

## **Ministry of Finance**

### **Decree-Law No. 345/98 of 9 November**

Directive 94/19/EC of the European Parliament and of the Council, of 30 May 1994, on deposit-guarantee schemes, set forth that each Member State should ensure that deposit-guarantee schemes were introduced so that overall depositors at credit institutions were guaranteed a minimum scope and level of deposit protection if deposits became unavailable, namely as a consequence of insolvency or liquidity shortage of the institution.

It has however allowed Member States to exempt a credit institution from the obligation to belong to a deposit-guarantee scheme where that credit institution belongs to a system which protects the credit institution itself and, in particular, ensures its liquidity and solvency, thus guaranteeing protection for depositors at least equivalent to that provided by a deposit-guarantee scheme.

It was precisely under this facility that the mutual agricultural credit banks belonging to the Integrated Mutual Agricultural Credit Scheme were exempt from the obligation to belong to the Deposit Guarantee Fund envisaged in the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law No. 298/92 of 31 December. For this purpose, not only was the compulsory participation of these institutions in the Mutual Agricultural Credit Guarantee Fund taken into consideration, this being a system targeted at ensuring the liquidity and solvency of the member institutions, but also the Legal System of Mutual Agricultural Credit and Agricultural Credit Co-operatives, approved by Decree-Law No. 24/91 of 11 January, which includes specific rules on the guarantee of the liabilities of the institutions in question.

Although the law has provided for a co-responsibility system between the Central Mutual Agricultural Credit Bank and the credit banks participating in the Integrated Mutual Agricultural Credit Scheme, and although the Mutual Agricultural Credit Guarantee Fund is a means of support for credit banks undergoing financial difficulties, the Fund is not – due to the purposes entrusted to it by law – an instrument entirely targeted at being a guarantee for the System's depositors in the

event of its insolvency, so as to ensure the repayment of their deposits up to the limits prescribed in the above-mentioned directive.

Thus, this Decree-Law has the objective of reconverting the Mutual Agricultural Credit Guarantee Fund so that its purpose will include, in addition to the support to the institutions participating in the System and undergoing financial difficulties, the guarantee of the deposits with this system. The new model takes into account the underlying Community framework, thus being rather close to the one governing the Deposit Guarantee Fund, naturally with the specificities arising from the tasks traditionally incumbent upon the Fund.

The Banco de Portugal has been heard.

Thus, pursuant to the provisions laid down in subparagraph *a)* of paragraph 1 of Article 198 and paragraph 5 of Article 112 of the Constitution, the Government decrees the following:

#### Article 1

##### **Applicability**

This Decree-Law governs the operation of the Mutual Agricultural Credit Guarantee Fund, hereinafter called the “Fund”, which is a public-law legal person, with administrative and financial autonomy, operating at the premises of the Banco de Portugal.

#### Article 2

##### **Purpose**

1 – The purpose of the Fund is to guarantee the repayment of deposits with the Central Mutual Agricultural Credit Bank and its associate mutual agricultural credit banks, as well as to promote and carry out the actions deemed necessary to ensure the solvency and liquidity of the referred institutions, targeted at the protection of the Integrated Mutual Agricultural Credit Scheme.

2 – The provisions laid down in paragraph 1 shall not prejudice those laid down in Articles 78 and 79 of the Legal System of Mutual Agricultural Credit, approved by Decree-Law No. 24/91 of 11 January.

#### Article 3

##### **Member institutions**

The Central Mutual Agricultural Credit Bank and its associate mutual agricultural credit banks shall compulsorily be members of the Fund.

#### Article 4

##### **Concept of deposit**

1 – For the purposes of this Decree-Law, deposit shall mean any credit balance which a member institution must repay under the legal and contractual conditions applicable and which is constituted by available monetary funds left in an account or resulting from temporary situations deriving from normal banking transactions.

2 – The provisions of the foregoing paragraph cover funds represented by certificates of deposit issued by the member institution, but not those represented by other debt securities issued by the same institution nor liabilities arising out of own acceptances or promissory notes outstanding.

#### Article 5

##### **Reporting requirement**

1 – Member institutions shall make available to the public all the pertinent information on the deposit-guarantee scheme provided for in this Decree-Law, namely as regards the respective amount, the scope of cover offered and the maximum repayment term.

2 – The information shall be made available at the branches, in a well-identified place and in a readily comprehensible manner.

#### Article 6

##### **Management committee**

1 – The Fund is managed by a management committee, which shall be responsible for carrying out, on behalf, by order of and for the account of the Fund, all actions and operations deemed necessary for or convenient to the accomplishment of its purpose.

2 – The management committee is comprised of three members. The chairman is a member of the Board of Directors of the Banco de Portugal, appointed by the Bank, the second member being appointed by the Ministry of Finance. The third member is appointed by the Central Mutual Agricultural Credit Bank as its representative.

3 – The chairman of the management committee shall have the casting vote.

4 – The Fund shall be legally committed by the signatures of two of the members of the management committee.

5 – The members of the management committee shall remain in office for renewable terms of three years.

