AFM

Policy Rule on Provision of Information

How does the AFM assess the information provided by financial undertakings on financial products and services?

Translation of the “Beleidsregel Informatieverstrekking”

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AFM

Table of contents

Introduction

The Policy Rule on Provision of Information (hereinafter: the Policy Rule) contains a collection of interpretations by the Dutch Authority for the Financial Markets (AFM) concerning the provision of information. These AFM interpretations have been produced in recent years as part of projects, formal decisions and informal conversations on compliance with standards. They are based on the Financial Supervision Act (Wft) (in particular Part 4), the Pensions Act (Pw), the Unfair Commercial Practices Act (Wohp) and regulations underlying the Wft such as the Decree on Conduct of Business Supervision of Financial Undertakings under the Wft (BGfo), Further Regulations on Conduct of Business Supervision of Financial Undertakings under the Wft (Nrgfo) and relevant European regulations, such as the Prospectus Regulation. The policy rule must always be viewed in the light of the applicable legislation and regulations, which will prevail. The policy rule has been the subject of public consultation.

What do we mean by...

When we say 'we' in this Policy Rule, we mean the AFM. When we say 'you', we mean financial undertakings and issuers or pension providers. These may be supervised or unsupervised undertakings. When we refer to a ‘product' in this Policy Rule, we also mean ‘service’. When we refer to a ‘consumer' in this Policy Rule, we also mean ‘client’ and ‘customer’.

Why do we need a Policy Rule on Provision of Information?

The legislature has included open and closed standards in the legislation. Open standards are standards that contain a broadly formulated objective and give market participants scope to determine for themselves how the objective is achieved or the behavioural requirements are met. An example of an open standard is the requirement that information must be clear to consumers. Closed standards are standards that state very precisely what a market participant is or is not permitted to do. An example of a closed standard is the obligation to include a credit warning in advertisements for credit.

The purpose of the Policy Rule is to make the AFM's policy on this matter transparent and accessible to market participants. The interpretations mainly concern open standards. Our aim is to explain how the AFM deals with these open standards in its supervision. The AFM aims to be a point of reference for market participants, including with regard to open standards.

All interpretations in this document have been shared with one or more financial undertakings in the past. We have gathered these interpretations and compiled them for you as part of our aim of being transparent and predictable. You can use this document as a reference framework for the provision of information. In practice, we always assess each case individually.

How is the Policy Rule structured?

The document is structured in a way that enables you to obtain step-by-step information on the AFM’s interpretations. These may relate to different products. In the table of contents you will find the questions we have answered and the articles of law associated with these questions. You can navigate this document easily using hyperlinks.

How does the AFM use insights from behavioural sciences in its supervision of the provision of information?

The AFM uses insights from behavioural sciences in its supervision. After all, behavioural sciences show us that consumers do not make decisions solely on the basis of information. They are influenced, for example, by the way in which choices and the associated information are presented, including when they take out a financial product online. In the case of financial decisions, this may mean that consumers make a choice that is less than ideal for them. The AFM takes broad account of this in its supervision, in order to better reflect consumers’ actual behaviour. For example, we examine whether psychological mechanisms in the consumers' choice environment are exploited in a negative way. We also encourage financial undertakings to make positive use of behavioural science insights and to pursue effective interventions. You can read more about this in AFM & consumer behaviour (afm.nl).

Any questions?

If you have any questions after reading this document, you can ask the AFM by emailing vragen.informatieverstrekking@afm.nl.

What is the legal status of this document?

The Policy Rule on Provision of Information is a policy rule within the meaning of Section 1:3(4) of the General Administrative Law Act (Awb). The AFM's power to adopt the Policy Rule derives from Section 4:81(1) Awb.

This is an English translation of the original Dutch text, furnished for convenience only. In the event of any conflict between this translation and the original Dutch text, the latter will prevail.

Following public consultation, the Dutch Authority for the Financial Markets resolves as follows:

1 Advertisements and marketing communication – Section 1:1 Wft

Advertisements for financial products must comply with legal requirements. These may differ from the requirements applying to other communications. Below you can learn when a communication is deemed to be an advertisement and whether all advertisements must meet the requirements.

When does a communication constitute an advertisement?

The Wft states that an advertisement is any form of information provision that serves to promote or attract consumers to a particular financial service or financial product (Section 1:1 Wft). A communication is promotional if it selectively presents the positive features of a financial product, regardless of whether it also mentions negative features.

The Wft uses a broad definition of advertisement, and the AFM also interprets this term broadly. The key point is whether the information tries to persuade the reader to make a purchase.

A number of questions are set out below to determine whether a communication constitutes an advertisement according to the Wft. If your answer to one or more questions is 'yes', it is likely to be an advertisement.

- Does the information try to persuade the reader to make a purchase?
- Does the information recommend a product by emphasising its positive features?
- Does the price information make the product attractive?
- Is the product being compared to another product?
- Does the text give a subjective representation of the facts?
- Is the purpose of the text to attract consumers?
- Is the purpose of the text to promote a product?

Whether a communication constitutes an advertisement depends on the information provided about the product. The medium and/or means by which the information is provided is of secondary importance. Messages via apps, social media posts and radio interviews or podcasts, for example, can also be deemed to be advertisements in certain cases. Every single web page (not just the home page) may also be an advertisement if it contains texts that promote a product. That means every single web page that is an advertisement must independently meet the requirements for advertisements. It is not sufficient to include a link to another document that meets these requirements.

When does a communication not constitute an advertisement?

Information that is solely intended to create or increase brand awareness for your company, for example on a sports shirt or a wall (where you only mention your company name and possibly your slogan), or is intended only to make a factual announcement, such as a change of address, is not an advertisement within the meaning of the Wft.

Other examples of communications that are not advertisements in principle include European standard credit information, comparison charts (in Dutch: *vergelijkingskaart*), prospectuses and annual reports.

Do all advertisements have to comply independently with the regulations?
Once a communication is deemed to be an advertisement, it must comply independently with the applicable legal requirements. It is not sufficient to refer to another document or to let the consumer click through to additional information. This means, for example, that banners and sponsored links on Google must independently meet the legal requirements, such as mandatory inclusion of the credit warning in the case of an advertisement for credit.

If an advertisement consists of two different parts, these are deemed to be independent advertisements. An example of this is a television commercial in two parts separated by other commercials within the same commercial break. This means each part must be examined to determine whether it is an advertisement. Each advertisement is then subject to the requirements for an advertisement.

Does an advertisement also have to include all the relevant features of a product?
No, an advertisement does not have to include all the relevant features of a product. Section 4:20 Wft states that the financial undertaking must supply consumers with information on all relevant features of the product before any agreement is entered into. It does not state that every information carrier must independently comply with these rules. However, an advertisement must present an accurate picture of the product and not mislead a consumer. This is set out in further detail in section 2.2 in the question ‘When is promotional information unclear and/or misleading?’ and in section 6.2.

Can a communication be an advertisement if it is aimed at consumers who already have the product?
Even if a communication is aimed solely at existing consumers, it can still be an advertisement.

2 Correct, clear and not misleading - Section 4:19 (2) Wft

Section 4:19 (2) Wft states that information provided by a financial undertaking must be correct[1], clear and not misleading. The dividing line between such information and information that is correct, unclear and misleading may be difficult to define, and there may be an overlap. Below we provide a more detailed explanation of what we understand to be correct, clear and not misleading information.

It should be emphasised that the qualification of information as incorrect, unclear or misleading makes no difference to the question of whether Section 4:19 (2) Wft has been violated. The provision of information must meet all three requirements (correct, clear and not misleading) independently.

2.1 Correct information

What do we understand by correct information?

When assessing whether the information is correct, we consider in all cases whether:

- the content of the information is accurate;
- the consumer gets what he is told;
- there are no contradictions in the information, either within a document or between different information carriers

What are some examples of information that is incorrect?

- If information on a website is not consistent with the conditions of the product, that information is incorrect.
- A mortgage calculation tool shows monthly costs and annual cost percentages based on the National Mortgage Guarantee (NHG), whereas the underlying calculations in the tool do not take account of the requirements for a mortgage issued under the NHG.
- A company states on its website that it is the biggest provider of investment funds in the Netherlands, whereas in fact it provides no investment funds and only receives and transmits orders.
- A company incorrectly states that the supervisory authority mandates certain information, for example that the AFM determines the risk of the product, whereas this is the result of regulation.

2.2 Clear and not misleading information

When is information clear and not misleading?

We assess whether information provides a clear picture of the relevant features of the product and does not mislead the consumer. This means the information must in all cases be easy to find, understandable and balanced for the target market.

After all, a consumer who has a question and cannot find the relevant information will not get an answer to his question. If he has found the relevant information, he must also be able to actually understand it. When assessing whether information is clear or not misleading, we may take positive account of a consumer survey of the company in question. This must show that the percentage of consumers who are able to find an answer

[1] The term *fair* is used in English European regulations instead of *correct*. However, in order to reflect the Dutch interpretation, the term is '*correct* is used in this translation where applicable.

to their question and actually understand it is sufficiently high. This may be a consumer survey that we conduct or commission, but it may also be one that you conduct or commission.

