

# CONSUMER OVER-INDEBTENESS IN PANDEMIA: ANALYSIS OF THE DRAFT SENATE LAW ON THE LIMITATION OF INTEREST ON CREDIT CARDS AND OVERDRAFT IN PANDEMIA

SUPERENDIVIDAMENTO  
DO CONSUMIDOR NA PANDEMIA:  
ANÁLISE CRÍTICA DO PROJETO DE LEI DO SENADO SOBRE A LIMITAÇÃO  
DE JUROS DO CARTÃO DE CRÉDITO E CHEQUE ESPECIAL

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## ABSTRACT

The purpose of this article is to analyze Bill nº 1,166/20, which provides for the limitation of interest on credit cards and overdraft to mitigate financial impacts during the pandemic, analyzing the material aspects of the proposal and the right compared. As a research problem, it is asked whether the referred bill has efficient mechanisms to face the highly complex situation, capable of mitigating over-indebtedness in Brazil, especially in the context of the economy of the most vulnerable families, considerably exposed in the context of the the COVID-19 pandemic. The research methodology adopted was documentary and bibliographic, through the analysis of specialized documents, consisting of books and scientific works. In the result, the importance of financial education combined with positive stimuli as an instrument for reducing consumer over-indebtedness in Brazil will be highlighted.

**Keywords:** Credit card. Overdraft. Pandemic. Over-indebtedness. Senate Bill.

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### How to cite this article/Como citar esse artigo:

SANTOS, Paulo Márcio Reis; COSTA, Flávia Guimarães Campos Paulino da; CAMPOLINA, Roberta Maciel. *Consumer over-indebteness in pandemia: analysis of the draft senate law on the limitation of interest on credit cards and overdraft in pandemia*. Revista Meritum, Belo Horizonte, vol. 15, n. 2, p. 304-316, May/Aug. 2020. DOI: <https://doi.org/10.46560/meritum.v15i2.8267>.

## RESUMO

*O presente artigo tem por objetivo analisar o Projeto de Lei nº 1.166/20, que prevê a limitação dos juros de cartões de crédito e cheque especial para atenuar os impactos financeiros durante a pandemia, analisados os aspectos materiais da proposta e o direito comparado. Como problema de pesquisa, indaga-se se o referido projeto dispõe de mecanismos eficientes para o enfrentamento do quadro de elevada complexidade, capazes de mitigar o superendividamento no Brasil, sobretudo no âmbito da economia das famílias mais vulneráveis, consideravelmente expostas no contexto da pandemia da COVID-19. A metodologia de pesquisa adotada foi documental e bibliográfica, mediante a análise de documentos especializados, constituída por livros e trabalhos científicos. No resultado, será destacada a importância da educação financeira aliada a estímulos positivos como instrumento para a redução do superendividamento do consumidor no Brasil.*

**Palavras-chave:** Cartão de Crédito. Cheque Especial. Pandemia. Projeto de Lei do Senado. Superendividamento.

## 1. INTRODUCTION

With the access to easy credit brought by several payment alternatives and the control of information, it is noted that, regardless of the interest rates applied, it is usual to use credit in its exceptions, modalities for payment of expenses.

This easy access to credit brought benefits so that the quality of life could be improved. However, there was an increase in the interest rate to compensate the assignor for the value of the capital made available to the consumer.

When a contracted obligation fails to be honored in due time, a vicious circle of consumer debt is created. In Brazil, this is reinforced by the perception of the absence of guidance and financial education. This scenario, coupled with exacerbated consumerism, increasingly attentive to "having", represents one of the strongest reasons for there to be more than 67.4% of indebted families (ROUBICEK, 2020).

In view of this, the Executive Branch, on June 9, 2020, to implement the financial education policy, issued Decree No. 10,393, which instituted the new National Strategy for Financial Education - ENEF and the Brazilian Forum on Financial Education - FBEF, for promote financial, insurance, social security and tax education in the country (BRASIL, 2020).

