JUDGMENT OF THE COURT

12 February 2026*

(*Consumer law – Directive 93/13/EEC – Non-binding effect of unfair contract terms – Legality of national statutes of limitation*)

In Case E-9/25,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Princely Supreme Court *(Fürstlicher Oberster Gerichtshof*), in the case between

Peter Plörer

and

LGT Bank AG,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann and Michael Reiertsen (Judge-Rapporteur), Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- Peter Plörer ("the applicant"), represented by Dr Alexander Amann, advocate;
- LGT Bank AG ("the defendant"), represented by Marco Ender, advocate;
- the Liechtenstein Government, represented by Dr Andrea Entner-Koch, Dr Claudia Bösch, and Hansjörg Lingg, acting as Agents;
- the EFTA Surveillance Authority ("ESA"), represented by Johanne Førde, Daniel Vasbeck and Melpo-Menie Joséphidès, acting as Agents; and

* Language of the request: German. Translations of national provisions are unofficial and based on those contained in the documents of the case.

- the European Commission ("the Commission"), represented by Lorna Armati and Camille Auvret, acting as Agents,

having heard oral argument on behalf of the applicant, represented by Dr Alexander Amann; the defendant, represented by Marco Ender; the Liechtenstein Government, represented by Hansjörg Lingg; ESA, represented by Daniel Vasbeck and Johanne Førde; and the Commission, represented by Lorna Armati, at the hearing on 11 November 2025,

gives the following

J U D G M E N T

I INTRODUCTION

1 The present request for an advisory opinion concerns the interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. The main question is whether national statutes of limitation that do not account for whether the consumer was aware of his or her claim under that directive before the period of limitation begins to run or expires make the domestic remedy against the unfair contract terms at issue ineffective and thus incompatible with EEA law.

2 The request has been made in proceedings between the applicant and the defendant, in which the applicant seeks the payment of sums unlawfully withheld by the defendant and compensatory interest on that principal amount covering the entire period of withholding.

II LEGAL BACKGROUND

EEA law

3 Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("SCA") reads, in extract:

> *The EFTA Court shall have jurisdiction to give advisory opinions on the interpretation of the EEA Agreement.*
>
> *Where such a question is raised before any court or tribunal in an EFTA State, that court or tribunal may, if it considers it necessary to enable it to give judgment, request the EFTA Court to give such an opinion.*

4 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) ("Unfair Contract Terms Directive") was incorporated into the Agreement on the European Economic Area ("EEA Agreement" or "EEA") by Decision of the EEA Joint Committee No 7/94 of 21 March 1994 (OJ 1994 L 160, p. 1) as point

7a of Annex XIX (Consumer protection). The decision entered into force on 1 May 1995 for Liechtenstein in accordance with Decision of the EEA Council No 1/95 of 10 March 1995 (OJ 1995 L 86, p. 58).

5 Article 3(1) of the Unfair Contract Terms Directive reads:

> *A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.*

6 Article 4 of the Unfair Contract Terms Directive reads:

> *1. Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.*
>
> *2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplies in exchange, on the other, in so far as these terms are in plain intelligible language.*

7 Article 5 of the Unfair Contract Terms Directive reads:

> *In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. This rule on interpretation shall not apply in the context of the procedures laid down in Article 7 (2).*

8 Article 6(1) of the Unfair Contract Terms Directive reads:

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

9 Article 7(1) of the Unfair Contract Terms Directive reads:

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

10 Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1) ("MiFID I") was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 65/2005 of 29 April 2005 (OJ 2005 L 239, p. 50) ("JCD 65/2005") as point 30ca of Annex IX (Financial services) and subsequently renumbered as point 31ba by Decision of the EEA Joint Committee No 114/2007 of 28 September 2007 (OJ 2008 L 47, p. 34) ("JCD 114/2007"). Constitutional requirements were indicated by Iceland, Liechtenstein and Norway and fulfilled by 8 June 2007. JCD 65/2005 entered into force on 1 August 2007.

