

## EFTA COURT

### **Request for an Advisory Opinion from the EFTA Court by the Fürstliches Landgericht dated 29 March 2019 in the case of Gable Insurance AG in Konkurs**

**(Case E-3/19)**

A request has been made to the EFTA Court by a letter dated 29 March 2019 from the Fürstliches Landgericht (Princely Court), which was received at the Court Registry on 29 March 2019, for an Advisory Opinion in the case Gable Insurance AG in Konkurs, on the following questions:

**1.**

**The first question concerns the interpretation of the term 'insurance claim' provided for in Article 268(1)(g) of Directive 2009/138/EC.**

**(a)**

**What criteria are to be applied in order to determine whether some elements of the debt are not yet known?**

**(b)**

**Must a claim, at least in principle, have arisen, been admitted and/or lodged before the opening of insolvency proceedings (or, alternatively, before the cancellation of the insurance contracts as a result of the opening of winding-up proceedings) in order to be treated as an insurance claim? If not, the following question arises:**

**(c)**

**Does Directive 2009/138/EC provide for a temporal limit on the possibility for insurance claims to arise after the opening of insolvency proceedings in order to prevent the continued postponement of the drawing up of the final account and distribution to the creditors by a reason of a constant lodging of new claims, or, alternatively, how does Directive 2009/138/EC deal with indeterminate debts of that kind?**

**(d)**

**Does the phrase ‘... or cancellation ...’ mean that only those premiums owed [by an insurance undertaking] as a result of the cancellation of a contract before the opening of the winding-up proceedings shall be regarded as insurance claims or does it also constitute an insurance claim where the premium is owed by the insurance undertaking as a result of the cancellation of a contract after the opening of the winding-up proceedings?**

**2.**

**The second question concerns the interpretation of the term ‘winding-up proceedings’ provided for in Article 268(1)(d) of Directive 2009/138/EC.**

**Must this provision be interpreted as meaning that a judicial composition in relation to (individual) insurance claims is possible also independently of, or contrary to, national procedural rules governing winding-up proceedings and, if so, what requirements specific to the Directive must be satisfied for a composition to be reached?**

**3.**

**The third question concerns the relationship between Article 275(1)(a) and Article 274(2)(g) of Directive 2009/138/EC.**

**Does Article 275(1)(a) preclude a national rule implementing Article 274(2)(g), in other words, on the lodging, verification and admission of claims, that results in insurance creditors being treated unequally?**