

# Legal Update 3rd Quarter 2024

Banking, Finance  
and Capital Markets Newsletter

Portugal





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## 1. Directive (EU) 2024/2760 on corporate sustainability due diligence and human rights

On July 5, 2024, Directive (EU) 2024/1760 of the European Parliament and of the Council on corporate sustainability due diligence, amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, (the “CS3D Directive”) was published in the Official Journal of the European Union.

The CS3D Directive establishes a duty for target entities to prevent, mitigate, bring to an end or minimize adverse impacts on the environment and on human rights resulting from their operations (including their subsidiaries’ operations) and operations in their chain of activities.

The CS3D Directive entered into force on July 26, 2024, and Member States have two years to transpose it into national law, i.e., until July 26, 2026. **Target entities will gradually start applying the rules introduced by the CS3D Directive and transposed into Portuguese law, from July 26, 2027, based on the number of employees and their turnover**, as shown in the table below:

|  |               |
|--|---------------|
| Companies with more than 5,000 employees on average and a net worldwide turnover of more than €1,500,000,000 in the last financial year before July 26, 2027 | July 26, 2027 |
| Companies with more than 3,000 employees on average and a worldwide net turnover of more than €900,000,000 in the last financial year before July 26, 2028   | July 26, 2028 |
| Other companies covered by the CS3D Directive (Article 2)  | July 26, 2029 |

In this publication, we highlight the key aspects introduced by the CS3D Directive regarding the new sustainability and human rights reporting duties for companies.

You can find more information about the CS3D Directive in the following publications: [CS3D in perspective](#); [The EU’s corporate Sustainability Due Diligence has been published](#); [Who does the CS3D affect?](#); [Legal assets protected by the CS3D](#); and [Risk-based approach](#).



## The purpose of the CS3D Directive | Article 1

The CS3D Directive establishes rules on:

- companies' **obligations** regarding the actual and potential adverse impacts on human rights and the environment arising from their own operations, those of their subsidiaries, and those carried out by their business partners in their chains of activities;
- **liability** for breaches of these obligations; and
- the obligation for companies to adopt and implement a **transition plan for climate change mitigation** aimed at ensuring, through best efforts, that the company's business model and strategy are compatible with the transition to a sustainable economy and limiting global warming to 1.5°C, in accordance with the Paris Agreement.

## Target entities | Article 2

The CS3D Directive applies to **companies that are based in a Member State** and meet one of the following conditions:

- i) The company had more than 1,000 employees on average and a worldwide net turnover of more than €450,000,000 in the last financial year for which annual financial statements were or should have been adopted.
- ii) The company did not meet the thresholds referred to in i), but is the parent company of a group that met those thresholds in the last financial year for which consolidated annual financial statements were or should have been adopted.
- iii) The company entered into—or is the parent company of a group that entered into—franchising or licensing agreements in the European Union ("EU") with independent third parties in return for royalties if:
  - a) the agreements guarantee a common identity, a common business concept, and the application of uniform business methods;
  - b) the royalties amounted to more than €22,500,000 in the last financial year for which annual financial statements were or should have been adopted; and
  - c) the company had—or is the parent company of a group that had—a worldwide net turnover of more than €80,000,000 in the last financial year for which annual financial statements were or should have been adopted.

The CS3D Directive also applies to **companies based in other countries but operating in the European Union** if they meet one of the conditions established in article 2.2 of the CS3D Directive.