When is *promotional* information unclear and/or misleading?

If a company provides promotional information on a product, it should give an accurate picture of the product and should not mislead consumers. To give an accurate picture of a product, you must also provide information on the restrictions as well as other conditions or risks associated with the features referred to in the information. In addition, features of the product that that are not customary in the market for this product group should almost always be disclosed.

You must also provide all reasonably relevant information on the feature included in your advertisement. For example, in the case of tax relief on an annuity product, you must also state that the consumer will have to pay tax later. We provide more examples in section 2.3.

2.2.1 When is information easy to find?

Whether information is easy to find depends on the structure of the information carriers. It is important that the information carriers are well structured/layered. The chosen structure (paragraphs, headings) must meet the needs of the reader. There must also be clear consistency between information carriers. The consumer must be able to navigate easily through the information provided. Hence this is not about the availability of information, but rather about how easy it is to find information on a website, in a document or in package of documents. A consumer survey is a good means of determining whether information is easy to find for a target market.

When assessing whether the information is easy to find, we consider in all cases whether:

- all relevant features can be found in the information documents on a product;
- all relevant core messages appear in the first layer of information;
- interrelated subjects are grouped together. For example, in the case of tax-friendly products, the tax deduction and tax on later income are described in the same place.

What are some examples of information that is easy to find?

- Information on the services of a comparison website, for example, is easy to find if the consumer comes across this information 'logically' when making the comparison. In order to ensure this, the information must be located immediately adjacent to the comparison. This means the information (or a hyperlink enabling the consumer to view the information with a single click) must appear in a prominent place on the website, both when the user is entering details for the comparison and when viewing the final comparison.
- A comparison chart is easy to find if a consumer can find it on or via a web page where the consumer would look for the information to which the chart relates. Examples include web pages that provide information on services, the associated costs and the product concerned (such as a mortgage).

What are some examples of information that is difficult to find?

- The information in a document is difficult to find if there is no clear table of contents or if information appearing in different locations has to be combined to provide a full answer to an important reader's question.
- Information on a website is difficult to find if information that belongs together is not on the same page and cannot be linked by a clear reference, for example.
- Information is difficult to find if the information is presented on web pages where the consumer is unlikely to search for it. The comparison chart, for example, is difficult to find if it is on the website under the theme of 'Customer service' or 'Legal information'.

2.2.2 When is information understandable?

When assessing whether the information is understandable, we consider in all cases whether:

- the information minimises the use of difficult terms, including legal jargon:
- any difficult concepts are explained in simple terms;
- information is explained as simply as possible;
- the information is presented as explicitly as possible.

A consumer survey is a good means of determining whether information is easy to understand for a target market.

2.2.3 When is information balanced?

Balanced information:
- includes both the relevant advantages and the relevant disadvantages and risks of the product;
- makes the disadvantages and risks of the product just as clear as the advantages;
- describes the conditions or restrictions and risks of product features that are referred to in an information carrier; For example: if mention is made of the tax relief associated with a product, without mentioning that tax still has to be paid later, the information is not balanced.

2.3 What are some examples of unclear and/or misleading information?

Information is misleading if it misinforms the reader. This is not limited to information in text form; illustrations and graphics etc. may also be unclear and/or misleading. Similarly, the presentation of the information must not influence the consumer's decision in a misleading way. Whether information is unclear or misleading will depend on the specific case. It is immaterial whether the person preparing the information misled the consumer intentionally or unintentionally. Some examples of unclear and/or misleading information are given below:

Costs, for example if:
- the impression is given that there is no cost for the product, whereas the consumer does actually have to pay for it. This is the case, for example, if a product is described as 'free', 'at no cost' or 'free of charge', or with a similar term, whereas in fact that is not the case. The word 'free' cannot be used if the consumer pays the cost indirectly.
- the impression is given that the consumer will get money back on the product, whereas there is only a discount on the cost;
- it is stated that no arrangement fees have to be paid to take out a mortgage under NHG terms, whereas a one-off premium is payable for financing based on the NHG;
- you receive indirect remuneration for giving advice, whereas the advertisement refers to 'free advice';
- no mention is made of the interest-on-interest effect and its consequences. For example, in the case of an equity release mortgage, the interest is not paid from the customer's own funds but is added to the outstanding mortgage debt. This gives rise to an interest-on-interest effect and the customer pays more interest;
- by referring only to certain costs, the impression is given that there are no other costs for the product, whereas other costs are in fact payable. This is the case, for example, if mention is only made of transaction costs, whereas there are also other costs such as fund charges and a buying and selling spread;
- it is not made clear that costs will increase;
- the impression is given that costs will decrease in the future, whereas this is not guaranteed;
- the impression is given that costs are one-off, whereas they are in fact periodic costs.

Risks, for example if:
- risks are downplayed, for example if advertisements refer to a "safe investment";
- risks are concealed. This may be the case, for example, if the information provided implies significant risks, but these are not explicitly stated. An example is stating that the principal is guaranteed, but not explicitly stating that the investor may lose the investment if the guarantor goes bankrupt;

- two different products with different risks are compared, but there is no explicit information on the difference in risk;
- a risk score is given (other than the mandatory risk indicator referred to in Article 1 BGfo), with no explanation as to how it was arrived at.

Restrictive conditions, for example if:
- no mention is made of restrictive conditions governing eligibility for a loan or guarantee;
- restrictive conditions are concealed. This may be the case, for example, if important restrictive conditions attached to a product are underplayed;
- an investor has to deduce from the text that the phrase ‘suitable for the medium- and long-term investor’ means that a unit is only negotiable to a certain extent.

Referring to guarantees, for example if:
- it is suggested that the principal is guaranteed, but the sum invested (at the issue price) exceeds the guaranteed value (nominal value).

Comparisons, for example if:
- two products are compared without clearly stating all the relevant differences;
- a chart incorrectly shows the interest rates of competing providers;
- the offered product is not of the same type as the products of other providers to which it is compared;
- an investment product is compared to a savings product, but the distinction is not made clear;
- not all features relevant to the comparison are included.
- when a consumer compares products, there is no explanation of how the comparison was arrived at. It is therefore important that consumers know whether comparisons are made only on the basis of price or whether other factors, such as product features, quality or ease-of-use considerations play a role, and if so, which;
- when a consumer compares products, there is no explanation of the completeness or otherwise of the displayed comparison, so the consumer cannot identify how many parties or products are being compared and why certain other parties or products have been omitted;
- the impression is wrongly given that a comparison is based on personal data (whereas this is not the case);
- it is stated that a product is cheaper by a certain percentage or amount, or up to a certain percentage or amount, without making clear what the saving is relative to and which customers can benefit from it.

Stating historical figures/returns, for example if:
- historical or actual returns are stated on the basis of a period that is unrepresentative, for example one that is too short;
- historical or actual returns are stated/indicated incorrectly with irrelevant information;
- a selective track record is presented that gives the impression of being complete.

Names of products or product features, for example if:
- an investment product is sold under a name that suggests it is a savings product;
- the term ‘flexible interest’ is used, whereas variable interest is meant;
- unclear terminology is used. For example, the term ‘transaction credit’ may give the false impression that a credit is available to purchase financial instruments;
- information on a contract for difference (CfD) suggests that it is a security, for example by using terms such as share, market price and exchange.

Non-mandatory references to authoritative bodies, for example if:
- non-mandatory references are made to an authoritative body with connotations of security. This would apply in the case of a non-mandatory reference to the AFM with connotations of security;
- the impression is given that the AFM supports or recommends products, for example by stating on a website that a provider was established ‘in close consultation’ with the AFM.

Provision of unbalanced information, for example if:

- the information explains the product, highlighting its positive features, whereas the risks and negative features are given less prominence;
- the information refers to the tax advantage, but does not state that tax still has to be paid later;
- relevant features of a financial product are included only in the terms and conditions, while there are other information carriers that pay no attention to these features and make no reference to the terms and conditions;
- the information on a loan for a sustainable investment cannot be read separately from the associated savings. This could be the case if an example calculation includes the monthly cost of the loan in the benefits of the energy savings. It would then not be easy to work out the cost and term of the loan;
- information includes terms such as 'commission-free investing', 'free' or 'zero euros' without any clarity as to possible additional costs and/or restrictions.

Calculation tools, for example if:

- it is not clear what key assumptions have been made in the calculation tool, so the information provided by the tool cannot be properly assessed.
- it is not clear that the information displayed by the calculation tool is an estimate for guidance purposes and that individual results will differ due to personal circumstances;
- the information displayed by the calculation tool appears accurate, but it is actually a simplified representation of the reality.

