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**FINAL REPORT ON THE PUBLIC CONSULTATION BY THE BANCO DE PORTUGAL No 2/2020**

**CIRCULAR LETTER – BEST PRACTICES APPLYING TO THE SELLING OF RETAIL BANKING PRODUCTS  
AND SERVICES THROUGH DIGITAL CHANNELS**

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**1. INTRODUCTORY NOTE**

Between 16 March and 30 April 2020, the Banco de Portugal launched Public Consultation No 2/2020, which addressed the draft Circular Letter through which it issues recommendations applying to the selling of banking products and services through digital channels.

For that purpose, the aforementioned Circular Letter was made available on the institutional website of the Banco de Portugal and the Bank Customer Website (*Portal do Cliente Bancário*).

In response, comments were received from six credit institutions, one association representing the banking sector, a consumer protection association, a bank customer and a trust service provider.

Section 3 of this report includes a list of all the entities that participated in this public consultation, highlighting the fact that out of the ten participants, only one declined being named for their contribution.

This report presents the comments received and the respective considerations made by the Banco de Portugal.



## 2. CONTRIBUTIONS

### 2.1. GENERAL COMMENTS

#### COMMENT 1

***We would appreciate it if you could clarify in what way the Circular Letter relates to Decree-Law No 95/2006, of 29 May 2006 (with an apparently broader scope).***

Decree-Law No 95/2006, of 29 May 2006, establishes the legal framework applicable to distance contracts regarding financial services entered with consumers, transposing into Portuguese law Directive 2002/65/EC, of the European Parliament and of the Council, of 23 September 2002, concerning the distance marketing of consumer financial services.

The aforementioned Decree-Law aims to establish a set of duties, namely pre-contractual information requirements, for the conclusion of contracts regarding financial services through distance communication means, such as by telephone, email, home banking or mobile phone applications, among others.

However, within the scope of the distance marketing of retail banking products and services, the supervised institutions should not only observe the aforementioned Decree-Law but also the applicable rules to the specific product or service. An example in this regard are the provisions of Article 77(2) of the Legal Framework for Payment Services and Electronic Money (*Regime Jurídico dos Serviços de Pagamento e da Moeda Eletrónica*), approved by Decree-Law No 91/2018, of 12 November 2018 (“RJSPME”), where the cumulative application of legal regimes is explicitly mentioned.

In addition, the recommendations under public consultation are directed towards increasing the transparency of the information regarding the selling of retail banking products and services, either on an online or mobile context. Therefore, the Circular Letter does not aim to broaden or replace the existing legal and regulatory framework. It does intend to facilitate the way in which these institutions should comply with the duties, which apply to them in the scope of the marketing of retail banking products and services through digital means.

#### COMMENT 2

***We would like to know to which products and services the Circular Letter’s recommendations are applicable.***



The present Circular Letter is intended to cover the retail banking products and services under the supervision of the Banco de Portugal, namely:

- Bank deposits,
- Credit products,
- Payment services,
- Electronic money.

In order to clarify this, an example of the retail banking products and services covered by the recommendations was included in the preamble of the Circular Letter.

### COMMENT 3

*A clarification regarding what in the Circular Letter is understood by “marketing through digital channels” is due. Can it be considered only the marketing done through digital channels (home banking and/or mobile apps) or should it be considered all types of remote selling, which eventually include, at a singular stage of the process, digital channels?*

The recommendations established in this Circular Letter are applicable to any offer of retail banking products and services through an online and mobile channel, regardless of the process taking place in full or in part on those channels.

Given that these recommendations aim at increasing the transparency of information on digital channels, the Banco de Portugal expects institutions to follow both the general and specific recommendations applicable to the stages of the marketing process which take place on digital channels.

### COMMENT 4

*The age groups of the people seeking financial products and services through digital channels should be particularly looked into. The way in which the internet is used, the management of their online presence, their attitude and reaction to marketing triggers and the behaviour in social networks have different effects and require different strategies. Moreover, when faced with unpleasant or adverse situations, the outcome is different, depending on whether it involves a younger or an older population, for example. Security needs and personalised services are still highly valued by consumers in general and, in particular, by the most vulnerable consumers.*



Institutions should always bear in mind the interests, objectives and characteristics of their target audience for the product or service in question and choose the distribution channels best suited in accordance with each target audience.

In this regard, the present legal framework is particularly noteworthy, notably Articles 90-B and 90-C of the Portuguese Legal Framework of Credit Institutions and Financial Companies (*Regime Geral das Instituições de Crédito e Sociedades Financeiras*), approved by Decree-Law No 298/92, of 31 December 1992, and the Guidelines on product oversight and governance arrangements for retail banking products by the European Banking Authority whose implementation was recommended by Circular Letter No 69/2016/DSC, where the adequacy of the product or service and channels according to the target audience is outlined, namely in accordance to demographic criteria, which should guide the institutions' conduct.

It is acknowledged that, in the digital environment, there are several factors that cause behavioral biases and that the weaknesses of more vulnerable groups are exacerbated. The recommendations contained in this Circular Letter aim, precisely, to mitigate the risks associated with these behavioral biases.

#### **COMMENT 5**

***The standardisation of information and the way it is delivered is fundamental. One of the important tools which provides the relevant information to the customer is the Standardised Information Sheet - "SIS" ("Ficha de Informação Normalizada"). However, it is often composed of several pages filled with complex language which renders it somewhat unclear and incomprehensible to the average consumer.***

***(...) Information duties are not only important regarding the content but also the type of language used, which should be simple and clear, and suited to the average consumer.***

The SIS (or in mortgage credit, the European Standardised Information Sheet) is a standardised document of pre-contractual information, established in the legal framework and regulations applicable to consumer credit, to credit agreements for consumers relating to residential immovable property which are secured either by a mortgage or by another comparable security and to bank deposits (see Decree-Law No 133/2009, of 2 June 2009, Decree-Law No 74-A/2017, of 23 June 2017, and Notice of the Banco de Portugal No 4/2009). It should be pointed out that, in the case of consumer credit and mortgage credit, the obligation to provide the SIS results from the transposing of Directives, and that this is a standardised document at European level.



