

ORIGINAL

TO THE PRESIDENT AND MEMBERS OF THE EFTA COURT

WRITTEN OBSERVATIONS

Submitted pursuant to Art 20 of the Statute of the EFTA Court by

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concerning a request for an advisory opinion submitted by the Princely Supreme Court (hereinafter referred as "Supreme Court"), in the case:

E-9/25

Peter Ploerer (Claimant) v LGT Bank AG (Defendant)

pursuant to Art 34 of the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice.

CONTENTS

1. Introduction	3
1.1. Factual and Procedural background	3
1.2. Considerations of the Supreme Court of 1 March 2024, 08 CG.2022.207, ON 90	5
1.3. Judgement of the Constitutional Court of 2 December 2024, StGH 2024/035	6
1.4. Current State of the Proceedings	7
2. Law – EEA Law and National Law	8
3. Questions of the National Court	8
4. Legal Analysis	8
4.1. First Question - Irrelevance of ECJ 19 December 2019 joined cases C-355/18 to C-357/18 and C-479/18 Rust-Hackner et al and related insurance directives	8
4.2. Second Question - Relevance of Directive 93/13/EEC on Unfair Terms in Consumer Contracts and Directive 2006/73/EC MiFID I, Principle of Effectiveness	10
4.2.1. General Considerations	10
4.2.2. Unfair Contract Terms Directive – ECJ case law on consumer claims and effective sanctions for the use of intransparent terms	13
4.2.2.1. Loss of entitlement to remuneration	14
4.2.2.2. No absolute, objective limitation of consumer claims	15
4.2.2.3. No reimbursement of costs	18
4.2.3. MiFID I and MiFID Implementing Directive - Case law of the ECJ on the principle of effectiveness in the context of sanctioning and deterring infringements of Union law ...	18
4.2.4. Case law of the ECJ on the principle of effectiveness in connection with the right to adequate compensation for infringements of EEA law	21
4.2.5. EEA-compliant interpretation of national law	24
4.2.5.1. General Considerations	24
4.2.5.2. The wording of § 1480 ABGB does not preclude an interpretation that complies with EEA law	25
4.2.5.3. The intention of the legislator does not preclude an interpretation in conformity with the EEA	26
5. Conclusion	27

1. Introduction

1.1. Factual and Procedural background

- 1 The Claimant Peter Plörer was a private banking client (consumer) of the Defendant LGT Bank AG between September 2004 and January 2012. With a claim letter of 19 November 2018, he requested from LGT Bank AG the disclosure and surrender of potential kickbacks (retrocessions, commissions, inducements and similar benefits) that LGT Bank AG might have received during this banking relationship.
- 2 LGT Bank AG – for reasons unknown back then – refused to provide the requested information.
- 3 Following the refusal, Peter Plörer filed a lawsuit on 08 February 2019 and thereby initiated civil proceedings before the Princely Liechtenstein Courts, docket no 02 CG.2019.58 (later 08 CG.2022.207). In a complex two step lawsuit, the Claimant sought disclosure and surrender of potential kickbacks.
- 4 The claim for disclosure, thus first stage of the two step lawsuit, was granted by the Princely Supreme Court with judgement of 04 September 2020, 02 CG.2019.58 ON 41, which was confirmed by the Liechtenstein Constitutional Court with judgement of 28 March 2022 StGH 2020/089.
- 5 In granting the claim for disclosure, the Liechtenstein Courts at the same time declared the following waiver clause in the General Terms and Conditions of LGT Bank AG null and void on the basis of Directive 93/13/EEC on Unfair Terms in Consumer Contracts (UCTD), Directive 2006/73/EC MiFID I and Liechtenstein law:

«15. Special Remuneration

The bank reserves the right to grant third parties retrocession on the commissions and fees charged to the customer and to pay remuneration to third parties based on the amount of assets under management. The disclosure of such payments to the customer is not the responsibility of the bank, but exclusively of the respective recipients. The customer accepts that any remuneration and compensation, such as commissions and portfolio payments, which are paid to the bank by third parties may be retained by the bank and considered as additional remuneration. »

- 6 Following the final and binding judgement on disclosure of potential kickbacks, LGT Bank AG admitted and disclosed on 20 June 2022 to have received the following kickbacks from an investment fund offered within LGT Group of Companies, namely LGT CF GIM II:

LGT Products

LGT CF GIM II EUR (1861970)

2009

2010

2011



The years 2004 – 2008 were still not disclosed.

Only after further correspondence, LGT Bank AG admitted and disclosed on 07 July 2022 to have received further kickbacks for the years 2004 – 2008 amounting to CHF [REDACTED].

- 7 Eventually, after having concealed and withheld these funds for more than a decade and after years of litigation, LGT Bank AG in Summer 2022 admitted and disclosed to have received a total amount of CHF [REDACTED] between 2004 and 2012.
- 8 Nevertheless, LGT Bank AG still refused repayment of these amounts, let alone payment of interest for the timeframe between receiving the moneys during the years 2004 - 2012 and the actual repayment of the kickbacks.
- 9 Therefore, the Claimant Peter Plörer had to continue with the second step of the present proceedings before the Princely Liechtenstein Courts, docket no now 08 CG.2022.207. He demanded that the Defendant LGT Bank AG surrenders kickbacks that were concealed and withheld from the Claimant between 2004 and 2012 in the amount of CHF [REDACTED] plus interest for the entire timeframe the Defendant could make use of these (wrongfully) received kickbacks to finance its business free of charge. The Princely Liechtenstein Courts once more ruled in favor of the Claimant with regard to the repayment of the kickbacks as such, the claim of the Claimant for repayment of the capital amount is final and binding.
- 10 Still in dispute is the claim for interest, the Defendant maintains that the claim for interest is precluded due to the three-years objective limitation period pursuant to § 1480 of the Liechtenstein General Civil Code (Allgemeines Bürgerliches Gesetzbuch ABGB). The Claimant is of the opinion that an objective limitation period which starts before the claimant even becomes aware of the facts and the legal assessment giving rise to this claims, violates the Directive 93/13/EEC on Unfair

Terms in Consumer Contracts (UCTD), Directive 2006/73/EC MiFID I and the principle of effectiveness established by the EFTA Court and the Court of Justice of the European Union (ECJ).

