Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

19 December 2019 *

(References for a preliminary ruling — Freedom to provide services — Direct life assurance — Directives 90/619/EEC, 92/96/EEC, 2002/83/EC and 2009/138/EC — Right of cancellation — Incorrect information concerning the detailed rules for exercising the right of cancellation — Formal requirements for the declaration of cancellation — Effects on the obligations of the assurance undertaking — Time limit — Lapse of the right of cancellation — Possibility to cancel a contract after it has been terminated — Repayment of the surrender value of the contract — Reimbursement of premiums paid — Right to remuneration interest — Limitation)

In Joined Cases C-355/18 to C-357/18 and C-479/18,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Landesgericht Salzburg (Regional Court, Salzburg, Austria) made by decisions of 16 May 2018, received at the Court on 31 May 2018 (C-355/18 to C-357/18), and from the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna, Austria), made by decision of 12 July 2018, received at the Court on 20 July 2018 (C-479/18), in the proceedings

Barbara Rust-Hackner (C-355/18),

Christian Gmoser (C-356/18),

Bettina Plackner (C-357/18),

v

Nürnberger Versicherung Aktiengesellschaft Österreich,

and

KL

v

UNIQA Österreich Versicherungen AG,

LK

v

DONAU Versicherung AG Vienna Insurance Group,

MJ

* Language of the case: German.

v

Allianz Elementar Lebensversicherungs-Aktiengesellschaft,

NI

v

Allianz Elementar Lebensversicherungs-Aktiengesellschaft (C-479/18),

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, L.S. Rossi (Rapporteur), M. Ilešič, J. Malenovský and F. Biltgen, Judges,

Advocate General: J. Kokott,

Registrar: L. Carrasco Marco, administrator,

having regard to the written procedure and further to the hearing on 11 April 2019,

after considering the observations submitted on behalf of

– Ms Rust-Hackner, Mr Gmoser, Ms Plackner and KL, by N. Nowak, Rechtsanwalt,

– LK, by M. Poduschka, Rechtsanwalt,

– MJ and NI, by P. Mandl, Rechtsanwalt,

– Nürnberger Versicherung Aktiengesellschaft Österreich, UNIQA Österreich Versicherungen AG and Allianz Elementar Lebensversicherungs-Aktiengesellschaft, by P. Konwitschka, Rechtsanwalt,

– DONAU Versicherung AG Vienna Insurance Group, by D. Altenburger and G. Hoffmann, Rechtsanwälte,

– the Austrian Government, by J. Schmoll, acting as Agent,

– the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and by P. Garofoli, avvocato dello Stato,

– the European Commission, by H. Tserepa-Lacombe, K.-P. Wojcik and G. Braun, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2019,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation 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 (OJ 1992 L 360, p. 1) ('Directive 90/619'), Article 31 of 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), of Articles 35(1) and 36 of 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) and of Articles 185(1) and 186(1) of 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).

2 The requests have been made in seven sets of proceedings, three of which are pending before the Landesgericht Salzburg (Regional Court, Salzburg, Austria), brought, respectively, by Barbara Rust-Hackner, Christian Gmoser and Bettina Plackner against Nürnberger Versicherung Aktiengesellschaft Österreich ('Nürnberger'), and four of which are pending before the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna, Austria) between, respectively, KL and UNIQA Österreich Versicherungen AG ('UNIQA'), LK and DONAU Versicherung AG Vienna Insurance Group ('DONAU'), MJ and Allianz Elementar Lebensversicherungs-Aktiengesellschaft ('Allianz'), and NI and Allianz regarding the scope of the right to cancel life assurance contracts and the time limit to which that right is subject.

Legal context

EU law

Directive 90/619

3 Article 15(1) of Directive 90/619, which was repealed by Directive 2002/83, provided as follows:

'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 giving of notice of cancellation by the policy-holder shall have the effect of releasing him from any future obligation arising from the contract.

The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract as defined in Article 4, notably as regards the arrangements for informing the policy-holder that the contract has been concluded.'

Directive 92/96

4 Recital 23 of Directive 92/96, which was also repealed by Directive 2002/83, was worded as follows:

'… in 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'.

5 Article 31 of Directive 92/96 provided as follows:

‘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 of the commitment.’

6 Annex II to that directive, headed ‘Information for policyholders’, stated as follows:

‘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 of the commitment.

…

A. Before concluding the contract	
Information about the assurance undertaking	Information about the commitment
…	… (a) 13. Arrangements for application of the cooling-off period …’

Directive 2002/83

7 Recitals 46 and 52 of Directive 2002/83, which was repealed by Directive 2009/138, were worded as follows:

‘(46) Within the framework of an internal market it is in the policy holder’s interest that they should have access to the widest possible range of assurance products available in the Community so that they can choose that which is best suited to their needs. It is for the Member State of the commitment to ensure that there is nothing to prevent the marketing within its territory of all the assurance products offered for sale in the Community as long as they do not conflict with the legal provisions protecting the general good in force in the Member State of the commitment and in so far as the general good is not safeguarded by the rules of the home Member State, provided that such provisions must be applied without discrimination to all undertakings operating in that Member State and be objectively necessary and in proportion to the objective pursued.

…

(52) In an internal market for assurance the consumer will have a wider and more varied choice of contracts. If he/she is to profit fully from this diversity and from increased competition, he/she must be provided with whatever information is necessary to enable him/her to choose the contract best suited to his/her 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/her as well as the particulars of the bodies to which any complaints of policy holders, assured persons or beneficiaries of contracts may be addressed.’

8 Article 35 of Directive 2002/83, headed 'Cancellation period', provided in paragraph 1 as follows:

'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/she was informed that the contract had been concluded within which to cancel the contract.

The giving of notice of cancellation by the policy holder shall have the effect of releasing him/her from any future obligation arising from the contract.

The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract as defined in Article 32, notably as regards the arrangements for informing the policy holder that the contract has been concluded.'

9 Article 36 of that directive, headed 'Information for policy holders', was worded as follows:

'1. Before the assurance contract is concluded, at least the information listed in Annex III(A) shall be communicated to the policy holder.

…

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

10 Annex III to that directive, headed 'Information for policy holders', stated:

'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 of the commitment.

…

A. *Before concluding the contract*	
Information about the assurance undertaking	Information about the commitment
…	… (a)13 Arrangements for application of the cooling-off period …'

Directive 2009/138

11 Recital 79 of Directive 2009/138 is worded as follows:

'In an internal market for insurance, consumers have a wider and more varied choice of contracts. If they are to benefit fully from that diversity and from increased competition, consumers should be provided with whatever information is necessary before the conclusion of the contract and throughout the term of the contract to enable them to choose the contract best suited to their needs.'

