



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

25 June 2015 *

(Reference for a preliminary ruling — Directives 94/19/EC and 97/9/EC — Deposit-guarantee schemes and investor-compensation schemes — Savings and investment instruments — Financial instrument within the meaning of Directive 2004/39/EC — Exclusion of the guarantee — Direct effect — Conditions to be met in order to benefit from Directive 97/9/EC)

In Case C-671/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Lithuania), made by decision of 16 December 2013, received at the Court on 17 December 2013, in the proceedings

‘Indėlių ir investicijų draudimas’ VĮ,

Virgilijus Vidutis Nemaniūnas,

Other parties to the proceedings:

Vitoldas Guliavičius,

bankas ‘Snoras’ AB, in liquidation,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, K. Lenaerts, Vice-President of the Court, acting as a Judge of the Second Chamber, J.-C. Bonichot, A. Arabadjiev and J.L. da Cruz Vilaça (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 20 November 2014,

after considering the observations submitted on behalf of:

- ‘Indėlių ir investicijų draudimas’ VĮ, by A. Mažintienė and by V. Drizga and A. Šekštelo, advokatai,
- Mr Guliavičius, by G. Subačiūtė and A. Milinis, advokatai,
- bankas ‘Snoras’ AB, in liquidation, by K. Švirinas and I. Dargužas, advokatai,

* Language of the case: Lithuanian.

— the Lithuanian Government, by V. Kazlauskaitė-Švenčionienė and D. Kriaučiūnas, acting as Agents,
— the European Commission, by K.-P. Wojcik and A. Steiblytė, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 26 February 2015,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1, point 1, and Articles 3(1) and 7(1) and (2) of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ 1994 L 135, p. 5), as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 (OJ 2009 L 68, p. 3, ‘Directive 94/19’), of point 12 of Annex I to Directive 94/19 and of Articles 2(2) and (3) and 4(1) and (2) of Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ 1997 L 84, p. 22).
- 2 The request has been made in proceedings brought by ‘Indėlių ir investicijų draudimas’ VI (‘IID’) and Mr Nemaniūnas concerning the validity of an agreement for the acquisition of a certificate of deposit and a number of bond subscription agreements.

Legal context

EU law

- 3 Article 20(1) of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ 1986 L 372, p. 1) provides with regard to item 3 concerning debts evidenced by certificates:

‘This item shall include both debt securities and debts for which negotiable certificates have been issued, in particular deposit receipts, “bons de caisse” and liabilities arising out of own acceptances and promissory notes’.

- 4 Recitals 16 and 17 in the preamble to Directive 94/19 state:

‘... the minimum guarantee level prescribed in this Directive should not leave too great a proportion of deposits without protection in the interest both of consumer protection and of the stability of the financial system;

...

... a Member State must be able to exclude certain categories of specifically listed deposits or depositors, if it does not consider that they need special protection, from the guarantee afforded by deposit-guarantee schemes’.

5 Point 1 of Article 1 of Directive 94/19 is worded as follows:

‘For the purpose of this Directive:

1. “deposit” shall mean any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution must repay under the legal and contractual conditions applicable, and any debt evidenced by a certificate issued by a credit institution.

...’

6 Article 3(1) of Directive 94/19 provides:

‘Each Member State shall ensure that within its territory one or more deposit-guarantee schemes are introduced and officially recognised. Except in the circumstances envisaged in the second subparagraph and in paragraph 4, no credit institution authorised in that Member State pursuant to Article 3 of Directive 77/780/EEC may take deposits unless it is a member of such a scheme.

...’

7 Article 7(1) and (2) of Directive 94/19 provides as follows:

‘1. Member States shall ensure that the coverage for the aggregate deposits of each depositor shall be at least EUR 50 000 in the event of deposits being unavailable.

...

2. Member States may provide that certain depositors or deposits shall be excluded from guarantee or shall be granted a lower level of guarantee. Those exclusions are listed in Annex I.’

8 Annex I to Directive 94/19, entitled ‘List of exclusions referred to in Article 7(2)’ states, in point 12:

‘Debt securities issued by the same institution and liabilities arising out of own acceptances and promissory notes.’

