JUDGMENT OF THE COURT

13 June 2013*

(Directive 90/619/EEC – Directive 92/96/EEC – Directive 2002/83/EC – Directive 2002/92/EC – Life assurance – Unit-linked benefits – Obligation to provide fair advice – Information to be communicated to the policy holder before the contract is concluded – Principle of equivalence – Principle of effectiveness)

In Case E-11/12,

REQUEST to the Court from the Fürstliche Landgericht des Fürstentums Liechtenstein (Princely Court of the Principality of Liechtenstein) under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in the case between

Beatrix Susanne Koch,

Lothar Hummel, and

Stefan Müller

and

Swiss Life (Liechtenstein) AG

on the interpretation of Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC, Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive), Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance and Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation,

* Language of the request: German.

THE COURT,

composed of: Carl Baudenbacher, President, Per Christiansen and Páll Hreinsson (Judge-Rapporteur), Judges,

Registrar: Gunnar Selvik,

having considered the written observations submitted on behalf of:

- Mr Hummel and Mr Müller represented by Dr Hans-Jörg Vogl, Rechtsanwalt; Ms Koch, represented first by Dr Hans-Jörg Vogl and later by Dr Franz Giesinger, Rechtsanwalt ("the plaintiffs");
- Swiss Life (Liechtenstein) AG ("the defendant"), represented by Dr Peter Nägele and Thomas Nägele, Rechtsanwälte;
- the Government of the Principality of Liechtenstein ("Liechtenstein"), represented by Dr Andrea Entner-Koch, Director, and Frédérique Lambrecht, Senior Legal Officer, EEA Coordination Unit, acting as Agents;
- the EFTA Surveillance Authority ("ESA"), represented by Xavier Lewis, Director, Clémence Perrin and Maria Moustakali, Legal Officers, Department of Legal & Executive Affairs, acting as Agents; and
- the European Commission ("the Commission"), represented by Karl Philipp Wojcik, Legal Advisor, and Nicola Yerrell, Member of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

having heard oral argument of Ms Koch, represented by Dr Franz Giesinger; Mr Hummel and Mr Müller, represented by Florian Scheiber; the defendant, represented by Dr Peter Nägele and Thomas Nägele; Liechtenstein, represented by Frédérique Lambrecht; ESA, represented by Clémence Perrin; and the Commission, represented by Nicola Yerrell, at the hearing on 20 March 2013,

gives the following

Judgment

I Legal context

EEA law

Directive 90/619/EEC

1 Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ 1990 L 330, p. 50) ("Directive 90/619")

was incorporated into the EEA Agreement by Joint Committee Decision 1/94, which entered into force on 1 July 1994.

2 Article 4 of Directive 90/619 provided:

> *1. The law applicable to contracts relating to the activities referred to in [Directive 79/267 of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance] shall be the law of the Member State of commitment. However, where the law of that State so allows, the parties may choose the law of another country.*

Directive 92/96/EEC

3 Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1) ("Directive 92/96") was incorporated into the EEA Agreement by Joint Committee Decision 1/94, which entered into force on 1 July 1994.

4 Article 21 of Directive 92/96 provided:

> *1. The home Member State may not authorise assurance undertakings to cover their technical provisions with any but the following categories of assets:*
>
> *A. Investments*
>
> *(a) debt securities, bonds and other money- and capital-market instruments;*
>
> *(b) loans;*
>
> *(c) shares and other variable-yield participations;*
>
> *(d) units in undertakings for collective investment in transferable securities [UCITS] and other investment funds;*
>
> …

5 Article 23 of Directive 92/96 provided:

> *1. Where the benefits provided by a contract are directly linked to the value of units in an UCITS or to the value of assets contained in an internal fund held by the insurance undertaking, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets.*

2. Where the benefits provided by a contract are directly linked to a share index or some other reference value other than those referred to in paragraph 1, the technical provisions in respect of those benefits must be represented as closely as possible either by the units deemed to represent the reference value or, in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based.

6 Article 31 of Directive 92/96 provided:

1. Before the assurance contract is concluded, at least the information listed in point A of Annex II shall be communicated to the policy-holder.

2. The policy-holder shall be kept informed throughout the term of the contract of any change concerning the information listed in point B of Annex II.

3. The Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in Annex II only if it is necessary for a proper understanding by the policy-holder of the essential elements of the commitment.

4. The detailed rules for implementing this Article and Annex II shall be laid down by the Member State of the commitment.

7 Annex II of Directive 92/96 ("Information for policy holders") lists the information which is to be communicated to the policy holder before the contract is concluded (Section A) or during the term of the contract (Section B), in a clear and accurate manner, in writing, and in an official language of the Member State of the commitment.

8 Points a11 and a12 of Annex II(A) provide that the following information must be provided to the policy holder before concluding the contract:

(a)11 For unit-linked policies, definition of the units to which the benefits are linked

(a)12 Indication of the nature of the underlying assets for unit-linked policies.

Directive 2002/83/EC

9 Directive 2002/83/EC of the European Parliament and the Council of 5 November 2002 concerning life assurance (OJ 2002 L 345, p. 1) ("Directive 2002/83") replaced Directive 90/619 and Directive 92/96.

10 Directive 2002/83 was incorporated into the EEA Agreement at point 11 of Annex IX to the Agreement through EEA Joint Committee Decision No 60/2004 of 26 April 2004. The decision entered into force on 27 April 2004.

