

---

# Legal Update – 4th Quarter 2022

Portugal | Banking, Finance and Capital Markets Newsletter

4th Quarter 2022



---

## Contents

- > Early access to retirement savings plans, education savings plans, and retirement/education savings plans
- > New European Banking Authority Guidelines on remote customer onboarding solutions
- > Legislation: Banking and finance law
- > Legislation: Insurance and pension funds law
- > Legislation: Securities and capital markets law
- > Selected caselaw



---

## Early access to retirement savings plans, education savings plans, and retirement/education savings plans

### Law 19/2022 of October 21

On October 21, 2022, Law 19/2022 (the “**Law**”) was published in the Official Gazette of the Republic of Portugal. The Law establishes exceptional rules in response to the current economic situation, including a temporary regime for accessing savings plans without penalty.

Article 6 of the Law establishes that, without prejudice to articles 4.1 to 4.4 of Decree-Law 158/2002 (which approved the legal regime for these savings plans), between October 1, 2022, and December 31, 2023, holders of retirement savings plans (“**PPR**”), education savings plans (“**PPE**”), and retirement/education savings plans (“**PPR/E**”) can apply to access the amount they invested in these products without any tax penalties up to the monthly limit of the social support index (“**IAS**”) (i.e., €480.43, as provided for in Ordinance 298/2022 of December 16).

Credit institutions and entities authorized to sell this type of financial product must announce—in a visible position on their websites—the possibility of accessing PPR, PPE, and PPR/E under this new regime. Also, if they issue account statements containing a client information area, they must include this information on the client statements.

### State Budget for 2023

After Law 24-D/2022 of December 30, which approved the State Budget for 2023 (“**SB 2023**”), entered into force, article 273 amended the wording of the current article 6 of the Law. The amendment involved adding article 6.2—on access to PPR, PPE, and PPR/E—to the Law.

As an exception to the regime established in articles 4.1 to 4.4 of Decree-Law 158/2002 of July 2, which approves the legal regime applicable to PPR, PPE, and PPR/E (“**Legal Regime for PPR, PPE, and PPR/E**”), the SB 2023 added article 6.2 to the Law. Under this article, in 2023, the value of the PPR, PPE, and PPR/E can be partially or wholly accessed for the purpose of paying (i) mortgage-backed loan contracts for owner-occupied homes, (ii) loan contract installments for the construction or improvement of real estate for owner-occupied homes, and (iii) contributions to housing cooperatives in owner-occupied housing solutions. These will be exempt from the minimum five-year obligation not to withdraw the funds, and the withdrawal will not be subject to the penalty stipulated in article 21.4 of the Tax Incentives Statute.

Therefore, according to the legal regime in force, participants can access their PPR, PPE, and PPR/E by December 31, 2023, as follows:



- Under article 6.1 of the Law, holders of PPR, PPE, and PPR/E can apply to receive a certain amount of the funds contributed these products—without tax penalties—up to the IAS monthly limit, which is €480.43 for 2023, as provided for in Ordinance 298/2022 of December 16.
- The application of this exceptional regime up to the above amount does not rule out the possibility of higher withdrawals—also without penalty—if the legal conditions established in articles 4.1 to 4.4 of the Legal Regime for PPR, PPE, and PPR/E are met:
  - Generally, withdrawal without penalty is only allowed in the following cases:
    - a) The participant reaches retirement age.
    - b) The participant or any of his or her household members are in a situation of long-term unemployment.
    - c) The participant or any of his or her household members—regardless of the cause—are in a situation of permanent work incapacity.
    - d) The participant or any of his or her household members suffer from a serious illness.
    - e) The participant has reached 60 years of age.
    - f) The participant or any of his or her household members attend or are enrolled in a vocational or higher education course, when these generate expenses in the respective year.
  - Withdrawals can only be made under subparagraphs a), e), and f) if at least five years have passed since the participant made the contributions.
  - After five years from the date of the first contribution, the participant is eligible to apply for a full withdrawal under subparagraphs a), e) and f) if they contributed at least 35% of all the contributions in the first half of the contractual term.
  - The two previous paragraphs also apply to the cases of withdrawal specified in subparagraphs b) to d) when the participant was in one of these situations on each contribution date.
  - Beyond the situations mentioned in the previous paragraphs, the participant can apply to withdraw the PPR/E at any time under the contractually established terms



and with the consequences established in articles 21.4 and 21.5 of the Tax Incentives Statute.

