management decisions.

2 - Credit institutions which are originators of revolving securitisation transactions involving early amortisation provisions have liquidity plans to address the implications of both scheduled and early amortisation.

Article 115-R
Market risk

1 - Credit institutions shall establish and implement policies and processes for the identification, measurement and management of all material sources and effects of market risks.

2 - Credit institutions shall take measures against the risk of a shortage of liquidity, where the short position falls due before the long position.

3 - Credit institutions' internal capital shall be adequate for material market risks that are not subject to an own funds requirement.

4 - Credit institutions shall also have internal capital adequate for market risks:

(a) In calculating own funds requirements for position risk in accordance with Articles 326 to 350 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, and if netting off their positions in one or more of the equities constituting a stock-index against one or more positions in the stock-index future or other stock-index product, to cover the basis risk of loss caused by the future's or other product's value not moving fully in line with that of its constituent equities;

(b) To hold opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition;

(c) To hold sufficient internal capital against the risk of loss which exists between the time of the initial commitment and the following working day, in the case of the underwriting of debt and equity instruments in which, for the calculation of own funds, the credit institution implements Article 345 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

Article 115-S
Interest rate risk arising from non-trading book activities

1 - Credit institutions shall select and apply one of the following techniques to identify, evaluate, manage and mitigate the risks arising from potential changes in interest rates that may affect the economic value of equity or the net interest income of an institution's non-trading book activities:

(a) internal systems;

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(b) standardised methodology; or

(c) simplified standardised methodology.

2 - Credit institutions shall adopt systems to assess and monitor the risks arising from potential changes in credit spreads that affect the economic value of equity or the net interest income of an institution's non-trading book activities.

3 - The Banco de Portugal may require:

(a) a credit institution to use the standardised methodology where the internal systems implemented for the purpose of evaluating the risks referred to in paragraph 1 are not satisfactory;

(b) a small and non-complex credit institution as defined in point (145) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, to use the standardised methodology where it considers that the simplified standardised methodology is not adequate to capture interest rate risk arising from non-trading book activities of that credit institution.

Article 115-T

Operational risk

1 - Credit institutions shall adopt internal policies and procedures to evaluate and manage their operational risk in accordance with the definition adopted by the credit institution, taking into account at least:

(a) the model risk;

(b) the risks resulting from outsourcing; and

(c) high-severity events, even low-frequency high-severity events.

2 - Credit institutions shall ensure that contingency and business continuity plans are in place to ensure their ability to operate on an ongoing basis and limit losses in the event of severe business disruption.

Article 115-U

Liquidity risk

1 - Credit institutions shall have robust strategies, policies, procedures and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day, so as to ensure that institutions maintain adequate levels of liquidity buffers.

2 - For the purposes of the foregoing paragraph, the strategies, policies, procedures and systems shall:

(a) Be tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks;

(b) Be proportionate to the complexity, risk profile, scope of operation and risk tolerance set by the management body of the credit institution;

(c) Reflect the institution's importance in each Member State in which it carries out business.

3 - Credit institutions shall communicate risk tolerance to all relevant business lines.

4 - Credit institutions, taking into account the nature, scale and complexity of their activities, shall

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have liquidity risk profiles that are appropriate for a well-functioning and robust system.

5 - In the definition and implementation of the strategies, policies, procedures and systems referred to in the foregoing paragraphs, credit institutions shall, in particular:

(a) Develop methodologies for the identification, measurement, management and monitoring of funding positions, which shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk;

(b) Distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations, and also take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account and their eligibility and shall monitor how assets can be mobilised in a timely manner;

(c) Have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the European Economic Area;

(d) Consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events;

(e) Have an adequately diversified funding structure and access to funding sources, both of which shall be reviewed regularly;

(f) Consider alternative scenarios on liquidity positions and on risk mitigants and review the assumptions underlying decisions concerning the funding position at least annually. These alternative scenarios shall address, in particular, off-balance-sheet items and other contingent liabilities, including those of Securitisation Special Purpose Entities (SSPE) or other special purpose entities, as referred to in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, in relation to which the credit institution acts as sponsor or provides material liquidity support;

(g) Consider the potential impact of institution-specific, market-wide and combined alternative scenarios. Different time periods and varying degrees of stress conditions shall be considered;

(h) Adjust their strategies, internal policies and limits on liquidity risk, where appropriate in the light of an analysis of the alternative scenarios referred to in subparagraphs *(f)* and *(g)*.

6 - Credit institutions shall draw up liquidity contingency plans, to be submitted to the management body for approval.

7 – The liquidity recovery plans shall:

(a) Set out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in another EU Member State;

(b) Consider the alternative scenarios set out in subparagraphs 5(*g)* and *(h)*;

(c) Be tested by the institutions at least annually, updated on the basis of the outcome of the alternative scenarios set out in subparagraphs 5(*g)* and *(h)*.

8 - The policies and procedures set out in paragraphs 1 and 2 shall be adjusted to the updates of the liquidity contingency plans to be implemented in accordance with subparagraph 7(*c)*.

9 - Credit institutions shall take the necessary operational steps in advance to ensure that liquidity contingency plans can be implemented immediately, in particular:

(a) Holding collateral immediately available for central bank funding;

(b) Holding collateral where necessary in the currency of another EU Member State, or the

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currency of a third country to which the credit institution has exposures;

(c) Holding collateral where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.

10- When monitoring the liquidity risk of credit institutions, the Banco de Portugal shall:

(a) Monitor developments in relation to liquidity risk profiles, for example product design and volumes, risk management, funding policies and funding concentrations;

(b) Take effective action where developments in relation to liquidity risk profiles referred to in the foregoing subparagraph may lead to individual institution or systemic instability;

(c) Inform the European Banking Authority about any actions carried out pursuant to the foregoing subparagraph.

Article 115-V

Risk of excessive leverage

1 - Credit institutions shall have policies and procedures in place for the identification, management and monitoring of the risk of excessive leverage.

2 - Indicators for the risk of excessive leverage shall include the leverage ratio determined in accordance with applicable regulations and mismatches between assets and obligations.

3 - Credit institutions shall address the risk of excessive leverage in a precautionary manner by taking due account of potential increases in the risk of excessive leverage caused by reductions of the institution's own funds, and shall be able to withstand a range of different stress events.

Article 115-W

Supervisory benchmarking of internal approaches for calculating own funds requirements

1 - Credit institutions permitted to use internal approaches for the calculation of risk weighted exposure amounts or own funds requirements except for operational risk shall annually report to the Banco de Portugal the results of the calculations of their internal approaches for their exposures or positions that are included in the benchmark portfolios, pursuant to Article 78(8) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, together with an explanation of the methodologies used to produce them.

2 - The results of the calculations referred to in the foregoing paragraph shall be submitted to the European Banking Authority in accordance with the template developed by the European Banking Authority.

3 - Where the Banco de Portugal chooses to develop specific benchmark portfolios, other than those referred to in paragraph 1, it shall do so in consultation with the European Banking Authority and ensure that credit institutions report the results of the calculations separately for the benchmark portfolios under Article 78(8) of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, and for the Banco de Portugal.

4 - On the basis of the information submitted by credit institutions in accordance with paragraph 1, The Banco de Portugal shall monitor the range of risk-weighted exposure amounts or own funds requirements, as applicable, except for operational risk, for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those institutions.

5 - At least annually, the Banco de Portugal shall make an assessment of the quality of those approaches paying particular attention to:

(a) Those approaches that exhibit significant differences in own funds requirements for the same

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exposure;

(b) Approaches where there is particularly high or low diversity, and also where there is a significant and systematic under-estimation of own funds requirements.

6 - Where particular credit institutions diverge significantly from the majority of their peers or where there is little commonality in approach leading to a wide variance of results, the Banco de Portugal shall investigate the reasons therefor and, if it can be clearly identified that an institution's approach leads to an underestimation of own funds requirements which is not attributable to differences in the underlying risks of the exposures or positions, shall take corrective action.

7 – In accordance with the foregoing paragraph, the Banco de Portugal shall ensure that corrective actions maintain the objectives of an internal approach and therefore do not:

(a) Lead to standardisation or preferred methods;
(b) Create wrong incentives; or
(c) Cause herd behaviour.

CHAPTER II-D
System to report irregularities

Article 115-X
Internal reporting of irregularities

1 – Credit institutions shall implement the necessary specific, independent and autonomous procedures in order to receive, analyse and archive reporting of serious irregularities relating to the management and accounting procedures or internal control of the credit institution, and strong evidence of breach of the duties set out in this Legal Framework or in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

2 – The procedures referred to in the foregoing paragraph shall guarantee the confidentiality of information received and the protection of the personal data of both the persons who report breaches and the accused person, in accordance with Regulation (EU) 2016/679 of the European Parliament of the Council of 27 April 2016, and other data protection legislation.

3 – The persons who, due to the functions they perform in the credit institution, namely those who perform functions in internal audit, risk management and compliance units, take notice of any serious irregularities they may become aware of within the management and accounting procedures, or internal control of the credit institution, or evidence of breach of the duties set out in this Legal Framework or in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 that may give rise to the credit institution's financial distress, must communicate those irregularities to the supervisory body under the terms and in accordance with the safeguards laid down in this Article.

4 – The communications received under the terms of the foregoing paragraphs shall be analysed, and a reasoned report shall be drawn up, containing the measures adopted or justification for not having adopted any measures.

5 – The communications referred to in this Article, as well as the reports produced, shall be kept on paper or another durable medium that allows the integral and unchanged reproduction of the respective information for five years, the provisions of Article 120 being applicable.

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6 – The communications under the terms of the foregoing paragraphs, per se, may not be used as grounds for disciplinary, criminal or civil liability submitted by the credit institution against the persons who report breaches, except where these are manifestly ill-founded.

7 – Credit institutions shall submit to the Banco de Portugal an annual report with the description of the mechanisms referred to in paragraph 1 and a summary account of the communications received and the way the complaint was dealt with.

8 – The Banco de Portugal shall approve the necessary regulations to ensure the implementation of the rules set out in this Article.

CHAPTER III
Supervision

SECTION I
GENERAL SUPERVISION

Article 116
Supervisory procedures

1 - In the performance of its supervisory functions, it shall in particular be incumbent on the Banco de Portugal to:

(a) monitor the activity of credit institutions, financial holding companies and mixed financial holding companies;

(b) oversee compliance with the rules governing the activity of credit institutions, financial holding companies and mixed financial holding companies, namely assessment of compliance with the requirements of this Legal Framework and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(c) issue specific recommendations addressed to natural or legal persons, in particular so that they adopt a certain behaviour, cease certain conduct or refrain from repeating it or remedy any irregularities detected;

(d) [*Repealed*].

(e) issue recommendations;

(f) regulate the business of the entities it supervises;

(g) impose penalties on infringements.

2 - The Banco de Portugal may require the carrying out of special audits by independent entities appointed by it, at the expense of the audited institution.

Article 116-A
Supervisory review process

1 - Taking into account the technical criteria set out in the following Article, the Banco de Portugal shall review the arrangements, strategies, processes, and mechanisms implemented by credit institutions to comply with this Legal Framework and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, and evaluate:

(a) risks to which the credit institutions are or might be exposed;

(b) [*repealed*].

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(c) risks revealed by stress testing taking into account the nature, scale and complexity of a credit institution's activities.

2 - On the basis of the review and evaluation referred to in the foregoing paragraph, the Banco de Portugal shall determine whether the arrangements, strategies, processes and mechanisms implemented by credit institutions and the own funds and liquidity held by them ensure a sound management and the coverage of their risks.

3 - The Banco de Portugal shall establish, taking into account the principle of proportionality, the frequency and intensity of the review and evaluation referred to in paragraph 1, having regard to the size, systemic importance, nature, scale and complexity of the activities of the credit institution concerned.

4 - The review and evaluation referred to in the foregoing paragraph shall be updated at least on an annual basis for credit institutions covered by the examination programme referred to in Article 116-AC.

5 - [*Repealed*].

6 - The Banco de Portugal shall carry out the review and evaluation referred to in paragraph 1, in accordance with the principle of proportionality and the corresponding criteria disclosed in accordance with Article 93-A(1)*(c)*.

7 - The Banco de Portugal may adapt the methodologies applied in its review and evaluation to consider institutions with a similar risk profile, notably resulting from similar business models or geographical location of exposures.

8 - The methodologies adapted in accordance with the foregoing paragraph:

(a) may include risk-oriented benchmarks and quantitative indicators;

(b) shall allow for due consideration of the specific risks that each institution may be exposed to; and

(c) shall not affect measures of a specific nature imposed on the credit institution in accordance with Article 116-C.

9 - The Banco de Portugal shall notify the European Banking Authority when using methodologies adapted in accordance with paragraph 7.

10 - The Banco de Portugal shall inform the European Banking Authority without delay about the results of the review and evaluation referred to in this Article whenever such review and evaluation show that a credit institution may pose systemic risk within the meaning of Article 23 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010.

11 - If, in the course of a process of review and evaluation, in particular of governance arrangements, business model or activities of a credit institution, the Banco de Portugal considers that there are reasonable grounds to suspect that, in connection with that credit institution, money laundering or terrorist financing is being or has been committed or attempted, or there is an increased risk thereof, it shall immediately notify:

(a) the European Banking Authority; and

(b) other authorities or bodies responsible for overseeing anti-money laundering and terrorist financing legislation relating to the credit institution.

12 - In the event of a potential increased risk of money laundering or terrorist financing, the Banco de Portugal shall:

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(a) align its position with the authorities or bodies responsible for overseeing anti-money laundering and terrorist financing legislation relating to the credit institution; and

(b) immediately and jointly with the entities referred to in the foregoing subparagraph, notify the European Banking Authority of the common assessment.

13 - For the purposes of paragraph 11 and the foregoing paragraph, the Banco de Portugal shall, if necessary, take appropriate measures in accordance with this Legal Framework.

Article 116-B

Technical criteria on review and evaluation by the Banco de Portugal

1 - In addition to credit, market and operational risks, the review and evaluation performed by the Banco de Portugal pursuant to Article 116-A shall include at least:

(a) the results of the stress test carried out by the credit institutions applying an internal ratings-based (IRB) approach;

(b) the exposure to and management of concentration risk by credit institutions, including their compliance with the regulations on large exposures;

(c) the robustness, suitability and manner of application of the policies and procedures implemented by credit institutions regarding the management of the residual risk associated with the use of recognised credit risk mitigation techniques;

(d) the extent to which the own funds held by a credit institution in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;

(e) the exposure to, and measurement and management of liquidity risks by credit institutions, including the development of alternative scenario analyses, the management of risk mitigants, including the level, composition and quality of liquidity buffers, and effective contingency plans;

(f) the impact of diversification effects and how such effects are factored into the risk measurement system; and

(g) the results of stress tests carried out by institutions using an internal model to calculate capital requirements for market risks;

(h) the geographical location of institutions' exposures;

(i) the business model of credit institutions;

(j) [*repealed*].

2 - For the purposes of paragraph 1(*e)*, the Banco de Portugal shall regularly carry out a comprehensive assessment of the overall liquidity risk management by credit institutions and promote the development of sound internal methodologies, having regard to the role played by institutions in the financial markets and the potential impact of their decisions on the stability of the financial system in all other Member States concerned.

3 - The Banco de Portugal shall monitor whether a credit institution has provided implicit support to a securitisation.

4 - If a credit institution is found to have provided implicit support on more than one occasion, the Banco de Portugal shall take appropriate measures reflective of the increased expectation that it will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

5 - For the purposes of the decision to be made under Article 116-A(2), the Banco de Portugal shall consider whether the value adjustments and provisions taken for positions in the trading book,

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as set out in the regulations applicable on the adequacy of own funds to market risks, enable the credit institution to sell or hedge its positions within a short period without incurring material losses under normal market conditions.

6 - The review and evaluation performed by the Banco de Portugal shall include the exposure of credit institutions to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with the applicable regulations.

7 - The Banco de Portugal shall take into account the business model of credit institutions in determining the adequacy of the leverage ratio of credit institutions and of the arrangements, strategies, processes and mechanisms implemented by institutions to manage the risk of excessive leverage.

8 - The review and evaluation conducted by the Banco de Portugal shall include governance arrangements of credit institutions, their corporate culture and values, and the ability of members of the management body to perform their duties.

9 - For the purposes of the foregoing paragraph, the Banco de Portugal shall, at least, have access to agendas and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of performance of the management body.

10 - The review and evaluation performed by the Banco de Portugal shall include the exposure of credit institutions to the interest rate risk arising from non-trading book activities.

11 - For the purposes of the foregoing paragraph, the Banco de Portugal shall exercise its supervisory powers in at least the following circumstances:

(a) where an institution's economic value of equity as referred to in Article 115-S(1) declines by more than 15% of its Tier 1 capital as a result of a sudden and unexpected change in interest rates as set out in any of the six supervisory shock scenarios applied to interest rates;

(b) where an institution's net interest income as referred to in Article 115-S(1) experiences a large decline as a result of a sudden and unexpected change in interest rates as set out in any of the two supervisory shock scenarios applied to interest rates.

12 - The provisions of the foregoing paragraph shall not apply where the Banco de Portugal considers, on the basis of the review and evaluation referred to in paragraph 10, that:

(a) the credit institution’s management of interest rate risk arising from non-trading book activities is adequate; and

(b) the credit institution is not excessively exposed to interest rate risk arising from non-trading book activities.

13 - For the purposes of paragraphs 11 and 12, the term “supervisory powers” means:

(a) the powers referred to in Article 116-C; or

(b) the power to specify modelling and parametric assumptions, other than those identified by the European Banking Authority under the relevant regulations, to be reflected by institutions in their calculation of the economic value of equity under Article 115-S(1).

Article 116-C

Corrective measures

1 - The Banco de Portugal may require any credit institution that does not meet, or, according to

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information available, will not meet within one year, the requirements regulating its activity, to take the necessary action or steps at an early stage to address the situation.

2 - For those purposes, the Banco de Portugal may determine the following measures, inter alia:

(a) require credit institutions to hold additional own funds in excess of the requirements laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, in accordance with the following Article;

(b) require the reinforcement of the arrangements, processes, procedures, provisions, mechanisms and strategies implemented for the purposes of corporate governance, internal control and assessment of risks;

(c) require credit institutions to submit a plan to restore compliance with supervisory requirements and set a deadline for its implementation, including improvements to the plan submitted;

(d) require credit institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;

(e) restrict or limit the business, operations or network of credit institutions, or to request the divestment of business that poses excessive risks to their soundness;

(f) require the reduction of the risk inherent in the business, products and systems of credit institutions, including outsourced activities;

(g) require credit institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;

(h) require institutions to use net profits to strengthen own funds;

(i) restrict or prohibit interest and dividend payments by a credit institution to shareholders or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;

(j) impose additional or more frequent reporting requirements, notably reporting on own funds, liquidity and leverage;

(k) impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;

(l) require additional disclosures.

3 - [*Repealed*].

4 - [*Repealed*].

5 - For the purposes of paragraph 2*(j)*, the Banco de Portugal may impose additional or more frequent reporting requirements where:

(a) the requirements are appropriate and proportionate regarding the purpose for which the information is required; and

(b) the information to be reported is not duplicative.

6 - For the purposes of Articles 116-A to 116-F and 116-AC to 116-I, any additional information shall be deemed duplicative where the same or substantially similar information has already been otherwise reported to the Banco de Portugal or may be produced by the Banco de Portugal.

7 - The Banco de Portugal shall not require any credit institution to report additional information where it has previously received it in a different format or level of granularity, unless that different format or granularity prevents the Banco de Portugal from producing information of the same quality

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and reliability as the additional information to be required.

8 - The foregoing paragraphs shall also apply to financial holding companies and mixed financial holding companies in the European Union subject to the supervision of the Banco de Portugal.

Article 116-D
Additional own funds requirement

1 - The Banco de Portugal shall impose the additional own funds requirement referred to in paragraph 2(a) of the foregoing Article where, based on its review and evaluation, it determines that:

(a) the credit institution is exposed to risks or elements of risk that are not covered or not sufficiently covered, in accordance with paragraphs 3 to 7, by the own funds requirements imposed on own funds, large exposures and leverage, and to securitisation laid down in Parts Three, Four and Seven of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and Chapter 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 respectively;

(b) the credit institution does not meet the control and internal capital requirements set out in Article 14(1)(f) to (i) and Article 14(2), Article 17(2) and (3) and Article 115-J of this Legal Framework, on large exposures as laid down in Article 393 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, and it is unlikely that other supervisory measures would be sufficient to ensure that those requirements can be met within an appropriate timeframe;

*(c)*the adjustments to the prudent valuation taken for position in the trading book, under Article 116-B(5), are deemed to be insufficient to enable the credit institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions;

(d) the Banco Portugal's evaluation of the use of internal approaches provided for in Article 116-AE(6) and (7) reveals that the non-compliance with the requirements for the application of the permitted internal approach will likely lead to inadequate own funds requirements;

(e) the credit institution repeatedly fails to comply with the guidelines issued to build up or maintain an adequate level of additional own funds;

(f) there are other specific situations of the credit institution that raise reasoned material supervisory concerns.

2 – The Banco de Portugal shall only impose the additional own funds requirement referred to in paragraph 2(a) of the foregoing Article to cover the risks incurred by the individual credit institution due to its activities, including the risks reflecting the impact of certain economic and market developments on the risk profile of the credit institution.

3 – For the purposes of paragraph 1(a), risks or elements of risk shall be considered not covered or insufficiently covered by the aforementioned own funds requirements laid down in European Union law where the amounts, types and distribution of capital considered adequate by the Banco de Portugal, taking into account its review of the assessment carried out by credit institutions in accordance with Article 115-J(1), are higher than the own funds requirements laid down in the said EU legislation.

4 – For the purposes of the foregoing paragraph, the Banco de Portugal shall assess, considering the risk profile of each individual credit institution, the risks to which this institution is exposed, including:

(a) risks specific to the credit institution or elements of such risks that are explicitly excluded from or not explicitly addressed by the own funds requirements laid down in the legislation referred to in

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paragraph 1(a);

(b) risks specific to the credit institution or elements of such risks likely to be underestimated despite compliance with the applicable requirements laid down in the legislation referred to in paragraph 1(a).

5 – Subparagraph (b) of the foregoing paragraph shall not apply to where those risks or elements of thereof are subject to transitional arrangements or grandfathering provisions laid down in this Legal Framework or in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

6 – For the purposes of paragraph 3, the capital considered adequate shall cover all risks or elements of risks identified as material, according to the assessment laid down in paragraph 4, which are not covered or not sufficiently covered by the own funds requirements referred to in paragraph 1(a).

7 – Interest rate risk arising from non-trading book positions may be considered material at least in the cases referred to in Article 116-B(11), unless the Banco de Portugal's review and evaluation conclude that the credit institution's management of interest rate risk arising from non-trading book activities is adequate and that the credit institution is not excessively exposed to interest rate risk arising from non-trading book activities.

8 – Where additional own funds are required to cover risks other than the risk of excessive leverage not sufficiently covered by the leverage ratio requirement laid down in Article 92(1)(d) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, the Banco de Portugal shall determine the level of additional own funds required as the difference between the capital considered adequate under paragraphs 3 to 7 and the own funds requirements set out in Parts Three and Four of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and Chapter 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017.

9 – Where additional own funds are required to cover the risk of excessive leverage not sufficiently covered by the leverage ratio requirement laid down in Article 92(1)(d) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, the Banco de Portugal shall determine the level of additional own funds required as the difference between the capital considered adequate under paragraphs 3 to 7 and the own funds requirements set out in Parts Three and Seven of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

10 – The credit institution shall meet the additional own funds requirement to cover risks other than the risk of excessive leverage as follows:

(a) at least three quarters of the additional own funds requirement is met with Tier 1 capital;

(b) at least three quarters of the Tier 1 capital referred to in the foregoing subparagraph shall be composed of Common Equity Tier 1 capital.

11 – The credit institution shall meet the additional own funds requirement to cover the risk of excessive leverage with Tier 1 capital.

12 – The Banco de Portugal may require the credit institution to meet the additional own funds requirement with a higher portion of Tier 1 capital or Common Equity Tier 1 capital, where necessary, and having regard to the specific circumstances of the credit institution.

13 – Compliance with the additional own funds requirement to cover risks other than the risk of

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excessive leverage shall not be possible with own funds used to meet any of the following:

(a) requirements for Common Equity Tier 1, Tier 1 capital and total capital set out in Article 92(1)(a), (b) and (c) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 respectively;

(b) the combined buffer requirement;

*(c)*the Banco de Portugal's guidance on additional own funds, where that guidance refers to risks other than the risk of excessive leverage.

14 – Compliance with the additional own funds requirement for the risk of excessive leverage not sufficiently covered by the leverage ratio requirement laid down in Article 92(1)(d) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 shall not be possible with own funds that are used to meet any of the following:

(a) the own funds requirement for the leverage ratio set out in Article 92(1)(d) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(b) the leverage ratio buffer requirement referred to in Article 92(1-A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

*(c)*the Banco de Portugal's guidance on additional own funds, where that guidance refers to risks of excessive leverage.

15 – The Banco de Portugal's decision shall be reasoned in writing to each credit institution, at least by giving a clear account of the full assessment of the elements referred to in the foregoing paragraphs, including, in the case referred to in paragraph 1(e), a specific statement of the reasons for which the imposition of guidance on additional own funds is no longer considered sufficient.

Article 116-E
Guidance on additional own funds

1 – Pursuant to the strategies and assessment processes referred to in Article 115-J, credit institutions shall maintain their internal capital at an adequate level of own funds that is sufficient to cover all the risks that individual institutions are exposed to and to ensure the absorption of potential losses resulting from stress scenarios, including those identified under the supervisory stress test.

2 – The Banco de Portugal shall regularly review the level of internal capital set by each credit institution according to the foregoing paragraph, as part of its supervisory review and evaluation, including the results of the stress tests, determining, for each credit institution, the overall level of own funds it considers appropriate.

3 – The Banco de Portugal shall communicate its guidance to credit institutions on additional own funds, corresponding to own funds that, as applicable, are needed to reach the overall level of own funds that the Banco de Portugal considers appropriate under the terms of the foregoing paragraph, and that exceed the amount of own funds required under:

(a) the own funds requirement imposed on own funds, large exposures and leverage laid down in Parts Three, Four and Seven of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(b) the leverage ratio buffer the ratio laid down in Article 92(1-A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(c) the own funds requirements for securitisation laid down in Chapter 2 of Regulation (EU) No

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2017/2402 of the European Parliament and of the Council of 12 December 2017;

(d) the combined own funds requirement and the additional own funds requirement laid down in Article 138-B(2)(g) and Article 116-C(2)(a) respectively.

4 – The guidance on additional own funds:

(a) shall be specific to each credit institution; and

(b) may cover risks addressed by the additional own funds requirements imposed only to the extent that it covers aspects of those risks that are not covered under that requirement.

5 – Compliance with the Banco de Portugal's guidance on additional own funds to cover risks other than the risk of excessive leverage shall not be possible with own funds used to meet any of the following:

(a) requirements for Common Equity Tier 1, Tier 1 capital and total capital set out in Article 92(1)(a), (b) and (c) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 respectively;

(b) the additional own funds requirement imposed by the Banco de Portugal to cover risks other than the risk of excessive leverage under the previous Article; and

(c) the combined buffer requirement laid down in Article 138-B(2)(g).

6 – Compliance with the Banco de Portugal's guidance on additional own funds to cover the risk of excessive leverage shall not be possible with own funds used to meet any of the following:

(a) the own funds requirement for the leverage ratio set out in Article 92(1)(d) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(b) the requirement imposed by the Banco de Portugal in the context of the foregoing Article to cover the risk of excessive leverage; and

(c) the leverage ratio buffer requirement referred to in Article 92(1-A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

7 – The provisions of Articles 138-AAa and 138-AB shall not apply in the event of non-compliance with the Banco de Portugal's additional own funds guidance where the credit institution complies with:

(a) own funds requirements imposed on own funds, large exposures and leverage, and securitisation applicable under Parts Three, Four and Seven of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and Chapter 2 of Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 respectively;

(b) the additional own funds requirement laid down in Article 116-C(2)(a);

(c) where relevant, the combined buffer requirement or the leverage ratio buffer requirement referred to in Article 138-B(2)(g) and Article 92(1-A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 respectively.

Article 116-F

Notification to the resolution authority

The Banco de Portugal, as the authority responsible for the supervision on an individual or

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consolidated basis of a credit institution, shall notify the Single Resolution Board, where the latter is, in accordance with the applicable law, the resolution authority of that credit institution, of the determination of the additional own funds requirement and of any guidance on additional own funds.

Article 116-G
Individual recovery plans

1 – Credit institutions that are not part of a group subject to consolidated supervision by a supervisory authority of an EU Member State shall prepare a recovery plan.

2 – The credit institution's recovery plan shall be approved by its management body and submitted to the Banco de Portugal.

3 – The recovery plan shall identify the measures which could be adopted to correct a situation of a credit institution which is or is likely to be in financial distress in a timely manner, namely under any of the circumstances justifying the application of corrective measures.

4 – The recovery plan shall:

(a) contemplate a range of scenarios of severe macroeconomic and financial stress relevant to the credit institution's specific conditions including system-wide events and stress specific to individual legal persons and to groups;

(b) not assume access to extraordinary public financial support;

(c) without prejudice to the provisions of the foregoing paragraph, include, where applicable, an analysis of how and when the credit institution may, in the conditions addressed by the plan, apply for the use of the Banco de Portugal facilities and identify those assets which would be expected to qualify as collateral.

5 – The content of the resolution plan shall not bind the Banco de Portugal nor grant third parties or the credit institution any right to the implementation of the measures provided for therein.

6 – The credit institution may, under a decision of its management body notified to the Banco de Portugal in timely manner:

(a) take action under its recovery plan regardless of the failure to comply with the relevant indicators;

(b) refrain from taking the action provided for in the recovery plan if considered inappropriate in the circumstances of the situation.

7 – If the credit institution legally obliged to submit a recovery plan to the Banco de Portugal pursuant to the provisions of paragraphs 1 and 2 carries out any financial intermediation activity or issues financial instruments admitted to trading on a regulated market, the Banco de Portugal shall inform the Portuguese Securities Market Commission of the respective recovery plan.

8 – Without prejudice to the provisions of paragraph 1, the Banco de Portugal may require any other institution subject to its supervision to submit a recovery plan, depending on its relevance to the national financial system, namely the type provided for in Article 117-B.

Article 116-H
Content and elements of the individual recovery plan

1 – The recovery plan shall include at least the following:

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(a) a summary of the key elements of the plan, a strategic analysis and a summary of the credit institution's overall capacity for recovery;

(b) a summary of the material changes to the credit institution since the most recently filed recovery plan;

(c) a communication and disclosure plan outlining how the credit institution intends to manage any potentially negative market reactions;

(d) capital and liquidity measures required to maintain or restore the viability and financial position of the credit institution;

(e) likely timetable for executing each material aspect of the plan;

(f) a detailed description of any material impediment to the effective and timely implementation of the plan, including consideration of any impact on the rest of the group, customers and counterparties;

(g) identification of its critical functions;

(h) a detailed description of the processes for determining the value and marketability of the core business lines, operations and assets of the credit institution;

(i) a detailed description of how recovery planning is integrated into the corporate governance structure, as well as the policies and procedures for the preparation, approval and implementation of the recovery plan and identification of the persons in the organisation responsible for its preparation and implementation;

(j) arrangements and measures to conserve or restore its own funds;

(k) arrangements and measures to ensure that the credit institution has adequate access to contingency funding sources, including potential liquidity sources, an assessment of available collateral and an assessment of the possibility to transfer liquidity across group entities and business lines, to ensure that it can continue to carry out its operations and meet its obligations as they fall due;

(l) arrangements and measures to reduce risk and leverage;

(m) arrangements and measures to restructure liabilities;

(n) arrangements and measures to restructure business lines;

(o) arrangements and measures necessary to maintain continuous access to financial markets infrastructures;

(p) arrangements and measures necessary to maintain the continuous functioning of the credit institution's operational processes, including infrastructure and IT services;

(q) preparatory arrangements to facilitate the sale of assets or business lines in a time frame appropriate for the restoration of financial soundness;

(r) other management actions or strategies to restore the credit institution's financial soundness and the anticipated financial effect of those actions or strategies;

(s) preparatory measures that the credit institution has taken or plans to take in order to facilitate the implementation of the recovery plan, including those necessary to enable the timely recapitalisation of the credit institution;

(t) a framework of qualitative and quantitative indicators on the credit institution's financial situation, to be periodically checked, which identifies the points at which appropriate actions referred to in the plan may be taken;

(u) appropriate recovery options, methodologies and procedures to ensure the timely execution of recovery measures.

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2 – The Banco de Portugal may establish, by means of a Notice, additional elements for recovery plans.

Article 116-I
Review and update of the individual recovery plan

1 – The recovery plan shall be reviewed and, where appropriate, updated by the credit institution:

(a) at least annually;
(b) whenever an event takes place relating to the legal or corporate organisation, operational structure, business model or financial condition of the credit institution that could have a material effect on the implementation of the plan;
(c) when there is any change in the assumptions used for preparing the plan that could have a material effect on its implementation;
(d) whenever requested by the Banco de Portugal on the basis of any of the facts mentioned in subparagraphs *(b)* or *(c)* above.

2 – The Banco de Portugal may establish, by means of a Notice, the procedures on submitting, maintaining and reviewing these plans.

Article 116-J
Simplified obligations in the preparation of recovery plans

1 – Taking into account the potential impact that a credit institution's failure and subsequent winding up may have on financial markets, other credit institutions, funding conditions or the economy as a whole, the Banco de Portugal may establish the following simplified obligations for certain credit institutions with regard to the recovery plans:

(a) preparation of simplified plans;
(b) reduction of the review frequency of the plans;
(c) elements and content of the plans.

2 – The provisions of the foregoing paragraphs shall not apply to:

(a) significant credit institutions, in accordance with Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013;
(b) credit institutions with a total value of assets of more than €30,000,000,000;
(c) credit institutions having a ratio of total assets to gross domestic product above 20%, unless the total value of its assets is less than €5,000,000,000.

3 – For the purposes of paragraph 1, the Banco de Portugal shall take into account:

(a) the legal form;
(b) the shareholding structure;
(c) the provision of the investment services and the carrying out of the investment activities referred to in Articles 290 and 291 of the Securities Code;
(d) whether it is a member of an institutional protection scheme or other cooperative mutual solidarity systems;

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(e) the size and systemic importance in accordance with the provisions of Article 138-B(2)(a) and (b);

(f) the risk profile and the business model;

(g) the scope, substitutability and complexity of its activities, services or operations;

(h) the degree of interconnectedness to other institutions or to the financial system in general.

4 – The Banco de Portugal may, by means of a Regulation, exempt credit institutions permanently affiliated to a central body from submitting recovery plans, being that the central body shall submit such recovery plan.

5 – The Banco de Portugal may, by means of a Notice, specify the analysis model of the criteria referred to in paragraph 3 and the procedures for establishing simplified obligations.

6 – The Banco de Portugal may at any time revoke the decision to apply simplified obligations regarding certain aspects of the recovery plan under the provisions of paragraphs 1 and 4.

7 – The Banco de Portugal shall inform the European Banking Authority of the decisions adopted under paragraphs 1 to 4.

Article 116-K

Assessment of the recovery plan

1 - The Banco de Portugal shall assess the legal compliance of the recovery plan within six months of its submission and whether it can be expected that:

(a) the implementation of the arrangements proposed in the plan may reasonably maintain or restore the viability and financial position of the credit institution or of the group, taking into account the preparatory measures that the institution has taken or has planned to take;

(b) the plan and specific options within the plan may reasonably be implemented quickly and effectively in situations of financial stress and avoiding to the maximum extent possible any significant adverse effect on the financial system, including in scenarios which would lead other institutions to implement recovery plans within the same period.

2 - The Banco de Portugal shall consult the supervisory authorities of the EU Member States where significant branches are established, insofar as is relevant for that branch.

3 - When assessing the recovery plan, the Banco de Portugal shall take into consideration the appropriateness of the credit institution's capital and funding structure to the level of complexity of the organisational structure and risk profile and whether the recovery plan contains any actions which may adversely impact the resolvability of the credit institution.

4 - The Banco de Portugal may determine, at any time, the provision of further information it deems relevant for assessing the recovery plan in question.

5 - Where the Banco de Portugal considers that the recovery plan contains material deficiencies or impediments to its implementation, it shall notify the credit institution or the parent undertaking of the group thereof and, after hearing the institution, shall submit, within two months, extendable by one month upon the approval of the Banco de Portugal, a revised plan demonstrating how those deficiencies or impediments are addressed.

6 - Should the Banco de Portugal consider that material deficiencies or impediments to the implementation of the recovery plan remain in the revised plan, the Banco de Portugal may decide that credit institutions should make, within a reasonable time frame, specific amendments to the plan that it considers necessary to ensure adequate compliance with the objective underlying its

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preparation.

7 - Credit institutions shall submit an amended recovery plan within one month of the decision provided for in the foregoing paragraph, including the specific amendments from the decision.

8 - The deadline set out in paragraph 1 shall be suspended until the additional information is provided, pursuant to the provisions of paragraph 4 and where there is a failure to comply with the determinations of the Banco de Portugal under paragraphs 5 and 6.

9 - The Banco de Portugal shall communicate the recovery plans to the Single Resolution Board, where the latter is, in accordance with the applicable law, the resolution authority of the credit institution concerned.

Article 116-L
Inadequacy of the recovery plan

1 – If the credit institution fails to submit a revised recovery plan, or if the Banco de Portugal considers that it does not adequately remedy the deficiencies or potential impediments to its implementation and it is not possible to adequately remedy them through specific changes to the recovery plan, the Banco de Portugal shall require the institution to identify, within a reasonable time frame, the changes it can make to its business in order to address the situations referred to.

2 – If the credit institution fails to identify such changes within the time frame set by the Banco de Portugal or if the Banco de Portugal assesses that the changes are not adequate, the Banco de Portugal may, without prejudice to the powers of the institution's corporate bodies, direct the institution to take any measures it considers necessary, adequate and proportionate, taking into account the seriousness of the deficiencies and impediments and the effect of the measures on the credit institution's business, including:

(a) to reduce the risk profile of the institution, including liquidity risk;

(b) to enable timely recapitalisation measures;

(c) to make changes to the funding strategy so as to improve the resilience of the core business lines and critical functions;

(d) to review the business strategy, namely changing the legal and corporate organisation, the governance structure or the operational structure, or those of the group where the institution is integrated;

(e) the legal separation at the level of the group where the institution is integrated between the financial and the non-financial business;

(f) as far as is possible and reasonable, the separation of business provided for in Article 4(1)*(a)* to *(c)* of the institution's other business;

(g) the restriction of business, operations or branch networks;

(h) the reduction of the risk inherent in its business, products and systems;

(i) the reporting of additional information to the Banco de Portugal.

3 – Without prejudice to the provisions of the foregoing paragraph, the Banco de Portugal may apply any corrective measure provided for in Article 141.

4 – If the credit institution is engaged in financial intermediation or issues financial instruments admitted to trading on a regulated market, the Banco de Portugal shall communicate the established measures that may have an impact on the pursuit of said business to the Portuguese Securities Market Commission.

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Article 116-M

Group recovery plan

1 – The EU parent undertaking of a group subject to supervision on a consolidated basis by the Banco de Portugal shall prepare a recovery plan taking as reference the group as a whole, identifying the measures that may need to be implemented at the level of the parent undertaking and each individual subsidiary integrated in the respective perimeter of supervision on a consolidated basis.

2 – The group recovery plan shall be approved by the management body of the parent undertaking of the group subject to supervision on a consolidated basis and it shall be submitted to the Banco de Portugal.

3 – The group recovery plan shall aim to achieve the stabilisation of the group as a whole, or any subsidiaries of the group, when it is in a situation of stress so as to address or remove the causes of the distress and restore the financial position of the group or the subsidiaries concerned, whilst taking into account the financial position of other group entities.

4 – Article 116-G(4) and Articles 116-I, 116-J and 116-L shall apply mutatis mutandis to the group recovery plan.

5 – Where the Banco de Portugal is the supervisory authority responsible for the supervision of subsidiaries of a parent undertaking of a group established in a third country or in the European Union, the Banco de Portugal may demand the preparation and submission of an individual recovery plan, in those cases where, upon joint decision with the consolidating supervisor, the plan is considered as relevant in the context of the group's plan or, in the absence of a joint decision to this effect, its relevance is understood in a context of systemic importance within the domestic scope.

6 – Without prejudice to the provisions of Article 81, the Banco de Portugal, as the authority responsible for supervising the group on a consolidated basis, shall transmit, where appropriate, the group recovery plan to:

(a) the relevant supervisory authorities referred to in Articles 135-B and 137-B;

(b) the supervisory authorities of the EU Member States where significant branches are established, insofar as is relevant to that branch;

(c) the Single Resolution Board, where it is the group-level resolution authority;

(d) the resolution authorities of subsidiaries.

Article 116-N

Content of the group recovery plan

In addition to the elements of the individual recovery plan, the group recovery plan and the plan prepared for each of the group's subsidiaries shall include:

(a) arrangements to ensure the coordination and consistency of measures to be taken at the level of the EU parent undertaking, of the entities referred to in Article 2-A*(g)* to *(m)* established in the EU, of the group's financial institutions established in the EU where they are subsidiaries of a credit institution, of an investment firm dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, or of one of the entities provided for in Article 2-A*(g)* to *(m)* that are covered by supervision on a consolidated basis to which their parent undertaking is subject, as well as the measures to be taken at the level of subsidiaries and, where applicable, at the level of significant branches;

(b) where applicable, arrangements for intragroup financial support adopted pursuant to an agreement that has been concluded in accordance with Articles 116-P to 116-Y;

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(c) a range of recovery options setting out measures to adopt under the scenarios of severe macroeconomic and financial stress provided for in Article 116-G(4)*(a)*, identifying whether there are obstacles to the implementation of recovery measures within the group, pursuant to the provisions of Article 116-H(1)*(f)*, including at the level of individual entities covered by the plan, and whether there are substantial practical or legal constraints on the prompt transfer of own funds or the repayment of liabilities or assets within the group.

Article 116-O
Assessment of the group recovery plan

1 – The Banco de Portugal, as consolidating supervisor, shall, together with the supervisory authorities of subsidiaries of the EU parent undertaking, after consulting the supervisory authorities referred to in Article 135-B, and with the supervisory authorities of significant branches insofar as is relevant to the significant branch, review the group recovery plan and assess compliance with the applicable legal requirements.

2 – The review referred to in the foregoing paragraph shall be made mutatis mutandis in accordance with the procedure and criteria established for the individual recovery plans and shall consider the potential impact of the recovery measures on financial stability in all EU Member States where the group operates.

3 - As consolidated supervisor or as the supervisory authority of any subsidiary of an EU parent undertaking, the Banco de Portugal shall endeavour to reach a joint decision with the other relevant supervisory authorities, within four months of the date of submission of the group recovery plan in accordance with the provisions of the foregoing Article, on:

(a) the review and assessment of the group recovery plan;

(b) whether a recovery plan on an individual basis shall be prepared for subsidiaries that are part of the group; and

(c) the application of the measures in the event of deficiencies and impediments to the implementation of the recovery plan or the inadequacy of the recovery plan.

4 – The Banco de Portugal may request the European Banking Authority to assist supervisory authorities in reaching a joint decision in accordance with the foregoing paragraph.

5 – In the absence of a joint decision between the supervisory authorities within four months of the plan's date of transmission on the matters referred to in paragraph 3, the Banco de Portugal, as consolidating supervisor, shall make its own decision with regard to those matters, having taken into account the views and reservations of the other supervisory authorities and shall notify the decision to the EU parent undertaking and to the other supervisory authorities.

6 – In the absence of a joint decision between the supervisory authorities within four months of the recovery plan's date of transmission, the Banco de Portugal, as authority responsible for the supervision of the group's subsidiaries, shall make its own decision on:

(a) whether a recovery plan on an individual basis is to be prepared for the credit institutions subject to its supervision; and

(b) the application of the measures to review the recovery plan to remove deficiencies or impediments or to correct the plan, if they are not removed, at the level of subsidiaries.

7 – If, before the end of the time frame referred to in paragraph 5 above or in the foregoing paragraph, or the adoption of a joint decision, any of the supervisory authorities concerned has referred any of the matters laid down in Article 116-L(2)*(a)* to *(c)* to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, the Banco de Portugal, as consolidating

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supervisor or as supervisory authority of any subsidiary of the EU parent undertaking, shall await the decision of the European Banking Authority and make its decision accordingly.

8 – In the absence of a decision by the European Banking Authority within one month, the Banco de Portugal shall make its decision in accordance with paragraphs 5 and 6.

9 – The Banco de Portugal may adopt a joint decision with the other supervisory authorities should they not disagree with the joint decision pursuant to the provisions of paragraph 6.

10 – The joint decision referred to in paragraph 3 and in the foregoing paragraph, as well as the individual decisions adopted by the supervisory authorities in the absence of the joint decision referred to in paragraphs 5 to 8, shall be recognised as conclusive by the Banco de Portugal.

Article 116-P

Scope of the intragroup financial support agreement

1 – The following entities may enter into an agreement to provide financial support to a counterparty that meets the requirements for the application of a corrective measure, and with the requirements for its provision being satisfied:

(a) parent credit institutions established in the European Union and in Portugal;

(b) parent investment firms established in the European Union and in Portugal dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis;

(c) financial institutions that are subsidiaries of a credit institution, of an investment firm dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, or of an entity referred to in subparagraphs *(d)* and *(e)*, which are covered by the supervision of the parent undertaking on a consolidated basis;

(d) financial holding companies, mixed financial holding companies and mixed-activity holding companies;

(e) parent financial holding companies established in the European Union and in Portugal and parent mixed financial holding companies established in the European Union and in Portugal;

(f) subsidiaries in Portugal, other Member States or third countries of entities referred to in the foregoing subparagraphs that are credit institutions, investment firms dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, or financial institutions covered by the supervision of the respective parent undertaking on a consolidated basis.

2 – The provisions of this section shall not apply to financing agreements between parties belonging to the same group where they do not meet the requirements for the application of a corrective measure.

3 – The conclusion of an intragroup financial agreements shall not constitute a prerequisite for a credit institution:

(a) to operate in Portugal; or

(b) to provide intragroup financial support to any group entity that experiences financial difficulties, provided that the applicable rules are complied with.

4 – The financial support agreement may only be concluded if, in the opinion of the respective supervisory authority, none of the parties meets the conditions for corrective intervention or similar requirements set out in the respective legislation when the group entity is not incorporated, authorised or established in Portugal.

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Article 116-Q

Purpose and content of the intragroup financial support agreement

1 – The intragroup financial support agreement may provide for unilateral or reciprocal financial support from the parent undertaking to subsidiaries, from subsidiaries to the parent undertaking or between subsidiaries.

2 – The intragroup financial support agreement shall specify the criteria for the calculation of the consideration, for any transaction made under it. The consideration shall be set at the time of the provision of financial support, according to the following principles:

(a) the consideration may take account of information in the possession of the entity providing financial support based on it being in the same group as the party receiving financial support and which is not available to the market;

(b) the principles for calculating the consideration for the provision of financial support may not have to take account of any anticipated temporary impact on market prices arising from events external to the group.

3 – The intragroup financial support agreement shall provide, in general, for the conditions for intragroup financial support.

Article 116-R

Approval of the proposed intragroup financial support agreement

1 – The parent credit institution established in the European Union or in Portugal or the parent investment firm established in the European Union or in Portugal shall submit to the Banco de Portugal, as the consolidating supervisor, an application for authorisation of any proposed intragroup financial support agreement.

2 – The application for authorisation referred to in the foregoing paragraph shall include the draft proposal of the agreement and shall identify the parties.

3 – The Banco de Portugal shall forward a copy of the application for authorisation to the supervisory authorities of each subsidiary that proposes to be a party to the intragroup financial support agreement, with a view to reaching a joint decision within four months of the date of receipt of the application for authorisation.

4 – The joint decision referred to in the foregoing paragraph shall take into account the potential impact, including any fiscal consequences, of the execution of the intragroup financial support agreement on the financial stability of the Member States where the group operates, and whether the terms of the draft agreement are consistent with the legal conditions for financial support laid down in Article 116-U.

5 – During the period specified in paragraph 3, the Banco de Portugal may request the European Banking Authority to assist the supervisory authorities in reaching a joint decision.

6 – In the absence of a joint decision pursuant to paragraph 3, the Banco de Portugal shall make its own decision on the application for authorisation, taking into account the views and reservations of the supervisory authorities of subsidiaries involved in the joint decision process.

7 – If the Banco de Portugal or any supervisory authority of subsidiaries involved in the joint decision process has referred the disagreement that led to the impossibility of a joint decision to the European Banking Authority, within the period referred to in paragraph 3, the Banco de Portugal shall defer its decision pursuant to the foregoing paragraph and await the European Banking Authority's decision. The Banco de Portugal shall make its decision in accordance with the European Banking Authority decision.

8 – In the absence of a decision by the European Banking Authority within one month, the Banco

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de Portugal shall take its decision.

9 – The Banco de Portugal, as the supervisory authority of a group's subsidiary that has been proposed to be a party to the intragroup financial support agreement, participates in the joint decision process on the application for authorisation of that agreement, and may refer the disagreement that led to the impossibility of a joint decision to the European Banking Authority, within the period referred to in paragraph 3.

10 – The Banco de Portugal shall transmit to the relevant resolution authorities the intragroup financial support agreements it authorised or in whose joint decision process it participated, and any changes thereto.

Article 116-S
Approval of proposed agreement by shareholders

1 – After the application for authorisation of an intragroup financial support agreement has been approved, the management body of every group entity that proposes to enter into the agreement submits the proposed agreement for shareholders' approval.

2 – An intragroup financial support agreement shall be valid in respect of a group entity only if the shareholders have authorised the management body to provide or receive intragroup financial support in accordance with the terms of the agreement.

3 – The management body of the group entity that is party to the intragroup financial support agreement shall report each year to the shareholders on the performance of the agreement.

Article 116-T
Disclosure

1 – Entities that have entered into an intragroup financial support agreement under Article 116-P and following shall make public that information, as well as a description of the general terms of any such agreement and the names of the group entities that are party to it, on their website.

2 – The information referred to in the foregoing paragraph shall be updated at least annually.

3 – Articles 431 and 434 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 shall be applicable.

Article 116-U
Conditions for intragroup financial support

1 – Intragroup financial support may be provided through one or more transactions and may take the form of a loan or of a guarantee.

2 – A group entity may provide intragroup financial support under an agreement entered into for intragroup financial support where all of the following requirements are met:

(a) there is a reasonable prospect that the support provided significantly redresses the financial difficulties of the group entity receiving the support;

(b) the provision of financial support has the objective of preserving or restoring the financial stability of the group as a whole or any of the entities of the group and is in the interests of the group entity providing the support;

(c) the financial support is provided for a consideration, in accordance with Article 116-Q(2);

(d) there is a reasonable prospect, on the basis of the information available at the time when the decision to grant financial support is taken, that the consideration referred to in the foregoing subparagraph will be paid;

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(e) there is a reasonable prospect, on the basis of the information available at the time when the decision to grant financial support is taken, if the support is given in the form of a loan, that the loan will be reimbursed as agreed;

(f) there is a reasonable prospect, on the basis of the information available at the time when the decision to grant financial support is taken, if the support is given in the form of a guarantee and such guarantee is enforced, that the beneficiary of the guarantee will be able to pay the guarantor under the terms agreed;

(g) the provision of the financial support would not jeopardise the liquidity or solvency of the group entity providing the support;

(h) the provision of the financial support would not create a threat to financial stability, in particular in the Member State of the group entity providing the support;

(i) the group entity providing the support complies, at the time the support is provided, with the requirements relating to capital or liquidity laid down in applicable legislation and regulations and the additional own funds requirements under Article 116-C(2)*(a)*, or similar requirements laid down in the legislation of the country in which that entity has its head office. Furthermore, unless expressly authorised by the competent authority responsible for the supervision on an individual basis of the group entity providing the support, that provision of financial support shall not cause the group entity to infringe the capital and liquidity requirements laid down in the applicable legislation and regulations and the additional own funds requirements, or similar requirements laid down in the legislation of the country in which that entity has its head office;

(j) the group entity providing the support complies, at the time the support is provided, with the requirements relating to large exposures laid down in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and in other applicable legislation and regulations and, unless expressly authorised by the competent authority responsible for the supervision on an individual basis of the group entity providing the support, that provision of financial support shall not cause the group entity to infringe the requirements relating to large exposures laid down in that Regulation and other applicable legislation and regulations; and

(k) the provision of the financial support would not undermine the resolvability of the group entity providing the support.

Article 116-V

Decision to provide and accept intragroup financial support

1 – The decision to provide financial support in accordance with the intragroup financial support agreement shall be taken by the management body of the group entity providing financial support.

2 – The decision of the management body shall state the reasons on which it is based, indicating the purpose of the financial support and the form it will take, as well as compliance with the requirements of paragraph 2 of the foregoing Article.

3 – The decision to accept financial support in accordance with the intragroup financial support agreement shall be taken by the management body of the group entity receiving financial support.

4 – The Banco de Portugal shall regulate any additional grounds of the decision referred to in paragraph 1.

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Article 116-W

Notification to the supervisory authorities

1 – Before providing support in accordance with an intragroup financial support agreement, the management body of a group entity that intends to provide financial support shall notify:

(a) the Banco de Portugal, as the authority responsible for the supervision of the group entity providing the support;

(b) the consolidating supervisor;

(c) the supervisory authority of the entity receiving the financial support;

(d) the European Banking Authority.

2 – The notification referred to in the foregoing paragraph shall include the information referred to in paragraph 2 of the foregoing Article.

Article 116-X

Opposition of supervisory authorities

1 – [R*epealed.*]

2 – [*Repealed.*]

3 – Within five days of the date of receipt of a complete notification referred to in the foregoing Article, the Banco de Portugal may agree with the provision of financial support, or may prohibit or restrict it, based on the requirements for intragroup financial support laid down in Article 116-U(2).

4 – The decision referred to in the foregoing paragraph shall be immediately notified to the entities referred to in paragraph 1*(b)* to *(d)* of the foregoing Article.

5 – The Banco de Portugal shall, as the consolidating supervisor pursuant to paragraph 1*(b)* of the foregoing Article, inform the other members of the supervisory college and the members of the resolution college of the respective group of the decision referred to in paragraph 3.

6 – Where the Banco de Portugal, as the consolidating supervisor or the authority responsible for the supervision on an individual basis of the group entity receiving the support pursuant to paragraph 1*(b)* and *(c)* of the foregoing Article respectively, has objections regarding the decision to agree, prohibit or restrict the financial support transmitted by the authority responsible for the supervision of the group entity providing the support, the Banco de Portugal may within two days refer the matter to the European Banking Authority, in accordance with Article 31 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010.

7 – Financial support may be provided in accordance with the terms notified to the Banco de Portugal when the latter has agreed or does not prohibit or restrict the financial support before the end of the period referred to in paragraph 3.

8 – [*Repealed.*]

9 – [*Repealed.*]

10 – If the supervisory authority of the entity providing financial support restricts or prohibits the financial support and where the group recovery plan makes reference to intragroup financial support, the Banco de Portugal, as the supervisory authority of the entity receiving the support may request the consolidating supervisor to initiate a reassessment of the group recovery plan or, where a recovery plan is prepared on an individual basis, request a revised recovery plan to the group entity receiving the support.

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Article 116-Y

Notification and communication on the provision of intragroup financial support

1 – The management body of the entity providing financial support shall notify the decision to provide intragroup financial support to the entities referred to in Article 116-W(1).

2 – As the consolidating supervisor pursuant to Article 116-W(1)*(b)*, the Banco de Portugal shall inform the other members of the supervisory college and the members of the resolution college of the respective group of the decision referred to in the foregoing paragraph.

Article 116-Z

Duty of communication

1 - When for any reason a credit institution is in financial distress or insolvency, or runs this risk, its management or supervisory body shall forthwith inform the Banco de Portugal.

2 - The management and supervisory bodies of the credit institution shall likewise inform the Banco de Portugal of any of the following situations, even though they consider that this might not impact on the credit institution's financial situation:

(a) risk of violation of prudential rules and limits, namely as regards the minimum capital adequacy requirements;

(b) abnormal decline in the credit balance of deposits;

(c) material depreciation of the institution's assets or material losses on other commitments, even without immediate recognition in the financial statements;

(d) risk of lack of liquidity by the institution to meet its financial obligations, as they fall due;

(e) funding problems to address liquidity needs;

(f) difficulties with the provision of funds by shareholders to increase the capital, when it becomes necessary or convenient to fulfil legal or regulatory requirements;

(g) occurrence of legal or regulatory changes, in Portugal or abroad, with a relevant impact on the credit institution's business;

(h) occurrence of events with a relevant potential adverse impact on the results or capital, namely:

(i) failure by a counterparty to fulfil its financial commitments to the credit institution, including any restrictions on the transfer of payments from abroad;

(ii) adverse movements in the market price of financial instruments measured at fair value, namely resulting from fluctuations in interest rates, exchange rates, share prices, credit spreads or commodities prices;

(iii) adverse movements in interest rates of the banking portfolio, due to lags in maturities or interest rate resetting periods, the absence of a perfect correlation between the rates received and paid on different instruments or the existence of options embedded in balance sheet financial instruments or off-balance-sheet items;

(iv) adverse movements in exchange rates of the banking portfolio, due to changes in the exchange rates used in the conversion to the functional currency or changes in the credit institution's competitive position resulting from significant exchange rate changes;

(v) failure to analyse, process or settle operations, internal and external fraud situations or malfunctioning of infrastructures;

(i) adverse movements in liabilities relating to pensions and other post-employment benefits, as well as in the asset value of pension funds used to fund such liabilities, when associated with defined

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benefit plans;

(j) existence of material tax or reputational contingencies resulting from the application of measures or penalties by administrative or judicial authorities, in Portugal or abroad.

3 - The members of the management and supervisory bodies are individually bound to undertake the communication referred to in the foregoing paragraphs, and are obliged to carry it out themselves, should the body to which they belong fail or neglect to do so in due time.

4 - Without prejudice to other communication or participation duties set out by law, the supervisory body or any of the members of the management or supervisory bodies, as well as the holders of qualifying holdings in the capital of the credit institution, shall also forthwith inform the Banco de Portugal of any serious irregularities they become aware of within the management and accounting procedures, or internal control of the credit institution that may give rise to the credit institution's financial distress.

5 - The duty of communication provided for in the foregoing paragraphs persists even after the termination of the functions in question or the ownership of the qualifying holding, with respect to events occurring during the exercise of such functions or the ownership of the said holding.

6 - Following communications made, the Banco de Portugal may, at any time, request any information it deems necessary, which shall be reported within a deadline set for that purpose.

7 - The fulfilment of the duties of communication is considered to be an exception to the duty of secrecy laid down in Article 79 if the facts communicated are referred to in paragraph 1 of the said Article.

8 - The Banco de Portugal may lay down, by means of an Instruction, criteria for the application of paragraph 2.

Article 116-AA
Reporting of irregularities
[Repealed.]

Article 116-AB
Reporting of breaches to the Banco de Portugal

1 - Anyone who is aware of strong evidence of breach of the duties set out in this Legal Framework or in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 may report it to the Banco de Portugal.

2 - The Banco de Portugal shall ensure appropriate protection for both the persons who report breaches, in accordance with Regulation (EU) 2016/679 of the European Parliament of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and other data protection legislation.

3 - The Banco de Portugal guarantees confidentiality over the identity of the persons who report breaches at any time or until this information is required for safeguarding the rights of defence of the accused persons, in the context of further investigations or subsequent judicial proceedings.

4 - The communications under the terms of the foregoing paragraphs, per se, may not be used as grounds for disciplinary, criminal or civil liability submitted by the credit institution against the persons who report breaches, except where these are manifestly ill-founded.

5 - The Banco de Portugal may approve the necessary regulations to ensure the implementation of the safeguards set out in the foregoing paragraphs.

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Article 116-AC
Supervisory examination programme

1 - The Banco de Portugal shall, at least annually, adopt a supervisory examination programme for credit institutions, which takes into account the supervisory review and evaluation process under Article 116-A. It contains the following:

(a) an indication of how it intends to carry out its tasks and allocate its resources;
(b) an identification of which credit institutions are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in paragraph 3;
(c) a plan for inspections at the premises of credit institutions, including their branches and subsidiaries established in other EU Member States.

2 - A supervisory examination programme shall include credit institutions:

(a) for which the results of the stress tests referred to in Article 116-B(1)(*a)* and *(g)* and in the following Article, or the outcome of the supervisory review and evaluation process under Article 116-A, indicate significant risks to their financial soundness or indicate breaches of the provisions of this Legal Framework and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;
(b) [*repealed*];
(c) for which the Banco de Portugal deems it to be necessary.

3 - Where appropriate under Article 116-A the following measures shall, in particular, be taken if necessary:

(a) an increase in the number or frequency of on-site inspections of the credit institution;
(b) a permanent presence of the Banco de Portugal at the credit institution;
(c) additional or more frequent reporting by the credit institution;
(d) additional or more frequent review of the operational, strategic or business plans of the credit institution;
(e) thematic examinations monitoring specific risks that are likely to materialise.

4 - Adoption of a supervisory examination programme by the Banco de Portugal shall not prevent the competent authorities of the host Member State from carrying out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of credit institutions established in Portugal.

Article 116-AD
Stress testing

1 - The Banco de Portugal shall carry out as appropriate but at least annually supervisory stress tests on credit institutions, to facilitate the review and evaluation process under Article 116-A.
2 - The stress test results may be published.

Article 116-AE
Ongoing review of the permission to use internal approaches

1 - The Banco de Portugal shall review on a regular basis, and at least every three years, credit institutions' compliance with the requirements regarding approaches that require the Banco de

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Portugal's permission before using such approaches for the calculation of own funds requirements in accordance with the applicable regulations.

