



# Annual Report 2023



FUNDO  
DE RESOLUÇÃO



# Annual Report

2023





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# Annual Report 2023

Within its own remit and under the terms of Article 153-T of the Legal Framework of Credit Institutions and Financial Companies (Regime Geral das Instituições de Crédito e Sociedades Financeiras — RGICSF), approved by Decree-Law No 298/92 of 31 December 1992, the Management Committee submitted, within the prescribed deadline (by 31 March 2024), the Fund's Annual Report for the 2023 fiscal year to the member of Government responsible for Finance, together with the opinion of the Board of Auditors of the Banco de Portugal (supervisory body).

The Annual Report of the Fundo de Resolução was approved by Decision No 73/2024/MEF-XXIV, of 18 June 2024, drawn up by the Minister of State and Finance.





# Management Committee

The Fund is operated by a Management Committee established in accordance with the provisions laid down in Article 153-E of the RGICSF.

As at 31 December 2023, the Management Committee was composed as follows:

## Chairman

Luís Augusto Máximo dos Santos<sup>1</sup>

## Member

Pedro Miguel Nascimento Ventura<sup>2</sup>

The Management Committee is assisted by the Secretary-General.

## Secretary-General

João Filipe Soares da Silva Freitas<sup>3</sup>

1. Appointed by the Board of Directors of the Banco de Portugal. He took up his post in March 2017 and was re-appointed in 2020 and 2023. Currently serving his third term, which began on 1 March 2023.
2. Appointed by the Deputy Minister for Finance, in the exercise of delegated powers. He took up his post in July 2017.
3. Appointed by the Management Committee in June 2012.



# Board of Auditors of the Banco de Portugal

Under Article 153-S of the RGICSF on auditing the Fundo de Resolução, the Board of Auditors of the Banco de Portugal oversees the Fund's activities and the observance of the applicable laws and regulations and issues its opinion on the Fund's annual accounts.

In accordance with Article 41(1) of the Statute of Banco de Portugal, approved by Law No 5/98 of 31 January 1998, the Board of Auditors of the Banco de Portugal consists of three members, appointed by the Minister of State and Finance.

The composition of the Board of Auditors of the Banco de Portugal as at 31 December 2023 was as follows:<sup>1</sup>

## Chairman

Óscar Manuel Machado Figueiredo

## Members

Maria Albertina Barreiro Rodrigues

Alexandre Jaime Boa-Nova e Moreira dos Santos

1. By Decision No 11174/2023 of 27 October 2023 of the Secretary of State for Finance, published in the Official Gazette No 212, Series 2, of 2 November 2023, the term of office of Óscar Manuel Machado de Figueiredo as member of the Board of Auditors was renewed and he was appointed Chair of this Board with effect from 1 November 2023, and Maria Albertina Barreiro Rodrigues and Alexandre Jaime Boa-Nova e Moreira dos Santos were appointed members of this Board with effect from 1 November 2023.

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## I Activity in 2023

- 1 The Fundo de Resolução in 2023: highlights
  - 2 Member institutions
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  - 5 Financial management of the Fund
  - 6 Legislative and regulatory changes
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# 1 The Fundo de Resolução in 2023: highlights

The year 2023 was marked by an improvement in the financial situation of the Fundo de Resolução, by major progress, in a very favourable direction, in litigation involving the Fund, as well as by the confirmation of the ability of Oitante, S. A. ("Oitante") to distribute profits and reserves to the Fund, its sole shareholder, and by the continuation of the work in the context of the performance of the contracts relating to the sale of Novo Banco, S. A. ("Novo Banco").

## 1.1 The Fund's financial position at the end of 2023

In 2023 and for the third year in a row, the Fundo de Resolução's net position recorded a significant improvement, as expressed by the increase in own funds of €239.6 million.

This was the largest annual increase in the Fund's own funds since it was set up in 2012, raising the aggregate increase in the Fundo de Resolução's own funds over the three-year period between 2021 and 2023 to €579.7 million.

The increase in own funds in 2023 was largely driven by contributions paid by the banking sector, which amounted to €258.7 million, taking into account the revenue from the contribution on the banking sector (€216.1 million) and the revenue from the additional periodic contribution, which is paid directly to the Fundo de Resolução by the participating institutions (€42.6 million).

In addition to the contributions, in 2023, own funds included €57.1 million from Oitante's distribution of dividends and € 7.7 million in net income from the investment of the Fund's resources.

Offsetting this, the Fundo de Resolução recognised in its balance sheet the economic effects of the reduction of its shareholding in Novo Banco due to the increase in the State's shareholding under the special regime applicable to deferred tax assets and the conditions laid down in the contracts for the sale of Novo Banco (-€83.6 million). The Fund's shareholding in Novo Banco, now 13.04%, is valued at €173.9 million.

The improvement in the financial position of the Fundo de Resolução is therefore one of the main highlights of 2023, but the more favourable developments observed since 2020 must be seen in the context of the high-deficit situation in which the Fund inevitably continues, as a result of the financing of the resolution actions applied to Banco Espírito Santo, S. A. ("BES"), including the sale of Novo Banco, and BANIF – Banco Internacional do Funchal, S. A. ("BANIF").

As a result, the net position of the Fundo de Resolução continues to show a very negative balance, -€6,735.1 million.

The Fund's debt remains at €7,511.9 million, of which €6,382.9 million corresponds to debt to the State (85%) and €1,129.0 million to debt to seven domestic banks (15%). No repayment of the Fundo de Resolução's debt has been made, as the applicable interest rate is zero until the next interest rate reset.

By contrast, the Fund's assets increased to €883,3 million, of which €709,3 million are cash and cash equivalents or receivables, meaning that the Fundo de Resolução has the cash capacity to cope with possible contingencies that may still materialise and/or to start repayment of its debt before the next interest rate reset.

## 1.2 Main developments in litigation involving the Fundo de Resolução

The year 2023 — and the beginning of 2024 — also brought important developments in litigation involving the Fundo de Resolução.

In March, the Supreme Administrative Court rendered a judgment that confirmed the full legality of the regime applicable to BES's resolution and the decisions made thereon by the Banco de Portugal. In question was the so-called 'pilot proceeding' concerning BES's resolution, covering the proceedings selected as priorities by the Administrative Court of the Lisbon District in the context of applying the procedural mechanism provided for in Article 48 of the Administrative Courts Procedural Code (*Código de Processo nos Tribunais Administrativos*). Regarding these proceedings, a judgment was rendered by the Administrative Court of the Lisbon District in March 2019, and another by the Court of Justice of the European Union in May 2022, based on a reference for a preliminary ruling submitted by the Supreme Administrative Court, for which an appeal had been brought against the judgment of the court of first instance. In all three judgments, the decisions favoured the Banco de Portugal and thus also the Fundo de Resolução. In the judgment of March 2023, more specifically, the Supreme Administrative Court rejected all allegations of illegality of the resolution action applied to BES as well as unconstitutionality of the applicable legal regime.

The judgment rendered by the Supreme Court of Justice in July 2023 on the appeal filed by the BES Liquidation Committee against the judgment of the Lisbon Court of Appeal, which had ruled in favour of the Fundo de Resolução, recognising the latter's claims in the BES liquidation proceedings, is also an important milestone in the litigation involving the Fundo de Resolução: the Supreme Court dismissed the appeal, therefore the first and second instance court judgments were fully confirmed, and the Fundo de Resolução's claims were recognised as having preference.

Of particular note is also the Supreme Court of Justice's judgment, already in January 2024, dismissing the appeal brought by Novo Banco after the Court of Appeal had dismissed the lawsuit to annul the arbitration award issued in October 2021, which favoured the Fundo de Resolução. The Supreme Court of Justice confirmed the judgment of the Lisbon Court of Appeal and thus the arbitration award, confirming that the Fundo de Resolução's decision was correct and valid when in 2019, it opposed Novo Banco's claim to pass on the impact of Novo Banco's intention to opt out of the transitional arrangements related to the introduction of IFRS 9 to the Fundo de Resolução under the contingent capitalisation mechanism. The Fundo de Resolução's actions in this case resulted in saving the Fund's resources €169 million, after the judgment of the Supreme Court of Justice decided in favour of the Fund.

## 1.3 Oitante's activity

As mentioned above, in 2023, the Fundo de Resolução benefited from the distribution of profits and reserves by Oitante, totalling €57.1 million.

Having concluded its debt repayment process in 2022, Oitante generated earnings that enabled it to strengthen its equity and distribute a total of €63.8 million before taxes to the Fundo de Resolução in 2023.

The data available at the time of approval of this annual report allow the Fund to anticipate that Oitante's activities in 2023 have again led to positive results.



## 1.4 Enforcement of the agreements related to the sale of Novo Banco

As explained by the Fundo de Resolução in various publications, the agreements related to the sale of Novo Banco — concluded upon determination of the Banco de Portugal as national resolution authority — establish a complex framework of rights and duties for the Fundo de Resolução, and they may originate, as has been the case, relevant liability.

In accordance with the Contingent Capital Agreement, the Fundo de Resolução paid Novo Banco (with reference to that bank's accounts between 2017 and 2020) a total amount of €3,405.0 million between 2018 and 2021.

Indeed, in 2022, although Novo Banco asked the Fundo de Resolução for a payment amounting to €209,2 million (with reference to its 2021 accounts), the Fund considered that no payment was due under the Contingent Capital Agreement and provided the relevant grounds.

In 2023, with reference to its 2022 accounts, Novo Banco did not make any payment requests under the Contingent Capital Agreement. Its Common Equity Tier 1 ratio at the end of 2022 exceeded the 12% threshold laid down in the Agreement for Novo Banco to make such a request.

The data available at the time this annual report was approved indicate that, also with reference to the end of 2023, Novo Banco's Common Equity Tier 1 ratio was above the required threshold. Thus, and for the second consecutive year, the Fundo de Resolução expects to receive no payment request under the Contingent Capital Agreement.

Despite having received no payment requests, the year was still demanding and called upon the rigour and care that the teams operating the Fundo de Resolução have always shown when following up on its contracts.

A more complete description of the main issues raised by the implementation of the Contingent Capital Agreement in 2023 is therefore provided in Box 1 of this Annual Report, similarly to the information provided in previous reports.

As described in Box 1, the Fundo de Resolução continued to analyse and decide upon operations involving assets covered by the Contingent Capital Agreement and continued work on the disputes and divergences that emerged between the Fundo de Resolução and Novo Banco, focussing on the arbitration proceedings relating to the payment application for the 2021 financial year.

The Fundo de Resolução was also notified to exercise its discretionary power to acquire the conversion rights granted to the State in the context of the special regime applicable to deferred tax assets as part of the conversion into tax credit of the deferred tax assets arising from losses recorded by Novo Banco in 2018 and 2019. In both cases, the Fundo de Resolução decided not to exercise its discretionary power.

## 1.5 Recurring activities

In the context of the Fund's regular operation, recurring activities carried out in 2023 included the collection of contributions from its members, cooperation with the Banco de Portugal to establish contribution levels for 2024 and the collection and delivery to the Single Resolution Fund (SRF) of the contribution intended to finance that fund and whose aggregate value in 2023 amounted to approximately €118.5 million.

In this regard, it should be noted that the initial build-up period of the SRF ended on 31 December 2023 and the target level of the SRF has been reached, meaning that, as already announced by the Single Resolution Board, no contributions to the SRF will be collected unless the financial means available to it fall below the target level (i.e. 1% of the amount of deposits covered by deposit guarantee schemes, within the Banking Union).

### **Box 1 • Monitoring the Contingent Capital Agreement and managing the assets comprising it in the course of 2023**

As previously explained in prior publications of the Fundo de Resolução, the Contingent Capital Agreement set out a specific governance and management model for the asset portfolio covered by the mechanism established in the Agreement.

According to the Agreement, Novo Banco is responsible for managing and administering those assets, without prejudice, as a rule, to completing the operations and actions in question subject to the decision of the Fundo de Resolução.

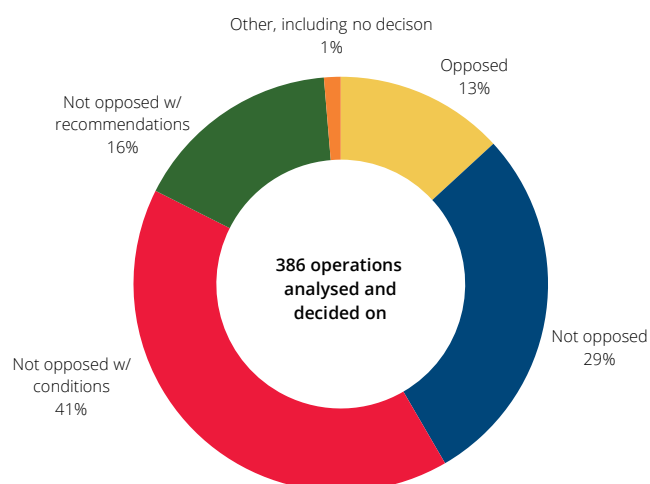
As such, under the terms of the Agreement, it is for the Fundo de Resolução to analyse and decide on the proposals for action submitted to it by Novo Banco regarding asset management. In that context, and among other monitoring activities, the Fundo de Resolução assesses whether Novo Banco's proposals contribute to the objective of minimising losses and/or maximising the recoverable amount, in particular by referring to alternative scenarios available for the recovery of the asset in question. For more complete and detailed information on the framework applicable to the management of assets covered by the Contingent Capital Agreement, see Box 1 of the Fundo de Resolução's 2020 Annual Report.

This box provides information on the Fundo de Resolução's participation in managing the assets covered by the Contingent Capital Agreement in the course of 2023 and on the year's developments in the main issues that prompted the Fund's intervention under the implementation of the Agreement. This complements and updates the information provided in previous Annual Reports and Accounts (see, inter alia, Box 1 of the 2021 Annual Report and Box 1 of the 2022 Annual Report).

#### **a) The management of assets covered by the Contingent Capital Agreement**

In 2023, the Fundo de Resolução decided on 46 operations submitted to it by Novo Banco, of which 6 (13%) justified the opposition of the Fund to the action proposed by Novo Banco and 32 (70%) led to Novo Banco being given recommendations or conditions to implement them. The Fundo de Resolução did not oppose the action recommended by Novo Banco in 8 (17%) of the operations which it was called to decide upon in 2023, under the terms proposed. In aggregate terms, and by the end of February 2024, the Fundo de Resolução's Management Committee had already ruled on 386 operations submitted by Novo Banco, and decided as shown in the following chart:

**Chart C1.1 • Number of operations submitted to the Fundo de Resolução and decisions made**



#### **b) Intervention by the Fundo de Resolução regarding the transitional regime for the implementation of IFRS 9**

In January 2023, Novo Banco brought an exceptional review appeal before the Supreme Court of Justice against the judgment of the Court of Appeal of November 2022, dismissing the special lawsuit to annul the arbitration award of October 2021 in favour of the Fundo de Resolução.

In January 2024, the Supreme Court of Justice decided to dismiss the appeal brought by Novo Banco.

The Supreme Court of Justice confirmed the judgment of the Lisbon Court of Appeal and thus the arbitration award, definitively confirming that the Fundo de Resolução's decision was correct and valid when in 2019, it opposed to Novo Banco's claim to pass on the impact of Novo Banco's intention to opt out of the transitional arrangements related to the introduction of IFRS 9 to the Fundo de Resolução under the contingent capitalisation mechanism.

The Fundo de Resolução's actions in these proceedings, ending in January 2024, resulted in saving the Fund's resources €169 million, after the judgment of the Supreme Court of Justice decided in favour of the Fund.

#### **Background**

As already reported in previous publications by the Fundo de Resolução, the Fund intervened in 2019 due to Novo Banco's intention to opt out of the transitional arrangements related to the introduction of IFRS 9 — Financial Instruments ("IFRS 9") and to reverse the bank's previous decision to join such arrangements — approved by Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017, to mitigate the effect of the significant negative impact on CET1 capital caused by the increase in the provisions for expected credit losses resulting from the introduction of IFRS 9.

The potential reversal of its adherence to the transitional arrangements related to the introduction of IFRS 9 would have implied that Novo Banco would no longer benefit from the mechanism allowing the impact on own funds arising from the introduction of this accounting standard to be distributed over the transitional period set out in that Regulation and, on the contrary, that that impact be concentrated in 2019.

The Fundo de Resolução and Novo Banco held different positions regarding the eligibility, for the purposes of coverage by the mechanism established in the Contingent Capital Agreement, of the additional impact on the bank's capital resulting from reversing Novo Banco's adherence to the transitional arrangements related to the introduction of IFRS 9.

In view of the position taken by the Fundo de Resolução, Novo Banco did not opt out of the transitional arrangements, making it possible to prevent a reduction in Novo Banco's own funds by an estimated €226 million in 2019.

Following that intervention by the Fundo de Resolução, arbitration proceedings were initiated to resolve disputes between the parties.

The award by the Court of Arbitration, established under the aegis of the International Chamber of Commerce, was rendered in favour of the Fundo de Resolução at the end of October 2021.

The Court of Arbitration held that, irrespective of Novo Banco's legitimacy to opt out of the transitional arrangements related to the introduction of IFRS 9, its impact on Novo Banco's own funds could not be covered by the contingent capitalisation mechanism, as has always been maintained by the Fundo de Resolução.

The monetary value of the dispute at the date of the award was €169 million, a sum which the Fundo de Resolução would have had to pay to Novo Banco if the Court of Arbitration's award had not been in its favour.

In 2022, a lawsuit was brought against the Fundo de Resolução by Novo Banco before the Lisbon Court of Appeal seeking annulment of the award rendered by the Court of Arbitration.

In its November 2022 judgment, the Lisbon Court of Appeal dismissed the aforementioned special lawsuit to annul the arbitration award in favour of the Fundo de Resolução.

#### **c) Intervention by the Fundo de Resolução on transitional arrangements related to the implementation of IFRS 9 (dynamic component), as amended in 2020 as part of the pandemic response measures**

Arbitration proceedings concerning the impact on Novo Banco's own funds resulting from its intention to opt out of the transitional arrangements related to the introduction of IFRS 9, as introduced by Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020, as part of the pandemic response, are ongoing and an award is expected in the course of 2024.

#### **Background**

As was also indicated in previous publications by the Fundo de Resolução, in 2020 the Fund informed Novo Banco that the mechanism established in the Contingent Capital Agreement would not cover the additional impact on Novo Banco's capital stemming from its intention not to benefit from new transitional arrangements related to the implementation of IFRS 9 as introduced by Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020, as part of the response to the pandemic.

Novo Banco eventually adhered to the arrangements, resulting in a positive impact on its own funds estimated at €171 million in 2020 (implying a capital relief that Novo Banco intended to pass on to the contingent capitalisation mechanism to the sum of €161.6 million).

Following that intervention by the Fundo de Resolução, a second arbitration procedure was initiated, also under the aegis of the International Chamber of Commerce, to resolve differences between the parties.

**d) The deductions made by the Fundo de Resolução to the payment claim submitted by Novo Banco in 2021 (relating to the 2020 accounts)**

The arbitration proceedings relating to deductions made by the Fundo de Resolução from the payment claim submitted by Novo Banco in 2021 (on the 2020 accounts) are ongoing and a decision is expected in the course of 2024.

**Background**

As detailed in the Fundo de Resolução's activity reports for 2020 (Box 2), 2021 (Box 1) and 2022 (Box 1), in 2021 Novo Banco submitted a request for payment under the Contingent Capital Agreement to the Fundo de Resolução to an amount of €598.3 million.

However, the Fundo de Resolução ended up deducting €169.3 million from the amount requested by Novo Banco, resulting from the sum of certain losses and costs that the Fundo de Resolução considered not to be covered by the contingent capital mechanism.

This adjustment is the result of the sum of the figures for the following situations:

- i) The amount corresponding to the impact on Novo Banco's capital position of the loss resulting from the decision to divest Novo Banco's business in Spain, with reference to 31 December 2020 (€147.4 million);
- ii) The amount corresponding to valuation differences of participation units of Restructuring Funds held by Novo Banco (€18.0 million);
- iii) The amount corresponding to the variable remuneration costs with the members of the Executive Board of Directors of Novo Banco for the financial years 2020 (€1.9 million) and 2019 (€2.0 million). The share of variable remuneration awarded in 2019 already justified a reduction in the payment made in 2020, but it was further adjusted in view of the functioning of the contingent capital mechanism. In fact, since their impact on own funds was not offset, the consumption of own funds resulting from variable remuneration in the financial year 2019 was carried over to the 2020 financial year and thus compounded Novo Banco's lack of capital in 2020.

In August 2021, Novo Banco submitted a request for arbitration to the International Chamber of Commerce, with a view to having its right to receive the amounts referred to in paragraphs (i) and (ii) above recognised.

The arbitration process also encompasses the situation described in (b) above, regarding the capital effects of adhering to the transitional arrangements related to the implementation of IFRS 9 (dynamic component), as amended in 2020 within the pandemic response measures.

In February 2022, Novo Banco submitted an application to the International Chamber of Commerce to add a claim to the ongoing arbitration proceedings to receive interest on arrears amounting to €4.9 million and to receive compensation of a non-quantified amount for losses allegedly caused by the fact that the Fundo de Resolução only paid the amount of €112 million in December 2021 in respect of the request for payment submitted that year.

**e) Novo Banco's request for payment in 2022 with reference to its 2021 accounts**

In 2023, having completed the verification work required under the contract (which took longer essentially due to the replacement of the entity appointed as Verification Agent), the Fundo de Resolução made its final decision on Novo Banco's payment application of 2022 that no amount is owed by the Fund with reference to Novo Banco's 2021 accounts.

In January 2024, Novo Banco submitted a request for arbitration to the International Chamber of Commerce, with a view to having its right to receive the amount of €209.2 million, plus €30.3 million in interest on arrears, recognised. This is the third time the Fundo de Resolução and Novo Banco participate in arbitration proceedings on to the implementation of the Contingent Capital Agreement.

### Background

In March 2022, and following approval of its 2021 Annual Report, including the legal certification of the accounts and the auditor's report, Novo Banco addressed a request to the Fundo de Resolução for payment under the Contingent Capital Agreement, to the amount of €209.2 million.

The information made available to the Fundo de Resolução when the request was submitted led to the conclusion that the Fundo de Resolução was not liable for the amount requested by Novo Banco.

That request included the impact on own funds of a provision amounting to €115.8 million, corresponding to the estimated taxes which Novo Banco considered, at that time, that it would have to pay on its properties. This was due to the fact that, for the purposes of the provisions of the Municipal Real Estate Tax Code and the Municipal Real Estate Transfer Tax Code, it could be considered that Novo Banco — through the shareholding owned by Nani Holdings, SGPS, S. A. — was an entity controlled, even if indirectly, by an entity or entities having their tax domicile in a country, territory or region subject to a more favourable tax regime.