11 Article 19 of MiFID I, entitled "Conduct of business obligations when providing investment services to clients", reads, in extract:

> *1. Member States shall require that, when providing investment services and/or, where appropriate, ancillary services to clients, an investment firm act honestly, fairly and professionally in accordance with the best interests of its clients and comply, in particular, with the principles set out in paragraphs 2 to 8.*
>
> *2. All information, including marketing communications, addressed by the investment firm to clients or potential clients shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.*
>
> *3. Appropriate information shall be provided in a comprehensible form to clients or potential clients about:*
>
> *- the investment firm and its services,*
>
> *- financial instruments and proposed investment strategies; this should include appropriate guidance on and warnings of the risks associated with investments in those instruments or in respect of particular investment strategies,*
>
> *- execution venues, and*
>
> *- costs and associated charges*
>
> *so that they are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. This information may be provided in a standardised format.*

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

incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 21/2007 of 27 April 2007 (OJ 2007 L 209, p. 38) ("JCD 21/2007") as point 30cab of Annex IX (Financial services) and subsequently renumbered as point 31bab by JCD 114/2007. Constitutional requirements were indicated by Iceland and Norway and fulfilled by 18 April 2008. JCD 21/2007 entered into force on 1 June 2008.

13 Article 26 of the Implementing Directive, entitled "Inducements", reads:

> *Member States shall ensure that investment firms are not regarded as acting honestly, fairly and professionally in accordance with the best interests of a client if, in relation to the provision of an investment or ancillary service to the client, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:*
>
> > *(a) a fee, commission or non-monetary benefit paid or provided to or by the client or a person on behalf of the client;*
> >
> > *(b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:*
> >
> > > *(i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service;*
> > >
> > > *(ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service to the client and not impair compliance with the firm's duty to act in the best interests of the client;*
> >
> > *(c) proper fees which enable or are necessary for the provision of investment services, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the firm's duties to act honestly, fairly and professionally in accordance with the best interests of its clients.*
>
> *Member States shall permit an investment firm, for the purposes of point (b)(i), to disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that it undertakes to disclose further details at the request of the client and provided that it honours that undertaking.*

14 MiFID I was repealed by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive

2002/92/EC and Directive 2011/61/EU ("MiFID II") by Decision of the EEA Joint Committee No 78/2019 of 29 March 2019 (OJ 2019 L 279, p. 143). Constitutional requirements were indicated by Iceland, Liechtenstein and Norway and fulfilled by 2 December 2019. The decision entered into force on 3 December 2019 but does not apply to the dispute in the main proceedings.

National law

15 According to the request, the Unfair Contract Terms Directive was transposed into Liechtenstein law by Article 8(3) of the Consumer Protection Act (*Konsumentenschutzgesetz*).

16 MiFID I and the Implementing Directive were transposed into Liechtenstein law by the Banking Act (*Bankengesetz*), the Banking Ordinance (*Bankenverordnung*) and the Civil Code (*Allgemeines bürgerliches Gesetzbuch*) of 1 June 1811 (ABGB; LR No 210.0). According to the referring court, the applicable version of the relevant national laws read at the material time as follows:

17 Article 8h(2) and (3) of the Banking Act read:

> *(2) Banks and investment firms may provide or accept fees, commissions, and non-monetary benefits offered in connection with the provision of investment services and ancillary services (benefits) only in accordance with the conditions set out by ordinance.*
>
> *(3) Banks and investment firms must disclose the benefits in accordance with the ordinance. The disclosure of benefits may be in summary form and general in content, e.g. as part of the general or other pre-formulated terms and conditions. Banks and investment firms are required to disclose further details if requested by the client.*

18 Paragraphs 1 and 5 of Section III, entitled "Benefits", in Annex 7.1 to the Banking Ordinance, read:

> *(1) The provision or acceptance of fees or commissions or non-monetary benefits ("benefits") within the meaning of Article 8h of the Banking Act is permitted if*
>
> > *(a) these constitute fees which enable or are necessary for the provision of services, such as, for example, custody costs, commissions for the purchase and sale of securities, settlement and exchange fees, regulatory levies or legal fees, which, by their nature, cannot give rise to conflicts with the obligation of the bank or investment firm to act honestly, fairly and professionally in accordance with the best interests of its clients; or*

(b) this constitutes a benefit paid or provided to or by the client or a person on behalf of the client;

(c) this constitutes a benefit from or to third parties or a person acting on their behalf, who are not covered by point (b), provided that

(aa) the existence, nature and amount of the benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant investment or ancillary service; and

(bb) the benefit is designed to enhance the quality of the relevant service to the client and does not impair compliance with the obligation of the bank or investment firm to act in the best interests of the client.

(5) The disclosure pursuant to point (c)(aa) of paragraph 1 may in accordance with Article 8h of the Banking Act be in summary form and general in content.