2 - For the purposes of the foregoing paragraph, the Banco de Portugal shall take into consideration changes in a credit institution's business and the implementation of those approaches to new products.

3 - Where material deficiencies are identified in risk capture by a credit institution's internal approach, the Banco de Portugal shall ensure that they are rectified or shall take appropriate steps to mitigate their consequences, including by imposing higher multiplication factors, or imposing capital add-ons, or by taking other appropriate and effective measures.

4 - The Banco de Portugal shall in particular review and assess whether the credit institution uses well developed and up-to-date techniques and practices for those approaches.

5 - If, for an internal market model, numerous overruns referred to in the applicable regulations indicate that the model is not sufficiently accurate, the Banco de Portugal shall revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

6 - If a credit institution has received permission to apply an approach for the calculation of own funds requirements that requires prior permission from the Banco de Portugal in accordance with the applicable regulations, but does not meet the requirements for applying that approach anymore, the Banco de Portugal shall require the institution to either demonstrate that the effect of non-compliance is immaterial, or present a plan for the timely restoration of compliance with the requirements and set a deadline for its implementation. The Bank shall require improvements to the plan if it is unlikely to result in full compliance or if the deadline is inappropriate.

7 - If the credit institution is unlikely to be able to restore compliance within an appropriate deadline and, where applicable, has not satisfactorily demonstrated that the effect of non-compliance is immaterial, the permission to use the approach shall be repealed or limited to compliant areas or those where compliance can be achieved within an appropriate deadline.

8 - The Banco de Portugal shall take into account guidelines developed by the European Banking Authority relevant for the review of the permissions it grants in accordance with the foregoing paragraphs.

9 - The Banco de Portugal shall encourage credit institutions, taking into account their size, internal organisation and the nature, scale and complexity of their activities:

(a) to develop internal credit risk assessment capacity and to increase use of the internal ratings-based approach for calculating own funds requirements for credit risk, based on the materiality of their exposures in absolute terms and where they have at the same time a large number of material counterparties, without prejudice to the fulfilment of criteria laid down in Articles 102 to 106 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on requirements for the trading book;

(b) with regard to credit institutions holding exposures to specific risks that are material in absolute terms and where they have a large number of material positions in debt instruments of different issuers, to develop internal specific risk assessment capacity and to increase use of internal models for calculating own funds requirements for specific risk of debt instruments in the trading book, together with internal models to calculate own funds requirements for default and migration risk, without prejudice to the fulfilment of the criteria laid down in Articles 362 to 377 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on the use of internal models for calculating own funds requirements for market risk.

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10 - The Banco de Portugal shall, taking into account the nature, scale and complexity of credit institutions' activities, monitor whether these credit institutions solely or mechanistically rely on external credit ratings for assessing the creditworthiness of an entity or financial instrument.

Article 116-AF
Application of supervisory measures to credit institutions with similar risk profiles
[Repealed.]

Article 116-AG
Specific liquidity requirements

1 - For the purposes of determining the appropriate level of liquidity requirements on the basis of the review and evaluation carried out in accordance with this section, the Banco de Portugal shall assess whether any imposition of a specific liquidity requirement is necessary to capture liquidity risks to which a credit institution is or might be exposed, taking into account:

(a) the particular business model of the institution;
(b) the credit institution's arrangements, processes and mechanisms referred to in Article 115-U;
(c) the outcome of the review and evaluation carried out in accordance with Article 116-A;
(d) [*repealed.*]

2 - The Banco de Portugal shall consider the need to apply administrative penalties or other administrative measures, including prudential charges, the level of which broadly relates to the disparity between the actual liquidity position of a credit institution and any liquidity and stable funding requirements established at national or Union level.

Article 116-AH
Specific disclosure requirements

1 - The Banco de Portugal may require, by means of regulations, that credit institutions:

(a) disclose information referred to in Articles 431 to 455 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 more than once per year, and set deadlines for disclosure;
(b) use specific media and locations for disclosure other than the financial statements.

2 - The Banco de Portugal may require parent undertakings to disclose annually, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure of the group.

Article 116-AI
Consistency of supervisory reviews, evaluations and supervisory measures

The Banco de Portugal shall inform the European Banking Authority of:

(a) the functioning of its review and evaluation process referred to in Article 116-A;
(b) the methodology used to base decisions referred to in Articles 116-B, 116-C, 116-AD, 116-AE and 116-AG on the process referred to in the foregoing subparagraph.

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Article 117

Financial holding companies, mixed financial holding companies and holding companies

1 – Without prejudice to the provisions of Article 131, the provisions of Articles 30 to 31 and 32 concerning the reputation, skills, experience and knowledge of the members of the administrative and supervisory bodies of credit institutions shall apply to financial holding companies and mixed financial holding companies mutatis mutandis.

2 – The Banco de Portugal may subject to its supervision, on an individual basis:

(a) the financial holding companies and mixed financial holding companies referred to in the foregoing paragraph;

(b) entities whose main activity is to acquire or manage holdings not covered by the foregoing subparagraph, if they hold qualifying holdings in a credit institution or in a financial company.

3 – The provisions of subparagraph *(b)* of the foregoing paragraph shall not apply to entities subject to the supervision of the Portuguese Insurance and Pension Funds Supervisory Authority.

4 – The provisions of Articles 42-A, 43-A and 115(1) and (3) shall apply to the entities subject to the supervision of the Banco de Portugal under paragraph 2.

Article 117-A

Payment institutions and electronic money institutions

Payment institutions and electronic money institutions shall be subject to supervision by the Banco de Portugal, in accordance with the laws and regulations governing their activity.

Article 117-B

Relevant companies for payment systems

1 – The Banco de Portugal may subject to its supervision the entities which have as their business purpose to carry on, or which in fact carry on, an activity of particular relevance for the functioning of payment systems, specifying the rules and obligations applicable to them, from amongst those provided for in this Decree-law for financial companies.

2 – The entities carrying on any activity within the scope of payment systems shall inform the Banco de Portugal and provide all and any information it requests.

3 – For the purposes of paragraph 1, the management of an electronic network for the carrying out of payments is considered especially relevant for payment systems.

4 - Title VIII shall apply to the relevant companies for payment systems subject to supervision by the Banco de Portugal.

Article 118

Sound and prudent management

1 - If the conditions of the activity of a credit institution do not comply with the rules of sound and prudent management, the Banco de Portugal may grant it a period in which to take the appropriate steps to restore or enhance the financial balance, or to rectify its management procedures.

2 - Whenever it is aware that a planned transaction by a credit institution is likely to lead to the violation or the aggravation of the violation of applicable prudential rules, or breach of sound and prudent management rules, the Banco de Portugal may notify such an institution to refrain from such transaction.

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Article 118-A

Duty to refrain from carrying out operations and registration of operations

1 - Credit institutions are not authorised to grant credit to entities having their head office in an offshore jurisdiction deemed to be non-cooperative or whose ultimate beneficial owner is unknown.

2 - The Banco de Portugal shall regulate, by means of a Notice, the offshore jurisdictions considered to be non-cooperative for the purposes of the provisions of the foregoing paragraph.

3 - Without prejudice to paragraph 1, credit institutions subject to supervision by the Banco de Portugal, based on their consolidated financial situation, shall make the registration of payment operations, corresponding to payment services provided by all entities included in the perimeter of prudential supervision, whose beneficial owner is a natural or legal person having its head office in an offshore jurisdiction, and shall communicate the said registration to the Banco de Portugal, under the terms defined by regulation.

4 - [*Repealed*].

5 - The provisions of paragraph 3 shall also apply to any other entities authorised to provide payment services in Portugal.

Article 119

Duties of the shareholder

Whenever warranted by the financial situation of a credit institution, the Banco de Portugal may recommend that shareholders provide such credit institution with adequate financial support.

Article 120

Reporting requirements

1 – Credit institutions shall provide the Banco de Portugal with the information necessary for the assessment of their compliance with the provisions of this Legal Framework and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, to monitor:

(a) their degree of liquidity and solvency;

(b) the risks they incur, including the level of exposure to different types of financial instruments;

(c) the practices for management and control of risks to which they are or may be subject;

(d) the methodologies adopted in the assessment of their assets, in particular those that are not traded in markets of high liquidity and transparency;

(e) compliance with the laws and regulations governing their activity;

(f) their administrative organisation;

(g) the effectiveness of their internal control systems;

(h) the IT security and control procedures;

(i) the permanent compliance with the requirements laid down in Articles 14, 15, 20(1)(g) and (h).

2 - The Banco de Portugal may regulate, by means of a Notice, the provisions of the foregoing paragraph.

3 - Credit institutions will facilitate on-site inspections by the Banco de Portugal and examination of their books, along with all other data which the Banco de Portugal deems relevant for the verification of the aspects mentioned in the foregoing paragraph.

4 - The Banco de Portugal may take copies and transcriptions of all the relevant documents.

5 - Entities not covered by the foregoing paragraphs which own qualifying holdings in the capital

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of credit institutions shall supply the Banco de Portugal with all the data and information which it deems relevant for the supervision of the institution in which they own holdings.

6 - Credit institutions shall maintain at the disposal of the Banco de Portugal, over a period of five years, the relevant information on transactions regarding investment services and activities.

7 - The Banco de Portugal may require credit institutions to provide reports on prudential supervision matters, carried out by an entity duly empowered and accepted by the Banco de Portugal for that purpose.

8 - The Banco de Portugal may also request from any person the information necessary for the fulfilment of its tasks and, if necessary, summon and hear that person in order to obtain such information.

9 - Credit institutions shall register all their transactions and processes, including those subject to this Legal Framework and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 in such a manner that the Banco de Portugal is able to check their compliance with such rules at all times.

10 - The Banco de Portugal may require credit institutions to keep detailed records of the financial contracts in which they intervene as a party or in any other capacity.

11 - The Banco de Portugal may, by means of a Notice, establish rules on the length, content and means of archive of the records referred to in the foregoing paragraph.

Article 121

Statutory auditors and external auditors

1 - Statutory auditors at the service of a credit institution and external auditors who, by legal requirement, provide audit services to a credit institution shall have a duty to report promptly to the Banco de Portugal the facts or decisions concerning that institution, of which they become aware in the course of their functions, where such facts or decisions may:

(a) constitute a serious breach of the rules or regulations which lay down the conditions governing authorisation or which specifically govern the pursuit of the activities of credit institutions; or

(b) affect the ongoing functioning of the credit institution; or

(c) lead to refusal to certify the accounts or to the expression of reservations.

2 - The duty provided for in the foregoing paragraph shall also apply to the facts or decisions of which the persons referred to in the same paragraph become aware in the exercise of similar functions, but in an undertaking having close links with the credit institution where such functions are exercised.

3 - The reporting requirement provided for in this Article shall prevail over any restriction imposed by legal or contractual provisions on the disclosure of information and shall not involve such persons in liability of any kind.

4 - The reporting of the facts or decisions mentioned in paragraph 1 shall be made simultaneously to the management body of the institution unless decided otherwise due to overriding reasons.

5 - The Banco de Portugal may decide to replace a statutory auditor or external auditor in the event of a violation of the obligations laid down in the foregoing paragraphs.

6 - The Banco de Portugal's decision under the foregoing paragraph shall constitute sufficient cause to terminate the contract with the statutory auditor or external auditor.

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Article 121-A
Third-country branches

1 – The branches of credit institutions having their head office in a third country authorised to conduct business in Portugal are subject to prudential supervision by the Banco de Portugal, and mutatis mutandis to the legal rules governing credit institutions authorised in Portugal.

2 - The Banco de Portugal may issue regulations for the implementation of the foregoing paragraph.

3 - The Banco de Portugal and the competent supervisory authorities of institutions that are part of the same third-country group shall cooperate closely to ensure that all activities of that third-country group are subject to comprehensive supervision, in accordance with the requirements applicable to third-country groups laid down in this Legal Framework and in Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, and to prevent risks to financial stability in the European Union.

Article 122
Credit institutions authorised in other EU Member States

1 - Credit institutions authorised in other EU Member States which carry out activities in Portugal are not subject to prudential supervision by the Banco de Portugal, provided they are subject to supervision by their home authorities.

2 - The Banco de Portugal, however, is responsible, in cooperation with the competent authorities of the home Member States, for the supervision of the liquidity of branches of the credit institutions mentioned in the foregoing paragraph.

3 - The Banco de Portugal shall cooperate with the competent authorities of the home Member States to ensure that the institutions referred to in paragraph 1 take the appropriate steps to cover risks arising out of open positions where such risks result from transactions carried out on the Portuguese financial market.

4 - The aforesaid institutions are subject to the decisions and other measures that the Portuguese authorities may take within the scope of the monetary, financial and exchange rate policy, and to rules applicable in the interests of the general good.

Article 122-A
Cooperation with supervisory authorities of other EU Member States

1 - The Banco de Portugal shall collaborate with the competent supervisory authorities in order to supervise the activities of credit institutions operating, in particular through a branch, in one or more EU Member States other than that in which their head offices are situated. They shall supply one another with information concerning the management and ownership structure of such credit institutions, as well as all information likely to facilitate their supervision, in particular with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, other factors that may influence the systemic risk posed by the credit institution, administrative and accounting procedures and internal control mechanisms, especially for the identification of a significant branch.

2 - The Banco de Portugal, pursuant to Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, may refer to the European Banking Authority situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time.

3 - The Banco de Portugal shall provide the competent authorities of host Member States immediately any information and findings pertaining to liquidity supervision of branches, to the

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extent that such information and findings are relevant to the protection of depositors or investors in the host Member State.

4 - The Banco de Portugal shall inform the competent authorities of all host Member States immediately where liquidity stress occurs or can reasonably be expected to occur. That information shall also include details about the planning and implementation of a recovery plan and about any prudential supervision measures taken in that context.

5 - The competent authorities of the home Member State shall communicate and explain upon request to the Banco de Portugal how information and findings provided have been taken into account.

6 - Where, following communication of information and findings, the Banco de Portugal maintains that no appropriate measures have been taken by the competent authorities of the home Member State, it may, after informing those authorities and the European Banking Authority, take appropriate measures to prevent further breaches in order to protect the interests of depositors, investors and others to whom services are provided or to protect the stability of the financial system.

7 - The Banco de Portugal shall communicate and explain upon request to the competent authorities of the home Member State how information and findings provided by the latter have been taken into account.

8 - Where the Banco de Portugal disagrees with the measures to be taken by the competent authorities of the host Member State, it may refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010.

Article 123

Duties of institutions authorised in other EU Member States

1 - For the purposes of Article 122, the institutions mentioned therein shall submit to the Banco de Portugal the information which the latter requires.

2 - The provisions of Article 120(2) and (3) shall apply.

Article 124

On-site inspections of branches of authorised credit institutions

1 - In the exercise of their prudential supervisory functions, the competent authorities of other EU Member States may, after having first informed the Banco de Portugal, carry out, either directly or through the intermediary of persons they appoint for that purpose, on-site inspections of the branches which credit institutions authorised in those Member States have established in Portugal.

2 - The on-site inspections referred to in the foregoing paragraph may also be performed by the Banco de Portugal, at the request of the authorities referred to in the same paragraph.

3 - The Banco de Portugal shall have the power to carry out, on a case-by-case basis, on-the-spot checks and inspections of the activities carried out by branches of credit institutions on their national territory and require information from a branch about its activities and for supervisory purposes, where they consider it relevant for reasons of stability of the Portuguese financial system.

4 - Before carrying out such checks and inspections, the Banco de Portugal shall consult the competent authorities of the home Member State.

5 - After such checks and inspections, the Banco de Portugal shall communicate to the competent authorities of the home Member State the information obtained and findings that are relevant for the risk assessment of the credit institution or the stability of the Portuguese financial system.

6 - The Banco de Portugal shall duly take into account the information and findings reported by the competent authorities of the host Member State in determining their supervisory examination programme, also having regard to the stability of the financial system in the host Member State.

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7 - The checks and inspections of branches shall be conducted in accordance with Portuguese law.

Article 125
Representative offices

The activities of representative offices of credit institutions having their head office abroad are subject to supervision by the Banco de Portugal, which may be performed on the spot and may involve the examination of accounting books and any other information deemed necessary.

Article 126
Unauthorised entities

1 - Where there are well-founded suspicions that an unauthorised entity exercises or has exercised an activity reserved to credit institutions, the Banco de Portugal may require it to present the information needed to clarify the situation and may carry out inspections at the site in which such activity apparently is or has been carried out, or where it suspects that elements may be relevant for the understanding of the same activity.

2 - Without prejudice to the powers conferred by the law on other entities, the Banco de Portugal may request the winding up and liquidation of any company or other collective body which, without being authorised, carries out activities only authorised to credit institutions.

Article 127
Assistance of other authorities

The police authorities shall provide whatever assistance the Banco de Portugal requests in the performance of its supervisory tasks.

Article 128
Seizure of documents and valuables

1 - In the course of the inspections referred to in Article 126(1), the Banco de Portugal may seize any documents or valuables which may constitute the object, instrument or proceeds of a breach or which prove to be necessary for the inquiry into the case.

2 - The provisions of Article 215(1) shall apply to the seized items.

Article 129
Appeals
***[Repealed]*.**

Article 129-A
Level of application of the internal capital adequacy assessment process

1 - Every credit institution that is not a subsidiary in Portugal, a parent undertaking or an institution included in supervision on a consolidated basis shall meet the obligations set out in Article 115-J on an individual basis.

2 - Where the Banco de Portugal waives the application of own funds requirements on a consolidated basis provided for in Article 15 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, the requirements of Article 115-J shall apply on an individual basis.

3 - Parent credit institutions in Portugal shall meet the obligations set out in Article 115-J on a consolidated basis.

4 - [*Repealed.*]

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5 - [*Repealed.*]

6 - The provisions of this Article shall apply on a sub-consolidated basis to subsidiary credit institutions, if those credit institutions, or the parent undertaking where it is a parent financial holding company or a parent mixed financial holding company, have a credit institution, an investment firm or a financial institution as a subsidiary in a third country, or hold a participation in such an undertaking.

Article 129-B

Treatment of risks and supervisory process and measures

1 – Credit institutions shall comply with the obligations laid down in Chapter II-C of Title VII and Article 116-AE(9) and (10), on an individual basis, unless the Banco de Portugal waives the application of prudential requirements on an individual basis, in accordance with Article 7 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

2 – Parent undertakings and subsidiaries covered by this Legal Framework shall comply with the obligations referred to in the foregoing paragraph on a consolidated or sub-consolidated basis, to ensure that the required arrangements, processes and mechanisms are consistent, well-integrated and that any element relevant to the purpose of supervision can be produced.

3 – [*Repealed.*]

4 – The obligations provided for in Articles 116 to 116-F and 116-AC to 116-AI are fulfilled on an individual or consolidated basis, in accordance with Articles 6 to 24 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

5 – [...]

6 – Parent undertakings and subsidiaries shall apply the arrangements, processes and mechanisms provided for in paragraph 1 in their subsidiaries not subject to this Legal Framework, including those established in offshore financial centres, in a consistent, well-integrated manner and capable of producing all elements relevant to the purpose of supervision.

7 – Subsidiary undertakings that are not themselves subject to this Legal Framework shall comply with their sector-specific requirements on an individual basis.

8 – The provisions of paragraph 1 shall not apply to subsidiary undertakings that are not themselves subject to this Legal Framework if the EU parent undertaking demonstrates to the Banco de Portugal that its application is incompatible with the laws of the third country where the subsidiary is established.

9 – The parent undertakings and subsidiaries referred to in paragraph 2 shall apply the provisions of paragraph 1 to their subsidiaries not covered by this Legal Framework, ensuring that those subsidiaries provide all information relevant to the purpose of supervision, unless their subsidiaries are from a third country whose legislation prohibits such provision.

10 – The provisions on remuneration shall not apply on a consolidated basis to the following entities:

(a) subsidiaries undertakings established in the Union where they are subject to specific remuneration requirements in accordance with other European Union legal acts;

(b) subsidiaries established in a third country where they would be subject to specific remuneration requirements in accordance with other European Union legal acts if they were established in the European Union.

11 – In order to ensure the application of the provisions of Chapter II-A, the provisions on remuneration shall apply to employees of subsidiaries not subject to this Legal Framework, on an individual basis, where:

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(a) the subsidiary is an asset management company or an undertaking that provides the investment services and activities of execution of orders, dealing on own account, portfolio management, underwriting financial instruments and/or placing financial instruments on a firm commitment basis; and

(b) those members of staff have been mandated to perform professional activities having a direct material impact on the risk profile or the business of the institutions within the group.

SECTION II
SUPERVISION ON A CONSOLIDATED BASIS

Article 130
Responsibility

1 - The Banco de Portugal shall be responsible for the supervision of credit institutions on a consolidated basis in accordance with this Section.

2 - [*Repealed*].

Article 131
Scope and powers

1 - The Banco de Portugal shall be responsible, in accordance with this Section, for the consolidated supervision:

(a) of credit institutions it supervises on an individual basis, which are parent undertakings in Portugal or the European Union;

(b) where the parent undertaking is a parent investment firm in Portugal or another Member State or an EU parent investment firm:

(i) if at least one of its subsidiaries is a credit institution supervised by the Banco de Portugal on an individual basis;

(ii) if several subsidiaries are credit institutions, and the credit institution with the largest balance sheet total is supervised by the Banco de Portugal on an individual basis.

2 - The Banco de Portugal shall be responsible for the consolidated supervision where a parent financial holding company in Portugal, a parent mixed financial holding company in Portugal, an EU parent financial holding company or an EU parent mixed financial holding company is a parent undertaking of a credit institution that the Banco de Portugal supervises on an individual basis.

3 - The Banco de Portugal is responsible for the consolidated supervision where two or more credit institutions or investment firms authorised in the European Union have the same parent financial holding company in a Member State, a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company and:

(a) the group has only one credit institution and the credit institution is supervised on an individual basis by the Banco de Portugal;

(b) the group has several credit institutions and the credit institution with the largest balance sheet total is supervised on an individual basis by the Banco de Portugal.

4 - The Banco de Portugal is also responsible for the consolidated supervision where consolidation is required in accordance with Article 18(3) or (6) of Regulation (EU) No 575/2013 of

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the European Parliament and of the Council of 26 June 2013, and the credit institution with the largest balance sheet total is supervised on an individual basis by the Banco de Portugal.

5 - By way of derogation from paragraph 1*(b)*, 3*(b)* and the foregoing paragraph, where a competent authority supervises on an individual basis more than one credit institution in a group, the consolidating supervisor shall be the competent authority that supervises on an individual basis one or more credit institutions in the group, if the sum of the total balance sheets of those supervised credit institutions is larger than that of the credit institutions supervised on an individual basis by any other competent authority.

6 - The Banco de Portugal shall adopt the necessary measures to include financial holding companies and mixed financial holding companies, authorised in accordance with Chapter IV-A of Title II, in consolidated supervision.

7 - The Banco de Portugal may decide to bring a credit institution under supervision on a consolidated basis in the following cases:

(a) where a credit institution exercises significant influence over another credit institution or financial institution, even if not owning a holding;

(b) where two or more credit institutions or financial institutions are placed under single management, even if not statutorily or contractually stipulated;

(c) where two or more credit institutions or financial institutions have management or supervisory bodies composed predominantly by the same persons.

8 - Ancillary services companies shall be included under supervision on a consolidated basis if the requirements laid down in paragraphs 1 and 2 are met.

9 - The Banco de Portugal shall establish, by means of regulations, the conditions under which credit institutions, financial institutions or ancillary services companies may be excluded from supervision on a consolidated basis.

10- The Banco de Portugal shall communicate to the European Banking Authority, the European Commission and the competent authorities of the Member States concerned a list of financial holding companies and mixed financial holding companies subject to supervision on a consolidated basis.

Article 132

Allocation of responsibilities between supervisory authorities

[*Repealed*].

Article 132-A

Parent undertakings having their head office in a third country

1 - Where a credit institution, the parent undertaking of which is a credit institution, a mixed financial holding company or a financial holding company having its head office in a third country, is not subject to supervision on a consolidated basis on terms equivalent to those provided for in this Section, it should be checked whether the credit institution is subject to equivalent supervision by a third-country supervisory authority.

2 - The check referred to in the foregoing paragraph shall be carried out by the Banco de Portugal, where by virtue of the application of the criteria laid down in Articles 130 and following, the Banco de Portugal would be the supervisor on a consolidated basis, if this supervision takes place.

3 - The Banco de Portugal shall carry out the check referred to in paragraph 1:

(a) at the request of the parent undertaking;

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(b) at the request of any of the entities subject to supervision authorised in the EU;

(c) on its own initiative.

4 - The Banco de Portugal shall consult the other supervisory authorities of the subsidiaries mentioned and the European Banking Authority.

5 - In the absence of equivalent supervision, Member States shall similarly apply the provisions of this Section.

6 - As an alternative to the provisions of the foregoing paragraph, where the Banco de Portugal is the authority responsible and after consulting the authorities referred to in paragraph 3, it may apply other appropriate methods to achieve the objectives of supervision on a consolidated basis, and in particular require the establishment of a financial holding company or a mixed financial holding company having its head office in the EU and apply to it the provisions on supervision on a consolidated basis.

7 - In the case mentioned in the foregoing paragraph, the Banco de Portugal shall notify the supervisory authorities referred to in paragraph 3, the European Commission and the European Banking Authority about the methods applied.

Article 132-B

Intragroup transactions with mixed-activity holding companies

1 - Credit institutions shall inform the Banco de Portugal of any significant transaction carried out with the mixed-activity holding company of whose group they are part and with the subsidiaries of the said company. For that purpose, they shall have in place the adequate risk management procedures and internal control mechanisms, including sound reporting and accounting procedures to identify, measure, monitor and control, in an appropriate manner, these transactions.

2 - The Banco de Portugal shall take appropriate action when the transactions mentioned in the foregoing paragraph may pose a threat to a credit institution's financial position.

Article 132-C

Agreement on the allocation of responsibilities

1 - In the cases set out in Article 131(1), (3) and (4), the competent supervisory authorities may, by common agreement, appoint a different competent authority to exercise supervision on a consolidated basis, if the application of those criteria were inappropriate with regard to the credit institutions or investment firms concerned and the relative importance of their activities in the Member States concerned, or the need to ensure the continuity of supervision on a consolidated basis by the same competent authority.

2 - In the case set out in the foregoing paragraph, the competent authorities shall first hear the EU parent credit institution, the EU parent financial holding company, the EU parent mixed financial holding company, the credit institution or the investment firm with the largest balance sheet total, as the case may be.

3 - The competent authorities shall notify the Commission European and European Banking Authority of a possible agreement under paragraph 1.

Article 132-D

Establishment of intermediate parent undertaking in the European Union

1 - Two or more institutions located in the European Union that are part of the same third-country group shall have a single EU intermediate parent undertaking established in a Member State.

2 - The Banco de Portugal may allow the institutions referred to in the foregoing paragraph to

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have two EU intermediate parent undertakings when they determine that the establishment of a single EU intermediate parent undertaking:

(a) would be incompatible with a mandatory requirement to separate activities imposed by the rules or supervisory authorities of the third country where the ultimate parent undertaking of the third-country group has its head office; or

(b) would lead to less effective resolvability than in the case of two EU intermediate parent undertakings in accordance with a review carried out by the competent resolution authority of the EU intermediate parent undertaking.

3 - Where none of the institutions referred to in paragraph 1 is a credit institution, or the second EU intermediate parent undertaking has to be established in respect of investment activities in order to comply with a mandatory requirement referred to in the foregoing paragraph, the EU intermediate parent undertaking or the second EU intermediate parent undertaking may be an investment firm.

4 - The provisions of the foregoing paragraphs shall not apply if the total value of assets in the European Union of a third-country group is less than €40 billion.

Article 132-E

Value of assets of the third-country group

1 - The calculation of the total value of assets in the European Union of the third-country group set out in paragraph 4 of the foregoing Article shall be the sum of the following:

(a) the total value of assets of each institution in the European Union of the third-country group, as resulting from its consolidated balance sheet or as resulting from their individual balance sheet, where an institution's balance sheet is not consolidated; and

(b) the total value of each branch of the third-country group authorised in the European Union under this regime and the national or Union law on markets in financial instruments.

2 - For the purposes of the foregoing Article and the foregoing paragraph, investment firms shall also be considered an institution.

Article 132-F

Notification to the European Banking Authority

The Banco de Portugal shall notify the European Banking Authority of the following information concerning each third-country group operating in its jurisdiction:

(a) the name and total value of assets of supervised institutions within a third-country group;

(b) the name and the total value of assets corresponding to branches authorised in that Member State under this regime, the national or Union law on markets in financial instruments, and the types of activities they are authorised to carry out;

(c) the name and types of EU intermediate parent undertakings incorporated in that Member State and the name of the third-country group of which it is part.

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Article 133
Other rules

The Banco de Portugal may, by means of a Notice, establish the rules necessary for supervision on a consolidated basis, namely:

(a) Rules defining the areas in which the supervision is to take place;

(b) Rules on the form and extent of consolidation;

(c) Rules on internal control procedures of companies covered by supervision on a consolidated basis, namely those necessary for providing the information relevant for supervision.

Article 133-A
Supervision of mixed financial holding companies

1 - Where a mixed financial holding company is subject to equivalent provisions under this Legal Framework and Decree-Law No 145/2006 of 31 July 2006, the Banco de Portugal may, after consulting the other competent authorities responsible for the supervision of subsidiaries, apply only the provisions provided for in that Decree-Law to that mixed financial holding company.

2 - Where a mixed financial holding company is subject to equivalent provisions under this Legal Framework and the legal framework governing the taking-up and pursuit of the business of insurance and reinsurance activity, approved in an annex to Law No 147/2015 of 9 September 2015, in particular in terms of risk-based supervision, the consolidating supervisor may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provisions relating to the most significant financial sector, as defined in Decree-Law No 145/2006 of 31 July 2006.

3 - The Banco de Portugal shall inform the European Banking Authority and the European Insurance and Occupational Pensions Authority of the decisions taken under paragraphs 1 and 2.

Article 134
Provision of information

1 - Institutions covered by the provisions of the foregoing Articles are obliged to submit to the Banco de Portugal all information required for supervision and relating to undertakings in which they own holdings.

2 - Undertakings in which institutions own holdings are obliged to provide those institutions with whatever information may be necessary for compliance with the provisions of the foregoing paragraph.

3 - When the parent undertaking of one or more credit institutions is a financial holding company, a mixed-activity holding company or a mixed financial holding company, these and their subsidiaries, including those not included in the framework of supervision on a consolidated basis, shall supply the Banco de Portugal with any information and clarification relevant for supervision.

4 - Institutions subject to supervision by the Banco de Portugal and in which credit institutions having their head office abroad own holdings shall be authorised to provide those participant institutions with all the information necessary for supervision on a consolidated basis by the competent authorities.

5 - The Banco de Portugal may, where deemed necessary for the supervision on a consolidated basis of credit institutions, carry out or have carried out by inspectors on-the-spot inspections of financial holding companies, mixed-activity holding companies or mixed financial holding companies and their subsidiaries, as well as in ancillary services companies.

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6 – The subsidiaries of a credit institution, financial holding company or mixed financial holding company not included in the framework of supervision on a consolidated basis shall present to the Banco de Portugal all the information relevant for supervision.

Article 135

Cooperation of supervisory authorities of other EC countries with the Banco de Portugal

1 - The Banco de Portugal may request the information that is necessary for supervision on a consolidated basis from the supervisory authorities of EU Member States where undertakings in which institutions own holdings have their head office.

2 - The Banco de Portugal may also request the following authorities to provide the information necessary for supervision on a consolidated basis:

(a) Competent authorities of EU Member States where head offices have been established by financial holding companies, mixed financial holding companies or companies that are parent undertakings of credit institutions having their head office in Portugal;

(b) Competent authorities of EU Member States where head offices have been established by credit institutions that are subsidiaries of the above financial holding companies or mixed financial holding companies.

3 - In addition, the Banco de Portugal may, for the same purpose, request the above authorities to check the information it has concerning undertakings in which institutions own holdings, or to authorise the Banco de Portugal to check such information, either directly or through the intermediary of a person or entity they appoint for that purpose.

Article 135-A

Responsibilities of the Banco de Portugal at EU level

1 - The Banco de Portugal, as the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies, shall carry out the following tasks:

(a) Coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations;

(b) Planning and coordination of supervisory activities in going concern situations, including in relation to the activities referred to in Article 116-A to 116-C, concerning the credit institutions' internal assessment and public disclosure of information, in cooperation with the competent authorities involved;

(c) Planning and coordination of supervisory activities in cooperation with the competent authorities involved, and if necessary with the central banks of the European System of Central Banks, in preparation for and during emergency situations, including adverse developments in credit institutions or in financial markets.

2 - Where the competent authorities referred to in the foregoing paragraph fail to cooperate with the Banco de Portugal in carrying out the tasks in the same paragraph, the Banco de Portugal may refer the matter to the European Banking Authority and request its assistance, in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, without prejudice to assistance by the European Banking Authority, on its own

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initiative.

3 - The planning and coordination of supervisory authorities referred to in paragraph 1*(c)* includes the exceptional measures referred to in Article 137-D(2)*(d)*, the preparation of joint assessments, the implementation of contingency plans and communication to the public.

Article 135-B
Colleges of supervisors

1 - The Banco de Portugal, as the consolidating supervisor, shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Articles 135-A, 135-C and 137-A and, subject to the requirements under Article 82, ensure appropriate coordination and cooperation with relevant third-country competent authorities where appropriate.

2 - Colleges of supervisors shall provide a framework for the Banco de Portugal, in close cooperation with the other competent authorities and the European Banking Authority, to carry out the following tasks:

(a) Exchange information between them and with the European Banking Authority, in accordance with Article 21 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010;

(b) Agree on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;

(c) Determine supervisory examination programmes based on a risk assessment of the group to review the arrangements, strategies, processes and mechanisms implemented by the credit institutions to comply with the applicable EU Directives and evaluate the risks to which the credit institutions are or might be exposed;

(d) Increase the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Articles 137 to 137-E;

(e) Consistently apply the prudential requirements across all entities within a banking group without prejudice to the options and discretions available in legislation;

(f) Apply Article 135-A(1)*(c)* taking into account the work of other forums that may be set up in this area.

3 - For the purposes of paragraph 1 of the foregoing Article, Article 137-A(1) and Article 137-B(1) and (2), the Banco de Portugal, as the consolidating supervisor, shall also establish colleges of supervisors where:

(a) all the cross-border subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company have their head offices in third countries; and

(b) third countries' supervisory authorities are subject to confidentiality requirements that are equivalent to the requirements laid down in Articles 80, 81, 82 and 82-A.

4 - The duty of professional secrecy under Article 80 shall not prevent the Banco de Portugal from exchanging information within colleges of supervisors.

5 - The establishment and functioning of the colleges of supervisors shall be based on the written arrangements referred to in Article 137-B, determined after consulting competent authorities concerned, and shall not affect the rights and responsibilities of the Banco de Portugal under the law.

6 - The following entities may participate in colleges of supervisors:

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(a) The competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company;

(b) The competent authorities of a host country where significant branches are established;

(c) The central banks of Member States where the subsidiaries and branches referred to in the foregoing subparagraphs are established;

(d) The competent authorities of third countries where the subsidiaries and branches referred to in the foregoing subparagraphs are established and subject to the requirements of Article 82;

(e) The European Banking Authority.

7 - The competent authority in the Member State where a financial holding company or a mixed financial holding company that has been granted authorisation in accordance with Chapter IV-A of Title II is established may also participate in the relevant colleges of supervisors.

8 - The Banco de Portugal, as the consolidating supervisor, shall:

(a) Chair the meetings of the colleges of supervisors and decide which competent authorities participate in a meeting or in an activity of the college;

(b) Keep all the members of the college fully informed, in a timely manner, of the organisation of such meetings, the main issues to be discussed and the activities to be carried out, as well as the actions taken or the measures adopted in those meetings.

9 - The decisions of the Banco de Portugal shall take account of the relevance for the authorities referred to in the foregoing paragraph of the supervisory activity to be planned or coordinated, in particular the potential impact on the stability of the financial system in the Member States concerned referred to in Article 93(3) and the obligations referred to in Article 40-A.

10- The Banco de Portugal, subject to the obligation of professional secrecy, shall inform the European Banking Authority of the activities of the colleges of supervisors, including in emergency situations, and communicate to that Authority all information that is of particular relevance for the purposes of supervisory convergence.

11 - In the event of disagreement between competent authorities on the functioning of supervisory colleges, the Banco de Portugal may refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010.

Article 135-C

Joint decision processes

1 - The consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries, in an EU Member State, of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company shall do everything within their power to reach a joint decision on:

(a) the internal capital adequacy assessment process and the review and evaluation process, to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile;

(b) the required level of own funds for the application of the measures under Article 116-D to each entity within the group and on a consolidated basis;

(c) measures to analyse and address any significant matters and material findings relating to liquidity supervision including relating to the adequacy of the organisation and the treatment of

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liquidity risks and relating to the need for institution-specific liquidity requirements;

(d) Possible guidance on additional own funds.

2 - The joint decisions mentioned in the foregoing paragraph:

(a) for the purposes of subparagraphs *(a)* and *(b)* of the foregoing paragraph, shall be adopted within four months of submission by the consolidating supervisor of a report containing the risk assessment of the group in accordance with Article 116-D to the other relevant competent authorities;

(b) for the purposes of subparagraph *(c)* of the foregoing paragraph, shall be adopted within four months of submission by the consolidating supervisor of a report containing the assessment of the liquidity risk of the group in accordance with Articles 115-U and 116-AG to the other relevant competent authorities;

(c) for the purposes of subparagraph *(d)* of the foregoing paragraph, shall be adopted within four months of submission by the consolidating supervisor of a report containing the risk assessment of the group in accordance with Article 116-E to the other relevant competent authorities;

(d) shall include the risk assessments of subsidiaries carried out by the relevant competent authorities relating to the internal capital adequacy assessment process, the review and evaluation process, the additional own funds requirements and guidance on additional own funds;

(e) for the purposes of subparagraphs *(a)*, *(b)* and *(c)* of the foregoing paragraph, shall be adopted in writing, fully reasoned and communicated by the consolidating supervisor to the EU parent credit institution.

3 - In the event of disagreement between the competent authorities under paragraph 1, the consolidating supervisor shall consult the European Banking Authority at the request of any of the other competent authorities concerned or on its own initiative.

4 - In the absence of such a joint decision between the competent authorities within the time periods referred to in paragraph 2, a decision shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities.

5 - The power to take decisions on an individual or sub-consolidated basis lies with the competent authorities responsible for supervision of subsidiaries of EU parent credit institutions, an EU parent financial holding companies or EU parent mixed financial holding companies after duly considering the views and reservations expressed by the consolidating supervisor.

6 - If, before the end of the time periods referred to in paragraph 2, or before adopting a joint decision, any of the competent authorities concerned has referred the matter to the European Banking Authority in accordance with and for the purposes of Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, the consolidating supervisor shall await any decision that the European Banking Authority may take, and shall take its decision in conformity with the decision adopted by this authority.

7 - The decisions referred to in paragraphs 4 and 5 shall be set out in a document containing full reasons and shall take into account the risk assessment, views and reservations of the other competent authorities expressed during the time periods referred to in paragraph 2.

8 - Where the European Banking Authority has been consulted, all the competent authorities shall consider its advice, and explain any significant deviation therefrom.

9 - The decisions referred to in paragraphs 4 and 5 shall be provided by the consolidating supervisor to all competent authorities concerned and to the EU parent credit institution.

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10 - The decisions referred to in paragraphs 1, 4 and 5 shall be recognised as determinative and applied equally by the competent authorities in the Member States concerned.

11 - The decisions referred to in paragraphs 1, 4 and 5 shall be updated:

(a) on an annual basis; or

(b) in exceptional circumstances, where the competent authority responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company makes a written and fully reasoned request to the consolidating supervisor to update the decision on the application of measures under Article 116-D, on guidance on additional own funds or on the decision on specific liquidity requirements under Article 116-AG.

12 - In the case referred to in subparagraph *(b)* of the foregoing paragraph, the update may be addressed only between the consolidating supervisor and the competent authority making the request.

Article 136

Cooperation with the Portuguese Insurance and Pension Funds Supervisory Authority

1 – The Portuguese Insurance and Pension Funds Supervisory Authority and the Banco de Portugal shall cooperate with each other where a credit institution, a financial holding company, a mixed financial holding company or a mixed-activity holding company controls one or more subsidiaries subject to supervision by that former authority, by exchanging all information required for supervision on a consolidated basis.

2 – Where the Portuguese Insurance and Pension Funds Supervisory Authority is the coordinator of the financial conglomerate, in accordance with Decree-Law No 145/2006 of 31 July 2006, that authority and the Banco de Portugal shall cooperate for the purposes of applying the legal framework of the aforementioned Decree-Law and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on a consolidated basis, in accordance with a written coordination and cooperation arrangement.

Article 137

Cooperation with other supervisory authorities of EU Member States

1 - For the purpose of supervision on a consolidated basis of the financial situation of credit institutions having their head office in other EU Member States, the Banco de Portugal shall supply the competent supervisory authorities with whatever information it possesses or may obtain in respect of the institutions which it supervises and in which those institutions have participations.

2 - When, for the purpose mentioned in the foregoing paragraph, the supervisory authority of another EU Member State requests the checking of information concerning institutions which are subject to the Banco de Portugal's supervision and have their head office within Portuguese territory, the Banco de Portugal shall carry out this check or allow it to be carried out by the authority which requested it, either directly or through the intermediary of a person or entity they appoint for that purpose.

3 - The supervisory authority which made the request may, if it so wishes, participate in the check where it does not carry out the check itself.

4 - Where the consolidating supervisor is other than the coordinator as determined in accordance with Decree-Law No 145/2006 of 31 July 2006, the consolidating supervisor and the coordinator shall cooperate for the purposes of applying this Legal Framework and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on a consolidated basis, in accordance with a written coordination and cooperation arrangement.

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Article 137-A

Cooperation in emergency situations

1 - Where an emergency situation arises, including adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the European Union, under Article 18 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, or adverse developments in financial markets which potentially jeopardise market liquidity and the stability of the financial system in any of the Member States where entities of a group have been authorised or where significant branches as referred to in Article 40-A are established, the Banco de Portugal, in its capacity as the competent authority responsible for the exercise of supervision on a consolidated or individual basis, shall alert as soon as is practicable the following bodies:

(a) the European Banking Authority;

(b) the European Systemic Risk Board;

(c) the authorities responsible for the supervision on an individual or consolidated basis of the entities concerned;

(d) central banks of the European System of Central Banks, when this information is relevant for the exercise of their respective statutory tasks, including the implementation of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system;

(e) departments of central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance undertakings and inspectors acting on behalf of those departments.

2 - Whenever the Banco de Portugal needs information which has already been provided to another competent authority, it may contact this authority directly whenever possible without the express consent of the entity which has disclosed it.

3 - the Banco de Portugal shall provide the competent authority responsible for supervision on a consolidated basis with the information that has come to its knowledge and which has been requested to it, under the terms of the foregoing paragraph.

Article 137-B

Written arrangements

1 - The Banco de Portugal shall have in place written coordination and cooperation arrangements with other competent authorities, in order to facilitate and establish effective supervision.

2 - Under the arrangements referred to in the foregoing paragraph, additional tasks may be entrusted to the consolidating supervisor and procedures for the decision-making process and for cooperation with other competent authorities may be specified.

3 - The Banco de Portugal, as the competent authority responsible for authorising the subsidiary of a parent undertaking which is a credit institution, may, by bilateral agreement and after informing the European Banking Authority, delegate its responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking.

4 - Coordination and cooperation arrangements shall also be concluded with the competent authority of the Member State where the parent undertaking is established, where the consolidating supervisor is different from the competent authority in the Member State where a financial holding company or mixed financial holding company granted authorisation in accordance with Chapter IV-A of Title II is established.

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Article 137-C
Exchange of information

1 - The Banco de Portugal and the other competent authorities shall cooperate closely with each other, providing one another with any information which is essential or relevant for the exercise of the supervisory tasks.

2 - The Banco de Portugal shall ask and communicate on request to the competent authorities all relevant information and shall communicate on its own initiative all essential information.

3 - The Banco de Portugal shall also provide the European Banking Authority with all information necessary to carry out its duties under relevant European Directives and under Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010.

4 - The Banco de Portugal may refer to the European Banking Authority the situations:

(a) where a competent authority has not communicated essential information;

(b) where a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time limit.

5 - The Banco de Portugal, as the consolidating supervisor of EU parent credit institutions and credit institutions controlled by parent financial holding companies or parent mixed financial holding companies having their head office in the EU, shall provide the competent authorities in other Member States who supervise subsidiaries of those parent undertakings with all relevant information.

6 - In determining the extent of relevant information referred to in the foregoing paragraph, the importance of those subsidiaries within the financial system in those Member States shall be taken into account.

Article 137-D
Essential information

1 - Information shall be regarded as essential if it could influence the assessment of the financial soundness of a credit institution or financial institution in another Member State.

2 - The essential information shall include, in particular, the following items:

(a) identification of the group's legal, organisational and governance structure, including all regulated and non-regulated entities, and significant branches belonging to the group, as well as the parent undertakings, and the competent authorities of the regulated entities in the group;

(b) procedures for the collection of information from the credit institutions in a group, and the checking of that information;

(c) adverse developments in credit institutions or in other entities of a group, which could seriously affect the credit institutions; and

(d) significant penalties and exceptional measures taken by competent authorities, including the imposition of additional own funds requirements under Article 116-C and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements.

Article 137-E
Mutual consultation

1 - The Banco de Portugal and the other competent authorities referred to in Article 131 shall consult each other with regard to the following items, where these decisions are of importance for

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other competent authorities' supervisory tasks:

(a) changes in the shareholder, organisational or management structure of credit institutions in a group, which require the approval or authorisation of competent authorities; and

(b) significant penalties and exceptional measures taken by competent authorities, including the imposition of additional own funds requirements under Article 116-C and the imposition of any limitation on the use of the Advanced Measurement Approach for the calculation of the own funds requirements.

2 - For the purposes of subparagraph *(b)* of the foregoing paragraph, the consolidating supervisor shall always be consulted.

3 - The Banco de Portugal may decide not to make the consultations referred to in this Article in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions.

4 - In the case referred to in the foregoing paragraph, the Banco de Portugal shall, without delay, inform the other competent authorities.

Article 137-F

Cooperation for preventing money laundering and terrorist financing

1 – The Banco de Portugal shall cooperate closely with the following entities for the prevention of money laundering and terrorist financing by credit institutions and financial institutions and other entities of similar nature, within the scope of their powers:

(a) the relevant competent authorities and the authorities responsible for overseeing such legislation;

(b) the Central Department for Criminal Investigation and Prosecution of the Public Prosecutor's Office;

(c) the Financial Intelligence Unit and financial intelligence units of other Member States.

2 – The cooperation referred to in the foregoing paragraph shall include the exchange of information relevant for the exercise of the Banco de Portugal's tasks under this Legal Framework, Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, or legislation on the prevention of money laundering and terrorist financing.

3 – The provisions of the foregoing paragraphs shall not affect ongoing inquiries, investigations or proceedings in accordance with the law of the Member State where the competent authority, financial intelligence unit or authority responsible for overseeing legislation on the prevention of money laundering and terrorist financing by credit and financial institutions and other entities of similar nature is located.

Article 138

Cooperation with third-country supervisory authorities

The cooperation referred to in Articles 135 and 137 may likewise take place with the supervisory authorities of non-EC Member States, within the scope of reciprocal cooperation arrangements which may have been concluded, and without prejudice to the provisions of Article 82.

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TITLE VII-A
Capital buffers

SECTION I
GENERAL PROVISIONS

Article 138-A
Competent authority

1 – The Banco de Portugal is the competent authority for applying:

(a) the capital buffer requirements specified in Sections III to V of this Title;
(b) [*repealed*];
(c) the provisions laid down in Articles 124, 164 and 458 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

2 – For the purposes of the foregoing paragraph, the Banco de Portugal shall act as the national macroprudential authority, in accordance with Article 12*(c)* of Law No 5/98 of 31 January 1998 and Article 2 of Decree-Law No 228/2000 of 23 September 2000.

Article 138-B
Definitions and general provisions for capital buffers

1 – For the purposes of this Article, the following definitions shall apply regarding capital buffers:

(a) "capital conservation buffer" means the own funds that a credit institution is required to maintain in accordance with Article 138-D;
(b) "institution-specific countercyclical capital buffer" means the own funds that a credit institution is required to maintain in accordance with Article 138-E;
(c) "global systemically important institution buffer" or "G-SII buffer" means the own funds that are required to be maintained in accordance with Article 138-P(1);
(d) "other systemically important institution buffer" or "O-SII buffer" means the own funds that may be required to be maintained in accordance with Article 138-R;
(e) "systemic risk buffer" means the own funds that a credit institution may be required to maintain in accordance with Articles 138-U to 138-Y.

2 – For the purposes of this Article, the following definitions shall also apply:

(a) "other systemically important institution" or "O-SII" means a credit institution or group headed by an EU parent credit institution, an EU parent financial holding company, an EU parent mixed financial holding company, a parent institution in Portugal, a parent financial holding company in Portugal or a parent mixed financial holding company in Portugal, whose insolvency or financial imbalance may give rise to a systemic risk, and which has been identified as such in accordance with Article 138-Q;
(b) "global systemically important institution" or "G-SII" means a group headed by an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company or a credit institution that is not a subsidiary of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company, whose

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insolvency or financial imbalance may give rise to a global systemic risk and which has been identified as such in accordance with Article 138-N;

(c) "total risk exposure amount" means the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(d) "countercyclical buffer rate" means the rate that credit institutions must apply in order to calculate their institution-specific countercyclical capital buffer, and that is set in accordance with Article 138-F to Article 138-J or by a relevant third-country authority, as applicable;

(e) "institution-specific countercyclical capital buffer rate" means the rate calculated in accordance with Article 138-L(1);

(f) "buffer guide" means a benchmark countercyclical buffer rate calculated in accordance with Article 138-F;

(g) "combined buffer requirement" means the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended by the following, as applicable:

(i) an institution-specific countercyclical capital buffer;

(ii) a G-SII buffer;

(iii) an O-SII buffer;

(iv) a systemic risk buffer.

3 – [R*epealed*.]

4 – Credit institutions shall not use Common Equity Tier 1 capital that is maintained to meet the combined buffer requirement for the purposes of meeting any of the following:

(a) the own funds requirements set out in Article 92(1)(a) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(b) the additional own funds requirements imposed pursuant to Article 116-D to address risks other than the risk of excessive leverage;

(c) the guidance communicated in accordance with Article 116-E to address risks other than the risk of excessive leverage;

(d) the requirements for own funds and eligible liabilities for G-SIIs and for own funds and eligible liabilities for non-EU G-SIIs set out in Articles 92-A and 92-B of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, where risk-based;

(e) the minimum requirements for own funds and eligible liabilities set out in Articles 138-AV to 138-AX, 138-BD, 138-BF and 138-BI(1), where risk-based.

5 – Credit institutions shall not use Common Equity Tier 1 capital that is maintained to meet one of the elements of the combined buffer requirement to meet the other applicable elements of its combined buffer requirement.

Article 138-C
Applicability
[*Repealed*].

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SECTION II
CAPITAL CONSERVATION BUFFER

Article 138-D
Capital conservation buffer

1 – Credit institutions shall maintain a capital conservation buffer of Common Equity Tier 1 capital equal to 2.5% of their total risk exposure amount on an individual and consolidated basis, as applicable.

2 – [*Repealed.*]

3 – Credit institutions failing to meet fully the requirement under paragraph 1 shall be subject to the restrictions set out in Article 138-AA(2) to (4).

SECTION III
INSTITUTION-SPECIFIC COUNTERCYCLICAL CAPITAL BUFFER

Article 138-E
Countercyclical buffer

1 – Credit institutions shall maintain an institution-specific countercyclical capital buffer of Common Equity Tier 1 capital, equivalent to their total risk exposure amount multiplied by the countercyclical buffer rates calculated in accordance with Articles 138-L and 138-M on an individual and consolidated basis, as applicable.

2 – [*Repealed.*]

3 – Credit institutions failing to meet fully the requirement under paragraph 1 shall be subject to the restrictions set out in Article 138-AA(2) to (4).

Article 138-F
Buffer guide

1 – The Banco de Portugal calculates for every quarter the buffer guide as a basis for setting the countercyclical buffer rate in accordance with Article 138-G(1).

2 – In setting the buffer guide the Banco de Portugal must take into account the following principles:

(a) reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in Portugal;

(b) take into account the specificities of the national economy;

(c) be based on the deviation of the ratio of credit to gross domestic product (GDP) from its long-term trend, taking into account, inter alia:

(i) an indicator of growth of levels of credit within Portugal and, in particular, an indicator reflective of the changes in the ratio of credit granted in Portugal to GDP;

(ii) the current guidance maintained by the European Systemic Risk Board regarding the measurement and calculation of deviation from the long-term trends of the credit-to-GDP ratio and calculation of the buffer guides.

Article 138-G
Setting the countercyclical buffer rate

1 – The Banco de Portugal shall assess the intensity of cyclical systemic risk and the

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appropriateness of the countercyclical buffer rate for Portugal on a quarterly basis and set or adjust that percentage, if necessary, taking into account the following:

(a) the buffer guide calculated in accordance with the foregoing paragraph;
(b) the current guidance maintained by the European Systemic Risk Board in accordance with:

(i) the principles to guide designated authorities when exercising their judgment as to the appropriate countercyclical buffer rate, to ensure that they adopt a sound approach in assessing the relevant macroeconomic cycles and to promote sound and consistent decision-making across Member States;
(ii) the variables that indicate the existence of system-wide risk associated with periods of excessive credit growth in the financial system, namely the relevant credit-to-GDP ratio and its deviation from the long-term trend, and on other relevant factors, including the treatment of economic developments within individual sectors of the economy, that should inform the decisions on the appropriate countercyclical buffer rate;
(iii) the variables, including qualitative criteria, used to indicate that the countercyclical buffer should be maintained, reduced or fully released;

(c) any other elements that the Banco de Portugal considers relevant for addressing cyclical systemic risk.

2 – The countercyclical buffer rate shall be between 0% and 2.5% of the total risk exposure amount in Portugal, calibrated in steps of 0.25 percentage points or multiples thereof.
3 – Where justified on the basis of the considerations set out in paragraph 1, the Banco de Portugal may set a countercyclical buffer rate higher than 2.5% of the total risk exposure amount.

Article 138-H
Deadline for applying the countercyclical buffer

1 – Where the Banco de Portugal sets the countercyclical buffer rate above zero for the first time, or where, thereafter, it increases it, that increased buffer rate shall apply for the purposes of calculating their institution-specific countercyclical capital buffer 12 months after the date of the announcement in accordance with Article 138-I, unless the Banco de Portugal determines that a shorter deadline for application shall be justified on the basis of exceptional circumstances.
2 – If the Banco de Portugal reduces the existing countercyclical buffer rate, it shall also announce an indicative period during which no increase in the buffer rate is expected.

Article 138-I
Disclosures regarding the countercyclical buffer

1 – The Banco de Portugal shall disclose on its website at least the following information on a quarterly basis:

(a) the applicable countercyclical buffer rate;
(b) the relevant credit-to-GDP ratio and its deviation from the long-term trend;
(c) the buffer guide calculated in accordance with Article 138-F;
(d) the justification for that buffer rate;
(e) where the countercyclical buffer rate is increased, the date from which the credit institutions must apply that buffer rate for the purposes of calculating their institution-specific countercyclical

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capital buffer;

(f) where the date referred to in the foregoing subparagraph is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application;

(g) where the countercyclical buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period.

2 – The Banco de Portugal shall take all reasonable steps to coordinate the timing of the announcement referred to in the foregoing paragraph with the designated authorities of the other Member States.

3 – The Banco de Portugal shall notify the European Systemic Risk Board of any changes to the quarterly setting of the countercyclical buffer rate and the information referred to in paragraph 1.

Article 138-J

Recognition of the countercyclical buffer rate

1 – The Banco de Portugal may recognise a countercyclical buffer rate higher than of 2.5% of the total risk exposure amount, set by a designated authority in an EU Member State responsible for setting that rate or by a relevant third-country authority with that responsibility, for the purposes of calculating the institution-specific countercyclical capital buffer.

2 – For the purposes of the foregoing paragraph, the Banco de Portugal shall publish on its website recognition of the countercyclical buffer rate higher than 2.5% of the total risk exposure amount, including the following:

(a) the applicable countercyclical buffer rate;

(b) the Member State or third countries to which it applies;

(c) where the countercyclical buffer rate is increased, the date from which the new value applies;

(d) where the date referred to in the foregoing paragraph is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

Article 138-K

Decision on third-country countercyclical buffer rates

1 – The Banco de Portugal may set the countercyclical buffer rate applying to credit institutions for the purposes of calculating the specific countercyclical buffer for exposures to a third country where the relevant authority of that third country:

(a) has not set and published a countercyclical buffer rate applicable to that country;

(b) has set and published a countercyclical buffer rate applicable to that country, but the Banco de Portugal has reasonable grounds to consider that it is not sufficient to protect credit institutions appropriately from the risks of excessive credit growth in that country, in which case it shall set and publish a different buffer rate.

2 – For the purposes of *(b)* of the foregoing paragraph, the Banco de Portugal shall not set a countercyclical buffer rate below the level set by the relevant third-country authority unless that buffer rate exceeds 2.5%, expressed as a percentage of the total risk exposure amount of institutions that have credit exposures in that third country.

3 – Where, pursuant to the foregoing paragraphs, the Banco de Portugal increases the

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countercyclical buffer rate, that buffer rate is applicable for the purposes of calculating their institution-specific countercyclical capital buffer 12 months from the date when the buffer rate is announced in accordance with the following paragraph, unless the Banco de Portugal determines that that buffer rate is applicable with a shorter deadline, justified on the basis of exceptional circumstances.

4 – The Banco de Portugal shall publish any setting of a countercyclical buffer rate for a third country pursuant to this Article on its website, including the following information:

(a) the countercyclical buffer rate and the third country to which it applies;

(b) the justification for that countercyclical buffer rate;

(c) where the buffer rate is set above zero for the first time or thereafter is increased, the date from which the credit institutions must apply that increased buffer rate for the purposes of calculating their institution-specific countercyclical capital buffer;

(d) where the date set out in the foregoing paragraph is less than 12 months after the date of the publication under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline.

Article 138-L

Calculation of institution-specific countercyclical capital buffer rate

1 – The institution-specific countercyclical capital buffer rate shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the credit institution are located or are applied for the purposes of this Article by virtue of Article 138-K(1) and (2).

2 – In order to calculate the weighted average referred to in the foregoing paragraph, the credit institutions shall apply to each applicable countercyclical buffer rate its total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, that relates to the relevant credit exposures in the jurisdiction in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit exposures.

3 – If a designated authority of an EU Member State or third country sets a countercyclical buffer rate higher than 2.5% of the total risk exposure amount, the buffer rate set out in the following paragraph shall apply to relevant credit exposures located in that Member State or third country for the purposes of the calculation on a consolidated basis.

4 – For the purposes of the foregoing paragraph, if the Banco de Portugal has recognised the countercyclical buffer rate in accordance with Article 138-J, credit institutions shall apply that buffer rate set by the relevant designated authority; otherwise, a countercyclical buffer rate of 2.5% of the total risk exposure amount shall apply.

5 – Relevant credit exposures shall include all those exposure classes, other than those referred to in Article 112*(a)* to *(f)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, that are subject to:

(a) the own funds requirements for credit risk under Part Three, Title II of that Regulation;

(b) where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of that Regulation or incremental default and migration risk under Part Three, Title IV, Chapter 5 of that Regulation;

(c) where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of that Regulation.

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6 – Credit institutions shall identify the geographical location of relevant credit exposures.

Article 138-M
Date of application of institution-specific countercyclical capital buffer rate

1 – Where the Banco de Portugal or the designated authorities of other EU Member States determine an increase in the countercyclical buffer rate, it shall apply from the date published by the Banco de Portugal or those authorities on their respective websites.

2 – Where the buffer rate is increased, the countercyclical buffer rates for third countries shall apply 12 months after the date on which a change of that buffer rate is announced by the relevant third-country authorities, without prejudice to those authorities demanding that the changes shall apply to the credit institutions established in the respective countries within shorter period.

3 – For the purposes of the foregoing paragraph, a change in the countercyclical buffer rate for a third country shall be considered to be announced on the date that it is published by the relevant third-country authority in accordance with the applicable national rules.

4 – Where the Banco de Portugal sets or recognises the countercyclical buffer rate for a third country pursuant to Article 138-K or Article 138-J such that that buffer rate increases, the increased buffer rate shall apply from the date specified in Article 138-K(4)(*c)* or Article 138-J(2)(*c)*.

5 – If the countercyclical buffer rate is reduced, the rate shall apply immediately.

SECTION IV
BUFFERS FOR SYSTEMICALLY IMPORTANT INSTITUTIONS

Article 138-N
Identification of the G-SIIs

1 – [*Repealed*.]

2 – The Banco de Portugal shall identify, on a consolidated basis, G-SIIs in accordance with a methodology based on the following criteria:

(a) size of the group;
(b) interconnectedness of the group with the financial system;
(c) substitutability of the services or of the financial infrastructure provided by the group;
(d) complexity of the group;
(e) cross-border activity of the group.

3 – For the purposes of the foregoing paragraph, the criteria shall receive an equal weighting and shall consist of quantifiable indicators.

4 – The methodology shall produce an overall score for each entity as referred to in Article 138-B(2)(*b)*, which is assessed to allow G-SIIs to be identified and allocated into a sub-category as described in Article 138-O.

5 – The Banco de Portugal also uses an additional methodology to identify G-SIIs based on the following criteria:

(a) the criteria referred to in paragraph 2(a) to (d);
(b) cross-border activity of the group, excluding the group's activities across participating Member States as referred to in Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014.

