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ORIGINAL

IN THE EFTA COURT

WRITTEN OBSERVATIONS

submitted, pursuant to Article 20 of the Statute of the EFTA Court, by

THE EFTA SURVEILLANCE AUTHORITY

represented by Johanne Førde, Daniel Vasbeck and Melpo-
Menie Joséphidès,
Department of Legal & Executive Affairs,
acting as Agents,

in Case E-9/25

Peter Ploerer

v

LGT Bank AG

in which the Princely Supreme Court (Fürstlicher Oberster Gerichtshof) of the Principality of Liechtenstein requests the EFTA Court to 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 concerning the interpretation of the principle of effectiveness in the context of national rules on limitation periods governing claims for remuneration interest on sums of money unduly withheld as a result of the invalidity of a contractual term, where that invalidity stems from the term's incompatibility with Article 19 of Directive 2004/39/EC (MiFID I) and Article 26 of Directive 2006/73/EC (the Implementing Directive).

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1 INTRODUCTION

1. The present written observations were prepared with support from Marianne Arvei Moen, Senior Legal Officer, and Nicola Pfisterer, Legal Officer, of the Internal Market Affairs Directorate of the EFTA Surveillance Authority (“**ESA**”).
2. The request for an advisory opinion (the “**Request**”) by the Princely Supreme Court (the “**Referring Court**”) concerns the interpretation of the principle of effectiveness in the context of national rules on limitation periods governing claims for remuneration interest on sums of money unduly withheld¹ as a result of the invalidity of a contractual term, where that invalidity stems from the term’s incompatibility with Article 19 of Directive 2004/39/EC (“**MiFID I**”)² and Article 26 of Directive 2006/73/EC (the “**Implementing Directive**”).³
3. The national proceedings giving rise to the Request were brought by Peter Ploerer (the “**applicant**”) against LGT Bank AG (the “**defendant**”). The defendant is a bank established in Liechtenstein which offers, inter alia, investment services. The applicant is a non-professional client⁴ and had a business relationship with the defendant from 22 September 2004 to 31 January 2012.⁵ The parties entered into an agreement for the operation of an account and a custody account, governed by the General Terms and Conditions, in which the defendant, in Section 15, reserved

¹ To ESA’s understanding, sums paid by a third party to a bank (specifically, inducements) based on an invalid contractual term, as in the present proceedings, are to be considered as ‘sums unduly withheld’ by the bank in respect of the relationship between the client and the bank under Liechtenstein law. ESA will in the following make use of the same terminology as the Referring Court, see the Request, pages 8 and 44–46.

² Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.04.2004, p. 1).

³ Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 02.09.2006, p. 26)

⁴ This is the term used by the Referring Court, see the Request pages 2–4 and 43, and which is presumably equivalent to the term “retail client” as defined in Article 4(12) of MiFID I. Under MiFID I, all clients who are not professional are considered retail clients. The criteria for determining professional client status are set out in Annex II of the Directive, see Article 4(11) of MiFID I. ESA will in the following make use of the same terminology as the Referring Court.

⁵ See the Request, page 4.

inter alia the right to receive certain financial inducements from third parties, including kick-back commissions.⁶

4. On 8 February 2019, the applicant brought a claim for information which resulted in the defendant providing him with information that the defendant had in fact received inducements from third parties in connection with their business relationship and on the amounts of those inducements.⁷ That information, which was necessary for the applicant to effectively pursue his subsequent claim for reimbursement, including interest, was provided after the final judgment by the Princely Court of Appeal of 12 May 2020.⁸
5. By judgment of 4 September 2020,⁹ the Princely Supreme Court found the term in Section 15 of the General Terms and Conditions to be too indeterminate and therefore invalid.¹⁰
6. Further, the applicant brought an action seeking reimbursement of the sums unduly withheld from it by the defendant (the main claim) and remuneration interest covering the entire period of withholding.¹¹ On 23 November 2022, the Princely Court granted the applicant's claim.¹² On 25 April 2023, the Princely Court of Appeal upheld the award of the main claim but granted remuneration interest only from 25 February 2019, the date on which the claim for information (see paragraph 4 above)

⁶ See the Request, page 5, Section 15 of the General Terms and Conditions, Version 09/2004. According to the judgment of the Princely Supreme Court in case 02 CG.2019.58, the General Terms and Conditions in the versions of 11/2007 and 05/2010 were not applicable to the business relationship between the defendant and the applicant, see the Request, pages 5–6.

⁷ See the Request, pages 6 and 43.

⁸ Judgment of the Princely Court of Appeal of 12 May 2020 (ON 31), see the Request, pages 6 and 43.

⁹ In case 02 CG.2019.58.

¹⁰ According to the Request, the case was determined in accordance with the substantive law of Liechtenstein, see the Request, page 5. A clause with the same wording as Section 15 of the General Terms and Conditions, Version 09/2004, has previously been examined in relation to EEA law by the Court in Case E-14/20 *Liti-Link*, compare the Request, page 5 and Case E-14/20 *Liti-Link*, paragraph 31. In *Liti-Link*, the Court assessed the circumstances under which an investment firm may provide information to a client on inducements in summary form, pursuant to Article 19 of MiFID I and Article 26 of the Implementing Directive. The Court held, inter alia, that a generic statement that a bank *might* receive inducements from third parties is not compliant with Article 19 of MiFID I and Article 26 of the Implementing Directive, and that the disclosure must specify *whether*, *when*, and *how* such inducements are provided, see Case E-14/20 *Liti-Link*, paragraph 61.

¹¹ See the Request, pages 6–8.