19 Section 1009 of the Civil Code read:

The agent is obliged to procure the transaction diligently and honestly in accordance with his promise and the power of attorney received and to transfer all benefits arising out of the transaction to the principal. Even if he has only a limited power of attorney, he is authorised to use all means that are necessarily connected with the nature of the transaction and in accordance with the declared intention of the principal. However, the agent is liable for any consequences if he exceeds the limits of his authority.

20 Section 1009a of the Civil Code read:

(1) If the agent is a bank, an investment firm or an asset management company, it may assume, except in the case of investment advice provided on an independent basis or in the case of portfolio management, that the principal has waived in relation to it the recovery of any fees, commissions or non-monetary benefits received or still to be received from third parties (benefits) and the assertion of civil law claims for compensation in relation to these benefits provided that

(a) prior to the procurement of the transaction the agent has correctly fulfilled its obligations of disclosure; and

(b) following the disclosure the principal has the transaction executed.

(2) The agent is obliged to notify the principal of the legal consequences provided for in paragraph 1 for example in the general or other pre-formulated terms and conditions.

(3) Minor non-monetary benefits that are capable of enhancing the quality of service provided to a client and are of a scale and nature such that they could not be judged to impair compliance with the duty of the bank, investment firm or asset management company to act in the best interest of the client may in any event be retained by the agent if they were clearly disclosed to the client.

21 Section 1444 of the Civil Code read:

In all cases in which the creditor is entitled to waive his right, he may also waive it to the benefit of his debtor, thereby releasing the debtor from his obligation.

22 Section 1478 of the Civil Code read:

To the extent that every usucaption includes a limitation both are completed in the same period by satisfying the conditions required. However, for the limitation itself the mere non-use during thirty years of a right which otherwise could have been used is sufficient.

23 Section 1479 of the Civil Code read:

Accordingly, all rights against a third party, whether or not entered in the public register, are extinguished generally by non-use for thirty years or observed silence for such period.

24 Section 1480 of the Civil Code read:

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

25 Section 1489 of the Civil Code read:

All actions for damages become time-barred after three years from the date when the damaged party became aware of the damage and the identity of the person who caused it or the person who is liable to compensate, irrespective of whether the damage was caused by breach of a contractual obligation or without reference to a contract. If the damaged party does not become aware of the damage or of the identity of the person who caused the damage or who is liable to compensate or the damage arises from a crime, the right to bring an action is extinguished only after thirty years.

26 Section 1497 of the Civil Code read:

Usucaption and limitation are interrupted if the party who seeks to rely on such has, before the expiry of the time of limitation, either expressly or impliedly acknowledged the right of the other party or if an action has been commenced and duly pursued against him by the party entitled. However, if the action has been declared inadmissible by final ruling, the limitation is considered to be uninterrupted.

III FACTS AND PROCEDURE

27 The defendant is a joint-stock company based in Vaduz, Liechtenstein, which operates under a Liechtenstein banking licence and offers, inter alia, investment services. The applicant was a client of the defendant between 22 September 2004 to 31 January 2012.

28 The contractual relationship between the parties in the main proceedings was governed by the defendant's General Terms and Conditions, which entered into force on 1 September 2004. Section 15 thereof read:

> *15. Special remuneration*
>
> *The bank reserves in principle the right to grant third parties a kick-back commission on the commissions and fees charged to the client and to pay remuneration to third parties on the basis of the volume of assets under management. Disclosure of such payments to the client is not a matter for the bank but exclusively for the respective recipients.*
>
> *The client accepts that any remuneration and compensation such as, for example, commissions and trail commissions, which are paid by third parties to the bank, may be retained by the latter and regarded as additional remuneration.*

29 On 19 November 2018, the applicant requested the defendant to disclose and surrender potential retrocessions, commissions, inducements and similar benefits that the defendant might have received from third parties by reason of its contractual relationship with the applicant. The defendant refused to disclose this information.

30 On 8 February 2019, in the first stage of an action in stages, the applicant filed an action for an order requiring the defendant to disclose whether the defendant had received benefits from third parties by reason of its contractual relationship and, if so, the amounts of those benefits. This action was served on the defendant on 25 February 2019.

31 In its judgment of 4 September 2020, the Princely Supreme Court of Liechtenstein ordered the disclosure of the information sought. In granting the claim for disclosure, the Princely Supreme Court found the term in Section 15 of the defendant's General Terms and Conditions to be too indeterminate and therefore invalid.