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6 – For the purposes of the foregoing paragraph, the criteria shall receive an equal weighting and shall consist of quantifiable indicators.

7 – The indicators of the criteria referred to in paragraph 5*(a)* shall be the same as the corresponding indicators determined in accordance with paragraph 3.

8 – The methodology shall produce an additional overall score for each entity as referred to in Article 138-B(2)*(b)*, on the basis of which the Banco de Portugal may take the measure of re-allocation of the sub-category of a G-SII referred to in paragraph (3)*(c)* of the following Article.

Article 138-O
G-SII sub-categories

1 – G-SIIs are allocated into at least five sub-categories under the following criteria:

(a) the lowest boundary and the boundaries between each sub-category shall be determined by the scores under the identification methodology provided for in paragraph 2 of the foregoing Article;

(b) the cut-off scores between adjacent sub-categories shall be defined clearly and be in accordance with the principle that there is a constant linear increase of systemic significance between each sub-category, resulting in a linear increase in the G-SII buffer, with the exception of sub-category five and any added higher sub-category.

2 – For the purposes of the foregoing paragraph, systemic significance is the expected impact exerted by the G-SII's distress on the global financial market.

3 – Taking into account the sub-categories and the cut-off scores provided for in paragraph 1, the Banco de Portugal may, with justification, in the exercise of its supervisory powers, decide to:

(a) re-allocate a G-SII to a higher sub-category;

(b) allocate an entity as referred to in Article 138-B(2)*(b)* that has an overall score in accordance with the methodology set out in paragraph 2 of the foregoing Article that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, and designate it as a G-SII;

(c) re-allocate a G-SII from a higher sub-category to a lower sub-category, on the basis of the additional G-SII identification score referred to in paragraphs 5 to 8 of the foregoing Article and taking into account the Single Resolution Mechanism.

4 – [*Repealed.*]

Article 138-P
G-SII buffer

1 – Each G-SII shall, on a consolidated basis, maintain a G-SII buffer consisting of Common Equity Tier 1 capital which shall correspond to the sub-category to which the G-SII is allocated, according to the following:

(a) the lowest sub-category shall require a buffer of 1% of the total risk exposure amount;

(b) for subsequent sub-categories, the capital buffer requirement for each sub-category shall increase in gradients of at least 0.5% of the total risk exposure amount;

(c) [*repealed.*]

2 – [R*epealed.*]

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Article 138-Q
Identification of the O-SIIs

1 – The Banco de Portugal shall be responsible for identifying O-SIIs on an individual, sub-consolidated or consolidated basis, as applicable.

2 – O-SIIs shall be identified according to an assessment based on at least one of the following criteria:

(a) size;
(b) importance for the economy of the European Union or of Portugal;
(c) significance of cross-border activities;
(d) interconnectedness of the credit institution or group, as applicable, with the financial system.

Article 138-R
O-SII buffer

1 – The Banco de Portugal may require each O-SII, on a consolidated, sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer consisting of Common Equity Tier 1 capital of up to 3% of the total risk exposure amount, taking into account the criteria to identify the O-SIIs.

2 – When requiring an O-SII buffer to be maintained, the Banco de Portugal shall review that requirement annually and ensure that it does not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union, forming or creating an obstacle to the functioning of the internal market.

3 – [*Repealed.*]

4 – The Banco de Portugal may require each O-SII, on a consolidated, sub-consolidated or individual basis, as applicable, to maintain an O-SII buffer consisting of Common Equity Tier 1 capital of more than 3% of the total risk exposure amount, subject to authorisation from the European Commission.

Article 138-S
Coinciding G-SII and O-SII buffer requirements

1 – Without prejudice to the foregoing Article and the provisions on the systemic risk buffer, where an O-SII is a subsidiary of either a G-SII or an O-SII which is either a credit institution or a group headed by an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company, and subject to an O-SII buffer on a consolidated basis, the buffer that applies on an individual or sub-consolidated basis to the subsidiary O-SII shall not exceed the lower of:

(a) the sum of the higher of the G-SII or the O-SII buffer rate applicable to the group on a consolidated basis and 1% of the total risk exposure; and
(b) 3% of the total risk exposure amount or the rate that the Commission has authorised to be applied to the group on a consolidated basis in accordance with paragraph 4 of the foregoing Article.

2 – Where a group, on a consolidated basis, is subject to a G-SII buffer and an O-SII buffer, the higher of the two shall apply.

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Article 138-T
Notification, review and disclosure regarding G-SIIs and O-SIIs

1 – The Banco de Portugal shall notify the European Systemic Risk Board of the following:

(a) the company or business name of the G-SIIs and O-SIIs; and
(b) the sub-category to which each G-SII is allocated, including the reasons for the decision to re-allocate or not to re-allocate sub-categories.

2 – The Banco de Portugal shall disclose on its website:

(a) an updated list of identified systemically important institutions; and
(b) the sub-category into which each identified G-SII is allocated.

3 – The Banco de Portugal shall notify the European Systemic Risk Board, one or three months before the publication of its decision to maintain an O-SII buffer, in accordance with Article 138-R(1) or (4) respectively, including:

(a) the reasons for the effectiveness and proportionality of the O-SII buffer to mitigate the risk;
(b) the assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on the information available;
(c) the O-SII buffer rate that it wishes to set.

4 – The Banco de Portugal shall review annually the identification of G-SIIs and O-SIIs, under Article 138-N and Article 138-Q and the G-SII allocation into the respective sub-categories, under Article 138-O.

5 – The Banco de Portugal shall report the result of the annual review mentioned in the foregoing paragraph to the G-SIIs and the O-SIIs concerned, as well as to the European Systemic Risk Board, and shall disclose the updated list under paragraph 2.

SECTION V
SYSTEMIC RISK BUFFER

Article 138-U
Systemic risk buffer

1 – The Banco de Portugal may decide to apply a systemic risk buffer of Common Equity Tier 1 capital to all exposures, or a subset of those exposures, on an individual, sub-consolidated and consolidated basis to credit institutions subject to its supervision or to one or more subsets of those institutions:

(a) to prevent or mitigate systemic or macroprudential risks not covered by Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, or by the countercyclical and G-SII or O-SII buffers; and
(b) where such risks are likely to disrupt the financial system with potential serious consequences for the financial system and the Portuguese economy.

2 – Credit institutions shall calculate the systemic risk buffer as follows:

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$$B_{SR} = r_T \cdot E_T + \sum_i r_i \cdot E_i$$

where:

B_{SR} = the systemic risk buffer;

r_T = the buffer rate applicable to the total risk exposure amount of an institution;

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JnB ymj wxp j}utxzwj fr tzsytkfs rsxyzyrts ktwymj xzgxjytkj}utxzwjx3

3 – A systemic risk buffer may apply to:

(a) all exposures located in Portugal;

(b) the following sectoral exposures located in Portugal:

(i) all exposures to natural persons that are secured by residential property;

(ii) all exposures to natural persons excluding those specified in the foregoing subparagraph;

(iii) all exposures to legal persons that are secured by mortgages on commercial immovable property;

(iv) all exposures to legal persons excluding those specified in the foregoing subparagraph;

(c) all exposures located in other Member States, subject to Articles 138-V(8) and 138-W;

(d) sectoral exposures, as identified in subparagraph (b), located in other Member States only to enable recognition of a buffer rate set by another Member State in accordance with Article 138-Z;

(e) exposures located in third countries;

(f) subsets of any of the exposure categories identified in subparagraph (b).

4 – The systemic risk buffer shall be set in adjustment steps of 0.5% or multiples thereof. Different requirements may be introduced for different subsets of credit institutions or exposures.

5 – The Banco de Portugal may determine the maintenance of the systemic risk buffer only under the following conditions:

(a) the systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States, or of the European Union as a whole, forming or creating an obstacle to the functioning of the internal market;

(b) the systemic risk buffer is reviewed at least every second year.

(c) the systemic risk buffer is not to be used to address risks that are covered by the countercyclical and G-SII or O-SII buffers.

6 – [*Repealed*.]

7 – Credit institutions failing to meet fully the requirements under paragraph 1 shall be subject to the restrictions set out in Article 138-AA(2) to (4).

8 – Where the application of the restrictions mentioned in the foregoing paragraph leads to an unsatisfactory improvement of the Common Equity Tier 1 capital of the credit institution, in the light of the relevant systemic risk, the Banco de Portugal may take additional measures, both under its supervisory powers and through administrative procedures.

9 – Where the Banco de Portugal decides to set the systemic risk buffer based on exposures in other Member States, the buffer shall be set at the same level on all exposures located within the

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European Union, unless the buffer is set to recognise the systemic risk buffer rate set by another Member State in accordance with Article 138-Z.

Article 138-V

Procedure for notification and obtaining an opinion on the systemic risk buffer

1 – The Banco de Portugal shall notify:

(a) the European Systemic Risk Board:

(i) before the publication of the decision to require the systemic risk buffer; and
(ii) where it applies a systemic risk buffer rate to exposures located in third countries;

(b) the authorities of the Member State in which the parent undertaking of the subsidiary institution to which one or more systemic risk buffer rates apply is established.

2 – The notification referred to in the foregoing paragraph shall contain:

(a) the macroprudential or systemic risks in Portugal;
(b) the reasons why the dimension of the systemic or macroprudential risks threatens the stability of the Portuguese financial system justifying the systemic risk buffer rate;
(c) the justification for why it considers the systemic risk buffer to be effective and proportionate to mitigate the risk;
(d) the assessment of the likely positive or negative impact of the systemic risk buffer on the internal market, based on information available to the Banco de Portugal;
(e) [r*epealed*];
(f) the systemic risk buffer rate that it intends to impose and the exposures to which such rates shall apply and the institutions which shall be subject to such rates;
(g) where the systemic risk buffer rate applies to all exposures, a justification of why the Banco de Portugal considers that the systemic risk buffer is not duplicating the functioning of the O-SII buffer.

3 – [*Repealed.*]
4 – [*Repealed.*]
5 – [*Repealed.*]
6 – The setting of a systemic risk buffer rate which results in a decrease or no change from the previously set buffer rate shall be governed exclusively by the provisions of the foregoing paragraphs.
7 – Where the Banco de Portugal sets a systemic risk buffer rate or rates on any set or subset of exposures referred to in paragraph 3 of the foregoing Article that results in a combined systemic risk buffer rate equal to or less than 3%, it shall notify the European Systemic Risk Board one month before the publication of its decision.
8 – For the purposes of the foregoing paragraph, the recognition of a systemic risk buffer rate set by another Member State shall not count towards the 3% threshold.
9 – Where the Banco de Portugal sets a combined systemic risk buffer rate or rates higher than 3% and up to 5%, it shall comply with paragraphs 1 and 2 and request in the notification submitted the European Commission's opinion.
10 - The Banco de Portugal may adopt the measure, even if the opinion of the European Commission is negative, giving reasons for not accepting that opinion.
11 - If all credit institutions subject to the percentage set under paragraph 9 have a subsidiary

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whose parent undertaking is established in another Member State, the Banco de Portugal shall:

(a) request a recommendation from the European Commission and the European Systemic Risk Board in the notification submitted in accordance with paragraph 1;

(b) wait for these recommendations for six weeks.

12 - In accordance with the foregoing paragraph, in the event of disagreement by the authorities of that Member State and a negative recommendation of the European Commission and the European Systemic Risk Board, the Banco de Portugal may refer the matter to the European Banking Authority and request its assistance in accordance with Article 19 of Regulation No 1093/2010 of the European Parliament and of the Council of 24 November 2010. The decision to set the buffer rate or rates for those exposures shall be suspended until the European Banking Authority makes a decision.

Article 138-W

Authorisation procedure for the systemic risk buffer

1 – Where the Banco de Portugal sets a rate or rates on any set or subset of exposures that results in a combined systemic risk buffer rate higher than 5%, it shall follow the notification procedure set out in the foregoing Article and seek the authorisation of the European Commission before implementing a systemic risk buffer.

2 – [*Repealed.*]

3 – [*Repealed.*]

4 – [*Repealed*.]

Article 138-X

Coinciding G-SII and O-SII buffer and systemic risk buffer requirements

1 – [*Repealed*.]

2 – The systemic risk buffer, where applicable, shall be cumulative with the G-SII or O-SII buffer.

3 – [*Repealed*.]

4 – [*Repealed*.]

5 – Where the sum of the systemic risk buffer rate and the O-SII buffer rate or the G-SII buffer rate to which the same credit institution is subject is higher than 5%, authorisation by the European Commission shall be required in accordance with Article 138-R(4).

Article 138-Y

Announcement of the systemic risk buffer

The Banco de Portugal shall disclose the setting or resetting of one or more systemic risk buffer rates on its website, including at least the following information:

(a) the systemic risk buffer rate or rates;

(b) the credit institutions to which the systemic risk buffer applies;

(c) a justification for setting or resetting the systemic risk buffer rate or rates, unless such information were to jeopardise financial stability;

(d) the date from which the credit institutions shall apply the setting or resetting of the systemic risk buffer;

(e) the countries where exposures located in those countries are recognised in the systemic risk buffer;

(f) the exposures to which the systemic risk buffer rate or rates apply.

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Article 138-Z
Recognition of a systemic risk buffer rate

1 – The Banco de Portugal may recognise the systemic risk buffer rate set by another EU Member State, considering the information contained in its notification, setting the application of the rate to credit institutions' exposures in that Member State.

2 – The Banco de Portugal shall notify the European Systemic Risk Board of such recognition under the foregoing paragraph.

3 – Where the Banco de Portugal recognises a systemic risk buffer rate for domestically authorised credit institutions, it may apply such rate cumulatively with the systemic risk buffer rate set in accordance with Article 138-U, provided that the buffers address different risks.

4 – Where the buffers address the same risks, only the higher buffer shall apply.

5 – The Banco de Portugal may ask the European Systemic Risk Board to issue a recommendation to one or more EU Member States to recognise the systemic risk buffer rate set under the terms of this section.

SECTION VI
CAPITAL CONSERVATION MEASURES

Article 138-AA
Restrictions on distributions

1 – Credit institutions that meet the combined buffer requirement shall not make distributions relating to Common Equity Tier 1 capital to an extent that would decrease that capital to a level where the combined buffer requirement is no longer met.

2 – Credit institutions that fail to meet the combined buffer requirement shall calculate the Maximum Distributable Amount in accordance with Article 138-AB and shall notify the Banco de Portugal of that amount.

3 – Until they calculate the Maximum Distributable Amount, the credit institutions covered by the foregoing paragraph shall not undertake any of the following actions:

(a) distributions relating to Common Equity Tier 1;

(b) creation of an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the credit institution failed to meet the combined buffer requirements;

(c) payments on Additional Tier 1 instruments.

4 – Where an institution fails to meet or exceed its combined buffer requirement, it shall not distribute more than the Maximum Distributable Amount calculated in accordance with Article 138-AB, through any action referred to in the foregoing paragraph.

5 – The restrictions on distributions shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the credit institution.

6 – For the purposes of paragraphs 1 and 3, a distribution in connection with Common Equity Tier 1 capital shall include the following:

(a) the payment of cash dividends;

(b) the attribution of variable remuneration in the form of fully or partly paid shares or other

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capital instruments referred to in Article 26(1)*(a)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(c) the purchase or repurchase by a credit institution of its own shares or other capital instruments referred to in Article 26(1)*(a)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(d) the repayment of amounts paid up in connection with capital instruments referred to in Article 26(1)*(a)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(e) the distribution of items referred to in Article 26(1)*(b)* to *(e)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

7 – A credit institution shall be considered as failing to meet the combined buffer requirement where it does not have own funds in an amount and of the quality needed to simultaneously meet the combined buffer requirement, the additional own funds requirement to cover risks other than the risk of excessive leverage, as well as the following requirements laid down in Article 92(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013:

(a) Common Equity Tier 1 Ratio;
(b) tier 1 capital ratio;
(c) total capital ratio.

8 – The provisions of paragraphs 1 to 6 shall also apply by reference to compliance with the leverage ratio buffer requirement laid down in Article 92(1-A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, in accordance with the following:

(a) the maximum distributable amount shall be the leverage ratio related maximum distributable amount;

(b) the leverage ratio related maximum distributable amount shall be calculated in accordance with Article 138-AB(5) and (6);

(c) the references to the combined buffer requirement correspond to the leverage ratio buffer requirement.

9 – Credit institutions shall adopt and maintain procedures to:

(a) accurately calculate the amount of distributable profits and the leverage ratio related maximum distributable amount; and

(b) demonstrate that accuracy provided for in the foregoing paragraph to the Banco de Portugal upon request.

10 – For the purposes of paragraph 8, a credit institution shall be considered as failing to meet the leverage ratio buffer requirement where it does not have the Tier 1 capital of the amount needed to simultaneously meet the leverage ratio capital requirement and the leverage ratio buffer requirement set out in Article 92(1)*(d)* and Article 92(1-A) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 respectively, and the additional own funds requirement to cover that risk is not sufficiently covered by that requirement.

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Article 138-AB
Calculation of the Maximum Distributable Amount

1 – Credit institutions shall calculate the Maximum Distributable Amount by multiplying the sum calculated in accordance with the following paragraph by the factor determined in accordance with paragraph 3 and reducing any amount resulting from any of the actions referred to in paragraph 3 of the foregoing Article.

2 – The sum to be multiplied for the purposes of the foregoing paragraph shall consist of the following items:

(a) interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, net of any distribution of profits or any payment resulting from the actions referred to in paragraph 3 of the foregoing Article;

(b) year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, net of any distribution of profits or any payment resulting from the actions referred to in in paragraph 3 of the foregoing Article;

(c) excluding amounts that would be payable by tax if the items specified in the foregoing points were not distributed.

3 – The factor referred to in paragraph 1 shall be determined as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, taking into account the quartile of the combined buffer requirement comprising the Common Equity Tier 1 capital maintained by the credit institution which is not used to meet the minimum own funds requirements under Article 92(1)*(a)* to *(c)* of that Regulation, or to meet the additional own funds requirement set out in Article 116-C(2)*(a)*, except those to cover the risk of excessive leverage, as follows:

(a) the factor is 0 if it is comprised within the first and lowest quartile of the combined buffer requirement;

(b) the factor is 0.2 if it is comprised within the second quartile of the combined buffer requirement;

(c) the factor is 0.4 if it is comprised within the third quartile of the combined buffer requirement;

(d) the factor is 0.6 if it is comprised within the fourth and highest quartile of the combined buffer requirement.

4 – The lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

(a) Lower bound of quartile = $\frac{\text{Combined buffer requirement}}{4} . (Q_n - 1)$

(b) Upper bound of quartile = $\frac{\text{Combined buffer requirement}}{4} . (Q_n)$

where:
'Qn' = the ordinal number of the quartile concerned.

5 – For the purposes of paragraph 6 of the foregoing Article, the leverage ratio related maximum distributable amount shall be calculated in accordance with the foregoing paragraphs, with the factor referred to in paragraph 1 being determined as a percentage of the total exposure measure calculated in accordance with Article 429(4) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, taking into account the quartile of the Tier 1 capital maintained by the credit institution which is not used to meet the minimum requirements for the leverage ratio, referred to in Article 92(1)*(d)* of that Regulation, or to meet the additional own funds requirement to cover the risk of excessive leverage that is not sufficiently covered by that minimum requirement laid down in Article 116-C(2)*(a)*, as follows:

(a) the factor is 0 if it is comprised within the first and lowest quartile of the leverage ratio buffer requirement;

(b) the factor is 0.2 if it is comprised within the second quartile of the leverage ratio buffer requirement;

(c) the factor is 0.4 if it is comprised within the third quartile of the leverage ratio buffer requirement;

(d) the factor is 0.6 if it is comprised within the last quartile of the leverage ratio buffer requirement.

6 – The lower and upper bounds of each quartile of the leverage ratio buffer requirement shall be calculated as follows:

(a) Lower bound of quartile = $\frac{\text{Leverage ratio buffer requirement}}{4}$. $(Q_n - 1)$

(c) Upper bound of quartile = $\frac{\text{Leverage ratio buffer requirement}}{4}$. (Q_n)

where:
'Qn' = the ordinal number of the quartile concerned.

Article 138-AC
Notification to the Banco de Portugal of distribution with restrictions

1 – Credit institutions that fail to meet the combined buffer requirement shall notify the Banco de Portugal of their intention to distribute any of its distributable profits or undertake an action referred to in Article 138-AA(3), along with the following information:

(a) the amount of capital maintained by the credit institution, subdivided as follows:

(i) common equity tier 1 capital;
(ii) additional Tier 1 capital;
(iii) tier 2 capital;

(b) the amount of its interim and year-end profits;
(c) the Maximum Distributable Amount;
(d) the amount of distributable profits it intends to allocate between the following:

(i) dividend payments;

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(ii) share buybacks;

(iii) payments on Additional Tier 1 instruments;

(iv) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the institution failed to meet its combined buffer requirements.

2 – Credit institutions shall maintain procedures to ensure that the amount of distributable profits and the Maximum Distributable Amount are calculated accurately, while also demonstrating that accuracy to the Banco de Portugal on request.

3 – A credit institution which does not meet the leverage ratio buffer requirement and intends to undertake any of the actions referred to in paragraph 1, shall notify the Banco de Portugal and provide it with the following information:

(a) the information referred to in paragraph 1, except the level of Tier 2 capital; and

(b) the leverage ratio related maximum distributable amount calculated in accordance with paragraphs 5 and 6 of the foregoing paragraph.

Article 138-AD

Capital conservation plan

1 – The credit institution that fails to meet its combined buffer requirement or, where applicable, the leverage ratio buffer requirement shall present a capital conservation plan to the Banco de Portugal no later than five working days after having identified that it was failing to meet those requirements.

2 – The Banco de Portugal may extend the time limit referred to in the foregoing paragraph up to a maximum of 10 working days considering the specific situation of the credit institution and taking into account the scale and complexity of its activities.

3 – The capital conservation plan shall include the following:

(a) estimates of income and expenditure and a forecast balance sheet;

(b) measures to increase the capital ratios of the credit institution;

(c) a plan and time frame for the increase of own funds with the objective of meeting fully the combined buffer requirement;

(d) other information that the Banco de Portugal considers to be necessary to carry out the assessment required by the following paragraph.

4 – The Banco de Portugal shall assess the capital conservation plan, and shall approve the plan if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient own funds to enable the institution to meet the combined buffer requirement within an appropriate period.

5 – If the Banco de Portugal does not approve the capital conservation plan, it shall impose one or both of the following:

(a) the increase of the credit institution's own funds to specified levels within specified periods;

(b) the imposition of more stringent restrictions on distributions than those required by the Articles of this Section, within its powers under Article 116-C.

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TITLE VII-B
Planning of resolution and minimum requirement for own funds and eligible liabilities

CHAPTER I
Resolution plans and resolvability assessment

Article 138-AE

Resolution plan

1 – The Banco de Portugal, after consulting the resolution authorities of the jurisdictions in which any significant branches are established insofar as is relevant to the significant branch, as well as the European Central Bank in those cases where the latter is, under the applicable legislation, the supervisory authority of the credit institution concerned, shall prepare a resolution plan for each credit institution that is not part of a group subject to consolidated supervision by a supervisory authority of an EU Member State.

2 – The resolution plan shall provide for the resolution actions which the resolution authority may take where the credit institution meets the conditions for resolution provided for in Article 145-E(2) and shall take into consideration relevant scenarios including that the event of failure may be idiosyncratic or may occur at a time of broader financial instability or system-wide events.

3 – The resolution plan shall be drawn up on the assumption that when taking the resolution actions none of the following are used:

(a) any extraordinary public financial support besides the use of the financing arrangements established by the Resolution Fund;

(b) any emergency liquidity assistance provided by the Banco de Portugal;

(c) any liquidity assistance provided by the Banco de Portugal under non-standard collateralisation, tenor and interest rate terms.

4 – The resolution plan shall contain the following elements, as appropriate and possible, in a quantified manner:

(a) a summary of the key elements of the plan;

(b) a summary of the material changes to the institution that have occurred after the latest resolution information was filed on the credit institution's legal and corporate organisation, operational structure, business model or financial situation, and which may have a relevant impact on the plan's implementation;

(c) an explanation of how critical functions and core business lines could be legally, economically and operationally separated, to the extent necessary, from other functions so as to ensure continuity upon the failure of the credit institution;

(d) an estimation of the time frame for executing each material aspect of the plan;

(e) a detailed description of the assessment of resolvability carried out in accordance with Article 138-AJ;

(f) a description of any measures required pursuant to Article 138-AK to address or remove impediments to resolvability identified as a result of the assessment carried out in accordance with Article 138-AJ;

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(g) a description of the processes for determining the value and marketability of the critical functions, core business lines and assets of the credit institution, as well as a description of its determination processes;

(h) a detailed description of the credit institution's internal processes intended to ensure that the information to be provided pursuant to the provisions of Article 138-AH(1) is updated and can be sent to the Banco de Portugal upon request;

(i) an explanation as to how the resolution options could be financed without the assumption of recourse to the use of the mechanisms provided for in the foregoing paragraph;

(j) an analysis of how and when the credit institution may apply for the use of the Banco de Portugal facilities and identify those assets which would be expected to qualify as collateral;

(k) a detailed description of the different resolution strategies that could be applied according to the different possible scenarios and the applicable timescales;

(l) a description of critical interdependencies;

(m) a description of options for preserving access to payments and clearing services and other infrastructures and an assessment of the portability of the customers' positions;

(n) an analysis of the impact of taking the resolution actions as set forth in the plan on the employees of the institution, including an assessment of any associated costs, and a description of envisaged procedures to consult collective staff representatives during the resolution process;

(o) a plan for communicating with the media and the public;

(p) the minimum requirement for own funds and eligible liabilities and a deadline for its compliance;

(q) where applicable, the transitional period determined by the Banco de Portugal for compliance with the subordination amounts of the minimum requirement for own funds and eligible liabilities;

(r) a description of essential operations and systems for maintaining the continuous functioning of the credit institution's operational processes;

(s) where applicable, any opinion expressed by the credit institution in relation to the elements of the resolution plan transmitted to it.

5 – The Banco de Portugal shall transmit the information referred to in subparagraph *(a)* of the foregoing paragraph to the credit institution concerned.

6 – Resolution plans shall be reviewed and where appropriate updated:

(a) at least annually;

(b) whenever an event takes place relating to the legal or corporate organisation, operational structure, business model or financial condition of the credit institution that could have a material effect on the implementation of the plans;

(c) when there is any change in the assumptions used for preparing the plan that could have a material effect on its implementation;

(d) after the taking of resolution actions or the exercise of the write-down or conversion powers provided for in Article 145-I.

7 – For the purposes of the provisions of subparagraph *(b)* of the foregoing paragraph, credit institutions shall immediately notify the Banco de Portugal of any event requiring the revision or update of the resolution plan.

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8 – In the case provided for in paragraph 6*(d)*, the Banco de Portugal shall take into account the time limit for compliance with Article 116-E for the purpose of setting the time limits referred to in paragraph 4*(p)* and *(q)*.

9 – The content of resolution plans shall not bind the Banco de Portugal nor grant third parties or the credit institution any right to the implementation of the measures provided for therein.

10 – The Banco de Portugal may not draw up autonomous resolution plans for mutual agricultural credit banks that are members of the Central Mutual Agricultural Credit Bank where it considers it is sufficient to draw up a joint resolution plan for them, taking the Integrated Mutual Agricultural Credit Scheme as a reference, and informing the European Banking Authority when it makes that decision.

11 – If the credit institution subject to the resolution plan is engaged in financial intermediation or issues financial instruments admitted to trading on a regulated market, the Banco de Portugal shall inform the Portuguese Securities Market Commission of the respective resolution plan.

12 –The Banco de Portugal shall transmit the resolution plans it prepares and any changes thereto to the relevant supervisory authorities.

Article 138-AF

Group resolution plan

1 – As group-level resolution authority, the Banco de Portugal shall:

(a) in a resolution college, draw up and maintain a group resolution plan for each group subject to its supervision on a consolidated basis, together with:

(i) the resolution authorities of the group's subsidiaries;

(ii) the resolution authorities of the EU Member States where significant branches are established, insofar as is relevant to those branches; and

(iii) the resolution authorities of the EU Member States where a financial holding company, mixed financial holding company or mixed-activity holding company in the group is established, or a parent undertaking of the groups' credit institutions, where that parent undertaking is a parent financial holding company in the EU or a parent mixed financial holding company in the EU; and

(b) consult in advance, for that purpose, the relevant supervisory authorities, including the supervisory authorities of the EU Member States where significant branches are established, on the foreseeable content of the plan or on the updates concerned.

2 – When drawing up and maintaining group resolution plans, the Banco de Portugal, as group-level resolution authority, may also consult the resolution authorities of third countries in which the group has established subsidiaries, financial holding companies or significant branches, provided that those authorities meet the confidentiality requirements laid down in Article 145-AO.

3 – The adoption of the group resolution plan shall take the form of a joint decision of the group-level resolution authority and the resolution authorities of the group's subsidiaries, taken within 120 days of the date of the transmission by the group-level resolution authority of the information needed for drawing up a group resolution plan, received under the provisions of Article 138-AH(1).

4 – Where the group resolution plan identifies more than one resolution group pursuant to Article 138-AG(2)*(a)*, the joint decision referred to in the foregoing paragraph shall also set out the resolution actions to be taken in relation to the resolution entities of each of those resolution groups.

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5 – The Banco de Portugal shall participate in the joint decision process provided for in paragraph 1 as a group-level resolution authority or as resolution authority of the group's subsidiaries, as applicable.

6 – The Banco de Portugal may request the European Banking Authority to assist the resolution authorities in reaching a joint decision in accordance with paragraph 3.

7 – In the absence of a joint decision under paragraph 3, the Banco de Portugal, as group-level resolution authority, shall approve the group resolution plan, taking into account the views and reservations of the other resolution authorities. The Banco de Portugal shall provide its decision to the EU parent undertaking.

8 – In the absence of a joint decision within the period referred to in paragraph 3 and when it disagrees with the proposed group resolution plan, the Banco de Portugal, in its capacity as the resolution authority of the group's subsidiaries, shall make its own decision and, where applicable, identify the resolution entity and draw up and update a resolution plan for the resolution group composed of entities having their head office in Portugal. The decision shall be fully substantiated, shall set out the reasons for the disagreement with the proposed group resolution plan and shall take into account the views and reservations of the other supervisory and resolution authorities. The Banco de Portugal shall notify the other members of the resolution college of its decision.

9 – If, prior to the joint decision-making mentioned in paragraph 3 and during the time frame established therein, any of the resolution authorities concerned has referred any of the matters to the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, the Banco de Portugal, in its capacity as group-level resolution authority or as resolution authority of any subsidiary of an EU parent undertaking, shall await any decision that the European Banking Authority may take, and shall make its decision accordingly.

10 – In the absence of decision by the European Banking Authority within 30 days, the decision of the Banco de Portugal as group-level resolution authority shall apply in the case provided for in paragraph 7, and as resolution authority of the group's subsidiaries, it shall apply in the case provided for in paragraph 8.

11 – The Banco de Portugal may oppose the European Banking Authority's provision of assistance as referred to in paragraph 9 should it consider that the subject matter under disagreement may in any way impinge upon the country's fiscal responsibilities.

12 – The Banco de Portugal, in its capacity as resolution authority of some of the subsidiaries of an EU parent undertaking, may reach a joint decision with the other resolution authorities of subsidiaries that do not disagree under the provisions of paragraph 3 on a group resolution plan covering the entities concerned.

13 – The Banco de Portugal shall recognise and apply:

(a) the joint decisions as referred to in paragraph 3 and in the foregoing paragraph; and

(b) the individual decisions as referred to in paragraphs 7 and 8, when taken by other resolution authorities, in the absence of the joint decision referred to in paragraph 3.

14 – Where the Banco de Portugal considers that an issue that is the subject matter of a disagreement regarding group resolution plans may impinge upon Portugal's fiscal responsibilities, it shall:

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(a) as group-level resolution authority, where a joint decision is taken in accordance with paragraph 3, re-assess the group resolution plan, including the minimum requirement for own funds and eligible liabilities;

(b) as resolution authority of the group's subsidiaries, where a joint decision is taken in accordance with paragraph 12, provide the decision to the group-level resolution authority, including the minimum requirement for own funds and eligible liabilities.

15 – The Banco de Portugal, in its capacity as group-level resolution authority, shall transmit the group resolution plan and any changes thereto to the relevant supervisory authorities.

16 – Group resolution plans shall be reviewed and where appropriate updated:

(a) at least annually;

(b) whenever an event takes place relating to the legal or corporate organisation, operational structure, business model or financial position of the group including any group entity that could have a material effect on the implementation of the plan;

(c) when there is any change in the assumptions used for preparing the plan that could have a material effect on its implementation.

17 – The provisions of Article 138-AE(11) shall apply to a group that includes entities engaged in financial intermediation or issuing financial instruments admitted to trading on a regulated market.

Article 138-AG

Scope of the group resolution plan

1 – Group resolution plans shall identify:

(a) the resolution actions to be taken in respect of the EU parent undertaking, the subsidiaries of an EU parent undertaking, the entities referred to in Article 2-A(1)*(g)* to *(m)* established in the European Union, and subsidiaries established in third countries;

(b) the resolution entities and resolution groups, taking into account the actions referred to in the foregoing subparagraph.

2 – Group resolution plans shall:

(a) set out and identify:

(i) the resolution actions that are to be taken for resolution entities, taking into account the provisions of Article 138-AA and the implications of those measures in respect of other group entities;

(ii) where more than one resolution group has been identified, the resolution actions that are to be taken for the resolution entities of each resolution group and the implications of those actions for other entities that belong to the same resolution group and other resolution groups;

(iii) the entities in relation to which the resolution action is taken;

(b) examine the extent to which the resolution tools could be applied, and the resolution powers exercised, with respect to resolution entities established in the Union in a coordinated manner, including measures to facilitate the purchase by a third party of the group as a whole, of separate

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business lines or activities that are provided by one or more of group entities, or of particular group entities or resolution groups;

(c) identify any potential impediments to a coordinated resolution;

(d) where a group includes entities incorporated in third countries, identify appropriate arrangements for cooperation and coordination with the relevant authorities of those third countries and the implications for resolution within the European Union;

(e) identify measures, including the legal, economic and operational separation of particular functions or business lines, that are necessary to facilitate group resolution when the conditions for resolution are met;

(f) set out any additional actions, which the relevant resolution authorities intend to take in relation to the entities within each resolution group;

(g) identify how the resolution actions are financed and, where necessary, set out principles for sharing responsibility for that financing between different sources of funding in the various EU Member States concerned on the basis of equitable and balanced criteria and that take into account in particular Article 145-AK and the impact on financial stability in all Member States concerned;

(h) describe in detail the assessment of resolvability carried out in accordance with Article 138-AJ.

3 – The group resolution plan shall be drawn up based on the assumption that when taking the resolution actions none of the following will be used:

(a) any extraordinary public financial support besides the support provided by the Resolution Fund and the remaining national mechanisms for financing the resolution of each of the group's entities;

(b) any emergency liquidity assistance provided by the Banco de Portugal or other central banks;

(c) any liquidity assistance provided by the Banco de Portugal or other central banks under non-standard collateralisation, tenor and interest rate terms.

4 – The parent undertaking of a group subject to supervision on a consolidated basis by the Banco de Portugal shall report the information to it provided for in paragraph 1 of the following Article on the parent undertaking itself and on each of the group's entities, including those referred to in Article 2-A(1)*(g)* to *(m)*.

5 – The Banco de Portugal, in its capacity as group-level resolution authority, shall, provided that the confidentiality requirements laid down in Article 145-AO are in place, transmit the information provided in accordance with the foregoing paragraph to:

(a) the European Banking Authority;

(b) the resolution authorities of the group's subsidiaries;

(c) the resolution authorities of the jurisdictions where significant branches are established, insofar as is relevant to those branches;

(d) the relevant supervisory authorities referred to in Articles 135-B and 137-B; and

(e) the resolution authorities of the EU Member States where the entities referred to in Article 2-A(1)*(g)* to *(m)* are established.

6 – In the case of information relating to third-country subsidiaries, the Banco de Portugal, in its capacity as group-level resolution authority, shall not be obliged to transmit that information without the consent of the relevant third-country supervisory authority or resolution authority.

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7 – The group resolution plan shall not have a disproportionate impact on any EU Member State.

Article 138-AH

Reporting duties for drawing up resolution plans

1 – For the purposes of drawing up, revising and maintaining the resolution plans provided for in Articles 138-AE and 138-AF, the credit institution or the parent undertaking of the group in question shall communicate the following information to the Banco de Portugal:

(a) detailed description of the credit institution's organisational and corporate structure and, where appropriate, of the parent undertaking and the other entities of the group to which it belongs, including an organisational chart and a list of all the entities, with identification of the direct holders and the percentage of voting and non-voting rights of each identified entity;

(b) location, jurisdiction of incorporation and description of the business purpose of each entity identified in the foregoing subparagraph;

(c) identification of the member of the management board of each entity identified in subparagraph *(a)*;

(d) identification of the supervisory authority and the resolution authority for each entity identified in subparagraph *(a)*;

(e) mapping of the critical functions and core business lines of each entity identified in subparagraph *(a)* and brief description of the criteria that served as a basis for this classification, indicating the entity with primary responsibility for the former;

(f) identification of the portfolios of assets, liabilities and off-balance-sheet exposures associated with the critical functions and core business lines, with the respective amount, per each entity referred to in subparagraph *(a)*;

(g) ranking (order of priority) of the liabilities of the entities identified in subparagraph *(a)* according to the liquidation system provided for in the applicable law, separating by types and amounts of short and long-term debt, secured, unsecured and subordinated liabilities;

(h) identification of the bail-inable liabilities in accordance with Article 145-U;

(i) identification, by critical functions and core business lines, of the major counterparties of the entities identified in subparagraph *(a)*, as well as an analysis of the impact of the failure of each counterparty identified on the entity's financial situation;

(j) description of the material hedges of the entity associated with each critical operation and core business line, including a mapping by each entity identified in subparagraph *(a)* and corresponding alignment with the underlying business strategy;

(k) identification of the processes needed to determine to whom the entities identified in subparagraph *(a)* have pledged collateral, the person that holds the collateral and the jurisdiction in which the collateral is located;

(l) description of possible liquidity sources for supporting the taking of resolution action;

(m) information on asset encumbrance, liquid assets, off-balance-sheet activities, and hedging strategies for each entity identified in subparagraph *(a)*;

(n) identification of the interconnections and interdependencies between the different entities identified in subparagraph *(a)*, such as:

(i) personnel, facilities and systems;

(ii) capital, funding or liquidity arrangements;

(iii) existing or contingent credit exposures;

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(iv) cross-guarantee agreements, cross-collateral arrangements, cross-default provisions and cross-affiliate netting arrangements;

(v) risk transfers and back-to-back trading arrangements; and

(vi) service level agreements;

(o) each system in which the entities identified in subparagraph *(a)* conduct a material number of trades, including a mapping to the entities, critical functions and core business lines;

(p) each payment, clearing or settlement system of which the entities identified in subparagraph *(a)* are directly or indirectly a member, including a mapping to the entities, critical functions and core business lines;

(q) detailed inventory and description of the key management information systems used by the entities identified in subparagraph *(a)*, including those for risk management, accounting and financial and regulatory reporting, including a mapping to the entities, critical functions and core business lines;

(r) identification of the owners of the systems identified in the foregoing subparagraph, service level agreements related thereto, and any software and systems or licenses, including a mapping to the entities, critical functions and core business lines;

(s) identification of all agreements entered into by the entities identified in subparagraph *(a)* the termination of which may be triggered by a decision to apply a resolution tool and whether the consequences of termination may affect the application of the resolution tool;

(t) identification and contact of the member of the management body of the various entities identified in subparagraph *(a)* responsible for providing the information necessary to prepare the resolution plan, as well as those responsible for the different critical functions and core business lines;

(u) description of the arrangements in place to ensure that, in the event of resolution, the Banco de Portugal will have, in a timely manner, all the necessary information, as it determines, to take the resolution actions.

2 – The Banco de Portugal may establish at any time that the credit institution or a parent undertaking of a group subject to its supervision on a consolidated basis provides, within a reasonable set time frame, all clarification, information and documentation, regardless of their format, and may also perform on-site inspections to its business establishments, examine accounting documents, as well as take copies or transcripts of all relevant documentation.

3 – Should the Banco de Portugal not prepare, under Article 138-AE(10), autonomous resolution plans for mutual agricultural credit banks members of the Central Mutual Agricultural Credit Bank, it may exempt those institutions from the reporting duties referred to in paragraph 1.

4 – In the case referred to in the foregoing paragraph, the Central Mutual Agricultural Credit Bank shall report such information on its members based on the Integrated Mutual Agricultural Credit Scheme.

5 – Without prejudice to liability for administrative offences, the Banco de Portugal may determine the application of the corrective measures provided for in Article 116-C that are considered appropriate to prevent risks, where the credit institution or the parent undertaking of a group subject to its supervision on a consolidated basis:

(a) fails to submit the information needed to draw up, revise or maintain the respective resolution plan; or

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(b) fails to provide the additional information requested pursuant to paragraph 2 within the set time frame.

Article 138-AI

Simplified obligations and exemption from drawing up autonomous resolution plans

1 – Considering the potential impact that a credit institution's failure and subsequent winding up may have on financial markets, other credit institutions, funding conditions or the economy as a whole, the Banco de Portugal may establish the following simplified obligations:

(a) drawing up of simplified resolution plans for certain credit institutions or groups;

(b) a reduction in the review frequency of the resolution plans of certain credit institutions or groups;

(c) exemption of a particular credit institution or group parent undertaking subject to its supervision on a consolidated basis from the obligation to report some of the information necessary to draw up its resolution plan;

(d) the adoption of a lower level of detail in the assessment of resolvability of a certain credit institution or group.

2 – The provisions of the foregoing paragraphs shall not apply to:

(a) significant credit institutions, in accordance with Article 6(4) of Council Regulation (EU) No 1024/2013 of 15 October 2013;

(b) credit institutions with a total value of assets of more than EUR 30,000,000,000;

(c) credit institutions having a ratio of total assets to gross domestic product above 20%, unless the total value of its assets is less than EUR 5,000,000,000.

3 – For the purposes of paragraph 1, the Banco de Portugal shall take into account:

(a) the legal form;

(b) the shareholding structure;

(c) the provision of the investment services and the carrying out of the investment activities referred to in Articles 290 and 291 of the Securities Code;

(d) whether it is a member of an institutional protection scheme or other cooperative mutual solidarity systems;

(e) the size and systemic importance in accordance with the provisions of Article 138-B(2)*(a)* and *(b)*;

(f) the risk profile and the business model;

(g) the scope, substitutability and complexity of its activities, services or operations;

(h) the degree of interconnectedness to other institutions or to the financial system in general.

4 – The Banco de Portugal may not draw up autonomous resolution plans for credit institutions permanently affiliated to a central body where it considers it sufficient to draw up a joint resolution plan for them.

5 – In the case provided for in the foregoing paragraph, the Banco de Portugal may exempt such institutions from the reporting duties laid down in Article 138-AH(1), with the central body being obliged to report the information provided for in the foregoing Article on its members.

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6 – The Banco de Portugal shall inform the European Banking Authority of the simplified plans and joint plans it draws up and of the exemptions granted.

7 – The Banco de Portugal may, by means of a Notice, specify the analysis model of the criteria referred to in paragraph 3 and the procedures for granting simplified obligations.

8 – The Banco de Portugal may, at any time, revoke any decisions adopted under paragraphs 1, 4 and 5.

Article 138-AJ

Assessment of resolvability

1 – The Banco de Portugal shall consider a credit institution or group resolvable if it is feasible and credible to wind up that credit institution or group entities or to take resolution actions and exercise resolution powers with respect to that credit institution or group resolution entities, ensuring the continuity of critical functions carried out by those entities and avoiding, to the maximum extent possible, any significant adverse consequences, including broader financial instability or system-wide events for the domestic financial system or of other EU Member States or of the European Union.

2 – For the purposes of drawing up or maintaining the individual or group resolution plans, the Banco de Portugal shall assess the resolvability of that credit institution or group taking into account:

(a) the ability of the credit institution or group to map core business lines and critical functions carried out by that credit institution or each entity within the group;

(b) the alignment of the legal, corporate and operational structures with core business lines and critical functions;

(c) the availability of arrangements to provide for essential staff, infrastructure, funding, liquidity and capital to support and maintain the core business lines and the critical functions;

(d) the possibility of ensuring that, in the event of resolution, no extraordinary public financial support is used, in addition to the support provided by the Resolution Fund, and where applicable, the remaining national mechanisms for financing the resolution of each of the group's entities, for the provision of emergency liquidity assistance by the Banco de Portugal or other central banks, or for the provision of liquidity assistance by the Banco de Portugal or other central banks under non-standard collateralisation, tenor and interest rates terms;

(e) the possibility of ensuring that, in the event of resolution, the validity and effectiveness of the contracts for the provision of services concluded by the credit institution or the group are maintained;

(f) the adequacy of the governance structure of the credit institution or group's entities for managing and ensuring compliance with internal policies with respect to their service level agreements;

(g) the existence of processes, within the credit institution or group's entities, for transitioning the services provided to third parties under service level agreements, in the event of the separation of critical functions or core business lines;

(h) the existence of contingency plans and measures in place to ensure continuity in access to payment and settlement systems;

(i) the adequacy of the management information systems in ensuring that the resolution authorities are able to gather accurate and complete information regarding the core business lines and critical functions so as to facilitate rapid decision making;

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(j) the capacity of the management information systems to provide the information essential for the effective resolution of the credit institution or group at all times even under rapidly changing conditions;

(k) the assessment by the credit institution or group of the adequacy of its management information systems, by conducting stress tests as established by the Banco de Portugal;

(l) the capacity of the credit institution or group to ensure the continuity of its management information systems;

(m) the existence of appropriate arrangements by the credit institution or group to ensure the provision of the information necessary to identify depositors and the amounts covered by the Deposit Guarantee Fund or other deposit guarantee scheme;

(n) where intragroup guarantees are provided, the possibility of those guarantees being provided at market conditions with associated sound risk management systems;

(o) where the group engages in back-to-back transactions, the possibility of those transactions being performed at market conditions with associated sound risk management systems;

(p) the possibility for increased contagion across the group from the use of intragroup guarantees or back-to-back booking transactions;

(q) the possibility for the legal structure of the group to inhibit the application of the resolution tools as a result of the number of legal persons, the complexity of the group structure or difficulty in identifying which group's entities are responsible for each business line;

(r) the amount and type of bail-inable liabilities;

(s) where the assessment involves a mixed financial holding company, the potential negative impact on the non-financial part of the group of resolving entities referred to in Article 152(1)*(a)* and (2), which are part of the group;

(t) the existence and robustness of service level agreements;

(u) the possibility for third-country authorities to have the resolution tools necessary to support resolution actions by European Union resolution authorities, and to carry out coordinated action;

(v) the feasibility of using resolution tools in such a way that meets the resolution objectives, given the tools available and the structure of the credit institution or the group;

(w) the adequacy of the group structure for group resolutions as a whole or of its entities without causing significant adverse effect on the financial system, market confidence or the economy, and with a view to maximising its value;

(x) the availability of arrangements and means through which resolution could be facilitated in the cases of groups that have subsidiaries established in different jurisdictions;

(y) the credibility of taking resolution actions in such a way that meets the resolution objectives, given possible impacts on creditors, employees, customers and counterparties and possible actions that third-country authorities may take;

(z) the possibility of making a proper assessment of the consequences of resolution on the financial system and on financial market's confidence;

(aa) the possibility for the resolution to have a significant adverse effect on the financial system, market confidence or the economy;

(bb) the possibility of contagion to other credit institutions or to the financial markets to be contained through the taking of the resolution actions and the application of resolution powers;

(cc) the possibility for the resolution to have a significant effect on the operation of payment and settlement systems.

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3 – The provisions of the foregoing paragraph shall apply mutatis mutandis to the assessment of group resolvability, as well as of each resolution group where the group resolution plan identifies more than one resolution group, and that assessment shall be taken into consideration by the resolution colleges referred to in Article 145-AG.

4 – If a credit institution or group is not deemed resolvable, the Banco de Portugal shall notify the European Banking Authority.

Article 138-AK

Addressing or removing impediments to resolvability

1 – Where, following the assessment of resolvability, and after consulting the European Central Bank in cases where it is, under the applicable law, the supervisory authority of the institution concerned, the Banco de Portugal determines that there are substantive impediments to the resolvability of an entity, it shall notify the entity, the competent supervisory authority and the resolution authorities of the Member States of the European Union where significant branches are established.

2 – Within four months of receipt of the notification provided for in the foregoing paragraph, the entity shall submit possible measures to address or remove the impediments identified to the Banco de Portugal.

3 – Within 15 days of receipt of the notification provided for in paragraph 1, the entity shall submit to the Banco de Portugal possible measures to ensure compliance with the minimum requirement for own funds and eligible liabilities referred to in Articles 138-AO, 138-AU or 138-BC and the combined buffer requirement referred to in Article 138-B(2), where:

(a) the entity meets the combined buffer requirement when considered in addition to the requirements referred to in Article 138-AA(7) but does not meet it when considered in addition to the minimum requirement for own funds and eligible liabilities that is determined in accordance with Article 138-AA(2)*(a)*; or

(b) the entity does not meet the requirements for own funds and eligible liabilities referred to in Articles 92-A and 494 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 or the minimum requirement for own funds and eligible liabilities.

4 – For the purposes of the foregoing paragraph, the entity shall indicate the timetable for the implementation of the measures proposed, taking into account the grounds for identifying the relevant impediments.

5 – The Banco de Portugal shall assess whether the measures proposed under paragraphs 2 and 3 effectively address or remove the impediments identified.

6 – If the Banco de Portugal considers that the measures referred to in the foregoing paragraph do not effectively address or remove the impediments identified, it shall notify the entity accordingly and shall require it to adopt specific alternative measures, justifying their adequacy, necessity and reasonableness to address or remove such impediments.

7 – For the purposes of the foregoing paragraph, the Banco de Portugal may require:

(a) the entity to draw up or revise any intragroup financing agreements or draw up service agreements, to cover the provision of critical functions;

(b) the entity to limit its maximum individual and aggregate exposures, most notably the extent to which it holds bail-inable liabilities on other institutions;

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(c) the entity to provide specific or regular additional information requirements relevant for resolution purposes;

(d) the entity to divest specific assets;

(e) the entity to limit or cease specific existing or proposed activities;

(f) the entity to limit or cease the development of new or existing business lines or sale of new or existing products;

(g) changes to legal, economic or operational structures of the entity or any group entity, either directly or indirectly under its control, so as to reduce complexity in order to ensure that critical functions may be legally, economically and operationally separated from other functions through the application of the resolution tools;

(h) an entity or a parent undertaking to set up a parent financial holding company in Portugal or an EU parent financial holding company;

(i) the entity to submit a plan to restore compliance with the minimum requirement for own funds and eligible liabilities referred to in Articles 138-AO, 138-AU or 138-BC, as determined in accordance with Article 138-AO(2)*(a)* and, where applicable, the combined buffer requirement referred to in Article 138-B(2), as well as the minimum requirement for own funds and eligible liabilities referred to in Articles 138-AO, 138-AU or 138-BC determined under Article 138-AO(2)*(b)*;

(j) the entity to issue eligible liabilities to meet the minimum requirement for own funds and eligible liabilities referred to in Articles 138-AO, 138-AU or 138-BC;

(k) the entity to take other measures to ensure compliance with the minimum requirement for own funds and eligible liabilities referred to in Articles 138-AO, 138-AU or 138-BC, including the renegotiation of any eligible liability, additional Tier 1 instrument or Tier 2 instrument it has issued, with a view to ensuring that any decision to write down the nominal value of those instruments or liabilities or to increase the share capital of the entity by converting those liabilities or instruments would be effected under the law governing them;

(l) the entity to change the maturities of capital instruments and eligible liabilities referred to in Article 138-Q, Article 138-AR(1)*(a)* and Articles 138-AY to 138-BA for the purpose of ensuring ongoing compliance with the minimum requirement for own funds and eligible liabilities referred to in Articles 138-AO, 138-AU or 138-BC;

(m) where the entity is the subsidiary of a mixed-activity holding company, that the mixed-activity holding company set up a separate financing holding company to control the entity, if necessary in order to facilitate the resolution of the institution and to avoid the application of the resolution tools having an adverse effect on the non-financial part of the group.

8 – For the purposes of paragraph 6, the Banco de Portugal shall take into account:

(a) the risks that those impediments identified to resolvability present for financial stability; and

(b) the potential effects of such measures on:

(i) the activity and stability of the entity concerned and its ability to contribute to the economy;

(ii) the internal market for financial services; and

(iii) the financial stability in other EU Member States and in the European Union as a whole.

9 – Within one month of receiving the notification referred to in paragraph 6, the entity shall submit a plan for the implementation of the required measures to the Banco de Portugal.

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10 – If the credit institution is engaged in financial intermediation or issues financial instruments admitted to trading on a regulated market, the Banco de Portugal shall first consult the Portuguese Securities Market Commission on the possible impact of those measures on the pursuit of such activities.

11 – Where paragraph 1 applies, the Banco de Portugal shall approve the resolution plan only if:

(a) it considers appropriate the measures proposed in accordance with paragraph 5; or

(b) it has required the adoption of alternative measures by the entity in accordance with paragraph 6.

Article 138-AL

Decision-making on addressing or removing impediments to resolvability of groups

1 – In its capacity as group-level resolution authority or resolution authority of any of the subsidiaries of the EU parent undertaking, the Banco de Portugal, together with the resolution authorities of subsidiaries within the resolution college, shall consider the resolvability assessment carried out and encourage the adoption of a joint decision on the application of measures that are proportionate to addressing or removing the identified substantive impediments for all credit institutions and investment firms dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, as part of the group, taking into account the potential impact of the measures on all the Member States where the group operates.

2 – Before reaching the decision in accordance with the foregoing paragraph, the supervisory college of the group shall be consulted, as well as the college of supervisory authorities and resolution authorities of the EU Member States where significant branches are established, insofar as is relevant for those branches.

3 – In its capacity as group-level resolution authority, the Banco de Portugal shall prepare and submit a report to the EU parent undertaking, to the resolution authorities of subsidiaries and to the resolution authorities of the EU Member States in which significant branches are located. Such report shall:

(a) analyse the substantive impediments to the effective application of resolution tools to the group and resolution groups, where the group resolution plan identifies more than one resolution group, considering the impact on the group's business model; and

(b) recommend any proportionate measures to address or remove those impediments.

4 – For the purposes of the foregoing paragraph, the Banco de Portugal shall cooperate with the European Banking Authority and shall first consult the supervisory authorities of the group.

5 – Where the Banco de Portugal, in its capacity as the resolution authority of any subsidiary of the EU parent undertaking, receives a report under paragraph 3 from the group-level resolution authority, it shall share this report with the group's subsidiaries located in Portugal.

6 – Within four months of the date of receipt of the report under paragraph 3, the EU parent undertaking may submit observations and propose alternative measures to the Banco de Portugal to address or remove the impediments identified in the report.

7 – Where there are substantive impediments to the resolvability of the group as referred to in paragraph 3 of the foregoing Article, the Banco de Portugal, in its capacity as the group-level resolution authority, shall notify the EU parent undertaking accordingly.

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8 – The provisions of the foregoing paragraph shall be preceded by consultation with the resolution authority of the resolution entity, where different, and the resolution authorities of the subsidiaries of the resolution entity belonging to the same resolution group.

9 – Within 15 days of receipt of the notification referred to in paragraph 7, the EU parent undertaking shall submit to the Banco de Portugal:

(a) a proposal of measures for the relevant group entity to ensure compliance with the minimum requirement for own funds and eligible liabilities referred to in Articles 138-AO, 138-AU or 138-BC, as determined in accordance with Article 138-AO(2)*(a)* and, where applicable, the combined buffer requirement referred to in Article 138-B(2), as well as the minimum requirement for own funds and eligible liabilities determined under Article 138-AO(2)*(b)*; and

(b) a timeline for the implementation of the proposed measures, taking into account the reasons for the substantive impediments identified.

10 – The Banco de Portugal, after consulting the European Central bank where this is the entity's supervisory entity, shall assess whether the measures proposed under paragraphs 6 and 9 effectively address or remove the impediments identified.

11 – In its capacity as the group-level resolution authority, the Banco de Portugal shall communicate any measure proposed by the EU parent undertaking, in accordance with paragraphs 6 and 9, to:

(a) the consolidating supervisor;

(b) the European Banking Authority;

(c) the resolution authorities of subsidiaries; and

(d) the resolution authorities of the EU Member States where significant branches are established, insofar as is relevant to those branches.

12 – The joint decision referred to in paragraph 1 shall be reasoned, notified to the parent undertaking of the group and adopted within the following conciliation periods within the meaning of European Union law:

(a) in the cases referred to in paragraphs 3 and 6:

(i) within four months of submission of any observations submitted by the EU parent undertaking; or

(ii) within one month from the expiry of the period laid down in paragraph 6, where the EU parent undertaking has not submitted any observations;

(b) in the cases referred to in paragraphs 7 and 9, within 15 days of the submission of the information referred to in paragraph 9.

13 – Until the adoption of a joint decision and within the time limits referred to in the foregoing paragraph, the Banco de Portugal may request the assistance of the European Banking Authority.

14 – If, before taking the joint decision referred to in paragraph 1 and within the time limits set out in paragraph 12, any of the resolution authorities has referred matters as provided for in EU law to the European Banking Authority, the Banco de Portugal, in its capacity as group-level resolution authority, resolution authority of a resolution entity or resolution authority of a subsidiary of a

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resolution entity which has not been identified as a resolution entity, as applicable, shall defer its decision and await any decision that the European Banking Authority may take, and shall make its decision accordingly.

15 – In the absence of a joint decision within the time limits referred to in paragraph 12 or in the absence of a decision by the European Banking Authority within one month, where applicable, the Banco de Portugal, in its capacity as group-level resolution authority, resolution authority of a resolution entity or resolution authority of a subsidiary of a resolution entity which has not been identified as a resolution entity, as applicable, shall make its own decision on whether to require alternative measures as referred to in Article 138-AK(6) and (7) from the entity concerned. This decision shall be fully reasoned and shall take into account the views and reservations of other resolution authorities.

16 – In the cases referred to in the foregoing paragraph, the Banco de Portugal, in its capacity as group-level resolution authority and resolution authority of a resolution entity, as applicable, shall provide its decision to the entity concerned.

17 – In the cases referred to in paragraph 15, the Banco de Portugal, in its capacity as the resolution authority of a subsidiary of a resolution entity which has not been identified as a resolution entity, shall provide the decision to the subsidiary concerned, to the resolution entity of the same resolution group, to the resolution authority of that resolution entity and, where different, to the group level resolution authority.

18 – The joint decision referred to in paragraph 1 and the individual decisions referred to in paragraph 15 shall be considered final for the authorities concerned.

Article 138-AM

Restrictions on distributions

1 – The Banco de Portugal may prohibit a credit institution from making distributions in excess of the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities, calculated in accordance with the following Article, where the credit institution meets both the combined buffer requirement referred to in Article 138-B(2) and each of the requirements referred to in Article 138-AA(7), but it fails to meet those requirements when considered in addition to the minimum requirement for own funds and eligible liabilities in accordance with Article 138-AO(2)*(a)*.

2 – For the purposes of the foregoing paragraph, the Banco de Portugal may prohibit the credit institution from:

(a) making a distribution in connection with Common Equity Tier 1 capital;

(b) creating an obligation to pay variable remuneration or discretionary pension benefits or paying variable remuneration if the obligation to pay was created at a time when the credit institution failed to meet the combined buffer requirements;

(c) making payments on Additional Tier 1 instruments.

3 – Credit institutions in the situation referred to in paragraph 1 shall immediately notify the Banco de Portugal thereof, in its capacity as national resolution authority.

4 – Where a credit institution is in the situation referred to in paragraph 1, the Banco de Portugal shall, without unnecessary delay, assess whether to exercise the power provided for in that paragraph, taking into account:

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(a) the reason, duration and magnitude of the failure to comply with the combined buffer requirement when considered in addition to the minimum requirement for own funds and eligible liabilities, calculated in accordance with Article 138-AO(2)*(a)*, as well as the impact of such failure on resolvability of the credit institution concerned;

(b) the development of the credit institution's financial situation and the likelihood of it being failing or likely to fail;

(c) the prospect that the credit institution is able to ensure compliance with the combined buffer requirement when considered in addition to the minimum requirement for own funds and eligible liabilities, calculated in accordance with Article 138-AO(2)*(a)* within a reasonable timeframe;

(d) where the credit institution is unable to replace eligible liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72-B and 72-C of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, Article 138-Q, Article 138-AR(1) and Articles 138-AY to 138-BA, if that replacement inability is idiosyncratic or is due to market disruption;

(e) whether the exercise of the power referred to in paragraph 1 complies with the principles of adequacy and proportionality, taking into account its potential impact on the financing conditions and resolvability of the credit institution.

5 – For as long as the credit institution continues to be in the situation referred to in paragraph 1, the Banco de Portugal shall repeat its assessment of the provisions in the foregoing paragraph at least every month.

6 – Where that non-compliance exceeds nine months from the date of notification in accordance with paragraph 3, the Banco de Portugal shall exercise the power referred to in paragraph 1, unless it finds that at least two of the following conditions are fulfilled:

(a) the failure is due to a serious disturbance to the functioning of financial markets which leads to broad-based stress across several segments of financial markets;

(b) the disturbance referred to in the previous subparagraph has led to increased price volatility of the own funds instruments and eligible liabilities of the credit institution concerned or increased costs for the credit institution, leading to a full or partial closure of markets which prevents the credit institution from issuing own funds instruments and eligible liabilities on those markets;

(c) the market closure referred to in the foregoing subparagraph is observed for the credit institution concerned and for other entities;

(d) the disturbance referred to in subparagraph *(a)* prevents the concerned credit institution from issuing own funds and eligible liabilities instruments sufficient to remedy that situation of failure referred to in paragraph 1;

(e) the exercise of power referred to in paragraph 1 has negative spill-over effects for part of the banking sector, potentially undermining financial stability.

