

ORDINANCE No. 66 of 16.05.2019 regarding the additional requirements regarding the classification of investment insurance products as non-complex within the meaning of Art. 342, para. 5 of the Insurance Code

Promulgated – SG No. 42/28.05.2019

Adopted by Decision No. 689-H of 16.05.2019 of the Financial Supervision Commission

Chapter One

GENERAL PROVISIONS

Art. 1. (1) The ordinance sets out the additional requirements regarding the classification of investment insurance products as non-complex within the meaning of Art. 342, para. 5 of the Insurance Code.

(2) This ordinance ensures compliance with the Guidelines under the Insurance Distribution Directive on Insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved (EIOPA-17/651/2017), issued by the European Insurance and Occupational Pensions Authority.

Chapter two

REQUIREMENTS APPLICABLE TO CONTRACTS WITHIN THE MEANING OF ART. 342, PARA. 5, ITEM 1, LETTER "A" OF THE INSURANCE CODE

Section I

Requirements that apply to contracts for non-complex investment insurance products within the meaning of Art. 342, para. 5, item 1, letter "a" of the Insurance Code

Art. 2. (1) An investment insurance product can be classified within the meaning of Art. 342, para. 5, item 1, letter "a" of the Insurance Code as non-complex, if it meets the following requirements:

1. the contract for investment insurance product provides exposure only to the financial instruments deemed non-complex according to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on the markets of financial instruments and amending Directive 2002/92/ EC and Directive 2011/61/EU (OB, L 173/349 of 12 June 2014), hereinafter referred to as “Directive 2014/65/EU”, as follows:

a) the financial instruments under Art. 25, paragraph 4, letter a) of Directive 2014/65/EU;
b) financial instruments satisfying the criteria under Art. 57 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ, L 87/1 of 31 March 2017);

c) the instruments not deemed to be complex according to the European Securities and Markets Authority Guidelines on complex debt instruments and structured deposits (ESMA/2015/1787);

2. the contract does not include a structure that makes it difficult for the user of insurance services to understand the existing risks.

(2) The insurer, respectively the insurance intermediary, makes an assessment whether the contracts contain a structure under para. 1, item 2, taking into account the presence of the characteristics under Art. 3 - 6.

Section II

Contractual features concerning changes in the nature of the contract and the ability to surrender the insurance-based investment product

Art. 3. The insurer, respectively the insurance intermediary, deems a contract incorporating a structure that makes it difficult for the user of insurance services to understand the existing risks, if it contains any of the following features:

1. it incorporates a clause, condition or trigger that allows the insurer to materially change the nature, risk profile or pay out profile of the insurance-based investment product;
2. there are no options to surrender or otherwise realise the insurance-based investment product at a value that is available to the user of insurance services or can be established by the customer on request based on rules that are clearly defined in the contract and announced to the customer;
3. there are explicit or implicit charges and fees which have the effect that, although technically there are options to surrender the insurance-based investment product, doing so may cause unreasonable detriment to the user of insurance services, since the costs are disproportionate to the costs to the insurer in connection with the surrender.

Section III

Contractual features concerning the determination of the maturity or surrender value, or the pay out upon death

Art. 4. (1) The insurer, respectively the insurance intermediary, assesses the impact of the mechanisms that determine the maturity or surrender value, or the pay out upon death, and whether these make it difficult for the user of insurance services to understand the risks involved, unless these mechanisms are based directly on national laws specifically aimed at protecting the interests of consumers.

(2) As part of the assessment, the insurer, respectively the insurance intermediary, deems a contract incorporating a structure that makes it difficult for the user of insurance services to understand the existing risks, if it contains any of the following features:

1. the maturity value or the surrender value or the pay out upon death depends on variables set by the insurer, the effects of which would be difficult for the user of insurance services to understand;
2. the maturity value or the surrender value or the pay out upon death is based on different types of investment exposure or strategies, the combined effect of which would be difficult for the user of insurance services to understand;
3. the maturity value or surrender value or the payout upon death may vary frequently and/or significantly at different points of time during the term of the contract either because certain predetermined threshold conditions are met or because certain time points are reached, except in the case of changes in the maturity value or surrender value, or the payout upon death due to the payment of discretionary bonuses;
4. there is a guaranteed maturity value or surrender value, or payout upon death, which is subject to conditions or time limitations, the effect of which would be difficult for the user of insurance services to understand, except in the case of changes in the maturity value, or the surrender value, or the payout upon death due to payment of discretionary bonuses.