#### Article 7

##### **Financial resources**

The Fund has the following resources:

- a)* Initial contributions from the Banco de Portugal and the member institutions;
- b)* Annual and special contributions from member institutions;
- c)* Borrowed funds;
- d)* Income from the investment of its resources;
- e)* Endowments;
- f)* Proceeds of fines exacted from member institutions.

#### Article 8

##### **Initial contributions**

1 – Initial contributions envisaged in subparagraph *a)* of Article 7 shall be paid by the member institutions and Banco de Portugal, within 60 days as of the date of the entry into force of this Decree-Law.

2 – The contribution that the Banco de Portugal decides to pay to the Fund shall not exceed the difference between the contributions paid up to that date by member institutions and those paid by the Banco de Portugal.

3 – Member institutions shall pay to the Fund, within 30 days of the registration of the commencement of their activity, an initial contribution whose amount shall be fixed by the Banco de Portugal, on a proposal from the Fund's management committee.

4 – Member institutions of the Fund as at the date of entry into force of this Decree-Law and members resulting from merger operations between member institutions of the Fund shall be exempt from the initial contribution.

#### Article 9

##### **Periodical contributions**

1 – Member institutions shall pay an annual contribution to the Fund, whose amount shall be fixed by a notice of the Banco de Portugal, after hearing the Fund's management committee.

2 – The amount of the annual contribution of the Central Mutual Agricultural Credit Bank and the mutual agricultural credit banks shall be based on the average amount of monthly credit balances of deposits over the previous year which are eligible for this purpose.

3 – The annual contribution shall be paid in two instalments, the first of which in April and the second in October of the year to which they refer.

#### Article 10

##### **Special contributions**

1 – When the Fund's resources are insufficient for the fulfilment of its obligations, the Minister of Finance may determine, by executive order and on a proposal from the management committee, that member institutions make special contributions, and may set the amounts, instalments, time limits and other conditions of these contributions.

2 – The overall value of a member institution's special contributions shall not exceed, in each fiscal year of the Fund's activity, the value of its annual contribution.

3 – The Banco de Portugal may grant loans to the Fund in exceptional cases.

#### Article 11

##### **Investment of resources**

1 – The Fund shall invest its available resources in financial operations, according to an investment plan defined by the management committee, under the following conditions:

- a) 10% of the assets shall be invested in immediately available deposits and financial instruments with a high degree of liquidity;
- b) 20% of the initial contributions referred to in Article 8 and of the periodical contributions referred to in Article 9 shall be invested in liquid assets of the same type as those mentioned in the foregoing paragraph, until the percentage of the assets referred to in this paragraph is reached.

2 – The assets referred to in subparagraph *a)* above shall not be used for the purposes envisaged in the second part of paragraph 1 of Article 2.

## Article 12

### **Limits of the guarantee**

1 – The Fund covers in full the value of the cash credit balances of each depositor, whenever this value does not exceed the amount fixed by executive order of the Minister of Finance, after hearing the Banco de Portugal.

2 – For the purposes of the foregoing paragraph, the credit balances to be considered shall be those existing on the date on which the deposits became unavailable.

3 – In determining the overall value referred to in paragraph 1 the following criteria shall be observed:

*a)* Account shall be taken of all deposits held by the party concerned with the institution in question, regardless of their type;

*b)* Interest due and payable up to the date mentioned in paragraph 2 above shall be included in the credit balances of deposits;

*c)* The credit balances of deposits denominated in foreign currency shall be converted into legal tender currency at the exchange rate prevailing on the same date;

*d)* Except where otherwise provided for, the credit balances of joint accounts, whether jointly or jointly and severally held, shall be considered as belonging in equal parts to the holders;

*e)* The person who is absolutely entitled to the sums held in an account shall be covered by the guarantee, provided that that person has been identified or is identifiable before the date on which the competent authorities make the determination that deposits became unavailable;

*f)* If there are several persons who are absolutely entitled, pursuant to the provisions of subparagraph *d)* above, the share of each shall be taken into account when the limits provided for in paragraph 1 of this article are calculated;

*g)* Deposits in an account to which two or more persons are entitled as members of an association or a special committee, without legal personality, shall be aggregated and treated as if made by a single depositor and shall not be taken into account for the purpose of calculating the limit applicable to each of these persons and provided for in paragraph 1 of this article.

## Article 13

### **Deposits excluded from the guarantee**

The following deposits shall be excluded from any repayment by guarantee schemes:

- a) Deposits made on their own behalf and for their own account by credit institutions, financial companies, insurance companies, pension-fund managing companies or general government bodies;
- b) Deposits arising out of criminal offences declared lost in favour of the State by a final decision with the force of *res judicata* as well as deposits arising out of transactions in connection with which there has been a final criminal conviction for money laundering;
- c) Deposits by investment funds, pension funds or other collective investment undertakings;
- d) Deposits by members of the board of directors, management or auditing boards of the institution, official accountants at the service of the institution, external auditors responsible for carrying out the audits of the institution or depositors of similar status in other companies in the same group or holding a controlling interest in the institution;
- e) Deposits by the spouse, relatives by consanguinity or persons related to them by affinity in the first degree or third parties acting on behalf of the depositors referred to in subparagraph d);
- f) Deposits by other companies in the same group or holding a controlling interest in the member institution;
- g) Deposits for which the depositor has, on an individual basis, obtained financial concessions from the member institution, which are so different from common market practice that they have helped to worsen its financial situation.