Without prejudice to other considerations raised by that situation, it is worth noting from the outset that this contingency arose from facts and circumstances related to Nani Holdings, SGPS, S. A., and the group of which it is part, and thus facts and circumstances totally unrelated to Novo Banco's activities.

The amount of €209.2 million calculated by Novo Banco also included costs of €1.6 million relating to the variable remuneration of the members of the Executive Board of Directors for 2021 (thus adding to the variable remuneration of €2.0 million awarded in 2019 and €1.9 million awarded in 2020). As with the position it held in previous years (and with which Novo Banco complied), the Fundo de Resolução considered that, pursuant to the Contingent Capital Agreement, the impact of that variable remuneration on Novo Banco's capital did not warrant coverage by the contingent capitalisation mechanism.

The amount of €209.2 million requested by Novo Banco also included the impact on Novo Banco's capital resulting from the losses and costs that Novo Banco decided to bear and record in previous years. The Fundo de Resolução is not liable for this under the Contingent Capital Agreement, totalling €169.3 million, i.e. the amount deducted by the Fundo de Resolução from the request for payment submitted by Novo Banco in 2021, of which €165.4 million is part of the arbitration proceedings between the Fundo de Resolução and Novo Banco, as described above.

Accordingly, the Fundo de Resolução communicated to Novo Banco's General Assembly on 25 March 2022 that it did not deem it correct to record the amount of €209.2 million as a receivable by Novo Banco in its accounts submitted for the General Assembly's appraisal and decision.

#### **f) The confirmation of an amount to be received by the Fundo de Resolução in respect of an asset included in the Contingent Capital Agreement, stemming from an agreement between the Fundo de Resolução and Novo Banco in May 2021**

Considering the amounts received by Novo Banco in 2023 in respect of an asset included in the Contingent Capital Agreement, covered by an agreement between the Fundo de Resolução and Novo Banco, in May 2021, the amount to be received by the Fundo de Resolução is estimated to be €127.8 million.

## Background

As reported in the 2020 Annual Report, in May 2021 the Fundo de Resolução and Novo Banco entered into an agreement under which the Fundo de Resolução is granted the right to benefit from the amounts that may be recovered by Novo Banco in relation to its exposure to a particular debtor, to the sum exceeding its book value, net of impairment, as recorded on the reference date laid down in that agreement.

That agreement was the result of different perspectives on the recoverability of the related exposure and the position expressed by the Fundo de Resolução in 2020 that there were grounds to assume that the amounts recovered would exceed those for which that exposure was recorded in Novo Banco's balance sheet.

In the course of 2021, in addition to the conclusion of that agreement, previously referred to in the 2020 Annual Report as a subsequent event, the related exposure was restructured, in the context of which Novo Banco has already recovered more than the amount for which that exposure was recorded in the bank's balance sheet at the time the agreement was concluded.

Pursuant to the agreement concluded in May 2021, the claims of the Fundo de Resolução under that agreement will be used to settle any amounts payable to Novo Banco by the Fundo de Resolução. If there are no other amounts to be paid by the Fundo de Resolução that may be used for compensation, the Fundo de Resolução will receive the related amounts upon the maturity date of the Contingent Capital Agreement.

## Box 2 • The absence of a request for payment from Novo Banco under the Contingent Capital Agreement for the 2023 accounts

As at the date of approval of this Annual Report, no request for payment under the Contingent Capital Agreement by Novo Banco with reference to its 2023 accounts had been submitted to the Fundo de Resolução, nor is it expected that any request will be submitted.

Data already disclosed by Novo Banco indicate that on 31 December 2023 the bank's CET1 ratio was 18.2%.

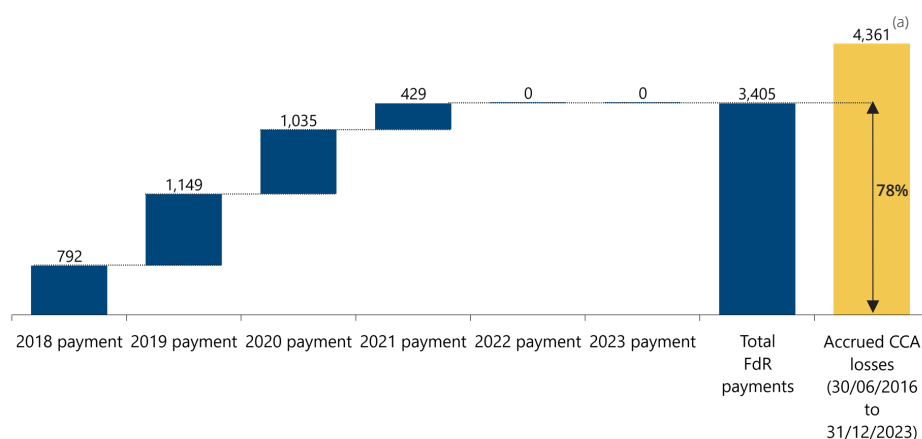
This CET 1 ratio exceeds the 12.0% threshold laid down in the Contingent Capital Agreement for the purpose of deploying the capitalisation mechanism provided for in the Agreement, so there is no basis for Novo Banco's claim regarding its 2023 accounts, although there are still accumulated losses on the assets covered by the Agreement not offset by the Fundo de Resolução (see Box 3 below, showing that the value of the "CCA losses" exceeds the aggregate amount of the payments made by the Fundo de Resolução by €956 million).

### Box 3 • Implementation of the Contingent Capital Agreement to date

The 2020 Annual Report of the Fundo de Resolução includes detailed information on how the contingent capitalisation mechanism works and the implementation of the Agreement as at 31 December 2020, characterising the method for calculating the amounts paid by the Fundo de Resolução in 2018, 2019, 2020 and 2021 (Box 3 of that Annual Report). These data are updated in the 2021 and 2022 Annual Reports of the Fundo de Resolução (see Box 3 of those Reports).

With reference to 31 December 2023, data on the implementation of the mechanism are shown in the chart below.

**Chart C3.1 • Losses attributable to the contingent capitalisation mechanism and payments made by the Fundo de Resolução | EUR millions**



Source: Fundo de Resolução. | Note: The value of “CCA losses” is also checked by the Verification Agent. In addition, that figure includes certain losses and costs that Novo Banco classifies as losses attributable to the contingent capitalisation mechanism, but whose classification gives rise to differences between the parties. In any event, this classification does not affect the calculation of the amounts paid by the Fundo de Resolução.

As illustrated in the chart, the accumulated losses for covered assets and their management between 30 June 2016 (the mechanism’s reference date) and 31 December 2023 amount to €4,361 million.

The payments made by the Fundo de Resolução amount to €3,405 million, which is less €956 million than the aggregate amount of the accumulated losses on the CCA Assets, i.e. approximately 78% of such losses.

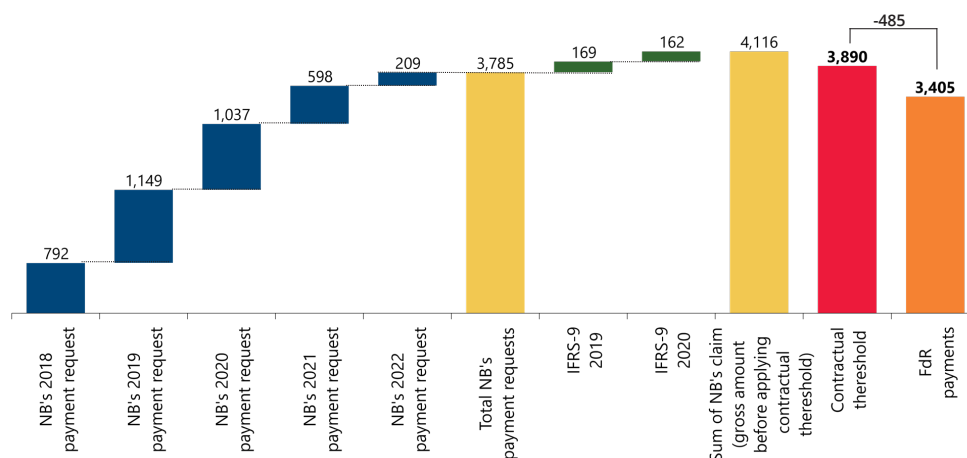
Note that the aggregate amount already claimed or requested by Novo Banco under the Contingent Capital Agreement would have surpassed the €3,890 million threshold laid out in the Agreement had it not been for the timely intervention of the Fundo de Resolução and its opposition to triggering the contingent capitalisation mechanism for certain losses and costs considered by Novo Banco to be covered by said mechanism.

Indeed, the amounts requested by Novo Banco under the Contingent Capital Agreement between 2018 and 2022 totalled €3,786 million (including €165.4 million that the Fundo de Resolução refused to pay in 2021 and which Novo Banco incorporated into the following year’s request).

In addition to those claims by Novo Banco, there are claims by Novo Banco concerning the transitional arrangements related to the implementation of IFRS 9: those amounts were not included in the payment requests relating to the 2019 and 2020 accounts because there was a prior intervention by the Fundo de Resolução, leading to Novo Banco making use of the transitional arrangements, contrary to what it intended, thus making it possible to reduce its capital needs during those years.



**Chart C3.2 • Amounts claimed or requested by Novo Banco under the Contingent Capital Agreement**



Source: Fundo de Resolução.

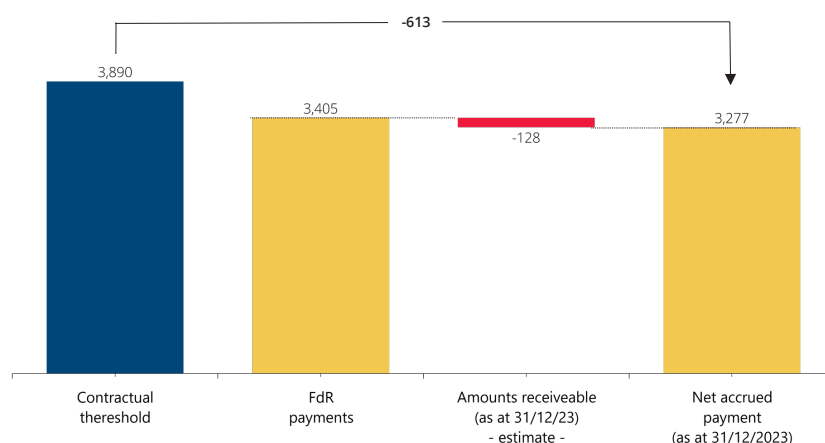
As such, the aggregate amount already claimed or requested by Novo Banco under the Contingent Capital Agreement would have exceeded the €3,890 million ceiling (thus limiting the Fundo de Resolução's liability to that amount). Nevertheless, the amounts paid are below that ceiling by €485 million, due to the Fundo de Resolução's action and intervention.

In addition, as stated in the 2020 Annual Report of the Fundo de Resolução, in May 2021 the Fund and Novo Banco entered into an agreement under which the Fundo de Resolução is given the right to benefit from amounts that may be recovered by Novo Banco in respect of its exposure to a particular debtor, in the amount exceeding its book value, net of impairment, recorded on the reference date laid down in that agreement.

As mentioned in paragraph (f) of Box 1 above, due to the agreement of May 2021, the Fundo de Resolução must receive an estimated amount of €127.8 million from Novo Banco.

Considering the amount receivable, the net balance of the implementation of the Contingent Capital Agreement to date is €3,277 million, €613 million below the contractual threshold of €3,890 million, which would have been reached had it not been for the Fundo de Resolução's timely action opposing Novo Banco's requests.

**Chart C3.3 • Overall net balance of implementation of the Contingent Capital Agreement to date | EUR millions**



Source: Fundo de Resolução.

## 2 Member institutions

Pursuant to the law, participation in the Fundo de Resolução is mandatory for the following institutions:

- credit institutions having their head office in Portugal, with the exception of mutual agricultural credit banks associated with the Caixa Central de Crédito Agrícola Mútuo, C.R.L;
- investment firms dealing on their own account or underwriting and/or placing financial instruments on a firm commitment basis;
- branches in Portugal of credit institutions having their head office in countries outside the European Union or the European Economic Area;
- branches of financial institutions having their head office in countries outside the European Union and dealing on their own account or underwriting and placing financial instruments on a firm commitment basis;
- relevant companies for payment systems subject to the supervision of the Banco de Portugal.

In the course of 2023, Banco Efisa, S. A. — Em Liquidação stopped being a member of the Fund following completion of its winding-up and the subsequent cancellation of its registration with the Banco de Portugal.

Therefore, as at 31 December 2023, the Fundo de Resolução had 41 members from six types of institution, as presented in Table 1.

A list of all member credit institutions as at 31 December 2023 is included in an annex to this Report.

**Table I.2.1 • Member institutions of the Fund, by type**

Member institutions	31/12/2022	Changes in 2023		31/12/2023
		New members	Outgoing members	
Banks	26	–	1	25
Savings banks	3	–	–	3
Central and mutual agricultural credit banks <sup>(a)</sup>	6	–	–	6
Credit financial institutions	5	–	–	5
Branches of credit institutions authorised in countries outside the EU and the EEA	1	–	–	1
Investment firms	1	–	–	1
<b>Total</b>	<b>42</b>	<b>–</b>	<b>1</b>	<b>41</b>

Source: Fundo de Resolução. | Notes: (a) The mutual agricultural credit banks associated with the Central Mutual Agricultural Credit Bank are exempt from being members of the Fund.

### 3 The Fund's financial means

As at 31 December 2023, the Fund's own funds posted a negative balance of €6,735.1 million, in comparison to a negative balance of €6,974.7 million in own funds at the end of the 2022 financial year.

The Fund's own funds therefore increased by €239.6 million. This was mainly due to the following factors:

**a) Positive contribution to own funds (+€323.5 million):**

- recognition of the proceeds from the contribution on the banking sector for 2023 of €216.1 million (of which €210 million was received by the Fund over the course of the year);
- collection of contributions paid directly to the Fund in relation to the 2023 contribution process, amounting to €42.6 million;
- incorporation of the year's earnings, amounting to €7.7 million, essentially reflecting earnings from interest and similar income<sup>1</sup> on current accounts held with the Banco de Portugal and on investments made with the Portuguese Treasury and Debt Management Agency (IGCP);
- the recognition of income from dividends paid by Oitante, S. A. (€57.1 million after taxes).

**b) Negative contribution to own funds (-€83.9 million):**

- recognition of losses relating to resolution actions, amounting to €83.9 million, essentially due to the reduction in the Fund's shareholding in Novo Banco from 19.31% to 13.04%, as a result of the share capital increase carried out by that bank in 2023 pursuant to the special regime applicable to deferred tax assets, approved by Law No 61/2014 of 26 August 2014.

For the third year in a row, the Fundo de Resolução's net position improved, following an increase in own funds by €232.8 million in 2022 and by €107.2 million in 2021.

The improvement observed in 2023 – of €239.6 million – represents, as shown in Chart I.3.1, the largest annual increase in the Fundo de Resolução's own funds since its setting-up in 2012, and is due, not only to the effort of the banking sector in paying contributions, but also to the dividend from Oitante and the return on the Fund's investments, as explained below.

Between 2021 and 2023, the aggregate effect of the improvement in the Fund's assets position amounted to €579.7 million.

The improvement over the past three years reflects the fact that during this time there were no charges related to the activation of the contingent capitalisation mechanism agreed with Novo Banco in 2017 as part of the sale of that credit institution.

Thus, in 2021, 2022 and 2023, losses resulting from resolution actions were essentially limited to recording the effect of dilution of the Fundo de Resolução's shareholding in Novo Banco, as a result of the capital increases made under the special regime applicable to deferred tax

1. Under the Fundo de Resolução's Chart of Accounts, costs stemming from the financial assistance to the application of resolution action and contributions paid to the Fund by member institutions, as well as the proceeds from the contribution on the banking sector, are directly recognised in the Fundo de Resolução's own funds, and therefore are not reflected in the profit or loss for the year.

assets. Cumulatively, that effect amounts to €159.4 million (of which €20.7 million in 2021, €55.1 million in 2022 and €83.6 million in 2023) and reflects the reduction in the Fundo de Resolução's shareholding from 25% to 13.04%.<sup>2</sup>

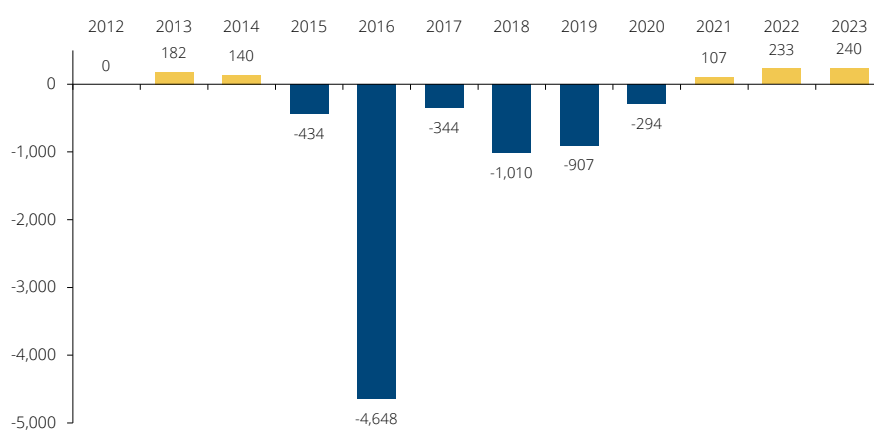
The reduction in the shareholding held by the Fundo de Resolução and the resulting loss for the Fund is offset by the increase in the shareholding held directly by the Government, which thus owns an 11.96% shareholding in Novo Banco, following the conversion of deferred tax assets into tax credits resulting from the losses incurred by Novo Banco between 2015 and 2019.

Considering that Novo Banco recorded profits in 2021, 2022 and 2023, the year 2020 — when that bank still posted net losses — was the last financial year that could still lead to the granting of a tax credit to Novo Banco and to the subsequent delivery of securities convertible into shares to the Government (the conversion rights). Should the shareholders not exercise the discretionary right to acquire those conversion rights resulting from the losses incurred by Novo Banco in 2020 from the State, the State's shareholding could increase to 15.6%, thus reducing the Fundo de Resolução's shareholding to 9.4%.

Thus, the minimum amount for the Fundo de Resolução's contribution under the special regime applicable to deferred tax assets is 9.4% (compared to the 9.16% estimated at the time of approval of the Fundo de Resolução's accounts for 2022).

As is also evident in Chart I.3.1, despite an improvement over the last three years, the reduction in own funds over the period 2015-20 was significantly larger, which explains why the net position remains very negative at -€6,735.1 million.

**Chart I.3.1 • Annual change in the Fund's own funds since its setting-up | EUR millions**



Source: Fundo de Resolução.

2. As explained in the notes on the financial statements (see Note 2.2(h) and Note 9), the Fundo de Resolução's shareholding in Novo Banco is measured at fair value at initial recognition, and subsequently deducted from potential impairment losses. At initial recognition, the asset was measured at fair value at €333.33 million, based on the valuation implied by the sale transaction concluded in October 2017, taking into account that a private investor acquired, through an open and competitive sale process on market terms, a 75% stake by carrying out a capital increase of €1 billion, meaning that the implicit valuation attributed to the asset as a whole amounted to €1,333.3 million. Since then, no reasons have been identified for considering that assets have depreciated, so that the losses recorded by the Fundo de Resolução reflect only the reduction in its shareholding by 11.96 p.p. to the same value of €1,333.33 million for the entire capital of Novo Banco.

The contribution of the main determinants of developments in the Fund's own funds in 2023 (+€239,6 million) compared to those observed in 2022 (+€232.8 million) is detailed below:

1. **Contributions received by the Fund**, directly or indirectly from the banking sector amounted to €258.7 million, a decrease of €29.6 million compared to the aggregate value of the contributions for 2022 (-10.3%);
2. **Net losses arising from resolution actions** amounted to €83.9 million, an increase of €28.7 million compared with 2022 (when a negative net impact of €55.2 million was observed);
3. **Oitante's payment of dividends** amounted to €57.1 million,<sup>3</sup> after paying no dividends in 2022;
4. **Net profit/loss for the year** amounted to €7.7 million, an increase of €7.9 million compared to 2022 (net losses of €179.1 thousand).

Note that the Fund has practically no operating expenses. Indeed, pursuant to the law, it operates within the Banco de Portugal, which provides the technical and administrative services required for the Fund's regular operation. Moreover, functions performed for the Fund's Management Committee are not remunerated, so the Fund does not bear any remuneration charges. The Fund's expenses have therefore been limited, in essence, to the payment for external audit services, court fees and emoluments paid to the Court of Auditors. In 2023, current expenditure totalled €19.7 thousand.

The profit/loss of €7.7 million is essentially a reflection of the management of the Fundo de Resolução's assets, especially considering that in 2023 there was no interest burden on the Fund's debt (as was the case in 2022), nor fees (in 2022 the Fund also incurred a fee of €0.15 million due and paid to the State for the counter-guarantee provided on Oitante's debt, which was fully settled in that year). More specifically, the return earned by the Fundo de Resolução — essentially from the investment in deposits with the Banco de Portugal and Short-term special debt certificates issued by the IGCP — amounted to €9.8 million, which resulted in €2.0 million in taxes.

This income reflects the return of interest rates to positive territory after a long period in which interest rates were negative.

As there were no interest and fees payable in 2023, the balance of interest paid by the Fundo de Resolução over the years remained at €810.2 million, of which approximately €692.1 million was paid to the State and €118.1 million to banks.

The balance of fees paid to the State (€22,4 million) remained the same and therefore the balance of interest and fees paid by the Fundo de Resolução to the State over the years (€714.5 million) also remained unchanged, to which the payment of €136.1 million for early partial repayment of the loan granted by the State in the context of the BANIF resolution was added. In addition to the amounts paid to the State, maturing interest to a total amount of €104.3 million is recognised.

The Fund's assets increased to €883.3 million, of which €663.7 million is in liquid assets, €173.9 million corresponding to a 13.04% stake in Novo Banco and a 100% shareholding in Oitante (the latter still valued at €50 thousand on the Fund's balance sheet), as well as €45.6 million in amounts receivable, €30.4 million of which correspond almost entirely to the part not yet paid to the Fundo de Resolução of the total revenue obtained by the State in 2022 and 2023 from the contribution on the banking sector. In turn, the Fund's liabilities amounted to €7,618.4 million.

3. Final amount after taxes, and therefore actually received by the Fundo de Resolução, as the total value of the dividends paid by Oitante in 2023 amounted to €63.8 million.