By making it mandatory to hand over the SIS, the legislator intends to provide bank customers with information making it possible for them to analyse a given product or service and compare it to similar products and services (“shopping around”).

The recommendations chiefly focus on the way information should be given to bank customers through digital channels, taking into account the information established in the applicable regulations. It should be reminded that these recommendations do not change the present framework. Therefore, in the cases in which they are bound to the obligation of providing the SIS, we recommend that institutions ensure that the marketing process does not advance without making sure the customer has read all the pages, via mandatory scroll down and the confirmation of its having been read by the end of the document.

The Banco de Portugal recommends that institutions adopt a simple language with short and direct sentences (Recommendation No 2). In fact, devices are often small in size (such as smartphones), and even though they allow zooming in and out, the use of a simple and direct language in the digital channels is essential to ensure that customers access and understand all the information provided to them, in light of behavioural economics studies on this matter.

Additionally, to increase the transparency of information, institutions should incorporate bank customer assistance tools throughout the marketing process, as well as mechanisms to facilitate the understanding of the information and highlight the basic features of the banking product or service, as a way of compensating for face-to-face interaction. In this respect, Recommendations No 7 and 16 are particularly noteworthy.

#### **COMMENT 6**

***Given the difficulties in implementing some of the issues referred to in this consultation, it would be important to establish a transition period in the Circular Letter, to allow institutions to adapt to these new requirements.***

Most of the recommendations set out in the Circular Letter have been transmitted to the supervised institutions, following an inspection of their marketing processes on digital channels, with a special focus on the supervision of credit products covered by Circular Letter No CC/2018/00000004, of 17 January 2018, and were also disclosed in the 2018 and 2019 Banking Conduct Supervision Reports and in the Banking Conduct Supervision Activities Report of the first half of 2019. Therefore, the recommendations are already known by the institutions operating in the retail banking market in Portugal and some of them have already been incorporated by the institutions into their marketing processes.



In addition, it is the Banco de Portugal's view that the implementation of these recommendations is of special importance amid an increasing use of digital channels by bank customers.

Therefore, the institutions should, from now on, make their best efforts to adapt their marketing processes to the recommendations issued through this Circular Letter.

## 2.2. SPECIFIC COMMENTS

### Recommendation No 1

#### COMMENT 7

*This assessment should be performed beforehand or with a specific guideline by the Banco de Portugal and not by the institutions themselves. Self-evaluation could lead to unequal criteria, and, therefore, to a different perspective from which the information is displayed on the digital channels and to a weakening of those criteria, which will deteriorate the quality of information given to consumers.*

The purpose of these recommendations is not the standardisation of marketing processes or how information is conveyed to the bank customer, given that these are also differentiating factors in the offer provided by the institutions. In fact, the recommendations seek to determine in what way institutions are observing the duties of information and assistance laid down in the applicable legal or regulatory provisions, within the digital ecosystem.

Hence, this recommendation aims at establishing that, in the selling of banking products and services through digital channels, the institution should ensure that the required information is adequately provided to the customer, conditional on the channel and device being used.

To clarify this topic, an amendment was introduced in Recommendation No 1.

#### COMMENT 8

*Given the uncertain nature of the concept of "adequate evaluation", (...) it is suggested that this expression be clarified, by laying out or identifying the criteria that make it possible to know what kind of "adequacy assessment" is intended.*

Through this recommendation, Banco de Portugal's aim is to ensure that the information provided to customers is adequate and that, among other factors, the marketing channel (platform) and the device used by the bank customer to purchase retail banking products and services are considered by



institutions. In this adequacy assessment, the characteristics of the banking product or service and the interests, objectives and characteristics of the target public should always be weighed.

The institutions benefit from a close contact with their bank customers, so they can monitor their doubts and reflect the result of that evaluation on the product or service. Indeed, as it is recognised by the European Banking Authority, the behaviour of consumers is one of the factors that should be taken into account when providing effective and adequate information (“[...] providers should be required to use behavioural insights to create effective products and service information[...]” - *Opinion of the European Banking Authority on disclosure to consumers of banking services through digital means under Directive 2002/65/EC*, available at [https://eba.europa.eu/sites/default/documents/files/document\\_library//Opinion%20on%20disclosure%20through%20digital%20means.%20FINAL.pdf](https://eba.europa.eu/sites/default/documents/files/document_library//Opinion%20on%20disclosure%20through%20digital%20means.%20FINAL.pdf)).

It should also be noted that, in judging the adequacy of information, institutions should pay special attention to the specific recommendations, which implement the points that the Banco de Portugal considers must be reflected in the marketing processes.

### Recommendation No 3

#### COMMENT 9

***The use of graphic elements such as font size, colour, icons and images in the information support should not be left to be decided in the process of the institution’s self-evaluation. There should be specific rules for the types of font, colours, backgrounds, sizes and related characteristics which facilitate the transmission and retention of the information by the consumer.***

The Banco de Portugal reiterates that it does not want to broaden or replace the current legal and regulatory framework applicable to the conduct of the supervised institutions in the scope of the selling of products and services on the retail banking market, but only to establish the way in which the institutions should carry the duties that apply to them when selling retail banking products and services through digital channels.