11 Article 23 of Directive 2002/83 ("Categories of authorised assets") reads:

> *1. The home Member State may not authorise assurance undertakings to cover their technical provisions with any but the following categories of assets:*
>
> *A. investments*
>
> *(a) debt securities, bonds and other money- and capital-market instruments;*
>
> *(b) loans;*
>
> *(c) shares and other variable-yield participations;*
>
> *(d) units in undertakings for collective investment in transferable securities (UCITS) and other investment funds;*
>
> …

12 Article 32 of Directive 2002/83 ("Law applicable") reads:

> *1. The law applicable to contracts relating to the activities referred to in this Directive shall be the law of the Member State of the commitment. However, where the law of that State so allows, the parties may choose the law of another country.*

13 Article 36 of Directive 2002/83 ("Information for policy holders") reads:

> *1. Before the assurance contract is concluded, at least the information listed in Annex III(A) shall be communicated to the policy holder.*
>
> *2. The policy-holder shall be kept informed throughout the term of the contract of any change concerning the information listed in Annex III(B).*
>
> *3. The Member State of the commitment may require assurance undertakings to furnish information in addition to that listed in Annex III only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.*
>
> *4. The detailed rules for implementing this Article and Annex III shall be laid down by the Member State of the commitment.*

14 Annex III to Directive 2002/83 is identical to Annex II to Directive 92/96, as quoted in paragraphs 7 and 8 above.

The insurance mediation directive

15 Directive 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation (OJ 2002 L 345, p. 1) ("the insurance mediation directive" or "Directive 2002/92"), was incorporated into the EEA Agreement at point 13b of Annex IX to the Agreement by EEA Joint Committee Decision No 115/2003 of 26 September 2003. Constitutional requirements under Article 103 EEA were indicated and the decision entered into force on 1 May 2004. Liechtenstein notified its implementation of Directive 2002/92 on 16 February 2004.

16 By Directive 2002/92, the previous directive regulating the matter, Council Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities ("Directive 77/92"), was repealed in the European Union from 15 January 2005.

17 Directive 77/92 was repealed in the EEA through Joint Committee Decision No 12/2010 of 10 November 2010. Constitutional requirements under Article 103 EEA were indicated and the decision entered into force on 1 November 2012.

18 Article 2(5) of the insurance mediation directive reads:

> *'insurance intermediary' means any natural or legal person who, for remuneration, takes up or pursues insurance mediation;*

19 Article 12 of the insurance mediation directive ("information provided by the insurance intermediary") reads:

> *1. Prior to the conclusion of any initial insurance contract, and, if necessary, upon amendment or renewal thereof, an insurance intermediary shall provide the customer with at least the following information:*
>
> *…*
>
> *(e) …*
>
> *In addition, an insurance intermediary shall inform the customer, concerning the contract that is provided, whether:*
>
> *(i) he gives advice based on the obligation in paragraph 2 to provide a fair analysis, or*
>
> *(ii) he is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, he shall, at the customer's request provide the names of those insurance undertakings, or*

(iii) he is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation in paragraph 2 to provide a fair analysis. In that case, he shall, at the customer's request provide the names of the insurance undertakings with which he may and does conduct business.

…

2. When the insurance intermediary informs the customer that he gives his advice on the basis of a fair analysis, he is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

3. Prior to the conclusion of any specific contract, the insurance intermediary shall at least specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product. These details shall be modulated according to the complexity of the insurance contract being proposed.

...

National law

20 Liechtenstein has implemented Directive 2002/83 by way of the Insurance Supervisory Act ("VersAG"), LR 961.01, the Insurance Supervisory Regulation (VersAV), LR 961.011, the Insurance Contract Act (VersVG) LR 215.229.1, the International Private Law Act (IPRG) LR 290 and the International Insurance Contract Act (IVersVG), LR 291).

21 Article 45 of the Insurance Supervisory Act ("Duties to inform policy holders") provides as follows:

Prior to the conclusion and during the term of the insurance contracts, specific information must be given to the policy holders for their information and protection. The content and scope of this duty of information is regulated under Annex 4.

22 Annex 4 to the Insurance Supervisory Act ("Duties to inform policy holders under Articles 45 and 49") provides as follows:

Where the policy holder is a natural person, insurance undertakings must inform him of the essential facts and rights under insurance contract before conclusion and during the term of a contract in accordance with the following provisions. In the case of the insurance of large risks, it is

sufficient to mention the applicable law and the competent supervisory authority. The information must be made available in writing.

Section I

1. Information required for all classes of insurance:

…

(h) address of the competent supervisory authority which the policyholder may contact in the case of complaints about the insurance undertaking.

2. Additional information required for life or accident insurance with premium refund:

…

(e) for unit-linked policies, definition of the units to which the insurance is linked and indication of the nature of the underlying assets;

…

23 Article 3 of the Insurance Contract Act ("Duty of the insurance undertaking to provide information") provides as follows:

1. The generally applicable special insurance provisions and the information required under Art. 45 and 49 of the Insurance Supervisory Act must either be included in the insurance application form or made available to the applicant by other means prior to submission of the application.

2. In the event of a failure to comply with this condition, the applicant will not be bound by the application. Following conclusion of the contract, the policyholder may rescind the contract if there is a breach of the duty to provide information under paragraph 1. The right of rescission shall expire no later than four weeks after receipt of the policy which includes notification of the right of rescission.

II Background

24 Two of the plaintiffs (Ms Koch and Mr Hummel) are German nationals resident in Germany. The third plaintiff (Mr Müller) is an Austrian national resident in Austria. The defendant, Swiss Life (Liechtenstein) AG, is a company registered in Liechtenstein. It carries a licence to provide life assurance.

25 In 2004 the plaintiffs, independently and by way of three different brokers, submitted applications for "unit-linked life assurance" to the defendant. The applications were accepted, and subsequently the life assurance agreements came into effect.

26 Ms Koch submitted her application for life assurance on 4 November 2004. It was accepted by the defendant on 22 December 2004 and the policy started on 1 December 2004 (“the first contract”).

27 Mr Hummel submitted his application for life assurance on 23 December 2004. It was accepted by the defendant on 30 December 2004 and the policy started on 1 December 2004 (“the second contract”).

28 Mr Müller submitted a first application for life assurance on 18 February 2004. This was accepted by the defendant on 5 April 2004 and the policy started on 1 March 2004 (“the third contract”).

29 Mr Müller also submitted a second application for life assurance on 14 September 2004. This was accepted by the defendant on 1 December 2004 and the policy started on 1 October 2004 (“the fourth contract”).

30 According to the application form, which appears to have been identical in all cases, a type of investment was agreed in each case “as per the attached investment strategy”. In the “investment strategy” forms, signed in each case by the plaintiffs, it was recorded, *inter alia*, “Allocation initial investment: Swiss Select Garantie (Euro Medium Term Notes)”.

31 Some of the investment strategies were amended by documents, signed by the plaintiffs, to read: “Note Swiss Select Garantie 3 or ff WKN XS0247561060”.

32 The ISIN (international securities identification number; in German *WKN* or *Wertpapierkennnummer*) is a combination of numbers and letters used to identify transferable securities (financial instruments). Relevant information can be found on the Internet by entering the ISIN/WKN into a search engine.