Unchanged from the previous year, the Fund's debt at the end of 2023 amounted to €7,511.9 million, of which €6,382.9 million (85%) is debt to the State and €1,129.0 million (15%) is debt held by seven domestic banks.

## 4 Contributions paid to the Fund

In 2023, due to the transitional arrangements laid down in Law No 23-A/2015 of 26 March 2015, two schemes for contributions to the Fund remained in place in parallel, in addition to the regime on the contribution by the banking sector.

On the one hand, the scheme in force before the implementation of Law No 23-A/2015 of 26 March 2015 remained on a transitional basis. The contributions detailed in said Law aim to ensure compliance with the obligations previously undertaken by the Fund (in this case, the scheme envisaged in Decree-Law No 24/2013 of 19 February 2013 applies with the necessary adaptations).

On the other hand, the contribution scheme created following the transposition of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (Bank Recovery and Resolution Directive, or BRRD) is in place. The scheme is based on harmonised rules within the European Union, whose general principles and rules were transposed by Law No 23-A/2015 of 26 March 2015 (Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 – “Delegated Regulation”). Contributions charged pursuant to this scheme in conjunction with Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 (SRM Regulation) from institutions covered by the Single Resolution Mechanism (SRM)<sup>4</sup> are transferred to the Single Resolution Fund, based on the Agreement on the transfer and mutualisation of contributions to the single resolution fund (Intergovernmental Agreement), signed in Brussels on 21 May 2014, approved by Parliament Resolution No 129/2015 of 22 July 2015, and ratified by Presidential Decree No 100/2015 of 3 September 2015.

In addition to the contributions levied on the basis of the scheme established by Decree-Law No 24/2013 of 19 February 2013, and the contributions created as part of the transposition of the BRRD, levied on the basis of the Delegated Regulation, the Fund also receives the revenue from the contribution by the banking sector.<sup>5</sup>

### **Periodical contribution charged under the scheme established by Decree-Law No 24/2013 of 19 February 2013**

In 2023, the base contribution rate was 0.029%, a 2.8 basis point decrease compared to the rate applicable in the previous year.

Given that according to its calculation methodology,<sup>6</sup> the effective rate applicable to each institution is the result of applying an adjustment factor to the base contribution rate, and that this adjustment factor, calculated on the basis of the risk profile of each member institution, measured by the

4. All credit institutions operating in Portugal and investment firms operating in Portugal whose parent undertaking is subject to consolidated supervision by the European Central Bank.

5. Pursuant to Article 153-F(1)(a) of the RGICSF.

6. The specific method and procedures to be followed for calculating these contributions are laid down in Notice No 1/2013 of the Banco de Portugal.

respective Common Equity Tier 1 ratio, is subject to a lower limit of 0.8 and an upper limit of 2.0,<sup>7</sup> the effective contribution rate to the Fundo de Resolução in 2023 ranged from 0.023% to 0.028%.

The total additional periodical contribution for 2023 amounted to €42.6 million,<sup>8</sup> a decrease of €41.2 million compared to the previous year (-49.1%). The breakdown of the periodical contribution for 2023 by type of member institution is shown in Table I.4.1.

**Table I.4.1 • Breakdown of the additional periodical contribution by type of institution | EUR thousands**

Type of member institution	Contributions due in 2023	Adjustments from the previous year	Contributions paid in 2023
Banks	38,282.2	-0.1	38,282.1
Savings banks	2,163.3	-1.1	2,162.1
Central and mutual agricultural credit banks	1,847.2	-0.4	1,846.8
Credit financial institutions	301.4	-0.2	301.2
Branches of credit institutions authorised in countries outside the EU and the EEA	5.3	-	5.3
Investment firms	5.0	-	5.0
<b>Total</b>	<b>42,604.4</b>	<b>-1.8</b>	<b>42,602.6</b>

Source: Fundo de Resolução.

As usual, the contribution was paid by member institutions by the last day in April.

### Contribution on the banking sector

According to available data, the amount received by the State was €216.1 million, of which €210 million was paid to the Fundo de Resolução. Thus, the amount not yet paid to the Fundo de Resolução (€6.1 million) is currently a receivable for the State, in addition to the €24.3 million in revenue from the contribution on the banking sector collected in 2022 that was not paid to the Fundo de Resolução.

### Periodical contribution created following the transposition of the BRRD

The figure calculated amounted to around €118.5 million, including contributions charged pursuant to the scheme transposing the BRRD in conjunction with the SRM Regulation to institutions covered by the SRM. Consequently, this amount was almost fully transferred to the SRF pursuant to the Intergovernmental Agreement and is therefore not included in the calculation of the Fund's own funds. The amount paid to the Fundo de Resolução by member institutions outside the scope of the SRM, which is therefore not transferred to the SRF, amounted to €3,000.

7. In the case of member institutions that are investment firms and not included within the perimeter of supervision on a consolidated basis of a credit institution, an adjustment factor of 0.8 is applicable; and in the case of companies relevant to payment systems subject to the Banco de Portugal's supervision, an adjustment factor of 1.0 is applicable.

8. In addition, €1.8 thousand was received due to the adjustment of amounts relating to 2022.

# 5 Financial management of the Fund

## 5.1 Macroeconomic environment and financial market developments

### Background

Debt markets were constrained by the continued strong upward adjustment of key central banks' interest rates, the significant decline in inflation and the slowdown in global economic activity in a geopolitical context marked by the persisting war in Ukraine and the worsening of the conflict in the Middle East.

In March and April there was an increase in the degree of risk aversion associated with the instability felt in the United States and Swiss banking sectors, which led to the intervention of US authorities in a number of small and medium-sized banks and, in Switzerland, to the acquisition of Credit Suisse by UBS.

The uncertainty surrounding the effectiveness of anti-inflation measures, the rise of geopolitical tensions in October following the acute worsening of the Israel-Hamas conflict, and the deadlock in the military conflict in Ukraine were also factors that conditioned risk aversion.

Nevertheless, the progress made in containing inflation and the prospect, reinforced in the final months of the year, of the approaching end of the cycle of interest rate hikes, contributed to a broadly positive market sentiment prevailing in 2023, visible in a favourable year-end performance of the medium and long-term segment of bond markets and major stock indices.

The short-term segment of the bond markets was constrained by the adjustment of key central bank interest rates, in particular those of the European Central Bank.

### Economic activity

Amid tighter monetary policies, economic growth in 2023 fell short of that in 2022. According to the International Monetary Fund's (IMF) estimate, the global economy grew by 3.1% in 2023, 0.4 p.p. less than in 2022.

The gross domestic product (GDP) of the advanced economies' aggregate grew by 1.6% in 2023, well below the level recorded in 2022 (2.6%).

In the euro area, GDP grew by 0.5% in 2023 according to IMF estimates,<sup>9</sup> following 3.4% growth in the previous year.

The United Kingdom economy moved from a 4.3% growth rate in 2022 to 0.5% in 2023.

The US economy was the exception among advanced economies, growing by 2.5%, greater than that in 2022 (1.9%).

9. Eurostat published an identical estimate on 14 February (0.5% euro area growth).



The growth rate of emerging market economies as a whole was 4.1% in 2023, the same figure as in 2022. In particular, the pace of growth of the Chinese economy increased from 3.0% in 2022 to 5.2% in 2023, benefiting from the end of the Zero-COVID policy and from measures supporting the real estate sector.

According to Statistics Portugal, the Portuguese economy grew by 2.3% in 2023,<sup>10</sup> after having grown 6.8% in 2022.

## **Inflation**

Over the course of the year, there was a sharp decline in global inflation, supported by the strong adjustment of central banks' monetary policies that started in 2022, the normalisation of supply chains that had been severely affected by the COVID-19 pandemic, and the fall in energy prices, particularly in the price of natural gas.

In the euro area, the year-on-year rates of change in the Harmonised Index of Consumer Prices (HICP) and the HICP excluding energy, alcohol, tobacco and food decreased from 9.2% and 5.2% in December 2022 to 2.9% and 3.4% in December 2023 respectively. In the United States, the year-on-year rates of change in the consumer price index and consumer price index excluding energy and food decreased from 6.4% and 5.7% in December 2022 to 3.3% and 3.9% in December 2023 respectively. In Portugal, the year-on-year rates of change in the HICP and HICP excluding energy, alcohol, tobacco and food decreased from 9.8% and 5.5% in December 2022 to 1.9% and 3.3% in December 2023 respectively.

## **Monetary policy developments**

Risks of inflation persisting above target levels prompted major central banks to continue the momentum of key interest rate hikes that started in 2022.

In the first three quarters of 2023, the European Central Bank (ECB) rose its key interest rates by a total of 2.00 p.p. Following its decisions, the interest rates on the deposit facility, the main refinancing operations and the marginal lending facility stood at 4.00%, 4.50% and 4.75% respectively.

In October, the ECB interrupted the cycle of interest rate hikes that began in July 2022 and decided to keep key interest rates unchanged on the grounds that the level reached, maintained for a sufficiently long period of time, would allow a timely return of inflation to the medium-term objective (2%).

The US Federal Reserve successively increased the federal funds target rate over the first seven months of the year, by a total of 1.00 p.p., to between 5.25% and 5.50%.

The Bank of England also raised its key rates in the course of 2023, from 3.50% to 5.25%, with the latest rate increase, of 0.25%, occurring at the August meeting. At its September meeting, the Bank of England decided to reduce the sovereign debt held on the balance sheet by £100 billion, to be implemented gradually over twelve months.

The Bank of Japan maintained the accommodative nature of its monetary policy throughout the year, having kept the key interest rate at -0.1% and introducing more flexibility in the margins of the fluctuation band of the ten-year public debt interest rates.

10. Data published on 30 January 2024 by Statistics Portugal, the latest information available at the time of publication of this report, as the March 2024 issue of the Banco de Portugal's Economic Bulletin was not yet available. In its December 2023 issue of the *Economic Bulletin*, the Banco de Portugal projected a 2.1% growth rate for 2023.

In turn, the People's Bank of China, in a context of absence of inflationary pressures and lower than desired economic growth, introduced monetary stimuli over the course of 2023, reducing the levels of several of its key interest rates by a total that stands between 0.10 p.p. and 0.25 p.p. and reducing the reserves required of Chinese banks by a total of 0.50 p.p.

## Developments in public debt markets

Over the course of 2023, the rating/outlook for developments in several countries' debt was revised by the main ratings agencies.

Financial ratings agencies DBRS and Fitch raised the Portuguese public debt ratings from "A (low)" to "A" and from "BBB+" to "A-" respectively, both keeping the outlook for its evolution stable. Financial rating agency Moody's revised Portugal's public debt rating upwards by two levels, from "Baa2" to "A3", placing the credit quality of Portuguese debt higher than Spanish debt. Standard and Poor's maintained Portuguese public debt's rating at "BBB+" and reviewed its outlook from stable to positive. Fitch revised French public debt downwards, from "AA" to "AA-", changing its outlook from negative to stable.

Moody's and Standard and Poor's revised Irish public debt upwards, from "A1" to "Aa3" and from "AA-" to "AA" respectively, with both moving their outlook for future developments from positive to stable.

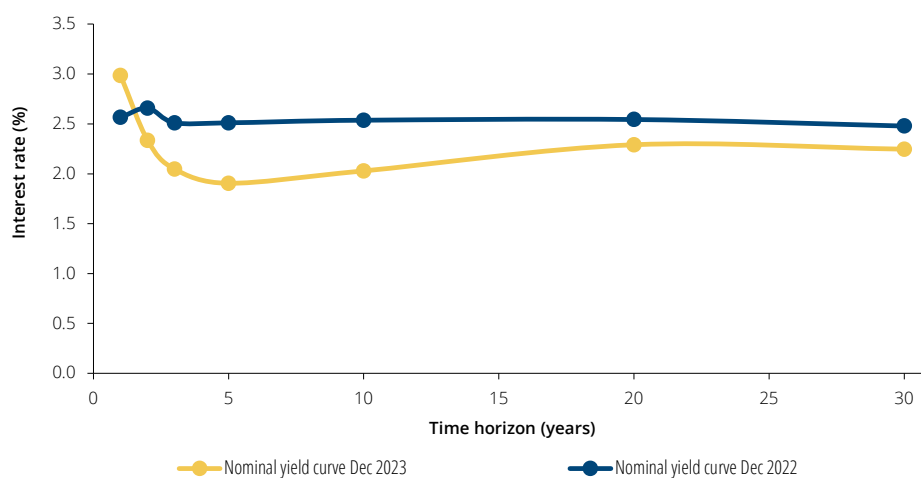
Standard & Poor's revised Greece's public debt rating upwards from "BB+" to "BBB-", the first level of the investment category, changing its outlook from positive to stable.

Fitch revised the rating of US public debt downwards from "AAA" to "AA+", changing its outlook from negative to stable. Moody's maintained the rating of US public debt at AAA and changed its outlook from stable to negative.

Interest rates on public and private debt described an upward trend until the end of October, declining significantly in the last two months of the year as the expectation that the central bank interest rate hike cycle had come to an end was reinforced.

In the euro area, there was, by year-end, an increase in nominal interest rates on short-term public debt and a decline in maturities longer than a year (Chart I.5.1).

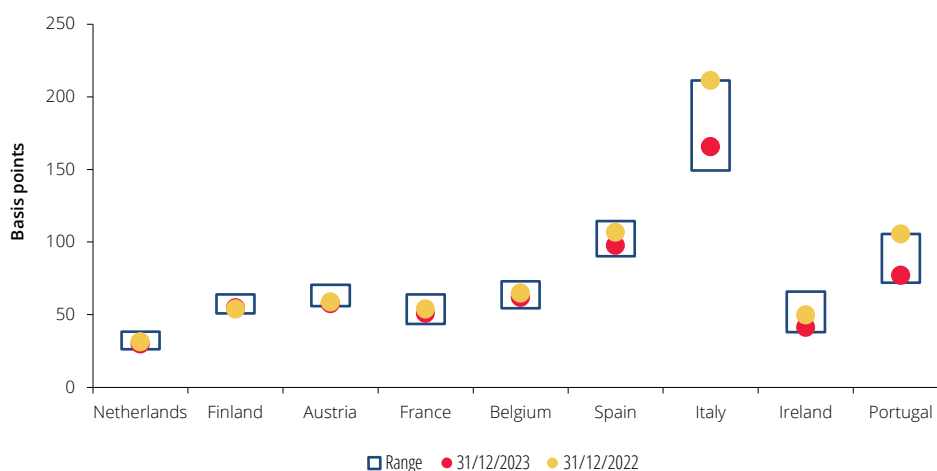
**Chart I.5.1 • Nominal interest rate curves on German public debt**



Source: Bloomberg.

In addition, most euro area countries' sovereign bond yield spreads in relation to their German counterparts narrowed, more markedly in the cases of public debt where initial interest rate levels were higher (Chart I.5.2).

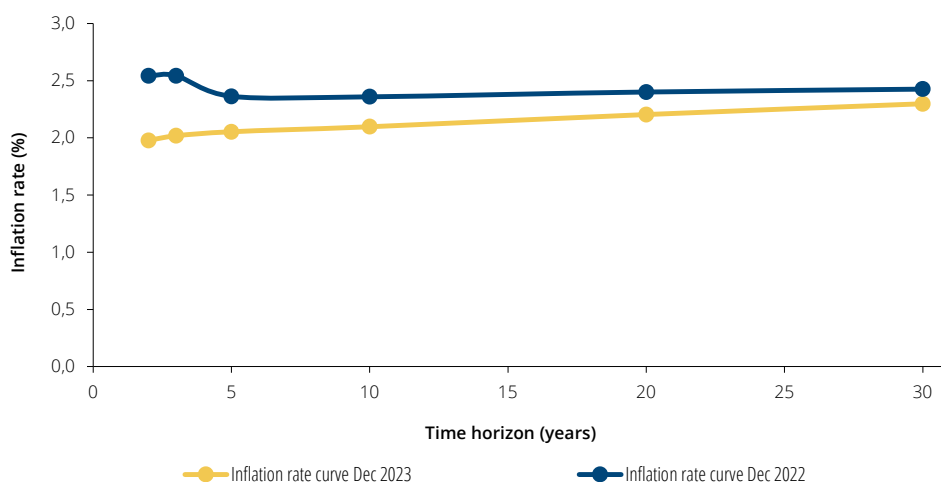
**Chart I.5.2 • Yield spreads on (ten-year) government bonds of euro area issuers and German counterparts**



Source: Bloomberg.

Inflation expectations measured from break-even inflation rates, implied in the German public debt market, declined significantly in 2023 (Chart I.5.3).

**Chart I.5.3 • Euro area inflation rate curves implied in German public debt**



Source: Bloomberg.

## 5.2 Portfolio structure

In 2023, the Fund's resources continued to be invested in the Portuguese Treasury and Debt Management Agency (Agência de Gestão da Tesouraria e da Dívida Pública — IGCP, E.P.E.).

## 6 Legislative and regulatory changes

In 2023 there were no major changes in legislation and regulations. The Banco de Portugal, through Instruction No 28/2023, slightly increased the base contribution rate provided for in Decree-Law No 24/2013 of 19 February 2013 to 0.032%, to be applied to the additional periodical contributions of 2024, compared to the 0.029% applied in the additional periodical contributions of 2023.

## 7 Auditing of the Fundo de Resolução

The Board of Auditors of the Banco de Portugal is the auditing entity for the Fund's activity in accordance with the provisions laid down in Article 153-S of the RGICSF.

Note that the Management Committee ruled that the Fund's accounts have also been subject to external audit since 2012, even if the Fund is not. The external audit of the Fund's accounts is carried out by BDO & Associados, SROC, Lda.

All documentation pertaining to the Fund's asset position is sent to the Court of Auditors.

## 8 Support provided by the Banco de Portugal and cooperation with other entities

Under Article 153-P of the RGICSF, the Banco de Portugal provides the technical and administrative services required for the Fund's smooth operation.

The support provided by the Banco de Portugal essentially involves providing the staff that support the activity of the Management Committee and implement its decisions and guidelines, the Fund's technical and administrative secretariat, those in charge of handling accounting records and preparing financial statements, managing the Fund's financial means, participating in the procedures for collecting contributions and legal support whenever required, particularly with regard to litigation, in addition to technical support in the context of the performance of the contracts relating to the sale of Novo Banco.

The Fund's Management Committee would again like to express its appreciation to all the Banco de Portugal's teams that provided continuous technical and administrative support to the Fund.

The Management Committee would like to reiterate its appreciation to the member credit institutions and to the Associação Portuguesa de Bancos for their excellent cooperation with the Fund.

Lisbon, 20 March 2024

#### **THE MANAGEMENT COMMITTEE**

##### **Chairman**

Luís Augusto Máximo dos Santos

##### **Member**

Pedro Miguel Nascimento Ventura

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## II Financial statements and notes

1 Financial Statements

2 Notes on the financial statements





# 1 Financial Statements

**Table II.1.1 • Balance sheet** | EUR thousands

	Notes	31/12/2023	31/12/2022
<b>ASSETS</b>			
<b>Current assets</b>			
Cash and bank deposits	3	663,696.3	359,931.6
Contributions receivable			
Contribution on the banking sector (State)	4	30,378.2	24,313.5
State and other public entities	5	6,702.7	–
Other accounts receivable and deferrals	6	8,565.6	7.9
		<b>709,342.8</b>	<b>384,252.9</b>
<b>Non-current assets</b>			
Other assets related to resolution actions			
Asset management vehicles	7	50.0	50.0
Holdings arising from resolution actions	8	173,915.4	257,493.2
		<b>173,965.4</b>	<b>257,543.2</b>
<b>Total assets</b>		<b>883,308.2</b>	<b>641,796.1</b>
<b>OWN FUNDS</b>			
Contributions		2,610,872.4	2,352,202.1
Resolution actions		-8,413,850.5	-8,387,121.9
Reserves and other own resources		-932,091.5	-939,794.6
<b>Total own funds</b>	9	<b>-6,735,069.5</b>	<b>-6,974,714.4</b>
<b>LIABILITIES</b>			
<b>Current liabilities</b>			
Liabilities related to resolution actions	10	8.8	–
Other accounts payable and deferrals	11	104,681.8	104,616.1
		<b>104,690.6</b>	<b>104,616.1</b>
<b>Non-current liabilities</b>			
Financing obtained			
Loans obtained from the State	12	6,382,880.3	6,382,880.3
Other financing	13	1,129,012.6	1,129,012.6
Deferred tax liabilities	14	1794.2	1.5
		<b>7,513,687.1</b>	<b>7,511,894.4</b>
<b>Total liabilities</b>		<b>7,618,377.7</b>	<b>7,616,510.5</b>
<b>Total own funds and liabilities</b>		<b>883,308.2</b>	<b>641,796.1</b>

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**Table II.1.2 • Profit and loss account by Nature | EUR thousands**

	Notes	31/12/2023	31/12/2022
Interest and similar income and expenses	15	9,770.2	6.2
Income tax		-2,047.3	-1.5
Current tax	16	-254.6	-
Deferred tax	14	-1,792.7	-1.5
<b>Income from the investment of available resources</b>		<b>7,722.9</b>	<b>4.7</b>
Supplies and services from third parties		-19.5	-174.2
Fees handed over to the State	17	-	-151.6
Other supplies and services from third parties	18	-19.5	-22.6
Other expenses	19	-0.2	-9.7
<b>Net profit/loss</b>		<b>7,703.1</b>	<b>-179.1</b>

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**Table II.1.3 • Statement of Changes in Own Funds | EUR thousands**

