INFORMATION NOTE

A request from the Princely Supreme Court (Fürstlicher Oberster Gerichtshof), dated 27 May 2025 was lodged on 11 June 2025, requesting the EFTA Court give an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. This request was registered as Case E-9/25 - *Peter Plörer v LGT Bank AG,* on 11 June 2025.

In the request for an advisory opinion the Princely Supreme Court sent the following questions to the EFTA Court;

1. *Must Article 15(1) of the Second Directive 90/619/EEC, Article 35(1) of Directive 2002/83/EC and Article 186(1) of Directive 2009/138/EC and the principle handed down in that connection that these provisions do not preclude national legislation providing for a limitation period of 3 years for the exercise of the right to remuneration interest, associated with the repayment of sums due to unjust enrichment, requested by a policyholder who has exercised his or her right of cancellation, provided that establishment of such a period does not undermine the effectiveness of that policyholder's right of cancellation be applied also in a case in which, following the declaration of invalidity of a term in accordance with the provisions of MiFID I, a non-professional client of an investment service provider is entitled to remuneration interest on the sums of money withheld due to the invalidity of the term (benefits from third parties such as fees or commissions in relation to the provision of an investment or ancillary service within the meaning of Article 26(b)(i) of the Implementing Directive), subject to the proviso that, in place of possibly undermining the right to cancel the insurance contract, the undermining of the right to assert his claim to recover the benefits or an undermining of a different kind applies if he does not also receive interest for a period of up to 30 years?*

2. *If the first question is answered in the negative, the referring court asks the following:*

   *Must Article 19 of MiFID I and Article 26 of the Implementing Directive 2006/73/EC, where necessary in conjunction with Article 6(1) and Article 7(1) of Directive 93/13, and having regard to the principles of effectiveness and equivalence, be interpreted as meaning that they preclude a national provision and consistent case law in that connection according to which, following the declaration of invalidity of a term in accordance with the provisions of MiFID I, the remuneration interest to which a non-professional client is entitled on the sums of money withheld due to the invalidity of the term (benefits from third parties such as fees or commissions in relation to the provision of an investment or ancillary service within the meaning of Article 26(b)(i) of the Implementing Directive) is subject to a limitation period for which the starting point is the date on which it becomes objectively possible to bring an action for the interest whereas subjective individual impediments such as an error on the part of the person entitled or total lack of awareness of the right* *do not affect the starting point of the limitation period and this results in a de facto limitation on the right to remuneration interest for the loss of use of the sums withheld to the last three years before lodging the action?*

On 24 July 2025, in accordance with Article 20 of the Statute and Article 90(1) of the Rules of Procedure of the EFTA Court, the Governments of the EFTA States, the EFTA Surveillance Authority, the Union (which includes the Governments of the EU States), the European Commission and the parties to the dispute were invited to submit written observations to the Court on the referred questions within a two month deadline.

The Court received and registered written observations from:

Peter Plörer

LGT Bank AG

The Government of Liechtenstein

The EFTA Surveillance Authority

The European Commission

The submitted suggested answers to the questions posed by the referring Court are as follows:

**Peter Plörer**

1. Art 15(1) of the Second Directive 90/619/EEC, Art 35(1) of Directive 2002/83/EC and Art 186(1) of Directive 2009/138/EC and the decision of the European Court of Justice (ECJ) of 19 December 2019, C-355/18 to C-357/18 and C-479/18 Rust-Hackner et al regarding the rights and claims of a holder of a Life insurance policy for (late) withdrawal does not apply to claims for repayment of illegally concealed and withheld kickbacks and interest based on the invalidity of a provision in general terms and conditions of a financial service provider pursuant to the Directive 93/13/EEC on Unfair Terms in Consumer Contracts and Directive 2006/73/EC MiFID I.