- As an exception to the regime established in the Legal Regime for PPR, PPE, and PPR/E, SB 2023 added article 6.2 to the Law. Under this article, in 2023, the value of the savings plans referred to in articles 4.1 to .4 of the Legal Regime for PPR, PPE, and PPR/E can be partially or wholly accessed for the purpose of paying (i) mortgage-backed loan contract installments for owner-occupied homes, (ii) loan installments for the construction or improvement of real estate for owner-occupied homes, and (iii) contributions to housing cooperatives in owner-occupied housing solutions. These will be exempt from the minimum five-year obligation not to withdraw the funds, and the withdrawal will not be subject to the penalty stipulated in article 21.4 of the Tax Incentives Statute.
- Beyond the exceptional cases mentioned in articles 6.1 and 6.2 of the Law and the cases referred to in articles 4.1 to 4.4 of the Legal Regime for PPR, PPE, and PPR/E, higher amounts may still be withdrawn, but a penalty will apply under article 4.5 of the Legal Regime for PPR, PPE, and PPR/E.

Although the wording of the former article 6.3 (currently article 6.4) of the Law has not changed, we consider that the entities referred to in that article are still obliged to announce—in the forms mentioned above—the exceptional legal regime established in article 6, including regarding updating the IAS value for 2023 and the new possibility of withdrawal added by the amendment made in the SB 2023.

---

## New European Banking Authority Guidelines on remote customer onboarding solutions

On November 22, 2022, the European Banking Authority (“**EBA**”) published its Final Report containing the new Guidelines (EBA/GL/2022/15) ([link](#)) on the use of remote customer onboarding solutions as part of the due diligence measures to be adopted under Articles 13.1.a) and 13.1.c) of Directive (EU) 2015/849 of the European Parliament and of the Council of May 20, 2015 (transposed into Portuguese law by Law 83/2017 of August 18).

These Guidelines establish common EU standards on the due diligence and identification procedures and policies that credit institutions, payment institutions, electronic money institutions, and investment firms (the “**Institutions**”) must adopt when establishing a business relationship with a remote customer (digital onboarding), to comply effectively with their obligations under the applicable anti-money laundering and countering the financing of terrorism (“**AML/CFT**”) legislation.



The Guidelines address the following topics:

- > Internal policies and procedures
- > Information to be obtained
- > Document authenticity and integrity
- > Matching customer identity as part of the verification process
- > Reliance on third parties and outsourcing
- > Information and communication technology and security risk management
- > Use of documents, data or information obtained from a credible independent source

In this context, the management board of the Institutions must approve remote customer onboarding policies and procedures and supervise their implementation.

The adopted policies and procedures must contain at least (i) a description of the solutions adopted for the collection, verification and recording of information during the remote customer identification process; (ii) a description of the eligible situations for remote customer identification; (iii) information on procedures that are fully automated and those that involve human intervention; (iv) the procedures in place to ensure the first transaction with the new customer is only carried out after the due diligence measures have been applied; and (v) a description of the training programs aimed at ensuring up-to-date knowledge of the remote customer onboarding solutions.

The Institutions must also outline the type of information necessary to identify the customer in these procedures and policies, including the type of documentation, data and other information that the Institution intends to use for this purpose, as well as the way it will verify this information. They must also identify the type of information that is (i) manually introduced by the customer, (ii) automatically collected from the documentation made available by the customer, and (iii) collected using other internal or external sources.

Institutions must continuously monitor the appropriacy and reliability of remote customer onboarding solutions. To this end, they can consider the following measures:

- > Quality assurance tests
- > Automated alerts and notifications
- > Regular automatic quality control reports
- > Sample reviews

The Guidelines further clarify that the Institutions must be able to demonstrate to the Bank of Portugal which assessments have been carried out on the remote customer onboarding solutions (before their implementation), the results of these assessments, and how they are compatible with the detected AML/CFT risks.



Regarding the use of biometric data to identify customers, the Institutions must ensure the data collected is sufficiently unique and decisively linked to the individual in question. When the collected data is of insufficient quality and results in ambiguities or uncertainties, the Institutions must halt the remote customer identification process and either restart the process or redirect the customer to a face-to-face identification process.

If the Institutions outsource all or part of the remote customer due diligence and identification process to third parties, they must ensure—either before establishing the contractual relationship with the outsourcing company or during that relationship—the outsourcing company:

- implements and complies effectively with the Institution's remote customer onboarding procedures and policies, which the Institution can confirm through regular reporting, ongoing monitoring, and inspections of the entity;
- is capable and sufficiently equipped to carry out the remote customer onboarding process; and
- informs the Institution if it intends to change the remote customer onboarding process or solution.

