JUDGMENT OF THE COURT

10 May 2016*

(Directive 2002/83/EC – Article 36 – Transfer of life assurance contracts – Admissibility – The term 'assurance contract' – Change in policy conditions)

In Joined Cases E-15/15 and E-16/15,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Supreme Court of the Principality of Liechtenstein (*Fürstlicher Oberster Gerichtshof*), in the cases between

Franz-Josef Hagedorn

and

Vienna-Life Lebensversicherung AG Vienna Life Insurance Group

and

Rainer Armbruster

and

Swiss Life (Liechtenstein) AG

concerning the interpretation of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance,

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen and Páll Hreinsson (Judge-Rapporteur), Judges,

Registrar: Gunnar Selvik,

---

* Language of the request: German.

having considered the written observations submitted on behalf of:

- Franz-Josef Hagedorn ("the applicant"), represented by Helmut Schwärzler and Matthias Niedermüller, advocates;

- Rainer Armbruster ("the applicant"), represented by Helmut Schwärzler and Matthias Niedermüller, advocates;

- Vienna-Life Lebensversicherung AG Vienna Life Insurance Group ("the defendant" or "Vienna Life"), represented by Moritz Blasy and Simon Ott, advocates;

- Swiss Life (Liechtenstein) AG ("the defendant" or "Swiss Life"), represented by Peter Nägele and Thomas Nägele, advocates;

- the Government of the Principality of Liechtenstein, represented by Dr Andrea Entner-Koch, Director, and Monika Zelger-Jarnig, Senior Legal Officer, EEA Coordination Unit, acting as Agents;

- the EFTA Surveillance Authority ("ESA"), represented by Carsten Zatschler, Director, Maria Moustakali and Clémence Perrin, Senior Officers, and Marlene Lie Hakkebo, Temporary Officer, Department of Legal & Executive Affairs, acting as Agents; and

- the European Commission ("the Commission"), represented by Joan Rius Riu and Karl-Philipp Wojcik, Members of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument of the applicants, represented by Alexander Amann, Rechtsanwalt; Vienna Life, represented by Moritz Blasy and Simon Ott, Swiss Life, represented by Peter Nägele; the Government of the Principality of Liechtenstein, represented by Dr Andrea Entner-Koch and Monika Zelger-Jarnig; ESA, represented by Maria Moustakali, Clémence Perrin and Marlene Lie Hakkebo; and the Commission, represented by Karl-Philipp Wojcik, at the hearing on 14 January 2016,

gives the following

Judgment

I Legal background

EEA law

Directive 2002/83/EC

1 Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance ("the Directive", "the Life Assurance Directive" or "the 2002 Directive") (OJ 2002 L 345, p. 1) was incorporated into the Agreement on the European Economic Area ("the EEA Agreement") at point 11 of Annex IX to the Agreement by EEA Joint Committee Decision No 60/2004 of 26 April 2004 (OJ 2004 L 277, p. 172, and EEA Supplement 2004 No 43, p. 156). The decision entered into force on 27 April 2004.

2 Recital 2 in the preamble to the Directive reads as follows:

> *In order to facilitate the taking-up and pursuit of the business of life assurance, it is essential to eliminate certain divergences which exist between national supervisory legislation. In order to achieve this objective and at the same time ensure adequate protection for policy holders and beneficiaries in all Member States, the provisions relating to the financial guarantees required of life assurance undertakings should be coordinated.*

3 Recital 3 in the preamble to the Directive reads as follows:

> *It is necessary to complete the internal market in direct life assurance, from the point of view both of the right of establishment and of the freedom to provide services in the Member States, to make it easier for assurance undertakings with head offices in the Community to cover commitments situated within the Community and to make it possible for policy holders to have recourse not only to assurers established in their own country, but also to assurers which have their head office in the Community and are established in other Member States.*

4 Recital 5 in the preamble to the Directive reads as follows:

> *This Directive therefore represents an important step in the merging of national markets into an integrated market and that stage must be supplemented by other Community instruments with a view to enabling all policy holders to have recourse to any assurer with a head office in the Community who carries on business there, under the right of establishment or the freedom to provide services, while guaranteeing them adequate protection.*

5 Recital 7 in the preamble to the Directive reads as follows:

> *The approach adopted consists in bringing about such harmonisation as is essential, necessary and sufficient to achieve the mutual recognition of authorisations and prudential control systems, thereby making it possible to grant a single authorisation valid throughout the Community and apply the principle of supervision by the home Member State.*

6 Recital 44 in the preamble to the Directive reads as follows:

> *The provisions in force in the Member States regarding contract law applicable to the activities referred to in this Directive differ. The harmonisation of assurance contract law is not a prior condition for the achievement of the internal market in assurance. Therefore, the opportunity afforded to the Member States of imposing the application of their law to assurance contracts covering commitments within their territories is likely to provide adequate safeguards for policy holders. The freedom to choose, as the law applicable to the contract, a law other than that of the State of the commitment may be granted in certain cases, in accordance with rules which take into account specific circumstances.*

7 Recital 52 in the preamble to the Directive reads as follows:

> *In an internal market for assurance the consumer will have a wider and more varied choice of contracts. If he/she is to profit fully from this diversity and from increased competition, he/she must be provided with whatever information is necessary to enable him/her to choose the contract best suited to his/her needs. This information requirement is all the more important as the duration of commitments can be very long. The minimum provisions must therefore be coordinated in order for the consumer to receive clear and accurate information on the essential characteristics of the products proposed to him/her as well as the particulars of the bodies to which any complaints of policy holders, assured persons or beneficiaries of contracts may be addressed.*

8 Article 36 of the Directive, which is headed Information for policy holders, reads as follows:

> *1. Before the assurance contract is concluded, at least the information listed in Annex III(A) shall be communicated to the policy holder.*
>
> *2. The policy-holder shall be kept informed throughout the term of the contract of any change concerning the information listed in Annex III(B).*
>
> *3. The Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in Annex III only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.*

4. The detailed rules for implementing this Article and Annex III shall be laid down by the Member State of the commitment.

9 Annex III to the Directive, which is headed Information for policy holders, reads as follows:

The following information, which is to be communicated to the policy holder before the contract is concluded (A) or during the term of the contract (B), must be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment.

However, such information may be in another language if the policy holder so requests and the law of the Member State so permits or the policy holder is free to choose the law applicable.

