



ORDER OF THE PRESIDENT

12 April 2019

(Denial of request for accelerated procedure)

In Case E-3/19,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by the Princely Court of Liechtenstein (Fürstliches Landgericht), in the case of

Gable Insurance AG in Konkurs

concerning the interpretation 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,

THE PRESIDENT,

makes the following

Order

I Facts and procedure

- 1 This reference for an advisory opinion concerns the interpretation 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 (OJ 2009 L 335, p. 1) (“the Directive”), referred to at point 1 of Annex IX to the Agreement on the European Economic Area.
- 2 The request has been made in insolvency proceedings regarding Gable Insurance AG (“Gable”) where the referring court sits as an insolvency court. Gable was declared insolvent by an order on 17 November 2016.
- 3 According to the request for an advisory opinion, Gable is a company under Liechtenstein law and registered in Liechtenstein. It was granted a license by the Liechtenstein Financial Market Authority as a direct insurance undertaking for the pursuit of non-life insurance activities.
- 4 Gable’s insurance contracts were cancelled four weeks after the insolvency proceedings were opened. However, in accordance with Liechtenstein legislation, new insurance claims are being notified continually as events given rise to a loss or damage can have

taken place before the opening of the insolvency proceedings, even if the loss or damage did not materialize until after the insolvency proceedings had been opened.

- 5 The Princely Court decided that an interpretation of the Directive, inter alia with regards to procedural aspects of the insolvency proceedings, was warranted in the case at hand. It therefore decided on 11 February 2019 to request an advisory opinion from the Court. The referring court also requests the Court to apply an accelerated procedure pursuant to Article 97a(1) of the Rules of Procedure (“RoP”). The request for an advisory opinion was registered at the Court on 29 March 2019.

II Findings

- 6 The referring court has included with its request for an advisory opinion a request that the Court applies an accelerated procedure pursuant to Article 97a(1) of the Rules of Procedure (“RoP”).
- 7 That provision provides that, at the request of the national court, and on a proposal from the Judge-Rapporteur, the President may exceptionally decide to apply an accelerated procedure derogating from the provisions of the Rules of Procedure to a request for an advisory opinion, where the circumstances referred to establish that a ruling on the question put to the Court is a matter of exceptional urgency.
- 8 In support of its request for an accelerated procedure, the referring court states that should the case not benefit from such a procedure, the insolvency proceedings can to a substantial extent not be continued or closed. According to the referring court, this will inevitably put back the date on which payments can be made in relation to insurance claims that have been admitted and, in so doing, will entail higher cost of administering the insolvency proceedings, and reduce the percentage that the insurance creditors will recover.
- 9 However, although the referring court has emphasized the importance of the forthcoming advisory opinion for the main proceedings, it has not established the urgency to give a decision on its application without delay, under Article 97a(1) RoP.
- 10 First, is clear from settled case-law that the large number of persons or legal situations potentially affected by the contested provisions is not capable, as such, of constituting a factor that would justify recourse to the accelerated procedure (compare the order in *Vitali*, C-63/18, EU: C: 2018: 199, paragraph 17 and the case-law cited).
- 11 Likewise, the legal uncertainty affecting the insurance creditors which may be affected by the decision, and their legitimate interest in knowing as quickly as possible the meaning of the rights that they derive from EEA law does not constitute an exceptional circumstance that could justify use of such a procedure (compare orders in *Abanca Corporación Bancaria*, C-70/17, EU:C:2017:227, paragraph 14, and *Magamadov*, C-438/17, EU:C:2017:723, paragraph 21).

- 12 Similarly, it is clear from settled case-law that invoking economic interests does not justify the use of the accelerated procedure (compare the order in *Indēliņ ir investicijų draudimas and Nemaniūnas*, C-671/13, EU:C:2014:225, paragraph 11 and the case-law cited).
- 13 It follows that the request of the Princely Court of Liechtenstein that the present case be determined pursuant to an accelerated procedure cannot be granted.

On those grounds,

THE PRESIDENT

hereby orders:

The request to apply an accelerated procedure, pursuant to Article 97a of the Rules of Procedure, derogating from the provisions of the Rules of Procedure to a reference for an advisory opinion is denied.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President