33 The plaintiffs subsequently paid assurance premiums to the defendant which invested the amounts as cover funds, in accordance with the investment strategies.

34 The plaintiffs brought a claim for damages against the defendant, on the basis that the amounts that they paid to the latter as assurance premiums have been all but wiped out. They contend that it was impossible for them to determine the level of risk involved in the investment, and the structure of the products was not transparent. Excessive commissions and fees were taken by the defendant and the capital was therefore wiped out within a very short period of time.

35 The defendant claims that the applications for damages should be dismissed since the investments were made according to the “investment strategy” forms signed by the plaintiffs.

36 The defendant has not claimed that it informed the plaintiffs about the relevant investment products, but asserts that the plaintiffs themselves requested those investment strategies.

37 On 31 October 2012, the *Fürstliche Landgericht des Fürstentums Liechtenstein* (Princely Court of the Principality of Liechtenstein; hereinafter the "Princely Court" or the "referring court") decided to seek an advisory opinion from the Court. It noted that Directive 2002/83 did not define what constitutes "unit-linked life assurance". In the view of the referring court it is unclear whether the duties under the Directive 2002/83 to inform the policy holder before the contract is concluded in the case of unit-linked life assurance also covers units which are not covered by a UCITS, as defined in Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ 1985 L 375, p. 3) ("Directive 85/611").

38 Moreover, the referring court seeks clarification on the scope of an assurance undertaking's duty to give advice and to inform the policy holder before the contract is concluded, the role of insurance intermediaries and whether EEA/EFTA States are required to establish a civil law right for the policy holder to claim damages from the assurance undertaking.

39 The referring court observes that the Liechtenstein Supreme Court in a judgment of 10 February 2012 interpreted the national legislation implementing Directive 2002/83 in Liechtenstein. In that judgment, the Liechtenstein Supreme Court held that, contrary to the "clear statutory requirement", the defendant in that case, which concerned facts different to those of the present proceedings before the referring court, did not "provide advice to the plaintiff, and in particular did not provide advice about the product underlying the life assurance … No more did it forward the necessary information in this regard, to the insurance brokers who were selling the life assurance …".

40 The Princely Court consequently has stayed the proceedings and submitted the following questions to the Court:

1. Does the term unit-linked policies, within the meaning of Annex III A a11 and a12 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, refer exclusively to units ("common funds") within the meaning of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) or does Annex III A a(11) and a(12) also apply for example where payments from a life assurance contract are linked to a share index or other reference value?

2. If Question 1 is answered by the Court to the effect that Annex III A a11 and a12 of Directive 2002/83/EC does not restrict the term "unit-linked policies" simply to investment companies ("common funds") within the meaning of Directive 85/611/EEC:

2.1 Does Directive 2002/83/EC oblige assurance undertakings to provide policy holders with advice or simply to notify them of the details set out in Annex III of the said Directive?

2.2 Is the duty to communicate information under Annex III A a11 of Directive 2002/83/EC sufficiently complied with if the assurance undertaking supplies the securities identification number (WKN), or what else does "definition of the fund (in units of account)" require in order for the duty to communicate information to be complied with? It must be borne in mind that the Member State of the commitment does not require any additional information from the assurance undertaking within the meaning of Art. 36(3) of Directive 2002/83/EC.

2.3 Is the duty to communicate information under Annex III A a12 of Directive 2002/83/EC sufficiently complied with if the assurance undertaking supplies the securities identification number (WKN) or should more detailed information be provided? It must be borne in mind that the Member State of the commitment does not require any additional information from the assurance undertaking within the meaning of Art. 36(3) of Directive 2002/83/EC.

3. Does Art. 36(1) of Directive 2002/83/EC make it mandatory for the assurance undertaking to provide the details set out in Annex III A or is it sufficient that this information is given to the policy-holder by a third party, for example by an insurance broker within the meaning of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation?

4. Does Directive 2002/83/EC require that Art. 36 be implemented into national law by the Member States in such a way that policy holders acquire a civil law right against the assurance undertaking to notify the details pursuant to Annex III or is it sufficient for the implementation into national law if a breach of the duties to provide information under Annex III of the Directive is only subject to sanction by a regulatory body such as by the imposition of a fine, withdrawal of license or other similar measure?

41 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

III Answers of the Court

Preliminary remarks

42 In view of the entry into force of the decisions of the EEA Joint Committee to incorporate Directive 90/619, Directive 92/96 and Directive 2002/83 into the

EEA Agreement, the Court notes that the questions must be interpreted in the light of Directive 90/619 and Directive 92/96, as amended, as far as they concern the third contract, whereas Directive 2002/83 was applicable at the material time in relation to the first, second and fourth contracts.

43 It is therefore necessary to answer the questions in the light of all three directives together (see Case E-17/11 *Aresbank*, judgment of 22 November 2012, not yet reported, paragraph 79).

44 At the hearing, the parties before the national court confirmed that the assurance policies in question are unit-linked policies as described in the request from the referring court.

45 The referring court refers to the national legislation of the Federal Republic of Germany and the Republic of Austria, but has formulated its questions exclusively in the light of the national legislation of the Principality of Liechtenstein.

46 At the hearing, the parties to the national proceedings agreed that the actual wording of the assurance contracts is not disputed before the national court. They have chosen Liechtenstein law to apply to the contracts in question. Since the referring court has not submitted any information indicating that a choice of law of that kind is not allowed (see Article 31(1) of Directive 92/96 and Article 32(1) of Directive 2002/83), it must be presumed that the law of Liechtenstein applies to the contracts in question.

47 According to the information provided by the parties in their written observations and confirmed at the hearing, the product covered by the contracts in question is an overall product package which consists of three elements: a loan, securities and life assurance. It is not entirely clear from the reference for an advisory opinion how these products relate to each other.

48 However, in the light of the wording of the questions and the information provided by the parties, it follows that the answers of the Court in the present proceedings will be limited to life assurance.

The first question

49 By its first question, the national court essentially seeks to establish whether the term “unit-linked policies” in points a11 and a12 of Annex II to Directive 92/96 and Annex III to Directive 2002/83 should be interpreted as referring only to units (“common funds”) within the meaning of Directive 85/611, or whether the term also refers to benefits linked to a share index or some other reference value.