A. Before concluding the contract

Information about the assurance undertaking

(a)1 The name of the undertaking and its legal form

(a)2 The name of the Member State in which the head office and, where appropriate, the agency or branch concluding the contract is situated

(a)3 The address of the head office and, where appropriate, of the agency or branch concluding the contract

Information about the commitment

(a)4 Definition of each benefit and each option

(a)5 Term of the contract

(a)6 Means of terminating the contract

(a)7 Means of payment of premiums and duration of payments

(a)8 Means of calculation and distribution of bonuses

(a)9 Indication of surrender and paid-up values and the extent to which they are guaranteed

(a)10 Information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate

(a)11 For unit-linked policies, definition of the units to which the benefits are linked

(a)12 Indication of the nature of the underlying assets for unit-linked policies

(a)13 Arrangements for application of the cooling-off period

(a)14 General information on the tax arrangements applicable to the type of policy

(a)15 The arrangements for handling complaints concerning contracts by policy holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings

(a)16 Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the assurer proposes to choose

B. During the term of the contract

In addition to the policy conditions, both general and special, the policy-holder must receive the following information throughout the term of the contract.

Information about the assurance undertaking

(b)1 Any change in the name of the undertaking, its legal form or the address of its head office and, where appropriate, of the agency or branch which concluded the contract

Information about the commitment

(b)2 All the information listed in points (a)(4) to (a)(12) of A in the event of a change in the policy conditions or amendment of the law applicable to the contract

(b)3 Every year, information on the state of bonuses

National law

10 Liechtenstein has implemented the Life Assurance Directive by way of the Insurance Supervision Act ("VersAG"), LR 961.01, the Insurance Supervision Regulation ("VersAV"), LR 961.011, the Insurance Contracts Act ("VersVG"), LR 215.229.1, the International Private Law Act ("IPRG"), LR 290, and the International Insurance Contracts Act ("IVersVG"), LR 291.

11 Article 45 of the VersAG reads as follows:

Duties to inform policy holders

Prior to conclusion and during the term of insurance contracts, specific information shall be provided to policy holders for purposes of their

information and protection. The content and scope of these duties to provide information are regulated in Annex 4.

12 Annex 4 to the VersAG reads as follows:

Duties to inform policy holders under Articles 45 and 49

Where the policy holder is a natural person, insurance undertakings shall inform him of the essential facts and rights pertaining to the insurance relationship prior to conclusion and during the term of a contract in accordance with the following provisions. In the case of insurance of large risks, it shall be sufficient to indicate the applicable law and the competent supervisory authority. Information shall be provided in writing.

Section I

1. Information required for all classes of insurance:

(a) name, address, legal form and registered office of the insurance undertaking and, where appropriate, any branch through which the contract is to be concluded;

(b) the general insurance conditions applicable to the insurance relationship, including the terms concerning scales of premiums, and indication of the law applicable to the contract;

(c) information on the nature, scope and maturity of the insurance undertaking benefits, where no general insurance conditions or where no terms concerning scales of premiums are applied;

(d) information on the term of the insurance relationship;

(e) information on the amount of the premiums, which should be identified individually if the insurance relationship is to include several autonomous insurance contracts, and on the method of payment of premiums, as well as information on any additional fees or costs, with an indication of the total amount to be paid;

(f) information on the period for which the applicant is to be bound by the application;

(g) instructions concerning the right of cancellation or withdrawal;

(h) address of the competent supervisory authority which the policy holder may contact in the event of complaints about the insurance undertaking.

2. Additional information required for life assurance or accident insurance with premium refund:

(a) information on the calculation principles and criteria used for profit determination and profit participation;

(b) indication of surrender values;

(c) information on the minimum sum insured for conversion into a fully paid-up insurance policy and on the benefits from a fully paid-up insurance policy;

(d) information on the extent to which the benefits under (b) and (c) are guaranteed;

(e) for unit-linked insurance policies, information on the unit underlying the insurance policy and the nature of the assets contained therein;

(f) general information on the tax rules applicable to this type of insurance policy.

Section II

Information to be provided by the insurance undertaking during the term of an insurance contract

1. changes of name, address, legal form and registered office of the insurance undertaking and any branch through which the contract has been concluded;

2. changes to the information provided in accordance with Section I(1)(c) to (e) and (2)(a) to (e), where such changes stem from amendments of the law;

3. annual notification of the status of profit participation in life assurance and accident insurance policies with premium refund.

II Facts and procedure

13 The cases before the national court concern the question whether, and, if so, to what extent, a life assurance undertaking has an obligation to provide information to a person that acquires a life assurance policy from an existing policy holder ("second-hand life assurance policy").

14 The defendants, Swiss Life and Vienna Life, are registered in Liechtenstein and have a licence to provide life assurance. In Case E-15/15, a unit-linked life assurance policy was concluded on 30 December 2004 between Vienna Life, as the assurer, and Gold Bank Finance Ltd, as the policy holder. On 28 November 2006, the applicant, Mr Hagedorn, acquired this unit-linked life assurance policy. The policy transfer took place on 19 December 2006. An intermediary, Mass & Partner Kapitalmanagement GmbH, working on behalf of Swiss Select Asset

Management AG (SSAM), a Liechtenstein-based asset management firm, brokered the sale of the life assurance policy from the original policy holder to Mr Hagedorn.

15 The purchase price and the total investment of Mr Hagedorn was EUR 500 000, an amount calculated by SSAM. It became due upon the transfer of the original policy.

16 In Case E-16/15, a unit-linked life assurance policy was concluded in 2003 between the defendant Swiss Life, as the assurer, and Werner Finzel and Ute Finzel-Heidinger, as the policy holders. The applicant, Mr Armbruster, acquired this unit-linked life insurance policy from the original policy holders through a purchase agreement dated 17 and 21 May 2007. The policy transfer took place on 9 July 2007. SSAM brokered the sale of the life assurance policy from the original policy holders to Mr Armbruster.

17 The purchase price was EUR 243 000, an amount calculated by SSAM. It became due upon the transfer of the original policy. The purchase price was paid to "the community of heirs of Werner Lorenz Finzel" on 4 June 2007. The total investment of Mr Armbruster amounted to EUR 750 000, of which EUR 250 000 was obtained by credit financing arranged through SSAM, with the Liechtensteinische Landesbank as the lender.