1.2. Considerations of the Supreme Court of 1 March 2024, 08 CG.2022.207, ON 90

- 11 The Supreme Court ruled in its judgment of 1 March 2024, 08 CG.2022.207, ON 90, that interest was owed by the Defendant from the date of receipt of the kickbacks and that a limitation period of 30 years pursuant to § 1479 ABGB was applicable, as a shorter period would violate the UCTD, MiFID I and the principle of effectiveness under EEA law.
- 12 As the Supreme Court correctly states in ON 90 under para 14.3.4., referring to Austrian case law and legal literature, the objective, absolute three-year limitation period of § 1480 ABGB applies to interest under national law (RIS-Justiz RS00319391; RS0033829; 7 Ob 137/20b para 7). It has to be noted that the relevant provisions in the Liechtenstein General Civil Code were adopted from the Austrian General Civil Code (« reception »). As a matter of principle, adopted law is to be interpreted according to case law and literature in the country of origin ("Law in Action Doctrine"). According to the historical legislator, this limitation period serves to protect the debtor from economic difficulties resulting from his inability to pay accumulated arrears from his current income [cf. *Eypeltauer*, Zum Geltungsbereich des § 1480 ABGB [On the scope of application of § 1480 of the Austrian Civil Code], ÖJZ 1991, 222].
- 13 However, the Supreme Court came to the [correct] conclusion that the legal situation in connection with the claim for repayment of kickbacks which, according to § 1479 ABGB, only becomes time-barred after 30 years, is to be interpreted as meaning that, contrary to § 1480 ABGB, the claim for interest thereon also becomes time-barred after thirty years and not after three, five or ten years. In any case, however, in accordance with the case law of the ECJ, § 1480 ABGB is not applicable on the basis of the principle of effectiveness, because this would no longer safeguard the Claimant's legitimate claim for adequate compensation (ON 90 page 50 f).

¹ <https://www.ris.bka.gv.at/> under case law « Judikatur ».

1.3. Judgement of the Constitutional Court of 2 December 2024, StGH 2024/035

- 14 The Defendant once more appealed the Supreme Court's decision in the Constitutional Court (Staatsgerichtshof StGH) and argued that the objective three-year limitation period pursuant to § 1480 ABGB should apply to the Claimant's interest claim, meaning that all interest claims dating back more than three years at the time the action was brought were time-barred.
- 15 In its ruling of 2 December 2024, StGH 2024/035, the supported the Defendant's individual complaint. The Constitutional Court found that the constitutional obligation to state sufficient reasons pursuant to Art 43 of the Liechtenstein Constitution had been violated. The main purpose of the obligation to state reasons under Art 43 LV is to enable the party affected by a ruling or decision to review its validity and defend itself against an incorrect statement of reasons. However, the scope of the fundamental right to a statement of reasons is limited by considerations of appropriateness and procedural economy. There is no general right to detailed reasoning. Only if there is a complete lack of comprehensible reasoning on a point relevant to the decision, or if there is merely a pretense of reasoning, is this fundamental right violated.
- 16 The Constitutional Court held that the obligation to state sufficient reasons was violated because no consideration had been given to the decision of the ECJ of 19 December 2019 C-355/18 to C-357/18 and C-479/18 Rust-Hackner et al on the question whether, in cases regarding the (late) withdrawal of insurance policies (even though such products are not at issue here in the first place), § 1480 of the Austrian Civil Code, which provides for an objective limitation period of three years for interest was in conformity with EU law.
- 17 Following this ECJ ruling, the Austrian Supreme Court stated in several decisions in cases regarding the (late) withdrawal of insurance policies that gave rise to the question referred to the ECJ that, pursuant to § 1480 of the Austrian Civil Code, interest would in principle become time-barred within three years from the date on which it became objectively possible to exercise the right. At the same time, the Austrian Supreme Court emphasized the need for a specific examination of each individual case and did not rule out that in (specific) individual cases where the contract did not meet the needs of the Claimant and he was prevented from withdrawing due to the statute of limitations, the three-year limitation period would not apply.
- 18 The Constitutional Court noted that the Supreme Court merely argued that the Claimant, in order to quantify his claim for repayment of kickbacks, was completely dependent on the information withheld from him by the Defendant and that he had to choose the complex route of a two step lawsuit for disclosure and repayment in order to enforce his claim. An objective limitation period

would impair the Claimant's right to adequate compensation based on the principle of effectiveness. However, the Constitutional Court deemed that the Supreme Court's reasoning would be contradictory to the case law of the Austrian Supreme Court regarding the limitation period for interest on payments following the withdrawal of a life insurance contract. For this reason, the Constitutional Court overturned the Supreme Court's ruling and referred the case back, instructing the Supreme Court to [1] examine whether the application of the objective three-year limitation period for the Claimant's interest claim under § 1480 ABGB actually contradicts EEA law, and [2] observe the limits of interpretation in conformity with EEA law when applying the thirty-year limitation period.

- 19 Given that the Constitutional Court only criticized the reasoning of the Supreme Court under the constitutional right of a party that judgements contain legally sufficient reasons, however, it did not assess these legal issues on the merits. Therefore the Constitutional Court also did not bind the Supreme Court with regard to the result of the interpretation of § 1480 ABGB in light of EEA law but only ordered the Supreme Court to more carefully consider the aspects raised by the Constitutional Court in a more detailed statement of reasons.

1.4. Current State of the Proceedings

- 20 The Supreme Court must now decide again in the present case and explain in more detail why the (short) three-year limitation period of § 1480 ABGB does not apply to the interest on compensation claimed by the Claimant *in casu*, where kickbacks were illegally concealed and withheld from the client by a financial service provider.
- 21 The request for advisory opinion therefore concerns the question whether a financial service provider should be held liable for interest for the timeframe the kickbacks were illegally concealed and withheld from the client and during which the financial service provider could use these funds for financing its own business in light of Directive 93/13/EEC on Unfair Terms in Consumer Contracts UCTD and Directive 2006/73/EC MiFID I and whether the ECJ's decision 19 December 2019, joined cases C-355/18 to C-357/18 and C-479/18 Rust-Hackner et al regarding the interpretation of Directive 2002/83/EC on life insurance and the Solvency II Directive 2009/138/EC has any relevance in this case.

2. Law – EEA Law and National Law

- 22 The relevant EEA law and national law was outlined by the Princely Supreme Court in Chapters 6.1 (EEA Law) and 6.2 (National Law) of its Order of 27 May 2025, ON 109, pages 15 et seq. The Claimant, for the sake of brevity, refers to these considerations.

3. Questions of the National Court

- 23 The Claimant refers to the Order of the Princely Supreme Court Order of 27 May 2025, ON 109, pages 2 – 4.

4. Legal Analysis

4.1. First Question – Irrelevance of ECJ 19 December 2019 joined cases C-355/18 to C-357/18 and C-479/18 Rust-Hackner et al and related insurance directives

- 24 The ECJ decision Rust-Hackner et al concerned Directive 2002/83/EC on life insurance and the Solvency II Directive 2009/138/EC. The decision specifically concerned the unlimited right of withdrawal (known as the "perpetual right of withdrawal"), with the ECJ basing its ruling on the case law already established in the Endress case (ECJ judgment of 19 December 2013 C-209/12) and clarified further questions of interpretation, such as questions concerning the specific **legal consequences of a "late withdrawal"**. Among other things, the ECJ ruled that, in the event of effective withdrawal from the insurance contract, the policyholder is entitled to both a refund of the premiums paid and the payment of (compensation) interest.
- 25 In connection with the policyholder's claim for interest on the premium for the period during which the insurer used the premium in the context of a (late) withdrawal, the ECJ referred to question 5 of the District Court for Commercial Matters in Vienna, namely whether Art 15(1) of Directive 90/619 and Art 35(1) of Directive 2002/83 and Art 186(1) of Directive 2009/138 are to be interpreted as **must** be interpreted as not precluding 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 that were not payable, 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, such a matter being for the referring court to verify (*Rust-Hackner et al.*, para. 122).