The ease of obtaining credit, mainly through the credit card and the special check, made the debt curve to show an upward trend in the last few years (BRASIL, 2020). In the specific case of the credit card, the possibility of having a benefit without the immediate disbursement for payment in cash makes it possible for the consumer to take advantage of this modality, in many cases, without due planning and sustainability in the income, that is, an expense not designed, but realized.

According to the National Confederation of Trade in Goods, Services and Tourism (CNC), there were consecutive increases in indebtedness of Brazilian families in 2019, ended with the highest index since 2013 (NATIONAL CONFEDERATION OF TRADE IN GOODS, SERVICES AND TOURISM, 2020).

It is believed that the high indebtedness scenario may worsen due to the measures to confront COVID-19 taken by the Government in Brazil (BRASIL, 2020). This is because the search for credit was the solution found in this new context, in an attempt to meet essential demands, such as rent, electricity, water, food, among others, a situation aggravated by the inadequate financial management of Brazilian families.

The default of credit obligations in terms of high interest rates raises the level of indebtedness and creates a worrying situation. The interest rates of overdraft and credit card in Brazil are one of the highest in the world, giving rise to necessary measures to mitigate, especially in such an exceptional period, such as that of a pandemic.

The purpose of this article is to analyze Law No. 1,166 of 2020 (BRAZIL, 2020), authored by Senator Álvaro Dias (Pode), from Paraná, which provides for the limitation of interest rates for credit cards and overdrafts, as a way to mitigate the negative impacts arising from the COVID-19 pandemic.

As a research problem, it is asked whether the referred Law has efficient mechanisms to face the highly complex situation, capable of mitigating over-indebtedness in Brazil, especially in the context of the economy of the most vulnerable families, considerably exposed in the context of the COVID-19 pandemic.

The research methodology adopted was documentary and bibliographic, through the analysis of specialized documents, consisting of books and scientific works.

## 2. FINANCIAL EDUCATION AND THE PANORAMA OF OVER INDEBTEDNESS IN BRAZIL IN THE LAST DECADE

Behavioral economics points out that, unlike the view of traditional economics, people decide based on habits, personal experiences and simplified rules of thumb. They accept only satisfactory solutions, seek speed, have difficulty balancing short and long-term interests and are heavily influenced by emotional factors, including the behavior of other individuals (ÁVILA; BIANCHI, 2020).

Financial education, as proposed by the government, through Decree nº 10.393, of 2020, combined with positive stimuli, as recommended by Richard H. Thaler and Cass Sunstein in the metaphorical figure of the "architect of choices" (THALER; SUNSTEIN, 2020), can represent the reorientation and improvement of domestic choices and financial management, with the ability to mitigate the situation of over-indebtedness.

Thaler and Sunstein consider that individuals and institutions, through conscious and invisible stimuli and with a minimum of political and economic cost, can achieve great achievements in relation to finance, public health and equality. For them, business agents, governments, parents, teachers and doctors can become "architects of choices" (THALER; SUNSTEIN, 2020) <sup>4</sup>.

4 Nudge it is a concept of behavioral science, political theory and economics, which proposes positive stimulus and indirect suggestions as a way to influence the behavior and decision making of groups or individuals. This incentive contrasts with other ways of achieving compliance, such as education, legislation or enforcement.

Advances in the various aspects of the field of economic-behavioral study occur at an accelerated rate and its wide use in several thematic areas, from academia to the public and private sector, reinforce the importance of incorporating and consolidating insights from behavioral economics in the face of the premises traditional economics (RIBEIRO; DOMINGUES, 2018).

Credit is an extra source of funds, coming from third parties, represented by banks, finance companies, credit unions, among others, which brings the opportunity to purchase goods or contract services in advance. This allows individuals or companies to supplement their income to buy something they want.

The spread of easy credit to the population, as well as the increase in other forms of payment, is making Brazilian society increasingly conducive to consumption. Another factor that increases the degree of indebtedness of the Brazilian family is the absence of a culture of financial education and the lack of monitoring of the application of financial resources in the long term.