¹² See the Request, page 6.

was served on the defendant.¹³ The claim for remuneration interest in respect of the earlier period was dismissed,¹⁴ and this part of the ruling was subsequently appealed by the applicant.¹⁵

7. On 1 March 2024, the Princely Supreme Court upheld the appeal and awarded the applicant remuneration interest for the contested earlier period.¹⁶ The Princely Supreme Court noted that the applicant's claim was, in particular, based on provisions in connection with the transposition of MiFID I and thus largely grounded in EEA law. It found, in summary, that, in line with the EEA law principle of effectiveness, the applicant was entitled to remuneration interest covering the entire withholding period, and the detailed rules governing the payment of interest must not deprive him of adequate compensation. Accordingly, the Princely Supreme Court interpreted national law to mean that both the right to recovery and the right to receive related interest are subject to the 30-year limitation period provided for under § 1479 of the Liechtenstein Civil Code, not the three-year period provided for under § 1480 of the Liechtenstein Civil Code, and awarded interest from the dates on which the sums were originally withheld (a period comprised between 2006 and 2012).
8. On 2 December 2024, the Constitutional Court set aside the judgment of the Princely Supreme Court and remitted the case to the Princely Supreme Court for a new decision under the obligation to be bound by its legal opinion.¹⁷ The Constitutional Court found, in summary, that the Princely Supreme Court had failed to take account of the CJEU's ruling in Joined Cases C-355/18 to C-357/18 and C-479/18 *Rust-Hackner*,¹⁸ which accepted a three-year limitation period for remuneration interest in relation to claims brought by policyholders against their life assurance providers, provided that it does not undermine the effectiveness of the policyholder's right to cancel the life assurance contract.

¹³ See the Request, page 7.

¹⁴ Which is the only issue that remains contested between the parties, see the Request, page 7.

¹⁵ The other parts of the judgment by the Princely Court of Appeal became final, see the Request, page 7.

¹⁶ See the Request, pages 7–9.

¹⁷ See the Request, pages 9–12.

¹⁸ Joined Cases C-355/18 to C-357/18 and C-479/18 *Rust-Hackner*, EU:C:2019:1123 (*"Rust-Hackner"*).

9. Against this background, the Princely Supreme Court decided to refer to the EFTA Court two questions concerning the interpretation of the principle of effectiveness in the context of national rules on limitation periods governing claims for remuneration interest on sums of money unduly withheld as a result of the invalidity of a contractual term, where that invalidity stems from the term's incompatibility with Article 19 of MiFID I and Article 26 of the Implementing Directive.
10. For further information about the factual circumstances of the case, ESA respectfully refers to the Request.¹⁹

2 EEA LAW

11. MiFID I was incorporated into the EEA Agreement as point 30ca of Annex IX (Financial services) by Decision of the EEA Joint Committee No 65/2005 of 29 April 2005.²⁰ Constitutional requirements were indicated by Iceland, Liechtenstein and Norway, which were fulfilled on 8 June 2007. The decision entered into force on 1 August 2007. MiFID I was repealed under the EEA Agreement with effect from 3 December 2019 by Decision of the EEA Joint Committee No 78/2019 of 29 March 2019.²¹
12. Recital 29 of MiFID I read as follows:
- “The expanding range of activities that many investment firms undertake simultaneously has increased potential for conflicts of interest between those different activities and the interests of their clients. It is therefore necessary to provide for rules to ensure that such conflicts do not adversely affect the interests of their clients.”*
13. Recital 31 of MiFID I read as follows:

¹⁹ See the Request, pages 4 to 15.

²⁰ OJ L 239, 15.9.2005, p. 50.

²¹ OJ L 279, 31.10.2019, p. 143.

“One of the objectives of this Directive is to protect investors. Measures to protect investors should be adapted to the particularities of each category of investors (retail, professional and counterparties).”

14. Article 19 of MiFID I, headed “Conduct of business obligations when providing investment services to clients”, read as follows (in extract):

“1. Member States shall require that, when providing investment services and/or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in paragraphs 2 to 8.

2 All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

3 Appropriate information shall be provided in a comprehensible form to clients or potential clients about:

- the investment firm and its services,*
- financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,*
- execution venues, and*
- costs and associated charges*

so that they are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. This information may be provided in a standardised format.

[...]”

15. The Implementing Directive was incorporated into the EEA Agreement as point 30cab of Annex IX (Financial services) by Decision of the EEA Joint Committee No 21/2007 of 27 April 2007.²² Constitutional requirements were indicated by Iceland and Norway, which were fulfilled on 18 April 2008. The decision entered into force on 1 June 2008.

16. Recital 5 of the Implementing Directive reads as follows:

“The rules for the implementation of the regime governing operating conditions for the performance of investment and ancillary services and investment activities should reflect the aim underlying that regime. That is to say, they should be designed to ensure a high level of investor protection to be applied in a uniform manner through the introduction of clear standards and requirements governing the relationship between an investment firm and its client. On the other hand, as regards investor protection, and in particular the provision of investors with information or the seeking of information from investors, the retail or professional nature of the client or potential client concerned should be taken into account.”

17. Recital 39 of the Implementing Directive reads as follows:

“For the purposes of the provisions of this Directive concerning inducements, the receipt by an investment firm of a commission in connection with investment advice or general recommendations, in circumstances where the advice or recommendations are not biased as a result of the receipt of commission, should be considered as designed to enhance the quality of the investment advice to the client.”

18. Article 26 of the Implementing Directive, headed “Inducements”, reads as follows:

“Member States shall ensure that investment firms are not regarded as acting honestly, fairly and professionally in accordance with the best interests of a client if, in relation to the provision of an investment or ancillary service to the client, they

²² OJ L 209, 9.8.2007, p. 38.

pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:

- (a) a fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client;*
- (b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:*
 - (i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service;*
 - (ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service to the client and not impair compliance with the firm's duty to act in the best interests of the client;*
- (c) proper fees which enable or are necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients.*

Member States shall permit an investment firm, for the purposes of point (b)(i), to disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that it undertakes to disclose further details at the request of the client and provided that it honours that undertaking."

