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Text of the Instruction

Subject: Reporting obligations relating to organisational conduct and culture and internal control and governance systems

Taking into account the principle of proportionality, this Instruction regulates the reporting obligations to the competent supervisory authority imposed on the entities covered by Notice of the Banco de Portugal No 3/2020, concerning organisational conduct and culture and the internal control and governance systems.

In particular, this Instruction establishes the rules that must be observed by the entities covered by Notice of the Banco de Portugal No 3/2020 on the following:

- the submission of self-assessment reports to the competent supervisory authority on the adequacy and effectiveness of the organisational culture and internal control and governance systems, and the Annexes thereof;
- the content and submission of the report provided for in Article 116-AA(7) of the Legal Framework of Credit Institutions and Financial Companies to the competent supervisory authority;
- the content and reporting on the staff members that have a material impact on the institution's risk profile;
- the reporting on the procedure for the approval of a higher maximum level of the variable component of remuneration, as provided for in Article 115-F(5) of the Legal Framework of Credit Institutions and Financial Companies.

This Instruction also lays down a non-exhaustive list of risk categories that should be taken into account by the entities covered by Notice of the Banco de Portugal No 3/2020, which allows for the identification, assessment, monitoring and control of the risks to which such entities are or might be exposed (Annex I).

Finally, this Instruction also includes the file to be used by the aforementioned entities to report the identified deficiencies in terms of organisational conduct and culture, internal control and governance systems, which will be available in the BPnet system. The draft proposal of this Instruction was submitted to public consultation, and the Portuguese Securities Market Commission (*Comissão do*

¹ In the event of inconsistency or discrepancy between the English and the Portuguese language versions, the Portuguese language version shall prevail.

Mercado de Valores Mobiliários – CMVM), the Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões*) and the Portuguese Data Protection Authority (*Comissão Nacional de Proteção de Dados*) were heard.

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Thus, in the exercise of the powers conferred upon it by Article 133(c) of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law No 298/92 of 31 December 1992, the Banco de Portugal hereby decrees as follows:

CHAPTER I

General provisions

Article 1

Subject matter

This Instruction regulates:

- (a) the submission of self-assessment reports to the competent supervisory authority on the adequacy and effectiveness of the organisational culture and internal control and governance systems by the entities covered by Notice of the Banco de Portugal No 3/2020, and the Annexes thereof;
- (b) the content and submission of the report provided for in Article 116-AA(7) of the Legal Framework of Credit Institutions and Financial Companies to the competent supervisory authority;
- (c) the content and reporting on the staff members that have a material impact on the institution's risk profile, as provided for in Article 41(1)(c) of Notice of the Banco de Portugal No 3/2020;
- (d) the reporting on the procedure for the approval of a higher maximum level of the variable component of remuneration, as provided for in Article 115-F(5) of the Legal Framework of Credit Institutions and Financial Companies.

CHAPTER II

Obligation to submit annual self-assessment reports

Article 2

Annual self-assessment report

1 – The institutions shall submit to the competent supervisory authority the annual self-assessment report on the adequacy and effectiveness of the organisational culture and internal control and governance systems, provided for in Article 55 of Notice of the Banco de Portugal No 3/2020, together with the following:

- (a) identification of the heads of the internal control functions, with their contacts (telephone and email address);
- (b) identification of the business unit responsible for coordinating the preparation of the self-assessment report;