The ease in obtaining credit in Brazil, reinforced by this lack of financial education, makes credit a problem instead of a solution, since interest, when not considered, ends up creating an overload in the fulfillment of the negotiated obligation. This often leads the consumer to look for a new credit as a form of payment for the previous one, thus creating the figure of over-indebtedness (FANECO, 2016).

This reality has generated a significant increase in household indebtedness, according to a survey carried out by the National Confederation of Trade in Goods, Services and Tourism (NATIONAL CONFEDERATION OF TRADE IN GOODS, SERVICES AND TOURISM, 2020).

According to a Consumer Debt and Default Survey (PEIC) conducted in July 2020, the number of Brazilian families with debts reached 67.4%, reaching the highest percentage index since 2010.

Gráfico 1



Fonte: Confederação Nacional do Comércio

Fonte: Roubicek, 2020.

In February 2020, the same survey indicated a level of indebtedness of 65.1% (sixty-five point one percent) of households. It is believed that with the scenario that has been established since March 2020 in Brazil, due to the COVID-19 pandemic, this rate may increase even more in the coming months.

It is worth mentioning that debts have different origins, such as: credit card, overdraft, store booklets, housing installments, installments of movable assets, among others.

Another data of great significance and that the research of the CNC presents is the increase in defaults in 2020. Although it is not considered the highest index in history, since the research began, it shows an upward trend. At a given moment, the families' responses also indicate that 12% (twelve percent) of them have overdue accounts and will not be able to honor their commitments.

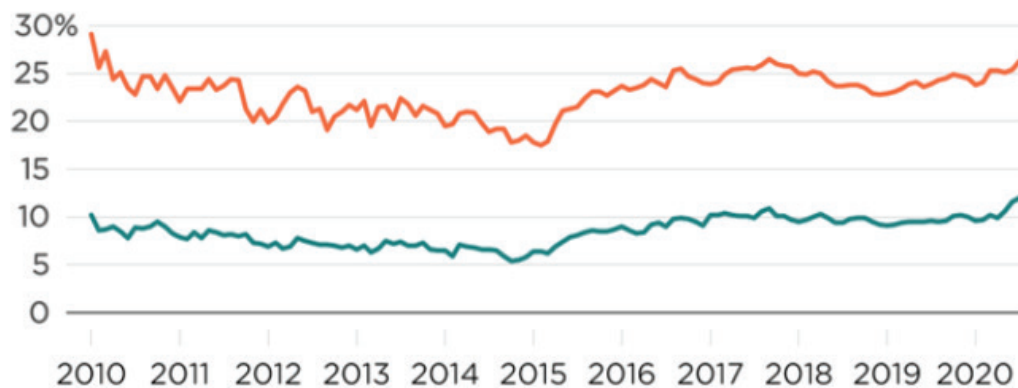
Gráfico 2

## INADIMPLÊNCIA EM ALTA

Famílias inadimplentes no Brasil

■ Contas em atraso

■ Não terão condição de pagar contas em atraso



Fonte: Confederação Nacional do Comércio

Fonte: Roubicek, 2020.

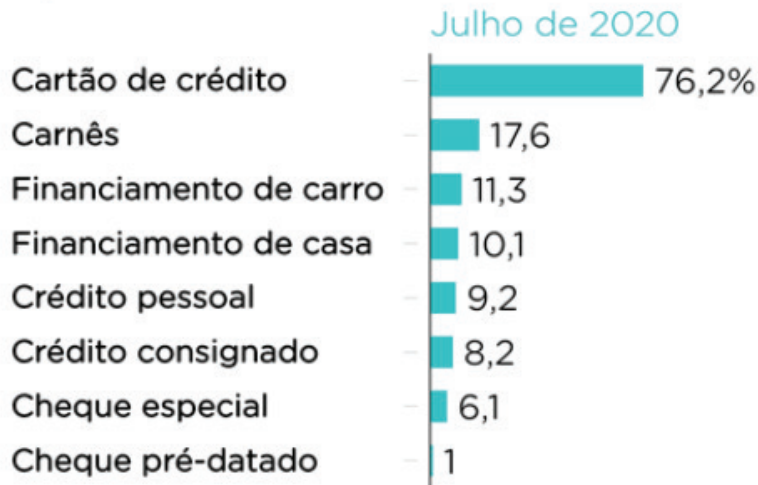
Among the various debt models, the most significant one raised in the survey was related to the credit card, which stood out with 76.2% (seventy-six point two percent). Followed by debts contracted in payment and car financing.