In light of this, it is intended that institutions evaluate whether the graphic elements used (such as font size, colour, icons and images) are suitable and do not affect the legibility and readability of the information provided to bank customers. For this purpose, some guiding criteria are established regarding the use of graphic elements:



- Customers should have the possibility of changing the default font size;
- Institutions should make sure that the information provided is balanced (namely the information on the main features of the banking product or service) and presented with at least the same font size as other information elements;
- The colours and images should be used to emphasise the most important or relevant information, and not to confuse or create difficulties for the reader;
- Information legibility should not be affected in case the bank customers opt for reading it on paper, namely by printing it in black and white.

It should be understood that as long as the applicable duties are followed, it is up to the institutions to structure and present their content in the way that they consider most fitting. The role of the Banco de Portugal is to verify, according to the legal and regulatory framework and the lessons of behavioural economics, if the use of the graphic elements such as font size, colour, icons and images in the information supports do not compromise the cognizance of the bank customers.

It should also be borne in mind that innovation in the financial sector is a dynamic reality, with institutions constantly improving their content and the way in which information is presented on digital channels.

**Recommendation No 3, point (i)**

**COMMENT 10**

*We would like to confirm if there is a minimum font size required for the presentation or provision of information to the customer on the screen of the respective digital channels.*

**COMMENT 11**

*Minimum font size standards should be set.*

**COMMENT 12**

*The recommended font size must be followed in such a way that legibility, comprehension and highlighting of information related to banking products or services are not affected. However, and taking into account zoom-in and zoom-out functionalities, is any action by the institutions still necessary?*





This Circular Letter does not provide for the setting of a minimum font size for the purpose of presenting the information to the bank customer on the screen of the marketing platform and in advertising.

Therefore, without prejudice to the minimum requirements provided for in the applicable legal and regulatory framework (such as the requirements of harmonised pre-contractual information documents or the requirements applicable to advertisement), it is up to the institutions to ensure that the information provided to their customers has a suitable font size which does not affect its legibility, understanding and the highlight of that information.

Indeed, considering that the selling of retail banking products and services can be made through different platforms and devices, font size should be adjusted to each of those platforms and devices, so that the understanding of the information by the bank customer is not compromised.

It should in point of fact be noted that zoom-in and zoom-out features allow the customer to adjust the font according to their needs.

In any case, in accordance to what is stated in Recommendation No 3, point (iii), any information about the main features of the banking product and service should not be presented, by default, with a smaller font size than that adopted for the remaining information.

#### **Recommendation No 3, point (ii)**

#### **COMMENT 13**

*Given that, as a rule, websites can be "responsive" or allow the user to zoom in on the device, we would like to clarify whether this is in compliance with the recommendation in question.*

According to the recommendations, institutions should ensure that the bank customer has the possibility to change the font size, being able, for this purpose, to adopt the technological solutions they deem most appropriate.

#### **Recommendation No 3, point (iv)**

#### **COMMENT 14**

*Allowing the institution to choose with no fixed criteria is not the best option.*

Refer to the answer in Comment 7, regarding Recommendation No 1.



Furthermore, it should be noted that through this recommendation, the Banco de Portugal, drawing from the lessons of behavioural economics, intends to prevent the choice of colours or images for the marketing process from interfering in the reading and comprehension of the information and, consequently, mitigate biased behaviours by bank customers.

#### COMMENT 15

*The specification of criteria for colour confusion that may or may not be used in the information entered is justified, taking into account the backgrounds of the screens. On this point, the regulator seems to consider that fees and expenses that may be applicable are always “elements deemed relevant”, which does not seem reasonable and will force institutions to highlight fees and expenses that may be applicable instead of the fees and expenses which are usually related to the provision of the service or product concerned. Hence, it is suggested, on one hand, to clarify which characteristics should be treated as “main features of the banking product and service” and which should be treated as “other elements deemed relevant” (for example, with the disclosure by the regulator of a check list of product typology). In addition, the expression “fees and expenses that may be applicable” should be replaced with another expression alluding to the common fees which are applicable to the product or service.*

This recommendation intends, namely, to prevent institutions from using a colour to provide information which is similar to the one on the background of the screen, in order to guarantee sufficient contrast so that the customer may easily read the information provided. Consequently, as long as there is no risk of colour confusion, the institutions are free to choose from the colours that they find most convenient.

Considering the importance of ensuring the balance between the device’s dimension (in particular, smartphones) and the clarification of the customers, the institutions should ensure that customers understand the main features of the banking product or service, as well as other relevant elements, such as fees and expenses that may be applicable.

In this respect, institutions should provide information on the elements that characterise the product and service, i.e. those elements that allow the customer to compare products and services, regardless of the specific conditions set by each institution and the respective brand name (“shopping around”). For instance, in the case of a bank deposit, the following features, among others, should be made clear: its nature (demand deposit, or term deposit, simple, or structured), and the interest rate, if applicable. If it is a credit agreement, it is important to clarify its nature (for example, mortgage or consumer credit),



the kind of interest rate (fixed, variable, mixed), the APR and the total amount payable by the consumer, illustrated by a representative example, term and method of reimbursement.

As regards “fees and expenses that may be applicable”, the intention is not for institutions to provide an exhaustive list of all fees and expenses, including those that may be applied in the future, but to sum up inherent fees of the banking products and services, which may influence the decision-making process of the bank customer.

#### **COMMENT 16**

***We suggest an amendment to the recommendation as follow: “not being able to consider as concluded any operation if these fees and expenses are not suitably identified”.***

These recommendations are aimed at establishing how institutions should observe their duties, especially the information duties on digital channels. The Banco de Portugal does not seek to introduce new rules, namely in terms of validity and efficiency of the contracts.

