

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Fürstliches Landgericht dated 31 October 2012 in the case of Beatrix Koch, Dipl. Kfm. Lothar Hummel and Stefan Müller v Swiss Life (Liechtenstein) AG

(Case E-11/12)

A request has been made to the EFTA Court by a letter of 31 October 2012 from Fürstliches Landgericht (Princely Court of Justice, Liechtenstein), which was received at the Court Registry on 8 November 2012, for an Advisory Opinion in the case of Beatrix Koch, Dipl. Kfm. Lothar Hummel and Stefan Müller v Swiss Life (Liechtenstein) AG., on the following questions:

- 1. Does the term unit-linked policies, within the meaning of Annex III A a11 and a12 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, refer exclusively to units (“Common Funds”) within the meaning of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) or does Annex III A a11 and a12 also apply for example where payments from a life assurance contract are linked to a share index or other reference value?**
- 2. If Question 1 is answered by the Court to the effect that Annex III A a11 and a12 of Directive 2002/83/EC does not restrict “unit-linked policies” to investment companies (“Common Funds”) within the meaning of Directive 85/611/EEC:**
 - 2.1 Does Directive 2002/83/EC oblige assurance undertakings to provide policy holders with advice or simply to notify them of the details set out in Annex III of the said Directive?**
 - 2.2 Is the duty to communicate information under Annex III A a11 of Directive 2002/83/EC sufficiently complied with if the assurance undertaking supplies the securities identification number (WKN), or, how else is “definition of the units” to be understood in order to fulfil the requirement to communicate information? It must be borne in mind that the Member State of the commitment does not require any additional information from the assurance undertaking within the meaning of Art. 36(3) of Directive 2002/83/EC.**
 - 2.3 Is the duty to communicate information under Annex III A a12 of Directive 2002/83/EC sufficiently complied with if the assurance undertaking supplies the securities identification number (WKN) or should more detailed information be provided? It must be borne in mind that the Member State of the commitment does not require any**

additional information from the assurance undertaking within the meaning of Art. 36(3) of Directive 2002/83/EC.

- 3. Does Art. 36(1) of Directive 2002/83/EC make it mandatory for the assurance undertaking to provide the details set out in Annex III A or is it sufficient if this information is given to the policy-holder by a third party, for example by an insurance intermediary within the meaning of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation?**

- 4. Does Directive 2002/83/EC require that Art. 36 be implemented into national law by the Member States in such a way that policy holders acquire a civil law right against the assurance undertaking to be notified of the details pursuant to Annex III, or is it sufficient for the implementation into national law if a breach of the duties to provide information under Annex III of the Directive is only subject to sanction by a regulatory body such as by the imposition of a fine, withdrawal of license or other similar measure?**