



BANCO DE PORTUGAL
EUROSYSTEM

Draft Circular Letter

Subject: Guidelines applying to the selling of retail banking products and services through digital channels

Banco de Portugal has been monitoring the credit institutions, financial companies, payment institutions and electronic money institutions (hereinafter “institutions”) when selling retail banking products and services through digital channels.

Banco de Portugal is particularly attentive to the way in which institutions ensure compliance with the applicable regulatory framework, namely when offering credit products to consumers via digital channels. As highlighted in the 2018 Banking Conduct Supervision Report and in the Banking Conduct Supervision Activities Report on the 1st half of 2019, institutions have been recommended to adopt measures to ensure compliance with information and assistance duties and to ensure the security of processes when selling consumer credit.

The European Banking Authority (EBA) has also been analysing the selling of retail banking products and services through digital channels, having recently suggested to the national competent authorities that they should incorporate a set guidelines aimed at increasing disclosure in digital channels at national level. The recommendations aim to ensure that the selling of products and services through digital channels does not compromise compliance with the requirements, namely information requirements, institutions must observe under the terms of the applicable law and regulations. These guidelines were shared with the European Commission as a contribution to the discussion that the European legislator is developing in the context of the revision of Directive 2002/65/EC, of the European Parliament and of the Council, of 23 September 2002, on distance marketing of consumer financial services (Opinion of the European Banking Authority on disclosure to consumers of banking services through digital means under Directive 2002/65/EC).

Backed by its supervisory experience in the marketing of consumer credit through digital channels and the guidelines issued by EBA, Banco de Portugal set good practices applicable to the selling of retail banking products and services through digital channels (online or mobile).

In the use of the powers assigned to it by the provisions of Article 17 of its Organic Law, approved by Law No. 5/98 of 31 January, Banco de Portugal recommends that the institutions adopt the following guidelines:

I. General recommendations

1. Without prejudice to the fulfilment of the information duties established in the applicable rules, institutions when selling banking products or services through digital channels should assess whether the information provided in these channels regarding the said products or services is adequate in terms of content, form of presentation and prominence, namely taking into account the marketing platform and the devices that bank customers can use to purchase these products or services.
2. Institutions should use simple language, with short and direct sentences, and adopt, in particular, key words, lists of services bundled, if applicable, a glossary of terms and references, explanatory notes (tooltips or equivalent) or frequently asked questions to facilitate bank customers' understanding of the information disclosed.
3. Institutions should evaluate the use of graphic elements such as font size, colour, icons and images in all information media, including on the screens of the marketing platform and in advertising, ensuring that said elements are not likely to affect the readability, understanding and prominence of information related to the banking product or service in question. To this end, institutions should, in particular, ensure that:
 - (i) the font size used allows adequate reading of the information provided;
 - (ii) bank customers can change the font size defined by default;
 - (iii) information on the main features of the banking product or service and on other relevant elements, such as fees and expenses that may be applicable, is not presented in a font size smaller than that adopted for the remaining information;
 - (iv) the colours or images used do not make it difficult for bank customers to read (for example, information inscribed in a colour that is confused with the screen background) and do not draw their attention away from information about the main features of the banking product or service or about other elements deemed relevant, such as the fees and expenses that may be applicable;

- (v) the use of colours or images referring to mandatory information does not restrict reading when printed in black and white.
4. When hyperlinks are used, institutions must ensure, in particular, that:
- (i) information about the banking product or service is not fragmented;
 - (ii) the hyperlinks are easily identifiable by bank customers, are presented in a coherent way (by ensuring that the same style, positioning and prominence are used) and are in accordance with the nature and relevance of the information they convey;
 - (iii) the hyperlinks refer bank customers directly to the relevant information on the click-through page;
 - (iv) the hyperlinks are periodically tested to ensure their functioning and to evaluate their effectiveness, namely, by monitoring the number of clicks and the behaviour of bank customers.
5. In cases when a brand is used for the marketing of a banking product or service, institutions must ensure that any reference to that brand on all information media, including on the screens of the marketing platform and in advertising, is accompanied by the identification, with similar prominence, of the institution responsible for the selling of the product or service.