2. Directive 93/13/EEC on Unfair Terms in Consumer Contracts, Directive 2006/73/EC MiFID I and the Principle of Effectiveness must be interpreted as a.) precluding a national provision rendering interest claims time-barred before the customer was even aware of the relevant facts and legal assessment giving rise to his claims and b.) requiring national law to provide for an appropriate timeframe of at least three to five years (depending on the complexity of the facts and the legal issues in the individual case) after the customer has received the necessary information.

**LGT Bank AG**

1. The interpretation of provisions of the insurance Directives listed in the first question referred is not relevant for the decision, which is why the request must be rejected as far as this item is concerned.

   Regardless of the lack of relevance for the decision, it must be noted that the principle of effectiveness as characterised in the case law on Union law must be observed in proceedings to enforce claims under Union law. Insofar, the case law of the European Court of Justice and the criteria developed in that case law - as mentioned in the first question referred - do play a role in assessing the effectiveness of the enforcement of rights.

2. Considering procedural autonomy (modified by the principles of effectiveness and equivalence), the mentioned provisions of EEA law, i.e. Article 19 MiFID I and Article 26 of Implementing Directive 2006/73/EC as well as Article 6(1) and Article 7(1) of the Unfair Contract Terms Directive, do not preclude rules of national law (and settled case law issued on it) according to which the assertion of remuneration interest on claims for restitution resulting from the voidness of a clause that is contrary to EEA law is subject to a period of limitation of three years, starting upon the objective possibility of assertion.

   One may conclude from the handling of the principle of effectiveness in the case law of the ECJ and in particular considering the review criteria developed therein (in particular consumer protection, legal certainty, and consideration of the legal situation) that a three-year limitation period for the remuneration interest presently in dispute does not contradict the principle of effectiveness, in particular given that this limitation period does not directly affect the right to assert the unfairness of the clause and the claim for restitution.

**The Government of Liechtenstein**

1. The first question must be answered in the affirmative.

2. In light of the answer to the first question, the Liechtenstein Government does not consider it necessary for the EFTA Court to answer the second question.

**The EFTA Surveillance Authority**

1. EEA law does not preclude a provision of national law that subjects a claim for remuneration interest on inducements withheld under a contract term found contrary to Article 19 of MiFID I and Article 26 of the Implementing Directive to a

three-year limitation period, provided that it does not undermine the principles of equivalence and effectiveness, which is for the Referring Court to assess. The analysis must cover the duration of the limitation period and the event used to start the period running, and be made by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies. Hence, the reasoning and result in Rust-Hackner, related to Article 15(1) of the Second Directive 90/619/EEC, Article 35(1) of Directive 2002/83/EC and Article 186(1) of Directive 2009/138/EC, cannot be directly transposed to a specific case under MiFID I and the Implementing Directive.

2. EEA law, specifically Article 19 of MiFID I and Article 26 of the Implementing Directive, in conjunction with Article 6(1) and Article 7(1) of Directive 93/13, and having regard to the principle of effectiveness, precludes a provision of national law or national case law that subjects a claim for remuneration interest on inducements withheld under a contract term found contrary to Article 19 of MiFID I and Article 26 of the Implementing Directive to a three-year limitation period that starts to run notwithstanding the client's lack of awareness of that right.

**The European Commission**

The Commission considers that the questions referred to the EFTA Court by the Fürstlicher Oberster Gerichtshof should be taken together and answered as follows:

The principle of effectiveness must be interpreted to preclude a national procedural rule that makes it excessively difficult or impossible in practice to exercise the rights conferred by EEA law, having regard to the need to ensure an appropriate deterrent effect in respect of breaches of those rights. In assessing whether this is the case, the national court must have regard to the place of that provision in the proceedings as a whole, the way in which they are conducted and their particular features.

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The public hearing of the Court in Case E-9/25 – Peter Plörer v LGT Bank AG, has been set for: Tuesday 11 November at 9:30am at the EFTA Court (1 rue du Fort Thűngen, L-1499, Luxembourg). The hearing will also be livestreamed on the Court's website, here.

Luxembourg, 15 October 2025

Ólafur Jóhannes Einarsson

Registrar