18 A document permitting a change of policy holder was signed by Ute Finzel-Heidinger, Mr Armbruster, a representative of SSAM and an authorised representative of Swiss Life. The document *inter alia* includes the following passage:

> *The new policy holder was informed and expressly agreed that by entering into the assurance contract he acquires the same rights and the duties which applied to the existing policy holders at the time he entered into the contract. This also holds for all agreements made with the existing policy holders (e.g. investment strategy, risk disclosure, any ancillary arrangements, supplementary arrangements etc.).*

19 Both applicants suffered substantial losses on their investments. The cases before the national court concern the defendants' liability for damages on the basis that they failed to fulfil their obligations to provide sufficient information, as provided for in Article 36 of the Directive and detailed in Annex III thereto. By an order of 3 July 2015, the national court sought two advisory opinions: first, in the proceedings between Franz-Josef Hagedorn and Vienna Life, and, second, in the proceedings between Rainer Armbruster and Swiss Life. Both requests were received at the Court Registry on 9 July 2015.

20 By a decision of 5 November 2015, the Court, pursuant to Article 39 of the Rules of Procedure ("RoP") and after having received observations from the parties, joined the two cases for the purposes of the oral procedure and final judgment.

21 The following questions were submitted to the Court in Case E-15/15:

1. Is Article 36(2) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance to be interpreted as meaning that the duties to provide information referred to therein and in Annex III(A)(a)(11) and (a)(12) and (B)(b)(2) for unit-linked life assurance policies must also be fulfilled in relation to a person who, by a legal transaction, acquires a unit-linked life assurance policy from another person with the consent of the assurer through the transfer of the contract ('second-hand policies')?

In the event that the Court answers the first question in the affirmative, the following additional questions are asked:

2(a) Is Article 36(2) of Directive 2002/83/EC concerning life assurance to be interpreted as meaning that in the event that a unit-linked life assurance policy is acquired by a legal transaction, only general information must be provided to the new policy holder or is the assurance company also required to provide the new policy holder with information specifically regarding the assurance product to be acquired by him, in particular regarding any differences between the investor or risk profiles of the existing policy holder and of the transferee?

In the event that Question 2(a) is answered in the negative, the following question is asked:

2(b) Is specific information to be given to the transferee of the contract regarding the assurance product to be acquired by him where the existing policy holder is an undertaking, while the transferee of the contract is a natural person or a consumer?

In the event that Question 2(b) is answered in the negative, the following question is asked:

2(c) Is specific information to be given to the transferee of the contract regarding the assurance product to be acquired by him where the transferor of the policy dispensed with information regarding the assurance product in question, for example because he did not disclose to the assurance company the information necessary in order to assess his own risk or investor profile?

Furthermore, the following additional question is asked:

3. Are the provisions concerning the assurer's obligations under Annex III(B)(b)(2) of Directive 2002/83/EC concerning life assurance effectively transposed into national law even if national law

provides, in Annex 4(II)(2) of the Versicherungsaufsichtsgesetz (Law on insurance supervision), in the case of unit-linked assurance policies, that during the term of an assurance contract information must be provided on the units underlying the assurance policy and the nature of the assets contained therein only where the changes in the information provided stem from 'amendments of the law' but not also 'in the event of a change in the policy conditions' (Annex III(B)(b)(2) to Directive 2002/83/EC)?

22 In Case E-16/15, the first question referred is essentially identical in substance to the first question in Case E-15/15, the only difference being that the referring court writes "has acquired" instead of "acquires". The third question in Case E-16/15 is identical to the third question in Case E-15/15. Finally, the second question in Case E-16/15, which is asked in the event that the Court answers the first question in the affirmative, is substantively similar to Question 2(a) in Case E-15/15 and is worded as follows:

> *2. Is Article 36(2) of Directive 2002/83/EC concerning life assurance to be interpreted as meaning that, in the case of the legal transfer of the contract for a unit-linked life assurance policy, only general information must be provided to the new policy holder or is the assurance company also required to provide the new policy holder with information specifically regarding the assurance product to be acquired by him, in particular regarding any differences between the risk profiles of the existing policy holder and of the transferee?*

23 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

III Admissibility

Arguments submitted to the Court

24 Vienna Life argues that the request in Case E-15/15 is inadmissible. It submits that even if an assurance undertaking has a duty to provide information to the purchaser of a second-hand policy, which Vienna Life denies, a violation of such duty could never be regarded as causal for damage resulting from the acquisition of the assurance policy. Therefore, Question 1 is purely hypothetical. According to Vienna Life, the same applies to Question 2(c) since no waiver by a primary policy holder of the right to be provided with the information specified in Annex III to the Directive was granted in the case. Finally, Vienna Life argues that Question 3 is also purely hypothetical since the transfer of the beneficial rights arising under a life assurance policy cannot be regarded as a change in the conditions of the life assurance policy at issue.

Findings of the Court

25 At the outset, the Court recalls that, under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA"), any court or tribunal in an EFTA State may refer questions on the interpretation of the EEA Agreement to the Court, if it considers an advisory opinion necessary to enable it to give judgment. Indeed, the purpose of Article 34 SCA is to establish cooperation between the Court and the national courts and tribunals. It is intended to be a means of ensuring a homogenous interpretation of EEA law and to provide assistance to the courts and tribunals in the EFTA States in cases in which they have to apply provisions of EEA law (see Case E-23/13 *Hellenic Capital Market Commission* [2014] EFTA Ct. Rep. 88, paragraphs 30 to 33).

26 Furthermore, it is settled case law that questions on the interpretation of EEA law referred by a national court, in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. Accordingly, the Court may only refuse to rule on a question referred by a national court where it is quite obvious that the interpretation of EEA law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see Joined Cases E-3/13 and E-20/13 *Fred. Olsen and Others* [2014] EFTA Ct. Rep. 400, paragraphs 75 and 76 and case law cited). Contrary to Vienna Life's submissions, no such exceptional circumstances are applicable to the questions in the case at hand.

27 It follows that the questions referred by the Supreme Court of the Principality of Liechtenstein are admissible.

IV Answers of the Court

The first set of questions

28 By its first question in each of the two cases, the national court seeks in essence to establish whether Article 36 of the Directive entails an obligation for life assurance undertakings to provide certain information to a person that acquires a unit-linked life assurance policy from an existing policy holder.