II. Specific recommendations

A. General pre-contractual stage

6. Pre-contractual information must be provided in a clear and transparent manner, ensuring that the charges for the banking product or service have the same prominence as its benefits, namely with regard to the font size and colour used.
7. Institutions must prominently present information on the basic characteristics of the banking product or service and on other elements deemed relevant, such as fees and expenses that may apply, on the main screen or webpage of the marketing platform, using larger characters, information boxes, pop-ups, simulations, overviews or other similar means.
8. Institutions must describe on the main screen or webpage of the marketing platform the steps of the process and the necessary elements to buy the product or service, so that bank customers are aware right from the start of (i) the various stages of the marketing process, (ii) the possible need

to use other channels, devices or means of communication in the course of the marketing process, as well as (iii) the possible necessary documents to purchase the banking product or service.

9. Institutions must ensure that general information about the banking product or service is easily accessible and can be downloaded by bank customers (namely, the Standardised Information Sheet, if applicable).
10. Institutions should provide a dedicated space, easily accessible and on a permanent basis, on the marketing platform, website or institutional application, to inform bank customers about the means at their disposal to exercise their right to complaint and to access to alternative dispute resolution procedures, identifying the alternative dispute resolution bodies they have joined and providing direct links to their websites.
11. When more than one institution is involved in the provision of a retail banking product or service, bank customers must be duly informed about the scope of intervention of each institution so that they can identify the one that, in particular, is responsible for the action in question, in order to fill a complaint or resort to alternative dispute resolution procedures.

B. Customised pre-contractual stage

12. During the marketing process, institutions should refrain from using expressions that indicate the approval of the contractual proposal before it has occurred, such as “pre-approval”, “pre-acceptance” or “pre-evaluation”.
13. Institutions must not use pre-ticked boxes (namely, within the scope of bundled sales of optional products and services or the financing of the initial charges associated with the contract).
14. Institutions should present and frame the information related to the main banking product or service that they are marketing separately from information about additional or ancillary products or services (namely, an insurance contract).
15. Institutions should ensure that the marketing process only proceeds to the next stage after bank customers have gone through all the pages of the mandatory information documents (namely, Standardised Information Sheet, Depositor Information Template and draft contract) through mandatory scroll down and have confirmed that they have read them at the end of the document. Institutions should use visual or textual techniques to encourage bank customers to read the document until the end, namely by adjusting the way of viewing, for example, using jump-to-section options.
16. Institutions should provide assistance to bank customers in relation to the banking product or service in question (namely, its characteristics, possible risks and fees and expenses that may be

applicable) and the marketing process (namely, process stages and necessary documentation), by making available, among others, a hotline or live chat, chatbot, frequently asked questions, infographics, explanatory videos or other interactive tools that are appropriate to the complexity of the banking product or service, the information being provided and the selling process.

17. In situations when the selling of a credit product is at stake and when the creditworthiness assessment of bank customers is carried out using exclusively automated decision-making processes, namely based on artificial intelligence models, institutions should inform the bank customer of that fact.
18. In situations when the selling of a credit product is at stake and when the credit application has been rejected on the basis of information contained in credit liability databases or the public enforcement list, institutions should resort to the same channel used to sell the credit product or another means of electronic communication (namely, electronic mail) to inform the bank customer of this fact, in accordance with the provisions of the law.

C. Conclusion of the contract stage

19. Institutions should adopt robust methods to confirm the willingness of bank customers to purchase the banking product or service.
20. Institutions should inform bank customers in advance of the methods available for confirming their willingness to purchase the banking product or service.

D. Post-sale stage

21. Institutions should provide a dedicated and easily accessible space so that bank customers who have purchased the banking product or service through digital channels can, under the terms of the law, exercise the right of withdrawal on the marketing platform of the banking product or service, website or application associated with the management of the contractual relationship underlying the contract in question. The exercise of the right of withdrawal should be as convenient as the form of conclusion of the contract.
22. Institutions should provide a dedicated, easily accessible and permanent space so that bank customers who have purchased a credit product through digital channels can, under the terms of the law, exercise the right of early repayment on the product's marketing platform, website or application associated with the management of the contractual relationship underlying the contract in question. The exercise of the right of early repayment, in part or in full, should be as convenient as the form of conclusion of the contract.

- 23.** After the prior consent of the bank customer, institutions should use instant communication channels, such as electronic mail, short message service (SMS) or push notifications, when they consider it appropriate to alert the bank customer to the availability, in its private area, of relevant communications after the selling of a banking product or service (namely, the amendment of contractual conditions regarding fees and expenses that may apply).