12 Article 185 of that directive, headed 'Information for policy holders', provides as follows:

'1. Before the life insurance contract is concluded, at least the information set out in paragraphs 2 to 4 shall be communicated to the policy holder.

…

3. The following information relating to the commitment shall be communicated:

…

(j) arrangements for application of the cooling-off period;

…

6. The information referred to in paragraphs 2 to 5 shall be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment.

…

8. The detailed rules for implementing paragraphs 1 to 7 shall be laid down by the Member State of the commitment.'

13 Article 186 of that directive, headed 'Cancellation period', provides in paragraph 1 as follows:

'Member States shall provide for policy holders who conclude individual life insurance contracts to have a period of between 14 and 30 days from the time when they were informed that the contract had been concluded within which to cancel the contract.

The giving of notice of cancellation by the policy holders shall have the effect of releasing them from any future obligation arising from 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.'

Austrian law

14 The version of Paragraph 165a of the Bundesgesetz über den Versicherungsvertrag (Federal Law on insurance contracts) of 2 December 1958 (BGBl. No 2/1959; 'the VersVG') in force between 1 January 1997 and 30 September 2004 provided as follows:

'1. The policyholder shall be entitled to cancel the contract within 2 weeks after it has been concluded. If the insurer has granted provisional cover, it shall be entitled to the premium corresponding to the duration thereof.

2. If the insurer has not complied with the obligation to disclose its address (first line of Paragraph 9a(1) of the [Bundesgesetz über den Betrieb und die Beaufsichtigung der Vertragsversicherung (Versicherungsaufsichtsgesetz) (Federal Law on the operation and supervision of contractual insurance (Law on insurance supervision)) of 18 October 1978 (BGBl. No 569/1978)], the period for cancellation under subparagraph 1 shall not begin to run before the policyholder has been informed of that address.

3. The foregoing subparagraphs shall not apply to group insurance policies or policies with a duration of 6 months or less.'

15 The version of Paragraph 165a of the VersVG in force between 1 January 2007 and 30 June 2012 provided as follows:

'1. The policyholder shall be entitled, within 30 days of communication of the conclusion of the contract, to withdraw therefrom. If the insurer has granted provisional cover he shall be entitled to the premium corresponding to the duration thereof.

2. If the insurer has not complied with the obligation to disclose his address (first line of Paragraph 9a(1) of the Federal Law on the operation and supervision of contractual insurance), the period for cancellation under subparagraph 1 shall not begin to run before the policyholder has been informed of this address.

3. The foregoing subparagraphs shall not apply to group insurance policies or policies with a duration of 6 months or less.'

16 The version of Paragraph 165a of the VersVG in force between 1 July 2012 to 31 December 2015 provided as follows:

'1. The policyholder shall be entitled, within 30 days of communication of the conclusion of the contract, to withdraw therefrom. If the insurer has granted provisional cover he shall be entitled to the premium corresponding to the duration thereof.

2. If the insurer has not complied with the obligation to disclose his address (first line of Paragraph 9a(1) of the Federal Law on the operation and supervision of contractual insurance), the period for cancellation under subparagraph 1 shall not begin to run before the policyholder has been informed of this address.

2a. If the policyholder is a consumer (second line of Paragraph 1(1) of the Konsumentenschutzgesetz (Law on consumer protection) of 8 March 1979 (BGBl. No 140/1979)), the period for cancellation under subparagraphs 1 and 2 shall begin to run only once the policyholder has also been informed of this right of cancellation.

3. The foregoing subparagraphs shall not apply to group insurance policies or policies with a duration of 6 months or less.'

17 The version of Paragraph 176 of the VersVG published in BGBl. No 509/1994 provides as follows:

'1. If an endowment insurance policy in the event of death that is taken out such that the entry of the obligation of the insurer to pay the agreed capital is certain to occur is annulled by cancellation, termination or rescission, the insurer must reimburse the surrender value allocated to the insurance.

…

3. The surrender value is to be calculated in accordance with the recognised rules of actuarial calculations on the basis of the accounting principles of the premium calculation for the ending of the ongoing insurance period as the current value of the insurance. Outstanding debts on premiums are deducted from the surrender value.

4. The insurer is entitled to make a deduction only when this has been agreed upon and is reasonable.'

18 The version of Paragraph 9a of the Federal Law on the operation and supervision of contractual insurance in force between 1 August 1996 and 9 December 2007 stated as follows:

‘1. In the event of the conclusion of an insurance policy relating to a risk situated in Austria, prior to submission of his contractual declaration the policyholder must be informed in writing of

(1) the name, the address of the head office and the legal form of the insurance company and, where appropriate, of the branch concluding the contract;

…

(6) the circumstances in which the policyholder can cancel the conclusion of the insurance policy or withdraw therefrom.’

19 The version of Paragraph 9a of the Federal Law on the operation and supervision of contractual insurance in force between 10 December 2007 and 31 December 2015 provided as follows:

‘1. In the event of conclusion of a direct insurance policy relating to a risk situated in Austria, prior to submission of his contractual declaration the policyholder must be informed in writing of

(1) the name, the address of the head office and the legal form of the insurance company and, where appropriate, of the branch concluding the contract;

…

(6) the circumstances in which the policy holder can cancel the conclusion of the insurance policy or withdraw therefrom.’

The disputes in the main proceedings and the questions referred for a preliminary ruling

Cases C-355/18 to C-357/18

20 Ms Rust-Hackner, Mr Gmoser and Ms Plackner each concluded a unit-linked life assurance contract with Nürnberger. It is apparent from the requests for a preliminary ruling that each of those contracts contained the information that the cancellation of the assurance contract had to be executed in writing in order to be valid.

21 Ms Rust-Hackner terminated her life assurance contract on 14 March 2017. On 23 May 2017, she cancelled the contract on the basis that the information communicated to her by Nürnberger regarding her right of cancellation had been incorrect.

22 In 2010, Mr Gmoser repurchased his contract concluded in 1998. It was only on 3 May 2017 that he cancelled that contract, also on the grounds that the information communicated to him regarding his right of cancellation was incorrect.

23 On 27 May 2017, Ms Plackner cancelled her contract, which had been concluded in 2000 and was still being performed, on the same grounds.

24 The Austrian court at first instance upheld the applications of Ms Rust-Hackner, Mr Gmoser and Ms Plackner, by which they sought reimbursement of all the premiums paid as well as interest on the basis of Nürnberger’s unjust enrichment. According to that court, since Austrian law did not provide that cancellation had to be declared in writing, the information provided by Nürnberger to

policyholders was incorrect. That court maintains that it follows from the judgment of 19 December 2013, *Endress* (C-209/12, EU:C:2013:864) that incorrect information is tantamount to a lack of information, which would not have caused the cancellation period to start to run, with the effect that the right to cancellation could be exercised without any temporal limitation, including after the contract had been terminated.

