

# 2009



## *Banking Conduct Supervision* REPORT

Excerpt from the 2009 Banking Conduct Supervision Report:

The new regulatory framework of Portuguese retail banking markets



*Banco de Portugal*

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## ABBREVIATIONS

**APR** Annual Percentage Rate of Charge

**EBIC** European Banking Industry Committee

**EU** European Union

**SIS** Standardised Information Sheet





## CHAPTER

*The new regulatory framework  
of Portuguese retail banking markets*



## THE NEW REGULATORY FRAMEWORK OF PORTUGUESE RETAIL BANKING MARKETS

### 1. Bank deposits market

In 2009 major changes were introduced in the regulatory framework of bank deposits, with the publication of Notices of Banco de Portugal No 4/2009, No 5/2009 and No 6/2009, which laid down new information requirements to be complied with by institutions offering bank deposits.

**Recent changes**

The fundamental characteristics of bank deposits were reinforced, in particular the guarantee of full repayment of the deposited amount at the end of the term or in the event of early withdrawal, if permitted (Notice of Banco de Portugal No 6/2009).

It has been established that the amount deposited is repaid at the maturity date and interest is paid until the first working day after the end of the interest calculation period. In the event of early withdrawal, the corresponding principal shall also be deposited until the first working day after the date referred to in the withdrawal request.

In addition, bank customers gained access to a set of information before making a deposit and the contents and periodicity of bank account statements were defined.

Deposits were classified into two large groups, according to the type of remuneration offered and their degree of complexity: “simple deposits” (regulated by Notice of Banco de Portugal No 4/2009), on the one hand, and “indexed and dual deposits” (regulated by Notice of Banco de Portugal No 5/2009), on the other.

The large majority of deposits offered by credit institutions falls into the simple deposits category; they are remunerated at a fixed rate, or at a variable rate, when the value of their return is tied to a benchmark rate such as the Euribor (euro interbank offered rate), and they can be of different types (demand deposits, fixed-term deposits and fixed-term deposits which cannot be withdrawn before maturity).

Indexed deposits differ from simple deposits in that their return depends on the evolution of other instruments or economic or financial variables, such as the price of a share or basket of shares, or the value of one or more stock price indices. Typically, these are fixed-term deposits which cannot be withdrawn before maturity.

Dual deposits correspond to the combined commercialisation of two or more bank deposits that can be simple or indexed.

As from 18 November 2009 indexed and dual deposits can only be offered after Banco de Portugal has checked that the respective Information Leaflet complies with the regulations in force. These leaflets are then made publicly available on the Bank Customer Website.

As from 1 November 2009 closing fees ceased to be charged on current accounts, when their holders are natural persons or micro enterprises (Decree-Law No 317/2009 of 30 October).

With regard to the guarantee of deposits in Portugal, deposits opened with credit institutions having their head office in Portugal, or with branches, in Portugal, of credit institutions having their head office in non-EU Member States, have a minimum coverage level of EUR 100,000 (Decree-Law No 211-A/2008 of 3 November).

Among the initiatives concerning self-regulation, the adoption by the European Banking Industry Committee (EBIC) of the “Common Principles on Bank Account Switching”, to facilitate the switching process of current accounts among banks, should be underscored. These principles were adopted by the Portuguese Banking Association and implemented on 1 March 2010. Bank customers can now more easily transfer, from one bank to another, within national borders, payment services associated with their current accounts. Time limits were set for the transfer, and the form of cooperation between the institutions involved was defined.

**Advertising** Credit institutions try to capture savers’ attention through advertising. To ensure that the information provided is clear and accurate, campaigns must comply with a set of principles and rules (Notice of Banco de Portugal No 10/2008).

Advertising campaigns that announce the interest rate of a deposit must indicate, with equal prominence given to other characteristics, the corresponding gross annual nominal rate .

When deposits have different interest rates applied over their life, advertising shall indicate the average interest rate applied during the lifetime of the deposit.

The name of a deposit cannot refer or highlight an interest rate that is not the one applicable to the whole term of the said deposit. This prevents the customer from being provided with misleading information on the overall profitability of the deposit (e.g. advertise as a “10% deposit” a 10-month deposit with increasing rates up to a 10 per cent gross annual nominal rate in the last month and an average rate of 5.5 per cent).

In the case of deposits with maturity up to one year, advertising must clearly mention its maturity, as it constitutes a restraint on the amount of return that the customer actually receives, being extremely important in assessing the annualised return.

In the case of deposits with maturity of over one year, advertising should not highlight the cumulative rate of interest for the whole term, as this may be potentially misleading, but the gross annual nominal rate, to enable customers to compare alternative offers, taking as a reference a one-year period.

When the return on a deposit can be affected as a result of early withdrawal, such penalty must always be indicated in the advertising to ensure that the customer is aware that the announced return requires the maintenance of the deposit to maturity.

When there are access conditions or important restrictions to the characteristics highlighted in the advertisement, these should be given equal prominence in order to ensure a balanced message.

All compulsory information in the advertisement must be printed in a font size that is not smaller than the minimum size defined by Banco de Portugal for the various news media (Notice of Banco de Portugal No 10/2008).

The name of the credit institution responsible for the deposit announced must always be indicated.

