Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

19 December 2013*

(Request for a preliminary ruling — Directives 90/619/EEC and 92/96/EEC — Direct life assurance — Right of cancellation — Lack of information on the conditions governing the exercise of that right — Expiry of the cancellation period one year after payment of the first premium — Conformity with Directives 90/619/EEC and 92/96/EEC)

In Case C-209/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Germany), made by decision of 28 March 2012, received at the Court on 3 May 2012, in the proceedings

Walter Endress

v

Allianz Lebensversicherungs AG,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet and M. Berger (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 24 January 2013,

after considering the observations submitted on behalf of:

— Mr Endress, by J. Kummer, Rechtsanwalt,

— Allianz Lebensversicherungs AG, by J. Grote and M. Schaaf, Rechtsanwälte,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— the European Commission, by G. Braun and K.-P. Wojcik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2013,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of the first subparagraph of Article 15(1) 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 (OJ 1990 L 330, p. 50), as amended by 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 second life assurance directive'), read in conjunction with Article 31(1) of the third life assurance directive.

2 The request has been made in proceedings between Mr Endress and Allianz Lebensversicherungs AG ('Allianz') concerning the cancellation by Mr Endress of a life assurance contract concluded with that company.

Legal context

European Union law

3 The second and third life assurance directives were 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 second and third life assurance directive remain relevant for the resolution of this case.

The second life assurance directive

4 In the words of the eleventh recital in the preamble to the second life assurance directive, 'for life assurance contracts … the policy-holder should be given the opportunity of cancelling the contract within a period of between 14 and 30 days'.

5 Article 15(1) of the second life assurance directive provided:

'1. Each Member State shall prescribe that a policy holder who concludes an individual life-assurance contract shall have a period of between 14 and 30 days from the time when he was informed that the contract had been concluded within which to cancel the contract.

…

The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract … notably as regards the arrangements for informing the policy-holder that the contract has been concluded.

…'

The third life assurance directive

6 Recital 23 in the preamble to the third life assurance directive was worded as follows:

'[I]n a single assurance market the consumer will have a wider and more varied choice of contracts; … if he is to profit fully from this diversity and from increased competition, he must be provided with whatever information is necessary to enable him to choose the contract best suited to his needs; … this information requirement is all the more important as the duration of commitments can be very long; … the minimum provisions must therefore be coordinated in order for the consumer to receive clear and accurate information on the essential characteristics of the products proposed to him as well as the particulars of the bodies to which any complaints of policy-holders, assured persons or beneficiaries of contracts may be addressed.'

7 Article 31(1) and (4) of that directive 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.

…

4. The detailed rules for implementing this Article and Annex II shall be laid down by the Member State [concerned].'

8 Annex II to that directive, entitled 'Information for policy-holders', provided:

'The following information, which is to be communicated to the policy-holder before the contract is concluded (A) or during the term of the contract (B), must be provided in a clear and accurate manner, in writing, in an official language of the Member State [concerned].

…

A. Before concluding the contract

…

(a) 13.
Arrangements for application of the cooling-off period

…'

Directive 85/577/EEC

9 In the words of the fourth recital in the preamble to Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31), 'the special feature of contracts concluded away from the business premises of the trader is that … the consumer is unprepared [for such contract negotiations] or he does not [expect them], [and] the consumer is often unable to compare the quality and price of the offer with other offers …'.

10 The fifth recital in the preamble to that directive states that 'the consumer should be given a right of cancellation … in order to enable him to assess the obligations arising under the contract'.

11 Article 5(1) of that directive provides:

'The consumer shall have the right to renounce the effects of his undertaking by sending notice within a period of not less than seven days from receipt by the consumer of the notice referred to in Article 4, in accordance with the procedure laid down by national law. It shall be sufficient if the notice is dispatched before the end of such period.'