Other reasons, for example if:

- an *en bloc* clause has been included in the conditions and is described in a way that does not make clear what it means and when it applies;
- the right to a second opinion is described in a way that does not make clear that the second opinion is a right and what that entails;
- reference is made to positive results of products from the provider other than the product to which the information relates;
- scenarios are presented that give an inaccurate picture of the operation of the product;
- return forecasts are presented in such a way that they appear reliable, whereas they cannot be adequately substantiated;
- loan interest rates are offered that only apply under certain circumstances or in combination with an insurance, without this being stated;
- interest rates on payment or savings accounts are shown which only apply under certain conditions, without this being stated, or which present an overly optimistic picture compared to the reality;
- the way in which the provider compiles the information gives the impression that it has been independently analysed, whereas this is not the case and the provider uses this apparent independence to promote its product;
- information is given about returns that can be achieved with tax relief in a particular tax bracket, but no mention is made of the fact that this return can only be achieved if the full relief can be used in the tax bracket concerned;
- the expectation is created that advice will be given, whereas this is not the case;
- interest rates are stated on an annual basis, whereas it can be inferred from the text that the stated percentages are for periods of less than one year, for example if an advertisement for a six-month deposit does not state that the interest is paid annually;
- it is stated that a mortgage has stable monthly charges, whereas monthly charges may change over the term because the fixed-interest period is not the same as the overall term of the mortgage;
- a brochure gives the impression that it includes a full description of the product, whereas this is not the case and no attention is devoted to it;
- if you suggest to a customer with an expiring annuity accumulation product that the benefit payment product has to be purchased from you;

- a financial service provider gives the impression that it is an insurer;
- information on the expiry date of an annuity is not sufficiently specific and/or personal;
- investing is presented as an alternative to saving, without making the differences clear;
- a Dutch version of an important document in another language such as a client agreement does not prevail over the other language version;
- information incorrectly suggests that losses are covered;
- information on a protection system incorrectly gives the impression that the price risk on the value of the client's investment portfolio is hedged;
- information on a disadvantageous product feature is accompanied by a visual symbol giving the impression that the feature is actually advantageous, such as a thumbs-up, green tick or stamp;
- important information is illegible, because it is displayed for too short a time, the font is too small or the contrast is too low.
- information intended to inform a client about a change does not make clear what the change is and what the consequences are.

2.4 By whom is the information provided or made available?

Section 4:19 (2) Wft states that information provided or made available 'by' a financial undertaking, including advertisements, must be correct, clear and not misleading.

With the rise of advertising on blogs, podcasts, social media channels and third-party websites, also known as affiliate marketing, it is important to clarify when information has been provided or made available 'by' a financial undertaking. After all, it is important to be clear as to whether a violation of Section 4:19 (2) Wft can be attributed to the financial undertaking.

Information is deemed to be 'provided or made available by a financial undertaking' if it is provided or made available by the undertaking *itself* or if it is provided or made available *on the instructions* of the financial undertaking.

When is information deemed to be provided or made available *on the instructions of* another party?

In order to determine whether information has been provided or made available on the instructions of another party, we consider the following elements, among others, and these elements must always be viewed in context:

- Is there a contractual (direct) relationship between the financial undertaking and a third party (also referred to as an affiliate)?
- Does the contractual relationship include conditions that define the responsibilities between the two parties more specifically?
- Is a third party required to accept certain conditions of the financial undertaking before it can start providing information or making it available?
- Does the financial undertaking itself issue certain information that the third party can provide or make available?

3 No prejudice to - Section 4:19 (1) Wft

The Wft states that the financial undertaking must ensure that information provided or made available on a financial product, financial service or ancillary service, including advertisements, must not prejudice the information provided or made available under this act. That is stated in Section 4:19 (1) Wft.

An example of information that prejudices mandatory information: if a risk indicator shows that the risk of a product is very high, whereas an advertisement for the same product states that the risk is 'relatively low', this is prejudicial to the risk indicator.

4 Relevant features - Section 4:20 Wft

The Wft states that, before an agreement is entered into, you must provide consumers with information on a financial product that is reasonably relevant to allow a proper assessment of that product (Section 4:20 (1) Wft). We call this information the relevant features of the product. We describe below what a relevant feature is and what we consider to be relevant features for various products. The AFM has not issued interpretations for all products, so we have not determined what the relevant features of all products are. The list of relevant features is not exhaustive. You can use this chapter to determine the relevant features for comparable products. The personal loan (we have not included any interpretations on this), for example, bears similarities to continuous credit, so the relevant features of these products logically overlap.

In addition to the relevant features, applicable regulations require more information to be provided on a number of products. This mandatory information is not included here. It could include, for example, obligations for consumer credit, which are included in the BGfo, such as the standard consumer credit information and the European Standardised Information Sheet on mortgage loans.

Section 4:20 (1) Wft also states that before giving advice or providing an investment service or ancillary service for consumers, relevant information must be provided on that service.

When is something a relevant feature?
A relevant feature of a product is a product feature on which the consumer needs information in order to understand a product. After reading the relevant features, the consumer must know what to expect from the product.

You must inform the consumer of the following features, if they apply to the product:
- what the product entails (how does the product work?)
- income from the product (such as interest, return, benefits etc.)
- the costs
- the risks
- conditions and restrictions (such as guarantees)
- non-market-compliant features (features that are not customary in the market but are relevant for a proper assessment of the product)

Where should relevant features be included?
The law does not give a clear answer to this question. All relevant features must be disclosed before entering into an agreement. Among other things, this information must be clear. For consumers, it will in any case be clear if all relevant features can be found on a single information carrier, such as a website or a brochure.

4.1 Savings: what are the relevant features?

Relevant features of savings products can essentially be divided into interest, costs, risks, restrictive conditions, deposit guarantee scheme and non-market-compliant features. The main pitfalls in providing information on savings products are failing to show clearly the period within which the interest rate is applicable and failing to give an accurate explanation of the deposit guarantee scheme. Below are some relevant features that may apply to all savings products. The list is not exhaustive, however. Specific types of savings products have relevant features that apply only to those products. These are included in sections 4.1.2 to 4.1.4.

4.1.1 What are relevant features of savings products?

Interest
- the level of interest paid in the various situations (for example a promotional rate)
- the type of interest (fixed or variable)
- the period to which the interest rate refers (e.g. year, quarter, month, etc.)

Cost
- withdrawal fees
- fees for early termination
- transaction fees for currency conversions
- fees for opening a deposit and/or savings account

Risks
- currency risk
- bankruptcy and other risks that may cause consumers to be unable to access their money (possibly temporarily) and who can assist them in such cases

Restrictive conditions
- compulsory regular deposits and/or maximum (periodic) deposits
- minimum savings/deposit required
- restrictions on spending purposes
- restrictions on withdrawal of the deposit

Deposit guarantee scheme

For example, a description of the following situations:
- If the savings product is aimed at wealthy consumers: the risk that savings above a certain amount will not be covered by the deposit guarantee scheme.
- If multiple entities/trade names are covered by a single bank licence: the fact that the deposit guarantee scheme applies to the combined balances of the various entities/trade names.
- It should be made clear how a payout under the deposit guarantee scheme is determined in the case of a bank savings mortgage.
- If a savings product is offered by a company covered by a deposit guarantee scheme outside the Netherlands: the fact that the product is subject to the operation and conditions of a foreign deposit guarantee scheme which differs in key respects from the Dutch deposit guarantee scheme.
- The following elements are relevant features of a foreign guarantee scheme:
  - the guaranteed amount in euros and the currencies in which the amount is guaranteed and paid out;
  - currency risk and associated explanatory notes;
  - the name of the undertaking responsible for paying out the guaranteed amount in the country in which this institution is established.

Non-market-compliant features
- withdrawal fees for a savings account with variable interest
- what happens to money on a suspense account in the event of bankruptcy
- if there is no applicable deposit guarantee scheme, a statement to this effect

4.1.2 What are relevant features of a savings deposit?

In addition to the relevant features that apply to all savings products, savings deposits have three other features that are relevant to consumers:
- The handling of the money in the savings deposit after the expiry date. Is the money released or is the savings deposit automatically renewed?

- The fact that the deposit can only be terminated early with the agreement of the financial undertaking or that the deposit cannot be withdrawn early at all.
- Whether a deposit can be withdrawn in the case of life events such as the death of the depositor.

4.1.3 What are relevant features of a subordinated deposit?

In addition to the relevant features that apply to all savings products and savings deposits, subordinated deposits have three other features that are relevant to consumers:
- The fact that if the bank fails money will only be refunded to the consumer if there is money left over after the other creditors have been paid.
- Whether a subordinated deposit is covered by the deposit guarantee scheme.
- The fact that the consumer cannot withdraw his money early.

4.1.4 What are relevant features of a tax-friendly savings account?

Tax treatment and unblocking are relevant features of tax-friendly savings accounts. You must therefore explain that tax relief, the future taxation of periodic payouts, the term of the product and the range of annual deposits can affect the tax treatment. Another relevant feature is that the unblocking has far-reaching tax consequences.

4.2 Loans: what are relevant features?

Relevant features of loans can be broadly subdivided into costs (interest), terms and conditions, drawing/repayments, changes/cancellation and, where applicable, taxation. Below are a number of relevant features of continuous credit and mortgages that may apply to your product. The list is not exhaustive, however. The BGfo also includes standards for the provision of information on loans. Interpretations with regard to credit can be found in Chapter 10.