## Duty of care for human rights and the environment | Articles 5, 7 to 16, and 22

The CS3D Directive establishes a number of actions that target companies must carry out (the “due diligence”):

- **integrate due diligence into their policies and risk management systems;**
- identify and assess **actual or potential adverse impacts** arising from their own operations, their subsidiaries’ operations, and their business partners’ operations;
- **prioritize** the negative and potential impacts identified;
- **prevent and mitigate potential adverse impacts, bring actual adverse impacts to an end and minimize their extent;**
- provide remediation **for actual adverse impacts;**
- develop meaningful engagement **with the stakeholders;**
- establish and maintain a **notification mechanism** and a **complaints procedure;**
- **monitor** the effectiveness of their due diligence policy and measures;
- **publicly communicate information about the due diligence:** companies must communicate information on the issues covered by the CS3D Directive by publishing an **annual statement** on their website; and
- **adopt and implement a transition plan for mitigating climate change.**

## Support for target companies in implementing the CS3D Directive | Articles 18 to 21

The Commission establishes a network of mechanisms to support target companies in the process of implementing the measures introduced by the CS3D Directive and to be transposed by the Member States:

- the adoption of guidance on voluntary **model contractual clauses** by January 26, 2027;
- the issuing of **general guidelines** and **guidelines for specific sectors** or **specific adverse impacts;**
- the creation of specific websites, platforms, or portals by Member States, aimed at **providing information and support to companies, in particular, small and medium-sized enterprises** (“SMEs”). In the context of the prevention of potential adverse impacts by target companies (article 10), the CS3D Directive also establishes



an obligation to adopt specific support measures for SMEs that, though not covered by that directive, are business partners of the target company (article 10.2(e)); and

- the creation of a **single helpdesk**, through which companies can request information, guidance, and support for complying with the CS3D Directive.

## Supervision | Articles 24 to 28

Each Member State must designate one or more authorities responsible for supervising compliance with the obligations arising from the CS3D Directive and ensure that these authorities have adequate powers and resources for the performance of their duties, including the power to (i) compel the target companies to provide information, (ii) carry out investigations, and (iii) impose penalties.



## 2. Legislation: Banking and finance law

### *EU law*

#### **Commission Implementing Regulation (EU) 2024/2494 of 24 September 2024**

Laying down implementing technical standards for the application of Regulation (EU) 2023/1114 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 EBA and ESMA.

#### **Corrigendum to Commission Implementing Regulation (EU) 2024/1618 (of 6 June 2024) of 8 August 2024**

Amending Implementing Regulation (EU) 2021/763 laying down implementing technical standards for the application of Regulation (EU) 575/2013 of the European Parliament and of the Council and Directive 2014/59/EU of the European Parliament and of the Council with regard to the supervisory reporting and public disclosure of the minimum requirement for own funds and eligible liabilities.

#### **Recast, of 23 July 2024, of Regulation (EU) 2024/1988 of the European Central Bank (of 27 June 2024)**

Recasting Regulation (EU) 2024/1988 of the European Central Bank of 27 June 2024 concerning statistics on investment funds and repealing Decision (EU) 2015/32 (ECB/2014/62) (ECB/2024/17).

#### **Commission Implementing Regulation (EU) 2024/1872 of 1 July 2024**

Amending the implementing technical standards laid down in Implementing Regulation (EU) 2016/1799 as regards the mapping tables specifying the correspondence between the credit risk assessments of external credit assessment institutions and the credit quality steps set out in Regulation (EU) 575/2013 of the European Parliament and of the Council.



**Commission Implementing Regulation (EU) 2024/1820 of 1 July 2024**, amending the implementing technical standards laid down in Implementing Regulation (EU) 2016/1800 as regards the mapping tables specifying the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps in accordance with Directive 2009/138/EC of the European Parliament and of the Council.

## *Portuguese law*

### **Ordinance 236-A/2024/1 of September 27, 2024**

Regulating the conditions for a personal guarantee to be granted by the state to ensure that credit institutions with head offices in Portugal and branches in Portugal of credit institutions with head offices abroad conduct loan transactions for buyers to purchase their first owner-occupied home.

## *Bank of Portugal instructions*

### **Instruction 13/2024 of September 5, 2024**

Disclosing the maximum rates for the 4th quarter of 2024 to be applied to consumer credit agreements under Decree-Law 133/2009 of June 2.