9 Recital 9 in the preamble to Directive 97/9 states:

‘Whereas the definition of investment firm includes credit institutions which are authorised to provide investment services; whereas every such credit institution must also be required to belong to an investor-compensation scheme to cover its investment business; whereas, however, it is not necessary to require such a credit institution to belong to two separate schemes where a single scheme meets the requirements both of this Directive and of Directive 94/19/EC ...; whereas, however, in the case of investment firms which are credit institutions it may in certain cases be difficult to distinguish between deposits covered by Directive 94/19/EC and money held in connection with investment business; whereas Member States should be allowed to determine which Directive shall apply to such claims.’

10 Point 3 of Article 1 of Directive 97/9 provides that for the purposes of the directive ‘instruments’ is to mean the instruments listed in Section B of the Annex to Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ 1993 L 141, p. 27).

11 Point 4 of Article 1 of Directive 97/9 defines ‘investor’ as ‘any person who has entrusted money or instruments to an investment firm in connection with investment business’.

12 Article 2(2) and (3) of Directive 97/9 provides:

‘2. A scheme shall provide cover for investors in accordance with Article 4 where either:

— the competent authorities have determined that in their view an [investment] firm appears, for the time being, for reasons directly related to its financial circumstances, to be unable to meet its obligations arising out of investors’ claims and has no early prospect of being able to do so,

or

— a judicial authority has made a ruling, for reasons directly related to an investment firm’s financial circumstances, which has the effect of suspending investors’ ability to make claims against it,

whichever is the earlier.

Cover shall be provided for claims arising out of an investment firm’s inability to:

— repay money owed to or belonging to investors and held on their behalf in connection with investment business,

or

— return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with investment business,

in accordance with the legal and contractual conditions applicable.

3. Any claim under paragraph 2 on a credit institution which, in a given Member State, would be subject both to this Directive and to Directive 94/19/EC shall be directed by that Member State to a scheme under one or other of those Directives as that Member State shall consider appropriate. No claim shall be eligible for compensation more than once under those Directives’.

13 Article 4(1) and (2) of Directive 97/9 provides as follows:

‘1. Member States shall ensure that schemes provide for cover of not less than [EUR] 20 000 for each investor in respect of the claims referred to in Article 2(2).

Until 31 December 1999 Member States in which, when this Directive is adopted, cover is less than [EUR] 20 000 may retain that lower level of cover, provided it is not less than [EUR] 15 000. That option shall also be available to Member States to which the transitional provisions of the second subparagraph of Article 7(1) of Directive 94/19/EC apply.

2. A Member State may provide that certain investors shall be excluded from cover by schemes or shall be granted a lower level of cover. Those exclusions shall be as listed in Annex I.’

14 Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1) lists the financial instruments covered by the directive. Point 2 of Section C includes money-market instruments within the concept of financial instruments.

15 Point 19 of Article 4(1) of Directive 2004/39 defines money-market instruments as follows :

“money market instruments”; means those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.’

Lithuanian law

16 Article 2(3) of Law IX-975 of 20 June 2002 on the insurance of deposits and of liabilities to investors (Žin., 2002, No 65-2635, ‘the Law on deposit insurance’), which transposes Directives 94/19 and 97/9 into the law of the Republic of Lithuania, provides:

“depositor”: a natural or legal person, holding a deposit with a bank, a bank branch or a credit union, with the exception of the persons whose deposits cannot be covered by insurance under this law...

17 Article 3(1), (2) and (4) of the Law on deposit insurance provides:

‘1. Deposit insurance coverage shall be provided for depositors’ deposits in Litas and in a foreign currency: in United States dollars, euros and national currencies (‘currencies’) of the Member States of the European Union and of the Member States of the European Economic Area.

2. Liability insurance coverage with regard to investors shall be provided in respect of liabilities relating to the restitution to investors of securities (in whatever currency the latter are denominated) or funds, whether in Litas or in currencies.

...

