

On behalf of the Hungarian Financial Arbitration Board!

The Hungarian Financial Arbitration Board (hereinafter: FAB) in the cross-border consumer dispute (Reference Number: xxx) concerning the unit linked insurance contract (No.: xxx) between **xxx** (Address: xxx) represented by yyy (Address: yyy) (hereinafter together: Complainant) and **ABC Nyrt.** (Address: zzz) (hereinafter: Financial Service Provider) (Hereinafter together: Parties) concluded the following

RECOMMENDATION

The Acting Council of the Hungarian Financial Arbitration Board calls upon the Financial Service Provider that within 15 (fifteen) days of the receipt of this recommendation to calculate the exchange rate of the value of share units held on the Complainant's xxx unit linked life insurance (Policy Number xxx) personal account as of December 30, 2021 as the evaluation day. Furthermore the Financial Service Provider shall within 15 (fifteen) days of the receipt of this recommendation calculate the full repayment value of the life insurance taking into account this exchange rate, and pay - within the above stated timeframe - the difference between the calculated repayment amount established above and the amount already paid to the Consumer.

In addition to the above, the Acting Council of the Hungarian Financial Arbitration Board calls upon the Financial Service Provider to pay - within 15 (fifteen) days of the receipt of this recommendation – to the Complainant the following default interest according to Section 6:48 of the Hungarian Civil Code as follows:

- ***taking into account December 30, 2021 as the evaluation day, after the full amount of the repurchase value for the time period starting from January 7, 2022 until March 17, 2022,***
- ***after the difference between the calculated repayment amount established above as of December 30, 2021 and the 181.573,47 EUR paid to the Consumer for the time period starting from March 18, 2022 until April 25, 2022,***
- ***furthermore after the difference between the calculated repayment amount established above as of December 30, 2021 and the 190,220.47 EUR for the time period starting from April 26, 2022 until the day of the actual payment by the Financial Service Provider.***

The recommendation of the council may not be appealed, but annulment of the decision or recommendation by court order may be requested within fifteen days of receipt of the recommendation; the Financial Service Provider may bring action to have such decision or recommendation annulled by the Fővárosi Törvényszék (Budapest Metropolitan Court) if the composition or the procedure of the council was not in compliance with the provisions of the Act CXXXIX of 2013 - on the National Bank of Hungary (hereinafter: *MNB tv.*), the Financial Arbitration Board did not have jurisdiction, or the request should have been rejected without a hearing.

In addition to the above, the Financial Service Provider may, within fifteen days from the time of receipt of the recommendation, request the Fővárosi Törvényszék to annul the decision or recommendation, if it fails to comply with the relevant statutory provisions.

In the event that the Financial Service Provider fails to comply with the council's recommendation, the Financial Arbitration Board shall be entitled to publish, without indicating the name of the consumer,

Pénzügyi Békéltető Testület

a brief description of the dispute and the outcome of the proceedings after sixty days of the time of delivery of the recommendation to the service provider in question.

The Financial Arbitration Board hereby calls upon the Financial Service Provider and the Complainant to notify the FAB within sixty days of the time of delivery of the recommendation in writing if the recommendation is carried out or refused.

The decision or recommendation of the council is adopted without prejudice to the consumer's right to have its claim enforced in the court of law.

FAB's decision was adopted according to Sections 96. (1), 113. (1) b), 116., 119. (1), and 120. (3) of the MNB tv..

REASONS

The Complainant turned to the FAB on August 9, 2022 with his claim against the Financial Service Provider with regard to unit linked life insurance contract No.: xxx.

Complainant submitted his application to the FAB on August 9, 2022. His complaint was considered a cross-border Complainant dispute concerning financial service activities, according to 124.-129 of MNB tv., since the home address of the Complainant affected was in Slovakia, and the registered office of the financial institution was in Hungary. According to the above sections of MNB tv. a cross-border consumer dispute of a financial nature shall mean any consumer dispute where the home address or habitual residence of the consumer affected is in one EEA Member State, and the registered office of the financial institution is in another EEA Member State.

