

56. Contingent liabilities and other commitments

In accordance with accounting policy 1.V3, the main contingent liabilities and other commitments under IAS 37 are the following:

1. In 2012, the Portuguese Competition Authority (PCA) initiated an administrative proceeding relating to competition restrictive practices (no. PRC 2012/9). On 6 March 2013, unannounced inspections were conducted in the premises of Banco Comercial Português, S.A. ('BCP' or 'Bank') and other credit institutions, where documentation was seized to investigate allegations of a commercially sensitive information exchange between credit institutions in the Portuguese banking market.

The administrative proceeding was subject to judicial secrecy by the PCA, as the publicity of the process would not be compatible with the interests of the investigation and with the rights of the investigated companies. On 2 June 2015, the Bank was notified of the PCA's statement of objections (SO) in connection with the administrative offence no. 2012/9, in which the Bank is accused of participating in a commercially sensitive information exchange between other 14 banks related to retail credit products, namely mortgage, consumer and small and medium enterprises credit products. The notification of a SO does not constitute a final decision in relation to the accusation of the PCA.

The proceedings, including the deadline to submit a response to the SO, were suspended for several months between 2015 and 2017, following the appeals lodged by some defendants (including the Bank) before the Portuguese Competition, Regulation and Supervision Court (Competition Court) on procedural grounds (namely, on the right to have access to confidential documents which were not used as evidence by the PCA – for several months, the PCA denied the Defendant's right to have access to confidential documents not used as evidence). In the end of June 2017, the suspension on the deadline to reply to the SO was lifted.

On 27 September 2017, BCP submitted its reply to the SO. A non-confidential version of the Bank's defence was sent to the PCA, at the latter's request, on 30 October 2017. The witnesses indicated by the Bank were interrogated by the PCA in December 2017.

On 23 October 2018, BCP was notified of the non-confidential versions of the oral hearing of the defendants Santander Totta and Unión de Créditos (which took place in December 2017). On 7 December 2018, the Bank requested the PCA to have access to the confidential version of these oral hearings.

In May 2018, the PCA refused the Bank's application for confidential treatment of some of the information in the Bank's reply to the SO, having also imposed that the Bank protects the confidential information of the co-defendants (providing a summary of the information). On 1 June 2018, the Bank filed an appeal with the Competition Court, which, upholding the appeal, concluded that the PCA infringed on the right to a prior hearing. Complying with the judgment, in November 2018 the PCA notified the Bank of its intention to refuse the application for confidential treatment of some of the information included in the Bank's defence, restating its arguments. The Bank submitted a non-confidential revised version of its reply but reaffirmed that it is not the Bank that must protect the confidential information of the co-defendants. On 25 January 2019, the PCA granted the Bank a 10-business day period to provide summaries for the co-defendants' confidential information. On 4 February 2019, the Bank filed an appeal before the Competition Court and, on 11 February 2019, submitted a reply to the PCA (although restated its opposition to the PCA's request).

On 9 September 2019, the PCA adopted its final decision on this proceeding, fining BCP in Euros 60 million for its alleged participation in a confidential information exchange system with its competitors in the mortgage, consumer and small and medium enterprises credit segments. The Bank considers that this decision contains serious factual and legal errors, having filed an appeal on 21 October 2019 before the Competition Court requesting the annulment of the decision and the suspensive effect of the appeal. The admission of the appeal and the decision on its respective effect are expected.

2. On 3 January 2018, Bank Millennium S.A. (Bank Millennium) was notified of the decision of President of the Office of Competition and Consumer Protection (UOKIK), in which the President of UOKIK found infringement by Bank Millennium of the rights of consumers. In the opinion of the President of UOKIK, the essence of the violation is that Bank Millennium informed consumers (regarding 78 agreements), in response to their complaints, that the court verdict stating the abusiveness of the loan agreements' clauses regarding exchange rates did not apply to them. According to the position of the President of UOKIK, the abusiveness of agreements' clauses determined by the court, during abstract control, is constitutive and effective for every agreement from the beginning.

As a result of the decision, Bank Millennium was obliged to:

- 1) send information about the UOKIK's decision to the referred 78 clients;
- 2) place information about the decision and the decision itself on its website and on Twitter;
- 3) pay a fine amounting to PLN 20.7 million (Euros 4.87 million).

The decision of the President of UOKIK is not final. Bank Millennium filed an appeal within the statutory time limit for not agreeing with this decision.

On 7 January 2020, the court of first instance dismissed Bank Millennium's appeal in its entirety. The court presented the view that the judgment issued in the course of control of a contractual template (in the course of abstract control), recognizing the provisions of the template as abusive, determines the existence of provisions of similar nature in previously concluded agreements. Therefore, the information provided to consumers was incorrect and misleading.

According to Bank Millennium's assessment, the court should not assess Bank Millennium's behaviour in 2015 from the perspective of today's case-law on the importance of abstract control (it was not until January 2016 that the Supreme Court's resolution supporting the view of the President of UOKIK was published), nor should it impose penalties for these behaviours using current policy. This constitutes a significant argument against the validity of the judgment and supports the appeal which Bank Millennium intends to make to the court of second instance.

The verdict issued on 7 January 2020 is not final. Bank Millennium will appeal to the court of second instance. According to current estimates of the risk of losing the dispute, Bank Millennium has not created a provision related to this matter.

In addition, Bank Millennium, alongside other banks, takes part in a litigation brought up by UOKIK, in which the President of UOKIK recognizes anti-competitive practices through an agreement aimed at jointly setting interchange fee rates charged on transactions made with Visa and Mastercard cards. On 29 December 2009, it was imposed a fine on Bank Millennium in the amount of PLN 12.2 million (Euros 2.87 million). The case is currently pending. Bank Millennium has created a provision in the same amount of the penalty imposed.

3. On 5 April 2016, Bank Millennium was notified of a case brought up by Europejska Fundacja Współpracy Polsko-Belgijskiej/European Foundation for Polish-Belgian Cooperation (EFWP-B) against Bank Millennium, worth of the dispute of PLN 521.9 million (Euros 122.75 million), with statutory interest from 5 April 2016 until the day of payment.

