

## **Decree-Law No 144/2009 of 17 June 2009 – The Portuguese Credit Ombudsman**

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### **DISCLAIMER**

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## **Decree-Law No 144/2009 of 17 June 2009**

This Decree-Law introduces into Portuguese law the Credit Ombudsman, whose activity is intended to safeguard and promote the rights, guarantees and legitimate interests of any persons or entities in a credit relationship, in particular in the field of housing credit, with a view to improving access to credit from the financial system.

In parallel, the Credit Ombudsman takes on an important responsibility in promoting financial literacy on credit. To this end, the Credit Ombudsman needs to raise awareness of citizens' rights and duties in this area, provide any clarification and information where requested, and collaborate with the Banco de Portugal for compliance with the legal and contractual rules governing the granting of credit and the adoption of high standards of accountability and ethics in this area.

In addition, the Credit Ombudsman plays an impartial and independent mediation role, contributing to the protection of the rights of any persons or entities in a credit relationship, and issuing appropriate recommendations on the matter.

The Credit Ombudsman operates within the Banco de Portugal, enjoying impartiality and independence in the performance of the duties incumbent on the Credit Ombudsman. For this purpose, the Credit Ombudsman is assisted by a council acting under the Credit Ombudsman's coordination. The Banco de Portugal is responsible for providing all the technical, administrative and financial assistance required for the performance of the Credit Ombudsman's duties, as well as for making available the information required for the performance of those duties.

The implementation of this Decree-Law will be reviewed within two years.

The Banco de Portugal was consulted on an optional basis.

Thus:

In accordance with Article 198(1)(a) of the Portuguese Constitution, the Government hereby decrees as follows:

### **CHAPTER I**

#### **General provisions**

##### **Article 1**

#### **Appointment**

1 – The Credit Ombudsman is an entity set up within the Banco de Portugal.

2 – The Credit Ombudsman shall be appointed by Decision of the Council of Ministers, from among persons whose recognised good repute, availability and professional qualifications give guarantees of appropriate and prudent action in the

performance of their duties.

## Article 2

### **Term of office**

The term of office of the Credit Ombudsman shall be two years.

## CHAPTER II

### **Tasks and powers**

## Article 3

### **Tasks**

The Credit Ombudsman shall be responsible for safeguarding and promoting the rights, guarantees and legitimate interests of any persons or entities that are a party to a credit relationship, as well as for improving access to credit from the financial system.

## Article 4

### **Competences**

1 – The Credit Ombudsman shall be responsible for:

(a) contributing globally to the promotion of the legally protected rights, guarantees and legitimate interests of any persons or entities that are a party to a credit relationship;

(b) disseminating and promoting knowledge of the legal and regulatory standards applicable to credit agreements, contributing to the development of financial literacy in this field;

(c) collaborating with the Banco de Portugal in order to contribute to compliance with the legal and contractual rules governing the granting of credit;

(d) coordinating the activity of mediation between bank customers and credit institutions with a view to contributing to improved access to credit from the financial system;

(e) issuing opinions or recommendations on any subject related to the Credit Ombudsman's activity;

(f) identifying any loopholes in legislation, by issuing recommendations for its amendment or repeal, or suggestions for the drafting of new legislation, which shall be submitted to the member of the Government responsible for finance;

(g) monitoring credit activity as a whole.

2 – In the exercise of its powers, the Credit Ombudsman shall be assisted by a council. The latter shall act under the Credit Ombudsman's coordination and shall be responsible for carrying out the day-to-day business, namely the provision of clarification and information upon request of any persons or entities and the implementation of mediation procedures.

## Article 5

### **Mediation process**

1 – The mediation process begins with the submission of a request for mediation to the Credit Ombudsman. Then, the procedures described in the paragraphs below shall

be observed.

2 – Upon receipt of the request for mediation, which shall include the identification of the applicant, a description of the claim, the reasons on which it is based and the entity or entities concerned, the following measures are taken:

(a) within five working days of the date of receipt of the request for mediation, the Credit Ombudsman shall, after a preliminary analysis to assess the admissibility of the request, inform the applicant of the decision to accept or to reject the application without further procedures;

(b) where the request for mediation is accepted, the process shall be sent immediately to the credit institutions from which the applicant originally asked for the financing;

(c) the credit institutions concerned shall re-examine the financing request and, within five working days of the date of receipt of the process, transmit their decision to confirm or review the previous decision to the Credit Ombudsman;

(d) the Credit Ombudsman shall immediately inform the applicant of the progress of the process, in which case:

(i) the mediation process ends when the credit institution agrees to review its decision and the applicant agrees with the financing conditions;

(ii) the mediation process remains open otherwise, ending when the Credit Ombudsman reasonably finds that it is impossible to reach an agreement between the credit institution and the applicant; in this case, a recommendation may be issued.

3 – Any request manifestly submitted in bad faith or without an adequate justification shall be rejected immediately.

