



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-143/20 and C-213/20 'A.' Towarzystwo Ubezpieczeń Życie ('Unit-linked' assurance contracts)

## **Court of Justice clarifies the scope of the pre-contractual information disclosure obligation in relation to 'unit-linked' group life assurance contracts**

The Polish consumers A (Case C-143/20) as well as G.W and E.S (Case C-213/20) acceded to, as insured persons, open-ended group endowment and life assurance contracts, so-called 'unit-linked', concluded between an assurance undertaking and the undertaking which is the policyholder.

By their accession, that had been offered and was managed by the undertaking which is the policyholder, those consumers agreed to pay assurance premiums, in return for services in the event of death or survival at the end of the assurance period. Those premiums were converted into units of an investment fund, then invested in financial instruments on which their value depended, that constituted the 'underlying assets' of the 'unit-linked' contracts.

Consequent on the significant loss in value of those units, those consumers brought an action seeking the recovery of all the monies that they had invested, claiming that they were not informed to the required level of detail of the characteristics and risks of those assurance products.

It is in that context that the Sąd Rejonowy dla Warszawy-Woli w Warszawie (District Court for Warszawa-Wola, Warsaw, Poland) requested that the Court of Justice clarify the scope of the pre-contractual information disclosure obligation laid down by the Life Assurance Directive in respect of a life-assurance policy holder <sup>1</sup> and the effects of a failure to make such a (full) disclosure.

In today's judgment, the Court of Justice states, first of all, that **the assurance relationship between the assurance undertaking and the consumer who acceded to a 'unit-linked' group contract falls within the concept of 'assurance contract', within the meaning of Directive 2002/83, even if the consumer who became a party to that group contract comes under the concept of 'policy holder' under that same directive. Accordingly, that consumer must receive, prior to his or her accession to the 'unit-linked' group contract, the information required to be communicated by that directive before signing a life-assurance contract, enabling him or her to make an informed choice of the assurance product which best meets his or her requirements.** (82)

Further, as regards the entity which must fulfil the pre-contractual information disclosure obligation, the Court of Justice considers that, first, it is **for the assurance undertaking**, prior to the signing of a 'unit-linked' group contract, **to communicate at least the information set out in Directive 2002/83 <sup>2</sup> to the undertaking which is the policy holder of that contract.** With regard to the nature of such a contract, that is intended to be distributed to final consumers, and the requirement that the consumers receive that information before they accede to the contract in order to choose the assurance product which best meets their requirements, the assurance undertaking is required to set out that information in a clear, comprehensive and understandable manner for those consumers, in view of its onward transmission to those consumers during the process of accession

<sup>1</sup> 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).

<sup>2</sup> Annex III, paragraph A.

to that contract. Secondly, **it is for the undertaking which is the policy holder of a 'unit-linked' group contract, acting as an assurance intermediary within the meaning of Directive 2002/92,<sup>3</sup> to transmit the information provided to it by the assurance undertaking to each consumer who accedes to that contract, prior to their accession.** That information must be supplied together with all other details that are deemed necessary taking into account the requirements and needs of that consumer, which must be established on the basis of the information provided by that consumer. Those details must be **varied in relation to the complexity of that contract and set out clearly and accurately and in an understandable manner for that consumer.** (89, 90, 91)

Moreover, the Court of Justice rules that indications as to the nature of the underlying assets must be communicated to a consumer before that consumer accedes to a 'unit-linked' group contract. It points out in that regard that the **characteristics of the financial instruments comprising the underlying assets of a 'unit-linked' contract are of the utmost importance in the informed choice of such an assurance product by the consumer.** That applies even more strongly when, as in the present case, those underlying assets are derivatives or structured financial instruments with embedded derivatives, which carry a particularly high degree of investment risk. (99) Therefore, in order to maintain the effectiveness of the information disclosure obligation arising from Directive 2002/83, such indications must include **an indication of the essential characteristics of the underlying assets.** (100)

The Court of Justice points out, however, that those indications must not only allow the consumer to make an informed choice as to the assurance product that best meets his or her requirements, but also be objectively necessary in order to effect that choice. (101) Thus, those indications **must include clear, accurate and understandable information as to the economic and legal nature of those underlying assets,** including the general principles governing their yield, (102) **as well as the structural risks that are associated with them,** namely the risks that are inherent in their nature and that may directly affect the rights and obligations flowing from the assurance relationship (103). The indications as to the nature of the underlying assets must not necessarily include, however, exhaustive information as to the nature and extent of all the risks associated with the investment in those underlying assets or the information communicated to the assurance undertaking by the issuer of those financial instruments.

In addition, the Court of Justice clarifies that, first, in the case of a 'unit-linked' group contract, the **information referred to in Directive 2002/83 must be communicated to the consumer prior to the signature of the declaration to accede to that contract,** by which that consumer makes clear his or her consent to be bound by that contract and to become a party to a contractual assurance relationship with the assurance undertaking. Secondly, in the absence of harmonised rules, it is for the Member States to establish the implementing rules for the pre-contractual information disclosure obligation provided for in that directive, in order that the effectiveness of that directive, taking into account its purpose, is ensured. (113, 114)

That implies, according to the Court of Justice, that the information referred to in Directive 2002/83 **must not necessarily be communicated to that consumer in a separate pre-contractual procedure and it may be mentioned in the 'unit-linked' group contract where provided to that consumer prior to their accession, such to enable them to make a timely and an informed choice as to the assurance product which best meets their requirements.** (118)

The Court of Justice adds that Directive 2002/83 does not require a failure to correctly discharge the obligation to communicate the requisite information to be regarded as entailing the nullity or invalidity of a 'unit-linked' group contract or the accession declaration thereto; but it thus confers on the consumer who acceded to that contract the right to the recovery of the assurance premiums **paid to the extent that the national law procedural rules for the exercise of the right to rely on that information obligation are not such as to undermine the effectiveness of that right by dissuading that consumer from exercising it.** It is, therefore, for the national court to

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<sup>3</sup> Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ 2003 L.

determine whether the legal effects that the applicable national provisions attach to the incorrect implementation of that information obligation are regulated in such a way as to guarantee its effectiveness. In doing so, the national court must interpret those provisions, including the general rules concerning the invalidity of legal acts and defective consent, to the maximum possible extent in the light of the wording and purpose of that directive. (125)

Lastly, the Court of Justice finds that **the omission to communicate the information referred to in Directive 2002/83 to the consumer acceding to the ‘unit-linked’ group contract** is likely to constitute a **misleading omission within the meaning of Directive 2005/29**.<sup>4</sup> First, that information constitutes material information which the average consumer requires, taking account of the context, to make an informed commercial decision. Secondly, with respect to the cardinal importance that it plays in the informed choice of the assurance product by that consumer, the failure to communicate that information, its concealment, or the communication thereof in an unclear, unintelligible, ambiguous or untimely manner appear likely to lead that consumer to make a commercial decision that he or she would not otherwise have taken. (131, 133, 134)

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**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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<sup>4</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’) (OJ 2005 L 149, p. 22).