Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

22 March 2018*

(References for a preliminary ruling — Deposit-guarantee and investor-compensation schemes — Directive 94/19/EC — Article 1(1) — Deposits — Temporary situations deriving from normal banking transactions — Directive 97/9/EC — Second subparagraph of Article 2(2) — Money owed to or belonging to an investor and held on his behalf by an investment firm in connection with investment business — Credit institution which issues transferable securities — Funds transferred by individuals to that institution in respect of subscription to future transferable securities — Application of Directive 2004/39/EC — Insolvency of that institution before the transferable securities in question are issued — Public undertaking entrusted with the deposit-guarantee and investor-compensation schemes — Ability to rely on Directives 94/19/EC and 97/9/EC against that undertaking)

In Joined Cases C-688/15 and C-109/16,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), made by decisions of 18 December 2015 (C-688/15) and 12 February 2016 (C-109/16), received at the Court on 21 December 2015 and 25 February 2016 respectively, in the proceedings brought by

Agnieška Anisimovienė and Others,

other parties:

bankas 'Snoras' AB, in liquidation,

'Indėlių ir investicijų draudimas' VĮ,

bankas 'Finasta' AB (C-688/15),

and

'Indėlių ir investicijų draudimas' VĮ,

other parties:

Alvydas Raišelis,

bankas 'Snoras' AB, in liquidation (C-109/16),

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça (Rapporteur), President of the Chamber, A. Tizzano, Vice-President of the Court, E. Levits, A. Borg Barthet and M. Berger, Judges,

* Language of the case: Lithuanian.

Advocate General: M. Campos Sánchez-Bordona,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 30 March 2017,

after considering the observations submitted on behalf of:

– Ms Anisimovienė and Others, by A. Mamontovas and A. Bambalas, advokatai,

– 'Indėlių ir investicijų draudimas' VĮ, by V. Impolevičienė, and by S. Urbonavičius and A. Šekštelo, advokatai,

– bankas 'Snoras' AB, in liquidation, by A. Pilipavičius and V. Drizga, advokatai,

– the Lithuanian Government, by R. Krasuckaitė and G. Taluntytė, 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 15 June 2017,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Articles 1(1), 7(1) and 8(3) 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'), and of Articles 1(1) and (4) and 2(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 requests have been made in proceedings brought, first, by Agnieška Anisimovienė and 256 other persons ('Ms Anisimovienė and Others') and, second, by 'Indėlių ir investicijų draudimas' VĮ ('IID') concerning the compensation that Ms Anisimovienė and Others and Alvydas Raišelis seek in respect of funds transferred to bankas 'Snoras' AB ('Snoras') for subscribing to future shares and bonds which that credit institution proposed to issue but which, because of its insolvency, were not issued.

Legal context

EU law

Directive 94/19

3 The first, second and fourth recitals of Directive 94/19 state:

'… in accordance with the objectives of the Treaty, the harmonious development of the activities of credit institutions throughout the [European Union] should be promoted through the elimination of all restrictions on the right of establishment and the freedom to provide services, while increasing the stability of the banking system and protection for savers;

… when restrictions on the activities of credit institutions are eliminated, consideration should be given to the situation which might arise if deposits in a credit institution that has branches in other Member States become unavailable; … it is indispensable to ensure a harmonised minimum level of deposit protection wherever deposits are located in the [European Union]; … such deposit protection is as essential as the prudential rules for the completion of the single banking market;

…

… the cost to credit institutions of participating in a guarantee scheme bears no relation to the cost that would result from a massive withdrawal of bank deposits not only from a credit institution in difficulties but also from healthy institutions following a loss of depositor confidence in the soundness of the banking system'.

4 Article 1 of Directive 94/19 provides the following definitions:

'For the purposes 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.

…

…

4. "*credit institution*" shall mean an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;

…'

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

'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.

1a. By 31 December 2010, Member States shall ensure that the coverage for the aggregate deposits of each depositor shall be set at EUR 100 000 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.'

6 Annex I to Directive 94/19 refers, in point 12, to 'debt securities issued by the same institution'.

Directive 97/9

7 Recitals 2 to 4 and 8 of Directive 97/9 state:

'(2) … [Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ 1993 L 141, p. 27)] lays down prudential rules which investment firms must observe at all times, including rules the purpose of which is to protect as far as possible investor's rights in respect of money or instruments belonging to them;

(3) … however, no system of supervision can provide complete protection, particularly where acts of fraud are committed;

(4) … the protection of investors and the maintenance of confidence in the financial system are an important aspect of the completion and proper functioning of the internal market in this area; to that end it is therefore essential that each Member State should have an investor-compensation scheme that guarantees a harmonised minimum level of protection at least for the small investor in the event of an investment firm being unable to meet its obligations to its investor clients;

…

(8) … therefore, every Member State should be required to have an investor-compensation scheme or schemes to which every such investment firm would belong; … each scheme must cover money and instruments held by an investment firm in connection with an investor's investment operations which, where an investment firm is unable to meet its obligations to its investor clients, cannot be returned to the investor; ...'

8 Article 1 of Directive 97/9 provides the following definitions:

'For the purposes of this Directive:

1. "investment firm" shall mean an investment firm as defined in Article 1(2) of Directive 93/22/EEC

   – authorised in accordance with Article 3 of Directive 93/22/EEC,

   or

   – authorised as a credit institution in accordance with [First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (OJ 1977 L 322, p. 30)] and [Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC (OJ 1989 L 386, p. 1)], the authorisation of which covers one or more of the investment services listed in Section A of the Annex to Directive 93/22/EEC;

2. "investment business" shall mean any investment service as defined in Article 1(1) of Directive 93/22/EEC and the service referred to in point 1 of Section C of the Annex to that Directive,

…

4. "investor" shall mean any person who has entrusted money or instruments to an investment firm in connection with investment business;

…'

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

‘2. ...

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,

…

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.’