As regards the Institutions' use of documents, data or information obtained from a credible independent source, the Institutions must determine the extent to which this solution is consistent with the Guidelines and apply the necessary measures to mitigate the significant risks that can arise from this solution.

The Guidelines apply six months after the date they were published on the EBA website in all the official languages of the European Union.



---

## Legislation: Banking and finance law

### Portuguese law

#### **Law 23-A/2022 - Official Gazette of the Republic of Portugal 236/2022, Series I of December 9, 2022**

Transposing Directive (EU) 2019/878 on access to banking and prudential supervision and Directive (EU) 2019/879 on the recovery and resolution of credit institutions and investment firms, amending the Legal Framework for Credit Institutions and Financial Companies, the Portuguese Securities Code, and related legislation.

#### **Decree-Law 82/2022 - Official Gazette of the Republic of Portugal 234/2022, Series I of December 6, 2022**

Transposing Directive (EU) 2019/882 of the European Parliament and of the Council of April 17, 2019, on the accessibility requirements for products and services, especially banking and financial services aimed at consumers.

#### **Decree-Law 80-A/2022 - Official Gazette of the Republic of Portugal 228/2022, 2nd Supplement, Series I of November 25, 2022**

Establishing measures to mitigate the effects of the increase in credit contract reference indexes for the purchase or construction of owner-occupied homes.

### European Union law

#### **Commission Delegated Regulation (EU) 2022/2580 of June 17, 2022 - OJEU L-335 of December 29, 2022**

Supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided in the application for the authorization as a credit institution, and specifying the obstacles which may prevent the effective exercise of supervisory functions of competent authorities.

#### **Commission Implementing Regulation (EU) 2022/2581 of June 20, 2022 - OJEU L-335 of December 29, 2022**

Laying down implementing technical standards for the application of Directive 2013/36/EU of the European Parliament and of the Council with regard to provision of information in applications for authorization of a credit institution.

#### **Regulation (EU) 2022/2554 of the European Parliament and of the Council of December 14, 2022 - OJEU L-333 of December 27, 2022**

On digital operational resilience for the financial sector and amending Regulations (EC) 1060/2009, (EU) 648/2012, (EU) 600/2014, (EU) 909/2014 and (EU) 2016/1011.



**Directive (EU) 2022/2556 of the European Parliament and of the Council of December 14, 2022 - OJEU L-333 of December 27, 2022**

Amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards digital operational resilience for the financial sector.

**Directive (EU) 2022/2464 of the European Parliament and of the Council of December 14, 2022 - OJEU L-324 of December 19, 2022**

Amending Regulation (EU) 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

**Commission Delegated Regulation (EU) 2022/2360 of August 3, 2022 - OJEU L-312 of December 5, 2022**

Amending the regulatory technical standards laid down in Delegated Regulation (EU) 2018/389 as regards the 90-day exemption for account access.

**Commission Delegated Regulation (EU) 2022/2328 of August 16, 2022 - OJEU L-308 of November 29, 2022**

Supplementing Regulation (EU) 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the exotic underlyings and the instruments bearing residual risks for the purposes of the calculation of own funds requirements for residual risks, in accordance with the indication provided in the relevant international framework established by the Basel Committee on Banking Supervision (BCBS).

**Regulation (EU) 2022/2036 of the European Parliament and of the Council of October 19, 2022 - OJEU L-275 of October 25, 2022**

Amending Regulation (EU) 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities.

**Bank of Portugal notices**

**Notice 2/2022 - Official Bulletin 220/2022, Series II, Part E of November 15, 2022**

Implementing Guideline (EU) 2022/508 of the European Central Bank and European Central Bank Recommendation ECB/2022/13, respectively, on amending Guideline (EU) 2017/697 of the European Central Bank and amending Recommendation ECB/2017/10 on the exercise of some options and discretions available in Union law by national competent authorities in relation to less significant credit institutions, by amending Bank of Portugal Circular 10/2017.

**Bank of Portugal instructions**

**Instruction 20/2022 – Official Bulletin 12/2022, 4th Supplement of December 30, 2022**

Publishing, for the first quarter of 2023, the maximum rates to be applied in consumer credit agreements under Decree-Law 133/2009 of June 2.





