

# **New Bank of Portugal's notice on advertising financial products and services, as well activity and institutional advertising, under public consultation**

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Public Consultation No. 2/2024 on the Draft Notice on the advertising of financial products or services (hereinafter, the "**Draft Notice**"), which aims to repeal Notice No. 10/2008, bringing important changes to the regime for advertising financial products or services, is available until 17 October 2024. As described by the Bank of Portugal, the Draft Notice reflects technological advances, growing digitalisation and financial innovations, reinforcing consumer protection and introducing new obligations for supervised institutions.

The Draft Notice applies to:

- Credit institutions, financial companies, payment institutions and electronic money institutions;
- Credit intermediaries and other entities authorised to carry out the activity of credit intermediary in the exercise of that activity or in the provision of consultancy services.

### 1. Regulated Advertising Categories

One of the main innovations of the Draft Notice is the distinction between **three types of advertising**:

- **Advertising financial products or services** (Article 8 et seq.): any form of communication with the direct or indirect aim of promoting:
  - A financial product or service, identified through at least one specific characteristic; or
  - A typology of financial products or services, when it includes references to price elements (e.g. interest rate, *spread*, instalment amount, commissions or any benefits associated with the promotional campaign).
- **Advertising the activity** (article 17 and article 18): any form of promotion of the commercial activity of credit institutions and credit intermediaries, when subject to supervision by the Bank of Portugal.
- **Institutional advertising** (Article 19 et seq.): any activity promoting credit institutions or intermediaries that does not fall within the definition of advertising financial products or services or advertising the activity.

The distinction between the various forms of advertising has implications for the corresponding legal framework.

### 2. Advertising financial products or services

The financial products specifically regulated in the Draft Notice are housing and mortgage loans, consumer credit, corporate credit, deposits, structured deposits and package accounts.

With regard to **housing and mortgage credit**, **consumer credit** and **credit to companies**, it is a common requirement to indicate, with similar prominence, the relevant information:

- The repayment period associated with that instalment;
- The amount of financing corresponding to the instalment announced;
- The total term of the credit, if there are different instalments associated with different terms;

In addition, for the three products mentioned above, advertising that announces the instalment of a credit for a reference period other than the respective regular payment period or as a percentage of the amount financed must show the instalment associated with the credit product with similar prominence.

### **2.1. Housing and Mortgage Loans**

The proposal to revise the regime applicable to the promotion of mortgage and home loans is strongly influenced by Decree-Law 74-A/2017 of 23 June. Accordingly, the Draft Notice provides that advertising relating to these products must now include (see Article 11):

- Information on the **Annual Percentage Rate (APR)**, calculated in accordance with article 15 of Decree-Law no. 74-A/2017, of 23 June, with a prominence similar to that of the product's name or commercial image or that of the financial characteristics or benefits highlighted;
- A representative example that includes the elements listed in Article 10(5)(c) to (i) of Decree-Law 74-A/2017 of 23 June, the value of the index and the interest rate *spread*, if applicable, and also, where applicable, the grace period or the percentage of deferred capital;
- In cases where the advertisement includes an APR for credit with optional associated sales, a representative example of these.

### **2.2. Consumer Credit**

With regard to advertising for consumer credit, namely those regulated by Decree-Law 133/2009 of 2 June, institutions must indicate (see Article 12):

- Information on the **Annual Percentage Rate (APR)**, calculated in accordance with article 24 of Decree-Law no. 133/2009, of 2 June, with a prominence similar to

that of the product's name or commercial image or that of the financial characteristics or benefits highlighted;

- A representative example that includes the elements listed in Article 5(5) of Decree-Law 133/2009 of 2 June, the value of the index and the interest rate *spread*, if applicable, as well as the grace period or the percentage of deferred capital;
- In cases where the advertisement includes an APR for credit with optional associated sales, a representative example of these.

In the case of advertising the use of *revolving* credit products aimed at specific customers, the information on the APR must correspond to the APR contracted with those customers.