For the purpose of securing compliance with the regulations in force, Banco de Portugal examines advertisements of indexed and dual deposits. Such deposits must be expressly identified as “Complex Financial Products”, and information must be given on the existence of an Information Leaflet and how to obtain it (Decree-Law No 211-A/2008 of 3 November).

## Pre-contractual information

On the opening of a demand account or a simple deposit, credit institutions shall give to the customer a Standardised Information Sheet (SIS), written in clear and legible language.

**Standardised  
Information Sheet**

In the case of an indexed or dual deposit, the information sheet is more complex, being called Information Leaflet.

**Information  
Leaflet**

Both the SIS and the Information Leaflet provide the customer, prior to the conclusion of a contract, with a complete description of the characteristics of the respective deposits, with the purpose of facilitating comparison between the proposals presented by the different institutions for a conscious and informed decision by the customer.

The SIS on simple deposits follows the template defined by Banco de Portugal (Notice of Banco de Portugal No 4/2009), containing in the case of demand deposits the conditions of access to the account, the available means to operate the account, the applicable fees and the description of the respective interest rate, where applicable.

When overdraft facilities and/or credit overruns are associated with a demand deposit account, the credit institution shall also describe in the SIS the terms and conditions applicable to this type of credit, namely, interest rates and any fees or associated expenses.

For a simple fixed-term deposit, the SIS must indicate the interest rate applicable, the possibility of early withdrawal and any interest penalty and, in the case of renewable deposits, the renewal conditions.

Before entering into an indexed or a dual deposit agreement, the credit institution must provide the customer with an Information Leaflet containing information on its characteristics. Leaflets must follow a template created by Banco de Portugal (Notice of Banco de Portugal No 5/2009).

Before entering into such an agreement, the customer should consult the Information Leaflet, paying particular attention to interest calculation. An indexed deposit Information Leaflet must clearly indicate whether a guaranteed minimum remuneration exists, which in some cases may be nil. The conditions of early withdrawal should also be analysed with particular care, as in general early withdrawal is not allowed.

When entering into a dual deposit agreement, the bank customer should be aware that this investment has different components (corresponding to the different deposits involved). Therefore, each and every component should be carefully analysed in terms of maturity, remuneration conditions and possibility of early withdrawal.

## Contractual information

The opening of an account or the constitution of a deposit is made by means of signing a contract. In addition to the general conditions applicable, this contract shall include all the information contained in the respective SIS, namely, the maturity and the description of the applicable remuneration. In the case of a fixed rate deposit, the gross annual nominal rate and the net annual nominal rate, or the several gross and net annual nominal rates applicable must be presented. In the case of a variable rate deposit, the contract must include the benchmark rate and the respective publication sources, the relevant date or the basis for its calculation, as well as the frequency of the revision and the spread(s) applicable.

**Information  
items of the  
contract**

In addition, the contract must clearly state whether funds can be withdrawn before maturity or not and, where applicable, the penalty to which the interest rate is subject.

### **Opening of an account**

The opening of a demand deposit account requires the identification of its holder(s) (and any other persons authorised to operate the account). These procedures are essential for the protection of the customers – making more secure the access to the account – as well as for the prevention of money laundering and terrorist financing (Notice of Banco de Portugal No 11/2005).

When opening a bank account, the customer receives a copy of the contract and at any time during the lifetime of the deposit has a right to receive, on request, the contractual terms applicable.

Where the contract envisages the possibility of changes being introduced in the contractual conditions regarding the demand accounts (or deposits redeemable at notice), such changes must be communicated to the customers at least 60 days before their enforcement. This is, for example, the case of changes on the management or maintenance fees of demand accounts.

The customer has the right to close his demand account at any time, unless the contract provides for a period of notice, which cannot exceed one month. Institutions are not allowed to impose fees for closing accounts of natural persons or micro enterprises. With respect to other customers, institutions are only allowed to impose fees for closing an account which was opened less than 12 months prior. However, these fees must be restricted to the costs borne by the institution.

### **Information to be provided during the period of the contract**

#### **Statement of account**

Credit institutions shall provide bank customers with bank account statements, which are a record of all movements made in a deposit account. Account statements shall include, namely, the date of each movement and the respective value-date, a brief description identifying each entry and whether it is a debit or a credit, as well as the amount.

Account statements shall also include any interest earned on the deposit, fees charged on it and interest charged on overdraft facilities or credit overruns associated with the demand account.

In the case of deposit accounts, statements of account shall be provided at least on a monthly basis, except when no movements are recorded in the account, in which case they can be provided on an annual basis. Bank account statements can be sent by mail or electronic form, provided that they comply with the rules defined for this purpose and are in accordance with the express wish of the customer.

In the case of term deposits, statements of account shall be provided on a monthly basis or on the maturity date of the deposit for deposits with an agreed maturity of up to 1 year, and on an annual basis for deposits with an agreed maturity equal to or over 1 year.



## 2. Mortgage credit market

In 2009 important steps forward were taken in mortgage credit market legislation and regulations, with the publication of several legal acts on the trading of this type of loans and on the information requirements of institutions towards their customers. **Recent changes**

Credit institutions must now inform insurance companies of the outstanding amount of capital in home loans guaranteed by the borrower's life insurance, regardless of the characteristics of the insurance and the date the mortgage credit agreement was signed (Decree-Law No 222/2009 of 11 September).