MiFID

10 Recitals 2, 5 and 44 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 Directive 93/22 (OJ 2004 L 145, p. 1), as amended by Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 (OJ 2006 L 114, p. 60) (‘MiFID’), state:

‘(2) … it is necessary to provide for the degree of harmonisation needed to offer investors a high level of protection …

…

(5) It is necessary to establish a comprehensive regulatory regime governing the execution of transactions in financial instruments irrespective of the trading methods used to conclude those transactions so as to ensure a high quality of execution of investor transactions and to uphold the integrity and overall efficiency of the financial system. …

…

(44) With the two-fold aim of protecting investors and ensuring the smooth operation of securities markets, it is necessary to ensure that transparency of transactions is achieved and that the rules laid down for that purpose apply to investment firms when they operate on the markets. ...’

11 Article 1 of MiFID, headed ‘Scope’, provides:

‘1. This Directive shall apply to investment firms and regulated markets.

2. The following provisions shall also apply to credit institutions authorised under Directive 2000/12/EC [of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ 2000 L 126, p. 1)], when providing one or more investment services and/or performing investment activities:

– Articles 2(2), 11, 13 and 14,

– Chapter II of Title II excluding Article 23(2) second subparagraph,

– Chapter III of Title II excluding Articles 31(2) to 31(4) and 32(2) to 32(6), 32(8) and 32(9),

– Articles 48 to 53, 57, 61 and 62, and

– Article 71(1).'

12 Article 4(1) of MiFID provides definitions as follows:

'For the purposes of this Directive, the following definitions shall apply:

(1) "Investment firm" means any legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis;

…

(2) "Investment services and activities" means any of the services and activities listed in Section A of Annex I relating to any of the instruments listed in Section C of Annex I;

…

…

(5) "Execution of orders on behalf of clients" means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients;

(6) "Dealing on own account" means trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments;

…

(18) "Transferable securities" means those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:
(a) shares in companies …;
(b) bonds or other forms of securitised debt …

…'

13 Article 69 of MiFID, headed 'Repeal of Directive 93/22/EEC', provides:

'Directive 93/22/EEC shall be repealed with effect from 1 November 2007. References to Directive 93/22/EEC shall be construed as references to this Directive. References to terms defined in, or Articles of, Directive 93/22/EEC shall be construed as references to the equivalent term defined in, or Article of, this Directive.'

14 Section A of Annex I to MiFID is headed 'Investment services and activities' and contains the following list:

'1. Reception and transmission of orders in relation to one or more financial instruments.

2. Execution of orders on behalf of clients.

3. Dealing on own account.

4. Portfolio management.

5. Investment advice.

6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.

7. Placing of financial instruments without a firm commitment basis.

8. Operation of Multilateral Trading Facilities.'

15 The financial instruments listed in Section C of that annex include, in point 1, 'transferable securities'.

Directive 2006/48

16 Article 4(1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (OJ 2006 L 177, p. 1), as amended by Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 267, p. 7) ('Directive 2006/48'), defines a credit institution as 'an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account'.

17 Article 23 of Directive 2006/48 provides:

'The Member States shall provide that the activities listed in Annex I may be carried on within their territories, in accordance with Articles 25, 26(1) to (3), 28(1) and (2) and 29 to 37 either by the establishment of a branch or by way of the provision of services, by any credit institution authorised and supervised by the competent authorities of another Member State, provided that such activities are covered by the authorisation.'

18 Annex I to Directive 2006/48, headed 'List of activities subject to mutual recognition', contains the following list:

'…

7. Trading for own account or for account of customers in:

…

(e) transferable securities.

8. Participation in securities issues and the provision of services related to such issues

…

14. …

The services and activities provided for in Sections A and B of Annex I to [MiFID], when referring to the financial instruments provided for in Section C of Annex I of that Directive, are subject to mutual recognition according to this Directive.

…'

Lithuanian law

19 Article 2(3), (4), (11) and (12) of the Indėlių ir įsipareigojimų investuotojams draudimo įstatymas (Law on the insurance of deposits and of liabilities to investors) of 20 June 2002 (Žin., 2002, No 65-2635), in the version in force from 18 November 2011 to 1 December 2012 ('the Law on guarantee of deposits and investor compensation'), sets out the following definitions:

'3. "Depositor": a natural or legal person holding a deposit with a bank, a bank branch or a credit union, with the exception of the entities whose deposits cannot be covered by insurance under this law. Where a natural or legal person (with the exception of a management company which manages a collective fund or pension fund) holding a deposit acts as a trustee, the trustee shall be regarded as a depositor. Where a group of persons hold a claim on the funds under a contract, each of those persons shall be regarded as a depositor and the funds shall be divided between them in equal shares, unless provided otherwise in the contracts from which their claims are derived or in court judgments.

4. "Deposit": the total amount (including interest) of a depositor's money held in a bank, a bank branch or a credit union under a bank deposit and/or bank account contract and of other money on which the depositor has a claim arising from the credit institution's undertaking to carry out transactions using the depositor's money or to provide investment services.

…

11. "Investor": a natural or legal person who has transferred money or securities to the policyholder in order to benefit from the investment services provided by the latter. …

12. "Obligations to the investor": obligations of a policyholder who provides an investor with investment services to return that investor's money and/or securities to him.'

20 It is apparent from Article 3(1) of the Law on guarantee of deposits and investor compensation that deposits held by depositors with credit institutions in national currency and foreign currencies are covered by the insurance provided for by that law. On the other hand, under Article 3(4) debt securities issued by a credit institution are not covered.

The main proceedings and the questions referred for a preliminary ruling

Case C-688/15

21 On 21 December 2010, the general meeting of Snoras's shareholders resolved to increase the capital of that credit institution and to issue for that purpose new shares that would be offered to the public.

22 On 3 February 2011, the Vertybinių popierių komisija (Securities Commission, Lithuania) approved the prospectus relating to the future shares.

23 On 1 March 2011, Snoras opened a bank account in its name with another credit institution, bankas 'Finasta' AB ('Finasta'), for deposit of the funds, corresponding to the issue price of the future shares, that would be transferred by the future subscribers.