4.2.1 What are relevant features of continuous credit?

Costs (interest)
- the interest payable
- the type of interest (fixed or variable)
- in the case of variable interest, the conditions under which the interest rate can be changed.
- withdrawal fees

Terms and conditions
- the additional terms and conditions for credit eligibility (such as insurance or collateral that must be provided)
- the duration of the agreement, or an indication of it
- the conditions applying on the death of the borrower

Drawing / Repayment
- the way in which regular repayments and interest payments take place
- the possibility of early repayment and how the consumer must arrange it
- the way in which the loan can be drawn
- the minimum / maximum amount that can be drawn at one time

Changes / Cancellation
- the way in which the credit limit can be changed
- the way in which the monthly payment can be changed
- the way in which the loan can be cancelled

Non-market-compliant features

Non-market-compliant features are features of a product that are not customary in the market for this product group.

Other matters
- the checking of the consumer and registration of the loan with the Credit Registration Agency (BKR)

4.2.2 What are relevant features of a mortgage?

Costs (interest)
- any fixed-interest periods; you must state that the interest will be reviewed after the fixed-interest period
- the possibility of changing a fixed-interest period or transferring it when moving house; you must state in general terms what the consequences will be
- in the case of variable interest (or a rate with a fixed-interest period of less than one year):
    - how this is structured (the base rate, the margin and the components making up the margin)
    - which factors can cause the margin to change
    - the fact that monthly charges can fluctuate
- if interest rebates are possible:
    - the conditions for interest rebates
- if information is provided on NHG (and possible interest rebates based on NHG)
    - NHG terms and conditions
    - NHG costs
    - whether the rebate is still available after renewal

Terms and conditions
- the term of the agreement
- any obligation to take out insurance to guarantee the mortgage
- any obligation to provide collateral for the lender
- any obligation to have the mortgage deed executed by a notary

Drawing / Repayment
- the method of repayment or accrual, with an explanation of relevant risks
- the possibilities for repayment without penalty
- if applicable: the calculation of the fee payable for early repayment
- in the case of an interest-only mortgage, the fact that only interest is paid during the term and there are no capital repayments
- in the case of an interest-only mortgage, the fact that no capital is accrued with which to repay the loan
- the obligation to repay the loan at the end of the term (in the case of an interest-only mortgage, for example, with the borrower's own funds or the proceeds of the sale of the home)

Taxation
The tax treatment of mortgage gives rise to various relevant features, including the maximum mortgage interest tax relief of 30 years. You must explain the relevant features in general terms together with the consequences.

Non-market-compliant features
Non-market-compliant features are features of a product that are not customary in the market for this product group.

4.3 Insurance: what are relevant features?

Depending on the type of insurance, relevant features of insurance can be broadly subdivided into information on the cover, premium, cancellation of the policy and restrictive conditions. Below you will find an overview of the features we have identified as relevant features for a number of insurances in recent years. This list is not exhaustive and takes no account of the rights and obligations arising from self-regulation. In addition to these features, the BGfo includes specific clauses concerning the provision of information on insurance. These are not dealt with here, but they can be found in the BGfo.

For all insurances, the AFM has listed four elements below that are relevant to consumers and that you must mention in all cases:
- the statutory termination period
- the way in which consumers can exercise the right to terminate the agreement (right of termination)
- for telephone sales, a reference to your website/brochure, for more detailed information on the product
- non-market-compliant features (features that are not customary in the market but are relevant for a proper assessment of the product)

NB: The Insurance Distribution Directive 2016/97/EU, which includes requirements on the provision of information, was transposed into Dutch law on 1 October 2018. Article 65b BGfo imposes an obligation to draw up the "insurance product information document" for non-life insurance.

4.3.1 What are relevant features of a term life insurance?

Cover
- what is insured and for what period
- the exclusions to cover, such as causes of death for which no benefits are paid (A clear reference to the relevant terms and conditions may be sufficient here.)
- the start date of the insurance if it can be applied for and/or agreed directly.

Premium
- the factors determining the level of the premium (It is sufficient to make a calculation tool available, for example, which consumers can use to calculate the premium.)
- a true indication of the premium and/or single premium
- the fact that the completed health declaration may result in a change in the premium, different conditions or a refusal to provide cover

Termination or amendment of the policy
- the possibility of surrendering a single-premium policy and the associated cost
- product features that can be changed during the term of the policy (the option right)
- limitations to the option right

Taxation
- inheritance tax payable
- the possibility of crossed premium payments

4.3.2 What are relevant features of a funeral expenses insurance?

In 2011 we published the report entitled "*Onderzoek naar de distributie van uitvaartverzekeringen*" (Investigation into the distribution of funeral expenses insurances). This report includes an explanation of the relevant features of funeral expenses insurance as set out below.

General
- the type of insurance (in-kind/capital/in-kind-sums/in-kind with additional capital)

Product conditions
- an explanation of the term 'average funeral' if this term is used
- cover provided by the insured basic package

- the main exclusions in the insured package/insurance
- details of any members' benefits
- the type of grave rights included (including the term)
- restrictive conditions concerning the payout (Here you must explain among other things how the insurance pays out in the first year of insurance.)
- whether the remainder of the overinsured amount is returned to the consumer
- the difference in the level of costs between a cremation and a burial

Premium
- the amount of the total premium, i.e. the level of the premium that the consumer must pay monthly/quarterly/annually depending on the chosen payment method
- the amount for which the consumer is insured (the 'insured capital')
- the total term, and the effect of the term on the level of the premium
- the operation/method of indexation and its consequences for the level of the premium

Restrictive conditions for a single premium or deposit
- if you compare the single premium or deposit to savings, the fact that in this situation the money is not covered by the deposit guarantee scheme
- possibilities for early withdrawal of the deposited money and any costs involved

4.3.3 What are relevant features of a motor insurance policy?

Cover
- what is insured for each type of insurance
- a description of the cover provided by the assistance service in the Netherlands and abroad
- compensation for total loss, replacement value and depreciated value
- exclusions from cover (A clear reference to the relevant terms and conditions may suffice here.)
- the level of the excess and associated conditions
- the start date of the insurance

Premium
- the factors determining the level of the premium (It is sufficient to make a calculation tool available, for example, which consumers can use to calculate the premium.)
- the level of the premium
- the bonus/malus scales when the insurance is taken out, the grade and the discount on the premium
- a direct reference to the information on the bonus/malus system and claims which may affect it (A clear reference to the relevant terms and conditions may suffice here.)
- the rules applicable to specific target markets, such as young people

Non-market-compliant features
- any term/contract period that differs from the usual term/contract period in the market.

Other matters
- differences in claim payouts as a result of cooperation with third parties in the handling of the claim, such as repair companies

4.3.4 What are relevant features of disability insurance?

In 2011 we published the report entitled "*Arbeidsongeschiktheidsverzekeringen voor zelfstandigen*" (Disability insurance for the self-employed). This report includes an explanation of the following relevant features of disability insurance.

Elements that affect the level of premium

- professional category
- age at termination
- benefit payment period
- waiting time / deductible
- type of cover (professional employment/suitable employment/standard employment
- indexation
- benefit payment threshold
- medical exclusions (applicable to all insured persons)
- age of the insured person

Events having consequences for the insurance
- change of profession and/or work
- decrease or increase in income
- change in sums insured
- handling of a claim
- temporary discontinuation of insurance
- period spent abroad

Other important components of this insurance
- sum-insured or non-life insurance
- contract term
- notice period

4.3.5 What are relevant features of an annuity?

In 2013 we published the report entitled *“Onderzoek naar expirerende lijfrentes*” (Investigation into expiring annuities) This report includes an explanation of the following relevant features of an annuity:
- basic information on the operation of annuities, such as information on the purpose of an annuity, the target market for an annuity and specific features of an annuity, including the distinction between the accrual and the benefit payment phase
- the relevant generic taxation aspects of an annuity
- the various product features of the available annuity benefit payment products, such as the term, longevity risk (whole life versus temporary) and whether or not surviving dependant risk is covered
- what the taxation and other consequences are if the customer fails to notify his choice of the type of service, the financial service provider from which the service is purchased and the product to be purchased, or fails to do so in time
- the various options a customer has on the expiry of his annuity: single lump sum, periodic payments or extension of the accrued benefit product
- the differences between a bank annuity and an annuity insurance

4.4 Investments: what are relevant features?

Relevant features of investments can broadly be subdivided into the operation of the product, risks, return, costs and negotiability. A major pitfall in information on investment products is that although attention is devoted to the positive features such as the return, little attention is devoted to negative features such as risks and costs. Some types of investment products have relevant features that only apply to that specific type of product. A key information document (KID) must be drawn up and issued for all packaged retail investment products. The KID includes many product features that the AFM considers relevant features. A number of products in which we have identified certain key features in recent years are discussed below. The list is not exhaustive, however. We have issued more interpretations in the past for some investment products than for others.

