Recommendation of the *Autorité de Contrôle Prudentiel* concerning advertising communication for unit-linked life insurance contracts, with bonds and other debt securities as underlying assets

2011-R-02 of 23 March 2011

(Non official translation)

1. Quality of the advertising practices

The *Autorité de Contrôle Prudentiel* (ACP) has noted an increase in the sales of unit-linked life insurance contracts with debt securities as underlying assets. These assets should be clearly distinguished from contracts expressed in euro, as the former do not provide the same guarantees as the latter, although some advertisements have suggested that they do.

The ACP has observed that the advertising communication for unit-linked life insurance contracts with bonds and other debt securities as underlyings can be ambiguous, or even misleading, as to the nature of and return on the units offered.

1.1 As to the nature of the underlying assets

Certain advertising communications may give the impression that the policyholder's[1] premiums are invested in a contract expressed in euro rather than in a unit.

The capital invested (that is, premiums paid in less fees) is sometimes described as "guaranteed". The use of this term is likely to lead to confusion, since the insurer does not provide any guarantee of the value of the investment units. Furthermore, the guarantees provided by the issuer or a third party, covering the value of the investment units, do not come into play until the underlying assets reach maturity, or until some other specific date, and this fact is not systematically disclosed.

Therefore, a surrender or termination of the policy due to the policyholder's death before the debt security underlying the unit reaches maturity may lead the policyholder to lose part of the invested capital, since the value of the debt security can decrease (interest rate risk and liquidity risk). Finally, the yield at maturity also depends on the issuer of the debt security not defaulting (counterparty credit risk).

Furthermore, the structure of certain debt securities does not guarantee the full amount of the capital invested and/or the promised yield at maturity.

1 For the purpose of this recommendation, this term includes not only policyholders (subscribers and members) but also potential policyholders (at the pre-contractual stage), who are natural persons.

1.2 As to yields and fees

Statements concerning the yield of the underlying asset(s) do not always mention the fees that will be charged at the time the contract is entered into or over the lifetime of the contract. When such fees are mentioned, the description is sometimes incomplete or not sufficiently understandable to the policyholders.

The yield is sometimes quoted for a period of either less than or more than one year (for example, a first long coupon). It can then be difficult for policyholders to calculate the expected annual yield and to compare it with the offers of other insurance undertakings.

The mechanisms for payment of the coupon(s) attached to a debt security may also lack clarity, or suggest that the interest of the underlying assets systematically increases the invested capital and benefits from a ratchet effect (for example, zero-coupon bonds).

Under these circumstances, the ACP recommends sound practices, which contribute to the provision of information that is accurate, clear, not misleading and that enables the policyholder to distinguish clearly between investments in contracts expressed in euro and unit-linked contracts with bonds and other debt securities as underlying assets.

2. Scope

2.1 Investment units concerned

This Recommendation shall apply to investment units consisting of bonds and other debt securities listed in paragraphs 1°, 2°, 2° bis and 2° ter of section A of Article R.332-2 of the Insurance Code[2]. This set of securities is collectively referred to as “debt securities” in the remaining of this document.

2.2 Parties concerned

This Recommendation shall apply to insurance undertakings governed by the Insurance Code, to mutual institutions and unions governed by the Mutual Insurance Code, to provident institutions governed by the Social Security Code (these three categories are hereunder collectively referred to as “insurance undertakings”) and to insurance intermediaries. The Recommendation shall also apply to insurance undertakings and intermediaries operating in France in accordance with the principles of freedom to provide services and freedom of establishment, when they offer unit-linked contracts on the French territory.

3. Obligations of insurance undertakings and intermediaries

Insurance undertakings and intermediaries are subject to legal requirements relating to information delivered to policyholders.

2 All of the following references are to articles in the Insurance Code, except where indicated otherwise.

Article L.132-27[3] requires that the information provided on life insurance contracts and capitalisation contracts be "accurate, clear, and not misleading".

Articles L.132-28[4] and R.132-5-1 require insurance intermediaries to enter into a written agreement with the insurance or capitalisation undertakings. Respective obligations of undertakings and intermediaries shall be specified in this agreement, along with the circumstances under which:

- the intermediary is to submit advertising documents to the insurance or capitalisation undertaking prior to their diffusion;
- the insurance undertaking is to provide the intermediary with all information necessary to understand the characteristics of the contract.

4. Recommendation

The ACP hereby recommends, in accordance with paragraph 3° of section II of Article L.612-1 and paragraph 2 of Article L.612-29-1 of the Monetary and Financial Code, that insurance undertakings and intermediaries marketing unit-linked contracts with debt securities as underlying assets:

4.1 As to advertising communication concerning the nature of the underlying assets

Not to use terms or symbols that could suggest that the capital is invested in a contract expressed in euro;

To mention in highly visible letters the less favourable characteristics of the underlying assets and the risks associated with the stated advantages;

To insert in highly visible letters, nearby the statements on the yield of the investment unit(s), a warning, written in easily understandable language, concerning the risks associated with the underlying assets (interest rate risk, liquidity risk, and counterparty credit risk), such as: "the bond/debt security proposed as investment unit for this life insurance contract is exposed to the risk of default of the issuer, and to the possible loss in the value of invested capital in case of surrender, arbitrage, or termination of the contract due to the policyholder's death before the security reaches maturity". A simple reference to the issuance prospectus of the debt securities, when there is one, is not sufficient;

To mention clearly that the insurance undertaking commits exclusively to the number of investment units and not to their value, which it does not guarantee;

To mention clearly and unambiguously the absence of any guarantee at maturity covering the invested capital or the stated yield of the debt security, or the level of the guarantee when it is less than 100%;

When a guarantee provided by a third party is mentioned, its characteristics (including conditions of application and limitations) shall be clearly described, as well as the period during which the guarantee applies;

3 See also Article L.223-25-2 of the Mutual Insurance Code.
4 See also Article L.116-5 of the Mutual Insurance Code.

Figures, diagrams, symbols or formulations shall not be used in any way that could give the impression that the investment unit(s) will systematically perform positively, for instance, ever increasing figures, constantly pointing upwards arrows, and formulations such as: “this investment unit will ensure steady growth in your capital”.

4.2 As to information relating to the yield and fees of the investment unit

If a yield rate is put forward, to disclose this rate net of the fees charged to the investment unit, and indicate, where applicable, that fees relating to the insurance contract will be deducted, in addition to taxes and social security withholdings.

To insert in highly visible letters, near the statements concerning the investment unit(s)’ yield, that:

- the investment unit’s yield at the maturity of the underlying debt security is conditioned on it being held until that date;
- the investment unit’s yield prior to the maturity of the underlying debt security may be higher, lower, or even negative;

To disclose an annual yield, using, for zero-coupon bonds, the form statement: “X% per year, paid out at the end of Y years (where Y is the holding period for the investment unit associated with the stated yield)”. Ambiguous formulations such as “X% annually capitalised over Y years” or “Fixed interest rate over Y years: X%” should be avoided;

To indicate clearly the mechanism for coupon payments.

4.3 As to adequacy of resources and procedures for ensuring the level of information and advice necessary to protect the interests of policyholders

To obtain the resources and to establish the procedures necessary to ensure proper internal control of compliance, by the insurance undertaking or intermediary, with its information and advice obligations in accordance with paragraphs 4.1, 4.2 and 4.3 above.

This Recommendation shall apply to unit-linked life insurance contracts marketed after 30 June 2011.