24 Between 9 March and 16 May 2011, Ms Anisimovienė and Others concluded subscription agreements with Snoras relating to the future shares in question. Subsequently, an amount equivalent to the issue price of the shares was debited from the bank accounts which those individuals held with Snoras and credited to the account opened in its name with Finasta. In some cases Snoras itself instigated those movements in the accounts, while in other cases they were carried out on the customer's initiative.

25 On 5 May 2011, Snoras applied to Lietuvos Bankas (the Bank of Lithuania) for authorisation to enter in the companies' register the amendments to its statutes resulting from the forthcoming increase in its capital.

26 On 16 November 2011, the Bank of Lithuania decided to suspend Snoras's activities until 16 January 2012. By a resolution of the same day, the Lithuanian Government nationalised Snoras on grounds of public interest. By decision of 22 November 2011, the Bank of Lithuania refused it authorisation to enter the amendments to its statutes in the companies' register and, by decision of 24 November 2011, the Bank of Lithuania revoked its banking licence. Finally, on 7 December 2011, insolvency proceedings were instituted in its regard, with effect from 20 December 2011.

27 Consequently, Snoras did not carry out the envisaged share issue. Ms Anisimovienė and Others then brought an action before the Vilniaus apygardos teismas (Regional Court, Vilnius, Lithuania) for a declaration acknowledging their status as 'depositors' of that credit institution, within the meaning of the Law on guarantee of deposits and investor compensation.

28 By judgment of 29 September 2014, that court dismissed the action brought by Ms Anisimovienė and Others, holding, in particular, that they had to be regarded as not depositors but investors and that the funds which they had transferred to Snoras in respect of subscription to the shares which it was proposing to issue could not be regarded as 'deposits' within the meaning of the Law on guarantee of deposits and investor compensation.

29 By order of 12 March 2015, the Lietuvos apeliacinis teismas (Court of Appeal of Lithuania) upheld the judgment delivered at first instance. Ms Anisimovienė and Others then appealed on a point of law to the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania).

30 In that appeal, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) raises the question, essentially, whether the funds which Ms Anisimovienė and Others transferred to Snoras in respect of subscription to shares which ultimately were not issued by it can be regarded as 'deposits' within the meaning of Article 1(1) of Directive 94/19.

31 In those circumstances, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is [Directive 94/19] to be interpreted as meaning that funds debited with the persons' consent or transferred or paid by those persons themselves into an account opened in the name of a credit institution held at another credit institution may be regarded as a deposit under that directive?

(2) Are Articles 7(1) and 8(3) of [Directive 94/19], taken together, to be understood as meaning that a deposit insurance payment up to the amount specified in Article 7(1) must be made to every person whose claim can be established before the date on which the determination or ruling referred to in Article 1(3)(i) and (ii) of [that directive] is adopted?

(3) For the purposes of [Directive 94/19], is the definition of a "normal banking transaction" relevant for the interpretation of the concept of a deposit as a credit balance deriving from banking transactions? Is that definition also to be taken into account when interpreting the concept of a deposit in national legal measures which have implemented [that directive]?

(4) If the third question is answered in the affirmative, how is the concept of a normal banking transaction used in Article 1(1) of [Directive 94/19] to be understood and interpreted:
(a) what banking transactions should be regarded as normal or what criteria should be the basis for determining whether a specific banking transaction is a normal one?

(b) is the concept of a normal banking transaction to be assessed having regard to the objective of the banking transactions performed or to the parties between whom such banking transactions are carried out?

(c) is the concept, used in [Directive 94/19], of a deposit as a credit balance deriving from normal banking transactions to be interpreted as covering only cases where all the transactions resulting in the creation of such a balance are regarded as normal?

(5) Where funds fall outside the definition of a deposit under [Directive 94/19] but the Member State has chosen to implement [Directive 94/19] and [Directive 97/9] in national law in such a way that funds to which the depositor has claims arising from a credit institution's obligation to provide investment services are also regarded as a deposit, can the cover for deposits be applied only after it has been determined that in a specific case the credit institution acted as an investment firm and funds were transferred to it to carry out investment business/activities, within the meaning of [Directive 97/9] and [MiFID]?'

Case C-109/16

32 By two decisions adopted on 16 June and 14 July 2011 respectively, the Securities Commission approved a prospectus relating to future bonds that Snoras was proposing to issue and offer to the public. Snoras could make a number of medium-term bond issues on the basis of that prospectus, subject to publication, before each issue, of the definitive conditions that would be applicable to the issue.

33 The prospectus stated, first, that those future bonds would be distributed by Snoras itself and that individuals interested could subscribe for them directly at branches, agencies and other units of that credit institution. Second, the issue price of the bonds would have to be paid up-front on the day on which the subscription agreement relating thereto was concluded. For that purpose, the subscriber would have to have the corresponding funds available in an account opened with Snoras and to authorise Snoras to debit them from the account. Third, the effective date indicated in the definitive conditions for the issue concerned would be regarded as the date of issue of the bonds in question. Fourth, those bonds, once issued, would have to be entered in securities accounts opened with Snoras in the name of the bondholders.

34 On 2 November 2011, Snoras published the definitive conditions relating to an 11th issue of medium-term bonds.

35 On 10 November 2011, Mr Raišelis concluded with Snoras, first, an agreement for the supply of investment services and, second, a subscription agreement relating to 40 bonds under that 11th issue. On the same day, he paid the funds corresponding to the issue price for those future bonds into his personal bank account with Snoras. The following day, he signed with that credit institution a new subscription agreement identical to the first, with just the date indicated for signature and for payment in respect of the bonds having been changed to 11 November 2011. On the same date, a sum equivalent to the issue price was debited by Snoras from Mr Raišelis's account and credited to an account, opened at that credit institution and in its name, intended for payment of the bonds.

36 Snoras, however, became insolvent before it could issue the bonds in question.

37 Mr Raišelis then brought an action before the Vilniaus miesto 2-asis apylinkės teismas (Second District Court of the City of Vilnius, Lithuania) against the public undertaking responsible in Lithuania for the deposit-guarantee and investor-compensation schemes. In that context, Mr Raišelis submitted that he was entitled to the compensation provided for by the Law on guarantee of deposits and investor compensation.