## **Instruction 19/2022 - Official Bulletin 12/2022 of December 15, 2022**

Setting at 0.029% as the base rate for determining periodic contributions to the Resolution Fund in 2023.

## **Instruction 18/2022 – Official Bulletin 12/2022 of December 15, 2022**

Setting 0.0018% as the base contributory rate for determining the rate for each institution and the minimum contribution to the Deposit Guarantee Fund to be made by participating institutions in 2023. It also stipulates that participating credit institutions cannot use irrevocable payment commitments to substitute their annual contribution.

## **Instruction 17/2022 - Official Bulletin 11/2022 of November 21, 2022**

Changing the effective date of Instruction 16/2022 to March 20, 2023, reflecting the European Central Bank Governing Council's decision of October 20, 2022, and in accordance with Guideline ECB/2022/39, which amends Guideline ECB/2022/8.

## **Instruction 16/2022 - Official Bulletin 10/2022 of October 17, 2022**

Regulating the operation of the national component system of TARGET (a new-generation Trans-European Automated Real-time Gross Settlement Express Transfer System) – TARGET-PT. It revokes Band of Portugal Instruction 54/2012.

## **Bank of Portugal circulars**

### **Circular CC/2022/00000037 – Official Bulletin 11/2022, 3rd Supplement of December 5, 2022**

Communicating the publication of the new EBA Guidelines on data collection exercises regarding high earners (EBA/GL/2022/08), which came into effect on December 31, 2022, and repealed the guidelines published on July 17, 2014 (EBA/GL/2014/07).

### **Circular CC/2022/00000031 – Official Bulletin 11/2022, 2nd Supplement of November 23, 2022**

Informing institutions subject to minimum reserves in Portugal of the final dates for notifying the minimum amount of reserves to be complied with by each institution in the minimum reserve maintenance periods for 2023.

### **Circular CC/2022/00000026 – Official Bulletin 10/2022, 2nd Supplement of November 4, 2022**

Establishing that Account Servicing Payment Service Providers (ASPSP) that chose to develop an application programming interface (API) must correct identified non-conformities by March 31, 2023, to ensure the removal of obstacles to the provision of services by third-party payment service providers.

### **Circular CC/2022/00000024 – Official Bulletin 10/2022, Supplement of October 19, 2022**

Providing instructions on the use of BPnet in communications exchanged by supervisory entities about companies that provide credit intermediation and advisory services on credit agreements.



## European Central Bank (“ECB”) acts

### **Regulation (EU) 2022/1917 of the ECB of September 29, 2022 - OJEU L-263/6 of October 10, 2022**

On infringement procedures in cases of non-compliance with statistical reporting requirements and repealing Decision ECB/2010/10 on non-compliance with statistical reporting requirements.

### **ECB Decision (EU) 2022/1921 of September 29, 2022 - OJEU L-263/59 of October 10, 2022**

Decision on the methodology for the calculation of sanctions for alleged infringements of statistical reporting requirements.

## EBA acts

### **EBA Guidelines of November 22, 2022**

On the use of remote customer onboarding solutions under Article 13.1 of Directive (EU) 2015/849 of the European Parliament and of the Council of May 20, 2015, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

### **EBA Report of November 14, 2022**

On the regulatory technical standards on the specific liquidity measures for investment firms, in accordance with Article 42.6 of Directive (EU) 2019/2034 of the European Parliament and of the Council of November 27, 2019, on the prudential supervision of investment firms.

### **EBA Report of October 24, 2022**

On incorporating environmental, social and governance (“ESG”) risks in the supervision of investment firms.

### **EBA Guidelines of October 20, 2022**

Under Article 84.6 of Directive 2013/36/EU of the European Parliament and of the Council of June 26, 2013, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, specifying criteria for the identification, evaluation, management and mitigation of risks arising from potential changes in interest rates and of the assessment and monitoring of credit spread risk of institutions’ non-trading book activities.

### **EBA Guidelines of October 12, 2022**

Amending Guidelines EBA/GL/2018/10 on disclosure of non-performing and forborne exposures.

---

## Legislation: Insurance and pension funds law

### European Union law

### **Commission Implementing Regulation (EU) 2022/2282 of November 21, 2022 - OJEU L-301 of November 22, 2022**



Laying down the technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from September 30, 2022, until December 30, 2022, in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance.