In an economic environment characterised inter alia by rising unemployment, the Portuguese State made available to the individuals unemployed for more than three months, a specific credit line for the payment of up to half of the monthly home loan instalment (Decree-Law No 103/2009 of 12 May). This moratorium, initially intended to last until the end of 2009, was subsequently extended by an additional year, ending on 31 December 2010 (Decree-Law No 14/2010 of 9 March).

Competition among credit institutions has stepped up the sale of non-compulsory ancillary financial products and services – the so-called cross selling – associated with mortgage credit (this practice, known as bundling, is allowed under the terms of Decree-Law No 51/2007 of 7 March). Hence, credit institutions must now compulsorily provide their customers with a measure of the total cost of credit, including the cost of those ancillary financial products and services: the Revised Annual Percentage Rate of Charge (Decree-Law No 192/2009 of 17 August). Considering that credit institutions already reflected in the rate usually made publicly available – the Annual Percentage Rate of Charge (APR) – the reduction of the spread or of other credit costs resulting from the purchase of ancillary products together with the home loan, this new measure, corresponding to the APR adjusted for the cost of bundling, gives a more complete and transparent -description of the total cost of credit, whenever several products are offered for sale as one packaged product.

Bearing in mind that in many cases, in addition to the home loan, the consumer applies for another loan secured by the same mortgage (usually known as multi-purpose or multi-option credit), this so-called “related” loan, is now also covered by the same regime as home loans (Decree-Law No 192/2009 of 17 August). As it is the case for mortgage loans, credit institutions are prohibited to charge any fees in the renegotiation of those “related” loans or to make them conditional on the purchase of ancillary financial products or services.

These legal acts completed the legal and regulatory framework of home loans, which has been subject since 2006 to a number of important legal changes, first with the establishment of interest rate rounding rules and rules for the calculation of the interest rate, followed by the definition, in 2007 and 2008, of rules concerning the early repayment of loans, as well as their renegotiation conditions, which have added to increased transparency in this market, promoting mobility and fostering competition.

Concerning the renegotiation of home loans, Banco de Portugal informed credit institutions that, according to the terms of the law, they are not allowed to charge -renegotiation fees, even when the renegotiation is intended to change the interest rate regime of the loan agreement. The prohibition to charge renegotiation fees also covers the switch of insurance companies. On the other hand, Banco de Portugal clarified that although credit institutions are not allowed to make the renegotiation of home loans conditional upon the purchase

of ancillary financial products or services, this prohibition does not apply to situations in which the contract already envisaged from the outset conditions for reducing the spread or other costs of credit (Circular Letter of Banco de Portugal No 47/2009/DSB of 20 May).

With regard to loans granted for “good-faith” deposits intended to secure the purchase of a house, Banco de Portugal clarified that, according to the law, the fees that may be charged shall be subject to the same upper limits as those charged on mortgage credit (Circular Letter of Banco de Portugal No 10/2009/DSB of 14 January).

-Moreover, the information that credit institutions must supply to their customers in the negotiation and conclusion of home loan agreements (Instruction of Banco de Portugal No 27/2003) will be expanded with the entry into force on 1 November 2010 of the new Notice relating to “Information requirements regarding home loans and related loans” (Notice of Banco de Portugal No 2/2010).

This Notice increases the transparency of information on the conditions of access to home loans, which have become increasingly complex. By distinguishing three major moments in the negotiation process of mortgage credit, i.e. the pre-contractual phase, the contractual phase and the contract lifetime, this Notice clearly regulates and separates the information to be supplied in each phase. Hence, in addition to the Standardised Information Sheet (SIS) to be supplied when a mortgage credit or related credit is being simulated, the Notice sets out that another SIS must be handed over when the credit is approved, in conjunction with the draft contract, which shall reflect SIS conditions. The mandatory presentation of the amortisation table of a “standard loan”, together with the amortisation table of the credit operation approved, is intended to inform customers of potential increased costs and risks associated with choices made by them that deviate from the standard option. This is namely the case when different repayment schedules are chosen and/or ancillary financial products and services are simultaneously purchased.

Banco de Portugal has available on the Bank Customer Website under “Mortgage credit”, a calculation tool (Simulator) enabling customers to calculate the costs inherent to a “standard loan”, as well as the costs associated with some of the other amortisation tables included in the SIS handed over by credit institutions.

**Advertising** In general, it is through advertising that a consumer has the first contact with the mortgage credit products offered on the market. For the sake of clear and accurate information, credit institutions’ campaigns must conform to a number of principles and comply with specific rules (Notice of Banco de Portugal No 10/2008).

Home loan advertisements must highlight the rate that reflects the total cost of the credit – the Annual Percentage Rate of Charge (APR). This rate is a measure of the overall home loan cost enabling consumers to compare different financing alternatives, with similar characteristics in terms of maturity and amount.

The APR shall be illustrated by means of a representative example explaining all the underlying assumptions in its calculation, namely, the amount of the loan, the maturity, the annual nominal interest rate (in the case of a fixed-rate loan) or the benchmark rate plus the spread (in the case of a variable-rate loan).

When the advertised home loan envisages an interest only period (during which only interest is paid by the consumer) or partial deferred payment of capital (when part of the capital

is only paid at the end of the loan), this should also be mentioned in the APR example.