### **2.3. Business loans**

This type of advertising must be indicated (see Article 13):

- The **Effective Annual Rate (EAR)**, calculated in accordance with Decree-Law no. 220/94, of 23 August, without the effect of financing charges, specifically those arising from commissions, taxes or other costs associated with the credit product, with prominence similar to that of the name or commercial image of the product and that of the financial characteristics or benefits highlighted.
- A representative example that includes:
  - The amount of credit;
  - The repayment period and the amount of instalments, if applicable;
  - The nominal annual rate, together with the value of the index and the interest rate spread, if applicable;
  - The other costs included in the EAR calculation;
  - The grace period or the percentage of deferred capital, if any.

In the case of advertising the use of *revolving* credit products aimed at specific customers, the APR must correspond to the APR contracted with those customers.

### **2.4. Deposits**

Under the terms of the Draft Notice (see Article 14), the requirements regarding the disclosure of the following product elements are maintained:

- Nominal Annual Gross Rate (NARR);
- Index;
- Spread;

- Indication of the currency in which the deposit is denominated.

The Draft Notice also distinguishes between the regime applicable to current deposits (Article 14(3)) and term deposits (Article 14(4)).

With regard to current account deposits, advertising should prominently display the amount of the account maintenance fee.

As for term deposits, the advertising must show:

- The deposit period,
- An indication that the deposit cannot be mobilised in advance; and
- The penalty if the deposit can be mobilised early.

## **2.5. Structured deposits**

The Draft Notice proposes the creation of specific information duties regarding structured deposits.

To this end, advertising for structured deposits must expressly identify the product as a "Structured Deposit" and must provide information on it (see Article 15):

- At the Nominal Annual Gross Rate (NARR);
- The currency in which the deposit is denominated;
- The deposit period;
- An indication that the deposit cannot be mobilised in advance, if applicable.

The following elements should also be highlighted:

- The possibility of zero return on capital;
- The existence of a key information document and the places and ways of obtaining it, including reference to the address of the depositary institution's websites.

In addition, advertisements for structured deposits may only contain information on the deposit's performance scenarios that are reflected in the respective key information document.

If the advertisement includes historical data on the evolution of the instruments or variables underlying the deposit, it should be made clear that the figures disclosed represent past data and are not a guarantee of future profitability.

Finally, the reference period must be clearly identified, which must correspond, in whole or in part, to that used in the calculation of the deposit performance scenarios contained in the respective key information document.

## **2.6. Package accounts**

The Draft Notice also includes something new with regard to "package accounts" (cf. Article 16).

With regard to this product, advertising must present information on the maintenance fee with similar prominence to the features or benefits highlighted, and the information duties for each of the products or services that comprise them must also be observed.

## **3. Specific Standards for Digital Advertising**

With the growing use of digital media for advertising, the Draft Notice focuses on ensuring that the information disclosed on these channels is accessible and clear, under the terms and conditions set out in the Annex to the Notice.

In this context, the minimum character size has been changed for websites, social networks, online banners and in videos or other audiovisual media.

The colours and fonts used should ensure easy reading, and important information should be close to the highlighted benefits, both in digital and print advertising.

In the case of video adverts, the information must be presented for a sufficient length of time to ensure the consumer's understanding, preventing crucial data from going unnoticed.

## **4. Filing Obligations and Reporting to the Bank of Portugal**

Under the terms of Notice no. 10/2008, credit institutions are obliged to inform the Bank of Portugal of the start date of advertising campaigns involving written media made available over the counter, direct mailing or posters exclusively used inside branches, by sending an electronic copy (see Circular Letter no. 108/2008/DSB).

With the Draft Notice, there is now an intention to oblige institutions to inform the Bank of Portugal of all advertising media, regardless of the channel and medium used. At the same time, the Draft Notice also provides for a procedure for reporting information to the Bank of Portugal, through the "Advertising Reporting" service, available in the "Behavioural Supervision" area of the BpNet platform.

Finally, an **archiving obligation** has been proposed. This obligation falls to the credit intermediaries and lenders responsible for the advertised credit product, who must keep proof of approval of the advertisement for a period of two years after it is issued.

We would like to remind you that this Draft Notice is under public consultation until 17 October 2024. The APDFin team at Abreu Advogados advises the entities covered by these regulations and is available to accompany the participation of any interested entity in the public consultation.



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