26 For the specific examination of whether the effectiveness of the right of withdrawal is impaired by the limitation period for interest on remuneration, the judgment of the ECJ contains the following guidelines:

27 If the fact that interest due for more than three years is time-barred leads to the policyholder *not* exercising his right of withdrawal even though the contract does not meet his needs, the right of withdrawal is impaired, especially if the policyholder has not been properly informed. With regard to the policyholder's needs, the date of conclusion of the contract shall be taken as the basis. *Advantages* that the policyholder could derive from a late withdrawal are *not taken into account*. Such a withdrawal would *not serve* to protect the *policyholder's freedom of choice*, but rather to enable him to achieve a *higher return* or even to *speculate* on the difference between the effective return on the contract and the rate of interest *payable* (*Rust-Hackner et al.*, para 119 et seq).

28 The ECJ's decision *Rust-Hackner et al* is coherent and systematic. The ECJ wanted to counteract the element of speculation in the "perpetual right of withdrawal," as the policyholder can withdraw from the contract after many years and receives the full premium. According to the ECJ, the assessment should be different if the insurance contract did not meet the policyholder's needs *ex ante*, but the lack of interest payments nevertheless means that the policyholder does not exercise their right of withdrawal because this would put them in a worse position than if they remained in the (inappropriate) contract. However, if this result makes it uneconomical to exercise the right of withdrawal in the case of an insurance contract that did not meet the policyholder's needs *ex ante*, for example because the three-year interest calculated over the entire term is still below the financial result of the insurance contract, then the withdrawal is ineffective and the limitation period for interest payments is again contrary to EU law. However, the policyholder must justify why the contract did not meet his needs *ex ante* at the time of conclusion. The achievement of a higher return *ex post* must not be taken into account.

29 As a result, this means that the ECJ with its ruling wanted to counteract the risk of speculation in the case of "late withdrawal," i.e., a very specific scenario, but did not want to rule on the fundamental conformity of § 1480 of the Austrian Civil Code (ABGB) with EU law.

30 The Austrian Supreme Court (see 7 Ob 11/20y; ZVers 2020,202 (Karl/Pichler) = Palma, ZFR 2020/195 p. 440 - Palma, ZFR 2020,440 = ZFR 2020/205 p. 476 - ZFR 2020,476) concluded from the

ECJ judgement in Rust-Hackner et al that EU law does not preclude a limitation period of three years for claims for interest if this does not affect the effectiveness of the policyholder's right of withdrawal under EU law. According to the case law of the Austrian Supreme Court, the ECJ has thus clearly emphasized that the right of withdrawal does not serve to enable the policyholder to obtain a higher return or even to speculate on the difference between the effective return on the contract and the rate of interest on compensation.

- 31 It can therefore be concluded that the ECJ in Rust-Hackner et al and the Austrian Supreme Court have come to the same conclusion that the limitation period for interest on compensation within the scope of late withdrawal is not contrary to EU law if it does not directly restrict the policyholder's right of withdrawal. However, it must also be examined in each individual case, based on the needs of the policyholder at the time the contract was concluded, whether such a limitation period for the claim to interest on compensation is likely to impair the effectiveness of the policyholder's right of withdrawal under EU law, especially since insurance contracts are legally complex financial products that vary greatly depending on the insurer offering them and can entail significant financial obligations over a potentially very long period of time.
- 32 Against this background, the decision of the ECJ in the Rust-Hackner case, among others, must be seen as a specific interpretation of the legal consequences of the so-called right to the late withdrawal of a life insurance contract, which, due to the completely different factual and legal circumstances of the case, and considerations unique to the specific right to the late withdrawal of a life insurance contract cannot be applied to the case at hand. Rather, the present case requires complete considerations of the relevant case law of the ECJ on the legal consequences following from the invalidity of general terms and conditions under the UCTD, restrictive provision regarding kickbacks under MiFID I and the general principle of effectiveness, as the Supreme Court has already held in a convincing manner in its prior judgement ON 90 and the order ON 109.

4.2. Second Question - Relevance of Directive 93/13/EEC on Unfair Terms in Consumer Contracts and Directive 2006/73/EC MiFID I, Principle of Effectiveness

4.2.1. General Considerations

- 33 The Claimant based his claim for disclosure and repayment of illegally concealed and withheld kickbacks on the invalidity of the General Terms and Conditions. The clause in question, No 15 « Special Remuneration » contained an alleged waiver of the claim for repayment and sought to

declare the kickbacks as an additional component of the Defendant's remuneration. The Claimant moved to invalidate this clause primarily on legal bases enshrined in European law, namely on the violation of the transparency requirement of Art 8 (3) Consumer Protection Act (KSchG; Art 3 (1), Art 4 and Art 5 of Directive 93/13/EEC on Unfair Terms in Consumer Contracts UCTD) and the fundamental prohibition of kickbacks under Annex 7.1 BankV (LBGL. 2007 No. 278; Art 19(1) MiFID I, Art 26 of the Implementing Directive 2006/73/EC; subsequently Art 24 MiFID II). The Directive 93/13/EEC on Unfair Terms in Consumer Contracts UCTD and MiFID I as well as the MiFID Implementing Directive are of utmost importance in this context.

34 The focus of Directive 93/13/EEC on Unfair Terms in Consumer Contracts UCTD is on protecting consumers such as the Claimant from unfair terms used by businesses in consumer contracts. The aim of the Directive is to ensure a high level of consumer protection by ensuring that such terms, which create a significant imbalance between the rights and obligations of the contracting parties to the detriment of the consumer, are unenforceable and subject to restrictive legal consequences. The restrictive legal consequences, such as the non-binding nature of unfair or intransparent terms, are intended to deter businesses from using such unfair / intransparent terms in the first place. The UCTD furthermore intends to bridge the information gap and outweigh the imbalance in bargaining power between consumers and businesses. The ECJ has repeatedly emphasized that the legal consequences for a violation of the UCTD must have a deterrent effect in order to ensure the effectiveness of EEA law. The ECJ has clarified that national regulations must not impair the practical effectiveness of consumer protection. This means that consumer rights must not be undermined by limitation periods or other similar restrictions.

35 The aim of MiFID I and the MiFID Implementing Directive – in the present context – is to ensure that financial service providers may not accept or grant inducements unless they provide clients with full and transparent information about the amount and scope of such inducements so that the customer can make an informed investment decision. If the financial service providers does not provide complete and transparent information about the amount and scope of these benefits, for example by using intransparent contractual clauses, such clauses are retroactively void and the financial service provider must return the benefits to the customer. In this context, the issue is not fundamentally about the exercisability of a specific right of a life insurance policyholder. Rather, it is a matter of 1. increasing the transparency of (complex) financial products so that investors can make informed investment decisions, and 2. effectively regulating incentive systems for financial service providers, as this business practice can lead to a conflict of interest at the

expense of the customer. It is therefore a matter of customer protection through transparency and regulation. Sanctions for violating these requirements have to be effective, proportionate and dissuasive.