According to the plaintiff, the basis of the claim is damage caused to their assets due to actions taken by Bank Millennium, consisting in the wrong interpretation of the agreement for a working capital loan between Bank Millennium and PCZ S.A., which resulted in placing the loan on demand.

In the case brought by EFWP-B, the plaintiff set the claim in the amount of PLN 250 million (Euros 58.80 million). The petition was dismissed on 5 September 2016, with legal validity by the Appeal Court. Bank Millennium is requesting complete dismissal of the lawsuit, stating disagreement with the charges raised in the claim. Supporting the position of Bank Millennium, Bank Millennium's attorney submitted a binding copy of the final verdict of Wrocław Court of Appeal, which was favourable to Bank Millennium, issued in the same legal state of the action brought by PCZ S.A. against Bank Millennium.

Currently, the court is conducting evidence proceedings.

4. On 19 January 2018, Bank Millennium received a lawsuit petition by First Data Polska S.A., requesting the payment of PLN 186.8 million (Euros 43.93 million). First Data Polska S.A. claims a portion of an amount that Bank Millennium received for the sale of shares of Visa Europe to Visa Inc. The plaintiff based its lawsuit on an existing agreement with Bank Millennium related to co-operation in scope of acceptance and settlement of operations conducted using Visa cards. Bank Millennium did not accept the claim and filed the response to the lawsuit petition within the legal deadline. In accordance with the judgment issued on 13 June 2019, Bank Millennium won the case before the court of first instance. The case is currently awaiting verdict before the court of second instance. According to current estimates of the risk of losing the dispute, Bank Millennium has not created a provision related to this matter.

5. Regarding mortgage loans indexed to swiss francs (CHF) granted by Bank Millennium, there are risks related to verdicts issued by polish courts in individual lawsuits against banks (including Bank Millennium) raised by borrowers of FX-indexed mortgage loans.

Vast majority of verdicts in lawsuits concerning Bank Millennium have been favourable to the Bank so far. However, it should be noted that there is a significant risk that such favourable verdicts may change, as a result of which pending lawsuits' verdicts may not be taken in accordance with the Bank's expectation.

If such risk materializes, it may have a significant negative impact on Bank Millennium. Among other factors which are relevant for the assessment of risk related to disputes concerning CHF-indexed mortgage loans, the judgment of the Court of Justice of the European Union (CJEU) on Case C-260/18 should be considered.

On 3 October 2019, the CJEU issued a judgment on Case C-260/18, in connection with the preliminary questions formulated by the District Court of Warsaw in the lawsuit against Raiffeisen Bank International AG. The judgment of CJEU, combined with the interpretation of European Union Law, is binding on domestic courts.

The referred judgment was based on the interpretation of Article 6 of Directive 93/13, of the European Union, to formulate the answers to the preliminary questions. In the light of the subject matter in question, Article 6 of Directive 93/13 must be interpreted as following: (i) the national court may, based on national law, conclude that a loan agreement cannot continue to exist if the removal of terms that alter the nature of the main subject matter of the agreement occurs; (ii) the effects on the consumer's situation resulting from the cancellation of the contract as a whole must be assessed in the light of the circumstances existing or foreseeable at the time when the dispute arose, and that the will of the consumer is decisive as to whether he wishes to maintain the contract and avoid those effects; (iii) Article 6 precludes the filling of gaps in the contract caused by the removal of abusive terms from it based on national law (even if the non-filling of those gaps would result in the contract annulment to the detriment of the consumer), which provides that the effects expressed in the content of a legal act are to be supplemented, in particular, by principles arising from equality rules or established customs; and, (iv) Article 6 precludes the maintenance of abusive terms in the contract (even if their removal would result in the contract annulment to the detriment of the consumer), if the consumer has not consented to the maintenance of such terms.

CJEU's judgment concerns only the situations where the national court has previously found the contract terms to be abusive. It is the exclusive competence of the national courts to assess, in the course of judicial proceedings, whether a particular contract term can be identified as abusive in the circumstances of the lawsuit.

It can be reasonably assumed that the legal issues relating to FX-indexed mortgage loans will be further examined by the national courts within the framework of the disputes considered, which could possibly result in the emergence of further interpretations relevant for the assessment of the risks associated with subject matter proceedings. This circumstance indicates the need for constant analysis of these matters. Further requests for clarification and ruling addressed to the CJEU and the Supreme Court of Poland with potential impact on the outcome of the court cases may also be filed.

At the end of 2019, Bank Millennium had 2,010 FX-indexed mortgage loans under individual litigations, submitted to the courts with the total value of claims filed by the plaintiffs amounting to PLN 203 million (Euros 47.74 million). Until 31 December 2019, only 19 of these cases had obtained a final verdict, being the vast majority in accordance with Bank Millennium's interest. The claims formulated by the clients in individual proceedings primarily concern the declaration of invalidity of the contract or the payment for reimbursement of allegedly undue performance, due to the abusive nature of indexation clauses. The pushy advertising campaign observed in the public domain to encourage claims against banks may lead to an increase of the number of future court disputes.

On 21 October 2014, a class action was presented to Bank Millennium, in which a group of Bank Millennium's borrowers, represented by the Municipal Consumer Ombudsman in Olsztyn, seek the ascertainment that Bank Millennium is liable for unjust enrichment in connection with the CHF-indexed mortgage loans. The members of the group claim that Bank Millennium unduly collected excessive amounts from them for the repayment of loans. It is not a payment dispute. According to the statement of claim, the overstatement of such amounts is the result of applying abusive contractual provisions concerning the CHF-indexed loans. The number of loan agreements involved in this lawsuit is 3,281. The case is pending before its first hearing, which is scheduled for March 2020.

According to the Polish Bank Association (ZBP), during 2019, over 70% of the lawsuits regarding FX-indexed mortgage loans obtained a final verdict favourable to the banks involved. However, after the CJEU judgment regarding Case C-260/18 issued on 3 October 2019, there is a risk that this so far positive scenario for the banks may change.