38 By judgment of 7 September 2012, that court dismissed Mr Raišelis's action. It held in particular that he would have been entitled to such compensation only if Snoras had used the funds at issue without his consent, which had not been the case. Furthermore, according to that court, bonds such as those that Snoras was proposing to issue could not give rise to such compensation.

39 On appeal, the Vilniaus apygardos teismas (Regional Court, Vilnius), by judgment of 17 October 2013, set aside the decision at first instance and recognised Mr Raišelis's right to the compensation sought. In the appellate court's view, Mr Raišelis had to be regarded as an 'investor', within the meaning of the Law on guarantee of deposits and investor compensation, and his funds in the account opened in Snoras's name had to be classified as a 'deposit' benefiting from the guarantee provided for by that law. IID then appealed on a point of law to the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania).

40 That court takes the view that the outcome of the appeal on a point of law depends, first of all, on which of Directive 94/19 and Directive 97/9 is capable of covering the funds transferred by Mr Raišelis to Snoras in respect of the subscription transaction at issue.

41 Should the Court of Justice hold that such funds fall, in principle, within the scope of Directive 97/9, the referring court, next, has doubts as to the correct translation of Article 2(2) of that directive into Lithuanian and the transposition of that provision in the Law on guarantee of deposits and investor compensation.

42 Finally, should the Court of Justice hold that funds such as those transferred by Mr Raišelis to Snoras in respect of subscription to the future bonds at issue fall, in principle, within the scope of Directive 94/19, the referring court is uncertain whether such funds fulfil the conditions necessary to be classified as 'deposits' within the meaning of Article 1(1) of that directive.

43 In those circumstances, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) In cases where a credit institution operates as an investment firm to which funds have been transferred for the acquisition of debt securities issued by the same credit institution, but the securities issue does not become effective and the securities are not transferred to the ownership of the person who has paid the funds, while the funds have already been debited from that person's bank account and transferred to an account opened in the name of the credit institution and are not repayable, and the national legislative intent in such a case is not clear with regard to the application of a specific protection scheme, can Article 1(1) of [Directive 94/19] and Article 1(4) of [Directive 97/9] be applied directly in order to determine the applicable coverage scheme, and is the intended use of the funds the decisive criterion for that purpose? Do those provisions of the directives display the necessary clarity, detail and unconditionality and confer rights on individuals, with the result that they may be relied on by individuals before national courts to found their claims for payment of compensation brought against the State body providing insurance cover?

(2) Should Article 2(2) of [Directive 97/9], which specifies the types of claims that are covered by the investor-compensation scheme, be understood and interpreted as also covering claims for repayment of funds that an investment firm owes to investors and that are not held in the name of the investors?

(3) If the answer to the second question is in the affirmative, does Article 2(2) of [Directive 97/9], which specifies the types of claims that are covered by the compensation scheme, display the necessary clarity, detail and unconditionality and confer rights on individuals, with the result that that provision may be relied on by individuals before national courts to found their claims for payment of compensation brought against the State body providing insurance cover?

(4) Should Article 1(1) of [Directive 94/19] be understood and interpreted as meaning that the definition of "deposit" under that directive also includes funds transferred from a personal account, with the person's consent, to an account opened in the name of a credit institution which is held at the same credit institution and is intended to pay for the future debt securities issue of that institution?

(5) Are Articles 7(1) and 8(3) of [Directive 94/19], taken together, to be understood as meaning that a deposit insurance payment up to the amount specified in Article 7(1) must be made to every person whose claim can be established before the date on which the determination or ruling referred to in Article 1(3)(i) and (ii) of [that directive] has been made?'

Procedure before the Court

44 By orders of the President of the Court of 15 February 2016, *Anisimovienė and Others* (C-688/15, not published, EU:C:2016:92), and of 13 April 2016, *Indėlių ir investicijų draudimas* (C-109/16, not published, EU:C:2016:267), the referring court's requests that the present references for a preliminary ruling be determined pursuant to the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice were rejected.

45 By decisions of 20 January and 29 February 2016, the President of the Court granted Case C-688/15 and Case C-109/16 priority treatment, in accordance with Article 53(3) of the Rules of Procedure.

46 Finally, on 29 February 2016, the President of the Court decided to join the two cases, in the light of the connection between them, for the purposes of the oral procedure and judgment.

Consideration of the questions referred

Questions 1 to 4 in Case C-688/15 and Questions 2, 4 and 5 in Case C-109/16

47 By its first four questions in Case C-688/15 and its second, fourth and fifth questions in Case C-109/16, which it is appropriate to examine first and together, the referring court asks, in essence, whether Directive 97/9, on the one hand, and Directive 94/19, on the other, must be interpreted as meaning that claims relating to funds which were debited from accounts that individuals held with a credit institution and credited to accounts opened in that institution's name, in respect of subscription to future transferable securities of which that institution was to be the issuer, in circumstances where owing to that institution's insolvency those securities were ultimately not issued, fall within the investor-compensation schemes provided for by Directive 97/9 and/or the deposit-guarantee schemes provided for by Directive 94/19.

48 In answering the questions referred, it is appropriate to interpret Directive 97/9 first and then Directive 94/19.

Directive 97/9 — investor-compensation schemes

49 As is apparent from recitals 4 and 8 of Directive 97/9, the investor-compensation schemes provided for by that directive are intended to cover money and instruments held by an investment firm in connection with its clients' investment operations and which, where such a firm is unable to meet its obligations to its clients, cannot be returned to them. In providing for such schemes, Directive 97/9 seeks both to protect investors and to ensure public confidence in the financial system.

50 In this context, the first indent of the second subparagraph of Article 2(2) of Directive 97/9 states that cover is to be provided by investor-compensation schemes for claims arising out of an investment firm's inability to repay, in accordance with the legal and contractual conditions applicable, money owed to or belonging to investors and held on their behalf in connection with investment business.

51 In order to establish whether claims such as those at issue in the main actions fall within the situations thereby covered, it is necessary to rule, first, on the concepts of 'investment firm' and 'investment business', referred to in the first indent of the second subparagraph of Article 2(2) of Directive 97/9, and, second, on a possible condition relating to the money concerned being entered in an account opened in the name of the investor invoking it.