19. Council Directive 93/13/EEC of 5 April 1993²³ on unfair terms in consumer contracts (the “**Unfair Contract Terms Directive**”) was incorporated into the EEA Agreement as point 7a of Annex XIX (Consumer protection) by Decision of the EEA Joint Committee No 7/94 of 21 March 1994.²⁴ Constitutional requirements were indicated by Iceland and Norway, which were fulfilled on 23 June 1994. The decision entered into force on 1 July 1994.

20. Article 6(1) of the Unfair Contract Terms Directive reads as follows:

“Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.”

21. Article 7(1) of the Unfair Contract Terms Directive reads as follows:

“Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.”

22. The Request also refers to provisions of several directives setting out the right of a policyholder to cancel a life assurance contract.²⁵

3 NATIONAL LAW

23. According to the Request, MiFID I and the Implementing Directive were implemented in Liechtenstein law, *inter alia*, in the Banking Act, the Banking Ordinance and in the Civil Code. ESA respectfully refers to the parts of the Request which reproduce the relevant provisions.²⁶

24. The Request also refers to a number of more general provisions of the Liechtenstein Civil Code which govern, in particular, matters of contract law, restitution and limitation periods. These include, *inter alia*, § 1480 of the Liechtenstein Civil Code,

²³ OJ L 95, 21.4.1993, p. 29.

²⁴ OJ L 160, 28.6.1994, p. 1.

²⁵ See the Request, pages 20–22.

²⁶ See the Request, in particular pages 22–25.

which is reproduced below. For the remainder, ESA respectfully refers to the parts of the Request which reproduce the relevant provisions.²⁷

25. § 1480 of the Liechtenstein Civil Code reads as follows:

“Claims in relation to outstanding annual payments, in particular, interest, pensions, maintenance, farmer’s life interest, as well as annuities agreed for the repayment of principal are extinguished in three years. The right itself becomes time-barred after non-use for thirty years.”

4 THE QUESTIONS REFERRED

26. The Referring Court has asked the EFTA Court the following questions:

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?*

²⁷ See the Request, in particular pages 24–27.

If the first question is answered in the negative, the Referring Court asks the following:

2. *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 LEGAL ANALYSIS

5.1 Preliminary remarks

27. Under Article 19 of MiFID I and Article 26 of the Implementing Directive (see paragraphs 14 and 18 above), investment firms²⁸ were, in principle, permitted to receive inducements from third parties, provided that certain conditions were met.²⁹

²⁸ Meaning “any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis”, pursuant to Article 4(1)(1) of MiFID I.

²⁹ This was subject to the condition that the “existence, nature and amount”, or method of calculation of the amount, were clearly disclosed to the client in a “comprehensive, accurate and

28. However, as indicated in paragraph 5 above, the Referring Court found in its judgment of 4 September 2020 that the term of the applicable General Terms and Conditions by which the defendant reserved the right to receive inducements from third parties was too indeterminate and thus invalid. Moreover, as noted in paragraph 4 above, the Princely Court of Appeal had found on 12 May 2020 that the defendant was obligated to inform the applicant of whether and to what extent it had received inducements from third parties in connection with their business relationship. Further, as noted in paragraph 6 above, as a consequence, the applicant brought an action seeking reimbursement of the inducements unduly withheld from it by the defendant and remuneration interest covering the entire period during which the inducements were withheld from it.³⁰

5.1.1 *The Request is admissible*

29. As set out above in paragraph 8, the Constitutional Court remanded the case to the Referring Court for renewed consideration under the obligation to be bound by the legal opinion of the Constitutional Court. In the Request, the Referring Court considers that, despite the judgment of 2 December 2024 of the superior Constitutional Court, there remain uncertainties about the correct interpretation of EEA law and requests the advisory opinion of the Court to ensure the effective legal protection of individuals.³¹

30. It is settled case law that questions on the interpretation of EEA law referred by a national court, in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine,

understandable” manner, prior to the provision of the relevant service, pursuant to Article 26(1)(b)(i) of the Implementing Directive, and to the condition that the inducement had been “*designed to enhance the quality of the relevant service to the client*” and not impair the investment firm’s duty to act in the interests of the client, pursuant to Article 26(1)(b)(ii) of the Implementing Directive. For the purpose of the investment firms’ duty of information according to point (b)(i), pursuant to the last paragraph of Article 26 of the Implementing Directive, the necessary information could be given in summary form, provided that the investment firm undertook to disclose further details upon request from the client, and honored that undertaking. The question on the investment firm’s right to provide information on inducements to the client in summary form was, inter alia, the topic of Case E-14/20 *Liti-Link*, see footnote 10.

³⁰ The exact date is not specified in the Request. Based on the chronology of events set out in the Request, ESA assumes that this claim for reimbursement was brought after 12 May 2020 (when the client became aware that the defendant had received inducements from third parties) but before 23 November 2022 (when the Princely Court issued its judgment on the claim).

³¹ See the Request, pages 13–14, 34 and 47.

enjoy a presumption of relevance. Accordingly, the Court may only refuse to rule on a question referred by a national court where it is quite obvious that the interpretation of EEA law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.³² ESA submits that none of the grounds for refusing to give an advisory opinion apply in the present case.

31. Further, the Court has held that national rules binding a national court, on points of law, by the rulings of a superior court cannot prevent that national court from using its discretion to request an advisory opinion from the Court.³³ Accordingly, a national court is permitted under Article 34 SCA to request an advisory opinion, in circumstances in which a legal question, that constitutes the subject of the request for an advisory opinion, has already been answered in an earlier set of proceedings by a higher-ranking national court with binding effect in accordance with national procedural law.³⁴ As a consequence, the Request is admissible.

