

Recent developments regarding cooling-off period in life insurance policies

The right to cancel a life insurance policy has been regulated in all European Life Insurance Directives adopted since 1992¹ and the relevant EU provisions have been further interpreted in rulings of the European Court of Justice (below “CJEU” in view of the current name of the court). The aim of this article is to review the right of cancellation as it is regulated in Bulgaria and particularly in view of the recently adopted amendments in the Bulgarian Insurance Code (the “Insurance Code”).

EU framework

Under the aforementioned EU Directives and specifically the currently applicable *Directive 2009/138/EC* (“Solvency II”), policy holders who have signed a life insurance contract with a duration of more than 6 months must be given a period of between 14 and 30 days from notification of the conclusion of the contract within which they may cancel it (“cooling-off period”). Solvency II further states that prior to the conclusion of the contract, policy holders must be informed of the arrangements governing the exercise of this right.

Regulation in Bulgaria

When implementing the Solvency II provisions, Bulgaria has adopted a cooling-off period of 30 days, however, starting from the day of conclusion of the insurance contract. This approach appears to be in contradiction to the EU provisions and may in some cases be to the detriment of the policy holders as the time when a policy has been issued and the time when the policy holder has received confirmation about the issuance of the policy do not always coincide.

Should the policy holder cancel the contract, he/she shall be relieved of his/her obligations and shall have the right to receive back the premium paid, with the exclusion of the part corresponding to the period during which the insurer has born the risk (provided an insured event has not taken place).

Regarding the obligation to provide information about the right to cancellation, the Insurance Code states that before the conclusion of the insurance contract the policyholder must be informed about the conditions for unilateral termination of the contract (which also includes the application of the cooling-off period). In practice, this information could be included in the insurance application, in the general terms and conditions or some other kind of document given to the client prior to the conclusion of the insurance contract. Although the cooling-off period has also been regulated in the previous Insurance Code (in force since 1 January 2006), some insurers still avoid disclosing this option to customers in order to cut down possible withdrawals from the contracts.

Court rulings

The provision of information about the right to cancellation to the policy holder should be duly documented as it turns out to be essential for the beginning of the cooling-off period as ruled by the CJEU in *Case C-209/12 Walter Endress v. Allianz Lebensversicherungs AG*. According to the court ruling, if a consumer was not aware of the existence of the right of cancellation and the arrangements for its

¹ 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, 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), DIRECTIVE 2002/83/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 November 2002 concerning life assurance, 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)

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application, he/she would not have been able to exercise that right and, therefore, the cooling-off period could not begin.

Given the serious economic effect the decision might have on millions of insurance contracts, during the proceedings the insurer concerned asked the Court to limit the effects of the judgment. The Court rejected this request on the grounds that the applicable EU provisions left no room for doubt that the policy holder has the right to cancel a life insurance contract if he/she considers that it does not best correspond to his/her needs, and also to do so in possession of all relevant information.

As we see it, this ruling of the CJEU also gave rise to a series of questions such as: can a contract be cancelled after it has already been terminated by the occurrence of an insurance event or by surrender of the policy; in case of cancellation: should all paid premiums be returned, and is interest due; which information precisely should be provided in order to fulfil the obligation; etc.

Since the adoption of this decision the Austrian Supreme Court and the German Federal Court of Justice seem to have subsequently ruled that affected consumers wishing to cancel their contracts were to receive all paid premium sums plus annual interest from the date of deposit of the premium sums. In Bulgaria, however, the topic is controversial as it seems that the number of such claims has increased recently while there is still no relevant practice of the Bulgarian courts.

Draft legislation

The CJEU decision seems to be taken into account in the recently adopted amendments to the Insurance Code which state that when the insurer has not provided to the policy holder the information about the terms for unilateral termination of the contract (among which is the right to cancellation), the latter shall have 30 days to cancel it as of receipt of this information. The new legislation further sets the consequences of this cancellation by limiting insurer's liability up to the surrender value of the contract, which is lower than the premium sums paid by the policy holder. These amendments apply to all life insurance contracts, including those concluded before their adoption.

Although it seems the new legislation is aimed at bringing certainty regarding the possibility for cancellation and the related consequences, the potential problem for insurance companies which have not duly informed the policy holders about their right to cancellation remains: on one hand, providing this information now brings the risk of potential costs for the insurers; on the other hand, if policy holders are not duly informed, the right to cancel the insurance contract seems unlimited.

Awaiting new CJEU rulings

The last word has not yet been spoken. In May 2018, the Regional Court of Salzburg submitted two questions to the European Court of Justice for preliminary rulings. This could turn the page again as the court's questions are: first, whether the policy holder can be considered misinformed when he/she has not been instructed that there is no specific form for applying the right to cancellation; secondly, whether the policy holder can cancel a life insurance policy on the grounds that he/she has been misinformed even if the insurance contract has already been terminated or surrendered.

While awaiting these new CJEU rulings, it will be interesting to see the way Bulgarian insurers and courts handle the aforementioned issues.

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