Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

21 December 2016*

(Reference for a preliminary ruling — State aid — Aid implemented by the Kingdom of Belgium in favour of ARCO Group financial cooperatives — Deposit guarantee schemes — Directive 94/19/EC — Scope — Guarantee scheme protecting the shares of individual members, being natural persons, of cooperatives operating in the financial sector — Not included — Articles 107 and 108 TFEU — Commission decision declaring the aid incompatible with the internal market)

In Case C-76/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Grondwettelijk Hof (Constitutional Court, Belgium), made by decision of 5 February 2015, received at the Court on 19 February 2015, in the proceedings

Paul Vervloet,

Marc De Wit,

Edgard Timperman,

Godelieve Van Braekel,

Patrick Beckx,

Marc De Schryver,

Guy Deneire,

Steve Van Hoof,

Organisme voor de financiering van pensioenen Ogeo Fund,

Gemeente Schaarbeek,

Frédéric Ensch Famenne

v

Ministerraad,

intervening parties:

Arcofin CVBA,

* Language of the case: Dutch.

Arcopar CVBA,

Arcoplus CVBA,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Prechal, A. Rosas (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 April 2016,

after considering the observations submitted on behalf of:

— Mr Vervloet, Mr De Wit, Mr Timperman, Ms Van Braekel, Mr Beckx, Mr De Schryver, Mr Deneire and Mr Van Hoof, by K. Geelen, E. Monard and W. Moonen, advocaten,

— the Organisme voor de financiering van pensioenen Ogeo Fund, by J. Bourtembourg and F. Belleflamme, avocats,

— Arcofin CVBA, Arcopar CVBA and Arcoplus CVBA, by A. Verlinden, R. Martens and C. Maczkovics, advocaten,

— the Belgian Government, by J.-C. Halleux and C. Pochet, acting as Agents, and by S. Ryelandt and P. De Bock, advocaten

— the European Commission, by P.-J. Loewenthal, L. Flynn and A. Nijenhuis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 June 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns, first, the interpretation of Articles 2 and 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 2005/1/EC of the European Parliament and of the Council of 9 March 2005 (OJ 2005 L 79, p. 9) ('Directive 94/19'), and, secondly, the validity of Commission Decision 2014/686/EU of 3 July 2014 on State aid SA.33927 (12/C) (ex 11/NN) implemented by Belgium — Guarantee scheme protecting the shares of individual members of financial cooperatives (OJ 2014 L 284, p. 53) ('the decision of 3 July 2014'), as well as the interpretation of Article 108(3) TFEU.

2 The request has been made in proceedings between, on the one hand, Mr Paul Vervloet, Mr Marc De Wit, Mr Edgard Timperman, Ms Godelieve Van Braekel, Mr Patrick Beckx, Mr Marc De Schryver, Mr Guy Deneire and Mr Steve Van Hoof, the Organisme voor de financiering van pensioenen Ogeo Fund (the Ogeo Fund pension fund body), the Gemeente Schaarbeek (the commune of Schaerbeek, Belgium) and Mr Frédéric Ensch Famenne and, on the other hand, the Ministerraad (Council of Ministers, Belgium) concerning the compatibility of the scheme to guarantee the shares of recognised cooperatives operating in the financial sector, established under the first subparagraph of

Article 36/24(1), point 3, of the wet tot vaststelling van het organiek statuut van de Nationale Bank van België (Belgian National Bank Law) of 22 February 1998 (*Belgisch Staatsblad*, 28 March 1998, p. 9377), as amended by the koninklijk besluit betreffende de evolutie van de toezichtsarchitectuur voor de financiële sector (Royal Decree implementing the development of financial supervisory structures) of 3 March 2011 (*Belgisch Staatsblad*, 9 March 2011, p. 15623) ('the Law of 22 February 1998'), with the principle of equality guaranteed by the Belgian Constitution.

Legal context

EU law

Directive 94/19

3 Directive 94/19 was repealed by Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ 2014 L 173, p. 149). Since that repeal took effect on 4 July 2015, Directive 94/19 remains applicable to the case in the main proceedings.