Observations submitted to the Court

29 The applicants submit, with regard to the scope of Article 36 of the Directive, that paragraphs 1 and 2 of that provision refer simply to a "policy holder" without distinguishing between the original policy holder and its legal successor. Accordingly, the term "policy holder" used in Article 36(1) and (2) must also include any natural or legal person who by virtue of a legal transaction acquires an existing policy.

30 Furthermore, it is only reasonable that the assurer provide its prospective contractual partner with the information referred to in Article 36(1), which is listed in Annex III(A) to the Directive. The reason is that Article 36(1) imposes certain obligations on the assurer before the assurance contract is concluded. Since the new policy holder could also be said to conclude an assurance contract, the wording of Article 36(1) applies to the new policy holder as well. The applicants maintain that the spirit and purpose of the Directive, in particular as evidenced in recital 52 in the preamble to the Directive, also support the interpretation advanced here.

31 With regard to the application of Article 36(1) of the Directive to the present case, the applicants observe that the case law of the Court confirms that life assurance contracts are generally of a complex nature, the details of which may be difficult to understand for the average consumer (reference is made to Case E-11/12 *Koch and Others* [2013] EFTA Ct. Rep. 272, paragraph 63). In addition, the applicants allege that the legal transfer of the assurance contract requires the approval of the assurer. Thus, another contractual partner cannot be imposed on the assurer contrary to its will.

32 In the event that the Court does not share the applicants' views concerning the application of Article 36(1) of the Directive, they submit that Article 36(2) applies in any case. According to that provision, a policy holder shall be kept informed throughout the term of the contract of any change concerning the information listed in Annex III(B) to the Directive. That annex provides that if a change in the policy conditions or an amendment of the applicable law takes place, all the information listed in points a(4) to a(12) in Annex III(A) must be provided to the policy holder. The applicants argue that both of these conditions cover the acquisition of an existing assurance policy by a new policy holder through the legal transfer of an assurance contract. In any case, they maintain that there are cases – such as the change of policy holder – where the assurer must realise that its new contractual partner is in need of comprehensive information.

33 Vienna Life argues that it would hamper the secondary market for life assurance policies if assurance undertakings were obliged to provide the purchasers with the information specified in Annex III to the Directive. In addition, such an obligation would necessarily require contact between the assurance undertaking and the future purchaser prior to the acquisition of the policy. In contrast, Vienna Life submits that there can be no duty on an assurance undertaking to provide the purchaser of a second-hand life assurance policy with information on the policy in advance of the purchase since this is a mere two-party transaction to which the assurance undertaking is not a party.

34 Vienna Life submits further that the brokerage of second-hand life assurance policies only results in the transfer of existing rights and does not create a new assurance relationship. In fact, such brokerage should be regarded as an investment advisory service, which means that it falls to the brokers on the secondary market to inform and advise the purchaser in accordance with Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in

financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

35 Swiss Life's arguments with regard to the first question in Case E-16/15 are essentially the same as those of Vienna Life. In addition, Swiss Life contends that, having regard to Liechtenstein law in general, a transfer of a contract entails that one party to the contract is replaced by a third party. The new party fully replaces the previous one, such that the latter completely withdraws from the contractual relationship. This means that the complete contractual legal status is transferred to an unrelated third party, the transferee of the contract, without any change of content or legal identity of the present contract. This entails that no new assurance relationship is established. Rather, the claims from an existing unchanged contract are transferred against payment.

36 The Liechtenstein Government submits that the Directive does not address legal transactions such as those in which a unit-linked life assurance policy is transferred via a purchase agreement from one person to another. Moreover, it follows from Article 36(4) of the Directive that it is for the EEA State of commitment to lay down the detailed rules for implementing Article 36 and Annex III.

37 According to the Liechtenstein Government, it follows from Article 32 of the Directive that legal transactions concerning contracts falling within the Directive's scope are subject to the law of the respective EEA State. This view is further supported by recital 44 in the preamble to the Directive and case law of the Court (reference is made to *Koch and Others*, cited above, paragraphs 113 and 114).

38 In the event that the Court adopts a different interpretation, the Liechtenstein Government submits that the transfer of a unit-linked life assurance policy by a legal transaction does not constitute a change in the policy conditions. A change in the policy conditions means an additional or altered contract, in other words a "new" contract, as is the case, for example, where an additional risk is covered. This interpretation of the phrase "policy conditions", as used in Annex III(B)(b)(2), is strengthened by the German-language version of the Annex, which refers to a "Zusatzvertrag", which literally means "accessory contract". In any event, the transfer of a unit-linked assurance policy cannot be interpreted as constituting a "change of policy conditions" since the existing policy is not being changed or supplemented.

39 ESA argues that the referring court is mistaken in focusing its first question in each case on Article 36(2) of the Directive, concerning information to be provided "throughout the term of the contract". Rather, ESA contends, the referring court should have focused on Article 36(1) of the Directive, concerning information to be provided "[b]efore the assurance contract is concluded".

40 In order to answer the referring court's first question, ESA submits that the starting point should be the rationale underlying Article 36 of the Directive, which is the protection of policy holders. That entails that Article 36(1) must be examined from

the point of view of policy holders (reference is made to recital 52 in the preamble to the Directive, *Koch and Others*, cited above, paragraph 62, and Case E-1/05 *ESA* v *Norway* [2005] EFTA Ct. Rep. 234, paragraph 42). In this regard, ESA adds that there is no difference from the point of view of the policy holder between the conclusion of a new contract and the acquisition of an existing one. Thus, the person acquiring the second-hand life assurance policy should be considered a new policy holder for the purposes of the obligation to provide information under the Directive and be entitled to the same information as any other new policy holder. With that in mind, ESA suggests that the Court should answer the questions referred on the basis of Article 36 as a whole and not simply on the basis of Article 36(2).

41 Furthermore, ESA argues that the information to be provided during the term of the contract is only effective and relevant if the policy holder has received the information pursuant to Annex III(A) before the conclusion of the contract. If the policy holder has not first been provided with the information required under Article 36(1) of the Directive, he will not be in a position to fully understand the changes occurring to the life assurance product throughout its term. ESA further argues that the interpretation of the principles of national contract law, in particular those applying to the legal transaction that took place between the original and the second-hand policy holder, must be interpreted in a way which does not affect the effectiveness of the Directive.