## *Bank of Portugal circulars*

### **Circular CC/2024/00000027 of September 16, 2024**

Reinforcing supervisory expectations regarding the suitability of the members of management and supervisory bodies and those responsible for the information and communication technology structure, security and associated risk management units in target institutions that are under the direct supervision of the Bank of Portugal.

### **Circular CC/2024/00000025 of September 2, 2024**

Containing information on the use of the services made available in the MLTF Prevention area of the BPnet system for the pursuit of specific purposes related to the prevention of money laundering and terrorist financing (“MLTF”) and replacing Circular CC/2021/00000015, among others.

### **Circular CC/2024/00000026 of August 8, 2024**

Informing, following the release of the FATF communiqués (plenary meeting of June 2024), on the adoption of countermeasures commensurate with a very high risk of money laundering and terrorist financing in relation to the Democratic People’s Republic of Korea (North Korea) and the Islamic Republic of Iran. It also highlights the continued suspension of the Russian Federation’s membership status.

### **Circular CC/2024/00000023 of July 15, 2024**

Informing about the framework and operationalization of the service for the banking system to disseminate information about situations of loss, theft, robbery, forgery, counterfeiting, and unlawful use of personal identification documents through the Electronic Platform for Registration and Transmission of Official Communications (PERTO)—an electronic solution made available on the Bank Customer Portal for this purpose and announced by Circular CC/2020/00000010 of February 17, 2020—and revoking Circular CC/2020/00000015 of March 16, 2020.



## *Bank of Portugal acts*

### **Bank of Portugal Public Consultation 3/2024 of September 16, 2024**

Calculation and periodic disclosure of the maximum APR (annual percentage rate) limits to be observed when concluding consumer credit agreements.

### **SPIN - Account Derivation Identifier**

Bank of Portugal has launched a new service called SPIN, which allows payment service users to initiate credit transfers and instant transfers by entering the cell phone number if the recipient is an individual, or the registration and tax identification number (“NIPC”) if the recipient is a company.

## *European Banking Authority (EBA) acts*

### **EBA Guidelines of September 18, 2024**

Guidelines on Recovery Plans under MiCAR (EBA GL 2024 07).

### **EBA Guidelines of September 4, 2024**

Guidelines amending the Guidelines on Arrears and Foreclosure (EBA GL 2024 10).

**Final Report, of September 4, 2024, on the Compliance Table of the Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers, in accordance with Directive (EU) 2021/2167 (EBA/GL/2023/09)**

**EBA Final Report on the Guidelines on the assessment of adequate knowledge and experience of the management or administrative organ of credit servicers.**

Guidelines for assessing the adequate knowledge and experience of the management or administrative organ of credit servicers as a whole, in accordance with Directive 2021/2167, and Compliance Table.

### **EBA guidelines of August 27, 2024**

Update of the data used to identify globally systemic institutions (G-SIIs). Update of the 13 indicators of systemic importance and the underlying data for the 33 largest institutions in the EU whose leverage ratio exposure measure exceeds €200 billion.

### **EBA guidelines of August 26, 2024**

Guidelines on liquidity stress testing under MiCAR (EBA GL 2024 08).

### **EBA guidelines of August 26, 2024**

Guidelines on the resubmission of historical data under the EBA reporting framework (EBA GL 2024 04).

### **EBA guidelines of August 26, 2024**

Guidelines on the application of the group capital test for investment firm groups (EBA GL 2024 03).





## **EBA guidelines of August 26, 2024**

Guidelines amending Guidelines EBA 2021 02 on MLTF risk factors (EBA GL 2024 01).

## **EBA guidelines of August 13, 2024**

The EBA establishes 2025 priorities for resolution authorities and reports on the progress made in 2023. It published its European Resolution Examination Program (EREP) Report, which establishes three priorities for resolution authorities and banks for 2025: operationalization of their resolution tools, liquidity strategies in resolution, and management information system for valuation.

## **EBA and ECB report of August 1, 2024**

The EBA and ECB have published a joint report on payment fraud data. The report assesses payment frauds reported by the industry across the European Economic Area (EEA), which totaled €4.3 billion in 2022 and €2 billion in the first half of 2023. The report confirms the beneficial impact of strong customer authentication (SCA) on fraud levels.

