Case E-9/25-3

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Written Observations
by the defendant in national proceedings

Court requesting an advisory opinion: **Fürstlicher Oberster Gerichtshof**
Spaniagass 1
LI-9490 Vaduz

("OGH")

Plaintiff in national proceedings: **Peter Ploerer**
XXX
XXX

Represented by:
Dr. Alexander Amann, LL.M.
Industriegasse 16
9487 Gamprin-Bendern

("the plaintiff")

Defendant in national proceedings:

LGT Bank AG
Herrengasse 12
LI-9490 Vaduz

Represented by
(Power of Attorney dated 16.09.2025):

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("the defendant")

via e-EFTACourt (Article 54 (8) Rules of Procedure of the EFTA Court)

The attorneys for the defendant were informed by letter dated 24 July 2025, which was served on 24 July 2025, that the defendant is entitled to submit to the EFTA Court written observations and that written observations must be lodged at the EFTA Court by 24 September 2025 (the "deadline").

The defendant herewith submits to the EFTA Court within the deadline the following

Written Observations.

1. Introduction and overview

1 The proceedings pending in Liechtenstein, which gave rise to the request for an opinion, concern a dispute between a bank (defendant) and an Austrian citizen (plaintiff) who maintained a banking and custodian account relationship with the defendant from 22 September 2004 to 31 January 2012. The plaintiff filed a (staged) claim for accounting and disclosure against the defendant with the first instance court on 11 February 2019. This claim was granted by a final partial judgment of the first instance court dated 12 May 2020, and the plaintiff subsequently specified his exact claim for compensation in his preparatory written submission dated 8 August 2022. With its final judgment dated 23 November 2022, the first instance court ruled in favor of the plaintiff and held the defendant liable for paying the plaintiff a specific amount of received benefits along with interest staggered over the years.

2 This was followed by further instances of appeal concerning the interest to be awarded. Most recently, after its judgment of 1 March 2024 had been annulled by the State Court (hereinafter "StGH") on 27 May 2025 for lack of reasoning, the Princely Supreme Court (hereinafter "OGH") decided to refer the following two questions to the EFTA Court for an opinion:

3 First question:

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 provison 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?

4 In the event that the first question is answered in the negative, the OGH asked the following second question:

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?

5 At the current stage of the proceedings, the case concerns only the ancillary claim to the main claim, namely the annually staggered interest of 5%, whereby the commencement and statute of limitations for asserting the claim is disputed. The applicable limitation provision is a purely domestic provision with no connection to EEA law, which is why it is already clear that the EFTA Court **is not competent to issue an opinion.** The defendant explains its position on this in detail in section 2.

6 In the event that the EFTA Court answers the questions in its opinion, reference is made to the comments in section 3.

7 To support its legal position, the defendant has obtained a legal opinion on the assessment of the limitation period on interest under European law for claims for restitution from Univ. Prof. DDr. Dr.h.c. Christoph Grabenwarter. This opinion is reproduced in excerpts in this statement and is also attached in its entirety. The expert was specifically commissioned to assess the facts

of the case in the event that, contrary to expectations, the EFTA Court should affirm EEA relevance.

2. Admissibility – No EEA relevance

2.1 The EFTA Court does not have jurisdiction to give an advisory opinion

8 According to settled case law, the advisory opinion is a specially established means of judicial cooperation between the EFTA Court and national courts with the aim of **providing the national courts with the necessary elements of EEA law to decide the cases before them.**[1] Conversely, the advisory opinion procedure is not meant to answer general or hypothetical questions[2], which are not necessary for the national court to give judgment.

9 Furthermore, within the framework of the advisory opinion procedure, the EFTA Court may only give an advisory opinion concerning the interpretation of a provision of EEA law. The EFTA Court does **not have jurisdiction** to **interpret national law,** including assessments of whether national law is in conformity with EEA law.[3] The same is true for questions regarding national law applied to purely domestic legal relationships which do not result from the implementation of EEA law into national legal regimes.

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1 See, for example, Case E-1/95 Ulf Samuelsson v Svenska staten [1994-1995] EFTA Court Report 145, para. 13. Cf. also the judgment of the ECJ of 24 October 1996 in Case C-217/94 Eismann Alto Adige Srl v Ufficio IVA di Bolzano, not yet reported.

2 See Case E-6/96 Wilhelmsen [1997] EFTA Ct. Rep. 56, paras. 39 and 40.

3 Case E-1/07, Judgment of the Court of 3 October 2007, margin no. 34; Case E-11/12, Beatrix Koch, Lothar Hummel and Stefan Müller and Swiss Life (Liechtenstein) AG, judgment of the Court of 13 June 2013, para. 60. The EFTA Court itself states the same in its Note for Guidance on Requests by National Courts for Advisory Opinions: "The request for an advisory opinion must be limited to the interpretation of a provision of EEA law, since the EFTA Court does not have jurisdiction to interpret national law. It is for the referring court or tribunal to apply the relevant rule of EEA law in the specific case before it". (https://eftacourt.int/the-court/guidance-for-advisory-opinion/)

10 Pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the EFTA Court shall give advisory opinions on the interpretation of the EEA Agreement. Where a question of this nature is raised before a court of an EFTA State, and that court considers a decision on the matter necessary to give judgment, it may refer the question to the EFTA Court for a ruling. According to the wording of this provision, the supreme courts of the EFTA States – in contrast to comparable courts in Member States of the European Union under Article 267(3) TFEU – are not subject to a strict obligation to refer.

11 However, even assuming such an obligation existed, the OGH would not be required to refer the question of the limitation period for interest on remuneration in the present case, given the case law of the Court of Justice of the European Union (hereinafter: 'CJEU') on the principle of effectiveness in relation to interest, because, as will be explained below, there is no question of doubt that would require clarification by the EFTA Court. Rather, the situation must be regarded as a case of *acte clair*.

12 Taking into account the course of the proceedings to date and the decisions rendered in this context on the one hand, and the requirements of European law and the relevant case law on the other, it is clear that, in connection with the assessment of the length of the limitation period for interest on claims for restitution, there is no question of interpretation of the Treaties that would need to be submitted to the EFTA Court for a preliminary ruling.

13 Already Article 88(2) of the Rules of Procedure of the EFTA Court, which requires a connection between the provisions of EEA law to be interpreted and the national law at issue in the main proceedings, makes it clear that the question referred must be relevant for the decision. The Guidance on Requests by National Courts for Advisory Opinions also states as follows: "*The request for an advisory opinion must be limited to the interpretation of*

a provision of EEA law, since the EFTA Court does not have jurisdiction to interpret national law. It is for the referring court or tribunal to apply the relevant rule of EEA law in the specific case pending before it." [4]

14 In this context, and thus with regard to the required relevance for the decision, the first question referred is in fact lacking: While the OGH implicitly assumes a connection by arguing that the "legal principles set out by the CJEU in the Rust-Hackner[5] case were adopted by the Austrian Supreme Court (hereinafter "Austrian OGH") in its case law on the reception basis of § 1480 Austrian Civil Code (hereinafter "ABGB)" (see p. 33 of ON 109), in fact the Austrian OGH[6], following the Rust-Hackner decision, proceeded on the basis that the principle of effectiveness does not fundamentally conflict with the limitation period under § 1480 ABGB, but that the question of whether Union law precludes a limitation period of three years must be examined and answered based on the specific circumstances of the individual case (see also section 3.2.6). This case-specific approach is already evident

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4 See the guidance at https://eftacourt.int/wp-content/uploads/2023/09/227858_EFTA_COURT_LEGAL_BOOKS_INT_EN.pdf?x67021 (Status of the text collection 2023), p. 131.

5 For individual case assessments see para. 119 in joined Cases C-355/18 to C-357/18 and C-479/18: Judgment of the Court (Third Chamber) of 19 December 2019 (request for a preliminary ruling from the Landesgericht Salzburg, Bezirksgericht für Handelssachen Wien — Austria) — Barbara Rust-Hackner (C-355/18), Christian Gmoser (C-356/18), Bettina Plackner (C-357/18) v Nürnberger Versicherung Aktiengesellschaft Österreich and KL v UNIQA Österreich Versicherungen AG, LK v DONAU Versicherung AG Vienna Insurance Group, MJ v Allianz Elementar Lebensversicherungs-Aktiengesellschaft, NI v Allianz Elementar Lebensversicherungs-Aktiengesellschaft (C-479/18), ECLI:EU:C:2019:1123 **[hereinafter referred to as „Rust-Hackner et al."]**.