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- (c) a description, organised by risk categories to which the institution is exposed, taking into account the different categories of risks listed in Annex I to this Instruction and the methodology for the classification of the deficiencies set out in Annex II, of the following deficiencies identified in the period to which the report relates and which are not fully remedied:
 - (i) deficiencies detected during the control initiatives and assessments carried out by the institution and its statutory auditor or audit firm;
 - (ii) deficiencies detected by any supervisory authorities.
 - (d) a description of the deficiencies identified in previous reports and which remain open;
 - (e) a report issued by the head of the internal audit function with validation of the classification of deficiencies taking into account the methodology set out in Annex II;
 - (f) explicit statements issued by the management body and the supervisory body on the adequacy of the classification applied to deficiencies classified as F3 (High) or F4 (Severe), taking into account the methodology set out in Annex II to this Instruction;
 - (g) a copy of the multi-year plan of internal audits provided for in Article 32(1)(a) of Notice of the Banco de Portugal No 3/2020 and an indication of the date of the last audit carried out for each institution's business unit, with explicit confirmation that all business units and business areas of the institution are included in the plan;
 - (h) where applicable, a description of any significant changes in the institution's internal organisation which have occurred in the period to which the report relates;
 - (i) with the first report to be submitted under this Instruction and where significant changes are observed, a description of the criteria developed by the institution for the classification of deficiencies in accordance with Annex II;
 - (j) assessment of the fulfilment of the conditions laid down in Article 16(1)(a) of Notice of the Banco de Portugal No 3/2020 and, where they are fulfilled and the institution chooses not to have an independent risk management function, a description of the mechanisms implemented to comply with paragraph 1 of that Article;
 - (k) assessment of the fulfilment of the conditions laid down in Article 16(1)(b) of Notice of the Banco de Portugal No 3/2020 and, where they are fulfilled and the institution chooses not to have an independent compliance function, a description of the mechanisms implemented to comply with paragraph 1 of that Article;
 - (l) assessment of whether the requirements set out in Article 16(3) and (4) of Notice of the Banco de Portugal No 3/2020 are met and, where they are fulfilled and the institution chooses to outsource the entire internal audit function, the reasons for this option;
 - (m) where the institution has chosen to combine the risk management and compliance functions into a single business unit, the reasons of the management body for this option, in accordance with Article 16(2) of Notice of the Banco de Portugal No 3/2020.

2 – The reference date of the report referred to in paragraph 1 shall be 30 November of each year, and the competent supervisory authority may always request updated information from the institutions on its content, particularly status reports on the implementation of measures to remedy the reported deficiencies.

Article 3

Treatment of deficiencies in the annual self-assessment report

1 – For the purposes of Article 2(1)(c) and for each of the deficiencies classified as F3 (High) or F4 (Severe), the description shall include the following information taking into account the methodology set out in Annex II:

- (a) assigned numeric or alphanumeric code;
- (b) risk category or categories should the deficiency fall within more than one risk category, in accordance with Annex I to this Instruction;
- (c) classification of the deficiency taking into account the methodology set out in Annex II to this Instruction;
- (d) the business unit, function or body to which the deficiency is related;
- (e) the date on which it was identified and the date on which the management body was informed thereof;
- (f) the internal control function responsible for monitoring the implementation of measures to remedy the deficiency;
- (g) description of the deficiency and its potential implications;
- (h) indication of whether the deficiency has been identified by the statutory auditor or audit firm or by another entity outside the institution, in particular supervisory authorities, including a reference to the document in which it was identified and the reference date;
- (i) indication of whether the deficiency had already been identified in the previous report;
- (j) the ongoing measures or those to be adopted to remedy the deficiencies and prevent any future occurrence, including the deadlines set for this purpose;
- (k) indication of whether the planned date for implementing the measures to remedy the deficiency has been extended, the reason for this extension and a new planned date for implementing the measures.

2 – For the purposes of Article 2(1)(c), the report shall also include the number of deficiencies classified as F1 (Low) or F2 (Moderate), taking into account the methodology set out in Annex II and indicating the number of deficiencies still pending for over one year and the number of measures subject to extension in relation to the deadline initially set.

3 – The institution shall document detailed information on deficiencies classified as F1 (Low) or F2 (Moderate), which shall immediately be made available upon request from the competent supervisory authority.

4 – Each deficiency shall be accounted and reported only once and the business unit, function or body to which it relates shall be responsible for that report.

5 – The management body shall ensure that the institution does not limit the number of deficiencies reported in the report.

6 – The deficiencies shall be reported in an editable format, using the files set out in Annex III to this Instruction and available on the BPnet system.

CHAPTER III

Annual self-assessment reports in financial groups

Article 4

Group annual self-assessment report

1 – The institutions shall submit the group annual self-assessment report to the competent supervisory authority, which is provided for in Article 58 of Notice of the Banco de Portugal No 3/2020, together with the following:

- (a) identification of the heads of the internal control functions of the parent undertaking, with their telephone numbers and email address;
- (b) identification of the business unit responsible for coordinating the preparation of the self-assessment report;
- (c) a description, organised by risk categories to which the financial group is exposed, taking into account the different categories of risks listed in Annex I to this Instruction and the methodology for the classification of the deficiencies set out in Annex II, and taking into account Article 3(1), of the following deficiencies identified in the period to which the report relates and which are not fully remedied:
 - (i) deficiencies detected during the control initiatives and assessments carried out by the statutory auditor or audit firm, the parent company or any subsidiary with an impact on the financial group's internal control system;
 - (ii) deficiencies detected by any supervisory authorities on the financial group's internal control system;
 - (iii) deficiencies associated with centralised tasks of the various entities of the group, when there are common services.
- (d) a description of the deficiencies identified in previous reports and which are still pending;
- (e) explicit statements issued by the management body and the supervisory body on the adequacy of the classification applied to deficiencies classified as F3 (High) or F4 (Severe), taking into account the methodology set out in Annex II and assessing the impact of those deficiencies on the financial group's internal control system;
- (f) a copy of the parent undertaking's multi-year plan of internal audits of the financial group's internal control system and an indication of the date of the last audit carried out, with explicit confirmation that all the components relevant to the financial group's internal control system are included in the plan;
- (g) where applicable, a description of any significant changes in the organisational structure of the financial group, which have occurred in the period to which the report relates;
- (h) with the first report to be submitted under this Instruction and where significant changes are observed, a description of the criteria developed by the institution for the classification of deficiencies in accordance with Annex II.

2 – For the purposes of subparagraph (c) of the foregoing paragraph, only deficiencies which are classified as F3 (High) or F4 (Severe), irrespective of their subsidiary's classification, are taken into account, according to the methodology set out in Annex II to this Instruction, given their impact on the group.

3 – If the competent supervisory authority considers that the reasoning is not sufficient to exclude the obligation to prepare individual reports in accordance with Article 58(1)(e) of Notice of the Banco de Portugal No 3/2020, the competent supervisory authority may always request their preparation.

4 – The deficiencies shall be reported in an editable format, using the files set out in Annex III to this Instruction and available on the BPnet system.

CHAPTER IV

Reporting timelines to the competent supervisory authority

Article 5

Entities authorised to receive deposits

The management body of institutions that are entities authorised to receive deposits shall ensure that the annual self-assessment report referred to in Article 55 of Notice of the Banco de Portugal No 3/2020, including the elements referred to in Article 2 of this Instruction, is submitted to the competent supervisory authority by 31 December of each year.

Article 6

Entities not authorised to receive deposits

1 – The management body of institutions that are not covered by the provisions of the foregoing Article shall ensure that the annual self-assessment report referred to in Article 55 of Notice of the Banco de Portugal No 3/2020, excluding the elements referred to in Article 2 of this Instruction, is submitted to the competent supervisory authority by 31 December of each year.

2 – The institutions referred to in this Article shall immediately submit the elements referred to in Article 2 upon request from the competent supervisory authority.

Article 7

Financial groups

1 – The management body of the parent undertaking of a group which includes entities authorised to receive deposits shall:

- (a) ensure that the group annual self-assessment report referred to in Article 58(1) of Notice of the Banco de Portugal No 3/2020, including the elements referred to in Article 4 of this Instruction, is submitted to the competent supervisory authority by 31 December of each year;
- (b) ensure that individual reports concerning entities authorised to receive deposits referred to in Article 58(1)(e) of Notice of the Banco de Portugal No 3/2020, including the elements referred to in Article 2 of this Instruction, are submitted to the competent supervisory authority within the time limit referred to in the foregoing subparagraph.

- 2 – The management body of the parent undertaking of a group shall ensure that the annual self-assessment reports referred to in Article 58(1)(e) of Notice of the Banco de Portugal No 3/2020, excluding the elements referred to in Article 2 of this Instruction, with regard to entities not authorised to receive deposits, are submitted to the competent supervisory authority by 31 December of each year.
- 3 – The management body of the parent undertaking of a group shall immediately submit the elements referred to in Article 2 of this Instruction with regard to entities not authorised to receive deposits, upon request from the competent supervisory authority.
- 4 – The reporting by the parent undertaking of the individual reports referred to in this Article fulfils the obligations laid down in Articles 5 and 6 of this Instruction.

CHAPTER V

Reporting of irregularities

Article 8

Annual report to be submitted to the competent supervisory authority

1 – The annual report provided for in Article 116-AA(7) of the Legal Framework of Credit Institutions and Financial Companies shall include:

- (a) a description of the means in place for receiving, processing and filing the reporting of irregularities provided for in Article 116-AA(1) of the Legal Framework of Credit Institutions and Financial Companies;
- (b) for each report received in the reference period, an indication of the following:
 - (i) internal reference assigned to the report;
 - (ii) date of receipt of the report;
 - (iii) a summary description of the facts reported and an analysis of the irregularities reported, including their legal framework;
 - (iv) a summary description of the inquiries into the facts reported;
 - (v) whether the proceedings are pending or finalised;
 - (vi) the outcome of the investigations;
 - (vii) where the report is not anonymous, the date of reply to the reporting person;
 - (viii) a description of the measures adopted or to be adopted as a result of the reporting of irregularities or the reasoning for not adopting any measures;
- (c) an indication of the total number of reports received during the reference period.