When there are access conditions or important restrictions to the characteristics highlighted in the advertisement, these should be given equal prominence in order to ensure a balanced message.

When the advertising campaigns make a special reference to the amount of one instalment, they shall also place similar emphasis on the repayment period and amount of financing underlying the instalment publicised.

All compulsory information in the advertising campaigns must be printed in a font size that is not smaller than the minimum size defined by Banco de Portugal for the various news media (Notice of Banco de Portugal No 10/2008).

Finally, advertising shall clearly include the identification of the credit institution responsible for the advertised mortgage credit.

### Pre-contractual information

While the consumer's search takes place, it is vital to ensure that he receives from all the credit institutions, standardised information about the different loans, enabling an immediate and adequate comparison of the different proposals, for a transversal cost-benefit analysis.

**Standardised  
Information  
Sheet**

The Notice of Banco de Portugal relating to "Information requirements regarding home loans and related loans" (Notice of Banco de Portugal No 2/2010) formally recognises the existence of three distinct moments in the negotiation process of mortgage credit: credit simulation, approval and validity period of the contract conditions.

When the simulation is made, either at the credit institution or through its website, credit institutions must provide the consumer with the corresponding SIS, which, according to the rules in force since 2003, was only mandatory on the occasion of credit approval. This new development makes it possible to accommodate the market practice already adopted by most credit institutions and at the same time to normalize the information supplied by them.

Standardised Information Sheets shall comprise, in addition to the financial conditions of the loan and other information items, a complete and detailed amortisation table, as well as two other tables, with the nominal interest rate increased by one and two percentage points respectively. When the simulated/approved loan does not match a standard or "plain vanilla" loan, the SIS must additionally include the amortisation table of the plain vanilla loan. SIS must present a standard model set out in Instruction of Banco de Portugal No 10/2010, published in parallel with Notice of Banco de Portugal No 2/2010.

The 'standard' or 'plain vanilla loan' – an important innovation introduced by this Notice - presents, from among the several financing alternatives offered by institutions, the simplest type of loan, with an interest rate linked to Euribor plus the interest rate spread applied to the customer, and repaid, from the beginning, in constant instalments of capital and interest. A comparison of the amortisation table of the "plain vanilla loan" with the amortisation table of the simulated/approved loan enables the consumer to better understand a potential increase in costs and risks induced by alternative types of loans.

A SIS is comprised of three parts:

- Part I – Financial conditions of the loan – description of the characteristics of the loan, namely, amount, maturity, nominal interest rate, repayment schedule, nature of the guarantees and insurance required, components and impact of promotional campaigns and/or cross selling, and early repayment conditions; description of the cost of credit, namely in terms of the annual nominal rate, APR and Revised Annual Percentage Rate of Charge, where applicable. The latter incorporates the charges borne with cross selling practices, being a more complete measure of the credit cost. In addition, the characteristics of such sales must be described and the value of every fee and of the expenses due at the initial stage and after the conclusion of the contract must be specified, as well as any other conditions affecting the cost of the credit.
- Part II – Amortisation tables of the loan – definition of the model and level of detail of the loan amortisation table presented to the customer, of the amortisation tables with the impact of one and two percentage point increases in interest rates, in the case of a variable rate loan, as well as the amortisation table of the “plain vanilla loan”, if the simulated/approved loan does not match that model.
- Part III – General information – indication of the documentation required for the approval of the loan and conclusion of the contract, as well as the characteristics of the ancillary financial products and services offered by the lending institution.

### Contractual information

#### **Information items of the contract**

With the approval of the home loan or the related loan, credit institutions must supply, in addition to a new SIS with the terms and conditions agreed by the parties, the draft contract. This draft shall contain the terms and conditions of the loan described in the SIS, which shall remain valid throughout the period mentioned in the contract, except for the value of the fixed interest rate or of the base rate, which shall be adjusted according to the market conditions prevailing on the date the contract is signed. Without prejudice to the provisions of the law, the above-mentioned Notice also lists all the items that shall be included in the loan agreement, namely potential adjustments of fee values through reference to the Price List and through prior notice of at least 30 days.

### Information to be provided during the period of the contract

#### **Statement of account**

During the period of the contract, credit institutions shall send on a monthly basis and at least 15 days before the next instalment date, a monthly account statement. This statement shall include the identification of the loan and the outstanding amount of capital; the number and date of the next instalment; the amount of each instalment, broken down into capital and interest; the nominal interest rate applicable to the instalment; the identification and amount of any fees and expenses payable by the consumer; and, when the home loan agreement is covered by a subsidised credit scheme, the identification of the bracket and amount of subsidised interest applicable to the instalment.

### 3. Consumer credit market

The legal framework of the consumer credit market underwent significant changes in 2009 with the transposition into Portuguese law of the EU Directive concerning the laws governing consumer credit contracts (Decree-Law No 133/2009 of 2 June). The new rules, which took effect on 1 July 2009, regulate credit granted to natural persons for purposes other than housing or their business or profession, and cover credit, such as personal and car loans, credit cards, credit lines and overdraft facilities.