## **EBA guidelines of July 24, 2024**

Guideline (EU) 2024/2148 of the European Central Bank amends Guideline ECB/2011/23 on the statistical reporting requirements of the European Central Bank in the field of external statistics (ECB/2024/21).

## **EBA guidelines of July 24, 2024**

The EBA has published final Guidelines extending the existing Joint Guidelines on complaint handling (JC Guidelines) to credit servicers under the new Credit Servicers Directive. When handling borrower complaints, credit servicers are required to apply the same effective and transparent procedures that have been applied to other companies in the banking, insurance, and securities sectors for more than a decade (EBA/GL/2024/12).

## **EBA guidelines of July 17, 2024**

Final Report on Joint Guidelines on the oversight cooperation and information exchange between the European supervisory authorities and the competent authorities under Regulation (EU) 2022/2554 (JC 2024 36).

## **EBA guidelines of July 17, 2024**

The three European supervisory authorities (EBA, EIOPA and ESMA (“ESAs”)) published the second batch of policy products under the Digital Operational Resilience Act (DORA). This batch consists of four final draft regulatory technical standards (RTS), one set of Implementing Technical Standards (ITS), and two guidelines, all of which aim to enhance the digital operational resilience of the EU’s financial sector.

## **EBA guidelines of July 17, 2024**

The EBA clarifies the operational application of CRR 3 in the area of credit risk modeling. The EBA welcomes the entry into force of the new European Banking Package, which implements the final Basel III framework into EU regulation. To ensure a smooth operational implementation of the Banking Package, the EBA encourages institutions and competent authorities to engage in an active dialog.



## **EBA guidelines of July 12, 2024**

The three European supervisory authorities (EBA, EIOPA and ESMA) published a consultation paper on Guidelines under Markets in Crypto Assets Regulation (MiCAR), establishing templates for explanations and legal opinions regarding the classification of crypto assets along with a standardized test to foster a common approach to classification (ESA 2024 12).

## **EBA guidelines of July 4, 2024**

The EBA issued guidelines on the “travel rule”, i.e., the information that must accompany transfers of funds and certain crypto assets transfers. This rule will help combat the abuse of these transfers for money laundering and terrorist financing purposes (EBA/GL/2024/11).



## **3.**

## **Legislation: Insurance and pension funds law**

### *EU law*

#### **Commission Implementing Regulation (EU) 2024/2147 of 6 August 2024**

Laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June 2024 until 29 September 2024 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 Funds Supervisory Authority (ASF) regulatory standards*

#### **Regulatory Standard 5/2024-R of July 16**

Establishing the quarterly capital update indexes for “Fire and natural elements” policies starting or maturing in the fourth quarter of 2024.

#### **Regulatory Standard 6/2024-R of August 20**

Establishing the requirements for the governance system of pension fund management entities, including self-assessment of risk, conflicts of interest, remuneration, and internal reporting of irregularities. It also aims to strengthen governance, aligning with Portuguese and EU law to promote transparent and fair action to protect consumers. The standard also updates risk management and internal control policies, revoking previous standards and establishing new rules for subcontracting and operations involving conflicts of interest. It will enter into force 60 days after publication, with some provisions being valid from January 1, 2025.

#### **Regulatory standard 7/2024-R of August 20**

Ensuring that pension fund management companies are ready to manage the risks associated with information and communication technologies (ICT) and their security. This standard supplements Regulatory Standard 6/2024-R and aims to reduce vulnerability to security incidents, including cyberattacks, and optimize ICT risk management in



the pension fund sector. The standard is essential to anticipate the requirements of Regulation (EU) 2022/2554, which concerns digital operational resilience for the financial sector and will apply from January 17, 2025. The main points of the standard include establishing the management body's ICT responsibilities, requiring an ICT strategy, the integration of associated risks into the overall risk management system, periodic audits, an information security policy, ICT operational management, ICT business continuity, and governance of outsourcing cloud computing services, as well as regulating the rights and obligations in outsourcing agreements.