– *'Investment firm' and 'investment business' within the meaning of Directive 97/9*

52 Pursuant to the first indent of the second subparagraph of Article 2(2) of Directive 97/9, the claims that must be covered by investor-compensation schemes relate to money owed to or belonging to an 'investor' and held on his behalf by an 'investment firm' in connection with one or more 'investment business' transactions.

53 Whilst Article 1(4) of Directive 97/9 defines an 'investor', for the purposes of the directive, as any person who has entrusted money or instruments to an 'investment firm' in connection with 'investment business', so far as concerns those last two terms Article 1(1) and (2) of the directive refers, respectively, to the definition provided by Directive 93/22 and to 'investment services' as defined by that directive and listed in the annex thereto.

54 Directive 93/22, which laid down the rules applicable to investment firms in the European Union, was, however, replaced from 1 November 2007 by MiFID. In accordance with Article 69 of MiFID, with effect from that date any reference to the terms defined in Directive 93/22 is to be construed as a reference to the equivalent terms defined in MiFID. In the present case, it is therefore necessary, for the purpose of interpreting Directive 97/9, to rely on the definitions of 'investment firm' and 'investment services and activities' in points 1 and 2 of Article 4(1) of MiFID.

55 It is apparent from point 1 of Article 4(1) of MiFID that an 'investment firm' is a legal person whose regular occupation or business is 'the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis'. Correspondingly, Article 1(2) of MiFID provides that some of its provisions are to apply to authorised credit institutions 'when providing one or more investment services and/or performing investment activities'.

56 In the light of the foregoing, in order to determine whether claims such as those of Ms Anisimovienė and Others and Mr Raišelis against Snoras are capable of being covered by the investor-compensation schemes provided for by Directive 97/9, it must be determined whether the money to which those claims relate was transferred to that credit institution in connection with one or more investment services or activities, within the meaning of MiFID, provided or performed by it.

57 In accordance with point 2 of Article 4(1) of MiFID, 'investment services and activities' means any of the services and activities listed in Section A of Annex I to that directive relating to any of the instruments listed in Section C of Annex I.

58 It is not in dispute that shares and bonds such as those which Snoras was proposing to issue are among the financial instruments listed in Section C of Annex I to MiFID. Point 1 of Section C refers to the category of 'transferable securities', that is to say, in accordance with point 18 of Article 4(1) of MiFID, securities which are negotiable on the capital market, including shares in companies and bonds.

59 So far as concerns the condition relating to Section A of Annex I to MiFID, the Lithuanian Government contends that a credit institution does not provide one of the services and does not perform one of the activities listed in that section when it distributes to the public, including its customers, financial instruments of which it is the issuer: in offering those instruments to the public, that institution acts not as a financial intermediary but as any company that issues securities.

60 It is true that, as the Lithuanian Government submits, the offering to the public by a credit institution of financial instruments issued by it is not, in itself, an 'investment service or activity' within the meaning of MiFID, as it is not referred to in Section A of Annex I to that directive.

61 However, the conclusion by a credit institution of subscription agreements with its clients relating to financial instruments issued by it entails, on the other hand, the provision of such investment services. As Mr Raišelis and the European Commission submit, the conclusion by a credit institution of such subscription agreements with its clients is covered, in particular, by the 'execution of orders on behalf of clients', referred to in point 2 of Section A of Annex I to MiFID.

62 In that regard, the concept of execution of orders 'on behalf of clients' ['au nom de clients'] must be regarded as having the same meaning as the concept of execution of orders 'on behalf of clients' ['pour le compte de clients'] the definition of which is set out in point 5 of Article 4(1) of MiFID. Those two concepts clearly relate, in MiFID, to one and the same service and, moreover, the vast majority of the language versions of that directive use the same term in both the annex and Article 4.

63 That said, in accordance with that definition, the concept of 'execution of orders on behalf of clients' refers to acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients.

64 It is not in dispute that a subscription agreement relating to financial instruments does constitute such an agreement. As to the fact that, in the context of the service of 'execution of orders', the agreement is concluded 'on behalf of clients', those words could admittedly suggest, in the abstract, that a credit institution cannot be regarded as providing that service to a client when its role in the conclusion of the agreement is not limited to that of an intermediary and it is also party to the agreement, as issuer of the financial instruments which the client wishes to acquire.

65 Those words must, however, be placed in their context. In particular, the service of execution of orders 'on behalf of' clients must be contrasted with the activity of dealing 'on own account', referred to in point 3 of Section A of Annex I to MiFID. In accordance with point 6 of Article 4(1) of MiFID, that activity consists in trading against proprietary capital resulting in the conclusion of transactions in one or more financial instruments.

66 It is apparent from this that MiFID is based on a clear division between, on the one hand, the conclusion of agreements for the purchase or sale of financial instruments by credit institutions and investment firms for their own benefit, employing their own capital, and, on the other, the conclusion of such agreements by those institutions and firms for the benefit of their clients, employing their clients' capital. Seen in this light, an agreement of such a kind must be regarded as being concluded by a credit institution 'on behalf of' clients, within the meaning of point 5 of Article 4(1) of MiFID and point 2 of Section A of Annex I thereto, where a client is the beneficiary thereof and employs his capital, even when that institution is also party to the agreement as issuer of the instruments concerned.

67 That interpretation is borne out by the objectives pursued by MiFID. In this connection, it should be noted that MiFID is intended, in particular, as is apparent from recitals 2, 5 and 44, to offer investors a high level of protection, to uphold the integrity and overall efficiency of the financial system and to ensure that transparency of financial transactions is achieved.

68 In the light of those objectives, it is irrelevant whether the financial instruments which a credit institution distributes to the public are issued by third-party companies or by the institution itself.

69 It follows from all those considerations that the conclusion by a credit institution of subscription agreements with its clients relating to future transferable securities issued by that institution constitutes an investment service, within the meaning of point 2 of Article 4(1) of MiFID. Consequently, claims relating to money transferred by those clients to that institution in connection with those agreements are capable of being covered by investor-compensation schemes, in accordance with the first indent of the second subparagraph of Article 2(2) of Directive 97/9.