Some investment products can be classified as securities. Securities are issued by an issuer. See section 6. Issuers are not subject to Part 4 of the Wft but are subject to the Prospectus Regulation (EU) 2017/1129. Part 4 does apply, however, if an investment firm provides an investment service in relation to securities. The same applies to units in a collective investment fund or UCITS See Section 4:20 (1) Wft.

NB: Both national and European laws and regulations include specific clauses on the provision of information. Examples include Delegated Regulation (EU) 2017/565 (supplementing the Markets in Financial Instruments Directive - MiFID II) and Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

4.4.1 What are relevant features of a unit of a collective investment fund?

In the case of units of a collective investment fund we have not drawn up a list of relevant features on which the investor must be informed. We have nevertheless previously issued the following interpretation on units of a collective investment fund:
- The degree of negotiability of a unit must be stated.

4.4.2 What are the relevant features of a security?

In the case of securities, we have not drawn up a list of relevant features on which the investor must be informed. We have nevertheless previously issued the following interpretation on securities:
- If the bond is subordinated, you must state this and explain what it means.

4.4.3 What are relevant features of a shipping investment?

Risks
- the cyclical market
- the financing and refinancing risk
- the different sales proceeds
- currency risk

Return

Inform the consumer about the variables that have a major impact on the return and on the way in which these variables influence the return.

Cost
Inform the consumer about the costs he will have to pay in addition to his investment. Also explain that a large part of the costs of building and operating the ship are fixed costs and that the return on the investment will consequently decrease rapidly if revenues are lower than expected.

Negotiability
Shipping investments are not always negotiable, so there is a risk that the consumer will be unable to access his money during the term of the investment. Explain this and also describe how he can sell his investment.

Liability / maximum loss
Shipping investments are offered in various forms that have different consequences for the consumer's liability. The liability may change during the term. Inform the consumer about his liability and about the part of his capital he may lose.

Ship financing
The ship will often be largely financed by a mortgage loan. This has major consequences for the investment. Inform the consumer about the possible consequences of the financing of the ship.

Taxation

If a tax arrangement is applicable, the consumer must be informed about the conditions of use of this arrangement and what consequences it has for him. Also state which conditions he must fulfil in order to use the arrangement.

5 Timeliness - Section 4:20 Wft

Information on the relevant features of a product must be provided before the agreement is entered into. Information on the relevant features of a service must be provided before the service is provided. This is specified in Section 4:20 (1) Wft. We refer to this as 'timely' provision of information. This should enable the consumer to make a proper assessment of a financial product.

When is information provided 'in a timely manner'?

You must provide information before the consumer takes a decision on the purchase of a product. If a quotation is provided before the agreement is entered into, the information on relevant product features must be provided prior to or at the same time as the quotation. Since any conditions or restrictions are part of the product features, you must also provide these prior to or at the same time as the quotation. In this way, the consumer can absorb all relevant information before entering into the agreement.

If a consumer is able to take out a product immediately, for example online, you must also provide the information in a timely manner. If the consumer can take out the product directly by means of a reference in a banner, the relevant features must also be provided during this process. The same applies to an advertisement that includes a telephone number on which consumers can take out a product directly. In these situations, you must ensure that the relevant features are actually provided for the consumer as part of the process before the agreement is entered into. To eliminate any doubt, you could consider recording the provision of information on these features, for example by obtaining the consumer's signature. It is not sufficient to have the information available only on your website. Sending brochures or terms and conditions retrospectively is not considered timely.

NB: An exception may also apply to your situation. This will be the case, for example, if you enter into a distance contract for with a consumer. Provisions relating to exceptions can be found in BGfo, including in Article 78.

6 Advertisements in the context of prospectuses – Article 22 of the Prospectus Regulation

In the Netherlands it is not permitted to offer securities to the public without a prospectus approved by the AFM being made generally available. This prohibition also applies to the admission of securities to trading on a regulated market. The AFM will assess the prospectus for completeness, comprehensibility and consistency. A prospectus must in any case be generally available on the issuer's website. Advertisements made in the context of an offer subject to the prospectus requirement or admission to trading on a regulated market must meet different requirements. These requirements are set out in paragraphs 2 to 5 of Article 22 of Regulation (EU) 2017/1129 (the Prospectus Regulation) and each individual advertisement must meet these requirements. These standards are further detailed in Articles 13 to 17 of Delegated Regulation (EU) 2019/979. The requirements are explained below. In certain cases there may be an exception to this prospectus requirement or an exemption may be used. In that case, the requirements of Article 22 of the Prospectus Regulation do not apply.

6.1 Details of publication and location of the prospectus

Article 22(2) of the Prospectus Regulation states that all advertising must mention the existence of a prospectus, or state that one will be published, and must also state where investors can obtain the prospectus.

How should an advertisement state that a prospectus is available and where it can be obtained?

- The statement that the prospectus has been published ("The prospectus can be downloaded from www.(...).nl") also makes clear that a prospectus exists. In that case, there is no need for an explicit statement that a prospectus exists.
- Where reference is made to a website or web address, the prospectus must also be available on the respective page.
- Some online advertisements are of limited size, such as banners. In that case, it is sufficient to use a shorter statement, provided it includes a hyperlink to the page on which the prospectus can be found and the word 'prospectus' is included in the wording (for example: "Click here for the prospectus").
- A prospectus can be published in various ways, but it is always deemed to be available (as a download) if it has been published on the issuer's website. The wording in the advertisement must therefore be consistent with this mandatory publication method. An advertisement containing only a hyperlink as a reference to the prospectus, for example with the text "request the prospectus", is not sufficient.

6.2 Accurate and not misleading and consistent with the prospectus

Article 22(3) of the Prospectus Regulation states that advertisements must be clearly recognisable as such and contain information that is accurate, not misleading and consistent with the information in the prospectus (which may yet to be published). Below we provide a more detailed explanation of what we understand by inaccurate, misleading and not consistent with the prospectus. There may be an overlap between the outlined examples.

6.2.1 When is information in an advertisement inaccurate?

Information in an advertisement is inaccurate if it does not correspond to the reality.
Examples of inaccurate information are:

- if the information is untrue, for example stating that an issuer is supervised by the AFM when that is not the case;
- if information is not consistent with the conditions of the product;
- if an advertisement contains contradictory information.

6.2.2 When is information in an advertisement misleading?

Information may be misleading if the picture it presents does not correspond to the reality. Investors must also not be misinformed. This means the information in an advertisement must always be balanced. It also means the presentation of the information must not influence the investor in his decision in a misleading way. That is not limited to textual information; illustrations, graphics and similar items may also be misleading. In order to provide a balanced and accurate picture of a product, information must always be provided on the principal risks, costs, conditions and restrictions and must not give a false impression. The stated positive features of the product must be in proper proportion to the negative features of the product. In addition, non-market-compliant features of the product must almost always be stated in order to present a balanced and accurate picture. Examples of misleading information are:

Costs, for example if:

- the impression is given that there are no costs for the product, although the investor will bear a cost. This is the case, for example, if a product is described as 'free' when in fact it is not. If the investor pays the costs either directly or indirectly, the word 'free' cannot be used. Another example is where the investor also has to bear issuing costs, so the return would be lower if those costs were included in the calculation of the return.

Risks, for example if:

- risks are downplayed, for example if advertisements refer to a "safe investment";
- risks are not literally described or formulated as such. This may be the case, for example, if the emphasis is placed on the transferability of the securities, whereas their limited negotiability actually poses a risk;
- two different products with different risks are compared, but there is no explicit information on the difference in risk. For example, if an investment is compared to a savings product without the difference in risk being made clear.

Return, for example if:

- the return, payout or redemption is described as 'fixed' or 'guaranteed', without it actually being fixed or guaranteed. This may give investors the impression of security, whereas that is not always the case.
- historical returns are described in an unrepresentative way, for example because the historical returns are based on an excessively short period or because not all historical returns are included in the selected period;

Restrictive conditions, for example if:

- important reservations are omitted with regard to a positive feature, for example concerning restrictions to negotiability, early redemption or options to extend the term.

Names of products or product features, for example if:
- unclear information is provided on the nature of the product, for example by naming the product in a way that does not match the type of product or gives the impression that the product has certain features that it does not actually possess.

Non-mandatory references to authoritative bodies or supervision, for example if:
- the applicable supervision, such as approval of the prospectus or having a licence, is linked to security or confidence, or if it is positioned as a quality mark, for example by mentioning it excessively or referring to the approval of the prospectus in such a way that it is presented as a (positive) feature of the product, or, for example, by suggesting that the AFM supports or recommends the product.

Created scarcity, for example if:
- factual information on the size of the issue or the availability of the securities is presented in such a way that the information is not displayed neutrally and factually but in a conspicuous manner (for example through eye-catching use of colour, font or positioning), creating the risk that the investor will be persuaded to act quickly;
- factual information on a discount (or discount period) at registration is presented in such a way that the information is not displayed neutrally and factually, creating the risk that the investor will be persuaded to act quickly;
- statements are made such as “when it’s gone its gone” and “be quick”, alluding to the limited size of the issue, limited availability of the securities and/or the discount period at registration and those statements do not present the information on the size of the issue and/or the discount period at registration neutrally and factually but in a conspicuous manner, creating the risk that the investor will be persuaded to act quickly.