It should be noted, however, that institutions must, throughout the marketing process, highlight any charges applicable to the product or service in question. This information can be obtained in the SIS, in those cases where the regulatory framework imposes the obligation of providing this document and in the price lists, which can also be consulted on the Bank Customer Website (*Portal do Cliente Bancário*).

#### **Recommendation No 4**

#### **COMMENT 17**

***Banco de Portugal should impose a minimum regularity to perform tests to the hyperlinks, and the objectives underlying the use of hyperlinks should be specified. Notably, this information should be clear, objective, simple and easily accessible by the consumer.***

Points (i), (ii) e (iii) of this recommendation aim at ensuring that the use of hyperlinks, in the selling of banking products and services on digital channels, complies with a set of requirements. In particular, it is intended that institutions assess whether information is not fragmented and hyperlinks direct bank customers straight to the page where the relevant information is, in order to prevent information diffusion, which may compromise an effective understanding by bank customers.

The requirements described in this recommendation should be observed at all times by institutions when using hyperlinks. Hence, those tests should not be subjected to a minimum regularity, and it



should be up to each institution to define its procedures in this regard, by tailoring the revision according to, namely, technical issues, the content associated with each hyperlink or actual customer behaviour (for example, a significant number of requests of clarification could indicate the need to test the efficiency of the hyperlink; the same could also be applied to the lack of clicks).

**Recommendation No 4, point (iv)**

**COMMENT 18**

*The efficiency assessment of the hyperlink is not connected to any criteria of information relevance as mentioned in point (ii). Therefore, the hyperlink may not be effective if the information provided in it is relevant. However, if the information has a complementary nature, the lack of clicks should not be equated to lack of efficiency. The expression “bank customer’s behaviour” should also be clarified.*

In line with point (ii) of Recommendation No 4, the purpose is that institutions guarantee that the hyperlinks are easily identifiable by the customers.

In turn, pursuant to point (iv) of the same recommendation, institutions should ensure, through periodical tests, that the hyperlinks are working and assess their efficiency.

It should be noted that the assessment of hyperlink effectiveness is not directly connected to the relevance of the information, as illustrated by the following examples:

- A hyperlink with relevant information and a high number of clicks could, in theory, be considered effective, in the sense that bank customers received that information; however, this analysis may lead the institution to rethink the option of presenting that information without resorting to hyperlinks, considering the reduction of efficiency associated with constantly redirecting the customer to another webpage;
- A hyperlink with relevant information and a small number of clicks could indicate the need to reformulate the way in which this information is given, so that it can be more visible, thereby making sure it is read;
- A hyperlink with supposedly complementary information and a high number of clicks could indicate that the information concerned may be underestimated by the institution;
- A hyperlink with complementary information and a small number of clicks could indicate that the information concerned, provided that it is not legally binding, can be erased.



The assessment of hyperlink effectiveness, among other methods, could be measured by the number of clicks and an analysis of the behaviour of bank customers.

Besides the analysis of clarification requests and complaints received over the information provided through hyperlinks, the evaluation of the bank customer's behaviour could be made, for example, with tools that allow:

- To verify the dynamic reading done by the customer during the marketing process, which could help assess the way in which the information is structured;
- To measure the time spent reading the various items presented, which makes it possible to identify and analyse the aspects that caught the customer's attention and also those which the customer values less or even tends to ignore.

#### Recommendation No 6

#### COMMENT 19

***We disagree with not clarifying what is meant by “clear and transparent” and with the fact that the institution presents the information “without defined criteria”.***

This recommendation intends to ensure that bank customers, while being provided with general pre-contractual information, should be properly informed about the main features of the products and services, as well as other relevant elements, such as the nature of the product or service, risks, remuneration and fees. It does not intend to set out new information requirements, considering that by complying with this recommendation, what is already established in the applicable regulatory framework is not compromised (for example, regarding Decree-Law No 74-A/2017, of 23 June 2017, the provisions of Article 12 should still be kept in mind, as they regulate precisely the general pre-contractual information).

The Banco de Portugal considers that the assessment of information “clarity and transparency” requires at *prima facie* a reflection by the institution on the nature of the product or service, the associated risks, the target audience and the need to observe the applicable rules concerning information requirements. Bank customers always benefit from the option of having their doubts answered, through the mechanisms made available by the institution, under the terms laid down in Recommendation No 16 (duty of assistance).



However, it is common knowledge that it is of significant concern to ensure clarity and transparency of information with respect to fees associated with products and services. To this end, the wording of Recommendation No 6 was amended, with the deletion of the expression “clarity and transparency”, with a view to applying this recommendation, by focusing on the need to place the same importance on banking product or service fees as on their benefits.

## Recommendation No 7

### COMMENT 20

*The majority of marketing processes already present summarised information about the features of the product, where the total amount to be reimbursed is included for credit products. Is this information considered sufficient to fulfil the requirement to provide information on applicable fees and expenses, bearing in mind that the SIS has this information in a disaggregated manner?*

Institutions should highlight, on the screen or main page of the marketing platform, the information concerning the main features of the banking product or service and other elements deemed relevant.

The said information does not intend to duplicate what is displayed in the SIS, but to give the bank customer access to easy and summarised information about the main features of the banking product or service in the “shopping around” phase. Furthermore, providing this information does not exempt the institutions from the duties of pre-contractual information stated in the applicable rules.

This recommendation can be observed, for example, through the display of a summary of key information about the product or service.

### COMMENT 21

*Our opinion is that it is justifiable to suggest that the regulator identify, for example in the form of a checklist, the product’s features which it considers to be the “main features of the products or services” and also which ones are “other deemed relevant”. The wording of this recommendation should be clarified. The expression “fees and expenses that may be applicable” should be replaced with another expression referring to the usual fees of the product or service concerned, in such a way that on the screen or main page of the platform (in the case of the marketing of a card), information on fees paid to replace the card, in case of loss, be otherwise displayed.*

Please refer to Comment 15, which regards Recommendation No 3, point (iv).