German law

12 Paragraph 5a of the Law on insurance contracts (Versicherungsvertragsgesetz) ('the VVG') was repealed with effect from 1 January 2008. In the version applicable to the facts in the main proceedings, that paragraph provided:

'(1) If the insurer has not delivered the conditions of insurance to the policy-holder at the time of the application or has failed to supply consumer information required by [the applicable provisions], the contract shall be considered to have been concluded on the basis of the policy document, the conditions of insurance and the additional consumer information which is relevant to the subject-matter of the contract, unless the policy-holder objects in writing within 14 days from delivery of the documents. …

(2) The period begins to run only when the policy document and the documentation under subparagraph 1 are fully available to the policy-holder and the policy-holder, on delivery of the policy document, has been informed in writing, in typographically clear form, about the right to object, the commencement of the period and its duration. … Notwithstanding the first sentence, however, the right to object expires one year after payment of the first premium.

…'

The dispute in the main proceedings and the question referred for a preliminary ruling

13 According to the order for reference, Mr Endress entered into a life assurance contract with Allianz, taking effect on 1 December 1998. He received the general conditions of assurance and consumer information only when Allianz sent him the policy document. When Allianz thus agreed to conclude that contract with Mr Endress, it did not sufficiently inform him of his rights guaranteed under Paragraph 5a of the VVG.

14 Under that life assurance contract, Mr Endress had to pay an annual premium for a period of five years from December 1998 and, in return, Allianz had to pay him a pension from 1 December 2011. However, on 1 June 2007, Mr Endress gave notice to Allianz of the termination of the contract, with effect from 1 September 2007. In September 2007, Allianz paid Mr Endress the repurchase value of the life assurance contract, which was less than the sum of the premiums with interest.

15 By letter of 31 March 2008, Mr Endress exercised his right to 'object' under Paragraph 5a of the VVG. He requested Allianz to reimburse him all of the premiums plus interest, after deduction of the repurchase value which had already been paid.

16 Mr Endress' action seeking payment by Allianz of that further amount was dismissed by the court of first instance. His appeal against the decision at first instance was also dismissed.

17 Mr Endress then brought an appeal on a point of law before the Bundesgerichtshof. That court considers that the appeal could be upheld only if, notwithstanding the fourth sentence of Paragraph 5a(2) of the VVG, he had retained a right to object even though more than a year had

elapsed since payment of the first insurance premium. It states then the decisive question is whether the first subparagraph of Article 15(1) of the second life assurance directive must be interpreted as precluding a limitation of the period during which the right to object may be exercised.

18 In those circumstances, the referring court decided to stay the proceedings and refer the following question to the Court:

'Must the first indent of Article 15(1) of [the Second Life Assurance Directive], having regard to Article 31(1) of [the Third Life Assurance Directive], be interpreted as precluding a provision – such as the fourth sentence of Paragraph 5a(2) of the VVG [in the version applicable to the facts in the main proceedings] – under which a right of cancellation or a right to object lapses one year at the latest after payment of the first premium even if the policy-holder has not been informed about the right of cancellation or the right to object?'

The question referred for a preliminary ruling

19 First of all, it should be noted that, under Article 267 TFEU, which is based on a clear separation of functions between the national courts and the Court, the latter is empowered only to give rulings on the interpretation or the validity of a European Union provision on the basis of the facts which the national court puts before it (see, to that effect, inter alia, Case C-226/08 *Stadt Papenburg* [2010] ECR I-131, paragraph 23 and the case-law cited). Likewise, it falls exclusively to the referring court to interpret national legislation (see, inter alia, Case C-416/10 *Križan and Others* [2013] ECR, paragraph 58 and the case-law cited).

20 It follows from that that, with regard to the present case, the Court is required to assume, notwithstanding the doubts expressed in that regard by Allianz in its written observations and at the hearing, that Mr Endress, as stated in the order for reference, was not informed about his right of cancellation or, at the very least, not sufficiently informed. Moreover, the Court is not called upon, in the present case, to decide whether the national legislation in Paragraph 5a of the VVG on the procedure for the conclusion of an insurance contract according to the so-called 'policy' model, in its entirety, was compatible with the requirements under the second and third life assurance directives.

21 The subject-matter of the present case is thus limited to the question of whether the exercise of the right of cancellation provided for in Article 15(1) of the second life assurance directive could be limited, by a national provision such as that at issue in the main proceedings, to one year from the date of payment by the policy-holder of the first premium under the insurance contract concerned, even when that policy-holder had not been informed about that right of cancellation.