Other reasons, for example if:
- information gives the impression of being complete, whereas that is not the case, for example if only the main costs are stated, whereas the accompanying text implies that those are all the costs;
- scenarios are shown that give an inaccurate or incomplete picture of the operation of the product;
- a tax benefit is stated on the basis of the highest tax bracket, whereas the target market includes persons who cannot enjoy the tax benefit in that bracket and/or it is not made clear what the tax benefit would be on the basis of the lower bracket.
- the information states the tax benefit, but does not state that tax will have to be paid later, or information is provided on returns that can be achieved with a deduction in a certain tax bracket, but no mention is made of the fact that this return can only be achieved if it is possible to take advantage of a full deduction in the respective tax bracket.

6.2.3 When is information in an advertisement not consistent with the prospectus?

When information in an advertisement contradicts or conflicts with the information in the prospectus, it is not consistent with the prospectus. Information may also be inconsistent with the prospectus if the impression given by the information is inconsistent with the picture presented by the prospectus. That is the case, for example, if the advertisement includes a list that gives the impression of being complete, whereas the prospectus contains more information on the matter in question. Similarly, when the advertisement presents a risk or fact as a positive feature, whereas according to the information in the prospectus it is not a positive feature, that information is not consistent. That is the case, for example, if the possible negotiability of the security is presented as a positive feature, whereas restricted negotiability is described as a risk in the prospectus.

An unbalanced picture must not be given of the information in the prospectus, for example by presenting negative aspects of that information less prominently than the positive aspects, by omission or by selective presentation of certain information. In order to be balanced, the stated positive features of the securities must be in proper proportion to the negative features. Positive aspects include, for example, the good prospects for a proposition, the return or the favourable market position. Negative aspects include, for example, limited negotiability, restrictive conditions and material risks as described in the prospectus. Since the risks are an important part of the prospectus and an advertisement must give a materially balanced presentation of the information in that prospectus, the inclusion of the risks – if positive aspects of the offer are described – is required to bring the information into proper balance.

Examples of materially unbalanced information:

- the information explains the product, highlighting the positive characteristics of the product, while the risks and negative characteristics are given less or no prominence;
- only general references are made to the risks of investing, while a lot of attention is focused on one or more positive features of the product.

7 Correct, clear, balanced and timely - Articles 48 Pw and 59 Wvb

Information provided for participants by pension providers is subject to legal requirements.[2] Section 48 (1) of the Pensions Act (Pw) and Section 59 (1) of the Mandatory Occupational Pension Schemes Act (Wvb) (reference is only made below to the sections in the Pw) state that information provided or made available by the pension provider must be correct , clear and balanced. Information must also be provided or made available in a timely manner. Below we state what we understand to be correct, clear, balanced and timely within the meaning of Section 48 Pw.

The requirements in Section 48 (1) Pw bear similarities to the requirements in Section 4:19 Wft (see Chapter 2), which apply to financial undertakings. The condition that information must not be misleading does not appear in the Pw. The Pw states in addition to 'correct' and 'clear' that information must be 'balanced'. Another difference as compared to the requirements in the Wft is that information must be continuously provided for the participant 'in a timely manner'. This is an overarching timeliness requirement that applies to all information provided for participants. Information on pensions also poses some specific challenges: for example there is often limited interest in pensions, participants perceive it to be a complex subject, terms are long and yet the subject is of great importance to the participant. Those challenges must be taken into account in providing information in a way that is correct, clear, balanced and timely.

We would emphasise that all information that the pension provider provides or makes available must, independently and in combination with other information, comply with each of the requirements in Section 48 Pw. This applies to all communications, whether mandatory or voluntary.

7.1 Correct information

What do we understand by correct information?

When assessing whether information is correct, we consider in all cases whether:

- the content of the information is accurate;
- the pension amounts communicated to participants correspond to what is due to them on the basis of the pension agreement;
- there are no inconsistencies in the information, either within the document or between the different information carriers; and
- the information is not unnecessarily obsolete. By this we mean that the information relates to the correct reference date and/or is up to date.

What are some examples of incorrect information?

- The Pension Benefit Statement (UPO) states that the pension provider is bound by the policy of another pension provider with regard to indexation. Other communications to participants state that more conditions must be fulfilled before the indexation can take place. This conditionality is not evident from the UPO.
- The accrual rate in the introductory letter does not match the accrual rate in the pension agreement.[3]

[2] Where we refer to participants, we mean active participants, former participants, former partners, other beneficiaries and pensioners, unless explicitly stated otherwise.

[3] This refers to information that must be provided in accordance with Section 21 (1) Pw or Section 48 (1) Wvb at the start of participation in the pension scheme.

- Due to an error, a change has not (yet) been entered in the records. The information in the UPO is consequently also incorrect.
- When informing the participant about the possibility of early retirement and its consequences, the same pension amount is shown for retirement at age 65 as for retirement at age 68.
- Information on forecast amounts is based on incorrect scenarios.

7.2 Clear information

When is information clear?

We consider whether information is easy for the target market to find and understand. If participants are unable to find information relevant to them, that information is not clear. If they have found the relevant information, the content of the information must also be easy to follow. This means that subjects must be formulated as clearly and specifically as possible. What is understandable will differ depending on the subject or target market. Another possible factor is the extent to which participants have previously been informed about the subject. We expect pension providers to ensure that their participants can understand the information, for example by testing it among participants.

When assessing whether information is clear, we may take account of a consumer survey of the pension provider in question. This may reveal, for example, that the percentage of participants that can find the answer to their question and can also understand it is at a sufficient level.

When assessing whether the information is clear, we consider in all cases whether:

- the use of language is geared to the group of participants;
- the texts are clearly structured;
- it is clear to the participant why he is receiving the information at that time and what he should do with it;[4]
- the pension provider explains the relationship between different documents with different reference dates if this could cause confusion for the participant.
- a participant can easily find all the relevant information, both on a website and in a hard-copy or electronic letter; and
- information provided on a layered basis is clear as a whole and in each individual layer.

Examples of unclear information

- The use of catch-all terms such as 'futureproof pension' by the pension provider without explaining what this means.
- Showing consequences of choices in a chart without explaining what a participant can see in the chart and what data the chart is based on.
- A participant must be able to use a table (in which the individual investment returns are shown as a percentage per month) to determine which adjustment to the benefits applies to him, depending on the time at which his pension benefits started to be paid.[5]
- Shortly before retirement a participant receives various letters showing large differences in the surrender value of his pension. The information in the various letters has different reference dates: the value on 31 December of the previous calendar year (Uniform Pension Statement); the expected redemption value on the retirement date; and the current, actual value. The pension provider does not make clear in the information whether it is the actual or forecast value, or how those three stated amounts relate to each other.
- A pension provider explains the effect of a fixed decrease in a variable pension benefit combined with a spread period in such a way that the participant has to make calculations and go through a number of logical steps to understand the effect and the associated risks.

[4] Section 48 (4) Pw is also relevant in this context.
[5] In this context Section 48 (2) Pw is also relevant.

- The general description of the complaint procedure is not easy for the participant to find if it cannot be accessed by two clicks from the pension provider's home page and if the participant cannot easily find it by using a search function on the home page.
- For a more detailed explanation of generation effects, the pension provider refers participants to the general website and not to a specific location on the website. The specific location can only be accessed by entering a technical term such as 'generation effects' in the search bar.

7.3 Balanced information

When is information balanced?
All information provided by the pension provider must be balanced. Balanced information means there is a proper balance in the provision of information, for example a proper balance between the relevant advantages and disadvantages, features and risks. If the information is unbalanced and a participant is not sufficiently aware of the restrictive conditions or risks, he may draw a false conclusion about his pension scheme.

When assessing whether the information is balanced, we consider in all cases whether:
- the relevant information on the situation and context has been included;
- the relevant advantages and disadvantages and risks are explicitly stated and made clear;
- the included examples and comparisons are representative and where necessary substantiated;
- it is clear to the participant when he has or does not have a certain right (conditions or grounds for exception); and
- the information is balanced in each of the information layers and when viewed as a whole.

Examples of unbalanced information
- In the online choice environment, highlighting only the advantages of an option without stating the disadvantages.
- Not providing a clear overview of all the consequences of a collective value transfer of accrued benefits.
- Failing to communicate transparently before the participant takes out a variable benefit product about the fact that the benefit may be adjusted if general life expectancy changes.
- A pension provider that uses a spread of investment results informs the participant that worse-than-expected investment results will not immediately be reflected in full in a cut to benefits, but does not mention the disadvantages, such as the fact that better-than-expected results in a particular year may be offset by worse-than-expected results in a previous year.