25 The Landesgericht Salzburg (Regional Court, Salzburg), which is hearing the appeal, is uncertain whether, despite the fact that the information stating that a declaration of cancellation must be made in writing does not mislead the policyholder as to the existence of a right of cancellation in respect of the contract, such information could nevertheless be considered incorrect in the light of Article 15(1) of Directive 90/619, with the effect that exercise of the right of cancellation should not be subject to any temporal limitations.

26 In particular, that court noted that, in the present instance, the information provided complied with the legal requirements and correctly indicated the time limit for exercising the right of cancellation, which meant that the policyholder was informed of his or her right. Moreover, cancellation in writing would not be prohibited under Austrian law and would have the effect of ensuring legal certainty, which would also be in the interests of the policyholder. Furthermore, the instruction requiring cancellation to be declared in writing would not, in principle, be such as to prevent the policyholder from cancelling within the time limit.

27 That said, in the light of both the judgment of 19 December 2013, *Endress* (C-209/12, EU:C:2013:864), and the objective pursued by the provision of the information, referred to in recital 23 of Directive 92/96, the Landesgericht Salzburg (Regional Court, Salzburg) is uncertain whether an interpretation of Austrian law consistent with that directive requires it to be concluded that, in such circumstances, exercise by the policyholder of the right to cancellation is not subject to any temporal limitation.

28 In addition, in Cases C-355/18 and C-356/18, that court is also uncertain whether, as a result of the incorrect information provided regarding the right of cancellation, cancellation of the life assurance contract can still take place after that contract has been terminated by the giving of notice of termination or repurchase by the policyholder.

29 After the termination of the life assurance contract and of the mutual provision of services thereunder, no further future obligation arises from the contract from which the policyholder could be released within the meaning of Article 15(1) of Directive 90/619. Moreover, a cancellation after termination of the life assurance contract would give rise to speculation on the part of the policyholder to the detriment of the assurance undertaking and the community of assured persons, which is not conducive to consumer protection.

30 In those circumstances, the Landesgericht Salzburg (Regional Court, Salzburg) decided to stay the proceedings and to refer the following two questions in Cases C-355/18 and C-356/18 and the first of the following questions in Case C-357/18 to the Court of Justice for a preliminary ruling:

‘(1) Must Article 15(1) of [Directive 90/619], in conjunction with Article 31 of [Directive 92/96], be interpreted as meaning that information regarding the right of cancellation must also contain the notice that the cancellation does not have to be communicated in any specific form?

(2) In the event that the information issued to the policyholder regarding the right of cancellation was incorrect, is it still possible for the life assurance contract to be cancelled after it has been terminated by the policyholder by giving notice of termination (and repurchase)?’

Case C-479/18

31 For the purposes of the request for a preliminary ruling in Case C-479/18, the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) joined four cases pending before it and designated them 'proceedings A, B, C and D'.

32 'Proceedings A' are between KL and UNIQA. KL concluded a life assurance contract with UNIQA's legal predecessor for the period from 1 August 1997 to 1 August 2032. In the application form for that contract, KL received information explaining that the cancellation of the contract had to be declared in writing in order for it to be valid.

33 On 24 October 2017, KL gave notice of cancellation to UNIQA in respect of its assurance contract. As the latter did not explicitly accept that cancellation, KL requests that she be reimbursed all of the premiums she has paid without risk costs, plus interest.

34 'Proceedings B' are between LK and DONAU. LK concluded a life assurance contract with DONAU for the period from 1 December 2003 to 1 December 2022. LK was not informed of her right of cancellation before the contract was concluded.

35 After having terminated the contract in 2013 and received its surrender value, LK notified DONAU on 4 January 2018 that she was cancelling that same assurance contract on the grounds that she had not been properly informed about her right of cancellation. As DONAU did not reply, LK is now bringing an action for reimbursement of the entirety of the premiums she has paid without risks costs, plus interest, less the payment of the surrender value already received in 2013.

36 'Proceedings C' are between MJ and Allianz, and 'Proceedings D' are between NI and Allianz. MJ and NI each concluded a life assurance contract with Allianz for the period from 1 December 2011 to 1 December 2037. In the application form for those contracts, Allianz informed MJ and NI that they had the right to cancel the contract 'in writing'.

37 In 2017, MJ and NI notified Allianz that they were cancelling their assurance contracts. As Allianz did not explicitly accept that cancellation, MJ and NI are now bringing an action for reimbursement of the entirety of the premiums they have paid without risks costs, plus interest.

38 The Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) notes that the conditions for the validity of the cancellation other than those determined directly by EU law are, in accordance with that law, governed by national law. According to that court, under Austrian law, the declaration of cancellation is not subject to any particular formal requirements. The referring court is therefore uncertain, in the first place, whether the period for exercising the right of cancellation can begin to run despite incorrect information being supplied as to the detailed rules on how it is to be exercised. In this respect, that court is considering whether it is appropriate, in this instance, to apply the case-law in the judgment of 19 December 2013, *Endress* (C-209/12, EU:C:2013:864). In that judgment, the Court held that, where an assurance undertaking has supplied no information to a policyholder in respect of his or her right of cancellation, that undertaking cannot raise as a defence against that policyholder the fact that the time period for the exercise of that right has lapsed. The question therefore arises whether that also applies if the policyholder has received correct information as to the existence of his or her right of cancellation and the time period for exercising it, but incorrect information as to the need to make his or her declaration in writing.

39 In the second place, the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) wishes to know whether, in any event, the time limit for cancelling the contract runs from the time when the policyholder actually became aware, in some other manner, of the existence of that right of cancellation, despite the incorrect information provided by the assurance undertaking. An answer in the affirmative may be justified in cases where the applicable EU law in those particular

cases has the sole purpose of ensuring that the policyholder is aware of his or her rights and is able to exercise them. However, that would not be the case if the purpose of the right of cancellation were also to encourage assurance undertakings to comply with their obligations to provide information.

40 In the third place, and with regard to 'proceedings B' in the context of which LK terminated her life assurance contract and obtained its surrender value so that no future contractual obligation was still in existence, this court is also uncertain whether the right of cancellation is not, in any event, extinguished in view of the fact that that right is only intended to release the policyholder from any future obligation arising from the contract.