70 That finding is not affected, in the present instance, by the argument put forward by the Lithuanian Government and IID that claims such as those invoked by Ms Anisimovienė and Others and Mr Raišelis cannot give rise to compensation on the basis of Directive 97/9 as they result from the materialisation of an investment risk, namely the insolvency of the issuer of the financial instruments which those individuals wished to acquire, a risk against which no protection is provided for by that directive.

71 It is true that, as the Advocate General has observed in point 134 of his Opinion, Directive 97/9 does not have the aim of protecting investors from the risks inherent in all investment. In particular, that directive is not intended to protect investors against the insolvency of the companies that have issued the financial instruments which they own. On that basis, the risk of insolvency of the issuer cannot be covered by that directive simply because, in the case of a given investment transaction, the issuer happens to be a credit institution or an investment firm.

72 In the present instance, however, Ms Anisimovienė and Others and Mr Raišelis never acquired ownership of the financial instruments in consideration for which they transferred the money at issue to Snoras, as the issue of those instruments did not take place before that credit institution was declared insolvent.

73 In such circumstances, it is not the loss of value of financial instruments held by an investor, or the inability of their issuer to repay the investor the money that they represent, that is at issue. On the other hand, what is at issue is the inability of a credit institution, acting as an investment firm, to supply such instruments to the clients wishing to acquire ownership of them and, therefore, to meet its obligations to them. This situation constitutes materialisation of the risk covered by Directive 97/9.

74 Moreover, that interpretation is consistent with the objectives pursued by Directive 97/9, in particular the objective of protecting investors against the risk of fraud, professional negligence or management error that would render the investment firm unable to return to its clients the money and securities belonging to them. In the light of those objectives, and as the Commission maintains, it is essential that the money which an investment firm or credit institution holds for an investor wishing to acquire financial instruments, before issue of those instruments, be protected, irrespective of whether those instruments are issued by a third-party company or by that institution.

– Absence of a condition relating to the money concerned being entered in an account opened in the investor's name

75 In the French language version of Directive 97/9, the first indent of the second subparagraph of Article 2(2) provides, as has been noted in paragraph 50 above, that cover is to be provided by investor-compensation schemes for claims arising out of an investment firm's inability to repay 'money owed to or belonging to investors and held on their behalf' ('*fonds leur étant dus ou leur appartenant et détenus pour leur compte*') in connection with investment business, in accordance with the legal and contractual conditions applicable.

76 However, the wording of that provision is appreciably more restrictive in the Lithuanian language version of Directive 97/9. In that version, the provision states that claims are covered that arise out of an investment firm's inability to repay 'money belonging to investors and held in their name' in connection with investment business, in accordance with the aforesaid conditions ('*kompensacija turi būti mokama pagal tuos reikalavimus, kurie kilo dėl investicinės įmonės nepajėgumo grąžinti pinigus, priklausančius investuotojams ir laikomus jų vardu ryšium su investicine veikla*').

77 Those words could imply that only claims relating to money held by an investment firm, or a credit institution acting as such, in accounts opened in the name of the investors must be covered by the investor-compensation schemes provided for by Directive 97/9.

78 That said, it is settled case-law that, where there is a divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, inter alia, judgments of 30 May 2013, *Genil 48 and Comercial Hostelera de Grandes Vinos*, C-604/11, EU:C:2013:344, paragraph 38, and of 17 May 2017, *ERGO Poist'ovňa*, C-48/16, EU:C:2017:377, paragraph 37 and the case-law cited).

79 In that regard, Directive 97/9 is intended, in particular, to protect investors against a situation where an investment firm is unable to meet its obligations to them. In accordance with that objective, Article 1(4) of Directive 97/9 defines the term 'investor' broadly as any person who has entrusted money or instruments to such a firm in connection with investment business. Likewise, recital 8 of the directive refers, generally, to 'money and instruments held by an investment firm in connection with an investor's investment operations'.

80 In view of those factors, the investor-compensation schemes provided for by Directive 97/9 cannot cover only claims relating to money held by investment firms or credit institutions acting as such in accounts opened in the name of the investors.

81 Consequently, the fact that claims such as those of Ms Anisimovienė and Others and Mr Raišelis relate to money entered not in accounts opened in their names but in accounts of which the credit institution at issue is the holder does not mean that the claims do not have to be covered by the investor-compensation schemes, in so far as the other conditions laid down in the first indent of the second subparagraph of Article 2(2) of Directive 97/9 are met.

82 In the light of all the foregoing, it must be concluded that claims such as those at issue in the main actions fall within the investor-compensation schemes provided for by Directive 97/9.

Directive 94/19 — deposit-guarantee schemes

83 In accordance with the second recital of Directive 94/19, the deposit-guarantee schemes provided for by that directive have the aim of protecting individuals against deposits in a credit institution becoming unavailable. In providing for such deposit-guarantee schemes, Directive 94/19 is intended, as its first and fourth recitals indicate, both to protect depositors and to ensure the stability of the banking system, by preventing massive withdrawal of deposits not only from a credit institution in difficulties but also from healthy institutions following a loss of public confidence in the soundness of the banking system.

84 In that context, the first subparagraph of Article 1(1) of Directive 94/19 provides that, for the purposes of that directive, a 'deposit' is 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.

85 In the present instance, it should be recalled, first, that the funds upon which Ms Anisimovienė and Others and Mr Raišelis base their claims were no longer credited to the accounts held by those individuals with Snoras on the day when deposits in it became unavailable. Second, the future transferable securities to which they had subscribed and of which that credit institution was to be the issuer were ultimately not issued before it was declared insolvent. In addition, as regards those transferable securities, whilst the bonds at issue in Case C-109/16 are among the 'debts evidenced by a certificate' envisaged in Article 1(1) of Directive 94/19, the shares at issue in Case C-688/15, on the other hand, are equity securities, with respect to which that directive provides no guarantee (judgment of 21 December 2016, *Vervloet and Others*, C-76/15, EU:C:2016:975, paragraphs 66 and 67).