**Recent changes**

The new legislation sets out requirements concerning the information to be supplied by credit institutions to their customers before the conclusion of a loan agreement through a Standardised Information Sheet (SIS), as well as the duties to provide customer-assistance and to perform an assessment of the customer's creditworthiness.

In addition and in spite of not being envisaged in the above-mentioned Directive, Decree-Law No 133/2009 also sets out a cap regime for the rates applicable to consumer credit.

Moreover, compared with the former legal framework of consumer credit (Decree-Law No 359/91 of 21 September), the minimum information requirements to be included in advertising and consumer credit contracts were reinforced, the period during which the customer has the right of withdrawal from the contract without penalty was extended, more specific rules were established on the calculation of the annual percentage rate of charge (APR) and the calculation rules of the maximum fee to be charged by the credit institution in the event of early repayment of credit were simplified.

The new rules shall be applicable to credit agreements concluded after their entry into force on 1 July, as well as to the agreements concluded before that date, with no specified term, which is the case of the large majority of credit cards and overdraft facilities. As regards the other contracts, the rules set out in Decree-Law No 359/91 of 21 September continue to be applicable, namely those on the early repayment of credit.

To ensure that customers obtain harmonised information from any credit institution, a template with the form and contents of the SIS was defined. These information sheets are to be provided before the conclusion of a loan agreement (Instruction of Banco de Portugal No 8/2009).

In addition, to facilitate the comparison of costs associated with different credit alternatives, the methodology and rules for the calculation of the APR were defined for each type of consumer credit (Instruction of Banco de Portugal No 11/2009).

On the other hand, in order to allow the implementation of interest rate caps, all credit institutions must report on a monthly basis to Banco de Portugal information on the new consumer credit contracts concluded (Instruction of Banco de Portugal No 12/2009), which will be the basis for the calculation of the said caps. The first interest rate caps, to prevail in the first quarter of 2010, were made publicly available on 7 December 2009 (Instruction of Banco de Portugal No 26/2009).

To ensure that the information conveyed to the customers through advertising campaigns is clear and accurate, credit institutions must comply with a number of principles and specific rules (Notice of Banco de Portugal No 10/2008).

**Advertising**

Advertisements of consumer credit products must give to the APR similar prominence to the characteristics of the credit product highlighted. The APR provides a benchmark for

measuring the cost of credit, enabling customers to compare different financing alternatives with identical characteristics, in terms of amount and maturity.

The APR shall be illustrated by means of a representative example mentioning all the assumptions used in order to calculate it, namely, the amount of credit, the repayment period, the annual nominal rate (in the case of a fixed rate) or the benchmark rate and the spread (in the case of a variable rate), the amount of each instalment and the total amount payable by the consumer.

When, in the advertisement, certain characteristics associated to the credit are highlighted, such as interest rates, spreads, monthly instalments or potential benefits resulting from the conclusion of the loan agreement or use of the credit (for instance, offer of a complimentary gift to customers who use a credit card), but access conditions or major restrictions apply (such as, the fact of being a new customer or the obligation to buy ancillary financial products in the same institution), such access conditions or restrictions should be given similar emphasis in order to ensure a balanced message.

When an advertisement makes a special reference to the amount of one instalment, equal prominence must be given to the repayment period and to the amount of financing underlying the instalment publicised.

All compulsory information in the advertisement must be printed in a font size that is not smaller than the minimum size defined by Banco de Portugal for the various news media (Notice of Banco de Portugal No 10/2008).

Consumer credit, which is intended for the purchase of certain consumer goods, is often granted through the intermediation of the retailer selling those goods (e.g. shops and large supermarkets), acting as an agent of the credit institution offering the credit product. Therefore, consumer credit products are frequently advertised by retailers. Notwithstanding, the advertising must contain an unequivocal reference to the credit institution responsible for the credit being announced, which shall comply with the information requirements applicable to the advertising.

### **Pre-contractual information**

#### **Standardised Information Sheet**

The customer has a right to receive a SIS before the conclusion of a credit agreement, which shall contain information tailored to that specific credit (e.g. amount and maturity). This document enables the customer to analyse the characteristics, costs and risks of the loan.

Standardised Information Sheets harmonise the information provided to customers, facilitating the comparison of the alternative types of credit offered by institutions in the market search phase and at the pre-contractual stage.

#### **Information items of the Standardised Information Sheet**

Information provided by the institution to the customer, through SIS shall include: (i) identification of the credit institution; (ii) description of the main characteristics of the loan; (iii) credit cost; (iv) other relevant legal issues (such as the right of withdrawal and the duration of the SIS conditions); and (v) amortisation table of the loan.

The loan characteristics shall include the type of loan requested (e.g. personal loan, car loan or other), total amount of the loan and term of the loan agreement, repayment modality and instalment regime, with the respective amounts, as well as the guarantees demanded from the customer and the amount of the early repayment fee, where appropriate.



The SIS section on credit cost provides information on all costs associated with the loan agreement. Besides the value of the nominal interest rate and a breakdown of all other charges applicable (such as, initial fees, instalment processing fees, insurance premia and stamp duties), information shall also include the overall cost of credit, e.g. the APR and the “total amount payable by the consumer”. The information should also cover the costs and consequences of defaulting on the payment obligations set out in the contract.

Whenever the loan has a defined repayment plan, without constant instalments, the SIS shall also include the amortisation table, enabling the customer to have clear information about the amount of each instalment and other charges to be borne over the lifetime of the loan.