42 ESA maintains that the transfer of the life assurance policy is undertaken with the consent of the assurer and that the assurance undertaking is thus made aware of the identity of the new potential policy holder before the transfer of the assurance policy takes place. The assurance undertaking is therefore in a position to communicate the information listed in Annex III(A) before the contract is transferred. In addition, in order to be effective, such information should be updated and reflect the situation as it stands at the time of the actual transfer. To take a different approach would run counter to the rationale and effectiveness of the Directive (reference is made to *ESA* v *Norway*, cited above, paragraph 43).

43 The Commission's arguments, with regard to the first question in each case, are substantively the same as those submitted by ESA. In addition, the Commission argues that, although neither Article 36(1) and (2) of the Directive nor Annex III to the Directive deals expressly with the situation of a transfer of a unit-linked life assurance policy from one person to another with the consent of the assurer, the objective of the Directive should nevertheless lead to an interpretation whereby the pre-contractual information requirements and the information requirements during the duration of the contract also apply to such situations.

44 The Commission concedes that, when the second-hand buyer acquires the assurance policy from the original purchaser, an assurance contract already exists. However, this does not preclude the possibility that the acquisition of the insurance policy can be regarded as the conclusion of another assurance contract distinct from the initial one. Moreover, this interpretation is supported by recital 5 in the preamble to the Directive. Furthermore, in the Commission's view, the transfer of

an assurance contract requires the consent of the assurance undertaking as this is a contract of mutual obligations.

Findings of the Court

Article 36(1) of the Directive

45 At the outset, the Court notes that the term "unit-linked life assurance policy" refers to an assurance contract where the original policy holder may not necessarily be the person whose life is insured.

46 Indeed, in Case E-15/15, the original holder of the assurance policy was Goldbank Finance Limited. However, the insured person was Corina Weber. On the transfer of the policy from Goldbank Finance Limited to Mr Hagedorn, no changes were made with respect to the insured person under the contract. In Case E-16/15, the original policy holders, Werner Finzel and Ute Finzel-Heidinger, were also the insured persons. By the time Mr Armbruster acquired the assurance policy from Mrs Finzel-Heidinger, Mr Finzel had passed away. However, no change in the insured person took place on the transfer of the assurance policy to Mr Armbruster.

47 As regards the question why the applicants decided to purchase second-hand life assurance policies despite having no apparent relation to the insured persons, instead of taking out new assurance policies for themselves, the advocate for the applicants stated at the hearing that the interest of the applicants had been to make an investment. More precisely, the applicants were not seeking the insurance aspect of the contracts but a tax advantage. Furthermore, the advocate indicated that unit-linked life assurance policies should mainly be regarded as financial investments.

48 Upon a question from the bench, the advocate for Vienna Life stated that the reason why the applicants did not take out new assurance policies themselves was that, due to tax reasons, it was more beneficial for them to acquire existing assurance contracts. This submission was not disputed by the other parties at the hearing.

49 The Court notes that the Directive was repealed with effect from 1 November 2012 by Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (OJ 2009 L 335, p. 1). Directive 2009/138/EC was incorporated into the EEA Agreement at point 1 of Annex IX to the Agreement by EEA Joint Committee Decision No 78/2011 of 1 July 2011. The dispute in the main proceedings, however, is governed by the 2002 Directive.

50 The Directive was based on Article 47(2) EC and Article 55 EC, according to which directives were to be issued to facilitate the taking-up and pursuit of activities of self-employed persons with a view to the right of establishment and the freedom to provide services. Recital 7 in the preamble to the Directive shows that the approach adopted consists in bringing about only such harmonisation as is essential, necessary and sufficient to achieve the mutual recognition of

authorisations and prudential control systems. As further explained below, recital 44 adds that the harmonisation of assurance contract law is not a prior condition for the achievement of the internal market in assurance.

51 According to recitals 3 and 5 in the preamble, the Directive aims at promoting an internal market in life assurance (see, for comparison, the Opinion of Advocate General Kokott in *RVS Levensverzekeringen NV*, C-243/11, EU:C:2012:546, point 4). Although this represents the main objective of the Directive, recitals 2 and 5 in its preamble demonstrate that it was also meant to ensure adequate protection for policy holders and beneficiaries in EEA States.

52 As regard the latter goal, it is established case law that the Directive aims at protecting consumers through choice based on information. This approach is reflected in recital 52 in the preamble to the Directive, which states that if consumers are to profit fully from wider and more varied choice of contracts, they must be provided with whatever information is necessary to enable them to choose the contract best suited to their needs (see *Koch and Others*, cited above, paragraph 62 and case law cited).

53 However, these considerations are only relevant as far as consumers are in need of protection. As the Court has held in *Koch and Others*, even though life assurance contracts are in general of a complex nature the details of which may be difficult to understand for the average consumer, the Directive does not impose any obligation on the assurance undertaking to provide advice (see *Koch and Others*, cited above, paragraphs 69 and 71).

54 Moreover, the facts of *Koch and Others* must be distinguished from those of the cases at hand, which concern the situation where a policy holder has already concluded an assurance contract and then proceeds to transfer his policy to a new policy holder without any change in the insured risk under the policy. In other words, the insured persons remain the same after the transfer. It is undisputed that assurance undertakings are obliged to provide original policy holders with the information under Article 36(1) in the Directive before the conclusion of unit-linked life assurance contracts. The Court also notes that according to Article 36(2), original policy holders, and those that subsequently purchase such policies, must be kept informed throughout the term of the contract of any change concerning the information listed in Annex III(B).

55 Therefore, the main issue before the Court is whether Article 36 of the Directive places a duty to inform on assurance undertakings with regard to persons that acquire unit-linked life assurance policies from existing policy holders without any change in the insured risk under the policy.

56 In this regard, the Court recalls that, according to Article 2 thereof, the Directive covers the taking-up and pursuit of activities related to certain kinds of assurance, such as life assurance, where they are on a contractual basis. Thus, the duty to inform stemming from Article 36(1) of the Directive is conditional upon the conclusion of an "assurance contract" within the meaning of the Directive.

57 Although the term "assurance contract" appears on several instances in the Directive, it is not expressly defined therein. Nonetheless, this term requires an autonomous and uniform interpretation throughout the EEA.