## **Insurance and Pension Fund Supervisory Authority (“ASF”) regulatory standards**

### **Regulatory Standard 13/2022-R of December 20 - Official Gazette of the Republic of Portugal 4/2023, Series II, Part E of January 5, 2023**

On the valuation of technical provisions and limits for insurance and reinsurance contracts. It also incorporates into the applicable law the European Insurance and Occupational Pensions Authority (“EIOPA”) guidelines on the valuation of technical provisions and the EIOPA guidelines on contract boundaries published on February 2, 2015, and the amended EIOPA guidelines on the valuation of technical provisions and the amended EIOPA guidelines on contract boundaries published on July 6, 2022.

### **Regulatory Standard 12/2022-R of December 20 - Official Gazette of the Republic of Portugal 4/2023, Series II, Part E of January 5, 2023**

Amending Regulatory Standard 6/2019-R of September 3 on appropriate qualification, training and ongoing professional development.

### **Regulatory Standard 11/2022-R of November 29 - Official Gazette of the Republic of Portugal 250/2022, Series II, Part E of December 29, 2022**

Establishing the quarterly capital adjustment indexes for “fire and natural elements” policies beginning or maturing in the first quarter of 2023.

### **Regulatory Standard 10/2022-R of November 2 - Official Gazette of the Republic of Portugal 227/2022, Series II, Part E of November 24, 2022**

Amending Regulatory Standard 7/2007-R of May 17.

### **Regulatory Standard 9/2022-R of November 2 - Official Gazette of the Republic of Portugal 228/2022, Series II, Part E of November 25, 2022**

Approving the chart of accounts for insurance companies (PAIC).



## ASF circulars

### **Circular 12/2022 of December 28, 2022**

Analyzing the impact of the amendment to the Corporate Income Tax Act on calculating the adjustment of the loss-absorbing capacity of deferred taxes.

### **Circular 11/2022 of December 20, 2022**

Providing guidance for calculating the solvency capital requirement for the expense risk sub-module of the life insurance specific risk module.

### **Circular 9/2022 of November 21, 2022**

Publishing Financial Action Task Force standards on procedures and measures institutions should adopt to prevent money laundering and terrorist financing. It also provides information on the adoption of enhanced identification and due diligence measures for the Democratic People's Republic of Korea (North Korea), the Islamic Republic of Iran, and the Republic of the Union of Myanmar, as well as countermeasures commensurate with the very high risk of money laundering and terrorist financing by the first two jurisdictions.

---

## Legislation: Securities and capital markets law

### European Union law

#### **Commission Implementing Regulation (EU) 2022/1994 of November 21, 2022 - OJEU L-329 of December 22, 2022**

Amending the implementing technical standards laid down in Implementing Regulation (EU) 2021/451 as regards own funds, asset encumbrance, liquidity and reporting for the purposes of identifying global systemically important institutions.

#### **Commission Implementing Regulation (EU) 2022/2453 of November 30, 2022 - OJEU L-324 of December 19, 2022**

Amending the implementing technical standards laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of ESG risks for large institutions that are issuers of securities admitted to trading on a regulated market in any Member State.

#### **Commission Implementing Regulation (EU) 2022/2454 of December 14, 2022 - OJEU L-322 of December 16, 2022**

Laying down implementing technical standards for the application of Directive 2002/87/EC of the European Parliament and of the Council with regard to supervisory reporting of risk concentrations and intra-group transactions of financial conglomerates.

#### **Commission Delegated Regulation (EU) 2022/2402 of August 16, 2022 - OJEU L-317 of December 9, 2022**



Correcting certain language versions of Delegated Regulation (EU) 2017/1018 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions.

**Commission Delegated Regulation (EU) 2022/2403 of August 16, 2022 - OJEU L-317 of December 9, 2022**

Correcting certain language versions of Delegated Regulation (EU) 1151/2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards on the information to be notified when exercising the right of establishment and the freedom to provide services.

**Corrigendum to Regulation (EU) 2019/876 of the European Parliament and of the Council of May 20, 2019 - OJEU L-316 of December 8, 2022**

Amending Regulation (EU) 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) 648/2012.

**Commission Implementing Regulation (EU) 2022/2365 of December 2, 2022 - OJEU L-312 of December 12, 2022**

Amending the implementing technical standards laid down in Implementing Regulation (EU) 2016/1801 as regards the mapping tables correspondence of credit assessments of external credit assessment institutions for securitization in accordance with Regulation (EU) 575/2013 of the European Parliament and of the Council, on prudential requirements for credit institutions and investment firms.