	Contributions						Retained earnings	Net profit/loss	Own funds
	Notes	Direct		Contribution on the banking sector	Gains and losses from resolution actions				
		Establishment of the Fundo de Resolução	Initial			Periodical			
<b>Position as at 31 December 2021</b>	<b>13,610.0</b>	<b>10.3</b>	<b>475,389.4</b>	<b>1,574,937.5</b>	<b>-8,331,888.1</b>	<b>-802,676.0</b>	<b>-136,939.4</b>	<b>-7,207,556.4</b>	
Contributions									
Contributions relating to the current financial year	-	-	83,784.6	204,470.2	-	-	-	-	288,254.9
Implementation of resolution actions									
Dilutive effect on the amount of the shareholding in Novo Banco, S. A., resulting from the special regime applicable to deferred tax assets and Novo Banco, S.A's sale agreements	-	-	-	-	-55,092.3	-	-	-	-55,092.3
Other obligations arising from Novo Banco, S. A's sale agreements	-	-	-	-	-141.5	-	-	-	-141.5
Profit distribution	-	-	-	-	-	-136,939.4	136,939.4	-	-
	-	-	83,784.6	204,470.2	-55,233.8	-136,939.4	136,939.4	233,021.1	-
<b>Net profit/loss for the year</b>							<b>-179.1</b>	<b>-179.1</b>	
<b>Position as at 31 December 2022</b>	<b>13,610.0</b>	<b>10.3</b>	<b>559,174.0</b>	<b>1,779,407.7</b>	<b>-8,387,121.9</b>	<b>-939,615.4</b>	<b>-179.1</b>	<b>-6,974,714.4</b>	
Contributions									
Contributions relating to the current financial year	-	-	42,605.6	216,064.8	-	-	-	-	258,670.4
Implementation of resolution actions									
Liabilities related to resolution actions	-	-	-	-	-8.8	-	-	-	-8.8
Dilutive effect on the amount of the shareholding in Novo Banco, S. A., resulting from the special regime applicable to deferred tax assets and Novo Banco, S.A's sale agreements	-	-	-	-	-83,577.8	-	-	-	-83,577.8
Other obligations arising from Novo Banco, S. A's sale agreements	-	-	-	-	-274.2	-	-	-	-274.2
Dividend distribution - Oitante, S. A.									
Gross dividends	-	-	-	-	63,834.9	-	-	-	63,834.9
Income tax – current	-	-	-	-	-6702.7	-	-	-	-6,702.7
Profit distribution	-	-	-	-	-	-179.1	179.1	-	-
	-	-	42,605.6	216,064.8	-26,728.6	-179.1	179.1	231,941.8	-
<b>Net profit/loss for the year</b>							<b>7,703.1</b>	<b>7703.11</b>	
<b>Position as at 31 December 2023</b>	<b>13,610.0</b>	<b>10.3</b>	<b>601,779.6</b>	<b>1,995,472.5</b>	<b>-8,413,850.5</b>	<b>-939,794.6</b>	<b>7,703.1</b>	<b>-6,735,069.5</b>	

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**Table II.1.4 • Cash flow statement and cash equivalents | EUR thousands**

	31/12/2023	31/12/2022
<b>Cash flows from operating activities</b>		
Contributions to the Fundo de Resolução:		
Contribution on the banking sector relating to the current year	210,000.0	180,156.8
Other periodical contributions	42,606.7	83,824.9
Contributions repaid to members of the Fund	-40.3	-
Contributions to the Single Resolution Fund:		
Contributions charged to member institutions	118,476.2	158,058.9
Delivery to the Single Resolution Fund	-118,549.6	-157,955.9
Interest payment on remuneration of balances with the Banco de Portugal	-	-103.9
Dividends paid by Oitante S. A.	50,429.6	-
Verification Agent established in the Contingent Capital Agreement	-138.5	-
Legal advisory services	-49.2	-
Other receipts/payments	-1.4	-9.9
<b>Cash flows from operating activities</b>	<b>302,733.5</b>	<b>263,970.8</b>
<b>Cash flows from investment activities</b>		
Payments relating to:		
Financial investments		
Short-term special debt certificates	-559,750.0	-126,827.3
Receipts from:		
Financial investments		
Maturity of short-term special debt certificates	126,827.3	4,875.5
Interest on demand deposits	1,020.0	-
Short-term special debt certificates	11.1	-
<b>Cash flows from investment activities</b>	<b>-431,891.5</b>	<b>-121,951.8</b>
<b>Cash flows from financing activities</b>		
Receipts from:		
Negative interest on financing from banks	-	20.4
Payments relating to:		
Fee payable on the State counter-guarantee	-	-167.9
<b>Cash flows from financing activities</b>	<b>-</b>	<b>-147.5</b>
<b>Change in cash and cash equivalents</b>	<b>-129,158.0</b>	<b>141,871.5</b>
Cash and cash equivalents at the start of the period	233,104.3	91,232.7
Cash and cash equivalents at the end of the period	103,946.3	233,104.3

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## 2 Notes on the financial statements

(Amounts in eur thousands, unless otherwise indicated)

### NOTE 1 • ACTIVITY OF THE FUNDO DE RESOLUÇÃO

The Fundo de Resolução was established in 2012 by Decree-Law No 31-A/2012 of 10 February 2012, which introduced a resolution regime into the Legal Framework of Credit Institutions and Financial Companies (Regime Geral das Instituições de Crédito e Sociedades Financeiras — RGICSF), approved by Decree-Law No 298/92 of 31 December 1992. The Fundo de Resolução is a public-law legal person, with administrative and financial autonomy and has its head office in Lisbon, in the premises of the Banco de Portugal (Article 153-B of the RGICSF), which provides the technical and administrative services required for the regular operation of the Fund (Article 153-P of the RGICSF).

The purpose of the Fundo de Resolução is to provide financial assistance to the implementation of the resolution action taken by the Banco de Portugal and to perform all other tasks conferred upon it by law in order to take resolution action (Article 153-C of the RGICSF). The resolution actions include: (i) total or partial sale of the business of an institution to another institution authorised to carry on the activity in question, (ii) total or partial transfer of the business of an institution to bridge banks, (iii) the separation and partial or total transfer of the business to asset management vehicles, and (iv) bail-in.

The Fundo de Resolução is operated by a Management Committee, which comprises three members: (i) a member of the Board of Directors of the Banco de Portugal, appointed by the Bank, who chairs the committee; (ii) a member appointed by the member of government responsible for finance; and (iii) a member appointed by agreement between the Banco de Portugal and the member of the government responsible for finance.

On 3 August 2014 the Banco de Portugal decided to apply a resolution action to Banco Espírito Santo, S. A. and a bridge bank — Novo Banco, S. A. — was created – whose capital was held in full by the Fundo de Resolução until the conclusion of its sale process in October 2017, which resulted in the sale of a 75% shareholding in the bank (Note 8).

On 20 December 2015 the Banco de Portugal decided to apply a resolution action to BANIF — Banco Internacional do Funchal, S. A. and to set up an asset management vehicle, whose capital is held in full by the Fundo de Resolução (Note 7), and also decided on the provision of financial assistance to the amount of €489,000,000 (Note 20).

As of 1 January 2016 and pursuant to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 (SRM Regulation), the Single Resolution Board (SRB) is responsible for heading resolution action within the Banking Union, and for ensuring the consistent functioning of the system and carrying out directly the resolution tasks regarding all institutions or groups that are subject to direct supervision by the ECB, as well as all groups operating in Member States that are engaged in cross-border activities within the Banking Union, even if they are not subject to direct supervision by the ECB.

Therefore, although the purpose of the Fundo de Resolução continues to be to fund resolution actions implemented by the Banco de Portugal pursuant to the RGICSF, the scope of institutions potentially covered by the financial support to be provided by the Fundo de Resolução was considerably reduced when the SRM Regulation entered into force, and, in practice, is now limited

to: i) investment firms dealing on own account or underwriting financial instruments and/or placing of collateralised financial instruments on a firm commitment basis, whose parent undertaking is not subject to consolidated supervision by the ECB, (ii) branches of credit institutions located in third countries operating in Portugal, and (iii) caixas económicas (savings banks), except for Caixa Económica Montepio Geral and Caixa Económica da Misericórdia de Angra do Heroísmo.

In fact, pursuant to the SRM Regulation, even though national resolution authorities continue to be directly responsible for establishing their resolution function over institutions or groups that are not subject to direct ECB supervision and that do not engage in cross-border activity, should the financing of resolution actions entail the use of the resolution financing arrangement, the decision will be the responsibility of the Single Resolution Fund (in which case the decision-making powers are also transferred to the Single Resolution Board).

Nevertheless, by virtue of the transitional arrangements set out in Article 14(5) and (6) of Law No 23-A/2015 of 26 March 2015, additional periodical contributions must be paid to the Fundo de Resolução by all member institutions operating on the last day of April each year (details in Box 2 of the 2016 Annual Report).

In February 2017 the Fundo de Resolução revised the conditions of the loans obtained from the Portuguese State and from member institutions in 2014 and 2015 (Notes 12 and 13 respectively), which makes it possible for the Fundo de Resolução to fully redeem its liabilities, and ensure their remuneration based on a stable, predictable and affordable charge to the banking sector, in accordance with the applicable legal framework and the principles of the resolution regime.

On 2 October 2017 the Fundo de Resolução and the Portuguese State signed a Framework Agreement on the provision of financial means to meet the Fund's obligations arising from the agreements related to the sale of the Fund's shareholding in Novo Banco, S. A.

Also in October 2017, and as mentioned above, the Novo Banco, S. A.' sale process was completed, resulting in the sale of a 75% stake (for more details, see Box 1 of the 2017 Annual Report).

Between 2018 and 2021 the Fund made payments to Novo Banco, S. A. under the Contingent Capital Agreement entered into within the sale process of Novo Banco, S. A., totalling €3,405,018.3 thousand (Note 23). The Fundo de Resolução used its own funds, resulting from contributions directly or indirectly paid by the banking sector, supplemented by State loans totalling €2,130,000.0 thousand, and loans granted by member institutions totalling €429,012.6 thousand, the latter on the basis of a Credit Facility Agreement entered into in May 2021, through which a sum of up to €475,000.0 thousand was made available to the Fundo de Resolução, intended to provide the Fundo de Resolução with the financial resources required to meet any obligations arising from the Contingent Capital Agreement in 2021 and 2022.

## NOTE 2 • BASES OF PRESENTATION AND MAIN ACCOUNTING POLICIES

### 2.1 Bases of presentation

Under Article 153-R of the RGICSF, the bases of presentation and accounting principles guiding the preparation of the Fund's financial statements are set out in its own Chart of Accounts.

This Chart establishes the financial statement models and the minimum content of disclosures in the Notes. The Chart is based on the International Financial Reporting Standards (IFRS), approved by the

European Commission, as amended up to 1 January 2012, without prejudice to a number of specific provisions expressly set out in this Chart. These specific provisions are duly indicated in Note 2.2.

## 2.2 Summary of the main accounting policies

The main accounting policies and valuation criteria used to prepare the financial statements for the 2023 fiscal year are as follows:

### a) Accounting assumptions and qualitative characteristics of the financial statements

The Fundo de Resolução's financial statements reflect the economic reality of its assets and liabilities and are based on the accounting assumptions of the accrual principle (for most items in the financial statements, namely as regards interest on loans and deposits that is recognised as it is earned or incurred, regardless of what it is paid or charged) and a going concern basis. The financial statements' qualitative characteristics are understandability, relevance, reliability and comparability.

### b) Recognition of assets and liabilities

Assets are resources controlled by the Fund as a result of past events, from which future economic benefits are expected. Liabilities are obligations arising from past events and their settlement is expected to result in an outflow or allocation of resources embodying economic benefits. Assets and liabilities are usually recognised at trade date.

### c) Income recognition

Realised gains and losses are recognised in periods in which they are earned or incurred.

Realised gains and losses in financial operations resulting from the sale of financial assets held for trading are recognised on their trade date in the Fund's profit and loss account, under Gains and losses on financial investments.

### d) Measuring balance sheet items

Financial assets held for trading are valued at the end of the period at market prices as at the reporting date.

Assets related to resolution actions are measured at acquisition cost, or fair value at initial measurement, subsequently net of impairment losses. Assets related to contributions receivable, accounts receivable, third-party deposits and other claims are recognised at nominal value, net of impairment losses. Financing obtained, other accounts payable and other liabilities are recognised at their nominal value.

### e) Financial assets held for trading

Financial assets are classified as held for trading when they are acquired with the main purpose of being traded in the short term. Acquisition and disposal of financial assets held for trading are recognised on their trade date, i.e. the date on which the Fund undertakes to purchase or sell the asset. These financial assets are recognised at fair value, and the transaction costs are directly recognised in profit/loss. After their initial recognition, changes to fair value are recognised in profit/loss.

**f) Cash and cash equivalents**

For the purpose of the Cash flow statement, the Cash and cash equivalents aggregate covers short-term highly liquid investments that are readily convertible into known amounts of cash and that are subject to negligible risk of changes in value. In this context, it includes cash and bank deposits.

**g) Non-current assets held for sale**

Non-current assets are classified as held for sale where: (i) their balance-sheet value is expected to be recovered through their sale rather than their continued use; (ii) disposable assets are available for immediate sale, and (iii) their sale is highly probable and made within a relatively short time frame.

Specifically, for a non-current asset to be classified as held for sale the following must apply: (i) there is a sale plan in progress, (ii) the estimated sale price is reasonable compared to its current fair value, and (iii) the sale is expected to take place within one year, save where there are events or extrinsic circumstances not allowing the sale to materialise within the said time frame, but which do not change the sale plan referred to above.

Non-current assets are measured in compliance with the applicable IFRS immediately before the initial classification of the asset as held for sale. Subsequently, these assets are measured at the lowest initial recognition amount and the fair value less selling costs. These assets are subject to impairment losses.

**h) Assets related to resolution actions: asset management vehicles and holdings arising from resolution actions**

The accounting recognition of assets related to the taking of resolution actions is a specific provision of the Fundo de Resolução's Chart of Accounts.

Asset management vehicles and full or partial holdings arising from resolution actions are measured at acquisition cost or fair value at initial measurement, subsequently net of impairment losses.

**i) Assets related to resolution actions: Claims to be recovered**

Pursuant to the RGICSF, the financial means provided by the Fundo de Resolução, as determined by the Banco de Portugal, for the purpose of resolution action, that are not used to pay up the bridge institution's share capital, confer upon the Fund a credit claim against the entity under resolution, of an equal amount. This credit claim enjoys, under the terms of the same legal framework, preferential ranking over other preferential claims. The credit claim is recognised as consideration for actual outflows, at the time of their financial settlement, for their nominal value, net of impairment losses. Impairment losses are recognised as consideration for a reduction in own funds, as established in the Fundo de Resolução's Chart of Accounts.

**j) Own funds: Direct contributions**

The accounting recognition of direct contributions made by member institutions is a specific provision of the Fundo de Resolução's Chart of Accounts.

The contributions paid to the Fund are one of the components of its own funds and are recognised as such on the dates set out in Articles 153-G, 153-H and 153-I of the RGICSF or in additional legislation.

Under the RGICSF, member institutions must pay an initial contribution to the Fundo de Resolução within 30 days of registration for the commencement of their activity and, subsequently, annual periodic contributions, due by the last working day of April of the year to which they relate. The values



of these contributions are fixed by means of specific legislation. In the event of lack of resources in the Fund, member institutions may be called upon to make special contributions, whose terms are set by means of specific legislation.

The amount of contributions is recognised in Own Funds through an off-setting receivable, which is cancelled out at the time of their financial settlement.

#### **k) Own funds: Proceeds from the contribution on the banking sector**

The proceeds from the contribution on the banking sector, created by Law No 55-A/2010 of 31 December 2010, are financial means of the Fundo de Resolução (Article 153-F of the RGICSF).

The accounting recognition of the proceeds from the contribution on the banking sector is a specific provision of the Fundo de Resolução's Chart of Accounts.

The amount of the contributions is recognised in Own Funds at the time of their calculation through an off-setting receivable, which is cancelled out at the time of their financial settlement.

#### **l) Own funds: Gains and losses from resolution actions**

The accounting recognition of the operations arising from resolution actions is a specific provision of the Fundo de Resolução's Chart of Accounts.

Where the Fund is required to provide financial assistance to the implementation of the resolution action taken by the Banco de Portugal, a credit claim is recognised over the entity under resolution, net of impairment losses. Impairment losses are recognised against a decline in the Fund's own funds.

Where the Fund is repaid the financial support it has provided for the implementation of resolution actions, gains are recognised against an increase in Own funds.

#### **m) Income tax**

The Fundo de Resolução, as a public-law legal person, is exempt from Corporate Income Tax under Article 9 of the Corporate Income Tax Code (CIRC), apart from capital income as defined for the purposes of Personal Income Tax in Article 5 of the Personal Income Tax Code (CIRS) — Category E.

Pursuant to Article 3(1)(b) of the CIRC, corporate income tax on "the total income, corresponding to the sum of incomes in the various categories considered for personal income tax purposes as well as asset increases obtained free of charge" will be applied to taxable persons who do not primarily carry out an activity of a commercial, industrial or agricultural nature.

Pursuant to Article 87(5) of the CIRC, for the total income of entities with head office or place of effective management in Portuguese territory that do not primarily carry out activities of a commercial, industrial or agricultural nature, the corporate income tax rate is 21%.

Capital income earned in Portugal is subject to tax withholding at source at the withholding rate in force. Tax withholding at source of income from debt securities issued by resident entities will be made in accordance with the provisions laid down in Decree-Law No 193/2005 of 7 November 2005.

Capital income earned abroad is taxed via an income tax statement submitted to the Portuguese Tax and Customs Authority (Form 22). Such income may be subject to tax withholding at source in the country of origin of income and, where applicable, the elimination of international double taxation is foreseen if such a convention with Portugal is in place or by using the international double taxation credit mechanism. Income tax recognised in the Fund's profit/loss comprises current taxes and deferred taxes, which correspond to the amount of tax payable in future periods, stemming from

temporary differences between the accounting values of assets and their tax base. The calculation of deferred taxes is based on the best estimate of the tax amount payable in the future.

The tax base specifically applicable to debt securities is calculated according to the provisions of Article 5(5) of the CIRS, which reads as follows: "investment income includes the quantum of interest counted from the date of the last payment or issue, or of first placement or endorsement, if payment has not yet been made, up to the date when transfer of some of the securities takes place, as well as the difference in the part that corresponds to those periods, between the amount of repayment and the issue price where the return on the securities consists, in whole or in part, of that difference."

#### n) Provision for liabilities arising from resolution actions

The accounting policy used for the provision for liabilities arising from resolution actions is a specific provision of the Fundo de Resolução's Chart of Accounts.

Resolution actions may trigger scenarios where future payments are likely to occur. These situations are subject to an assessment of whether: (i) there is a current legal obligation derived from a past event, (ii) an outflow of funds will probably occur in order to meet that obligation, and (iii) it is possible to make a reliable estimate of the amount in question. Where these conditions are cumulatively met, a provision is made, offset by a reduction in the Fund's own funds, in accordance with the accounting policy described in (l) above.

#### o) Post-balance-sheet events

In compliance with the IFRS, the Fundo de Resolução's assets, liabilities and results are adjusted for favourable or unfavourable events occurring between the balance sheet date and the date of approval of the financial statements, for which there is evidence as at the balance sheet date. Events indicating conditions arising after the balance sheet date, which do not give rise to adjustments, are disclosed only.

## NOTE 3 • CASH AND BANK DEPOSITS

The item Cash and bank deposits is broken down as follows:

Cash and bank deposits	31/12/2023	31/12/2022
Cash	0.4	0.4
Demand deposits	103,945.9	233,103.9
Short-term special debt certificates	559,750.0	126,827.3
	<b>663,696.3</b>	<b>359,931.6</b>

As of 2017, pursuant to the provisions of the Budget Implementation Decree-Law (Decree-Law No 25/2017 of 3 March 2017), and consecutively replicated in the following equivalent legislation up to 2023, the principle of using a treasury single account is applicable to the Fundo de Resolução. In 2023 the Fundo de Resolução was granted partial exemption from complying with this principle, under the terms of the law. Thus, demand deposits correspond to amounts placed with the Agência de Gestão da Tesouraria e da Dívida Pública — IGCP, the E.P.E. and the Banco de Portugal.

Short-term special debt certificates are also issued by the same entity. The investment made in 2022 matured on 2 January 2023. In 2023 two short-term special debt certificates were set up, on 19 January and 29 December 2023, maturing on 4 and 17 January 2024 respectively.

The Cash Flow Statement details the entries recorded under Cash and demand deposits. For the purposes of preparing the cash flow statement, the short-term special debt certificates were not considered as Cash and cash equivalents and are presented in cash flows from investing activities.

## **NOTE 4 • CONTRIBUTIONS RECEIVABLE – CONTRIBUTION ON THE BANKING SECTOR (STATE)**

The proceeds from the contribution on the banking sector are included in the Fundo de Resolução's own funds, under the terms of the provisions set out in Article 153-F(1)(a) of the RGICSF.

Amounts entered in this item as at 31 December 2023 correspond to amounts receivable by the Fundo de Resolução from the State and represent the difference between (i) the overall revenue received by the State as a contribution on the banking sector in 2023 (€216,064.8 thousand), and (ii) the amount actually transferred by the State to the Fundo de Resolução during 2023 (€210,000.0 thousand), as well as the difference between (i) the total revenue received by the State as a contribution on the banking sector in 2022 (€204,470.2 thousand), and (ii) the amount actually transferred by the State to the Fundo de Resolução during that year (€180,156.8 thousand).

## **NOTE 5 • STATE AND OTHER PUBLIC ENTITIES**

On 31 December 2023 the item State and other public entities shown under assets includes the amount of 50% of the withholding tax levied when dividends were distributed by Oitante, S. A.

The Fundo de Resolução is subject to corporate income tax (IRC), but exempt (under Article 9 of the IRC Code), except for capital income, as defined for the purpose of personal income tax (IRS), as outlined in Note 2.2(m).

In terms of corporate income tax, Oitante, S. A. is a non-exempt taxpayer. Therefore in distributing dividends to the Fundo de Resolução, Oitante, S. A. made a withholding tax at the rate of 21%, corresponding to €13,679.4 thousand.

Therefore the Fundo de Resolução recorded an IRC amount to be recovered, corresponding to 50% of the withholding tax made by Oitante, S. A. (€6,702.7 thousand), upon submission of Form 22 for 2023.

## **NOTE 6 • OTHER ACCOUNTS RECEIVABLE AND DEFERRALS**

As at 31 December 2023 this item essentially comprised accrued interest on short-term special debt certificates (€7,514.2 thousand – Note 3) and the demand deposit with the Banco de Portugal (€1,050.6 thousand).

## **NOTE 7 • OTHER ASSETS RELATED TO RESOLUTION ACTIONS: ASSET MANAGEMENT VEHICLES**

The item Other assets related to resolution actions records Oitante, S. A.' share capital, subscribed in full by the Fundo de Resolução, corresponding to 50,000 registered shares with the unit value of €1.

Oitante, S. A. was set up as an asset management vehicle on 20 December 2015. Its purpose is the management of the rights and obligations transferred from BANIF – Banco Internacional do Funchal,

S. A. following the resolution actions applied to this credit institution. In carrying out its activity, this entity will comply with management criteria ensuring the maintenance of low risk levels and the maximisation of its value, with a view to its subsequent sale or liquidation.

The Fundo de Resolução was informed of Oitante, S. A.'s 2022 accounts, as well as of the opinions of the Audit Board and the Statutory Audit.