50 Questions posed by national courts under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“SCA”) enjoy a presumption of relevance. Consequently, where the questions concern the interpretation of EEA law, the Court is in principle bound

to give a ruling, unless it is obvious that the interpretation of EEA law that is sought is unrelated to the 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 (see Cases E-13/11 *Granville Establishment*, judgment of 25 April 2012, not yet reported, paragraph 20, *Aresbank*, cited above, paragraph 44, and E-19/11 *Vín Tríó*, judgment of 30 November 2012, not yet reported, paragraph 26).

51 Nevertheless, the Court considers that it may, if need be, examine the circumstances in which the case was referred to it by the national court, in order to assess whether it has jurisdiction. The spirit of cooperation which must prevail in preliminary ruling proceedings requires the national court for its part to have regard to the function entrusted to the Court, which is to contribute to the administration of justice in the EEA States and not to give opinions on general or hypothetical questions.

52 It is in the light of that function that the Court finds that it has no jurisdiction to give a preliminary ruling on a question raised before a national court where the interpretation of EEA law has no connection whatever with the circumstances or purpose of the main proceedings (see Case E-6/96 *Wilhelmsen* [1997] EFTA Ct. Rep. 56, paragraphs 39 and 40).

53 According to Article 23(1)(A)(d) of Directive 2002/83, the EEA States may authorise assurance undertakings to cover their technical provisions with assets such as UCITS and other investment funds. In this case, pursuant to Article 24(3), second indent, of Directive 2002/83, UCITS not coordinated within the meaning of Directive 85/611 and other investment funds shall be given more limitative treatment as compared with UCITS coordinated within the meaning of that Directive. Corresponding provisions can be found in Directive 92/96.

54 The referring court and the parties to the proceedings before it agree that the assurance policies in question are unit-linked assurance contracts. Thus, it appears that the benefits provided by the contracts are linked to “other investment funds” within the meaning of Directive 92/96 and Directive 2002/83.

55 Under those circumstances, and without prejudice to the fact that the question of information requirements may arise in other cases concerning assurance policies where the benefits provided by the contracts are not unit-linked but directly linked to share indexes or some other reference other than those mentioned in Article 25(1) of Directive 2002/83 or Article 23(1) of Directive 92/96, the first question appears to be purely hypothetical in the context of the present case.

56 It is thus not necessary to provide an answer to the first question for the national court to be able to render its judgment. Without prejudice to the second question, the first question must be regarded as inadmissible.

General remarks concerning Questions 2 and 3

57 By Question 2.1, the referring court asks, in essence, whether Directive 92/96 and Directive 2002/83 must be interpreted as obliging assurance undertakings to provide policy holders with advice or whether it suffices simply to communicate to them the details set out in Annex II to Directive 92/96 and Annex III to Directive 2002/83. By Questions 2.2 and 2.3, the referring court also asks whether points a11 and a12 in Annex II(A) to Directive 92/96 and Annex III(A) to Directive 2002/83 are to be interpreted as requiring further information from the undertaking to the policy holder in addition to the securities identification number of the financial instrument to which the assurance is linked.

58 By Question 3, the referring court essentially asks whether it suffices that the information listed in Annex II(A) to Directive 92/96 and Annex III(A) to Directive 2002/83 is communicated to the policy holder by an insurance intermediary or whether the information must be communicated directly by the assurance company to the policy holder.

59 The referring court refers to a judgment of 10 February 2012 of the Liechtenstein Supreme Court, from which it follows that an obligation to provide advice exists under Liechtenstein law. The plaintiffs also make reference to this judgment, whereas the defendant contends that the judgment was set aside by judgment of the Liechtenstein Constitutional Court (*Staatsgerichtshof*) of 10 December 2012. In the plaintiffs' view, however, the grounds on which the judgment of 10 February 2012 was set aside are not relevant to the present proceedings and that, consequently, the judgment remains relevant in the case at hand.

60 It is not for the Court to rule on the interpretation of national law, that being exclusively for the national court.

61 However, according to settled case law, Article 34 SCA establishes a special means of judicial cooperation between the Court and national courts with the aim of providing the national courts with the necessary interpretation of elements of EEA law to decide the cases before them (see Case E-10/12 *Harðarson*, judgment of 23 March 2013, not yet reported, paragraph 37, and case law cited).

62 Directive 92/96 and Directive 2002/83 aim at protecting consumers through choice based on information. This approach is reflected in recital 23 in the preamble to Directive 92/96 and recital 52 in the preamble to Directive 2002/83, which state that if consumers are to profit fully from wider and more varied choice of contracts, they must be provided with whatever information is necessary to enable them to choose the contract best suited to their needs (see Case E-1/05 *ESA* v *Norway* [2005] EFTA Ct. Rep. 234, paragraph 42).

63 In that regard, the Court notes that the average consumer, i.e. a consumer who is reasonably well informed and reasonably observant and circumspect, must be taken into consideration when interpreting Directive 92/96 and Directive 2002/83. Life assurance contracts are in general of a complex nature the details

of which may be difficult to understand for the average consumer. Moreover, such contracts may involve considerable financial commitments for consumers over a long period of time. This underlines the importance of clear information to consumers when entering into life assurance contracts (see *ESA* v *Norway*, cited above, paragraph 41).

64 It is apparent from recital 23 in the preamble to Directive 92/96 and recital 52 in the preamble to Directive 2002/83 that the directives seek, *inter alia*, to coordinate the minimum provisions in order for the consumer to receive clear and accurate information on the essential characteristics of assurance products offered to him. As is pointed out in the same recital, if he/she is to profit fully from the greater choice and diversity in the single market for assurance, and from increased competition, the consumer must be provided with whatever information is necessary to enable him to choose the contract which best meets his requirements (see, for comparison, Case C-386/00 *Axa Royale Belge* [2002] ECR I-2209, paragraph 20).

65 Moreover, it must also be recalled that the legislature intended, by Article 31 of Directive 92/96 and Article 36 of Directive 2002/83, to delimit the type of information which EEA States may require assurance undertakings to provide in the interest of consumers, in order not to restrict unduly the choice of assurance products offered in the single market for assurance (see, for comparison, *Axa Royale Belge*, cited above, paragraph 23).

66 It is in the light of these considerations that the Court will answer the remaining questions posed by the national court.