58 The applicants, ESA and the Commission maintain that the transfer of a life assurance policy from an original policy holder to another person must be seen as a new assurance contract. In this regard, the Court notes that, despite its regulation of issues concerning the transfer of portfolios of contracts, specified in particular in Articles 14 and 53, the Directive does not mention the transfer of life assurance policies from an original policy holder to another person.

59 Furthermore, recital 44 in the preamble to the Directive expressly recognises that the provisions in force in the EEA States differ with regard to the contract law applicable to the activities referred to in the Directive. The recital adds that the harmonisation of assurance contract law is not a prior condition for the achievement of the internal market in assurance. The recital goes on to conclude that, therefore, the opportunity afforded to the EEA States of imposing the application of their law to assurance contracts covering commitments within their territories is likely to provide adequate safeguards for policy holders.

60 Thus, the recital demonstrates that the Directive was not intended to harmonise contract laws among the EEA States in this field, but instead left decisions on the content of contract laws up to the States themselves where the Directive does not expressly provide otherwise. This reading finds further support in recital 7 in the preamble to the Directive. In addition, Article 36(4) of the Directive provides that the detailed rules for implementing Article 36 and Annex III shall be laid down by the EEA State of the commitment.

61 Moreover, it is a prerequisite for a legal transaction to be considered an "assurance contract" within the meaning of the Directive that it entails a new and independent assumption of risk in return for payment. In the present case, it appears that the legal transactions at issue have transferred the underlying assurance contracts from one party to another without there being a change of the pre-existing risk assumption. Notably, the insured person, agreed on by the original parties to the contract, remains the same after the transfer. Accordingly, the Court finds that such a legal transaction does not involve any new and independent assumption of risk.

62 Any assessment of the obligation that Article 36(1) of the Directive places on assurance undertakings must be viewed in light of these factors.

63 Bearing all of this in mind, it is clear from the wording of Article 36(1) of the Directive that an assurance undertaking is obliged to provide its customer with the information referred to in that provision before the conclusion of the assurance contract. After the conclusion of that contract, and with the assurance undertaking having already honoured its obligation, Article 36(1) places no further obligation on that undertaking to communicate information. The only remaining duty to inform then resting on an assurance undertaking under the Directive follows from Article 36(2), dealt with below.

64 The Court thus concludes that Article 36(1) of the Directive does not address legal transactions such as those in which an existing unit-linked life assurance policy is transferred via a purchase agreement from one person to another where the insured risk, namely the insured person, under the assurance policy remains the same. Neither such purchase agreements nor the acknowledgement of such agreements by assurance undertakings constitute "assurance contracts" within the meaning of Article 36(1). The transfer of unit-linked life assurance policies is, as a general rule, governed by national law. This result entails that it is a matter for national law to determine whether, and, if so, to what extent, a transfer of an existing assurance policy should trigger an additional obligation on assurance undertakings to provide second-hand policy holders with information such as that referred to in Article 36(1) of the Directive.

65 For the sake of completeness, the Court adds that the regulatory framework at issue has been subject to revision and amendment. It cannot be ruled out that those changes may place certain obligations of information on assurance undertakings with respect to second-hand policy holders. However, the assessment in the present case must be based on the Directive as it stood at the relevant time.

Article 36(2) of the Directive

66 At the outset, the Court notes that Article 36 of the Directive refers to "policy holders" in general and consequently covers original and second-hand policy holders alike. Thus, Article 36(2) of the Directive may apply in the case at hand if the requirements stipulated therein are fulfilled.

67 According to Article 36(2) of the Directive, a policy holder shall be kept informed throughout the term of the contract of any change concerning the information listed in Annex III(B) to the Directive. Annex III(B) provides that if a change in the policy conditions takes place, all the information listed in points a(4) to a(12) in Annex III(A) must be provided to the policy holder.

68 The applicants argue that the acquisition of an existing assurance policy by a new policy holder through the legal transfer of an assurance contract constitutes a change in the policy conditions that should trigger the application of Article 36(2).

69 These contentions do not find support in the Directive. A "change in the policy conditions" implies that the terms of an assurance policy are being amended, thereby altering the balance of rights and obligations of the parties to an assurance contract. An example of such a change would be if the conditions governing the obligation of payment were amended by making the conditions for paying out the insurance either more or less likely to be triggered. However, a change in the person of the policy holder, taken on its own, while upholding the remainder of the contractual rights and obligations, does not amount to "a change in the policy conditions".

70 The Court therefore holds that the transfer of a unit-linked life assurance policy by a legal transaction does not constitute a change in the policy conditions unless the

terms of an assurance policy are also amended, thereby altering the balance of rights and obligations of the parties. It falls to the referring court to assess the facts of the cases at hand and to determine whether the relevant transfers led to a change in the policy conditions of the unit-linked life assurance policies acquired by the applicants.

71 For the sake of completeness, the Court notes that Annex III(B) to the Directive applies not only to cases where there is a change in the policy conditions but also where an amendment of the law applicable to the contract takes place. The applicants have argued that this condition covers the acquisition of an existing assurance policy by a new policy holder through the legal transfer of an assurance contract. However, they have not furnished any reasoning as to how such circumstances could, even remotely, be seen to apply to the cases at hand. Furthermore, no indication of any relevant amendment of law can be found in the case file. Consequently, this argument merits no further discussion.

72 In light of the above, the answer to the first question in each of the two cases must be that Article 36(1) of the Directive does not address legal transactions such as those in which an existing unit-linked life assurance policy is transferred via a purchase agreement from one person to another where the insured risk, namely the insured person, under the assurance policy remains the same. Furthermore, a transfer of a unit-linked life assurance policy by a legal transaction does not constitute a change in the policy conditions unless the terms of an assurance policy are also amended, thereby altering the balance of rights and obligations of the parties to an assurance contract. It falls to the referring court to assess the facts and to determine whether the relevant transfers led to a change in the policy conditions of the unit-linked life assurance policies acquired by the applicants.

The second set of questions

73 The second set of questions relates in essence to the content and extent of the information which needs to be provided by the assurance undertaking. In light of the answer given to the first question in each of the two cases, the Court finds it appropriate to address these questions, in case the referring court concludes that the transfer of the assurance contract at issue in the main proceedings led to a "change in the policy conditions" as set out above.