41 In the fourth place, the court asks whether, in the event of cancellation following belated information as to the detailed rules for exercising the right of cancellation, the policyholder is entitled to repayment of only the surrender value of his or her contract or, on the contrary, to reimbursement of all amounts paid, less premiums payable for the period during which he or she was covered. In that respect, that court maintains that the right of cancellation is thus rendered redundant if the policyholder can obtain, by means of cancellation, nothing more than the surrender value.

42 Finally, the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) wishes to know, in essence, whether the general limitation period of 3 years can be applied to the exercise of the right to remuneration interest provided for in the event of the reimbursement of sums that were not payable, which limits the amount of such interest to the proportion covering that 3 year period.

43 That court states that, according to the case-law of the Oberster Gerichtshof (Supreme Court, Austria), in order to ensure the conformity of Paragraph 165a(2) of the VersVG with EU law, that provision must be interpreted as meaning that the provision of incorrect information as to the right of cancellation is equivalent to an absence of information and that the provision of such information has the effect of enabling the policyholder to exercise his or her right of cancellation without such exercise being subject to a time limit.

44 In those circumstances the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must Article 15(1) of [Directive 90/619], in conjunction with Article 31 of [Directive 92/96], or Article 35(1), in conjunction with Article 36(1), of [Directive 2002/83], or Article 185(1), in conjunction with Article 186(1), of [Directive 2009/138] be interpreted as meaning that — in the absence of national rules on the effects of incorrect information concerning the right of cancellation before the contract is concluded — the period for exercising the right of cancellation does not begin to run if the insurance undertaking specifies in the information that the right of cancellation must be exercised in written form, even though under national law it is possible to cancel in any form?

(2) If the first question is answered in the affirmative, must Article 15(1) of [Directive 90/619], in conjunction with Article 31 of [Directive 92/96], be interpreted as precluding a national rule under which, in the event of no information or incorrect information being supplied on the right of cancellation before the contract is concluded, the period for exercising the right of cancellation begins to run at the point in time at which the policyholder was informed — by whatever means — of his or her right of cancellation?

(3) Must Article 35(1), in conjunction with Article 36(1), of [Directive 2002/83] be interpreted as meaning that — in the absence of national rules on the effects of no information or incorrect information being supplied on the right of cancellation before the contract is concluded — the

policyholder's right to cancel the contract expires at the latest after the surrender value has been paid out to him or her by reason of his or her having given notice to terminate the contract and thus the contracting parties have performed in full the obligations under the contract?

(4) If the first question is answered in the affirmative and/or the third question is answered in the negative, must Article 15(1) of [Directive 90/619], or Article 35(1) of [Directive 2002/83] or Article 186(1) of [Directive 2009/138] be interpreted as precluding a national rule under which the surrender value (the current value for the insurance calculated in accordance with the accepted rules of actuarial calculations) must be reimbursed to the policyholder if he or she exercises his or her right of cancellation?

(5) If the fourth question is to be dealt with and is answered in the affirmative, must Article 15(1) of [Directive 90/619], or Article 35(1) of [Directive 2002/83], or Article 186(1) of [Directive 2009/138] be interpreted as precluding a national rule under which, in the event of exercise of the right of cancellation, the claim to a flat rate of interest for the reimbursed premiums due to limitation may be restricted to the proportion covering the period of the last 3 years prior to the bringing of the action?'

Procedure before the Court

45 By order of the President of the Court of 22 June 2018, Cases C-355/18 to C-357/18 were joined for the purposes of the written and oral procedure and the judgment. By decision of the Court of 26 February 2019, those three cases were joined to Case C-479/19 for the purposes of the oral procedure and the judgment.

46 By document lodged at the Court Registry on 22 November 2019, Nürnberger, UNIQA and Allianz requested the reopening of the oral procedure.

47 In support of their request, they claim, first, that the interested persons should have the opportunity to discuss the judgment of 11 September 2019, *Romano* (C-143/18, EU:C:2019:701), which was delivered 2 months after the Advocate General's Opinion in the present cases was published, second, that the line of argument in point 51 of that Opinion concerning the formal requirements for the declaration of cancellation is new and that the interested persons should therefore also have the opportunity to debate that line of argument and, third, that several of the main aspects of that Opinion have been criticised in Austrian and Swiss academic writing, in particular with regard to the issue of which portions of the assurance premiums would have to be repaid if the assurance contract is terminated.

48 In that regard, it should be noted, first, that the Statute of the Court of Justice of the European Union and the Rules of Procedure of the Court of Justice make no provision for the interested persons referred to in Article 23 of the Statute to submit observations in response to the Advocate General's Opinion (judgments of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, paragraph 26, and of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 61).

49 Second, under the second paragraph of Article 252 TFEU, the Advocate General, acting with complete impartiality and independence, is to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. The Court is not bound either by the Advocate General's conclusion or by the reasoning which led to that conclusion. Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions that he or she examines in his or her Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgments of 6 March 2018,

Achmea, C-284/16, EU:C:2018:158, paragraph 27, and of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 62).

50 However, the Court may at any time, after hearing the Advocate General, order the reopening of the oral procedure, in accordance with Article 83 of its Rules of Procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the interested persons.

51 Nevertheless, in the present instance, the Court concludes that, after hearing the Advocate General, the request for the reopening of the oral procedure submitted to it contains no new fact that is capable of having an influence on the decision that it is called upon to deliver in the present cases. With regard, in particular, to the judgment of 11 September 2019, *Romano* (C-143/18, EU:C:2019:701), the subject of that case was a request for a preliminary ruling seeking an interpretation of Article 4(2), Article 5(1), the second indent of the second subparagraph of Article 6(1), Article 6(2)(c), Article 6(6) and Article 7(4) of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ 2002 L 271, p. 16), a directive which is in no way at issue in the cases at hand.

52 In addition, the Court takes the view that, after the written and oral procedures in these cases, it has all that it needs to answer the questions referred to it and that the answers to those questions do not have to take into account arguments, such as those referred to in paragraph 47 above, which have not been debated by the interested persons.

53 In such circumstances, it is not necessary to order the reopening of the oral procedure

The jurisdiction of the Court

54 Ms Rust-Hackner, Mr Gmoser, Ms Plackner and, with regard to the third and fifth questions referred in Case C-479/18, Allianz and UNIQA argue that the Court does not have jurisdiction to answer questions that, in their view, concern only national law. First, the detailed rules for exercising the right of cancellation must be established by the Member States. Second, the applicable Austrian law specifically laid down an obligation incumbent on the assurance undertaking to inform policyholders, before the conclusion of the assurance contract and in writing, of the circumstances in which such policyholders may revoke the contract or cancel it.