**Amortisation table**

In addition to the compulsory supply of a SIS, credit institutions must assist bank customers, who have the right to receive all the adequate information about the characteristics of the credit offered. Therefore, the institutions must clarify the information items contained in the SIS, in order to enable the customer to decide whether the loan agreement proposed is suited to his needs and financial situation.

**Obligation to provide assistance**

In turn, credit institutions are now obliged to assess the creditworthiness of the customer, bearing the responsibility of checking the information provided by the customer, and through the consultation of the Central Credit Register of Banco de Portugal.

**Assessment of creditworthiness**

Together, the obligation to provide assistance and to assess the creditworthiness will lead to responsible borrowing decisions, so that both parties (institution and customer) make an accurate assessment of the financial situation of the customer and of his capacity to fulfil the obligations arising from the loan agreement.

### **Contractual information and information to be provided during the period of the contract**

The credit agreement concluded between the institution and the customer shall reflect in a clear and complete manner the information and the conditions stated in the SIS. On signing the credit contract, the credit institution shall deliver a copy of the contract to all contracting parties, including not only the borrower but also, where applicable, the guarantors (or sureties).

**Information items of the agreement**

The customer can also request at any time and free of charge a copy of the amortisation table containing information on the instalments already paid and those payable for the remaining duration of the loan, disaggregated by amount of interest and amount of capital repaid, as well as any other charges applicable.

The period during which the customer has the right of withdrawal from the credit contract was extended from 7 business days to 14 calendar days. This means that the customer can withdraw from the credit agreement without giving any reason, during a period of 14 calendar days starting from the day of the conclusion of the credit agreement, or from the day on which the customer receives a copy of the contractual terms and conditions, if that day is later than the date of the conclusion referred to above. Moreover, in accordance with the law currently in force the customer may not waive the right of withdrawal, whereas before the customer could waive that right in the event of immediate delivery of the good being financed.

**Right of withdrawal**

**Early  
repayment**

Throughout the duration of the credit agreement, the customer has, at any time, the right to make an early repayment of credit either in part or in full. Fees shall no longer be imposed on the early repayment of variable-rate loans and the rules for the calculation of the maximum fee imposed on fixed-rate loans were simplified. Therefore, in the latter type of loans, the maximum fee that the credit institution is allowed to impose is 0.5 per cent of the capital repaid in advance, if the period of time between the early repayment and the agreed termination of the credit agreement exceeds one year, and a maximum fee of 0.25 per cent if that period does not exceed one year.

Early repayment was already envisaged in the former legal framework, although partial early repayment could only be made once throughout the duration of the credit agreement (except if otherwise agreed between the parties). On the other hand, the rule that defined the maximum fee that the credit institution was allowed to charge was based on the present value of outstanding instalments at a rate corresponding to 90 per cent of the applicable interest rate. This rule was more complex than the one set forth in the new legislation and made it difficult for the customer to perceive the costs he would incur if he chose to make an early repayment of credit.

**Annual percentage rate of charge**

**Nominal  
interest rate**

The annual nominal interest rate is charged on the amount borrowed by the customer, therefore defining the amount of interest payable for the loan. However, the cost of credit not only includes interest, but also other charges, such as initial fees or other fees charged throughout the duration of the credit agreement, stamp duties or compulsory insurance.

In order to enable the customer to have a measure of the total cost of the credit, institutions must also indicate the APR, which reflects all the charges the customer has to pay, being expressed as the annual percentage of the total amount of the loan. The annual nominal rate and the APR shall be compulsorily indicated in the advertising of consumer credit products, in the price lists of the institutions, in the pre-contractual information contained in the SIS and in the loan agreement.

**Calculation of  
the APR**

The law lays down several general principles and assumptions used in order to calculate the APR (Decree-Law No 133/2009), which were systematised by Banco de Portugal, namely as regards the charges to be taken into account for the calculation of this rate and the calculation methodology applicable to the different types of loans (Instruction of Banco de Portugal No 11/2009). Indeed, there are several types of consumer credit, with specific characteristics in terms of duration, type of repayment plan and how the amount of the loan is made available, whereby the rules applicable for the calculation of the APR are different. Therefore, specific rules shall apply to the following types of loan: classic loan (e.g. personal and car loans), leasing contract, revolving credit (e.g. credit cards) and overdraft facility.

The definition of clear rules for the calculation of the APR is crucial to ensure harmonisation of information between credit institutions and to enable customers to compare the cost of credit associated to the different offers by the institutions.



## Interest rate caps

The new law sets interest rate caps for consumer credit (Decree-Law No 133/2009). To encompass the total cost of the credit, the APR is used as a reference rate.

It is Banco de Portugal's responsibility to publish on a quarterly basis the interest rate caps for each type of loan. Interest rate caps are calculated on the basis of the average APR applicable to loan agreements concluded by all credit institutions in the quarter preceding their release increased by one-third. Loan agreements presenting higher interest rates than the interest rate caps are automatically adjusted to that level.

For the calculation of interest rate caps, all credit institutions must report on a monthly basis to Banco de Portugal information on all new consumer credit contracts concluded in the previous month (Instruction of Banco de Portugal No 12/2009).