## Recommendation No 9

### COMMENT 22

*We think that it should clearly be possible for the customer to download in a durable medium, paper or digital, free of charge.*

### COMMENT 23

*It should be possible to download, in part or in full, the general information about the banking product or service onto the customer's device, in order to keep and edit it.*

The provision of general information in an accessible form, which can be downloaded into the customer's device, is aimed at clarifying bank customers, in a preliminary stage, about the features of the banking product or service and to foster comparison between offers available in the market.

At this stage of the marketing process, in view of the legal and regulatory framework in force, and the fact that the marketing process may possibly occur through digital channels, it is suitable that general information regarding the banking product or service must be provided in a durable medium, allowing for its storage and reproduction by the bank customer. However, it is not recommended that it may be provided in an editable format, given all the risk inherent to its adulteration or misuse.

Furthermore, the Banco de Portugal does not consider that it is suitable to demand that this information be provided on paper. In fact, given the contractual phase in which the information is made available, its generic nature and the channel used by the customer (who has used the online or mobile channel on his/her own initiative), it is inappropriate to issue this recommendation.

However, this does not mean that institutions are exempted from complying with the legal and regulatory framework laying down the obligation of providing the general pre-contractual information on paper (namely in accordance to Decree-Law No 74-A/2017, of 23 June 2017, applicable to mortgage agreements).

As regards this service being free of charge, the Banco de Portugal stresses that the provision of this general information is an obligation of the institution, and as a result, no fee should be charged for its download by the customer or when the customer requests that document at a branch.



#### COMMENT 24

***What mechanisms can be used to ensure easy accessibility to general information? For instance, are the obligation to download the SIS (which will be available for consultation on the client's device) and the presentation, throughout the different signing-up stages, of the credit's features (such as amount, term of the contact, annual nominal interest rate, APR and total amount to be reimbursed) sufficient to comply with this recommendation?***

The Banco de Portugal considers that institutions should guarantee that bank customers have the possibility to know the general features of the products or services they sell on digital channels, namely by displaying the SIS, if applicable, or the draft credit agreement, before bank customers insert their personal data or express the intention to initiate the signing-up process for the product or service.

The purpose of this recommendation is not that institutions make publicly available all information about their offer of banking products and services, without prejudice to compliance with the legal and regulatory framework applicable to each product or service.

This recommendation is only applicable to the general pre-contractual stage. Bear in mind that, for each contracting stage and each specific banking product or service, the institution should respect the legal and regulatory framework in force.

To that end, it is considered that the provision of the SIS and the draft credit agreement is, at this stage, appropriate to ensure compliance with this recommendation.

Lastly, we would like to stress that this recommendation has two main components: (i) that general information regarding the banking product or service should be easily found by customers and (ii) that customers should be able to download that information, without further need to insert personal information, and store it on their device.

#### Recommendation No 13

#### COMMENT 25

***The use of the adverb "namely" could circumscribe this prohibition of selection by default, opening the door to other adverse selections, such as the choice of a grace period on a credit or a credit card instalment payment method.***





Considering that behavioural economics studies show that, in general, consumers do not change pre-defined options, this recommendation intends to encourage bank customers to make a rational and conscious decision, expressly manifesting their will, thereby avoiding implicit consent.

The aim is not to restrict the scope of this prohibition to bundled sales of optional products and services or financing of initial charges associated with the contract. As the adverb “namely” indicates, these two situations merely serve as an example.

Moreover, practice has shown that, along with default options, the use of specific colours and different font sizes may also bias the behaviour of bank customers.

With this in mind, and as a way of enriching this recommendation, the Banco de Portugal has introduced an amendment to its wording.

### **Recommendation No 15**

#### **COMMENT 26**

***The provision of pre-contractual information in PDF format, easily accessible to customers and allowing them to scroll down, whereby customers have to deliberately confirm that they have read and accepted it in order to move forward with the marketing process, is enough to comply with the mandatory scroll down of the documents?***

Compulsory scroll down aims to avoid that all the marketing process unfolds without the banking customer having seen the mandatory information documents in their entirety (namely, according to the specific banking product or service, the Standardised Information Sheet, the Depositor Information Template, the draft credit agreement, the Fee Information Document, and the European Standardised Information Sheet) and to encourage customers to read these documents, allowing them to obtain information about the main features of the product or service they intend to purchase, hence allowing a comparative analysis of said product or service.

In this sense, institutions must present the mandatory information documents to the customer in accordance with the applicable regulatory framework and ensure that the customer looked over all the pages of these documents before proceeding with the contracting process and confirmed that he had read them.



#### COMMENT 27

***Clarification is requested on whether mandatory reading of documents also exists in the pre-contractual phase or only when the customer confirms taking out the loan in question.***

Compulsory scroll down, resulting from the systematic position of this recommendation, is required whenever pre-contractual information documents should be provided to customers, in accordance with the applicable legal and regulatory rules.

The Banco de Portugal also observes that some institutions make available non-personalised information documents (in a draft form) on the marketing platform, through home banking or on the App. Regarding these documents, institutions are not required to apply compulsory scroll down, provided that it is ensured that the bank customer, if he decides to go ahead with the marketing process, will compulsorily scroll through the pre-contractual information documents with personalised information according to the preferences expressed before the conclusion of the contract.

