

Recommendation on the marketing of time deposit accounts

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(Non official translation)

1 Background

In the framework of its monitoring of advertising and new products, the *Autorité de contrôle prudentiel* (ACP) has observed that banks are marketing an increasing range of time deposit accounts to individuals.

These products are specific accounts in which funds received from the public are deposited. Financial institutions can draw on these funds for their own account but must return all funds to customers. Time deposit accounts are covered by the deposit guarantee scheme up to the amount currently applicable. The rules governing such accounts (return, account life, whether or not a termination clause with or without penalty payable by the depositor is inserted) derive mainly from the contractual freedom principle and, therefore, from the agreement concluded between the bank and its customer.

Because of this flexibility, the ACP has noted that the contracts offered have very different features. Thus, several types of time deposit accounts can be identified in terms of market practice, and some products may combine several of their features.

- 1 The simplest time deposit accounts offered consist of an investment for a specific horizon and amount and a fixed rate known at the time of the offer.
- 2 Other products offer a progressive rate whereby the return, determined when the contract is signed, increases over the life of the investment.
- 3 Some variable rate time deposit accounts offer a return indexed to a market rate or a benchmark index.
- 4 In an initial framework contract, the subscriber undertakes to open multiple time deposit accounts that sometimes vary in their durations and operating procedures.
- 5 The time deposit account is one component of a product made up of other savings products or financial services with which it is linked in the form of payments.

The characteristics of these different offers are not always clearly set out in the advertising and marketing documents. Thus, some documents may generate confusion between time deposit accounts and savings accounts and even, in some cases, life insurance policies. Depending on the terms and conditions of the time deposit account, its functioning and the actual return can be difficult to understand.

Some advertising stresses that funds are available at any time, but conceals the fact that the time deposit account has a minimum duration, which cannot be less than one month, as well as any penalties for early redemption.

2 Scope of the recommendation

This recommendation concerns the marketing of time deposit accounts to natural persons for purposes other than their trade or professional activity.

A time deposit account - also known as a term deposit - is an account in which funds are deposited and are locked in for a certain period against a return established at the time of subscription.

Time deposit accounts are currently governed by the provisions of the National Credit Council of 1969, as amended by regulations and orders. However, other legislative provisions and regulations may also apply (see appendix).

Thus, a time deposit account consists of a single locked-in deposit, with a rate of return and for a term, which cannot be less than one month, specified in the contract and redeemable in full in a single repayment, at the end of this period, unless there exist terms for the release of funds before the maturity specified in the contract. A separate time deposit account must be opened for each term deposit transaction and this account may only record the remittance of funds to be locked in, account closures and account balances at the maturity stipulated in the contract.

This recommendation applies to credit institutions and intermediaries in banking transactions and payment services, hereinafter together referred to as "the entities", including where these entities operate in France under the freedom to provide services or right of establishment procedures.

3 Recommendation

With the aim of improving transparency in the marketing, management and closing of time deposit accounts, the ACP recommends, pursuant to Articles L. 612-1 II 3 and L. 612-29-1 of the Monetary and Financial Code, that the entities concerned comply with the following best practices regarding:

3.1 Advertising material:

Ensure that advertising aimed at savers presents the product in a balanced way and that the most advantageous features of the product are not emphasised and the least favourable understated:

3.1.1 In all advertising:

3.1.1.1 Mention the "time" aspect of the product.

3.1.1.2 Ensure that the presentation, especially any trade names used, is not misleading with regard to the nature of time deposit accounts, and does not cause confusion with any other savings product or financial service.

- 3.1.1.3 If advertising material stresses the availability of the funds, the consequences of early withdrawal must be mentioned.
- 3.1.1.4 Ensure that the information contained in the advertising is clear, legible and understandable.
- 3.1.2 For advertising giving information on the return offered by the product:
 - 3.1.2.1 The life of the contract must be mentioned.
 - 3.1.2.2 Specify, where appropriate, that the early withdrawal of funds before the maturity date of the contract is not allowed.
 - 3.1.2.3 If the interest rate is featured in the advertising, it must be expressed as a gross annual yield to maturity, before social contributions and taxes, and it must be clearly stated next to the rate whether it is fixed, progressive or variable, and that it is a gross rate.
 - 3.1.2.4 This annual yield to maturity calculated on the total life of the investment must be mentioned in the main body of the advertising text and in a font size larger than that used to indicate any other rate, specifying that this rate is subject to the deposit being held until maturity.
 - 3.1.2.5 If fees are payable on the time deposit account, this must be stated.
 - 3.1.2.6 Where multiple time deposit accounts exist, this must be mentioned, specifying, where necessary, that each renewal entails the opening of a new account.
 - 3.1.2.7 Specify the conditions of special offers (in particular their validity period and conditions linked to the subscription of other products subject to compliance with Article L.312-1-2 of the Monetary and Financial Code).