32 In the next step of the proceedings, the applicant claimed payment of the sums unlawfully withheld by the defendant on the basis of the provisions in the Civil Code

on unjust enrichment, and compensatory interest on that principal amount covering the entire period of withholding.

33 On 23 November 2022, the Princely Court granted the applicant's claim in full, awarding him the payment of the benefits and compensatory interest on that principal amount at a rate of 5 per cent. The defendant appealed to the Princely Court of Appeal.

34 In its judgment of 25 April 2023, the Princely Court of Appeal upheld the award of the main claim, but awarded the applicant 5 per cent interest only for the period after 25 February 2019 when the action for disclosure was served on the defendant. The Princely Court of Appeal held that, although the applicant's statutory claim for recovery pursuant to the Civil Code arose on the defendant's receipt of the benefits, the applicant was only due the interest payable thereupon from the date on which payment of the kickbacks at issue was claimed. The applicant appealed to the Princely Supreme Court.

35 In its judgment of 1 March 2024, the Princely Supreme Court found in favour of the applicant, awarding him compensatory interest covering the entire period of the withholding. The Princely Supreme Court reasoned, in summary, that the applicant's claim was based on the Civil Code, read in conjunction with accompanying banking law provisions that transposed MiFID I into Liechtenstein law, and that the detailed rules for the payment of interest should not lead to the person concerned being deprived of adequate compensation for the loss sustained. Since the applicant could not have been aware of the nature and extent of the benefits received by the defendant prior to the disclosure, it would infringe the principle of effectiveness under EEA law to apply a limitation period of, for example, three, five or ten years. As the right to recovery becomes time-barred after 30 years, pursuant to Section 1479 of the Civil Code, this provision had to be interpreted to mean that also the claim to interest thereupon, contrary to the rule of Section 1480 of the Civil Code, by reason of the undue withholding (and undue withholding of the right to recovery), becomes time-barred after 30 years and not after only three years. In any event, on account of the principle of effectiveness, Section 1480 of the Civil Code had to be disapplied, according to the Princely Supreme Court, as this would no longer ensure the applicant's justified claim. The defendant complained to the Constitutional Court.

36 By its judgment of 2 December 2024, the Constitutional Court set aside the Princely Supreme Court's judgment and remitted the case for a new decision. The Constitutional Court reasoned, in summary, that the Princely Supreme Court had failed to take account of the judgment of 19 December 2019 in *Rust-Hackner*, Joined Cases C-355/18, C-356/18 and C-479/18, EU:C:2019:1123, in which the Court of Justice of the European Union ("ECJ") had found a national limitation period of three years for the exercise of the right to remuneration interest, associated with the repayment of sums due to unjust enrichment, to be compatible with the principle of effectiveness, provided that establishment of such a period does not undermine the effectiveness of that policyholder's right of cancellation under EEA law.

37 Against this background, the Princely Supreme Court decided to refer the following questions to the Court:

First Question:

Must Article 15(1) of the Second Directive 90/619/EEC, Article 35(1) of Directive 2002/83/EC and Article 186(1) of Directive 2009/138/EC and the principle handed down in that connection that these provisions do not preclude national legislation providing for a limitation period of 3 years for the exercise of the right to remuneration interest, associated with the repayment of sums due to unjust enrichment, requested by a policyholder who has exercised his or her right of cancellation, provided that establishment of such a period does not undermine the effectiveness of that policyholder's right of cancellation be applied also in a case in which, following the declaration of invalidity of a term in accordance with the provisions of MiFID I, a non-professional client of an investment service provider is entitled to remuneration interest on the sums of money withheld due to the invalidity of the term (benefits from third parties such as fees or commissions in relation to the provision of an investment or ancillary service within the meaning of Article 26(b)(i) of the Implementing Directive), subject to the proviso that, in place of possibly undermining the right to cancel the insurance contract, the undermining of the right to assert his claim to recover the benefits or an undermining of a different kind applies if he does not also receive interest for a period of up to 30 years?