4. Debt securities (certificates of deposit) issued by the insured itself, liabilities arising from bills accepted by that insured and from promissory notes as well as mortgage bonds issued in accordance with the Lithuanian law on mortgage bonds and mortgage credit ... may not be covered by insurance.’

18 Article 9(1) of the Law on deposit insurance is worded as follows:

‘A depositor shall become entitled to insurance compensation from the day on which an insured event occurs. An investor shall become entitled to insurance compensation from the day on which an insured event occurs only where the insured entity has transferred or used the investor’s securities and/or funds without the investor’s consent. In the calculation of the insurance compensation due in respect of the securities with regard to investors, those securities shall include only the securities and funds of the investor which the insured entity is not in a position to restore to the investor.’

The actions in the main proceedings and the questions referred for a preliminary ruling

19 On 17 January 2011, Mr Guliavičius concluded an agreement with bankas ‘Snoras’ AB (‘Snoras’) for the acquisition of an inflation-linked certificate of deposit.

20 On 9 March, 14 July, 26 September and 6 October 2011, Mr Nemaniūnas concluded bond subscription agreements with Snoras.

21 By decision of the Lithuanian Government of 16 November 2011, Snoras’ business activities were suspended. On 24 November 2011, the Lithuanian central bank took legal action with a view to insolvency proceedings being opened against Snoras.

- 22 Mr Guliavičius and Mr Nemaniūnas brought legal proceedings seeking a declaration of invalidity in respect of the agreements they had concluded with Snoras. They claimed, in essence, that the bank had provided them with misleading and incomplete information concerning (i) the application of the guarantee to the instruments purchased and (ii) Snoras' financial position.
- 23 By order of 6 May 2013, the Vilniaus apygardos teismas (Vilnius Regional Court) dismissed Mr Guliavičius' action. By order of 29 July 2013, the Lietuvos apeliacinis teismas (Court of Appeal) upheld the appeal brought by Mr Guliavičius, set aside the order of the court at first instance and declared the agreement that he had entered into for the acquisition of a certificate of deposit to be invalid.
- 24 IID is a State undertaking with limited liability whose task is to guarantee the protection of deposits and of investments vis-à-vis investors in the event of the insolvency of investment firms. By its appeal in cassation in the proceedings initiated by Mr Guliavičius, IID requests that the referring court set aside the order of the Lietuvos apeliacinis teismas of 29 July 2013.
- 25 By order of 7 December 2012, the Vilniaus apygardos teismas dismissed Mr Nemaniūnas' action. In the appeal brought by the latter, the Lietuvos apeliacinis teismas upheld the order of the court at first instance. By his appeal in cassation before the referring court, Mr Nemaniūnas requests that the judgment of the appeal court be set aside.
- 26 The Lietuvos Aukščiausiasis Teismas (Supreme Court) takes the view that the disputes before it must be decided in the light of the EU legislation relating to the legal protection of Mr Guliavičius and Mr Nemaniūnas in their capacity as depositors or investors.
- 27 In that regard, the referring court enquires, first, about the protection afforded to the certificate of deposit acquired by Mr Guliavičius. It observes, first, that the Republic of Lithuania has chosen, by means of Article 3(4) of the Law on deposit insurance, to use the exception provided for in Article 7(2) of Directive 94/19 and point 12 of Annex I thereto by excluding from the guarantee provided for by that directive securities such as the certificate of deposit at issue in the main proceedings. Second, it raises the question as to whether such an exclusion may apply only to debt securities issued by a credit institution which have, in each specific case, the essential characteristics of a financial instrument for the purposes of Directives 97/9 and 2004/39.
- 28 Secondly, the Lietuvos Aukščiausiasis Teismas is uncertain whether the directives at issue have been correctly transposed. It states, in essence, that by virtue of the references to Directive 94/19 made in recital 9 and Article 2(3) of Directive 97/9, the EU legislature created a system in which the holders of instruments such as the certificates of deposit and the bonds with which the cases in the main proceedings are concerned must necessarily be protected by one or other of those two directives. However, Lithuanian law merely establishes, in Article 3(4) of the Law on deposit insurance, a general exclusion of all debt securities, including, as a consequence, certificates of deposit and bonds, from the guarantee scheme without providing for any alternative arrangements for protection. The Lietuvos Aukščiausiasis Teismas notes that such a generalised exclusion leaves the holders of securities such as those at issue in the main proceedings without protection.
- 29 Thirdly, the Lietuvos Aukščiausiasis Teismas has doubts about whether Directive 97/9 has been correctly transposed inasmuch as Article 9(1) of the Law on deposit insurance lays down an additional condition, by comparison with the directive, which must be met in order to benefit from the guarantee provided for by that provision, namely that an investor is entitled to insurance compensation only where the insured entity has transferred or used the investor's securities and/or funds without the investor's consent.