### **Regulatory Standard 8/2024-R of September 17**

Establishing the quarterly capital update indexes for “Fire and natural elements” policies starting or maturing in the first quarter of 2025.

### **Regulatory Standard 9/2024-R of September 26**

Regulating the reporting of severe ICT incidents to the ASF. The standard establishes how these incidents should be identified, assessed, monitored, managed, and reported, as well as the information to be included and the format, medium, and deadlines for reporting. It also aims to bring forward the requirements of Regulation (EU) 2022/2554 on digital operational resilience in the financial sector by entering into force the day after its publication.

## *European Insurance and Occupational Pensions Authority (EIOPA) acts*

### **EIOPA Staff Paper on the future Pan-European Pension Product (PEPP), September 11, 2024**

The Pan-European Pension Product (PEPP), launched in 2022, aims to offer a simple and efficient retirement savings option, but its uptake has been limited due to supply, demand, and structural factors. This Staff Paper looks at why PEPP has not lived up to its potential and proposes enhancements that could revitalize supplementary pensions across the EU.

### **Joint Committee Report on risks and vulnerabilities in the EU financial system - Autumn 2024, September 10**

This report, which brings together the three ESAs, highlights the continuing major economic and geopolitical uncertainties. The ESAs warn national supervisors about the risks to financial stability arising from these uncertainties and call for continued vigilance by all financial market participants. The report also includes an in-depth cross-cutting analysis of credit risks in the financial sector.



## **4. Legislation: Securities and capital markets law**

### *Portuguese law*

#### **Decree-Law 59/2024 of September 25**

Second amendment to the legal regime on central securities depositories, approved by Law 35/2018 of July 20, adapting the domestic legal order to Regulation (EU) 2023/2845.



## *CMVM circulars*

**Circular 009/2024 of August 8**

Circular on FATF - Preventing and Combating Money Laundering and Terrorist Financing.

## *European Securities and Markets Authority (ESMA) acts*

**ESMA announced the next steps for the selection of consolidated tape providers – September 30, 2024**

ESMA, the regulatory and supervisory authority for the EU's financial markets has published more details on the selection of consolidated tape providers (CTP) for bonds and for shares and exchange-traded funds (ETFs).

**The ESAs warn of the risks posed by economic and geopolitical events – September 10, 2024**

The three ESAs have published their Autumn 2024 Joint Committee Report on the risks and vulnerabilities of the EU's financial system. The report highlights the persistence of major economic and geopolitical uncertainties. The ESAs warn national supervisory authorities of the risks to financial stability arising from these uncertainties and call for continued vigilance on the part of all financial market participants. For the first time, the report also includes an in-depth cross-cutting analysis of credit risks in the financial sector.

**ESMA published a report on increasingly sensitive markets following a strong performance at the beginning of 2024 – August 29, 2024**

ESMA has published its second risk monitoring report for 2024, which presents the main risk factors currently facing the EU financial markets. External events continue to have a strong impact on the evolution of financial markets, and ESMA also considers that overall risks are high or very high in the markets under its supervision.

**ESMA publishes translations of its Guidelines on fund names – August 21, 2024**

ESMA has published translations of its Guidelines on fund names using ESG or sustainability-related terms in all the official EU languages.

**ESMA recognizes CDS Clearing and Depository Services as a Level 1 CCP following the Memorandum of Understanding with the British Columbia Securities Commission – August 13, 2024**

ESMA has signed a Memorandum of Understanding (MoU) with the British Columbia Securities Commission and updated its list of recognized third country central counterparties (TC CCPs) under the European Markets Infrastructure Regulation (EMIR).

**ESMA has published the data for the quarterly assessment of bond liquidity and the systematic internalizer calculations – August 1, 2024**

ESMA has published the new quarterly assessment of bond liquidity and the data for the quarterly systematic internalizer calculations for equities, equity-like instruments, bonds and other non-equity instruments under MiFID II and MiFIR.

