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Judgment in Joined Cases E-15/15 and E-16/15 *Franz-Josef Hagedorn v Vienna-Life Lebensversicherung AG Vienna Life Insurance Group and Rainer Armbruster v Swiss Life (Liechtenstein) AG*

INFORMATION OBLIGATIONS OF ASSURANCE UNDERTAKINGS WITH REGARD TO SECOND-HAND POLICY HOLDERS

In a judgment delivered today, the Court answered the questions referred to it by the Supreme Court of the Principality of Liechtenstein (*Fürstlicher Oberster Gerichtshof*), on the interpretation of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (“the Directive”).

Franz-Josef Hagedorn and Rainer Armbruster (“the applicants”), had purchased second-hand unit-linked life assurance policies from an undertaking and individuals who had originally concluded the contracts with Vienna-Life Lebensversicherung AG Vienna Life Insurance Group and Swiss Life (Liechtenstein) AG (“the defendants”) respectively. The defendants are registered in Liechtenstein and have a licence to provide life assurance. Both applicants suffered substantial losses on their investments. The cases before the Supreme 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. Article 36(1) of the Directive states that, before the assurance contract is concluded, at least the information listed in Annex III(A), which concerns the assurance undertaking and the commitment, shall be communicated to the policy holder. Under Article 36(2), the policy holder shall, *inter alia*, be kept informed throughout the term of the contract of any change in the policy conditions.

The Court held that Article 36(1) of the Directive does not address legal transactions according to 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 does not constitute a change in the policy conditions under Article 36(2) 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 exact 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.

With regard to the referring court’s further questions on specific information duties under the Directive, the Court found, first, 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 and in an official language of the EEA State of commitment. Second, 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. Neither is it of significance whether or not the original policy holder disclosed information about himself so that his own risk or investor profile could be assessed.

As to the referring court's question whether Annex III to the Directive has been correctly transposed into Liechtenstein law, the Court held 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 of the Surveillance and Court Agreement ("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 Court's findings. In cases where a harmonious 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.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

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