55 It is sufficient to note, in this regard, that, as is stated by the Advocate General in points 23 to 25 of her Opinion, it is indeed true that the third subparagraph of Article 15(1) of Directive 90/619 and Article 31(1) and (4) of Directive 92/96, in combination with point A ((a)13) of Annex II to that directive, grant Member States the responsibility for adopting the rules laying down the arrangements for application of the cooling-off period and those relating to the communication, inter alia, of information relating to the exercise of the right of cancellation. However, the Court has previously held that, when adopting those rules, the Member States are obliged to ensure the effectiveness of those directives, taking account of their aims (see, to that effect, judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 23 and the case-law cited).

56 It follows that the Court is called upon to interpret provisions of EU law applicable in the present instance and that, consequently, it does have jurisdiction to answer the questions raised in these cases.

Consideration of the questions referred

Admissibility of the requests for a preliminary ruling in Cases C-355/18 to C-357/18

57 Ms Rust-Hackner, Mr Gmoser and Ms Plackner question the admissibility of the requests for a preliminary ruling in Cases C-355/18 to C-357/18 on the grounds that, in the light of the requirements in Article 94 of the Rules of Procedure of the Court of Justice, the orders for reference in those cases fail to set out the national legal framework in sufficient detail.

58 In that respect, it should be noted that the questions referred for a preliminary ruling in those cases relate directly to the interpretation of provisions of EU law and that, by its questions, the referring court seeks clarification on the limits of the Member States' competence in determining the detailed rules for exercise of the right of cancellation provided for in those provisions. In those circumstances, the explanation of the national legal framework contained in those orders does not in any way prevent the Court or the interested persons from understanding those questions and the context in which they were raised.

59 It follows that the requests for a preliminary ruling are admissible.

The single question in Case C-357/18 and the first question in Cases C-355/18, C-356/18 and C-479/18

60 By the single question in Case C-357/18 and the first question in Cases C-355/18, C-356/18 and C-479/18, the referring courts wish to know, in essence, whether Article 15(1) of Directive 90/619, in conjunction with Article 31 of Directive 92/96, Article 35(1) of Directive 2002/83, in conjunction with Article 36(1) of that directive, and Article 185(1) of Directive 2009/138, in conjunction with Article 186(1) of that directive, must be interpreted as meaning that the period for exercising the right to cancel a life assurance contract begins to run from the moment when the policyholder is informed that the contract is concluded, even though the information provided by the assurance undertaking to that policyholder either fails to specify that the national law applicable to the contract does not provide for any formal requirements for the exercise of that right of cancellation, or indicates formal requirements that are in reality not required by the national law applicable to that contract.

61 In order to answer those questions, it should be noted at the outset that those provisions of EU law, which are applicable *ratione temporis* to the disputes in the main proceedings, all provide, in essence, that, first, the policyholder of an individual life assurance contract has a period of between 14 and 30 days from the time when the policyholder is informed that the contract has been concluded to cancel the contract, with such cancellation having the effect of releasing the policyholder from any future obligation arising from the contract, and, second, the other legal effects and the conditions of cancellation are to be determined by the law applicable to the contract, in particular as regards the detailed rules on how the policyholder is to be informed that the contract has been concluded.

62 As was noted in paragraph 55 above, the Court has previously held, in that regard, that Member States do indeed have the power to adopt the specific detailed rules governing the exercise of the right of cancellation, and that those detailed rules may contain, by their very nature, certain limitations on that right. However, when adopting those rules, Member States are required to ensure the effectiveness of Directives 90/619 and 92/96 in the light of the aims that they pursue.

63 Concerning the aims of those directives, it should be noted that recital 23 of Directive 92/96 stated that 'in a single assurance market the consumer [would] have a wider and more varied choice of contracts'. In addition, 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 [was] necessary to enable him to choose the contract best suited to his needs'. 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' (judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 24).

64 For the purpose of achieving that information objective, Article 31(1) of Directive 92/96, in conjunction with point A ((a)13) of Annex II to that directive, provided that 'at least' the 'arrangements for application of the cooling-off period' should be communicated to the policyholder, and that such communication should occur 'before the … contract is concluded' (judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 25).

65 The Court infers from the above that a national provision providing that a policyholder's right to cancel the contract can lapse at a time when he or she has not yet been informed of that right runs counter to the attainment of a fundamental objective pursued by Directives 90/619 and 92/96 and, consequently, undermines their effectiveness.

66 The same conclusions can be extended to Directives 2002/83 and 2009/138, which state in recitals 52 and 79 respectively that they have, in essence, the same objectives.

67 It follows, in the first place, that, where the policyholder has not received any information concerning the fact that the right of cancellation exists, the period for exercising that right cannot begin to run.

68 In such circumstances, as the policyholder is not aware of the existence of such a right, he or she would not be able to exercise it (see, to that effect, judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 27).

69 In addition, the assurance undertaking 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 EU law, to communicate a defined list of information, including, in particular, information relating to the right of the policyholder to cancel the contract (judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 30).

70 In the second place, it should be noted that, not only must the policyholder be informed of the existence of the right of cancellation, but he or she must also receive, under point A ((a)13) of Annex II to Directive 92/96, point A ((a)13) of Annex III to Directive 2002/83, and Article 185(3)(j) and Article 185(6) of Directive 2009/138, inter alia, information concerning the arrangements for application of the cooling-off period, which must be provided in a clear and accurate manner and in writing.

71 It is therefore clear from the relevant provisions of those directives that they sought to ensure that the policyholder receives correct information concerning, inter alia, his or her right of cancellation (see, to that effect, judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 25).

72 In particular, in so far as information on the formal requirements of the declaration of cancellation is necessary to enable the policyholder to exercise his or her right, it must be provided to him or her. This is particularly the case where national law imposes such conditions on the parties to a life assurance contract. Indeed, a declaration of cancellation made in a form other than those laid down in mandatory terms could be considered invalid.

73 It follows from the documents submitted to the Court that, in the present instance, the Austrian law applicable to the main proceedings provided that the exercise of the right of cancellation was not subject to any particular formal requirements. However, those documents do not make it clear whether Austrian law allowed the parties to an assurance contract to make the exercise of that right subject to observance of formal requirements.

74 In that regard, it should be noted, first, that if Austrian law did not allow the parties to an assurance contract to agree that the declaration of cancellation was to be made in a particular form, it would not be necessary, in order to ensure the effectiveness of the right of cancellation, that there be an obligation requiring the policyholder to be informed of the fact that that right can be exercised in any form. In such circumstances, the policyholder could validly communicate to the assurance undertaking his or her intention to cancel the contract in his or her preferred form and, therefore, could not be obliged by that undertaking to make the declaration of cancellation in a particular form, with the result that the exercise of the right of cancellation provided for by EU law would in no way be limited. Of course, even in those circumstances, the assurance undertaking retains the option of informing the policyholder that there is no formal requirement under national law.