- 36 In Case E-14/2 Liti-Link AG v LGT Bank AG of July 15, 2021, the EFTA Court dealt with the question of how financial service providers must inform their customers about inducements in accordance with Art 26 of the MiFID Implementing Directive. The Court clarified that banks and asset managers are obliged to inform their clients in a complete, accurate, and understandable manner about kickbacks received or paid. This transparency requirement serves to avoid conflicts of interest and enable clients to make an informed decision about the financial service or product in question and the total costs associated with it. If this information requirement is violated, clients can demand the disclosure of the kickbacks received. The EFTA Court held that such payments are considered unlawfully retained if they are not properly disclosed.
- 37 Finally, according to EU case law on claims for repayment of amounts that were received without proper legal basis or on claims for damages, interest must be granted for the unavailability of the monies in order to preserve the effectiveness and efficiency of EU law. In this context, it is settled case law of the ECJ that the limitation period for interest claims must be designed in such a way as to preserve the practical effectiveness (*effet utile*) of EU law. In particular, the claim for interest must not result in the person concerned being denied adequate compensation for the losses suffered. This requires, among other things, that the interest covers the entire period between the date on which the person concerned paid or should have received the amount in question and the date on which it was actually reimbursed or paid to them, depending on the circumstances of the case (see, to that effect, judgments of 18 April 2013, Irimie, C-565/11, EU:C:2013:250, paras 26 to 28, and of 23 April 2020, Sole-Mizo and Dalmandi Mezőgazdasági, C-13/18 and C-126/18, EU:C:2020:292, paragraphs 43, 49, and 51).
- 38 The present case concerns the impact of the UCTD, MiFID I, and the MiFID Implementing Directive on the Claimant's claims, particularly in light of the principle of effectiveness, as well as the question of effective sanctions for the use of intransparent and unfair terms in a financial service provider's general terms and conditions that comply with the requirement of effectiveness (Art 7 Directive 93/13/EEC), the effective sanctioning of wrongfully retained benefits (Art 19(1) Directive 2004/39/EC in conjunction with Art 26 Directive 2006/73/EC), and the requirement under EEA law to provide the affected party with adequate compensation for the losses suffered as a result of the breach of EEA law.

4.2.2. Unfair Contract Terms Directive – ECJ case law on consumer claims and effective sanctions for the use of intransparent terms

39 The present case is a prime example of an intransparent and unfair term. Reference should be made here to the unambiguous considerations of the Supreme Court in the first step of the proceedings concerning the request for disclosure (Supreme Court judgment of 4 September 2020, 02 CG.2019.58 ON 41 page 44 et seq ; meaning based translation if necessary to retain correct sense of the Court's considerations):

«If the waiver is so vague that the legal relationships to which it refers cannot be assessed in advance and therefore the risks cannot be foreseen and calculated, it must be assumed to be invalid (*Holly* in *Kletecka/Schauer*, ABGB^{1.05} § 1444 Rz 8; *Rummel* in *Rummel/Lukas*, ABGB⁴ § 869 Rz 8; ÖOGH 7 Ob 146/03a JBl 2004, 248 on comparable premium discount claims [Apathy]; öOGH 7 Ob 227/06t VersR 2008, 519; *Körber*, Commission waiver clauses in contracts with independent insurance agents wbl 2006, 406). If this standard of review is applied to the clause in No 15 of the 2004 General Terms and Conditions, practically everything remains open with regard to third-party payments. Even the linguistically peculiar wording “may be retained and regarded as additional remuneration” does not indicate whether the bank actually retains payments from third parties and whether this is regarded as additional remuneration in this case. It only refers to “possible” remuneration and compensation, such as commissions and similar payments. It therefore also remains unclear whether such remuneration and compensation are paid by third parties at all. Finally, a key argument is that the amount is completely unknown. The contractual partner, in this case the Claimant, cannot even remotely estimate whether, if any payments are retained and considered as additional remuneration, if they are in line with market rates, whether they are one-off payments that then represent remuneration for the entire duration of the business relationship, or whether they are ongoing periodic cashflows. The degree of certainty that would make an advance waiver permissible under § 869 ABGB or § 1444 ABGB is not even remotely present.»

40 The ECJ ruled on three key issues within the framework of the Unfair Contract Terms Directive that are relevant to the present case:

- Loss of the right to remuneration;

- Absolute, objective limitation period inadmissible, limitation period dependent on knowledge only admissible if tied to actual knowledge of the consumer of the facts and established national case law;
- inadmissibility of a claim for reimbursement of legal costs.

41 In the following, these three aspects will be examined in more detail based on the finding of intransparency of the waiver clause No 15 in LGT's General Terms and Conditions in question.

4.2.2.1. Loss of entitlement to remuneration

42 According to ECJ case law on the Unfair Contract Terms Directive UCTD, a business who uses an opaque and unfair remuneration clause in its general terms and conditions loses the claim to remuneration entirely, even if the business has already provided its promised service. This is because the UCTD in principle prevents the national court from applying statutory law instead of the invalidated clause to determine appropriate remuneration.

43 The ECJ in its decision of 12. January 2023 C-395/21 para 67 et seq justifies this with the deterrent effect inherent in the UCTD:

« The Court has held that if it were open to the national court to revise the content of unfair terms included in such a contract, such a power would be liable to compromise attainment of the long-term objective of Article 7 of Directive 93/13. That power would contribute to eliminating the dissuasive effect on sellers or suppliers of the straightforward non-application with regard to the consumer of those unfair terms, in so far as those sellers or suppliers would still be tempted to use those terms in the knowledge that, even if they were declared invalid, the contract could nevertheless be modified, to the extent necessary, by the national court in such a way as to safeguard the interest of those sellers or suppliers (judgment of 18 November 2021, A. S.A., C-212/20, EU:C:2021:934, paragraph 69 and the case-law cited). »

44 Only in cases where the removal of the clause would render the entire contract void and this invalidity would have particularly disadvantageous consequences for the consumer, the national court may resort to a supplementary provision of national law in favor of the consumer (ECJ 12. January 2023 C-395/21 para 56).

45 The ECJ takes the same stance in its judgment of 21 March 2024 C-714/22 S.R.G. v Profi Credit Bulgaria EOOD concerning intransparent clauses in consumer credit agreements. The ECJ was

confronted with the question of whether Art 10(2)(g) and Art 23 of Directive 2008/48/EC are to be interpreted as precluding a consumer credit agreement if it does not specify an annual percentage rate of charge that includes all the costs provided for in Art 3(g) of that directive, from being regarded as interest-free and cost-free, so that its annulment would result only in the repayment of the loan amount by the consumer concerned (para 49). The ECJ stated that the indication of the annual percentage rate of charge in the credit agreement is of essential importance, in particular because it enables the consumer to assess the extent of his obligation. On the other hand, it follows from Art 23 Directive 2008/48/EC, in the light of its 47th recital, that although the choice of penalties to be applied in the event of infringements of the national provisions adopted pursuant to that directive is left to the Member States, the penalties thus provided for must be effective, proportionate, and dissuasive. This implies that the severity of the penalties must correspond to the seriousness of the infringements they are intended to punish, in particular by ensuring that they have a genuinely deterrent effect, while at the same time complying with the general principle of proportionality. In view of the particular importance for consumers of the indication of the annual percentage rate of charge in such a contract, the Court of Justice has ruled that a national court may apply of its own motion the national provisions under which failure to provide this information results in the credit being deemed to be interest-free and free of charges (ECJ 21 March 2024 C-714/22 para 47 et seq).