Considering the increased legal risk related to FX-indexed mortgages, Bank Millennium created a provision in the amount of PLN 223 million (Euros 52.45 million) for legal risk. The methodology developed by Bank Millennium is based on the following main parameters: (i) the number of current (including class actions) and potential future court cases that will appear within a specified (three-year) time horizon; (ii) the amount of Bank Millennium's potential loss in the event of a specific court judgment (three negative judgment scenarios were taken into account); and, (iii) the probability of obtaining a specific court verdict calculated on the basis of statistics of judgments of the banking sector in Poland and legal opinions obtained. Variation in the level of provisions or concrete losses will depend on the final court decisions about each case and on the number of court cases.

Bank Millennium undertakes a number of actions at different levels towards different stakeholders in order to mitigate legal and litigation risk regarding the FX-indexed mortgage loans portfolio. Bank Millennium is open to negotiate case-by-case favourable conditions for early repayment (partial or total) or the conversion of loans to PLN. On the other hand, Bank Millennium will continue to take all possible actions to protect its interests in courts while, at the same time, being open to find settlement with customers in the court under reasonable conditions.

Finally, it should be mentioned that Bank Millennium has to maintain additional own funds for the coverage of additional capital requirements related to the FX-indexed mortgage portfolio risks (Pillar II FX buffer) in the amount of 4.87 p.p. at the Group level, which corresponds to, approximately, PLN 1.85 billion (Euros 43.51 billion), part of which is allocated to operational/legal risk.

6. On 3 December 2015, a collective action against Bank Millennium was filed. A group of Bank Millennium's debtors (454 borrowers party to 275 loan agreements) is represented by the Municipal Consumer Ombudsman in Olsztyn. The plaintiffs demanded payment of the amount of PLN 3.5 million (Euros 0.82 million), claiming that the clauses of the agreements of the low-down payment insurance, pertaining to CHF-indexed mortgage loans, are unfair and, thus, not binding. The plaintiff extended the group in the court letter filed on 4 April 2018 and, consequently, the claims increased from PLN 3.5 million (Euros 0.82 million) to over PLN 5 million (Euros 1.18 million).

On 1 October 2018, the group's representative corrected the total amount of claims subject in the proceedings and submitted a revised list of all group members, covering the total of 697 borrowers – 432 loan agreements. The value of the subject of the dispute, as updated by the claimant, is PLN 7,371,107.94 (Euros 1.733.644,09).

The next stage of the proceedings is establishing the composition of the group (i.e., determining whether all the people who joined the proceedings may participate in the group).

As at 31 December 2019, there are also 537 individual court cases regarding loan-to-value (LTV) insurance.

In addition, there are currently two class actions against Euro Bank S.A. (bank held by Bank Millennium):

- firstly, a class action worth PLN 3.5 million (Euros 0.82 million), in which the plaintiffs demand the determination of the actual condition of their debt under the mortgage loan agreements, accusing the bank of abusiveness;
- secondly, a class action worth PLN 1.3 million (Euros 0.31 million), in which the plaintiffs demand payment for the abusive nature of the mortgage loan agreements regarding the valorisation clause.

The cases are pending before the court of first instance.

7. On 1 October 2015, a set of entities connected to a group with past due loans to the Bank amounting to Euros 170 million, resulting from a loan agreement signed in 2009 – debts already fully provisioned in the Bank's accounts –, filed against the Bank, after receiving the Bank's notice for mandatory payment, a lawsuit aiming that:

- a) the court declares that two of the defendants are mere fiduciary owners of 340,265,616 BCP shares, since they acted pursuant to a request made by the Bank for the making of the respective purchases, and also that the court orders the cancellation of the registration of those shares in the name of those companies;
- b) the court declares the nullity of the financing agreement established between the plaintiffs and the Bank, due to relative simulation;
- c) the court sentences the Bank, in accordance with the legal regime of the mandate without representation, to become liable for the amounts due to the institution, abstaining from requesting those amounts to the plaintiffs and to refund them the cost they incurred while complying with that mandate, namely, Euros 90,483,816.83 regarding Banco Espírito Santo, S.A. (BES) and Euros 52,021,558.11 regarding Caixa Geral de Depósitos, S.A. (CGD), plus default interests;
- d) the amount of the lawsuit determined by the plaintiffs is Euros 317,200,644.90;
- e) the Bank opposed and presented a counter claim, wherein it requests the conviction, namely, of a plaintiff company in the amount of Euros 185,169,149.23 for the loans granted, plus default interests and stamp tax.

The court issued a curative act and already ascertained the factual basis proven and that must be proven. Currently, the Bank is waiting for the designation of an expert, requested by the plaintiffs, and each one of the parties must, afterwards, indicate an expert and the court shall indicate a third expert.

8. Resolution Fund

Resolution measure of Banco Espírito Santo, S.A.

On 3 August 2014, with the purpose of safeguarding the stability of the financial system, Bank of Portugal applied a resolution measure to Banco Espírito Santo, S.A. (BES) in accordance with the Article 145-C (1.b) of the Legal Framework of Credit Institutions and Financial Companies (RGICSF), namely by the partial transfer of assets, liabilities, off-balance sheet items and assets under management into a transition bank, Novo Banco, S.A. (Novo Banco), incorporated on that date by a decision issued by the Bank of Portugal. Within the scope of this process, the Resolution Fund made a capital contribution to Novo Banco amounting to Euros 4,900 million, becoming, on that date, the sole shareholder.

Within this context, the Resolution Fund borrowed Euros 4,600 million, of which Euros 3,900 million were granted by the State and Euros 700 million by a group of credit institutions, including the Bank.

As announced on 29 December 2015, Bank of Portugal transferred to the Resolution Fund the liabilities emerging from the *“eventual negative effects of future decisions regarding the resolution process that may result in liabilities or contingencies”*.