**ESMA has issued an opinion on global crypto firms using their execution venues outside the EU – July 31, 2024**



ESMA has issued an opinion to address the risks posed by global crypto firms seeking authorization under the Markets in Crypto Assets Regulation (MiCA) for part of their activities (crypto brokerage) while keeping a substantial part of their group activities (intra-group execution venues) outside the EU's regulatory scope.

### **The ESAs have published a joint final report on draft technical standards on subcontracting under DORA – July 26, 2024**

The ESAs have published their joint final report on draft regulatory technical standards (RTS) specifying how to determine and assess the conditions for outsourcing ICT services that support critical or important functions under the Digital Operational Resilience Act (DORA). These RTS aim to increase the digital operational resilience of the EU financial sector by strengthening the ICT risk management of financial entities with regard to the use of outsourcing.

### **ESMA has presented its long-term vision on the functioning of the sustainable financing framework – July 24, 2024**

ESMA has published an opinion on the sustainable finance regulatory framework, in which it presents possible long-term improvements.

### **ESMA published its follow-up report to the Wirecard Fast Track Peer Review – July 18, 2024**

ESMA has published its follow-up report to the Wirecard fast track peer review, assessing the progress made with respect to the recommendations formulated in 2020.

### **The ESAs published the second batch of policy products under DORA – July 17, 2024**

The ESAs have published the second batch of policy products under the Digital Operational Resilience Act (DORA). This batch consists of four final draft regulatory technical standards (RTS), one set of Implementing Technical Standards (ITS) and two guidelines, all of which aim at enhancing the digital operational resilience of the EU's financial sector.

### **The ESAs establish framework to strengthen coordination in the event of systemic cyber incidents – July 17, 2024**

The ESAs will establish the EU systemic cyber incident coordination framework (EU-SCICF), in the context of the Digital Operational Resilience Act (DORA), that will facilitate an effective financial sector response to a cyber incident that poses a risk to financial stability by strengthening the coordination among financial authorities and other relevant bodies in the European Union, as well as with key actors at international level.

### **ESMA published 2023 data on companies' cross-border investment activity – July 15, 2024**

ESMA, together with the national competent authorities (NCAs), has completed an analysis of the crossborder provision of investment services during 2023.



### **The ESAs published a consultation paper on the Guidelines under the Crypto Asset Markets Regulation – July 12, 2024**

The ESAs have published a consultation paper on the Guidelines under the Markets in Crypto Assets Regulation (MiCA) which establishes templates for explanations and legal opinions relating to the classification of crypto assets, along with a standardized test to promote a common approach to classification.

### **ESMA published a new set of questions and answers – July 12, 2024**

ESMA has updated questions and answers on the following topics: the Alternative Investment Fund Managers Directive (AIFMD), Crypto Assets Markets Regulation (MiCA), Markets in Financial Instruments Directive II (MiFID II), and Undertakings for Collective Investment in Transferable Securities Directive (UCITS).

### **ESMA publishes the ESEF 2024 Reporting Manual – July 11, 2024**

ESMA has published the update of its Reporting Manual on the European Single Electronic Format (ESEF), supporting a harmonized approach for the preparation of annual financial reports. ESMA has also updated Annex II of the Regulatory Technical Standards (RTS) on ESEF.

### **ESMA publishes a statement on the use of collateral by NFCs acting as clearing members – July 10, 2024**

ESMA has published a statement deprioritizing supervisory actions linked to the eligibility of uncollateralized public guarantees, public bank guarantees and commercial bank guarantees for non-financial counterparties (NFCs) acting as clearing members, pending the entry into force of EMIR 3.

### **MiFIR review: ESMA launches new consultations – July 10, 2024**

ESMA has published a new package of public consultations with the aim of increasing transparency and system resilience in financial markets, reducing the reporting burden and promoting convergence in the supervisory approach.