4.2.2.2.No absolute, objective limitation of consumer claims

- 46 According to ECJ case law on the UCTD, the consumer's claim for the repayment of wrongfully withheld payments is clearly protected from absolute, objective limitation. Although the limitation period must be assessed under national law in the absence of relevant EEA regulations, even if a claim is based on Community law, according to the ECJ, the principle of effectiveness precludes a national rule under which a consumer's claim for repayment of amounts paid on the basis of terms that are unfair within the meaning of the Unfair Terms Directive is subject to a three-year limitation period that begins to run regardless of the consumer's knowledge (ECJ 9 July 2020 C-698/18 and C-699/18 Raiffeisenbank et al - limitation period begins at the time of complete performance of the contract ; and ECJ 22 April 2021 C-485/19 Profi Credit Slovakia - limitation period begins on the day on which the unjust enrichment occurred).
- 47 In its judgment of 10 July 2021, in joined cases C-776/19 to C-782/19 BNP Paribas Personal Finance SA, paras 37 et seq, the ECJ has already ruled that claims based on unfair and invalid clauses in

General Terms and Conditions must have a corresponding restitutory effect in respect of those same amounts. A limitation period is only permissible if the person concerned had the opportunity to become aware of their rights before this period began or expired. Otherwise, this would violate the principle of effectiveness. This clarifies that, within the scope of the UCTD, restitutive interest claims cannot be limited by an objective, absolute, and thus knowledge-independent limitation period. Otherwise, the longer a business is able to conceal and withhold monies owed as a consequence to invalid unfair clauses, the compensation owed to a consumer would decrease over time due to the limitation of interest and inflation while on the other hand supporting the business with an interest free loan. Here, the ECJ considered that a relative five-year limitation period, provided that it is established and known in advance does not appear such as to make it in practice impossible or excessively difficult to exercise the rights conferred by Directive 93/13. A period of such a duration is, in principle, sufficient in practical terms to enable a consumer to prepare and bring an effective action in order to enforce the rights that he or she derives from that directive, in the form, inter alia, of a claim for restitution based on the unfairness of a contractual term [ECJ C-776/19 to C-782/19 BNP Paribas, para 42 ; also see Art 10 Private Enforcement Directive 2014/104/EU: « Member States shall ensure that the limitation periods for bringing actions for damages are at least five years » ; EFTA Court 09.08.2024, Case E-11/23 Assa Abloy Opening Solutions Norway AS para 51: «principle of effective judicial protection, including the right to a fair trial, which comprises, in particular, the rights of the defence, the principle of equality of arms, the right of access to a court or tribunal and the right to be advised, defended and represented, as well as the fundamental right to an effective remedy, which are general principles of EEA law »].

- 48 Since the absolute, objective three-year limitation period under § 1480 ABGB begins, at least according to national law, with the objective possibility to claim the monies but regardless of the subjective knowledge and therefore the subjective possibility of the entitled party to effectively bring the claim for repayment, interest claims by consumers for unjust enrichment may become time-barred before the consumer has had the opportunity to become aware of the unfairness or other illegality of such a clause. Since national courts, including those of last instance, are obliged to amend established case law, the exception provision of § 1480 ABGB must remain inapplicable to claims for repayment and interest under the UCTD, so that for these consumer claims the general limitation period of 30 years under § 1479 ABGB applies, or must be interpreted in a manner compliant with EEA law (see Chapter 4.2.5 below).

- 49 The ECJ has confirmed its case law in this regard in Case C-810/21 CaixaBank et al. In the judgement of 25 January 2024 C-810/21 CaixaBank et al, the ECJ held that the commencement of a ten-year limitation period without the specific consumer being aware of the facts and legal assessment is contrary to Arts 6(1) and 7(1) of Directive 93/13/EEC on Unfair Terms in Consumer Contracts in light of the principle of effectiveness. It follows from paras 49 et seq of this judgement that the ECJ considers that consumers must be aware of their rights under the UCTD. This, in turn, can only be understood to mean that the limitation period only begins to run when consumers are aware of their claim in factual and legal terms.
- 50 Austrian legal doctrine has predominantly concluded from previous ECJ case law that the 30-year objective limitation period of § 1478 et seq of the Austrian Civil Code (ABGB) applies to claims for reimbursement resulting from the unfairness of a clause, that an (analogous) application of § 1480, § 1486 ABGB would be contrary to the UCTD and that the Austrian Supreme Court's case law (RIS-Justiz RS0117773), according to which the credit debtor's claim for repayment of excess interest paid due to unfair terms is objectively time-barred after three years, is therefore obsolete (P. Bydlinski, VbR 2020, 200 ff; Leupold/Gelbmann, VbR 2020, 222 ; see also T. Rabl, eolx 2021/68 and Eliskases, ZFR 2020, 559).
- 51 In light of the ECJ ruling, regarding claims for unjust enrichment that are subject to the short three-year limitation period under Austrian law, legal literature acknowledges the possibility of an interpretation of § 1480 ABGB that is in line with the UCTD. This in the sense that the three-year period only begins when the consumer becomes aware of the claim (for analogous application, see Zoppel, ZFR 2021, 283 with further references; cf. OGH 4 Ob 73/03v ErwGr 1. OGH 8 Ob 145/19k).
- 52 In the present case, the Defendant used an opaque waiver clause in its General Terms and Conditions to the detriment of the Claimant, which is invalid under Art 8(3) KSchG, so that the Claimant is entitled to the return of all wrongfully concealed and withheld kickbacks. Under national law, he is also entitled to compensation for the benefits derived by the Defendant from these sums of money, interest being a generalized form to confiscate such illicit profits derived from withholding the funds from the client. However, the limitation period for this claim before the consumer even becomes aware of it is, in the context of the application of the UCTD (which was implemented by, among other things, Art 8(3) KSchG) contrary to EEA law in light of the above-cited case law. Therefore the general limitation period of 30 years under § 1479 ABGB must be applied of § 1480 ABGB must be interpreted in a manner compliant with EEA law to the effect that

the three-year limitation period can only begin once the consumer has become aware of the factual and legal circumstances giving rise to the claim.

4.2.2.3.No reimbursement of costs

53 Ultimately, it is consistent with established case law of the ECJ within the framework of the UCTD that businesses are not entitled to reimbursement of costs in proceedings concerning the invalidation of an unfair or intransparent contractual term.