On 7 July 2016, the Resolution Fund declared that it would analyse and evaluate the diligences to be taken, following the publication of the report on the result of the independent evaluation, made to estimate the level of credit recovery for each category of creditors under a hypothetical scenario of a normal insolvency process of BES on 3 August 2014.

In accordance with the applicable law, when the BES liquidation process is over, if it is verified that the creditors, whose credits were not transferred to Novo Banco, would take on a higher loss than the one they would hypothetically take if BES had gone into liquidation right before the application of the resolution measure, such creditors shall be entitled to receive the difference from the Resolution Fund.

On 31 May 2019, the Liquidation Committee of BES presented a list of all the acknowledged and a list of the non-acknowledged creditors before the court and the subsequent terms of the proceedings. This list details that the total of the acknowledge credits, including capital, remunerative and default interest amounts to Euros 5,056,814,588, of which Euros 2,221,549,499 are common credits and Euros 2,835,265,089 are subordinated claims, there being no guaranteed or privileged claims. Both the total number of acknowledged creditors and the total value of the acknowledged credits and their ranking will only be ultimately determined with the definitive judicial judgment of the verification and ranking of credits to be given in the liquidation proceedings.

Following the resolution measure of BES, a significant number of lawsuits against the Resolution Fund was filed and is underway. According to note 23 of the Resolution Fund's annual report of 2018, *"Legal actions related to the application of resolution measures have no legal precedents, which make it impossible to use of case law in their evaluation, as well as a reliable estimate of the associated contingent financial impact. However, on 12 March 2019, the Administrative Court of Lisbon unanimously by its 20 judges delivered its judgment, confirming the constitutionality of the legal regime of the resolution and the full legality of the resolution measure applied to BES on 3 August 2014. Also, by decision of the Supreme Administrative Court on 13 March 2019, a judgment on the substance was entirely favourable to the Resolution Fund associated to the impugnation of the sale process of Novo Banco. The Board of Directors supported by lawyers opinion, which sponsored these actions, and in the light of the legal and procedural information available so far, considers that there is no evidence to cast doubt on their belief that the probability of success is higher than the probability of failure"*.

On 31 March 2017, Bank of Portugal communicated the sale of Novo Banco, where it states the following: *"Banco of Portugal today selected Lone Star to complete the sale of Novo Banco. The Resolution Fund has consequently signed the contractual documents of the transaction. Under the terms of the agreement, Lone Star will inject a total of Euros 1,000 million in Novo Banco, of which Euros 750 million at completion and Euros 250 million within a period of up to 3 years. Through the capital injection, Lone Star will hold 75% of the share capital of Novo Banco and the Resolution Fund will maintain 25% of the share capital"*.

The terms agreed also include a Contingent Capital Agreement, under which the Resolution Fund, as a shareholder, undertakes to make capital injections if certain cumulative conditions are to be met related to the performance of a specific portfolio of assets and to the capital ratios of Novo Banco going forward.

If these conditions are met, the Resolution Fund may be called upon to make a payment to Novo Banco for the lesser of the accumulated losses in the covered assets and the amount necessary to restore the capital ratios at the agreed levels. Any capital injections to be carried out pursuant to this contingent mechanism are limited to an absolute cap. The terms agreed also provide for mechanisms to safeguard the interests of the Resolution Fund, to align incentives as well as monitoring mechanisms, notwithstanding the limitations arising from State Aid rules.

On 18 October 2017, following the resolution of the Council of Ministers no. 151-A/2017 of 2 October 2017, the Bank of Portugal communicated the conclusion of the sale of Novo Banco to Lone Star, with an injection by the new shareholder of Euros 750 million, followed by a further capital increase of Euros 250 million by the end of 2017. Upon completion of the transaction, the status of Novo Banco as a bridge institution ceased, fully complying with the purposes of the resolution of Banco Espírito Santo.

On 26 February 2018, the European Commission published the non-confidential version of its decision regarding the approval of State aid underlying Novo Banco's sale process. This statement identifies the three support measures by the Resolution Fund and the State that are part of the sale agreement associated with a total gross book value of around Euros [10-20] billion (*) that revealed significant uncertainties regarding adequacy in provisioning (**):

(i) Contingent Capital Agreement (CCA) which allows Lone Star to reclaim, from the Resolution Fund, funding costs, realised losses and provisions related to an ex-ante agreed portfolio of existing loan stock, up to a maximum of Euros 3.89 billion, subject to a capital ratio trigger (CET1 below 8%-13%) as well as to some additional conditions (*) (**) (***);

(ii) underwriting by the Resolution Fund of a Tier 2 instrument to be issued by Novo Banco up to the amount necessary (but no more than Euros 400 million). The amount that can be reclaimed by the Resolution Fund under the Contingent Capital Agreement is subject to the cap of Euros 3.89 billion (**);

(iii) in case the Supervisory Review and Evaluation Process ("SREP") total capital ratio of Novo Banco falls below the SREP total capital requirement, the State will provide additional capital in certain conditions and through different instruments (**).

According to the 2018 Resolution Fund's annual report, the Resolution Fund and Novo Banco have agreed that a Verification Agent - an independent entity which is essentially responsible to clarify any differences that may exist between Novo Banco and the Resolution Fund regarding the set of calculations inherent to the Contingent Capital Agreement or regarding the practical application of the principles stipulated in the contract - is in charge of confirming that the perimeter of the mechanism is correct and that the balance sheet values of Novo Banco are being correctly reflected in the mechanism, as well as verifying the underlying set of calculations, namely by confirming the correct calculation of losses and the reference value of the assets.

Also in its 2018 annual report, the Resolution Fund states that *"Regarding future periods, a significant uncertainty as to the relevant parameters for the calculation of future liabilities is deemed to exist, either for their increase or reduction, under the terms of the agreement on the Contingent Capital Agreement with Novo Banco"*.