#### Recommendation No 16

#### COMMENT 28

***We believe that the assessment of the tool's suitability for the product's complexity should not be left to the institution (...)***

***The existence of virtual assistants and messages capable of being heard and properly perceived and understood by the elderly should also be an important aspect, as well as the possibility for customers to be fully informed and express their doubts through the various channels, namely through a clearly identified customer hotline.***

The Banco de Portugal believes that the use of tools to assist bank customers in the selling of banking products and services through digital channels is essential to mitigate the lack of face-to-face contact. However, there is a multiplicity of tools available (some of which are listed in the recommendation) and it is expected that new ways of providing assistance to customers may emerge in the future.

On the other hand, it is considered that the adoption of a certain tool to assist customers, for example a hotline, may be effective in selling a product with certain features (such as more complex products) to a specific target audience (e.g. an older age group), but may not have the desired effects if the variables (target audience or product features) are different.



In this context, the Banco de Portugal considers that it should not be mandatory in this respect and indicates the tools that should be made available. It is considered that a different approach could result in the adoption of inappropriate tools or even hinder innovation.

Therefore, it is up to the institutions to evaluate the adequacy of the tools which they provide to their customers, paying close attention to diverse factors such as the complexity of the product, the device used, the nature of the information provided, the target audience, amongst others.

The Banco de Portugal shall assess, on a case-by-case basis, the sufficiency and adequacy of the tools made available by supervised institutions in digital channels.

#### Recommendation No 17

##### COMMENT 29

*Is the objective only to inform the customer of the automatic creditworthiness assessment process, or is it to make alternatives available to the customer in this case, namely by redirecting him to branches?*

##### COMMENT 30

*With regard to the creditworthiness assessment, use of exclusively automated processes, based on artificial intelligence models, should be reduced by defining limits on their use, for example, in terms of credit amounts.*

*When automated processes are used, in addition to information that this kind of procedure will be used, a clear and brief explanation should also be provided on how it will be developed. It should be noted that this automated process of creditworthiness assessment could jeopardise the correct application of the legally defined requirements.*

*The creditworthiness assessment must always be an indispensable element when applying for credit and must be carried out in accordance with the legal criteria, (...) otherwise this automation of the creditworthiness assessment could become a factor encouraging over-indebtedness.*

The Banco de Portugal is aware of the growing use by supervised institutions of automated creditworthiness assessment processes, based on machine learning and supported by alternative data, mainly within the scope of consumer credit agreements.



The advantages of these credit risk assessment models are recognised, such as convenience of selling and speed (with reliability). But possible risks are also anticipated, in particular as regards security, financial exclusion and personal data protection.

Therefore, within the scope of Notice of the Banco de Portugal No 4/2017, and with due consideration of the interests involved, the use of indirect methods for determining the consumer's regular income and expenditure was limited to credit agreements “to be concluded for an amount equal to or lower than the equivalent to tenfold the guaranteed monthly minimum wage” (Article 9(1) of the aforementioned Notice).

In turn, under Regulation (EU) 2016/679, of the European Parliament and of the Council, of 27 April 2016 (General Data Protection Regulation), “the data subject shall have the right not to be subject to any decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her”, and in particular to have “at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision”.

In this context, this recommendation aims to ensure that bank customers are properly informed that the creditworthiness assessment process is carried out on the basis of fully automated processes, which exclude human intervention. The provision of information on the use of automated creditworthiness assessment methods in the marketing of products and services through digital channels is therefore intended to make it easier for bank customers to exercise their rights.

It is also understood that providing information to customers on how the process itself will be developed may interfere with competition issues and introduce complexity for bank customers. In fact, creditworthiness assessment methods based on algorithms and the use of alternative data involve the definition by institutions of data sources and the establishment of criteria and ratios that are part of their business options.

We also take the opportunity to recall that the European Supervisory Authorities have already defined best practices in the context of the use of Big Data by financial institutions, which should be observed whenever they use creditworthiness assessment models based on large volumes of information (Joint Committee Final Report on Big Data).

Finally, institutions should also take into account in this context the Guidelines on loan origination and monitoring issued by the European Banking Authority and published on 29 May 2020 (available at [https://eba.europa.eu/sites/default/documents/files/document\\_library/Publications/Guidelines/2020](https://eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2020)



[/Guidelines%20on%20loan%20origination%20and%20monitoring/884283/EBA%20GL%202020%2006%20Final%20Report%20on%20GL%20on%20loan%20origination%20and%20monitoring.pdf](#)).

Therefore, in order to clarify the purpose of this recommendation, an amendment has been made to its wording.

#### COMMENT 31

***Taking into account that, in compliance with the General Data Protection Regulation, this information is provided through the Privacy Policy or by providing a document describing the purposes of the data processing carried out, can we consider that this requirement has been met?***

The Banco de Portugal considers that this recommendation will be fulfilled if information on the use of exclusively automated decision-making processes is provided within the scope of the specific credit product offer, even in the context of the privacy / personal data protection policy. Conversely, if this information is only provided within the scope of the general privacy policy, namely on the website or App used for the selling of several banking products and services, the Banco de Portugal considers that the purpose of this recommendation is not being complied with.

In this context, in situations where the creditworthiness assessment of bank customers is carried out using exclusively automated decision-making processes, namely based on artificial intelligence models, institutions shall inform the bank customer of this fact prior to contracting and in a clear and transparent manner. Such information may be included, for example, in the summary of key information about the credit product, in frequently asked questions, or next to the customer's data form available to start the process of contracting the credit product.

#### Recommendation No 18

#### COMMENT 32

***The customer must be informed of a possible refusal and the reason for it, identifying the criteria used to justify it.***

The current legal framework only provides that the customer should be informed, justifiably, of the reason for the refusal of credit when it is based on the information contained in credit liability databases, in the public enforcement list or other databases considered useful for the creditworthiness assessment, regardless of the channel used (see Articles 10 and 11 of Decree-Law No 133/2009 of 2 June 2009 and Article 16 of Decree-Law No 74-A / 2017 of 23 June 2017).