86 Accordingly, it must solely be determined whether claims such as the claims of those individuals against Snoras can be brought within the second case of 'deposits' that is referred to in Article 1(1) of Directive 94/19, that is to say, the case of a 'credit balance which results from temporary situations deriving from normal banking transactions and which a credit institution must repay under the legal and contractual conditions applicable'.

87 It follows from the wording of that provision, read in the light of the objectives pursued by Directive 94/19 as noted in paragraph 83 above, that that case covers claims against a credit institution relating to depositors' funds which are involved in one or more 'normal banking transactions' and are in a temporary situation stemming from those transactions.

88 So far as concerns, first, the question whether claims such as those of Ms Anisimovienė and Others and Mr Raišelis against Snoras relate to funds involved in 'normal banking transactions', it is to be noted that Directive 94/19 does not define how those words should be understood and also does not make a reference to national law as regards their meaning.

89 According to the Court's settled case-law, the meaning and scope of terms for which EU law provides no definition must be determined by reference to their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part (judgment of 20 December 2017, *Erzeugerorganisation Tiefkühlgemüse*, C-516/16, EU:C:2017:1011, paragraph 50 and the case-law cited).

90 In their ordinary meaning, the words 'normal banking transactions' refer to transactions habitually carried out by credit institutions in the course of their business.

91 In accordance with the definition that is given, in identical terms, by Article 1(4) of Directive 94/19 and by Article 4(1)(a) of Directive 2006/48 relating to the taking up and pursuit of the business of credit institutions, the activity which is characteristic of such institutions is receiving deposits or other repayable funds from the public and granting credits for their own account.

92 That said, it is not in dispute that credit institutions habitually carry out, in connection with that activity, a wide range of operations, a list of which was drawn up by the EU legislature in Annex I to Directive 2006/48. In the light of the fact that Directive 94/19 and Directive 2006/48 both apply to credit institutions and that they pursue common objectives, in particular the protection of savings and depositors, the list of activities set out in that annex is relevant for interpreting the concept of 'normal banking transactions' within the meaning of Article 1(1) of Directive 94/19.

93 Point 7 of Annex I to Directive 2006/48 refers to trading for the credit institution's own account or for the account of its customers in, inter alia, transferable securities and point 8 refers to participation in securities issues and the provision of services related to such issues. Furthermore, entirely consistently with the explanation set out in paragraph 55 above, that annex also refers to 'investment services and activities' as defined by MiFID.

94 It follows that subscription to future transferable securities on behalf of its customers is among the transactions habitually carried out by credit institutions in the course of their business. Consequently, and in the light of the objectives pursued by Directive 94/19, as noted in paragraph 83 above, such a transaction must be classified as a 'normal banking transaction', within the meaning of Article 1(1) of Directive 94/19, when it is carried out by the credit institution, as in the main actions, by using funds of its depositors. Furthermore, and by analogy with the grounds set out in paragraphs 61 to 66 above, the fact that the credit institution is the issuer of the future transferable securities concerned does not affect that classification.

95 Second, as regards the question whether the transactions for subscribing to future transferable securities at issue in the main actions resulted in a 'temporary situation' within the meaning of Article 1(1) of Directive 94/19, it must be held that where, in the context of such transactions, funds of depositors of a credit institution are debited, before the transferable securities are issued, from their bank accounts and credited to accounts opened in that institution's name, in which they remain deposited until such time as they become the consideration for the acquisition of the transferable securities when the latter are issued, those funds are indeed in such a 'temporary situation'.

96 In the light of all the foregoing considerations, claims such as those at issue in the main actions fall within the deposit-guarantee schemes provided for by Directive 94/19, since they relate to a 'credit balance which results from a temporary situation deriving from normal banking transactions', within the meaning of Article 1(1) of that directive.

97 That interpretation is not affected, in Case C-688/15, by the fact that the bank account in which the funds upon which Ms Anisimovienė and Others base their claims are entered has been opened not with Snoras, but with another credit institution. In the case referred to in Article 1(1) of Directive 94/19 of a 'credit balance which results from temporary situations deriving from normal banking transactions', the location of the account in which the credit institution has entered the funds in the course of the normal banking transactions is not decisive.

98 Nor is that interpretation affected, in Case C-109/16, by the fact that the Republic of Lithuania has made use of the power provided for in Article 7(2) of Directive 94/19, read in conjunction with point 12 of Annex I thereto, in excluding debt securities issued by credit institutions from the deposit guarantee. That exclusion is irrelevant in Case C-109/16, in relation to which it should be recalled that the bonds had not been issued and not been acquired by Mr Raišelis on the date when Snoras was declared insolvent.

Conclusion

99 In the light of all the foregoing considerations, the answer to the first four questions in Case C-688/15 and the second, fourth and fifth questions in Case C-109/16 is that Directive 97/9, on the one hand, and Directive 94/19, on the other, must be interpreted as meaning that claims relating to funds which were debited from accounts that individuals held with a credit institution and credited to accounts opened in that institution's name, in respect of subscription to future transferable securities of which that institution was to be the issuer, in circumstances where owing to that institution's insolvency those securities were ultimately not issued, fall within both the investor-compensation schemes provided for by Directive 97/9 and the deposit-guarantee schemes provided for by Directive 94/19.

The first part of Question 1 in Case C-109/16

100 By the first part of its first question in Case C-109/16, which it is appropriate to examine second, the referring court asks, in essence, whether Article 2(3) of Directive 97/9 must be interpreted as meaning that, in a situation where claims fall within both the deposit-guarantee schemes provided for by

Directive 94/19 and the investor-compensation schemes provided for by Directive 97/9, and the national legislature has not directed such claims to a scheme under one or other of those two directives, the court dealing with the case may or must decide itself, on the basis of that provision, which scheme the holders of those claims may benefit from.

101 It is clear from Article 2(3) of Directive 97/9 that if, in a given Member State, a claim falls both within the investor-compensation schemes provided for by that directive and the deposit-guarantee schemes provided for by Directive 94/19, it falls to that Member State to direct that claim to a scheme under one or other of those directives 'as that Member State shall consider appropriate'. In addition, that provision states that no claim is to be eligible for compensation more than once under those directives.