5.1.2 *To comply with EEA law, Liechtenstein law must provide for an effective remedy*

32. As noted above, according to the Request, the applicant's claim is largely based on EEA law, in particular MiFID I (see paragraph 7 above). Neither MiFID I nor the Implementing Directive specify which remedy or penalty EEA States must apply in the event where investment firms receive inducements from third parties in violation of the rules set out in those directives. However, ESA submits that to comply with EEA law, the remedy provided to that effect under Liechtenstein law must be effective. This follows from Directive 93/13³⁵ but also more generally from the

³² See Case E-3/24 *Margrét Rósa Kristjánsdóttir v Icelandic Health Insurance (Sjúkratryggingar Íslands)*, paragraph 32; Case E-9/22 *Verkfæðingafélag Íslands, Stéttarfélag tölvunarfræðinga and Lyfjafræðingafélag Íslands v Íslenska ríkið*, paragraph 23, and Case E-11/20 *Eyjólfur Orri Sverrisson v The Icelandic State*, paragraph 34.

³³ Case E-10/23 *X v Finanzmarktaufsicht*, paragraph 47; compare also Case C-689/13 *PFE*, EU:C:2016:199, paragraph 32 and case law cited.

³⁴ Case E-10/23 *X v Finanzmarktaufsicht*, paragraph 48.

³⁵ The Court has previously held that Directive 93/13 is the “starting point of consumer protection under EEA law”, being “a general directive for consumer protection, intended to apply in all sectors of economic activity”, see Joined Cases E-13/22 and E-1/23 *Birgir Þór Gylfason and Others v Íslandsbanki hf.*, paragraph 70 and the case law cited.

requirement to provide for effective, proportionate and dissuasive sanctions in case of non-compliance with EEA law.

33. First, it follows from Article 6(1) of Directive 93/13 that the determination by a court that a term is unfair within the meaning of that directive must, in principle, have the consequence of restoring the consumer to the legal and factual situation that he or she would have been in if that term had not existed. Accordingly, the obligation for the national court to exclude an unfair contract term imposing the payment of amounts that prove not to be due entails, in principle, a corresponding restitutory effect in respect of those same amounts.³⁶ ESA notes in this regard that, according to the Request, the applicant's claim is not only based on an infringement of MiFID I and the Implementing Directive, but also on Directive 93/13, to which the Request explicitly refers.³⁷

34. Further, as noted in paragraph 2 above,³⁸ sums paid by a third party to a bank (specifically, inducements) based on an invalid contractual term, as in the present proceedings, are to be considered as 'sums unduly withheld' by the bank in respect of the relationship between the client and the bank under Liechtenstein law. An analogy may therefore be drawn between an unfair contract term imposing the payment by the consumer of amounts that are not due and an unfair contract term leading to sums being unduly withheld from a client.

35. Second, and in any event, even if directives do not contain provisions addressing specific forms of sanctions for non-compliance and the choice of these sanctions remains within the discretion of the EEA States, EEA States are nevertheless required under Article 3 EEA to take all measures necessary to guarantee the application and effectiveness of EEA law. It is not sufficient that these sanctions are analogous to sanctions for infringements of national law of a similar nature. They must also be effective, proportionate and dissuasive.³⁹ More generally, where a

³⁶ Case C-230/24 *Banco Santander*, EU:C:2025:177, paragraph 29 and the case law cited.

³⁷ See the Request, in particular page 3, second question, and page 20, referring respectively to Articles 6(1) and 7(1) of Directive 93/13, as well as page 42, referring to Articles 3(1), 4 and 5 of Directive 93/13. In this context, MiFID I complements the protection conferred by Directive 93/13, compare the judgment in Joined Cases E-13/22 and E-1/23 *Birgir Þór Gylfason and Others v Íslandsbanki hf.*, paragraph 102.

³⁸ See footnote 1.

³⁹ Case E-3/24 *Margrét Rósa Kristjánsdóttir v Icelandic Health Insurance*, paragraph 55.

directive does not specify the consequences of the invalidity of a contract whose terms violate the directive and it is for the EEA States to determine the consequences of such a finding, the rules which they lay down must be compatible with EEA law and, in particular, with the objectives pursued by that directive.⁴⁰

36. ESA understands from the Request that under Liechtenstein law, where an investment firm has received inducements in violation of MiFID I and the Implementing Directive, clients have a right to restitution of such inducements which are considered unduly withheld from them, in addition to corresponding remuneration interest.⁴¹ ESA further understands that the questions referred by the Referring Court do not concern the availability as such of this remedy of restitution, which does not appear to be in dispute. In contrast, the two questions referred by the Referring Court concern the issue whether the conditions under which the remedy is available, and more specifically whether the limitation period to which the claim to receive remuneration interest is subject under § 1480 of the Liechtenstein Civil Code, comply with the EEA law principle of effectiveness.

5.1.3 On limitation periods and the principle of effectiveness

37. In the absence of specific EEA rules on the matter, it is for the national legal order of each EEA State to establish, in accordance with the principle of procedural autonomy, procedural rules for actions intended to safeguard the rights that individuals derive from EEA law, provided, however, that those rules are no less favourable than the rules governing similar domestic actions (the principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of rights conferred by EEA law (the principle of effectiveness).⁴² It is for the Referring Court to assess whether the national rules in question respect the principles of equivalence and effectiveness. EEA law requires, in addition to

⁴⁰ Case C-520/21 *Bank M.*, EU:C:2023:478, paragraph 64.

⁴¹ See the Request, in particular pages 6–8 referring to the sums of money including 5% of interest which were awarded to the applicant. See also page 46 of the Request setting out the provisions of Liechtenstein law on which the applicant's claim is based.

