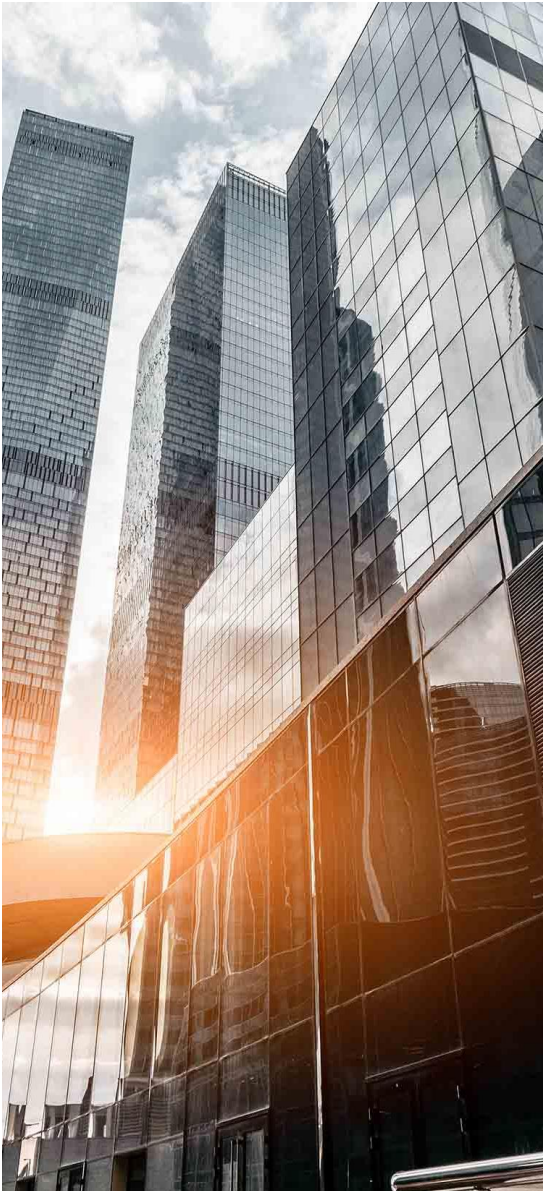

Law 23-A/2022 transposing CRD V and BRRD II

Law 23-A/2022 transposing Directive on access to the banking activity and prudential supervision and Directive on the recovery and resolution of credit institutions and investment firms

Legal Flash | Portugal

December 15, 2022



Key Aspects

- > Portugal was the only member of the 27 Member States that had not yet transposed the Directives
- > The new Law aims to harmonize Portuguese legislation, ensuring alignment with the “new” European banking rules, in order to strengthen the banking sector and the resilience of the financial system and of the credit institutions, protecting them from possible future shocks
- > These legislative changes innovate the Portuguese legal system in a way that is not limited to transposing the Directives



Law 23-A/2022 of December 9, transposing CRD V and BRRD II

Law 23-A/2022 was published on December 9, 2022, transposing Directive (EU) 2019/878 on access to the banking activity and prudential supervision (“**CRD V**”) and Directive (EU) 2019/879 on the recovery and resolution of credit institutions and investment firms (“**BRRD II**”).

This important transposition addresses issues in the sector regarding CRD V, on exempt entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers, and capital conservation measures, and, regarding BRRD II, on the loss-absorbency and recapitalization capacity of credit institutions and investment firms.

CRD V and BRRD II (“**Directives**”), which were published in 2019 following the European Commission’s proposals in 2016 to strengthen and clarify the prudential rules applicable to the banking sector, in line with the Basel Committee reforms, should have been transposed by December 28, 2020.

Portugal was the only member of the 27 Member States that had not yet transposed the Directives, in breach of its obligation. The European Commission notified Portugal of its breach on July 23, 2021, and again, giving a reasoned opinion, on December 2, 2021.

These amendments were initially established in the preliminary draft of the new Banking Activity Code. Due to the delays in the approval of this proposal for a legislative initiative, they were eventually removed from the preliminary draft and approved separately, with the corresponding maintenance and amendment of the Legal Framework on Credit Institutions and Financial Companies (“**RGICSF**”), with a set of systematic changes and the republication of the law.

The new law amends the following legislation with a set of additions and revocations:

- RGICSF
- Portuguese Securities Code
- Decree-Law 221/2000 on financial settlement in payment systems
- Decree-Law 199/2006 on the liquidation of credit institutions and financial companies
- Law 63-A/2008 (Banking Recapitalization Law)

- Legal framework on the manufacturing, marketing, and provision of advisory services regarding structured deposits, approved by Law 35/2018
- Legal framework on covered bonds, approved by Decree-Law 31/2022

These legislative changes innovate the Portuguese legal system in a way that is not limited to transposing the Directives. They also cover aspects such as deadlines for the Bank of Portugal to make certain decisions, a sanctions regime for covered bonds, and the clarification of certain aspects related to MREL, as well as providing more demanding general requirements for credit institutions.

The new law aims to harmonize Portuguese legislation, ensuring alignment with the “new” European banking rules, to strengthen the banking sector and the resilience of the financial system and credit institutions, protecting them from possible future shocks.

Law 23-A/2021 came into force on December 10, 2022, the day after it was published (except the provisions of article 14 on the manufacturing, marketing and provision of advisory services regarding structured deposits, for which the new wording came into force, retroactively, on November 22, 2022).

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