As at the date of approval of the Fundo de Resolução's accounts and in view of the information provided by Oitante's Board of Directors on its activity carried out in 2023, it is expected that the shareholding in Oitante, S. A. will exceed the value recorded in the Fundo de Resolução's balance sheet. Therefore, in accordance with the accounting policy outlined in Note 2.2(h), no impairment loss has been recognised. In fact, the information available — namely Oitante, S. A.'s full repayment of its debt (in 2022), Oitante, S. A.'s accumulation of positive results (including in 2023, according to the preliminary, unaudited version of its accounts) and the distribution by Oitante, S. A. of accumulated results and reserves in 2023 – suggests that the amount to be recovered by the Fundo de Resolução should be higher than the amount currently recorded on the Fundo de Resolução's balance sheet (€50,000), although it is not possible to reliably determine the overall amount to be recovered relating to that shareholding.

For further details on the resolution action applied to BANIF and on the role of the Fundo de Resolução, see Box 1 of its 2015 Annual Report.

## **NOTE 8 • OTHER ASSETS RELATED TO RESOLUTION ACTIONS: HOLDINGS ARISING FROM RESOLUTION ACTIONS**

The item Other assets related to resolution actions: holdings arising from resolution actions comprises the Fundo de Resolução's holding in Novo Banco, S. A.'s capital.

At initial recognition, the asset was measured at fair value to the amount of €333,333.3 thousand, based on the valuation implied in the sale of the 75% stake in Novo Banco, S. A., completed on 18 October 2017. The underlying rationale stemmed from the fact that a private investor had acquired, through an open, competitive sale process on market terms, a 75% stake by means of a €1 billion capital injection, meaning that the implied valuation assigned to the asset as a whole amounted to €1,333.3 million.

As at the date of approval of the Fundo de Resolução's accounts, in accordance with the accounting policy outlined in Note 2.2(h), no indicators were identified leading to believe that the Novo Banco, S. A.'s share capital as at 31 December 2022 is lower than the aforesaid implied valuation, in view of the information provided by Novo Banco, S. A. on the activity carried out that year.

Under the special regime applicable to deferred tax assets, provided for in Law No 61/2014 of 26 August 2014, Novo Banco, S. A. carried out three capital increases by incorporation of reserves, the last of which in April 2023, through the conversion of the rights that had been allocated to the State as a result of the conversion, into tax credits, of Novo Banco, S. A.'s deferred tax assets, with reference to tax periods from 2015 to 2019.

Following the three capital increases mentioned above, the State became Novo Banco, S. A.'s shareholder, with a shareholding corresponding to 11.96% of its share capital, in cumulative terms. The percentage of the Fundo de Resolução's shareholding was diluted from 25% in 2020 to 13.04% in 2023 due to the following (cumulative) effects:

- direct dilution effect (-2.99 percentage points): the percentage of the Fundo de Resolução's shareholding in Novo Banco, S. A. decreased due to the State's investment through an increase in number of ordinary shares representing the share capital;
- indirect dilution effect (-8.97 percentage points): under the terms of the agreements on the sale of the 75% stake in Novo Banco, S. A., the Fundo de Resolução is bound to transfer to Nani Holdings, SGPS, S. A. (Held in full by Lone Star) the amount of shares required to ensure that the stake of that shareholder is not reduced as a result of the implementation of the special regime applicable to deferred tax assets. In compliance with its contractual obligations, the Fundo de Resolução transferred 116,180,485 shares to Nani Holdings, SGPS, S. A. in February 2022, 327,102,470 in December 2022 and 554,848,515 shares in June 2023.

The dilution of the Fundo de Resolução's shareholding from 25% in 2020 to 13.04% in 2023, led to the recognition of losses related to resolution actions, in accordance with the accounting policy outlined in Note 2.2(l), reflected in the decrease in the balance sheet value of the shareholding held by the Fundo de Resolução in Novo Banco, S. A. against the decrease in Own funds (Note 9), for the amount of €20,747.9 thousand compared with 2021, and €55,092.3 thousand compared with 2022, and €83,577.8 thousand compared with 2023, for an accumulated total amount of €159,418.0 thousand.

Therefore, in the Fundo de Resolução's balance sheet, the 13.04% stake in Novo Banco is recognised at €173,915.4 thousand.

Moreover, Novo Banco, S. A. was notified by the Tax and Customs Authority of the tax credit certification for the 2020 economic period in January 2024, and is awaiting delivery of the tax credit to trigger a fourth capital increase by incorporation of reserves, under the terms of the special regime applicable to deferred tax assets.

The effect of converting tax credits relating to the 2020 period into Novo Banco, S. A.'s share capital, and the consequent dilution of the Fundo de Resolução's shareholding, will only be recognised in the Fundo de Resolução's financial statements, in accordance with the accounting policy that has been followed, after the aforementioned capital increase has taken effect, should it occur, being recorded as a contingent liability in these financial statements (Note 24(c)).

## NOTE 9 • OWN FUNDS

The Fundo de Resolução's Own funds comprise direct contributions from member institutions, proceeds from the contribution on the banking sector, dividends received from Oitante, S. A. gains and losses from resolution actions and the net profit for the year.

The Fundo de Resolução recognises in this item the contributions from member institutions and the proceeds from the contribution on the banking sector, according to the accounting policies described in Note 2.2.(j) and (k), irrespective of when they were received.

The Fundo de Resolução also recognises in this item the gains and losses arising from financing the various resolution actions applied by the Banco de Portugal to Banco Espírito Santo, S. A. and BANIF – Banco Internacional do Funchal, S. A. in accordance with the accounting policy described in Note 2.2.(l) and (n).

Changes in this item in 2023, which are reflected in the Statement of Changes in Own Funds, mainly include:

**Contribution-related factors:**

- recognition of the proceeds from the contribution charged to the banking sector in 2023 (+€216,064.8 thousand);
- receipt of additional periodic contributions for 2023, directly paid to the Fundo de Resolução by member institutions under the transitional regime provided for in Law 23-A/2015 of 26 March 2015 (+€42,602.6 thousand).
- receipt of periodic contributions for 2023, directly paid to the Fundo de Resolução by member institutions, under the scheme of contributions established by the transposition of the Bank Recovery and Resolution Directive ("BRRD") covering member institutions that are not part of the Single Resolution Mechanism (€3.0 thousand).

**Factors relating to dividends from Oitante, S. A.:**

- The recognition of income from dividends from Oitante, S. A., corresponding to the amount net of tax withheld (+€57,132.2 thousand).

**Factors relating to resolution actions:**

- recognition of a loss related to resolution actions, as a result of the effects of the reduction in the Fundo de Resolução's shareholding in Novo Banco, S. A., from 19.31% to 13.04%, due to the application of the special regime applicable to deferred tax assets (-€83,577.8 thousand – Note 8);
- recognition of a loss related to resolution actions corresponding to the Fundo de Resolução's share (50%) of expenditure with services provided by the Verification Agent, appointed under the terms of the Contingent Capital Agreement entered into with Novo Banco, S. A. in October 2017, and for the purposes set out therein (-€274.2 thousand).

**Net profit/loss for the year:**

- net profit for the year (€7,703.1 thousand).

**NOTE 10 • LIABILITIES RELATED TO RESOLUTION ACTIONS**

The liability recorded under this item in 2023 (€8.8 thousand) relates to a claim for compensation submitted by Nani Holdings, SGPS, S. A. in 2022, arising from a legal case in which Novo Banco, S. A. was condemned and recorded the corresponding losses in an economic period in which no payment was made under the Contingent Capital Agreement (Note 24(b)).

The Fundo de Resolução analysed the request and considered it partially well-founded, subject to the submission of evidence that the case meets all the contractual requirements for the emergence of a payment obligation by the Fundo de Resolução. A liability has therefore been recognised in the balance sheet, its settlement depending on the submission of data requested by the Fundo de Resolução.

## NOTE 11 • OTHER ACCOUNTS PAYABLE AND DEFERRALS

The amount recorded under Other accounts payable, and deferrals comprises:

Other accounts payable and deferrals	31/12/2023	31/12/2022
Non-accrued interest on State loans	104,286.8	104,286.8
Verification Agent established in the Contingent Capital Agreement	277.1	141.5
Legal advice for additional verification requested in Order No 109/2021/MEF	–	49.2
Account auditing services	64.3	44.8
Amounts to be repaid to institutions that were members of the Fundo de Resolução	–	40.3
Emoluments paid to the Court of Auditors	8.6	8.6
Other accounts payable	44.9	44.9
	<b>104,681.8</b>	<b>104,616.1</b>

Non-accrued interest on State loans comprises accrued interest on the following loans granted by the Portuguese State:

- under the Credit Facility Agreement entered into between the Portuguese State and the Fundo de Resolução in October 2017, as supplemented by the Second Amendment to the Credit Facility Agreement, entered into in May 2019 (€76,185.8 thousand). This amount relates to loans obtained in 2018 and 2019 (Note 12) and, in accordance with applicable contractual terms, becomes due on the maturity date of the Agreement or upon early repayment.
- under the Credit Facility Agreement entered into between the Portuguese State and the Fundo de Resolução in May 2020 (€28,101.1 thousand). This amount relates to the loan obtained in 2020 (Note 12) and has the same conditions as those referred to in the preceding paragraph.

## NOTE 12 • LOANS OBTAINED FROM THE STATE

As at 31 December 2023 the item Loans obtained from the State shows:

- the amount provided by the State in 2014 to finance part of Novo Banco, S. A.'s share capital under the resolution action applied by the Banco de Portugal to Banco Espírito Santo, S. A. (€3,900,000.0 thousand);
- the amount owed in respect of the loan granted by the State to finance the absorption of BANIF — Banco Internacional do Funchal, S. A.'s losses following the resolution action applied by the Banco de Portugal to that entity (€352,880.3 thousand);
- the amount provided by the State in 2018, under the agreements entered into in October 2017 (Box 3 of the 2017 Annual Report), to finance part of the payment to Novo Banco, S. A., made under the Contingent Capital Agreement signed in October 2017 (€430,000.0 thousand);
- the amount provided by the State in 2019, under the agreements entered into in October 2017 (Box 3 of the 2017 Annual Report), as supplemented by the Second Amendment to the Credit Facility Agreement, entered into on 3 May 2019, to finance part of the payment to Novo Banco, S. A. made under the Contingent Capital Agreement signed in October 2017 (€850,000.0 thousand);

- (v) the amount made available by the State in 2020, under the Credit Facility Agreement entered into on 5 May 2020, to finance part of the payment to Novo Banco, S. A. made under the terms of the Contingent Capital Agreement signed in October 2017 (€850,000.0 thousand).

The terms of these loan agreements are as follows:

Loans obtained from the State	Principal outstanding	Repayment period	Annual nominal interest rate
For BES' resolution (i)	3,900,000.0	2046	<p>– up to 31 December 2011: 2%</p> <p>– between 1 January 2022 and 31 December 2026: 0%. Order No 27/2022-SET of 21 April 2022 establishes that negative interest will not apply to agreements entered into between the Fundo de Resolução and the State.</p> <p>As of 1 January 2027: the interest rate is revised every five years and is taken to be the nominal interest rate reflecting the financing cost of the Portuguese Republic for a five-year period prevailing on 31 December of the year in which each rate review takes place, plus a 0.15% base fee. Interest paid annually</p>
By BANIF' resolution (ii)	352,880.3	2046	<p>– up to 31/12/2020: 1.38%</p> <p>– between 01/01/2021 and 31/12/2025: 0%. Order No 27/2022-SET of 21 April 2022 establishes that negative interest will not apply to agreements entered into between the Fundo de Resolução and the State.</p> <p>As of 1 January 2026: the interest rate is revised every five years and is taken to be the nominal interest rate reflecting the financing cost of the Portuguese Republic for a five-year period prevailing on 31 December of the year in which each rate review takes place, plus a 0.15% base fee. Interest paid annually</p>
By BES's resolution – Contingent Capitalisation Mechanism (lii), (iv) and (v)	2,130,000 thousand	2046	<p>– up to 31/12/2021: 2.00%</p> <p>– between 01/01/2022 and 31/12/2026: 0%. Order No 27/2022-SET of 21 April 2022 establishes that negative interest will not apply to agreements entered into between the Fundo de Resolução and the State.</p> <p>As of 1 January 2027: the interest rate will be revised every five years in order to consider the nominal interest rate reflecting the State's financing cost in a five-year period in force as at 31 December of the year when the rate is revised, plus a 0.15% tax base.</p> <p>– Interest paid at maturity.</p> <p>The payment of principal and interest on these loans can only be made after the loans obtained from the State to finance the resolution action applied to BES and to finance the resolution actions applied to BANIF, as well as the loans obtained from credit institutions (Note 13), have been repaid..</p>

Under the terms of the Order of the Secretary of State for the Treasury No 27/2022-SET of 21 April 2022, negative interest will not apply to loan agreements entered into between the State and the Fundo de Resolução on 7 August 2014 and 31 December 2015, nor to the Credit Facility Agreements entered into between the State and the Fundo de Resolução on 2 October 2017 and 5 May 2020 (Note 13).

## NOTE 13 • OTHER FINANCING

As at 31 December 2023 the item Other financing shows:

- The amount of €700,000.0 concerning the loan granted in 2014 by the Fundo de Resolução's member institutions, intended for: 1) the financing of part of the share capital of Novo Banco, S. A., which was set up following the resolution action applied by the Banco de Portugal to Banco Espírito Santo, S. A.; and 2) the financing of part of the interest charges due on the loan granted by the State to the Fundo de Resolução.



The conditions in force up to 31 December 2021 were revised by the parties in February 2017, whereby the maturity date is 31 December 2046, and the annual interest rate is 2% up to 31 December 2021. Since 1 January 2022, the date on which the interest rate was contractually revised, a zero rate has been applied, and no interest receivable has been recorded, given the provisions of the Order of the Secretary of State for the Treasury No 27/2022-SET of 21 April 2022 (Note 11), and the contractual mechanism that provides for equalisation of the conditions of the loans obtained by the Fundo de Resolução. Work is underway to ensure the proper implementation of that Order. As of 1 January 2027 and under the terms set out in the agreement, the interest rate will be updated for the following five years and for each five-year period thereafter. The interest rate to be applied will continue to be the interest rate reflecting the State's financing costs for a five-year period, in force as at 31 December of the year when the rate is revised, plus 0.15%.

- The amount of €429,012.6 thousand concerning the loan granted in 2021 by the Fundo de Resolução's member institutions for the settlement of liabilities arising from the Contingent Capital Agreement entered into with Novo Banco, S. A. and entered into in accordance with the addendum to the agreements concluded with the State, signed on 31 May 2021.

The maturity of this loan is set for 31 December 2046 and, up to 31 December 2026, it will bear interest calculated at a rate equivalent to the State's financing costs for that period plus 0.15%, calculated at -0.06% at the time the agreement was concluded.

However, in view of the provisions of the Order of the Secretary of State for the Treasury No 27/2022-SET of 21 April 2022 (Note 11), and the contractual mechanism that provides for the equalisation of the conditions of the loans obtained by the Fundo de Resolução, no interest receivable has been recorded, and work is underway to ensure the proper implementation of that Order.

As of 1 January 2027, and as with the loan mentioned in the preceding paragraph, and under the terms set out in the agreement, the interest rate will be updated for the following five years and for each five-year period thereafter. The interest rate to be applied will continue to be the interest rate that reflects the Republic's cost of financing for a five-year term, in force on 31 December of the year in which each rate review takes place, plus 0.15%.

## NOTE 14 • DEFERRED TAX LIABILITIES

As at 31 December 2023 the item Deferred tax liabilities reflects the taxation of income already recognised in the Fund's accounts, regarding special short-term debt certificates, for which tax will only become due in 2024, in accordance with the accounting policy described in Note 2.2(m).

## NOTE 15 • INTEREST AND SIMILAR INCOME AND EXPENSES

The item Interest and similar income and expenses is broken down as follows:

Interest and similar income and expenses	31/12/2023	31/12/2022
<b>Interest received</b>		
Demand deposits	2,248.9	–
Short-term special debt certificates	7,521.3	7.1
<b>Total interest received</b>	<b>9,770.2</b>	<b>7.1</b>
<b>Interest paid</b>		
Demand deposits	–	0.9
	–	<b>0.9</b>
<b>Total interest paid</b>	<b>–</b>	<b>0.9</b>
	<b>9,770.2</b>	<b>6.2</b>

Interest earned is primarily explained by interest received on demand deposits held with the Banco de Portugal. Until 30 April 2023 these deposits were remunerated in accordance with Decision ECB/2022/30 of 12 September 2022 and from 1 May 2023 they were remunerated in accordance with Guideline ECB/2023/8 of 5 April 2023. In 2023 the ongoing rise in interest rates led to positive results, while in 2022 interest rates were at negative levels for most of the year.

## NOTE 16 • CURRENT TAX

The item Current tax refers to taxation on interest income received in 2023, relating to demand deposits with the Banco de Portugal. As explained in Note 2.2(m), taxation occurs by withholding tax at source at the rate in force when the income is received, with the corresponding expense being recognised at the same time.

## NOTE 17 • FEES HANDED OVER TO THE STATE

Following BANIF's resolution and the setting up of Oitante, S. A., the Fundo de Resolução and the Portuguese State signed a State counter-guarantee agreement on the guarantee provided by the Fund to Oitante, S. A.'s bond issue. The agreement provided for the payment to the State of a 0.8% annual fee on the Oitante's outstanding principal. The expense recognised by the Fundo de Resolução in 2022 under this agreement (which corresponds to fees handed over to the State) reflecting the conclusion, on 30 June 2022, of the early repayment of the bond debt by Oitante, S. A. The full repayment of Oitante's debt means that the Fundo de Resolução's liability to the Portuguese State for the counter-guarantee provided was extinguished on the same date.

## NOTE 18 • OTHER SUPPLIES AND SERVICES FROM THIRD PARTIES

The item Other supplies and services from third parties is broken down as follows:

Other supplies and services from third parties	31/12/2023	31/12/2022
Specialised services	19.5	22.4
Litigation and notary	–	0.2
	<b>19.5</b>	<b>22.6</b>

The specialised services relate to auditing the Fundo de Resolução's financial accounts.

## NOTE 19 • OTHER EXPENSES

As at 31 December 2023, Other costs and losses includes costs relating to bank charges and licences.

As at 31 December 2022 this item essentially includes the costs of fees charged by the Court of Auditors, to the amount of €8.6 thousand, and the costs of court fees relating to legal proceedings in which the Fundo de Resolução is the defendant, to the amount of €0.8 thousand.

## NOTE 20 • RECOVERABLE CLAIMS RELATED TO RESOLUTION ACTION

Pursuant to the deliberation of the Board of Directors of the Banco de Portugal on 20 December 2015, which determined the taking of resolution actions to BANIF, the Fund made available the amount of €489,000.0 thousand as financial support for loss absorption. As a result, the Fundo de Resolução holds a credit claim over BANIF, to the same amount, which benefits from the preferential ranking provided for in Article 166-A of the RGICSF, in compliance with Article 145-L 5) of that legal framework.

In 2020, the report of an independent entity appointed by the Banco de Portugal to estimate the recovery level of the claims of each class of BANIF's creditors, in a hypothetical liquidation scenario, had the resolution action not been applied, was concluded. In the context of BANIF's judicial liquidation proceedings initiated following the resolution, the independent valuer estimates that the recovery level of the financial support provided by the Fundo de Resolução, considering a preferential claim to be obtained by the end of the liquidation, should be 7.6%.

As at the date of approval of the Fundo de Resolução's accounts, the deadline for BANIF's Liquidation Committee submitting its replies to objections to the lists of secured and unsecured creditors is running. For accounting purposes, the Fundo de Resolução continues to consider that the probability to recover this credit claim is remote, based on prudence criteria, and a total impairment is recognised on that claim, backed by a loss in Own Funds, in accordance with the same accounting policy described in Note 2.2(i).

## NOTE 21 • CONTINGENT ASSETS

### Claims assigned to the Fundo de Resolução under the Contingent Capital Agreement

On 27 May 2021 the Fundo de Resolução and Novo Banco, S. A. entered into an agreement under which the Fundo de Resolução is granted the right to benefit from any amount recovered by Novo Banco, S. A., from a particular debtor, to the amount exceeding the relevant book value, net of impairments, recorded on the date set out in that agreement — see Box 1(f) of the Activity Report.

This amount, as well as other credit claims that the Fundo de Resolução may hold as a result of this mechanism, may be used to deduct any liabilities of the Fundo de Resolução (Note 23) until the end of the term of the Contingent Capital Agreement or will be paid to the Fundo de Resolução at the end of the Contingent Capital Agreement. Therefore, and given the existing litigation with Novo Banco, the amounts to be received by the Fundo de Resolução are prudently recorded as a contingent asset, without prejudice to the definitive and irrevocable nature of the Fundo de Resolução's right.

### Claims submitted to Banco Espírito Santo, S. A.'s Liquidation Committee

Under the judicial liquidation proceedings of Banco Espírito Santo, S. A. — Em Liquidação (BES), the Fundo de Resolução also submitted claims to that bank's Liquidation Committee corresponding to the amounts incurred in fulfilling the obligations taken under and pursuant to the Contingent Capital Agreement, and the amounts incurred in paying interest and fees arising from the loans obtained to support the financing of the resolution action applied to BES. It also safeguarded the right to claim other credits, arising both from the fulfilment of future obligations under the terms and for the purposes of the agreements relating to the sale of Novo Banco, S. A., and the loan agreements still in force and under which interest-related payment obligations will still be due.

In 2019 the Fundo de Resolução was notified that the claims had not been recognised by the Liquidation Committee of Banco Espírito Santo, S. A. — Em Liquidação, and the Fundo de Resolução challenged the decision on the list of creditors with the Lisbon District Court, thus applying for the recognition of the claims it had submitted. The Court decided in favour of the Fundo de Resolução and the Liquidation Committee of Banco Espírito, S. A. — Em Liquidação filed an appeal.

In 2023 a judgment was rendered by the Lisbon Court of Appeal dismissing the appeal filed by the Liquidation Committee of Banco Espírito Santo, S. A. — Em Liquidação, and in favour of the position held by the Fundo de Resolução, confirming the decision of the Court of First Instance and the recognition of the Fundo de Resolução's claims as preferential. The Liquidation Committee of Banco Espírito Santo, S. A. — Em Liquidação, lodged an exceptional review appeal with the Supreme Court of Justice, which handed down a ruling in July 2023 that has already become final, recognising and classifying the claims of the Fundo de Resolução as preferential, totalling €1,242,568.9 thousand.

## NOTE 22 • LEGAL PROCEEDINGS

### Pending legal proceedings

As at 31 December 2023 the Fundo de Resolução was summoned as defendant or counter-interested party to several court proceedings.