7.4 Timely information

When is information provided or made available 'in a timely manner'?
Information is timely if the participant can absorb it when he has to make a decision based on it or when the information is otherwise relevant to him. The decisions the participant must take do not necessarily have to be in a pension context. If the benefit is adjusted and, for example, is reduced[6], the participant must have time to adjust his spending pattern accordingly. For a number of information carriers the legislation determines what is timely. A letter at the start of participation in the pension scheme, for example, must be sent to the participant no later than three months after the start.[7] The UPO must be issued every year[8], with active participants receiving their UPO before 1 October in accordance with the Policy Rule on the timely provision of Pension Benefit Statements. In the case of some information obligations, the law does not specify when they have been met 'in a timely manner'.

When assessing whether information is provided or made available in a timely manner, we consider in all cases whether:

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[6] Examples are adjustments to variable benefits, the start of low benefits in a high-low benefit structure and reductions to defined benefit payments.
[7] See Section 21 Pw.
[8] See Section 38 Pw for active participants and Section 44 Pw for pensioners. In the case of former participants, the UPO must also be sent annually in principle, unless the exception in Section 40 (3) Pw is applied. The UPO for former partners is issued every five years.

- the period is sufficient for the participant to absorb the information and obtain any necessary advice;
- the participant has enough time to take an informed decision; and
- the period is sufficient for the participant to take any steps available to him.

Examples of non-timely information

- The pension provider provides the participant with information for a collective value transfer of accrued benefits less than six weeks before the end of the objection period (Possibility of objection in collective transfers of accrued benefits - Section 83 (2) Pw).
- The pension provider sends the termination letter more than six months after the end of employment (Information on termination of participation - Section 39 (1) Pw).
- The pension provider fails to provide the pre-retirement information at least six months before the pension start date (Pre-retirement information including a (provisional) statement of pension rights - Section 43 (1) Pw).
- The pension provider provides information for surviving dependants more than six months after the death of the participant (Information on right to surviving dependants' pension - Section 43 (1) Pw).
- The pension provider does not provide pensioners in receipt of variable benefits with information on the amount of benefits at least one month before the change in benefits (Information on adjustment to variable benefits - Section 44 (1) (a) Pw in conjunction with Section 7b of the Pensions Act Implementing Decree).
- The pension provider fails to provide annual information for pensioners on a calendar year in the following calendar year (Annual information for pensioners - Section 44 (1) Pw).

8 Investment firms - Article 44 of the Delegated Regulation supplementing MiFID II

Section 4:19 (2) Wft requires investment firms to provide information that is correct, clear and not misleading. This section is explained in Chapter 2. In addition, article 44 of Delegated Regulation (EU) 2017/565[9] includes requirements for investment firms concerning fair, clear and not misleading information. The interpretations we have issued on the basis of this standard are set out below.

What we understand by a fair and clear indication of risks

When attention is drawn to the possible benefits of an investment service or financial instrument, a fair and clear indication of the respective risks must be given. For the sake of clarity, when providing this indication in the information, a font size at least equal to the font size predominantly used in the information as a whole must be used, as well as a layout that ensures the clarity of the indication in question. A clear indication is required in order to define the risks. This can be done, for example, with a passage such as: *"Investing involves risks. You may lose your investment."* The indication must be designed in such a way as to guarantee clarity. The reader or listener must be reasonably able to absorb it.

What are some examples of a risk indication that is unfair and unclear?

- Including a passage such as 'investment involves/entails risks' without explaining what those risks are.
- The risk indication is not displayed long enough to be read.
- The indication is presented in a font size that is too small to be legible.
- The contrast between the text of the indication and the background is too low, so it is not legible.
- Possible advantages are stated in several places on a web page, but the indication of the associated risks appears only at the bottom of the page far from the stated advantages.
- The risk indication is only on one of the last pages of a brochure, whereas the possible advantages are described earlier in the brochure.

Using the name of the competent authority

The name of the competent authority must not be used in the information in such a way as to indicate or suggest that this authority supports or recommends the products or services.

An example of the use of the name of the competent authority in the information in such a way as to indicate or suggest that this authority supports or recommends the products or services is:

- the use of a visual symbol of approval, such as a thumbs-up, green tick or stamp.

[9] Elaboration of Article 24(3) of Directive 2014/65/EU (MiFID II)

9 Management companies - Article 4 CBDF[10]

According to Article 4 (1) of the CBDF Regulation, management companies[11] must ensure that all marketing communications are identifiable as such, that the risks and rewards are described in an equally prominent manner and that all information included in marketing communications is correct, clear and not misleading. Before the CBDF came into force in 2021, management companies were obliged to provide correct, clear and not misleading information under Section 4:19 (2) Wft. More details of this standard can be found in Chapter 2, where Section 4:19 (2) Wft is further explained.

Article 4(1) of the CBDF Regulation is further detailed in the Guidelines[12]. The Guidelines explain the concept of marketing communications. Although the Guidelines are detailed, we have issued a number of interpretations which are stated below for each guideline.

Guideline 30

Guideline 30 states that marketing communications should refrain from referring to the name of a national competent authority in a manner that would imply any endorsement or approval or could be used as a sales argument. This happens, *inter alia,* when a visual symbol of approval, such as a thumbs-up, a green tick or stamp, is placed next to the name of a national competent authority.

Guideline 38

Guideline 38 states that a marketing communication should clearly mention the illiquid nature of the investment where this is the case. A fund from which investors can only exit on a quarterly basis and from which investors may not be able to sell their units (in full or in part) because the manager has no obligation to repurchase them is in any event illiquid. This must therefore be stated in marketing communications.

[10] Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings, also referred to as the cross-border distribution of funds regulation (CBDF Regulation).

[11] For the sake of completeness, it should be noted that the CBDF Regulation applies to alternative investment fund managers, UCITS management companies, including any UCITS that has not designated a UCITS management company, EuVECA managers and EuSEF managers (in accordance with Article 2 of the CBDF Regulation).

[12] Guidelines on marketing communications under the Regulation on cross-border distribution of funds

10 Credit - Article 53 BGfo Wft

The legal requirements for the provision of information on credit are included *inter alia* in Article 53 BGfo. These rules apply only to information provided for consumers (as specified in Section 1:1 Wft). Below we consider a number of questions on these regulations.

10.1 The credit warning

Can you design the credit warning yourself?

No. All advertisements for credit aimed at the Dutch market must use the standard format drawn up by the AFM. This format can be found on the AFM website.

Can you also include the credit warning in a language other than Dutch (such as English)?

No. The credit warning is only available in Dutch. It is therefore not possible to display it in another language.

In order to provide full information for consumers, you could provide a short textual explanation of the credit warning in a foreign language, explaining the purpose of the illustration. Naturally, the textual explanation must not detract from the credit warning.

Should you include the credit warning and the credit table in an advertisement for a loan with 0% interest?

Yes, even if you advertise 0% interest, you must include both the credit warning and the credit table in the advertisement. The credit warning and the credit table must be included in every (individual) advertisement for credit. The credit table must be included in all advertisements for credit that mention a debit interest rate or other information on the cost of credit. This also applies to a loan where interest is charged at 0%.

Where should you include the credit warning on a website consisting of multiple pages?

Each web page must be assessed individually for the presence of advertisements. Consequently, it may not be sufficient to display the credit warning only on the home page. If a website consists of multiple pages, you must include the credit warning on all pages that qualify as advertisements. The reason for this is that the underlying pages also can be viewed independently without the home page being opened.

Should you also include the credit warning on the internet in banners, moving pictures or audio files?

Online advertisements are less static than written advertisements. This means that moving advertisements (such as a moving banner and videos in banner format) are possible. The credit warning must also be displayed in these online advertisements.

Should you include the credit warning in an advertisement for credit cards?

The credit warning must be included in an advertisement for a credit card if the credit facility on the credit card is also being advertised, for example if an interest rate or the possibility of spread repayments is mentioned.

How should you include the credit warning if only part of the internet page contains an advertisement?
If only part of the internet page can be designated as an advertisement, the credit warning must be included in the part of the website designated as an advertisement. The inclusion of the credit warning is subject to the regular rules for including the credit warning in an advertisement.

How should you include the credit warning in audio advertisements?
Advertisements for credit that can be heard on the radio or the internet must include an audio clip with a credit warning. The format for the audio clip can be found here. The audio clip must be played immediately after the advertisement. The intention is therefore that the credit warning is played immediately after the end of the advertisement. Advertisements with audio but without video (for example on the internet) must meet the same requirements as radio advertisements.

How should you include the credit warning in a banner?
The credit warning must be centred at the top of the advertisement. In the case of a banner comprising multiple or moving images (for example a flash banner), the credit warning must be included in each picture.

How should you include the credit warning in an advertisement covering multiple pages but concerning only one financial product or one financial service? (For example a brochure, possibly with a front page/cover.)
You must include the credit warning on the first page of the advertisement. If the front page of the advertisement is already promotional, this page is deemed to be the first page.

How should you include the credit warning in an advertisement without colour?
The credit warning includes a figure with a 'block chained to its leg', which, according to the format for the credit warning, should be coloured red. If the advertisement is not in colour, it is permitted to deviate from the standard format by including the credit warning in black and white.