Question 2.1 – Obligation to provide advice

67 By Question 2.1 the national court wishes to know whether Directive 92/96 and Directive 2002/83 are to be interpreted such that they require the assurance undertakings to provide advice.

68 With regard to the question whether Directive 92/96 and Directive 2002/83 must be interpreted as obliging assurance undertakings to provide policy holders with advice, it must be recalled, first, that Article 31(1) of Directive 92/96 and Article 36(1) of Directive 2002/83 provide that before the assurance contract is concluded, at least the information listed in Annex II(A) and Annex III(A), respectively, shall be communicated to the policy holder before the contract is concluded. According to the introductory paragraph of the relevant annex, this information must be provided in writing in a clear and accurate manner and in an official language of the EEA State of the commitment.

69 Second, even though life assurance contracts are in general of a complex nature the details of which may be difficult to understand for the average consumer, Directive 92/96 and Directive 2002/83 only require the information listed to be communicated to the policy holder. The directives do not impose any obligation on the assurance undertaking to provide advice.

70 Third, Article 31 of Directive 92/96 and Article 36 of Directive 2002/83 and Annex II(A) and Annex III(A), respectively, show that the legislature considered the information required pursuant to these provisions sufficient to protect the average consumer before the contract is concluded. According to those provisions, when the listed information is communicated to the consumer before the contract is concluded, he/she will be able to compare the essential elements of a contract – and then to choose the contract best suited to his needs. This is confirmed by the fact that, pursuant to Article 31(3) of Directive 92/96 and Article 36(3) of Directive 2002/83, the EEA State of commitment may require additional information in addition to that listed in the annexes only where it is necessary for a proper understanding by the policy holder of the essential elements of the commitment (see, for comparison, *Axa Royale Belge*, cited above, paragraphs 22 and 23).

71 Fourth, as ESA, the Liechtenstein Government and the Commission have correctly observed, the obligation in Directive 92/96 and Directive 2002/83 to communicate to the policy holder the relevant information must be distinguished from the express obligation of independent insurance intermediaries to provide advice based on a fair analysis pursuant to Articles 12(1)(c)(i) and 12(2) of Directive 2002/92.

72 As a result, it must be held that Directive 92/96 and Directive 2002/83 do not require an assurance undertaking to provide advice to the policy holder.

73 This interpretation is supported by the wording of Article 4 of Directive 90/619 and Article 32 of Directive 2002/83, which provide that the law applicable to contracts relating to the activities referred to in the directives shall be the law of the EEA State of commitment.

74 This interpretation is further supported by Article 12(5) of Directive 2002/92, which provides that EEA States may maintain or adopt stricter provisions regarding the information requirements concerning insurance intermediaries, provided that such provisions comply with EEA law.

75 However, Directives 92/96 and 2002/83 do not preclude the national courts of the EEA States from establishing an obligation under national law to provide advice to consumers before a contract is concluded, provided that this obligation does not affect the effectiveness of those directives.

76 Where EEA law does not preclude or limit the application of national contract law in a field otherwise coordinated or harmonised by a directive (see paragraph 64 above), that must also be the case for the application of general principles of national contract law, as long as this application of national law does not affect the effectiveness of the directives concerned.

77 As a result, without prejudice to other provisions, and as long as their effectiveness is not affected, Directive 92/96 and Directive 2002/83 do not prevent the EEA States from applying general principles of national contract law

to establish an obligation to provide advice concerning complex financial instruments, such as life assurance, sold to consumers (for a recent example concerning life assurance, see the judgment of the German Federal Court of Justice (*Bundesgerichtshof*) of 11 July 2012, IV ZR 271/10).

78 The answer to Question 2.1 must therefore be as follows:

Directives 92/96 and 2002/83 are to be interpreted as meaning that they do not require the assurance undertaking to provide advice to the policy holder before the contract is concluded.

Questions 2.2 and 2.3 – Interpretation of point a11 and a12 of Annex II(A) to Directive 92/96 and Annex III(A) to Directive 2002/83

79 By Questions 2.2 and 2.3 the referring court essentially asks whether points a11 and a12 of Annex II(A) to Directive 92/96 and Annex III(A) to Directive 2002/83 are to be interpreted such that provision of the securities identification number by the assurance undertaking suffices to fulfil those requirements.

80 The Court recalls that the general considerations underlying the directives concerned which have been presented above in paragraphs 62 to 65 must also form the point of departure for the answer to this question.

81 The two points to which the national court refers are intended to regulate two different aspects.

82 According to point a11, for unit-linked policies, the information communicated to a policy holder before the contract is concluded must contain a definition of the units to which the benefits are linked.

83 According to point a12, for unit-linked policies, the information communicated to a policy holder before the contract is concluded must contain an indication of the nature of the underlying assets.

84 The international securities identification number (ISIN/WKN) is a combination of numbers and letters used to identify transferable securities (financial instruments). It follows from the information submitted by the national court that details on transferable securities can be found on the Internet by entering the relevant ISIN/WKN into an Internet search engine.

85 However, as has been stated above, the information listed in Annex II(A) to Directive 92/96 and Annex III(A) to Directive 2002/83 required to be communicated to the policy holder before the contract is concluded must be provided in writing in a clear and accurate manner and in an official language of the EEA State of the commitment.

86 It must be recalled that the list in Annex II(A) to Directive 92/96 and Annex III(A) to Directive 2002/83 specifies information which must be provided to the policy holder, the underlying purpose of which is to ensure the protection of

consumers. That information is precise and objective and is intended to enable the policy holder to choose from amongst the available products the one best suited to his/her requirements and also to assess the policy in practical terms (see, for comparison, *Axa Royale Belge*, cited above, paragraph 29).

87 As pointed out above, points a11 and a12 require that, for unit-linked policies, the definition of the units to which the benefits are linked and an indication of the nature of the underlying assets be communicated to the policy holder.

88 In order to ensure the effectiveness of Directive 92/96 and Directive 2002/83, the information communicated to the policy holder pursuant to Annex II(A) to Directive 92/96 and Annex III(A) to Directive 2002/83 must be complete. Only if the information communicated to the policy holder covers all the points in the annexes will he/she get a clear picture of the units to which the assurance policy contract is linked, thus enabling him to choose from amongst the available products the one best suited to his/her requirements and also to assess the policy in practical terms.