4 – The Credit Ombudsman shall lay down the method of conducting the mediation process and may, at any time, request any additional information needed to assess the process.

## Article 6

### **Dismissal of the process**

Requests for mediation shall be dismissed:

(a) where they do not fall within the powers of the Credit Ombudsman;

(b) where the Credit Ombudsman concludes that the request is unfounded or that there is insufficient information for any measure to be taken;

(c) where the reasons underpinning the request ceased to exist.

## Article 7

### **Recommendations**

1 – The recommendations of the Credit Ombudsman shall be issued with a view to correcting any procedures or acts and remedying irregular situations.

2 – The entity to which the recommendation is addressed shall, within 60 days of receipt of the recommendation, inform the Credit Ombudsman of its position with regard to the recommendation.

3 – Any non-compliance with the recommendation is required to have a well-grounded reason that shall be communicated to the Banco de Portugal by the Credit Ombudsman. The Banco de Portugal shall take this into account in the planning and carrying out of its supervisory activity.

#### Article 8

##### **Obligation of cooperation**

1 – Credit institutions, as well as any other public entities whose activity falls within the remit of the Credit Ombudsman, are required to provide any clarification and information requested by the mediator.

2 – The Credit Ombudsman may lay down, in writing, a period of not less than five working days for a reply to a request it classifies as urgent.

#### Article 9

##### **Reporting obligation**

1 – The Credit Ombudsman shall provide the member of the Government responsible for finance, either on the Credit Ombudsman's initiative or upon request, with relevant information within the scope of its duties.

2 – The Credit Ombudsman shall prepare an annual report on the Credit Ombudsman's activity, identifying the processes initiated, any measures taken, and the results obtained. This report shall be submitted for approval to the member of the Government responsible for finance by 31 March of the following year.

3 – The annual report shall be made public on the website of the Banco de Portugal within 30 days of its approval.

### CHAPTER III

#### **Statute and organisation**

##### Article 10

##### **Statute**

1 – The Credit Ombudsman's post shall not confer on its holder any rights as an official or agent of the public administration.

2 – The Credit Ombudsman shall not accumulate this post with the performance of executive functions in another entity or any other duties involving a risk of conflict of interest.

3 – The remuneration of the Credit Ombudsman shall be determined by Order of the member of the Government responsible for finance, after hearing the Banco de Portugal.

##### Article 11

##### **Impartiality and independence**

The Credit Ombudsman shall perform its duties in an impartial and independent manner.

## Article 12

### **Council**

1 – The council is coordinated by the Credit Ombudsman and consists of no more than three members, appointed by Order of the member of the Government responsible for finance, after hearing the Banco de Portugal, from among persons whose good repute, availability and professional qualifications give guarantees of appropriate and prudent action in the performance of their duties.

2 – Without prejudice to the provisions of Article 4(2), the Credit Ombudsman may delegate to the members of the council any specific responsibilities falling within the Credit Ombudsman's remit, and those members shall be responsible for ensuring the regular conduct of the activities in the event of the temporary impediment of the Credit Ombudsman.

3 – The remuneration of the members of the council shall be determined by Order of the member of the Government responsible for finance, after hearing the Banco de Portugal.

4 – In the case of a public-interest assignment agreement, the worker has the right to opt, at any time, for the base remuneration due under the initial legal and functional position held for an indefinite duration.

5 – Without prejudice to the provisions of the foregoing paragraphs, the council shall lay down rules applicable to its internal organisation and operation.

## Article 13

### **Technical, administrative and financial support**

The Banco de Portugal shall be responsible for ensuring, on a permanent basis, the technical, administrative and financial support required for the performance of the duties of the Credit Ombudsman and the council referred to in Article 12. In particular, all costs arising from such performance shall be charged to the Banco de Portugal.

## Article 14

### **Duty of secrecy**

The Credit Ombudsman and the members of the council are obliged to keep in secrecy any facts which come to their knowledge in the performance of their duties, where such secrecy is imposed due to the nature of the facts.

## CHAPTER IV

### **Final provisions**

## Article 15

### **Cooperation agreements**

In the performance of the Credit Ombudsman's duties, the Credit Ombudsman may, by means of a protocol, conclude cooperation agreements with public or private entities, of an associative or commercial nature, which carry on similar duties.

Article 16

**Appointment of the Credit Ombudsman**

The first appointment of the Credit Ombudsman shall occur within a maximum of 30 days of the date of entry into force of this Decree-Law.

Article 17

**Entry into force**

This Decree-Law shall enter into force on the day following that of its publication.

Seen and approved in the Council of Ministers on 26 March 2009. *José Sócrates Carvalho Pinto de Sousa - Fernando Teixeira dos Santos.*

Promulgated on 4 June 2009.

Let it be published.

The President of the Republic, *Aníbal Cavaco Silva.*

Countersigned on 8 June 2009.

*José Sócrates Carvalho Pinto de Sousa, Prime Minister*