Section IV

Contractual features concerning the costs

Art. 5. (1) As part of the assessment of whether the contract incorporates a structure which makes it difficult for the user of insurance services to understand the risks involved, the insurer, respectively the insurance intermediary assesses whether the costs are not likely to be readily understood by the user of insurance services, in particular the conditions under which the costs can change significantly during the duration of the contract, including based on the performance of the investment.

(2) When costs are based directly on national laws aimed specifically at protecting the interests of consumers, they shall not be deemed as incorporating structure that makes it difficult for the user of insurance services to understand the risks involved.

Section V

Contractual features concerning the beneficiary of the life insurance contract

Art. 6. Where the insurance contract allows the user of insurance services to use non-

standard wording to define the person who is entitled to receive the benefits under the respective contract (beneficiary clause), which can lead to difficulties to identify the beneficiary and could result in difficulties for the beneficiary to receive the pay out upon the death of the policyholder, the insurer, respectively the insurance intermediary, defines the contract as a contract incorporating a structure that makes it difficult for the user of insurance services to understand the risks involved.

Chapter three

REQUIREMENTS THAT APPLY TO OTHER NON-COMPLEX INSURANCE-BASED INVESTMENT PRODUCTS ACCORDING TO ART. 342, PARA. 5, ITEM 1, LETTER “B” OF THE INSURANCE CODE

Art. 7. (1) An investment insurance product can be classified within the meaning of Art. 342, para. 5, item 1, letter "b" of the Insurance Code as non-complex when the contract does not incorporate a structure which makes it difficult for the user the insurance services to understand the risks involved

(2) The insurers, respectively the insurance intermediaries, make an assessment whether the contracts contain a structure under para. 1, and for the contractual features regarding

1. determining the maturity value or the surrender value, or the pay out upon death, Art. 4 applies;

2. costs, Art. 5 applies;

3. the beneficiary under the insurance contract, Art. 6 applies.

Chapter four

ADMINISTRATIVE PENAL PROVISION

Art. 8. Persons who have committed a violation of the ordinance, as well as persons who have allowed such violations to be committed, shall be penalized under the conditions and according to the procedure of part eight of the Insurance Code.

SUPPLEMENTARY PROVISION

§ 1. Pursuant to this ordinance:

1. "**Discretionary bonuses**" are bonuses under the insurance contract, whose provision or non-provision and amount according to the terms of the insurance contract depend on the discretion of the insurer.

2. "**Standard wording of the beneficiary clause**" is wording that defines the beneficiary unambiguously and in a way that poses low risk of difficulty in determining it over time, such as e.g. the legal heirs of the insured person.

3. There is "**Non-standard wording of the beneficiary clause**" :

a) when the beneficiary is defined simultaneously with generic and individual criteria, which may not coincide at the date of the insurance event (maturity) (e.g. designation of the beneficiary as a spouse and at the same time with their personal name) or may not cover the same set of persons (e.g. determining the insured's children and listing their names, without taking into account the possibility of there being more children at the maturity date);

b) when the beneficiary is individualized, but no replacement person has been specified in the event of the first beneficiary's death on the date of the insurance event (maturity);

c) in other cases where determining the beneficiaries could make it difficult to individualize them at the date of the insurance event (maturity) and the absence of advice from the distributor of insurance services before concluding the contract could lead to consequences unwanted by the insured person.

FINAL PROVISION

§ 2. The Ordinance is issued on the basis of Art. 342, para. 13 of the Insurance Code and was adopted by Decision No. 689-H of 16 May 2019 of the Financial Supervision Commission.

For the chairperson: Diana Yordanova