89 As a result, where any part of the information listed in Annex II(A) to Directive 92/96 and Annex III(A) to Directive 2002/83 has not been provided to the policy holder before the contract is concluded, such contract is not concluded in accordance with the requirements of the relevant directive.

90 In order to determine whether an assurance undertaking has provided complete information to a policy holder, it is therefore necessary to consider whether the information provided satisfies the requirements of Annex II(A) to Directive 92/96 and Annex III(A) to Directive 2002/83.

91 It is for the national court to determine whether those requirements are met and, if not, to draw the necessary conclusions in order to ensure the effectiveness of the relevant directive.

92 However, when giving an advisory opinion, the Court may, where appropriate, provide clarification designed to give the national court guidance in its interpretation.

93 The directives concerned do not specify at what time before the contract is concluded that the information must be submitted to the policy holder. Normally, such information is made available to the policy holder before the contract is concluded through the information about the commitment, provided, for example, in a prospectus or other information materials.

94 According to Article 4 of Directive 90/619 and Article 32 of Directive 2002/83, the law applicable to contracts relating to the activities referred to in the relevant directive shall be the law of the EEA State of the commitment.

95 It appears from the reference as well as the oral submissions by the parties before the national court that the life assurance contracts are unit-linked (see paragraph

54 above). The referring court has limited its question to whether the communication of the international securities identification number (ISIN/WKN) of the units to which the benefits are linked can be held to satisfy the requirements of both points a11 and a12 of Annex II(A) to Directive 92/96 and Annex III(A) to Directive 2002/83.

96 First, the written information must be communicated to the policy holder. This means that it cannot be deemed sufficient that the policy holder is asked to use a search engine on the Internet to find and access the necessary information (see, by analogy, Case E-4/09 *Inconsult* [2009-2010] EFTA Ct. Rep. 86, and for comparison, Case C-49/11 *Content Services*, judgment of 5 July 2012, not yet reported, paragraph 37).

97 Second, in order to satisfy the requirement set out in point a11, the written information communicated to the policy holder before the contract is concluded must provide, in a clear and accurate manner, the definition of the units to which the benefits are linked. The policy holder must be able, on the basis of this information, to clearly identify the units which are linked to the assurance policy.

98 In the light of the wording of point a11 of Annex II(A) of Directive 92/96 and Annex III(A) of Directive 2002/83, which only requires a definition of the units to which the benefits are linked, an ISIN/WKN suffices to define the units to which the life assurance is linked, if the assurance is linked to that financial instrument alone. If the life assurance contract is linked to more than one instrument, each one must be defined in the information communicated to the policy holder.

99 It is for the national court, in the light of all the relevant circumstances of the case before it, to determine whether the written information was communicated to the policy holder before the contract was concluded and whether the information is sufficient to define the units to which the benefits are linked, such that the prospective policy holder was able to choose the contract best suited to his/her needs.

100 Third, in order to satisfy the requirement set out in point a12, for unit-linked policies, the written information communicated to the policy holder before the contract is concluded must also provide, in a clear and accurate manner, an indication of the nature of the underlying assets. This information must be communicated in addition to the definition of the units, so that the policy holder can determine whether the nature of the underlying assets – for example, the relevant stock exchange, their currency, denominations, form, type, maturity, level of risk and the costs involved in the management of these assets – are suited to his/her needs.

101 Given the purpose of the information related to the nature of the underlying assets, a simple statement of the ISIN/WKN number or the name of the asset underlying the unit-linked policy would normally not suffice to satisfy point a12 of the Directive. However, it is for the national court, in the light of all the

relevant circumstances of the case before it, to determine whether the written information was communicated to the policy holder before the contract was concluded and whether it is sufficient to describe the nature of the underlying assets, such that the prospective policy holder was able to choose the contract best suited to his/her needs.

102 The answer to Questions 2.2 and 2.3 must therefore be as follows:

Article 31 and points a11 and a12 of Annex II(A) of Directive 92/96 and Article 36 and points a11 and a12 of Annex III(A) of Directive 2002/83 must be interpreted as meaning that it is for the national court, in the light of all the relevant circumstances of the case before it, to determine whether the written information communicated to the policy holder before a contract on unit-linked life assurance was concluded is complete, clear and accurate and

- sufficient to define the units to which the benefits are linked, and

- sufficient to describe the nature of the underlying assets,

such that the prospective policy holder was able to choose the contract best suited to his/her needs.

Question 3 – Obligation to communicate the information

103 By Question 3, the referring court essentially asks if it suffices that the information in Annex II to Directive 92/96 and Annex III to Directive 2002/83 is communicated to the policy holder by a third party, for example, an insurance intermediary.

104 Neither Directive 92/96 nor Directive 2002/83 explicitly specifies the persons or undertakings responsible for communicating the information referred to in Article 31 of Directive 92/96 and Article 36 of Directive 2002/83.

105 As all parties and participants rightly have pointed out, assurance undertakings covered by the directives concerned are required to provide the complete information listed in Annex II(A) and Annex III(A) of the relevant directive. Nevertheless, it may be communicated to the policy holder by a third party such as an insurance intermediary.

106 Since assurance undertakings are the principal undertaking creating, structuring, managing and offering assurance policies, they will have access to the complete information concerning their products.

107 Moreover, incomplete, inaccurate and unclear information from an assurance undertaking prevents the consumer from making an informed choice and also prevents an insurance intermediary from providing fair advice within the meaning of Article 12 of Directive 2002/92, and, in particular, from satisfying the obligations laid down in Article 12(3) of that directive.

108 Therefore, in determining whether the information requirements of Article 31 of Directive 92/96 and Article 36 of Directive 2002/83 are satisfied, it does not matter whether the information was provided directly by the assurance company, or relayed by an insurance intermediary, as long as the information is complete and communicated to the policy holder on the terms set out in those provisions and Annex II and Annex III, respectively, and in accordance with other rules applicable to the communication of information to the policy holder.

109 Thus, as long as the information is complete and communicated to the policy holder on the terms set out in Article 31 of Directive 92/96 and Article 36 of Directive 2002/83, and in accordance with other rules applicable to the communication of information to the policy holder, it suffices that the information listed in Annex II and Annex III, respectively, is communicated to the policy holder by a third party, for example, an insurance intermediary.