102 Thus, in the case of the categories of claims which fulfil the conditions provided for both by Directive 94/19 and by Directive 97/9, Article 2(3) of Directive 97/9 does not lay down objective criteria for the purpose of directing them to a scheme under one or the other directive, but gives each Member State the task of deciding.

103 It follows that, if the court dealing with the case determines, first, that claims in respect of which compensation is sought fulfil both the conditions provided for by Directive 94/19 and those provided for by Directive 97/9 and, second, that national law does not contain a rule directing such claims to a scheme under one or the other directive, it cannot rely on Article 2(3) of Directive 97/9 as a basis for determining itself the scheme under which the holders of those claims must be compensated.

104 In a situation such as that envisaged in the previous paragraph, given that, first, the holders of those claims are legally entitled to invoke the protection that both Directive 94/19 and Directive 97/9 guarantee them but, second, in accordance with Article 2(3) of Directive 97/9, they cannot be compensated twice, it must be held that it falls to the holders of the claims to choose to be compensated by one or other of the schemes laid down to implement those directives.

105 In the light of all the foregoing considerations, the answer to the first part of the first question in Case C-109/16 is that Article 2(3) of Directive 97/9 must be interpreted as meaning that, in a situation where claims fall within both the deposit-guarantee schemes provided for by Directive 94/19 and the investor-compensation schemes provided for by Directive 97/9, and the national legislature has not directed such claims to a scheme under one or other of those directives, the court dealing with the case may not decide itself, on the basis of that provision, which scheme the holders of those claims may benefit from. On the contrary, in such a situation it falls to the holders of the claims to choose to be compensated by one or other of the schemes laid down in national law to implement those two directives.

The second part of Question 1 and Question 3 in Case C-109/16

106 By the second part of its first question, and its third question, in Case C-109/16, which it is appropriate to examine last and together, the referring court asks, in essence, whether Article 1(1) of Directive 94/19, and Article 1(4) and the second subparagraph of Article 2(2) of Directive 97/9, must be interpreted as being capable of being relied upon by individuals before the national courts in support of claims for compensation against a public undertaking entrusted, in a Member State, with the deposit-guarantee and investor-compensation schemes.

107 First, in the judgment of 25 June 2015, *Indėlių ir investicijų draudimas and Nemaniūnas* (C-671/13, EU:C:2015:418, paragraph 58), the Court held that the provisions of Directive 97/9 relating to delimitation of the funds and instruments covered by the compensation schemes for which it

provides, including Article 1(4) and the second subparagraph of Article 2(2), are sufficiently clear, precise and unconditional to be capable of being relied on directly by individuals before the national courts.

108 Article 1(1) of Directive 94/19 must be interpreted in the same way. That provision defines the various cases of 'deposits' covered by that directive with all the clarity, precision and unconditionality required in order for it to be capable of being applied directly in a dispute before the national courts, in particular in view of the interpretation provided by the Court in the present cases.

109 Second, it should be recalled that provisions of a directive that are unconditional and sufficiently precise may be relied upon by individuals not only against a Member State and all the organs of its administration, but also against organisations or bodies which can be distinguished from individuals and must be treated as comparable to the State, either because they are legal persons governed by public law that are part of the State in the broad sense, or because they are subject to the authority or control of a public body, or because they have been required, by such a body, to perform a task in the public interest and have been given special powers for that purpose (judgment of 10 October 2017, *Farrell*, C-413/15, EU:C:2017:7455, paragraphs 33 and 34).

110 In the present instance, it is apparent from the orders for reference in the two main actions that IID is, in Lithuanian law, a 'State undertaking', that is to say, a legal person governed by public law, so that it can without more be treated as comparable to the State for the purposes of the direct applicability of Directives 94/19 and 97/9.

111 In the light of all the foregoing considerations, the answer to the second part of the first question, and the third question, in Case C-109/16 is that Article 1(1) of Directive 94/19, and Article 1(4) and the second subparagraph of Article 2(2) of Directive 97/9, must be interpreted as being capable of being relied upon by individuals before the national courts in support of claims for compensation against a public undertaking entrusted, in a Member State, with the deposit-guarantee and investor-compensation schemes.

Question 5 in Case C-688/15

112 By its fifth question in Case C-688/15, the referring court asks, in essence, whether Directive 94/19 must be interpreted as meaning that the Member States are free to extend the guaranteeing of deposits to claims which fall, in principle, neither within that directive nor within Directive 97/9.

113 In the light of the answer to the preceding questions, there is no longer any need to answer the fifth question in Case C-688/15.

Costs

114 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 (Fifth Chamber) hereby rules:

1. **Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes, on the one hand, and 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, on the other, must be interpreted as meaning that claims relating to funds which were debited from accounts that individuals held with a credit institution and credited to accounts opened in that institution's name, in respect of subscription to future transferable securities of which that institution was to be the issuer, in circumstances where owing to that institution's insolvency those securities were ultimately not issued, fall within both the investor-compensation schemes provided for by Directive 97/9 and the deposit-guarantee schemes provided for by Directive 94/19.**

2. **Article 2(3) of Directive 97/9 must be interpreted as meaning that, in a situation where claims fall within both the deposit-guarantee schemes provided for by Directive 94/19 and the investor-compensation schemes provided for by Directive 97/9, and the national legislature has not directed such claims to a scheme under one or other of those directives, the court dealing with the case may not decide itself, on the basis of that provision, which scheme the holders of those claims may benefit from. On the contrary, in such a situation it falls to the holders of the claims to choose to be compensated by one or other of the schemes laid down in national law to implement those two directives.**

3. **Article 1(1) of Directive 94/19, as amended by Directive 2009/14, and Article 1(4) and the second subparagraph of Article 2(2) of Directive 97/9, must be interpreted as being capable of being relied upon by individuals before the national courts in support of claims for compensation against a public undertaking entrusted, in a Member State, with the deposit-guarantee and investor-compensation schemes.**

[Signatures]