3.2 The explanations given to the saver before entering into a contract concerning one or more time deposit accounts:

In a document separate from the contract itself, provide savers with any explanations before they enter into one or more time deposit account.

Exceptions to this provision may be made for simple offers comprising a single, fixed-rate time deposit account with fixed early withdrawal penalties, which is neither automatically renewable at maturity nor combined with another time deposit account, savings product or financial services. This document is not necessary in the case where a pre-contractual information document provided for by law or regulation contains the following information.

This document must set out in a clear, apparent and understandable manner:

- 3.2.1 The nature of the product, by presenting time deposit accounts as such, without creating confusion with any other savings product or financial service. If the time deposit account is linked to other time deposits, savings products or financial services, the general structure of the product must be described.
- 3.2.2 The financial conditions of the time deposit account(s) in the offer, specifying:
 - 3.2.2.1 The life of the contract, after which it is terminated.

- 3.2.2.2 Conditions, if any, to which the institution subjects the offer and, in particular, the minimum deposit amount required and/or the maximum permitted.
- 3.2.2.3 The characteristics of the interest rate applied to the deposit, specifying each of the following details:
- 1 The gross annual yield to maturity, before social contributions and taxes, calculated on the total investment period, for comparison purposes;
 - 2 When the exact rate cannot be determined, the index or benchmark rate applicable to the deposit must be indicated, and information must also be provided on how this rate may be obtained;
 - 3 State whether this rate is gross and whether it is fixed, progressive or variable. Where appropriate, the index or benchmark rate and its methods of application must be indicated.
- 3.2.2.4 The precise and detailed methods for calculation of interest and the date from which it is applied, indicating, where appropriate, whether it is capitalised, and with what frequency. This information must be distinguished from that regarding interest calculation methods relating to any other associated financial products or services.
- 3.2.2.5 The conditions for interest payments, especially if the payment is made during the life of the contract and, in this case, the frequency of interest payments, or whether the payment only takes place at maturity.
- 3.2.2.6 Any charges related to the opening, management or closure of the account and their impact on the yield to maturity.
- 3.2.2.7 The conditions for the possible release of funds before the end of the contract:
- 1 The impact of the withdrawal on the return of the time deposit account and any penalties applied must be specified;
 - 2 A graph or a table must be used to illustrate the changes in the gross annual yield to maturity, before social contributions and taxes, depending on the date of withdrawal and the corresponding penalties. This graph or table must be accompanied by an example to make it easier to understand.

For time deposit accounts whose rate of return is fixed on the date of subscription in line with market conditions, the provisions of paragraph 3.2.2.7 may be met by filling out a form separate from that of the information document.

- 3.2.3 Conditions of any special offers, specifying their validity period, the period in which the special conditions are applied to the contract and any conditions related to the subscription or holding of other products or financial services, subject to compliance with the provisions of Article L.312-1-2 of the Monetary and Financial Code.
- 3.2.4 The functioning of the time deposit account(s), specifying:
- 3.2.4.1 The terms related to the initial remittance and the return of funds (capital and interest) on the maturity of the contract, in particular:
- 1 Conditions for remittance and return of funds by transfer, cheque or any other means;

2 The deadlines for returning funds to customers following account closure.

3.2.4.2 Their combination with other products or financial services associated, where applicable, with the time deposit accounts, including the terms and conditions for closing all and/or each part of the package.

3.2.4.3 Where multiple time deposit accounts exist, the possibility of terminating the investment before opening a new time deposit account.

3.3 Periodic information provided to savers:

With regard to variable rate contracts, savers must be informed:

3.3.1 Periodically, with updated account statements tailored to the life of the time deposit account, on the forecasted yield of the contract when the time deposit account is held to maturity or when funds are withdrawn early, at the date on which the statement was issued.

3.3.2 Within a period consistent with the characteristics of the time deposit account, as to the terms of renewal and in particular as to their right not to renew such contracts and the consequences of their choices.

The entities must be able to justify to the *Autorité de contrôle prudentiel* the means and procedures implemented to ensure that the information provided to savers enables them to understand the nature, financial conditions and general functioning of the marketed time deposit accounts.

This recommendation applies as of 1 June 2013.

Rules applicable to time deposit accounts

The rules applicable to time deposit accounts may be specific or general.

