

No limitation of Nationale-Nederlanden's duty to provide information following a ruling on investment-linked insurance handed down by the European Court of Justice

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The judgment handed down by the European Court of Justice in the Van Leeuwen case on 29 April 2015 does not impose a limitation on an insurer's duty to provide information in the case of an investment-linked insurance policy. This is the final ruling of the Financial Services Complaints Board in a case against Nationale-Nederlanden. An insurer is required to provide compensation for the initial charges of an investment-linked insurance policy and to pay more for any leverage and impairment effects. The complaints board has imposed a duty on Nationale-Nederlanden to recalculate such compensation within four weeks after receiving the ruling and to improve the accrual of the value of an investment-linked insurance policy by doing so.

Non-compliance

In a previous interim ruling in this case in 2013 the complaints board had already ruled that Nationale-Nederlanden had failed to comply with its duty to provide information. It found that the insurer had failed to inform consumers of the initial charges of this investment-linked insurance in a clear, comprehensible manner. Nationale-Nederlanden subsequently sought to rely on the judgment handed down by the European Court of Justice on 29 April 2015, which was said to reveal that it did not have a duty to provide information about such initial charges. The board upheld the principle that open standards of civil law may mean that an insurer or broker has an additional duty of disclosure.

Compensation for initial expenses

In its final ruling, the complaints board stipulated that, when the insurance was agreed to in 1997, Nationale-Nederlanden should have provided information about the initial charges. That information was required by a policyholder to obtain a proper understanding of the essential features of the investment-linked insurance. The board was of the opinion that it was sufficiently predictable to the insurer that it had a duty to provide that information, with the result that it held the view that the conditions stipulated by the European Court had been satisfied. Nationale-Nederlanden therefore has to provide compensation for the initial charges and has to use them for the accrual of value for the purposes of the insurance.

More compensation for leverage and impairment effects

In addition, the complaints board has ruled that Nationale-Nederlanden failed to comply with its duty to provide information about the leverage and impairment effects. These effects mean that, as prices fall, more needs to be paid for a mortality risk which has also been insured. This occurs at the expense of the accrual of value for the purposes of the insurance. In this respect too this duty of disclosure satisfies the requirements stipulated by the European Court. Furthermore, the insurer bases its compensation scheme on a net annual gross return of 6% but mentioned a minimum net return of 15% in its quotations. As such, the board deemed it to be equitable to have Nationale-Nederlanden recalculate the compensation for the leverage and impairment effects based on a net return of 13%. In

doing so, allowances were made for the fact that, were prices to rise, the leverage and impairment effects could also be favourable to the accrual of value. The insurer is also required to use the increase in compensation for the leverage and impairment effects for the benefit of the accrual of value for the purposes of the insurance.

Misrepresentation of the facts

An actuary's examination of the capital and returns cited as examples in the quotation has revealed that the quotation misrepresented the facts in a number of respects, with the result that the capital mentioned by way of example was too high. However, the board denied the invocation of an error, because the consumer had failed to show that it was reasonable to assume that they would not have agreed to the investment-linked insurance had the facts been presented appropriately.

Note for the editorial team

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You may read the full ruling *here*: GC 2016 - 129.