54 In its judgment of 16 July 2020 C-224/19 and C-259/19 para 99, the ECJ states the following:

"In view of the foregoing, the answer to the twelfth question in Case C-224/19 is that Art 6(1) and Art 7(1) of Directive 93/13 and the principle of effectiveness must be interpreted as precluding a rule which it is possible to charge the consumer part of the costs of the proceedings corresponding to the amount of the unjustified payments that are reimbursed to him as a result of the invalidity of a contractual clause on the grounds of its unfairness, since such a provision creates a significant obstacle that is likely to deter consumers from exercising the right granted by Directive 93/13 to effective judicial review of the possible unfairness of contractual terms."

55 The same conclusion is reached in the ECJ judgment of 21 March 2024 C-714/22 para 88:

"In view of the foregoing, the answer to the sixth question is that Arts 6(1) and 7(1) of Directive 93/13, in the light of the principle of effectiveness, must be interpreted as precluding national legislation under which a consumer may be required to to bear part of the costs of proceedings where, following a finding that a contractual term is unfair and therefore void, his claim for reimbursement of sums paid without legal basis under that term is only partially upheld because it is impossible or excessively difficult in practice to determine the extent of that consumer's claim for reimbursement of those sums."

4.2.3. MiFID I and MiFID Implementing Directive – Case law of the ECJ on the principle of effectiveness in the context of sanctioning and deterring infringements of Union law

56 Art 19(1) MiFID requires Member States to provide by law that, when providing investment services and/or ancillary services to their clients, financial service providers must act honestly, fairly and professionally in accordance with the best interests of their clients and, in particular, comply with

the principles set out in paragraphs 2 to 8. Under Art 26 MiFID Implementing Directive, Member States must ensure that financial service providers are not considered to be acting honestly, fairly and professionally in the best interests of a client if they pay or receive a fee or commission in connection with the provision of investment services or ancillary services to the client, or if they grant or accept a non-monetary benefit. This obligation requires that these measures be effective and achieve a result consistent with the objective pursued (see Case E-25/13 Gunnar V. Engilbertsson, EFTA Court Report 2014, p. 524, para. 163).

57 Art 26 does not prescribe any specific measure in the event of a breach of the prohibition of inducements, but leaves Member States free to choose from among the various solutions suitable for achieving the objective of the Directive. However, the objective in each case is to ensure that investment firms act honestly, fairly and professionally in the best interests of their clients; which would not be achieved in the absence of measures to ensure such conduct. As the Court of Justice stated in paragraphs 23 and Marshall of the Von Colson and Kamann judgment, measures must ensure effective and effective legal protection and have a genuinely deterrent effect.

58 Against this background, it is clear that Art 26 MiFID Implementing Directive must be interpreted as not allowing the reimbursement of interest on payments wrongfully retained over a number of years to be limited by an objective, absolute three-year limitation period, since the mere identification of the payments and the application of the objective, absolute three-year limitation period as an upper limit for the claim for interest on payments does not provide sufficient compensation for the loss of use of the capital or have a genuinely deterrent effect, since most of the benefit that could have been gained through the withheld funds remains with the investment firm. What is more, the investment firm is actually incentivized to keep hidden kickbacks secret for as long as possible (as happened in the present case) in order to prolong the period of usability of the illegally retained and concealed sums of money, and thus the duration of the loan provided free of charge by the customer.

59 As explained above, unlike the policyholder's right of withdrawal, a key issue in connection with the effectiveness and efficiency required by EU law is not only the effectiveness and efficiency of the customer's subjective right vis-à-vis the investment firm (claim for surrender), but also in the effectiveness and efficiency of the sanctions and deterrents imposed on the investment firm in the event of a breach of its subjective obligation to disclose and, where applicable, surrender kickbacks.

- 60 The ECJ emphasizes the importance of the deterrent effect of measures to ensure the effectiveness of EU law, inter alia in the LCL Le Crédit Lyonnais decision C-565/12. The ECJ's judgment in the LCL Le Crédit Lyonnais case deals with the **effectiveness of sanctions** in connection with the Consumer Credit Directive (Directive 2008/48/EC). The case concerned the question of whether national penalties imposed for non-compliance with a creditor's information obligations satisfy the requirements of EU law for effective, proportionate, and dissuasive penalties. The ECJ clarified that national sanctions for infringements of the Consumer Credit Directive must be **effective, proportionate, and dissuasive**. The sanction of complete loss of interest meets these requirements, as it is suitable for inducing lenders to comply with their information obligations and at the same time has a clear dissuasive effect.
- 61 The penalty of complete loss of interest shows that the deterrent effect is of considerable importance. The need for deterrent effect of measures taken by Member States in the event of infringements of EEA law is thus recognized in case law. In the present case, when interpreting EEA law, it must therefore also be examined whether the mere surrender of kickbacks as a measure has the necessary deterrent effect if the kickbacks retained in violation of EEA law for more than a decade are to be surrendered under the law of unjust enrichment, that national law protects investment firms against the customer's claim for payment of a usage fee by means of a de facto upper limit.
- 62 The need for deterrent sanctions is evident not only from the present individual case, but also from the fact that incentive and remuneration systems have existed for decades on a widespread basis, enabling investment firms to generate high profits at the expense of clients and through intransparent cost structures. It is precisely this unfair trade practice (see Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices) that must be countered by deterrent measures under the MiFID Directive, as financial service providers otherwise might not be prepared to abandon these incentive systems unless there are appropriate consequences.
- 63 In that sense, in order to be able to assess the general deterrent effect of the national regulatory framework for kickbacks under national law, the Claimant respectfully request the taking of evidence pursuant to Art 61 et seq of the Rules of Procedure as follows:
- The EFTA Court may obtain a written statement and / or exam witnesses from the Liechtenstein Financial Market Authority (FMA)

1. whether FMA initiated investigations regarding kickbacks (retrocessions, commissions, inducements and similar benefits) received by LGT Bank AG from other financial service providers, especially investment funds offered within LGT Group of Companies such as LGT CF GIM II;
2. whether such kickbacks were disclosed to all customers by LGT Bank AG following an investigation by FMA or a voluntary basis; if yes, in what amount;
3. whether kickbacks and / or profits generated through these funds were confiscated; if yes, in what amount.

64 In light of the foregoing and within the framework of the required EEA-compliant interpretation of the law, the only possible conclusion is that Art 19 of Directive 2004/39/EC and Art 26 of Directive 2006/73/EC preclude a national restriction on the replacement of interest on compensation by the absolute, objective limitation period of § 1480 ABGB limits the effectiveness and efficiency of measures in cases of dishonest, unfair, and unprofessional conduct by investment firms.