30 In those circumstances, the Lietuvos Aukščiausiasis Teismas decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Is Article 7(2) of Directive 94/19, applied in conjunction with point 12 of Annex I to that directive, to be understood and interpreted as meaning that, where a Member State excludes from the guarantee depositors of a credit institution who possess debt securities (certificates of deposit) issued by that institution, that exclusion can be applied only in the event that the abovementioned certificates of deposit fully conform to (possess) all the features characterising them as financial instruments within the meaning of Directive 2004/39 (having regard also to other measures of EU law, for example, Regulation (EC) No 25/2009 of the European Central Bank), inter alia their negotiability on a secondary financial market?
- (2) If the relevant Member State elects to transpose Directives 94/19 and 97/9 into national law in such a way that schemes for depositor and investor protection are laid down in a single legal measure (a law), are Article 7(2) of Directive 94/19, applied in conjunction with point 12 of Annex I to that directive, and Article 2(2) of Directive 97/9, taking account of Article 2(3) of Directive 97/9, to be understood and interpreted as meaning that it is not possible for no protection (guarantee) scheme for the purposes of the abovementioned directives to apply to holders of certificates of deposit and of bonds?
- (3) Having regard to the fact that under national legislation none of the possible protection schemes provided for in Directives 94/19 and 97/9 is applicable to holders of certificates of deposit and bonds issued by a credit institution:
 - (a) Do Article 3(1), Article 7(1) (as amended by Directive 2009/14) and Article 10(1) of Directive 94/19, in conjunction with Article 1(1) of that directive which defines the term 'deposit', display the necessary clarity, detail and unconditionality and confer rights on individuals, so that they could be relied upon by individuals before a national court to found their claims for payment of compensation against the insurer which has been established by the [Member] State and is responsible for making payment?
 - (b) Do Articles 2(2) and 4(1) of Directive 97/9 display the necessary clarity, detail and unconditionality and confer rights on individuals, so that they could be relied upon by individuals before a national court to found their claims for payment of compensation against the insurer which has been established by the [Member] State and is responsible for making payment?
 - (c) Should the above questions (3(a) and 3(b)) be answered in the affirmative, which of the two possible protection regimes must a national court choose to apply when deciding a dispute between a private person and a credit institution and involving the participation of the insurer, established by the [Member] State, responsible for administration of the depositor and investor protection schemes?
- (4) Are Articles 2(2) and 4(2) of Directive 97/9 (in conjunction with Annex I to that directive) to be understood and interpreted as precluding national legislation under which the investor-compensation scheme is not applicable to investors who possess debt securities issued by a credit institution by reason of the type of financial instrument (debt securities) and having regard to the fact that the entity with insurance (the credit institution) has not transferred or used investors' funds or securities without the investor's consent? Is it relevant to the interpretation of the abovementioned provisions of Directive 97/9, as regards investor protection, that the credit institution which has issued the debt securities — the issuer — is at the same time also the custodian of those financial instruments (intermediary) and that the investors' funds are not separated from other funds of the credit institution?

- 31 By order of the President of the Court in *Indēlija ir investīciju draudimas and Nemaniūnas* (C-671/13, EU:C:2014:225), the referring court's request that the present reference for a preliminary ruling be dealt with under the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court was refused.