75 If, on the other hand, the parties to the contract were permitted, under Austrian law, to establish some formal requirement for a declaration of cancellation of that contract, there would have to be an obligation requiring the policyholder to receive information on the formal requirements to which that right of cancellation is subject.

76 Second, regardless of whether information relating to the formal requirements to which the right of cancellation is subject is obligatory or optional, such information should, in order to be correct, be consistent with national law or with the contractual clauses agreed by the parties in accordance with the law applicable to that contract.

77 It follows that the information provided by an assurance undertaking insisting on compliance with formal requirements for the declaration of cancellation must be regarded as incorrect if those requirements are not consistent with the mandatory requirements laid down by the applicable law or the clauses of the contract, such a matter being for the referring courts to verify.

78 Although providing incorrect information on the formal requirements for the exercise of the right of cancellation to the policyholder is, indeed, likely to mislead that policyholder as to his or her right of cancellation and, on that basis, may be tantamount to providing no information in that regard (see, by analogy, judgment of 10 April 2008, *Hamilton*, C-412/06, EU:C:2008:215, paragraph 35), it cannot be concluded that any error relating to those formal requirements contained in the information provided by the assurance undertaking to the policyholder corresponds to a failure to provide information.

79 In particular, where information, including incorrect information, does not essentially limit the circumstances in which the policyholder can exercise his or her right of cancellation as compared with the circumstances in which he or she could have done so if the information had been correct, it would be disproportionate to allow the latter to be released from obligations arising from a contract concluded in good faith.

80 In such a situation, the policyholder, once informed of his or her right of cancellation, would still be able to exercise that right and withdraw from the commitments that he or she has made, which means that the objectives of Directives 90/619, 92/96, 2002/83 and 2009/138, referred to in paragraphs 63 to 66 above, would therefore be met.

81 In the main proceedings, it is for the referring courts to ascertain whether the assurance undertakings have provided information concerning the formal requirements for the declaration of cancellation. If so, it is also for those courts to assess whether that information was correct or incorrect to such an extent that, on the basis of an overall assessment taking into account, in particular, the national legislative context and the facts in the main proceedings, it essentially limited the circumstances in which the policyholders could exercise their right of cancellation as compared with the circumstances in which they could have done so if that information had been correct.

82 In the light of the foregoing, the answer to the single question in Case C-357/18 and the first question in Cases C-355/18, C-356/18 and C-479/18, is that Article 15(1) of Directive 90/619, in conjunction with Article 31 of Directive 92/96, Article 35(1) of Directive 2002/83, in conjunction with Article 36(1) of that directive, and Article 185(1) of Directive 2009/138, in conjunction with Article 186(1) of that directive, must be interpreted as meaning that the period for exercising the right to cancel a life assurance contract begins to run from the moment when the policyholder is informed that the contract is concluded, even though the information provided by the assurance undertaking to that policyholder

– either fails to specify that the national law applicable to the contract does not provide for any formal requirements for the exercise of that right of cancellation, or

– indicates formal requirements that are in reality not required by the national law applicable to that contract or by the clauses set out in that contract, provided that such an indication does not essentially limit the circumstances in which the policyholders can exercise their right of cancellation as compared with the circumstances in which they could have done so if that information had been correct. It is for the referring courts to assess, on the basis of an overall assessment taking into account, in particular, the national legislative context and the facts in the main proceedings, whether the error contained in the information provided to the policyholder created such a limitation.

Second question in Case C-479/18

83 By the second question in Case C-479/18, the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) asks, in essence, whether Article 15(1) of Directive 90/619, in conjunction with Article 31 of Directive 92/96, must be interpreted as meaning that, where no information is provided by the assurance undertaking to the policyholder concerning the latter's right of cancellation or where the information provided by the assurance undertaking is so incorrect that it essentially limits the circumstances in which the policyholder can exercise his or her right of cancellation as compared with the circumstances in which he or she could have done so if that information had been correct, the period for exercising the right of cancellation shall not start to run, even if the policyholder has become aware of the existence of the right of cancellation by other means.

84 In order to answer this question, it should be noted that neither Article 15(1) of Directive 90/619 nor Article 31 of Directive 92/96 expressly specify that the information to which these provisions refer must be communicated to policyholders by assurance undertakings.

85 However, the Court has previously held that EU law requires the assurance undertaking to provide the policyholder with a defined list of information, including, in particular, information relating to the right of the policyholder to cancel the contract (judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 30).

86 In those circumstances, the fact that the policyholder has received by other means the exact information which it was incumbent on the assurance undertaking to communicate to him or her cannot have the same legal effects on the cancellation period as communication to the policyholder by that undertaking of that same information, which would have the result of releasing that undertaking from any obligation in that respect.

87 First, if that were not the case, it would run counter to the objective of Directive 2002/83, referred to in paragraph 71 above, of guaranteeing that the policyholder receives correct information, in particular concerning the right of cancellation, which is to be provided by the assurance undertaking, as was noted in paragraph 85 above.

88 Second, as the Advocate General notes, in essence, in point 65 of her Opinion, any awareness of the right of cancellation acquired outside of the contractual relationship between the policyholder and the assurance undertaking would be likely to raise difficulties in terms of evidence, in particular with regard to the time at which that awareness was acquired and therefore to the determination of the period in which the right of cancellation may be exercised.

89 Finally, as is pointed out by the European Commission, if the assurance undertaking were released from its information obligation on the grounds that the policyholder became aware of that information by other means, it would not be encouraged to comply with its obligation to provide the policyholder with correct information.

90 In the light of the foregoing, the answer to the second question in Case C-479/18 is that Article 15(1) of Directive 90/619, in conjunction with Article 31 of Directive 92/96, must be interpreted as meaning that, where no information is provided by the assurance undertaking to the policyholder concerning the latter's right of cancellation or where the information provided by the assurance undertaking is so incorrect that it essentially limits the circumstances in which the policyholder can exercise his or her right of cancellation as compared with the circumstances in which he or she could have done so if that information had been correct, the period for exercising the right of cancellation shall not start to run, even if the policyholder has become aware of the existence of the right of cancellation by other means.