2 – The Central Mutual Agricultural Credit Bank shall prepare a report template to be issued by the institutions which are part of the Integrated Mutual Agricultural Credit Scheme.

3 – The institutions referred to in the foregoing paragraph shall submit the annual report provided for in this Article to the Central Mutual Agricultural Credit Bank within 15 days of its conclusion, while the institution may request any clarification it deems necessary.

Article 9

Submission of the irregularities report

1 – The report referred to in the foregoing Article shall be prepared with the reference date of 30 November of each year and submitted to the competent supervisory authority by 31 December of each year.

2 – The reports relating to institutions that are part of the Integrated Mutual Agricultural Credit Scheme shall be submitted by the Central Mutual Agricultural Credit Bank to the competent supervisory authority by 31 January each year.

CHAPTER VI

Staff members that have a material impact on the institution's risk profile

Article 10

Reporting of the staff members that have a material impact on the institution's risk profile

The staff members that have a material impact on the institution's risk profile, as provided for in Article 41(1)(c) of Notice of the Banco de Portugal No 3/2020 shall be reported to the competent supervisory authority by 31 December of each year and shall include, at least, the following for each staff member:

- (a) the staff member's unique ID;
- (b) the staff member's function or responsibility in the institution;
- (c) identification of the business unit in which the staff member performs functions;
- (d) identification of the criterion applied to assess the material impact on the institution's risk profile;
- (e) total annual remuneration received in the last year, calculated in accordance with the regulatory technical standards for the qualitative and appropriate quantitative criteria to identify the categories of staff whose professional activities have a material impact on the institution's risk profile.

CHAPTER VII

Reporting on the procedure for the approval of a higher maximum level of the variable component of remuneration

Article 11

Reporting under Article 115-F(5) of the Legal Framework of Credit Institutions and Financial Companies

For the purposes of reporting the information provided for in Article 115-F(5) of the Legal Framework of Credit Institutions and Financial Companies, the institutions shall submit the following to the competent supervisory authority:

- (a) within 5 working days of the notice convening the shareholders' meeting, a detailed proposal for the approval of a higher maximum level of the variable component of remuneration submitted to that shareholders' meeting, under Article 115-F(4)(a) of the Legal Framework of Credit Institutions and Financial Companies; and
- (b) within 5 working days following the shareholders' meeting, a copy of the minutes of that meeting containing the resolution adopted under Article 115-F(4)(b) of the Legal Framework of Credit Institutions and Financial Companies, irrespective of the outcome.

CHAPTER VIII

Reporting method

Article 12

Reporting through the BPnet system

1 – The documents reported to the competent supervisory authority under this Instruction shall be submitted through the BPnet system, regulated by Instruction of the Banco de Portugal No 5/2016, with the exception of the reporting referred to in Article 11 of this Instruction.

2 – The report referred to in Article 11 of this Instruction shall be submitted to the competent supervisory authority by letter or by email.

CHAPTER IX

Final and transitional provisions

Article 13

Transitional reporting timelines

1 – The first submission of the reports and other documents provided for in this Instruction to the competent supervisory authority shall occur by 1 March 2021, accompanied by a description of the dedicated, ongoing and planned activities for 2021 aiming to ensure full compliance with the provisions of Notice of the Banco de Portugal No 3/2020 and this Instruction, including training courses on the subject that have been attended or are to be attended by the members of the management and supervisory bodies, the remaining senior management members and key function holders.

2 – The following report shall be submitted by 31 December 2021, as provided for in this Instruction.

Article 14

Entry into force

This Instruction shall enter into force on the day following that of its publication.

