

NEWS

BANKING & FINANCE / CAPITAL MARKETS

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Since our last Newsletter many were the advances and setbacks in the economic and political context in Europe and in Portugal. Important to note is Ireland's official exit of the recession after quarters of positive performance, being an indicator of recovery at a euro global level.

In Portugal, March was the month in which the results of the seventh review of the Programme of Economic and Financial Assistance were presented, but the lack of a medium-term expenditure framework and a plan to reform the State delayed the evaluation until June. The flunking by the Constitutional Court of four State Budget's provisions for 2013 led the lending institutions to require compensation due to the budget deviation and thus the Portuguese authorities only reached an agreement with the troika two months later, in May. Furthermore, the position of the Portuguese Government diverged from troika's understanding on the deficit target for the year 2014, with the Government proposing 4.5% and the troika insisting on 4%.

The eighth and ninth evaluations began in September, altogether to enable the completion of the adjustment program on schedule, in which the troika did not ease on the deficit targets of 4%, with the argument of the ability to endure this contractionary shock, in a context where the surrounding external give signs of improvement.

In the market, some developments took place and significant transactions were closed, demonstrating an unexpected resilience. The Revitalizar funds launched in August 2013 will make 220 million euros available to small and medium businesses. The merger of Zon and Optimus was registered in August and the new company Zon Optimus was born. At the debt level, we see the continued success of bond issues to the market, for example the public offerings of bonds of EDP and Brisa both directed to international markets.

Despite an active Portuguese market scenario in 2013, not everything developed as expected. Regarding the recapitalization operations of the banks, we highlight the approvals in Brussels of the restructuring plans of CGD, BPI and BCP, completed with fewer impositions than many predicted but imposing relevant reformist measures. The focus now is to reimburse the State (and BPI is in the lead), the completion of their repayment plans of contingent convertible bonds ("CoCos") still being awaited. Banif's case is in Brussels for approval, characterized by the use of private shareholders to meet a capital increase of €450 million. As of today, the bank raised €310 million, €100 million subscribed by reference shareholders, €100 million by retail investors and €40.7 million by 16 institutional investors, the remaining €70 million

EDITORIAL

Pedro Cassiano Santos

being achieved by public offer of exchange between subordinated debt and other hybrid securities of the bank for Banif shares. In this context, Banif started the repayment of the CoCos underwritten by the State, having repaid €150 million in August. Although Portuguese banks have strengthened their liquidity and capital levels, the default rate on loans granted continues to rise due to the deep recession that Portugal is in, meaning that credit risk will remain high and banks will have to maintain a prudent write-down policy. The Bank of Portugal considers that banks with a Core Tier 1 ratio above 9% have enough capital to face such increase.

Since April 2013, we highlight the entry into force of (i) the Delegated Regulations (EU) completing Regulation (EU) n.º 648/2012 and covering various aspects of OTC derivative contracts, the regulation of CCP activity and trade repositories, (ii) Decree-Law 58/2013 of 8 May, revising the framework applicable to the classification of credit transactions terms, compensatory interest, capitalization of interest and default interest and default by the debtor, (iii) Decree-Law 63-A/2013 of 10 May, establishing the new legal framework on investment funds.

We try to give a brief account of these legislative changes in the upcoming articles. Thank you for your attention, and if any comments or suggestions on these and other topics should arise, please do let us know through amn@vda.pt.

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3 WORDS FOR THE NON-PERFORMING LOANS (NPLS)

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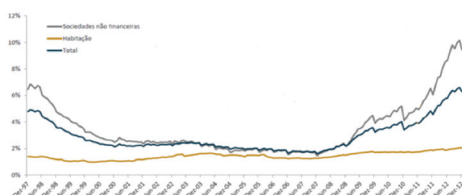
Tiago Correia Moreira / Mariana Padinha Ribeiro

Based on the most recently published numbers in respect of non-performing loans (“NPLs”) in the Portuguese market (available at <http://www.bportugal.pt>), those who have an interest in this sort of assets, including investors, borrowers and originators should reconsider their **perspectives** in respect therewith. Lessons learned from past experiences may certainly prove useful, as well as new solutions to overcome the burdensome of dealing with NPLs.

1. The Numbers

The chart set out below, published by the Portuguese Banks Association, clearly evidences an increase on the NPLs since year-end 2008, particularly in respect of corporate loans. However, with the Economic Adjustment Programme for Portugal agreed in May 2011, numbers of corporate loans in default has further increased.

In the meanwhile, on the mortgage loans front, the figures in respect of NPLs have maintained relatively stable, though there is also a slight increase being registered from the last 2012 semester onwards.