⁴² Case C-484/21 *Caixabank*, EU:C:2024:360, paragraph 22 and the case law cited; Case E-11/23 *Låssenteret AS v Assa Abloy Opening Solutions Norway AS*, paragraph 44.

observance of the principles of equivalence and effectiveness, that national legislation does not undermine the right to effective judicial protection.⁴³

38. As regards the principle of effectiveness, which is the only principle at issue in the present proceedings, every case in which the question arises as to whether a national procedural provision makes the application of EEA law impossible or excessively difficult must be analysed 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. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings.⁴⁴

39. An extensive body of case law has provided guidance on the circumstances under which the EEA law principle of effectiveness may preclude specific features of national limitation periods. This case law relates, in particular, to two areas of law: (i) consumer protection law, more specifically unfair contract terms prohibited by Directive 93/13,⁴⁵ and (ii) competition law.⁴⁶ ESA submits that the case law relating to unfair contract terms is most relevant to the present case. This is because that case law concerns, as the present case, national limitation periods governing claims for restitution of sums of money by consumers against financial institutions in relation to contract terms found to be invalid.

40. The CJEU has consistently held that the application of a limitation period to claims for restitution brought by consumers in order to enforce rights which they derive from Directive 93/13 is not, in itself, contrary to the principle of effectiveness, provided that its application does not make it in practice impossible or excessively difficult to exercise the rights conferred by that directive.⁴⁷ For the purposes of

⁴³ Case E-11/23 *Læssenteret AS v Assa Abloy Opening Solutions Norway AS*, paragraph 44.

⁴⁴ Case C-484/21 *Caixabank*, EU:C:2024:360, paragraph 23 and the case law cited.

⁴⁵ See, for example, Case C-484/21 *Caixabank*, EU:C:2024:360; Case C-561/21 *Banco Santander*, EU:C:2024:362; Joined Cases C-810/21 to C-813/21 *Caixabank*, EU:C:2024:81; Joined Cases C-80/21 to C-82/21 *D.B.P.*, EU:C:2022:646; Joined Cases C-776/19 to C-782/19 *BNP Paribas Personal Finance*, EU:C:2021:470; and Case C-485/19 *Profi Credit Slovakia*, EU:C:2021:313.

⁴⁶ See, for example, Case C-21/24 *Nissan Iberia*, EU:C:2025:659; and Case C-605/21 *Heureka Group*, EU:C:2024:324.

⁴⁷ Case C-484/21 *Caixabank*, EU:C:2024:360, paragraph 27 and the case law cited.

examining whether the principle of effectiveness precludes certain features of a national limitation period, the analysis of the characteristics of the limitation period must cover **the duration of the limitation period** and the detailed rules for its application, including **the event used to start the period running**.⁴⁸

41. In this assessment, it is necessary to take account of the weaker position of the consumer vis-à-vis the seller or supplier as regards both bargaining power and level of knowledge, which leads the consumer to accept terms drawn up in advance by the seller or supplier, without being able to influence their content. Similarly, the CJEU held, in the context of Directive 93/13, that consumers may be unaware of the unfairness of a term in a mortgage loan agreement or not appreciate the extent of their rights.⁴⁹

42. ESA submits that the considerations set out in paragraph 40–41 above apply *mutatis mutandis* to MiFID I and the Implementing Directive. In particular, the contract term at issue in the present case was drawn up in advance without clients such as the applicant having been able to influence its content. Moreover, non-professional clients such as the applicant may be unaware of the fact that a contract term such as the one at issue is contrary to MiFID I and the Implementing Directive. ESA notes in this regard that recital 5 of the Implementing Directive refers to the need, as regards investor protection and in particular the provision of investors with information, to take account of the retail or professional nature of the client (see paragraph 16 above). Additionally, although the case law relating to Directive 93/13 did not specifically concern remuneration interest, ESA submits that there is no valid reason why the scope of that case law should be confined to the principal of amounts unduly paid or withheld and exclude interest.

43. By its two questions, the Referring Court seeks, in essence, to ascertain whether EEA law must be interpreted as precluding a rule of national law whereby the right to claim remuneration interest to which a non-professional client is entitled on the sums of money which a financial institution withheld from the client pursuant to a contract term found to be contrary to MiFID I is (i) subject to a three-year limitation

⁴⁸ Case C-484/21 *Caixabank*, EU:C:2024:360, paragraph 25 and the case law cited.

⁴⁹ Case C-484/21 *Caixabank*, EU:C:2024:360, paragraph 28 and the case law cited.

period that (ii) starts to run notwithstanding the client's lack of awareness of that right.

5.2 The first question: duration of the limitation period and applicability of the *Rust-Hackner* case law

44. By its first question, the Referring Court asks, in essence, whether the principle of effectiveness, in the context of Article 19 of MiFID I and Article 26 of the Implementing Directive, precludes a national provision which lays down a three-year limitation period for claims to remuneration interest arising in connection with the repayment of sums unduly withheld by an investment bank, and whether the *Rust-Hackner* case law should be applied by analogy in such a scenario.
45. Specifically, the Referring Court refers 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 and the principles set out in *Rust-Hackner* and asks whether the same principles must apply to the matter at hand.

5.2.1 *Rust-Hackner* is not as such applicable to the present proceedings

46. In *Rust-Hackner*, policyholders claimed that they had either received no information or incorrect information about their right to cancel their life assurance contracts, contrary 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.⁵⁰ The CJEU held that if information is not provided or is incorrect to such an extent that it essentially limits the policyholder's exercise of its cancellation right, the cancellation period does not begin to run.⁵¹ As a result, the CJEU found that, in such circumstances, policyholders could cancel their life assurance contract even after the contract had

⁵⁰ See Opinion of Advocate General Kokott in Joined Cases C-355/18 to C-357/18 and C-479/18 *Rust-Hackner*, EU:C:2019:594, paragraph 12.