4.2.4. Case law of the ECJ on the principle of effectiveness in connection with the right to adequate compensation for infringements of EEA law

65 The claim for repayment and interest on a sum of money withheld in violation of EEA law can be asserted if a national authority has levied a sum of money in the form of a contribution, a levy or an anti-dumping duty on the basis of an EEA legal act that proves to be unlawful (see, to that effect, judgments of 27 September 2012, Zuckerfabrik Jülich and Others, C-113/10, C-147/10 and C-234/10, paras 65 and 69, and of 18 January 2017, Wortmann, C-365/15, paras 34 and 37), **but also in other situations**. However, it has to be noted that the Defendant in this specific case is not just some bank in the sense of a merely privately held competitor in the market of financial services. Rather, the Defendant LGT Bank AG is the bank of the royal family of Liechtenstein.² The Prince of Liechtenstein is nothing less than the constitutional head of the Principality of Liechtenstein (Art

² <https://www.lgt.com/li-en/about-lgt/our-owner>: «Our owner A journey through 900 years of the Princely House of Liechtenstein. The history of the owner family of LGT has been closely connected with the country of Liechtenstein ever since Prince Karl I (1569 to 1627), the first Prince of Liechtenstein. Today, Liechtenstein is one of the most economically successful states in the world. [...] "Preserving values for the next generation" is a recurring theme in the history of the Princely Family of Liechtenstein. **Today, in addition to LGT, the family's assets** include agriculture and forestry in Austria, numerous properties, a production company for container seedlings, and the largest US hybrid rice producer.»

7 et sec of the Liechtenstein Constitution³) who is, inter alia, competent to appoint the Judges subject to the provisions of the Constitution (Art 11 of the Liechtenstein Constitution⁴). Therefore, the present proceeding, even though it is conducted before the Princely Courts within the framework of the Liechtenstein Code of Civil Procedure, thus the procedural rules governing disputes between private parties, it has at least some connotation of a dispute between a private party and a state-affiliated enterprise.

- 66 The interest claim of the creditor is intended to compensate for the unavailability of a specific amount of money in the case of amounts to be refunded as unjust enrichment or as damages. Depending on the circumstances of the case, this compensation may be made in accordance with the procedure provided for in the relevant Union legislation or, in the absence of such Union legislation, in accordance with the procedure applicable under national law. The modalities for the payment of default interest must, on the one hand, in accordance with the principle of equivalence, not be less favorable than those applicable to similar domestic legal remedies and, on the other hand, in accordance with the principle of effectiveness, must not render the exercise of rights conferred by Union law practically impossible or excessively difficult. In particular, the payment arrangements must not result in the person concerned being denied adequate compensation for the losses suffered.
- 67 In the **Manfredi** case [ECJ judgment of 13 July 2006 C-295/04 to C-298/04], the ECJ established that it follows from the principle of effectiveness and the right of individuals to compensation for damage caused to them by conduct contrary to Union law that an injured party must be able to claim not only compensation for pecuniary damage (*damnum emergens*), but also for loss of profit (*lucrum cessans*) and the payment of interest.
- 68 The ECJ has already ruled on the requirements for effectiveness and efficiency on several occasions. In the **Marshall** case [judgment of 2 August 1993 C-271/91], it dealt with the issue of compensation for discrimination on grounds of sex under Directive 76/207/EEC, which regulates equal treatment for men and women in terms of employment and working conditions. The case arose from a dispute between M. Helen Marshall and her former employer, the Southampton and

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https://gesetze.li/konso/1921015000?search_text=lv&search_loc=abk_list&lrr=&tglid_von=&observe_date=16.09.2025.

⁴ As a side note, a photograph of the Prince of Liechtenstein is found in most if not all court rooms ; see for instance <https://landesspiegel.li/2025/08/zicken-streit-eskaliert-vor-gericht/>.

South-West Hampshire Area Health Authority, after she was dismissed on discriminatory grounds on account of her age.

69 In the Marshall case, it is not only the substantive outcome, namely that the need for compensation for the damage suffered also includes the award of interest on the principal amount from the date of the discrimination until the date of payment of the compensation, that is of interest for the legal question at issue. The ECJ emphasized (paras 17 et seq) that, according to established case law, Art 189(3) of the EEC Treaty requires each Member State to which a directive is addressed to take all necessary measures in its domestic legal system to ensure that the provisions of the directive are fully effective in accordance with the objective pursued by it, while leaving it free to choose the form and means of achieving that objective.

70 Under Art 6 of the Directive, Member States must take the measures necessary to enable any person who considers himself or herself to be the victim of discrimination to assert his or her rights in court. This obligation requires that these **measures be effective** in achieving the objective of the Directive and that the persons concerned be able to rely on them in practice before the national courts. As the Court of Justice ruled in its judgment of 10 April 1984 in Case 14/83 Von Colson and Kamann para 18, Art 6 does not prescribe any particular measure in the event of a breach of the prohibition of discrimination, but leaves the Member States free to choose, in accordance with the various possible situations, from among the various solutions suitable for achieving the objective of the directive. The aim of the directive is to create genuine equality of opportunity, which would not be achieved if there were no measures to restore that equality where it has not been observed. As the Court stated in para 23 of the Von Colson and Kamann judgment, those measures must guarantee genuine and effective legal protection and have a genuinely deterrent effect on employers.

71 With reference to these statements (para 29: "The interpretation of Art 6 given above provides a direct answer to the first part of the second question concerning the amount of compensation required under that provision."), the Court clarifies that Art 6 of the Directive must be interpreted as that it does not allow the compensation for damage suffered by a person as a result of discriminatory dismissal to be limited by a predetermined maximum and by the fact that no interest is awarded to compensate for the loss suffered by the person entitled to compensation as a result of the time it takes to actually pay the capital sum awarded to him.

72 The right to compensation for loss of earnings and the payment of interest must therefore not only exist in principle, but must also be guaranteed in substance. In this sense, the ECJ also ruled in

the case of Mariana Irimie (ECJ judgment of 18 April 2013 C-565/11) that a provision limiting interest to that accrued from the day following the date of the request for reimbursement of the amounts wrongfully withheld does not satisfy this requirement of effectiveness. The losses depend, among other things, on how long the amount wrongfully paid in breach of EU law was unavailable and thus arise in principle during the period from the date of the wrongful payment of the amounts in question to the date of their reimbursement.

- 73 The ECJ has thus clearly rejected a maximum limit on interest claims in the sense that they are only payable upon submission of an application or an action. Implicitly, of course, such a limitation presupposes that the person concerned is aware of the conduct contrary to EU law, since only someone who is aware of their claim will file an application or bring an action. This means that the ECJ's case law opposes an objective, absolute limit on the interest claim of the person concerned in the case of withheld sums of money.
- 74 Nothing else can therefore apply to a provision that limits interest in such a way that, regardless of how long the amount wrongfully paid in violation of EU law was not available to the person concerned, it is limited to an absolute, objective limitation period, so that the person concerned only ever receives interest for the last three years. This means that, particularly in the case of long-standing infringements, such as in the present case, the person concerned is **denied adequate compensation** and the **effectiveness and efficiency of the right under EU law to compensation for the losses suffered** is thus restricted and impaired by a de facto upper limit.