Consideration of the questions referred

The first question

- 32 By its first question, the referring court asks, in essence, whether Article 7(2) of Directive 94/19 and point 12 of Annex I to that directive must be interpreted as meaning that the Member States may, when they exclude from the guarantee provided for by the directive certificates of deposit issued by a credit institution, limit that exclusion only to certificates having all the characteristics of a financial instrument within the meaning of Directive 2004/39.
- 33 In that regard, it should be stated at the outset that neither Article 7(2) of Directive 94/19 nor point 12 of Annex I to that directive provides, for the purposes of the exclusion of the deposit guarantee, that the instruments in question must have all the characteristics of a financial instrument within the meaning of Directive 2004/39.
- 34 It is necessary, however, in view of the requirements of Directive 94/19, that the instruments covered by the exclusion which the Member States apply be amongst those which fall within the scope of Directive 94/19.
- 35 Under Article 1, point 1, of Directive 94/19, the definition of the term 'deposit', for the purposes of the directive, includes (i) 'any credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions' and (ii) 'any debt evidenced by a certificate issued by a credit institution'.
- 36 Thus, it is clear from the wording of that provision that the concept of 'deposit', for the purposes of Directive 94/19, is not defined by reference to the characteristics of a financial instrument within the meaning of Directive 2004/39. It is also clear from that provision that a defining characteristic of the second type of deposit is the fact that it is evidenced by a certificate which may be transferred, so that the claim to the debt which that certificate entails may be traded.
- 37 The last-mentioned finding is borne out by the analysis of the Commission's proposal for Directive 94/19 (Com(92) 188 final, of 4 June 1992; OJ 1992 C 163, p. 6), which, in Article 1, referred expressly to 'claims for which negotiable certificates have been issued'. In that regard, the point should also be made that Article 20 of Directive 86/635, to which the proposal for Directive 94/19 refers, specifies that debts evidenced by a certificate include 'both debt securities and debts for which negotiable certificates have been issued, in particular deposit receipts'.
- 38 Therefore, Article 7(2) of Directive 94/19 in conjunction with point 12 of Annex I to that directive do not preclude a rule of national law such as Article 3(4) of the Law on deposit insurance, which excludes from the deposit guarantee 'debt securities (certificates of deposit) issued by the insured itself', provided that such securities are negotiable.
- 39 It is for the referring court to determine whether, in this case, the certificate of deposit held by Mr Guliavičius has that characteristic.

40 Accordingly, the answer to the first question is that Article 7(2) of Directive 94/19 and point 12 of Annex I to that directive must be interpreted as meaning that the Member States may exclude from the guarantee provided for by that directive certificates of deposit issued by a credit institution if those certificates are negotiable, a matter which it falls to the referring court to determine, there being no need for it to satisfy itself that those certificates have all the characteristics of a financial instrument within the meaning of Directive 2004/39.

The second question

41 By its second question, the referring court asks, in essence, whether Directives 94/19 and 97/9 must be interpreted to the effect that it is permissible for debt securities issued by a credit institution, in particular, certificates of deposit and bonds, to be covered by none of the guarantee schemes for which those directives provide.

42 The second question is based on the assumption that the certificates of deposit at issue in the main proceedings are caught by the exclusion from the guarantee scheme for which Directive 94/19 provides, an exclusion adopted by the Lithuanian legislature on the basis of point 12 of Annex I to that directive. On that assumption, the referring court seeks to ascertain whether it is compatible with EU law for national legislation which, like the Lithuanian legislation, has transposed Directives 94/19 and 97/9 by means of a single instrument, to exclude, in a general manner, such certificates from each of the guarantee schemes provided for by those two directives, thus leaving the holders of those certificates without the least protection.

43 In that regard, in view of the definitions of the concepts of ‘deposit’ and ‘instrument’ in Directive 94/19 and Directive 97/9 respectively, a single debt security may, as can be seen from the request for a preliminary ruling, be encompassed by both those concepts and therefore fall within the scope of both directives.