First, of note are the various decisions challenged by credit institutions seeking annulment of the decisions settling the contribution on the banking sector.

To date, the Lisbon Tax Court has dismissed all lawsuits on the banking sector's contributions, in the specific lawsuits in which the Banco de Portugal was involved because it had been specifically ordered to intervene, of which four were appealed to the Supreme Administrative Court, which also dismissed them. The four judgments of the Supreme Administrative Court were appealed to the Constitutional Court, which has also ruled that they should not be upheld, therefore all of these cases have ended with a fully favourable decision. Although the Fundo de Resolução is not a party to these appeals, it has an interest in a favourable outcome since these contributions are one of its funding sources.

In addition to these, there are ten other lawsuits relating to periodic contributions to the Fundo de Resolução, with the Fundo de Resolução being the defendant. Of these, two have already been ruled by the Lisbon Tax Court, with judgments handed down in 2021 and 2022, dismissing the lawsuits in favour of the position held by the Fundo de Resolução, and pending a decision on appeal. The remaining lawsuits are pending at first instance, and a new lawsuit has been filed in 2023.

The Banco Espírito Santo, S. A. (BES) resolution process, consisting of the transfer of most of its business and property to a bridge bank, Novo Banco, S. A., has also triggered a significant number of legal proceedings against the Fund.

Litigation related to the taking of resolution action has no case-law precedent, and therefore it is not possible to resort to case-law to evaluate it, or to obtain a reliable estimate of the potential contingent financial effect associated.

However, on 19 March 2019, twenty judges of the Administrative Court of Lisbon rendered a unanimous judgment confirming the constitutionality of the legal regime on bank resolution and the full legality of the resolution action applied to BES on 3 August 2014, against which an appeal was lodged with the Supreme Administrative Court. As these proceedings concerned matters of European law and the Supreme Administrative Court was the highest instance rendering a judgment, it decided to refer the case for a preliminary ruling of the Court of Justice of the European Union (CJEU).

Following the Advocate General's opinion, submitted on 14 October 2021, the CJEU rendered its judgment on 5 May 2022, which was very favourable to the interests of the Fundo de Resolução in this litigation. In that judgment the Court held that the national legislation based on which the BES resolution action was adopted is compatible with Article 17(1) of the Charter of Fundamental Rights of the European Union. It further held that the transposition by a Member State, only in part, of certain provisions of a directive before the expiry of the period set for its transposition is not, as a matter of principle, liable to seriously compromise the attainment of the result prescribed by that directive.

Accordingly, the Supreme Administrative Court rendered a judgment in March 2023, which confirmed the full legality of the regime applicable to BES's resolution and the decisions of the Banco de Portugal.

Moreover, on 4 November 2020, the Administrative and Tax Court of Sintra, in the context of another lawsuit challenging the unsuspended resolution action, rendered a judgment that dismissed in its entirety the lawsuit in which unconstitutionality and illegalities were claimed in relation to the resolution action imposed on BES, a decision that passed into *res judicata*.

In turn, in October 2022, the Administrative and Tax Court of Porto rendered a decision in proceedings challenging the BES resolution action brought by a shareholder and claiming the existence of several (formal and substantive) unconstitutionality and illegalities – a judgment that dismissed the case in its entirety, constituting yet another favourable precedent with the force of *res judicata*.

At the end of 2022 the Administrative and Tax Court of Sintra delivered a further favourable decision based on the merits of the case. Despite it being a lawsuit for non-contractual civil liability for an unlawful act against the Banco de Portugal (and not a lawsuit challenging an administrative act), the Court, in assessing the conditions for non-contractual civil liability, held that the BES resolution action was lawful in a particularly reasoned manner.

The Supreme Administrative Court of 13 March 2019 has rendered a decision entirely in favour of the Fundo de Resolução, in the context of Novo Banco, S. A.'s sale, essentially based on two aspects: (i) the non-application of the Portuguese Procurement Code to the sale of Novo Banco, S. A.; and (ii) acceptance of the exception on the investment funds' procedural illegitimacy to seek action. Furthermore, already in 2022, in the context of the lawsuits seeking annulment of the deliberation of 31 March 2017, a conclusive opening order was delivered, which may still be subject to appeal, recognising the exception of procedural illegitimacy to seek action and handing down a decision in favour of the defendants. The Court held that the claimants have no direct and personal interest in challenging the award decision, which has not immediately and detrimentally affected them, as their legal position has previously been ascertained when the rules on the eligibility of tenderers (undisputable in the meantime) were laid down. Also, in the first half of 2023, two more favourable decisions were rendered: in both cases, a conclusive opening order was delivered upholding the procedural illegitimacy claimed by the defendants and handing down a decision in favour of the latter. Appeals of these decisions are pending.

Noteworthy in 2021 is also the first decision on the merits of the so-called "Retransfer" litigation (included in the deliberations of the Board of Directors of the Banco de Portugal of 29 December 2015), which was rendered by the Administrative and Tax Court of Porto, dismissing in its entirety the lawsuit brought by a natural person who invested in retransferred obligations, claiming a breach of the principle of legitimate expectations and legal certainty. In 2023 there was a procedural move of material significance in this litigation challenging the legality of the Decisions of 29 December 2015. On 20 June 2023 the President Judge of the Administrative and Tax Courts of the Central Region, the Administrative Court of the Lisbon District and the Administrative and Tax Court of Funchal decided, by order, to apply the procedural mechanism provided for in Article 48 of the Code of Procedure in Administrative Courts. This order, after hearing the parties, is pending further procedural terms in the context of this procedural concentration mechanism.

Moreover, in 2023 the trend of a favourable outcome was maintained, whether by decisions on the merits or procedural exceptions, which has allowed to reduce pending litigation.

Also in terms of litigation arising from a resolution action, and in particular in the context of BES liquidation, three decisions were handed down in favour of the Fundo de Resolução's claims, in three lawsuits for the subsequent verification of credits for the purposes of recognising the claims made in BES liquidation. Moreover, in the context of the challenge brought by the Fundo de Resolução against the list of recognised and unrecognised creditors, the Supreme Court of Justice rendered a judgment on the appeal brought by the BES's Liquidation Committee (in February 2023) against the decision of the Lisbon Court of Appeal, which had been favourable to the Fundo de Resolução: the Supreme Court of Justice dismissed the appeal, thus fully confirming the first and second instance court decisions, recognising the Fundo de Resolução's claims.

The Fundo de Resolução, relying on the opinion delivered by the lawyers representing the Fund in these lawsuits, and in view of the legal and procedural information currently available, considers that there is no evidence to refute the belief that there is a higher probability of a decision in favour of the Fund.

The aforementioned volume of litigation has justified the allocation of specialised resources by the Legal Services Department of the Banco de Portugal to meet the Fund's needs in terms of legal representation in court.

### **Memorandum of Understanding on a Dialogue procedure with non-qualified investors holding commercial paper of Grupo Espírito Santo**

On 30 March 2016 the Government, the Banco de Portugal, the Securities Market Commission, Banco Espírito Santo and AIEPC - Associação de Indignados e Enganados do Papel Comercial (BES victims' association) signed a Memorandum of Understanding on a Dialogue procedure with non-qualified investors holding commercial paper of Grupo Espírito Santo. Work developed within this dialogue procedure has resulted in a solution model that implies the express waiver, by investors accepting such model, of all rights, claims and proceedings against the Fundo de Resolução and Novo Banco, S. A. and their future shareholders.

Subsequently, in August 2017, Law No 69/2017 of 11 August 2017, which regulates credit recovery funds, was published, and in November of the same year, Executive Order No 343-A/2017 of 10 November 2017 was published, establishing the procedure for the granting of State guarantees under that Law. Also in 2017 the Portuguese Securities Market Commission (CMVM) approved CMVM Regulation No 3/2017 on Credit Recovery Funds, which develops the framework provided for in Law No 69/2017 of 11 August 2017, by setting out the content and format of the document containing key information for potential participants in these funds.

The implementation of this Memorandum of Understanding was a mitigating factor for potential legal contingencies likely to affect the Fundo de Resolução, given that, following the conclusion of this agreement, (i) some claimants have withdrawn their claims in lawsuits brought against the Fundo de Resolução and (ii) in other lawsuits, FRC — INQ — Papel Comercial ESI e Rio Forte, a credit recovery fund managed by PATRIS - SGFTC, S. A., and of which those investors had become members, has requested to be qualified for the purpose of that withdrawal. As a result, the number of legal proceedings brought against the Fundo de Resolução has been decreasing — in whole or in part (in these cases, with a decrease in the number of claimants and/or claims), and it is therefore estimated that the downward trend in this litigation will continue.

## **NOTE 23 • CONTINGENT LIABILITIES ARISING FROM THE CONTINGENT CAPITAL AGREEMENT**

The Contingent Capital Agreement entered into between the Fundo de Resolução and Novo Banco, S. A., carries certain contingent liabilities to the Fundo de Resolução, some conditioned by the outcome of arbitration proceedings initiated by Novo Banco, S. A., which may result in the Fund being obliged to make future disbursements. Based on information available at the time, the fulfilment of these obligations is subject to considerable uncertainty and is deemed unlikely to occur.

In any case, any payment to be made by the Fundo de Resolução under the Contingent Capital Agreement is limited to a maximum amount of €3,890,000.0 thousand. In view of payments already made as at the date the accounts were approved, the remaining amount that can still be used is, at most, €484,981.7 thousand.

The following subparagraphs describe the contingent liabilities arising from the above scope:

#### **a) Amounts claimed by Novo Banco, S. A., with reference to 2020, but considered not due by the Fundo de Resolução**

On 5 August 2021 Novo Banco, S. A., submitted a request for arbitration to the International Chamber of Commerce, with a view to having its right to receive an aggregate amount of €165,441.9 thousand recognised, which the Fundo de Resolução considered, and considers, not eligible for coverage

by the contingent capitalisation mechanism when carrying out the verification and validation procedures applicable to the application lodged by Novo Banco, S. A., for 2020. These amounts cover the following situations:

- the amount corresponding to the impact on Novo Banco, S. A.'s capital position of the loss resulting from the decision to divest Novo Banco's business in Spain, as at 31 December 2020 (€147,441.9 thousand);
- the amount corresponding to valuation differences calculated for a set of assets held by Novo Banco (€18,000.0 thousand).

Furthermore, these arbitration proceedings also discuss Novo Banco's potential right to compensation for an alleged delay by the Fundo de Resolução in paying part of the amounts requested by Novo Banco, with reference to the 2020 financial year, the amounts of which have not been fully calculated – see subparagraph (e).

The arbitration proceedings also encompass the situation described in subparagraphs (d) and (e) of this Note and are still pending, a judgment being expected in the first quarter of 2024.

**b) Amounts claimed by Novo Banco, S. A., with reference to 2021, but considered not due by the Fundo de Resolução**

On 28 March 2022 and following the approval of its 2021 Annual Report, including its Statutory Audit and Audit Report, Novo Banco, S. A. addressed a request for payment under the Contingent Capital Agreement to the Fundo de Resolução to the amount of €209,220.4 thousand.

This amount included the impact on own funds of a provision to the amount of €115.8 million, corresponding to the estimated taxes that Novo Banco believed it would have to pay on its immovable property, due to the fact that, for the purposes of the provisions of the Municipal Property Tax Code and the Municipal Real Estate Transfer Tax Code, it may be understood that Novo Banco, S. A. – through the shareholding held by Nani Holdings, SGPS, S. A. – was an entity controlled, even if indirectly, by an entity or entities having their tax residence in a country, territory or region subject to a more favourable tax regime.

The amount of €209,220.4 thousand calculated by Novo Banco, S. A. also includes costs to the amount of €1.6 million concerning the allocation of variable remuneration to the members of the Executive Board of Directors, and also includes the impacts on Novo Banco's own funds stemming from losses and costs that Novo Banco, S. A. decided to bear and record in previous years, and which are not due by the Fundo de Resolução under the terms of the Contingent Capital Agreement, totalling €165,441.9 thousand.

Based on available data, the Fundo de Resolução considered, and considers, that the amount requested by Novo Banco is not due in full. The amount of €209,220.4 thousand includes the amounts referred to in subparagraph (a) above and, therefore, their contingent liabilities are not cumulative.

On 12 January 2024, Novo Banco, S. A. submitted a request for arbitration to the International Chamber of Commerce with a view to being recognised as entitled to receive the aforementioned amount of €209,220.4 thousand, plus interest on arrears of €30,318.8 thousand.



**c) Effects arising from any Novo Banco, S. A.'s discretionary decision to reverse its previous decision to adopt the transitional regime related to the introduction of IFRS 9 – Financial Instruments**

Whereas the implementation of IFRS 9 by credit institutions was expected to result in a sudden and significant increase in provisions for expected credit losses and, consequently, a decrease in common equity tier 1 capital (CET 1), Regulation (EU) No 2017/2395 of the European Parliament and of the Council of 12 December 2017 introduced a regime enshrining transitional arrangements that seek to mitigate the effect of that significant negative impact on common equity tier 1 capital ("transitional arrangements").

In 2018 Novo Banco, S. A. adopted the transitional arrangements provided for in Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017. In November 2019 Novo Banco, S. A. applied to the ECB Banking Supervision for permission to reverse its previous decision to opt in to the transitional arrangements for the 2019 fiscal year.

Any reversal of the decision of applying the transitional arrangements related to the introduction of IFRS 9 would imply that Novo Banco, S. A., would no longer be eligible for the mechanism that allows to distribute the impacts on own funds of the introduction of that standard over the transition period set in the Regulation and that, on the contrary, these impacts would be concentrated in the period the reversal decision is taken. In 2019, when Novo Banco applied to the ECB for permission to opt out of the transitional arrangements, this positive adjustment in own funds was estimated at around €226,000.0 thousand. As such, any exit from the transitional arrangements during that year would result in an equal decrease in Novo Banco, S. A.'s own funds.

In view of Novo Banco, S. A.'s intention to opt out of the transitional arrangements related to the introduction of IFRS 9 by reversing its previous decision to apply these arrangements, the Fundo de Resolução took action, still in 2019, and informed Novo Banco, S. A. that it was not covered by the contingent capitalisation mechanism and, therefore, the additional impact on the bank's own funds resulting from reverting the application of the transitional arrangements could not be passed on to the Fundo de Resolução. In view of the position held by the Fundo de Resolução, Novo Banco, S. A. continued to apply the transitional arrangements and arbitration proceedings were initiated. As a result, the amount paid in 2020 by the Fundo de Resolução was €206 million lower than the amount that would have been paid had the Fundo de Resolução not intervened. The amount of the dispute was subsequently reduced to €169 million, taking into account that the usual application of the transitional arrangements meant that part of the impact on own funds related to the introduction of IFRS 9 was passed on to Novo Banco, S. A.'s 2020 accounts.

On 28 October 2021 the Court of Arbitration rendered an arbitration award in favour of the Fundo de Resolução, considering that the intention expressed by Novo Banco to opt out of the transitional arrangements related to the introduction of IFRS 9 is not compatible with the contractual balance on which the Contingent Capital Agreement is based. In this context, irrespective of Novo Banco, S. A.'s legitimacy to take the decision to opt-out of the said transitional arrangements in 2019, the corresponding financial impact on the bank's own funds could not be covered by the contingent capitalisation mechanism. The amount in dispute as at the date of the award, was approximately €169,000.0 thousand, which the Fundo de Resolução would have had to pay to Novo Banco, S. A., if the award of the Court of Arbitration had not been in its favour.

As a result of the Court of Arbitration's award, the contingent liability that had been disclosed in the Fundo de Resolução's 2020 accounts, approximately to the amount of €169,000.0 thousand, was extinguished.

In May 2022 a lawsuit was brought against the Fundo de Resolução by Novo Banco before the Lisbon Court of Appeal seeking annulment of the award rendered by the Court of Arbitration in October 2021. A judgment handed down by the Lisbon Court of Appeal on 17 November 2022 dismissed the special appeal for annulment of the arbitration award in favour of the Fundo de Resolução, and this judgment was appealed to the Supreme Court of Justice.

On 31 January 2024, by unanimous decision of the panel of judges, the Supreme Court of Justice decided to dismiss the appeal filed by Novo Banco, S. A., confirming the decision of the Court of Appeal and thus definitively upholding the arbitration award (Note 26).

**d) Effects of Novo Banco's intention not to make use of the arrangements provided for in Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020**

In June 2020 a Regulation of the European Parliament and of the Council was published, introducing amendments to the transitional arrangements for IFRS 9 (Regulation (EU) 2020/873 of the European Parliament and of the Council of 24 June 2020).

That Regulation reflects the European authorities' awareness that the application of IFRS 9 during the economic downturn caused by the pandemic could lead to a sudden and significant increase in provisions for expected credit losses. As such, the Regulation has extended the transitional arrangements for IFRS 9 and made them more flexible with a view to mitigating this impact.

In line with this initiative, the ECB, in a letter addressed to each of the institutions under its direct supervision dated 1 April 2020, issued recommendations aimed at mitigating the effect of the application of IFRS 9 on institutions' own funds. In this letter, the ECB explicitly recommended that all significant institutions should opt for the transitional arrangements relating to IFRS 9.

Therefore, in early November 2020, the Fundo de Resolução informed Novo Banco, S. A. that it should comply with the new rules applicable to transitional arrangements. Novo Banco, S. A. had no intention of applying the new rules and considered that it was not obliged to do so. This triggered a new disagreement between the Fundo de Resolução and Novo Banco, S. A.

Novo Banco, S. A. ended up asking the ECB to opt in to the "new transitional arrangements", on the understanding that the dispute with the Fundo de Resolução would be submitted to an arbitration court for settlement under the terms of the Contingent Capital Agreement.

Novo Banco, S. A.'s opting in to the new transitional arrangements had a positive effect on Novo Banco's own funds and reduced the amount of capital requirements reported for 2020 by around €161,634 thousand.

On 5 August 2021 Novo Banco, S. A. submitted a request for arbitration to the International Chamber of Commerce that encompasses not only this dispute, but also the disputes referred to in subparagraphs (a) and (e).

The arbitration proceedings are pending, and an award is expected in the course of 2024.

**e) Request for interest on arrears and compensation for damages allegedly caused by an alleged delay in the payment of €112,000.0 thousand, referring to the payment request submitted by Novo Banco, S. A., in 2021, under the Contingent Capital Agreement**

On 7 April 2021 and following the approval of its 2020 Annual Report, including its Statutory Audit and Audit Report, Novo Banco submitted to the Fundo de Resolução a request for the payment of €598,311.6 thousand under the Contingent Capital Agreement.

The amount determined by the Fundo de Resolução for payment to Novo Banco was €429,012.6 thousand.

The payment by the Fundo de Resolução required a budget amendment, which was authorised by an Order of the Minister of State and Finance, amounting to €429,012.6 thousand. However, the authorisation of a portion of €112,000.0 thousand was conditional upon the completion of a further investigation, including an external opinion, regarding Novo Banco's option not to apply the accounting policy to hedge derivative financial instruments taken out as part of the management of interest rate risk arising from exposure to long-term sovereign bonds.

In view of the provisions of the Order of the Minister of State and Finance, the Fundo de Resolução paid €317,012.6 thousand in June 2021, in accordance with the applicable financial and fiscal legal requirements and continued the necessary steps for assessing the verification of the condition to which the payment of €112,000.0 thousand was subject.

More specifically, the Fundo de Resolução:

- Obtained, from PricewaterhouseCoopers — Assessoria de Gestão, Lda. ('PwC'), an analysis of the prudential and accounting policies adopted by Novo Banco in the context of the management of interest rate risk of the sovereign debt portfolio and impacts on own funds;
- obtained an opinion from the Banco de Portugal, namely as the national resolution authority and as responsible for conducting Novo Banco's sale process and for determining the conclusion of the Contingent Capital Agreement, on the report prepared by the PwC and on the compliance of the conclusions drawn in that report under the provisions of that Agreement.
- obtained an external legal opinion from a Professor of Law, to which an external legal opinion of two Professors of Law, obtained in turn by the Banco de Portugal, was added, on whether Novo Banco's failure to apply hedge accounting would constitute a legitimate basis, in the light of the Agreement and the law, for the Fundo de Resolução to reject the relevant payment.

The analyses — from a financial, economic, and also legal point of view — deemed vital to provide the necessary clarification on the issue raised in May 2021 led to the unequivocal conclusion that Novo Banco, S. A. was owed €112,000.0 thousand by the Fundo de Resolução, a payment which, in June 2021, had been placed on hold pending further verification.

Thus, on 23 December 2021, the Fundo de Resolução paid Novo Banco, S. A. the said amount of €112,000.0 thousand.

On 17 February 2022, Novo Banco, S. A. submitted to the International Chamber of Commerce a request to add to the arbitration it had requested on 5 August 2021 (subparagraphs (a) and (d)) an additional claim so as to be recognised as entitled to:

- receive interest on arrears to the amount of €4,940.3 thousand, due to the fact that the amount of €112,000.0 thousand was paid only in December 2021;
- receive an unquantified compensation for damages allegedly caused by the fact that the amount of €112,000.0 thousand was paid only in December 2021.

The arbitration proceedings are pending, and an award is expected in the course of 2024.

In 2023 the Banco de Portugal and the Fundo de Resolução filed an administrative lawsuit against Novo Banco, S. A. for declaratory relief and recognition of the subjective legal situation arising from the aforementioned Order of the Minister of State and Finance, with the respective pleadings having been submitted.

## NOTE 24 • OTHER CONTINGENT LIABILITIES

- a) Implementation of the principle that no creditor of a credit institution under resolution may incur greater losses than they would have incurred if that institution had entered into liquidation

Pursuant to the RGICSF, the Fundo de Resolução must pay compensation to shareholders and creditors of any credit institution under resolution, where it is determined that, as a result of the resolution action, they have incurred greater losses than they would have incurred if the resolution action had not been implemented, and the credit institution subject to resolution had entered into liquidation at the moment the resolution action was implemented (no creditor worse off principle).

In compliance with the second part of Article 145-H(4) of the RGISCF, the Banco de Portugal has appointed an independent entity to estimate the level of claim recovery for each class of Banco Espírito Santo's creditors, in a hypothetical scenario of liquidation on 3 August 2014, if the resolution action had not been applied. According to the estimate made by the appointed entity, in a liquidation scenario, the recovery level of subordinated claims would be nil, and the recovery level of ordinary claims would be 31.7%. As announced in the Banco de Portugal's press release of 6 July 2016, due to the independent nature of the appointed entity, its report and respective conclusions, due to its independent nature, do not correspond to an understanding and/or position of the Banco de Portugal.