1. Rules specific to time deposit accounts: General Decisions of the National Credit Council

- a) Time deposit accounts are covered by Article 2 C of the **General Decision No. 69-02 of 8 May 1969** of the National Credit Council on the conditions for receipt of funds by banks, as amended by Regulations No. 89-12 of 22 December 1989, No. 92-09 of 15 October 1992, No. 92-10 of 23 December 1992, No. 96-03 of 23 April 1996, No. 97-05 of 29 July 1997, No. 2000-10 dated 8 December 2000, the Order of 8 March 2005 and the Order of 26 December 2008.

This Article provides for deposited funds to be locked in until the expiry of the term fixed on the date of deposit, which cannot be less than one month, the payment at maturity of interest on time deposit accounts with an agreed maturity of up to one year, the opening of a separate account for each time deposit transaction, which may only record remittances or transfers of funds to be locked in, account closing entries and account balance entries on the stipulated maturity.

- b) **General Decision No 69-03 of 8 May 1969** of the National Credit Council on the conditions for receipt of funds by financial institutions, as amended by Regulation No 97-05 of 29 July 1997 and the Decree of 8 March 2005, also covers time deposit accounts and incorporates provisions identical to Article 1 B, with the exception of the term "banker", which is replaced by "financial institution".
- c) Concerning the return on time deposit accounts, **Regulation No 86-13 of 14 May 1986** on the remuneration of funds received by credit institutions as amended, provides in Article 4 that "*Credit institutions are allowed to pay a free rate of return on funds received in one of the following forms:*
- *time deposit accounts and certificates of deposit with a fixed maturity of up to one month; (...)*".

2. Legislative provisions and/or regulations common to other products

a) Obligation of repayment

Under Article L. 312-2 of the Monetary and Financial Code, persons collecting funds from the public, especially in the form of deposits, must repay them. Indeed, this article states that "*funds received from the public are deemed to be those funds collected by a person from a third party, particularly in the form of deposits. The former may draw on them for own account use, but must repay them (...)*".

Pursuant to Article 1932 of the Civil Code, "*the depositary shall return deposits in the identical form to that in which they were received.*

Thus, the deposit of cash sums must be returned in the same specie in which they were made, whether their value increases or decreases. "

For its part, Article 1937 of the same Code lays down that "*the depositary shall only return deposits to the person having made them, or the person on whose behalf they were made, or the person designated as the recipient thereof*".

b) Consumer Information

Under Section I of Article L.111-2 of the Consumer Code, "*any professional service provider must, before the signing of the contract and, in all events, when there is no written contract, before the execution of the service, ensure that the consumer knows the main characteristics of the service*".

According to Article L.111-3 of the same Code, this article applies "*without prejudice to stricter consumer protection regulations which subject certain activities to specific rules regarding the provision of information to consumers*".

In addition, General Decision No. 74-07 of 3 December 1974 of the National Credit Council provides that the return on certain investments paid by banks must be expressed by the "*annual yield to maturity*", defined in the same text. Any advertising that mentions such a return must indicate this rate gross, before all taxes. A gross nominal annual rate may also be indicated in advertising under certain conditions, but in less visible characters than the annual yield to maturity.

c) Business practices

Article L. 120-1 of the Consumer Code prohibits unfair practices and defines such practices as contrary to the requirements of professional diligence and materially distorts or is likely to materially distort the economic behaviour of a reasonably well-informed and reasonably observant and circumspect consumer, with regard to any particular goods or services.

Under this article, unfair commercial practices are the misleading commercial practices defined in Articles L.121-1 and L.121-1-1 and the aggressive commercial practices defined in Articles L.122-11 and L.122-11-1 of the French Consumer Code. The above-mentioned Article L. 121-1 sets out the circumstances permitting marketing practices to be deemed misleading (for example, a presentation likely to mislead the consumer as to the main characteristics of the good or service) and Article L.121-1-1 of this Code lists commercial practices according to their purpose.

d) Distance selling of contracts for financial services and the direct marketing of banking or financial products

Articles L. 121-20-8 *et seqq* of the Consumer Code, referred to in Articles L. 343-1 *et seqq* of the Monetary and Financial Code, set out rules on the distance selling of contracts for financial services and in particular regarding the pre-contractual information sheet (see Article R. 121-2-1 of that Code with regard to the content of the information given to the consumer).

Articles L. 341-1 *et seqq* of the Monetary and Financial Code lay down the rules on the direct marketing of banking or financial products, in particular regarding the pre-contractual information sheet (see Article R.341-16 of that Code with respect to the information given to the person solicited).

e) Sales or offering for sale of grouped products or services

Article L. 312-1-2 I 1 of the Monetary and Financial Code prohibits the sale or offering for sale of grouped products or services except where the goods or services included in the packaged offer can be purchased individually or when they are inseparable.