The second question in Cases C-355/18 and C-356/18 and the third question in Case C-479/18

91 By the second question in Cases C-355/18 and C-356/18 and by the third question in Case C-479/18, the referring courts seek, in essence, to ascertain whether Article 15(1) of Directive 90/619, in conjunction with Article 31 of Directive 92/96, and Article 35(1) of Directive 2002/83, in conjunction with Article 36(1) of that directive, must be interpreted as meaning that, once the contract has been terminated and all obligations arising from it have been complied with, including, in particular, the payment by the assurance undertaking of the surrender value, the policyholder may still exercise his or her right of cancellation where the law applicable to the contract does not determine the legal effects arising where either no information is provided in respect of the right of cancellation or incorrect information is provided.

92 In order to answer this question, it should be noted that, in accordance with the second subparagraph of Article 15(1) of Directive 90/619 and the second subparagraph of Article 35(1) of Directive 2002/83, the giving of notice of cancellation by the policyholder is to have the effect of releasing him or her from any future obligation arising from the contract.

93 It follows from the foregoing that, once the policyholder has made his or her declaration of cancellation within the prescribed periods, that policyholder is released from any future obligation arising from the contract and the assurance undertaking cannot compel the policyholder to perform the contract.

94 Those provisions do not determine in any way the conditions in which a declaration of cancellation must be made or the legal effects of that cancellation on the obligations — in particular with regard to repayment — that national law may impose on the assurance undertaking.

95 Such conditions and effects fall outside the scope of those provisions and, in accordance with the third subparagraph of Article 15(1) of Directive 90/619 and the third subparagraph of Article 35(1) of Directive 2002/83, are to be determined by the law applicable to the contract.

96 It follows that those provisions cannot be interpreted as requiring Member States to make the possibility of cancelling a life assurance contract or the legal effects of a declaration of cancellation in respect of such a contract made within the prescribed periods, such as the possible emergence of a repayment obligation, dependent on the performance status of a life assurance contract. Thus, in this instance, in circumstances where Austrian law is silent in that respect, the right of cancellation can still be exercised even after the contract has been terminated and all obligations arising from it have been fulfilled.

97 Contrary to what is claimed by DONAU and the Austrian Government in their observations, such an interpretation of those provisions is not contradicted by the judgment of 10 April 2008, *Hamilton* (C-412/06, EU:C:2008:215), in which the Court held that the right of cancellation laid down in 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), cannot be exercised where there are no longer any commitments. That judgment concerns whether a national provision which provides that the right to cancellation is to expire 1 month after the contracting parties have completely performed the obligations arising under the contract complies with that directive. However, the cases in the main proceedings do not concern such a provision, since the Austrian legislature did not adopt such a provision with regard to life assurance contracts (see, to that effect, judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 31).

98 Therefore, the answer to the second question in Cases C-355/18 and C-356/18 and to the third question in Case C-479/18 is that Article 15(1) of Directive 90/619, in conjunction with Article 31 of Directive 92/96, and Article 35(1) of Directive 2002/83, in conjunction with Article 36(1) of that directive, must be interpreted as meaning that, once the contract has been terminated and all obligations arising from it have been complied with, including, in particular, the payment by the assurance undertaking of the surrender value, the policyholder may still exercise his or her right of cancellation provided that the law applicable to the contract does not determine the legal effects arising where either no information is provided in respect of the right of cancellation or incorrect information is provided.

The fourth question in Case C-479/18

99 By its fourth question, the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) wishes to know, in essence, whether Article 15(1) of Directive 90/619, Article 35(1) of Directive 2002/83 and Article 186(1) of Directive 2009/138 must be interpreted as precluding national legislation under which an assurance undertaking is required to reimburse to a policyholder who has exercised his or her right of cancellation only the surrender value.

100 In order to answer that question, it should be noted that, as was noted in paragraphs 61, 62 and 66 above, the legal effects of the cancellation other than those provided for by those provisions of EU law are to be determined by the law applicable to the contract and that, by adopting those rules, the Member States are required to ensure the effectiveness of Directives 90/619, 92/96, 2002/83 and 2009/138 in the light of the aims that they pursue.

101 In that respect, as was pointed out, in essence, in paragraph 63 above, the objective of the right of cancellation is to allow a policyholder to choose the contract best suited to his or her needs and, thus, to cancel a contract that has been concluded but proves to be unsuitable to the needs of that policyholder in the course of the cooling-off period during which the right of cancellation may be exercised.

102 The second subparagraph of Article 15(1) of Directive 90/619, the second subparagraph of Article 35(1) of Directive 2002/83 and the second subparagraph of Article 186(1) of Directive 2009/138, according to which, once a policyholder has made a declaration of cancellation during the prescribed period, he or she is released from any future obligations arising from the contract, respond specifically to the requirement of ensuring such freedom of choice.

103 If the policyholder remained bound by the contract subsequently, even after cancellation, he or she would be discouraged from exercising the right of cancellation and would thus be deprived of the possibility of choosing the contract that best suits his or her needs.

104 Additionally, in order to ensure the effectiveness of the right of cancellation, the other legal effects to which the exercise of the right of cancellation is subject under the law applicable to the contract must not discourage the policyholder from exercising his or her right of cancellation.

105 In the present instance, as follows from the order for reference in Case C-479/18, Paragraph 176 of the VersVG, in the version applicable to the main proceedings, provides, in essence, that if assurance such as that at issue in the main proceedings is annulled by cancellation, termination or rescission, the assurance undertaking must repay the surrender value allocated to the assurance.

106 Therefore, such a provision treats the situation of a policyholder who, having concluded that the contract suited his or her needs, decided not to exercise the right of cancellation but who, for other reasons, decided to terminate the contract in the same way as it treats the situation of a policyholder who, by contrast, concluded that the contract did not suit his or her needs and exercised the right of cancellation.

107 Thus, in so far as that provision, in particular, makes cancellation and termination of the contract subject to the same legal effects, it deprives the right of cancellation provided for under EU law of its effectiveness.

108 Such an interpretation is not called into question by the fact, referred to by, inter alia, Allianz, that if the policyholder is entitled to reimbursement of the sums paid, the financial disadvantages of this would have to be shared among the community of assured persons and that, with regard to instances of late cancellation, the Court found in the judgment of 15 April 2010, *E. Friz* (C-215/08, EU:C:2010:186) that the person concerned should bear a proportion of the risks.

109 First, if the assurance undertaking provides the policyholder with correct information on the right of cancellation, the policyholder has only a relatively short period of time in which to exercise the right of cancellation, which means that the financial consequences of possible cancellation on the community of assured persons can be seen to be part of the general management of assured risks. If, however, cancellation of the contract is late due to a lack of information or due to the provision of information that is so incorrect that it essentially limits the circumstances in which the policyholder can exercise the right of cancellation as compared with the circumstances in which he or she could have done so if that information had been correct, it is for the assurance undertaking itself, as was pointed out in paragraph 69 above, to remedy a situation caused by its own failure to observe the requirement under EU law to communicate a defined list of information, including, in particular, information relating to the right of the policyholder to cancel the contract.