The modality of debt by credit card is a cause for concern, as interest rates are very high, reaching rates above 250% (two hundred and fifty percent) per year.

Gráfico 3

## ORIGEM DAS DÍVIDAS

Tipo de dívida das famílias



Fonte: Confederação Nacional do Comércio

Fonte: Roubicek, 2020.

The research carried out by CNC also considered, in the data analysis, families with receipts of up to 10 (ten) minimum wages and those who perceived above this level.

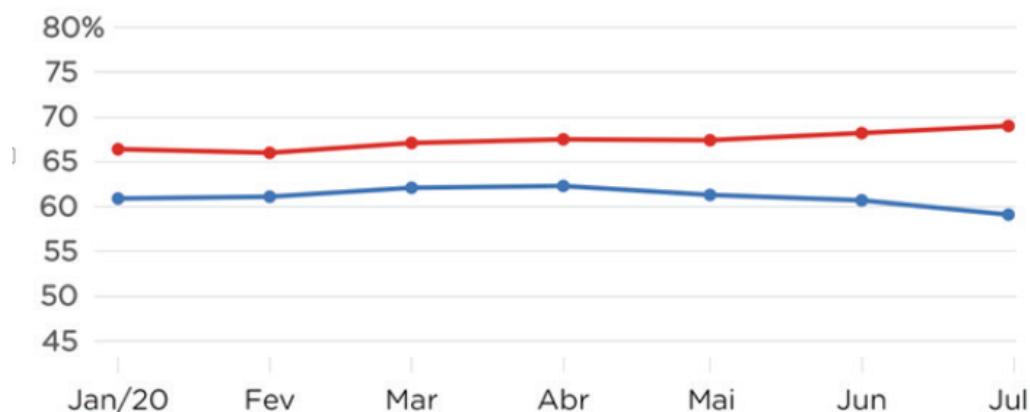
In the analysis for the month of July 2020, a scenario of contrast was observed between the two ranges of families surveyed. The families that received above the ceiling of 10 (ten) minimum wages and still in the full situation of the pandemic, showed a tendency to fall in debt during the survey. However, there was an opposite movement in the range of families that received up to 10 (ten) minimum wages where an increase in indebtedness was noted.

Gráfico 4

## MOVIMENTOS OPOSTOS

Famílias endividadadas no Brasil, por faixa de renda

■ Abaixo de 10 S.M. ■ Acima de 10 S.M.



Fonte: Confederação Nacional do Comércio

Fonte: Roubicek, 2020.

This is corroborated by the indication that families with income below 10 (ten) minimum wages have credit cards as their main source of debt, which corresponds to 78.5% (seventy-eight point five percent) of the total. This high degree of indebtedness generates negative impacts on the economy of society, with negative repercussions on the dignity of these people.

### 3. THE PANDEMIC FOR COVID - 19

The human being is facing a different reality from the past centuries. Globalization is a phenomenon that has changed behavior, whether in society or in the economy. Distances have been shortened and technology, as well as development, has brought people from different countries together.

This shortening of distances is a source of benefits, but it is also a reality that brings concern, as diseases of fast spread such as diseases of viral origin, such as MERS (Middle East Respiratory Syndrome - Middle East Respiratory Syndrome and Severe Acute Respiratory Syndrome) and SARS brings a situation of difficult control in this globalized scenario (PAN AMERICAN HEALTH ORGANIZATION, 2020).

In 2019, one of these viral diseases appeared in China, whose characteristic was the ease of contagion, resistance of the virus in the environment and long incubation time (SANARMED, 2020). At the beginning of the year 2020, there were already reports of incidence of COVID-19 in practically all countries. This made the World Health Organization on January 30, 2020, COVID-19 was declared a state of emergency of international concern, and then, on March 11, 2020, it was designated as a pandemic (FUNDAÇÃO OSWALDO CRUZ, 2020).