According to section 127 (1) of the MNB tv., the proceedings are conducted in writing. According to Section 128 (1) of the MNB tv. and Section 10.4 of the Operating Procedures of the FAB, *„the procedure shall be conducted in English. The acting panel will deliver its judgement also in this language, unless the petitioner requests that the language of the disputed contract and/or of the communication between the respective service provider and the consumer be used.“*

Insurance offer xxx for the euro based unit linked life insurance named xxx was signed by the Complainant on November 6, 2011 for a 15 year insurance payment period, under which time the Complainant undertook to pay 22.500,-EUR annually as insurance premium through BCD. With the letter dated December 01, 2011 the Financial Service Provider issued insurance policy No. xxx, in which it stated that the risk bearing started on November 7, 2011. The Policy also contained that 20% of the funds were to be invested in the xxx Money Fund, 20% in the yyy Money Fund, 20% in the zzz Money Fund, 20% in the xyz Money Fund, and 20% yzx Money Fund. The xxx euro based unit linked life insurance (hereinafter: xxx insurance) General Terms and Conditions, Special Conditions of xxx Euro based Unit Linked Life Insurance are integral part of the contract between the parties.

On November 23, 2021, the Complainant notified the Financial Service Provider about his intention to repurchase the insurance policy by e-mail to xxx. On December 28, 2021, the Financial Service Provider informed the Complainant about the steps to be taken in connection with the surrender at the e-mail address yyy, and sent the form required for the surrender. Furthermore, in this e-mail the representative of the Financial Service Provider informed the re-purchase value of the Insurance Contract in question is EUR 232,515.- as of exchange rate /valuation date December 22, 2021. On December 29, 2021, the Complainant sent a request for the complete surrender of the contract xxx, together with a copy of the client's personal documents and proof of bank account, to the e-mail address xxx. On December 29, 2021, the Complainant replied to the automatic reply message sent by

the Financial Service Provider from the e-mail address zzz on December 29, 2021, and sent a reminder on February 09, 2022.

On February 16, 2022, the contract was automatically placed in a premium suspension status, of which the Financial Service Provider informed the Complainant by letter dated February 17, 2022, sent by post. The Complainant requested a reply on the status of the termination of the contract on March 02, 2022, at the e-mail address zzz. On March 03, 2022, the Complainant re-submitted his request for a full surrender and copies of his documents to xxx. The Complainant urged the execution of the surrender in an e-mail sent to zzz on March 07, 2022. On March 08, 2022, the Financial Service Provider executed the full surrender, and paid the 181.573,- EUR for the Complainant. In response to the request received on March 02, 2022, the Financial Service Provider informed the Complainant on March 11, 2022 that the processing of the surrender request is in progress, and asked for his patience. The Complainant filed a complaint on April 03, 2022, in which he objected to the handling of his surrender claim and requested compensation for the delayed administration. On April 08, 2022, the Financial Service Provider informed the Complainant by post of the execution of the repurchase and sent him the settlement letter. On April 20, 2022, the Complainant sent a second complaint to the e-mail address zzz, in which he complained about the handling of his repurchase claim and disagreed with the amount of the surrender amount paid. **An additional payment of 8,647 EUR was paid to the Complainant by the financial Service Provider with regard to the zxy Fund on April 25, 2022.** In total, the Financial Service Provider paid out the sum of 190,220.47 EUR to the Complainant with regard to the surrender of the contract in question. On April 29, 2022, the Financial Service Provider sent its reply to the Complainant's e-mail address: yyy, in which it partially upheld the complaint due to an administrative failure. On May 12, 2022, the Complainant sent a third complaint by post, in which he complained about the customer information procedure, the administration processes of the Financial Service Provider and the paid surrender amount. On May 18, 2022, the Financial Service Provider sent its reply to the second and third complaint to the Complainant's e-mail address yyy, in which the complaint was partially rejected. In its May 18 letter, the Financial Service Provider stated, that the significant reduction in the re-purchase value of the Insurance Contract caused by the fact that the distribution of the zxy Euro share mutual fund was suspended on xxx.

In his petition to the FAB, the Complainant claimed that by the direct action of the Financial Service Provider, or by breaching its obligations arising from the Insurance Contract during the repurchase of the Insurance Contract and the subsequent payment of the repurchase, he suffered a considerable damage in a direct causal connection. As to the calculation of the amount of the damage, he claimed that it should be based on the difference in the amount that was reimbursed from the repurchase (EUR190,220.-) and the amount to which the entitlement actually arose when the number of units were multiplied as of December 29, 2021 (which was the actual delivery of the Re-purchase Application together with all the necessary attachments) and the exchange rate of funds as of 30th DEC, 2021. For the purposes of calculating the amount of damage, he used the Information on the results of the investigation in the May 18, 2021 reply of the Financial Service provider to his complaint (xxx, yyy), where the Insurance Company stated on page 3 in the first paragraph that with the Re-purchase Application delivered to the Insurance Company on 29th DEC, 2021 the value of the repurchase without zxy Fund was in amount of EUR 175,222.-EUR. The calculation of the zxy Fund's value was based on the last delivered Personal Account Statement dated November, 2021 which determined the status of units in the xyz Fund in the number of 52,119.61756 which was multiplied by the value of the xyz Fund exchange rate on the following valuation day representing a value of 1.15934 as of December 30, 2021. He claims that on the basis of the Application for the Re-purchase delivered to the Insurance Company on December 29, 2021, the value of the xyz Fund amounted to EUR 60,517.1. As the summary of the damage calculation, he claims that the value of the repurchase was in the amount of EUR 235,739.1, while the Insurance Company only paid a total amount of EUR 190,220.47 in violation of the Insurance Contract, at the same time. In sum, Complainant claims 45,518.63 EUR unpaid value

