

Circular 4/2020, of June 26, of the Bank of Spain, on advertising banking products and services

Legal flash

August, 2020

On July 15, 2020, the Official Gazette of the Spanish State published Circular 4/2020, of June 26, of the Bank of Spain, on advertising banking products and services (the “**Circular**”), which will enter into force on October 15, 2020, except with regard to (i) the obligation to notify the start of the advertising activity, in force since July 16, 2020; and (ii) the regulations on registering publicity, which will enter into force six months after the Bank of Spain publishes the corresponding technical specifications.



The Circular, which repeals Circular 6/2010, updates the regulation governing the advertising of banking services and products, with the aim of adapting it to developments in the advertising sector as a result of the impact of digital technology. Highlights:

- It extends the **subjective scope of application** to lenders and real estate credit intermediaries, and partially to credit institutions, payment institutions, e-money institutions and foreign credit institutions authorized in a third state that operate in Spain without a branch.
- It tightens **control on advertising activities**, including specific rules on advertising in audiovisual, radio or digital media and social networks.
- It specifies the **internal controls** and procedures required of institutions.
- It regulates the procedure under which the Bank of Spain can order the **cessation or rectification** of banking advertising that does not comply with the Circular.
- It introduces the obligation to notify of the **start of the advertising activity**, which is applicable to institutions that advertise banking products and services for the first time in Spanish territory.



Subjective scope of application

- > The Circular extends the scope of the regulations governing the advertising of banking activities to lenders and real estate credit intermediaries or their appointed representatives, as defined under [Spanish Act 5/2019, of March 15, regulating real estate loan agreements](#).
- > The Circular also applies to:
 - (a) **Spanish institutions:** credit institutions, payment institutions, e-money institutions and Spanish credit establishments;
 - (b) **entities authorized in a Member State of the European Union or a third state that operate in Spain through a branch, agent or intermediary established in Spanish territory:** credit institutions, payment institutions, e-money institutions and creditors and intermediaries of real estate loans; and
 - (c) **institutions operating in Spain without a branch (whether authorized in an EU Member State or based in a third state).** These types of institutions are only subject to regulations on the content and format of the advertising message, the obligation to adhere to advertising self-regulation systems, the procedure to order the cessation or rectification of banking advertising, the obligation to notify of the start of the advertising activity, and the principles and criteria to which advertising on banking services and products must adapt.

Control of advertising

General principles and criteria on content and format

- > The Circular details in greater depth the general principles and criteria regarding the content and format that advertising messages must meet. **The nature and complexity of the product or service offered must be taken into account, as well as media used for dissemination and the target audience.**
- > Generally speaking, the **advertising must be clear, balanced, objective and not misleading, using language that is simple and easy to understand.** It must avoid using ambiguous, biased, incomplete and contradictory information that may lead to confusion, and it must avoid withholding information necessary to make an informed decision. The products or services offered must be clearly distinguishable and can raise no doubts as to their nature or characteristics, or lead consumers to make an economic decision they



presumably would not have made if they had been provided complete information, in cases where space or time is restricted in the advertising medium used.

- > **The format and presentation of the message must allow complete and easy reading, using a legible and distinct font**, which must always be appropriate to the advertising medium. The Annex to the Circular gives examples of the minimum font size ensuring this requirement is fulfilled for each advertising format.
- > The Annex also sets out rules applicable to advertising broadcast through **audiovisual, radio or digital media and social networks**, making clear reference not only to the minimum amount of information provided, but also to the format (e.g., banners, pop-up windows, the amount of time notifications are displayed on the screen).

Procedure and internal monitoring

- > **Institutions must have a commercial communications policy**, which, among others, must specifically describe the advertising activity, a list of the functional areas of the institution in charge of internal review, and that institution's procedures and internal monitoring systems, as provided under Circular 6/2010. These monitoring processes must ensure the fulfillment of requirements on the content and format of advertising messages, their review, the establishment and maintenance of an updated internal register, and, if applicable, the cessation or rectification of advertisements at the Bank of Spain's request.
- > The governing body will be in charge of approving the commercial communications policy, which must have received a favorable report from the entity carrying out tasks of regulatory compliance and that must be **kept updated and available to the Bank of Spain**.
- > Institutions must keep **internal records, duly updated and at the disposal of the Bank of Spain**, which must contain all the documentation on advertising campaigns the institution has launched, ensuring they are in order and in separate files.
- > **The procedure and internal monitoring must be proportional to the institution's size and structure**, and to the nature, scale and complexity of its advertising activity. As provided previously under Circular 6/2010, institutions can voluntarily adhere to self-regulation systems as a way to demonstrate they have sufficient monitoring systems to guarantee that their advertisements comply with applicable law.



Monitoring of advertising activities

Supervisory role of the Bank of Spain

- The Bank of Spain can ask institutions subject to the Circular for specific information on their advertising campaigns or pieces so that it can make sure they are in line with applicable regulations.
- The Bank of Spain can also inform institutions of any violations it has detected in their advertising activities and, if applicable, order their cessation or rectification.

Start of the advertising activity

- Institutions that advertise banking products and services for the first time that target customers or potential customers in Spanish territory **must inform the Bank of Spain of this** through the channel enabled for this purpose on the Bank of Spain's website **within one month from the day following the start of the advertising activity**. Where applicable, the commercial communications policy must be submitted together with this information using the same channel.
- The obligation to inform of the start of the advertising activity has been in force since July 16, 2020.

For additional information, please contact Cuatrecasas.

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