

Request for an Advisory Opinion from the EFTA Court by Hæstiréttur Íslands, dated 15 December 2011, in the case of Aresbank SA v Landsbankinn hf., Fjármálaeftirlitið (the Financial Supervisory Authority) and Iceland

(Case E-17/11)

(2012/C 128/05)

A request has been made to the EFTA Court by a letter from Hæstiréttur Íslands (Supreme Court of Iceland), which was received at the Court Registry on 16 December 2011, for an Advisory Opinion in the case of Aresbank SA v Landsbankinn hf., Fjármálaeftirlitið (the Financial Supervisory Authority) and Iceland, on the following questions:

1. Can funds which bank A delivers to bank B, and which B must repay A on a predetermined date, together with interest which has been specially negotiated, be regarded as a deposit in the sense of Article 1(1) of Directive 94/19/EC on deposit-guarantee schemes, even though the funds, when they reach B, are not placed in a special account in A's name, B has not issued any special documents to A recording the receipt of the funds and has not paid premiums in respect of the funds to the Depositors' and Investors' Guarantee Fund and the funds have not been entered as a deposit in B's books? It is assumed in this question that banks A and B each hold operating licences as commercial banks in different States in the European Economic Area.
2. When the first question is answered, is it of any significance whether bank B's State of domicile has availed itself of the authorisation of Article 7(2) of Directive 94/19/EC on deposit-guarantee schemes (cf. item 1 of Annex I) to exclude deposits by financial institutions from deposit guarantee?
3. When the first question is answered, is it of any significance whether bank A, which holds a licence to operate as a commercial bank according to the laws of the contracting party in whose territory it operates, does not exercise the authorisation it has, under its operating licence, to accept deposits from the general public, but finances its operations by means of contributions from its owner and through the issue of financial instruments, subsequently re-lending that money on the so-called interbank market?