(*) Exact value not disclosed by the European Commission for confidentiality reasons

(**) As referred to in the respective European Commission Decision

(***) According to 2018 Novo Banco's earnings institutional presentation, the "minimum capital condition" is (i) CET1 or Tier 1 < CET1 or Tier 1 SREP requirement plus a buffer for the first three years (2017-2019); (ii) CET1 < 12%

The Resolution Fund disclosed on 17 June 2019 a set of clarifications related to the payment due in 2019 under the CCA with Novo Banco, namely:

- For payments from the Resolution Fund to be made (limited to a maximum of Euros 3,890 million over the lifetime of the mechanism), losses on the assets under the contingent mechanism should be incurred and the capital ratios of Novo Banco should stand below the agreed reference thresholds;
- The payment to be made by the Resolution Fund corresponds to the lower of the accumulated losses on the assets covered and the amount necessary to restore the capital ratios above the minimum reference threshold;
- The reference capital ratios are, in 2017, 2018 and 2019, linked to the regulatory requirements applicable to Novo Banco (CET1 ratio of 11.25% and Tier 1 ratio of 12.75%), but, as from 2020, the reference ratio will correspond to a CET1 ratio of 12%;
- The initial reference value of the portfolio comprising the contingent capitalization agreement was as of 30 June 2016 of Euros 7,838 million (book value of the associated assets, net of impairments), and the value of the portfolio, as of 31 December 2018, amounted to approximately Euros 3,920 million (book value, net of impairments);
- The accumulated losses of the covered assets and their management, between 30 June 2016 (reference date of the mechanism) and 31 December 2018, correspond to Euros 2,661 million. Of this amount, the Resolution Fund paid in 2018, in accordance with the terms and conditions of the CCA, around Euros 792 million, hence, the amount of losses not borne by the Fund was, at the end of 2018, approximately Euros 1,869 million;
- The amount necessary to maintain the capital ratios of Novo Banco for 2018 at the agreed levels is Euros 1,149 million. The amount payable by the Resolution Fund results from a comparison between the amount of Euros 1.869 million (accumulated loss on the covered assets not supported by the Fund) and the amount of Euros 1,149 million, corresponding to the lower of those amounts, i.e. Euros 1,149 million.

On 24 May 2018, arising from the referred mechanism, the Resolution Fund paid Euros 792 million to Novo Banco using its available financial resources from banking contributions (direct or indirect) and complemented by a State loan of Euros 430 million under the terms agreed between the Portuguese State and the Resolution Fund in October 2017. In its 2018 annual results press release, on 1 March 2019, Novo Banco states that, in connection with the impact of losses related to the sale and write-downs of legacy assets, Novo Banco will request a compensation of Euros 1,149 million under the existing CCA. The Resolution Fund paid to Novo Banco on 6 May 2019 the calculated value relative to the 2018 exercise, in the amount of Euros 1.149 million. For this purpose, the Resolution Fund used its own resources and also resorted to a State loan of Euros 850 million, which corresponds to the annual maximum funding limit agreed between the Resolution Fund and the State. The amount paid by the Resolution Fund to Novo Banco in two years was Euros 1,941 million.

According to Novo Banco's 2019 earnings press release, Novo Banco will request a compensation of Euros 1.037 million under the Contingent Capital Agreement (CCA), as stipulated in the sale agreement. The amount of the compensation requested in 2017 and 2018 and to be requested relating to 2019 totals Euros 2.98 billion. The maximum amount of compensation established in the CCA is Euros 3.89 billion.

As at 31 December 2019, Novo Banco is held by Lone Star and the Resolution Fund, corresponding to 75% and 25% of the share capital respectively.

Resolution measure of Banif – Banco Internacional do Funchal, S.A.

On 19 December 2015, the Board of Directors of Bank of Portugal announced that Banif was *"at risk of insolvency or insolvent"* and started an urgent resolution process of the institution through the partial or total sale of its activity, which was completed on 20 December 2015 through the sale to Banco Santander Totta S.A. (BST) of the rights and obligations of Banif, formed by the assets, liabilities, off-balance sheet items and assets under management.

The largest portion of the assets that were not sold, were transferred to an asset management vehicle denominated Oitante, S.A. (Oitante) specifically created for that purpose, having the Resolution Fund as the sole shareholder. For that matter, Oitante issued bonds representing debt in the amount of Euros 746 million. The Resolution Fund provided a guarantee and the Portuguese State a counter-guarantee. The operation also involved state aid, of which Euros 489 million were provided by the Resolution Fund, which was funded by a mutual contract given by the State.

According to the Resolution Fund's 2018 annual report, *"to ensure that the Fund has, at due date, the financial resources necessary to comply with this guarantee, if the principal debtor – Oitante – defaults, the Portuguese State counter-guarantees the referred bond issue. Until 31 December 2018, Oitante made partial prepayments of Euros 360.961 thousand, which reduces the amount of the guarantee provided by the Resolution Fund to Euros 385.038 thousand. Considering the anticipated reimbursements, as well as information provided by Oitante's Board of Directors regarding 2018 exercise, it is envisaged that there are no relevant situations that could trigger the guarantee provided by the Resolution Fund"*. On 13 July 2019, Oitante states that *"at the end of the current month, July 2019, the debt reimbursed since it was incurred will reach 57.7%"*.

Also, according to this source, *"The outstanding debt related to the amount made available by the State to finance the absorption of BANIF's losses, following the resolution measure applied by Banco de Portugal to that entity [amounts to] Euros 352,880.3 thousand".* This partial early repayment of Euros 136 million corresponds to the revenue of the contribution collected, until 31 December 2015, from the institutions covered by the Regulation of the Single Resolution Mechanism which was not transferred to the Single Resolution Fund and which will be paid to the Single Resolution Fund by the credit institutions that are covered by this scheme over a period of 8 years starting in 2016 (according to the Resolution Fund's 2016 annual report).