7 – Every month, the Banco de Portugal shall repeat its assessment of the decision not to exercise the power referred to in paragraph 1 in accordance with the foregoing paragraph.

Article 138-AN

Maximum Distributable Amount

1 – Credit institutions shall calculate the Maximum Distributable Amount related to the minimum requirement for own funds and eligible liabilities by multiplying the sum calculated in accordance with the following paragraph by the factor determined in accordance with paragraph 3. That amount

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shall be reduced by any amount resulting from any of the actions referred to in paragraph 2*(a)* to *(c)* of the previous Article.

2 – The sum to be multiplied for the purposes of the foregoing paragraph shall consist of the following items:

(a) any interim profits not included in Common Equity Tier 1 capital pursuant to Article 26(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, net of any distribution of profits or any payment resulting from the actions referred to in paragraph (2) of the foregoing Article;

(b) any year-end profits not included in Common Equity Tier 1 capital pursuant to EU legislation referred to in the foregoing subparagraph, net of any distribution of profits or any payment resulting from the actions referred to in paragraph (2) of the foregoing Article;

(c) excluding amounts that would be payable by tax if the items specified in the foregoing subparagraphs were to be retained.

3 – The factor referred to in paragraph 1 shall be determined using the quartile of the combined buffer requirement comprising the Common Equity Tier 1 capital maintained by the credit institution and which is not used to meet the requirement under Article 92-A of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, and the minimum requirement for own funds and eligible liabilities, expressed as a percentage of the total risk exposure amount referred to in Article 138-AO(2)*(a)*, as follows:

(a) the factor is 0 if it is comprised within the first and lowest quartile of the combined buffer requirement;

(b) the factor is 0.2 if it is comprised within the second quartile of the combined buffer requirement;

(c) the factor is 0.4 if it is comprised within the third quartile of the combined buffer requirement;

(d) the factor is 0.6 if it is comprised within the fourth and highest quartile of the combined buffer requirement.

4 – Article 138-AB(4) shall be applicable.

CHAPTER II
Minimum requirement for own funds and eligible liabilities

SECTION I
GENERAL PROVISIONS

Article 138-AO
Minimum requirement for own funds and eligible liabilities

1 – The Banco de Portugal shall determine the requirements for own funds and eligible liabilities to be met by credit institutions.

2 – The minimum requirement for own funds and eligible liabilities shall be met on an ongoing basis and expressed as a percentage of:

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(a) the total risk exposure amount of the credit institution, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(b) the total exposure measure of the credit institution, calculated in accordance with Articles 429 and 429-A of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

Article 138-AP

Exemption from the requirement for own funds and eligible liabilities

1 – The Banco de Portugal shall determine that paragraph 1 of the foregoing Article shall not apply to mortgage credit institutions financed by covered bonds which are not allowed to receive deposits, provided that:

(a) those institutions are wound up in accordance with the applicable law or the measures provided for in Article 145-E(1)*(a)* to *(c)*; and

(b) the proceedings referred to in the foregoing subparagraph ensure that creditors of those institutions, including holders of covered bonds, bear the losses of those institutions in such a way that would not jeopardise the purposes of Article 145-C(1).

2 – In the case referred to in the foregoing paragraph, credit institutions shall not be part of the consolidation of the resolution group for the purposes of Articles 138-AU and 138-AV.

Article 138-AQ

Eligible liabilities of resolution entities

1 – The following shall be eligible liabilities of resolution entities:

(a) bail-inable liabilities that meet the eligibility conditions set out in Articles 72-A to 72-C of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, with the exception of Article 72-B(2)*(c)*;

(b) liabilities arising from Tier 2 instruments that meet the eligibility conditions set out in Article 72-A(1)*(b)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

2 – Liabilities arising from debt instruments with embedded derivatives, including structured notes, that meet the conditions referred to therein, except for Article 72-A(2)*(l)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, shall be eligible liabilities of a resolution entity where one of the following conditions is met:

(a) the principal amount of the liability arising from the debt instrument:

(i) is known at the time of issue, is fixed or increasing, and is not affected by embedding a derivative; and

(ii) can be valued on a daily basis, including the embedded derivative, by reference to an active and liquid two-way market for an equivalent instrument without credit risk, in accordance with Articles 104 and 105 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

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(b) the debt instrument includes a contractual term that specifies that the value of the liability in cases of the insolvency of the issuer or the taking of resolution actions in relation to the issuer is fixed or increasing and does not exceed the initially paid-up amount.

3 – Debt instruments and embedded derivatives referred to in the foregoing paragraph shall not be covered by any netting agreements and the valuation of such instruments shall not be subject to Article 145-V(7).

4 – For the purposes of paragraph 2, only that portion of the liability arising from debt instruments that corresponds to the principal amount referred to in subparagraph *(a)* or to the fixed or increasing amount referred to in subparagraph *(b)* thereof shall be relevant for the amount of own funds and eligible liabilities.

5 – Liabilities arising from instruments issued or contracts entered into by subsidiaries of a resolution entity which have not been identified as resolution entities, referred to in Article 138-BC, and which are part of the same resolution group shall also be eligible liabilities of that resolution entity and shall also be taken into account for the purposes of compliance with the subordination amount, where:

(a) they were issued or entered into in favour of shareholders of subsidiaries that are not part of the resolution group to which the subsidiaries belong; and

(b) they comply with the provisions of paragraph 1*(a)* of the following Article.

6 – Liabilities referred to in the foregoing paragraph shall be included in the amount of own funds and eligible liabilities of the resolution entity only with respect to the part that does not exceed the difference between:

(a) the minimum requirement for own funds and eligible liabilities of the subsidiary, calculated under Article 138-BC;

(b) the sum of liabilities arising from instruments issued or entered into in favour of and subscribed by that resolution entity either directly or indirectly through other entities in the same resolution group, and the amount of own funds referred to in paragraph 1*(c)* and *(d)* of the following Article.

Article 138-AR

Amount of own funds and eligible liabilities of subsidiaries

1 – For the purposes of the amount of own funds and eligible liabilities of the entities referred to in Article 138-BC, the following shall be taken into account:

(a) bail-inable liabilities arising from instruments that meet the following conditions:

(i) they are issued to or entered into in favour of and subscribed by the resolution entity that is part of the same resolution group, either directly or indirectly through other entities in the same resolution group, or are issued or entered into in favour of and subscribed by the other shareholders of the entity that are not part of the same resolution group, provided that the exercise of the write-down or conversion powers under Article 145-I in relation to liabilities arising from those instruments does not affect the control relationship between that entity and the resolution entity;

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(ii) they fulfil the eligibility criteria referred to in Articles 72-A to 72-C of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, except for Article 72-B(2)*(b)*, *(c)*, *(k)*, *(l)* e *(m)* and Article 72-B(3) to (5);

(iii) liabilities arising from those instruments rank, in case of insolvency, below liabilities arising from instruments that do not meet the condition referred to in subparagraph *(i)* and that are not and have not been eligible for own funds of the entity concerned in accordance with the applicable laws and regulations;

(iv) the exercise of the write-down or conversion powers provided for in Article 145-I in respect of liabilities arising from those instruments is consistent with the resolution strategy of the resolution group, in particular by not affecting the control relationship between the entity concerned and the resolution entity;

(v) the purchase of the instrument was not funded directly or indirectly by the entity concerned;

(vi) the terms and conditions governing the instrument do not indicate explicitly or implicitly that the liabilities are called, redeemed, repaid or repurchased early, as applicable, by the entity concerned, other than in the case of insolvency or liquidation, and that entity does not otherwise provide such an indication;

(vii) the terms and conditions governing the instrument do not give the holder the right to accelerate the future scheduled payments of interest or principal, other than in case of the insolvency or liquidation of the entity concerned;

(viii) the amount of interest or dividend payments, as applicable, due thereon is not amended on the basis of the credit standing of the entity concerned or its parent undertaking;

(b) liabilities arising from Tier 2 instruments with a residual maturity longer than 1 year, under Article 72-A(1)*(b)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(c) Common Equity Tier 1 capital;

(d) additional Tier 1 capital and Tier 2 capital that:

(i) are issued to or entered into in favour of and subscribed by entities that are part of the same resolution group; or

(ii) are issued or entered into in favour of and subscribed by entities that are not part of the same resolution group, as long as the exercise of the write-down or conversion powers provided for in Article 145-I in relation to liabilities arising from those instruments does not affect the control relationship between the entity concerned and the resolution entity.

2 – The joint decision determining the minimum requirement for own funds and eligible liabilities may provide, where consistent with the resolution strategy of the resolution group, that where the resolution entity that is part of the same resolution group has not subscribed, directly or indirectly, sufficient instruments referred to in the foregoing paragraph, the minimum requirement for own funds and eligible liabilities of the entities referred to in Article 138-BC may be partially met with instruments issued or entered into and subscribed by entities that are not part of the same resolution group.

3 – The Banco de Portugal may allow the minimum requirement for own funds and eligible liabilities of the entities referred to in Article 138-BC to be met in full or in part with a commitment undertaken by the resolution entity where:

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(a) the entity concerned and the resolution entity belonging to the same resolution group are established in Portugal; and

(b) the resolution entity meets its minimum requirement for own funds and eligible liabilities.

4 – For the purposes of the foregoing paragraph, the commitment by the resolution entity shall comply with the following requirements:

(a) it corresponds to an amount equal to or greater than the amount of the minimum requirement for own funds and eligible liabilities of the entities referred to in Article 138-BC it substitutes;

(b) it is required where the entity concerned is unable to fulfil its obligations or a determination has been made that the entity meets one of the requirements referred to in Article 145-I(2), whichever is the earliest;

(c) it benefits from a financial guarantee provided by the resolution entity under a financial collateral arrangement provided for in Decree-Law No 105/2004 of 8 May 2004 for an amount equal to or greater than 50% of the amount of the commitment undertaken by the resolution entity;

(d) the collateral backing the financial guarantee provided by the resolution entity fulfils the eligibility requirements for funded credit protection in accordance with Article 197 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and its value, following the appropriately conservative haircuts, is equal to or greater than the amount of the financial guarantee referred to in the foregoing subparagraph;

(e) the collateral backing the financial guarantee provided by the resolution entity is not encumbered by the rights of any third party and is not used as collateral to back any other guarantee;

(f) the maturity of the collateral of the financial guarantee provided by the resolution entity is longer than one year;

(g) there is no legal, regulatory or operational impediment to the enforcement of the collateral of the financial collateral provided by the resolution entity for the entity concerned, including by virtue of the taking of resolution actions in respect of the resolution entity.

5 – For the purposes of subparagraph *(g)* of the foregoing paragraph, the Banco de Portugal may require the resolution entity to provide an independent written and reasoned legal opinion or otherwise demonstrate compliance with the provisions of that subparagraph.

SECTION II

DETERMINATION OF THE MINIMUM REQUIREMENT FOR OWN FUNDS AND ELIGIBLE LIABILITIES

Article 138-AS

General criteria for determining the minimum requirement

1 – The Banco de Portugal shall determine the minimum requirement for own funds and eligible liabilities on the basis of the following criteria:

(a) the resolution group can be resolved by the application of the resolution tools to the resolution entity, including, where appropriate, the bail-in tool, in a way that meets the resolution objectives set out in Article 145-C(1);

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(b) the resolution entities and their subsidiaries that have not been identified as resolution entities and are part of the same resolution group have sufficient own funds and eligible liabilities to ensure that, if the bail-in tool or write-down and conversion powers provided for in Article 145-I respectively, were to be applied, losses could be absorbed by the respective holders and that the total capital ratio and, as applicable, the leverage ratio could be restored to a level necessary to enable them to comply with the conditions for authorisation and to carry on the activity for which it is authorised;

(c) the resolution entity has sufficient own funds and other eligible liabilities to ensure that losses could be absorbed by the respective holders and that the total capital ratio and, as applicable, the leverage ratio could be restored to a level necessary to enable them to comply with the conditions for authorisation and to carry on the activity for which it is authorised, where the resolution plan anticipates the possibility for certain liabilities or classes of liabilities to be excluded from bail-in or for certain eligible liabilities or classes of eligible liabilities to be transferred under the resolution actions set out in Article 145-E(1)*(a)* to *(c)*;

(d) the size, the business model, the funding model and the risk profile of the credit institution;

(e) the effects on financial stability of the credit institution's risk or failure, including due to the risk of contagion to other credit institutions or the financial system as a whole.

2 – Where the resolution plan provides that resolution actions are to be taken or that the write-down or conversion powers under Article 145-I are to be exercised, the minimum requirement for own funds and eligible liabilities shall equal an amount sufficient to ensure that:

(a) the losses that are expected to be incurred by the credit institution may be fully absorbed by its own funds and eligible liabilities; and

(b) the own funds of the credit institution can be recapitalised to a level necessary to enable it to continue to comply with the conditions for authorisation, and to carry on the activities for which it is authorised for a period not longer than one year.

3 – Where the resolution plan provides that the credit institution is to be wound up, the Banco de Portugal shall assess whether it is appropriate to limit the requirement for own funds and eligible liabilities, so that it does not exceed the necessary to comply with subparagraph *(a)* of the foregoing paragraph. The assessment shall take into account any possible impact of the winding up of the credit institution on financial stability and the risk of contagion to the financial system.

4 – For the purposes of the foregoing paragraph, the Banco de Portugal shall determine the minimum requirement for own funds and eligible liabilities to be complied with by the institution based on its financial position.

Article 138-AT

Decision

1 – The decision of the Banco de Portugal determining the minimum requirement for own funds and eligible liabilities to be complied with by each credit institution shall include a full assessment of the elements referred to in paragraphs 2 to 4 of the foregoing Article, as well as in Articles 138-AV, 138-AW and 138-BD.

2 – The Banco de Portugal shall make the decisions provided for in this Chapter when drawing up the resolution plans and reassess them when they are updated or where deemed necessary.

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3 – If the additional own funds requirements imposed on a credit institution change, the Banco de Portugal shall, without undue delay, review that institution's minimum requirement for own funds and eligible liabilities.

4 – For the purposes of Articles 138-AV and 138-BD, the own funds requirements shall be interpreted in accordance with the transitional provisions laid down in Chapters 1, 2 and 4 of Title I of Part Ten of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and with the relevant provisions of national legislation exercising the options granted by that Regulation.

Article 138-AU

Minimum requirement of resolution entities

1 – Resolution entities shall comply with the minimum requirement for own funds and eligible liabilities on a consolidated basis at the level of the resolution group.

2 – The Banco de Portugal shall determine the minimum requirement for own funds and eligible liabilities of each resolution entity at the consolidated resolution group level and shall consider whether the third-country subsidiaries of the group are to be resolved jointly or separately according to the resolution plan.

3 – For resolution groups to which credit institutions permanently affiliated to a central body and the central body itself belong, the Banco de Portugal shall determine, taking into account the applicable liability regime and the preferred resolution strategy, which entities are required to comply with the requirements referred to in the following Article and, where applicable, in Articles 138-AW and 138-AX, and how those requirements are to be met, in order to ensure that the resolution group complies in its entirety with the provisions of the foregoing paragraphs.

Article 138-AV

Determination of the minimum requirement of resolution entities

1 – The minimum requirement for own funds and eligible liabilities of a resolution entity to be determined under Article 138-AO(2)*(a)* shall be the sum of the following:

(a) for the purposes of Article 138-AS(2)*(a)*, the amount corresponding to the requirement referred to in Article 92(1)*(c)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and the additional own funds requirements imposed under this Legal Framework applicable to the resolution entity at the consolidated resolution group level;

(b) for the purposes of Article 138-AS(2)*(b)*, the amount to enable the resolution entity to continue to comply with the requirement referred to in Article 92(1)*(c)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and the additional own funds requirements imposed under this Legal Framework, at the consolidated resolution group level, following the application of the preferred resolution strategy and taking into account any changes to the resolution group arising from the application of such strategy.

2 – The minimum requirement for own funds and eligible liabilities of a resolution entity referred to in the foregoing paragraph shall be expressed in percentage terms as the amount calculated under the foregoing paragraph, divided by the total risk exposure amount of the resolution entity as calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

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3 – The minimum requirement for own funds and eligible liabilities of a resolution entity to be determined under Article 138-AO(2)*(b)* shall be the sum of the following:

(a) for the purposes of Article 138-AS(2)*(a)*, the amount corresponding to the own funds requirement for the leverage ratio, under Article 92(1)*(d)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, applicable to the resolution entity at the consolidated resolution group level;

(b) for the purposes of Article 138-AS(2)*(b)*, the amount to enable the resolution entity to continue to comply with the own funds requirement for the leverage ratio, referred to in Article 92(1)*(d)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, at the consolidated resolution group level, following the application of the preferred resolution strategy and taking into account any changes to the resolution group arising from the application of such strategy.

4 – The minimum requirement for own funds and eligible liabilities of a resolution entity referred to in the foregoing paragraph shall be expressed in percentage terms as the amount calculated under the foregoing paragraph, divided by the measure of total risk exposure of the resolution entity as calculated in accordance with Articles 429 and 429-A of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

5 – For the purposes of determining the amount referred to in paragraphs 1*(b)* and 3*(b)*, the Banco de Portugal shall:

(a) use the most recent values reported to the Banco de Portugal by the resolution entity for the total risk exposure amount and the total exposure measure, calculated respectively in accordance with Articles 92(3), 429 and 429-A of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, adjusted for any changes resulting from the implementation of the resolution strategy;

(b) adjust upwards or downwards the additional requirements for own funds imposed under this legal Framework to determine the additional requirements to be applied to the resolution entity after the implementation of the preferred resolution strategy.

6 – The Banco de Portugal shall be able increase the amount referred to in paragraph 1*(b)* by an appropriate amount necessary to ensure that, after the implementation of the resolution strategy, the resolution entity is able to obtain financing autonomously and on sustainable terms from financial markets for a period which shall not exceed one year.

7 – For the purposes of the foregoing paragraph, the appropriate amount shall be equal to the combined buffer requirement referred to in Article 138-B(2), less the credit institution-specific countercyclical capital buffer referred to in Article 138-B(1)*(b)*, applicable to the resolution entity after the implementation of the resolution strategy.

8 – The amount referred to in the foregoing paragraph shall be:

(a) adjusted downwards by the Banco de Portugal if it considers feasible and credible that such an amount is sufficient to ensure that the resolution entity is able to obtain financing autonomously and on sustainable terms from the financial markets and without recourse to extraordinary public financial support, in addition to the support provided by the Resolution Fund in accordance with the provisions of Article 145-U(11) to (14), and to ensure continued provision of critical functions by the resolution entity after the implementation of the resolution strategy;

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(b) adjusted upwards by the Banco de Portugal if it considers that such an amount is necessary to ensure that the resolution entity is able to obtain funding under the conditions referred to in the foregoing subparagraph and to ensure continued provision of critical functions by the resolution entity after the implementation of the resolution strategy for a period that shall not exceed one year.

9 – For the purposes of paragraph 3, the Banco de Portugal shall take into account the requirements referred to in Articles 145-U(11) to (14) and 16-C(1) of Law No 63-A/2008 of 24 November 2008.

10 – Where the Banco de Portugal anticipates in the resolution plan that certain eligible liabilities or classes of eligible liabilities are reasonably likely to be excluded from bail-in pursuant to Article 145-U(6) or might be transferred in the context of the taking of the resolution actions provided for in Article 145-E(1)*(a)* to *(c)*, the minimum requirement for own funds and eligible liabilities of the resolution entity shall be met using own funds or other eligible liabilities that are sufficient to:

(a) cover the amount of liabilities to be excluded from bail-in or to be transferred to a transferee;

(b) ensure that the conditions referred to in Article 138-AS(2) to (4) are fulfilled.

Article 138-AW

Determination of the minimum requirement of resolution entities of relevant size

1 – The amount of the minimum requirement for own funds and eligible liabilities to be determined under the foregoing Articles for resolution entities that are not global systemically important institutions or subsidiaries of global systemically important institutions, and that are part of a resolution group whose total assets exceed EUR 100 billion shall not be less than:

(a) 13.5% of the total risk exposure amount of the resolution entity, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, for the purposes of Article 138-AO(2)*(a)*;

(b) 5% of the total exposure measure of the resolution entity, calculated in accordance with Articles 429 and 429-A of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, for the purposes of Article 138-AO(2)*(b)*.

2 – Without prejudice to Article 138-AZ, the resolution entities referred to in the foregoing paragraph shall comply with the minimum amounts set out therein with the instruments and liabilities referred to in Article 138-AY.

3 – The Banco de Portugal may apply the provisions of the foregoing paragraphs to resolution entities other than global systemically important institutions or subsidiaries of global systemically important institutions, which are part of a resolution group whose total assets do not exceed EUR 100 billion where it considers reasonably likely that such a resolution entity poses a systemic risk in the event of its failure or risk of failure.

4 – For the purposes of the foregoing paragraph, the Banco de Portugal shall consider:

(a) the prevalence of deposits and the absence of debt instruments, in the funding model of the resolution entity;

(b) the limitations of the resolution entity on access to capital markets to obtain funding through instruments from which eligible liabilities arise;

(c) the degree of reliance on Common Equity Tier 1 capital to meet the minimum requirement for own funds and eligible liabilities.

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5 – The absence of a decision pursuant to paragraph 3 is without prejudice to the adoption of any decision under Article 138-BA.

Article 138-AX

Minimum requirement for global systemically important institutions

1 – The minimum requirement for own funds and eligible liabilities of a resolution entity that is a global systemically important institution or a subsidiary of a global systemically important institution shall be the sum of:

(a) the requirements referred to in Articles 92-A and 494 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(b) the additional requirement for own funds and eligible liabilities determined by the Banco de Portugal.

2 – In order to comply with the requirements referred to in subparagraph *(a)* of the foregoing paragraph, the elements referred to in Article 72-K of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 shall be taken into account, but Article 138-AQ(1) shall not apply.

3 – For the purposes of paragraph 1*(b)*, the Banco de Portugal shall determine an additional requirement for own funds and eligible liabilities where the requirements referred to in paragraph 1*(a)* are not sufficient to comply with Articles 138-AS and 138-AV, which shall be determined in the amount necessary to pursue the purposes referred to in those Articles.

4 – The decision referred to in the foregoing paragraph shall contain a full assessment of the elements referred to in the foregoing paragraph, and Article 138-AT(4) shall also apply.

Article 138-AY

Amount of own funds and eligible liabilities for the subordination amount

The resolution entities shall comply with the amounts referred to in Articles 138-AZ and 138-BA with:

(a) the own funds;

(b) bail-inable liabilities that meet the eligibility conditions set out in Articles 72-A to 72-C of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, with the exception of Article 72-B(3) to (5);

(c) liabilities arising from Tier 2 instruments that meet the eligibility conditions set out in Article 72-A(1)*(b)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(d) the liabilities referred to in Article 138-AQ(5) and (6).

Article 138-AZ

Subordination amount of resolution entities of relevant size and global systemically important institutions

1 – The Banco de Portugal shall determine the amount of the minimum requirement for own funds and eligible liabilities to be met with the instruments and liabilities referred to in the foregoing

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Article by resolution entities that are global systemically important institutions or subsidiaries of global systemically important institutions or to which the provisions of Article 138-AW apply.

2 – The amount referred to in the foregoing paragraph shall be equal to 8% of the total liabilities, including own funds, of the resolution entity.

3 – The Banco de Portugal may determine an amount lower than 8% of the total liabilities, including own funds, of the resolution entity, where:

(a) for the resolution entity, the requirements provided for in Article 72-B(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 are met;

(b) the amount determined by the Banco de Portugal is greater than the amount resulting from the application the following formula:

(1-A/B) x 8% of the total liabilities, including own funds

where:

"A" = 3.5% of the total risk exposure amount of the resolution entity, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

"B" = the sum of 18% of the total risk exposure amount of the resolution entity, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, and the amount of the combined buffer requirement.

4 – Where the application of paragraphs 2 and 3 leads to a requirement greater than 27% of the total risk exposure amount, for the resolution entity concerned, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, the Banco de Portugal shall determine an amount equal to 27% of the total risk exposure amount where, taking into account the risk of disproportionate impact on the business model of the resolution entity concerned:

(a) the resolution plan of the resolution entity concerned does not provide for recourse to the Resolution Fund; or

(b) the Banco de Portugal considers that the minimum requirement for own funds and eligible liabilities of the resolution entity would allow compliance with Article 145-U(11) or (13) in case resolution actions are taken.

5 – The foregoing paragraph shall not apply to resolution entities to which the Banco de Portugal has applied the provisions of Article 138-AW(3).

6 – The Banco de Portugal may determine an amount of the minimum requirement for own funds and eligible liabilities greater than that provided for in paragraph 2 where:

(a) substantive impediments to resolvability are identified as part of the resolvability assessment and:

(i) the resolution entity has not taken any specific alternative measures required by the Banco de Portugal in accordance with Article 138-AK(6) and (7); or

(ii) the measures set out in Article 138-AK(7) are unlikely to reduce or remove the substantive impediments to resolvability that have been identified and the determination of an amount exceeding 8% of the total liabilities, including own funds, of the resolution entity would partially or fully compensate for the negative impact of those significative constraints;

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(b) the Banco de Portugal considers that the feasibility and credibility of the resolution entity's preferred resolution strategy are limited, taking into account its size, its interconnectedness with other credit institutions or with the financial system in general, the nature, scope, risk and complexity of its activities, its legal status and its shareholding structure;

(c) the additional own funds requirements imposed on the resolution entity shall be within the 20% of the highest additional requirements of resolution entities referred to in paragraph 1, rounded up to the closest whole number.

7 – The Banco de Portugal may make the decision provided for in the foregoing paragraph only for a total number of entities not exceeding 30% of the resolution entities referred to in paragraph 1, rounded up to the closest whole number.

8 – The amount of instruments and liabilities referred to in the foregoing Article necessary to meet all the combined buffer requirement, the minimum amounts referred to in Article 138-AW(2), the requirements referred to in Articles 92-A and 494 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and the amounts determined by the Banco de Portugal under paragraph 6 shall not exceed the greater of:

(a) 8% of total liabilities, including own funds, of the resolution entity;

(b) the amount resulting from the application of the following formula:

C x 2 + D x 2 + E

where:

"C" = the amount resulting from the requirement referred to in Article 92(1)*(c)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

"D" = the amount resulting from the additional own funds requirements imposed on the resolution entity;

"E" = the amount resulting from the combined buffer requirement.

Article 138-BA

Subordination amount of the minimum requirement of other resolution entities

1 – The Banco de Portugal may determine an amount of the minimum requirement for own funds and eligible liabilities to be met with the liabilities referred to in Article 138-AY by resolution entities not covered by the provisions of the foregoing Article where:

(a) eligible liabilities referred to in Article 138-AQ(1)*(a)* and Article 138-AQ(2) to (4), which do not rank as subordinated claims in the event of failure, have the same priority ranking as liabilities excluded from bail-in pursuant to Article 145-U(6) or for which there is a reasonable likelihood of exclusion under paragraph 9 of that Article, in accordance with the resolution plan of the resolution entity;

(b) there is a risk that the application of the bail-in tool to eligible liabilities referred to in Article 138-AQ(1)*(a)* and Article138-AQ(2) to (4), which do not rank as subordinated liabilities in the event of failure, would not lead to compliance with Article 145-D(1)*(c)*; and

(c) the amount does not exceed what is necessary to ensure compliance with Article 145-D(1)*(c)*.

2 – The amount determined in accordance with the foregoing paragraph may not exceed the greater of the values referred to in paragraph 8 of the foregoing Article.

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3 – For the purposes of paragraph 1*(b)*, the Banco de Portugal shall take into account whether the amount of liabilities excluded from bail-in pursuant to Article 145-U(6) or for which there is a reasonable likelihood of exclusion under Article 145-U(9), in accordance with the resolution plan of the resolution entity, represents more than 10% of the total liabilities of that resolution entity with the same ranking in case of failure.

Article 138-BB

Common provisions

1 – For the purposes of Article 138-AZ(6) and the foregoing Article, the Banco de Portugal shall take into account:

(a) the depth of the market for the resolution entity's instruments and liabilities referred to in Article 138-AY, the pricing of such instruments, where they exist, and the time necessary for the resolution entity to comply with those decisions;

(b) the amount of the resolution entity's liabilities that meet the eligibility conditions referred to in Articles 72-A to 72-C of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 that have a maturity below one year, with a view to making quantitative adjustments to the amounts referred to in Article 138-AZ(6) and Article 138-BA;

(c) the amount of own funds and eligible liabilities of the resolution entities;

(d) whether the amount of liabilities that are excluded from bail-in pursuant to Article 145-U(6), or in respect of which there is a reasonable likelihood of exclusion under paragraph 9 of that Article, in accordance with the resolution plan of the resolution entity, and which in the event of failure, rank equally with or below any of the eligible liabilities of the institution, is significant in comparison to the amount of own funds and eligible liabilities;

(e) the resolution entity's business model, funding model, and risk profile, as well as its stability and ability to contribute to the economy;

(f) the impact of possible restructuring costs on the own funds of the resolution entity after the taking of resolution actions.

2 – For the purposes of subparagraph *(d)* of the foregoing paragraph:

(a) an amount that does not exceed 5% of the amount of own funds and eligible liabilities of the resolution entity shall be considered as not being significant;

(b) the Banco de Portugal shall assess whether an amount exceeding 5% of the amount of own funds and eligible liabilities of the resolution entity is significant.

3 – Own funds maintained by the resolution entity to meet the amounts determined under Articles 138-AZ and 138-BA may be used to meet the combined buffer requirement and Article 138-AA shall not apply.

4 – For the purposes of this Section, derivative liabilities shall be included in the total liabilities on the basis that full recognition is given to counterparty netting rights.

Article 138-BC

Minimum requirement for own funds and eligible liabilities of subsidiaries

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1 – The Banco de Portugal shall determine the minimum requirement for own funds and eligible liabilities to be met on an individual basis by each credit institution or investment firm dealing on own account or underwriting financial instruments and/or placing of financial instruments on a firm commitment basis, which is a subsidiary of a third-country resolution entity or a third-country parent undertaking and has not been identified as a resolution entity.

2 – The Banco de Portugal may determine a minimum requirement for own funds and eligible liabilities to be met on an individual basis by the entities referred to in Article 152(2)*(a)* to *(c)* that are subsidiaries of a resolution entity and have not been identified as resolution entities.

3 – The Banco de Portugal shall determine the minimum requirement for own funds and eligible liabilities to be met on a consolidated basis by each EU parent undertaking established in Portugal of any of the entities referred to in Article 152(1) or Article 152(2)*(a)* to *(c)*, which is a subsidiary of a third-country entity and has not been identified as a resolution entity, and the provisions of the foregoing paragraphs shall not apply.

4 – For central bodies and resolution groups to which credit institutions permanently affiliated to a central body belong, the Banco de Portugal shall determine the minimum requirement for own funds and eligible liabilities to be met on an individual basis:

(a) by the credit institutions permanently affiliated to a central body that have not been identified as resolution entities;

(b) by the central body, where it has not been identified as a resolution entity;

(c) by the resolution entities of the resolution group that are not subject to the minimum requirement for own funds and eligible liabilities on a consolidated basis under Article 138-AU(3).

Article 138-BD

Determination of the minimum requirement of subsidiaries

1 – The minimum requirement for own funds and eligible liabilities of an entity referred to in the foregoing Article to be determined under Article 138-AO(2)*(a)* shall be the sum of the following:

(a) for the purposes of Article 138-AS(2)*(a)*, the amount corresponding to the requirement referred to in Article 92(1)*(c)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and the additional own funds requirements imposed under this Legal Framework to the entity;

(b) for the purposes of Article 138-AS(2)*(b)*, the amount to enable the entity to continue to comply with the requirement referred to in Article 92(1)*(c)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and the additional own funds requirements imposed under this Legal Framework, following the exercise of the write-down or conversion powers under Article 145-I or the resolution of the resolution group.

2 – The minimum requirement for own funds and eligible liabilities of an entity referred to in the foregoing paragraph. to be determined under Article 138-AO(2)*(a)*, shall be expressed in percentage terms as the amount calculated under the foregoing paragraph, divided by the total risk exposure amount of the resolution entity as calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

3 – The minimum requirement for own funds and eligible liabilities of an entity referred to in the foregoing Article to be determined under Article 138-AO(2)*(b)* shall be the sum of the following:

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(a) for the purposes of Article 138-AS(2)*(a)*, the amount corresponding to the requirement referred to in Article 92(1)*(d)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 applicable to the entity;

(b) for the purposes of Article 138-AS(2)*(b)*, the amount to enable the entity to continue to comply with the requirement referred to in Article 92(1)*(d)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, following the exercise of the write-down or conversion powers under Article 145-I or the resolution of the resolution group.

4 – The minimum requirement for own funds and eligible liabilities of an entity referred to in the foregoing paragraph. to be determined under Article 138-AO(2)*(b)*, shall be expressed in percentage terms as the amount calculated under the foregoing paragraph, divided by the total exposure measure exposure of the resolution entity as calculated in accordance with Articles 429 and 429-A of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

5 – For the purposes of determining the amount referred to in paragraphs 1*(b)* and 3*(b)*, the Banco de Portugal shall:

(a) use the most recent values reported to the Banco de Portugal for the total risk exposure amount and the total exposure measure, calculated respectively in accordance with Articles 92(3), 429 and 429-A of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, adjusted for any changes resulting from the implementation of the resolution strategy;

(b) adjust upwards or downwards the additional requirements for own funds imposed under this legal Framework to determine the additional requirements to be imposed on the entity following the exercise of the write-down or conversion powers under Article 145-I or the resolution of the resolution group.

6 – The Banco de Portugal shall be able adjust upwards the requirement referred to in paragraph 1*(b)* by an appropriate amount necessary to ensure that, following the exercise of the write-down or conversion powers under Article 145-I, the entity referred to in the foregoing Article is able to obtain financing autonomously and on sustainable terms from financial markets for a period that shall not exceed one year.

7 – For the purposes of the foregoing paragraph, the appropriate amount shall be equal to the combined buffer requirement referred to in Article 138-B(2), less the credit institution-specific countercyclical capital buffer referred to in Article 138-B(1)*(b)*, applicable to the entity referred to in the foregoing Article, following the exercise of the write-down or conversion powers under Article 145-I or the resolution of the resolution group.

8 – The amount referred to in the foregoing paragraph shall be:

(a) adjusted downwards by the Banco de Portugal if it considers feasible and credible that such an amount is sufficient to ensure that the entity referred to in the foregoing Article is able to obtain financing autonomously and on sustainable terms from the financial markets and without recourse to extraordinary public financial support, in addition to the support provided by the Resolution Fund in accordance with the provisions of Article 145-U(11) to (14), and to ensure continued provision of critical functions by the entity following the exercise of the write-down or conversion powers under Article 145-I or the resolution of the resolution group;

(b) adjusted upwards by the Banco de Portugal if it considers that such an amount is necessary to ensure that the entity is able to obtain funding under the conditions referred to in the foregoing

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subparagraph, and to ensure continued provision of critical functions by the entity after the implementation of the resolution strategy for a period that shall not exceed one year.

9 – For the purposes of paragraph 3, the Banco de Portugal shall take into account the requirements referred to in Articles 145-U(11) to (14) and 16-C(1) of Law No 63-A/2008 of 24 November 2008.

10 – Where the liabilities of the entities referred to in the foregoing Article against the resolution entity that is part of the same resolution group are covered by Article 145-U(6)*(i)*, the Banco de Portugal shall assess whether the amount of instruments and liabilities referred to in Article 138-AR is sufficient for the implementation of the preferred resolution strategy.

Article 138-BE

Exemption

1 – The Banco de Portugal may exempt the entities referred to in Article 138-BC(1) to (3) from compliance with the minimum requirement for own funds and eligible liabilities where:

(a) the entity concerned and the resolution entity belonging to the same resolution group are established in Portugal;

(b) the resolution entity meets its minimum requirement for own funds and eligible liabilities;

(c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the resolution entity to the entity concerned after the determination that such entity meets one of the requirements referred to in Article 145-I(2), in particular where resolution actions have been taken in respect of the resolution entity;

(d) the resolution entity adequately demonstrates to the Banco de Portugal that it manages prudently the entity concerned and declares, with the approval of the Banco de Portugal, that it guarantees the commitments entered into by that entity, or the risks of the entity concerned are of no significance;

(e) the risk evaluation, measurement and control procedures of the resolution entity cover the entity concerned; and

(f) the resolution entity holds more than 50% of the voting rights attached to shares in the capital of the entity concerned or has the right to appoint or remove a majority of the members of the management body of such entity.

2 – The Banco de Portugal may also exempt the entities referred to in the foregoing paragraph from compliance with the minimum requirement for own funds and eligible liabilities where:

(a) the entity concerned and its parent undertaking are established in Portugal and are part of the same resolution group;

(b) the parent undertaking complies on a consolidated basis with the minimum requirement for own funds and eligible liabilities;

(c) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities by the parent undertaking to the entity concerned after the determination that such entity meets one of the requirements referred to in Article 145-I(2), in particular where resolution actions have been taken or the write-down or conversion powers under Article 145-I have been exercised in respect of the parent undertaking;

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(d) the parent undertaking entity adequately demonstrates to the Banco de Portugal that it manages prudently the entity concerned and declares, with the approval of the Banco de Portugal, that it guarantees the commitments entered into by that entity, or the risks of the entity concerned are of no significance;

(e) the risk evaluation, measurement and control procedures of the parent undertaking cover the entity concerned;

(f) the parent undertaking entity holds more than 50% of the voting rights attached to shares in the capital of the entity concerned or has the right to appoint or remove a majority of the members of the management body of such entity.

3 – The Banco de Portugal may fully or partially exempt a central body or credit institution permanently affiliated to a central body from compliance with the minimum requirement for own funds and eligible liabilities referred to in Article 138-BC(4) where:

(a) the central body and the credit institution permanently affiliated to it are established in Portugal and are part of the same resolution group;

(b) the central body and the credit institutions permanently affiliated to it are jointly and severally liable for their obligations, or the obligations assumed by credit institutions permanently affiliated to the central body are fully guaranteed by the central body;

(c) the minimum requirements for own funds and eligible liabilities, the solvency and liquidity of the central body and of the permanently affiliated credit institutions, are monitored as a whole on a consolidated basis;

(d) for the purposes of exempting the minimum requirement for own funds and eligible liabilities of a credit institution permanently affiliated to a central body, the central body may issue instructions to credit institutions permanently affiliated to it;

(e) the resolution group to which the central body belongs and the credit institutions permanently affiliated to it overall complies with the minimum requirement for own funds and eligible liabilities on a consolidated basis in accordance with Article 138-AU(3);

(f) there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or repayment of liabilities between the central body and the permanently affiliated credit institutions in the event of resolution.

Article 138-BF

Minimum requirement for subsidiaries of global systemically important institutions established in a third country

1 – The minimum requirement for own funds and eligible liabilities of an entity referred to in Article 138-BC which is a material subsidiary of a global systemically important institution established in a third country shall be the sum of:

(a) the requirements referred to in Articles 92-B and 494 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(b) the additional requirement for own funds and eligible liabilities determined by the Banco de Portugal.

2 – For the purposes of the foregoing paragraph, subsidiaries referred to in Article 4, point (135), of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 shall be material subsidiaries of a global systemically important institution established in a third country.

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3 – For the purposes of paragraph 1*(a)*, the elements referred to in Article 72-L of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 shall be taken into account, but Article 138-AR(1)*(a)* and *(b)* shall not apply.

4 – For the purposes of paragraph 1*(b)*, the Banco de Portugal shall determine an additional requirement for own funds and eligible liabilities where the requirements referred to in paragraph 1*(a)* are not sufficient to comply with Article 138-AS(1) and Article 138-BD, which shall be determined in the amount necessary for such purpose.

5 – The decision referred to in the foregoing paragraph shall contain a full assessment of the elements referred to in the foregoing paragraph, and Article 138-AT(4) shall also apply.

6 – In order to meet the additional requirement for own funds and eligible liabilities, the instruments and credits referred to in Article 138-AR(1) and Article 145-AH(9) shall be taken into account.

SECTION III

TRANSITIONAL PERIODS

Article 138-BG

Determination of transitional periods

1 – The Banco de Portugal shall determine an appropriate deadline for credit institutions to comply with the minimum requirements for own funds and eligible liabilities referred to in Articles 138-AU and 138-BC, as well as the subordination amounts determined in accordance with Articles 138-AZ and 138-BA.

2 – Following the taking of resolution actions or the exercise of the write-down or conversion powers provided for in Article 145-I, the Banco de Portugal shall determine a new deadline for compliance with the provisions of the foregoing paragraph.

3 – To determine the deadlines under the foregoing paragraphs, the Banco de Portugal shall take into account:

(a) the prevalence of deposits and the absence of debt instruments, in the funding model of the resolution entity;

(b) the limitations of the resolution entity on access to capital markets to obtain funding through instruments from which eligible liabilities arise;

(c) the degree of the resolution entity's reliance on Common Equity Tier 1 capital to meet the minimum requirement for own funds and eligible liabilities.

4 – For determining the deadline referred to in paragraph 2, the Banco de Portugal shall also take into account the deadline set for compliance with guidance on additional own funds imposed on the credit institution.

5 – When determining transitional periods, in accordance with the foregoing paragraphs, the Banco de Portugal shall communicate to the credit institution a minimum requirement for own funds and eligible liabilities for each 12-month period, with a view to facilitating a gradual build-up of its loss-absorbing as recapitalisation capacity and to contributing to the fulfilment of the minimum requirements for own funds and eligible liabilities referred to in Article 138-AU and Article 138-BC of the subordination amounts determined under Articles 138-AZ and 138-BA at the end of the transitional period.

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6 – The Banco de Portugal may review the deadlines determined under paragraphs 1 and 2 and the requirements communicated under paragraph 5 at any time.

7 – The minimum amounts laid down in Article 138-AW for the minimum requirement for own funds and eligible liabilities of resolution entities of a relevant size shall not apply for two years following:

(a) the application of the bail-in tool to the resolution entity concerned;

(b) the implementation, by the resolution entity itself, of the measures referred to in Article 145-E(2)*(b)* under which the share capital or the nominal value of the liabilities resulting from the ownership of own funds instruments has been written down or where an increase in share capital has taken place by conversion of those liabilities into Common Equity Tier 1 instruments, or the exercise of the write-down or conversion powers provided for in Article 145-I by the Banco de Portugal to the resolution entity concerned, in order to prevent or overcome the failure or likelihood of failure of that entity without taking any resolution action.

8 – The minimum amounts laid down in Article 138-AW for the minimum requirement for own funds and eligible liabilities of resolution entities of relevant size, as well as the subordination amount determined under Article 138-AZ, shall not apply in the three years following the date on which the resolution entity meets the conditions laid down in Article 138-AW.

9 – The subordination amount determined under Article 138-AZ shall not apply for three years after the resolution entity or its parent undertaking being identified as a global systemically important institution.

SECTION IV

DECISION PROCESS FOR GROUPS

Article 138-BH

Joint decision

1 – The minimum requirements for own funds and eligible liabilities of resolution entities and subsidiaries shall be determined by a fully reasoned joint decision of the following entities within four months of the beginning of the decision-making process:

(a) the resolution authority of the resolution entity;

(b) the group-level resolution authority, when different from that mentioned; and

(c) the resolution authorities of subsidiaries of the resolution entity that are part of the same resolution group.

2 – The Banco de Portugal shall participate in the joint decision process referred to in the foregoing paragraph as resolution authority of the resolution entity, group-level resolution authority or resolution authority of subsidiaries of the resolution entity that are part of the same resolution group, as applicable.

3 – The joint decision referred to in paragraph 1 may provide for the determination referred to in Article 138-AR(2).

4 – The Banco de Portugal shall notify the joint decision referred to in paragraph 1:

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(a) to the resolution entity, as the resolution authority responsible for that entity;

(b) to the subsidiaries of the resolution entity that are part of the same resolution group, as the resolution authority responsible for those entities;

(c) to the parent undertaking of the group, when different from the resolution entity referred to in subparagraph *(a)*, as group-level resolution authority.

5 – For the period provided for in paragraph 1 and until the joint decision has been adopted, the Banco de Portugal may request the assistance of the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010.

6 – As resolution authority of the resolution entity or group-level resolution authority, as applicable, the Banco de Portugal shall not request the assistance of the European Banking Authority for binding mediation in the framework of the joint decision process for determining the minimum requirement for own funds and eligible liabilities of a subsidiary of a resolution entity that is part of the same resolution group where the level set by the resolution authority of the subsidiary:

(a) complies with Article 138-BB; and

(b) is within 2% of the total risk exposure amount, calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, of the minimum requirement for own funds and eligible liabilities of the resolution entity.

7 – In the absence of a joint decision in accordance with paragraph 1, the provisions of Articles 138-BJ to 138-BL shall apply.

Article 138-BI

Joint decisions on global systemically important institutions

1 – Where more than one resolution entity in a group that includes a global systemically important institution is identified, in the context of the joint decision process referred to in the foregoing Article, the following shall be calculated:

(a) the additional requirement for own funds and eligible liabilities of each resolution entity at the consolidated resolution group level;

(b) the additional requirement for own funds and eligible liabilities for the EU parent undertaking at the consolidated group level.

2 – In the situations referred to in the foregoing paragraph, the resolution authorities referred to in paragraph 1 of the foregoing Article shall assess and decide, as part of the joint decision process and considering the resolution strategy:

(a) how Article 72-E of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 shall be applied;

(b) any adjustments to reduce or eliminate the difference between:

(i) the sum of the amounts referred to in subparagraph *(a)* of the foregoing paragraph and in Article 12-A of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 for each resolution entity;

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(ii) the sum of the amounts referred to in subparagraph *(b)* of the foregoing paragraph and in Article 12-A of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 for the EU parent undertaking at the consolidated group level.

3 – The adjustments referred to in subparagraph *(b)* of the foregoing paragraph:

(a) may be applied in respect of differences in the calculation of the total risk exposure amount in the EU Member States where the resolution entities are established by adjusting the level of the requirement; and

(b) shall not be applied to eliminate differences resulting from exposures between resolution groups.

4 – The amounts referred to in paragraph 2*(b)(i)* shall not be lower than the amounts referred to in paragraph 2*(b)(ii)*.

Article 138-BJ

Individual decisions on the minimum requirement of resolution entities

1 – In the absence of a joint decision within the four-month period referred to in Article 138-BH(1) due to a disagreement on the minimum requirement for own funds and eligible liabilities of the resolution entity provided for in Article 138-AU, the Banco de Portugal, in its capacity as resolution authority of the resolution entity, shall take an individual decision on that requirement, taking into account the views and reservations expressed by the group-level resolution authority, where different, and by the resolution authorities of the subsidiaries of the resolution entity that is part of the same resolution group.

2 – Where, during the four-month period referred to in Article 138-BH(1), any of the resolution authorities has requested the assistance of the European Banking Authority in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, the Banco de Portugal shall await any decision that the European Banking Authority may take, and shall make its decision accordingly.

3 – In the absence of a decision by the European Banking Authority within one month, paragraph 1 shall apply.

Article 138-BK

Individual decisions on the minimum requirement of subsidiaries

1 – In the absence of a joint decision within the four-month period referred to in Article 138-BH(1) due to a disagreement on the minimum requirement for own funds and eligible liabilities of a subsidiary of the resolution entity provided for in Article 138-BC, the Banco de Portugal, in its capacity as resolution authority of such subsidiary, shall take an individual decision on that requirement, taking into account the views and reservations expressed in writing by the resolution authority of the resolution entity that is part of the same resolution group or by the group-level resolution authority, where different.

2 – Where, during the four-month period referred to in Article 138-BH(1), any of the resolution authorities has requested the assistance of the European Banking Authority, the Banco de Portugal shall await any decision that the European Banking Authority may take, and shall make its decision accordingly.

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3 – In the absence of a decision by the European Banking Authority within one month, paragraph 1 shall apply.

Article 138-BL

Individual decisions on the minimum requirement of resolution entities and subsidiaries

In the absence of a joint decision within the four-month period referred to in Article 138-BH(1) due to a disagreement on the minimum requirements for own funds and eligible liabilities of the resolution entity and its subsidiaries that are part of the same resolution group, individual decisions on those requirements shall be made in accordance with Articles 138-BJ and 138-BK.

Article 138-BM

Common provisions

1 – The Banco de Portugal shall make the decisions provided for in this Section when drawing up the resolution plans and reassess them when they are updated or where deemed necessary.

2 – The joint decision referred to in Article 138-BH, the decisions of the Banco de Portugal referred to in Articles 138-BJ and 138-BK and the decisions taken by the resolution authority of the resolution entity and by the resolution authorities of the subsidiaries of that resolution entity that are part of the same resolution group, in the absence of a joint decision, shall be binding, periodically reassessed and, where necessary, updated.

SECTION V

REPORTING AND DISCLOSURE OBLIGATIONS

Article 138-BN

Reporting obligations of credit institutions

1 – Credit institutions shall report the following information to the Banco de Portugal:

(a) the amount of own funds relevant for the amount of own funds and eligible liabilities under Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 and, where applicable, Article 138-AR(1)*(c)* and *(d)*;

(b) the amount of eligible liabilities relevant for the amount of own funds and eligible liabilities;

(c) the expression of the amounts referred to in the foregoing subparagraphs in accordance with Article 138-AO(2) after any deductions in accordance with Articles 72-E to 72-J of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, where applicable;

(d) the amounts of other bail-inable liabilities;

(e) for the items referred to in the foregoing subparagraphs:

(i) the composition of those items, including their maturity profile;

(ii) the ranking of claims resulting from those items in the event of failure;

(iii) the law governing the respective contractual instruments and, being the law of a third country, whether those instruments contain the contractual terms referred to in Article 52(1)*(p)* and *(q)*, in Article 63*(n)* and *(o)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 or in Article 145-X(3).

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2 – The items referred to in the foregoing paragraph shall be reported to the Banco de Portugal:

(a) on a semi-annual basis, in respect of the items referred to in subparagraphs *(a)* to *(c)* of the foregoing paragraph;

(b) on an annual basis, in respect of the items referred to in subparagraphs *(d)* and *(e)* of the foregoing paragraph.

3 – The Banco de Portugal may set a higher frequency than that provided for in the foregoing paragraph for the reporting of the items referred to in paragraph 1.

4 – The obligation to report the items referred to in paragraph 1*(d)* shall not apply to credit institutions whose amount of own funds and eligible liabilities is equal at the date of the reporting, to 150% of the minimum requirement for own funds and eligible liabilities determined to it, as calculated in accordance with subparagraphs *(a)* to *(c)* of paragraph 1.

5 – The provisions of this Article shall not apply to credit institutions whose resolution plan provides that they are to be wound up.

Article 138-BO

Disclosure

1 – Credit institutions shall disclose the following information on at least an annual basis:

(a) the items referred to in paragraph 1*(a)*) and *(b)* of the foregoing Article;

(b) the composition of the items referred to in the foregoing subparagraph, including their maturity and the ranking of claims resulting from those items in the event of failure;

(c) the minimum requirement for own funds and eligible liabilities determined to it, expressed in accordance with Article 138-AO(2).

2 – After the application of resolution tools or the exercise of the write-down or conversion powers of own funds instruments and eligible liabilities provided for in Article 145-I, compliance with the obligation laid down in the foregoing paragraph shall only be required after the end of the transitional period determined by the Banco de Portugal under the provisions of Article 138-BG(2).

3 – The provisions of this Article shall not apply to credit institutions whose resolution plan provides that they are to be wound up.

Article 138-BP

Notification of the European Banking Authority

The Banco de Portugal shall notify the European Banking Authority of the minimum requirements for own funds and eligible liabilities determined under this Chapter.

SECTION VI

BREACH OF THE MINIMUM REQUIREMENT

Article 138-BQ

Breaches of the minimum requirement for own funds and eligible liabilities

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1 – Without prejudice to possible liability for administrative offences, any breach of the minimum requirement for own funds and eligible liabilities referred to in Articles 138-AU and 138-BC, the Banco de Portugal may apply, notably:

(a) powers to address or remove impediments to resolvability;
(b) powers to restrict distributions;
(c) corrective measures;
(d) corrective intervention.

2 – The Banco de Portugal may also assess whether the credit institution in breach of its minimum requirement for own funds and eligible liabilities is failing or likely to fail for the purposes of Article 145-E(3).

3 – For the purposes of paragraph 1*(c)* and *(d)*, the Banco de Portugal, in its capacity as the authority responsible for the supervision on an individual or consolidated basis of a credit institution, shall consult the Single Resolution Board when this Board is the resolution authority of the credit institution pursuant to the applicable law.

SECTION VII

MINIMUM DENOMINATION AMOUNT OF FINANCIAL INSTRUMENTS

Article 138-BR

Distribution and sale of instruments

1 – Own funds instruments, with the exception of Common Equity Tier 1 instruments, debt instruments provided for in Article 8-A of Decree-Law No 199/2006 of 25 October 2006 and subordinated eligible liabilities may be distributed and sold to retail investors only where the financial intermediary involved in the transaction:

(a) tests the suitability of the transaction, in accordance with Article 314-A of the Portuguese Securities Code, irrespective of the service provided;
(b) concludes, on the basis of the test referred in the foregoing subparagraph, that those instruments are suitable for that retail investor; and
(c) records and documents the test of suitability in accordance with Articles 312-H and 323 of the Portuguese Securities Code.

2 – The retail investor shall provide the financial intermediary involved in the transaction with accurate information on the retail investor's financial instrument portfolio, including, in particular, any investments in the instruments referred to in the foregoing paragraph.

3 – In addition to compliance with paragraph 1, where the retail investor holds a financial instrument portfolio that does not exceed EUR 500,000 at the date of acquisition, the financial intermediary may only execute the transaction if, in accordance with the information provided under the foregoing paragraph:

(a) the aggregate amount invested in the instruments referred to in paragraph 1 does not exceed 10% of the total financial instrument portfolio; and

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(b) the initial investment amount in each of the instruments referred to in paragraph 1 is at least EUR 10,000.

4 – FOR THE PURPOSES OF PARAGRAPHS 2 AND 3, THE RETAIL INVESTOR'S FINANCIAL INSTRUMENT PORTFOLIO SHALL INCLUDE FINANCIAL INSTRUMENTS OTHER THAN THOSE PROVIDED AS COLLATERAL, AND DEPOSITS.

TITLE VIII
Corrective measures, interim administration and resolution

CHAPTER I
General principles

Article 139
General principles

1 - In order to safeguard the financial soundness of the credit institution, the interests of depositors or the stability of the financial system, the Banco de Portugal may adopt the measures set out in this Title.

2 - The application of the measures set out in this Title shall be subject to the principles of adequacy and proportionality, taking into account the risk or degree of non-compliance by the credit institution with the legal and regulatory rules governing its activity, as well as the seriousness of their consequences for the financial soundness of the institution in question, for the interests of depositors or for the stability of the financial system.

Article 140
Application of measures

When adopting the measures laid down in this Title, the Banco de Portugal is not obliged to observe any particular order, being authorised, according to the specific circumstances of each situation and the principles set out in the foregoing Article, to combine different kinds of measures, without prejudice to the conditions established for the application of each measure taken.

CHAPTER II
Corrective measures and interim administration

Article 141
Corrective measures

1 - Where a credit institution breaches, or is likely to breach, the legislation or regulations governing its activity, the Banco de Portugal, within a period it considers adequate and taking into account the general principles laid down in Article 139, may:

(a) require the management body of the credit institution to prepare and submit an action programme identifying and proposing solutions within a specific time frame for compliance with the legislation or regulations governing its activity or to eliminate the risk of non-compliance;

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(b) require the management body to implement the arrangements or measures set out in the recovery plan or in accordance with Article 116-I(1) update such a recovery plan when the circumstances that led to the corrective action are different from the assumptions set out in the initial recovery plan and implement the arrangements or measures set out in the updated recovery plan within a specific time frame for compliance with the legislation or regulations governing its activity or to eliminate the risk of non-compliance;

(c) require the implementation of the corrective measures set out in Article 116-C;

(d) require the credit institution in question to submit a restructuring plan, under the terms of Article 142;

(e) require the appointment of an auditing commission or a single auditor, under the terms of Article 143;

(f) impose restrictions on the granting of credit and investment of funds in specific types of assets, especially in relation to transactions with subsidiaries, with its parent undertaking or with subsidiaries of the parent undertaking, as well as with entities in off-shore jurisdictions;

(g) impose restrictions on the acceptance of deposits, according to their type and remuneration;

(h) Impose the compulsory building-up of special provisions;

(i) prohibit or limit the distribution of dividends;

(j) require certain transactions and certain acts to be subject to the prior approval of the Banco de Portugal;

(k) impose additional reporting requirements;

(l) require the credit institution in question to submit a plan for negotiation on restructuring the debt with its creditors, according to the recovery plan, where applicable;

(m) require that a general or partial audit to the business of the credit institution be conducted by an independent entity appointed by the Banco de Portugal and whose cost will be borne by the institution;

(n) require at any time the chair of the general meeting to convene a meeting of shareholders, with a specific agenda and decision proposals, or if the chair fails to comply with that requirement convene directly a meeting of shareholders;

(o) impose changes in the legal or operational structures of the credit institution;

(p) impose changes in the functional structure of the credit institution, specifically by eliminating or replacing holders of senior management positions or removing the holders of these positions;

(q) impose changes in the credit institution's business strategy;

(r) require on-site inspections to be carried out to acquire the information necessary in order to update the resolution plan and prepare for the possible resolution of the credit institution, and for valuation of its assets, liabilities and off-balance-sheet items in accordance with Article 145-H;

(s) impose the removal or replacement of the members of the management body or auditing commission where, for any reason, the requirements of suitability, professional qualification, independence or availability laid down in Article 30 are no longer fulfilled;

(t) require the credit institution in question to contact potential purchasers of its rights and obligations constituting assets, liabilities, off-balance-sheet items and assets under the management of the institution, or the ownership of shares or equivalent instruments of ownership, in order to prepare for the possible application of the resolution measure laid down in Article 145-M.

2 - In assessing the risk provided for in the foregoing paragraph, account shall be taken of the fact that the credit institution breaches or there are objective elements to support a determination that the institution will, in the near future, breach the legal and regulatory rules governing its activity,

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and, among other pertinent facts, whose relevance shall be assessed by the Banco de Portugal in accordance with the general principles prescribed in Article 139, the following situations:

(a) risk of non-compliance with minimum capital adequacy requirements;

(b) liquidity problems that may jeopardise the regular fulfilment of the obligations of the credit institution;

(c) the corporate governance system or the management body of the credit institution no longer ensuring a sound and prudent management;

(d) material inadequacies in the accounting organisation or in the internal control system of the credit institution, which do not allow for an adequate assessment of the institution's financial situation.

3 – Members of senior management, or holders of other positions, who have ceased their functions under paragraph 1(*p)* shall communicate, without delay, all information, and provide the cooperation required by the Banco de Portugal or by the credit institution, where deemed necessary by the latter.

4 – Where the Single Resolution Board is, in accordance with the applicable law, the resolution authority of the credit institution concerned:

(a) the Banco de Portugal shall immediately notify it of any decision adopted under paragraph 1;

(b) it shall be notified of the information collected under paragraph 1*(r)*.

Article 142

Restructuring plan

1 - The restructuring plan provided for in Article 141(1)*(d)* shall be submitted to the Banco de Portugal for approval within a time frame set by the latter.

2 - The Banco de Portugal may, at any time, lay down the conditions it deems appropriate for the acceptance of the restructuring plan, namely a capital increase, a capital reduction or the disposal of shareholdings or of other assets of the credit institution.

3 - If the conditions laid down by the Banco de Portugal under the foregoing paragraph are not approved by the shareholders or the management body of the credit institution, or if the credit institution does not comply with the restructuring plan approved by the Banco de Portugal, the latter may determine the suspension of the management body of a credit institution and appoint a temporary administration or withdraw the authorisation of the credit institution, without prejudice to the ability to apply one or more resolution measures under the terms of Chapter III.

4 - [*Repealed*].

5 - [*Repealed*].

6 - [*Repealed*].

7 - [*Repealed*].

Article 143

Auditing commission or single auditor

1 - The auditing commission appointed by the Banco de Portugal in accordance with Article 141(1)*(e)* shall be comprised of at least three members, one of which shall be a statutory auditor or auditing company, who will chair, and the others must have a university degree appropriate to the performance of these functions as well as a high level of expertise in auditing or accounting.

2 - When the supervisory function of the credit institution is incumbent on a single auditor, the Banco de Portugal may, as an alternative to the provisions of paragraph 1, appoint a single auditor,

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who must be a statutory auditor or auditing company.

3 - The auditing commission or the single auditor are remunerated by the credit institution and shall have the powers and duties conferred by law and by the respective articles of association of the supervisory body, which shall be suspended during the period of activity of the said auditing commission or single auditor.

4 - The auditing commission or the single auditor shall keep the Banco de Portugal informed about their activity, namely by preparing reports with the frequency defined by the Banco de Portugal.

5 - In the cases where the credit institution has adopted one of the management and supervisory models set out in the Commercial Companies Code in which the statutory auditor or auditing company responsible for the legal certification of the accounts is not a member of the respective supervisory body, the Banco de Portugal may impose its replacement with a new statutory auditor or auditing company appointed by the Banco de Portugal, whose remuneration shall be fixed by the Banco de Portugal and paid by the credit institution.

6 - The auditing commission or the single auditor shall remain in office for the period determined by the Banco de Portugal, up to a maximum of one year, renewable up to two years.

7 - The remuneration of the members of the auditing commission or of the single auditor shall be fixed by the Banco de Portugal.

8 - The Banco de Portugal may, at any time, replace the members of the auditing commission, the single auditor or the statutory auditor or auditing company appointed under the terms of paragraph 5 and end their duties if it deems that there are relevant grounds.