Observations submitted to the Court

74 The applicants argue that according to Article 36(2) of the Directive a new policy holder needs to be provided with all the information listed in points (a)(4) to (a)(12) in Annex (B)(b)(2) of the Directive. This includes information specifically relating to the assurance product to be acquired and in particular with regard to any differences between the investor or risk profiles of the existing policy holder and of the transferee. The applicant in Case E-15/15 maintains, in relation to Question 2(b), that in the event a unit-linked life assurance policy is acquired by a natural person or a consumer from an undertaking, the assurer has to provide all the information listed in points (a)(4) to (a)(12) in Annex (B)(b)(2) of the Directive to

the new policy holder, since an undertaking and a consumer are in significantly different positions as regards their need for protection. With regard to Question 2(c), the same applicant submits that the Directive does not provide for the possibility to dispense with information regarding the insurance product. Hence, the assurer is not able to rely on a decision by the original policy holder to dispense with information. *In eventu*, the applicant maintains that the transferee's right to be informed about the insurance product shall not be affected by any undertaking given to the assurer by the transferor to dispense with information.

75 Both defendants submit that, according to the Directive, the assurer must provide information and not advice. Vienna Life adds that the information to be provided under the Directive is purely factual information and thus not affected by the risk and/or investor profile of the individual policy holder. With regard to Question 2(b), Vienna Life submits that according to the Directive it is irrelevant for the information obligation of the assurer whether the policy holder is a legal entity or a natural person. The information specified in Annex III of the Directive has been regarded as sufficient by the European legislative bodies to protect consumers. As regards Question 2(c), Vienna Life contends that any consequences for the purchase of the second-hand policy resulting from a waiver of advice by the original policy holder must be determined not by reference to the Directive but in accordance with national law.

76 With regard to Questions 2(a), 2(b) and 2(c) the Liechtenstein Government refers to its proposed answer to the first question, where it contends that the first question should not be answered in the affirmative. *In eventu*, the Government submits that, according to the Directive, an assurance undertaking has to communicate the information listed in Annex III(A) when a contract is concluded or the information listed in Annex III(B) during the term of the contract. The Directive does not stipulate any further information duties. Nor are assurance undertakings obliged to provide advice. With regard to Question 2(b), the Government of Liechtenstein argues that the term "consumer" is not used in the Directive. Thus, the Directive does not impose an obligation to provide specific information to the transferee of the contract when the original policy holder was an undertaking while the transferee is a natural person or a consumer. On Question 2(c), the Government submits that the Directive does not require specific information to be given to the transferee where the transferor dispensed with information regarding the insurance product.

77 ESA argues that the referring court distinguishes between "general information", which it understands as information listed under Annex III(A) of the Directive, and "specific information regarding the insurance product", which is based on the investment and risk profile of the second-hand policy buyer. However, as regards "general information", ESA maintains that the obligation imposed on the assurance undertaking under the Directive should be limited to the provision of the information listed in Annex III(A) of the Directive. It adds, however, that the Directive does not preclude national legislation establishing an obligation to provide specific information concerning the unit-linked life assurance to the

second-hand buyer, provided that this does not affect the effectiveness of the Directive and as long as the additional information is necessary, clear and accurate.

78 With regard to the second question in each case, the Commission submits that it follows from its proposed reply to the first question, namely that Article 36 and Annex III of the Directive apply regardless of the issue whether technically there is a new policy or the transfer of an existing policy with the consent of the assurance undertaking, that the prospective policy holder will need to receive all the relevant information set out in Annex III pre-contractually and during the term of the contract. For this reason, the Commission does not consider it warranted to distinguish between general information and product-specific information.

Findings of the Court

79 By Question 2(a) in Case E-15/15 and the second question in Case E-16/15, the referring court seeks, in essence, guidance on the content of information to be given to the second-hand policy holder.

80 The Court recalls that Article 36 of the Directive and Annex III thereto show that the legislature considered the information required pursuant to these provisions sufficient to protect the average consumer (compare *Koch and Others*, cited above, paragraph 70).

81 The information listed in Annex III to the Directive must be provided in writing in a clear and accurate manner and in an official language of the EEA State of commitment (compare *Koch and Others*, cited above, paragraph 85).

82 Further, the information communicated to the policy holder pursuant to Annex III of the Directive must be complete (compare *Koch and Others*, cited above, paragraph 88).

83 Thus, in answer to Question 2(a) in Case E-15/15 and the second question in Case E-16/15, the Court finds that, if a "change in the policy conditions" within the meaning of the Directive has taken place, the referring court needs to consider whether the information listed in Annex III(B)(b)(2) was provided to the second-hand policy holder in a clear, accurate and complete manner, in writing, and in an official language of the EEA State of commitment.

84 This finding is not altered by the fact that the former policy holder may have been an undertaking and the new policy holder a consumer, unless this difference in the person of the policy holder has also led to an amendment of the terms of the assurance contract. In this regard, the fact that an insurance undertaking has consented to a change in policy holder does not in itself amount to an amendment of the terms when this consent does not affect the balance of rights and obligations of the parties to an assurance contract.

85 In answer to Question 2(b) it is thus of no significance for the information obligation of the assurance undertaking whether the former policy holder was an

undertaking and the new policy holder is a consumer, unless this difference has led to an amendment to the terms of the assurance contract.

86 By Question 2(c), the referring court asks whether specific information is to be given to the second-hand policy holder if the original policy holder dispensed with information regarding the assurance product in question, for example because he/she did not disclose to the assurance undertaking the information necessary in order to assess his/her own risk or investor profile.

87 First, the Court recalls that the Directive does not require the assurance undertaking to provide advice to the policy holder (*Koch and Others*, cited above, paragraph 78).

88 Second, as outlined above, Article 36 of the Directive and Annex III thereto show that the legislature considered the information required pursuant to these provisions sufficient to protect the average consumer before the contract is concluded. In this regard, it should be added that the Court has also ruled that where any part of the information listed in Annex III(A) has not been provided to the policy holder before the contract is concluded, such a contract is not concluded in accordance with the requirements of the Directive (*Koch and Others*, cited above, paragraph 89).

89 In answer to Question 2(c), the Court thus finds that the information listed in Annex III(A) of the Directive solely relates to "information about the assurance undertaking" and "information about the commitment". Consequently, whether or not the original policy holder disclosed information about himself so that his own risk or investor profile could be assessed is of no relevance for the information obligation of the assurance undertaking under the Directive.