If the first question is answered in the negative, the referring court asks the following Second Question:

Must Article 19 of MiFID I and Article 26 of the Implementing Directive 2006/73/EC, where necessary in conjunction with Article 6(1) and Article 7(1) of Directive 93/13, and having regard to the principles of effectiveness and equivalence, be interpreted as meaning that they preclude a national provision and consistent case law in that connection according to which, following the declaration of invalidity of a term in accordance with the provisions of MiFID I, the remuneration interest to which a non-professional client is entitled on the sums of money withheld due to the invalidity of the term (benefits from third parties such as fees or commissions in relation to the provision of an investment or ancillary service within the meaning of Article 26(b)(i) of the Implementing Directive) is subject to a limitation period for which the starting point is the date on which it becomes objectively possible to bring an action for the interest whereas subjective individual impediments such as an error on the part of the person entitled or total lack of awareness of the right do not affect the starting point of the limitation period and this results in a de facto limitation on the right to remuneration interest for the loss of use of the sums withheld to the last three years before lodging the action?

38 On 14 October 2025, the Court requested the referring court, in accordance with Article 95 of the Rules of Procedure, to clarify the legal basis on which the contract term at issue was declared invalid. In its reply of 17 October 2025, the referring court stated:

The invalidity of clause 15 of the defendant's General Terms and Conditions 09/2004 was justified in the judgment of the Princely Supreme Court of September 4, 2020, 02 CG.2019.58 page 44 (in a different Senate composition) on the grounds that it was too vague, regardless of whether the clause was a declaration of advance waiver (§ 1444 ABGB) or whether a change in dispositive law with regard to § 1009 ABGB was simply to be assumed.

Without making specific reference to European legal principles, the Princely Supreme Court ultimately followed the reasoning of the plaintiff, who ultimately based its claim both on a violation of the transparency requirement of Art. 8(3) KSchG (Art. 3(1) Art. 4 and Art. 5 of Directive 93/13/EEC on unfair terms in consumer contracts) and on the fundamental prohibition of inducements in connection with Art. 19(1) MiFID 1 and Art 26 of Implementing Directive 2006/73/EC (see order for reference, para. 7.2.7).

39 Reference is made to the written observations published on the Court's website for a fuller account of the arguments and proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

IV ANSWER OF THE COURT

Admissibility

40 The defendant and the Liechtenstein Government have challenged the admissibility of the request, arguing, in essence, that the questions referred lack a connection to EEA law and, in any event, concern issues already settled by case law.

41 The Court recalls that, under Article 34 SCA, any court or tribunal in an EFTA State may refer questions on the interpretation of the EEA Agreement to the Court, if it considers an advisory opinion necessary to enable it to give judgment. The purpose of Article 34 SCA is to establish cooperation between the Court and the national courts and tribunals. It is intended to be a means of ensuring a homogenous interpretation of EEA law and to provide assistance to the courts and tribunals in the EFTA States in cases in which they have to apply provisions of EEA law (see the judgment of 7 May 2025 in *TC and AA*, Joined Cases E-1/24 and E-7/24, paragraph 40 and case law cited).

42 It is settled case law that questions concerning the interpretation of EEA law referred by a national court, in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may only refuse to rule on a question referred by a national court where it is obvious that the interpretation of EEA law that is sought bears no relation to the actual facts of the main action or its purpose where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions referred (see the judgment in *TC and AA*, Joined Cases E-1/24 and E-7/24, cited above, paragraph 41 and case law cited).

43 None of the above conditions for a rebuttal of the presumption of relevance are fulfilled. The referring court has clarified that the contract term at issue in the main proceedings was declared invalid on the grounds that it infringed national law, which implements Articles 3 to 5 of the Unfair Contract Terms Directive, as well as Article 19(1) of MiFID I and Article 26 of the Implementing Directive. The referring court therefore considers the interpretation of the principles of effectiveness and equivalence derived from EEA law to be relevant for the application of national law.

44 With regard to the assertion that the Court's case law has already provided an answer to the questions raised by the referring court, the Court recalls that, even where there is case law resolving the point of law at issue, national courts remain entirely at liberty to bring a matter before the Court if they consider it appropriate to do so. The fact that the provisions whose interpretation is sought have already been interpreted by the Court does not deprive the Court of jurisdiction to give a further ruling or lead to the inadmissibility of the questions referred (compare the judgment of 2 February 2023 in *Towarzystwo Ubezpieczeń Ż (Contrats types d'assurance trompeurs)*, C-208/21, EU:C:2023:64, paragraph 40 and case law cited).