The rules used for the calculation of the APR, that follow the general principles laid down in the EU Directive on credit agreements for consumers, were systematised by Banco de Portugal (Instruction of Banco de Portugal No 11/2009) in articulation with the credit institutions to ensure comparability of rates and the robustness of their calculation.

In order to have an adequate perception of the consumer credit market, studies were undertaken in 2009 before the first release of interest rate caps, which occurred in December.

The model followed in Portuguese law for the setting of interest rate caps is close to the French one and similar to the Italian and Belgian. To this end, studies of the international framework were undertaken to obtain more extensive knowledge about the current practices in Europe. Two distinct approaches were identified: interest rate caps are set on credit and the rates applied on credit are assessed by the courts. The first approach is adopted in France, Italy and Belgium, being also the model followed in Portugal. In France, interest rate caps have been in place since the 1960s and are also applicable to mortgage and corporate loans, i.e. a similar scope to that adopted in Italy. In other countries, such as Spain<sup>(1)</sup>, Germany and the United Kingdom, the assessment of the adequacy of a rate falls upon jurisprudence.

The French model is the most similar to that adopted in Portugal, considering that in spite of having a wider scope, interest rate caps also correspond to the average APR of each type of contract increased by one-third.

The first release of interest rate caps by Banco de Portugal occurred on 9 December 2009 (Instruction of Banco de Portugal No 26/2009), being applicable to the agreements in force in the first quarter of 2010. This early release enabled institutions to adjust the conditions of their products and to customize loan granting procedures. In turn, it enabled customers to be informed of the interest rate caps applicable when applying for consumer credit in the first quarter of 2010, thereby increasing the transparency of this market. Interest rate caps to prevail in the second quarter of 2010 were made publicly available in the beginning of March (Instruction of Banco de Portugal No 7/2010).

(1) Except for bank overdrafts to which a maximum limit is applied. The consumer credit law (*Ley 7/1995*, Article 19 (4)) sets a ceiling on credit granted in the form of an overdraft facility and stipulates that interest shall not be higher than 2.5 times a legally fixed rate ("*interés legal del dinero*").

#### 4. Payment services market

##### **Recent changes**

In 2009 the rights and obligations of the parties involved in a payment transaction were substantially revised. These parties are: “payment service users” (i.e. “payers” or “payees” in payment transactions) and “payment service providers” (i.e. institutions authorised to provide payment services, such as credit institutions, electronic-money institutions, providers of postal services and a new category of entities that has now been introduced – payment institutions).

The new rules are set out in the Legal Framework of Payment Institutions and Payment Services (annexed to Decree-Law No 317/2009 of 30 October), which resulted from the transposition into Portuguese law of the new Community framework (Directive 2007/64/EC).

The new rules are applicable to all services related to deposit and withdrawal of cash, all operations required for the management of payment accounts, bank transfers, direct debits, remittance of funds and payment transactions made through (debit and credit) cards, as well as to the issuance and purchase of payment instruments.

Cash payments and, given their characteristics, payment transactions based on paper cheques are not covered by the new rules.

The rules set forth in the new legal framework shall always apply where customers are consumers (i.e. natural persons who, in payment services contracts, act for purposes other than their business or profession) or micro enterprises, although some rules can be waived by the parties in other situations.

In addition to the right to information – pre-contractual, contractual and throughout the duration of the contract – payment service customers have several others, namely the right to obtain rectification, without charge, of unauthorised or incorrectly executed payment transactions, provided that it notifies the payment service provider within the agreed time limits.

The maximum time limit for the execution of payment transactions in euro (and in all other currencies of the EU Member States, unless otherwise agreed between the parties) was harmonised at Community level.

Therefore, in domestic transfers between accounts of the same institution (interbank transfers) the amounts involved shall be credited in the account of the payee on the same day (value date of the moment the amount was credited). A maximum time of three business days was established on cross-border payment transactions (between institutions located in EU Member States) for the payee to have the funds available (this period can be extended by an additional business day in the case of paper-based transfer orders). In the remaining payment transactions, as a general rule, the relevant amount shall be credited in the payee's payment account by the end of the following business day.

On cash deposits, funds shall become immediately available, when made by a consumer. Otherwise, funds shall be available on the following business day, at the latest.

For payments up to EUR 50,000, including direct debits, the principle of equality of charges was established on cross-border payments in euro within the European Community (Regulation (EC) No 924/2009).

## Information to be provided to payment service users

Os prestadores de serviços de pagamento estão obrigados a comunicar, aos respectivos Payment service providers shall compulsorily communicate to the respective customers, all relevant information on the service to be provided and its conditions, before and on the date the service is contracted by the two parties. Users shall also be provided with detailed information on each payment transaction to be executed.

All information shall be provided in Portuguese (unless otherwise agreed between the parties) in easily understandable words and in a clear and comprehensible form, and when the information is given on paper or another durable medium, it shall be easily read by the customer.

Some of the information requirements established in the Legal Framework of Payment Institutions and Payment Services are not applicable, or may be reduced if agreed by the parties, in the case of low-value payment instruments (i.e. instruments which concern individual payment transactions that do not exceed EUR 30, or that either have a spending limit of EUR 150 or store funds that do not exceed EUR 150) and electronic money (i.e. monetary value stored in an electronic device).