The above press release presents a summary of the results of the independent estimate carried out by the appointed entity and clarifies that guaranteed and preferential claims of Banco Espírito Santo were transferred to Novo Banco, S. A. under the terms of the resolution action decided by the Banco de Portugal. As regards common creditors whose claims were not transferred to Novo Banco, S. A. the right of compensation by the Fundo de Resolução will be determined at the time of closure of BES liquidation proceedings. Until then, a number of complex legal and operational issues must be clarified, namely as regards the title to compensation by the Fundo de Resolução. Therefore, all things considered, it is not yet possible to estimate the amount of compensation to be paid upon completion of BES liquidation.

The Banco de Portugal has appointed an independent entity to estimate the claims recovery level for each class of BANIF – Banco Internacional do Funchal, S. A.'s creditors, in a hypothetical scenario of liquidation on 20 December 2015, if the resolution action had not been applied. According to the estimate made by the appointed entity, in a liquidation scenario, the recovery level of the subordinated claims would be nil, and the recovery level of ordinary claims would be 12.7%. As announced in the Banco de Portugal's press release of 15 July 2020, due to the independent nature of the appointed entity, its report and respective conclusions do not correspond to an understanding and/or position of the Banco de Portugal.

Considering the current stage of BANIF's liquidation proceedings (Note 20), a number of complex legal and operational issues (such as the identification of the credit claims under consideration and the determination of their amounts) will still need to be clarified to accurately determine the payment conditions of any compensation that may be due and to determine when it should be verified.

The Fundo de Resolução considers that, although it has already been summoned in legal proceedings in which the Fund is required to pay compensation under the "no creditor worse off principle", there is no evidence to date to assess the existence and/or value of this potential claim, neither in the case of the resolution action applied to BES or in the case of the resolution action applied to BES nor to BANIF — Banco Internacional do Funchal, S. A.

**b) Neutralisation of potential negative effects of future decisions, arising from the resolution process, which may result in liabilities or contingencies for Novo Banco, S. A..**

In accordance with a deliberation of the Board of Directors of 29 December 2015, the Banco de Portugal clarified that the Fundo de Resolução will be responsible for neutralising, through compensation to Novo Banco, S. A., any potential negative effects of future court decisions arising from Banco Espírito Santo, S. A.'s resolution process, which may result in liabilities for that bank.

Under the sale of Novo Banco, S. A., concluded on 18 October 2017, its contractual documents include specific provisions having effects equivalent to the aforementioned deliberation of the Board of Directors of the Banco de Portugal of 29 December 2015, although now based on contract, therefore the framework of contingent liabilities of the Fundo de Resolução remains.

As regards Novo Banco, S. A.'s litigation, the trend towards favourable decisions in Portuguese courts is noteworthy.

In addition to Portuguese courts, Novo Banco, S. A.'s litigation in other jurisdictions should be analysed, most notably its litigation in the Spanish jurisdiction by virtue of its substance and procedural stage. In this respect, from 2018 to 2023, final judgment was passed in respect of twelve lawsuits condemning Novo Banco S. A., Sucursal em Espanha ('NBSE'), as well as four lawsuits condemning Novo Banco, S. A., and for which appropriate compensation was requested from the Fundo de Resolução.

Following the sale of Novo Banco, S. A., the Fundo de Resolução, assisted by the Banco de Portugal's services, has mandated a Spanish law firm in 2019 to monitor and intervene (where applicable) in legal actions targeting the NBSE. The Banco de Portugal and the Fundo de Resolução applied for intervention in fourteen legal proceedings before the Spanish Supreme Court. On the one hand, the Banco de Portugal intended to defend the legality and effectiveness of the decisions on the BES resolution action before the Spanish courts (similarly to a prior intervention in the Goldman Sachs International proceedings at the UK's Supreme Court). On the other hand, the Fund's intervention was also justified in view of the fact that the actions pending before the Spanish courts may give rise to financial liabilities for the Fund itself, since, under certain conditions, it may be responsible for neutralising the negative effects of those court decisions, by way of compensation, on Novo Banco (under the Neutralisation Resolution adopted on 29 December 2015).

In April 2019 the Banco de Portugal and the Fundo de Resolução were both accepted as parties in the first court case where they sought intervention. The Spanish Supreme Court held that (i) the Banco de Portugal, as national resolution authority, had interest in the interpretation of its decisions; and that (ii) in accordance with the Neutralisation Decision of 29 December and the Novo Banco, S. A. sale agreements, the Fundo de Resolução may incur financial liabilities as a result of decisions issued by the Banco de Portugal being ruled as invalid and ineffective. The Court held that the Banco de Portugal and the Fundo de Resolução would be in the same procedural position as the NBSE.

On 7 June 2019 the Spanish Supreme Court delivered a favourable decision, acknowledging thereby: (i) the banking resolution as a solution whose adoption was possible and provided for in the Portuguese legislation and Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001; (ii) that, regardless of the alleged behaviour, this would not justify the transfer of the responsibility to the Novo Banco, S. A. (and its branches), as the relevant liability was excluded from the sphere of the Novo Banco, S. A. under the resolution action adopted by the Banco de Portugal, and (iii) that such responsibility would not prevent the resolution action adopted by the Banco de Portugal from being recognised.

In another case, following approval of the intervention of the Banco de Portugal and the Fundo de Resolução, the Spanish Supreme Court decided to refer the case to the Court of Justice of

the European Union (CJEU) for a preliminary ruling. In this context and following the submission of observations by all the parties and the public oral hearing held in September 2020, Advocate-General Juliane Kokott delivered an Opinion, published in November 2020, favourable not only to the NBSE's interests but also to the interests of the Banco de Portugal and the Fundo de Resolução.

However, on 29 April 2021, the CJEU rendered a judgment responding in opposite direction to that defended by Advocate-General Juliane Kokott and, in turn, also adversely to that defended by the NBSE, the Banco de Portugal and the Fundo de Resolução. Accordingly, on 23 July 2021, the Spanish Supreme Court decided to dismiss both the appeal brought by the NBSE and the extraordinary appeal for procedural infringement brought by the NBSE, with the intervention of the Banco de Portugal and the Fundo de Resolução, since, in its view, and considering the specificities of the case, a contrary decision would breach the principle of legal certainty and the right to effective judicial protection. This case became final in the course of 2022.

In all the other cases, the intervention of the Banco de Portugal and the Fundo de Resolução has already been accepted, except for one case before the Civil Litigation Division, that is still pending before the Spanish Supreme Court as to the intervention sought; and two cases before the Administrative Litigation Division, in which the Spanish Supreme Court rejected the requested interventions, and the subsequent *incidentes excepcionales de nulidad de acciones*.

Furthermore, in one of the cases in which the intervention of the Banco de Portugal and the Fundo de Resolução was accepted, the First Instance Court decided not to refer the case to the CJEU for a preliminary ruling. However, in three other cases, after the intervention of the Banco de Portugal and the Fundo de Resolução was admitted, and during 2022 the Spanish Supreme Court decided to refer the cases to the CJEU for a preliminary ruling, consisting of four questions, in the context of which written observations were submitted by all parties. The oral hearing in this case took place on 26 October 2023, and the Advocate General's Opinion was scheduled to be delivered at the beginning of 2024. As a result of this reference for a preliminary ruling, the other five cases to which the Banco de Portugal and the Fundo de Resolução had already been admitted were suspended.

Moreover, there are cases in jurisdictions other than Spain with material sums that have not yet had relevant developments, but from which liabilities may arise for the Fundo de Resolução, the grounds for which will be assessed on a case-by-case basis.

Similarly to the information in Note 22, since these legal proceedings are unprecedented in legal terms, it is not possible to obtain a reliable estimate of their potential contingent financial effect. Nevertheless, the following must be highlighted: (i) the intervention of both the Banco de Portugal and the Fundo de Resolução has been accepted, and (ii) the Supreme Court ruled in favour of the interests of the Banco de Portugal and the Fundo de Resolução.

On 27 May 2021 the Fundo de Resolução, Nani Holdings SGPS, S. A. and Novo Banco, S. A. entered into an agreement specifying that no payment will be made by the Fundo de Resolução in respect of compensation claims arising from legal proceedings in which Novo Banco, S. A. has recorded the corresponding losses in the accounts up to 2020, to the extent that the loss duly recorded by Novo Banco, S. A. was passed on to the contingent capitalisation mechanism, which effectively happened in fifteen cases. The amounts concerned will only give rise to a payment by the Fundo de Resolução should the limit established in the Contingent Capital Agreement be exceeded and the contractually eligibility conditions be met (subparagraph (e)).

In addition to these fifteen cases, there is another case that resulted in losses for Novo Banco, S. A. recorded after 2020, specifically in October 2022. The Fundo de Resolução is waiting for Novo Banco, S. A. to present evidence that the case fulfils all the contractual requirements for the Fundo

de Resolução to become obliged to pay, and has therefore recorded a liability for the amount considered valid by the Fundo de Resolução, although subject to the presentation of the necessary evidence (€8.8 thousand – Note 10).

**c) Effect of the special regime applicable to deferred tax assets on the 25% stake in Novo Banco, S. A.**

As mentioned in Note 8, Novo Banco, S. A. opted in to the special regime applicable to deferred tax assets provided for in Law No 61/2014 of 26 August 2014, and was notified by the Portuguese Tax and Customs Authority of the confirmation of the conversion of deferred tax assets into tax credits, for the tax periods from 2015 to 2020.

The conversion processes for the 2015 to 2019 tax periods have already been completed, resulting in the State being granted an 11.96% holding in Novo Banco, S. A.'s share capital, as mentioned in Note 8.

As for the 2020 tax period, the conversion of deferred tax assets into a tax credit was confirmed in 2024, and the State has not yet paid Novo Banco, S. A. that claim.

Under the terms of the special regime applicable to deferred tax assets, on the date the conversion rights granted to the State are created, the shareholders have the discretionary right to acquire those conversion rights pro rata to their holdings in the taxpayer's share capital.

Should the Fundo de Resolução not exercise its discretionary right to acquire the conversion rights granted to the State, for the tax credit for the 2020 tax period, the State will increase its shareholding in Novo Banco, S. A. as a result of and under the special regime, in which case it will hold a number of ordinary shares representing an accumulated percentage of 15.60% of Novo Banco, S. A.' share capital, thus diluting the percentage held by the Fundo de Resolução to 9.40%.

The direct effect of this dilution is estimated at 3.9 percentage points in aggregate terms, plus the indirect effect, under the terms of the Share Purchase and Subscription Agreement relating to 75% of the share capital of Novo Banco, S.A, concluded with Nani Holdings, SGPS, S. A.

In fact, under the terms of said agreement, the dilution caused by the State's entry into the capital of Novo Banco, S. A. under the special regime applicable to deferred tax assets, should solely affect the Fundo de Resolução's shareholding. Therefore, in addition to the aforementioned effect, which results in a direct dilution of that shareholding, an additional dilution effect is expected to occur. The impact of this additional dilution corresponds to 11.7 percentage points in aggregate terms.

Without prejudice to the foregoing, the conditions for taking a decision on its discretionary right had not yet been met as at the date of the financial statements (31 December 2023). As such, the impact from the conversion of tax credits relating to 2020 on Novo Banco, S. A.'s share capital, and the consequent dilution of the Fundo de Resolução's shareholding, will only be recognised in the Fundo de Resolução's financial statements, in accordance with the accounting policy that has been followed, for the 2024 fiscal year, after the said capital increase takes effect, if any.

Thus, should the Fundo de Resolução not exercise its discretionary right to acquire the conversion rights granted to the State, for tax credits for the 2020 tax period, the aggregate impact of the application of the special regime applicable to deferred tax assets, in view of the losses recorded by Novo Banco, S. A. over the period 2015-20, will result in a 15.60% shareholding of the State and a drop in the Fundo de Resolução's shareholding to 9.40%.

This estimate differs from that known at the time the Fundo de Resolução's accounts for 2022 were closed and which is included in its 2022 Annual Report, stating that the aggregate impact of the



application of the special regime applicable to deferred tax asset, in view of the losses recorded by Novo Banco, S. A. over the period 2015-20, would result in a 15.84% shareholding of the State and a drop in the Fundo de Resolução's shareholding to 9.16%.

**d) Other contingent liabilities arising from agreements on the sale of Novo Banco, S. A.**

The agreements for the sale of Novo Banco, S. A. also provide for other sources of potential liabilities for the Fundo de Resolução, namely those related to any non-compliance with guarantee statements provided at the time of the sale, the so-called business warranties. As at the date the annual accounts were approved by the Management Committee of the Fundo de Resolução, even if notifications have been issued that could qualify as non-compliance with business warranties, considering that the information provided and/or the relevant analysis has not been completed, no data points to the probability of the Fundo de Resolução having to make payments under the business warranties being greater than the probability that such payments will not occur.

## **NOTE 25 • RELATED PARTIES**

As at 31 December 2023 the Fundo de Resolução held a 13.04% shareholding in Novo Banco, S. A. (Note 8), as well as the entire share capital of Oitante, S. A., the asset management vehicle set up to manage the rights and obligations transferred from BANIF — Banco Internacional do Funchal, S. A. (Note 7).

The Fundo de Resolução also holds a credit claim with Novo Banco, S. A. (Note 20), while there are also amounts claimed by Novo Banco, S. A. with the Fundo de Resolução recorded as a liability (Note 10) and as contingent liabilities (Note 23).

The Fundo de Resolução is a public-law legal person, with administrative and financial autonomy and has its head office in Lisbon, in the premises of the Banco de Portugal (Article 153-B of the RGICSF), which provides the technical and administrative services required for the regular operation of the Fund (Article 153-P of the RGICSF). Notes 3, 11, 12 and 14 show the assets and liabilities arising from transactions with the State and Notes 15 and 16 report the results arising from these transactions.

The RGICSF, which regulates the operation of the Fundo de Resolução, establishes in its Article 153-E that the Fund is managed by a Management Committee comprised of three members: one member of the Board of Directors of the Banco de Portugal, appointed by the latter, who will chair, one member appointed by the member of Government responsible for finance, and one member appointed by agreement between the Banco de Portugal and the member of Government responsible for finance. Members of the Management Committee do not receive compensation and therefore this body does not represent any charge for the Fundo de Resolução.

The Fundo de Resolução's own funds include the contributions of member institutions, pursuant to Article 153-D of the RGICSF. The details of the contributions made by member institutions is presented in the Statement of Changes in Own Funds.



Transactions with related parties in the Fund's ordinary course of business are as follows:

Related-party transactions	31/12/2023	31/12/2022
<b>Payments</b>		
Banco de Portugal – Negative interest received on deposits	–	103.9
Banco de Portugal – Return of arbitration court fees	–	8.8
<b>Receivables</b>		
Banco de Portugal – Positive interest received on deposits	1,020.0	–
Banco BPI – Negative interest on financing obtained	–	20.4

Balances with related parties in the Fund's ordinary course of business are as follows:

Balances with related parties	31/12/2023	31/12/2022
<b>Cash and bank deposits</b>		
Banco de Portugal	103,945.3	–
Portuguese Treasury and Debt Management Agency (IGCP)	559,750.0	126,827.3
<b>Loans obtained from the State</b>		
Directorate-General for Treasury and Finance	6,382,880.3	6,382,880.3
<b>Other financing</b>		
Caixa Geral de Depositos, SA	292,720.7	292,720.7
Banco Comercial Português, SA	292,720.7	292,720.7
Banco BPI, SA	195,147.1	195,147.1
Banco Santander Totta, SA	233,773.5	233,773.5
Caixa Económica Montepio Geral	72,348.3	72,348.3
Banco BIC Português, SA	32,441.4	32,441.4
Caixa Central – Caixa Central De Crédito Agrícola Mútuo, CRL	9,861.1	9,861.1
<b>Other accounts payable and deferrals</b>		
Directorate-General for Treasury and Finance (DGTF) – Accrued interest	104,286.8	104,286.8
Banco Santander Totta – Negative interest on financing obtained	24.4	24.4
Banco BPI – Negative interest on financing obtained	20.4	20.4
	<b>8,279,919.9</b>	<b>7,743,051.9</b>

## NOTE 26 • SUBSEQUENT EVENTS

### Claims recognised by the BES Liquidation Committee

On 31 January 2024 the Supreme Court of Justice handed down a unanimous judgment in favour of the Fundo de Resolução in the context of the appeal filed by Novo Banco, following the judgment of the Lisbon Court of Appeal dismissing the request for annulment of the decision of the Arbitration Court, handed down in October 2021 and relating to the first arbitration proceedings between the Fundo de Resolução and Novo Banco, initiated in 2020, described in Note 23(c).

In its judgment, the Supreme Court of Justice declares Novo Banco's appeal inadmissible, confirming the Court of Appeal's judgment and thus the arbitration award, which definitively confirms the validity and correctness of the position held by the Fundo de Resolução in 2019, when it opposed being charged, through the contingent capitalisation mechanism, for the impact of Novo Banco's intention to opt out of the transitional arrangements related to the introduction of IFRS 9.

Lisbon, 20 March 2024

### THE MANAGEMENT COMMITTEE

#### Chairman

Luís Augusto Máximo dos Santos

#### Member

Pedro Miguel Nascimento Ventura

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### III Opinion of the board of auditors of Banco de Portugal





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## **FUNDO DE RESOLUÇÃO**

### **EXERCÍCIO DE 2023**

#### **PARECER DO CONSELHO DE AUDITORIA DO BANCO DE PORTUGAL**

##### **1. ENQUADRAMENTO**

Nos termos dos Artigos 153.º-S e 153.º-T do Regime Geral das Instituições de Crédito e Sociedades Financeiras (RGICSF), aprovado pelo Decreto-Lei n.º 298/92, de 31 de dezembro, na sua redação atual, e do Artigo 18.º do Regulamento do Fundo de Resolução, o Conselho de Auditoria do Banco de Portugal acompanha a atividade do Fundo de Resolução (doravante FdR ou Fundo), zela pelo cumprimento das leis e regulamentos aplicáveis e emite parecer acerca das suas contas anuais.

##### **2. ATIVIDADE DESENVOLVIDA**

Durante o ano de 2023, o Conselho de Auditoria acompanhou as atividades e a gestão do FdR através (i) de contactos regulares com o Presidente e o Secretário-Geral da Comissão Diretiva e com os serviços de apoio que funcionam junto do Banco de Portugal, (ii) da análise das atas das reuniões da Comissão Diretiva e da informação financeira e de gestão que, nos termos do protocolo celebrado, é regularmente disponibilizada ou solicitada e (iii) da análise de documentação diversa produzida por entidades relacionadas com a aplicação e fiscalização do Acordo de Capitalização Contingente.

##### **3. APRECIÇÃO DO RELATÓRIO E CONTAS**

O Conselho de Auditoria acompanhou o processo de preparação e divulgação da informação financeira contida no Relatório e Contas do exercício findo em 31 de dezembro de 2023, e aprovado pela Comissão Diretiva do Fundo em 20 de março de 2024, o qual



compreende o Relatório de Atividades, as Demonstrações Financeiras, e as respetivas notas explicativas.

O Conselho analisou também o Relatório de Auditoria da BDO & Associados SROC datado de 21 de março de 2024 que foi emitido com ênfases.

O Relatório de Atividades sintetiza a atividade do FdR no ano de 2023 e descreve de forma clara e detalhada a gestão dos ativos que o integram ao longo dos anos, assim como o acompanhamento do Acordo de Capitalização Contingente relativo ao Novo Banco, e a execução do mesmo até ao final de 2023.

As Demonstrações Financeiras, incluindo as Notas Explicativas anexas, apresentam de forma adequada as operações, o património e a situação económico-financeira do FdR, e divulgam com suficiente detalhe as informações de maior relevância, nomeadamente as principais contingências e incertezas que poderão eventualmente afetar de forma significativa as contas do Fundo. Sobre as matérias de maior relevância, o Conselho de Auditoria entende destacar as seguintes:

- I. A aplicação do Acordo de Capitalização Contingente (Acordo) celebrado no âmbito da operação de venda do Novo Banco, S.A. (Novo Banco) implicou pagamentos significativos do FdR a este banco entre 2018 e 2021. Com efeito, até 31 de dezembro de 2021 foram pagos ao Novo Banco ao abrigo deste Acordo, cerca de 3 405 milhões de euros com referência a pedidos de pagamento do Novo Banco no montante de cerca de 3 786 milhões de euros, sendo a diferença não paga relativa a divergências de interpretação do enquadramento e da natureza de algumas operações, nos termos do Acordo. As divergências, referentes a operações realizadas nos exercícios de 2020 e 2021, encontram-se submetidas a processo de arbitragem internacional e, embora o Novo Banco não tenha efetuado qualquer pedido de pagamento com referência a operações realizadas nos exercícios de 2022 e 2023, existe ainda a possibilidade de, até ao término do Acordo, o FdR vir a ser chamado a realizar pagamentos adicionais que, agregados aos já efetuados, não deverão exceder o limite máximo definido de 3 890 milhões de euros.
- II. Apesar da melhoria verificada nos últimos três anos de cerca de 580 milhões de euros, incluindo os resultados positivos de 7,7 milhões de euros apurados em 2023, o FdR continua a apresentar recursos próprios negativos que, em 31 de dezembro de 2023,



totalizavam 6 735,1 milhões de euros. Esta situação resulta fundamentalmente da assunção de perdas líquidas derivadas da aplicação de medidas de resolução totalizando 8 413,9 milhões de euros, significativamente superiores às contribuições recebidas que à mesma data totalizavam 2 610,9 milhões de euros. Este défice de recursos obrigou o FdR à contratação de financiamentos à sua liquidez, no montante de 7 511,9 milhões de euros, a que acrescem encargos com juros, comissões e outros no valor de cerca de 938,2 milhões de euros, acumulados à mesma data, os quais contribuíram também para penalizar a posição financeira do Fundo.