45 In the light of the foregoing, the request is admissible.

Substance

46 By its first question, the referring court essentially asks whether the ECJ's findings in the judgment in *Rust-Hackner*, Joined Cases C-355/18, C-356/18 and C-479/18, cited above, apply to circumstances such as those in the main proceedings. By its second question, the referring court seeks guidance as to whether Article 19 of MiFID I and Article 26 of the Implementing Directive, read in conjunction with Articles 6 and 7 of the Unfair Contract Terms Directive, preclude national law that defines the starting point for the limitation period as the date on which the claim is due, regardless of whether this may lead to a situation in which a claim is time-barred before the creditor is aware of the existence of the claim. The Court finds it appropriate to examine these questions together.

47 As a preliminary point, the Commission questioned at the hearing whether EEA law is at the basis of the claim at issue in the main proceedings. MiFID I and the Implementing Directive do not specify the legal consequences of a breach, whereas MiFID II explicitly confers on clients the right to claim payment of unlawful kickbacks but does not apply to the dispute in the main proceedings. The Commission thus argued that simply declaring the contract term invalid may not automatically entitle the applicant to the benefits paid by third parties under EEA law.

48 The Court recalls that proceedings under Article 34 SCA are based on a clear separation of functions between national courts or tribunals and the Court. Any assessment of the facts of the case is a matter for the national court or tribunal, which must assume the responsibility for the subsequent judicial decision, and it is that court or tribunal which has the task of interpreting the provisions of national law at issue and ultimately

determining their compatibility with EEA law (see the judgment of 20 November 2024 in *Bygg & Industri Norge*, E-2/24, paragraph 31 and case law cited).

49 It appears from the request that the national court has definitively ruled that the consequence of declaring that contract term invalid is that the applicant is entitled to claim the benefits provided by a third party and unlawfully withheld by the defendant. Accordingly, the Court is not called upon to determine whether the contract term at issue was in fact unfair within the meaning of the Unfair Contract Terms Directive, nor to assess the precise consequences of such a finding for the contractual relationship between the parties in the main proceedings. The present request for an advisory opinion is thus confined to examining the compatibility with EEA law of national statutes of limitation governing claims for interest in circumstances in which a contract term was declared invalid by the application of national law implementing the Unfair Contract Terms Directive and MiFID I and the Implementing Directive.

50 Furthermore, as regards the submission of the defendant and the Liechtenstein Government that the Unfair Contract Terms Directive does not, in any event, confer a right to interest on the principal amount of restitution, the Court recalls that, pursuant to Article 6(1) of the Unfair Contract Terms Directive, a contract term held to be unfair must be regarded, in principle, as never having existed, so that it cannot have any effect on the consumer. Therefore, the determination by a court that a term is unfair must, in principle, have the consequence of restoring the consumer to the legal and factual situation that he or she would have been in if that term had not existed by, inter alia, creating a right to restitution of advantages wrongly obtained, to the consumer's detriment, by the seller or supplier on the basis of that unfair term (see, to that effect, the judgment of 23 May 2024 in *Gylfason and Others*, Joined Cases E-13/22 and E-1/23, paragraph 135 and case law cited, and compare the judgment of 15 June 2023 in *Bank M*, C-520/21, EU:C:2023:478, paragraph 65 and case law cited).

51 Accordingly, provided that the national court has determined that restoring the applicant to the situation he would have been in had the term not existed entails that the applicant is entitled to claim the benefits provided by a third party and placing him in the situation in which he would have been had he claimed these benefits at the time they were unlawfully withheld by the defendant, compensatory interest on the principal amount for the entire period of withholding is necessary to achieve that result. The absence of such compensation would otherwise fail to take into account the effluxion of time and depreciation in the value of money and thus undermine the right to full restitution under Article 6(1), as well as the deterrent effect sought by Article 7(1) of the Unfair Contract Terms Directive, which obliges EEA States to provide for adequate and effective means to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

52 However, consumer protection is not absolute and the setting of reasonable limitation periods in the interests of legal certainty is compatible with EEA law. Articles 6 and 7 of the Unfair Contract Terms Directive do not preclude a national rule which, while providing that an action seeking a declaration of invalidity of an unfair term in a contract concluded between a seller or supplier and a consumer is not subject to a time limit,

subjects the action seeking to enforce the restitutory effects of that finding to a limitation period. In such circumstances, it must be ensured that that period is not less favourable than those governing similar domestic actions (principle of equivalence) and that it does not render practically impossible or excessively difficult the exercise of rights conferred by EEA law, in particular the Unfair Contract Terms Directive (principle of effectiveness) (compare the judgment of 13 March 2025 in *Banco Santander*, C-230/24, EU:C:2025:177, paragraphs 30 to 31 and case law cited).

