



Press and Information

Court of Justice of the European Union

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Judgment in Case C-51/13

Nationale-Nederlanden Levensverzekering Mij NV v Hubertus Wilhelmus Van Leeuwen

Member States may require life assurance companies to send clients information other than that listed in the Third Life Assurance Directive

None the less, those companies must be able to identify that additional information with sufficient foreseeability

The Third Life Assurance Directive¹ seeks, in particular, to coordinate minimum provisions in this area so that the consumer receives clear and accurate information on the essential characteristics of the insurance products proposed to him.

In 1999, Mr Van Leeuwen took out assurance with Nationale-Nederlanden Levensverzekering Mij NV (NN) forming part of an investment, known as 'flexibly insured investing'. It was a life assurance policy under which the accumulated value at the end date is not guaranteed but depends on the results of investments. Furthermore, during the term of the assurance contract, payment of a fixed and guaranteed capital is provided for should the policyholder die before the end of the contract.

After the end of the assurance contract, a dispute arose between NN and Mr Van Leeuwen concerning the amount of the costs and premiums deducted by the insurer in respect of the death risk cover. Part of the dispute relates to whether NN gave sufficient information concerning those costs and the risk premiums before the assurance contract was taken out. In particular, the fact that Mr Van Leeuwen was not sent a summary or full overview of the actual and/or absolute costs and their composition is in dispute.

The Rechtbank te Rotterdam, hearing the action, considers that although those indications do not cover the information which insurance companies are required to provide to policyholders under the directive, by refraining from sending that information, however, NN infringed the 'open and/or unwritten rules' of Netherlands law which include, in this case, the duty of care of the insurance company, pre-contractual good faith and requirements of reasonableness and fairness. The referring court decided to refer questions to the Court of Justice in that regard. It asks, in essence, whether the provisions of the Third Life Assurance Directive precludes an insurance company, on the basis of general principles of domestic law such as the 'open and/or unwritten rules' at issue in the main proceedings, from being required to send to policyholders certain information additional to that listed in the directive.

In today's judgment, the Court recalls first of all that it is apparent from the express wording of the relevant provision of the directive,² Annex II and a recital in the preamble thereto that the additional information Member States may require must be clear, accurate and necessary for a proper understanding of the essential characteristics of assurance products proposed to the policyholder.

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; OJ 1992 L 360, p. 1). The third life assurance directive was repealed and replaced by Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ 2002 L 345, p. 1), which was then itself repealed and replaced, with effect from 1 November 2012, by Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ 2009 L 335, p. 1). However, in view of the date on which the life assurance contract at issue in the main proceedings was concluded, the provisions of the third life assurance directive remain relevant for the resolution of this case.

² Article 31.

An obligation to provide additional information can therefore be imposed only where it is necessary to achieving the objective of informing the policyholder and where the information required is clear and accurate in order to achieve that objective and thus, in particular, in order to guarantee the insurance companies a sufficient level of legal certainty.

In that regard, the Court points out that the Member States are not bound to require insurance companies to provide additional information. They have the choice of doing so or not. However, although it is for the Member State to lay down the detailed rules for implementing the obligation to provide additional information provided for in national legislation, the directive does delimit that possibility by stating that that information must enable the policyholder to understand the essential elements of the commitment and must be necessary to achieve that end.

Accordingly, it is for the Member State concerned to determine, on the basis of the characteristics of its legal order and the specific features of the situation which it seeks to regulate, the legal basis of the obligation to provide additional information in order to ensure both effective understanding by the policyholder of the essential elements of the insurance products proposed to him and a sufficient level of legal certainty.

The legal basis of such an obligation to provide additional information and particularly whether that obligation follows from general principles of domestic law such as the 'open and/or unwritten rules' is, in principle, irrelevant.

Nevertheless, that legal basis must be such that, in accordance with the principle of legal certainty, it enables insurance companies to identify with sufficient foreseeability what additional information they must provide and which the policyholder may expect. In that regard, the Court notes that, when assessing the requirements to be laid down as regards the foreseeability of such an obligation to provide additional information, the national court may take into consideration the fact that it is for the insurance company to determine the type and characteristics of the insurance products which it offers, so that, in principle, it should be able to identify the characteristics which its products offer and which are likely to justify a need to provide additional information to policyholders.

In any event, it is for the referring court to assess whether the 'open and/or unwritten rules' at issue meet those requirements.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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