## Pre-contractual and contractual information

Payment service users have the right to know all applicable terms and conditions, before contracting the relevant service – regardless of whether it is a “framework contract” (i.e. covering a series of payment transactions), or a single payment transaction.

**Information items of the contract**

Before the payment service user is bound by any single service contract or offer (or, when a means of distance communication is used, immediately after the user is bound by the contract or offer), the payment service provider is obliged to make available to the payment service user a set of information, including that needed to execute the transaction, the maximum execution time and the amount of all charges applicable, with a breakdown thereof.

Moreover, before the conclusion of a “framework contract” for the provision of payment services, the payment service provider shall provide the payment service user on paper or on another durable medium with the information and conditions, which shall include, in particular:

- the identification of the payment service provider;
- a description of the main characteristics of the payment service to be provided;
- the form of and procedure for giving consent to execute a payment transaction;
- the maximum execution time for the payment services to be provided;
- all charges payable by the payment service user to the payment service provider and where applicable, the interest and exchange rates to be applied;
- the manner in and frequency with which information is to be provided or made available;
- the security procedures to be adopted by the payment service user;
- how and within what period of time the payment service user is to notify the payment service provider of any unauthorised or incorrectly executed payment transaction and conditions for refund of payment transactions, where applicable;
- the procedures regarding changes in and termination of the framework contract;
- the out-of-court complaint and redress procedures available.

Pre-contractual information requirements may also be fulfilled by supplying to the customer a copy of the draft “framework contract” including the information and conditions referred to above.

At any time during the contractual relationship the payment service user shall have a right to receive, on request, the contractual terms of the contract.

The payment service contract should provide the payment service user with the possibility of establishing spending limits for payment transactions executed through a specific payment instrument.

In the event of loss, theft or misappropriation of the payment instrument or of its unauthorised use, the customer shall notify, without undue delay, his service provider, in accordance with the forms, means and deadline established in the contract. For those purposes, access to the means needed to provide evidence that the said communication was made shall be guaranteed.

### **Unauthorised transactions**

The customer shall not bear any financial consequences resulting from the use of the payment instrument after the said notification was made, except where he has acted fraudulently. The user shall bear the losses relating to any unauthorised payment transactions, executed prior to the said notification, up to the amount of the available balance or of the credit line associated with the account or payment instrument, up to a maximum of EUR 150. In case of gross negligence of the customer, the maximum amount shall not apply.

However, even after the said notification, the user shall bear all the losses relating to any unauthorised payment transactions if he incurred them by acting fraudulently or by failing to fulfil one or more of his obligations in accordance with the terms governing the issue and use of the payment instrument or by failing to notify the payment service provider, without undue delay on becoming aware of loss, theft or misappropriation of the payment instrument or of its unauthorised use.

The payment service provider may only block a payment instrument if provided for in the framework contract and for objectively justified reasons related to:

- the security of the payment instrument;
- the suspicion of unauthorised or fraudulent use of the payment instrument;
- a significantly increased risk that the payer may be unable to fulfil his liability to pay, in the case of a payment instrument with an associated credit line.

### **Blocking of payment instruments**

The payment instrument shall be immediately unblocked or replaced with a new one once the reasons for blocking no longer exist.

However, the payment service provider must refrain from sending unsolicited payment instruments, except in replacement of payment instruments already provided to the user.

The payment service provider may propose changes, throughout the duration of the contract, to the information and conditions established, no later than two months before their proposed date of application. If the user so decides, he may terminate the contract immediately without incurring charges, before the introduction of changes. If provided for in the contract, the change of contractual conditions shall be tacitly accepted by the user, unless he communicates his opposition within the agreed time limit.

The payment service user may terminate the contract at any time, unless the parties have agreed on a period of notice. Such a period may not exceed one month. Payment service providers are not allowed to impose termination charges on consumers and micro enterprises.

### **Termination of the contract**

As the new legal framework applicable to the provision of payment services became effective on 1 November 2009, payment service providers are required to communicate to their customers the changes that will be introduced in the existing payment service contracts before that date, within a maximum of 6 months.

Without prejudice to this communication, all provisions of the new legal framework which are more favourable to the payment service users took immediate effect with the publication of the new legal framework.

### **Information to be provided during the period of the contract**

In addition to the information included in the contract, the payment service provider shall provide the customer (payer and/or payee) with detailed information on each payment transaction executed.

### **Statement of account**

This information shall include:

- a reference enabling the identification of each payment transaction and, where appropriate, information relating to the payer or payee;
- the amount of the payment transaction in the currency in which the payer's account is debited or in the currency used for the payment order;
- the amount of any charges for the payment transaction and a breakdown thereof;
- where applicable, the exchange rate used in the payment transaction by the payer's payment service provider, and the amount of the payment transaction after that currency conversion;
- the date of receipt of the payment order or the debit or credit value date .

In the case of single payment transactions, this information shall be provided to the payment service user, immediately after the execution of the payment transaction. If the payment transactions are executed under a “framework contract”, this information may be provided periodically, at least once a month, and in an agreed durable medium, which shall be paper upon the express request of the payment service user.

Information on payment transactions should be given free of charge. However, the parties may agree on charges for additional or more frequent information, or by means of communication other than those specified in the framework contract.