The concept of pandemic is used when an epidemic, which is a disease that has its dissemination restricted to a limited space, ends up spreading over several continents reaching large proportions and its contagion is sustained from person to person (FUNDAÇÃO OSWALDO CRUZ, 2020).

The Corona Virus (CoV) term is the name given to a viral family that has a crown-shaped structure. This group of viruses are zoonotic, as their transmission occurs from animals to people. Such viruses can cause mild and moderate respiratory diseases, with symptoms very similar to the common flu (SANAMED, 2020).

Some strains of Corona Virus can cause severe respiratory syndromes that are commonly called SARS (severe acute respiratory syndrome). With human reports made in China in 2002 (SANAMED, 2020). According to the Ministry of Health (2020), COVID-19 is a disease caused by the Corona Virus, called SARS-CoV-2, whose clinical range varies from asymptomatic infections to severe conditions.

The Legislative Branch, through the Legislative Decree of March 20, 2020, recognized the state of public calamity required by the Executive Branch and on February 6, Law No. 3,160 of 2020 was approved, providing for the amendment of Law No. 13,979 establishing the rules for

dealing with this confrontation, including measures such as isolation and quarantine (BRASIL, 2020).

#### **4. THE SCENERY BROUGHT BY COVID 19 AND THE DRAFT LAW 1,166 OF 2020**

The world is experiencing an exceptional moment since the COVID-19 pandemic. As previously analyzed, the level of indebtedness of Brazilian families was already increasing and consumers were at the mercy of seeking quick credit to honor their obligations. This type of credit has a positive aspect, which is the credit or financing made automatically and another negative aspect, which is high interest.

The Executive Branch at all levels of government has taken measures to deal with this calamity so that it has the least possible impact on the health and life conditions of Brazilians. In economic terms, the consequences of the pandemic were also significant.

It is expected that during the crisis and after that, most consumers will not be able to pay the entire credit card looking for revolving credit and overdraft for an option to honor their obligations (APPROVED ..., 2020).

The Brazilian legal system was contextualized in a different scenario before the pandemic crisis. This made the Legislative Power feel pressured in the search to update the country's legislation for this moment. Currently, there are laws passing both in the Senate and in the Chamber of Deputies, among which we can mention Law 1.166 / 2020, which deals with a variable of great impact on people's indebtedness.

This is a Bill designed by Senator Álvaro Dias, which proposes in its original wording an interest rate of 20% (twenty percent) per year for all types of credit offered through credit cards and overdraft between the months of March 2020 to July 2021, whose supervision will be the responsibility of the Central Bank and the breach of the ceiling, will constitute a crime of usury. (BRASIL, 2020).

The senator explained that his proposal is based on the fact that during the crisis the loss of income motivated, either by the change in the labor legislation or by unemployment, will cause a significant part of the population to search the credit card or overdraft for complement to finance essential expenses.

The author pointed out that a rate of 20% (twenty percent) per year is satisfactory and sufficient to remunerate credit institutions in this period of crisis. In order not to run the risk of an institution reducing the credit limit, exceptionally during this period, it will not be allowed to reduce the limit in the special verification and credit card modalities.

The text approved in August 2020, in the Senate, brought the limit of 30% (thirty percent) per year (in the case of fintechs<sup>5</sup>, the limit was 35%), prohibiting the collection of fines and interest due to late payment. the provision of products and services and in bank credit opera-

5 The word fintech is an abbreviation for financial technology. It refers to startups or companies that develop fully digital financial products, in which the use of technology is the main differential in relation to traditional companies in the sector.



tions, even on credit cards. It was also predicted that the ban on charging interest will retroact to March 20, 2020.

According to article 2 of the substitute, the Law's objective is to prevent over-indebtedness. Thus, it will not be valid for those who assume debts using fraud or bad faith. It happens that there is a delay in its processing in the Chamber of Deputies associated with the signaling of the current president of the house, Deputy Rodrigo Maia, that he should not vote on a proposal, because he considers the Legislative's interference in the financial market (CHRISTIAN, 2020).

