

Full title of law or regulation

Bank of Spain Circular 4/2020 of June 26 on advertising of banking services and products. In force October 15, 2020.

<https://www.boe.es/eli/es/cir/2020/06/26/4>

Notes:

- The translation was not prepared by legal translators and should be treated as broadly correct but not legally definitive
- The original Spanish is anyway the only true and applicable source of the rules
- Credit advertising should be reviewed with legal advisors
- These chapters should be seen in the context of the full Circular

Title of section

Chapter II Advertising control and Chapter III Supervision of advertising activity

Regulation 5. Content and format of the advertising message.

1. The advertising of banking products and services must respect the provisions of this circular, without prejudice to compliance with the provisions of Law 34/1988, of 11 November, General Advertising; in Law 3/1991, of January 10, on Unfair Competition, and other regulations governing advertising of general application; in the regulations governing banking products and services that contain specific provisions in relation to advertising activity, and in Order EHA / 1718/2010, of June 11.
2. When designing the advertising campaigns, and each of the advertising executions that comprise them, the companies will observe the provisions of the annex (*separately provided*). For these purposes, they will take into account, in any case, the nature and complexity of the banking product or service offered, the characteristics of the media used and the target audience to which they are addressed.

Regulation 6. Commercial communication policy. Internal procedures and controls.

1. The companies must have a commercial communication policy, in order to ensure proper compliance with the provisions of this circular. Said policy will expressly include:
 - a) A description of the advertising activity carried out by the company.
 - b) The general principles and criteria set out in the annex, as well as a list of the regulations applicable to the company's advertising activity.
 - c) The designation of the functional areas of the company that will be responsible for the internal review of the advertising executions in order to manage proper control of the campaigns' content.
 - d) A detailed description of the internal procedures and controls established by the company to protect the legitimate interests of the clientele and manage the risks derived from its advertising activity, in which their establishment ensures knowledge of the commercial communication policy by all those areas involved in said activity. Part of these control processes, will include, among others, those necessary to:
 - 1) Ensure that the content and format of the advertising messages comply with the provisions of this circular and, in particular, that they are adjusted to the characteristics of the group to which they are addressed.
 - 2) Ensure the review of the advertising executions by the functional areas designated for this purpose in the commercial communication policy.
 - 3) Create and maintain an updated internal record of advertising campaigns, in accordance with the provisions of regulation 7.
 - 4) Where appropriate, carry out effective control and monitoring of the performance of its service providers in the field of advertising activity and, where appropriate, the use by the company of the system's advance advertising self-regulatory review tools to which it was adhered, in accordance with the provisions of the commercial communication policy.
- 5) Ensure the cessation or rectification of the advertising executions in the time and

manner required by the Bank of Spain.

2. The administrative body will be responsible for approving the commercial communication policy, which must have a positive report from the body that performs the regulatory compliance function and be duly updated and available to the Bank of Spain.
3. The commercial communication policy will designate the functional areas of the company responsible for controlling the adequacy and effectiveness of the company and of the procedures and control mechanisms established in order to manage the risks derived from the advertising activity, which will be subject to periodic review of compliance with the internal control and risk management framework defined by the company. The established internal procedures and controls will be proportionate to the size and structure of the company, as well as the nature, scale and complexity of its advertising activity.
4. The company will be responsible for the dissemination of the advertising executions in the terms provided by the functional areas of the company responsible for their internal review and, where appropriate, confirmed by the advertising self-regulation system that has been consulted, and will carry out in all cases, even when their dissemination is carried out through third parties, the appropriate checks in order to ensure that the content and format of the advertising executions conform to their express instructions. Likewise, it will establish the appropriate means and channels to withdraw within a reasonable time the advertising of products or services that are no longer available to the public, taking into account the means of communication or the advertising medium used, and in any case within a maximum of five business days from the end of the offer or, in the absence of a specified term, from the closing date of the campaign.

Regulation 7. Advertising registration.

