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FMA CIRCULAR

ON UNISEX CALCULATION BASES (VAG 1978)

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In its ruling of 1 March 2011 (“Test-Achats ruling”), the Court of Justice of the European Union declared Article 5(2) of Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services to be invalid with effect from 21 December 2012. On the basis of this ruling, as from 21 December 2012 the use of gender as a factor in the calculation of premiums and benefits may not result in differences in premiums and benefits.

Pursuant to Article 18 para. 3 of the Insurance Supervision Act (VAG; *Versicherungsaufsichtsgesetz*), the premiums for newly concluded insurance contracts must be sufficient according to actuarially based assumptions to guarantee the ongoing compliance with the obligations arising from the insurance contracts, in particular the establishment of adequate technical provisions. Pursuant to Article 81k para. 4 VAG the life/health insurance provision must be calculated according to recognised actuarial methods.

This Circular Letter is directed at all insurance undertakings supervised by the Financial Market Authority (FMA) that provide life assurance and/or health insurance. It sets out the FMA’s legal opinion developed in the context of its statutory remit with regard to the provisions of Article 18 paras. 1, 2 and 3 and Article 81k para. 4 VAG and of the FMA Regulation on the Content and Structure of Actuarial Bases (VVMGL; *Verordnung der FMA über Inhalt und Gliederung der versicherungsmathematischen Grundlagen*). The legal basis is in no way affected by this Circular Letter. No rights or obligations beyond those defined in the statutory provisions may be deduced from this Circular Letter.

In view of the future legal situation (amendment of Article 9 para. 2 VAG and deletion of paras. 3 and 4), the FMA sets out its position on the use of unisex calculation bases as follows:

I. PENSION INSURANCE

The Actuarial Association of Austria (AVÖ) formally introduced a new pension table (AVÖ 2005R unisex) on 24 April 2012 and published it on the AVÖ website. The FMA considers that this pension table, with a 30:70 gender ratio of men to women, represents a suitable actuarial basis for the calculation of adequate technical provisions for pension insurance, unless the insurance undertaking has information to indicate that it is not suitable for its own insured pool.

Derogations from the pension table AVÖ 2005R unisex, which result in a lower provision (as may be the case, for example, if a different gender ratio is used or age postponement applies) must be explained with the aid of comparative calculations for the insurer’s own pool and the assumptions of future trends that have been used.

This explanation is to be presented in the actuarial bases pursuant to Article 18 para. 2 VAG under item 6.5 “Explanation of calculation bases” according to the VVMGL, Federal Law Gazette II No. 110/2005, last amended by Federal Law Gazette II No. 91/2009, and must include the following in particular:

- a comparison of expected mortality (based on the unisex pension table) with actual mortality over the last 5 years;
- a comparison of the safety premiums contained in the pension table (1st order) with the expected mortality rates of the insured pool (2nd order);
- a comparison of the derogation from the pension table for women with the unisex pension table (1st order each).

II. OTHER LIFE ASSURANCE

For all other life assurance scales of premiums, the mortality tables and the underlying gender ratio must be explained in the actuarial bases pursuant to Article 18 para. 2 VAG under item 6.5 “Explanation of calculation bases” according to the VVMGL. The explanation must include the following in particular:

- a comparison of expected mortality (based on the unisex mortality table) with actual mortality over the last 5 years;
- a comparison of the safety premiums contained in the calculation bases (1st order) with the expected mortality rates of the insured pool (2nd order);
- a comparison of the derogation from the calculation bases for men (1st order) with the unisex calculation bases.

III. HEALTH INSURANCE SIMILAR TO LIFE ASSURANCE

For all health insurance scales of premiums, pursuant to Article 18 para. 2 VAG the following in particular must be presented in the actuarial bases:

- how the gender ratio is included in the premium calculation (costs per head, withdrawal probabilities);
- the effects of a 20% reduction in the mortality rate (Solvency II Stress) (e.g. for a significant “Austria” hospital costs tariff).

IV. CALCULATION BASES 2ND ORDER

The FMA generally recommends, when deriving 1st order unisex calculation bases (“cautious”), also deriving the 2nd order calculation bases (“realistic”; best estimate), on a unisex and gender-specific basis, for all life assurance and health insurance scales of premiums. This would make the safety level of the 1st order calculation bases easier to estimate and, based on the findings from the future actual events (“3rd order calculation bases”), the 1st and 2nd order calculation bases could be validated and adapted, if necessary.