9 - Without prejudice to other types of responsibility, the members of the auditing commission or the single auditor are only responsible and accountable to the shareholders and creditors of the credit institution for damages resulting from illegal acts and omissions committed with fraudulent intention or with gross negligence.

10 - The natural or legal persons suspended or replaced under the foregoing paragraphs are obliged to immediately provide all information and to cooperate with the Banco de Portugal or with the credit institution where deemed necessary by the latter.

Article 144

Resolution or liquidation regime

Whenever the corrective measures applied do not achieve the financial recovery of the credit institution, or if they are deemed insufficient, the Banco de Portugal may, alternatively:

(a) suspend or remove the members of the management body, where all the requirements laid down in Article 145(1) are fulfilled, and appoint temporary members for the management body under Article 145-A;

(b) apply a resolution measure, if deemed necessary to fulfil the objectives set out in Article 145-C(1) and if the requirements laid down in Article 145-E(2) are met;

(c) withdraw its authorisation, applying the liquidation regime provided for in the applicable law.

Article 145

Suspension or removal of the members of the management body

1 - The Banco de Portugal may suspend or remove the members of the management body of a credit institution where the corrective measures provided for in Article 141 are insufficient or there is a grounded fear that they are not sufficient to reverse the significant deterioration of the institution or to financially recover it, or when any of the following situations occurs that may seriously

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jeopardise the financial soundness or solvency of the institution or constitute a threat for the stability of the financial system:

(a) detection of a serious or continuous breach of legal or regulatory rules governing the credit institution's activity, as well as of its statutory rules;

(b) existence of sufficient grounds to suspect the existence of serious irregularities in the management of the credit institution;

(c) Existence of sufficient grounds to suspect that the shareholders or the members of the management body of the credit institution are unable to ensure sound and prudent management or to financially recover the institution;

(d) existence of sufficient grounds to suspect that there are other irregularities that seriously jeopardise the interests of the depositors and creditors.

2 – The members of the management body that have ceased their duties under the foregoing paragraph are obliged to immediately provide all information and to cooperate as required by the Banco de Portugal or by the credit institution where deemed relevant and necessary by the latter.

3 – The fact that the members of the management body have ceased their duties under paragraph 1 shall not entitle them to a compensation under the agreements signed with the former or the general terms of the law.

4 – [*Repealed*].

5 – [*Repealed*].

6 – [*Repealed*].

7 – [*Repealed*].

8 – [*Repealed*].

9 – [*Repealed*].

10 – [*Repealed*].

11 – [*Repealed*].

12 – [*Repealed*].

13 – [*Repealed*].

14 – [*Repealed*].

Article 145-A

Appointment of a temporary administrator

1 – Where the suspension or removal of the members of the management body is deemed to be insufficient to remedy some of the situations described in Article 145(1)*(a)* to *(d)*, the Banco de Portugal may appoint one or more temporary administrators to the credit institution.

2 – Without prejudice to some other duties provided for by law or imposed on them by the Banco de Portugal under Article 116(1)*(c)*, the temporary administrators shall have the following duties:

(a) to keep the Banco de Portugal informed of the financial position and management of the credit institution during their appointment, namely through the preparation of reports at regular intervals defined by the latter and at the end of the mandate;

(b) to comply with the general guidelines and strategic goals established by the Banco de Portugal regarding the performance of their functions;

(c) to provide the Banco de Portugal will all information and the collaboration required on any subject related to their activity and the credit institution;

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(d) subject the actions mentioned in the following paragraph to prior approval by the Banco de Portugal.

3 – The temporary administrators appointed by the Banco de Portugal shall, in addition to the powers conferred upon them by law and by the statutes, have the following powers:

(a) to veto decisions of the general meeting that may jeopardise the objectives of the measures applied or to be applied by the Banco de Portugal with a view to safeguarding the viability of the credit institution and financial stability;

(b) to veto the decisions of the other corporate bodies of the credit institution;

(c) to revoke decisions previously adopted by the credit institution's management body;

(d) to call the general meeting of the institution and draw up its agenda, after the prior approval of the Banco de Portugal;

(e) to promote a detailed assessment of the assets and financial position of the credit institution, in accordance with the assumptions defined by the Banco de Portugal;

(f) to submit to the Banco de Portugal proposals for the financial recovery of the credit institution;

(g) to provide for the immediate correction of any previous irregularities on the part of the corporate bodies of the institution or any of their members;

(h) to adopt measures which they consider to be in the interests of depositors and the credit institution;

(i) to promote agreement between the shareholders and creditors of the credit institution regarding measures aimed at the financial recovery of the institution, namely debt restructuring, conversion of debt into capital, write-down of the capital through loss absorption, capital increase or sale of part of the business to another institution authorised to pursue it;

(j) to manage all or some core business lines of the credit institution;

(k) to decide on financial and legal audits to the credit institution.

4 – The Banco de Portugal may subject to its prior approval certain acts performed by the temporary administrators, and restrict some of the powers listed in the foregoing paragraphs.

5 – When appointing the temporary administrators, the Banco de Portugal shall take into account their suitability, qualifications, independence or availability. The provisions of Articles 30 to 33 shall apply mutatis mutandis.

6 – The appointment of a temporary administrator shall last for a period set by the Banco de Portugal, no more than one. That period may be exceptionally renewed for an equal period, under a duly reasoned decision of the Banco de Portugal, if the conditions for their appointment continue to be met.

7 – The Banco de Portugal shall have the exclusive power to remove, at any time, temporary administrators or change the duties and powers conferred on them. The provisions of Article 145(3) shall apply mutatis mutandis.

8 – The remuneration of the temporary administrators shall be fixed by the Banco de Portugal and paid by the credit institution.

9 – Without prejudice to other type of responsibility, the temporary administrators shall have no liability to the credit institution's shareholders and creditors unless the act or omission committed by them in the exercise of their functions implies gross negligence or serious misconduct.

10– The appointment of the temporary administrators does not depend on the previous application of corrective measures, and does not prejudice their application.

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11– With the appointment of a temporary administrator, the Banco de Portugal may also designate an auditing commission or single auditor. The provisions of Article 143 shall apply.

12– The Banco de Portugal may determine that the provisions of Article 147 shall apply mutatis mutandis as long as the temporary administrator remains in office.

13– In injunction proceedings to suspend the execution of decisions taken by temporary administrators of the credit institution it is assumed for all legal purposes that the damage resulting from the suspension is greater than the damages resulting from the execution of the decision taken.

14– The Banco de Portugal shall publish on its website the appointment or extension of functions of any temporary administrators, specifying the functions and powers entrusted to them.

Article 145-B

Coordination of corrective measures and appointment of temporary administrator in relation to groups

1 – Where the conditions for the imposition of requirements under Article 141 or the appointment of a temporary administrator in accordance with Article 145-A are met in relation to an EU parent undertaking, the Banco de Portugal, in its capacity as consolidating supervisor, shall notify the European Banking Authority and consult the other competent authorities within the supervisory college, pursuant to Article 135-B.

2 – Following that notification and consultation mentioned in the foregoing paragraph, the Banco de Portugal, in its capacity as consolidating supervisor, shall decide whether to apply any of the measures in Article 141, taking into account the impact of those measures on the group, as established in other EU Member States, or appoint a temporary administrator for the parent company, pursuant to Article 145-A, notifying the European Banking Authority and the other supervisory authorities within the scope of the college of supervisory authorities, pursuant to Article 135-B.

3 – Where the conditions for the implementation of corrective measures under Article 141 or the appointment of a temporary administrator under Article 145-A are met in relation to a subsidiary of an EU parent undertaking, the Banco de Portugal, in its capacity as supervisor of that subsidiary on an individual basis shall notify the European Banking Authority and consult the consolidating supervisor of the respective group.

4 – Following that notification and consultation mentioned in the foregoing paragraph, the Banco de Portugal shall decide whether to apply any of the measures in Article 141 or appoint a temporary administrator for the parent undertaking, under Article 29, notifying the decision to the European Banking Authority, the consolidating supervisor of the respective group and the other supervisory authorities within the scope of the college of supervisory authorities, pursuant to Article 135-B.

5 – When the Banco de Portugal is the entity consulted, under the foregoing paragraph, it shall communicate its evaluation to the consulting entity within three days.

6 – Where more than one supervisory authority intends to apply any of the measures in Article 141 or appoint a temporary administrator to more than one institution in the same group, the Banco de Portugal in its capacity as the consolidating supervisor or supervisory authority of a subsidiary of an EU parent undertaking shall decide, jointly with the other relevant supervisory authorities, within five days from the date of the notification referred to in paragraph 4, whether it is more appropriate to coordinate the application of any measures in that Article or to appoint the same temporary administrators for all the entities concerned in order to facilitate the restoration of the group's financial soundness.

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7 – The joint decision taken pursuant to the foregoing paragraph shall be reasoned and set out in a document in writing and notified by the Banco de Portugal to the EU parent undertaking, where the former is the consolidating supervisor.

8 – At the request of the Banco de Portugal, the European Banking Authority may assist the supervisory authorities in reaching a joint decision in accordance with Article 31 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010.

9 – In the absence of a joint decision within five days from the date of notification referred to in paragraphs 1 and 3, the Banco de Portugal, in its capacity as the consolidating supervisor or supervisory authority of a subsidiary of an EU parent undertaking, may take individual decisions on the application of any of the measures in Article 141, or the appointment of a temporary administrator to the institution under its supervision.

10 – Where the Banco de Portugal does not agree with the decision notified by a supervisory authority in situations similar to those described in paragraphs 1 and 3, it may refer the matter to the European Banking Authority in accordance with Article 19(3) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010, except if:

(a) the consultation period mentioned in paragraph 5 has ended;
(b) the five-day period mentioned in paragraph 6 has ended;
(c) a joint decision has been reached by supervisory authorities.

11 – The decision reached by the Banco de Portugal in accordance with paragraph 9 and the foregoing paragraph shall take into account the views and reservations of the other supervisory authorities expressed during the consultation period referred to in paragraph 6, as well as the potential impact of the decision on the financial stability of the EU Member States in which the group is active.

12 – Where a supervisory authority disagrees with a decision notified by the Banco de Portugal in accordance with paragraphs 1 or 3 or with a position taken by the latter under paragraph 6, and refers the matter to the European Banking Authority, the Banco de Portugal shall suspend its decision for a period of three days from the date of notification to that authority, except if the latter reaches a decision before the end of that period.

13 – The Banco de Portugal should decide according to the European Banking Authority's decision reached in accordance with paragraph 10 and the foregoing paragraph.

CHAPTER III
Resolution

SECTION I
OBJECTIVES, GUIDING PRINCIPLES AND REQUIREMENTS

Article 145-C
Purposes of resolution

1 – The application of resolution actions and the exercise of the powers provided for in this Chapter shall serve the following purposes:

(a) to ensure the continuity of critical financial services for the economy;

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(b) to avoid adverse effects on financial stability, in particular by preventing contagion, including to market infrastructures, and by maintaining market discipline;

(c) to safeguard the interests of taxpayers and protect public funds, minimising reliance on extraordinary public financial support;

(d) to protect depositors covered by the Deposit Guarantee Fund and investors covered by the Investors Compensation Scheme;

(e) to protect the client funds and client assets held by credit institutions in their name and on their behalf and the provision of related investment services.

2 – The Banco de Portugal shall determine the resolution actions that best achieve the objectives set out in the foregoing paragraph, whose relevance shall be balanced as appropriate to the nature and circumstances of each case.

3 – [*Repealed*].

4 – [*Repealed*].

5 – [*Repealed*].

Article 145-D
Guiding principles

1 – For the purposes of resolution, in the application of resolution actions, and in the exercise of the powers provided for in this Chapter:

(a) the shareholders of the credit institution under resolution bear first losses;

(b) the creditors of the credit institution under resolution bear losses after the shareholders in an equitable manner, in accordance with the order of priority of their claims in case of failure;

(c) no shareholder or creditor of the credit institution under resolution shall incur greater losses than would have been incurred if the institution had been wound up;

(d) depositors shall not bear losses from deposits guaranteed by the Deposit Guarantee Fund in accordance with Article 166.

2 – The costs incurred from the application of resolution actions and the required financial support shall be proportionate and appropriate to the objectives of these measures. The Banco de Portugal shall endeavour to minimise that support in order to avoid loss of value other than that deemed necessary.

3 – The decisions adopted and action taken by the Banco de Portugal under the present Chapter shall be applied in a timely manner and with due urgency when required. Where these may have an adverse impact on any EU Member State, they must:

(a) be taken in a transparent, efficient and coordinated manner among the different intervening authorities;

(b) take into account, in particular, their implications on the financial stability, fiscal resources, resolution fund, deposit guarantee scheme or investor compensation scheme of the Member States where the EU parent undertakings, significant subsidiaries or branches of the credit institution that is the object of the decisions are established; and

(c) ensure the equitable treatment of the interests across the different EU Member States in question, avoiding unfair burden allocation.

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4 – The Banco de Portugal shall apply resolution actions to credit institutions that are part of a group in a way that minimises the impact on other group entities and on the group as a whole, and minimises the adverse effects on financial stability in the European Union and its Member States, in particular, in the countries where the group operates.

Article 145-E
Resolution actions

1 – The Banco de Portugal may apply the following resolution actions:

(a) partial or total sale of the business;
(b) partial or total transfer of the business to bridge institutions;
(c) separation and partial or total transfer of the business to asset management vehicles;
(d) bail-in.

2 – The resolution actions provided for in the foregoing paragraph may be applied if the following requirements are met:

(a) the Banco de Portugal, in its capacity as supervisory or resolution authority, has determined that the credit institution is failing or likely to fail;
(b) there is no reasonable prospect that the failure of the credit institution can be prevented within a reasonable time frame through recourse to alternative private sector measures, corrective measures or the exercise of powers to write down or convert own funds instruments and eligible liabilities set out in Article 145-I;
(c) the resolution action is necessary and in proportion to serve any of the purposes of resolution; and
(d) the winding up of the credit institution, by virtue of the withdrawal of authorisation for the pursuit of its business, does serve the purposes of resolution as effectively as the application of resolution actions.

3 – For the purposes of subparagraph *(a)* above, a credit institution shall be deemed to be failing or likely to fail in one or more of the following circumstances:

(a) the credit institution infringes or there are objective elements to support a determination that the institutions will, in the near future, infringe the requirements for continuing authorisation in a way that would justify the withdrawal of authorisation, including because the institution has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds;
(b) the assets of the credit institution total or there are objective elements to support a determination that the assets of the institution will total, in the near future, less than its liabilities;
(c) the credit institution is or there are objective elements to support a determination that the institution will, in the near future, be unable to meet its obligations;
(d) extraordinary public financial support is required except when, in order to remedy a serious disturbance in the economy and preserve financial stability, it takes any of the following forms:

(i) a State guarantee to back liquidity facilities assumed in financing contracts, including credit operations with the Banco de Portugal and newly issued liabilities;

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(ii) capitalisation operations with recourse to public investment, provided that, at the time the extraordinary public financial support is granted, neither the circumstances referred to in subparagraphs *(a)* to *(c)* nor in Article 145-I(2) are present.

4 – The application of resolution action is not conditional on prior application of corrective measures nor does it hinder their application at any time.

5 – The Banco de Portugal may take a resolution action in relation to a central body and the credit institutions permanently affiliated to it that are part of the same resolution group when that resolution group complies as a whole with the requirements laid down in paragraph 2.

6 – If the Banco de Portugal considers that the requirements laid down in paragraph 2*(a)* and *(b)* are met but that the requirement laid down in subparagraph *(c)* is not met, this shall constitute grounds for withdrawal of the institution's authorisation.

7 – In the case referred to in the foregoing paragraph, the Banco de Portugal shall initiate the process for the withdrawal of the institution's authorisation within an appropriate period, in accordance with the applicable legislation, followed by the winding-up and liquidation of the institution following the decision to withdraw its authorisation.

Article 145-F

Removal of corporate bodies and senior management

1 – When the Banco de Portugal takes resolution action, the members of the management and supervisory bodies of the credit institution under resolution and the respective statutory auditor or the company responsible for issuing the legal certification of the accounts that is not part of the supervisory body shall be removed, except in those cases when their retention, in whole or in part, as appropriate to the circumstances, is considered to be necessary for achieving the objectives set out in Article 145-C(1).

2 – In the case mentioned in the foregoing paragraph, the Banco de Portugal shall appoint new members of the management body for the credit institution under resolution, pursuant to Article 145-G, as well as an auditing commission or single auditor, regulated mutatis mutandis by the provisions of Article 143, and a statutory auditor or an auditing company to carry out those functions.

3 – The Banco de Portugal may also decide to eliminate or change senior management positions or to remove from office the respective holders, and appoint new holders for such positions, except in those cases where their retention, in whole or in part, as appropriate to the circumstances, is considered to be necessary for achieving the objectives set out in Article 145-C(1).

4 – The members of the management and supervisory bodies and the holders of senior management positions of the credit institution under resolution, as well as the statutory auditor or the auditing company who have been removed, pursuant to paragraphs 1 and 3, shall immediately provide all information and cooperation required by the Banco de Portugal or the credit institution under resolution, where deemed necessary by the latter.

5 – Without prejudice to other types of responsibility, the members of the management body, the auditing commission or the single auditor and the holders of senior management positions appointed under paragraphs 2 and 3 are made liable only to the shareholders and creditors of the credit institution for damages resulting from illegal acts and omissions committed with fraudulent intention or with gross negligence.

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6 – No liability for damages, as stipulated in the signed contract or under the general terms of the law, shall arise as a result of the removal of the members of the management and supervisory bodies under paragraph 1.

7 – [*Repealed*].

8 – [*Repealed*].

9 – [*Repealed*].

10– [*Repealed*].

11– [*Repealed*].

12– [*Repealed*].

13– [*Repealed*].

14– [*Repealed*].

15– [*Repealed*].

16– [*Repealed*].

17– [*Repealed*].

18– [*Repealed*].

19– [*Repealed*].

Article 145-G

Members of the management board appointed by the Banco de Portugal

1 – When appointing members of the management board, pursuant to Article 145-F(2), the Banco de Portugal shall take into account suitability, qualification, independence and availability requirements in the exercise of functions in the financial sector. Articles 30 to 33 shall apply, as appropriate.

2 – The members of the management board shall be equipped with the powers entrusted by the law and by the statutes to the general meeting and the management bodies, and may only exercise them under the guidance of the Banco de Portugal.

3 – The members of the management board shall take all the measures necessary to achieve the objectives referred to in Article 145-C(1) and implement resolution actions in accordance with the decision of the Banco de Portugal, in particular the decision to reorganise the ownership structure of the credit institution under resolution, including an increase in capital or the sale of share ownership or equivalent instruments of ownership to persons or institutions with a solid asset and financial position and a clear organisation structure, appropriate to the development of their business.

4 – The duty in the foregoing paragraph shall override, in case of conflict, any other duty in accordance with the law or the statutes.

5 – The Banco de Portugal may require that certain acts of the members of the management board be subject to its prior consent and may set limits to their powers.

6 – The members of the management board shall draw up reports for the Banco de Portugal on the economic and financial situation of the credit institution and on the acts performed in the conduct of their functions, at regular intervals set by the Banco de Portugal and at the beginning and end of their mandate.

7 – The members of the management board shall not be appointed for more than one year by the Banco de Portugal. This period may be renewed, on an exceptional basis.

8 – The Banco de Portugal may, at any time, replace some of the members of the management board or remove them, where there is a justified reason.

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9 – No liability for damages, as stipulated in the signed contract or under the general terms of the law, shall arise as a result of the removal of the members of the management and bodies under the foregoing paragraph.

10– The Banco de Portugal shall publish, on its website, the appointment or extension of functions of any member of the management board.

11– The remuneration of the members of the management board shall be fixed by the Banco de Portugal and paid by the credit institution under resolution.

12– [*Repealed*].

13– [*Repealed*].

14– [*Repealed*].

Article 145-H

Valuation for the purposes of resolution

1 – Before taking resolution action or exercising the powers under Article 145-I, the Banco de Portugal shall appoint an independent entity, at the expense of the credit institution under resolution, in order to ensure that, within a deadline set by the latter, a fair, prudent and realistic valuation of the assets and liabilities and off-balance-sheet items of the institution in question is carried out.

2 – The objectives of the valuation under the foregoing paragraph shall be:

(a) to ensure that any losses on the assets of the institution in question, including those resulting from the valuation mentioned in the foregoing paragraph, are fully recognised at the moment the resolution tools are applied or the powers under Article 145-I are exercised;

(b) to support the reasoned decision of the Banco de Portugal regarding the aspects below, depending on the action taken:

(i) to decide whether the conditions for resolution or the conditions for the exercise of the powers under Article 145-I are met;

(ii) to decide on the appropriate resolution action to be taken in respect of the credit institution;

(iii) cancellation or dilution of the holdings of shares or other instruments of ownership, in case of the write-down or conversion of own funds instruments, in accordance with Article 145-J(2), as well as the write-down of the nominal value of liabilities resulting from the ownership of the other own funds instruments and eligible liabilities referred to in Article 145-I(7) or from the conversion of those liabilities into share capital;

(iv) to decide on the rights and obligations which are assets, liabilities, off-balance-sheet items and assets under management, to be transferred within the scope of the resolution action taken, as well as the value of any consideration to be paid to the credit institution under resolution or to the owners of the shares or other instruments of ownership, in accordance with Article 145-Q(2) and Article 145-T(4);

(v) to decide on the conditions that constitute commercial terms, for the purposes of Article 145-N(1);

(vi) write-down of the nominal value of bail-inable liabilities or the conversion of those liabilities into share capital in accordance with Article 145-U.

3 – The valuation in paragraph 1 shall make use of generally accepted methodologies and shall be based on prudent and transparent assumptions that are as realistic as possible, based on appropriate and detailed reasoning, including rates of default and severity of losses. The valuation shall not

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assume any potential provision of extraordinary public financial support or central bank emergency liquidity assistance or liquidity assistance provided under non-standard collateralisation, tenor and interest rate terms.

4 – The valuation shall take account of the following:

(a) the Banco de Portugal and the Resolution Fund may recover any reasonable expenses incurred in connection with the resolution action taken, in accordance with Article 145-L(4);

(b) the Resolution Fund may charge interest or fees in respect of any loans or guarantees provided to the credit institution under resolution.

5 – The valuation shall be supplemented by:

(a) an updated balance sheet and a report on the financial position of the credit institution;

(b) an analysis and an estimate of the accounting value of the assets, which may be complemented, where appropriate to inform the decisions referred to in subparagraphs 2*(b)*(*iv*) and *(v)*, by an analysis and estimate of the value of the assets and liabilities of the credit institution;

(c) the list of on-balance-sheet and off-balance-sheet liabilities shown in the books and records of the credit institution, with an indication of the respective claims and priority levels.

6 – The valuation referred to in paragraph 1 shall indicate the subdivision of the shareholders and creditors in classes in accordance with their priority levels under the applicable law and the terms and conditions of the respective instruments and contracts, and estimate the treatment that each class of shareholders and creditors would have been expected to receive, if the credit institution were wound up under normal insolvency proceedings, without prejudice to the valuation in paragraph 14.

7 – Where all the requirements laid down in the foregoing paragraphs are met, the valuation shall be considered to be definitive.

8 – Where due to the urgency in the circumstances of the case it is not possible to carry out the valuation referred to in paragraph 1, or to comply with the requirements of paragraphs 5 and 6, the Banco de Portugal shall carry out a provisional valuation of the assets, liabilities and off-balance-sheet items of the credit institutions, taking account of the requirements in paragraphs 1, 5 and 6. This valuation shall include a buffer for additional losses, with appropriate justification, and, where possible and if applicable, shall be complemented by a sensitivity analysis considering different levels of additional losses, granting probability levels to the range of scenarios in question.

9 – Where the valuation referred to in paragraph 1 does not comply with all the requirements laid down in this Article, it shall be considered to be provisional until an independent person has carried out a definitive valuation that is fully compliant with all the requirements.

10 – The definitive valuation mentioned in the foregoing paragraph shall be carried out as soon as practicable to ensure that any losses are fully recognised in the books of accounts of the institution in question and to inform a decision to write back creditors' claims or to increase the value of the consideration paid, in accordance with paragraph 11.

11 – In the event that the equity value of the credit institution or the value of the difference, if positive, between transferred assets and liabilities, assessed in accordance with the valuation mentioned in the last part of paragraph 9, is higher than the provisional valuation's estimate of that value of the institution, the Banco de Portugal may:

Increase the value of the liabilities which have been written down under the powers provided for in Article 145-I and the application of the measure mentioned in Article 145-U;

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Instruct a bridge institution or asset management vehicle to make a payment of consideration in respect of the assets to the credit institution under resolution, or to the owners of the shares or other instruments of ownership, in accordance with Article 145-Q(2) and Article 145-T(4).

12 – Notwithstanding paragraph 1, the Banco de Portugal may take resolution actions or exercise the powers provided for in Article 145-I, based on the provisional valuation referred to in paragraph 8.

13 – The valuations made in accordance with the foregoing paragraphs shall include the decision to take a resolution action or to exercise the powers provided for in Article 145-I. The valuation itself shall not be subject to a separate right of appeal.

14 – For the purposes of Article 145-D(1)*(c)*, immediately after the effects of the resolution action taken, the Banco de Portugal shall appoint an independent entity, at the expense of the credit institution under resolution, and set a reasonable deadline to evaluate whether, in case no resolution action had been taken and the credit institution under resolution had been wound up at that time, the shareholders and creditors of the credit institution under resolution, as well as the Fund, in the cases where the Banco de Portugal decides on its intervention, in accordance with Article 167-B(1), have incurred fewer losses than they would have incurred as a result of the resolution action taken. That valuation shall determine:

(a) the losses that the shareholders and creditors, as well as the Fund, would have incurred if the credit institution under resolution had been wound up;

(b) the losses that the shareholders and creditors, as well as the Fund, have actually incurred as a result of the resolution action applied to the credit institution under resolution; and

(c) the difference between the losses referred to in subparagraph *(a)* and the losses incurred in subparagraph *(b)*.

15 – The valuation in the foregoing paragraph shall assume that the resolution action would not have been taken nor have produced effects and that the credit institution under resolution would be wound up at the time the resolution action was taken, not taking into account, where applicable, the provision of extraordinary public financial support to the credit institution under resolution.

16 – Should the valuation in paragraph 14 determine that the shareholders, creditors or the Fund have incurred greater losses than those which they would have incurred if the resolution action had not been taken and the credit institution under resolution had been wound up at the time that the resolution was taken, they shall have the same right to receive that difference from the Resolution Fund, in accordance with Article 145-AA(1)*(f)*.

17 – The valuation referred to in paragraph 1 or the definitive valuation mentioned in the last part of paragraph 9 may be carried out by the same independent entity carrying out the valuation referred to in paragraph 14, either separately or jointly.

18 – The entity carrying the valuations referred to in paragraph 1, the last part of paragraph 9 and paragraph 14 shall be independent from the institution in question, the Banco de Portugal and any other public authority.

19 - The provisions of the foregoing paragraphs shall also apply mutatis mutandis to the exercise of the write-down or conversion powers provided for in Article 145-I when exercised separately.

SECTION II

WRITE-DOWN OR CONVERSION POWERS OF OWN FUNDS INSTRUMENTS AND ELIGIBLE LIABILITIES

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Article 145-I

Power to write down or convert own funds instruments and eligible liabilities

1 – The Banco de Portugal, in the exercise of its functions as resolution authority and in order to write down or convert capital instruments, independently or in combination with a resolution action, shall exercise powers to:

(a) write down, in part or in full, the share capital of a credit institution through amortisation or write down of the nominal value of its shares or other instruments of ownership;

(b) suppress the nominal value of all or part of the shares representing the share capital of a credit institution;

(c) write down, in part or in full, the nominal value of liabilities to a credit institution arising from the other own funds instruments and eligible liabilities referred to in paragraph 7;

(d) convert, in part or in full, liabilities to a credit institution arising from the other own funds instruments and eligible liabilities referred to in paragraph 7 into share capital through the issue of ordinary shares or other instruments of ownership of the credit institution.

2 – The Banco de Portugal shall exercise the power to write down or convert own funds instruments and eligible liabilities where any of the following requirements are met:

(a) the Banco de Portugal, in the exercise of its functions as supervisory authority or resolution entity, has determined that the conditions for resolution specified in Article 145-E(2) have been met, before any resolution action is taken;

(b) the Banco de Portugal has determined that, unless the powers set out in paragraph 1 are exercised, the credit institution will no longer be viable;

(c) in the case of financial instruments or contracts issued by a credit institution that is a subsidiary of a credit institution, an investment firm dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, or an entity as referred to in Article 152(2)*(a)* to *(c)* that are comprised or have been comprised of own funds on a consolidated basis of the group in which it is included, the Banco de Portugal and the relevant authority of the EU Member State of the supervisory authority on a consolidated basis of the group in which that subsidiary is included have determined, through a joint decision, in accordance with Article 145-AJ(4), (5) and (7), that, unless the powers under the foregoing paragraph are exercised, the group will no longer be valid;

(d) in the case of financial instruments or contracts issued by a parent undertaking having its head office in Portugal, a credit institution, an investment firm dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, or an entity as referred to in Article 152(2)*(a)* to *(c)*, whose supervisory authority on a consolidated basis is the Banco de Portugal, and which are comprised or have been comprised in own funds on an individual basis at the level of the parent undertaking, or on a consolidated basis of the group in which it is included, the Banco de Portugal has determined that, unless the powers under the foregoing paragraph are exercised in relation to those instruments, the group will no longer be viable;

(e) extraordinary public finance support is required, except in any of the circumstances set out in Article 145-E(3)*(d)*(*ii*).

3 – For the purposes of the foregoing paragraph, a credit institution or group shall be deemed to be no longer viable when the credit institution or the group is failing or likely to fail and there is no

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reasonable prospect that recourse to measures implemented by the credit institution itself or the implementation of corrective measures would prevent the failure.

4 – For the purposes of the foregoing paragraph, the credit institution shall be deemed to be failing or likely to fail, only where one or more of the circumstances set out in Article 145-E(3) occurs.

5 – For the purposes of paragraph 3, a group is deemed to be failing or likely to fail where it infringes or there are objective elements to support a determination that the group, in the near future, will infringe its consolidated prudential requirements, in particular because the group has incurred or is likely to incur losses that will deplete all or a significant amount of its own funds.

6 – For the purposes of subparagraph 2*(c)*, the exercise of the powers set out in paragraph 1 in relation to a group, or equivalent powers in accordance with the applicable law in the EU Member State where the parent undertaking has its head office, cannot produce a more unfavourable treatment of the holders of capital instruments issued by a subsidiary, compared with the treatment of the holders of capital instruments issued by the parent undertaking with the same order of priority in case of failure.

7 – The powers provided for in paragraph 1(c) and (d) may be exercised in relation to eligible liabilities of an entity referred to in Article 138-BC which comply with the eligibility requirements of Article 138-AR(1)(a), except the residual maturity requirement laid down in Article 72-C(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

8 – The Banco de Portugal may also carry out the conversion provided for in paragraph 1(d) by transferring the ownership of shares or other instruments of ownership from the credit institution to creditors that are subject to exercising the conversion powers.

9 – The Banco de Portugal may also convert liabilities arising from a credit institution's own funds instruments into ordinary shares or other instruments of ownership of its parent undertaking.

10 – If the own funds instruments and the instruments from which eligible liabilities of a credit institution arise, as referred to in paragraph 7, have been subscribed by a resolution entity in the same resolution group indirectly through other entities in the same resolution group established in Portugal, the Banco de Portugal shall simultaneously and jointly exercise the write-down or conversion powers in relation to own funds instruments and eligible liabilities in respect of the various entities, in order to ensure that the resolution entity bears the losses of the credit institution concerned and reinforces its own funds.

11 – In its capacity as resolution authority of a credit institution whose own funds instruments and instruments from which eligible liabilities of a credit institution arise, as referred to in paragraph 7, and which have been subscribed by a resolution entity in the same resolution group indirectly through other entities in the same resolution group established, the Banco de Portugal shall request the resolution authorities of those entities to exercise the write-down or conversion powers in relation to their own funds instruments and eligible liabilities together with the exercising, by the Banco de Portugal, of the write-down and conversion powers in relation to own funds instruments and eligible liabilities of the credit institution concerned, in order to ensure that the resolution entity bears the losses of the credit institution concerned and reinforces its own funds.

12 – In the exercise of the powers to write down or convert own funds instruments and eligible liabilities as referred to in paragraph 7, no shareholder or creditor of the credit institution shall incur greater losses than would have been incurred if the institution had been wound up.

13 – Where the powers provided for in paragraph 1 are exercised prior to or in combination with a resolution action or with a mandatory capitalisation operation with recourse to public investment, in accordance with the provisions of Law No 63-A/2008 of 24 November 2008, on a resolution entity or, exceptionally, on a credit institution that has not been identified as a resolution entity in the

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resolution plan, the amount by which the share capital or the nominal value of the liabilities arising from the other own funds instruments has been written down or converted into share capital pursuant to the exercise of those powers is relevant for meeting the requirements referred to in Article 145-U(12)(a) and Article 145-U(13)(a), as well as in Article 16-C(1) of Law No 63-A/2008 of 24 November 2008 respectively.

14 – The Banco de Portugal shall notify the Portuguese Securities Market Commission if any of the requirements laid down in paragraph 1 are met, if the institution subject to this measure is engaged in financial intermediation, is the issuer of financial instruments admitted to trading on a regulated market, a multilateral trading facility or an organised trading facility, is a participant in a central counterparty or a centralised securities system or is otherwise of significant importance in the securities market.

15 – When it exercises the powers referred to in paragraph 1, the Banco de Portugal shall notify the Portuguese Insurance and Pension Funds Supervisory Authority as soon as possible where the institution subject to this measure is the parent undertaking or belongs to the same group as an insurance undertaking or is otherwise of significant importance in the insurance market.

Article 145-J
General procedure

1 – The Banco de Portugal shall exercise the write-down or conversion powers referred to in the foregoing Article in accordance with the order of priority of claims in case of failure. The nominal value of a class of liabilities shall not be written down or a class of liabilities be converted into share capital while those powers are not exercised in relation to another lower ranking class, according to that order of priority.

2 – In the exercise of powers under Article 145-I(1), the Banco de Portugal ensures that, as regards shareholders or other instruments of ownership of the credit institution, one of the following effects may occur:

(a) where the valuation carried out in accordance with Article 145-H concludes that the credit institution has a negative value, the cancellation, in part or in full, of the holding of shares or other instruments of the credit institution's ownership , or the transfer, in whole or in part, of ownership of the shares or other instruments of ownership from those holders to holders of the other own funds instruments or eligible liabilities of the credit institution concerned that are subject to the exercise of the conversion powers;

(b) where the valuation carried out in accordance with Article 145-H concludes that the credit institution has a positive value, the significant dilution of the holdings of shares or other instruments of ownership of the credit institution, as a result of the conversion into share capital of liabilities arising from the other own funds instruments or eligible liabilities.

3 – The provisions of the foregoing paragraph also apply to shareholders and other instruments of ownership of the credit institution, where the shares or other instruments of ownership were issued or conferred pursuant to the conversion of liabilities resulting from the ownership of other capital instruments, in accordance with the applicable contractual conditions, on the occurrence of an event that preceded or occurred at the same time as the assessment that the credit institution met the conditions for the implementation of the resolution action provided for in Article 145-E(2).

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4 – The provisions of paragraph 2 shall also apply to owners of the shares and other instruments of ownership of the credit institution whose shares or other instruments of ownership are the result of a conversion of liabilities resulting from the ownership of other capital instruments into shares, through the issue of ordinary shares or other instruments of ownership of the credit institution.

5 – In the exercise of the powers in paragraph (1)*(d)* of the foregoing Article, the applicable conversion rate is determined by the Banco de Portugal, taking into account the objective, if necessary based on the result of the estimate provided for in 145-H(6), to appropriately compensate the holders of the affected own funds instruments or eligible liabilities.

6 – The Banco de Portugal may determine different conversion rates for each category of liabilities arising from own funds instruments and eligible liabilities. The conversion rate applicable to higher-ranking liabilities, in accordance with the order of priority of the claims in case of failure, shall be higher than the conversion rate applicable to lower-ranking liabilities.

7 – The Banco de Portugal evaluates the suitability of the new shareholders who come to own a qualifying holding, in accordance with Article 103 mutatis mutandis. The following shall also apply:

(a) conferring ownership of the shares or other instruments of ownership of the credit institution shall take effect after the decision on the exercise of powers, in accordance with Article 145-I(1);

(b) during the suitability assessment period, the voting rights attached to the ownership of shares or other instruments of ownership of the credit institution in question can only be exercised by the Banco de Portugal, which shall have no liability for exercising any such rights, except when committed with intent or serious negligence;

(c) upon completion of its assessment, the Banco de Portugal shall notify the new shareholders or other instruments of ownership of the credit institution of its decision;

(d) where the Banco de Portugal is satisfied that the owner of the shares or instruments of ownership of the credit institution with a qualifying holding is in a position to ensure the sound and prudent management of the credit institution, the voting rights attached to the ownership of such shares or instruments shall be exercised by the respective owners of the shares or instruments of ownership upon receipt of notification of the decision in question;

(e) where the Banco de Portugal is not satisfied that the owner of the shares or instruments of ownership of the credit institution that holds a qualifying holding is in a position to ensure the sound and prudent management of the credit institution, it will determine a period during which that owner is requested to divest such shares or instruments, taking into account prevailing market conditions.

8 – In the situation under subparagraph 7*(e)*, the voting rights attached to the ownership of such shares or other instruments of ownership of the credit institution can only be exercised by the Banco de Portugal, in accordance with subparagraph 7*(b)*.

9 – The exercise by the Banco de Portugal of the voting rights referred to in the foregoing paragraph is irrelevant for the purpose of implementing the rules of allocation of voting rights, communication and dissemination of qualifying holdings and the obligation to launch a mandatory takeover bid or other similar obligations deriving from legislation on securities.

10 – The write-down of share capital or nominal value of liabilities deriving from other own funds instruments and eligible liabilities:

(a) shall be permanent, without prejudice to the provisions of the following paragraph;

(b) shall not result in the payment of compensation to any holder, other than that resulting from the conversion of those liabilities, in accordance with Article 145-I(1);

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(c) shall terminate any obligation to the holder of the own funds instruments or eligible liability in connection with the nominal value of that amount of the instrument or liability that has been written down.

11 – Where the exercise of the powers in paragraph 1 of the foregoing Article is based on the provisional valuation carried out in accordance with Article 145-H(8) and the nominal value of the amount of the liabilities resulting from the ownership of own funds instruments and eligible liabilities which has been written down is found to exceed requirements when assessed against the definitive valuation according to the final part of Article 145-H(9), the Banco de Portugal may reimburse the value of those liabilities to the extent necessary.

12 – Ordinary shares or other instruments of ownership arising from the conversion of liabilities resulting from the ownership of own funds instruments or eligible liabilities shall be issued as follows:

(a) ordinary shares or other instruments of ownership shall be issued by the credit institution or, with the agreement of the group-level resolution authority, by its parent undertaking;

(b) the credit institution's ordinary shares or other instruments of ownership shall be issued prior to any issuance of special shares or equivalent instruments of ownership of the credit institution for the purposes of provision of own funds by the State;

(c) ordinary shares or other instruments of ownership of the credit institution shall be issued and awarded without delay following the decision of the Banco de Portugal, with no need for approval by the general meeting.

13 – For the purposes of the exercise of the powers provided for in Article 145-I(1), the Banco de Portugal shall carry out the tasks necessary for such exercise, and may, in particular, instruct the Portuguese Securities Market Commission to order the relevant entity:

(a) to amend all relevant registers;

(b) to delist or remove shares, other instruments of ownership of the credit institution under resolution or debt instruments from trading on a regulated market or multilateral trading system;

(c) to list or admit new shares or other instruments of ownership of the credit institution under resolution to trading on a regulated market or multilateral trading system;

(d) to relist or readmit to trading on a regulated market or on a multilateral trading system or an organised trading system of any debt instruments which have been written down, without the requirement for issuing a prospectus approved in accordance with the applicable legislation.

14 – The powers under Article 145-I(1) may be exercised irrespective of the consent of capital instrument holders, counterparties in contracts related to the rights and obligations of the credit institution or any other third parties, and cannot be grounds for the exercise of the right to close out, resolve, terminate, oppose, renew or amend the conditions set out in any terms and conditions applicable to the credit institution or to an entity in a group relationship, or for enforcing security interests provided by the latter, relating to compliance with any obligation provided for in those terms and conditions.

15 – The exercise of the powers under Article 145-I(1) shall take effect irrespective of any legal or contractual provision expressing otherwise, especially the possible existence of preferential rights for shareholders, and provides a sufficient basis for compliance with any legal formality related to the exercise of such powers.

16 – The exercise of the powers under Article 145-I(1):

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(a) is not subject to prior decision by the general meeting, nor other legal or statutory proceeding;

(b) is not conditional on prior compliance with the legal requirements related to the commercial register and other procedures provided for in the law, without prejudice to their subsequent compliance as soon as possible.

Article 145-K
Decision-making process for groups

1 – Before making a determination referred to in Article 145-I(2)*(b)* to *(e)* in relation to own funds instruments or eligible liabilities referred to in Article 145-I(7) issued by a credit institution that is a subsidiary of a credit institution, an investment firm dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, or an entity referred to in Article 152(2)*(a)* to *(c)*, which is relevant for the purposes of compliance with the minimum requirement for own funds and eligible credits referred to in Article 138-BC, or in relation to issued own funds instruments that are comprised or have been comprised of own funds on an individual basis or on a consolidated basis of the group in which it is included, the Banco de Portugal, after consulting the resolution authority of the relevant resolution entity belonging to the same resolution group, where different, shall notify, within 24 hours of such consulting:

(a) the consolidating supervisor of the group that includes the subsidiary concerned is included and the relevant authority for the exercise of the write-down or conversion powers set out in Article 145-I, or equivalent powers in accordance with the applicable law in the EU Member State of the consolidating supervisor;

(b) the resolution authority of other entities within the same resolution group that have, directly or indirectly, subscribed instruments from which eligible liabilities arise and issued by the credit institution concerned to which a minimum requirement for own funds and eligible liabilities has been determined in accordance with Article 138-BC(1).

2 – For the purposes of the foregoing paragraph, and in the case of the determinations provided for in Article 145-I(2)*(c)*, the Banco de Portugal shall also notify the supervisory authority of the subsidiary and the relevant authority for the exercise of the write-down or conversion powers provided for in Article 145-I, or equivalent powers according to the applicable law in the EU Member State of the consolidating supervisor of the group in which that subsidiary is included.

3 – When making a determination referred to in Article 145-I(2)*(c)* to *(e)* in the case of a credit institution with cross-border activity or included in a group with cross-border activity, the Banco de Portugal shall take into account the potential impact of the resolution in all the EU Member States where the credit institution or group operates.

4 – Following the provisions of paragraphs 1 and 2, and after consulting the authorities notified in accordance with paragraphs 1*(a)* and 2, the Banco de Portugal shall assess whether an alternative and viable measure is available, in particular any of the measures provided for in Article 116-C(1) and (2) and in Article 141, or a transfer of funds or capital from the parent undertaking of the group in eligible liabilities referred to in Article 145-I(7), as well as the likelihood of such a measure addressing, within an adequate time frame, the circumstances provided for in Article 145-I(2).

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5 – Where the Banco de Portugal concludes that no alternative measures are available that would deliver, in an appropriate time frame, the outcome referred to in Article 145-I(2), it shall exercise the powers set out in paragraph 1 of the same Article.

6 – The determination referred to in Article 145-I(2)*(c)* shall only be made under the form of a joint decision.

7 – As the relevant authority for the exercise of the powers to write down or convert own funds instruments and eligible liabilities referred to in Article 145-I(7) in relation to a parent undertaking having its head office in Portugal which has a subsidiary in another EU Member State and which issues own funds instruments that are comprised or have been comprised in own funds on an individual basis or on a consolidated basis of the group in which it is included, the Banco de Portugal shall participate in the joint decision process to determine that the group is no longer viable where the powers to write down or convert own funds instruments and eligible liabilities referred to in Article 145-I(7) or the equivalent powers according to the applicable law in the EU Member State are not exercised in relation to the own funds instruments issued by that subsidiary.

SECTION III
RESOLUTION ACTIONS

Article 145-L
General principles

1 – The Banco de Portugal may apply any resolution actions individually or in any combination, except the action referred to in Article 145-E(1)*(c)*, which can only be applied together with another resolution action, at the same time or subsequently.

2 – Where the Banco de Portugal applies the resolution actions referred to in Article 145-E(1)*(a)* or *(b)* individually and transfers only part of the rights and obligations which are assets, liabilities, off-balance-sheet items and assets under management, it shall revoke the authorisation of the credit institution under resolution in an adequate time frame, taking into account the provisions of Article 145-AP, in accordance with the settlement system provided for in the applicable law.

3 – Where the application of a resolution action results in losses being borne by creditors or their claims being converted, the Banco de Portugal shall exercise the power provided for in Article 145-I immediately before or together with the application of the resolution action.

4 – The Banco de Portugal and the Resolution Fund may recover any reasonable expenses properly incurred in connection with the use of the resolution action or the exercise of the resolution powers or the powers provided for in Article 145-I, in the following ways:

(a) as a deduction from any consideration paid by a recipient, to which rights, obligations, shares or other instruments of ownership of the credit institution under resolution have been transferred, to the credit institution under resolution or, as applicable, to the owners of the shares or other instruments of ownership of the credit institution;

(b) from the credit institution under resolution;

(c) from any proceeds generated as a result of the termination of the operation of the bridge institution or the asset management vehicle.

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5 – For the purposes of the foregoing paragraph, the Banco de Portugal and the Resolution Fund, as applicable, are holders of a credit claim over the credit institution under resolution, the bridge institution, the asset management vehicle or the purchasing institution, as applicable, to an amount corresponding to such resources, which benefit from preference in accordance with Article 166-A(1) and (2).

6 – The provisions of Articles 120 and following of the Insolvency and Corporate Recovery Code (*Código da Insolvência e Recuperação de Empresas*) shall not apply to the decisions adopted under the present Chapter.

7 – Where in the cases provided for in paragraph 2 the authorisation of the institution under resolution is not repealed simultaneously with or immediately after the application of the resolution action referred to therein, compliance with obligations that have not been transferred to a purchaser or a bridge institution, by virtue of the application of the resolution action provided for in Article 145-E(1)*(a)* and *(b)*, is not required of the institution under resolution, save for those whose compliance has been deemed by the Banco de Portugal indispensable to preserve and maintain the value of the respective assets.

Article 145-M
Partial or total sale of business

1 – The Banco de Portugal may determine the partial or total sale of the rights and obligations of a credit institution under resolution which are assets, liabilities, off-balance-sheet items, and assets under management of the institution, and the ownership of shares or other instruments of ownership.

2 – The Banco de Portugal shall ensure that the process is transparent and that the persons concerned are treated fairly, as appropriate given the timeliness imposed by the circumstances.

3 – For the purposes of paragraph 1, the Banco de Portugal shall promote the transfer to a purchaser of the rights and obligations and the ownership of the shares or other instruments of ownership of the credit institution under resolution, ensuring the transparency and accuracy of the information provided, having regard to the circumstances of the case and the need to maintain financial stability, to be free from any conflict of interest, to effect rapid resolution action, not to unduly discriminate between potential purchasers, and to maximise, as far as possible, the same price for the rights and obligations or the shares or other instruments of ownership of the credit institution under resolution.

4 – The provisions of the foregoing paragraph shall not prevent the Banco de Portugal from inviting certain potential purchasers to submit applications for acquisition.

5 – Where necessary to ensure the pursuit of the objectives set out in Article 145-C(1), the Banco de Portugal may promote the sale of rights and obligations and the ownership of shares or other instruments of ownership of the credit institution under resolution, without the observance of paragraph 3.

6 – The Banco de Portugal may market pools of rights and obligations, shares or other instruments of ownership of the credit institution under resolution to more than one purchaser.

7 – The application for acquisition of rights and obligations of the credit institution under resolution can only be submitted by credit institutions authorised to pursue the business in question or entities that have applied to the Banco de Portugal for authorisation to exercise such business.

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The decision referred to in paragraph 1 shall be conditional on the decision relating to the application for authorisation.

8 – When selecting the purchaser, the Banco de Portugal shall take into account the objectives set out in Article 145-C(1).

9 – Potential purchasers shall be immediately granted conditions of access to relevant information on the financial position of the credit institution under resolution, for the purpose of evaluating the rights, obligations and shares or other instruments of ownership of the credit institution under resolution. For the purpose, the duty of professional secrecy under Article 78 may not be invoked against them, without prejudice to the fact that they may themselves be subject to said secrecy in respect of the information in question.

Article 145-N

Application of the partial or total sale of business tool

1 – The sale shall be made on commercial terms, having regard to the circumstances of the case, the valuation conducted under Article 145-H, and the principles, rules and guidelines of the European Union on State aid.

2 – Where the sale of ownership of the shares or other instruments of ownership of the credit institution under resolution would result in the acquisition of or increase in a qualifying holding by the purchaser, the Banco de Portugal shall carry out the assessment required under Article 103 in a timely manner, jointly with the decision referred to in paragraph 1 of the foregoing Article, so as not to delay the sale of business and jeopardise the objectives set out in Article 145-C(1).

3 – Following the sale referred to in Article 145-M(1), the Banco de Portugal may, at all times:

(a) sell other rights and obligations and the ownership of other shares or instruments of ownership of the credit institution under resolution;

(b) transfer back to the credit institution under resolution the rights and obligations transferred to the purchaser, with the appropriate authorisation, or transfer back the ownership of shares or other instruments of ownership of the credit institution under resolution to the respective holders at the time of the decision under Article 145-M(1). The credit institution under resolution or original holders shall be obliged to take them back and, where relevant, correct the consideration set at the time of the sale.

4 – Subject to paragraph 7, it shall not be possible to sell any credit claims on the credit institution under resolution held by persons or entities who, in the two years prior to the date of application of the resolution action, have had a direct or indirect shareholding equal to or exceeding 2% of the capital of the credit institution or have been members of the management body of the credit institution, unless it is shown that they were not, by act or omission, responsible for the financial difficulties of the credit institution and have not contributed, by act or omission, to that situation.

5 - Subject to Article 145-L(4), the proceeds of the sale shall accrue to:

(a) the shareholders or holders of other instruments of ownership of the credit institution under resolution, where the sale has been made through the sale of ownership of the shares or other instruments of ownership;

(b) the credit institution under resolution, where the sale has been made through the sale of part of or all rights and obligations.

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6 – The decision in favour of the sale referred to in Article 145-M(1) shall, per se, have the effect of a transfer of ownership of the transferred rights and obligations of the credit institution under resolution to the purchaser, the latter being considered, for all legal and contractual purposes, the successor of the rights and obligations being sold.

7 – Any possible partial sale of the rights and obligations shall not hinder the full sale of the contractual positions of the credit institution under resolution, where the transfer of liabilities is associated with the asset items being transferred, particularly in the case of financial collateral arrangements, securitisation operations or other close-out netting arrangements.

8 – The decision in favour of the sale referred to in Article 145-M(1) shall take effect, irrespective of any legal or contractual provision expressing otherwise, and provides a sufficient basis for compliance with any legal formality related to the sale.

9 – The sale referred to in Article 145-M(1) shall take place without obtaining the consent of the shareholders or holders of other instruments of ownership of the credit institution under resolution, counterparties in contracts related to the rights and obligations being sold or any other third parties, and cannot be grounds for the exercise of the right to close out, resolve, terminate, oppose, renew or amend the conditions set out in the contracts in question.

10– The purchaser, which shall be considered to be a continuation of the credit institution under resolution, may continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes, as well as participation and membership in other public or private systems or associations, as required for the development of the transferred activity. The exercise of such rights shall not be denied on the ground that the purchaser does not possess a rating from a credit rating agency, or that rating is not commensurate.

11– The exercise of the rights referred to in the foregoing paragraph shall cover all services, functions and operations that the credit institution under resolution had in place at the time of application of the resolution action referred to in Article 145-M(1).

12 – Where the purchaser does not meet the membership or participation criteria for any of the systems mentioned in paragraph 10, the respective rights shall be exercised by the purchaser for a period of time specified by the Banco de Portugal, not exceeding 24 months, renewable on application by the purchaser to the Banco de Portugal.

13 - Without prejudice to Section V of this Chapter, shareholders and creditors of the credit institution under resolution, and other parties whose rights and obligations are not sold, shall not have any right over the rights and obligations transferred.

14 – Where as a result of the sale in Article 145-M(1) a concentration operation occurs, under the applicable competition legislation, this operation may be carried out before it is the object of a decision of opposition by the Competition Authority, without prejudice to the measures subsequently stipulated by this Authority.

Article 145-O

Partial or total transfer of the business to bridge institutions

1 – The Banco de Portugal has the power to transfer all or any rights and obligations of a credit institution, which are assets, liabilities, off-balance-sheet items and assets under management, and to transfer the ownership of the shares or other instruments of ownership to bridge institutions set up for that purpose, with a view to their subsequent sale.

2 – The Banco de Portugal also has the power to transfer all or any rights and obligations of two or more credit institutions included in the same group and transfer the ownership of the shares or

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other instruments of ownership of credit institutions included in the same group to bridge institutions, with the same objective as that referred to in the foregoing paragraph.

3 – The bridge institution shall be a legal person authorised to pursue its business related to the rights and obligations transferred.

4 – The bridge institution shall ensure the continued provision of financial services inherent to the business transferred, as well the management of assets, liabilities, off-balance-sheet items, assets under management and shares or other instruments of ownership transferred, pursuant to paragraphs 1 and 2, with a view to maintaining value in the business, aiming at its sale, as soon as circumstances are favourable, under terms that maximise the value of the assets in question.

5 – The transfer decision under paragraphs 1 and 2 shall, per se, have the effect of a transfer of ownership of the rights and obligations of the credit institution under resolution to the bridge institution, the latter being considered, for all legal and contractual purposes, the successor of the rights and obligations being sold.

6 – The partial transfer of the rights and obligations to the bridge institution shall not hinder the total sale of the contractual positions of the credit institution under resolution, where the transfer of liabilities is associated with the asset items being transferred, particularly in the case of financial collateral arrangements, securitisation operations or other close-out netting arrangements.

7 – The decision in favour of the transfer referred to in paragraphs 1 and 2 shall take effect irrespective of any legal or contractual provision expressing otherwise, and provides a sufficient basis for compliance with any legal formality related to the transfer.

8 – The transfer referred to in paragraphs 1 and 2 shall take place without obtaining the consent of the shareholders or holders of other instruments of ownership of the credit institution, counterparties in contracts related to the rights and obligations being transferred or any third parties, and cannot be grounds for the exercise of the right to close out, resolve, terminate, oppose, renew or amend the conditions set out in the contracts in question.

9 – Without prejudice to Section V of this Chapter, shareholders and creditors of the credit institution under resolution, and other parties whose rights and obligations are not transferred, shall not have any right over the rights and obligations transferred to a bridge institution.

10 – The Commercial Companies Code shall apply to bridge institutions, with the necessary adjustment to the purposes and nature of these institutions.

11 – The bridge institution, in the pursuit of its business, shall comply with management criteria ensuring low risk levels.

12 – The bridge institution, which shall be considered to be a continuation of the credit institution under resolution, shall continue to exercise the rights of membership and access to payment, clearing and settlement systems, stock exchanges, investor compensation schemes and deposit guarantee schemes, as well as participation and membership in other public or private systems or associations, as required for the development of the transferred activity. The exercise of such rights shall not be denied on the ground that the bridge institution does not possess a rating from a credit rating agency, or that rating is not commensurate.

13 – The exercise of the rights referred to in the foregoing paragraph shall cover all services, functions and operations that the credit institution under resolution had in place at the time of application of the resolution action referred to in paragraph 1.

14 – Where the bridge institution does not meet the membership or participation criteria for any of the systems mentioned in paragraph 12, the respective rights shall be exercised by the bridge institution for a period of time specified by the Banco de Portugal, not exceeding 24 months, renewable on application by the purchaser to the Banco de Portugal.

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Article 145-P
Setting up of the bridge institution

1 – The bridge institution shall be set up by a decision of the Banco de Portugal, which shall approve the respective statutes. The provisions of Chapter II of Title II shall not apply.

2 – The bridge institution shall meet the rules applicable to credit institutions or investment firms, as applicable.

3 – The bridge institution's share capital shall be fully or partially subscribed and paid up by the funds of the Resolution Fund and, if necessary, through the exercise of power in Article 145-U(2)*(a)*, without prejudice to the powers of the Banco de Portugal over the bridge institution.

4 – Notwithstanding the provisions of the following paragraph, and where necessary to meet the objectives of Article 145-C(1), the Banco de Portugal may temporarily waive the bridge institution, after the beginning of its operation, from complying with the applicable prudential requirements.

5 – The Banco de Portugal may require the European Central Bank to waive the bridge institution from complying with the applicable prudential requirements, in the cases where, under the law, it is the supervisory authority of the bridge institution.

6 – The bridge institution may be established and authorised without complying with the legal requirements related to the commercial register and other procedures provided for in the law, without prejudice to their subsequent compliance as soon as possible.

7 – The Banco de Portugal, on a proposal from the general meeting of the bridge institution, shall appoint and set the remuneration of the members of its management and supervisory bodies, which shall comply with all the guidelines and recommendations conveyed by the Banco de Portugal, particularly as regards management decisions and the strategy and risk profile of the bridge institution.

8 – At the time of the transfer decision referred to in Article 145-O(1), the Banco de Portugal may, as an alternative to the foregoing paragraph, appoint the members of the management and supervisory bodies of the bridge institution, without the need for a proposal by the general meeting.

9 – Without prejudice to other type of responsibility, the members of the management and supervisory bodies or the holders of senior management positions of the bridge institution shall have no liability to shareholders and creditors of the credit institution under resolution unless the act or omission committed by them in the exercise of their functions implies gross negligence or serious misconduct.

10 – The bridge institution shall be set up for a maximum period of two years, counting from the date on which the last transfer of rights, obligations, shares or other instruments of ownership of the credit institution under resolution was made to the bridge institution.

11 – The Banco de Portugal may extend the period referred to in the foregoing paragraph for one or more additional one-year periods, where:

(a) there are reasonable grounds of public interest, particularly risks for financial stability;

(b) it is necessary to ensure the continuity of essential banking; or

(c) it is necessary to enable or facilitate the merger of the bridge institution with another entity or the sale of the rights and obligations.

12 – Any decision of the Banco de Portugal to extend the period referred to in paragraph 11 shall contain, where possible, an assessment of the market conditions and outlook that justifies the extension.

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13 – The Banco de Portugal shall establish, by means of a Notice, the rules applicable to bridge institutions.

14 – The transfer decision referred to in Article 145-O(1) and (2), as well as the possible decision to extend the period referred to in paragraph 11, shall be reported to the Competition Authority, but considering its transitional nature, it shall not constitute a concentration between undertakings for the purposes of the applicable law concerning competition.

Article 145-Q
Assets and funding of the bridge institution

1 – The Banco de Portugal shall select the rights, obligations, shares and other instruments of ownership of the credit institution under resolution to be transferred to the bridge institution at the time of its establishment.

2 – Subject to Article 145-L(4), if there is payment of a consideration by the bridge institution, resulting from the transfer determined by the Banco de Portugal pursuant to Article 145-O(1) and (2), it shall accrue to:

(a) the shareholders or holders of other instruments of ownership of the credit institution under resolution, where the transfer to the bridge institution has been made through a transfer to the bridge institution of the ownership of shares or other instruments of ownership of the credit institution under resolution, to the extent of the value, if positive, of the equity of the institution under resolution, at the time of the transfer referred to in 145-O(1) and (2), assessed in accordance with Article 145-H; or

(b) the credit institution under resolution, where the transfer to the bridge institution has been made through a transfer of all or part of the rights and obligations of the credit institution under resolution to the bridge institution, to the extent of the difference, if positive, between the assets and liabilities of the institution under resolution being transferred to the bridge institution, assessed in accordance with Article 145-H.

3 – Subject to Article 145-O(6), it shall not be possible to transfer to the bridge institution any credit claims on the credit institution under resolution held by persons or entities who, in the two years prior to the date of application of the resolution action, have had a direct or indirect shareholding equal to or exceeding 2% of the capital of the credit institution or have been members of the management body of the credit institution, unless it is shown that they were not, for act or omission, responsible for the financial difficulties of the credit institution and have not contributed, for act or omission, to that situation.

4 – After the transfer referred to in Article 145-O(1) and (2), the Banco de Portugal may, at any time:

(a) transfer the rights and obligations from the bridge institution to an asset management vehicle set up for the purpose, in accordance with Articles 145-S and 145-T, where necessary to ensure the objectives set out in Article 145-C(1) or to facilitate the termination of business of the bridge institution, pursuant to Article 145-R(1);

(b) transfer other rights and obligations and the ownership of shares or other instruments of ownership of the credit institution under resolution to the bridge institution;

(c) transfer the rights and obligations transferred to the bridge institution back to the credit institution under resolution, or transfer the ownership of shares or other instruments of ownership of the credit institution under resolution back to the respective holders at the time of the decision

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under Article 145-P(1). The credit institution under resolution or original holders shall be obliged to take back this transfer, provided that the conditions in the following paragraphs are met.

5 – The transfer referred to in the foregoing subparagraph shall only be made where expressly provided for in a decision of the Banco de Portugal, in accordance with Article 145-O(1) and (2), where the conditions for the transfer of the rights, obligations, shares and other instruments of ownership of the credit institution under resolution provided for therein are not met or when such rights, obligations, shares and other instruments of ownership of the credit institution under resolution do not fall within the transfer criteria set out therein.