**Commission Delegated Regulation (EU) 2022/2311 of October 21, 2022 - OJEU L-307 of November 28, 2022**

Amending the regulatory technical standards laid down in Delegated Regulation (EU) 153/2013, on regulatory technical standards, as regards temporary emergency measures on collateral requirements for central counterparties.

**Commission Delegated Regulation (EU) 2022/2310 of October 18, 2022 - OJEU L-307 of November 28, 2022**

Amending the regulatory technical standards laid down in Delegated Regulation (EU) 149/2013 as regards the value of the clearing threshold for positions held in OTC commodity derivative contracts and other OTC derivative contracts.

**Commission Delegated Regulation (EU) 2022/2257 of August 11, 2022 - OJEU L-299 of November 18, 2022**



Supplementing Regulation (EU) 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the calculation methods of gross jump-to-default amounts for exposures to debt and equity instruments and for exposures to default risk arising from certain derivative instruments, and specifying the determination of notional amounts of instruments other than the instruments referred to in Article 325w.4 of Regulation (EU) 575/2013, on prudential requirements for credit institutions and investment firms.

**Commission Delegated Regulation (EU) 2022/2111 of July 13, 2022 - OJEU L-287 of November 8, 2022**

Supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying conflicts of interest requirements for crowdfunding service providers.

**Commission Delegated Regulation (EU) 2022/2114 of July 13, 2022 - OJEU L-287 of November 8, 2022**

Supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the entry knowledge test and the simulation of the ability to bear loss for prospective non-sophisticated investors in crowdfunding projects.

**Commission Delegated Regulation (EU) 2022/2115 of July 13, 2022 - OJEU L-287 of November 8, 2022**

Supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculating default rates of loans offered on a crowdfunding platform.

**Commission Delegated Regulation (EU) 2022/2116 of July 13, 2022 - OJEU L-287 of November 8, 2022**

Supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the measures and procedures for crowdfunding service providers' business continuity plan.

**Commission Delegated Regulation (EU) 2022/2117 of July 13, 2022 - OJEU L-287 of November 8, 2022**

Supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements, standard formats and procedures for complaint handling between crowdfunding service providers across the Union.

**Commission Delegated Regulation (EU) 2022/2118 of July 13, 2022 - OJEU L-287 of November 8, 2022**

Supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards on individual portfolio management of loans by crowdfunding service providers, specifying the elements of the method to assess credit risk, the information on each



individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds.

**Commission Delegated Regulation (EU) 2022/2119 of July 13, 2022 - OJEU L-287 of November 8, 2022**

Supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the key investment information sheet.

**Commission Implementing Regulation (EU) 2022/2120 of July 13, 2022 - OJEU L-287 November 8, 2022**

Laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to data standards and formats, templates and procedures for reporting information on projects funded through crowdfunding platforms.

**Commission Implementing Regulation (EU) 2022/2121 of July 13, 2022 - OJEU L-287 of November 8, 2022**

Laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and the European Securities and Markets Authority (“ESMA”) in relation to European crowdfunding service providers for business.

**Commission Implementing Regulation (EU) 2022/2122 of July 13, 2022 - OJEU L-287 November 8, 2022**

Laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities concerning European crowdfunding service providers for business.

**Commission Implementing Regulation (EU) 2022/2123 of July 13, 2022 - OJEU L-287 of November 8, 2022**

Laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to the standard forms, templates and procedures for the notifications of national marketing requirements applicable to crowdfunding service providers by competent authorities to ESMA.

**Commission Delegated Regulation (EU) 2022/2112 of July 13, 2022 - OJEU L-287 of November 11, 2022**

Supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying requirements and arrangements for the application for authorization as a crowdfunding service provider.



**Commission Delegated Regulation (EU) 2022/2113 of July 13, 2022 - OJEU L-287/22 of November 11, 2022**

Supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities in relation to investigation, supervision and enforcement activities in relation to European crowdfunding service providers for business.

**Commission Delegated Regulation (EU) 2022/2058 of February 28, 2022 - OJEU L-276 of October 26, 2022**

Supplementing Regulation (EU) 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards on liquidity horizons for the alternative internal model approach, as referred to in Article 325bd.7.

**Commission Delegated Regulation (EU) 2022/2059 of June 14, 2022 - OJEU L-276 of October 26, 2022**

Supplementing Regulation (EU) 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the technical details of back-testing and profit and loss attribution requirements under Articles 325bf and 325bg of Regulation (EU) 575/2013.