44 That said, the guarantee schemes provided for by the two directives entail different conditions, in particular in terms of exclusion. Whilst Article 7(2) of Directive 94/19 and Annex I thereto allow for exclusions based on either the type of depositor or the type of deposit, Article 4(2) of Directive 97/9 provides for exclusions solely on the basis of the type of investor.

45 In those circumstances, although EU law does not prevent a Member State from choosing to transpose Directives 94/19 and 97/9 by a single legislative measure, the scheme established by that measure must, as is made clear in recital 9 in the preamble to Directive 97/9, meet the requirements of both directives.

46 Consequently, when, as in the disputes in the main proceedings, the national legislature has made use of the option provided for by point 12 of Annex I to Directive 94/19 to exclude the type of claim at issue from the cover of the guarantee scheme prescribed by that directive, the fact that the legislature has transposed Directive 94/19 and Directive 97/9 by means of a single legislative measure cannot result in that type of claim also being excluded from the protection provided for by Directive 97/9, other than under the conditions mentioned in Article 4(2) of that directive.

47 Accordingly, the answer to the second question is that Directives 94/19 and 97/9 must be interpreted as meaning that when claims against a credit institution are such as to be encompassed by both the concept of ‘deposit’ within the meaning of Directive 94/19 and that of ‘instrument’ within the meaning of Directive 97/9, and the national legislature has made use of the option provided for in point 12 of Annex I to Directive 94/19 to exclude those claims from the protection scheme provided for by Directive 94/19, such an exclusion cannot result in those claims also being excluded from the protection scheme provided for by Directive 97/9, other than under the conditions mentioned in Article 4(2) of that directive.

The fourth question

- 48 By its fourth question, the referring court asks, in essence, whether Articles 2(2) and 4(2) of Directive 97/9 must be interpreted as meaning that they preclude national legislation such as that at issue in the main proceedings, which makes entitlement to compensation under the scheme provided for by that directive conditional upon the credit institution concerned having transferred or used the funds or securities in question without the investor's consent.
- 49 As regards the condition laid down in Article 9(1) of the Law on deposit insurance, an analysis of Directive 97/9 shows that, in order to be able to benefit from the guarantee provided for by that directive, investors' claims must meet the conditions laid down in Article 2(2) of the directive. Furthermore, Annex I to that directive sets out the list of investors who, pursuant to Article 4(2) of the directive, may be excluded from cover or be granted a lower level of cover.
- 50 According to the order for reference, the holders of bonds issued by a credit institution may benefit from the guarantee provided for by Directive 97/9 only if the condition concerning the lack of consent laid down by Article 9(1) of the Law on deposit insurance is met.
- 51 It should be stated in that regard that such a condition is not required by Directive 97/9 in order for investors to be able to benefit from the protection scheme provided for by the directive. Moreover, investors holding such instruments, such as Mr Nemaniūnas in one of the cases before the referring court, are not mentioned amongst those who, under Annex I of Directive 97/9, may be excluded from that system.
- 52 Accordingly, the answer to the fourth question is that Articles 2(2) and 4(2) of Directive 97/9 must be interpreted as meaning that they preclude national legislation such as that at issue in the main proceedings, which makes entitlement to compensation under the scheme provided for by that directive conditional upon the credit institution concerned having transferred or used the funds or securities in question without the investor's consent.

The third question

- 53 By its third question, the referring court asks, in essence, whether Directives 94/19 and 97/9 must be interpreted as meaning that it is obliged to refrain from applying national legislation which excludes, unlawfully, the holders of certain debt securities from the guarantee schemes established by those directives, in particular in so far as the national legislation makes entitlement to compensation under the scheme provided for by that directive conditional upon the credit institution concerned having transferred or used the funds or securities in question without the investor's consent.
- 54 Since, as has been stated in paragraph 40 of this judgment, it was lawful for the Lithuanian legislature to introduce the exclusion of the guarantee provided for by Directive 94/19 in respect of negotiable certificates of deposit, the third question must be understood as concerning only Directive 97/9.
- 55 As is clear from paragraph 52 of this judgment, national legislation such as that at issue in the main proceedings, which makes entitlement to compensation under the scheme provided for by that directive conditional upon the credit institution concerned having transferred or used the funds or securities in question without the investor's consent, must be regarded as incompatible with Articles 2(2) and 4(2) of Directive 97/9.
- 56 In that regard, according to settled case-law, in applying national law, the national court called upon to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by the latter and thereby comply with the third paragraph of Article 288 TFEU (judgment in *Marleasing*, C-106/89, EU:C:1990:395, paragraph 8).