6 Judgment Austrian OGH of 24 April 2020, Case 7 Ob 11/20y, ECLI:AT:OGH0002:2020:0070OB00011.20Y.0424.000.

from the case law of the CJEU[7] and is also reflected in the literature on Union law.[8]

15 An alleged relevance of Directive 90/619/EEC on the coordination of laws, regulations and administrative provisions relating to direct life assurance, Directive 2002/83/EC concerning life assurance, and Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) is neither present in the case at hand nor has this been substantiated by the OGH. It is obvious that these directives bear no connection to the subject matter of the main proceedings. Neither in its judgment of 1 March 2024 nor in its order for reference does the OGH rely on provisions implementing these directives; rather, the applicable provisions are those of civil law and banking law adopted on the basis of MiFID I and the MiFID Implementing Directive, which, however, are likewise irrelevant in relation to the limitation of interest claims anchored in national law.

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7 See e.g. para. 80 in joined Cases C-295/04 to C-298/04: Judgment of the Court (Third Chamber) of 13 July 2006, Vincenzo Manfredi v Lloyd Adriatico Assicurazioni SpA (C-295/04), Antonio Cannito v Fondiaria Sai SpA (C-296/04) and Nicolò Tricarico (C-297/04) and Pasqualina Murgolo (C-298/04) v Assitalia SpA, ECLI:EU:C:2006:461 **[hereinafter referred as „Manfredi et al."]**: „It is for the national court to determine whether such is the case with regard to the national rule at issue in the main proceedings"; para. 117 in Rust-Hackner et al. („However, it is for the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) to determine whether the application of a limitation period in respect of the exercise of the right to remuneration interest is capable of undermining the effectiveness of the right of cancellation itself, such a right being granted to the policyholder under EU law."). Furthermore, this can be inferred from wording that refers to possibilities or additional circumstances and thus indicates that the referring court is examining precisely these circumstances: e.g. para. 92 in joined cases C-224/19 und C-259/19: Judgment of the Court (Fourth Chamber) of 16 July 2020, CY and Others v Caixabank SA and Banco Bilbao Vizcaya Argentaria SA, ECLI:EU:C:2020:578 **[hereinafter referred to as „Caixabank et al."]**, („provided that the starting point and duration of that period do not make it practically impossible or excessively difficult for the consumer to exercise his or her right to seek such a refund").

8 See e.g. *Craig/de Búrca*, EU Law[8] (2024) p. 272 („each national provision governing enforcement of an EU right before national courts must be examined and weighed not in the abstract, but in the specific circumstances of each case").

16 The mere fact that the StGH, in its judgment of 2 December 2024, referred to the CJEU's decision in the Rust-Hackner case in assessing the effects of the principle of effectiveness does not mean that the directives underlying that case are applicable to the limitation issue at hand. Nor does the fact that this CJEU judgment may indeed be relevant for interpretation in the present case alter this. The OGH itself expressly denied such a connection in its order of 27 May 2025 and ultimately refuted any alleged link.[9] *Grabenwarter* also rightly points out in the attached opinion: "*A request for an advisory opinion pursuant to Art. 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice may only have the Interpretation of the EEA Treaty as its subject, but not – as is requested here – the assessment of the legal views of other courts without relation to the legal rules to be applied.*"[10]

17 In sum, this means that the EFTA Court may only be called upon where the correct interpretation of EEA law is **relevant for the decision** in the pending proceedings. The required relevance for the decision "*puts emphasis on the requirement of prejudicial nature: if the* ***legal act does not have to be applied in the proceedings at all, it is not prejudicial, and the way it has to be interpreted may remain open***"[11]. In the present case, there is undoubtedly no relevance for the decision, since the purely domestic dispute concerns only an ancillary claim, namely the limitation of interest on a restitution claim, without any connection to EEA law. The OGH's request for an advisory opinion from the EFTA Court was therefore inadmissible, as any link to EEA law is lacking. For this reason alone, the EFTA Court must dismiss the questions referred without providing an answer.

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9 OGH order of 27 May 2025 (ON 109, 08 CG.2022.207, OGH.2025.9), pp. 35 et seq.

10 Legal opinion on the assessment under European law of the limitation period on interest for claims for restitution, prepared by Univ.Prof. DDr. Dr.h.c. Christoph Grabenwarter in collaboration with Univ.Ass. Dr. Caroline Lechner-Hartlieb **[hereinafter referred to as „*Grabenwarter*, Legal Opinion"]**, p. 10.

11 Judgment StGH 2013/172 of 07 April 2014 (LES 2014 148).

2.2 No relevance to EEA law

18 First of all, it must be made clear that no Union law "rights" are affected in the present case. The Liechtenstein statutory provisions on the limitation of interest, as well as the established national case law on the commencement of the accrual of interest, are clear and unambiguous.

19 There are no provisions in the MiFID Regulation[12], the Unfair Terms Directive[13] or elsewhere in EEA law that dictate how the limitation of interest is to be regulated under national law. It is up to the national legislature to determine the statute of limitations in its own national law through the democratic process. Any limitations, if they exist at all, would – in light of the EU principle of effectiveness and according to relevant case law of the CJEU – only apply if the national rules practically prevent or excessively hinder a person from asserting their rights before national courts in matters falling within the scope of Union law. The StGH also noted that the OGH would have to justify why, in the specific case, the applicable interest payment provision (meaning § 1480 ABGB) would exceptionally prevent the customer from asserting his claim for the restitution of kickbacks (benefits) or otherwise impair him in any way.[14]

20 Neither the civil law claim for restitution pursuant to § 1009 ABGB (i.e. the main claim in the underlying multi-stage action, which is no longer at issue in the present proceedings), nor the provisions on the accrual of interest on such claims, nor the limitation provisions under the ABGB (in this case

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12 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 and Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast).

13 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

14 Judgment StGH 2024/035 of 2 December 2024, consideration 3.6 in the reasoning.

§ 1480 ABGB) fall within the scope of EEA law. § 1009 ABGB, which essentially forms the basis of the underlying facts of the case, regulates a civil law restitution claim under which the agent is obliged to surrender to the principal any benefits arising from the transaction. However, § 1009 ABGB is not an implementation measure of the MiFID framework or any other EEA directive, but rather a civil law remedy for asserting any restitution claims against an agent/mandatary. § 1009 ABGB has existed for more than 150 years. MiFID I was only transposed into national law in 2008, and MiFID II only in 2018 (i.e. after the termination of the present banking relationship). The Unfair Terms Directive (Directive 93/13/EEC on unfair terms in consumer contracts) has existed in the EU since 1993 and was only transposed into national law with the Consumer Protection Act (hereinafter "KSchG") in 2002.[15] The KSchG contains no specific provisions on the limitation of interest claims. Moreover, the introduction of the KSchG was neither intended nor designed to amend or otherwise adapt the limitation provisions of the ABGB, in particular § 1480 ABGB.[16]

21 It is therefore not apparent to what extent the application of § 1480 ABGB would affect EEA (rights) at all, let alone how it would fail to comply with the requirements of the EU principle of effectiveness. Accordingly, it is entirely unclear which specific "rights conferred by Union Law" would be impaired by the application of the national provisions on the limitation of interest claims and on the commencement of the accrual of interest. In ON 90, the OGH merely argued that a three-year limitation period for interest would impair the plaintiff's right to adequate compensation, as derived from the principle of effectiveness, and that therefore interest would have to cover the

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15 Report and Motion of the Government to the Parliament of the Principality of Liechtenstein concerning the creation of a Consumer Protection Act (KSchG) (hereinafter "BuA 2002/74"); Statement of the Government to the Parliament of the Principality of Liechtenstein on the questions raised during the first reading concerning the creation of a Consumer Protection Act, (hereinafter "BuA 2002/90"); Act of 23 October 2002 on the Protection of Consumers (Consumer Protection Act), LGBl No. 2002.164.

