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### Judgment in Case E-21/16 *Pascal Nobile v DAS Rechtsschutz-Versicherungs AG*

#### LEGAL EXPENSES INSURANCE AND THE INSURED PERSON'S RIGHT FREELY TO CHOOSE A LAWYER

In a judgment delivered today, the Court answered questions referred to it by the Princely Court of Appeal (*Fürstliches Obergericht*) in Liechtenstein on the interpretation of Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (“the Directive”).

Mr Pascal Nobile has a legal expenses insurance provided by DAS Rechtsschutz-Versicherungs AG (“DAS”). In 2015, a dispute arose between Mr Nobile and his landlady. With a view to initiating proceedings against the landlady, Mr Nobile engaged a lawyer. He did not inform DAS of this in advance. In the following, Mr Nobile’s lawyer requested cost coverage for the proceedings against the landlady from DAS. However, DAS rejected his claim for reimbursement of legal costs and alleged that in engaging a lawyer without DAS’s prior consent Mr Nobile had breached the terms and conditions of the insurance contract.

Mr Nobile then initiated legal proceedings against DAS seeking a declaration that DAS was liable to provide legal expenses cover for the proceedings to be brought against the landlady. Upon appeal, the national court decided to refer questions to the Court concerning the interpretation of Article 201(1)(a) of the Directive on the free choice of lawyer.

The Court noted that Article 201(1)(a) of the Directive recognises the free choice of lawyer in any inquiry or proceedings. That rule has general application and is obligatory in nature. Moreover, the context, the objective pursued and the wording of Article 201(1)(a) militate against a restrictive interpretation of the term “inquiry or proceedings”.

The Court pointed to several factors indicating that DAS’ general terms and conditions did not fully recognise the free choice of lawyer. In fact, the effect of the contractual clauses at issue in the main proceedings appears to be that the insured person’s right freely to choose a lawyer would consist solely of the possibility of suggesting a lawyer, the acceptance of whom would be, ultimately, at the discretion of the insurance company. Consequently, the Court held that such contractual terms and conditions were incompatible with Article 201(1)(a) of the Directive. Accordingly, the insurance undertaking cannot be released from its obligations under the insurance contract because the insured person breached such terms and conditions.

Finally, the Court also noted that the Directive does not oblige an EEA State to require insurers to cover in full the legal expenses incurred by an insured person’s defence. Certain limitations of coverage are permissible, provided they do not render it impossible freely to choose a lawyer.

The full text of the judgment may be found on the internet at: [www.eftacourt.int](http://www.eftacourt.int).

This press release is an unofficial document and is not binding upon the Court.