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Judgment in Case E-3/19 *Gable Insurance AG in Konkurs*

ADVISORY OPINION ON THE SOLVENCY II DIRECTIVE CONCERNING THE WINDING-UP OF AN INSURANCE UNDERTAKING

In a judgment delivered today, the Court answered questions referred by Princely Court of Liechtenstein (*Fürstliches Landgericht*) regarding 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 (Solvency II) ("the Directive").

Gable Insurance AG in Konkurs ("Gable Insurance") is a Liechtenstein insurance undertaking. On 17 November 2016, insolvency proceedings concerning it were opened. New insurance claims were notified despite the cancellation of all of Gable Insurance's insurance contracts four weeks after the opening of the insolvency proceedings. These include claims where the insured events took place before the opening of the insolvency proceedings, but where the loss or damage is not yet known.

The national court requested interpretations of Articles 268, 274, 275 and 282 of the Directive, including of the term 'insurance claim' and how such claims are determined and treated during the course of winding-up proceedings.

The Court held that an insured event must have occurred before the cancellation of an insurance contract for it to be an insurance claim within the meaning of Article 268(1)(g) of the Directive. However, the scope of an insurance claim cannot be limited to claims that have arisen, been lodged or admitted before the opening of the winding-up procedure if the claim cannot yet be fully determined. In accordance with Article 274(2)(g) of the Directive, it is for national law to set the specific rules and conditions concerning lodging, verification and admission of claims, including temporal limits for lodging and final determination of the amount of an insurance claim in cases where some elements of the debt are not yet known. A claim for owed premium resulting from the cancellation of a contract after the opening of winding-up proceedings does not constitute an insurance claim according to the wording of Article 268(1)(g) of the Directive.

Further, the Court held that Article 268(1)(d) of the Directive neither obliges EEA States to provide nor precludes them from providing for composition in the termination of winding-up proceedings.

The Court also found that Article 275(1)(a) of the Directive does not preclude national rules on the lodging, verification and admissibility of insurance claims that result in different categorisation and ranking of insurance claims, provided those rules ensure that insurance claims take precedence over other claims and that insurance creditors are treated equally.

The full text of the judgment may be found on the internet at: www.eftacourt.int.