6 – The Banco de Portugal shall determine the amount of financial support to be granted by the Resolution Fund, if necessary, to create and develop the activity of the asset management vehicle, pursuant to Article 145-AA, while taking into account the intervention of the Fund, under the terms and conditions laid down in Article 167-B, in the framework of the application of resolution action as defined in Article 145-O(1) and (2).

7 – The total value of liabilities and off-balance-sheet items to be transferred to the bridge institution should not exceed the total value of the assets transferred from the credit institution under resolution, plus, where appropriate, the funds from the Resolution Fund or the Fund, in accordance with Articles 145-AA and 167-B.

Article 145-R
Termination of the operation of the bridge institution

1 – The Banco de Portugal shall take a decision to terminate the operation of a bridge institution as soon as possible and, in any case, once it considers that the objectives set out in Article 145-C(1) are ensured, or in the following cases:

(a) the sale to a third party of all rights, obligations, shares or other instruments of ownership of the credit institution under resolution which were transferred to the bridge institution, pursuant to paragraphs 3, 4 and 6;

(b) the sale to a third party of all shares or other instruments of ownership of the bridge institution, pursuant to paragraphs 3, 4 and 6;

(c) the bridge institution merging with another entity, without prejudice to paragraph 8;

(d) the bridge institution ceasing to meet the requirements of Article 145-O(3) and (4) and Article 145-P(3);

(e) the expiry of the period specified in Article 145-P(10), where the bridge institution in such a case shall enter into winding up proceedings;

(f) when it considers that, after the sale of most of the rights and obligations transferred to the bridge institution, its continuation is not justified, deciding that the bridge institution in question shall enter into winding up proceedings.

2 – Where a bridge institution is used for the purpose of transferring the rights and obligations of more than one credit institution under resolution, the winding up proceedings referred to in paragraph 1(*e)* and *(f)* shall refer to the rights and obligations and not to the bridge institution itself.

3 – Where it considers that the conditions have been met to sell some or all of the rights, obligations, shares or other instruments of ownership of the credit institution under resolution which were transferred to the bridge institution or to transfer the shares or other instruments of ownership of the bridge institution, the Banco de Portugal or the bridge institution, if authorised in accordance with the following paragraph, may, while ensuring that the process is transparent and the persons

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concerned are treated fairly, promote their sale by whatever means are considered more appropriate in the light of the conditions existing at the time, the facts of the case and the principles, rules and guidelines of the European Union on State aid.

4 – The sale by the bridge institution referred to in the foregoing paragraph, and the terms and conditions shall be subject to authorisation by the Banco de Portugal.

5 – Subject to Article 145-L(4), any proceeds generated as a result of the termination of the operation of the bridge institution shall benefit its shareholders.

6 – After the sale of all rights, obligations, shares or other instruments of ownership of the credit institution under resolution transferred to the bridge institution and the allocation of the proceeds from the sale referred to in the foregoing paragraph, the bridge institution shall be wound up by the Banco de Portugal.

7 – In the cases of sale of the full ownership of shares or other instruments of ownership, and merger of the bridge institution with another entity, the framework applicable to bridge institutions shall be terminated.

8 – At the time of the merger referred to in paragraph 1*(c)*, the Resolution Fund shall not hold shares or other instruments of ownership of the bridge institution.

Article 145-S

Asset separation

1 – The Banco de Portugal may decide to transfer rights and obligations from a credit institution or a bridge institution which are assets, liabilities and off-balance-sheet items and assets under management of the institution to asset management vehicles created for the purpose, with a view to maximising their value through eventual sale or wind down.

2 – The Banco de Portugal may also decide to transfer rights and obligations from two or more credit institutions which are included in the same group to asset management vehicles, with the same objective as specified in the foregoing paragraph.

3 – The asset management vehicle shall be a legal person created for the purpose of receiving and administering some or all of the rights and obligations of credit institutions under resolution or a bridge institution.

4 – The share capital of the asset management vehicle shall be subscribed and paid up in whole or in part by the Resolution Fund using its own funds, without prejudice to the powers of the Banco de Portugal over the asset management vehicle.

5 – The asset management vehicle is created by decision of the Banco de Portugal approving its statutes, and is under no obligation to meet the legal requirements that would otherwise be required for the management of the rights and obligations being transferred.

6 – The asset management vehicle may start its operation without complying with any legal requirements in relation to the commercial register and other procedural requirements under the law, without prejudice to subsequent compliance as soon as possible.

7 – The Banco de Portugal's decision referred to in paragraph 1, per se, shall provide for the transfer of ownership of the rights and obligations from the credit institution under resolution or bridge institution to the asset management vehicle, the latter being regarded for all legal and contractual purposes the successor entity in the rights and obligations being transferred.

8 – The partial transfer of rights and obligations to the asset separation tool shall not prejudice the complete sale of contractual positions of the credit institution under resolution or bridge institution, with transmission of responsibilities relating to the assets being transferred, including in

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the case of financial guarantee contracts, securitisation transactions or other contracts containing netting provisions.

9 – The transfer decision referred to in paragraph 1 shall take effect irrespective of any legal or contractual provision expressing otherwise, and provides a sufficient basis for compliance with any legal formality related to the transfer.

10 – The transfer decision referred to in paragraph 1 shall not require the consent of the shareholders or holders of other instruments of ownership of the credit institution under resolution or the bridge institution, counterparties in contracts related to rights and obligations being sold or any other third parties, and cannot be grounds for the exercise of the right to close out, resolve, terminate, oppose, renew or amend the conditions set out in the contracts in question.

11 – Without prejudice to Section V of this Chapter, shareholders and creditors of the credit institution under resolution or bridge institution, and other creditors whose rights and obligations are not transferred shall not have any rights over or in relation to the rights and obligations transferred.

12 – The Commercial Companies Code applies to asset management vehicles, duly adjusted to the objectives and nature of these entities.

13 – The Banco de Portugal, on a proposal of the general meeting of the bridge institution, shall appoint and approve the remuneration of the members of its management and supervisory bodies, who shall comply with all guidelines and recommendations transmitted by the Banco de Portugal, in particular on management, strategy and risk profile of the asset management vehicle.

14 – At the time of the transfer decision referred to in paragraph 1, the Banco de Portugal, as an alternative to the foregoing paragraph, may appoint the members of the management and supervisory bodies of the bridge institution without a proposal from the general meeting.

15 – Without prejudice to other types of liabilities, the members of the management and supervisory bodies or the holders of senior management positions of the asset management vehicle shall have no liability to the shareholders and creditors of the credit institution under resolution unless the act or omission committed by them in the exercise of their functions implies gross negligence or serious misconduct.

16 – In carrying out its activity, the asset management vehicle shall comply with management criteria ensuring the maintenance of low levels of risk.

17 – The partial or total transfer of rights and obligations of a credit institution under resolution or a bridge institution to asset management vehicles created for the purpose shall be notified to the Competition Authority, but in view of its transitional nature it does not constitute a concentration for the purposes of the applicable legislation on competition.

18 – The members of the management and supervisory bodies of the asset separation tool, its employees, legal representatives, commissioners and other persons that provide permanent or occasional services are subject to the duty of professional secrecy laid down in Article 78.

Article 145-T

Assets, financing and termination of the activity of the asset management vehicle

1 – The Banco de Portugal shall select the rights and obligations of the credit institution under resolution or bridge institution to be transferred to the asset management vehicle at the time of its establishment.

2 – The rights and obligations of the credit institution under resolution or bridge institution may only be transferred to an asset management vehicle if any of the following conditions are met:

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(a) their sale in a winding up proceeding has adverse effects on the financial markets;

(b) their transfer is necessary to ensure the proper functioning of the credit institution under resolution or bridge institution;

(c) their transfer is necessary to maximise the revenue from their sale.

3 – The Banco de Portugal shall determine the consideration for which the rights and obligations are transferred to the asset management vehicle, which may have nominal or negative value. This should take into account the valuation referred to in Article 145-H and the principles, rules and guidelines of the European Union on State aid.

4 – Subject to Article 145-L(4), any consideration paid by the asset management vehicle in respect of the transfer referred to in Article 145-S(1) shall benefit the credit institution under resolution or the bridge institution, where the rights and obligations have been directly acquired, to the extent of the difference, if positive, between the assets and liabilities of the institution under resolution or bridge institution transferred to an asset management vehicle, calculated in accordance with the valuation referred to in Article 145-H.

5 – The consideration referred to in the foregoing paragraph may be paid in the form of debt bonds issued by the asset management vehicle, in which case Article 349 of the Commercial Companies Code shall not apply.

6 – Subject to Article 145-S(8), any claims on the credit institution under resolution shall not be transferred to the asset separation tool, where they are held by persons and entities who, during the two years preceding the date of application of resolution action, have been holding, directly or indirectly, 2% or more of the share capital of the credit institution or who have been members of the management bodies of the credit institution, unless it is established that they were not, by act or omission, responsible for the financial difficulties of the credit institution and have not contributed, by act or omission, to that situation.

7 – After the transfer referred to in Article 145-S(1), the Banco de Portugal may at any time:

(a) transfer other rights and obligations from the credit institution under resolution or the bridge institution to asset management vehicles;

(b) transfer the rights and obligations transferred to the asset management vehicle back to the credit institution under resolution or the bridge institution and, if necessary, adjust the consideration set at the time of the transfer, in which case the credit institution under resolution or the bridge institution shall be obliged to take back this transfer, under the conditions provided for in the following paragraph.

8 – The transfer referred to in subparagraph 7*(b)* shall only be made where expressly provided for in a decision of the Banco de Portugal, in accordance with Article 145-S(1), where the conditions for the transfer of rights, obligations, shares and other instruments of ownership of the credit institution under resolution provided for therein are not met or when such rights, obligations, shares and other instruments of ownership of the credit institution under resolution do not fall within the categories set out therein.

9 – The Banco de Portugal shall determine the amount of financial support to be granted by the Resolution Fund, if necessary, to create and develop the activity of the asset management vehicle, pursuant to Article 145-AA, while taking into account the intervention of the Fund, under the terms and conditions laid down in Article 167-B, in the framework of the application of resolution action as defined in Article 145-S(1).

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10 – The total value of liabilities and off-balance-sheet items to be transferred to the asset management vehicle shall not exceed the total value of the assets transferred from the credit institution under resolution or the bridge institution, plus, where appropriate, the funds from the Resolution Fund or the Fund under the terms and conditions set out in the foregoing paragraph.

11 – The provisions of Article 145-R shall apply mutatis mutandis to the termination of the operation of the asset management vehicle.

Article 145-U
Bail-in

1 – The Banco de Portugal may apply the bail-in tool to recapitalise a credit institution to the extent sufficient to restore its ability to comply with the conditions for authorisation and to continue to carry out its activities and to raise finance independently and under sustainable conditions from the financial markets if there is a reasonable prospect that the application of that tool together with other relevant measures will achieve the objectives set out in Article 145-C(1) and restore the financial soundness and long-term viability of the credit institution, by applying the following powers:

(a) write down, in part or in full, the nominal value of liabilities of the credit institution under resolution that do not result from the ownership of own funds instruments and that are included in the scope of application of the bail-in tool;

(b) raise the capital of the credit institution under resolution or its parent undertaking by converting, in part or in full, the bail-inable liabilities of the credit institution under resolution by issuing ordinary shares or other instruments of ownership of the credit institution under resolution or its parent undertaking.

2 – Where the requirements laid down in the foregoing paragraph are not fulfilled, the Banco de Portugal may also:

(a) convert the eligible liabilities of the credit institution under resolution into share capital of the bridge institution by issuing ordinary shares and write down the nominal value of the eligible liabilities of the credit institution under resolution to be transferred to the bridge institution;

(b) write down the nominal value of the eligible liabilities of the credit institution under resolution to be transferred in accordance with Articles 145-M and 145-S.

3 – Where strictly necessary, the Banco de Portugal may change the type of association of the credit institution under resolution in order to apply the powers referred to in the foregoing paragraphs.

4 – The application of the powers referred to in paragraphs 1 and 2 shall be preceded by the exercise of the write-down or conversion powers under Article 145-I.

5 – The Banco de Portugal shall select the bail-inable liabilities to which the powers referred to in paragraphs 1 and 2 shall apply.

6 – The powers referred to in paragraphs 1 and 2 shall not apply to:

(a) deposits that are guaranteed by the Deposit Guarantee Fund, within the limits laid down in Article 166;

(b) liabilities covered by collateral;

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(c) liabilities to credit institutions and investment firms dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, with an original maturity of less than seven days, excluding entities that are part of the same group;

(d) liabilities with a maturity of less than seven days, owed to payment and securities settlement systems, designated or recognised under Decree-Law No 221/2000 of 9 September 2000 or the Securities Code, or to their operators or participants and arising from the participation in such a system, to central counterparties established in an EU Member State and to central counterparties recognised under Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012;

(e) liabilities to employees in relation to accrued salary, pension benefits or other fixed remuneration, except for the variable component of remuneration that is not regulated by a collective bargaining agreement and except for the variable component of the remuneration of material risk takers as identified in Article 115-C;

(f) liabilities related to the provision of goods and services that are critical to the daily functioning of the credit institution, including IT services, utilities and the rental, servicing and upkeep of premises;

(g) liabilities to tax and local authorities, provided that those liabilities are preferred under the applicable law;

(h) liabilities to the Deposit Guarantee Fund arising from contributions due;

(i) liabilities to credit institutions, investment firms dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis and entities referred to in Article 152(2) which have not been identified as resolution entities and belonging to the same resolution group, regardless of their maturity, except where those liabilities are ranked in accordance with Article 8-A of Decree-Law No 199/2006 of 25 October or as subordinated claims in the event of failure.

7 – The provisions of subparagraph 6*(b)* shall not prevent the Banco de Portugal from implementing the powers referred to in paragraphs 1 and 2 to the liabilities covered by collateral in the amount exceeding the guarantee.

8 – The following liabilities shall not be considered bail-inable liabilities:

(a) liabilities arising from the holding by the credit institution of customers' assets or money held on their behalf shall not be considered eligible liabilities, including customers' assets or money held on behalf of undertakings for collective investment;

(b) liabilities arising from a trustee relationship between the credit institution in a trustee capacity and a third party as beneficiary where the third party is protected under applicable civil and insolvency law.

9 – The Banco de Portugal may exceptionally exclude, in part or in full, certain bail-inable liabilities or classes of bail-inable liabilities from the application of the bail-in tool where any of the following applies:

(a) it is not operationally possible to apply those powers within a reasonable time frame;

(b) the exclusion is strictly necessary and is proportionate to achieve the continuity of critical functions and core business lines of the credit institution under resolution, in a manner that maintains the ability of the institution under resolution to continue key operations, services and transactions;

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(c) the exclusion is strictly necessary and is proportionate to avoid severely disrupting the functioning of financial markets, with impact on the national or European Union economy, in particular as regards the deposits held by natural persons and micro, small and medium-sized enterprises for the portion that exceeds the limit laid down in Article 166;

(d) the application of the powers provided for in paragraphs 1 and 2 to those liabilities would cause a destruction in value of the assets of the credit institution under resolution, such that the losses borne by other creditors not excluded in accordance with this paragraph or paragraph 6 would be higher than if those liabilities were excluded from the application of such powers.

10 – For the purposes of the foregoing paragraph, the Banco de Portugal shall:

(a) assess whether liabilities of entities referred to in paragraph 6*(i)* that have not been identified as resolution entities and belong to the same resolution group not excluded from the application of the bail-in tool under that provision should be fully or partially excluded from the application of that tool under the provisions of the foregoing paragraph, in order to ensure the effective implementation of the resolution strategy; and

(b) give due consideration, for the purposes referred to in Article 145-D(1)*(a)* and *(b)*, to the amount of bail-inable liabilities that would remain in the credit institution after the exercise of that power, as well as the amount of financial resources of the Resolution Fund.

11 – Where the Banco de Portugal decides to exclude certain bail-inable liabilities or classes of bail-inable liabilities from the application of the bail-in tool and it is not possible to pass on the losses that would have been borne by those liabilities to the remaining creditors in accordance with Article 145-D(1)*(c)*, the Banco de Portugal may order the Resolution Fund to provide the credit institution under resolution with the financial support necessary to:

(a) cover any losses which have not been borne by those liabilities, taking into account Article 145-V(1)*(a)*;

(b) purchase shares or other capital instruments of the credit institution under resolution or the bridge institution, taking into account Article 145-V(1)*(b)*.

12 – The Resolution Fund may provide the financial support referred to in the foregoing paragraph only where the following conditions are met:

(a) a contribution to loss absorption and recapitalisation equal to an amount not less than 8% of the total liabilities including own funds of the credit institution under resolution, in accordance with the valuation referred to in Article 145-H, has been made by the holders of own funds instruments and bail-inable liabilities of the credit institution under resolution, by exercising the write-down or conversion powers under Article 145-I and by applying the bail-in tool;

(b) the contribution of the Resolution Fund does not exceed 5% of the total liabilities including own funds of the credit institution under resolution.

13 – The resolution fund may make a contribution under paragraph 11 without complying with the conditions referred to in paragraph 12*(a)*, provided that all of the following situations occur:

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(a) the contribution to loss absorption borne by the holders of own funds instruments and bail-inable liabilities of the credit institution under resolution is equal to an amount not less than 20% of the total risk exposure amount;

(b) the resolution fund has at its disposal, by way of the contributions referred to in Articles 153-G and 153-H, an amount which is at least equal to 3% of the deposits of all the participating credit institutions covered by the Deposit Guarantee Fund, within the limit set out in Article 166; and

(c) the credit institution concerned has assets below EUR 900,000,000,000 on a consolidated basis.

14 – In exceptional circumstances the Banco de Portugal may seek further funding from alternative financing sources where financial support provided by the Resolution Fund has reached the 5% limit specified in paragraph 12*(b)*, and all claims, other than deposits guaranteed by the Deposit Guarantee Fund that are not preferred under Article 166-A, have been written down or converted in full, in compliance with paragraphs 1 and 2.

15 – The Banco de Portugal shall notify the European Commission before excluding a bail-inable liability or a class of bail-inable liabilities from the application of the bail-in tool in accordance with paragraph 9.

16 – If the decision provided for in the foregoing paragraph determines the intervention of the Resolution Fund or the acquisition of alternative financing resources, the Banco de Portugal shall await the decision of the European Commission for 24 hours, or for a longer period agreed with that entity, and shall make its decision accordingly.

Article 145-V

Application and effects of the bail-in tool

1 – For the purposes of the application of the powers set out in Article 145-U(1) and (2), the Banco de Portugal shall determine, in aggregate form, on the basis of the valuation referred to in Article 145-H:

(a) the amount of the bail-inable liabilities to be written down in order to ensure that the capital of the credit institution under resolution is equal to zero;

(b) the amount of bail-inable liabilities to be converted into share capital, through the issue of shares or other instruments of ownership, in order to reach a Common Equity Tier 1 capital ratio of either the credit institution under resolution or the bridge institution and enable it to continue to meet, for at least one year, the conditions for authorisation and raise finance independently and under sustainable conditions on the financial markets.

2 – The write-down referred to in paragraph 1*(a)* shall take into account the provisions of Article 145-Q(7) and Article 145-T(10).

3 – The Banco de Portugal shall apply the bail-in tool in accordance with the order of claims in case of failure. The nominal value of a class of liabilities shall not be written down or a class of liabilities be converted into share capital while those powers are not exercised in relation to other lower ranking classes, according to that order of priority.

4 – In application of the powers laid down in Article 145-U(1) and (2), the provisions of Article 145-J shall apply mutatis mutandis.

5 – The Banco de Portugal may exercise the powers referred to in Article 145-U(1) and (2) in relation to a liability to the credit institution arising from a financial derivative only after closing out the derivative.

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6 – The Banco de Portugal may determine the maturity and winding up of any financial derivative with a view to the application of the powers referred to in Article 145-U(1) and (2).

7 – Where financial derivatives are subject to a netting agreement, the Banco de Portugal or an independent entity in accordance with Article 145-H shall determine the liability arising from the write down of those instruments in accordance with the terms of the agreement.

8 – The Banco de Portugal shall determine the value of liabilities arising from financial derivatives in accordance with the following:

(a) appropriate methodologies for determining the value of classes of financial derivatives, including transactions that are subject to netting agreements;

(b) principles for establishing the relevant point in time at which the value of a financial derivative position should be established; and

(c) appropriate methodologies for comparing the destruction in value that would arise from the write down of financial derivatives and application of the powers under Article 145-U(1) and (2) with the amount of losses that would be borne by those derivatives in a bail-in.

9 – After the application of the powers referred to in Article 145-U(1) and (2), the part of the bail-inable liabilities that have been written down under such powers is cancelled, and their payment or any other obligations arising in relation to it that are not accrued cease to be required.

10 – The amount of bail-inable liabilities that has not been written down under Article 145-U(1) and (2) remains outstanding in accordance with the applicable contractual terms, subject to any modification of the amount of interest payable and any further modification of the terms that the Banco de Portugal might make in accordance with Article 145-AB(1)(j).

Article 145-W
Business reorganisation plan

1 – Within 30 days of the application of the bail-in tool referred to in Article 145-U, the management body of the credit institution under resolution shall draw up and submit to the Banco de Portugal a business reorganisation plan including the following elements:

(a) a detailed diagnosis of the factors, circumstances and problems that caused the credit institution under resolution to fail or to be likely to fail;

(b) a description of the measures aiming to restore the long-term viability or part of the activity of the credit institution under resolution within an appropriate time frame, which may include:

(i) the reorganisation of its activities;
(ii) changes to the operational systems and infrastructure within the institution;
(iii) the withdrawal from loss-making activities;
(iv) the restructuring of existing activities that can be made competitive;
(v) the sale of assets or of business lines;

(c) the time frame for the implementation of those measures.

2 – The business reorganisation plan shall be based on realistic assumptions as to the economic and financial market conditions under which the credit institution will operate. It shall take account, inter alia, of the current state and future prospects of the financial markets, reflecting best-case and worst-case assumptions, including a combination of events allowing the identification of the main vulnerabilities, which shall be compared with appropriate sector-wide benchmarks.

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3 – Where the principles, rules and guidelines of the European Union on State aid are applicable, the business reorganisation plan shall be compatible with the restructuring plan which must be submitted to the Commission under those principles, rules and guidelines.

4 – When the powers referred to in Article 145-U(1) are applied to group entities, whose parent undertaking has its head office in Portugal and is subject to consolidated supervision by the Banco de Portugal, the business reorganisation plan shall be prepared by the body and cover all of the credit institutions and investment firms dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, within the group, and are submitted to the Banco de Portugal, which shall communicate the plan to the relevant resolution authorities and the European Banking Authority.

5 – In exceptional circumstances, if it is necessary for achieving the resolution objectives set out in Article 145-C(1), the resolution authority may extend the period in paragraph 1 up to a maximum of two months since the application of the bail-in tool referred to in Article 145-U(1), or, where the business reorganisation plan is required to be notified to the competent European authorities in terms of State aid, up to the deadline set out in the respective principles, rules and guidelines, whichever occurs earlier.

6 – Within one month of the date of submission of the business reorganisation plan, the Banco de Portugal, in agreement with the European Central Bank, where, under the law, this is the supervisory authority of the credit institution, shall assess the likelihood that the plan, if implemented, will restore the long-term viability of the credit institution.

7 – Where the Banco de Portugal, in agreement with the European Central Bank in accordance with the foregoing paragraph, is not satisfied that the reorganisation plan would achieve the long-term viability of the credit institution, it shall notify the respective management body of its concerns and require the amendment of the plan within 15 days in a way that addresses those concerns.

8 – The Banco de Portugal shall decide, within one week, whether it is satisfied that the plan, as amended, addresses the concerns notified.

9 – The management body of the credit institution shall implement the reorganisation plan as agreed and shall submit a report to the Banco de Portugal at least every six months on progress in the implementation of the plan.

10 – The management body of the credit institution shall revise the reorganisation plan if, in the opinion of the Banco de Portugal with the agreement of the European Central Bank, where, under the law, this is the supervisory authority of the credit institution, it is necessary to achieve the long-term viability of the credit institution, pursuant to paragraphs 8 and 9.

11 – In the case of a credit institution engaged in financial intermediation, the Banco de Portugal shall communicate to the Portuguese Securities Market Commission the elements of the business reorganisation plan which could have an impact on the development of such activities.

Article 145-X
Contractual recognition of bail-in

1 – [*Repealed.*]

2 – [*Repealed.*]

3 – Credit institutions shall include in their instruments and agreements a clause whereby creditors recognise that their liability may be subject to the write-down or conversion powers provided for in Article 145-I or the bail-in tool and accepts their effects where such instruments and agreements:

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(a) are not excluded from the scope of the bail-in tool;
(b) are not a deposit;
(c) are governed by the law of a third country; and
(d) are concluded after 31 March 2015.

4 – The foregoing paragraph shall not apply where the Banco de Portugal determines that the mentioned liabilities may be subject to the write-down or conversion powers referred to in Article 145-I or to the bail-in tool referred to in Article 145-U, pursuant to the law of the third country or to a binding agreement concluded with that third country.

5 – The Banco de Portugal may require credit institutions to provide a legal opinion relating to the legal enforceability and effectiveness of a term included in the instruments and agreements referred to in paragraph 3.

6 – Where an instrument or agreement constituting a liability is governed by the law of a third country, the Banco de Portugal may require the credit institution to demonstrate that any decision to apply the powers referred to in Article 145-I(1) and (2) would be effective under the law of that third country, having regard to the terms of the contract governing the liability and international agreements on the recognition of resolution proceedings in that third country. Where the Banco de Portugal is not satisfied, the liability shall not be counted towards the minimum requirement for own funds and eligible liabilities.

7 – The Banco de Portugal may exempt a credit institution from compliance with paragraph 3 where:

(a) the minimum requirement for own funds and eligible liabilities does not exceed what is necessary to ensure the provisions of Article 138-AS (2)(a); and
(b) the liabilities covered by paragraph 3, which do not include the clause referred to in that paragraph, are not used by the credit institution to meet that minimum requirement.

8 – The credit institution shall notify the Banco de Portugal if, by virtue of the relevant applicable legislation or otherwise, it concludes that it is not feasible to comply with paragraph 3, stating the reasons for such a conclusion and the type of instrument or agreement concerned.

9 – The foregoing paragraph shall not apply to:

(a) additional Tier 1 instruments;
(b) Tier 2 instruments;
(c) debt instruments from which liabilities covered by collateral are not arising;
(d) contractual instruments from which liabilities arise whose ranking in case of failure is equal to or lower than the ranking of the claims referred to in Article 8-A of Decree-Law No 199/2006 of 25 October 2006.

10 – For the purposes of subparagraph (c) of the foregoing paragraph, “debt instruments” are bonds, other debt securities and any instruments creating or recognising a claim.

11 – Following the notification referred to in paragraph 8, the Banco de Portugal may request the credit institution to provide, within a reasonable time frame, any information necessary to assess the impact of the non-inclusion referred to in paragraph 3 on the resolvability of the institution concerned.

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12 – The application of paragraph 3 shall be suspended upon receipt by the Banco de Portugal of the notification referred to in paragraph 8.

13 – If the Banco de Portugal considers that the inclusion of paragraph 3 is feasible, it shall require the credit institution, taking into account the need to ensure the resolvability of the credit institution concerned, to include the clause referred to in paragraph 3 within a reasonable time frame after the notification referred to in paragraph 8.

14 – In the cases referred to in the foregoing paragraph, the Banco de Portugal may also require the credit institution to change its practices relating to the application of paragraph 8.

15 – The Banco de Portugal may specify the categories of contractual instruments to which paragraph 8 may be applied.

16 – If, in the context of the assessment of resolvability, or at any time, the Banco de Portugal concludes that, in a given class of liabilities with the same ranking in case of failure which includes eligible liabilities referred to in Article 138-AQ(1), Article 138-AR(1)(a) and Article 138-AV(2), the amount of liabilities covered by paragraph 8 is greater than 10% of the total liabilities within such class of liabilities, together with the amount of liabilities excluded from the scope of the bail-in tool or for which there is a reasonable likelihood of exclusion under Article 145-U(9), in accordance with the resolution plan of the credit institution, the Banco de Portugal shall assess the impact of this situation on the resolvability of the institution concerned, especially taking into account the need to ensure the provisions of Article 145-D(1)(c).

17 – If it concludes, in accordance with the provisions of the foregoing paragraph, that the non-inclusion of the clause in paragraph 3 constitutes a substantive impediment to resolvability, the Banco de Portugal shall apply the provisions of Articles 138-AK and 138-AL.

18 – Liabilities arising from instruments or agreements which do not include the clause referred to in paragraph 3 shall not be relevant to the amount of the credit institution's own funds and eligible liabilities, except where the provisions of paragraph 4 apply.

19 – The non-inclusion of paragraph 3 shall not prevent the Banco de Portugal from exercising the write-down or conversion powers provided for in Article 145-I or from applying the bail-in tool provided for in Article 145-U to liabilities arising from these instruments or agreements.

Article 145-Y
Minimum requirement for own funds and eligible liabilities – bail in

[Repealed.]

Article 145-Z
Application of the minimum requirement for own funds and eligible liabilities to groups

[Repealed.]

Article 145-AA
Resolution financing arrangements

1 – For the purpose of application of the resolution action referred to in Article 145-E(1), the Banco de Portugal may determine that the Resolution Fund, in compliance with the objectives set out in Article 145-C(1) and in accordance with the principles referred to in Article 145-D(1), shall use financing arrangements for the following purposes:

(a) to guarantee the assets or the liabilities of the credit institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

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(b) to make loans to the credit institution under resolution, its subsidiaries, a bridge institution or an asset management vehicle;

(c) to purchase assets of the credit institution under resolution;

(d) to subscribe and pay up, in whole or in part, the capital of a bridge institution and an asset management vehicle;

(e) to replace certain eligible liabilities or classes of eligible liabilities that have been excluded from the scope of application of the bail-in tool referred to in Article 145-U(9);

(f) to pay compensation to shareholders, creditors of the credit institution under resolution or the Deposit Guarantee Fund, pursuant to Article 145-H(16).

2 – The resources of the Resolution Fund may also be used for the purposes referred to in the foregoing paragraph, with respect to the purchaser in the context of the resolution action provided for in Article 145-M.

3 – Subject to paragraph 1*(e)*, the resources of the Resolution Fund shall not be used directly to recapitalise or to absorb the losses of the credit institution under resolution.

4 – In the event that the use of the Resolution Fund's resources for the purposes in paragraphs 1 and 2 indirectly results in part of the losses of the credit institution under resolution being passed on to the Resolution Fund, the provisions of Article 145-U(11) to (13) shall apply.

SECTION IV
RESOLUTION POWERS

Article 145-AB
Resolution powers

1 – In order to ensure the efficient application of resolution action, and to guarantee the pursuit of the objectives set out in Article 145-C(1), the Banco de Portugal shall have, in particular, the following resolution powers:

(a) to temporarily waive the application of prudential rules to the credit institution under resolution for a maximum of one year, extendable for a maximum period of two years;

(b) to suspend, having regard to the respective impact on the orderly functioning of financial markets, any payment or delivery obligations pursuant to any contract to which a credit institution under resolution is a party, from the publication in accordance with Article 145-AT(5)*(a)* until the end of the working day following that publication, and the payment or delivery obligations of the institution under resolution's counterparties under that contract shall be suspended for the same period of time;

(c) to restrict, having regard to the respective impact on the orderly functioning of financial markets, secured creditors of a credit institution under resolution from enforcing security interests in relation to their assets from the publication in accordance with Article 145-AT(5)*(a)* until the end of the working day following that publication;

(d) to suspend, having regard to the respective impact on the orderly functioning of financial markets, the rights of close-out netting agreements, resolution, termination, opposition to the renewal or amendment of conditions of any party to a contract with a credit institution under resolution, from the publication of the notice pursuant to Article 145-AT(5)*(a)* until the end of the working day following that publication, provided that the payment and delivery obligations and the provision of collateral continue to be performed;

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(e) to suspend, having regard to the respective impact on the orderly functioning of financial markets, the rights of close-out netting agreements, resolution, termination, opposition to the renewal or amendment of conditions of any party to a contract with a subsidiary of a credit institution under resolution, from the publication of the notice pursuant to Article 145-AT(5)*(a)* until the end of the working day following that publication, provided that the payment and delivery obligations and the provision of collateral continue to be performed, where:

(i) the obligations under that contract are guaranteed or are otherwise supported by the credit institution under resolution;

(ii) the rights of close-out netting agreements, resolution, termination, opposition to the renewal or amendment of conditions under that contract are based solely on the financial condition or, in the case of contracts under foreign law, on the insolvency of the credit institution under resolution; and

(iii) in the case of a transfer of rights, obligations, shares or other instruments of ownership of the credit institution under resolution, all the rights and obligations of the subsidiary relating to that contract have been or may be transferred to and assumed by the recipient, or the Banco de Portugal provides in any other way adequate protection for such obligations;

(f) to temporarily close offices and other premises of the credit institution under resolution where transactions are carried out with the public for a maximum period of one year, extendable for a maximum period of two years;

(g) to require, at any time, any persons or entities to provide, in a reasonable time frame set by the Banco de Portugal, all the information and documents, regardless of the nature of their support, and to carry out on-site inspections to the establishments of a credit institution under resolution, examine the books and take copies of all relevant documentation;

(h) to exercise, directly or through persons appointed for that purpose by the Banco de Portugal, the rights and powers conferred upon the holders of shares or other instruments of ownership and their management bodies and administer or sell the assets and property of the credit institution under resolution;

(i) to require a credit institution under resolution or a relevant parent institution to issue new shares, other instruments of ownership or other securities, including preferential shares and contingent convertible instruments;

(j) to amend:

(i) the maturity date of debt instruments and other bail-inable liabilities issued by the credit institution under resolution;

(ii) the amount or maturity date of interest payable under the instruments and other bail-inable liabilities issued by the credit institution under resolution, including by suspending payments temporarily, except for liabilities for which there is collateral referred to in Article 145-U(6);

(k) to close out and terminate financial contracts or derivatives contracts for the purposes of applying Article 145-V(5) to (8);

(l) subject to Article 145-AD and any right of compensation in accordance with the provisions of this Chapter, to provide for a transfer to take effect free from any liability or encumbrance, of rights and obligations which are assets, liabilities, off-balance-sheet items and assets under management, and the ownership of shares or other instruments of ownership;

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(m) to remove rights to acquire further shares or other instruments of ownership;

(n) to require the relevant authority to discontinue or suspend the admission to trading on a regulated market or the official listing of financial instruments;

(o) to cancel or modify the terms and conditions of a contract to which the credit institution under resolution is a party or to substitute a recipient as a party, to which rights, obligations, shares or other instruments of ownership of the credit institution under resolution have been transferred, without the consent of the other party;

(p) to require the resolution authorities of the EU Member States in which entities of the group of the credit institution under resolution are established to assist in obtaining the information, documents or access to services and facilities provided for in Article 145-AP(1);

(q) to require the resolution authorities of EU Member States owning the assets, liabilities, off-balance-sheet items, assets under management and shares or other instruments of ownership which are the object of the Banco de Portugal's transfer decision to provide all necessary assistance for the purposes of that transfer;

(r) to require the transferee receiving the transferred rights, obligations, shares or other instruments of ownership of the credit institution under resolution to provide all the assistance, data, information and documents, regardless of the nature of the medium, related to the transferred business.

2 – The provisions of paragraph 1*(b)* shall not apply to:

(a) [*repealed.*]

(b) payment and delivery obligations to:

(i) systems or operators of payment and securities settlement systems for financial instruments designated or recognised under Decree-Law No 221/2000 of 9 September 2000 or the Securities Code;

(ii) central counterparties authorised in the European Union or third-country central counterparties recognised by the European Securities and Markets Authority under Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012; and

(iii) central banks;

(c) [*repealed.*]

3 – In view of the specific circumstances, the Banco de Portugal shall determine the set of payment and delivery obligations subject to the provisions of paragraph 1*(b*), in particular considering the appropriateness of including deposits covered by the Deposit Guarantee Fund, in particular for natural persons and micro, small and medium-sized enterprises.

4 – If paragraph 1*(b*) applies to deposits covered by the Deposit Guarantee Fund, the credit institution shall ensure that depositors have access to an appropriate daily amount as determined by the Banco de Portugal.

5 – In the exercise of the power referred to in paragraph 1*(c)*, and where the provisions of Article 145-AF apply, the Banco de Portugal shall take into account their impact on all entities of the group subject to resolution action. 3

6 – The provisions of paragraph 1*(c)*, *(d)* and *(e)* shall not apply to:

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(a) systems or operators of payment and securities settlement systems for financial instruments designated or recognised under Decree-Law No 221/2000 of 9 September 2000 or the Securities Code;

(b) central counterparties authorised in the European Union or third-country central counterparties recognised by the European Securities and Markets Authority under Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012; or

(c) central banks.

7 – For the purposes of subparagraphs 1*(d)* and *(e)*, a party to a contract may exercise the right to close out, resolve, terminate, oppose, renew or amend the conditions before the end of the period referred to in the mentioned subparagraphs where the Banco de Portugal informs them that the rights and obligations covered by the contract shall not be transferred to another entity or shall not be subject to write down or conversion in accordance with Article 145-U(1). 5

8 – For the purposes of paragraph 1*(d)* and *(e)*, subject to Article 145-AV, where the rights and obligations covered by the contract have been transferred to another entity, and the notification provided for in the foregoing paragraph has not been made, the right to close out, resolve, terminate, oppose the renewal or amend the conditions shall only be exercised if any enforcement event occurs, in accordance with that contract.

9 – For the purposes of subparagraphs 1*(d)* and *(e)*, subject to Article 145-AV, where the rights and obligations covered by the contract have not been transferred to another entity, the Banco de Portugal has not applied the measure referred to in Article 145-U(1) to credit claims resulting from that contract, and the notification provided for in paragraph 7 has not been made, the right to close out, resolve, terminate, oppose the renewal or amend the conditions, under that contract, shall only be exercised upon expiry of the suspension period.

10– The voting rights of shares or other instruments of ownership of the credit institution under resolution shall not be exercised during the period of resolution. 8

11– The exercise of resolution powers by the Banco de Portugal shall not require the consent of the shareholders or holders of other instruments of ownership of the credit institution under resolution, the parties to contracts relating to their rights and obligations or any third parties, and shall not be the basis for the exercise of the right to close out, resolve, terminate, oppose, renew or amend the conditions stipulated in the contracts in question. 9

12 – Subject to the foregoing paragraphs, the exercise of resolution powers shall be without prejudice to the exercise of the rights of parties to a contract concluded with the credit institution under resolution on the basis of an act or omission at a date prior to the transfer, or of the transferee for which the rights, obligations, shares or other instruments of ownership of the credit institution under resolution were transferred.

13 – Subject to Article 145-AT and to the notification requirements under the rules and guidelines of the European Union on State aid, before the exercise of resolution powers, the Banco de Portugal is not subject to compliance with the notification procedures of any persons who would otherwise be determined by law or by contractual provision, or requirements to disclose announcements, or to file or register any document with any other public bodies. 11

14 – Subject to Section V of this Chapter, where none of the powers listed in paragraph 1 is applicable to an institution, as a result of the legal form of the company, the Banco de Portugal may apply similar powers, in particular with regard to their effects. 12

15 – In cases in which resolution action or the powers set out in Article 145-I take effect in respect of rights and obligations or the ownership of shares or other instruments of ownership located in a

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third country or governed by the law of a third country, the Banco de Portugal may determine that: 13

(a) the administrator, liquidator or other person or entity exercising control over the assets of the credit institution under resolution and the recipient take all necessary steps to ensure that the application of resolution action or the exercise of powers under Article 145-I becomes effective;

(b) the administrator, liquidator or other person or entity exercising control over the property of the credit institution under resolution take the necessary steps to maintain and preserve the assets, liabilities, off-balance-sheet items, assets under management, shares or other instruments of ownership, or comply with the obligations on behalf of the recipient until the resolution action or the exercise of powers under Article 145-I becomes effective;

(c) the reasonable expenses of the recipient duly incurred in carrying out any measures or powers under the foregoing subparagraphs are paid in any of the forms referred to in Article 145-L(4).

16 – Where The Banco de Portugal considers that, in spite of all the necessary steps taken by the administrator, liquidator or other person or entity in accordance with paragraph 13*(a)*, it is highly unlikely that the application of resolution action or the exercise of powers referred to in Article 145-I will become effective in relation to the rights, obligations, ownership of shares or other instruments of ownership located in a third country or governed by the law of a third country, it shall not proceed with the application of the resolution action or the exercise of the powers referred to in Article 145-I.

17 – Where the Banco de Portugal has already taken the decision to apply a resolution action or the exercise of the powers referred to in Article 145-I, and verifies that it is highly unlikely that the application of that resolution action or the exercise of that power will become effective in relation to the rights, obligations, ownership of shares or other instruments of ownership located in a third country or governed by the law of a third country, that decision shall not have effect in regard to those.

18 - The Banco de Portugal may, after consulting the European Central Bank where the latter is, under the applicable legislation, the supervisory authority of the credit institution concerned, suspend payment or delivery obligations arising from a legal transaction to which a credit institution is a party, where:

(a) the credit institution has been declared by the Banco de Portugal, in its capacity as supervisory or resolution authority, to be failing or likely to fail in accordance with Article 145-E(2)*(a)*;

(b) it is not possible to implement any measure in the short term preventing failure in accordance with Article 145-E(2)*(b)*;

(c) the exercise of the power to suspend is deemed necessary to avoid the further deterioration of the financial conditions of the credit institution; and

(d) the exercise of the power to suspend is necessary to:

(i) assess whether the requirements of Article 145-E(2)*(c)* and *(d)* are met; or

(ii) determine the resolution actions to be taken against the credit institution or ensure the effective application of resolution actions.

19 – The foregoing paragraph shall not apply to payment and delivery obligations to:

(a) systems or operators of payment and securities settlement systems for financial instruments designated or recognised under Decree-Law No 221/2000 of 9 September 2000 or the Securities

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Code;

(b) central counterparties established in an EU Member State and central counterparties recognised by the European Securities and Markets Authority under Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012;

(c) central banks.

20 – Where paragraph 18 applies, the payment and delivery obligations of the counterparties shall be suspended for the same period of time.

21 – The Banco de Portugal shall determine the set of payment and delivery obligations included in the exercise of the power provided for in paragraph 18, in view of the specific circumstances, in particular considering the appropriateness of including deposits covered by the Deposit Guarantee Fund, in particular for natural persons and micro, small and medium-sized enterprises.

22 – If paragraph 18 applies to deposits covered by the Deposit Guarantee Fund, the credit institution shall ensure that depositors have access to an appropriate daily amount as determined by the Banco de Portugal.

23 – The Banco de Portugal shall determine the duration of the suspension referred to in paragraph 18, which:

(a) shall be as short as possible, taking into account the purposes referred to in paragraph 18*(d)*; and

(b) shall last no longer than the period from the publication provided for in paragraph 27 to the end of the working day following the day of the publication.

24 – For the purposes of paragraph 18, the Banco de Portugal shall take into account:

(a) the impact on the orderly functioning of financial markets;

(b) the provisions on safeguarding creditors' rights in insolvency proceedings, in particular the principle of equal treatment of creditors, and the possibility for the credit institution, following the assessment of the requirements set out in Article 145-E(2)*(c)* and *(d)*, to be wound up.

25 – If the power provided for in paragraph 18 is exercised before a resolution action is taken, the Banco de Portugal shall immediately notify the credit institution concerned and the authorities referred to in Article 145-AT(2)*(b)* to *(g)* thereof.

26 – Insofar as the exercise of the power provided for in paragraph 18 relates to instruments issued by the credit institution admitted to trading on a regulated market, a multilateral trading facility or an organised trading facility, a participant of a central counterparty or a centralised securities system, the Banco de Portugal shall inform the Portuguese Securities Market Commission in advance, in order to assess the potential effects on the development of that activity or on the trading of financial instruments.

27 – The Banco de Portugal shall publish the decision on the exercise of the power provided for in paragraph 18, as well as the terms and period of suspension by the means provided for in Article 145-AT(5).

28 – During the suspension period, the Banco de Portugal may also exercise the following powers, which shall take effect until the end of that period:

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(a) to restrict, taking into account the respective impact on the orderly functioning of financial markets, secured creditors of a credit institution from enforcing the relevant collateral, and paragraphs 5 and 6 shall apply;

(b) to suspend, with regard to the respective impact on the orderly functioning of financial markets, the rights to close out, resolve, terminate, oppose the renewal or amend conditions of any party to a contract with a credit institution and paragraphs 1*(e)* and 6 to 9 shall apply.

29 – Where the Banco de Portugal exercises the power provided for in paragraph 18 in relation to a credit institution in accordance with the provisions of this Article, and subsequently takes resolution action with respect to that institution, it shall not exercise the resolution powers provided for in paragraph 1*(b)* to *(d)* with respect to that institution.

30 – Credit institutions shall include, in financial contracts governed by a third-country law, a clause in which the counterparty recognises and accepts:

(a) that such a financial contract may be the subject of the exercise of the powers referred to in paragraph 1*(b)* to *(d)* and in paragraph 18; and

(b) its effectiveness and that it is bound to the provisions of Article 145-AV.

31 – The provisions of the foregoing paragraphs shall apply to financial contracts that:

(a) create new obligations or materially amend existing obligations; and

(b) provide for rights to close out or the possibility of enforcing collateral to which the provisions of paragraphs 1*(b)* to *(d)* and 18, as well as the provisions of Article 145-AV, would apply if the financial contract were governed by the law of an EU Member State.

32 – Non-compliance with paragraph 30 shall not prevent the Banco de Portugal from exercising the powers referred to in paragraphs 1*(b)* to *(d)* and 18, or the application of the provisions of Article 145-AV to the relevant financial contract.

33 – The Banco de Portugal may require EU parent undertakings to ensure that their subsidiaries established in third countries which are credit institutions, financial institutions or investment firms, or which would be investment firms if they were established in Portugal, include in financial contracts a clause according to which the exercise by the Banco de Portugal of the powers referred to in paragraphs 1*(b)* to *(d)* and 18 in relation to the parent undertaking shall not constitute grounds to:

(a) invoke or exercise any termination, suspension, modification, netting or set-off rights; or

(b) enforce collateral under such financial contracts.

SECTION V
SAFEGUARDS

Article 145-AC
Covered bonds and structured finance arrangements

1 - Without prejudice to Articles 145-AB and 145-AV, where the Banco de Portugal transfers some but not all of the rights and obligations of a credit institution under resolution, from a bridge institution or asset management vehicle to another entity, or where the Banco de Portugal exercises the powers specified in Article 145-AB(1)*(o)*, the Banco de Portugal shall not:

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(a) transfer some but not all of the rights and obligations arising from covered bonds and structured finance arrangements to which the credit institution under resolution is a party and which involve the provision of collateral by a party to the arrangement or a third party, including securitisations and instruments used for hedging purposes which form an integral part of the cover pool and which are secured by assets which, during the whole period of validity of the bonds, are capable of covering claims attached to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest;

(b) modify or terminate the rights and obligations arising from the bonds and arrangements referred in the foregoing subparagraph.

2 - Where necessary in order to ensure availability of deposits covered by the Deposit Guarantee Fund, the Banco de Portugal may:

(a) transfer the deposits covered by the Deposit Guarantee Fund which form an integral part of the bonds and the agreements referred to in paragraph 1*(a)* without transferring other rights and obligations arising from them;

(b) transfer, modify or terminate the rights and obligations arising from the bonds and arrangements referred to in paragraph 1*(a)* without transferring the deposits covered by the Deposit Guarantee Fund.

3 - The requirement under this Article applies irrespective of whether the bonds and arrangements referred to paragraph 1*(a)* are created by contract or other means, or arise automatically by operation of law, or arise under or are governed by the law of another EU Member State or of a third country.

Article 145-AD

Financial collateral, set off and netting agreements

1 - Without prejudice to Articles 145-AB and 145-AV, where the Banco de Portugal transfers some but not all of the rights and obligations of a credit institution under resolution, from a bridge institution or asset management vehicle to another entity, or where the Banco de Portugal exercises the powers specified in Article 145-AB(1)(*o)*, the Banco de Portugal shall not:

(a) transfer some but not all of the rights and obligations that are protected under a title transfer financial collateral arrangement, a set-off arrangement or a netting agreement;

(b) modify or terminate the rights and obligations which are part of any of the arrangements mentioned in the foregoing subparagraph.

2 - For the purposes of this Article, Article 145-AC(2) and (3) shall apply mutatis mutandis.

3 - The provisions of Chapter III of Title VIII which are likely to, by any means, affect the enforcement or restrict the effects of a financial collateral agreement, shall apply irrespective of Decree-Law No 105/2004 of 8 May 2004, amended by Decree-Laws No 85/2011 of 29 June 2011, and No 192/2012 of 23 August 2012, taking the place of any other general or special provisions to the contrary.

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Article 145-AE
Collateralised liabilities

1 - Without prejudice to Articles 145-AB and 145-AV, where the Banco de Portugal transfers some but not all of the rights and obligations of a credit institution under resolution, from a bridge institution or asset management vehicle to another entity, or where the Banco de Portugal exercises the powers specified in Article 145-AB(1)(*o)*, the Banco de Portugal shall not:

(a) transfer assets against which the liability is secured unless that liability and benefit of the security are also transferred;

(b) transfer secured liabilities unless the benefit of the security is also transferred;

(c) transfer the benefit of the security unless the secured liability is also transferred;

(d) modify or terminate a security arrangement when the effect of that modification or termination is that the liability ceases to be secured.

2 - The provisions of the foregoing paragraph shall apply to arrangements under which a person has by way of security an actual interest in the liabilities, irrespective of whether that interest is secured by specific assets or rights or by way of a floating charge or similar arrangement.

3 - For the purposes of this Article, Article 145-AC(2) and (3) shall apply mutatis mutandis.

Article 145-AF
Payment, clearing and settlement systems

The taking of resolution action by the Banco de Portugal shall not affect the legislation and regulations on the settlement finality in payment and securities settlement systems, and shall not:

(a) revoke a transfer order from the irrevocability moment defined by the rules of that system;

(b) negate, modify or in any other way affect the enforceability of transfer orders and netting carried out within a payment system;

(c) hinder the use of funds or financial instruments in the settlement account or credit facility connected to the system, against collateral security, to fulfil the obligations of the credit institution under resolution;

(d) affect the collateral security provided in connection with a system or any interoperable system.

SECTION VI
CROSS-BORDER GROUP RESOLUTION

Article 145-AG
Resolution colleges

1 - Subject to Article 145-AH, the Banco de Portugal, in its capacity as group-level resolution authority, shall establish and chair resolution colleges comprising also the following entities:

(a) the resolution authorities of EU Member States in which subsidiaries covered by consolidated supervision of the group concerned are established;

(b) the resolution authorities of EU Member States where parent undertakings are established, where they are parent financial holding companies in an EU Member State, parent financial holding companies in the European Union, parent mixed financial holding companies in an EU Member State, or parent mixed financial holding companies in the European Union;

(c) the resolution authorities of EU Member States in which significant branches are located;

(d) the supervisory authorities of EU Member States where the resolution authority is a member

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of the resolution college;

(e) the competent government members;

(f) the deposit guarantee scheme, or the authority that is responsible for the deposit guarantee scheme of an EU Member State where the resolution authority is a member of a resolution college;

(g) the European Banking Authority, with the purpose of contributing to the efficient, effective and consistent functioning of resolution colleges, taking into account international standards. It shall not have voting rights.

2 - The resolution authorities of third countries where a parent undertaking or a credit institution established in the European Union has a subsidiary or a branch that would be considered to be significant were it located in the European Union may, at their request, be invited to participate in the resolution college as observers, provided that they are subject to confidentiality requirements equivalent, in the opinion of the group-level resolution authority, to those established by Article 145-AO.

3 - In the cases where other groups or colleges perform the same functions, carry out the same tasks and comply with all the conditions and procedures established in this Article and Article 148(4) and (5), the Banco de Portugal, as the group-level resolution authority, and as an alternative to the provision of paragraph 1, may waive the requirement to establish a resolution college.

4 - Resolution colleges established pursuant to paragraph 1 shall perform the following tasks:

(a) exchange information relevant for the development, revision or update of group resolution plans, to take decisions on the taking of resolution action in relation to groups;

(b) develop group resolution plans, pursuant to Articles 138-AF and 138-AG;

(c) assess the resolvability of groups, pursuant to Article 138-AJ;

(d) adopt measures to remove or address impediments to the resolvability of groups pursuant to Article 138-AL;

(e) decide on the need to establish a group resolution scheme as referred to in Articles 145-AI and 145-AJ;

(f) reach the agreement on a group resolution scheme proposed in accordance with Articles 145-AI and 145-AJ;

(g) coordinate public communication of the adequate group resolution strategies;

(h) coordinate the use of the Resolution Fund or other similar financing arrangements established in another EU Member State;

(i) set the minimum requirements for own funds and eligible liabilities at consolidated and subsidiary level under Article 138-AO to 138-BM;

(j) cooperate and coordinate with third-country resolution authorities;

(k) discuss any issues relating to cross-border group resolution.

5 - As chair of the resolution college, the Banco de Portugal shall:

(a) establish arrangements and procedures for the functioning of the resolution college, after consulting the other members of the resolution college;

(b) coordinate all activities of the resolution college;

(c) convene and chair all its meetings and keep all members of the resolution college fully informed in advance of the organisation of meetings of the resolution college and the respective agendas;

(d) notify the members of the resolution college of any planned meetings so that they can request to participate;

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(e) invite the members and observers to attend particular meetings of the resolution college, taking into account the relevance of the issues to be discussed for those members and observers, in particular the potential impact on financial stability in the Member States concerned;

(f) keep all the members of the resolution college informed, in a timely manner, of the decisions and outcomes of those meetings.

6 - Notwithstanding subparagraph 5*(e)*, resolution authorities which are members of the resolution college shall be entitled to participate in its meetings whenever matters subject to joint decision-making or relating to a group entity located in their EU Member State are on the agenda.

7 - Where a resolution authority of another EU Member State is the group-level resolution authority, the Banco de Portugal, when carrying out equivalent functions to those established in paragraph 1*(a)* to *(c)*, shall participate in resolution colleges established by that authority.

Article 145-AH
European resolution colleges

1 – Where a third-country credit institution or third-country parent undertaking has subsidiaries, parent undertakings or at least two significant branches established in two or more EU Member States, including Portugal, the Banco de Portugal, together with the resolution authorities of the other Member States, shall establish a European resolution college in order for resolution authorities to adequately carry out the tasks provided for in paragraph 4 of the foregoing Article and, where applicable, by the supervisory authorities involved, with respect to the referred entities and, insofar as those tasks are relevant, to the branches concerned.

2 – The Banco de Portugal shall chair the European resolution college:

(a) where the EU parent undertaking, which holds all the Union subsidiaries of a third-country institution or a third-country parent undertaking, is established in Portugal;

(b) where it is the resolution authority of the EU parent undertaking or an EU subsidiary with the highest total value of total on-balance sheet, where the foregoing subparagraph does not apply.

3 – The European resolution colleges shall be composed of the following entities:

(a) resolution authorities of the Member States in which subsidiaries of the group are established;

(b) resolution authorities of the Member States in which parent undertakings of the group are established, where they are EU parent financial holding companies or EU parent mixed financial holding companies;

(c) resolution authorities of Member States in which significant branches are established;

(d) supervisory authorities of Member States in which the resolution authority is a member of the European resolution college;

(e) members of Government responsible for finance;

(f) authorities responsible for the deposit guarantee schemes of Member States in which the resolution authority is a member of the European resolution college;

(g) the European Banking Authority to promote an efficient, effective and consistent functioning of resolution colleges, taking into account international standards. It shall not have voting rights.

4 – For the purposes of paragraph 1, and with regard to paragraph 4*(i)* of the foregoing Article, the members of the European resolution college shall take into consideration the global resolution

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strategy, if any, adopted by third-country authorities.

5 – The subsidiaries established in the European Union, or the EU parent undertaking, shall comply with the requirement laid down in Article 138-BC by issuing instruments referred to in Article 138-AR(1) to their ultimate parent undertaking established in a third country, or to the subsidiaries of that ultimate parent undertaking that are established in the same third country or to other entities under the conditions set out in Article 138-AR(1)*(a)(i)* and *(d)* where:

(a) the global resolution strategy referred to in the foregoing paragraph provides that subsidiaries established in the Union or the EU parent undertaking and its subsidiaries are not resolution entities; and

(b) the members of the European resolution college agree with that strategy.

6 – Where another group or college performs the same tasks and complies with the provisions of this Article and Article 148(4) and (5), the Banco de Portugal and the other resolution authorities of the Member States concerned may, by mutual agreement, choose not to establish a European resolution college.

7 – Subject to the foregoing paragraphs, European resolution colleges shall otherwise function in accordance with Article 154-AG.

8 – If an international agreement has not been reached as referred to in Article 93 of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, European resolution colleges shall also decide, subject to Article 145-AL(2), on the recognition and enforcement of third-country resolution proceedings relating to a third-country credit institution or parent undertaking that:

(a) has subsidiaries or branches regarded as significant by, and established in, two or more Member States; or

(b) has assets, liabilities, assets under management or off-balance-sheet exposures that are located in two or more EU Member States or are governed by law of those Member States.

9 – Where the joint decision on the recognition and enforcement of the third-country resolution proceedings is reached by the European resolution college, pursuant to the foregoing paragraph, the Banco de Portugal shall enforce these proceedings in accordance with national law.

Article 145-AI

Taking of resolution actions in relation to a subsidiary in a group or withdrawal of its authorisation

1 - Where the Banco de Portugal considers that the requirements of Article 145-E(2) are met in relation to a credit institution established in Portugal that is a subsidiary in a group, it shall notify the group-level resolution authority, the consolidating supervisor and the resolution college members of the group in question of this fact and of the resolution actions that it intends to take.

2 - Where the Banco de Portugal considers that there are grounds to withdraw the authorisation of a credit institution established in Portugal that is a subsidiary in a group, pursuant to Article 22, but that the requirements of Article 145-E(2) are not met, it shall notify the group-level resolution authority, the consolidating supervisor and the resolution college members of the group in question of this fact and the effects of its decision.

3 - The Banco de Portugal may take the actions notified pursuant to paragraph 1 or decide on the withdrawal of the authorisation of a credit institution that is a subsidiary in a group notified pursuant to paragraph 2 only if the group-level resolution authority, after consulting the other members of the

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resolution college, considers that the resolution actions or the withdrawal of authorisation would not make it likely that the requirements of Article 145-E(2) would be satisfied in relation to a group credit institution in another EU Member State.

4 – In the absence of an assessment by the group-level resolution authority within 24 hours after receiving the notification under paragraphs 1 or 2, or a longer period that has been agreed, the Banco de Portugal may take the resolution actions referred to in paragraph 1 or withdraw the authorisation of a credit institution that is a subsidiary in a group notified in accordance with paragraph 2.

5 – On receiving a notification that the requirements of Article 145-E(2) are met or that there are grounds to withdraw the authorisation of a credit institution that is a subsidiary in a group, the Banco de Portugal, in its capacity as group-level resolution authority, after consulting the other members of the resolution college, shall assess the likely impact of such measures or the withdrawal of authorisation on the group and group entities in other EU Member States and, in particular, whether such actions would make it likely that the requirements of Article 145-E(2) would be satisfied in relation to a group credit institution in another EU Member State.

6 - Where the Banco de Portugal, as the group-level resolution authority, after consulting the other members of the resolution college pursuant to the foregoing paragraph, considers that:

(a) the actions notified would make it likely that the requirements laid down in Article 145-E(2) would be satisfied in relation to a group credit institution in another EU Member State, it shall, no later than 24 hours after receiving the notification, propose a group resolution scheme and submit it to the resolution college. That 24-hour period may be extended with the consent of the resolution authority which made the notification;

(b) the actions notified would not make it likely that the requirements laid down in Article 145-E(2) would be satisfied in relation to a group credit institution in another EU Member State, it shall notify the authority responsible for that institution or entity.

7 - The group resolution scheme, required under subparagraph 6*(a)*, shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme. It shall:

(a) take into account and follow the resolution plans as referred to in Article 138-AF unless resolution authorities conclude, taking into account the circumstances of the case, that resolution objectives will be achieved more effectively by taking actions that are not provided for in the resolution plans;

(b) outline the resolution actions that should be taken by the relevant resolution authorities in relation to the Union parent undertaking or particular group entities with the aim of meeting the resolution objectives and principles referred to in Article 145-C(1) and Article 145-D(1);

(c) specify how these resolution actions should be coordinated;

(d) establish a financing plan which considers the group resolution plan and principles for sharing responsibility among sources of financing in the various EU Member States as established in accordance with Article 138-AG(2)*(g)* and Article 145-AK.

8 - The Banco de Portugal, in its capacity as resolution authority responsible for the credit institutions that are covered by the group resolution scheme, may request the European Banking Authority to assist the resolution authorities in reaching a joint decision in accordance with the foregoing paragraph.

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9 - Where the Banco de Portugal, in its capacity as resolution authority, member of a resolution college of a group, disagrees with the group resolution scheme proposed by the competent resolution authority or considers that, for reasons of financial stability, it needs to take actions other than those proposed in the scheme, it shall notify the group-level resolution authority and the other resolution authorities that are covered by the group resolution scheme of the reasons for the disagreement and, where applicable, inform them of the actions it intends to take, giving consideration to the resolution plans as referred to in Article 138-AF and the potential impact on financial stability in the EU Member States concerned or on other group entities.

10 - Where the Banco de Portugal, in its capacity as resolution authority member of a resolution college of a group, does not disagree with the group resolution scheme proposed by the group-level resolution scheme, it may, together with other resolution authorities of the group that did not disagree with the scheme, reach a joint decision on a group resolution scheme covering entities in their EU Member States.

11 - The joint decisions referred to in paragraphs 7 and 10 and the individual decision referred to in paragraph 9, when taken by other resolution authorities that are members of a resolution college of a group, shall be recognised as conclusive by the Banco de Portugal.