16 BuA 2002/74 and BuA 2002/90.

entire period.[17] However, according to the case law of the StGH, this reasoning is contradictory and therefore insufficient.[18]

22 In the present proceedings, the OGH did not rely on the Unfair Terms Directive at any point in its judgment of 1 March 2024 (ON 90), nor did it address this directive at all. Likewise, the StGH, in its judgment of 2 December 2024 in case StGH 2024/035, did not invoke the Unfair Terms Directive. For this reason alone, it is evident that the Unfair Terms Directive is not applicable in the present case and that no EEA law is therefore affected.

23 Furthermore, it should be noted that the MiFID Directive generally and indisputably constitutes supervisory law. Accordingly, the MiFID Directives were also implemented primarily in the Banking Act and the Banking Ordinance. Civil law claims for restitution are not regulated therein, nor are issues of interest or the statute of limitations.

3. Remarks concerning the questions raised

24 In the event that the EFTA Court decides not to dismiss the questions as inadmissible, the defendant comments as follows:

3.1 Principle of effectiveness and principle of equivalence

25 The principle of effectiveness, or *effet utile*, aims to give European Community law provisions the most effective impact possible and to make full use of the existing competences of the Community.[19] It means that the imple-

17 Judgment of the Liechtenstein OGH of 1 March 2024 (ON 90, 08 CG.2022.207), para. 14.4).
18 Judgment StGH 2024/035 of 2 December 2024, consideration 3.5.2 in the reasoning.
19 *Höreth* in *Große Hüttmann / Wehling*, Das Europalexikon (4rd edition), Bonn 2020, Verlag J. H. W. Dietz Nachf. GmbH.

mentation of Union law must not be rendered practically impossible. A provision must therefore be interpreted and applied in a manner that best achieves the objective of the Treaty.

26 This principle exists in two different forms: while the objective legal form is less frequently applied in the case law of the CJEU and concerns the scope of Union law itself, the subjective legal form ensures the enforcement of "the rights granted to individuals by Union law".[20]

27 The principle of effectiveness is a consequence of the EU's incomplete legislation and was developed by the CJEU through judicial law-making. It contains both an equality and an effectiveness component, as it ensures the effectiveness of Union law and contributes to the harmonization of the law of the Member States.[21]

28 Although the principle of effectiveness is a fundamental principle of Union law, the CJEU acknowledges the importance of respecting national legal particularities.[22] It is a legal principle aimed at ensuring the effectiveness of EEA law. According to CJEU case law, the application of provisions of the relevant national law must not render rights conferred by Union law practically impossible to exercise (principle of effectiveness), and the procedures for enforcing these Union law rights must not be less favourable than those

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20 *Auer/Papst,* Unionsrechtlicher Effektivitätsgrundsatz und nationales Gebot eines effizienten Rechtsschutzes in der BAO, AVR 2021, p. 54.

21 *Auer/Papst*, Unionsrechtlicher Effektivitätsgrundsatz und nationales Gebot eines effizienten Rechtsschutzes in der BAO, AVR 2021, p. 54 with further references.

22 *Auer/Papst*, Unionsrechtlicher Effektivitätsgrundsatz und nationales Gebot eines effizienten Rechtsschutzes in der BAO, AVR 2021, p. 54; Judgment of the Court (Fifth Chamber) of 21 September 1983, Deutsche Milchkontor GmbH and others v Federal Republic of Germany, ECLI:EU:C:1983:233, para. 30; Joined cases C-205/82 to 215/82: Judgment of the Court of 16 December 1976, Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer für das Saarland, C-33/76, ECLI:EU:C:1976:188, para. 5.

applicable to comparable domestic claims (principle of equivalence).[23] Accordingly, under the OGH, the rules on the payment of default interest must, on the one hand, comply with the principle of equivalence by not being less favourable than remedies under similar domestic law, and, on the other hand, must comply with the principle of effectiveness by not rendering the exercise of rights conferred by the Union legal order practically impossible or excessively difficult.[24]

29 In short, the principle of effectiveness aims to ensure that EEA law is interpreted and applied in such a way that it effectively achieves its purpose. According to the principle of effectiveness, the exercise of rights conferred by Union law must not be made practically impossible or excessively difficult.

30 According to the CJEU, when assessing whether the principle of equivalence has been upheld in proceedings, it must be examined whether the rule applies in the same way to legal remedies based on a breach of EU law as to those based on a breach of national law, provided that these legal remedies have a similar subject matter and legal basis. Both the subject matter and the legal basis, as well as the essential characteristics of the remedies to be compared, must be taken into account in the assessment.[25] However, the principle of equivalence must not be understood as requiring a Member

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23 Judgment of the Court of 20 March 1997, Land Rheinland-Pfalz v Alcan Deutschland GmbH. C-24/95, ECLI:EU:C:1997:163 **[hereinafter referred to as „Land Rheinland-Pfalz v Alcan Deutschland"]**, para. 24; Judgment of the Court (First Chamber) of 10 March 2021 M.A. v Konsul Rzeczypospolitej Polskiej w N, C-949/19, ECLI:EU:C:2021:186, para. 43; Judgment of the Court (First Chamber) of 13 December 2017, Soufiane El Hassani v Minister Spraw Zagranicznych, C 403/16, ECLI:EU:C:2017:960, para. 59

24 Judgment of the Liechtenstein OGH of 01 March 2024, (ON 90, 08 CG.2022.207), para. 14.4.1, p. 43.

25 Judgment of the Court of 13 March 2025, MF v Banco Santander SA, C-230/24, ECLI:EU:C:2025:177 **[hereinafter referred to as Banco Santander]**, para. 32, 34.

State to extend the most favourable domestic rules to all remedies brought in a particular area of law.[26]

31 In the present proceedings, it is not apparent that the procedural rules for asserting restitution and interest claims—claims rooted in Union law and based on the invalidity of a contractual clause in breach of Union law—are less favourable than the rules under (Liechtenstein or Austrian) domestic law for similar restitution claims. For example, if a contractual clause were void due to a breach of § 879 ABGB and this breach did not stem from a Directive violation but from a conflict with domestic law, the other contracting party would still have a civil law claim for repayment or restitution. This therefore represents a similar civil law basis as in cases where the nullity of a clause is caused by Union law. It follows that the limitation provisions – §§ 1479 and 1480 ABGB – apply equally in both cases. Since in similar cases, once due to a Union law violation and once due to a breach of solely domestic law, the same limitation periods apply, it can be concluded that the procedural rules for enforcing Union law claims are equally favourable as those under domestic law, and equivalence is thus ensured. "*The fact that the period of limitation for asserting the remuneration interest is shorter and thus less favourable than the period of limitation for asserting the voidness of the clause and the claim for restitution is in accordance with the principle of equivalence in that this constellation of periods of limitation also applies to comparable claims to be assessed under national law exclusively, so that the periods of limitation apply regardless of whether the claims are based on Union law or national law.*"[27] Since the limitation periods apply regardless of whether the claim is based on Union law or on national law, the principle

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26 Judgment of the Court (Grand Chamber), 19 July 2012, Littlewoods Retail Ltd and Others v Her Majesty's Commissioners of Revenue and Customs, C-591/10, ECLI:EU:C:2012:478, para. 31 with reference to Judgment of the Court (Third Chamber) of 29 October 2009, Virginie Pontin v T-Comalux SA. 29. October 2009, C-63/08, ECLI:EU:C:2009:666, para. 45.

27 *Grabenwarter*, Legal Opinion, p. 13.

of equivalence does not preclude the application of the limitation provisions in the present case.