Given the aim of the proposed recommendations, which are not intended to establish new duties for the institutions, but to implement existing duties in order to increase transparency of information in the digital environment, the suggested amendment does not seem appropriate.

Recommendation No 18 only aims to emphasise that when a credit application is rejected based on information contained in credit liability databases, the public enforcement list or other databases considered useful for the creditworthiness assessment, the customer should be informed through the channel used to submit the credit offer or through another means of electronic communication (e.g. electronic mail). This allows the customer to be given this information in a faster and more convenient manner.

#### **Recommendation No 19**

#### **COMMENT 33**

*We would like a clarification on what is meant by “robust methods to confirm the willingness to purchase the banking product of service”.*

#### **COMMENT 34**

*Given the importance of confirming the consumer's will, the Banco de Portugal should indicate what is meant by robust methods to confirm the willingness to purchase products. Failure to do so may lead to inadvertent or misinformed contracting.*

#### **COMMENT 35**

*Clarification is requested regarding the expression “robust methods to confirm the bank customers' willingness to purchase”. It is not clear whether the Banco de Portugal considers as “robust methods” how the customer is identified, the type of remote signature used, among others.*

#### **COMMENT 36**

*Regarding the formalisation of contracts by digital means, it is suggested that the recording by video call or videoconference, on a durable medium, should be equivalent - for the purposes of proof - to the confession made on a document signed by the declarant - Article 358 of the Civil Code. By this means, the formalisation of an agreement by digital channels has the same value as a written document signed by the customer.*



**COMMENT 37**

*The wording of this recommendation is rather vague, not specifying or exemplifying what these methods consist of (...)*

*The Circular Letter should define what these robust methods are and the use of qualified electronic signatures should be given as an example. We stress that this is a legal, not a technological, concept, so the question of technological neutrality does not arise. A qualified electronic signature is the instrument that best safeguards the interest of all parties in a banking relationship, especially the guarantee that the bank customer has not been the victim of identity theft and the guarantee that the customer has expressed his will in a durable medium that will allow him to subsequently know exactly what the contractual terms were.*

**COMMENT 38**

*We would like the meaning of “robust method” to be clarified in this context.*

**COMMENT 39**

*The concept of "robust methods" should be clarified by specifying whether these refer, for example, to channels, applications, or something different, namely by means of representative examples.*

*Under PSD2, financial institutions were required to adopt the SCA (Strong Customer Authentication - two-factor authentication - Password and OTP). The use of an sms token when purchasing products or services can be understood as the adoption of a robust method, considering that the customer is obliged in a first step to manifest the intention to purchase and in a second and last step to introduce an OTP password that is sent by sms to his mobile phone? Is this not sufficient validation by the customer?"*

**COMMENT 40**

*It suggests that the Internet, in particular electronic mail, should be commonly accepted by banks, avoiding the need to send signed documentation by post as a way of speeding up operations.*

Through the term "robust methods", the Banco de Portugal intends to convey to institutions the need to adopt mechanisms to confirm the willingness of bank customers that will contribute to greater legal security in the purchase of banking products and services through digital channels.



It should be noted that the ease and speed associated with the use of digital channels should not materialise in the non-fulfilment of regulatory requirements, which may jeopardise the legal certainty of concluded contracts.

In the national legal system, the form of expression of will, in the context of the conclusion of contracts, and the respective evidential value of the documents is expressly provided for by law (e.g. in the Civil Code). Regarding electronic documents, particularly important are Decree-Law No 290-D/99 of 2 August 1999 (Digital Signature Regime) and Regulation (EU) No 910/2014 of the European Parliament and Council of 23 July 2014 (eIDAS Regulation).

It is recalled that the institution should take account of the form laid down by law or regulation in force for the contract in question.

In this context, it should also be recalled that the Banco de Portugal is not competent to determine or recognise the evidential value of any documents or procedures, rule on the validity of any agreement of evidence or on the equivalent means to handwritten signature or possible alternatives to qualified electronic signature, nor to oversee compliance with the legal form required for each particular contract, this matter being reserved for the assessment of the courts.

Without prejudice to the foregoing, it is understood that institutions wishing to use alternative methods to confirm the willingness to purchase banking products or services should ensure compliance with minimum security and risk mitigation requirements in the context of the conclusion of the agreements through digital channels, ensuring that the customer's willingness to conclude the agreement with the proposed content is expressed in a clear and informed manner. In this context, they may use, for example, a qualified electronic signature or the Digital Mobile Key (*'Chave Móvel Digital'*). Similarly, it is understood that the use of at least two different elements belonging to the categories of knowledge (e.g. password), possession (e.g. OTP) and inherence (e.g. facial recognition) is also likely to mitigate security risks and ensure the appropriate expression of the customer's willingness to purchase.

Therefore, when choosing to use a particular method for the customer to express his will, the institution should consider the robustness of the method in question, taking into account, among others, criteria of reliability, authenticity, integrity and security.

It should be noted that authentication of the customer for the purpose of access to digital channels, as well as identification and verification of the customer (KYC/CDD) should not be confused with the time of signing, which occurs when the will of the parties is expressed. Thus, the moment of identification of the bank customer and the moment of expression of his will to purchase should be differentiated in the





marketing process, considering that the phases and procedures at stake have different purposes and must be perfectly identifiable by customers.

