NEWS FROM THE AUSTRIAN PARLIAMENT

RIGHTS TO WITHDRAW FROM AN INSURANCE CONTRACT WILL BE HARMONISED IN AUSTRIA

It has been almost four years (19 December 2013) since the European Court of Justice delivered a preliminary ruling related to a life insurance contract to which the insured was not sufficiently informed of his right to cancel the policy (C-209/12, *Endress/Allianz*). This ECJ ruling also had an impact on life insurance policies that are subject to Austrian law and regarding which a policyholder has not been informed accurately about his right to withdraw from it.

The Austrian High Court of Justice initially ruled on the basis of *Endress/Allianz* that a consumer is entitled to **withdraw** from a unit-linked LIFE INUSRANCE POLICY **for an indefinite period of time** if the insured was inaccurately informed of the withdrawal period (OGH 2. 9. 2015, 7 Ob 107/15h). Whereas the core consequence of such inaccurate information seemed to be further undisputed, i.e. the right to withdraw even many years after concluding the policy, it became crucial whether the insurer would, in such cases, have to reimburse all of the premiums plus interest OR the repurchase value OR the savings part of the premium only. One can imagine that this became a highly controversial issue in Austria among the different stakeholders.

Against this background came a legislative initiative in Austria to HARMONISE THE RIGHTS TO WITHDRAW FROM INSURANCE CONTRACTS. This will be achieved by allowing numerous terms dealing with a right to withdraw to lapse, including certain provisions in the Austrian Consumer Protection Act. Additionally, along with the law, a **new sample revocation template** will be named annex A to the Act; an insurer who uses this template will ensure that an insured party has been instructed accurately on his/her right of withdrawal.

However, the WITHDRAWAL PERIODS WILL REMAIN ALMOST COMPLETELY UNCHANGED: It will be possible to withdraw within 14 days of the signing of the contract without stating any reason. For life insurance, the term will be 30 days. The withdrawal declaration must be submitted in writing; it will be sufficient to dispatch an e-mail prior to the expiry of the withdrawal period. This standardised right to withdraw from insurance policies is intended to apply to **all contracts concluded after 22 February 2018**.

For life insurance policies to be concluded from 1 JANUARY 2019, the law initiative seeks a further amendment that will **increase** the **surrender value of life insurance policies**. If such policy is terminated within 10 years, then the one-off acquisition costs will be spread out over 10 instead of 5 years and an intermediary will in any event only be entitled to a pro-rata share of its commission.

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OUTLOOK

Insurers who sell policies under Austrian law should keep track of this legislative initiative, which comes within the timeframe of the IDD implementation and therefore may be rather easily overlooked, especially by foreign insurers who also will **need to adopt** their **wordings** once the **rights to withdrawal** have been harmonised.

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