Liabilities and financing of the Resolution Fund

Pursuant to the resolution measures applied to BES and Banif the Resolution Fund borrowed loans and assumed other responsibilities and contingent liabilities resulting from:

- The State loans, on 31 December 2018 included the amounts made available (i) in 2014 for the financing of the resolution measure applied to BES (Euros 3,900 million); (ii) to finance the absorption of Banif's losses (Euros 353 million); (iii) under the framework agreement concluded with the State in October 2017 for the financing of the measures under the Contingent Capital Agreement (Euros 430 million plus Euros 850 million of additional funding requested in 2019, as described above);
- Other funding granted by the institutions participating in the Resolution Fund in the amount of Euros 700 million, in which the Bank participates, within the scope of BES resolution measure;
- Underwriting by the Resolution Fund of a Tier 2 instrument to be issued by Novo Banco up to the amount of Euros 400 million. This underwriting did not take place as the instruments were placed with third party investors as disclosed by Novo Banco on 29 July 2018;
- Effects of the application of the principle that no creditor of the credit institution under resolution may assume a loss greater than the one it would take if that institution did not go into liquidation;
- Negative effects resulting from the resolution process that result in additional liabilities or contingencies for Novo Banco, S.A., which must be neutralized by the Resolution Fund;
- Legal proceedings filed against the Resolution Fund;
- Guarantee granted to the bonds issued by Oitante S.A. This guarantee is counter-guaranteed by the Portuguese State;
- Contingent Capital Agreement which allows Lone Star to reclaim, from the Resolution Fund, funding costs, realised losses and provisions related to the aforementioned ex-ante portfolio of existing loan stock agreed upon the sale process to Lone Star up to Euros 3,89 billion under the aforementioned conditions, among which a reduction of CET1 below 8%-13%;
- In case the Supervisory Review and Evaluation Process (SREP) total capital ratio of Novo Banco falls below the SREP total capital requirement, the State will provide additional capital in certain conditions and through different instruments as referred to in the respective European Commission Decision.

According to note 24 of the Resolution Fund's 2018 annual report, the Resolution Fund considers that, to date, there are no elements that allow a reliable estimate of the potential financial effect of these potential liabilities.

By a public statement on 28 September 2016, the Resolution Fund and the Ministry of Finance communicated the agreement based on a review of the terms of the Euros 3,900 million loan originally granted by the State to the Resolution Fund in 2014 to finance the resolution measure applied to BES. According to the Resolution Fund, the extension of the maturity of the loan was intended to ensure the ability of the Resolution Fund to meet its obligations through its regular revenues, regardless of the contingencies to which the Resolution Fund is exposed. On the same day, the Office of the Minister of Finance also announced that increases in the liabilities arising from the materialization of future contingencies will determine the maturity adjustment of State and Bank loans to the Resolution Fund, in order to maintain the contributory effort required to the banking sector at current levels.

According to the communication of the Resolution Fund of 21 March 2017:

- *"The conditions of the loans obtained from the Fund to finance the resolution measures applied to Banco Espírito Santo, S.A. and to Banif-Banco Internacional do Funchal, S.A. were changed. These loans amount to Euros 4,953 million, of which Euros 4,253 million were granted by the Portuguese State and Euros 700 million were granted by a group of banks";*
- *"Those loans are now due in December 2046, without prejudice to the possibility of being repaid early based on the use of the Resolution Fund's revenues. The due date will be adjusted so that it enables the Resolution Fund to fully meet its liabilities based on regular revenues and without the need for special contributions or any other type of extraordinary contributions. The liabilities resulting from the loans agreed between the Resolution Fund and the State and the banks pursuant to the resolution measures applied to BES and Banif are handled with one another";*
- *"The revision of the loans' conditions aimed to ensure the sustainability and financial balance of the Resolution Fund";*
- *"The new conditions enable the full payment of the liabilities of the Resolution Fund, as well as the respective remuneration, without the need to ask the banking sector for special contributions or any other type of extraordinary contributions".*

On 2 October 2017, by Council of Ministers (Resolution no. 151-A/2017), the Portuguese State, as the ultimate guarantor of financial stability, was authorised to enter into a framework agreement with the Resolution Fund, to make available the necessary financial resources to the Resolution Fund, if and when it deemed necessary, to satisfy any contractual obligations that may arise from the sale of the 75% stake in Novo Banco. It is also mentioned that the reimbursement will consider the stability of the banking sector, i.e. without the Resolution Funds' participants being charged special contributions or any other extraordinary contributions.

The Resolution Fund's own resources had a negative equity of Euros 6,114 million, according to the latest 2018 annual report of the Resolution Fund.

To reimburse the loans obtained and to meet other liabilities that it may take on, the Resolution Fund receives proceeds from the initial and regular contributions from the participating institutions (including the Bank) and from the contribution over the banking sector (Law no. 55-A/2010). It is also provided for the possibility of the member of the Government responsible for the area of Finance to determine, by ordinance that the participating institutions make special contributions, in the situations provided for in the applicable legislation, particularly if the Resolution Fund does not have resources to fulfil with their obligations.

Pursuant to Decree-Law no. 24/2013 of 19 February, which establishes the method for determining the initial, periodic and special contributions to the Resolution Fund, provided for in the RGICSF, the Bank has been proceeding, since 2013, to the mandatory contributions, as provided for in the decree-law.

On 3 November 2015, the Bank of Portugal issued a Circular Letter under which it is clarified that the periodic contribution to the Resolution Fund should be recognised as an expense at the time of the occurrence of the event which creates the obligation to pay the contribution, i.e. on the last day of April of each year, as stipulated in Article 9 of the referred Decree-Law, thus the Bank is recognising as an expense the contribution to the RF in the year in which it becomes due.

The Resolution Fund issued, on 15 November 2015, a public statement declaring: *"...it is further clarified that it is not expected that the Resolution Fund will propose the setting up of a special contribution to finance the resolution measure applied to Banco Espírito Santo, S.A., ('BES'). Therefore, the eventual collection of a special contribution appears to be unlikely".*

The regime established in Decree-Law no. 24/2013 establishes that the Bank of Portugal fixes, by instruction, the rate to be applied each year based on objective incidence of periodic contributions. The instruction of the Bank of Portugal no. 24/2019, published on 16 December 2019, set the base rate to be effective in 2020 for the determination of periodic contributions to the FR by 0.06% against the rate of 0.057% in 2019.