110 Second, the scope of the judgment of 15 April 2010, *E. Friz* (C-215/08, EU:C:2010:186) is expressly limited to a consumer's membership of a closed-end real property fund established in the form of a partnership, as is noted in paragraph 24 of that judgment, and therefore does not relate generally to all aleatory contracts, that is to say, contracts based on chance or risk.

111 In the light of the foregoing, the answer to the fourth question in Case C-479/18 is that Article 15(1) of Directive 90/619, Article 35(1) of Directive 2002/83 and Article 185(1) of Directive 2009/138 must be interpreted as precluding national legislation under which an assurance undertaking is required to reimburse to a policyholder who has exercised his or her right of cancellation only the surrender value.

The fifth question in Case C-479/18

112 By its fifth question, the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) seeks, in essence, to ascertain whether Article 15(1) of Directive 90/619, Article 35(1) of Directive 2002/83 and Article 186(1) of Directive 2009/138 must be interpreted as precluding 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 that were not payable, requested by a policyholder who has exercised his or her right of cancellation.

113 In order to answer that question, it should be noted that, by providing that the policyholder of an individual life assurance contract has a period of between 14 and 30 days from the time when he or she is informed that the contract is concluded to cancel that contract, those EU law provisions grant the policyholder a right of cancellation.

114 Thus, the policyholder acquires the right to cancel the life assurance contract simply by virtue of having concluded that contract and the communication by the assurance undertaking to the policyholder of the detailed rules for exercising that right has the sole effect of triggering the cancellation period.

115 It follows from the documents submitted to the Court in Case C-479/18 that, in order to determine the effects of cancellation in accordance with those EU law provisions, the Austrian law applicable to the contracts at issue in the main proceedings provides, first, that the exercise of the right of cancellation entails an obligation to refund the payments that have been made and, second, that remuneration interest is to be paid on the sums to be refunded. In addition, the right to receive such interest is time-barred after 3 years, which is the general time limit provided for by the Allgemeines Bürgerliches Gesetzbuch (Civil Code) in respect of claims for backdated annual benefits.

116 However, since that time limit concerns only remuneration interest, it does not directly affect the policyholder’s right to cancel his or her contract.

117 However, it is for the Bezirksgericht für Handelssachen Wien (District Court for Commercial Matters, Vienna) to determine whether the application of a limitation period in respect of the exercise of the right to remuneration interest is capable of undermining the effectiveness of the right of cancellation itself, such a right being granted to the policyholder under EU law.

118 In that respect, it should be found, first, that, as the Court has previously pointed out, insurance contracts are legally complex financial products which are capable of differing considerably depending on the insurer offering those products and of involving significant and potentially very long-term financial commitments (judgment of 19 December 2013, *Endress*, C-209/12, EU:C:2013:864, paragraph 29).

119 If, in such circumstances, the fact that claims for interest due for more than 3 years are time-barred should lead the policyholder to refrain from exercising his or her right of cancellation, even though the contract does not suit his or her needs, such a period would be capable of impairing that right, in particular where the policyholder has not been correctly informed of the conditions for the exercise of that right.

120 Second, it should be noted that the needs of the policyholder must be assessed at the time when the contract is concluded, without taking into account the advantages that he or she could derive from late cancellation, where the purpose of late cancellation is not to protect the policyholder's freedom of choice, but rather to allow him or her 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.

121 In the light of the above, the answer to the fifth question in Case C-479/18 is that Article 15(1) of Directive 90/619, Article 35(1) of Directive 2002/83 and Article 186(1) of Directive 2009/138 must be interpreted as not precluding 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 that were not payable, 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, such a matter being for the referring court in Case C-479/18 to verify.

Costs

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

On those grounds, the Court (Third Chamber) hereby rules:

1. **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, in conjunction with Article 31 of 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), Article 35(1) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, in conjunction with Article 36(1) of that directive, and Article 185(1) of 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), in conjunction with Article 186(1) of that directive, must be interpreted as meaning that the period for exercising the right to cancel a life assurance contract begins to run from the moment when the policyholder is informed that the contract is concluded, even though the information provided by the assurance undertaking to that policyholder**

   – **either fails to specify that the national law applicable to the contract does not provide for any formal requirements for the exercise of that right of cancellation, or**

   – **indicates formal requirements that are in reality not required by the national law applicable to that contract or by the clauses set out in that contract, provided that such an indication does not essentially limit the circumstances in which the policyholders can exercise their right of cancellation as compared with the circumstances in which they could have done so if that information had been correct. It is for the referring courts to assess, on the basis of an overall assessment taking into account, in particular, the national legislative context and the facts in the main proceedings, whether the error contained in the information provided to the policyholder created such a limitation.**

2. **Article 15(1) of Directive 90/619, as amended by Directive 92/96, in conjunction with Article 31 of Directive 92/96, must be interpreted as meaning that, where no information is provided by the assurance undertaking to the policyholder concerning the latter's right of cancellation or where the information provided by the assurance undertaking is so incorrect that it essentially limits the circumstances in which the policyholder can exercise his or her right of cancellation as compared with the circumstances in which he or she could have done so if that information had been correct, the period for exercising the right of cancellation shall not start to run, even if the policyholder has become aware of the existence of the right of cancellation by other means.**

3. **Article 15(1) of Directive 90/619, as amended by Directive 92/96, in conjunction with Article 31 of Directive 92/96, and Article 35(1) of Directive 2002/83, in conjunction with Article 36(1) of that directive, must be interpreted as meaning that, once the contract has been terminated and all obligations arising from it have been complied with, including, in particular, the payment by the assurance undertaking of the surrender value, the policyholder may still exercise his or her right of cancellation provided that the law applicable to the contract does not determine the legal effects arising where either no information is provided in respect of the right of cancellation or incorrect information is provided.**

4. **Article 15(1) of Directive 90/619, as amended by Directive 92/96, Article 35(1) of Directive 2002/83 and Article 185(1) of Directive 2009/138 must be interpreted as precluding national legislation under which an assurance undertaking is required to reimburse to a policyholder who has exercised his or her right of cancellation only the surrender value.**

5. **Article 15(1) of Directive 90/619, as amended by Directive 92/96, Article 35(1) of Directive 2002/83 and Article 186(1) of Directive 2009/138 must be interpreted as not precluding 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 that were not payable, 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, such a matter being for the referring court in Case C-479/18 to verify.**

[Signatures]