32 The sole standard of review in the civil law matter underlying the EFTA proceedings is therefore whether the application of the national limitation provisions and the national rules on the commencement of interest make the MiFID provisions transposed into national law practically impossible to exercise or excessively difficult. The (case-by-case) examination of the compatibility of a limitation period with the principle of effectiveness must cover both the length of the period and the conditions of its application (e.g. commencement of the period).[28] Actual knowledge is not required; it is sufficient that there was the possibility of becoming aware of the abusive nature of a clause.[29]

33 In addition, further criteria can be derived from the case law, in particular the role of the provision within the overall procedure, the course of the proceedings, and the specific characteristics of the procedure. Where applicable, principles underlying the national system of legal protection must also be taken into account (e.g. protection of the rights of defence, legal certainty, and the proper conduct of the proceedings).[30] Furthermore, consideration

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28 Joined Cases C-698/18 and C-699/18: Judgment of the Court (Fourth Chamber) of 9 July 2020, SC Raiffeisen Bank SA and BRD Groupe Societé Générale SA v JB and KC, ECLI:EU:C:1983:233 **[hereinafter referred to as „Raiffeisen Bank et al."]**, para. 61; Judgment of the Court (First Chamber) of 22 April 2021 LH v Profi Credit Slovakia s.r.o., C-485/19, ECLI:EU:C:2021:313 **[hereinafter referred to as „Profi Credit Slovakia"]**, para. 55.

29 Raiffeisen Bank et al, para. 67 und 75; *Vollmaier*, Verjährungsfragen im Bankgeschäft de lege lata et ferende, ÖBA 2024, 169 (171). Dies legt bis zu einem gewissen Grad auch die Obliegenheit nahe, sich als Vertragspartner rechtlich beraten zu lassen: *Piekenbrock*, Die Verjährung des Bereicherungsanspruchs im Lichte der Klauselrichtlinie, GPR 2020, p. 304 (307).

30 E.g. Caixabank et al, para. 85; 10.6.2021, Joined Cases C-776/19 to C-782/19: Judgment of the Court (First Chamber) of 10 June 2021, VB and Others v BNP Paribas Personal Finance SA and AV and Others v BNP Paribas Personal Finance SA and Procureur de la Républiqueverb. ECLI:EU:C:2021:470 **[hereinafter referred to as „BNP Paribas Personal Finance SA et al."]**, para. 28; Profi Credit Slovakia., para. 53.

must be given to the significance of the decisions to be made for the parties concerned, the complexity of the proceedings and the applicable legal provisions, the number of potentially affected persons, as well as other relevant public or private interests.[31] In the present case, consumer protection and legal certainty are of particular importance.

34 The system of protection introduced by the Unfair Terms Directive[32], which assumes that the consumer is at an informational disadvantage compared to the trader[33], does not have absolute validity. Rather, the setting of reasonable limitation periods for the pursuit of rights is compatible with Union law in the interests of legal certainty[34], and procedural rules such as time limits that restrict the exercise of rights (whether based on national or Union law) can therefore be justified. "*A period of limitation of three years set in advance and known to the parties is considered sufficient to enable the persons concerned to prepare and bring effective legal action.*"[35]

35 As already stated, the principle of effectiveness is not infringed where a national provision on the commencement of a limitation period requires only that the person exercising the right could have obtained knowledge before the expiry of the period. In this context, it should be noted that, when assessing whether national provisions comply with the principle of effectiveness, the national legal framework must also be taken into account. In the present case, however, this framework expressly provides for a customer's right to information: pursuant to Article 8h(3) of the Liechtenstein Banking Act (in force since 1 November 2007), banks or investment firms are obliged

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31 See regarding a deadline for exercising a right to be heard Judgment of the Court (Second Chamber) of 18 December 2008, Sopropé - Organizações de Calçado Lda v Fazenda Pública., C-349/07, ECLI:EU:C:2008:746, para. 40.

32 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

33 Caixabank et al, para. 67.

34 See among others Banco Santander, para. 30; Caixabank et al, para. 82.

35 *Grabenwarter,* Legal Opinion, p. 15 f.

to disclose inducements and, upon request, details thereof, thereby ensuring the possibility of obtaining information. This plays a role in assessing the consumer's level of knowledge in individual cases.

36 In the CJEU's case law on the relevance of the principle of effectiveness in cases involving unfair terms, the distinction between different types of claims plays an essential role. A distinction must therefore be made between the modalities for establishing the unfairness itself and those for claiming reimbursement of payments made under unfair terms.[36] This confirms the assumption that the CJEU recognizes a gradation of the needs to be addressed when assessing effectiveness: it is clear from the judgment in Rust-Hackner – in particular from the finding that "any advantages which the policyholder might derive from a late withdrawal must be disregarded" – that, given the non-time-barred right to invoke the unfairness of a term, there is no longer a compelling consumer need in relation to the recovery of remuneration interest.[37] Consequently, not every potential disadvantage for the consumer must be offset in the same way.

37 If the EFTA Court were to intervene in national law with regard to limitation periods for any reason whatsoever, this would lead to unequal treatment between situations based on EEA law and those based purely on national law. In the latter case, a three-year limitation period for interest claims would apply; in EEA-related cases, however, a limitation period of 30 years "under application of the principle of effectiveness" would apply. This could result in extremely untenable outcomes; as different categories of financial intermediaries would be confronted with entirely different limitation periods for

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36 BNP Paribas Personal Finance SA et al, para.. 34; see also *Graf*, Der EuGH und das österreichische Verjährungsrecht, JBl 2024, 69 (72).

37 See Rust-Hackner et al, para 120 and para. 116, according to which the policyholder's right of withdrawal is not directly affected.

identical claims. For instance, if a trust client (settlor) were to claim restitution of inducements from a trustee under § 1009 ABGB, § 1480 ABGB – i.e. the three-year limitation period for interest claims – would apply, since the trustee is not subject to the MiFID framework. However, if a bank customer were to bring a corresponding claim for restitution of inducements against a bank (as in the present case), the 30-year limitation period for interest claims "under application of the principle of effectiveness" would apply. Such unequal treatment cannot be justified.

38 The application of the principle of effectiveness is therefore inadmissible already in principle. There exists a clear and unambiguous national legal framework regarding both the commencement of interest accrual and the limitation period for interest, and thus no EEA matter is affected. An excessive application of the principle of effectiveness, as well as an interpretation contra legem (cf. section 3.4), would ultimately lead to the risk that all national legal provisions could be "undermined" through such an overreaching use of the principle of effectiveness. This cannot be the meaning and purpose of that principle.

39 That the Union law principle of effectiveness with regard to national limitation periods is to be applied in an extremely restrictive manner, and can only come into play where such a rule would entirely deprive an individual of the possibility of asserting his or her rights before the national courts, is made clear by the following case law of the CJEU in C-542/08. The Court stated: *„As regards the principle of effectiveness, the Court has stated that it is compatible with European Union law to lay down reasonable time-limits for bringing proceedings in the interests of legal certainty which protects both the individual and the authorities concerned. Such time-limits are not liable to make it in practice impossible or excessively difficult to exercise the rights*

conferred by European Union law. In that regard, a national limitation period of three years appears to be reasonable."[38]

40 In this CJEU decision as well, a limitation period of three years was therefore considered reasonable.

41 In this decision, it was concluded that Union law does not prevent a Member State from applying a three-year limitation period to a claim for a special length-of-service allowance that was not granted in violation of Union law, even if that Member State has not amended its national provisions to bring them into line with Union law. The situation would be different only if the conduct of the national authorities, combined with the existence of a limitation period, resulted in a person being entirely deprived of the possibility of asserting their rights before the national courts.

42 Limitation periods aim to ensure legal certainty after a certain lapse of time and to maintain the peace of the law. In this regard, the CJEU also argues in the joined cases C-89/10 and C-96/10[39]: *„As regards the principle of effectiveness, the Court has stated that it is compatible with EU law to lay down reasonable time-limits for bringing proceedings in the interests of legal certainty which protects both the taxpayer and the authorities concerned. Such periods are not by their nature liable to make it virtually impossible or excessively difficult to exercise the rights conferred by EU law, even if the*

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38 Judgment of the Court (Fourth Chamber) of 15 April 2010, Friedrich G. Barth v Bundesministerium für Wissenschaft und Forschung, C-542/08, ECLI:EU:C:2010:193, para. 28.