During 2019, the Group made regular contributions to the Resolution Fund in the amount of Euros 15,965 thousand. The amount related to the contribution on the banking sector, registered in 2019, was Euros 31,818 thousand. These contributions were recognized as a cost in 2019, in accordance with IFRIC no. 21 – Levies.

In 2015, following the establishment of the Single Resolution Fund (SRF), the Group had to make an initial contribution in the amount of Euros 31,364 thousand. In accordance with the Intergovernmental Agreement on the Transfer and Mutualisation of Contributions to the SRF, this amount was not transferred to the SRF but was used instead to partially cover for the disbursements made by the RF in respect of resolution measures prior to the date of application of this Agreement. This amount will have to be reinstated over a period of 8 years (started in 2016) through the periodic contributions to the SRF. The total amount of the contribution attributable to the Group in 2019 was Euros 21,918 thousand, of which the Group delivered Euros 18,747 thousand and the remaining was constituted as irrevocable payment commitment. The Single Resolution Fund does not cover undergoing situations with the National Resolution Fund as at 31 December 2015.

It is not possible, on this date, to assess the effects on the Resolution Fund due to: (i) the sale of the shareholding in Novo Banco in accordance with the communication of Banco de Portugal dated 18 October 2017 and the information provided by the European Commission on this subject under the terms described above, including the effects of the application of the Contingent Capital Agreement; (ii) the application of the principle that no creditor of the credit institution under resolution may take on a loss greater than the one it would take if that institution did not go into liquidation; (iii) additional liabilities or contingencies for Novo Banco, S.A. which need to be neutralized by the Resolution Fund; (iv) legal proceedings against the Resolution Fund, including "processo dos lesados do BES"; and (v) the guarantee provided to the bonds issued by Oitante, in this case, the referred trigger is not expectable in accordance to the most recent information communicated by the Resolution Fund in its annual accounts.

According to Article 5 (e) of the Regulation of the Resolution Fund, approved by the Ministerial Order no. 420/2012, of 21 December, the Resolution Fund may submit to the Government a proposal for the implementation of special contributions to rebalance the financial condition of the Resolution Fund. According to public communications from both the Resolution Fund and from the Government, there is no indication that any such special contributions are foreseen.

According to the Resolution Fund's 2018 annual report, under note 10, *"the Resolution Fund is not obliged to present positive equity. In case of insufficient resources, the Resolution Fund may receive special contributions, as determined by the member of the Government responsible for finance, in accordance with article 153-I of the RGICSF and no such contributions are foreseen, in particular after a review of the financing conditions of the Resolution Fund".*

Eventual alterations regarding this matter may have relevant implications in future financial statements of the Group.

9. Banco Comercial Português, S.A., Banco ActivoBank S.A. and Banco de Investimento Imobiliário, S.A. (company merged into Banco Comercial Português, S.A.) initiated an administrative proceeding to contest the resolution adopted by Banco de Portugal on 31 March 2017 to sell Novo Banco (NB), and also, as a precaution, the deliberation adopted by the Resolution Fund on the same date, as they foresee the sale of NB by resorting to a contingent capitalization agreement under which the Resolution Fund commits to inject capital in Novo Banco up to Euros 3,9 billion, under determined circumstances. In the proceedings, the Claimants request the declaration of nullity or annulment of those acts.

The proceedings were filed based on the information contained in the Communication from Banco de Portugal dated 31 March 2017, of which the Claimants were not notified.

The proceedings were filed in court on 4 September 2017. Banco de Portugal and the Resolution Fund presented their arguments and, only very recently, Nani Holdings SGPS, S.A. did the same since, by delay of the court, this company was only very recently notified to act as a party in the proceedings.

Besides opposing to it, the Defendants invoke three objections (i) the illegitimacy of the Claimants, (ii) the argument that the act performed by Banco de Portugal cannot be challenged and (iii) the material incompetence of the court. The opponent part invoked the issue of passive illegitimacy since Novo Banco was not notified as an opponent party.

The Claimants replied to the arguments presented by the Defendants and to the arguments presented by the opponent party. After the presentation of the arguments, Banco de Portugal attached to the proceedings what it called an evidence process (allegedly in compliance with the law) but most of the documents delivered were truncated in such a way that neither the court nor the Claimants are able to get an adequate knowledge thereon. That issue was already raised in the proceedings (requesting the court to order Banco de Portugal to deliver a true evidence process) but no decision thereon has been made yet.

Currently, the proceedings are prepared for confirmation of the decision accepting the formalities of right of action (with the making of a decision on the specific objections invoked). In case the judge considers that Novo Banco is an opponent party, the judge must start by issuing a pre-confirmation order to request the Claimants to identify it. Afterwards, that Bank will be notified to present its opposition arguments.

10. Following the restructuring process agreed with the Directorate-General for Competition (DGComp) and the Portuguese State, it was implemented in Group Banco Comercial Português a process of salary adjustment with temporary term. Additionally, it was agreed between the Bank and the Trade Unions that, in the following years after the State intervention and if then exist distributable profits, the Board of Directors and the Executive Committee will submit for approval of the Shareholders' General Meeting a proposal of distribution of profits to the employees, which allows the distribution of an accumulated total global amount at least equal to the total amount that was not received over the temporary term of the salary adjustment, as described in the clause no. 151-E of BCP's Collective Labour Agreement.

At the General Meeting of 22 May 2019, following the proposal submitted by the Board of Directors, the application of profits for the year 2018 was approved, which includes the distribution to employees of Euros 12,587,009, in compliance partially with the previously referred clause. This payment occurred in June 2019 and the corresponding amount was recognized in 'Staff costs' in 2019.