110 The answer to Question 3 must therefore be as follows:

As long as the information is complete and communicated to the policy holder on the terms set out in Article 31 of Directive 92/96 and Article 36 of Directive 2002/83, and in accordance with other rules applicable to the communication of information to the policy holder, it suffices that the information listed in Annex II and Annex III, respectively, is communicated to the policy holder by a third party, for example, an insurance intermediary.

Question 4 – Access to an effective remedy

111 By its fourth question, the referring court essentially asks whether a national rule which provides for an administrative complaint procedure, which is only subject to a regulatory sanction such as the imposition of a fine, withdrawal of license or other similar measure, may constitute a sufficient remedy for the purposes of Directive 92/96 and Directive 2002/83 in cases where the assurance undertaking has failed to satisfy its obligation to inform the policy holder pursuant to Article 31 of Directive 92/96 and Article 36 of Directive 2002/83.

112 More precisely, seemingly on the assumption that a policy holder has a legal right enforceable against the assurance undertaking to receive the information set out in Article 31 of Directive 92/96 and Article 36 of Directive 2002/83, the national court asks if such an administrative complaint procedure is compatible with the principles of equivalence and effectiveness.

113 Article 4 of Directive 90/619 and Article 32 of Directive 2002/83 state that the law applicable to contracts relating to the activities referred to in the relevant directive shall be the law of the EEA State of the commitment. Neither directive requires the EEA States to introduce sanctions for the situation where, in its relations with a consumer, an assurance undertaking infringes a rule of national contract law.

114 It follows from the wording of those provisions that the rules governing an action for the enforcement of contractual obligations relating to activities referred to in Directives 90/916 and 2002/83, seeking, for example, compensation for pecuniary loss, are governed by national law.

115 ESA has correctly assumed that the fourth question should be answered in the light of the principles of equivalence and effectiveness, as established by the Court of Justice of the European Union ("ECJ") under EU law, for the reasons set out below.

116 The Court has repeatedly held that the objective of establishing a dynamic and homogeneous European Economic Area can only be achieved if EEA/EFTA and EU nationals and economic operators enjoy, relying upon EEA law, the same rights in both the EU and EFTA pillars of the EEA (see Cases E-18/11 *Irish Bank*, judgment of 28 September 2012, not yet reported, paragraph 122; E-14/11 *DB Schenker and Others*, judgment of 21 December 2012, not yet reported, paragraph 118; E-3/12 *Jonsson*, judgment of 20 March 2013, not yet reported, paragraph 60; and in relation to the EU see the Opinion of Advocate General Kokott of 21 March 2013 in pending Case C-431/11 *United Kingdom* v *Council*, point 42).

117 Access to justice and effective judicial protection are essential elements in the EEA legal framework (see Case E-2/02 *Bellona* v *ESA* [2003] EFTA Ct. Rep. 52, paragraph 36; and in relation to the EU see Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37). This can only be achieved if EEA/EFTA and EU nationals and economic operators enjoy equal access to the courts in both the EU and EFTA pillars of the EEA to ensure their rights which they derive from the EEA Agreement.

118 There are three main points at which a directive gains effect under the EEA Agreement. The first arises where a decision of the EEA Joint Committee has entered into force and becomes binding pursuant to Article 104 EEA and the directive must be implemented (see Case E-2/12 *HOB-vín III*) judgment of 11 December 2012, not yet reported, paragraph 128). This must have taken place at the latest on the implementation date in the EU or when the Joint Committee Decision enters into force, whichever comes later. Any later date constitutes an infringement of the EEA Agreement (see Case E-6/06 *ESA* v *Liechtenstein* [2007] EFTA Ct. Rep. 238, paragraph 19).

119 The second is where a directive is implemented pursuant to Article 7 EEA, in which case it shall prevail over national provisions (see Case E-1/07 *Criminal proceedings against A* [2007] EFTA Ct. Rep. 246, paragraph 38).

120 The third is where a decision of the EEA Joint Committee becomes provisionally applicable pursuant to Article 103 EEA, unless a Contracting Party notifies that such a provisional application cannot take place (see *Aresbank*, cited above, paragraphs 76 and 77).

121 In the absence of EEA rules in the field it is for the domestic legal system of each EEA State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which EFTA and EU citizens and economic operators derive from EEA law whether they are binding pursuant to Article 104 EEA, implemented, or provisionally applicable provided, first, that such rules are no less favourable than those governing similar domestic actions (principle of equivalence) and, second, that they do not render practically impossible or excessively difficult the exercise of rights conferred by EEA law (principle of effectiveness) (see, *mutatis mutandis*, *Unibet*, cited above, paragraph 43).

122 First, the principle of equivalence requires that the national rule in question be applied without distinction, whether the infringement alleged is of EEA law or national law, where the purpose and cause of action are similar (see, *mutatis mutandis*, Cases C-246/09 *Bulicke* [2010] ECR I-7003, paragraph 26, C-78/98 *Preston and Others* [2000] ECR I-3201, paragraph 55 and case law cited, and C-63/08 *Pontin* [2009] ECR I-10467, paragraph 45).

123 In other words, the principle of equivalence extends the general principle of equality to the law of remedies. National procedural law must remain neutral in relation to the origin of the rights invoked, under the conditions set out below.

124 In order to establish whether the principle of equivalence has been complied with in the case in the main proceedings, it is for the national court, which alone has direct knowledge of the procedural rules governing actions in national civil law, to consider the purpose, cause of action and the essential characteristics of allegedly similar domestic actions (see, *mutatis mutandis*, *Bulicke*, cited above, paragraph 28, *Preston and Others*, cited above, paragraph 56, and *Pontin*, cited above, paragraph 45).

125 Moreover, every case in which the question arises as to whether a national provision is less favourable than those concerning similar domestic actions must be analysed by the national court by reference to the role of that provision in the procedure, its conduct and its special features, viewed as a whole, before the various national bodies (see, *mutatis mutandis*, *Bulicke*, cited above, paragraph 29, *Preston and Others*, cited above, paragraph 61, and *Pontin*, cited above, paragraph 46).

126 In light of the information supplied by the national court, it appears to follow from the general principles of national civil law that compensation for pecuniary loss may be obtained from an assurance undertaking or an insurance intermediary which fails to satisfy its obligation to communicate the information required under national law. The referring court notes that such a claim for compensation for pecuniary loss is based on a civil law right in Liechtenstein.