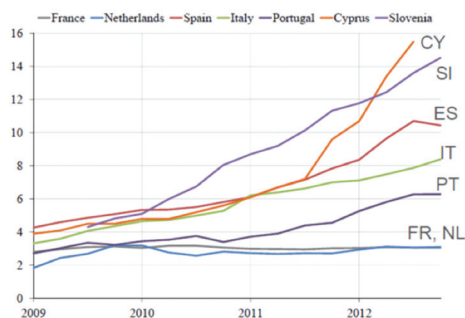


2. The Perspectives

Since there is still some uncertainty on whether the economic and financial environment in Portugal will improve over the next few years and, notably, whether the Economic Adjustment Programme for Portugal will terminate during the course of 2014, it

is likely for the figures described above to maintain the same trend and keep on increasing.

In fact, this is also the perspective ahead at a European level, where the percentages in respect of NPLs have been continuously increasing, even in EU countries where no financial assistance was put in place.



3. The Lessons

Past experiences in dealing with NPLs have confirmed that there are solutions which all market players directly or indirectly may benefit from. These may include (a) restructuring the loan in default, (b) outsourcing the servicing of the loan and (c) securitising the loan.

Negotiate – Restructuring the loan may prove as one of the best alternatives for both creditors and debtors dealing with NPLs. Banks have been implementing restructuring strategies which allow a more successful approach in recovering such loan. By renegotiating certain conditions of the loan, including, for example, the maturity dates, the applicable interest rates, the collateral put in place and any financial covenants agreed, banks should be able to

reclassify the NPL and treat it as a performing loan.

Service – An efficient management of the loan also reveals a fruitful approach to NPLs and there are Portuguese market players focused on assisting banks and other credit institutions in such tasks. The outsourcing of NPLs’ servicing to a skilled and professional servicing company will allow banks to save costs with the daily management of their relationship with the debtors, while benefiting from a specialized assistance in such services.

Securitize – The sale of the NPLs to a special purpose vehicle is also a possible solution to deal with this matter. The advantages of a securitisation are well known but they come into play again when banks are being forced to comply with more demanding own funds ratios. A true sale of the NPLs and, consequently, the release of capital previously consumed to cover the banks’ exposure to such assets in their balance sheets, certainly is an advantage. The Portuguese jurisdiction has proved capable of providing the legal mechanics required for the securitisation of NPLs. It is now time for market players to make the best use of it.

UPDATE AND STANDARDIZATION OF UCI’S INFORMATION AND DISTRIBUTION

Pedro Simões Coelho / Filipe Ravara

As a consequence of the entry into force of the new Legal Framework of Undertakings for Collective Investment (“RJOIC”), as well as the obligation of implementation of the new orientations and guidelines issued by the European Securities and Markets Agency (“ESMA”) Regulation no 5/2013 of CMVM (“Regulation”) was approved and revokes Regulations no. 15/2003 and no. 8/2007 of CMVM.

The Regulation, establishing the implementation rules of the new RJOIC, provides equivalent obligations to the ones established for undertakings for collective investment (“UCI”) to open-ended Pension Funds of individual subscription, related to the disclosure of information and distribution. Although the Regulation sets

up a list of certain types of UCI, it is now possible to adopt different types of UCI from those established in the Regulation. Moreover, the new Regulation defines the terms and conditions through which the units can be issued, as well as the rules regarding the merger, demerger and transformation of UCI.

The new Regulation also effects the orientations and guidelines of ESMA related to (i) the calculation of the global exposure to derivatives, (ii) loan and reporting operations, (iii) information subject to be disclosed by UCIs related to securities admitted to trading in regulated markets and associated to an index and (iv) rules related to the calculation of the synthetic indicator of risk and remuneration included in the key information

document provided to investors.

The main objectives of the introduction of this new set of rules are, on one hand, to enhance the transparency of information, increasing the UCI disclosure duties, in order to provide for investors to take informed investment decisions. On the other hand, it is aimed to safeguard the amounts invested in UCI, through the imposition of procedures which enact the employment of more sustainable management policies by these investment vehicles.



THE PURSUIT OF THE BANKING DEBTOR'S PROTECTION

Ana Moniz Macedo / Francisco Eiró

Decree-Law no. 58/2013 dated 8 May, applicable to all defaulting situations occurring after its entering into force (September 2013), resets the legal framework on the term calculation of credit operations, compensatory interest, interest capitalization and default of the banking debtor, which, up to such time, were regulated by old and asymmetric legislation and which appeared totally inadequate considering the current banking activity.

With the deterioration of the financial situation of the families and the banks facing high credit defaulting rates, this regime specially emphasizes debtor clients' protection, creating conditions to standardize and bring transparency of the activities applicable to situations regulated thereunder.