- III. Em 2023 verificou-se a terceira diminuição da participação do FdR no capital do Novo Banco, a qual passou dos 25% originais para 13,04% em 2023, tendo o Estado Português assumido a correspondente diferença de participação de 11,96%, resultante do aumento de capital no âmbito da conversão de ativos por impostos diferidos em créditos tributários fixados pela Autoridade Tributária, referentes aos exercícios de 2015 a 2019. A situação indicada decorre das disposições previstas no Regime Especial aplicável aos Ativos por Impostos Diferidos (“REID”) a que o Novo Banco aderiu e das condições acordadas no âmbito da venda à Nani Holdings, SGPS, SA de 75% do capital do Novo Banco, não tendo o FdR exercido o direito de adquirir os direitos de conversão atribuídos ao Estado no prazo previsto naquele Regime. Esta diluição resultou numa perda acumulada de 159,4 milhões de euros, dos quais 83,6 milhões de euros em 2023, na participação financeira no Novo Banco e nos recursos próprios do FdR. Caso o FdR não exerça o referido direito quanto aos créditos tributários atribuídos ao Estado, relativos a exercícios subsequentes àqueles, a sua percentagem de participação no capital do Novo Banco poderá continuar a diminuir até atingir uma participação estimada final de 9,40%.
- IV. Os Processos em contencioso, Passivos Contingentes emergentes do Acordo de Capitalização Contingente e Outros Passivos Contingentes, detalhados no Relatório e Contas, para os quais o FdR considera não ser possível estimar com fiabilidade o potencial efeito financeiro, em particular:
- a) De um conjunto de processos judiciais em curso relativamente aos quais o FdR se encontra, a 31 de dezembro de 2023, citado como réu ou parte contrainteressada, nomeadamente os relacionados com a aplicação de medidas de resolução;
  - b) Memorando de Entendimento sobre um Procedimento de Diálogo com os Investidores não Qualificados, Titulares de Papel Comercial do Grupo Espírito Santo



relativo a redução de eventuais contingências de natureza jurídica que possam afetar o FdR de ações contra si propostas;

- c) De determinadas responsabilidades contingentes, incluindo:
- (i) Montantes reclamados pelo Novo Banco, com referência a 2020, em particular relacionados com o desinvestimento da atividade da sua Sucursal em Espanha, cujos montantes não estão totalmente apurados, ao abrigo do Acordo de Capitalização Contingente, que o FdR considera que não são devidos;
  - (ii) Pedido de pagamento de capital solicitado pelo Novo Banco ao FdR em 28 de março de 2022 referente ao exercício em 2021 ao abrigo do Acordo de Capitalização Contingente, que o Fundo de Resolução considera não ser devido;
  - (iii) Efeitos decorrentes da intenção do Novo Banco de não fazer uso do regime transitório relativo à implementação da IFRS-9 previsto no Regulamento do Parlamento Europeu e do Conselho;
  - (iv) Pedido de juros de mora e de indemnização relativos a alegada mora referente ao pedido de pagamento submetido pelo Novo Banco, em 2021, ao abrigo do Acordo de Capitalização Contingente.
- d) Da aplicação do princípio de que nenhum credor da instituição de crédito sob resolução poderá assumir um prejuízo maior do que o que assumiria se a instituição tivesse entrado em liquidação;
- e) Da deliberação do Conselho de Administração do Banco de Portugal, de 29 de dezembro de 2015, que clarificou que compete ao FdR neutralizar, por via compensatória junto do Novo Banco, os eventuais efeitos negativos de decisões futuras, decorrentes do processo de resolução, de que resultem responsabilidades para esse banco.

Entende-se salientar o Acórdão do Supremo Tribunal de Justiça, de 31 de janeiro de 2024, que veio confirmar em definitivo a decisão arbitral, inteiramente favorável ao FdR no processo que o opunha ao Novo Banco relativamente aos efeitos decorrentes da decisão discricionária do Novo Banco de reverter a sua anterior decisão de aderir ao regime transitório relacionado com a introdução da IFRS-9.

- V. Finalmente, chama-se de novo a atenção para o facto de, desde 1 de março de 2021, a Comissão Diretiva continuar a funcionar apenas com dois dos seus três membros, na





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sequência da renúncia apresentada por um dos seus membros cujo mandato terminou em agosto de 2020.

#### 4. PARECER

Com base nos trabalhos efetuados, e tendo presente o Relatório de Auditoria emitido pelo Auditor Externo, o Conselho de Auditoria deliberou emitir parecer favorável à aprovação do Relatório e Contas do Fundo de Resolução referentes ao exercício de 2023.

#### 5. AGRADECIMENTOS

O Conselho de Auditoria manifesta o seu reconhecimento pela cooperação institucional existente com a Comissão Diretiva e com o Secretariado do Fundo e agradece aos serviços de apoio do Banco de Portugal a colaboração prestada.

Lisboa, 22 de março de 2024

O Conselho de Auditoria

Óscar Figueiredo

Alexandre Boa-Nova Santos

Maria Albertina Barreiro Rodrigues

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## IV Auditor's Report



## RELATÓRIO DE AUDITORIA

### RELATO SOBRE A AUDITORIA DAS DEMONSTRAÇÕES FINANCEIRAS

#### Opinião

Auditámos as demonstrações financeiras anexas do Fundo de Resolução (o Fundo), que compreendem o balanço em 31 de dezembro de 2023 (que evidencia um total de 883 308 milhares de euros e um total de recursos próprios negativo de 6 735 070 milhares de euros, incluindo um resultado líquido de 7 703 milhares de euros), a demonstração de resultados, a demonstração de alterações nos recursos próprios e a demonstração de fluxos de caixa relativas ao ano findo naquela data, e as notas explicativas às demonstrações financeiras que incluem um resumo das políticas contabilísticas significativas.

Em nossa opinião, as demonstrações financeiras anexas apresentam de forma verdadeira e apropriada, em todos os aspetos materiais, a posição financeira do Fundo de Resolução em 31 de dezembro de 2023 e o seu desempenho financeiro e fluxos de caixa relativos ao ano findo naquela data de acordo com os princípios contabilísticos adotados no Plano de Contas do Fundo e detalhadamente descritos na nota explicativa 2 às demonstrações financeiras.

#### Bases para a opinião

A nossa auditoria foi efetuada de acordo com as Normas Internacionais de Auditoria (ISA) e demais normas e orientações técnicas e éticas da Ordem dos Revisores Oficiais de Contas. As nossas responsabilidades nos termos dessas normas estão descritas na secção “Responsabilidades do auditor pela auditoria das demonstrações financeiras” abaixo. Somos independentes do Fundo nos termos da lei e cumprimos os demais requisitos éticos nos termos do código de ética da Ordem dos Revisores Oficiais de Contas.

Estamos convictos de que a prova de auditoria que obtivemos é suficiente e apropriada para proporcionar uma base para a nossa opinião.

#### Ênfases

Nas notas explicativas 22, 23 e 24 às presentes demonstrações financeiras são descritas situações de incerteza que representam passivos contingentes para o Fundo e as razões pelas quais não foi possível estimar com fiabilidade os seus desfechos e/ou os seus eventuais efeitos financeiros decorrentes nomeadamente de:

- a) processos judiciais em curso relacionados com: (i) impugnações judiciais propostas por instituições de crédito que visam a anulação dos atos de liquidação da contribuição para o setor bancário e das contribuições periódicas; (ii) a aplicação de medidas de resolução, nos quais o Fundo é citado como réu ou contrainteresado e cujo desfecho depende das decisões dos Tribunais ou da renúncia por parte dos investidores que aceitem participar num fundo de recuperação de créditos no âmbito do “Memorando de entendimento sobre

um procedimento de diálogo com os investidores não qualificados titulares de papel comercial do Grupo Espírito Santo”; (iii) compensações ao Novo Banco, SA (Novo Banco) para neutralização de eventuais efeitos negativos de decisões futuras decorrentes do processo de resolução, de que resultem responsabilidades ou contingências para o Novo Banco, conforme resulta da deliberação do Conselho de Administração do Banco de Portugal de 29 de dezembro de 2015. No âmbito da operação de venda do Novo Banco, os respetivos documentos contratuais contemplam disposições específicas que produzem efeitos equivalentes à referida deliberação.

A Comissão Diretiva do Fundo, suportada pela opinião dos advogados que asseguram o patrocínio destes processos judiciais em curso (que consideram que não têm precedentes jurídicos firmes, o que impossibilita o uso de jurisprudência na sua avaliação, bem como uma estimativa fiável do eventual efeito financeiro contingente associado) e, face à informação jurídico-processual disponível até ao momento, considera que não existe qualquer evidência que contrarie a sua convicção de que a probabilidade de sucesso seja superior à probabilidade de insucesso;

b) indemnizações contratuais aos acionistas ou aos credores do Banco Espírito Santo, SA e do BANIF - Banco Internacional do Funchal, SA, objeto de resolução nos termos do n.º 16 do artigo 145.º-H do Regime Geral das Instituições de Crédito e Sociedades Financeiras, caso se venha a determinar que os mesmos suportaram um prejuízo superior ao que suportariam caso não tivesse sido aplicada a medida de resolução e a instituição de crédito entrasse em liquidação no momento em que aquela foi aplicada, conforme previsto na alínea f) do n.º 1 do artigo 145.º-AA do mesmo Regime.

A Comissão Diretiva do Fundo considera que não existem, à data, elementos que permitam avaliar a existência e/ou o valor desta responsabilidade potencia no que se refere às medidas de resolução das instituições anteriormente referidas;

c) eventuais pagamentos futuros ao Novo Banco decorrentes da aplicação do mecanismo de capitalização contingente os quais se encontram limitados ao valor máximo de 3 890 milhões de euros, sendo que, com os pagamentos já realizados até à data, o valor remanescente suscetível de ser ainda utilizado ascende a 485 milhões de euros. À data atual, o Fundo e o Novo Banco têm posições divergentes, que se encontram a ser avaliadas em sede de Tribunal Arbitral, quanto à elegibilidade para efeitos de cobertura do referido mecanismo, em relação aos impactos nos fundos próprios do Novo Banco de um conjunto de situações, designadamente: (i) a não aplicação do regime relativo à IFRS 9 previsto no Regulamento (UE) 2020/873, do Parlamento Europeu e do Conselho, de 24 de junho de 2020, no montante de 162 milhões de euros; (ii) a perda resultante da decisão de desinvestimento da atividade do Novo Banco em Espanha, com referência a 31 de dezembro de 2020 no montante de 147 milhões de euros; (iii) as diferenças de valorização apuradas quanto a um conjunto de ativos detidos pelo Novo Banco, no montante de 18 milhões de euros; (iv) a provisão constituída, no montante de 116 milhões de euros, correspondente à estimativa dos impostos que o Novo Banco entende ser provável vir ter de pagar relativamente aos imóveis que detém, pelo facto de se poder vir a entender, para os efeitos do disposto no Código do Imposto Municipal sobre

Imóveis e no Código do Imposto Municipal sobre as Transmissões Onerosas de Imóveis, que o Novo Banco, por via da participação detida pela Nani Holdings, SGPS, S.A. (Nani Holdings) é uma entidade dominada ou controlada, ainda que indiretamente, por entidade ou por entidades com domicílio fiscal em país, território ou região sujeito a um regime fiscal mais favorável; e (v) a atribuição de uma remuneração variável aos membros do Conselho de Administração Executivo do Novo Banco no montante de 1,6 milhões de euros.

d) impacto na mensuração da participação do Fundo no Novo Banco, decorrente do regime especial aplicável aos ativos por impostos diferidos (REAIT) e responsabilidade prevista nos acordos relativos à venda do Novo Banco quanto à manutenção da percentagem de participação do adquirente.

Conforme descrito na nota explicativa 8 às presentes demonstrações financeiras, entre 2021 e 2023, o Novo Banco procedeu a aumentos de capital no montante de 155 milhões de euros, 250 milhões de euros e 263 milhões de euros, respetivamente, através da conversão dos direitos que haviam sido atribuídos ao Estado por efeito da conversão dos ativos por impostos diferidos do Novo Banco em créditos tributários, com referência aos períodos de tributação entre 2015 e 2019, no quadro do REAIT, previsto na Lei n.º 61/2014, de 26 de agosto. Nesta sequência, o Estado passou a ser acionista do Novo Banco, possuindo em 31 de dezembro de 2023 uma participação correspondente a 11,96% do seu capital social, diluindo assim a percentagem de participação detida pelo Fundo de Resolução, que passou, de 25% em 2021 para 13,04% no final de 2023, devido aos seguintes efeitos acumulados: (i) efeito direto de diluição (-2,99%): o Fundo de Resolução viu reduzida a proporção da sua participação no capital do Novo Banco devido à entrada do Estado através do aumento do número de ações ordinárias representativas do capital; e (ii) efeito indireto de diluição (-8,97%): nos termos dos acordos relativos à venda da participação de 75% do Novo Banco, o Fundo de Resolução encontra-se obrigado a transmitir à Nani Holdings o número de ações necessárias para que a participação desse acionista não seja reduzida por efeito da aplicação do REAIT. Neste âmbito, o Fundo de Resolução procedeu assim à transmissão para a Nani Holdings do necessário número de ações necessárias para dar cumprimento às suas obrigações contratuais,

Adicionalmente, já em janeiro de 2024, o Novo Banco, S.A., foi notificado pela Autoridade Tributária e Aduaneira acerca da certificação do crédito tributário relativo ao período económico de 2020, encontrando-se a aguardar pela entrega do crédito tributário para desencadear um quarto aumento de capital por incorporação de reservas, nos termos do REAIT.

Caso o Fundo de Resolução não venha a exercer o seu direito potestativo de adquirir esses direitos de conversão atribuídos ao Estado com referência ao período de tributação de 2020, o Estado aumentará a sua participação como acionista do Novo Banco, S.A., passando nesse caso a deter um número de ações ordinárias representativas de uma percentagem acumulada de 15,60% do capital social do Novo Banco, S.A., com a consequente diluição da percentagem de participação detida pelo Fundo de Resolução, para 9,40%.



e) eventual pagamento ao Novo Banco, de juros de mora no montante de 5 milhões de euros e de indemnização por prejuízos de montante não quantificado, resultantes do facto de o montante de 112 milhões de euros referente ao pedido de pagamento submetido pelo Novo Banco em 2021, ao abrigo do Acordo de Capitalização Contingente apenas ter sido pago pelo Fundo em dezembro de 2021; e

f) outras responsabilidades contingentes emergentes dos acordos da operação de venda do Novo Banco nomeadamente aquelas que se relacionam com eventuais situações de incumprimento de declarações em garantia prestadas no momento da venda, as designadas *business warranties*. Ainda que tenham ocorrido notificações suscetíveis de vir a ser qualificadas como situações como situações de incumprimento, a Comissão Diretiva do Fundo considera não estar concluída a informação prestada e/ou a respetiva análise, não existindo elementos que levem a que se considere que a probabilidade do Fundo ter de vir a efetuar pagamentos neste âmbito é superior à probabilidade de tais pagamentos não venham a ocorrer.

Na eventualidade destas incertezas se materializarem desfavoravelmente para o Fundo, o seu potencial impacto nas demonstrações financeiras do Fundo será significativo.

Nas notas explicativas 9, 11 e 12 às presentes demonstrações financeiras sobre o financiamento do Fundo, na medida em que os seus recursos próprios são negativos em 31 de dezembro de 2023 no montante de 6 735 milhões de euros devido essencialmente às perdas nos exercícios anteriores decorrentes das medidas de resolução divulgadas na nota explicativa 1 às presentes demonstrações financeiras, é explicado que o financiamento do Fundo tem sido assegurado por empréstimos obtidos junto do Estado e de instituições participantes, com prazo de vencimento para 31 de dezembro de 2046, sem prejuízo da possibilidade de reembolso antecipado com base na utilização das receitas do Fundo. As disposições contratuais dos empréstimos obtidos do Estado preveem que o prazo de pagamento possa ser ajustado em termos que garantam a capacidade do Fundo para cumprir integralmente as suas obrigações com base nas suas receitas.

A nossa opinião não é modificada em relação a estas matérias.



## **Responsabilidades do órgão de gestão e do órgão de fiscalização pelas demonstrações financeiras**

A Comissão Diretiva do Fundo é responsável pela:

- preparação de demonstrações financeiras que apresentem de forma verdadeira e apropriada a posição financeira, o desempenho financeiro e os fluxos de caixa do Fundo de acordo com os princípios contabilísticos adotados no Plano de Contas do Fundo;
- elaboração do relatório de atividades;
- criação e manutenção de um sistema de controlo interno apropriado para permitir a preparação de demonstrações financeiras isentas de distorções materiais devido a fraude ou a erro;
- adoção de políticas e critérios contabilísticos adequados nas circunstâncias; e
- avaliação da capacidade do Fundo de se manter em continuidade, divulgando, quando aplicável, as matérias que possam suscitar dúvidas significativas sobre a continuidade das atividades.

O Conselho de Auditoria do Banco de Portugal é responsável por acompanhar a atividade do Fundo, zelar pelo cumprimento das leis e regulamentos aplicáveis e emitir parecer sobre as suas contas anuais.

## **Responsabilidades do auditor pela auditoria das demonstrações financeiras**

A nossa responsabilidade consiste em obter segurança razoável sobre se as demonstrações financeiras como um todo estão isentas de distorções materiais devido a fraude ou a erro, e emitir um relatório onde conste a nossa opinião. Segurança razoável é um nível elevado de segurança mas não é uma garantia de que uma auditoria executada de acordo com as ISA detetará sempre uma distorção material quando exista. As distorções podem ter origem em fraude ou erro e são consideradas materiais se, isoladas ou conjuntamente, se possa razoavelmente esperar que influenciem decisões económicas dos utilizadores tomadas com base nessas demonstrações financeiras.

Como parte de uma auditoria de acordo com as ISA, fazemos julgamentos profissionais e mantemos ceticismo profissional durante a auditoria e também:

- identificamos e avaliamos os riscos de distorção material das demonstrações financeiras, devido a fraude ou a erro, concebemos e executamos procedimentos de auditoria que respondam a esses riscos, e obtemos prova de auditoria que seja suficiente e apropriada para proporcionar uma base para a nossa opinião. O risco de não detetar uma distorção material devido a fraude é maior do que o risco de não detetar uma distorção material devido a erro, dado que a fraude pode envolver conluio, falsificação, omissões intencionais, falsas declarações ou sobreposição ao controlo interno;
- obtemos uma compreensão do controlo interno relevante para a auditoria com o objetivo de conceber procedimentos de auditoria que sejam apropriados nas

circunstâncias, mas não para expressar uma opinião sobre a eficácia do controlo interno do Fundo;

- avaliamos a adequação das políticas contabilísticas usadas e a razoabilidade das estimativas contabilísticas e respetivas divulgações feitas pelo órgão de gestão;
- concluimos sobre a apropriação do uso, pelo órgão de gestão, do pressuposto da continuidade e, com base na prova de auditoria obtida, se existe qualquer incerteza material relacionada com acontecimentos ou condições que possam suscitar dúvidas significativas sobre a capacidade do Fundo para dar continuidade às suas atividades. Se concluirmos que existe uma incerteza material, devemos chamar a atenção no nosso relatório para as divulgações relacionadas incluídas nas demonstrações financeiras ou, caso essas divulgações não sejam adequadas, modificar a nossa opinião. As nossas conclusões são baseadas na prova de auditoria obtida até à data do nosso relatório. Porém, acontecimentos ou condições futuras podem levar a que o Fundo descontinue as suas atividades;
- avaliamos a apresentação, estrutura e conteúdo global das demonstrações financeiras, incluindo as divulgações, e se essas demonstrações financeiras representam as transações e os acontecimentos subjacentes de forma a atingir uma apresentação apropriada;
- comunicamos com os encarregados da governação, entre outros assuntos, o âmbito e o calendário planeado da auditoria, e as conclusões significativas da auditoria incluindo qualquer deficiência significativa de controlo interno identificada durante a auditoria.

A nossa responsabilidade inclui ainda a verificação da concordância da informação constante do relatório de atividades com as demonstrações financeiras.

## RELATO SOBRE OUTROS REQUISITOS LEGAIS E REGULAMENTARES

### Sobre o relatório de atividades

Dando cumprimento aos requisitos legais aplicáveis, somos de parecer que o relatório de atividades foi preparado de acordo com os requisitos legais e regulamentares aplicáveis em vigor e a informação nele constante é coerente com as demonstrações financeiras auditadas e, tendo em conta o conhecimento e a apreciação sobre o Fundo, não identificamos incorreções materiais.

Lisboa, 21 de março de 2024



Rui Carlos Lourenço Helena,  
(ROC nº 923, inscrito na CMVM sob o nº 20160541)  
em representação de BDO & Associados - SROC

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## V Annex



# List of member institutions as at 31 December 2023<sup>1</sup>

## **Banks**

Banco Activobank, S. A.  
Banco Atlântico Europa, S. A.  
Banco BAI Europa, S. A.  
Banco BIC Português, S. A.  
Banco BPI, S. A.  
Banco Comercial Português, S. A.  
Banco Credibom, S. A.  
Banco CTT, S. A.  
Banco de Investimento Global, S. A..  
Banco Finantia, S. A.  
Banco Invest, S. A.  
Banco L. J. Carregosa, S. A.  
Banco Português de Gestão, S. A.  
Banco Primus, S. A.  
Banco Santander Totta, S. A.  
Best – Banco Electrónico de Serviço Total, S. A.  
Bison Bank, S. A.  
BNI – Banco de Negócios Internacional (Europa), S. A.  
Caixa – Banco de Investimento, S. A.  
Caixa Geral de Depósitos, S. A.  
Haitong Bank, S. A.  
Montepio Investimento, S. A.  
Novo Banco dos Açores, S. A.  
Novo Banco, S. A.  
Itaú BBA Europe, S. A.

## **Caixas económicas (Savings Banks)**

Caixa Económica da Misericórdia de Angra do Heroísmo, Caixa Económica Bancária, S. A.  
Caixa Económica do Porto  
Caixa Económica Montepio Geral, Caixa Económica Bancária, S. A.

## **Central and mutual agricultural credit bank**

Caixa Central – Caixa Central de Crédito Agrícola Mútuo, C.R.L.  
Caixa de Crédito Agrícola Mútuo da Chamusca, C.R.L.  
Caixa de Crédito Agrícola Mútuo de Bombarral, C.R.L.  
Caixa de Crédito Agrícola Mútuo de Leiria, C.R.L.  
Caixa de Crédito Agrícola Mútuo de Mafra, C.R.L.  
Caixa de Crédito Agrícola Mútuo de Torres Vedras, C.R.L.

1. Situation as at 31 December 2023 according to the registration with the Banco de Portugal and the Portuguese Securities Market Commission.

**Credit financial institutions**

321 Crédito – Instituição Financeira de Crédito, S. A.

BBVA, Instituição Financeira de Crédito, S. A.

Montepio Crédito – Instituição Financeira de Crédito, S. A.

Sofid – Sociedade para o Financiamento de Crédito, S. A.

Unicre – Instituição Financeira de Crédito, S. A.

**Investment firms**

Atrium Investimentos Managers – Empresa de investimento, S. A.

**Branches of credit institutions authorised in non-eu and non-eea countries**

FCE Bank, PLC – sucursal em Portugal

**Institutions that ceased to be members of the Fund in 2023**

Banco EFISA, S. A. – em liquidação