11. The Bank was subject to tax inspections for the years up to 2016. As a result of the inspections in question, corrections were made by the tax authorities, arising from the different interpretation of some tax rules. The main impact of these corrections occurred, regarding IRC, in terms of the tax loss carry forwards and, in the case of indirect tax, in the calculation of the Value-Added Tax (VAT) deduction *pro rata* used for the purpose of determining the amount of deductible VAT. The additional liquidations/corrections made by the tax administration were mostly object of contestation by administrative and/or judicial ways.

The Bank recorded provisions or deferred tax liabilities at the amount considered adequate to offset the tax or tax loss carry forwards, as well as the contingencies related to the fiscal years not yet reviewed by the tax administration.

12. Banco Comercial Português, S.A. filed in 2013 a lawsuit against Mr. Jorge Jardim Gonçalves, his wife and Ocidental – Companhia de Seguros de Vida, S.A., requesting mainly that the following be recognized: (a) that the amount of the retirement instalments of the former director, to be paid by the Bank, cannot exceed the highest fixed remuneration earned by the directors exercising functions in the Bank at any moment; (b) that the former director cannot maintain, at the Bank's expenses, the benefits he had when still in active functions; and (c) that the wife of the former director cannot benefit from a survival lifelong pension paid by the Bank in case of death of the former director, under conditions different from the ones foreseen for the majority of the Bank's employees.

After several procedural extraordinary events, on 27 January 2019, the court issued a new sentence - which fully reproduces the previous one issued on 25 May 2018 - considering: (i) rejected the request made by the Bank consisting in the reduction of the pensions paid and to be paid to the first defendant Mr. Jorge Jardim Gonçalves, (ii) rejected the request for the nullity of the eventual future survival pension of the second defendant; (iii) partially accepted the counter-claim made by the defendant Mr. Jorge Jardim Gonçalves, sentencing the Bank to pay him the amount of Euros 2,124,923.97, as reimbursement of the expenses regarding the use of a car with driver and private security until June 2016, and also those that, on this regard, he paid since that date or will pay in the future, in the amount that comes to be settled, expenses which would be part of his retirement regime, plus default interests accounted at the legal rate of 4% per year since the date of the reimbursement request up to their effective and full payment.

In March 2019, BCP appealed the sentence to the Tribunal da Relação de Lisboa (Lisbon Court of Appeal) requesting that the same is revoked and replaced by a decision accepting all the requests presented by the Bank. The Bank considers that the court decided incorrectly regarding evidence and relevant legal issues, and that the appeal has good chances of success, namely because, concerning the amounts received by the former director, the sentence upholds an original interpretation of the limit of article 402, no.2, of the Commercial Companies Code (CCC), going against all court decisions issued by superior courts and most of all the prior doctrine on these issues.

On 5 March 2020, Lisbon Court of Appeal abrogated the court of first instance's decision, upholding the Bank's legal action and declaring the non-existence of the right of the Defendant Mr. Jardim Gonçalves to receive the retirement supplements paid by Ocidental Vida, condemning the Defendant to return to the Bank the amounts received monthly in excess of the limits provided for in Article 402 (2) of the Commercial Companies Code, as from the date of retirement; as well as enacted the partial nullity of the insurance contracts titled by the capitalisation and lifelong pension policy, sentencing Ocidental Vida to return to the Bank the amounts paid by the latter to support the retirement supplements of Mr. Jardim Gonçalves. Finally, the court dismissed the counterclaim, acquitting the Bank of the request. There may be an appeal to the Supreme Court of Justice for this last decision.

57. Recently issued accounting standards

1- Recently issued accounting standards and interpretations that came into force in 2019

At the date of approval of these financial statements, the following accounting standards, interpretations, amendments and revisions were endorsed by the European Union (EU) with mandatory application for the financial year of the Group started on 1 January 2019:

Amendment to IFRS 9: Prepayment features with negative clearing

This amendment allows financial assets with contractual conditions which, in their early amortization, allow the payment of a considerable amount by the creditor, can be measured at amortized cost or at fair value through reserves (depending on the business model), since that: (i) on the date of the initial recognition of the asset, the fair value of the early amortization component is insignificant; and, (ii) the possibility of negative compensation in the early amortization is the only reason for the asset in question not to be considered as an instrument that only includes payments of principal and interest.

The Group applied IFRS 9 and early adopted the amendment to IFRS 9 in the period beginning on 1 January 2018, as note 58.

IFRIC 23 – Uncertainties in the treatment of income tax

This interpretation clarifies what are the recognition and measurement requirements that must be adopted in scenarios of uncertainty regarding the treatment of income tax in accordance with IAS 12. It is applicable to all the inherent aspects of the treatment of income tax, such as the determination of taxable income, tax losses to be reported, tax bases, tax credits to be used and tax rates.

There were no material impacts on the application of this interpretation in the Group's financial statements.

IFRS 16 – Leases

IFRS 16 was approved by the EU in October 2017 and entered into force in the periods starting on or after 1 January 2019. Its early application is permitted through the fulfilment of certain requirements.

This standard replaces IAS 17 – Leases and establishes the new requirements regarding the scope, classification/recognition and measurement of leases. The Group applied the principles set out in IFRS 16 at the beginning of 2019 with the following impacts:

- from the lessor's perspective, leases continue to be classified as finance leases or operating leases, with no substantial changes for the Group compared to which was already defined in IAS 17;
- from the lessee's perspective, the standard defines a single model of accounting for lease contracts, which results in the recognition of a right-of-use asset and a lease liability for all leases, except for those which the lease term ends within 12 months or for those which the underlying asset is of low value and, in these cases, the lessee may opt for the exemption from recognition under IFRS 16, and shall recognise the lease payments associated with those leases as an expense.

The Group chose not to apply this standard to short-term lease contracts, i.e., contracts with a term shorter than or equal to one year, and to lease contracts in which the underlying asset's value is below Euros 5,000. Additionally, this standard was not applied to leases of intangible assets.

Lease definition

The new lease definition focusses on the control of the identified asset, establishing that a contract constitutes or contains a lease if it carries the right to control the use of an identified asset, i.e., the right to obtain substantially all of the economic benefits of using it, and the right to choose how to use the identified asset over a period in exchange of a payment.