

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by the Fürstliches Obergericht dated 20 December 2016 in the case of Pascal Nobile v DAS Rechtsschutz-Versicherungs AG

(Case E-21/16)

A request has been made to the EFTA Court by a letter dated 20 December 2016 from the Fürstliches Obergericht (Princely Court of Appeal), which was received at the Court Registry on 20 December 2016, for an Advisory Opinion in the case of Pascal Nobile v DAS Rechtsschutz-Versicherungs AG on the following questions:

- 1. Does Article 201(1)(a) 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) preclude a contractual agreement between a legal expenses insurance and an insured person, according to which it is a breach of duty of the insured person, releasing the insurance company from its obligations, if the insured person mandates an attorney to represent his interests, without the consent of the legal expenses insurance, at a point in time when the insured person would be entitled to make a claim according to the legal expenses insurance contract?**
- 2. In the event that question 1 is answered in the negative: In litigation proceedings, when does an inquiry or do proceedings referred to in Article 201(1)(a) of Directive 2009/138/EC start, leading to the free choice of a lawyer? Is the relevant point in time solely based on the formal commencement of court proceedings (the lawsuit being filed with the court), or are prior steps also included, and, if so, which ones?**
- 3. In the event that questions 1 and 2 are answered after 16 January 2017:**
 - a) Does the principle of loyalty laid down in Article 3 of the EEA Agreement preclude national courts, in all circumstances, from calling the validity of decisions of the EFTA Court into question?**

b) In the event that question 3a is answered in the negative: Which circumstances would allow national courts to question the validity of decisions of the EFTA Court, without thereby being in breach of the principle of loyalty laid down in Article 3 of the EEA Agreement?