ANNEX I
RISK CATEGORIES

Risk category	Risk subcategory
Business model risk	Business model viability
	Business model sustainability
Internal governance risk	Internal governance structure
	Risk management framework and risk culture
	Infrastructure, data and reporting
Credit Risk	Default risk
	Country risk
	Foreign exchange credit risk
	Sovereign risk
	Specialised lending risk
	Counterparty credit risk
	Migration risk
	Credit spread risk
	Credit concentration risk
	Securitisation risk
	Residual risk
	Dilution risk
	Settlement and delivery risk
Market risk	General position risk (debt instruments)
	Specific position risk (debt instruments)
	Credit spread risk
	Equity instruments risk
	Migration risk
	Default risk
	Commodities risk
	Foreign exchange risk
	Option risk
	Credit valuation adjustment risk
	Equity instruments risk in the banking book
	Basis risk
	Sovereign risk
	Concentration risk / Liquidity risk

Interest-rate risk in the banking book	Reassessment risk
	Yield curve risk
	Basis risk
	Option risk

Operational risk	Internal fraud
	External fraud
	Employment practices and workplace safety
	Clients, products & business practices
	Damage to physical assets
	Business disruption
	Execution, delivery & process management
	Information and communication technologies

Risk to liquidity and funding	Gross financing risk
	Retail financing risk
	Funding cost risk
	Intraday risk
	Foreign exchange risk to liquidity and/or funding
	Intragroup risk to liquidity and/or funding
	Concentration risk to liquidity and/or funding
	Risk of cash flow mismatch

Other risks	Reputational risk
	Compliance risk
	Money laundering and terrorist financing risk
	Pension fund risk
	Insurance risk
	Real estate risk
	Step-in risk
	Participation risk
	Other concentration risks
	Risk of excessive leverage
	Group risk

Note: The institutions must allocate the risks to which they are exposed to the seven risk categories indicated in the table above. The column entitled “Risk subcategory” is a non-exhaustive list of risks to which an institution is or might be exposed, intending to reflect risk taxonomies commonly used by institutions.

ANNEX II
CLASSIFICATION METHODOLOGY FOR DEFICIENCIES

Deficiency arising from non-compliance with:	Impact (current or potential)*:	Classification
Legislation / Regulation / Internal rules Soft law / Best Practices	Low impact	F1 – Low
Legislation / Regulation / Internal rules Soft law / Best practices	Moderate impact	F2 – Moderate
Legislation / Regulation / Internal rules	High impact	F3 – High
Legislation / Regulation / Internal rules	Very high impact	F4– Severe

*Impact on the financial position of the institution, own funds requirement level, internal governance, liquidity, leverage, business model, risk management and control.

ANNEX III
FILE FOR REPORTING DEFICIENCIES

Deficiencies classified as F3 (High) and F4 (Severe)

Entity	
Numeric or alphanumeric code of the deficiency	[DD.MM.YY]
Risk category(ies)	
Deficiency classification	[F3/F4]
Business unit, function or body to which the deficiency is related	
Date of deficiency detection	[DD.MM.YY]
Date on which the management body was notified of the deficiency	[DD.MM.YY]
Internal control function responsible for monitoring the implementation of measures to remedy the deficiency	
Deficiency description	
Description of the potential implications of the deficiency	
Has the deficiency been identified by the statutory auditor or audit firm or other entity outside the institution? If so, the entity's identification, an indication of the document in which it was identified and the reference date	
Has the deficiency been identified by a supervisory authority? If so, the authority's identification, an indication of the document in which it was identified and the reference date	
Had the deficiency already been identified in the previous report?	
Measures to remedy the deficiency	
Estimated date of remedy	[DD.MM.YY]
Has the planned date for implementation of the measures been extended?	
Reason for extension	
New planned date for implementation of the measures to remedy the deficiency	[DD.MM.YY]

Deficiencies classified as F1 (low) and F2 (moderate)

Risk category	No of deficiencies F1	No of measures to remedy F1 deficiencies that have been extended	No of deficiencies F2	No of measures to remedy F2 deficiencies that have been extended
Credit risk				
<1 year				
between 1 and 3 years				
>3 years				
Market risk				
<1 year				
between 1 and 3 years				
>3 years				
Interest-rate risk in the banking book				
<1 year				
between 1 and 3 years				
>3 years				
Operational risk				
<1 year				
between 1 and 3 years				
>3 years				
Risk to liquidity and funding				
<1 year				
between 1 and 3 years				
>3 years				
Internal governance risk				
<1 year				
between 1 and 3 years				
>3 years				
Business model risk				
<1 year				
between 1 and 3 years				
>3 years				
Other risks				
<1 year				
between 1 and 3 years				
>3 years				