**Commission Delegated Regulation (EU) 2022/2060 of June 14, 2022 - OJEU L-276 of October 26, 2022**

Supplementing Regulation (EU) 575/2013 of the European Parliament and of the Council with regard to the regulatory technical standards specifying the criteria for assessing the modellability of risk factors under the internal model approach (IMA) and specifying the frequency of that assessment under Article 325be.3 of that Regulation.

**Commission Delegated Regulation (EU) 2022/1988 of July 12, 2022 - OJEU L-273 of October 21, 2022**

Extending the transitional period for continuing to provide crowdfunding services in accordance with national law as referred to in Article 48.1 of Regulation (EU) 2020/1503 of the European Parliament and of the Council.

**Commission Implementing Decision (EU) 2022/1980 of October 19, 2022 - OJEU L-272 of October 20, 2022**

Amending the Implementing Decision (EU) 2021/626 establishing the InvestEU Portal and setting out its technical specifications.

**Commission Delegated Regulation (EU) 2022/1959 of July 13, 2022 - OJEU L-270 of October 18, 2022**

Supplementing Regulation (EU) 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards setting out a contractual template for liquidity contracts for the shares of issuers whose financial instruments are admitted to trading on an SME growth market.





**Commission Implementing Regulation (EU) 2022/1929 of March 31, 2022 - OJEU L-266 of October 13, 2022**

Amending the implementing technical standards laid down in Implementing Regulation (EU) 2020/1227 as regards the templates for the provision of information in accordance with the STS (simple, transparent and standardized) notification requirements for on-balance-sheet synthetic securitizations.

**Commission Delegated Regulation (EU) 2022/1930 of July 6, 2022 - OJEU L-266 of October 13, 2022**

Amending the regulatory technical standards laid down in Delegated Regulation (EU) 2018/1229 as regards the date of application of the provisions related to the buy-in regime.

**Commission Delegated Regulation (EU) 2022/1855 of June 10, 2022 - OJEU L-262 of October 7, 2022**

Supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum details of the data to be reported to trade repositories and the type of reports to be used.

**Commission Delegated Regulation (EU) 2022/1856 of June 10, 2022 - OJEU L-262 of October 7, 2022**

Amending the regulatory technical standards laid down in Delegated Regulation (EU) 151/2013 by further specifying the procedure for accessing details of derivatives as well as the technical and operational arrangements for their access.

**Commission Delegated Regulation (EU) 2022/1857 of June 10, 2022 - OJEU L-262 of October 7, 2022**

Amending the regulatory technical standards laid down in Delegated Regulation (EU) 150/2013 as regards the details of the applications for registration as a trade repository and for applications for extension of registration as a trade repository.

**Commission Delegated Regulation (EU) 2022/1858 of June 10, 2022 - OJEU L-262 of October 7, 2022**

Supplementing Regulation (EU) 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the procedures for the reconciliation of data between trade repositories and the procedures to be applied by the trade repository to verify the compliance by the reporting counterparty or submitting entity with the reporting requirements and to verify the completeness and correctness of the data reported.

**Commission Implementing Regulation (EU) 2022/1859 of June 10, 2022 - OJEU L-262 of October 7, 2022**

Amending the implementing technical standards laid down in Implementing Regulation (EU) 1248/2012 as regards the format for applications for registration as trade repositories for applications for extension of registration as trade repositories.

**Commission Implementing Regulation (EU) 2022/1860 of June 10, 2022 - OJEU L-262 of October 13, 2022**



Laying down implementing technical standards for the application of Regulation (EU) 648/2012 of the European Parliament and of the Council with regard to the standards, formats, frequency and methods and arrangements for reporting.

## Portuguese Securities Market Commission (“CMVM”) circulars

### CMVM Circular of October 12, 2022

Containing recommendations for the preparation, use, and validation of real estate assessment reports for the purpose of valuing real estate in the portfolios of real estate investment organizations.

## ESMA

### ESMA Guidelines of December 14, 2022

On reporting obligations under Regulation (EU) 648/2012 of the European Parliament and of the Council of July 4, 2012, on OTC derivatives, central counterparties and trade repositories (EMIR).

### ESMA Guidelines of November 30, 2022

On stress test scenarios under Regulation (EU) 2017/1131 of the European Parliament and of the Council of June 14, 2017, on money market funds.