53 It is settled case law that the question of 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 defence, the principle of legal certainty and the proper conduct of procedure (see the judgment of 9 August 2024 in *Låssenteret*, E-11/23, paragraph 54 and case law cited).

54 In addition, the Court has stated that the obligation on the EEA States to ensure the effectiveness of the rights that individuals derive from EEA law, particularly the rights deriving from the Unfair Contract Terms Directive, implies a requirement for effective judicial protection, reaffirmed in Article 7(1) of that directive and also given expression by Article 47 of the Charter of Fundamental Rights of the European Union, which applies, inter alia, to the definition of detailed procedural rules relating to actions based on such rights (see, to that effect, the judgments of 16 December 2025 in *Silbernagl*, E-5/25, paragraph 48 and case law cited, and of 18 April 2012 in *Posten Norge*, E-15/10, paragraph 86 and case law cited; and compare the judgment of 18 December 2025 in *Soledil*, C-320/24, EU:C:2025:993, paragraph 29 and case law cited).

55 In this respect, a limitation period is compatible with the principle of effectiveness only if, first, it is sufficient in practical terms to enable the consumer to prepare and bring an effective action, and, second, the consumer has had the opportunity to become aware of his or her rights before the period begins to run or expires (compare the judgment of 8 May 2025 in *Abanca Corporación Bancaria*, Joined Cases C-6/24 and C-231/24, EU:C:2025:333, paragraph 32 and case law cited).

56 The Court notes that whether consumers have had the opportunity to become aware of the unfair nature of a contract term and their rights under the Unfair Contract Terms Directive before the limitation period begins to run or expires must be assessed on a case-by-case basis. Whereas sellers or suppliers may be required to keep themselves informed of legal matters relating to the terms which they take the initiative to insert in contracts which they conclude with consumers in the course of ordinary commercial activity, a similar attitude cannot be expected of consumers, given the occasional, or even exceptional, nature of the conclusion of a contract containing such a term (compare the judgment of 25 January 2024 in *Caixabank (Prescription de remboursement des frais hypothécaires)*, Joined Cases C-810/21 to C-813/21, EU:C:2024:81, paragraphs 52 and 60).

57 The judgment in *Rust-Hackner*, Joined Cases C-355/18, C-356/18 and C-479/18, cited above, to which the defendant and the Liechtenstein Government have referred, concerned the right to cancel life assurance contracts under EEA law, where the communication by the assurance undertaking to the policy holder of the detailed rules for exercising that right was the sole trigger for the cancellation period. In those specific circumstances, the ECJ held that the needs of the policyholder had to be assessed at the time when the contract was concluded as the policyholder would otherwise potentially be allowed to yield more from that contract or even to speculate on the difference between what can actually be gained under the contract and the rates of remuneration interest (compare the judgment in *Rust-Hackner*, Joined Cases C-355/18, C-356/18 and C-479/18, cited above, paragraph 120).

58 As noted by the applicant, ESA and the Commission, however, the motive of preventing financial speculation and ensuring that the right to cancellation should not be employed merely in order to obtain higher financial returns or to speculate on the difference between contractual benefits and remuneration interest – which would exceed the protective purpose of the right – does not arise in the present case, which instead concerns the applicant's right to claim unlawfully withheld third party benefits, together with compensatory interest, in order to give effect to the Unfair Contract Terms Directive. It appears from the request, subject to verification by the referring court, that the applicant was unable to bring his claim until the national courts ordered the defendant to disclose whether it had in fact received any such commissions. In those circumstances, the risk of speculation identified by the ECJ in *Rust-Hackner* is absent.

59 In the light of the foregoing, the answer to the questions referred is that Articles 6(1) and 7(1) of the Unfair Contract Terms Directive must be interpreted as precluding a national provision under which compensatory interest on sums unlawfully withheld as a result of the invalidation of a contract term under that directive is subject to a limitation period that expires before the consumer had the opportunity to both become aware of, and exercise, the rights conferred by EEA law.

V COSTS

60 Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

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

Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding a national provision under which compensatory interest on sums unlawfully withheld as a result of the invalidation of a contract term under that directive is subject to a limitation period that expires before the consumer had the opportunity to both become aware of, and exercise, the rights conferred by EEA law.

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 12 February 2026.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President