1. The companies will maintain an internal register, duly updated and at the disposal of the Bank of Spain, in which they will write down and keep all the documentation corresponding to each of the advertising campaigns disseminated by the company, separated by calendar years and identified by serial number and trade name.
2. The documentation corresponding to each advertising campaign must include at least the following information:
 - a) General campaign data: start and end date, geographical scope, detailed description of the target audience and list of the channels and advertising media used for its dissemination.
 - b) Specific information on the advertising executions: at least one copy of all the advertising executions will be kept with a different advertising message (including clarifications or legal warnings) or format (radio spot, television advertisement, banner, posters, etc.) broadcast during the campaign, in the original format or in an electronic format that allows its reproduction. Additionally, when applicable:
 - 1) The information required in point a) will be set out for each example, if this does not coincide with the generic information for the campaign.
 - 2) A list of the different sizes or spaces of duration in which the advertising execution has been broadcast will be included (for example, in the case of posters, banners, television advertisements or radio advertising spots).
 - 3) The intermediaries (agents, distributors, associated credit intermediaries, affiliates, etc.) who have participated in the commercialization of the banking products or services offered in the advertising executions and, where appropriate, in the dissemination of these.
 - c) Control information about the campaign:
 - 1) Date and supporting documentation of the review by the functional areas of the company designated for this purpose in the commercial communication policy of, at

least, one copy of all advertising executions with different messages (including legal clarifications or warnings) or advertising format (radio spot, television advertisement, banner, posters, etc.) broadcast during the campaign, in which it will be expressly stated that adequate compliance with the provisions in the annex has been verified in relation to the information on the cost or profitability of the banking product or service offered and, in particular, with regard to the inclusion of the equivalent annual rate (APR) in the advertising message, and the criteria that have been taken into account for its calculation.

- 2) When the company is adhering to an advertising self-regulation system, date and supporting documentation of obtaining the positive prior consultation report of each of the advertising executions submitted for review, as set out in Regulation 8.
- 3) Where appropriate, a copy of the requirements for the cessation or rectification of the advertising executions disseminated during the campaign made by the Bank of Spain and of the resolutions issued by the extrajudicial bodies of the advertising self-regulation systems in relation to claims or issues arising from the advertising campaign.
3. The internal registry provided for in this regulation will be kept in the central offices of the company. In the event that a group of companies subject to the provisions of this circular develops its advertising activity in a centralised manner, the registry may be unique for the entire group. In these cases, said circumstance will be communicated to the Bank of Spain, with express indication of the company that will maintain the record, and this will be broken down for each company that is part of the group, duly identified by the Bank of Spain's code.

Regulation 8. Adherence to advertising self-regulation systems.

1. Without prejudice to the provisions of Regulation 6, and in particular the obligation of the company to carry out an internal review of advertising executions, it will be presumed that companies that have voluntarily adhered to self-regulation advertising systems that comply with the provisions of article 37.4 of Law 3/1991, of January 10, on Unfair Competition, have the internal procedures and controls provided for in Regulation 6.1.d) .1, provided that the codes of conduct of the aforementioned self-regulation systems adopt the principles and criteria set out in the annex (*separately provided*) and include prior review self-regulation measures for advertising content. This presumption will not extend in any case to the procedures and controls necessary to guarantee the effective fulfillment of the rest of the obligations of the company in relation to the adequate management of the risk derived from its advertising activity.
2. The companies adhering to advertising self-regulation systems will make sufficient use of their voluntary prior review tools. To this end, they will obtain at least one positive prior consultation report of all the advertising executions with differing content that will be broadcast over the campaign period before proceeding to their dissemination, for which they will send the information required by the self-regulation system, including the following In order to issue the aforementioned report:
 - a) Copy of the advertising execution submitted for verification, in the original format or electronic format that allows its reproduction.
 - b) Validity of the offer, territorial scope and detailed description of the target audience of the advertising execution.
 - c) Channel and advertising media to be used for its dissemination.
 - d) Where appropriate, a list of the different sizes or duration in which the advertising execution is to be disseminated and the adaptations made for this purpose on the original execution, so that the self-regulation system can make the assessments or warnings that it deems appropriate.
 - e) Where appropriate, identification of the intermediaries (agents, distributors, related credit intermediaries, affiliates, etc.) that are going to participate in the commercialization of the banking products or services offered in the advertising execution and, where appropriate, in the dissemination of this.

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3. The Bank of Spain will inform on its website of the companies adhering to advertising self-regulation systems that meet the requirements set out in this regulation and will specify the system which each company observes. To this end, companies will communicate said information through the channel enabled for this purpose on the Bank of Spain website.
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CHAPTER III Supervision of advertising activity

Regulation 9. Supervisory function of the Bank of Spain. Procedure to require the cessation or rectification of bank advertising.