According to João Pedro Porto, interventionism is government interference in the market, be it in prices, interest rates and profits (PORTO, 2019). This occurred in the historical period of the military dictatorship, when interest rates were limited to all areas of the economy, causing disastrous effects, such as the decrease in credit granting and the increase in other financial products (ZANONI; IGNÁCIO; BARROS; LIMA; SOUTO; SILVA, 2018).

The law contradicts the understanding of directors and the president of the Central Bank, that the ideal, at this moment, would be to maintain bank contracts as they are, avoiding the limitation of existing rules and contractual breaches (GARCIA, 2020).

FEBRABAM (Brazilian Federation of Banks) supported the need to reduce the cost of credit, but in its understanding, the tabulation, instead of promoting financial relief, may aggravate the crisis, distorting the formation of prices, creating bottlenecks and creating legal insecurity .

If the law is approved, even if it is late, this may imply new issues, such as the judicialization of contracts and the fall in the supply of credit, with the double victimization of the most economically vulnerable strata in the country.

## 5. THE FOREIGN EXPERIENCE

Interest is the remuneration on the assigned capital, which is calculated according to the total loan amount, the time of the loan and a fee. It is the income that the owner of the capital obtains on the amount he lent (VASCONCELOS, 2019).

The fees charged by the assignor can be fixed or variable, in the first case referring to an unchanged amount, and in the second case, they are a combination of indexing with a margin or spread (VASCONCELOS, 2019).

The imposition of interest rate limits does not depend specifically on the countries' domestic legislation. Regarding maximum rates, they can be rigid or variable. In the maximum rigid rates, a percentage is determined, and in the case of the variables, a reference index is used, which is subject to variation.

The fixation of a limit rate for interest on consumer credit is made in approximately 76 (seventy-six) countries, as shown in a study by the World Bank and quoted by the Central Bank (LIMITE, 2019). Of these 76 (seventy-six) countries, 24 (twenty-four) adopt a single roof platform that is applied at all interest rates practiced in their markets. The rest, 32 (thirty-

two) countries, work with ceilings relative, where there are varied indices by types of credits, amounts borrowed, or maturity (LIMITE, 2019).

In most countries, the interest limit was introduced via legislation, where 28 (twenty-eight) establish the so-called "Usury Law", and in 24 (twenty-four) there are specific interest rate laws. Only in nine countries have these limits been introduced into the financial system by normative acts by the Executive Branch, such as the overdraft created by a resolution of the National Monetary Council (LIMITE, 2019).

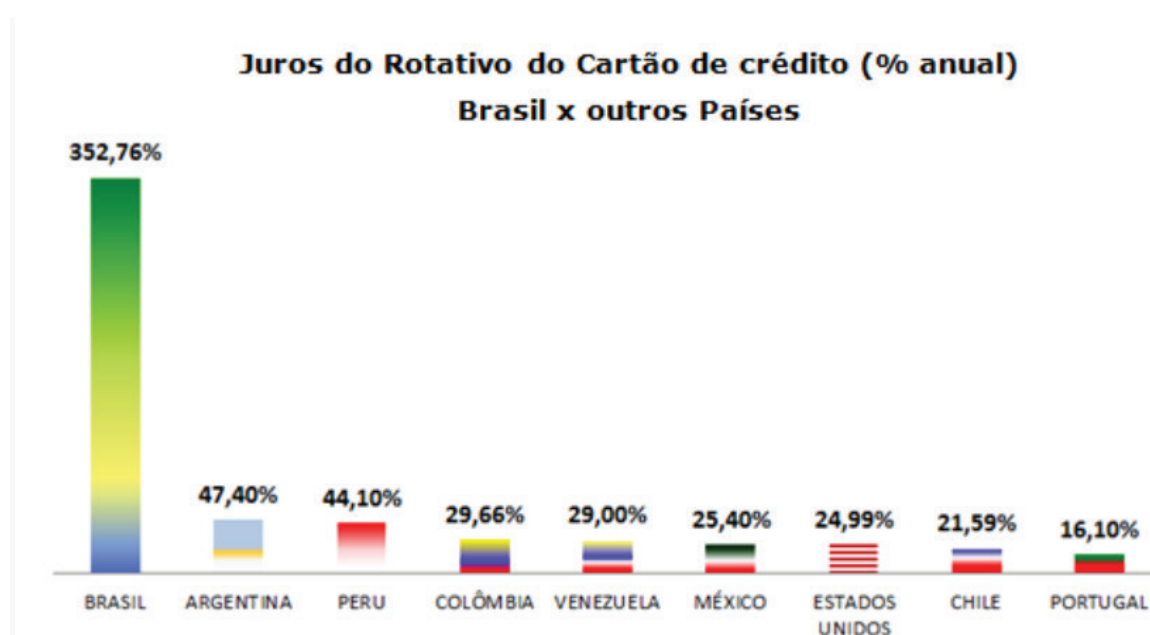
Through a comparison between the overdraft interest rate between Brazil and other countries, we can see the discrepancy in the cost between them, even if compared to the new measure adopted by the National Monetary Council on November 27, 2019 that limited to 8% (eight percent) per month the overdraft rate (GOMES, 2020).