39 Joined cases C-98/10 and C-96/10: Judgment of the Court (Fourth Chamber) of 8 September 2011, Q-Beef NV (C-89/10) v Belgische Staat and Frans Bosschaert (C-96/10) v Belgische Staat, Vleesgroothandel Georges Goossens en Zonen NV and Slachthuizen Goossens NV, ECLI:EU:C:2011:555.

expiry of those periods necessarily entails the dismissal, in whole or in part, of the action brought."[40]

43 In CJEU case C-24/95, the Court stated regarding the principle of effectiveness that the application of provisions of the relevant national law must not make rights conferred by Community law practically impossible to exercise.[41] This decision concerned a 'Community-law-mandated recovery' of unlawful state aid. Specifically, it involved a "breach of Article 93(3) of the EC Treaty" and incompatibility with the "Common Market within the meaning of Article 92 [of the EC Treaty]". This was contrasted with difficulties in recovery arising from a national rule protecting the aid recipient. In this decision, the CJEU held that the competent authority was obliged under Community law to withdraw the approval decision for unlawfully granted state aid (specifically, a bridging loan) even if this were precluded under national law (CJEU C-24/95, operative part). It is therefore evident that the CJEU assumed in this case a breach of Union law provisions or even an incompatibility with provisions of the EC Treaty (now the EU Treaty as amended by the Treaty of Lisbon).

44 In the present case, there is therefore neither a "breach" nor an "incompatibility" of the limitation provisions in § 1480 ABGB with EEA law, and both the principle of effectiveness and the principle of equivalence are in any event respected.

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40 Joined cases C-98/10 and C-96/10: Judgment of the Court (Fourth Chamber) of 8 September 2011, Q-Beef NV (C-89/10) v Belgische Staat and Frans Bosschaert (C-96/10) v Belgische Staat, Vleesgroothandel Georges Goossens en Zonen NV and Slachthuizen Goossens NV, ECLI:EU:C:2011:555, para. 36.

41 Land Rheinland-Pfalz v Alcan Deutschland, para. 24.

3.2 Lack of comparability of the cited case law

3.2.1 In general

45 First of all, it should be noted that none of the decisions cited by the OGH or the plaintiff deal in detail with the limitation period for ancillary claims, i.e. interest in connection with claims for restitution relating to benefits. Therefore, when considering the subsequent case law of the CJEU, it must be taken into account that the factual circumstances of seemingly applicable decisions often differ significantly from the present case in essential aspects, and thus the adoption of the results of these decisions without due regard to the specific factual details of this case is not possible.

3.2.2 Manfredi et al.

46 In the case of Manfredi et al., the CJEU held that the determination of the statute of limitations for the assertion of a claim for damages arising from an unlawful cartel is a matter for national law. Consequently, the national court must assess whether the national statute of limitations – particularly if the statute of limitation is short and cannot be interrupted –, which begins to run from the implementation of the cartel, makes the assertion of the claim for damages practically impossible or excessively difficult. In addition, it has been established that in the case of conduct contrary to EU law in relation to a contract that may restrict or distort competition, not only the damage but also the loss of profit and interest must be compensated. However, this does not imply that a statutory three-year limitation period for interest should remain inapplicable. The case of Manfredi et al. therefore concerned claims for damages in connection with violations of prohibited cartels, and thus claims of entirely different legal nature. In the present civil law case, how-

ever, the issue is neither claims for damages nor competition law. The dispute concerns "only" the point in time from which interest becomes due and which statute of limitations applies in this regard.

47 Against this background, *Grabenwarter*[42] also concludes that this decision cannot be directly transferred to the present case, which is completely different in nature.

3.2.3 Caixabank et al.

48 In the Caixabank et al. case, the CJEU held that a limitation period of five years applicable to the action seeking to enforce the restitutionary effects of the annulment of an unfair term relating to a commitment fee and ancillary costs in a loan agreement was not, in principle, such as to render the exercise of the rights conferred by the Directive practically impossible or excessively difficult. However, the limitation period beginning upon conclusion of the loan agreement was suitable for this purpose, since the limitation period began regardless of whether the consumer was aware of the unfairness of the provision or could reasonably have been aware of it.[43]

49 In contrast to the present case, which concerns the statute of limitations for interest in conjunction with claims for the return of contributions, the decision in the case of Caixabank related to the restitution claim and not to compensation for non-availability,[44] and therefore did not concern the same constellation of claims. Furthermore, there is a decisive difference in that, according to case law on § 1480 ABGB the start of the three-year limitation period is based on the (objective) possibility of asserting the claim.[45]

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42 *Grabenwarter,* Legal Opinion, p. 18

43 Caixabank et al, para. 80 ff.

44 Similiar applies to Raiffeisenbank et al.; The CJEU took the established start of the period (date of complete contract fulfillment) as its starting point.).

45 *Kietaibl* in Schwimann/Kodek (Hrsg), ABGB Praxiskommentar (2024) § 1480, para. 182.

50 Furthermore, it is also clear from the CJEU's decision in the Raiffeisenbank case that the CJEU's primary concern in enforcing the Unfair Terms Directive is to help the consumer whose rights have been infringed to assert their main claim, rather than ancillary claims such as interest.[46] The same applies to the decision in the case of Profi Credit Slovakia. This decision also concerns a limitation period for principal claims in connection with consumer credit agreements. This decision is therefore also not relevant to the present case.

51 The main claim for the return of retrocessions remains unaffected by the three-year limitation period for interest under § 1480 ABGB. Such ancillary claims as interest are not considered separately in the aforementioned decisions of the CJEU – especially not in connection with limitation periods. The decisions relate exclusively to the invalidity of clauses that violate the Consumer Credit Directive and the restitution of the principal amounts paid. Therefore, it is clear that the relevant national legal consequences (§ 1480 ABGB) apply to ancillary claims. None of the CJEU rulings mentioned require mandatory limitation periods covering the entire period for interest, which is not surprising in light of the above considerations. Nor is there any other decision by the CJEU that would establish that a three-year limitation period for interest claims in connection with claims for restitution would violate the Unfair Terms Directive or the principle of effectiveness and would have to cover the entire period (contrary to clear national regulations). The main claim of the plaintiff has already been fulfilled in this case. Therefore, the application of § 1480 to the interest claimed by the plaintiff does not constitute a violation of the Unfair Terms Directive or the principle of effectiveness.

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46 Raiffeisen Bank et al, para. 82

52 As a result, it is not appropriate to refer to this case law of the CJEU and it should therefore be disregarded. There is – as already mentioned – no justification for applying the principle of effectiveness under Union law. The fact remains that interest, including remuneration interest, becomes time-barred three years after the date of maturity in accordance with the explicit and unambiguous legal provision in § 1480 ABGB.

3.2.4 BNP Paribas Personal Finance SA

53 According to the CJEU's decision in the BNP Paribas Personal Finance SA case, a court finding that a clause is unfair must, in principle, lead to the restoration of the factual and legal situation in which the consumer would have been without that clause. It does not in itself violate the principle of effectiveness if a limitation period is invoked against claims for restitution, provided that its application does not render impossible or excessively difficult the exercise of the rights conferred by the directive applicable at the time. However, a limitation period can only be compatible with the principle of effectiveness if the person concerned had the opportunity to become aware of their rights before this period began or expired. On this basis, for example, the five-year limitation period, which in any case begins with the conclusion of the legal transaction, could impermissibly impair the exercise of rights.[47]

54 No direct conclusions regarding the limitation period for interest can be drawn from this decision, as no preliminary question was referred to the CJEU in this regard:[48] The CJEU merely stated, with regard to the claim for reimbursement, that the legality of the limitation period under EU law requires that the consumer must have had the opportunity to become aware

47 BNP Paribas Personal Finance SA et al., para. 40, 46 f.
48 Similiar *Schindl*, ÖBA 2025, p. 28.

of the unfairness of a clause in the contract.[49] The BNP Paribas case concerned consumer credit and thus the Consumer Credit Directive, not claims for the return of benefits. The BNP Paribas case also concerned the main claim, which was threatened by the limitation period as a whole – it was only for this reason that the Court argued that there was a possible violation of the principle of effectiveness. Furthermore, in this decision, the CJEU clearly states that a three-year limitation period for interest is a typical limitation period recognised under EU law, which is fundamentally compatible with the principle of effectiveness.[50] In addition, reference should again be made to the commencement of the time limit according to the case law on § 1480 ABGB, namely that the (objective) possibility of asserting the claim is the determining factor.