127 This point has been confirmed by the Liechtenstein Government, which indicates that an action seeking compensation for pecuniary loss is part of the general law of obligations which civil courts have to apply.

128 Finally, it appears from the order for reference that such claims are admitted by the Liechtenstein courts. This also appears to follow from the judgments of 10 February 2012 of the Liechtenstein Supreme Court and of 10 December 2012 of the Liechtenstein Constitutional Court referred to by the referring court and the defendant.

129 If, in the light of this description of the national legislation, the only remedy available in Liechtenstein to a policy holder in the case of a violation by an assurance undertaking of the obligation to communicate information pursuant to points a11 and a12 of Annex II(A) to Directive 92/96 and Annex III(A) to Directive 2002/83 would be an administrative complaint against the assurance undertaking, and which is only subject to a regulatory sanction, such as the imposition of a fine, withdrawal of license or other similar measure, the situation would be substantially less favourable within the meaning of the principle laid down in paragraph 121 of the present judgment. Such a procedure does not allow for the policy holder to obtain compensation for his/her pecuniary loss from an assurance undertaking or an insurance intermediary which fails to satisfy its obligation to communicate the information required under the directives, even though similar claims on the basis of national law appear permitted under the general law of obligations before the civil courts.

130 It is, however, for the national court to determine what constitutes a comparable domestic action to obtain compensation for pecuniary loss resulting from a failure to comply with the obligation to provide information under the directives. If it transpired that other national remedies that have not been put before the Court were similar to an action for compensation for pecuniary loss resulting from a failure to comply with the obligation to provide information under the directives, it would also be for the referring court to consider whether such actions involved more favourable rules (see, *mutatis mutandis*, *Pontin*, cited above, paragraph 56).

131 Nevertheless, the various aspects of the national rules cannot be examined in isolation but must be placed in their general context. Moreover, such an examination may not be carried out subjectively by reference to circumstances of fact but must involve an objective comparison, in the abstract, of the procedural rules at issue (see, *mutatis mutandis*, *Preston and Others*, cited above, paragraph 62).

132 Second, as regards application of the principle of effectiveness, 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 conduct and its special features, viewed as a whole, before the various national bodies. For those purposes, account must be taken, where appropriate, of the basic principles of the domestic judicial system, such as protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure (see, for comparison, *mutatis mutandis*, *Unibet*, cited above, paragraph 54).

133 Under the administrative complaint procedure, as explained by the national court, a policy holder can lodge an administrative complaint before the national supervisory authority that an assurance undertaking has infringed its obligations pursuant to Directive 92/96 and Directive 2002/83.

134 However, this administrative procedure must be seen in the light of the national rules applicable to contracts relating to the activities referred to in those directives as a whole.

135 Therefore, in circumstances such as those in the present case, this administrative procedure does not mean that it is practically impossible or excessively difficult to exercise the rights conferred by Article 31 of Directive 92/96 and Article 36 of Directive 2002/83, if, in addition, which is for the national court to verify, national legislation provides a civil law right to seek compensation for pecuniary loss.

136 The answer to Question 4 must therefore be as follows:

In circumstances such as those in the present case, the EEA Agreement and Directive 92/96 and Directive 2002/83 must be interpreted as not precluding a national rule which provides for an administrative complaint procedure after losses have been incurred pursuant to a failure on the part of an assurance undertaking to comply with the requirement to provide information set out in Article 31(1) of Directive 92/96 and Article 36(1) of Directive 2002/83, provided,

> first, that the right to claim compensation for pecuniary loss from that assurance undertaking for a failure to communicate the information prescribed in Annex II to Directive 92/96 and Annex III to Directive 2002/83 is no less favourable than that applicable to similar domestic actions, and,
>
> second, that the application of national law does not render it practically impossible or excessively difficult for the policy holder to exercise rights conferred by the directives.

It is for the national court to ascertain whether those two conditions are met.

IV Costs

137 The costs incurred by the Liechtenstein Government, ESA and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are a step in the proceedings pending before Princely Court of the Principality of Liechtenstein, any decision on the costs of the parties to those proceedings is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Princely Court of the Principality of Liechtenstein hereby gives the following Advisory Opinion:

1. **Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) and Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance are to be interpreted as meaning that they do not require the assurance undertaking to provide advice to the policy holder before the contract is concluded.**

2. **Article 31 and points a11 and a12 of Annex II(A) of Directive 92/96 and Article 36 and points a11 and a12 of Annex III(A) of Directive 2002/83 must be interpreted as meaning that it is for the national court, in the light of all the relevant circumstances of the case before it, to determine whether the written information communicated to the policy holder before a contract on unit-linked life assurance was concluded is complete, clear and accurate and**

   sufficient to define the units to which the benefits are linked, and

   sufficient to describe the nature of the underlying assets,

   such that the prospective policy holder was able to choose the contract best suited to his/her needs.

3. **As long as the information is complete and communicated to the policy holder on the terms set out in Article 31 of Directive 92/96 and Article 36 of Directive 2002/83, and in accordance with other rules applicable to the communication of information to the policy holder, it suffices that the information listed in Annex II and Annex III, respectively, is communicated to the policy holder by a third party, for example, an insurance intermediary.**

4. **In circumstances such as those in the present case the EEA Agreement and Directive 92/96 and Directive 2002/83 must be interpreted as not precluding a national rule which provides for an administrative complaint procedure after losses have been incurred pursuant to a failure on the part of an assurance undertaking to comply with the requirement to provide information set out in Article 31(1) of Directive 92/96 and Article 36(1) of Directive 2002/83, provided**

first, that the right to claim compensation for pecuniary loss from that assurance undertaking for a failure to communicate the information prescribed in Annex II to Directive 92/96 and Annex III to Directive 2002/83 is no less favourable than that applicable to similar domestic actions, and,

second, that the application of national law does not render it practically impossible or excessively difficult for the policy holder to exercise rights conferred by the directives.

It is for the national court to ascertain whether those two conditions are met.

Carl Baudenbacher Per Christiansen Páll Hreinsson

Delivered in open court in Luxembourg on 13 June 2013.

Gunnar Selvik
Registrar

Carl Baudenbacher
President