In this context, the use of assisted videoconference, under the terms laid down in Part I of Annex 1 of Notice of the Banco de Portugal No 2/2018, aims to comply with the customer identification obligation, within the scope of the due diligence requirements laid down in Article 23 of Law No 83/2017 of 18 August 2017, which establishes measures to combat money laundering and terrorist financing. In these circumstances, if institutions use videoconference for customer identification, in compliance with the applicable rules on the prevention of money laundering and terrorist financing, they should not use the same videoconference procedure to conclude a banking product or service agreement.

Regarding the suggestion to present specific examples of "robust methods", it is considered that the delimitation of a closed set of examples is not appropriate, since technological innovation may allow the development of new functionalities or methods to confirm willingness to purchase in a robust manner.

However, the Banco de Portugal has amended this recommendation in order to clarify the notion of "robust methods" by listing some examples.

#### **COMMENT 41**

***It is essential that financial institutions make available to customers, on a durable medium and through a secure channel, the terms of the agreement which bind the parties and it should be ensured that: (i) the electronic identification of the parties is made - ensuring the authenticity and capacity of the parties; (ii) the durable medium cannot be changed - ensuring the integrity of the document in which the declaration of will has been made.***

***The financial institution could easily achieve this by affixing a qualified electronic stamp on the legally relevant documents.***

The Banco de Portugal recognises that the digital environment poses different challenges from those resulting from face-to-face contracting.

In this context, it encourages the adoption of all measures and procedures that may increase the level of security and integrity of the marketing process through digital channels.

Under the current legal and regulatory framework, institutions are obliged to provide the terms and conditions of the contract, on paper or on another durable medium, to their customers, namely within the scope of bank deposits (see Article 6(3) of Notice of the Banco de Portugal No 4/2009) and consumer credit agreements (see Article 12(2) of Decree-Law No 133/2009). Institutions should also be able to



demonstrate that they have delivered the terms and conditions of the contract (see, for example, in the context of deposit agreements, the provisions of Article 9(3) of Notice of the Banco de Portugal No 4/2009; in the case of consumer credit, if the institution does not deliver a copy of the agreement to all the parties, it will not be valid, according to Article 13(1) of Decree-Law No 133/2009).

However, in view of the principle of technological neutrality and in order not to hinder the adoption of other procedures or mechanisms that may offer an adequate level of security and integrity of documents, as well as due the fact that these options have costs for the institutions, which should be weighed against the risks in question, the Banco de Portugal considers that it is up to the institutions to assess and decide which electronic mechanisms are the most appropriate for the marketing process.

#### **Recommendation No 20**

#### **COMMENT 42**

***In our opinion, it should be clarified whether the purpose of this point is to provide the customer with information on other forms of contracting other than via digital means.***

The Banco de Portugal considers that institutions should, at an early stage of the marketing process, inform the customer about the method available to confirm his willingness to conclude the contract digitally. As an example, the institution should inform the customer in advance that he can confirm his will by means of a digital signature with the Citizen's Card or the Digital Mobile Key ('*Chave Móvel Digital*') In this way, the customer can obtain in advance the elements needed to use these methods (for example, requesting the Digital Mobile Key or recovering his password).

With regard to the place and time at which this information should be provided, it must be ensured that this information is easily accessible to customers and is always provided prior to the conclusion of the contract. For example, this information could be provided in the summary of key information and other elements on the banking product or service that are deemed relevant.

In a nutshell, institutions do not need to make it possible to sign up to the banking product or service by another (non-digital) means, such circumstance remaining subject to the commercial choices of each institution. The purpose of this recommendation is to foster transparency and fluidity in the marketing process, avoiding interruptions or leaving of the process due to the fact that the customer is unaware or does not have the necessary elements.



#### **COMMENT 43**

***We believe that the concept of "methods" should be clarified, specifying whether the methods refer to channels, applications, or something different.***

***When and where should customers be informed in advance of the methods available to confirm their willingness to enter into a credit agreement.***

Please see the responses to comments 33 to 40 concerning recommendation No 19.

Regarding the time and place of provision of information on available methods, please see the answer to comment 42 relating to recommendation No 20.

#### **Recommendation No 21**

#### **COMMENT 44**

***This recommendation applies only to digital processes or mixed processes (e.g. process carried out by telephone or in person and contract signature in digital form).***

Please see the answer to comment 3.

As explained above, the recommendations are addressed to institutions offering retail banking products and services through digital channels, irrespective of whether the process is not fully concluded through these channels.

Taking into account that the recommendations set out in the Circular Letter aim to increase the transparency of information on digital channels, the Banco de Portugal considers that institutions should comply with the general recommendations and the specific recommendations applicable to the respective phases of the marketing process of a retail banking product or service that take place through the digital channel.

Thus, the existence of interactions between the customer and the institution via another channel does not prevent institutions from complying with these recommendations in the contractual phases that take place in the digital environment.



**Recommendation No 22**

**COMMENT 45**

*This recommendation applies only to processes carried out entirely digitally or to mixed processes (e.g. sales process carried out by telephone or in person and contract signature in digital form).*

[Please see the answer to comment 44 on recommendation No 21.](#)



### **3. LIST OF PARTICIPATING INSTITUTIONS**

1. Banco BPI, S. A. ('BPI')
2. Banco Comercial Português, S.A. ('BCP')
3. Banco Primus, S. A. ('Primus')
4. Caixa Central - Caixa Central de Crédito Agrícola Mútuo, CRL ('CCCAM')
5. Wizink Bank, S.A.U. - Sucursal em Portugal ('Wizink')
6. Associação Portuguesa de Bancos ('APB')
7. Associação Portuguesa para a Defesa do Consumidor ('DECO')
8. Joaquim Páscoa Martins ('Bank Customer')
9. DigitalSign – Certificadora Digital, S. A. ('DigitalSign')