4.2.5. EEA-compliant interpretation of national law

4.2.5.1. General Considerations

- 75 According to the EFTA Court judgement of 15 July 2021 E-14/20 Liti-Link AG / LGT Bank AG para 78 No 5, EEA law does not require any direct (horizontal) effect of EEA law provisions not correctly transposed into national law. The national court is nevertheless obliged, as far as possible, to ensure the result sought by EEA law through the interpretation of national law in conformity with EEA law. This principle is based on long-standing case law (EFTA Court judgment of 3 October 2007 E-1/07 para 39; EFTA Court judgment of 2 October 2015 E-3/15 para 68) and is by no means an isolated decision.
- 76 However, it is also well established case law of the ECJ that directives, under specific circumstances, can have a direct vertical effect (ECJ 4 December 1974 Case 41/74 Yvonne van Duyn

v Home Office ; 5 April 1979 Case 148/78 Ratti). As was mentioned before, LGT Bank AG is not to be considered a merely private market participant but rather a state-affiliated enterprise.

77 Lastly, it should be noted that, in its judgment of 21 March 2023 C-100/21 para 97 No 1, the Grand Chamber of the ECJ has now affirmed the direct applicability of EU directives that qualify as protective laws.

4.2.5.2. The wording of § 1480 ABGB does not preclude an interpretation that complies with EEA law

78 According to the principles of civil law in national law, in addition to the obligation to return the (unjustly) received benefit, any benefit derived from this benefit must also be surrendered under the law of unjust enrichment. In the case of money, the special feature is that, **regardless of proof of actual benefit**, according to prevailing legal opinion and case law, a **lump-sum compensation for use must be paid in the amount of the statutory interest** [9 Ob A 42/91 ecolex 1991, 557; 4 Ob 84/97z SZ 70/69; cf. also the note by *Mader* in *Schwimann/Kodek*, ABGB Praxiskommentar § 1437 Rz 15; *Lurger* in *Kletečka/Schauer*, ABGB-ON § 1437 para 8 and *Leupold* in *Schwimann/Neumayr*, ABGB Taschenkommentar § 1437 para 9].

79 The specific provision of § 1480 ABGB reads as follows:

"Claims for outstanding annual payments, in particular interest, pensions, alimony payments, retirement benefits, and annuities agreed for capital repayment expire in three years; the right itself becomes time-barred after 30 years of non-use."

80 For the interpretation in accordance with the directive in the present case, this means that the wording of § 1480 ABGB does not preclude an interpretation under national law that the limitation period for interest only begins once the Claimant knows about the facts and the legal assessment regarding the claims. In fact, since **§ 1480 ABGB does not contain any legal definition of the [objective] commencement of the limitation period**, the wording of § 1480 ABGB does not preclude an interpretation in conformity with the directive to the effect that the three-year limitation period only begins, for example, with the judicial determination of the invalidity of the intransparent waiver clause or the knowledge of the creditor of the enrichment.

81 With regard to the limitation period to which such interest is subject, the case law of the Austrian Supreme Court is not uniform. Two decisions [4 Ob 584/87 and 5 Ob 160/07a with parallel decisions 5 Ob 161/07y and 5 Ob 162/07w] concerned the recovery of rent overpaid over a longer period of

time; in both cases, the Austrian Supreme Court, citing § 1480, awarded interest only for the last three years prior to the filing of the lawsuit. However, the interest was treated differently in E 4 Ob 46/13p : In the case underlying the decision, the putative father demanded compensation from the actual father for alimony expenses incurred, including statutory interest for a period of twelve years. The Defendant's objection that such interest was only payable for the last three years prior to the filing of the lawsuit pursuant to § 1480 ABGB was unsuccessful before the Austrian Supreme Court. Although the Austrian Supreme Court affirmed the applicability of the three-year limitation period under § 1480 ABGB, it pointed out that this period **could not begin to run before the objective possibility of asserting the interest claim**. However, this possibility only arose once it had been established that the child was not the Claimant's, hence before the claimant knew about the facts and the legal assessment giving rise to his claim for repayment. The limitation period for interest due on the basis of enrichment law therefore followed that of the capital, which only begins with the legal validity of the decision that removes the acknowledgment of paternity by the putative father or the presumption of paternity based on birth in a valid marriage.

4.2.5.3. The intention of the legislator does not preclude an interpretation in conformity with the EEA

- 82 Based on the historical intention of the legislator, § 1480 ABGB serves to protect the debtor from an uncontrolled accumulation of interest liabilities. However, the protection of the debtor also has limits according to the historical intention of the legislator, since the general legal principle applies that no one should gain advantages through deceptive conduct or violation of the principle good faith and fair dealings (§ 1487 ABGB; Art 2 Persons and Companies Act: „Everyone shall act in good faith in exercising their rights and fulfilling their obligations. The manifest abuse of a right shall not be protected by law.“), the short limitation period should neither start nor expire before the creditor becomes aware of it if the debtor against principles of good faith prevents the creditor from becoming aware of the facts giving rise to the claim.
- 83 In accordance with the assessment in § 1480 of the Austrian Civil Code, a distinction must therefore be made as to whether the debtor is worthy of protection at all under a statute of limitations in the context of his conduct according to the historical intention of the legislator. If the debtor bases his contractual relationship with the consumer on a intransparent waiver clause that contradicts Art 8 (3) KSchG in order to illegally collect kickbacks, he does not appear to be worthy of protection vis-à-vis the consumer from the outset pursuant to § 1480 ABGB.

- 84 In such a case, it can rightly be assumed that the historical intention of the legislator does not preclude an interpretation of § 1480 ABGB in accordance with the directive to the effect that the limitation period for remuneration interest pursuant to § 1479 ABGB only begins after 30 years from the conclusion of the contract or, by teleological reduction of § 1480 ABGB, only begins within three years of knowledge of the invalidity of the intransparent waiver clause.
- 85 In reality, therefore, neither the wording nor the historical intention of the legislature precludes an interpretation of the national legal situation that is in conformity with the directive.

5. Conclusion

- 86 In the light of the foregoing, the Claimant considers that the questions referred to the EFTA Court for an advisory opinion by the Princely Supreme Court should be answered as follows:
1. **Art 15(1) of the Second Directive 90/619/EEC, Art 35(1) of Directive 2002/83/EC and Art 186(1) of Directive 2009/138/EC and the decision of the European Court of Justice (ECJ) of 19 December 2019, C-355/18 to C-357/18 and C-479/18 Rust-Hackner et al regarding the rights and claims of a holder of a life insurance policy for (late) withdrawal does not apply to claims for repayment of illegally concealed and withheld kickbacks and interest based on the invalidity of a provision in general terms and conditions of a financial service provider pursuant to the Directive 93/13/EEC on Unfair Terms in Consumer Contracts and Directive 2006/73/EC MiFID I.**
 2. **Directive 93/13/EEC on Unfair Terms in Consumer Contracts, Directive 2006/73/EC MiFID I and the Principle of Effectiveness must be interpreted as a.) precluding a national provision rendering interest claims time-barred before the customer was even aware of the relevant facts and legal assessment giving rise to his claims and b.) requiring national law to provide for an appropriate timeframe of at least three to five years (depending on the complexity of the facts and the legal issues in the individual case) after the customer has received the necessary information (Section 2.a above).**