12 - Where a group resolution scheme is not implemented and the Banco de Portugal takes resolution action in relation to any subsidiary in a group, it shall inform the members of the resolution college regularly and fully about those actions or other measures and their ongoing progress. It shall cooperate closely within the resolution college with a view to achieving a coordinated resolution strategy for all the group entities that are failing or likely to fail.

13 - For the purposes of this Article, the Banco de Portugal acts without delay, and with due regard to the urgency of the situation.

Article 145-AJ

Taking of resolution actions in relation to a parent undertaking or withdrawal of its authorisation

1 - Where the Banco de Portugal, in its capacity as group-level resolution authority, considers that the requirements of Article 145-E(2) are met in relation to a parent undertaking of the group, it shall notify the consolidating supervisor and the other resolution college members of the group concerned of this fact and of the resolution actions that it intends to take.

2 - Where the Banco de Portugal, in its capacity as group-level resolution authority, considers that there are grounds to withdraw the authorisation of a credit institution that is the parent undertaking of a group, pursuant to Article 22, but that the requirements of Article 145-E(2) are not met, it shall notify the consolidating supervisor and the other resolution college members of the group in question of this fact and the effects of its decision.

3 - The resolution actions notified for the purposes of paragraph 1 may include the implementation of a group resolution scheme drawn up in accordance with Article 145-I(7) in any of the following circumstances:

(a) the taking of resolution actions at parent level or the withdrawal of its authorisation make it likely that the requirements laid down in Article 145-E(2) would be fulfilled in relation to a group entity in another EU Member State;

(b) the taking of resolution actions at parent level or the withdrawal of its authorisation are not sufficient to restore the group's financial balance or solvency;

(c) the subsidiaries meet the requirements referred to in Article 145-E(2) according to a determination by the resolution authorities responsible for those subsidiaries; or

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(d) the adoption of a group resolution scheme will benefit the subsidiaries of the group.

4 - Where the resolution actions notified under paragraph 1 include the implementation of a group resolution scheme drawn up in accordance with Article 145-AI(7), it shall take the form of a joint decision of the group-level resolution authority and the resolution authorities responsible for the subsidiaries that are covered by the group resolution scheme.

5 - The Banco de Portugal, in its capacity as resolution authority responsible for the subsidiaries that are covered by the group resolution scheme, may invite the European Banking Authority to assist the resolution authorities in reaching a joint decision in accordance with the foregoing paragraph.

6 - Where the resolution scheme referred to in paragraph 3 is not implemented, the Banco de Portugal, after consulting the other resolution college members of the group, shall take the resolution action notified pursuant to paragraph 1, considering the financial stability in the EU Member States concerned and the resolution plans established in Article 138-AF, except in the cases where resolution authorities consider that the actions laid down in such plans are not those best suited to achieve the resolution objectives, and inform the resolution college members of the group about the ongoing progress, cooperating closely within the resolution college with a view to achieving a coordinated resolution strategy for all the group entities that are failing or likely to fail.

7 - Where the Banco de Portugal, in its capacity as resolution authority member of a resolution college of a group, disagrees with the group resolution scheme proposed by the group-level resolution authority or considers that, for reasons of financial stability, it needs to take actions other than those proposed in the scheme, it shall notify the group-level resolution authority and the other resolution authorities covered by the group resolution scheme of the reasons for the disagreement and, where applicable, shall inform them of the actions it intends to take, giving consideration to the resolution plans as referred to in Article 138-AF and the potential impact on financial stability in the EU Member States concerned or on other group entities.

8 - Where the Banco de Portugal, in its capacity as resolution authority member of a resolution college of a group, does not disagree with the group resolution scheme proposed by the group-level resolution authority, it may, together with other resolution authorities of the group that did not disagree with the scheme, reach a joint decision on a group resolution scheme covering entities in their EU Member States.

9 - The joint decisions referred to in paragraphs 4 and 8 and the individual decision referred to in paragraph 7, when taken by other resolution authorities that are members of a resolution college of a group, shall be recognised as conclusive by the Banco de Portugal.

10 - For the purposes of this Article, the Banco de Portugal acts without delay, and with due regard to the urgency of the situation.

Article 145-AK

Financial support to group resolution

1 - In the event of a resolution of a group pursuant to Articles 145-AI or 145-AJ, the Resolution Fund shall provide financial support in accordance with this Article.

2 - The Banco de Portugal, in its capacity as group-level resolution authority, after consulting the resolution authorities of the credit institutions and investment firms dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, that are part of the group, shall propose, if necessary before taking any resolution action, a financing plan as part of the group resolution scheme provided for in Articles 145-AI and 145-AJ, which shall be

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agreed in accordance with the decision-making procedure referred to in those Articles on the group resolution scheme.

3 - The financing plan shall include:

(a) a valuation, in accordance with Article 145-H, of assets, liabilities, assets under management or off-balance-sheet items of the affected group entities;

(b) the losses of each affected group entity at the moment the resolution tools are exercised;

(c) for each affected group entity, the losses that would be suffered by each class of shareholders and creditors;

(d) any contribution to be made by the Deposit Guarantee Fund, pursuant to Article 167-B, as well as by the deposit guarantee schemes in EU Member States where group entities that are covered by the resolution scheme are located, in accordance with their national law;

(e) the total contribution by each resolution financing arrangement and the objective and form of the contribution;

(f) the basis for calculating the amount that each of the resolution financing arrangements of the EU Member States where affected group entities are located is required to contribute;

(g) the amount that each national resolution financing arrangement of the EU Member States where affected group entities are located is required to contribute and the form of those contributions;

(h) where applicable, the amount of borrowing that the resolution financing arrangements of the EU Member States where affected group entities are located will contract;

(i) a time frame for the use of the financing arrangements of the EU Member States where affected group entities are located, which should be capable of being extended where appropriate.

4 - Unless agreed otherwise in the financing plan, the basis for apportioning the contribution of each resolution financing arrangement shall be consistent with the principles set out in the group resolution plans in accordance with Article 138-AF, and shall in particular have regard to:

(a) the risk-weighted assets and the group's assets held at credit institutions, investment firms dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, or by one of the entities referred to in Article 152(2)*(a)* to *(c)* established in the EU Member State of that resolution financing arrangement;

(b) the proportion of the group's assets held at credit institutions, investment firms dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis, or by one of the entities referred to in Article 152(2)*(a)* to *(c)* established in the EU Member State of that resolution financing arrangement;

(c) the losses which originated in group entities, under supervision in the EU Member State of that resolution financing arrangement, and, as such, have given rise to the need for group resolution;

(d) the resources of resolution financing arrangements of the EU Member State of the group-level resolution authority which, under the financing plan, are expected to be used to benefit group entities established in that Member State directly.

5 - Where the Banco de Portugal is the group-level resolution authority, the Resolution Fund shall be the group financing arrangement and is allowed, under the conditions laid down in Article 153-F(4), to contract borrowings or other forms of support from participating institutions, financial institutions or other third parties.

6 - Where the Banco de Portugal is not the group-level resolution authority, the Resolution Fund

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may guarantee any borrowing contracted by the resolution financing arrangement of the EU Member State of the group-level resolution authority in accordance with Article 153-F(4).

7 - Any proceeds or benefits that arise from the use of the group resolution financing arrangement are allocated to the Resolution Fund in accordance with its contributions to the financing of the group resolution.

SECTION VII
RELATIONS WITH THIRD COUNTRIES

Article 145-AL
Recognition and enforcement of third-country resolution proceedings

1 - In the absence of a joint decision between the resolution authorities participating in the European resolution college pursuant to Article 145-AH(8), or in the absence of a European resolution college, the Banco de Portugal, notwithstanding the following paragraph, shall make its own decision on whether to recognise and enforce third-country resolution proceedings relating to a third-country credit institution or parent undertaking, giving due consideration to the interest of each individual Member State where a third-country credit institution or parent undertaking operates, and in particular to the potential impact of the recognition and enforcement on the other parts of the group and the financial stability in those Member States.

2 - The Banco de Portugal, after consulting other resolution authorities, where a European resolution college is established under Article 145-AH, may refuse to recognise or to enforce third-country resolution proceedings if it considers that:

(a) the third-country resolution proceedings would have adverse effects on financial stability in Portugal or in another EU Member State;

(b) the resolution action in relation to a branch in Portugal of credit institutions authorised in an EU Member State would be necessary to achieve a resolution objective;

(c) creditors, in particular depositors, would not receive the same treatment as third-country creditors and depositors with similar legal form under the third-country home resolution proceedings;

(d) the recognition or enforcement of the third-country resolution proceedings would have fiscal implications for Portugal; or

(e) the effects of such recognition or enforcement would be contrary to national law.

3 - With regard to decisions taken on the recognition and enforcement of third-country resolution proceedings referred to in Article 145-AH(8) and paragraph 1, the Banco de Portugal may:

(a) exercise the resolution powers in relation to the following:

(i) assets of a third-country credit institution or parent undertaking that are located in Portugal or governed by national law;

(ii) rights or liabilities of a third-country credit institution that are booked by the branch located in Portugal or governed by national law, or where claims in relation to such rights and obligations are enforceable in Portugal;

(b) transfer, or request another entity to take action to transfer, shares or other instruments of ownership in a subsidiary of a third-country credit institution or a parent mixed financial holding company established in an EU Member State;

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(c) exercise the powers in Article 145-AB in relation to the contracts with an entity referred to in Article 145-AH(8), where such powers are necessary in order to enforce third-country resolution proceedings;

(d) suspend any right to close out, resolve, terminate, oppose the renewal or amend the terms and conditions, as well as any right to affect the contractual rights, of entities referred to in Article 145- AH(8) and other group entities, where such a right arises from resolution action taken in respect of such entities or other group entities, whether by the third-country resolution authority itself pursuant to legal or regulatory requirements as to resolution arrangements in that country, provided that the substantive obligations under the contract, including payment and delivery obligations, and provision of collateral, continue to be fulfilled.

4 - The Banco de Portugal may take, where necessary in the public interest, resolution action with respect to a parent undertaking where the relevant third-country authority determines that a credit institution that is incorporated in that third country meets the conditions for resolution under the law of that third country. For that purpose, Article 145-AV shall apply.

5 - The recognition and enforcement of third-country resolution proceedings shall be without prejudice to any normal insolvency proceedings under national law applicable, where appropriate.

Article 145-AM

Resolution of branches located in Portugal of credit institutions authorised in a third country

1 - When the conditions laid down in paragraph 2 are met, the Banco de Portugal may take resolution actions or exercise resolution powers in relation to a branch located in Portugal of a credit institution authorised in a third country that is not subject to any third-country resolution proceedings or that is subject to third-country resolution proceedings that have been refused pursuant to Article 145-AJ(2). For that purpose, Article 145-AV and the principles and requirements laid down in Articles 145-D, 145-E and 145-H shall apply.

2 - The Banco de Portugal may take resolution actions or exercise resolution powers pursuant to paragraph 1, where it considers that action is necessary in the public interest and one or more of the following conditions are met:

(a) the branch no longer meets or is highly likely not to meet the requirements for its authorisation and operation and there is no prospect that any action by the credit institution itself, implementation of corrective measures or the exercise of powers pursuant to Article 145-I would restore the branch to compliance or prevent failure, in a reasonable time frame;

(b) the Banco de Portugal considers that the third-country credit institution is unable, or is likely to be unable, to pay its obligations to creditors, including obligations that have been created through the branch, as they fall due, and that no third-country resolution or insolvency proceedings have been or will be initiated, in relation to that third-country credit institution, in a reasonable time frame;

(c) the relevant third-country authority has initiated third-country resolution proceedings in relation to the third-country credit institution, or has notified to the Banco de Portugal its intention to initiate such a proceeding.

Article 145-AN

Cooperation with third-country authorities

1 - Until an international agreement as referred to in Article 93(1) of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 enters into force, this Article shall apply in

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respect of cooperation between the Banco de Portugal and relevant third-country authorities.

2 - The Banco de Portugal shall conclude framework cooperation arrangements, in line with the framework cooperation arrangements signed by the European Banking Authority pursuant to Article 97(2) and (3) of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, with the following relevant third-country authorities:

(a) the relevant authorities of the third country where the parent undertaking or a company referred to in Article 152(2)*(b)* and *(c)* are established, in cases where its subsidiary is located in Portugal and in another Member State;

(b) the relevant authority of the third country where a third-country credit institution is established, in cases where that institution operates branches in Portugal and another EU Member State;

(c) the relevant authorities of third countries where subsidiaries are established, in cases where their parent undertakings or companies referred to in Article 152(2)*(b)* and *(c)* established in Portugal also have subsidiaries or significant branches in another Member State;

(d) the relevant authorities of third countries where a branch of a credit institution is located, in cases where that institution has established subsidiaries or significant branches in Portugal.

3 – Cooperation arrangements concluded between the Banco de Portugal and relevant third-country authorities in accordance with this Article may include provisions on the following matters:

(a) the exchange of information necessary for the preparation, revision and update of resolution plans;

(b) consultation and cooperation in the development of resolution plans, including principles for the exercise of powers under Article 145-AH(8) and (9), Articles 145-AL and 145-AM and similar powers under the law of the relevant third countries;

(c) the exchange of information necessary for the application of resolution tools and exercise of resolution powers and similar powers under the law of the relevant third countries;

(d) notification or consultation of parties to the cooperation arrangement before taking any measure under Title VIII or similar measures under relevant third-country law affecting the credit institution or group to which the arrangement relates;

(e) the coordination of public communication in the case of joint resolution actions;

(f) procedures and arrangements for the exchange of information and cooperation under the foregoing subparagraphs, including, where appropriate, through the establishment and operation of crisis management groups.

4 - The cooperation arrangements under this Article shall not establish rules or provisions in relation to specific credit institutions, and shall not prevent the Banco de Portugal from concluding bilateral or multilateral arrangements with third countries, in accordance with Article 33 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010.

5 - The Banco de Portugal shall notify the European Banking Authority of any cooperation arrangements that it has concluded in accordance with this Article.

Article 145-AO

Exchange of confidential information

1 - Notwithstanding Articles 80 to 82, for the purposes of this Section, the Banco de Portugal shall exchange confidential information, including recovery plans, with third-country authorities only if the

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following conditions are met:

(a) those third-country authorities are covered, in the opinion of all the authorities concerned, by guarantees of secrecy equivalent to those provided for in this Legal Framework;

(b) insofar as the exchange of information relates to personal data, the handling and transmission of such data to third-country authorities shall be governed by the applicable Union and national data protection law;

(c) the information is necessary for the performance by the relevant third-country authorities of their resolution functions that are comparable to those under this Legal Framework, and is not used for any other purposes.

2 - Where confidential information originates in another EU Member State, the Banco de Portugal shall not disclose that information to relevant third-country authorities unless the following conditions are met:

(a) the relevant authority of the EU Member State where the information originated agrees to that disclosure;

(b) the information is disclosed only for the purposes permitted by that EU Member State.

SECTION VIII
OTHER PROVISIONS

Article 145-AP
General obligations of credit institutions under resolution

In the scope of resolution actions or the exercise of resolution powers, the credit institution under resolution or any group entity located in Portugal shall:

(a) provide all explanations, information and documents, whatever their medium, requested by the Banco de Portugal;

(b) provide the recipient (who received rights, obligations, shares or other instruments of ownership of the credit institution under resolution) all assistance, explanations, information and documents, whatever their medium, related to the transferred business;

(c) give access to any operational services and infrastructure, including IT systems and facilities, that the recipient may require to effectively conduct the transferred business, even where the credit institution under resolution or the relevant group entity is being wound up;

(d) provide, by means of remuneration set by the Banco de Portugal taking the existing market conditions into account, the services that the recipient deems necessary for the normal course of the transferred business.

Article 145-AQ
Liquidation regime

Where, after taking resolution actions, the Banco de Portugal deems that the objectives set out in Article 145-C(1) have been achieved and concludes that the credit institution does not comply with the requirements for continuing authorisation, it may withdraw the authorisation of the credit institution which was subject to the resolution action in question, and the winding up proceedings provided for in the applicable law shall be initiated.

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Article 145-AR
Dispute and public interest

1 - Without prejudice to Article 12, the decisions of the Banco de Portugal applying resolution actions, exercise resolution powers or appoint administrators to the credit institution under resolution are subject to the legal proceedings provided for in the legislation regulating administrative disputes, save for the provisions laid down in the following paragraphs, taking into account the relevant public interests underlying their adoption.

2 - The appraisal of matters that must be demonstrated by expert evidence, regarding the valuation of assets and liabilities that are the object of or involved in the resolution actions taken, is carried out in the main proceedings.

3 - Regarding decisions annulling any acts committed within the scope of this Chapter, the Banco de Portugal may invoke legitimate reason for non-enforcement, pursuant to Article 175(2) and Article 163 of the Administrative Courts Procedure Code, in which case the procedure to decide the amount of compensation due is immediately launched, in accordance with the proceedings laid down in Articles 178 and 166 of that Code.

4 - When notified for the purposes of Article 178(1) of the Administrative Courts Procedure Code, the Banco de Portugal shall send the person concerned and the court the evaluation reports in its possession drafted by independent entities that have been requested with a view to taking the actions referred to in this Chapter.

Article 145-AS
Evaluation and compensation amount

1 - For the purposes of Article 145-AR(3), as well as any other legal proceedings that appraise the payment of a compensation arising from the adoption of the measures provided for in Article 145-E(1), the added value resulting from any extraordinary public financial support shall not be considered, namely that provided by the Resolution Fund, or of any potential intervention from the Fund.

2 - Irrespective of its potential intervention as a party in the legal proceedings, it is incumbent upon the Banco de Portugal to submit in those proceedings an evaluation report covering all prudential matters deemed relevant for calculating the amount of the compensation, namely as regards the future capacity of the credit institution to comply with its licensing requirements. The judge in the legal proceedings shall notify the Banco de Portugal for that purpose, without prejudice to the Banco de Portugal being empowered to submit the report on its own initiative.

Article 145-AT
Notifications, communications and disclosure of actions

1 - Where the requirements referred to in Article 145-E(2)(*a)* and *(b)* are met in relation to a credit institution, the Banco de Portugal shall immediately notify the following authorities, if different and where applicable:

(a) the Single Resolution Board and the European Central Bank, in the cases where, under the terms of the relevant law, they are the resolution authority and the supervisory authority of the credit institution respectively;

(b) the supervisory authority and the resolution authority of any branch of the credit institution;

(c) the Deposit Guarantee Fund and other deposit guarantee schemes to which the credit institution is affiliated where necessary to enable their action, and provided that the latter

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guarantees the appropriate level of confidentiality as regards access and treatment of information;

(d) the Resolution Fund, where the credit institution is a member and where necessary to enable its action;

(e) the group-level resolution authority;

(f) the member of Government responsible for finance;

(g) the consolidating supervisor, where the credit institution is subject to consolidated supervision, pursuant to Chapter 3 of Title VII of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, under Article 145-F(1) and (2);

(h) the European Systemic Risk Board.

2 - The Banco de Portugal's decision to take resolution action shall be notified as soon as practicable to the following entities, if different and where applicable:

(a) the credit institution under resolution;

(b) the supervisory authority of any branch of the credit institution under resolution;

(c) the Deposit Guarantee Fund and other deposit guarantee schemes to which the credit institution under resolution is affiliated;

(d) the Resolution Fund;

(e) the group-level resolution authority;

(f) the member of Government responsible for finance;

(g) the consolidating supervisor, where the credit institution is subject to supervision on a consolidated basis, pursuant to Chapter 3 of Title VII of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013;

(h) the European Systemic Risk Board;

(i) the European Commission, the European Central Bank, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority and the European Banking Authority;

(j) the Portuguese Securities Market Commission and the Insurance and Pension Funds Supervisory Authority;

(k) where the credit institution under resolution is an institution as defined in Article 2*(d)* of Decree-Law No 221/2000 of 9 September 2000, as amended by Decree-Laws Nos 85/2011 of 29 June 2011, 18/2013 of 6 February 2013, and 40/2014 of 18 March 2014, the systems in which it participates.

3 - The notification referred to in the foregoing paragraph shall include a copy of any order by the Banco de Portugal by which resolution action is taken, indicating the date from which it is effective.

4 - Any decision by the Banco de Portugal to take resolution action shall be communicated as soon as practicable to the employee representatives of the credit institution under resolution, pursuant to Article 286(4) of the Labour Code or, in their absence, its employees.

5 - The Banco de Portugal shall publish the order by which resolution action is taken or a notice summarising the decision and its effects, and in particular the effects on the customers of the credit institution under resolution and, if applicable, the terms and period of suspension or restriction referred to in Article 145-AB or, as applicable, request its disclosure by the following means:

(a) on the official website of the Banco de Portugal;

(b) on the website of the European Banking Authority;

(c) on the website of the credit institution under resolution;

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(d) in the information disclosure system of the Portuguese Securities Market Commission, where the shares, other instruments of ownership or debt instruments of the credit institution under resolution are admitted to trading on a regulated market.

6 - If the shares, other instruments of ownership or debt instruments of the credit institution under resolution are not admitted to trading on a regulated market, the Banco de Portugal shall send a copy of the order by which resolution action is taken to the shareholders, and holders of securities representing the capital and creditors of the credit institution under resolution that are known through the registers of securities issues with the issuer or which are available to the Banco de Portugal.

7 - The decision of the Banco de Portugal to take resolution action shall take effect as from the date of its publication under paragraph 5*(a)*.

Article 145-AU

Tax regime

1 - In the case of transfers of assets, the tax regime established in Article 74 and Article 75-A(3) of the Corporation Tax Code shall apply mutatis mutandis to the partial or total transfer of the business of a credit institution referred to in Articles 145-M and 145-O.

2 - Unused tax losses of a credit institution that is the subject of the resolution action referred to in the foregoing paragraph may be deducted from the taxable profits of institutions to which the business is transferred in whole or in part, pursuant to Article 52 and up to the end of the period referred to in paragraph 1 of that Article, with effect from the tax period in which they arose.

3 - Transfers of assets under the resolution actions referred to in paragraph 1 or Article 145-S have the following tax advantages:

(a) municipal real estate tax exemption;

(b) stamp duty exemption on the transfer of immovable property, and the incorporation, increase of capital or assets of institutions to which the business is transferred in whole or in part;

(c) exemption from fees and other legal charges payable on the necessary transactions and acts.

4 - The advantages laid down in this Article are granted by order of the member of Government responsible for finance, preceded by a request submitted by institutions to which the business is transferred in whole or in part. The request must be submitted to the Portuguese Tax and Customs Authority within 90 days from the decision of the Banco de Portugal.

5 - The order referred to in the foregoing paragraph shall list the advantages granted on the transaction, as well as, where applicable and subject to paragraph 2, the annual limits applicable when deducting the transferred tax losses.

6 - The request referred to in paragraph 4 shall:

(a) expressly list the acts and transactions and other relevant information for consideration;

(b) be accompanied by the Banco de Portugal's opinion on the compliance with requirements for the application of the advantages referred to in this Article, their compatibility with the rules governing the business of credit institutions and their effects on the stability of the financial system;

(c) be accompanied by a decision of the Portuguese Competition Authority where the transaction is subject to notification under Law No 19/2012 of 8 May 2012.

7 - In the case of transactions or acts prior to the order of the member of Government

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responsible for finance under paragraph 4, the refund of probable incurred taxes, fees and other legal charges may be requested by the applicants within 90 days from the date of notification of that order.

8 - The provisions of the foregoing paragraphs shall also apply mutatis mutandis to the transactions referred to in Article 145-R(1)*(a)* to *(c)*, as well as to other partial or total transfers of business to other credit institutions carried out by bridge institutions pursuant to Article 145-R(3).

CHAPTER IV
Common provisions

Article 145-AV
Overriding mandatory provisions on contractual obligations

1 - The application of the actions or the exercise of the powers laid down in this Title or the occurrence of any event directly linked to the application of such actions or exercise of such powers shall not, per se, under a contract entered into by the credit institution that is subject to resolution actions, and insofar as such contract continues to be complied with:

(a) be an enforcement event, pursuant to Decree-Law No 105/2004 of 8 May 2004;

(b) launch insolvency proceedings, pursuant to Decree-Law No 221/2000 of 9 September 2000;

(c) invoke or exercise any closing-out, resolution, termination, opposition to renewal, expiry or amendment rights;

(d) obtain possession, exercise control or enforce any security over any property of the credit institution subject to the action or of any group entity;

(e) modify, restrict or suspend any contractual rights, in relation to a contract which includes close-out netting or cross-default provisions.

2 - The provisions of subparagraphs *(a)* and *(b)* of the foregoing paragraph shall also apply to contracts concluded by:

(a) a subsidiary, the obligations under which are guaranteed or otherwise supported by the parent undertaking or by any group entity;

(b) any group entity, which includes close-out netting or cross-default provisions.

3 - The rights referred to in paragraph 1 may be exercised, in accordance with the applicable legal and contractual terms, where they are not based on the taking of the resolution action or the exercise of the powers provided for in this Title or the occurrence of any event directly linked to the taking of such action and the exercise of such powers.

4 - A suspension or restriction under Article 145-AB shall not constitute non-performance of a contractual obligation for the purposes of Article 145-AB(1)*(d)* and *(e)* and paragraph 1.

5 - Where third-country resolution proceedings are recognised under Article 145-AH(8) and Article 145-AL, or if the Banco de Portugal so decides, the provisions contained in this Article shall apply to such proceedings.

6 - The provisions contained in this Article shall be considered to be overriding mandatory provisions within the meaning of Article 9 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008.

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Article 146
Urgent nature of the measures

1 - The decisions of the Banco de Portugal adopted under this Title are considered to be urgent for the purposes of the provisions laid down in Article 103(1)*(a)* of the Administrative Procedures Code, without being subject to prior hearing of the persons concerned, without prejudice to paragraph 2.

2 - If it considers that there is no urgency in a decision nor any risk for the orderly and efficient execution of the decision taken, the Banco de Portugal shall hear the members of the corporate bodies and of senior management ceasing functions under Article 145-F, the holders of qualifying holdings and of the critical functions referred to in Article 33-A, without the need of a formal notification, about relevant matters on the decision to be taken and through any means of communication considered appropriate.

3 – The hearing established in the foregoing paragraph shall be carried out, without the need for a formal notification, about relevant matters on the decisions to be taken, through any means of communication that are appropriate to the urgency of the situation.

Article 147
Suspension of enforcement and time limits

1 – When a resolution measure is adopted, and while it is in effect, up to a maximum period of one year, all proceedings, including fiscal proceedings, against the credit institution or involving its property, except those for the collection of preferential or senior claims, shall be suspended, and the prescription or expiry deadlines opposable by the institution shall be interrupted.

2 – Where the credit institution under resolution is a party in a judicial proceeding, the Banco de Portugal may request a suspension for an appropriate period of time, if necessary for the effective application of the resolution action.

Article 148
Cooperation

1 – Insofar as this is compatible with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014, the Banco de Portugal shall:

(a) keep the Portuguese Insurance and Pension Funds Supervisory Authority informed of the measures taken under this Title and, where possible, shall consult it before deciding on their application, in the case of a credit institution that is the parent undertaking or belongs to the same group as an insurance undertaking or is otherwise of significant importance in the insurance market;

(b) keep the Portuguese Securities Market Commission informed of the measures taken under this Title and, where possible and insofar as this is compatible with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014, shall consult it before deciding on their application, in the case of a credit institution that is engaged in financial intermediation, is the issuer of financial instruments admitted to trading on a regulated market, a multilateral trading facility or an organised trading facility, is a participant in a central counterparty or a centralised securities system or is otherwise of significant importance in the securities market;

(c) conclude protocols with the Portuguese Securities Market Commission and the Portuguese Insurance and Pension Funds Supervisory Authority for the purpose of cooperation under this Title, in particular on the procedure for sharing confidential information and its processing, taking into account the safeguarding of financial stability.

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2 – Where a resolution authority of another EU Member State has decided to transfer rights and obligations constituting assets, liabilities, off-balance-sheet items and assets under management, and the ownership of shares or equivalent instruments of ownership located in Portugal or under national law, the Banco de Portugal shall provide the necessary assistance to ensure the transfer has effect in or under the law of that other Member State.

3 – Where a resolution authority of another EU Member State has decided to exercise the write-down or conversion powers laid down in Article 145-I or apply the measure laid down in Article 145-U, and in the event that the eligible liabilities, bail-inable liabilities or capital instruments of the credit institution under resolution include instruments or liabilities governed by Portuguese law or liabilities whose holders are located in Portugal, the Banco de Portugal shall cooperate with this resolution authority to ensure the write-down or conversion are applied under the terms and conditions established by the resolution authority of that Member State.

4 – Without prejudice to Articles 80 to 82, and for the purposes of Section VI of this Chapter, the Banco de Portugal shall:

(a) provide resolution authorities and supervisory authorities, on request, the information relevant for the exercise of the tasks assigned to the authorities involved in the resolution of a cross-border group;

(b) coordinate, where the Banco de Portugal is the group-level resolution authority, the flow of all relevant information between resolution authorities;

(c) provide the resolution authorities of other EU Member States, where the Banco de Portugal is the group-level resolution authority, access to all the information relevant for the exercise of the tasks referred to in Article 145-AG(4)(*b)* to *(i)*.

5 – For the purposes of the foregoing paragraph, when a request for information pertains to or includes information which has been provided by a third-country resolution authority and this authority has not consented to its onward transmission, the Banco de Portugal shall seek the consent of this resolution authority for the onward transmission of that information, and shall not be obliged to transmit information provided by a third-country resolution authority if the third-country resolution authority has not consented to its onward transmission.

6 – Where a resolution authority of another EU Member State has decided to apply a resolution measure or exercise a resolution power requiring from entities belonging to the group of the credit institution under resolution established in Portugal access to explanations, information, documents, information systems and facilities or the provision of the services referred to in Article 145-AP, the Banco de Portugal shall cooperate with this resolution authority to require that these entities provide said access or services.

Article 149

Application of penalties

The adoption of measures under this Title shall not preclude, in cases of breach, the application of the penalties provided for by law.

Article 150

Release and replacement of liens in tax execution procedures

The provisions of Article 218(1) and (2) of the Tax Proceedings Code shall apply mutatis mutandis in the event and for the duration of the resolution action, where the Banco de Portugal is entitled to exercise the option assigned in that Article to the judicial administrator.

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Article 151
Subsidiaries referred to in Article 18

Before the decision to apply any of the measures provided for in this Title to the subsidiaries referred to in Article 18 or, if not possible, immediately afterwards, the Banco de Portugal shall inform the competent authorities of the foreign country about the measures adopted.

Article 152
Subjective scope

1 – In addition to the credit institutions, the provisions of Title VII-B and this Title shall be applicable to investment firms dealing on own account or carrying out activities of underwriting financial instruments and/or placing financial instruments on a firm commitment basis.

2 – The provisions of the foregoing paragraph shall also apply mutatis mutandis to the following entities:

(a) financial institutions which are subsidiaries of a credit institution, an investment firm dealing on own account or activities of underwriting financial instruments and/or placing financial instruments on a firm commitment basis, or of one of the entities referred to in the following subparagraphs, and are covered by the consolidated supervision of the parent undertaking;

(b) financial holding companies, mixed financial holding companies and mixed-activity holding companies;

(c) parent financial holding companies in Portugal and parent mixed financial holding companies in Portugal;

(d) branches of credit institutions not covered by Article 48;

(e) branches of financial institutions covered by Article 189 and dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis.

3 - The provisions of Article 138-AE shall not apply to the entities referred to in subparagraphs *(a)* to *(c)* of the foregoing paragraph.

4 - The Banco de Portugal may take a resolution action in relation to the institutions referred to in paragraph 2*(a)* where the conditions laid down in Article 145-E(2) are met with regard to both the institutions and the parent undertaking subject to consolidated supervision.

5 - The Banco de Portugal may take a resolution action in relation to the entities referred to in paragraph 2*(b)* and *(c)* where the conditions laid down in Article 145-E(2) are met with regard to such entities.

6 - Without prejudice to the foregoing paragraph, the Banco de Portugal may take resolution actions in relation to the entities referred to in paragraph 2*(b)* and *(c)* when the conditions laid down in Article 145-E(2) in relation to these entities have not been met, provided that:

(a) the entity is a resolution entity;

(b) the requirements under Article 145-E(2) are met for any of its subsidiaries which are institutions or investment firms dealing on own account or activities of underwriting financial instruments and/or placing financial instruments on a firm commitment basis;

(c) the failure of the subsidiaries referred to in the foregoing subparagraph threatens the resolution group as a whole; and

(d) the taking of resolution actions to the resolution entity is necessary for the resolution of such subsidiaries or the resolution group as a whole.

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7 - Where a mixed financial holding indirectly holds subsidiaries which are credit institutions or investment firms dealing on own account or activities of underwriting financial instruments and/or placing financial instruments on a firm commitment basis, the Banco de Portugal shall provide, in the resolution plan, that the intermediate financial holding company is the resolution entity and, for the purposes of and within the scope of the group resolution may take resolution actions in relation to the intermediate financial holding company, and not to the mixed financial holding company.

8 - For the purposes of paragraphs 3 and 4 and of assessing whether the requirements laid down in Article 145-E(2) are met, the Banco de Portugal, in its capacity as resolution authority of the entities referred to in paragraph 2*(b)* and *(c)* or as the resolution authority of a subsidiary of those entities which is a credit institution or an undertaking dealing on own account or activities of underwriting financial instruments and/or placing financial instruments on a firm commitment basis, may disregard any intragroup exposures and the possibility of loss transfers between those entities, including the exercise of powers to write down or convert own funds instruments and eligible liabilities provided for in Article 145-I.

9 - The provisions of the foregoing paragraph shall be preceded in accordance with:

(a) the resolution authority of a subsidiary that is a credit institution or an investment firm dealing on own account or activities of underwriting financial instruments and/or placing financial instruments on a firm commitment basis; or

(b) the resolution authority of the entities referred to in paragraph 2*(b)* and *(c)*.

Article 152-A

Regime applicable to investment firms

1 – The Portuguese Securities Market Commission is the supervisory authority with powers to apply the measures laid down in Chapter II of this Title to investment firms referred to in paragraph 1 of the foregoing Article.

2 – For the purposes of the foregoing paragraph, the requirements regarding the suitability of members of the management body of investment firms laid down in the Investment Firms Framework shall be applicable.

3 – For the purposes of paragraph 1, the interests of customers of investment firms shall also be considered in the following circumstances:

(a) the adoption of corrective measures by the Portuguese Securities Market Commission in respect of investment firms;

(b) the suspension or removal by the Portuguese Securities Market Commission of members of the management body of the investment firm for reason of the existence of sufficient grounds to suspect that there are irregularities that seriously jeopardise such interests;

(c) the adoption of measures by temporary administrators of the investment firm, appointed by the Portuguese Securities Market Commission, which are appropriate in order to safeguard such interests.

4 – Within the scope of the exercise of its powers laid down in Title VII-B and in Chapter III of this Title regarding investment firms referred to in paragraph 1 of the foregoing Article, the Banco de Portugal shall comply with the provisions of the following paragraphs, including, mutatis mutandis, where such investment firms are part of a group subject to consolidated supervision by the Banco de

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5 – For the purposes of applying the foregoing paragraph to investment firms that are not covered by Article 1(2) or (5) of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019:

(a) the reference to the total capital ratio requirement set out in Article 92(1)*(c)* of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 shall correspond to the own funds requirement set out in Article 11(1) of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019;

(b) the reference to the total exposure amount in Article 92(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 shall correspond to the requirement determined under in Article 11(1) of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019, multiplied by 12.5;

(c) the reference to the additional own funds requirement shall correspond to the requirement determined under the Investment Firms Framework.

6 – The Banco de Portugal shall first consult the Portuguese Securities Market Commission in the exercise of its powers provided for in:

(a) Article 138-AE(1), Article 138-AF(1)*(b)*, Article 138-AJ(1) and (2), Article 138-AK(1), (5) and (6), Article 138-AL (1), (3) and (10), Article 138-AM(4) and (6); Article 138-AS(1), Article 138-AV(5)*(b)* and (8), Article 138-AW(3), Article 138-AZ(6), Article 138-BA(1), Article 138-BC(2), Article 138-BD(5)*(b)*, Article 138-BE(1)*(d)* and (2)*(d)*, Article 145-W(9) and (10) and Article 145-AB(18);

(b) Article 145-AJ(1), when a resolution college has been established.

7 – The Banco de Portugal may first consult the Portuguese Securities Market Commission in the exercise of its powers provided for in Article 138-AI(1).

8 – The Banco de Portugal shall make the declaration provided for in Article 145-E(2)*(a)* after communicating to the Portuguese Securities Market Commission and only if the latter fails to make such a declaration within three days of receiving the communication of its intention.

9 – For the purposes of the foregoing paragraph, the Portuguese Securities Market Commission shall transmit to the Banco de Portugal all relevant information requested by the latter to support the declaration provided for in Article 145-E(2)*(a)*.

10 – For the purposes of the foregoing paragraphs, the Portuguese Securities Market Commission shall reply to the Banco de Portugal without undue delay.

11 – Where, in the context of the application of measures for the sale of business or bail-in or in the exercise of the write-down or conversion powers provided for in Article 145-I, there is an acquisition of or increase in a qualifying holding of one or more investment firms described in paragraph 1 of the foregoing Article, the Banco de Portugal shall notify the Portuguese Securities Market Commission for the latter to assess the qualifying holdings in a timely manner, so as not to delay the application of the measures or the exercise of the aforementioned powers or to prevent reaching the relevant resolution objectives.

12 – The Banco de Portugal and the Portuguese Securities Market Commission shall consult each other for the purposes of Article 138-BQ.

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Article 153
Branches of non-EC institutions
[Repealed.]

Article 153-A
Legal framework governing the recovery of companies and the protection of creditors

The legal framework governing the recovery of companies and the protection of creditors shall not apply to credit institutions.

TITLE VIII-A
Resolution Fund

Article 153-B
Nature

1 - The Resolution Fund, hereinafter called the "Fund", is a public-law legal person, with administrative and financial autonomy and own property.

2 - The Fund has its head office in Lisbon, at the premises of the Banco de Portugal.

3 - The Fund shall be governed by this Decree-Law and its regulations.

Article 153-C
Purpose

The purpose of the Fund is to provide financial assistance to the application of the resolution action adopted by the Banco de Portugal, pursuant to Article 145-AB, and to perform all other tasks conferred upon it by law in order to take resolution action.

Article 153-D
Member institutions

1 - The following institutions shall compulsorily be members of the Fund:

(a) credit institutions having their head office in Portugal;

(b) investment firms dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis;

(c) branches of credit institutions not covered by Article 48;

(d) branches of financial institutions covered by Article 189 and dealing on own account or underwriting financial instruments and/or placing financial instruments on a firm commitment basis;

(e) relevant companies for payment systems subject to the supervision of the Banco de Portugal.

2 - Mutual agricultural credit banks which are associates of the Central Mutual Agricultural Credit Bank shall be waived from being members of the Fund.

Article 153-E
Management committee

1 - The Fund is managed by a management committee comprised of three members:

(a) one member of the Board of Directors of the Banco de Portugal, appointed by the latter, who

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will chair;

(b) one member appointed by the member of Government responsible for finance;

(c) one member appointed by agreement between the Banco de Portugal and the member of Government responsible for finance.

2 - The decisions of the management committee shall be reached by a majority vote of the members present in person; the chair of the management committee shall have the casting vote.

3 - The Fund shall be legally committed by the signatures of two members of the management committee.

4 - The members of the management committee shall remain in office for renewable terms of three years, up to a maximum of four terms of office, during which they may engage in any other public or private occupation, provided that upon nomination they have been authorised for the purpose.

5 - The performance of the functions provided for in this Article shall not be remunerated.

6 - Other entities, whose presence is deemed necessary, may participate in the meetings of the management committee, upon invitation by its chair, but shall have no voting rights.

7 - The Fund shall also have an advisory body providing support to the management committee, with advisory and consulting functions.

8 – The advisory body shall be made up of representatives from the member institutions of the Fund laid down in the foregoing Article.

9 - The performance of the functions of the members of the advisory body shall not be remunerated.

10 – The organisation and operation of the advisory body shall be regulated by Executive Order of the member of Government responsible for finance.

Article 153-F
Financial means

1 – The Fund shall have the following financial means:

(a) proceeds from the contribution over the banking sector;

(b) initial contributions from member credit institutions;

(c) periodical contributions from member credit institutions;

(d) borrowed funds;

(e) proceeds from investment of financial means;

(f) endowments;

(g) any other income, revenue or valuables resulting from its activity or assigned to it in the course of business or under the terms of any law or contract, including the amounts received from the credit institution under resolution or the bridge institution.

2 - The financial means of the Fund shall reach at least 1% of the total amount of the deposits covered by the Fund, within the limit laid down in Article 166, of all the credit institutions authorised in Portugal.

3 - If, after the minimum level laid down in the foregoing paragraph has been reached, the Fund's financial means have been reduced to less than two-thirds of this minimum level, the Banco de Portugal shall set the amount of periodical contributions at a level allowing for reaching the minimum level within six years.

4 - The Fund may contract borrowings or other forms of support from member institutions,

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financial institutions or other third parties, where the contributions raised under Articles 153-G and 153-H are not sufficient to comply with its obligations and cover the losses, costs or other expenses incurred by the use of the financing arrangements and the contributions provided for in Article 153-I are not immediately accessible or are not sufficient.

5 - The funds referred to in subparagraph 1*(d)* cannot be granted by the Banco de Portugal.

6 – The Fund may borrow from other resolution financing arrangements within the European Union, in the event that:

(a) the means from the initial and periodical contributions of member institutions are not sufficient to comply with its obligations and cover the losses, costs or other expenses incurred by the use of the Fund;

(b) the special contributions provided for in Article 153-I are not immediately accessible; and

(c) the funds referred to in paragraph 5 are not immediately accessible on reasonable terms.

7 - The Fund may also lend to other resolution financing arrangements within the European Union at their request and under the conditions specified in the foregoing paragraph, and the decision to grant the requested loan shall be taken urgently.

8 – The Fund, where it makes a request to borrow or decides to lend, shall agree the rate of interest, repayment period and other terms and conditions of the loan with the other resolution financing arrangements involved.

9 – Where the Fund lends to a resolution financing arrangement of another EU Member State and other EU resolution financing arrangements also decide to participate, the loans shall have the same repayment period, interest rate and other terms and conditions, and the amount lent by each participating arrangement shall be pro rata to the amount of deposits covered by the deposit guarantee scheme officially recognised in that EU Member State, within a limit equivalent to that laid down in Article 166, with respect to the aggregate of deposits covered by the deposit guarantee schemes officially recognised in the participating EU Member States, within a limit equivalent to that laid down in Article 166, unless all participating financing arrangements agree otherwise.

10 – Loans granted by the Fund under paragraph 8 shall be treated as an asset of the Fund and may be counted towards the respective minimum level.

11 – The means arising from the contributions provided for in paragraph (1)*(b)* and *(c)* shall only be used for the purposes laid down in Article 145-AA(1), to repay the loans taken by the Fund for these purposes or to lend to other financing arrangements under paragraph 8.

Article 153-G

Initial contributions from member institutions

1 - Member institutions shall pay to the Fund, within 30 days as of the registration of the commencement of their activity, an initial contribution whose amount shall be fixed by means of a Notice of the Banco de Portugal, upon a proposal from the managing committee of the Fund.

2 – The initial contribution shall apply to the amount of accounting equity existing at the time of the setting up.

3 - Member institutions resulting from merger, splitting or transformation operations of member institutions of the Fund and bridge institutions shall be exempt from the initial contribution.

Article 153-H

Periodical contributions from member institutions

1 – Member institutions shall pay to the Fund periodical contributions which shall be established

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by the Banco de Portugal under the terms laid down in the applicable law.

2 – The value of the periodical contribution of each member institution shall be pro rata to the amount of its liabilities, excluding own funds, less deposits covered by the Fund, within the limit laid down in Article 166, in relation to said values calculated for all the member institutions.

3 – The value of the periodical contribution shall be adjusted in proportion to the risk profile of the member institution and shall take due account of the phase of the business cycle and the impact pro-cyclical contributions may have on the financial position of the institution.

4 - The periodical contribution to be paid by the Central Mutual Agricultural Credit Bank shall take as a reference the consolidated financial situation of the Integrated Mutual Agricultural Credit Scheme.

5 - The Banco de Portugal, upon a proposal from the Fund, shall set a rate of contribution applicable to the basis for calculating the contribution laid down in paragraph 2, allowing the minimum level established in Article 153-F(2) to be reached, as well as the amount which The Banco de Portugal may consider adequate at any time, in order to ensure the Fund is able to comply with its obligations and objectives.

6 - Up to a limit of 30% of the periodical contributions, member institutions may be exempt from making the relative payment within the time limit established provided they commit themselves to pay to the Fund irrevocably, in whole or in part, the amount of the contribution that was not paid in cash, backed by collateral of low-risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use of the Fund, at any time as required by the latter.

7 - The amount of irrevocable payment commitments referred to in the foregoing paragraph shall not exceed 30% of the total amount of financial means available at any time in the Fund.

Article 153-I

Complementary financial means

1 - If the Fund's financial means become insufficient for the fulfilment of its obligations, the member of Government responsible for finance may determine, by means of an Executive Order, that member institutions make special contributions, setting the amounts, instalments, time limits and other terms and conditions of these contributions, in accordance with the following paragraphs.

2 - Special contributions shall be allocated between member institutions in accordance with the rules laid down in Article 153-H(2) and (3) and shall not exceed three times the amount of the last periodical contributions laid down in the same Article.

3 – The special contributions laid down in this Article shall be subject to the provisions of Article 153-F(11).

4 - The Banco de Portugal may defer, in whole or in part, for a period no longer than 180 days, renewable upon the request of the institution in question, a member institution's payment of special contributions, if the payment of those contributions would jeopardise the liquidity or solvency of the institution.

5 – In the cases provided for in the foregoing paragraph, when the payment of the special contribution that has been deferred no longer jeopardises the institution's liquidity or solvency, the Banco de Portugal shall determine the end of the deferral and shall establish that the deferred special contributions be paid immediately.

Article 153-J

Extraordinary financial support by the State

1 - In exceptional cases, the financial means mentioned in the foregoing Article may also be supplemented by financial support from the State to the Fund, namely under the form of loans, or

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provision of guarantees.

2 – Without prejudice to the foregoing paragraph, the State shall not be obliged to provide extraordinary financial support to the Fund, nor shall it be responsible for funding the application of resolution action.

Article 153-L
Other financing arrangements

The member of Government responsible for finance may also establish by means of an Executive Order that member institutions provide to the Fund securities in rem or personal guarantees, enabling the Fund to borrow funds.

Article 153-M
Provision of financial means

1 - The Fund shall provide the financial means established by the Banco de Portugal for the application of resolution action.

2 - The funds provided under paragraph 1 that are not used to pay up the bridge institution's share capital confer on the Fund a credit claim against the credit institution under resolution, the bridge institution, the asset management vehicle or the purchasing institution, as applicable, in the same amount and enjoying a preferential claim under the terms of Article 166-A(1) and (2).

3 - The provision of financial means under the terms of this Article shall comply with the principles, rules and guidelines of the European Union on State aid.

Article 153-N
Investment of the financial means

The Fund shall invest available financial means in financial operations, according to an investment plan agreed with the Banco de Portugal.

Article 153-O
Expenses

The expenses incurred by the Fund shall be the following:

(a) amounts payable regarding the financial support to the application of resolution action by the Banco de Portugal;

(b) administrative and operational expenses arising from the application of resolution action.

Article 153-P
Services

The Banco de Portugal shall provide the technical and administrative services required for the regular operation of the Fund.

Article 153-Q
Fiscal years

The Fund's fiscal year shall correspond to the calendar year.

Article 153-R
Chart of Accounts

The Fund's chart of accounts shall be drawn up in such a manner as to permit the clear identification of its asset composition and its operation and to record all the transactions carried out.

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Article 153-S
Auditing

The Board of Auditors of the Banco de Portugal shall monitor the Fund's activities and the observance of the applicable laws and regulations and shall issue its opinion on the annual accounts.

Article 153-T
Annual report

No later than 31 March, the Fund shall submit for approval to the member of Government responsible for finance its annual report as at 31 December of the previous year together with the opinion of the Board of Auditors of the Banco de Portugal.

Article 153-U
Regulations

The member of Government responsible for finance shall approve, by means of an Executive Order and on a proposal from the management committee of the Fund, after hearing the Banco de Portugal, the regulations governing the Fund's activity.

TITLE IX
Deposit Guarantee Fund

Article 154
Nature

1 – The Deposit Guarantee Fund, hereinafter called the "Fund", is a public-law legal person, with administrative and financial autonomy and own property.

2 - The Fund has its head office in Lisbon, at the premises of the Banco de Portugal.

3 - The Fund shall be governed by this legal act and its own regulations.

Article 155
Purpose

1 - The purpose of the Fund is to guarantee the repayment of deposits with its member credit institutions.

2 - The Fund may also intervene in the implementation of resolution action under the terms laid down in Article 167-B.

3 – [*Repealed*].

4 – For the purposes of this Title, deposit shall mean any credit balance which a credit institution must repay under the applicable legal and contractual conditions and which results from funds left in an account or from temporary situations deriving from normal banking transactions.

5 – The provisions of the foregoing paragraph shall cover funds represented by certificates of deposit issued by the credit institution until 2 July 2014 made out to a named holder, but not those represented by other debt securities issued by the same institution, by the financial instruments laid down in Article 2(1)(*a)* to *(f)* of the Securities Code, or by liabilities arising out of own acceptances or promissory notes in circulation.

6 - A credit that arises from investment operations, including those in which the principal, plus any remuneration, is only repayable under a particular contractual guarantee or agreement provided

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by the credit institution or a third party shall not be covered by the provisions of paragraph 4.

7 - Any correspondence between the Fund and the depositors of member credit institutions shall be drawn up:

(a) in the official language of the EU Member State that is used by the credit institution holding the deposit covered by the Fund when writing to the depositor;

(b) in the official language or languages of the EU Member State holding the deposit covered by the Fund; or

(c) in the language that was chosen by the depositor when the account was opened, if a credit institution operates in another EU Member Sate under the freedom to provide services.

8 – The Fund shall make available, on its website, all the information it considers relevant to depositors, in particular information concerning the amount, scope of coverage and procedures for the repayment of deposits.

Article 156
Member institutions

1 - The following institutions shall compulsorily be members of the Fund:

(a) credit institutions having their head office in Portugal and authorised to take deposits;

(b) credit institutions having their head office in non-EU Member States, in relation to deposits taken by their branches in Portugal, unless these deposits are covered by a guarantee scheme in the home country under terms deemed by the Banco de Portugal to be equivalent to those of the Fund, namely concerning the scope of coverage and the limit of the guarantee, and without prejudice to any bilateral agreements on the matter;

(c) [*Repealed*].

2 - [*Repealed*].

3 - [*Repealed*].

4 - [*Repealed*].

5 - [*Repealed*].

6 - The Deposit Guarantee Fund shall cooperate with other bodies and institutions with similar functions in the context of deposit guarantee, more specifically with regard to deposits taken by branches of credit institutions having their head office in other Member States or deposits taken in other Member States by branches of credit institutions having their head office in Portugal.

7 – [*Repealed*].

8 – If a credit institution withdraws from the Fund, the credit institution shall inform its depositors within 30 days of such withdrawal.

9 – In the case of a central body and its permanently affiliated credit institutions, the central body cooperates with the Fund and the Banco de Portugal for compliance with the obligations laid down in this Title by its affiliated credit institutions.

Article 157
Reporting requirements

1 - Credit institutions taking deposits in Portugal shall make available to the public, in an easily understandable manner, all the pertinent information on guarantee schemes of deposits taken by them, including the identification, provisions, amount, the scope of cover offered, and the maximum

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repayment delay.

2 – Credit institutions shall also inform depositors where deposits are excluded from the guarantee.

3 – If a credit institution uses more than one business name, the credit institution shall inform its depositors of that fact and that the limit referred to in Article 166(1) shall cover in full the value of the deposits held by depositors with the credit institution in question.

4 – The information shall be made available at the branches, in an easily accessible and well identified position, and shall be provided to depositors before entering into a contract on deposit-taking.

5 – The information provided for in paragraph 1 shall be made available in the language that was agreed by the depositor and the credit institution when the account was opened or in the official language of the Member State in which the branch is established.

6 - Depositors should acknowledge receipt of the information provided, in compliance with paragraph 1, by way of a standardised information sheet included in Annex I to Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014.

7 - Credit institutions shall provide confirmation to depositors that the deposits agreed upon are covered by the Fund including a reference to the information sheet set out in the foregoing paragraph. This information sheet shall be provided to the depositor at least annually.

8 - Advertising by credit institutions of their deposits may only include, regarding the information referred to in paragraphs 1 and 2, a factual reference to the Fund guaranteeing the deposits and to the functioning of the Fund, but shall not contain a specific reference to unlimited coverage of deposits.

9 - On request of the party concerned, the entities referred to in paragraph 1 shall provide information on the conditions of the repayment in the context of the deposit guarantee and on the formalities which must be completed to obtain compensation.

10 - Credit institutions shall inform the Banco de Portugal of the terms and conditions regarding the deposits taken from the public that fall under the scope of cover offered by the Fund.

11 - The Banco de Portugal shall establish, by means of a Notice, the particulars, manner and frequency of the information mentioned in the foregoing paragraph.

12 - In the case of a merger, conversion of subsidiaries into branches or similar operations, the credit institutions in question shall inform their depositors of this operation at least 30 days before the operation takes effect, unless the Banco de Portugal allows a shorter deadline on the grounds of commercial secrecy or financial stability.

13 – In the situation laid down in the foregoing paragraph, depositors of the credit institutions in question shall be given a 90-day period, following the notification referred to in the foregoing paragraph, to withdraw or transfer to another credit institution, without incurring any penalty, the amount of deposits covered by the Fund, including all accrued interest and benefits, insofar as they exceed the limit pursuant to Article 166(1).

^{14} – If a depositor uses online banking services, the information required to be disclosed by this Article may be communicated by electronic means, unless the depositor requests that it be communicated on paper.

15 - Branches in Portugal of credit institutions having their head office in non-EU Member States, whose deposits are covered by a guarantee scheme in the home country under terms deemed by the Banco de Portugal to be equivalent to those of the Fund, shall provide their depositors with the information referred to in paragraph 1, in Portuguese, or in the language that was agreed by the depositor and the credit institution when the account was opened.

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Article 158
Management committee

1 - The Fund shall be managed by a management committee comprised of three members, the chair being a member of the Board of Directors of the Banco de Portugal, appointed by the latter, another member being appointed by the Minister of Finance, and a third member appointed by the association representing in Portugal the member credit institutions which, on the whole, hold the largest volume of deposits covered by the guarantee.

2 - The decisions of the management committee shall be reached by a majority vote of the attending members; the chair of the management committee shall have the casting vote.

3 - The Fund shall be legally committed by the signatures of two members of the management committee.

4 – The members of the management committee shall remain in office for renewable terms of three years, up to a maximum of four terms of office, during which they may engage in any other public or private occupation, provided that upon nomination they have been authorised for the purpose.

5 - Other entities, whose attendance is deemed necessary, may participate in the meetings of the management committee, upon invitation by the chair, but shall have no voting power.

Article 159
Financial means

The Fund shall have the following financial means:

(a) initial contributions from member credit institutions;
(b) periodical contributions from member credit institutions;
(c) income from investment of financial means;
(d) endowments;
(e) any other income, revenue or valuables resulting from its activity or assigned to it in the course of business or under the terms of any law or contract, including proceeds of fines exacted from credit institutions.

2 – The Fund's financial means shall at least reach a target level of 0.8% of the amount of deposits covered by the Fund, within the limits laid down in Article 166, of all member credit institutions.

3 - If, after the minimum target level laid down in the foregoing paragraph is reached, the Fund's financial means amount to less than two-thirds of that minimum level, the Banco de Portugal shall set the amount of periodical contributions at a level allowing the minimum target level to be reached within six years.

4 - The Banco de Portugal shall, by 31 March each year, inform the European Banking Authority of the amount of deposits in Portugal covered by the Fund, within the limit laid down in Article 166, and of the amount of the available financial means of the Fund on 31 December of the preceding year.

Article 160
Initial contributions

1 - Member credit institutions shall pay to the Fund, within 30 days as of the registration of the commencement of their activity, an initial contribution whose amount shall be fixed by a Notice of the Banco de Portugal, upon a proposal from the Fund.

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2 - Institutions resulting from merger, splitting or transformation operations of member institutions of the Fund and bridge institutions shall be exempt from the initial contribution.

Article 161
Periodical contributions

1 - Member credit institutions shall pay a periodical contribution to the Fund by the last working day of April.

2 - The amount of the periodical contribution of each credit institution shall be based on the average amount of monthly credit balances of deposits over the previous year, covered by the Fund, within the limit laid down in Article 166, and the credit institution's risk profile.

3 - The Banco de Portugal shall, in consultation with the Fund and the associations representing member credit institutions, establish the specific method for calculating periodical contributions, taking due account of the phase of the business cycle, and the possible impact of procyclical contributions.

4 – The method established by the Banco de Portugal under the previous paragraph may provide that, in the case of a central body and its permanently affiliated credit institutions, the calculation of the periodic contributions shall take as reference the consolidated financial situation of the central body and its affiliated credit institutions.

5 - The Banco de Portugal shall set a rate of contribution applicable to the basis for calculating the contribution laid down in paragraph 2, and a minimum contribution, allowing the minimum target level established in Article 153-F(2) to be reached, as well as the amount which the Banco de Portugal may consider adequate at any time, in order to ensure the Fund is able to comply with its obligations and objectives.

6 - The Banco de Portugal shall inform the European Banking Authority of the method established under the foregoing paragraph.

7 – When the Fund borrows from other deposit guarantee schemes which are officially recognised in an EU Member State under Article 162(9), the amount of periodical contributions levied in the following years shall be sufficient to reimburse the amount borrowed and to re-establish the minimum target level referred to in Article 159(2) as soon as possible.

8 - Up to a limit of 30% of the periodical contributions, member institutions may be exempt from making the relative payment within the time limit established in paragraph 1 provided they commit themselves to pay to the Fund irrevocably, in whole or in part, the amount of the contribution that was not paid in cash, backed by collateral of low-risk assets unencumbered by any third party rights, at the free disposal and earmarked for the exclusive use of the Fund, at any time as required by the latter.

9 - The amount of irrevocable payment commitments referred to in the foregoing paragraph shall not exceed 30% of the total amount of financial means available at any time in the Fund.

Article 162
Complementary financial means

1 – Where the Fund's financial means, as defined in Article 159, prove to be insufficient for the fulfilment of its obligations, the following funding means can be used:

(a) extraordinary contributions from member credit institutions;

(b) borrowed funds.

2 – The financial means provided for in the foregoing paragraph may be supplemented by:

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(a) loans granted by the Banco de Portugal;

(b) loans or guarantees granted by the State, under the proposal of the Fund's management committee.

3 – The member of Government responsible for finance shall establish, by means of an Executive Order, the amounts, instalments, time limits and other conditions of the special contributions referred to in paragraph 1(*a)*, in accordance with the following paragraphs.

4 – The overall value of a credit institution's special contributions shall not exceed, in each fiscal year of the Fund's activity, 0.5% of its deposits covered by the Fund's guarantee, within the limits provided for in Article 166.

5 – In exceptional circumstances, and with the consent of the Banco de Portugal, the Fund may require contributions that are higher than the limit referred to in the foregoing paragraph.

6 – In accordance with the Executive Order mentioned above, new member institutions, with the exception of those resulting from merger, splitting or transformation operations of member institutions, can be waived from the obligation to make special contributions for a period of three years.

7 – The Banco de Portugal may defer, in whole or in part, for a period not exceeding 180 days, renewable upon the request of the member credit institution, a credit institution's payment of special contributions if the contributions would jeopardise the liquidity or solvency of the credit institution.

8 – In the cases provided for in the foregoing paragraph, when the payment of the special contribution that has been deferred no longer materially jeopardises the institution's liquidity or solvency, the Banco de Portugal shall determine the end of the deferral and shall establish that the deferred special contributions be paid immediately.

9 – The Fund may borrow from other deposit guarantee schemes officially recognised in an EU Member State provided that the following conditions are met:

(a) the Fund is not able to fulfil its obligations because of a lack of financial means as referred to in Article 159(1);

(b) the payment of the special contributions provided for in paragraph 1(*a)* has been established;

*(c)*the Fund has undertaken the commitment to use the borrowed funds for the repayment referred to in Article 164;

(d) the Fund is not currently subject to an obligation to repay a loan to other deposit guarantee schemes under this Article;

(e) the Fund states the amount of loan requested;

(f) the total amount lent does not exceed 0.5% of deposits covered by the Fund, within the limit provided for in Article 166.

10 – Where the Fund borrows from other deposit guarantee schemes officially recognised in an EU Member State, it shall inform the European Banking Authority without delay of the amount of money requested and state the reasons why all the conditions set out in the foregoing paragraph are fulfilled.

11 – The Fund may also lend to deposit guarantee schemes officially recognised in another EU Member State at their request provided that the conditions referred to in paragraph 9 are met mutatis mutandis. In these situations, the Fund must inform the European Banking Authority of the initial interest rate and the duration of the loan.

12 – For the loans borrowed under paragraph 9 and those granted under the foregoing paragraph the interest rate set must be at least equivalent to the marginal lending facility rate of the European Central Bank during the credit period.

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13 – The loans referred to in paragraphs 9 and 11 must be repaid within five years and may be repaid in periodical instalments. Interest shall be due only at the time of repayment.

14 - By Executive Order of the member of Government responsible for finance, it can be determined that member credit institutions provide to the Fund securities in rem and personal guarantees that the Fund needs to obtain the loans provided for in paragraphs 1 and 2.

