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Judgment in Case E-14/20 *Liti-Link AG v LGT Bank AG*

MIFID I: SUFFICIENT DISCLOSURE OF INFORMATION CONCERNING INDUCEMENTS TO CLIENTS

In a judgment delivered today, the Court answered questions referred to it by the Supreme Court of the Principality of Liechtenstein (*Fürstlicher Oberster Gerichtshof*) regarding the interpretation of Commission Directive 2006/73/EC of 10 August 2006 (“the Implementing Directive”) implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (“MiFID I”).

The case before the referring court concerns a request for information on advantages with a monetary value paid to LGT Bank AG (“LGT”) in relation to its business relationship with a client. In 2018, the client had assigned all claims arising from his business relationship with LGT to Liti-Link AG for collection. The referring court sought guidance on the interpretation of Article 26 of the Implementing Directive with regard to the disclosure of fees, commissions or non-monetary benefits (“inducements”).

The Court found that the final paragraph of Article 26 of the Implementing Directive, which must be read in conjunction with the first paragraph of that provision and Article 19 of MiFID I, must be interpreted as meaning that the essential terms of the arrangements relating to inducements may be disclosed in summary form provided that the investment firm has clearly disclosed to the client prior to the provision of an investment or ancillary service that such inducements are paid to or received from a third party; has undertaken to disclose further details at the client’s request; and honours this undertaking. The Court also held that disclosure may be made in general or pre-formulated terms and conditions. This is however contingent upon each individual client receiving the information related to the specific investment service and that the information gives the client a sufficient basis to make an informed investment decision. Further, the Court found that such a disclosure entails an obligation on the investment firm to indicate clearly whether and when an inducement is provided in a manner that is comprehensive, accurate and understandable prior to the provision of the relevant investment or ancillary service. A generic disclosure which merely refers to the possibility that an investment firm might receive such inducements from a third party, is not sufficient. Furthermore, the Court found that the conditions for a disclosure of inducements in summary form are not fulfilled if the investment firm undertakes to disclose further details merely for a period of twelve months preceding the request.

With regard to disclosures under point (b)(i) of the first paragraph of Article 26, the Court held that if the amount of the fees or commissions cannot be ascertained, a correct disclosure must place the client in a position to calculate this amount provided to the investment firm by a third party so that the client is enabled to make an informed decision on an investment.

With regard to the referring court's final questions, the Court held that EEA law does not require any direct effect of EEA law provisions not correctly transposed into national law. The national court is nevertheless obliged, as far as possible, to ensure the result sought by EEA law through the interpretation of national law in conformity with EEA law.

The full text of the judgment may be found on the Court's website: www.eftacourt.int.

This press release is an unofficial document and is not binding upon the Court.