22 In that regard, it should be noted that, although the second and third life assurance directives did not mention either the case in which the policy-holder was not informed about his right of cancellation or, consequently, the effect that that lack of information could have on that right, the third subparagraph of Article 15(1) of the second life assurance directive provided that 'the conditions of cancellation [were to] be determined by the [national] law applicable to the contract'.

23 The Member States were therefore, indeed, entitled to adopt rules relating to the precise procedure for exercising the right of cancellation, and that procedure could include, by its nature, certain restrictions on that right. However, when adopting those rules, the Member States were required, in accordance with settled case-law, to ensure the effectiveness of the second and third life assurance directives, taking account of their aims (see, to that effect, inter alia, Case 48/75 *Royer* [1976] ECR 497, paragraph 73).

24 Concerning the aims of those directives, it should be noted that recital 23 in the preamble to the third life assurance directive stated that 'in a single assurance market the consumer [would] have a wider and more varied choice of contracts'. Also according to that recital, 'if he [was] to profit fully from this diversity and from increased competition, he [had to] be provided with whatever information is necessary to enable him to choose the contract best suited to his needs' (Case C-386/00 *Axa Royale Belge* [2002] ECR I-2209, paragraph 28). Finally, it was stated in that recital that 'this information requirement [was] all the more important as the duration of commitments [could] be very long'.

25 For the purpose of achieving that information objective specified in recital 23 in the preamble to the third life assurance directive, Article 31(1) of that directive, read in conjunction with point (a)13 of Annex II to the directive, provided that 'at least' the '[a]rrangements for application of the cooling-off period' should be communicated to the policy-holder, and that '[b]efore the … contract is concluded'. It was therefore clear from both the background and the wording of the relevant provisions of the third life assurance directive that it sought to ensure that the policy-holder receive precise information concerning, inter alia, his right of cancellation.

26 It must, therefore, be stated that a national provision, such as that at issue in the main proceedings, providing for the expiry of the policy-holder's right to cancel the contract at a time when he has not been informed about that right runs counter to the achievement of an essential objective pursued by the second and third life assurance directives and, therefore, to the effectiveness of those directives.

27 Such a conclusion cannot be invalidated by the argument, put forward in particular by Allianz, that the principle of legal certainty could require a provision such as that at issue in the main proceedings. The Court has already held, in that regard, that if a consumer was not aware of the existence of the right of cancellation, he would not be able to exercise that right and that, therefore, reasons of legal certainty could not justify a restriction of the period during which the right of cancellation in accordance with Directive 85/577 could be exercised, in so far as that entailed a limitation of the rights expressly conferred on consumers in order to protect them against the risks arising from the fact that credit institutions had chosen to enter into agreements away from their business premises (Case C-481/99 *Heininger* [2001] ECR I-9945, paragraphs 45 and 47).

28 While *Heininger* relates in particular to the provisions of Directive 85/577 to protect the consumer in respect of contracts negotiated away from business premises, and while there are, as the Advocate General states in point 43 of her Opinion, significant differences between that directive and the second and third life assurance directives, the considerations set out by the Court in *Heininger*, referred to in the paragraphs above, are capable of being applied to the provision at issue in the main proceedings. The risks connected, for the consumer, with the conclusion of a contract away from the business premises of the other contracting party, first, and those connected, for the policy-holder, with the conclusion of an insurance contract in the absence of information in accordance with the requirements under Article 31 of the third life assurance directive, read in conjunction with Annex II to that directive, secondly, are similar.

29 First, Directive 85/577 notes, in the fourth recital in the preamble, in particular, that 'the consumer is often unable to compare the quality and price of the offer with other offers' and, in the fifth recital, that 'the consumer should be given a right of cancellation … in order to enable him to assess the obligations arising under the contract'. Secondly, as insurance contracts are legally complex financial products, capable of differing considerably depending on the insurer offering those products and of involving significant and potentially very long-term financial commitments, the policy-holder is at a disadvantage vis-à-vis the insurer, a situation which is similar to that of a consumer concluding a contract away from business premises.

30 Therefore, as noted by the Advocate General in points 46 and 47 of her Opinion, the insurer may not validly rely on reasons of legal certainty in order to redress a situation caused by its own failure to comply with the requirement, under European Union law, to communicate a defined list of information, including, in particular, information relating to the right of the policy-holder to cancel the contract (see, by analogy, *Heininger*, paragraph 47).