15 - The loans granted by the Banco de Portugal referred to in subparagraph 2*(a)* shall comply with all of the following conditions:

(a) they shall only be granted if the stability of the financial system is jeopardised;
(b) they shall meet all conditions laid down in the Statute of the Banco de Portugal;
(c) they shall exclusively address immediate and urgent financing needs;
(d) they shall be repaid within a short time span.

16 – Without prejudice to the possibility of granting loans or providing collateral to the Fund, the State shall not be obliged to provide extraordinary financial support to the Fund, nor shall it be responsible for financing the Fund's activities.

Article 163
Investment of financial means

Without prejudice to the provisions of Article 167-B, the Fund shall invest available financial means in financial operations in a low-risk and sufficiently diversified manner, according to an investment plan agreed with the Banco de Portugal.

Article 164
Deposits covered by the guarantee

The Fund shall guarantee, up to the limits provided for in Article 166, the repayment of:

(a) deposits taken in Portugal or in other EU Member States by credit institutions having their head office in Portugal;
(b) deposits taken in Portugal by the branches referred to in Article 156(1)(*b)*;
(c) [Repealed].

Article 165
Deposits excluded from the guarantee

1 - The following shall be excluded from any repayment by the Fund:

(a) deposits made on behalf and for the account of credit institutions, investment firms, financial institutions, insurance and reinsurance undertakings, collective investment undertakings, pension funds, entities of national and foreign administrative public sectors and supranational or international organisations, with the exception of:

(i) deposits held by pension schemes of small or medium-sized enterprises;
(ii) deposits held by local authorities with an annual budget of up to EUR 500,000;

(b) deposits arising out of transactions in connection with which there has been a final criminal conviction for money laundering;
(c) deposits the holder of which has never been identified pursuant to Article 8 of Law No 25/2008 of 5 June 2008, as amended by Decree-Law No 317/2009 of 30 October 2009, Law No 46/2011 of 24

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June 2011, and Decree-Laws Nos 242/2012 of 7 November 2012, 18/2013 of 6 February 2013, and 157/2014 of 24 October 2014, by submitting the items listed in Article 7 of the above Law, when they have become unavailable;

(d) deposits held by persons or entities that have, in the two years before the date on which deposits became unavailable or on which a resolution measure was adopted, a direct or indirect holding which represents at least 2% of the share capital of the credit institution or have been members of the management body of the credit institution, except if proven that they did not cause through their action or failure to act the financial difficulties experienced by the credit institution or helped to aggravate that situation;

(e) [*Repealed*].

(f) [*Repealed*].

(g) [*Repealed*].

(h) [*Repealed*].

(i) [*Repealed*].

(j) [*Repealed*].

(k) [*Repealed*].

(l) [*Repealed*].

2 – If there is reasonable doubt as to any of the situations referred to in the foregoing paragraph, the Fund may suspend any repayment relating to the depositor concerned, pending the judgement of the court recognising the depositor's right to it.

3 – [*Repealed*].

4 – Where a judgement of the court does not recognise the depositors' right to repayment by the Fund after the repayment has been made, that amount shall be returned to the Fund.

Article 166

Limits of the guarantee

1 – The Fund shall guarantee the repayment of the overall value of the cash credit balances of each deposit holder, up to a limit of EUR 100,000 per credit institution.

2 – The limit laid down in the foregoing paragraph shall not apply to the following deposits, for a year after the amount has been credited in the respective account:

(a) deposits resulting from real estate transactions relating to private residential properties;

(b) deposits that serve social purposes laid down in a specific statutory law;

(c) deposits whose amount results from the payment of insurance benefits or compensation for criminal injuries or wrongful conviction.

3 – For the purposes of paragraph 1, the credit balances to be considered shall be those existing on the date on which the deposits became unavailable.

4 – In the calculation of the value referred to in paragraph 1, the following criteria shall be observed:

(a) all the deposits held by the party concerned with the institution in question shall be taken into consideration, regardless of their type;

(b) interest due and payable up to the date mentioned in paragraph 3 shall be included in the credit balances of deposits;

(c) the credit balances of deposits denominated in foreign currency shall be converted into euro at the exchange rate prevailing on that date;

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(d) except where otherwise provided for, the credit balances of joint accounts, whether jointly or jointly and severally held, shall be considered as belonging in equal parts to the holders;

(e) where the holder of the account is not entitled to the sums held in that account and the person who is entitled has been or may be identified before the date on which the deposits become unavailable, the guarantee shall cover the entitled person;

(f) in the case of a deposit with several holders, the share of each, pursuant to the provisions of subparagraph *(d)*, shall be guaranteed up to the limit provided for in paragraph 1;

(g) deposits in an account to which two or more persons are entitled as members of an association or special committee, without legal personality, shall be aggregated and treated as if made by a single depositor and shall not be taken into account in the calculation of the limit provided for in paragraph 1 applicable to each of these persons.

5 – In the case of a credit institution under resolution, the deposits that are transferred for the purpose of the application of the resolution shall be taken into account in calculating the limit provided for in paragraph 1, if deposits become unavailable in the credit institution under resolution.

6 – Deposits at a member institution shall be repaid in euro.

7 – The Fund may at any time request from member institutions information about the aggregated amount of deposits covered by the Fund, as well as any other information the Fund considers relevant.

Article 166-A
Preferential ranking

1 – Claims in respect of deposits covered by the Fund's guarantee, within the limits provided for in Article 166, shall benefit from preference over the movable property of the deposit-taking institution and specific preference over the real estate owned by the same credit institution.

2 – Claims benefiting from the preferential rights under paragraph 1 shall take preference over all other preferential rights, with the exception of those related to judicial costs, claims of the institution's staff arising from labour contracts and tax claims of the State, local authorities and social security entities.

3 – The preferential ranking mentioned in paragraphs 1 and 2 shall also apply to the claims of the Fund and the Resolution Fund arising from the financial support provided for the application of resolution action.

4 – Claims in respect of deposits from natural persons and micro, small and medium-sized enterprises to an amount which exceeds the limit provided for in Article 166, as well as all claims on the deposits from these persons and enterprises with branches established outside the European Union of member institutions in respect of which none of the situations referred to in Article 165(1) apply, shall benefit from preference over the movable property of the credit institution and specific preference over the real estate owned by the same institution benefiting from preference over all other preferential rights, although subject to the preferential ranking provided for in the foregoing paragraphs.

5 – Claims in respect of deposits not covered by the foregoing paragraphs and in respect of which none of the situations referred to in Article 165(1)(a), (b) and (c) apply, shall benefit from preference over the movable property of the credit institution and specific preference over the real estate owned by the same institution benefiting from preference over all other preferential rights, although subject to the preferential ranking provided for in the foregoing paragraphs.

6 – The provisions of Article 97(1)*(a)* and *(b)* of the Insolvency and Corporate Recovery Code, approved by Decree-Law No 53/2004 of 18 March 2004, shall not apply to claims in respect of

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deposits referred to in the foregoing paragraphs.

Article 167
Repayment procedures

1 – Repayment shall take place within seven working days of the date on which the deposits became unavailable and shall not depend on a request from the depositors to the Fund for that purpose.

2 – In the situations referred to in Article 166(4)*(e)* and *(f)*, the repayment period shall be set at 90 days of the date on which the deposits became unavailable.

3 – The Fund may invite the Banco de Portugal to defer the period referred to in paragraph 1 where:

(a) it is uncertain whether the depositor is entitled to receive repayment;

(b) judicial or administrative offence proceedings have been initiated for any acts related to deposits covered by the Fund that violate legal or regulatory rules;

(c) the deposit is subject to restrictive measures imposed by national governments or international bodies;

(d) there has been no transaction relating to the deposit within the last two years;

(e) the deposit is one of the deposits referred to in Article 166(2);

(f) the amount to be repaid is to be paid out by the deposit guarantee scheme officially recognised in the host Member State, in accordance with Article 167-A(2).

4 – Notwithstanding the time limit laid down in the law, the expiry of the time limits provided for in paragraphs 1 and 2 does not affect the depositors' right of asking the Fund for repayment.

5 – Where the holder of the account or the person entitled to the sums in the account has been charged with an offence arising out of money laundering, the Fund shall suspend the repayment of amounts due until the final sentence is passed.

6 – No repayment shall be made where there has been no transaction relating to the deposit within the last two years and the value of the deposit is lower than the administrative costs that would be incurred by the Fund in making such a repayment.

7 – Unavailability of deposits is deemed to exist when:

(a) the deposit-taking credit institution, for reasons which are directly related to its financial circumstances, has not repaid the deposits under the legal and contractual conditions applicable, and the Banco de Portugal has verified, no later than five working days after being informed that the credit institution concerned appears to be unable for the time being to repay the deposits and has no current prospect of being able to do so in the forthcoming days;

(b) the Banco de Portugal makes public the decision through which it withdraws the authorisation of the deposit-taking institution, if such disclosure is prior to the occurrence mentioned in the foregoing subparagraph;

(c) [*Repealed*].

8 – For the purposes of subparagraph 7*(a)*, it shall be considered that the Banco de Portugal is informed that the credit institution is not repaying the deposits under the legal and contractual conditions applicable when there is public information that the institution has suspended payments.

9 – Where appropriate, the Banco de Portugal shall inform the Fund of any situation detected in a credit institution that is likely to give rise to the intervention of the deposit guarantee.

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10 – The deposit-taking institution is required to provide the Fund, within a maximum period of two working days of the request and under the terms to be defined by means of a Notice of the Banco de Portugal, a full account of the depositors' claims, together with whatever information the Fund requires to meet its obligations; the Fund is responsible for examining the institution's accounting books and collecting from the institution's premises any other relevant information.

11 – For the purposes of the foregoing paragraph, credit institutions shall report all deposits covered by the Fund's guarantee.

12 – The Banco de Portugal, in cooperation with the Fund, regulates, oversees and conducts regular tests on the efficacy of the systems referred to in paragraph 10, and may decide on the performance of such tests by the institutions themselves.

13 – Although the access to the financial means mentioned in Article 162(1) is conditional on the insufficiency of the financial means referred to in Article 159, the Fund may beforehand study, plan and prepare the arrangements, to ensure that access to funding under the terms of Article 162 observes the time limit defined in paragraph 1.

14 – The Fund shall perform stress tests of its systems at least every three years to ensure their efficacy in the event of deposits becoming unavailable, namely their compliance with the time limit defined in paragraph 1.

15 – The Fund shall keep the information received for the purposes of paragraphs 10 to 14 no longer than is necessary for processing it.

16 – The Fund shall have the right of subrogation to the rights of depositors for an amount equal to the payments made.

Article 167-A

Cooperation with other deposit guarantee schemes

1 – In the event that the deposits of a credit institution having its head office in another EU Member State and having a branch in Portugal become unavailable, the Fund shall repay the deposits in Portugal on behalf of the deposit guarantee scheme in the home Member State in accordance with the instructions given by that scheme, and shall not bear any liability with regard to acts done in accordance with those instructions.

2 – In the event that the deposits of a credit institution having its head office in Portugal and having a branch in another EU Member State become unavailable, the Fund shall provide the necessary funding prior to payout for the repayment of the deposits in those branches by the deposit guarantee scheme of the host Member State, giving the necessary instructions, and shall compensate it for the costs incurred.

3 – [*Repealed*].

4 – [*Repealed*].

5 – [*Repealed*].

6 – [*Repealed*].

7 – The Fund shall provide all the necessary information and shall be entitled to receive correspondence from the depositors at branches in Portugal of credit institutions having their head office in other EU Member States on behalf of the deposit guarantee schemes of the home Member States.

8 – The Fund, as deposit guarantee scheme of the home Member State, shall share with the deposit guarantee schemes of the host Member States the information received from the Banco de Portugal under Article 167(9) and the results of the tests performed under Article 167(12).

9 – If a credit institution ceases to be a member of the Fund and joins another deposit guarantee

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scheme officially recognised in another EU Member State, the Fund shall transfer to this scheme the contributions paid by the credit institution during the 12 months preceding the end of the membership in the Fund, with the exception of the special contributions under Article 162(1)*(a)*, in proportion to the amount of transferred deposits covered by the Fund within the limit provided for in Article 166.

10 – The Fund shall have written cooperation agreements in place with other deposit guarantee schemes of EU Member States with which it has a relationship and shall notify the European Banking Authority of the existence and the content of such agreements.

11 – If, pursuant to the establishment or implementation of the cooperation agreements referred to in the foregoing paragraph, there is a disagreement between the Fund and the other deposit guarantee schemes of EU Member States, the Fund may request assistance from the European Banking Authority to settle the disagreement under Article 19 of Regulation (EU) 1093/2010 of the European Parliament and of the Council of 24 November 2010.

Article 167-B

Financial assistance for the implementation of resolution action

1 – Where resolution action is applied in relation to a credit institution, the Banco de Portugal may determine that the Fund provides financial assistance for the implementation of resolution action up to the maximum:

(a) amount by which the claims in respect of deposits covered by the Fund, within the limit provided for in Article 166, would have been written down in order to absorb the losses in the institution, under the bail-in tool, had these deposits not been excluded from the scope of this tool pursuant to Article 145-U(6)*(a)* and had they been written down to the same extent as the nominal value of claims with the same level of priority, according to the seniority of the claim in insolvency; or

(b) amount of losses that the depositors holding deposits covered by the Fund, within the limit provided for in Article 166, would have suffered as a result of the application of resolution action, with the exception of the bail-in tool, had they suffered losses in proportion to the losses incurred by the rest of the creditors with the same level of priority, according to the seniority of the claim in insolvency.

2 – Without prejudice to the foregoing paragraph, the Fund's financial assistance for the implementation of resolution action may not result in its financial means being reduced to an amount equal to or less than their minimum level.

3 – The financial assistance under paragraph 1 grants the Fund a credit claim against the member institution under resolution, for an amount equal to that financial assistance, under the provisions of Article 166-A(3).

4 – Where deposits covered by the Fund, within the limit provided for in Article 166, at a credit institution under resolution are transferred to another entity through the sale of business tool or the bridge institution tool, the holders of the deposits in question have no claim against the Fund in relation to any part of their deposits at the credit institution under resolution that are not transferred, provided that the amount of funds transferred is equal to or more than the limit provided for in Article 166.

Article 168

Services

The Banco de Portugal shall ensure the technical and administrative services necessary for the

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smooth operation of the Fund.

Article 169
Fiscal years

The Fund's fiscal year shall correspond to the calendar year.

Article 170
Chart of accounts

The Fund's chart of accounts shall be drawn up in such a manner as to permit the clear identification of its asset composition and its operation and to record all the transactions carried out.

Article 171
Auditing

The Board of Auditors of the Banco de Portugal shall monitor the Fund's activities and the observance of the applicable laws and regulations and shall issue its opinion on the annual accounts.

Article 172
Annual report and accounts

By 31 March each year at the latest, the Fund shall submit for the approval of the Minister of Finance its annual report and accounts as at 31 December of the previous year together with the opinion of the Board of Auditors of the Banco de Portugal.

Article 173
Regulations

1 – The Minister of Finance shall approve the regulations governing the Fund's activity by Executive Order and on a proposal from the management committee.

2 – It shall be incumbent on the Minister of Finance to set the remunerations of the members of the management committee.

TITLE X
Financial companies

CHAPTER I
Authorisation of financial companies having their head office in Portugal

Article 174
General requirements

***[Repealed]*.**

Article 174-A
Legal framework governing financial companies

Title II shall apply mutatis mutandis to financial companies having their head office in Portugal, with the exception of Article 14(1)*(b)* and *(d)(*last part), Article 16(3), Article 22(3) and Article 23(2).

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Article 175
Authorisation

[*Repealed*].

Article 176
Refusal of authorisation

[*Repealed*].

Article 177
Lapsing of authorisation

[*Repealed*].

Article 178
Withdrawal of authorisation

[*Repealed*].

Article 179
Power of withdrawal and related procedures

[*Repealed*].

Article 180
Special regulations

[*Repealed*].

Article 181
Investment fund management companies

[*Repealed*].

Article 182
Management and auditing

[*Repealed*].

Article 183
Statutory changes

[*Repealed*].

CHAPTER II
Activity abroad of financial companies having their head office in Portugal

Article 184
Branches of financial companies that are subsidiaries of credit institutions in EU Member States

1 - The provisions of Article 36, Article 37(1) and Articles 38 to 40 shall apply to the establishment, in EU Member States, of branches of financial companies having their head offices in Portugal, when these financial companies are themselves subsidiaries of one or more credit institutions governed by Portuguese law, are subject to a legal framework which permits them to carry out one or more of the activities referred to in points 2 to 12 and 15 of the list in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, and fulfil each

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of the following conditions:

(a) the parent undertakings are authorised as credit institutions in Portugal;

(b) the activities in question are actually carried out within the Portuguese territory;

(c) the parent undertakings hold 90% or more of the voting rights attaching to the subsidiary's capital;

(d) the parent undertakings satisfy the Banco de Portugal regarding the prudent management of the subsidiary and declare, with the consent of the Banco de Portugal, that they jointly and severally guarantee the commitments entered into by the subsidiary;

(e) the subsidiary is effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in particular as regards the calculation of the solvency ratio, the control of large exposures and the limitation of holdings in other companies;

(f) the subsidiary is also subject to supervision on an individual basis.

2 - The notification referred to in Article 37(1) shall specify the amount, composition and own funds requirements of the financial company.

3 - If a financial company as referred to in this Article ceases to fulfil any of the conditions imposed, the Banco de Portugal shall notify the supervisory authorities of the countries where the company has established branches.

Article 185

Branches of other companies abroad

Financial companies having their head office in Portugal that are not covered by the previous Article and wishing to establish branches abroad shall comply with the provisions of Article 42.

Article 186

Intervention of the Portuguese Securities Market Commission

Where the purpose of financial companies wishing to establish branches abroad includes intermediation involving financial instruments, the Banco de Portugal shall request the Portuguese Securities Market Commission to give its opinion within two months.

Article 187

Provision of services in other EU Member States

1 - The provision of services in another EU Member State by financial companies fulfilling the conditions referred to in Article 184(1) shall comply with the provisions of Article 43, and the notification by the Banco de Portugal provided for therein shall be accompanied by documentary evidence that those conditions are met.

2 - Article 184(3) shall apply mutatis mutandis.

CHAPTER III

Activity in Portugal of financial institutions having their head office abroad

Article 188

Branches of subsidiaries of credit institutions of EU Member States

1 - The establishment in Portugal of branches of financial institutions subject to the law of other EU Member States shall be governed by the provisions of Articles 44 and 46 to 56 where such

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institutions are subsidiaries of a credit institution or jointly owned subsidiaries of two or more credit institutions, are subject to a legal framework which permits them to carry out one or more of the activities referred to in points 2 to 12 and 15 of the list in Annex I to Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, and fulfil each of the following conditions:

(a) the parent undertakings are authorised as credit institutions in the Member State by the law of which the subsidiary is governed;

(b) the activities in question are actually carried out within the territory of the same Member State;

(c) the parent undertakings hold 90% or more of the voting rights attached to the subsidiary's capital;

(d) the parent undertakings satisfy the supervisory authorities of the home Member State regarding the prudent management of the subsidiary and declare, with the consent of those authorities, that they jointly and severally guarantee the commitments entered into by the subsidiary;

(e) the subsidiary is effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in particular as regards the calculation of the solvency ratio, the control of large exposures and the limitation of holdings in other companies;

(f) the subsidiary is also subject to supervision on an individual basis by authorities of the home Member State, under Community law.

2 - As a condition of establishment, the Banco de Portugal shall receive, from the supervisory authority of the home country, a notification including the information referred to in Article 49*(a)* mutatis mutandis, *(b)* and *(c)*, the amount of the financial institution's own funds, the consolidated solvency ratio of the credit institution which is its parent undertaking and a certificate, issued by the supervisory authority of the home country, attesting compliance with the requirements referred to in the foregoing paragraph.

3 - If a financial institution ceases to fulfil any of the conditions referred to in paragraph 1, the activities carried out by its branches in Portuguese territory shall become subject to the rules set forth in Articles 189 and 190.

4 - The provisions of Article 122(1), (3) and (4) and Articles 123 and 124 shall apply mutatis mutandis to the subsidiaries referred to in this Article.

Article 189
Other branches

1 - The provisions of Articles 44 to 47 and 57 to 59 shall apply to the establishment in Portugal of branches of financial institutions having their head office abroad which are not covered by the foregoing Article and correspond to one of the types prescribed in Article 6.

2 - The provisions of Article 29-A shall apply to the establishment of the branches referred to in the foregoing paragraph, whenever they wish to carry out in Portugal any intermediation involving financial instruments.

3 - [*Repealed*].

Article 190
Scope of activity

Authorisation for the establishment in Portugal of the branches referred to in the foregoing

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Article shall not be granted in such terms as to permit those branches to carry out a wider range of activities than that permitted to institutions of a similar nature having their head office in Portugal.

Article 191

Provision of services

The provisions of Articles 60 and 61 shall apply to the provision of services in Portugal by financial institutions fulfilling the conditions referred to in Article 188, and the notification mentioned in Article 61(1) shall be accompanied by a certificate issued by the supervisory authority of the home country attesting compliance with the conditions referred to in Article 188(1).

Article 192

Representative offices

The establishment and operation in Portugal of representative offices of financial institutions having their head office abroad shall be governed mutatis mutandis by Articles 62 to 64 and 125.

Article 193

Intervention by the Portuguese Securities Market Commission

Where the purpose of the financial institutions referred to in the foregoing Article include the carrying out of intermediation activities involving financial instruments, Article 186 shall apply mutatis mutandis.

CHAPTER IV
Other provisions

Article 194

Registration

1 - Financial companies shall not commence their activities without being subject to a special registration with the Banco de Portugal.

2 - Articles 65 to 72 shall apply mutatis mutandis.

Article 195

Rules of conduct

Except where otherwise provided for by special law, Articles 73 to 90-D shall apply mutatis mutandis to financial companies, to the extent that their business falls into the scope of said provisions.

Article 196

Prudential supervision

1 - Subject to any special law, Title VII shall apply mutatis mutandis to financial companies, excluding Articles 91, 92, 116-G to 116-Z, 117 to 117-B and 122 to 124.

2 - The financial companies referred to in Article 6(1)*(b)(vii)*, *(viii)* and *(x)* shall not be subject to the provisions of Articles 102 to 111. The acquirers of holdings equal to or exceeding 10% of the capital or of the voting rights of a financial company not covered by Title X-A shall communicate that to the Banco de Portugal, pursuant to Article 104, and the Banco de Portugal may request the information referred to in Article 102(5) and Article 103(3) and exercise the powers granted to it under Article 106.

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3 - Where a financial institution having its head office abroad and providing services or having a representative office in Portugal carries out any intermediation involving financial instruments in Portugal, this activity shall likewise be subject to the supervision of the Portuguese Securities Market Commission.

Article 197
Supervision

[Repealed].

Article 197-A
Capital buffers

The Banco de Portugal may establish, by means of regulations, the conditions under which financial companies must comply with the requirements under Title VII-A.

Article 198
Corrective action and interim administration

1 - Except where otherwise provided for by special law, Chapters I, II and IV of Title VIII shall apply mutatis mutandis to financial companies and to branches established in Portugal.

2 - [*Repealed*].

Article 199
Reference

Where it does not conflict with the provisions of this Legal Framework, financial companies shall be governed by the applicable special law.

TITLE X-A
Investment firms

CHAPTER I
General provisions

Article 199-A
Definitions

[*Repealed*].

Article 199-B
Legal framework

[*Repealed*].

CHAPTER II
Authorisation of investment firms having their head office in Portugal

Article 199-C
Authorisation of investment firms having their head office in Portugal

[*Repealed*].

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CHAPTER III
Activity in the European Union of investment firms having their head office in Portugal

Article 199-D
Activity in the European Union of investment firms having their head office in Portugal
[*Repealed*].

CHAPTER IV
Activity in Portugal of investment firms having their head office in other EU Member States

Article 199-E
Activity in Portugal of investment firms having their head office in other EU Member States
[*Repealed*].

Article 199-F
Irregularities relating to the provision of investment services and activities
[*Repealed*].

CHAPTER IV-A
Activity in Portugal of third-country investment firms

Article 199-FA
Subsidiaries of third-country investment firms
[*Repealed*].

Article 199-FB
Authorisation
[*Repealed*].

Article 199-FC
Withdrawal of authorisation
[*Repealed*].

Article 199-FD
Provision of services at the exclusive initiative of the customer
[*Repealed*].

CHAPTER V
Cooperation with other entities

Article 199-G
Cooperation with other entities
[*Repealed*].

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Article 199-H
Refusal to cooperate
[*Repealed*].

CHAPTER VI
Other provisions

Article 199-I
Provisions applicable to investment firms
[Repealed.]

Article 199-IA
Provision of investment services in the European Union by credit institutions through tied agents
[*Repealed*].

Article 199-J
Other powers of supervisory authorities
[*Repealed*].

Article 199-L
Legal framework governing securities investment fund management companies and real estate investment fund management companies
[*Repealed*].

TITLE XI
Penalties

CHAPTER I
Criminal provisions

Article 200
Unauthorised acceptance of deposits and other repayable funds

The carrying out of the business of taking deposits or other repayable funds from the public, on own account or on behalf of a third party, without the relevant authorisation, save for any of the situations provided for in Article 8(3), shall be liable to imprisonment for a period not exceeding five years.

Article 200-A
Disobedience

1 – Refusing to obey the legitimate orders or warrants of the Banco de Portugal in the exercise of its functions, or in any way creating obstacles to their execution, shall incur the penalty of qualified disobedience, if the Banco de Portugal or its staff have made a warning to this effect.

2 – Not complying with, hindering or obstructing the application of additional penalties or precautionary measures applied in administrative offence proceedings shall incur the same penalty.

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CHAPTER II
Administrative offences

SECTION I
GENERAL PROVISIONS

Article 201
Areas of application

The provisions of this Title shall apply, regardless of the agent's nationality, to the following acts constituting breaches under Portuguese law:

(a) acts committed within the Portuguese territory;

(b) acts committed on foreign territory by credit institutions or financial companies having their head office in Portugal and operating there through branches or by providing services, as well as by individuals who, in relation to such entities, fall into any of the situations provided for in Article 203(1), or are shareholders of those institutions;

(c) acts committed on board Portuguese ships or aircrafts, except as otherwise provided for by treaty or convention.

Article 202
Responsibility for administrative offences

1 – Natural or legal persons, even if irregularly constituted, and associations without legal personality may be held responsible, jointly or not, for the administrative offences referred to in this Legal Framework.

2 – Anyone who, by act or omission, causally contributes to the administrative offences set out in this Legal Framework shall be punishable as the agent of said offences.

Article 203
Responsibility of collective bodies

1 – Legal persons and similar entities referred to in the foregoing Article shall be responsible for administrative offences committed by members of their bodies and by their top-, mid- or lower-level managers in the exercise of their functions, as well as for the administrative offences committed by legal representatives, representatives or workers of the collective body acting in its name and on its behalf.

2 – The responsibility of the legal person shall be excluded when the agent acts against its orders or instructions expressly given.

3 – The legal invalidity or ineffectiveness of the deeds on which the relationship between the individual agent and the collective body is founded do not preclude their responsibility.

Article 204
Responsibility of individual agents

1 – The responsibility of the legal persons and similar entities does not preclude the individual responsibility of their agents.

2 – When the legal definition of the breach requires the existence of certain personal elements which are only found in the legal person, the similar entity or one of the agents involved, or requires the act to have been committed in the agents' own interest, while the agent acted for the interest of

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the represented entity, these circumstances do not preclude the individual responsibility of the agents acting on behalf of the represented entity.

3 – The responsibility of the members of the board or the management of legal persons and similar entities may be particularly mitigated where these are not directly responsible, cumulatively, for the domain or the area where the breach was committed, and their responsibility resides only in the fact that, considering they should be or were aware of the breach, they did not take appropriate measures to remedy that situation.

Article 205
Attempted offences and negligence

1 – Attempted offences and negligence shall always be punishable.

2 – In the event of negligence, the upper limit of the administrative fine set out for the offence shall be reduced by half.

3 – In the event of an attempt, the applicable administrative fine shall be that laid down for the committed offence, with due mitigation.

4 – [*Repealed*].

Article 206
Degree of penalty

1 – The administrative fine and additional penalties shall be determined according to the illicit nature of the breach, the agent's guilt and the prevention requirements, also taking into account whether the agent is a natural or legal person.

2 – The illicit nature of the breach, the agent's guilt and the prevention requirements shall be evaluated taking into account, inter alia, the following circumstances:

(a) danger or harm caused to the financial system or to the national economy;

(b) occasional or repeated nature of the breach;

(c) [*Repealed*];

(d) [*Repealed*];

(e) degree of the defendant's participation in the breach;

(f) intensity of the fraudulent intent or negligence;

(g) benefit or intended benefit for the person concerned or third parties;

(h) the losses for third parties caused by the breach and their importance, insofar as they can be determined;

(i) the duration of the breach;

(j) where the administrative offence corresponds to the omission of an act, the time that has elapsed since the date on which the act should have been carried out.

3 – As regards natural persons, the illicit nature of the breach, the agent's guilt and the prevention requirements shall be evaluated also taking into consideration the following circumstances:

(a) level of responsibility, scope of functions and sphere of action within the legal person in question;

(b) [*Repealed*];

(c) special duty not to commit the breach.

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4 – In determining the penalty to be applied, the following shall also be taken into consideration:

(a) the economic standing of the defendant;
(b) the previous conduct of the defendant.
(c) acts of concealment to obstruct the discovery of the breach;
(d) acts on the agent's own initiative to repair the damage or obviate the danger caused by the breach;
(e) the level of cooperation of the defendant.

5 – [*Repealed*].
6 – The administrative fine should, wherever possible, exceed any economic benefit that the defendant or any person whom the defendant intended may have gained as a result of the breach.

Article 207
Injunctions and fulfilment of breached duties

1 – Whenever the breach is a result of failure to perform a duty, the application of the penalty and the payment of the administrative fine do not exempt the offender from performing the said duty, if this is still possible.
2 – The Banco de Portugal may impose on the offender an injunction to fulfil the breached duty, bring the infringing conduct to an end and avoid the consequences thereof.
3 – Should the offender fail to comply with the injunctions referred to in the foregoing paragraph within the time limit set by the Banco de Portugal, it shall incur the penalty prescribed for particularly serious breaches.

Article 208
Concurrent offences

1 – Where, for the practice of the same facts, a person is answerable for both criminal and administrative offences, the administrative offence proceedings under the remit of the Banco de Portugal and the corresponding decision are always the responsibility of this authority.
2 – Where a person is answerable for a criminal offence, although the relevant facts are also punishable as an administrative offence, the criminal court may apply the additional penalties set out for the administrative offence in question.

Article 209
Period of limitation

1 – Administrative offence proceedings provided for in this Legal Framework shall reach the period of limitation within five years.
2 – In case of concealment of the facts which are the object of administrative offence proceedings, the period of limitation shall only begin from the date on which the Banco de Portugal becomes aware of these facts.
3 – The period of limitation of penalties is five years as of the date on which the decision to impose the penalty becomes final.
4 – Without prejudice to other causes for suspending or interrupting the period of limitation, the limitation of administrative offence proceedings shall be suspended from the date of notification of the order initiating the preliminary study of the appeal against the decision applying the penalty until the date of notification of the final decision on the appeal.
5 – In the case of serious breaches, the suspension provided for in the foregoing paragraph shall

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not exceed 30 months.

6 – In the case of particularly serious breaches, the suspension provided for in paragraph 4 shall not exceed five years.

7 – The time period set out in paragraphs 5 and 6 shall be doubled if there has been an appeal to the Constitutional Court.

Article 209-A

Decision not to initiate proceedings

1 – Without prejudice to the exercise of other administrative powers, the Banco de Portugal may inform the institutions of the possibility of correcting irregularities of minor seriousness, or the causes of such irregularities, within a period and under conditions to be laid down for that purpose, including, if it considers it appropriate, the specific measures to be taken, where the following requirements are cumulatively met:

(a) the interests that are protected by law are not seriously and irreversibly harmed;

(b) the harm of protected rights or interests has ceased;

(c) any damage caused by such harm is reparable;

(d) the correction of the irregularities or their causes adequately achieves the legal purposes or reasonably prevents the risk of future non-compliance; and

(e) the general or special prevention purposes are not jeopardised by the non-application of sanctions.

2 – The institution shall inform the Banco de Portugal, within the set time frame, of the measures actually taken to correct the irregularities identified and the actual date on which they were remedied.

3 – The Banco de Portugal may decide not to initiate any administrative offence proceedings where it considers that the provisions of the foregoing paragraphs have been met.

4 – The Banco de Portugal shall disclose an annual summary of the irregularities by type and the grounds for the decisions not to initiate proceedings as referred to in the foregoing paragraph.

SECTION II
ADMINISTRATIVE OFFENCES IN PARTICULAR

Article 210

Serious breaches

Depending on whether the administrative fines are applied to a legal or natural person, the following breaches are punishable by a fine of EUR 3,000 to EUR 1,500,000 or of EUR 1,000 to EUR 500,000 and are considered serious breaches:

(a) exercise of activity without observing the rules of registration with the Banco de Portugal;

(b) violation of the rules governing the subscription or paying up of the share capital, regarding the time limit, amount and form of representation;

(c) breach of the rules on the use of company and business names set forth in Articles 11 and 46;

(d) failure to comply with the prudential ratios and limits set out in the law by the Minister of Finance or by the Banco de Portugal in the exercise of their powers;

(e) failure to issue the compulsory publications within the prescribed periods;

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(f) failure to comply with the accounting rules and procedures set out in the law or by the Banco de Portugal, when this does not seriously jeopardise the awareness of the financial and balance sheet situation of the entity in question;

(g) violation of rules and duties of conduct provided for in this Legal Framework or in additional legal texts that refer to its penalty framework, and non-compliance with specific instructions issued by the Banco de Portugal for the purposes of ensuring that the said rules and duties are enforced;

(h) violation of the duty to provide information laid down in Article 77;

(i) failure to provide the Banco de Portugal with the required information and communications within the established time limits, and the provision of incomplete information;

(j) failure to submit or revise the recovery or resolution plans, as well as failure to introduce the changes required by the Banco de Portugal to the said plans, in accordance with Article 116-D;

(l) violation of the rules on the registration of the operations referred to in Article 118-A(3);

(m) violation of the provisions of this Legal Framework and of the specific legislation, including EU legislation, governing the activity of credit institutions, financial companies, financial holding companies and mixed financial holding companies not provided for in the foregoing subparagraphs and in the following Article, as well as of regulations issued, in compliance with or for the execution of the aforementioned provisions.

Article 211
Particularly serious breaches

1 – Depending on whether the administrative fines are applied to a legal or natural person, the following breaches are punishable by a fine of EUR 10,000 to EUR 5,000,000 or of EUR 4,000 to EUR 5,000,000 and are considered particularly serious breaches:

(a) unauthorised carrying out, by any natural or legal person, of transactions only authorised to credit institutions or to financial companies;

(b) exercise by credit institutions or by financial companies of activities not included in their statutory purpose, as well as the carrying out of unauthorised transactions or those which have been specifically forbidden to them;

(c) fraudulent paying up of the share capital;

(d) introduction in the articles of association of the changes provided for in Articles 34 and 35, when not preceded by an authorisation of the Banco de Portugal;

(e) performance of any positions or functions in a credit institution or financial company, violating legal prohibitions or against the express opposition of the Banco de Portugal;

(f) non-observance of a prohibition to exercise voting rights;

(g) fraudulent accounting and absence of organised accounting, as well as the non-observance of other applicable accounting standards laid down by law or by the Banco de Portugal, when this non-observance seriously jeopardises awareness of the financial situation and net worth of the entity in question;

(h) failure to comply with the prudential ratios and limits provided for in Article 96(2), without prejudice to paragraph 3 of the same Article, as well as in Articles 97, 101, 109, 112 and 113, or of other prudential ratios and limits provided for in a general rule of the member of Government responsible for finance or of the Banco de Portugal under Article 99, when this results or may result in serious harm to the financial balance of the entity in question;

(i) breach of the provisions of Articles 85 to 86-B on conflicts of interest;

(j) violation of the rules on credit to owners of qualifying holdings provided for in Article 109(1) to

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(3);

(k) fraudulent mismanagement by members of corporate bodies, to the detriment of depositors, investors and other creditors;

(l) practice by owners of qualifying holdings of acts which seriously hinder or obstruct the sound and prudent management of the entity in question;

(m) unlawful non-compliance with specific Instructions of the Banco de Portugal, issued under the terms of the law for the specific case in question, as well as the practice of acts subject by law to prior approval by the Banco de Portugal, when the latter has expressed its opposition;

(n) refusal to carry out or obstruction of inspections by the Banco de Portugal;

(o) failure to report to the Banco de Portugal the facts provided for in Article 32(1), as well as failure to take the measures referred to in Article 30-C(3) and (6) and Article 32(5);

(p) providing the Banco de Portugal with false information, or with incomplete information, which may lead to erroneous conclusions with the same or similar effect that false information on the same matter would have caused;

(q) failure to comply with the obligations to contribute to the Deposit Guarantee Fund or the Resolution Fund;

(r) violation of the rules on the granting of credit referred to in Article 118-A(1);

(s) violation of the rules on the preparation, presentation and revision of the recovery plans and group recovery plans, as well as the failure to introduce the changes required by the Banco de Portugal regarding those plans;

(t) failure to comply with the reporting requirements necessary for the drawing up, revision and update of the resolution plans and group resolution plans;

(u) failure to comply with the notification requirements provided for in Article 116-W(1), as well as the provision of intragroup financial support in breach of Article 116-X(7);

(v) failure to comply with the communication duty provided for in Article 116-Z, as well as with the information requirements in paragraph 6 of the same Article;

(w) failure to comply with the measures directed by the Banco de Portugal in order to remove the deficiencies and impediments to the implementation of the recovery plan or in order to remove impediments to resolvability;

(x) failure to comply with the corrective measures set out in Article 141(1)(*a)* to *(d)*, *(f)* to *(l)* and *(n)* to *(q)*;

(y) the performance or omission of acts likely to prevent or hinder the application of corrective or resolution measures;

(z) the performance or omission of acts likely to prevent or hinder the exercise of the powers and duties incumbent on the auditing commission, the single auditor or the members of the temporary administration laid down in Articles 143 and 145-A respectively;

(aa) failure to comply with the information and cooperation duties to which the suspended or replaced members of the management and supervisory bodies, the single auditor, the holders of senior management positions, the statutory auditor, or the auditing company are bound under the terms of Article 141(3), Article 143(10), Article 145(2) or Article 145-F(4);

(bb) failure to duly communicate to the competent authorities the acquisition, disposal and ownership of qualifying holdings referred to in Articles 102 , 107 and 108;

(cc) acquisition of qualifying holdings in spite of the opposition of the competent authorities, in breach of Article 103;

(dd) failure to report information to the competent authorities referred to in Article 108(2) of this Legal Framework and Articles 99 and 101, Article 394(1), Article 415(1) and (2) and Article 430(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, within the deadlines defined, as well as the provision of incomplete or inaccurate information;

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(ee) failure to comply with the capital adequacy ratio set out in Article 92 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(ff) failure to comply with the capital conservation plan set out in Article 138-AD or with the measures set out by the Banco de Portugal under the same Article;

(gg) failure to comply with the national measures adopted pursuant to Article 458 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(hh) failure to implement adequate governance systems and governance arrangements, in breach of Article 14;

(ii) failure to comply with the limits to large exposures set out in Article 395 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(jj) failure to comply with the limits to large exposures set out in Article 395 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(kk) exposure to the credit risk of a securitisation position, failing to comply with the conditions set out in Article 405 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(ll) failure to disclose information or provision of incomplete or inaccurate information, in breach of Article 431(1) to (3) or Article 451(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(mm) making payments to holders of own funds instruments of the credit institution, where prohibited, in breach of Articles 138-AA to 138-AC of this Legal Framework or Articles 28, 51 or 63 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013;

(nn) allowing one or more persons not complying with Articles 30, 31 and 33 to become or remain a member of the management and supervisory bodies;

(oo) non-compliance with the internal organisation obligations pursuant to Article 90-A;

(pp) non-compliance with the obligations regarding creation and marketing of products and services pursuant to Articles 90-B and 90-C;

(qq) non-compliance with the rules on remuneration policies and practices contained in this Legal Framework, as well as failure to comply with any disclosure obligation related to such rules;

(rr) failure to comply with the rules on authorisation of financial holding companies and mixed financial holding companies;

(ss) failure to take the necessary measures to comply, on a consolidated or sub-consolidated basis, with the prudential requirements laid down in EU legislation on prudential requirements for credit institutions imposed on own funds, large exposures, liquidity, leverage or additional own funds requirements and specific liquidity requirements laid down in this Legal Framework;

(tt) failure to comply with the requirements for own funds and eligible liabilities.

2 – In the case of a legal person, administrative fines may be applied of up to 10% of the total annual net turnover for the fiscal year prior to the date of the sentence, including the gross income consisting of interest receivable and similar income, income from shares and other variable- or fixed-yield securities, and commissions receivable in accordance with Article 316 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, where this amount can be determined and exceeds that limit.

3 – In the case of a legal person subject to accounting standards other than those established in Article 316 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013, the calculation of the annual net turnover mentioned in the foregoing paragraph is based on data best reflecting the provisions of the same Article.

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4 – Where the legal person is a subsidiary, the relevant gross income shall be the gross income resulting from the consolidated account of the ultimate parent undertaking in the preceding fiscal year.

Article 211-A
Aggravated administrative fine

Without prejudice to the provisions of Article 212(1)(*a)*, if twice the amount of the benefit derived from the breach by the offender, where that benefit can be determined, exceeds the maximum limit of the applicable administrative fine, the said limit shall be increased up to that amount.

Article 212
Additional penalties

1 – In addition to the administrative fines provided for in Articles 210 and 211, the following additional penalties may be applied to offenders:

(a) loss of the benefit of the breach;
(b) loss of the object of the breach and goods belonging to the offender which are related to the breach;
(c) publication of the final decision;
(d) where the defendant is a natural person, prohibition from being a member of a corporate body, as well as from holding top-, mid- or lower-level management positions in any entity subject to supervision by the Banco de Portugal, for a period from six months to three years, in the cases provided for in Article 210, or from one year to ten years, in the cases provided for in Article 211;
(e) suspension from exercising voting rights conferred on shareholders in any entity subject to supervision by the Banco de Portugal, for a period from one year to ten years.

2 – The publication referred to in subparagraph *(c)* shall be at the offender's expense, in whole or in part, using suitable media in compliance with customer and financial system protection purposes, in a national, regional or local newspaper, as appropriate.

SECTION III
ADMINISTRATIVE PROCEEDINGS

Article 213
Responsibilities

1 – The Banco de Portugal is the authority responsible for the administrative offence proceedings provided for in this Legal Framework and for the enforcement of the applicable penalties.
2 – The final decision on the administrative offence proceedings shall be given by the Board of Directors of the Banco de Portugal.
3 – In the course of the inquiry or investigation procedure, the Banco de Portugal may request from the police or any other public services or authorities whatever cooperation or help it deems necessary for the achievement of the proceedings' purpose.

Article 213-A
Cooperation among authorities

Without prejudice to Articles 80 and 81, and where necessary to ensure coordinated action when dealing with cross-border cases, the Banco de Portugal shall communicate to the resolution and

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supervisory authorities of EU Member States the start of the inquiry or investigation procedure.

Article 214
Suspension of proceedings

1 – Where the breach is a remediable irregularity, which does not significantly harm or seriously or immediately jeopardise the rights of depositors, investors, shareholders or other parties concerned and does not cause significant damage to the financial system or the national economy, the Board of Directors of the Banco de Portugal may suspend the proceedings, requiring the offender to remedy the irregularity within a specified time limit.

2 – Failure to remedy the irregularity within the specified time limit shall result in the resumption of proceedings.

Article 214-A
Secrecy

1 – The administrative offence proceeding is confidential until the administrative decision has been delivered.

2 – From the moment the defendant is notified to exercise their right of defence, the defendant may:

(a) attend the procedural acts performed that concern the defendant;
(b) examine the records and take copies or extracts of any part thereof.

3 – The exceptions set out in the *Código de Processo Penal* (Penal Procedure Code) concerning the secrecy regime shall apply mutatis mutandis to the administrative offence proceeding.

Article 215
Collection of information

1 – Whenever required for the inquiry or investigation procedure, searches shall be conducted on any premises, any documents or equipment shall be seized and cash assets shall be frozen, regardless of the place or institution where they are located; the cash assets seized shall be deposited in a current account held by the Banco de Portugal, as collateral for the payment of whatever administrative fines or costs the defendant may be sentenced to pay.

2 – House seizures and searches shall be the object of judicial warrants.

3 – Any person or entity has the obligation to provide the Banco de Portugal with all the explanations and information it requires, as well as all the documents, irrespective of their form, objects and elements that may be relevant for the investigation procedures that are the responsibility of the Banco de Portugal.

4 – Any search conducted in law firms, statutory auditors or medical practices shall be ordered and carried out by the examining judge, under penalty of invalidity, pursuant to specific legislation.

5 – With the exception of the situations set out in Article 126, the searches and seizures conducted in entities which are not subject to the supervision of the Banco de Portugal shall be authorised by the competent judicial authority.

6 – Where, during a search, equipment or information media are seized which may contain information that does not only pertain to the institution's customers, operations or accounting and prudential information, these shall be given to the competent judicial authority, which authorises or gives a ruling ordering an investigation of the relevant items in a computer system, taking copies or prints of these data, in an independent medium, to be annexed to the file.

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7 – During any inspection of entities subject to the supervision of the Banco de Portugal, these are required to provide the Banco de Portugal with unrestricted access to their systems and files, including electronic files, with information on customers or operations, accounting and prudential information or other relevant information within the remit of the Banco de Portugal, and to allow this information to be copied and transcribed.

Article 216
Preventive suspension

[Repealed].

Article 216-A
Precautionary measures

1 – Where necessary for the effective conducting of an administrative offence proceeding or the safeguarding of the financial system or the interests of the depositors, investors and other creditors, the Banco de Portugal may:

(a) decide to impose conditions on the conduct of business by the defendant, namely compliance with special information or technical standards requirements, or decide on a mandatory prior authorisation request to the Banco de Portugal for the exercise of some activities;

(b) decide on the preventive suspension of certain activities, functions or positions by the defendant;

*(c)*decide on the preventive closure, in whole or in part, of the establishment where the unauthorised activity is carried out.

2 – The adoption of any of the measures referred to in the foregoing paragraph must comply with principles of need, suitability and proportionality, following the hearing of the defendant, except where the objective or effectiveness of the measure is put at risk.

3 – The precautionary measures adopted in accordance with this Article shall be immediately enforceable and shall only cease with the legal decision repealing them definitively, with the start of compliance with an additional penalty equivalent to the precautionary measure determined or with its express revocation by decision of the Banco de Portugal.

4 – Where, pursuant to paragraph 1(*b)*, the preventive suspension of activities, functions or positions by the defendant is determined, and the latter is sentenced in the same proceeding to an additional penalty which consists of the inhibition of the exercise of the same activities, functions or positions, the duration of the preventive suspension is deducted from compliance with the additional penalty.

5 – The decisions of the Banco de Portugal reached under this Article may always be the object of appeal, with immediate, separate and non-suspensive effect.

Article 217
Communication and notification

1 – Communications shall be sent by registered letter, fax, e-mail or any other means of telecommunication.

2 – Communications which, under the legal framework on administrative offence proceedings included in Decree-Law No 433/82 of 27 October 1982, amended by Decree-Laws Nos 356/89 of 17 October 1989, 244/95 of 14 September 1995, and 323/2001 of 17 December 2001, and Law No 109/2001 of 24 December 2001, and other cases expressly set out in this Legal Framework, have to be sent as a notification, shall take the form of a registered letter with acknowledgement of receipt

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addressed to the person notified, or their defence counsel, if there is one, or in person, if necessary through the police.

3 – The notification of the procedural document which formally attributes to the defendant an administrative offence, and the decision to apply an administrative fine, an additional penalty or any precautionary measure, shall be sent to the defendant and the defendant's defence counsel, if there is one.

4 – Where, in the situations referred to in the foregoing paragraph, the defendant is not found, the notification shall be made by announcement published in a newspaper in the location of the respective head office, permanent establishment or last known area of residence in the country or, in the event that said location does not have a newspaper or the defendant does not have a head office, permanent establishment or residence in the country, in one of the national newspapers.

5 – Where the defendant refuses to receive the notification, the official shall certify said refusal, which serves as notification.

Article 218

Duties of witnesses and experts

1 – Witnesses and experts who fail to appear on the day, at the time and in the place appointed for the proceedings, without justifying their absence either at that time or within the next five working days, or, having appeared, refuse without reason to give evidence or carry out their tasks, shall be liable to an administrative fine applied by the Banco de Portugal of up to 10 units of account.

2 – Payment must be made within 10 working days of notification, under penalty of compulsory collection.

3 – Where the statement of a person involved in the proceedings must be recorded, the Banco de Portugal shall record said statement on audio- or videotape.

4 – Statements shall not be transcribed in the cases referred to in the foregoing paragraph. The Banco de Portugal shall, without prejudice to the provisions on secrecy, provide to anyone taking part in the proceedings who requests it a copy of said statements within two working days.

5 – In the event of a judicial appeal against the decision of the Banco de Portugal, and where relevant to the decision, the court may request, by reasoned order, that the Banco de Portugal transcribe all or part of the recorded evidence, pursuant to the foregoing paragraphs.

Article 219

Closure of the case

1 – As soon as sufficient evidence has been collected proving that no breach was committed, that the agent did not commit the breach in any way or that the proceeding is legally inadmissible, the case shall be closed.

2 – The case shall also be closed where sufficient evidence that the administrative offence was committed or that identifies its agent has not been obtained.

3 – The proceedings shall only be reopened where new evidence comes to light invalidating the reasons given in the decision to close the case.

4 – The decision to close the case shall be communicated to the agent, if it takes place after the notification of the procedural document which formally attributes to the agent an administrative offence, or, where it takes place before said notification, if the agent has already been involved in the proceedings.

5 – [*Repealed*].

6 – [*Repealed*].

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Article 219-A
Attribution of the breaches and defence

1 – Where sufficient evidence has been collected that the administrative offence was committed and that identifies its agents, the defendant and the defendant's defence counsel, if there is one, shall be notified to, if they so wish, present their defence in writing and supply evidence, for which the Banco de Portugal shall set a deadline of 10 to 30 working days.

2 – The procedural document attributing an administrative offence to the defendant shall compulsorily include the name of the offender, the facts attributed to that person and the respective circumstances of time and place, as well as the law which prohibits and punishes them.

3 – The defendant cannot indicate more than three witnesses for each breach and no more than 12 in total and should also distinguish the witnesses that only give evidence on the defendant's economic standing and conduct, before and after the relevant facts, which cannot be more than two.

4 – The limits laid down in the foregoing paragraph may be exceeded, where the defendant makes a fully reasoned request, provided this is necessary to discover the truth, particularly due to the exceptional complexity of the case.

5 – The Banco de Portugal shall notify the defendant or the defendant's defence counsel, if there is one, of additional evidence it has obtained, on its own initiative, after the defence has been produced, setting a deadline for the defendant to respond to the evidence obtained, if the defendant so wishes.

Article 220
Decision

1 – Once the investigation procedure has been conducted, the case shall be submitted to the entity responsible for passing the decision, together with an opinion on the breaches which are considered proven and the penalties applicable thereto.

2 – [*Repealed*].

Article 221
Non-appearance

Failure to appear on the part of the defendant shall not hinder, at any stage, the course of the proceedings or the passing of a final decision.

Article 222
Requirements for the decision applying the penalty

1 – The decision imposing any administrative fine shall contain:

(a) the identification of the defendants;
(b) the description of the relevant facts;
(c) the description of the evidence supporting the decision;
(d) the description of the legal rules infringed and the rules on penalties;
(e) the description of the penalty or penalties applied, mentioning the facts which gave rise to their determination;
(f) the costs payable and an indication of the person or persons compelled to pay them;
(g) [*Repealed*].

2 – The notification of the decision shall contain:

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(a) notice that the administrative fine and, where applicable, the costs, must be paid within 10 working days of the day the court decision becomes final, under penalty of compulsory collection;

(b) the indication of the terms of its judicial appealability and enforceability;

(c) the indication that, in case of judicial appeal, the court may rule through a hearing or, where the defendant, the Public Prosecution Service, or the Banco de Portugal do not object, by means of a simple order;

(d) the indication that the principle of the prohibition of reformatio in pejus shall not apply.

Article 223
Suspension of execution

1 – The Board of Directors of the Banco de Portugal may suspend, in whole or in part, the execution of the penalty, where it concludes that the general prevention strategies are still carried out in an appropriate and sufficient manner.

2 – The suspension may be conditional on the fulfilment of certain obligations, in particular those considered necessary to remedy illegal situations, to compensate for damages or to prevent risks.

3 – The period of suspension shall range between two and five years, as of the day when the decision becomes final.

4 – The suspension does not include costs.

5 – If within the period of suspension the defendant does not commit any of the criminal or administrative offences which are to be processed by the Banco de Portugal, and does not violate any injunctions which have been set, the penalty which had been suspended shall be considered terminated. Otherwise, where the purposes behind the suspension cannot be achieved by means of that suspension, the sentence will be executed.

Article 224
Costs

1 – In case of conviction, costs will be paid by the convicted party.

2 – In the event of there being more than one defendant, the costs shall be divided equally among the defendants. Only the amount concerning the defendants that are sentenced shall be payable.

3 – Costs shall cover expenses arising from the case, namely notifications and communications, recording media and copies or certificates pertaining to the case.

4 – Repayment of the expenses referred to in the foregoing paragraph shall be calculated as half of a unit of account for the first 100 sheets or equivalent fraction of the records and as one tenth of a unit of account for each subsequent set of 25 sheets or equivalent fraction of the records.

Article 225
Payment of administrative fines and costs

1 – The payment of administrative fines and costs shall be made by means of a payment form, at the Revenue Office of the place of the convicted party's residence, head office or permanent establishment or, if this place is outside the national territory, at any Revenue Office in Lisbon.

2 – After paying, the convicted party shall, within eight working days, forward to the Banco de Portugal a copy of the payment form so that it may be added to the records of the case.

3 – The proceeds of administrative fines shall revert fully to the State except as otherwise provided for in the following paragraphs.

4 – The proceeds of administrative fines exacted from credit institutions shall revert fully to the Deposit Guarantee Fund, irrespective of the stage in which the decision becomes final.

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5 – The proceeds of fines exacted from investment firms participating in the Investor Compensation Scheme shall revert fully to this Scheme, irrespective of the stage in which the conviction becomes final.

Article 226
Responsibility for payment

1 – Legal persons, even when irregularly constituted, and associations without legal personality shall be jointly and severally liable for the payment of any administrative fines and costs which their directors, staff or representatives may be sentenced to pay for the practice of breaches punishable under this Legal Framework.

2 – Members of management bodies of legal persons, even when irregularly constituted, and of associations without legal personality, who, being able to do so, failed to oppose the practice of the breach, should be answerable individually and subsidiarily for the payment of any administrative fines and costs which those legal persons or associations have been sentenced to pay, even if, by the date of the decision being passed, those legal persons or associations have been wound up or have gone into liquidation.

Article 227
Enforceability of the decision

[Repealed].

Article 227-A
Summary proceedings

1 – When justified by the nature of the offence, the seriousness of the guilt or other circumstances, the Banco de Portugal, before formally attributing to the defendant any administrative offence and based on indicted facts, may notify the defendant that a reduced penalty will be applied, under the terms and conditions mentioned in the following paragraphs.

2 – The penalty applicable consists of a warning or an administrative fine, whose maximum amount shall not exceed five times the minimum limit set out for the breach or, in the event of several breaches, a single administrative fine not exceeding 20 times the highest minimum limit for the concurrent administrative offences; in any case, the adoption of a specific behaviour and an additional penalty consisting of the publication of the decision may also be established.

3 – The decision provided for in paragraph 1 shall contain the identification of the defendant, a summary description of the relevant facts, a reference to the rules infringed and the rules on penalties and the warning or an indication of the administrative fine or additional penalty specifically applied, or, where applicable, the behaviour to be adopted and the deadline for its adoption, as well as the elements taken into account to determine the penalty.

4 – The notification of the decision shall refer to the provisions of paragraph 7 and shall be accompanied by a template for the declaration of acceptance of the decision and, where the penalty applied is an administrative fine, a payment form.

5 – Upon receipt of the notification, the defendant shall send to the Banco de Portugal within 10 working days:

(a) where the penalty applied is a warning, a written declaration of acceptance;

(b) where the penalty applied is an administrative fine, a written declaration of acceptance or proof of payment.

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6 – If the defendant accepts the decision or pays the administrative fine applied and, where applicable, adopts the aforementioned behaviour, the decision of the Banco de Portugal shall become final, and the relevant facts shall not be reappraised as an administrative offence.

7 – The decision shall become null and void and the administrative offence proceedings will follow the usual course, in which case the Banco de Portugal shall conduct the inquiry it considers appropriate and, where applicable, formally attribute to the defendant an administrative offence, without being bound by the contents of the said decision, if the defendant:

(a) refuses the decision;

(b) fails to respond within the period of time established, except where, when an administrative fine is applied, the defendant pays it within the established period of time;

(c) fails to adopt the recommended behaviour;

(d) asks for any additional measure.

8 – Decisions reached in summary proceedings cannot be the object of appeal.

9 – No costs shall be paid in summary proceedings.

Article 227-B
Disclosure of the decision

1 – After the time limit for lodging judicial appeals has passed, the decision to convict the agent for the practice of one or more particularly serious breaches shall be published on the website of the Banco de Portugal in full or as a summary including, at least, the identification of the natural or legal person sentenced and information on the type and nature of the offence, even if a judicial appeal has been lodged, in which case this fact shall be expressly mentioned.

2 – The disclosure of the judicial decision that confirms, amends or repeals a conviction handed down by the Banco de Portugal or by a court of first instance shall be mandatory pursuant to the foregoing paragraph.

3 – The Banco de Portugal may disclose the decision on an anonymous basis, delay its disclosure or not disclose it at all, where:

(a) following an obligatory prior assessment, the disclosure of the identity of the legal persons or the personal data of the natural persons proves to be disproportionate, considering the seriousness of the breach;

(b) the disclosure might jeopardise the stability of financial markets or the success of an ongoing investigation;

(c) the disclosure would cause, insofar as can be determined, actual damage to the agent, clearly disproportionate considering the seriousness of the breach.

4 – Where the circumstances referred to in the foregoing paragraph are likely to cease within a reasonable period of time, the disclosure of the identity of the legal persons or the personal data of the natural persons may be postponed for such a period of time.

5 – Information disclosed under the foregoing paragraphs shall remain available on the website of the Banco de Portugal for five years as of the moment the decision becomes final or res judicata, except where a penalty with a duration exceeding such term has been applied, in which case the information shall remain available on the website until the expiry of the longer term of duration, and shall never be indexed by search engines.

6 – Judicial decisions relating to the crime of unauthorised acceptance of deposits and other repayable funds shall be disclosed by the Banco de Portugal under the terms of the foregoing paragraphs, irrespective of the moment at which they become res judicata.

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Article 227-C
Communication of penalties

1 - The Banco de Portugal shall inform the European Banking Authority of the penalties applied for the breaches provided for in Article 211(1)*(a)*, *(b)*, *(p)*, *(s)*, *(t)*, *(u)* and *(v)* on non-compliance with the obligation to notify situations of risk of or actual insolvency, and in Article 211(1)*(cc)* to *(ll)*, *(rr)*, *(ss)* and *(tt)*, and for non-compliance with the rules of Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013, including any appeal in relation thereto and the outcome thereof.

2 - For the purposes of carrying out the obligation to report to the European Securities and Markets Authority, the Banco de Portugal shall notify the Portuguese Securities Market Commission of any penalties imposed that are covered by said obligation, including any appeal in relation thereto and the outcome thereof.

SECTION IV
APPEAL

Article 228
Judicial appeal

1 – Any appeals against a decision imposing a penalty shall be lodged with the Banco de Portugal within 15 working days of the date the decision came to the knowledge of the defendant.

2 – Once the appeal has been received, the Banco de Portugal shall forward it to the Public Prosecution Office within 15 working days, with the option to add whatever allegations, elements or other information it deems relevant to the decision, as well as to supply evidence.

3 – Where there are several defendants, the deadline referred to in the foregoing paragraph shall start from the expiry of whichever deadline comes last.

Article 228-A
Effect of the appeal

The appeal against decisions reached by the Banco de Portugal shall only have a suspensive effect if the person lodging the appeal provides collateral, within 20 days, to an amount corresponding to half of the administrative fine applied, except if such person proves, within the same time period, being unable to provide the collateral, in whole or in part, due to lack of means.

Article 229
Competent court

The competition, regulation and supervision court shall be the competent court to adjudge any appeal, reappraisal and execution of decisions, or any other legally appealable measures taken by the Banco de Portugal, within administrative offence proceedings.

Article 230
Judicial decision

1 – Where a hearing is deemed not necessary, the judge may rule by an order if the defendant, the Public Prosecution Office or the Banco de Portugal raise no objection to this procedure.

2 – Where there is a hearing, the court shall decide on the basis of proof presented at the hearing and proof presented during the administrative stage of the administrative offence proceedings.

3 – The principle of the prohibition of reformatio in pejus shall not apply to the administrative

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offence proceedings initiated and decided pursuant to this Legal Framework.

Article 231

Intervention by the Banco de Portugal at the judicial stage

1 - The Banco de Portugal may always participate in the hearing through a representative.

2 - Withdrawal of the charge by the Public Prosecution Office depends on the Banco de Portugal's agreement.

3 - The Banco de Portugal has the right to appeal against decisions reached on appeals, where this is admissible.

SECTION V

SUBSIDIARY LAW

Article 232

Application of the general law governing administrative offence proceedings

The general law governing administrative offence proceedings shall be subsidiarily applicable to the offences provided for in this Chapter, as long as it does not conflict with the provisions of the same Chapter.

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