### **ESMA puts forward measures to support corporate sustainability reporting – July 5, 2024**

ESMA has published a final report on the Guidelines for the Application of Sustainability Information (GLES) and a public statement on the first application of the European Sustainability Reporting Standards (ESRS). These documents will support the consistent application and supervision of sustainability reporting requirements.

### **New MiCA rules increase transparency for retail investors – July 4, 2024**

ESMA has published the second Final Report under the Markets in Crypto Assets (MiCA) Regulation, covering eight draft technical standards that aim to provide more transparency for retail investors, clarity for providers on the technical aspects of disclosure and record-keeping requirements, and data standards to facilitate supervision by national competent authorities (NCAs).



## 5. Selected case law

### *European case law*

#### **Judgment of the Court of Justice of the European Union of 12 September 2024 (Case C-579/22 P)**

This judgment concerns an appeal of the General Court and discusses the ECB's competence to revoke bank authorizations based on money laundering and terrorist financing offenses.

In this case, the ECB revoked the authorization of Anglo Austrian AAB AG, a credit institution in liquidation, following serious and repeated money laundering and terrorist financing offenses. Belegging-Maatschappij “Far-East” BV, the majority shareholder of Anglo Austrian AAB AG, appealed the decision to the General Court, claiming that the ECB did not have competence to apply national legislation on the prevention of money laundering and terrorist financing and that the revocation of the credit institution's authorization should be decided exclusively by the national authorities. The General Court dismissed the appeal in its entirety.

Among other things, the Court of Justice confirmed the ECB's exclusive competence to revoke the authorizations of credit institutions, even when the revocation is based on breaches of anti-money laundering provisions, as established in article 4.1(a) of Regulation (EU) 1024/2013. The Court of Justice held that while national authorities remain competent to apply money laundering provisions, the ECB has exclusive competence to revoke authorizations if the revocation is based on grounds established in EU law, namely articles 18 and 67 of Directive 2013/36/EU (CRD IV Directive).

In short, the Court of Justice dismissed the appeal, confirming the General Court's decision and the ECB's competence to revoke the authorizations of credit institutions based on breaches of anti-money laundering and terrorist financing provisions.

### *Portuguese case law*

#### **Judgment of the Porto Court of Appeals of September 12, 2024 (Case 133/24.8YRPRT)**

This judgment concerns an appeal filed by an insurance company against an arbitration decision ordering it to pay €15,000 in compensation for moral damages. The case concerned a fire that destroyed part of the appellants' home along with items of sentimental value. The insurer claimed that the moral damages claimed concerned “*indirect damage*,” which would be excluded from coverage under the General Conditions of the Insurance Agreement.

However, the court confirmed the arbitration award, ruling that non-pecuniary damage—such as the emotional distress, insomnia, and depression resulting from the undignified conditions the plaintiffs lived in—is direct damage and is therefore covered by insurance. The court applied article 563 of the Portuguese Civil Code on causation, which requires the damage to be an adequate and direct consequence of the unlawful act, which was



demonstrated in this case. It also invoked article 496 of the Portuguese Civil Code on damages for non-pecuniary damage, determining that only damage that is serious enough to justify legal protection can be compensated. The extent of the plaintiffs' distress from living in precarious conditions and seeing items of great sentimental value destroyed was considered serious enough to warrant compensation.

The court also highlighted that clauses that limit liability, such as the exclusion of indirect damage in the insurance agreement, must be narrowly interpreted and cannot contradict the General Civil Liability Regime established in articles 483 and 496 of the Portuguese Civil Code, which recognizes the right to compensation for damages including for non-pecuniary damage, if there is an adequate causal link.

Finally, the court applied Decree-Law 446/85 of October 25 (General Contractual Clauses Regime), which establishes that contractual clauses limiting consumer rights must be drafted clearly and precisely and cannot be abusive. In the court's view, the clause excluding indirect damage did not release the insurance company from its obligation to directly and adequately indemnify the moral damage suffered by the injured parties.

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