## Article 14

### **Repayment procedures**

1 – Repayment shall take place within a maximum of three months of the date on which deposits became unavailable; in exceptional circumstances and in special cases,

the Fund may apply to the Banco de Portugal for a maximum of three further extensions of the time limit; neither of which shall exceed three months.

2 – Without prejudice to the time limit laid down in the general provisions, the expiry of the time limit provided for in the foregoing paragraph does not affect the depositors' right of compensation.

3 – Where the depositor or any person entitled to the sums held in an account has been charged with an offence arising out of or in relation to money laundering, or the amounts held in an account have been seized in the course of a criminal process, the Fund may suspend any payment pending the final judgement of the court.

4 – Unavailability of deposits is considered to exist when the Integrated Mutual Agricultural Credit Scheme, for reasons which are directly related to its financial circumstances, cannot ensure the respective repayment under the legal and contractual conditions applicable and the Banco de Portugal has determined, at the latest 21 days after first becoming aware of that fact, that the System appears to be unable for the time being to ensure the repayment of the deposits and has no current prospect of being able to do so;

5 – The Central Credit Bank and the associated credit banks are bound to provide the Fund with a full account of the depositors' claims, together with whatever information the Fund requires to meet its obligations, the Fund having the option of examining the institutions' books and collecting on the institutions' premises any other relevant information.

6 – The Fund shall have the right of subrogation to the rights of depositors for an equal amount to its repayments.

## Article 15

### **Support rules**

1 – The Fund may notify any member institution so that it adopts the measures deemed necessary for the reestablishment of its financial standing, when it considers that its smooth functioning or solvency is at risk.

2 – For the accomplishment of its purpose, the Fund may grant allowances or loans to member institutions, give guarantees in their favour and acquire from them credit or any other items from their assets.

3 – The Fund can restrain its support to any member institution, depending on the explicit acceptance by the latter of the set of management and other rules the Fund deems necessary to correct the situations which gave rise to the need for support.

4 – When the seriousness of the situation so requires, the support can be restrained, depending on the acceptance by the member institution supported of the monitoring of its activities by a representative of the Fund, empowered to prevent the implementation of any of its decisions.

5 – Under the same circumstances, the Fund can also call for general meetings of any member institution and intervene therein in order to disclose information to the associates and to propose measures.

#### Article 16

##### **Disclosure of information**

Member institutions must make the consultation of documents available to the Fund and provide it with the information it deems necessary for the accomplishment of its purpose. The members of the bodies of these institutions and those supplying services to them are, under all circumstances, compulsorily subject to bank secrecy.

#### Article 17

##### **Services**

The Banco de Portugal shall ensure the technical and administrative services required for the smooth operation of the Fund.

#### Article 18

##### **Fiscal years**

The Fund's fiscal years shall correspond to the calendar years.

#### Article 19

##### **Chart of accounts**

The Fund's chart of accounts shall be drawn up in such a manner as to allow the clear identification of its assets composition and its operation and to record all the transactions carried out.

## Article 20

### **Auditing**

The Board of Auditors of Banco de Portugal shall monitor the Fund's activities and the observance of the applicable laws and regulations and shall issue its opinion on the annual accounts.

## Article 21

### **Report and accounts**

No later than 31 March, the Fund shall submit for approval to the Minister of Finance its report and accounts as at 31 December of the previous year together with the opinion of the Board of Auditors of Banco de Portugal.

## Article 22

### **Regulations**

1 — The Minister of Finance shall approve, by executive order and under a proposal from the management committee, the regulations governing the Fund's activity.

2 — It shall be incumbent on the Minister of Finance to set the remunerations of the members of the management committee.

## Article 23

### **Winding-up**

In the event of winding-up of the Fund, the proceeds from its liquidation shall revert to payer institutions, as a proportion of their contributions, irrespective of their nature.

## Article 24

### **Exception for other legislation in force**

The provisions of this Decree-Law shall not prejudice the solvency and liquidity rules applicable to member institutions, as well as the supervisory and control tasks envisaged in the legislation in force.

## Article 25

### **Previous regulations**

All the regulatory decree-laws governing the Fund, issued under the previous legislation, shall remain in force up to their replacement.

Article 26

**Revocation**

Decree-Laws No. 182/87 of 21 April and No. 322/97 of 26 November are hereby revoked.

Examined and approved by the Council of Ministers of 10 September 1998. – *José Veiga Simão – António Luciano Pacheco de Sousa Franco – José Manuel de Matos Fernandes – Luís Manuel Capoulas Santos.*

Promulgated on 21 October 1998.

Let it be published.

The President of the Republic, JORGE SAMPAIO.

Countersigned on 21 October 1998.

The Prime Minister, *António Manuel de Oliveira Guterres.*