



INFORMATION NOTE

A request from the Princely Court of Appeal (Fürstliches Obergericht), dated 30 April 2025 was lodged on 6 May 2025, requesting the EFTA Court give an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. This request was registered as Case E-8/25 - *Dommages Aréas v Gable Insurance AG in Konkurs*, on 6 May 2025.

In the request for an advisory opinion the Princely Court of Appeal sent the following questions to the EFTA Court;

1. *Is an insurance claim within the meaning of Article 268(1)(g) 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), OJ 2009 L 335, p. 1, incorporated in the EEA Agreement by Decision of the EEA Joint Committee No 78/2011 of 1 July 2011, LGBI 2012/384, still to be given precedence in accordance with Article 275(1) of that directive even where the claim at issue is the claim of an injured party having a direct right of action against the insurance undertaking which, by way of statutory subrogation, has been subrogated to a fourth party?*
2. *If the answer to the Question 1 is in the affirmative: Must legal costs incurred in the assertion of an insurance claim be regarded as an insurance claim within the meaning of Article 268(1)(g) of Directive 2009/138/EC and thus also be given precedence in accordance with Article 275(1) of that directive?*

On 6 June 2025, in accordance with Article 20 of the Statute and Article 90(1) of the Rules of Procedure of the EFTA Court, the Governments of the EFTA States, the EFTA Surveillance Authority, the Union (which includes the Governments of the EU States), the European Commission and the parties to the dispute were invited to submit written observations to the Court on the referred questions within a two month deadline.

The Court received and registered written observations from:

Dommages Aréas

Gable Insurance AG in Konkurs

The Government of Liechtenstein

The EFTA Surveillance Authority

The European Commission

The submitted suggested answers to the questions posed by the referring Court are as follows:

Dommages Aréas

1. An insurance claim within the meaning of Article 268(1)(g) 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), OJ L 335 of 17 December 2009, p. 1, incorporated into the EEA by Decision No 78/2011 of the EEA Joint Committee of 1 July 2011, LGBI 2012/384, shall also be given priority treatment in accordance with Article 275(1) of this Directive if it is a claim of an injured third party who has a direct claim against the insurance undertaking which has been transferred by statutory subrogation to a fourth party.
2. Legal costs incurred in the assertion of an insurance claim must be regarded as an insurance claim within the meaning of Article 268(1)(g) of Directive 2009/138/EC and are thus to be given precedence in accordance with Article 275(1) of that directive.

Gable Insurance AG in Konkurs

1. Article 275(1) in conjunction with Article 268(1)(g) 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) must be interpreted to the effect that a claim originally qualifying as an insurance claim within the meaning of Article 268(1)(g) is no longer to be given precedence in accordance with Article 275(1) if it is, in circumstances such as those in the main proceedings, subrogated to a fourth party by way of statutory subrogation.

If the Court answers Question 1 in the affirmative:

2. Legal costs incurred in the assertion of an insurance claim are only to be regarded as an insurance claim within the meaning of Article 268(1)(g) of Directive 2009/138/EC and thus only to be given precedence in accordance with Article 275(1) of that

directive, provided that the claim to these costs was awarded in proceedings of an injured (third) party against the party liable for the injury or against its liability insurer and provided that these proceedings began before the opening of the bankruptcy proceedings against the liability insurer.

The Government of Liechtenstein

1. An Insurance claim within the meaning of Article 268(1)(g) 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), OJ 2009 L 335, p. 1, incorporated in the EEA Agreement by Decision of the EEA Joint Committee No 78/2011 of 1 July 2011, LGBI 2012/384, is not to be given precedence in accordance with Article 275(1) of that directive where the claim at issue is the claim of an injured party having a direct right of action against the Insurance undertaking has by way of statutory Subrogation, been subrogated to a fourth party.
2. Considering the proposed answer to the previous question, it is not necessary for the EFTA Court to answer this question.

The EFTA Surveillance Authority

1. An insurance claim within the meaning of Article 268(1)(g) 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 (or within the meaning of the corresponding provision of the predecessor directive, Article 2(k) of Directive 2001/17/EC), such as a claim initially held by an injured third party with a direct right of action against a liability insurer, retains its classification and is to be given precedence in accordance with Article 275(1) of that Directive (or in accordance with the corresponding provision of the predecessor directive, Article 10 of Directive 2001/17/EC) where the claim has been transferred by way of statutory subrogation to another party, such as the insurer of the injured party.
2. Legal costs incurred in asserting an insurance claim do not, in themselves, constitute an insurance claim within the meaning of Article 268(1)(g) of Directive 2009/138/EC (or within the meaning of the corresponding provision of the predecessor directive, Article 2(k) of Directive 2001/17/EC) and therefore do not benefit from the priority set out in Article 275(1) of that Directive (or in the corresponding provision of the predecessor directive, Article 10 of Directive 2001/17/EC), unless the obligation to cover such costs arises from an insurance contract and the other conditions of Article

268(1)(g) of Directive 2009/138/EC (or Article 2(k) of Directive 2001/17/EC) are fulfilled.

The European Commission

1. An insurance claim within the meaning of Article 268(1)(g) 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) should be given precedence in accordance with Article 275(1) of that Directive in circumstances such as those at issue in the present proceedings where the claim has been transferred by way of statutory subrogation to another insurance undertaking which has compensated the injured party under an indemnity insurance contract.
2. A claim for legal costs incurred in the assertion of an insurance claim does not constitute an insurance claim within the meaning of Article 268(1)(g) 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), and should not therefore be given precedence in accordance with Article 275(1) of that Directive.

Luxembourg, 17 September 2025

Ólafur Jóhannes Einarsson

Registrar