Within this framework, the capitalization of due and unpaid compensatory interests is allowed for minimum periods of one month, if expressly agreed between the parties. Furthermore, it is no longer allowed the setting of default penalty clauses, being only permitted the collection of a maximum annual surcharge of 3% to be added to the applicable compensatory interest rate, such capi-

talization being restricted to the restructuring or credit operations consolidation cases.

On the other hand, quantitative limits are provided to commission fees and to expenditure of the financial intermediaries, as a penalty for non-compliance.

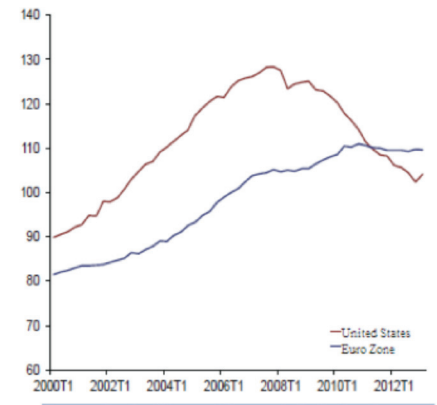
Additionally, this regime categorize the executed credit agreements in short, medium and long term agreements, establishes the calculation formula and the time of payment of compensatory interest and grants powers to the Bank of Portugal to punish violations of these rules through administrative infraction proceedings.

This legal framework has the merit of creating more stable conditions for the bank's borrowers by defining concepts and establishing the maximum to be charged by way of interest, commissions and expenses in the event of arrears in the payment. We hope that this new outlined path will forge a stronger, stable and efficient credit market.



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FAMILIES INDEBTNESS | PERCENTAGE OVER AVAILABLE INCOME



Source: Bank of Portugal Economic Bulletin - Autumn 2013

EMIR DEVELOPMENTS

Orlando Vogler Guiné / Sandra Cardoso

A year has passed since Regulation (EU) no. 648/2012 and in the meantime three implementing regulations and six delegated regulations were also approved (together, the "EMIR"). ESMA released a very useful set of Q&A about the subject, available in the [ESMA's website](#). Under EMIR, counterparties are classified as financial counterparties ("FC") and non-financial counterparties ("NFC"). The latter are divided in counterparties above ("NFC+") or counterparties below ("NFC-") the so-called clearing threshold, depending on the gross notional of the agreed OTC transactions. The conditions applicable to NFC- are the least demanding terms. On the other hand, the FCs should be able to rely on representations and warranties provided by the NFCs in relation to their respective classification.

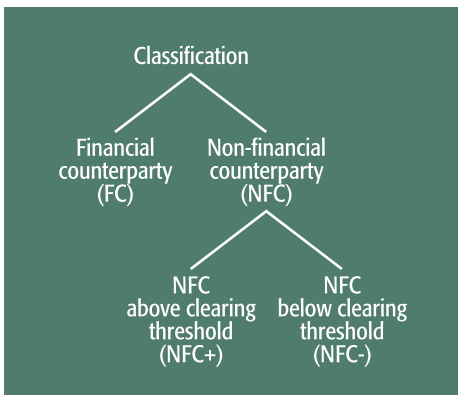
From EMIR results a set of contractual and procedural changes to the OTC business, which the national and international financial intermediaries, as well as their clients, have been implementing. Due to legal and practical reasons, these changes are subject to different implementation dates.

For example, reporting obligation concerning transaction data and transaction reporting data are not yet in force, since there were some delays in the registration of such repositories. ESMA notes, in a communication dated 13 September, available [here](#), that reporting to such entities will not begin before February 2014.

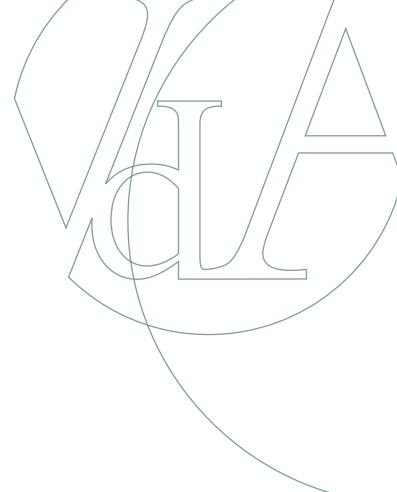
On the other hand, when the portfolio conciliation, the portfolio compression and the dispute resolution rules entered into force on 15 September, the rules concerning the deadline for confirmations had already entered into force. For example, the following applies to NFC-s:

ISDA has been publishing a set of documents and protocols concerning these subjects, available [here](#), which the interested parties can use. The choice between a transversal "protocol" option, which implies following an accession process described on the ISDA's website, and a bilateral solution, contracted between the counterparties of a particular ISDA Master Agreement, shall be carefully considered. The solution for a particular case might not be the most appropriate to a different situation - the most appropriate alternative might depend on the actual situation and the circumstances applicable to each entity.