55 This decision is therefore also irrelevant to the present case and can therefore be disregarded.

3.2.5 Gräfendorfer und Dyrektor Izby

56 Due to the completely different factual circumstances and the respective obligated parties, no conclusions can be drawn from the decisions in the cases Gräfendorfer and Dyrektor Izby[51] regarding the assessment of a limitation period for interest from invalid clauses:

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49 Similiar also Raiffeisen Bank et al, para. 75.

50 BNP Paribas Personal Finance SA et al., para. 41 ff.

51 Joined Cases C-415/20, C-419/20 and C-427/20: Judgment of the Court (Second Chamber) of 28 April 2022, Gräfendorfer Geflügel- und Tiefkühlfeinkost Produktions GmbH and Others v Hauptzollamt Hamburg and Hauptzollamt Kiel, ECLI:EU:C:2022:306 **[hereinafter referred to as „Gräfendorfer et al."]**; Judgment of the Court of 08 June 2023, Dyrektor Izby Administracji Skarbowej we Wroclawiu, C-322/22, ECLI:EU:C:2023:460 **[hereinafter referred to as „Dyrektor Izby Administracji Skarbowej we Wroclawiu"]**.

57 In Gräfendorfer, the CJEU dealt with the repayment of unlawfully refused export refunds and financial penalties imposed, as well as the interest accrued thereon. The Court clarified that national regulations must not make the enforcement of interest claims under EU law practically impossible or excessively difficult. In that case, the national regulation only provided for interest for the period between the lodging of the appeal and the decision on it, which the CJEU deemed to be contrary to EU law. The initial case thus concerned a claim for restitution against the state in the relationship between private individuals and public authorities.

58 Dyrektor Izby also involved a public law context, namely the recovery of interest on overpaid taxes. The CJEU ruled that the principle of effectiveness, in conjunction with the principle of sincere cooperation, precludes national legislation which, only provides for interest for 30 days after the finding of an infringement of EU law or excludes it altogether in the event of a later claim. In addition, the specific structure of the tax collection procedure played a role. There is no parallel to the present case because the latter involved a tax law relationship with an extremely short limitation period and a specific reference to tax collection.

59 Both cases therefore already relate to a different constellation of parties, namely a private individual and the state, and the claims themselves are in no way comparable to the present constellation of facts. Consequently, the two cases are not relevant to the present case, as no conclusions can be drawn from them.

3.2.6 Rust-Hackner

60 The joined cases C 355/18, C 356/18 and C 357/1 concerned the requirements for informing policyholders of their right of withdrawal under EU law, whereby failure to provide or incorrect information led to an unlimited right

of withdrawal. It was examined whether the general limitation period of three years pursuant to § 1480 applied to the claim for interest on remuneration [for the premiums to be refunded]. The Austrian OGH therefore referred the question to the CJEU as to whether the relevant provisions of the directive on insurance law are to be interpreted as precluding a national rule, according to which interest on amounts [premiums] reclaimed by the policyholder after withdrawing from the contract is subject to a limitation period of three years under § 1480 ABGB.[52]

61 In its preliminary remarks, the CJEU clarified in this decision that the relevant provisions of the directive grant the policyholder a right of withdrawal that is established upon conclusion of the life insurance contract. The insurer's notification of the conditions for exercising this right merely triggers the start of the withdrawal period.[53]

62 The CJEU ruled as follows: The claim for remuneration interest becomes time-barred after three years. This is the limitation period generally provided for in the Austrian Civil Code (hereinafter "Austrian ABGB") for claims for outstanding annual payments. However, as this period only applies remuneration interest, it does not directly affect the policyholder's right of withdrawal.[54]

63 However, the CJEU expressly referred to the principle of effectiveness: the referring court must examine whether such a limitation period for the claim to interest on remuneration is likely to impair the effectiveness of the policyholder's right of withdrawal under EU law. In addition, the CJEU emphasised the special nature of insurance contracts: they are legally complex financial

52 Rust-Hackner et al, para. 42, 44 und 112
53 *Grabenwarter,* Legal Opinion, p. 22.
54 Rust-Hackner et al, para. 115 f.

products that vary greatly depending on the provider and can entail significant long-term financial obligations.[55]

64 Nevertheless, the Vienna Commercial Court will have to examine whether such a limitation period for the claim for interest on remuneration is likely to affect the effectiveness of the policyholder's right of withdrawal under EU law. If, in these circumstances, the fact that the interest due for more than three years is time-barred were to result in the policyholder not exercising his right of withdrawal, even though the contract does not meet his needs, such a limitation period would be likely to affect the right of withdrawal, in particular if the policyholder had not been properly informed of the conditions for exercising that right. However, the policyholder's needs must be assessed at the time the contract was concluded. The CJEU therefore concluded that the relevant provisions of the directive must be interpreted as precluding national legislation under which interest on amounts reclaimed by the policyholder after withdrawal from the contract is subject to a limitation period of three years, provided that this does not affect the effectiveness of the policyholder's right of withdrawal, which is for the referring court to determine.[56]

65 After the preliminary questions had been answered by the CJEU, the Austrian OGH issued its national decision on 7 Ob 10/20a. It stated that the CJEU had clarified that this limitation period of three years for the remuneration interest on the premium did not raise any fundamental objections because it did not directly affect the policyholder's right of withdrawal. However, in its answer to the question referred on the limitation period under § 1480 ABGB, it also pointed out that it must be examined in each individual case whether such a limitation period for the remuneration interest is likely

55 *Grabenwarter*, Legal Opinion, p. 22; Rust-Hackner et al, para. 117 f.
56 Rust-Hackner et al, para. 121.

to affect the effectiveness of the policyholder's right of withdrawal under EU law. The answer to the question referred therefore shows that, in principle, EU law does not preclude a limitation period of three years for the remuneration interest if this does not affect the effectiveness of the policyholder's right of withdrawal under EU law. The parties should therefore be given the opportunity to submit their arguments and to clarify and determine whether the contract met the policyholder's needs at the time it was concluded and whether and to what extent the limitation period for interest within three years prevented him from exercising his right of withdrawal. Only if the contract did not meet the plaintiff's needs in the specific individual case and he was prevented from withdrawing due to the limitation period would the three-year limitation period not apply.[57]

66 The CJEU and, subsequently, the Austrian OGH thus concluded that the three-year limitation period for interest under the national provision in § 1480 Austrian ABGB does not, in principle, conflict with the provisions of EU law on the policyholder's right of withdrawal if this does not impair the effectiveness of the right of withdrawal.

67 Insofar as this decision is relevant to the assessment of the matter at hand, the following should be noted: In order for a deviation from the national regulation on the limitation period for interest in § 1480 ABGB (corresponding to § 1480 Austrian ABGB) to be justified in exceptional cases, at least the requirements set out in this decision must be met. In this CJEU decision, the policyholder sought reimbursement of the premiums he had paid, plus interest (which was assessed in the context of this decision). In this decision, the CJEU had to assess specific provisions of the directive which prescribed a right of withdrawal for the policyholder and sufficient information regarding

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57 Judgment Austrian OGH of 24 April 2020, 7 Ob 10/20a, ECLI:AT:OGH0002:2021:E127891, para 2.1 und 2.2.

this right of withdrawal. In the present case, the plaintiff, as a former bank customer, sought the return of payments (which had already been paid) and, in addition, interest (which is now the subject of the proceedings).

68 It is not apparent that a limitation period of three years for (remuneration) interest would have prevented or otherwise impaired the plaintiff from asserting his claim for the return of kickbacks (benefits) or otherwise impaired him. The requirements established by the CJEU in the Rust-Hackner case are clearly not met in the present case. Therefore, it is precisely not the case that a limitation period of three years would result in the plaintiff being denied adequate compensation for the losses suffered. For this reason, it is not necessary in this specific case to apply a 30-year limitation period for (remuneration) interest. Consequently, in the present case, even applying the criteria established by the CJEU in the Rust-Hackner case, there should be no deviation from the statutory provision § 1480 ABGB (as already held by the StGH[58]).