In the case of Brazil, the annual interest rate on overdraft reached until 2019 at up to 305% (three hundred and five percent), and as of January 2020 it was limited to 151% (one hundred and fifty-one percent). In Canada, this rate ranges from 19% (nineteen percent) to 22% (twenty-two percent). Portugal 15.7% (fifteen point seven percent). France 13.81% (thirteen point eighty-one percent). Spain 7.5% (seven point five percent). Which demonstrates that the cost of obligations for Brazilian consumers is about 10 times the cost that the Portuguese have to bear in the same type of credit or when compared with the Spanish, 20 (twenty) times (GOMES, 2020).

In the most used form of credit by the Brazilian family, which is the credit card, the consumer pays very high interest rates. If there is a need to finance credit card obligations through a method called revolving, this interest could reach up to more than 350% (three hundred and fifty percent) in 2019 (O BRASILEIRO ..., 2017).

The interest on the revolving account is paid when the consumer chooses not to pay the total bill on the card, so he automatically acquires a credit with the financial institution.

Gráfico 5



Fonte: Banco Central de cada país, exceto Estados Unidos (creditcards.com).

Fonte: Roubicek, 2020.

When comparing the average rate applied to revolving credit in Brazil with other countries, it is possible to see the great difference between them. In the case of Portugal, which is one of the highest rates in Europe, it has a maximum interest of 16.1% (sixteen point one percent). In the United States, the rate of consumers who opt for revolving credit reaches a maximum of 24.99% (twenty-four point ninety-nine percent).

## 5 CONCLUSION

This article analyzed Law No. 1,166, by Senator Álvaro Dias, already approved in the first round by the Federal Senate (BRASIL, 2020). Through it, it was possible to analyze the severity of the effects of indebtedness on people's lives, especially during the pandemic.

COVID-19 emerged in a scenario of high indebtedness, when the government adopted measures to deal with the state of public calamity that was installed. Credit started to be used for basic demands, such as rent, electricity, water and food, essential needs of people's daily lives.

Although the project foresees mechanisms that, apparently, seem adequate to mitigate the situation of Brazilian over-indebtedness, the delay in its processing may imply new issues, such as the judicialization of contracts, the drop in the credit supply, with the double victimization of the economically most vulnerable, creating legal uncertainty.

Furthermore, state interference, as suggested in the project, could set precedents for greater state intervention in the economy, as happened during the military dictatorship, with catastrophic results.

It is necessary to implement a culture of financial education in the country, combined with positive stimulation, that is, through conscious stimuli, invisible and with minimal political and economic cost. With this, great achievements can be made in relation to finance and, in particular, mitigating people's over-indebtedness.

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Recebido/Received: 30.04.2020.

Aprovado/Approved: 25.11.2020.