Besides the derivatives contracted under the ISDA Master Agreements, some procedural and contractual changes have been made in the Portuguese law master agreements contracted between some financial intermediaries and their clients for derivatives trading, for the same EMIR compliance reasons.



| Client's Category | Derivatives | Deadline |
|--|--|---|
| Non-Financial counterparty under the clearing threshold (NFC-) | Credit default swaps and interest rate swaps entered into before 31 August 2013, inclusive | Until the end of the fifth working day following the trading day |
| | Credit default swaps and interest rate swaps entered into after 31 August 2013 and until 31 August 2014, inclusive | Until the end of the third working day following the trading day |
| | Credit default swaps and interest rate swaps entered into after 31 August 2014 | Until the end of the second working day following the trading day |
| | Stock swaps, foreign exchange rate swaps, commodity swaps and remaining swaps not referred above, entered into after 31 August 2013, and until 31 August 2014, inclusive | Until the end of the fourth working day following the trading day |
| | Stock swaps, foreign exchange rate swaps, commodity swaps and remaining swaps not referred above entered into after 31 August 2014 | Until the end of the second working day following the trading day |



IN BRIEF

BoP Notice no. 3/2013 – Determination of Own Funds on a Consolidated Basis

Keeping up with the developments in the methodologies for calculating impairment losses, the Bank of Portugal (“BoP”) issued Notice 3/2013, of 30 June, amending Notice no. 6/2010. The new Notice, as of 30 September, introduces changes to the mechanism for correcting the impact of provisions and impairment losses on the calculation of the consolidated own funds of certain entities, namely of companies with securities admitted to trading on a regulated market and institutions required to prepare individual and consolidated financial statements in accordance with the international accounting standards.

Directive 2013/36/EU and Regulation (EU) No. 575/2013

Directive 2013/36/EU and Regulation (EU) No. 575/2013 form the legal framework governing the access to the activity, the supervisory framework and the prudential rules for credit institutions and investment firms.

This Directive contains, inter alia, the provisions governing the authorisation of the business, the acquisition of qualifying holdings, the exercise of the freedom of establishment and of the freedom to provide services, the initial capital and the supervisory review of credit institutions and investment firms. The Regulation contains the prudential requirements for institutions that relate strictly to the functioning of banking and financial services markets.

Information to consumers and new rules on consumer credit agreements

Further to the amendments introduced by Decree-Law n.º 42-A/2013, BoP Instructions n.º 12/2013, 13/2013, 14/2013 e 15/2013, in force from 1 July, now adjust the form models’ language and terminology, specifically regarding credit intermediaries, and clarify their filling in. Additionally, these BoP Instructions establish a new systematization of the prerequisites for the APR calculation, adjust the existing credit categories, introduce changes to improve the information to report by credit institutions and disclose the maximum rates applicable to consumer credit agreements for the third trimester of 2013.

Law 48/2013, of 16 July: Measures to strengthen the financial soundness of the credit institutions (“CIs”)

Law 63-A/2008, of 24 November establishing measures to strengthen the CIs’ financial soundness was recently amended. It is now possible to trigger a transaction of CIs’ mandatory capitalization through public investment, provided some requirements are met, namely the non-approval by the general shareholders’ meeting of the recapitalization plan presented by the interim board of directors appointed by the Bank of Portugal (“BoP”). Such mandatory capitalization is proposed by the BoP to the Minister of Finance, who decides on its appropriateness, terms and conditions. A further amendment to this law is being considered, the Law Proposal 181/XII having been presented by the Government to the Assembly of the Republic.

CMVM Regulation no. 3 / 2013

The CMVM Regulation no. 3/2013, of 30 May, amending CMVM Regulation no. 2/2007, 5 November, establishes new rules on the further completion of the registration procedure with the CMVM for the individual investment consultants and the investment consulting companies. From now on, under exceptional circumstances, the applicants with relevant academic background, that have professional experience of at least 10 years, in activities within the scope of financial markets, inter alia, professional experience in credit institutions or investment companies, shall be considered qualified for this purpose.

Corporate Governance – New Regulation

The CMVM Regulation no. 4/2013 (“Regulation”) was disclosed, establishing new standardised rules regarding corporate governance, namely the requirement that a report on the structure and governance practices shall be prepared by the relevant issuers of shares admitted to trading on a regulated market, in Portugal or subject to Portuguese law.

The Regulation allows the relevant issuers to adopt the CMVM Corporate Governance Code or other such code issued by a dedicated entity, and such choice shall be justified in the annual management report.

The new Regulation aims to systematize the information duties required within the context of corporate governance and shall enter in force in January 2014.