3.2.7 Marshall

69 Although the OGH does not refer to the Marshall case[59] in ON 109[60] itself, since the plaintiff raised this decision in the proceedings, the following remarks are made in this regard:

70 In the Marshall case, the CJEU dealt with the issue of gender discrimination within the framework of Directive 76/207/EEC[61]. The Marshall case explicitly

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58 Judgment of the StGH 2024/035 of 2 December 2024, consideration 3.6 ff.

59 Judgment of the Court of 2 August 1993,M. Helen Marshall v Southampton and South-West Hampshire Area Health Authority. C-271/91, ECLI:EU:C:1993:30 **[hereinafter referred to as „Marshall"]**.

60 OGH order of 27 May 2025 (ON 109, 08 CG.2022.207, OGH.2025.9).

61 Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

concerns a labour law situation (discriminatory dismissal under Directive 76/207/EEC), in which the CJEU ruled that a statutory upper limit that already restricts the damages in the principal claim and does not provide for any interest payments is contrary to EU law. An upper limit for the principal claim is not the subject of the proceedings in the present case, but only the statutory limitation period for interest claims. In addition, no interest was awarded in the Marshall case, whereas in the present case, § 1480 ABGB provides for an appropriate interest claim with an appropriate limitation period of three years.

71 Particularly noteworthy, however, is paragraph 31 of the Marshall decision: *"The award of interest, **in accordance with the applicable national rules**, must therefore be regarded as an essential component of compensation for the purposes of restoring real equality of treatment"*[62]. The applicable national law in this case is indisputably § 1480 ABGB.

72 It can therefore be concluded that a three-year limitation period for the claim to interest is in no way capable of affecting the effectiveness of the rights granted to bank customers under EU law in accordance with MiFID or the Unfair Terms Directive (of whatever nature). There is therefore neither scope nor reason to apply the principle of effectiveness under EU law.

3.2.8 Interim Conclusion

73 The CJEU decisions cited by the Supreme Court or the plaintiff (Manfredi, Caixabank, BNP Paribas, Gräfendorfer, Dyrektory Izby, Marshall) cannot be directly applied to the present question of the limitation period for interest in connection with claims for the return of benefits (kickbacks).

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62 Highlighted by the plaintiff in national proceedings; Marshall, para. 31.

74 In the cases mentioned, the decision concerned either principal claims, damages, competition law infringements or public law constellations (e.g. state and private individuals), whereas in the present case, ancillary claims such as interest and the application of the clear national limitation rule under § 1480 ABGB are relevant. The only relevant decision is Rust-Hackner: Here, it was confirmed that the three-year limitation period for interest on remuneration is in conformity with EU law, provided that it does not impair the right of withdrawal.

75 In summary, it can therefore be concluded that the national three-year limitation period for interest under § 1480 ABGB is in conformity with EU law in the present case. The decisions referred to in other cases are not relevant due to the lack of comparable factual circumstances, and the principle of effectiveness under EU law is not violated in this case. Rather, these decisions referred to in other cases indicate that the three-year limitation period for interest under § 1480 ABGB is in conformity with EU law and is not subject to dispute in this case.

3.3 No impossibility or obstruction of the exercise of the main claim

76 As explained above, the applicability of the EU principle of effectiveness first requires that the matter in question actually falls within Union law. Although this is not the case here (see section 2), the following is noted at this point out of legal caution:

77 As can be seen from CJEU case law, the principle of effectiveness applies only if it would be practically impossible or excessively difficult for a person to assert their rights before the national courts. Neither the OGH nor the plaintiff has explained in the previous proceedings why the applicable interest payment modalities (i.e. those pursuant to § 1480 ABGB) would prevent

the customer from asserting their claim for the restitution of kickbacks (benefits) or otherwise impair their ability to do so.

78 It is also obvious that, under § 1480 ABGB, the rights conferred by Union law (the claim for restitution of inducements) are in this case neither made practically impossible nor excessively difficult to exercise.

79 It should be clarified that a distinction must be made between main and ancillary claims. For example, in a sales contract, the main claim is the delivery of the purchased item in exchange for payment (e.g. a car for CHF 20'000.00). Any accessories delivered with the purchased item are merely ancillary claims of the buyer (e.g. a safety vest or spare tire with a car).[63] For main and ancillary claims, the legislator can, of course, provide for different rules, and prevailing doctrine and case law require different legal consequences. For instance, the late delivery of a spare tire for a new car (a dependent ancillary performance) does not trigger default consequences under § 918 ABGB.[64] Similarly, the defective performance of ancillary obligations generally does not lead to the same warranty-related legal consequences as defective performance of main obligations; in particular, there is no right to rescission under § 932 (1) ABGB.

80 This very distinction must also be taken into account with respect to the limitation of the main claim (restitution of inducements) and the limitation of the associated interest claims. It is clear and undisputed that the legislator has provided a separate limitation period for interest claims – as an ancillary claim to a (main) payment claim – in § 1480 ABGB. This is logical: by setting a shorter three-year limitation period for interest claims, the legislator in-

63 *Welser* in: Koziol/Welser, Bürgerliches Recht I[13], p. 4 f.
64 *Welser* in: Koziol/Welser, Bürgerliches Recht I[13], p. 56.

tended, among other things, to protect the debtor from the sudden accumulation of a large, unexpected debt arising from mere ancillary performances.[65] The debtor is thus protected, among other things, against an endless recovery of interest claims (in other words, the accumulation of interest claims). It follows that the purpose of the "special interest limitation rule" (as is generally the case with limitation provisions) is not merely to prevent evidentiary problems but also specifically aims to protect the debtor. There is no reason in the present case to deny the defendant this protective purpose of § 1480 ABGB on the basis of the plaintiff's mere ancillary claims, or to otherwise undermine it – not even via the "detour" of the European law principle of effectiveness, which is allegedly violated in the present case.

81 The application of the national limitation provision under § 1480 ABGB to the plaintiff's mere ancillary claims (interest) does not, in any event, violate the EU principle of effectiveness. In the present case, the inducements have already been returned by the defendant to the plaintiff. The main claim has therefore been satisfied. It is thus evident that the limitation rule in dispute has neither made it practically impossible nor substantially difficult for the plaintiff to enforce his rights. An interest claim is merely an ancillary claim to the restitution claim, not an essential component of the compensation claim. As is also evident from the judgment in Rust-Hackner[66], in the recovery of remuneration interest, there is no longer a compelling consumer need. *"Thus, not every potential placement at a disadvantage of an asserting consumer must be compensated for in the same way."*[67] The fact that these claims can be asserted within a three-year period in no way prevents a plaintiff from asserting the far more significant restitution claim. A violation of the principle of effectiveness is not apparent, and recourse to the principle of effectiveness is not necessary at all.

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65 *Mader/Janisch* in Schwimann/Kodek, ABGB4, V. 6, § 1480, para. 1 ff.
66 Rust-Hackner et al, para. 112 ff.
67 *Grabenwarter,* Legal Opinion, p. 17 f.

3.4 Inadmissibility of an interpretation contra legem

82 It should be clarified once again that interest – both contractual and statutory – is subject to a limitation period of three years from the date of maturity in accordance with the explicit and unambiguous legal provision in § 1480 ABGB. This is also undisputed in case law and legal doctrine. This includes interest on a sum of money paid without legal basis and therefore subject to restitution, i.e. so-called remuneration interest.[68]

83 Even the OGH, in its decision of 1 March 2024 concerning limitation periods for interest in the present proceedings, first noted – by reference to the case law of the Austrian OGH (as the jurisdiction from which § 1480 ABGB was adopted) – that a three-year limitation period applies to interest on the sum of money to be paid. The OGH then expressly clarified: *"In this respect, the national legal situation is clearly regulated"*[69]. The national legal framework and the applicability of the three-year limitation period under § 1480 ABGB for interest on inducements to be restituted are therefore clear.

84 Where interest, whether capital or default interest, is payable annually or in shorter periods, both statutory and contractual claims thereto are subject to a three-year limitation period from maturity pursuant to § 1480 ABGB. Accordingly, (remuneration) interest on restitution claims concerning inducements is also time-barred after three years, in line with the clear wording of the provision.