⁵¹ See *Rust-Hackner*, paragraphs 67–68, 81–82 and 89–90.

been terminated.⁵² Upon valid cancellation, the insurers had to reimburse all premiums paid, not just the surrender value.⁵³

47. Austrian law provided that the exercise of the right of cancellation entailed an obligation to refund the payments that have been made and to pay remuneration interest on the sums to be refunded.⁵⁴ In this context, the CJEU held that national rules may impose a three-year limitation period on claims for remuneration interest, provided their application does not undermine the effectiveness of the policyholder's right of cancellation, which it underlined was a matter for the referring court to determine.⁵⁵ The CJEU emphasised that such a limitation period may impair the cancellation right if it discourages policyholders from exercising it, particularly where they were not properly informed of the conditions for doing so.⁵⁶ At the same time, the CJEU underlined that late cancellation is intended to protect the policyholder's freedom of choice at the time of contract conclusion. If, instead, cancellation is used merely to obtain greater financial returns or to speculate on the difference between contractual benefits and remuneration interest, it goes beyond the protective purpose of the right.⁵⁷

48. In its judgment of 2 December 2024, the Liechtenstein Constitutional Court found that the Princely Supreme Court in its decision of 1 March 2024 had failed to take account of the CJEU's ruling in *Rust-Hackner*⁵⁸ and the subsequent case law of the Austrian Supreme Court which applied the principles set out in *Rust-Hackner*.⁵⁹ According to the Constitutional Court,⁶⁰ a three-year limitation period for remuneration interest is permissible, provided that the principle of effectiveness is

⁵² See *Rust-Hackner*, paragraph 98 (provided that the law applicable to the contract does not determine the legal effects arising where either no information is provided in respect of the right of cancellation or incorrect information is provided).

⁵³ Which would be the refunded amount if the policyholder terminated the contract. The CJEU held that the right to cancellation cannot be treated in the same way as the right to termination, see *Rust-Hackner*, paragraphs 106–107 and 111.

⁵⁴ See *Rust-Hackner*, paragraph 115.

⁵⁵ See *Rust-Hackner*, paragraphs 115–117.

⁵⁶ See *Rust-Hackner*, paragraph 119.

⁵⁷ See *Rust-Hackner*, paragraph 120.

⁵⁸ See the Request, pages 9–11.

⁵⁹ See the Request, page 10. The Request refers to Austrian case law because § 1480 of the Liechtenstein Civil Code, which provides for a three-year limitation period for remuneration interest, is based on an equivalent provision of Austrian law.

⁶⁰ Based on its understanding of the case law from the Austrian Supreme Court.

respected. The Constitutional Court further found that ascertaining whether that is the case requires a case-by-case assessment of whether, in a specific circumstance, applying a three-year limitation period, as opposed to a 30-year limitation period, would impede a client from exercising their rights under EEA law.⁶¹ In this regard, the Constitutional Court held that the Princely Supreme Court should not have assumed that a 30-year limitation period was necessary in the present proceedings. The Princely Supreme Court should have explained why, in the context of the specific case, the client would, by the application of a three-year limitation period on remuneration interest, be deterred from enforcing his or her right to recover the inducements at issue or otherwise be impeded in his or her rights, contradicting both EEA law and Austrian jurisprudence by failing to do so.⁶² The Constitutional Court stressed that the application of a limitation period of 30 years could enable the applicant to speculate on the defendant acting contrary to EEA law, contrary to the principles established by the CJEU in *Rust-Hackner*.⁶³

49. The Request suggests that the Princely Supreme Court treats the CJEU's judgment in *Rust-Hackner* as illustrative of the broader principle of effectiveness. When it comes to the specific factors that the CJEU underlined in *Rust-Hackner*, the Princely Supreme Court considers them as specifically tailored to the rights of a policyholder connected with a contract for life assurance,⁶⁴ which involve complex, speculative yields and long-term commitments, whereas the present dispute concerns a fixed and undisputed right to recover inducements plus statutory interest.⁶⁵ Since no cancellation right was at issue and no speculative yield could arise – given that the defendant would not owe remuneration interest if it had acted in accordance with EEA law⁶⁶ – the Princely Supreme Court considers that the specific guidance provided in *Rust-Hackner* is not directly applicable.

⁶¹ See the Request, pages 10–11 and 30–31.

⁶² See the Request, page 11.

⁶³ See the Request, page 11.

⁶⁴ See the Request, page 31.

⁶⁵ See the Request, pages 32–33.

⁶⁶ See the Request, page 33. Compare to *Rust-Hackner*, paragraph 109 where the CJEU held that “it is for the assurance undertaking itself (...) to remedy a situation caused by its own failure to observe the requirement under EU law to communicate a defined list of information, including, in particular, information relating to the right of the policyholder to cancel the contract.” That statement was made in connection to the fourth question raised, namely whether EEA law precludes a national rule that would only require the insurers to reimburse the surrender value, and not remuneration

50. ESA submits that while the fifth question raised in *Rust-Hackner* and the present case both concern the principle of effectiveness in relation to claims for remuneration interest, the underlying facts and the purposes of the applicable EEA rules are distinct. In *Rust-Hackner*, policyholders of life assurance contracts sought repayment of premiums plus interest because they had not been properly informed of their statutory cancellation right. The present case concerns a non-professional banking client claiming restitution and interest on hidden inducements received by the bank under a contract term subsequently declared invalid under MiFID I and the Implementing Directive.
51. Both frameworks pursue the overarching aim of consumer protection, but in different regulatory contexts. The life assurance directives protect policyholders from being locked into long-term commitments without a genuine chance to reconsider, ensuring that cancellation rights remain effective where insurers fail in their duty to inform. MiFID and its implementing rules, on the other hand, safeguard non-professional investors against conflicts of interest and hidden inducements by requiring transparency. Both regimes address imbalances of knowledge and power between financial institutions and individuals, ensuring that consumers and investors can exercise their rights effectively.
52. Furthermore, in *Rust-Hackner*, the CJEU stressed that late cancellation serves to protect the policyholder's freedom of choice at the moment of contract conclusion, and that using the right to cancellation merely to obtain higher financial returns or to speculate on the difference between contractual benefits and remuneration interest would exceed the protective purpose of that right.⁶⁷ By contrast, as the Princely Supreme Court pointed out, no cancellation right is at issue here and no speculative yield could arise, since a bank such as the defendant would not owe remuneration interest to a client such as the applicant had it complied with EEA law.⁶⁸

interest if policyholders exercised its right to cancellation. The CJEU held that, upon valid cancellation, insurers have to reimburse all premiums paid, not just the surrender value, see *Rust Hackner* paragraph 111.

