



## Reports of Cases

**Case C-127/14**

**Andrejs Surmačs**

**v**

**Finanšu un kapitāla tirgus komisija**

(Request for a preliminary ruling from the Augstākā Tiesa)

(Reference for a preliminary ruling — Directive 94/19/EC — Point 7 of Annex I — Deposit-guarantee scheme — Exclusion of certain depositors from the deposit-guarantee scheme — Exclusion of a ‘manager’)

Summary — Judgment of the Court (Second Chamber), 2 September 2015

1. *Freedom of establishment — Freedom to provide services — Credit institutions — Deposit-guarantee schemes — Directive 94/19 — Option, for the Member States, to exclude certain deposits or depositors from the guarantee — Conditions — Exhaustive nature of the list of exclusions set out in Annex I — Option, for the Member States, to exclude other categories of deposits or depositors — No such option)*

*(European Parliament and Council Directive 94/19, as amended by Directive 2009/14, Art. 3 and Annex I, point 7)*

2. *EU law — Interpretation — Methods — Literal, systematic and teleological interpretation*
3. *Freedom of establishment — Freedom to provide services — Credit institutions — Deposit-guarantee schemes — Directive 94/19 — Option, for the Member States, to exclude certain deposits or depositors from the guarantee — Exclusion of managers of credit institutions — Concept of a manager — Criteria for assessment*

*(European Parliament and Council Directive 94/19, as amended by Directive 2009/14, Art. 3 and Annex I, point 7)*

1. The deposits excluded under point 7 of Annex I to Directive 94/19 on deposit-guarantee schemes, as amended by Directive 2009/14, are listed exhaustively in that provision, so that the Member States cannot provide, in their national law, for other categories of depositors who are not covered, in terms of the functions carried out, by the concepts listed in that point, in order for the exclusion from the deposit-guarantee to be applied to them.

In that regard, the categories to which point 7 of Annex I to Directive 94/19 refers, in order to determine the deposits or depositors excluded from the guarantee, must be defined in functional terms. Consequently, the exclusion of the deposit-guarantee applies to persons who carry out functions which can be considered, having regard to national law and to the commercial practice of the Member State, as being covered by the concepts referred to in that point of that annex,

irrespective of the actual title of the functions accordingly carried out, which is for the national court to determine. Moreover, since the categories laid down in Annex I to Directive 94/19 constitute an exception to the general rule in Article 3 of that directive, they must be interpreted strictly.

(see paras. 24-26, operative part 1)

2. See the text of the decision.

(see para. 28)

3. Point 7 of Annex I to Directive 94/19 on deposit-guarantee schemes, as amended by Directive 2009/14, must be interpreted as meaning that the Member States may exclude from the guarantee laid down by that directive, as a manager, persons who, because of the function exercised within the credit institution, have, irrespective of the title of that function, a level of information and expertise which enables them to assess the actual financial situation and the risks associated with the activity of the credit institution.

The optional exclusion of the depositors listed in point 7 of Annex I to Directive 94/19 is based on the assumption that those persons have, in principle, a level of expertise and information relating to the credit institution to which they entrust their deposits which most depositors do not have. It is for the national court to determine whether, in the circumstances, the person concerned possesses that information and expertise and is in a situation to enable him to assess the actual financial situation and the risks associated with the activity of the credit institution. To that end, the national court will have to take into consideration all the relevant circumstances of the case and, in particular, the description of the position held by the person concerned, the activities which he actually carried out and the legal and factual relationships between him and the bank's administrative board. In that context, whether the person concerned is responsible for all of the bank's activity or only a specific part of it is only one of the elements to be taken into account in that determination.

(see paras 33, 37, 38, operative part 2)