of the repurchase, interest on the late payment and cost of legal representation and the cost of official translation as follows:

A) The unpaid value of the repurchase in the amount of EUR 45,518.63, which is calculated as the difference between the amount that was paid out of the repurchase (EUR 190,220.47) and the amount to which the claim actually arose (EUR 235,739.1 - Euro) at a multiple of the number of units as of 12/29/2021 (actual delivery of the Repurchase Application together with attachments) and the fund exchange rate as of 12/30/2021.

B) Interest on late payment in the amount of 9% per year:

- from the amount of EUR 235,739.1 from 07.01.2022 until payment;
- from the amount of EUR 54,165.63 from 18.03.2022 until payment;
- from the amount of EUR 45,518.63 from April 26,2022 until payment.

C) Cost of legal representation consisting of four acts of legal service in the amount of EUR 2,613.12 (4 x EUR 653.28 with VAT - Decree No. 655/2004 Coll, of the Ministry of Justice of the Slovak Republic on remuneration and compensation of lawyers for the provision of legal services);

In its answer, the Financial Service Provider acknowledged the following non contractual conduct:

- the Financial Service Provider did not respond to the electronic customer enquiry dated November 23, 2021 within the timeframe expected of it;
- the surrender application received on December 29, 2021 was not processed and executed in the manner set out in the terms and conditions;
- the information letter about the full surrender sent on 08.04.2022 was sent late;

With regard to the surrender amount, the Financial Service Provider stated that as explained in detail in the Complaint Response dated 18 May 2022, sent on 20 May 2022, the Complainant has not suffered any damage during this time, as section (4) of Article 127 of the Hungarian Insurance Act (Bit.) states that, the Insurer is obliged, in the case of contracts terminated with a total surrender, to pay to the Complainant, within fifteen days of the termination of the suspension of the asset fund, the current value of the units of the suspended asset fund, calculated at the first known price of the units in the account of the Complainant following the termination of the asset fund suspension, or the amount due under the contractual provisions on surrender at the same price. Taking into account that the first known exchange rate after the termination of the suspension of the asset fund suspension is, of course, unknown at the moment, and may be lower or higher than the exchange rate that would have been applicable if the repurchase request had been properly executed on 29.12.2021, it is not possible to determine whether the Complainant has suffered any damage at all, and if so, how much.

In its subsequent answer, the Financial Service Provider stated that the applicant claimed default interest of 9 %, without specifying the legal basis, presumably based on Slovak law. The Financial Service Provider pointed out that in contrast, point xxx of the general conditions of insurance provides in connection with the insurance contract for the application of Hungarian law.

According to Section 6:48 of the Hungarian Civil Code, the obligor shall be required to pay default interest, as of the date of his default at the base rate applicable on the first day of the calendar half year affected by his default, or for a pecuniary debt denominated in foreign currency, at the base rate determined for the relevant currency by the issuing central bank; in the absence of such, at the money market interest rate. As stated above, if the debt is denominated in euro, the applicant may be entitled to a late payment penalty up to the base rate set by the European Central Bank. The Financial Service Provider also debated the claims of the Complainant regarding the legal costs and translation costs.

According to Section 96 (1) of the MNB tv. the Financial Arbitration Board shall attempt to reach a conciliation agreement or, failing this, to adopt a decision in the case to enforce Complainant rights simply, efficiently and practically and under the principle of cost-efficiency. The FAB made an attempt to converge the positions of the Parties in order to conclude a compromise, without success. The Financial Service Provider contacted the Complainant directly through its Slovakian language customer

service. Following the enquiry, the Complainant made a settlement offer by e-mail, in the amount of EUR 54,344.85.00, including default interest and costs. The settlement offer was not accepted by the Financial Service Provider.