- 57 In the event of an interpretation in conformity with EU law not being possible, it must be stated that whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the Member State where the latter has failed to transpose the directive into domestic law by the end of the period prescribed or where it has failed to transpose it correctly (judgment in *Dominguez*, C-282/10, EU:C:2012:33, paragraph 33).
- 58 In the present case, as the Advocate General has observed in point 86 of his Opinion, Directive 97/9 is, in so far it concerns the delimitation of the cases protected, sufficiently clear, precise and unconditional to be relied on directly by individuals.
- 59 Moreover, it should be recalled that the entities against which the provisions of a directive that are capable of having direct effect may be relied upon include a body, whatever its legal form, which has been made responsible, pursuant to a measure adopted by the State, for providing a public service under the control of the State and has for that purpose special powers beyond those which result from the normal rules applicable in relations between individuals (judgment in *Dominguez*, C-282/10, EU:C:2012:33, paragraph 39). It is for the referring court to determine whether those conditions are met by IID which, it is common ground, has responsibility for guaranteeing the protection of deposits and of investments vis-à-vis investors in the event of the insolvency of investment firms.
- 60 If that were the case, the national court — since Directive 97/9 meets, in so far it concerns the delimitation of the cases protected, the requisite conditions for it to produce direct effect — would have to discount all domestic provisions that are contrary to the directive and, consequently, refrain from applying the condition concerning the use of funds without the investor's consent, when it comes to define the scope of the investments covered by the protection scheme provided for by that directive.
- 61 The answer to the third question is therefore that Directive 97/9 must be interpreted as meaning that the referring court, provided that it considers that in the disputes before it Directive 97/9 is invoked against a body that meets the conditions for the provisions of that directive to be relied on, must refrain from applying a provision of national law such as that at issue in the main proceedings, which makes entitlement to compensation under the scheme provided for by that directive conditional upon the credit institution concerned having transferred or used the funds or securities in question without the investor's consent.

Costs

- 62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Article 7(2) of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009, and point 12 of Annex I to that directive, must be interpreted as meaning that the Member States may exclude from the guarantee provided for by that directive certificates of deposit issued by a credit institution if those certificates are negotiable, a matter which it falls to the referring court to determine, there being no need for it to satisfy itself that those certificates have all the characteristics of a financial instrument within the meaning of Directive 2004/39/EC of the European**

Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

2. Directive 94/19, as amended by Directive 2009/14, and Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes must be interpreted as meaning that when claims against a credit institution are such as to be encompassed by both the concept of ‘deposit’ within the meaning of Directive 94/19 and that of ‘instrument’ within the meaning of Directive 97/9, and the national legislature has made use of the option provided for in point 12 of Annex I to Directive 94/19 to exclude those claims from the protection scheme provided for by Directive 94/19, such an exclusion cannot result in those claims also being excluded from the protection scheme provided for by Directive 97/9, other than under the conditions mentioned in Article 4(2) of that directive.
3. Articles 2(2) and 4(2) of Directive 97/9 must be interpreted as meaning that they preclude national legislation such as that at issue in the main proceedings, which makes entitlement to compensation under the scheme provided for by that directive conditional upon the credit institution concerned having transferred or used the funds or securities in question without the investor’s consent.
4. Directive 97/9 must be interpreted as meaning that the referring court, provided that it considers that in the disputes before it Directive 97/9 is invoked against a body that meets the conditions for the provisions of that directive to be relied on, is required to refrain from applying a provision of national law such as that at issue in the main proceedings, which makes entitlement to compensation under the scheme provided for by that directive conditional upon the credit institution concerned having transferred or used the funds or securities in question without the investor’s consent.

[Signatures]