⁶⁷ See *Rust-Hackner*, paragraph 120.

⁶⁸ See the Request, page 33.

53. As such, the claims at issue differ in their sums, the duties breached, and the remedies sought. While both cases engage the principle of effectiveness, the legal frameworks and policy objectives diverge, which may result in different outcomes when the referring court analyses whether a national procedural provision makes the application of EEA law impossible or excessively difficult by reference to the role of that provision in the national procedure viewed as a whole. Accordingly, the reasoning in *Rust-Hackner* and, in particular, the specific factors identified by the CJEU for purposes of verifying the effectiveness of the provision at issue in that case, cannot be transposed mechanically to the present case; the analysis must instead be based on the principle of effectiveness in the context of the specific objectives of MiFID I and the Implementing Directive.

5.2.2 A three-year statute of limitation rule is not, in itself, precluded

54. At the outset, it should be emphasised that the judgment in *Rust-Hackner* does not oblige EEA States to introduce limitation periods of a predetermined, specified duration, such as limitation periods shorter than 30 years. Consistent case law confirms that EEA States may in principle provide for limitation rules of their choice, subject to compliance with, inter alia, the principles of equivalence and effectiveness (see paragraph 40 above).⁶⁹

55. The application of a limitation period for claims to remuneration interest arising in connection with a claim for repayment of sums, brought by non-professional clients in order to enforce rights which they derive from MiFID I and the Implementing Directive, is not, in itself, contrary to the principle of effectiveness, provided that its application does not make it in practice impossible or excessively difficult to exercise the rights conferred by that directive.⁷⁰

56. In this regard, it has already been held that a national provision providing for a limitation period of three years for damages claims is not, in itself, contrary to the principle of effectiveness. Consistent case law has, nevertheless, held that the

⁶⁹ To ESA's understanding, the Constitutional Court considers the application of a limitation period of 30 years as contrary to the principles established by the CJEU in *Rust-Hackner* as it could enable the applicant to speculate on the defendant acting contrary to EEA law, see paragraph 48 above.

⁷⁰ See, in relation to Directive 93/13, Case C-484/21 *Caixabank*, EU:C:2024:360, paragraph 27 and the case law cited.

establishment and knowledge of the limitation period and all arrangements for its application *in advance*, are, inter alia, prerequisites for a consumer to effectively exercise his or her right to bring an effective action regarding an unfair contract term under Directive 93/13.⁷¹ In *Raiffeisen Bank*, the CJEU underlined that in so far as it is *established and known in advance*, a limitation period of three years is, in principle, sufficient in practical terms to allow the consumer to prepare and bring an effective action.⁷² In *Caixabank*, the CJEU confirmed that national limitation periods of three to five years are, in principle, compatible with EEA law.⁷³ Likewise, in *BNP Paribas*, the CJEU held that limitation rules serve legitimate aims of legal certainty, and a three-year limitation period is acceptable provided that it runs from a point in time when the consumer can reasonably be aware of their rights.⁷⁴ By further comparison, in *Rust-Hackner*, the CJEU accepted that a three-year period could apply to claims for remuneration interest following cancellation of a life assurance contract, so long as it did not undermine the effectiveness of the cancellation right.⁷⁵ In *Nye Kystlink*, which concerned an action for damages in the field of competition law, the EFTA Court held that limitation rules are a legitimate expression of legal certainty and may be applied provided that they do not render the exercise of EEA competition rules practically impossible or excessively difficult.⁷⁶

57. In conclusion, ESA submits that, while national rules on limitation must always be tested against the principles of equivalence and effectiveness, consistent case law establishes that a three-year period is not, in itself, incompatible with EEA law. It is for the Referring Court to assess whether the national rules in question respect the principles of equivalence and effectiveness,⁷⁷ including whether a national

⁷¹ See Joined Cases C-776/19 to C-782/19 *BNP Paribas Personal Finance*, EU:C:2021:470, paragraphs 41–42; Case C-485/19 *Profi Credit Slovakia*, EU:C:2021:313, paragraph 59; Joined Cases C-698/18 and C-699/18 *Raiffeisen Bank*, EU:C:2020:537, paragraph 64, together with the Opinion of Advocate General Szpunar in Joined Cases C-698/18 and C-699/18 *Raiffeisen Bank*, EU:C:2020:181, paragraph 73.

⁷² See Joined Cases C-698/18 and C-699/18 *Raiffeisen Bank*, EU:C:2020:537, paragraph 64.

⁷³ See Joined Cases C-224/19 and C-259/19 *Caixabank*, EU:C:2020:578, paragraph 87 and the case law cited.

⁷⁴ See Joined Cases C-776/19 to C-782/19 *BNP Paribas Personal Finance*, EU:C:2021:470, paragraphs 31 and 41, 43–46. The starting point of the limitation period will be assessed under Section 5.3 below.

⁷⁵ See *Rust-Hackner*, paragraphs 112 and 117.

⁷⁶ See Case E-10/17 *Nye Kystlink*, paragraphs 110–112 and 122.