1. In accordance with the provisions of article 50 of Law 10/2014, of June 26, on the management, supervision and solvency of credit institutions, in the exercise of its supervisory function, the Bank of Spain may require the companies specific information on advertising campaigns or executions, in order to assess their suitability to the applicable regulations. Said requirement must be met by the company within a period of three business days.
2. Likewise, the Bank of Spain may contact the companies to inform them of the discrepancies it sees in advertising activity and, where appropriate, in the exercise of the administrative authority referred to in article 5.1 of Order EHA / 1718 / 2010, of June 11, require the cessation of advertising or its timely correction.
3. In the event of receiving a request to cease or rectify an advertising campaign or execution, the company must either prove its compliance with the Bank of Spain, by the procedure established in said communication, or object to it, in which case it will state the substantive reasons on which said objection is based, all within a maximum period of three business days, except that, taking into account the specific circumstances related to the content of the advertising, the means of communication and formats used, or the potential risks derived from the campaign or advertising execution affected, the Bank of Spain establishes a different term.

When the claims of the company have been received, if they are based in whole or in part on the fact that the advertising execution that is the subject of the request has a positive prior consultation report issued by an advertising self-regulatory system in accordance with the provisions of Regulation 8, the Bank of Spain will contact the control body of the respective self-regulatory system in order for it to justify, within a maximum period of three business days, the criteria on which the aforementioned report is based.

Once the case presented by the company has been assessed, or the deadlines provided in this section have elapsed without it having made a case, the Bank of Spain will convey either the confirmation of the requirement, or modification as appropriate, or the file of the proceedings, which will conclude the process.

4. In the event that the resolution that ends the procedure confirms the requirement to cease or rectify the advertising in all or some of its terms, the company must comply with it within a maximum period of three business days, unless the Bank of Spain establishes a different period in said notification, through the same means used for the dissemination of the advertising campaign or execution and with the same scope, all without prejudice to the possibility of filing the corresponding administrative appeal.
5. The measures provided for in this regulation will be adopted without prejudice to the application, when appropriate, of the sanctioning regime provided for in Title IV of Law 10/2014, of June 26, on the management, supervision and solvency of credit institutions, in the event of non-compliance with the obligations set forth in this circular by the companies indicated in letters a), b), c), d) and f) of rule 4.1, and in chapter IV of Law 5/2019, of March 15, regulating real estate credit contracts, in case of non-compliance with the obligations set forth in this circular by the companies indicated in letter e) of regulation 4.1.

In the case of administrative action within the context of sanctioning proceedings, and with regard only to compliance with the provisions of regulation 5 and those in the annex, it will be understood that the company acted diligently if the controversial

advertising execution had been adjusted in light of the content of the positive prior consultation report issued by the advertising self-regulation system to which it is adhered, unless said report manifestly contradicts the provisions of this circular.

[Single additional provision. Start of advertising activity.](#)

The companies referenced in regulation 4 that carry out advertising for the first time on banking products and services aimed at clients or potential clients in Spanish territory must notify this circumstance to the Bank of Spain and, when this is required, also send the commercial communication policy in accordance with the provisions of regulation 6, all via telematic transmission through the channel enabled for this purpose on the Bank of Spain website and within a period of one month from the day following the start of the advertising activity .

[First transitory provision. Communication of adherence to advertising self-regulation systems.](#)

Without prejudice to the obligation of the companies to inform of any update of the information required in regulation 8.2, the results of the communications of adherence to advertising self-regulation systems made to the Bank of Spain prior to the date of entry into force of this circular will remain in force.

[Second transitory provision. Advertising registration.](#)

Until the provisions set forth in regulation 7 come into force, the registration obligations provided for in section 4 of the third regulation and in section 1 of the fourth regulation of Circular 6/2010 of the Bank of Spain, of September 28, will remain in force to credit institutions and payment institutions, on advertising of banking services and products.

[Repeal provision. Repeal of regulations.](#)

Circular 6/2010, of September 28, of the Bank of Spain, to credit institutions and payment institutions, on advertising of banking services and products, as well as any provisions of the same or lower rank opposing it, is hereby repealed as provided in this circular.

[Second final provision. Technical specifications of the internal registry.](#)

The Bank of Spain will determine the technical specifications that the internal registry provided for in regulation 7 must be in accordance with a standardised format.