31 Nor may the above considerations be called into question by the fact, relied on in particular by Allianz, that, according to the Court's case-law, the right of cancellation under Article 5(1) of Directive 85/577 can expire even when the consumer has received mistaken information concerning the exercise of that right (see Case C-412/06 *Hamilton* [2008] ECR I-2383, paragraph 49). That judgment concerns the conformity with that directive of a national provision providing for such an expiry one month after the contracting parties have completely performed the obligations under the contract. However, the present case does not concern such a provision, since the national legislature did not adopt such a provision with regard to life assurance contracts.

32 In the light of all the foregoing considerations, the answer to the question referred is that Article 15(1) of the second life assurance directive, read in conjunction with Article 31 of the third life assurance directive, must be interpreted as precluding a national provision, such as that at issue in the main proceedings, under which a right of cancellation lapses one year at the latest after payment of the first premium, where the policy-holder has not been informed about the right of cancellation.

The temporal effects of the present judgment

33 In its observations, Allianz requested the Court, if it were to hold that the second and third life assurance directives preclude national legislation such as that at issue in the main proceedings, to limit the temporal effects of its judgment.

34 In support of that request, Allianz states that that judgment could affect more than 108 million insurance contracts concluded between 1995 and 2007 and that, in accordance with those contracts, premiums amounting to approximately EUR 400 billion have been paid. Allianz itself concluded approximately 9 million contracts of that type during that period, and received premiums amounting to approximately EUR 62 billion.

35 In that regard, it should be pointed out, first, that the interpretation given by the Court to a provision of European Union law only clarifies and defines its meaning and scope as it should have been understood and applied from the time of its entry into force (see *Heininger*, paragraph 51 and the case-law cited).

36 Secondly, according to settled case-law, a limitation of the temporal effects of a judgment is an exceptional measure which assumes that there is a risk of serious economic repercussions owing in particular to the large number of legal relationships entered into in good faith on the basis of rules considered to be validly in force and that it appears that individuals and national authorities have been led to adopt practices which do not comply with European Union law by reason of objective, significant uncertainty regarding the implications of European Union provisions, to which the conduct of other Member States or the European Commission may even have contributed (see, inter alia, C-465/11 *Forposta and ABC Direct Contact* [2012] ECR, paragraph 45 and the case-law cited).

37 With regard, in this case, to the factors capable of justifying limiting the temporal effects of the Court's judgment, it must be noted that Allianz, which has not provided evidence in that regard, merely referred to a very large number of insurance contracts which were concluded under the so-called 'policy' scheme and in accordance with which premiums representing, in total, a very large sum were paid. Allianz, however, has not provided information concerning the number, which is the only relevant issue in the present case, of insurance contracts with respect to which the policy-holder was

not informed about his right of cancellation, nor has Allianz calculated the economic risk for it connected with the possibility, for the policy-holders concerned, of cancelling those contracts. In those circumstances, the existence of a risk of serious economic consequences has not been established.

38 Moreover, with regard to the condition relating to the existence of 'objective, significant uncertainty' regarding the implications of European Union provisions, it is clear that the provisions of the third life assurance directive, as is apparent from paragraphs 22 to 31 of the present judgment, left no room for doubt regarding the essential objective of that directive, which is to allow the policy-holder to cancel a life assurance contract if he considers that it does not best correspond to his needs, and to do so in possession of all relevant information.

39 A national provision, such as that at issue in the main proceedings, which restricted the exercise of the right of cancellation granted to a policy-holder to a period of one year from payment of the first premium, where that policy-holder had not been provided with information in accordance with Article 31 of the third life assurance directive, clearly ran counter to that objective. Nor, therefore, can 'objective, significant uncertainty' regarding the implications of the European Union provisions at issue be found to exist.

40 Accordingly, there is no need to limit the temporal effects of the present judgment.

Costs

41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs 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 (First Chamber) hereby rules:

Article 15(1) 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, as amended by Council Directive 92/96/EEC of 10 November 1992, read in conjunction with Article 31 of the latter directive, must be interpreted as precluding a national provision, such as that at issue in the main proceedings, under which a right of cancellation lapses one year at the latest after payment of the first premium, where the policy-holder has not been informed about the right of cancellation.

[Signatures]