The third set of questions

90 By its third question in each of the two cases the national court asks, in essence, whether the provisions concerning the assurer's obligations under Annex III(B)(b)(2) of the Directive are effectively transposed into national law even if national law provides, in the case of unit-linked assurance policies, that during the term of an assurance contract information must be provided on the units underlying the assurance policy and the nature of the assets contained therein only where the changes in the information provided stem from "amendments of the law" but not also "in the event of a change in the policy conditions".

Observations submitted to the Court

91 Both applicants argue that Liechtenstein has implemented the Directive too narrowly into national law.

92 Swiss Life argues that the question lacks relevance and should not be answered. Vienna Life concurs with Swiss Life and adds that the question is purely hypothetical.

93 The Liechtenstein Government submits that it is not for the Court to assess under the Article 34 SCA procedure whether national law is compatible with EEA law. Therefore, the third question is for the referring court to decide.

94 ESA argues that it is for the national court to assess whether it is possible in the present case to interpret the national provisions transposing Article 36(2) of the Directive into the Liechtenstein legal order in a manner harmonious with the actual meaning of the Directive, i.e. that the policy holders shall be kept informed throughout the term of the contract of any change concerning the information listed in Annex III(B).

95 The Commission submits that any transposition of Annex III(B)(b)(2) of the Directive needs to ensure the necessary information requirements in two distinct cases, i.e. when there is, first, a change in the policy conditions, and, second, an amendment of the law applicable to the contract. Whether Liechtenstein legislation can be interpreted in a way that reflects the requirements of the Directive is a matter for the national court to establish.

Findings of the Court

96 It is settled case law that directives must be implemented into the national legal order of the EEA States with unquestionable binding force and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty. EEA States must ensure full application of directives not only in fact but also in law. It is essential that the legal situation resulting from national implementing measures be sufficiently precise and clear and that individuals be made fully aware of their rights so that, where appropriate, they may rely on them before the national courts. Moreover, EEA States may not apply rules which are liable to jeopardise the achievement of the objectives pursued by a directive and, therefore, deprive it of its effectiveness (see Case E-3/15 *Liechtensteinische Gesellschaft für Umweltschutz*, judgment of 2 October 2015, not yet reported, paragraph 33 and case law cited).

97 Furthermore, it is inherent in the objectives of the EEA Agreement that national courts are obliged to interpret national law in conformity with EEA law. They are bound by EEA law to apply, as far as possible, the methods of interpretation recognised by national law in order to achieve the result sought by the relevant rule of EEA law, and consequently comply with Articles 3 and 7 EEA and Protocol 35 EEA. When interpreting national law, national courts will consider any relevant element of EEA law, whether implemented or not. These obligations arise on the day the respective legal act is made part of the EEA Agreement. The national rules in the present case must be interpreted with those obligations in mind (see *Liechtensteinische Gesellschaft für Umweltschutz*, cited above, paragraph 74 and case law cited).

98 Under Article 34 SCA, the Court has jurisdiction to give advisory opinions on the interpretation of the EEA Agreement upon the request of national courts. After the Court has rendered its judgment, it falls to the referring court to interpret national

law in light of the factors clarified above. In cases where a conform interpretation of national law is not sufficient to achieve the result sought by the relevant EEA rule, that matter may be brought before the Court under the procedure prescribed by Article 31 SCA.

99 The answer to the third question in each of the two cases must therefore be that directives must be implemented into the national legal order of the EEA States with unquestionable binding force and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty. Furthermore, national courts are bound to interpret national law in conformity with EEA law. Under Article 34 SCA, the Court has jurisdiction to give advisory opinions on the interpretation of the EEA Agreement upon the request of national courts. After the Court has rendered its judgment, it falls to the referring court to interpret national law in light of the factors clarified above. In cases where a conform interpretation of national law is not sufficient to achieve the result sought by the relevant EEA rule, that matter can be brought before the Court under the procedure prescribed by Article 31 SCA.

V Costs

100 The costs incurred by the Liechtenstein Government, ESA and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Supreme Court of the Principality of Liechtenstein hereby gives the following Advisory Opinion:

1. **Article 36(1) of Directive 2002/83/EC does not address legal transactions such as those in which an existing unit-linked life assurance policy is transferred via a purchase agreement from one person to another where the insured risk, namely the insured person, under the assurance policy remains the same. A transfer of a unit-linked life assurance policy by a legal transaction does not constitute a change in the policy conditions unless the terms of the assurance policy are also amended, thereby altering the balance of rights and obligations of the parties to the assurance contract. It falls to the referring court to assess the facts of the cases and to determine whether the relevant transfers led to a change in the policy conditions of the unit-linked life assurance policies acquired by the applicants.**

2. **If a "change in the policy conditions" within the meaning of the Directive has taken place, the referring court needs to consider whether the information listed in Annex III(B)(b)(2) was provided to the second-hand policy holder in a clear, accurate and complete manner, in writing, and in an official language of the EEA State of commitment.**

3. **It is of no significance for the information obligation of the assurance undertaking whether the former policy holder was an undertaking and the new policy holder is a consumer, unless this difference has led to an amendment to the terms of the assurance contract.**

4. **The information listed in Annex III(A) of the Directive solely relates to "information about the assurance undertaking" and "information about the commitment". Consequently, whether or not the original policy holder disclosed information about himself so that his own risk or investor profile could be assessed is of no relevance for the information obligation of the assurance undertaking under the Directive.**

5. **Directives must be implemented into the national legal order of the EEA States with unquestionable binding force and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty. Furthermore, national courts are bound to interpret national law in conformity with EEA law. Under Article 34 SCA, the Court has jurisdiction to give advisory opinions on the interpretation of the EEA Agreement upon the request of national courts. After the Court has rendered its judgment, it falls to the referring court to interpret national law in light of the factors clarified by the Court. In cases where a conform interpretation of national law is not sufficient to achieve the result sought by the relevant EEA rule, that matter may be brought before the Court under the procedure prescribed by Article 31 SCA.**

Carl Baudenbacher Per Christiansen Páll Hreinsson

Delivered in open court in Luxembourg on 10 May 2016.

Gunnar Selvik
Registrar

Carl Baudenbacher
President