⁷⁷ See paragraph 37 above.

procedural provision makes the application of EEA law impossible or excessively difficult. The analysis must cover the duration of the limitation period, which must be established and known in advance to allow for an effective action, and the event used to start the period running,⁷⁸ 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.⁷⁹ For the reasons indicated in paragraphs 49 to 53 above, the solution adopted by the CJEU in *Rust-Hackner* is not directly transposable to the present case.

5.3 The second question: the start of the limitation period

58. By its second question, the Referring Court seeks, in essence, to ascertain whether EEA law must be interpreted as precluding a rule of national law whereby the right to claim remuneration interest to which a non-professional client is entitled on the sums of money which a financial institution withheld from the client pursuant to a contract term found to be contrary to MiFID I and the Implementing Directive is subject to a three-year limitation period starting to run notwithstanding the client's lack of awareness of that right.
59. More specifically, the EEA law provisions and principles referred to in the second question include (i) Article 19 of MiFID I and Article 26 of the Implementing Directive, (ii) Articles 6(1) and 7(1) of Directive 93/13, and (iii) the principles of effectiveness and equivalence. The sums of money at issue withheld from the client are inducements, i.e. benefits received 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.
60. It follows from the above that the core of the second question is whether a limitation period with a starting point such as the one at issue in the present case makes the application of EEA law, in this case Article 19 of MiFID I and Article 26 of the Implementing Directive 2006/73/EC, as well as Articles 6(1) and 7(1) of Directive 93/13, impossible or excessively difficult.

⁷⁸ See paragraph 40 above.

⁷⁹ See paragraph 38 above.

61. As noted in paragraph 42 above, ESA considers the case law relating to Directive 93/13 relevant to the present case. The application of a limitation period that begins to run following the signing of a contract, in so far as it means that the consumer may seek the refund of payments made pursuant to a contractual term held to be unfair only during a specified period following the signing of the contract, irrespective of whether he or she was or could reasonably have been aware of the unfairness of that term, has been considered by the CJEU to make it excessively difficult for that consumer to exercise his or her rights under Directive 93/13, and, consequently, run counter to the principle of effectiveness read in conjunction with the principle of legal certainty.⁸⁰ Thus, Directive 93/13 precludes the limitation period for an action for restitution of the sums paid by a consumer pursuant to an unfair contractual term from beginning to run irrespective of whether that consumer was or could reasonably have been aware of the unfairness of that term.⁸¹

62. In the present case, the Request seeks to ascertain whether the principle of effectiveness precludes a rule of national law which subjects the right to claim remuneration interest on the sums withheld by a financial institution under a contract term found contrary to MiFID to a three-year limitation period that starts to run notwithstanding the client's lack of awareness of that right. ESA understands that the question arises against the background of Liechtenstein case law which, influenced by Austrian case law, takes the view that the limitation period for remuneration interest starts running from an objectively defined starting point, i.e. the date on which it becomes objectively possible to exercise the right. According to this judicial interpretation, the lack of awareness of the right generally does not prevent the limitation period from starting to run.⁸²

63. In this case, the applicant's knowledge of his claim for remuneration interest, appears, based on the Request, to first have been effectively established after the judgment by the Princely Court of Appeal of 12 May 2020, on the applicant's claim for information, became final and was complied with by the defendant.⁸³ However,

⁸⁰ Case C-484/21 *Caixabank*, EU:C:2024:360, paragraphs 29–31 and the case law cited.

⁸¹ Case C-484/21 *Caixabank*, EU:C:2024:360, paragraph 35.

⁸² See the Request, pages 10, 30-31 and 34-35.

⁸³ See the Request, page 6.

according to the Request, the business relationship between the applicant and the defendant dates back to the period between 2004 and 2012, and the inducements at issue appear to have been originally withheld between 2006 and 2012.⁸⁴ Hence, applying a three-year limitation period that is purely objectively defined – without consideration of the applicant’s lack of knowledge of the existence of the inducements, nor of his subsequent right to claim reimbursement, including remuneration interest, of those sums – would mean that at the point in time when the applicant was first effectively able to bring an action for his claim for remuneration interest, namely after 2020, at least the major part of that claim was already time-barred.⁸⁵ It is for the Referring Court to verify the factual circumstances in the present case, but in ESA’s view, it appears that an interpretation of Liechtenstein law which applies an objectively determined starting point for the limitation period, such as the date of conclusion of the agreement between the applicant and defendant or the date of withholding of the inducements, is incompatible with the applicant’s right to bring an effective action for payment of the remuneration interest on his main claim for reimbursement.

64. As apparent from the case law referred to in paragraph 61 above, the principle of effectiveness precludes a limitation period for an action for restitution of sums paid by a consumer pursuant to an unfair contractual term that begins to run irrespective of whether that consumer was or could reasonably have been aware of the unfairness of that term. The date of conclusion of the contract containing the unfair term cannot constitute the starting point of the limitation period.⁸⁶ ESA submits that, given the similarities already highlighted in paragraph 39 above, the same solution applies in the present case.

65. In conclusion, ESA submits, in light of the above, that the Referring Court must interpret the applicable national law in accordance with EEA law, such that the limitation period at issue in the present case does not start to run before the consumer was or could reasonably have been aware of the existence of the

⁸⁴ See the Request, pages 4, 6 and 8.

⁸⁵ Applying the Liechtenstein Constitutional Court’s interpretation of national law, see the Request, pages 30–31.

⁸⁶ Case C-484/21 *Caixabank*, EU:C:2024:360, paragraph 31.

inducements and the related right to claim remuneration interest. The Request suggests that the relevant procedural provision of Liechtenstein law may be interpreted in this way, since its wording does not specify the starting point of the relevant limitation period.⁸⁷

6 CONCLUSION

66. Accordingly, ESA respectfully submits to the Court that the answer to the Request should be as follows:

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

⁸⁷ See the Request, pages 43–44.

Implementing Directive to a three-year limitation period that starts to run notwithstanding the client's lack of awareness of that right.

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