### ESMA Guidelines of November 17, 2022

On the assessment resolvability under Article 15.5 of Regulation (EU) 2021/23 of the European Parliament and of the Council of December 16, 2020, on a framework for the recovery and resolution of central counterparties.

### ESMA Guidelines of November 17, 2022

On the types and content of the provisions of cooperation arrangements under Article 79 of Regulation (EU) 2021/23 of the European Parliament and of the Council of December 16, 2020, on a framework for the recovery and resolution of central counterparties.

---

## Selected caselaw

### Portuguese caselaw

#### Ruling of the Supreme Court of Justice of November 30, 2022 (Case 191/13.0TCFUN.L1.S3)

This ruling of the Supreme Court of Justice discusses issues relating to the formal aspects of financial instrument transactions and bank secrecy.

The Supreme Court of Justice ruled that the combination of articles 327 and 67 of the Portuguese Securities Code shows that orders to carry out financial instrument transactions can be given verbally or in writing. When given verbally, the registering entity must register them by preparing a simple written note justifying the registration. Failure to do so gives rise to a penalty for the financial



intermediary—under article 397.2.e) of the Portuguese Securities Code—but does not invalidate the order.

The law allows a verbal order to be substantiated in other ways than writing, including by witness testimony. In other words, written form is not an evidentiary requirement for verbal orders.

As regards bank secrecy, the Supreme Court of Justice stated that the protected legal asset is the trust placed by the clients in the bank employees' description regarding family, personal, and property information. Bank secrecy laws are designed to prevent bank employees from using knowledge acquired in their duties to disclose information that affects clients' private lives.

Therefore, the Supreme Court of Justice ruled that laws on bank secrecy do not prevent the collection of information that is necessary and required between clients and the bank. Rather, these laws aim to prevent bank employees from taking advantage of knowledge they have acquired from their role and then revealing this information, which would breach clients' right to privacy. Therefore, preventing bank employees from making statements regarding such contractual client–bank relations would not make sense, as banking transactions within the context of this contractual client–bank relation are no secret between the parties; otherwise, both the bank and the client would be limited in their ability to defend their rights, which would be curtailed.

Therefore, if the contracting parties invoke the facts and elements related to the client–bank relation within the contractual relationship, they must not be considered covered by banking secrecy, provided—of course—the bank does not use this information in a context or in terms that are completely outside the client's reasonable expectations.

### **Ruling of the Lisbon Court of Appeals of October 13, 2022 (Case 344/21.8T8AGH.L1-2)**

The Lisbon Court of Appeals was called to rule on an online banking issue and its cyberattack risk exposure.

The court considered that, under an online banking agreement, the bank's primary duty is to accept the successive payment orders issued after proper authentication by the client. Also, as an ancillary duty, the institution must give the user the code card and all the access codes required to use the electronic banking service.

This case involved pharming, where the user of the service is deceived without realizing it. A hidden file is installed that will redirect the user to a fake website whenever he or she logs on to his or her banking website. The funds in the client's accounts are then unlawfully appropriated.

The Lisbon Court of Appeals acknowledged that:

- (i) banks are responsible for ensuring the IT system they use is operational and secure, guaranteeing the confidentiality of the security devices used, and therefore have the burden



of proving that (a) the payment orders that clients give are authorized using the authentication mechanisms provided, and (b) the service provided has no malfunctions or defects; and

- (ii) banks have the burden of proving that the user is negligent, grossly negligent, or behaved intentionally, as is clear from the Legal Regime for Payment Services and Electronic Money (RJSPME) (current articles 113 to 115).

In this case, the client—despite being a frequent user of the home banking payment system—did not merely enter the credentials stated on the bank’s website and on the code card itself (i.e., 2 code positions only), but instead disclosed 36 of the total 72 positions of the code card. Consequently, the Lisbon Court of Appeals ruled that the user acted negligently and committed a grave mistake, an inexplicable lack of attention, and an inexcusable negligence when compared to the behavior of most people, even those who are not particularly diligent. The user also violated the duty of security and confidentiality regarding devices.

---

For additional information on the contents of this document, please contact Cuatrecasas.

©2023 CUATRECASAS

All rights reserved.

This communication is a selection of the latest important legal and legislative developments in areas of interest and is not intended to be an exhaustive account of all the news for the period at issue. The information contained in this document does not constitute legal advice in any area of our professional activity.

The intellectual property rights to this document belong to Cuatrecasas. This document may only be fully or partially reproduced by any means, distributed, transferred or used in any other way if Cuatrecasas has given authority to do so.