10.2 Goods credit

When is a communication deemed to be an advertisement for goods credit?
Below we discuss an example of a communication that constitutes an advertisement for goods credit. You must then determine for yourself, in line with this explanation and the applicable laws and regulations, whether your advertisement is an advertisement for goods credit.

Example
An advertisement states that it is possible to pay for a new television (the good) in instalments. The buyer therefore takes out a credit in order to pay for the good: a goods credit.

Explanation
The Wft states that the 'movable property' (in this case the television) that is purchased on instalments is one of the features of the goods credit. Examples of other features of the goods credit are: credit limit, credit sum, total price of credit, monthly charge, (effective) interest rate etc.

NB: According to the Wft, a credit is also deemed to be a goods credit if it involves a financial instrument or an investment object rather than movable property.

In order to promote the television, features of the goods credit are mentioned, namely the price of the television (the total credit amount), the monthly charge and the television itself (the movable property). Since these are promotional features of the goods credit, the communication constitutes an advertisement. This is also the case if, instead of mentioning a monthly charge, the communication states: 'Payment by instalments possible'.

In short, this example shows that when you link a product to a credit facility in an advertisement, it constitutes an advertisement for goods credit. You must therefore include a credit warning in this advertisement.

Where should the credit warning appear in a catalogue that includes an advertisement for goods credit?
In an advertisement for goods credit, it is sufficient to place the credit warning immediately below the phrase: 'xx euros per month'. The wording could also be 'possibility of purchase on instalments', for example. The credit warning must be at least as wide as this phrase and must be clearly legible. The credit warning therefore does not have to be placed below the advertisement as a whole including the good being offered. You can also include a credit warning at the bottom and across the entire width of the advertisement, for example if you include a page in the catalogue displaying several different products.

10.3 Debit interest rate

How should you deal with mandatory information if you also refer to another company's debit interest rate in an advertisement?

In this case, you must also include the mandatory information from the other company in the advertisement. This also applies if you advertise a mortgage loan.

11 Exemption statement - supervision by the AFM or not?

Under the Wft, products may be exempt from the licence or prospectus requirement. In the case of the licence requirement, for example, this applies to investments of at least €100,000 per investment object. In order to use the exemption, an exemption statement must be included in advertisements and other documents concerning a prospective offer. The Nrgfo explains how the exemption statement should be included in each media type. This is further explained in the Explanatory notes. The interpretations below provide additional information. In order to use the €5 million exemption from the prospectus requirement, with effect from 1 October 2017 there is also an obligation to prepare and issue the information document for offers of securities. This information must also be balanced and understandable.

Where should you include the exemption statement on a website consisting of multiple pages or tabs?
This exemption statement must be visible on each communication. These include offers, advertisements, documents concerning prospective offers and other non-mandatory pre-contractual information. A website consisting of multiple pages or tabs may contain multiple communications of this kind. In such cases, the website must include multiple exemption statements.

Where should the exemption statement be located in a written communication comprising multiple pages?
You must include the exemption statement on the very first page. This may also be the cover page or the front cover. It is not the first 'text page'.

12 Unfair Commercial Practices Act (Wohp)

The provision of information on financial products is subject to the Wft. The Unfair Commercial Practices Act (Wohp), as set out in Book 6, Title 3, Section 3a of the Dutch Civil Code, also applies. This includes rules governing the provision of information. The Wohp also applies to exempt financial products. A number of interpretations are detailed below.

12.1 When does the Wohp apply to my product?

You must bear in mind that in addition to the Wft, the Wohp also applies. You must comply with both acts. This applies both if you are licensed by the AFM and if you have products that are exempt from the licence and/or prospectus requirement. In the case of exempt products, the Wft only applies to a limited extent and for those products the AFM will therefore look more to the Wohp.

12.2 When is a commercial practice deemed to be misleading?

Information must not be misleading. A consumer is misled if he is misinformed about a product. His expectation will then not coincide with the reality.

Information on exempt products must similarly not be misleading. This concerns, for example, information on the nature of the product, the main features of the product or the price.

Below are a number of examples in which the information for consumers may be misleading:

Return

- You refer to a fixed return (or fixed interest) even though the return is not actually fixed as it would be in a savings deposit, for example. In many cases, the interest payment cannot be guaranteed and may often be suspended. Mentioning a fixed return may give consumers the impression that there is certainty or a guarantee, whereas this is not always the case.
- You show a guaranteed return, although there are scenarios in which this guarantee will lapse, and you do not mention these scenarios.
- You present optimistic return forecasts in a way that makes them appear reliable, whereas the forecasts cannot be sufficiently substantiated and you do not draw consumers' attention sufficiently to the risks.
- You outline historical or actual returns based on a period that is unrepresentative, for example a period that is too short, or you present a selective track record that gives the impression of being complete, whereas that is not the case.
- You explain/interpret historical or actual returns incorrectly with irrelevant information.

Risk

- You downplay risks, for example by calling a risk a 'minimal risk', whereas the investor could lose his investment or a substantial part of it. Another example is presenting 'controlled risk' while also stating that the interest and repayment obligations on a product may not be met.
- In the case of a risky investment (for example with derivatives) you indicate that the money will be invested in such a way that the product is suitable for a risk-averse consumer.

Saving/investment

- You compare investment products with savings products, for example by referring to a 'savings interest rate', rather than a return or dividend.
- You compare an investment with a bank savings account, without stating the difference in risk.
- You suggest that the pursued investment strategy is comparable in terms of risk to the risk that consumers incur with savings accounts. However, the use of shares and options gives rise to an entirely different and bigger risk compared to the risk on a savings account.

When is the use of a benchmark misleading?

It is misleading if the benchmark used does not have the same risks or composition as the compared product and these differences are not explained. When you use a benchmark, it must be clear what is being compared and what the differences are. This is to avoid giving a misleading idea that the products are comparable when they are not. An example is a comparison between the AEX index and a specific unit trust or bond loan.

12.3 What is material information according to the Wohp?

Material information is information that a consumer needs at the very least to make an informed decision. If material information is omitted, it is a misleading omission. The Wohp states that the material information that a consumer needs to take a decision on an agreement must not be withheld from him. The material information must not be concealed or disclosed in a manner that is unclear, incomprehensible, ambiguous or late. Logically, not all material information can be included in all types of information, for example in advertisements. You must nevertheless enable the consumer to absorb this information before a purchase.

In the past, we have designated various features of a product as material information. These features are shown below. The list is not exhaustive, but it shows the information that must be included in all cases if a feature is applicable.

General features

- the risks
- the main features such as (nominal/intrinsic) value, duration, where the property is located (for example in the case of real estate investments) and the expected return
- information on securities and guarantees
- the conditions for termination or early termination of the product
- the way in which the return is generated
- the fact that a loan is subordinated
- conditions not corresponding to normal market conditions
- the charges levied

Restrictive conditions

- the fact that a position of less than €100,000 must not remain after a sale, as this would invalidate the exemption (this means the consumer must maintain a minimum balance (of €100,000) throughout the term)
- specific conditions governing eligibility for certain benefits
- the restrictive conditions of a guarantee, for example previously known situations in which a guarantee may lapse
- the restrictive conditions for obtaining a return

Tax treatment

- any tax disadvantages if you refer to any tax advantage (for example the creation of a deferred tax liability)

Bond loan to a company

- the current financial position of the company

- information from which the consumer can deduce what expenses are associated with the business activities and how the income is generated to pay the interest and redeem the bond.
- the use of the invested funds
- the financial relationship between the company and its directors
- the financial relationship between the company and related entities

12.4 In the case of an exempt product the impression must not be given that the product is supervised

If you suggest that a product or company is supervised when it is not, that is misleading. This may give consumers a misleading picture of the main features of the product, namely with regard to supervision. Consumers may (wrongly) associate this with security. In the following examples, the information provided gives the impression that the offer is supervised:

- You provide a risk indicator and/or a financial leaflet (possibly with your own interpretation) for the exempt product.
- You state that you comply with laws and regulations without stating that the offer is exempt.
- As the manager of an exempt collective investment fund you state very explicitly that you are supervised. You are permitted to state this, but the exemption statement must be clear.
- The provided information is also misleading if the exemption statement is not adhered to.

13 Final provisions

13.1 When is the Policy Rule evaluated?

This Policy Rule is periodically evaluated.

- The first version was published on 25 September 2013.
- The second version was published on 31 December 2018. The included interpretations were issued in the period 2007-2017.
- The third version was published on 30 September 2024. The included interpretations were issued in the period 2007-2023.

13.2 When will the Policy Rule come into force?

The Policy Rule comes into force on 30 September 2024. This Policy Rule will be published in the Government Gazette.

13.3 What is the short title of the Policy Rule for citation purposes?

This Policy Rule is cited as: Policy Rule on Provision of Information.

13.4 Repeal of the Policy Rule on Provision of Information 2018

The Policy Rule on Provision of Information of 31 December 2018 is repealed.

Amsterdam, 30 September 2024

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