During its procedure the FAB examined all declarations and documents submitted by the Parties to the dispute. Based on the proof before it, the FAB found that the Complainant's claims are partially substantiated based on the following:

The legal basis of this dispute is Insurance Policy No. xxx of the euro based unit linked life insurance named xxx signed by the Complainant and the Financial Service Provider, and the General Terms and Conditions (hereinafter: GTC) with the Special Conditions of xxx Euro based Unit Linked Life Insurance (hereinafter: SC). Section xxx of the GTC provides for the application of Hungarian law in connection with the insurance contract. Section yyy of the GTC (RE-PURCHASE) the Insured is entitled to re-purchase taking into account the special conditions applicable to the Insurance Contract. In case of a re-purchase the Insurance Company shall pay out an amount of the current repurchase value to the Insured. **Payment of the re-purchase value is due within 8 days after receipt of all documents necessary to meet the Application for re-purchase by the insurance company.**

Under point zzz) Terms, Section v) and w) of the SC it is stated that:

v) current value of the Insurance Contract: means the value of share units held on a personal account stated according to the exchange rate of the given evaluation day,

w) **evaluation day: means the day on which the insurance company determines the share price of the given mutual fund.**

According to Section xyz) c) of the GTC the insurance contract can be terminated by the payment of the repurchase value upon surrender of the contract. According to point yzx) RE-PURCHASE letter c) and e) of the SC:

c) The re-purchase amount is the value of the percentage of units held on the personal account; the percentage is fix-set under the table of the repurchase. When setting the amount of the re-purchase the Insurance Company shall base on the current number of units **on the day, when the request for re-purchase is delivered to the Insurance Company and on the exchange rate on the next valuation day;**

e) The Insurance Company shall pay out the amount of the repurchase within 8 days after receipt of all necessary documents for the Insured. Upon payment of the total redemption the Insurance Contract expires.

Based on the Repurchase Table of Annex zzz of the SC, the repurchase ratio is 100% from year 10 of the contract.

It is claimed by the Complainant and at the same time acknowledged by the Financial Service Provider that the Complainant's complete surrender application was received on December 29, 2021, and was not processed and executed in the manner set out in the terms and conditions. According to the above cited Sections of the GTC and the SC, the Company shall base on the current number of units **on the day, when the request for re-purchase is delivered to the Insurance Company (i.e.: December 29, 2021) and on exchange rate on the next valuation day (i.e.: December 30, 2021); And the payment should have been completed according to the rule that payment of the re-purchase value is due within 8 days after receipt of all documents necessary to meet the Application for re-purchase by the insurance company (i.e.: no later than January 7, 2022). At this moment of time the xyz Euro share mutual fund has not been yet suspended (according to the declaration of the Financial Service Provider suspension took place on xxx).**

The Complainant is also entitled to default interest according to Section 6:48 of Act V of 2013 of the Hungarian Civil Code as it was detailed in the operative section of this decision.

As to the Complainant's claims regarding the cost of legal representation and the cost of official translation, the FAB informs the consumer that according to Section 110 (1) of the MNB tv., the parties may be represented in the proceedings by an authorized representative, however, for the Consumer it is not obligatory. Therefore it was the Complainant's decision in the proceedings to opt for a legal representative. Also, based on Section 114 of the MNB tv., the costs of the proceedings shall only be borne by the party against whom the decision was passed in case of a binding resolution, but not in case of a recommendation. According to Section 128 (1) the related translation costs shall be comprised in the costs of the proceedings.

According to Section 113. (1) b) of the MNB tv. in the absence of a negotiated settlement the council shall make a recommendation on the merits of the case, if the request is found substantiated, but the body or person covered by the acts enumerated in Section 39 affected has refused to be bound by the decision of the council in a statement filed at the time of the opening of the proceedings, or did not declare its position concerning the decision of the council in terms of submission.

The FAB concluded that the Complainant's claim is partially substantiated, and the Financial Service Provider did not submit itself to the binding resolution of the FAB, therefore the FAB adopted a recommendation as in the operative section of this decision.

With regard to section 128 (3) of the MNB tv. the time limit for the proceedings is 90 days, which shall be extended by additional 90 days if it deemed necessary. During the procedure, the time limit of the above cross border consumer dispute was extended with 90 days.

Budapest, February 23, 2023.

Dr. Tamás Lajos Tarpai
member of the acting panel

Dr. Judit Cserépi
chair of the acting panel

Dr. Ádám Sebestyén
member of the acting panel