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68 Judgment Austrian OGH of 20 October 1987, 4 Ob 584/87, ECLI:AT:OGH0002:1987:0040OB00584.87.1020.000 and Judgment Austrian OGH of 28 August 2007, 5 Ob 160/07a, ECLI:AT:OGH0002:2007:0050OB00160.07A.0828.000; RIS-Justiz RS0031939, ECLI:AT:OGH0002:1987:RS0031939; *R. Madl* in *Kletečka/Schauer*, ABGB-ON[1.07] § 1480 para. 10.

69 Judgment of the Liechtenstein OGH of 1 March 2024 (ON 90, 08 CG.2022.207), para. 14.3.4, p. 39 f.).

85 As regards the intent of the historical legislator of § 1480 ABGB, reference must be made to the Austrian source provision, namely § 1480 Austrian ABGB. Both the Supreme Judicial Authority and the (reporting member of the) Court Commission in Judicial Matters referred, in relation to § 1480 Austrian ABGB, to the protection of the debtor from economic ruin caused by the accumulation of interest arrears as the rationale of this provision. That the Austrian legislator of the ABGB was particularly concerned with protecting the debtor from excessively high interest arrears is also evident from other provisions.[70] It was only in the original draft of the Austrian ABGB (i.e. prior to 1811) that there was no short limitation period for claims to individual recurring payments, but solely a thirty-year limitation period for the overall right to such payments. This was subsequently amended to the three-year period that has now been in force for over 200 years.[71] No separate or supplementary intent of the Liechtenstein historical legislator is apparent. The provision of § 1480 ABGB was thus originally enacted, among other things, to protect debtors from financial difficulties caused by the accumulation of arrears of recurring payments. The focus is therefore exclusively on the protection of debtors. In any case, it is clear that nothing in the legislative materials suggests that the wording of this provision does not correspond to the legislator's intent.

86 Accordingly, the StGH has already stated in the present proceedings that it considers it inadmissible to interpret a provision in a manner that is not only contrary to its wording but also contrary to the intention of the historical legislator, and that the same must naturally apply to an interpretation that is in conformity with EEA law. Consequently, it has already repealed provisions that contradicted EEA law as unconstitutional in the past.[72]

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70 *Ernst Eypeltauer*, Zum Geltungsbereich des § 1480 ABGB, ÖJZ 1991, p. 222.
71 Ibid.
72 Judgment StGH 2024/035 of 2 December 2024, consideration 4.1 with references.

87 In accordance with the case law of the StGH, it can also be concluded for the matter at hand that an interpretation that complies with EEA law but contradicts the wording and the intention of the historical legislator is inadmissible, and therefore § 1480 ABGB must be interpreted strictly in accordance with its wording.[73]

88 In this regard, the CJEU also clarified in case C-715/20[74] that the obligation of a national court to take the content of a directive into account when interpreting and applying the relevant provisions of national law may not serve as a basis for an interpretation contra legem of that national law. Moreover, a national court is obliged under Union law to disapply a provision of its national law that conflicts with a provision of Union law only if the Union law provision has direct effect.[75] A directive, on the other hand, cannot create obligations for individual private parties and therefore has no direct effect between private parties (horizontal effect), but only from private parties vis-à-vis the state (vertical effect).[76] It must also be clarified from a legal perspective that CJEU case C-715/20 concerned judicial protection under Article 47 of the Charter of Fundamental Rights of the EU. The CJEU held that Article 47 of the Charter produces effect in its own right and does not need to be implemented by provisions of Union or national law. Solely in order to guarantee individuals the judicial protection derived from Article 47 of the Charter and to ensure the full effectiveness of this article, the national court, if unable to interpret applicable national law in conformity with the directive provision, must [even in a dispute between private parties] disapply any conflicting national provision.[77] It is obvious that the EU Charter of Fundamental Rights is not applicable in the present case. Insofar as the OGH, in ON 109,

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73 Judgment StGH 2011/132 of 19 December 2011, consideration 2.2.
74 Judgment of the Court of 20 February 2024, X, C-715/20, ECLI:EU:C:2024:139.
75 Ibid, para. 70, 72 and 74.
76 Ibid, para. 73 and 76
77 Ibid, para. 80 and 83.

stated that according to CJEU C-715/20 "the instrument of primacy of application is also available for claims based on directives"[78], it must therefore be corrected from a legal point of view that this was only justified and ruled on (exceptionally) in this decision in conjunction with Article 47 of the Charter of the EU, and is thus irrelevant in the present case. Moreover, it must again be emphasized that the present case does not involve any "claims based on directives", since the restitution and interest claims do not constitute an EEA law matter nor do they affect one. As has already been explained in detail, § 1480 ABGB also lacks the incompatibility with EEA law required for the application of the instrument of primacy of application (cf. section 2).

4. Conclusion

89 The defendant respectfully submits that the EFTA Court **does not have jurisdiction** to answer any of the referred questions.

90 In summary, it follows that the questions referred by the OGH have no relevance for the EEA whatsoever. They neither concern a question of interpretation of EEA law decisive for the outcome within the meaning of Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, nor are there any Union law requirements regarding the national regulation of the limitation of interest claims. The relevant provisions (§§ 1009, 1480 ABGB) are purely domestic rules without any need for implementation from EEA law. Likewise, neither the MiFID regulation, the Unfair Terms Directive, nor any other EEA directives establish any relevance for the limitation of interest claims in the present case.

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78 OGH order of 27 May 2025 (ON 109, 08 CG.2022.207, OGH.2025.9), para. 7.2.11.

91 The proceedings concern exclusively the application of national civil law, so that the reference to the EFTA Court was already inadmissible for lack of relevance to the decision. There is no impact on EEA rights. Consequently, the EFTA Court must dismiss the questions referred without substantive examination.

92 Even in the event that EEA relevance were established, it is ultimately clear that neither the principle of effectiveness nor the principle of equivalence precludes the application of the national limitation provisions (§§ 1479, 1480 ABGB). The three-year limitation period for interest claims is recognized under Union law and does not constitute an unlawful impediment to, or denial of, the enforcement of rights. Nor is there any unequal treatment compared to comparable purely domestic situations, since the same limitation periods apply regardless of whether the claim is based on Union law or national law. The broad application of the principle of effectiveness invoked by the OGH amounts to an impermissible application of Union law contra legem.

93 The CJEU judgments cited by the OGH and the plaintiff are not transferable to the present question of the limitation of interest on restitution claims, as they concerned different constellations. The decisive precedent is Rust-Hackner, which confirms that a three-year limitation period for interest on renumeration is consistent with Union law, provided that the effectiveness of the policyholder's right of withdrawal is not impaired.

94 The application of § 1480 ABGB to interest claims does not violate the EU principle of effectiveness. The main claim for restitution of the inducements has been satisfied, and the interest constitutes merely ancillary claims. The three-year limitation period serves, among other things, the legitimate purpose of protecting the debtor and does not prevent the plaintiff from enforcing his main claims.

95 Moreover, an interpretation contra legem in conformity with Union or EEA law is excluded. § 1480 ABGB must be interpreted according to its clear wording and the unambiguous intent of the historical legislator. Since the restitution and interest claims do not concern an EEA matter, there is no scope for priority of application or for an interpretation in conformity with directives.

5. Proposal for the EFTA Court's answer to the request for an Advisory Opinion

96 For the foregoing reasons the defendant respectfully

submits

that the EFTA Court dismiss as inadmissible the request for an Advisory Opinion made by the Princely Supreme Court by order dated May 27, 2025, due to the lack of relevance for the national proceedings and correspondingly the lack of jurisdiction of the EFTA Court.

In the alternative and in the event that the EFTA Court decides not to dismiss the questions as inadmissible, the defendant respectfully submits that the questions posed by the referring court should be answered as follows:

Question 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.

Question 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.

Triesen, 23.09.2025 **LGT Bank AG**

Appendix

- Power of Attorney dated 16.09.2025
- Expert opinion on the assessment under European law of the period of limitation for interest on claims for restitution provided by Univ.Prof. DDr. Dr.h.c. Christoph Grabenwarter with the assistance of Univ.Ass. Dr. Caroline Lechner-Hartlieb, in the original German and translated into English
- Excerpt from the judgment of the StGH 2024/035 of 2 December 2024 (Reasoning of the Court, pp. 18-26), in the original German and translated into English