4 Recitals 1, 8, 16 and 17 of Directive 94/19 stated:

'Whereas, in accordance with the objectives of the [EC] Treaty, the harmonious development of the activities of credit institutions throughout the Community 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;

…

Whereas harmonisation must be confined to the main elements of deposit-guarantee schemes and, within a very short period, ensure payments under a guarantee calculated on the basis of a harmonised minimum level;

…

Whereas, on the one hand, 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; whereas, on the other hand, it would not be appropriate to impose throughout the Community a level of protection which might in certain cases have the effect of encouraging the unsound management of credit institutions; whereas the cost of funding schemes should be taken into account; whereas it would appear reasonable to set the harmonised minimum guarantee level at EUR 20 000; whereas limited transitional arrangements might be necessary to enable schemes to comply with that figure;

Whereas some Member States offer depositors cover for their deposits which is higher than the harmonised minimum guarantee level provided for in this Directive; whereas it does not seem appropriate to require that such schemes, certain of which have been introduced only recently pursuant to [Commission Recommendation 87/63/EEC of 22 December 1986 concerning the introduction of deposit-guarantee schemes in the Community (OJ 1987 L 33, p. 16)], be amended on this point'.

5 Article 1(1) and (4) of that directive provided:

‘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.

Shares in United Kingdom and Irish building societies apart from those of a capital nature covered in Article 2 shall be treated as deposits.

Bonds which satisfy the conditions prescribed in Article 22(4) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (Ucits) [(OJ 1985 L 375, p. 3)] shall not be considered deposits.

…

…

(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’.

6 Article 2 of Directive 94/19 provided:

‘The following shall be excluded from any repayment by guarantee schemes:

…

— all instruments which would fall within the definition of “own funds” in Article 2 of Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions [(OJ 1989 L 124, p. 16)].

…’

7 The first subparagraph of Article 3(1) of Directive 94/19 provided:

‘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 [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)] may take deposits unless it is a member of such a scheme.’

Directives 77/780 and 89/299

8 Directives 77/780 and 89/299 were repealed and replaced by 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), which was repealed and replaced by 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), itself repealed and replaced, with effect from 1 January 2014, by Directive 2013/36/EU of the European Parliament and of the Council of 26 June

2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338).

9 Article 1 of Directive 77/780 was worded as follows:

'For the purposes of this Directive:

— "credit institution" means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account,

…'

10 Article 1(2) of Directive 89/299 provided:

'For the purposes of this Directive, "credit institutions" shall mean the institutions to which Directive [77/780, as last amended by Council Directive 86/524/EEC of 27 October 1986 (OJ 1986 L 309, p. 15)], applies.'

11 Article 2 of Directive 89/299 provided:

'(1) Subject to the limits imposed in Article 6, the unconsolidated own funds of credit institutions shall consist of the following items:

(1) capital within the meaning of Article 22 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)], in so far as it has been paid up, plus share premium accounts but excluding cumulative preferential shares;

…'

Directive 2006/48

12 Article 4 of Directive 2006/48, as amended, with effect from 7 December 2009, by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 302, p. 97) ('Directive 2006/48'), provided:

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

(1) "credit institution" means: … an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;

…'

13 The first paragraph of Article 57 of Directive 2006/48 provided:

'Subject to the limits imposed in Article 66, the unconsolidated own funds of credit institutions shall consist of the following items:

(a) capital within the meaning of Article 22 of Directive 86/635/EEC, in so far as it has been paid up, plus the related share premium accounts, it fully absorbs losses in going concern situations, and in the event of bankruptcy or liquidation ranks after all other claims;

…’

Directive 86/635

14 Article 22 of Directive 86/635, entitled ‘Liabilities: Item 9 — Subscribed capital’, is worded as follows:

‘This item shall comprise all amounts, regardless of their actual designations, which, in accordance with the legal structure of the institution concerned, are regarded under national law as equity capital subscribed by the shareholders or other proprietors.’

Belgian law

15 Article 36/24(1) of the Law of 22 February 1998 provides:

‘In the event of a sudden crisis on the financial markets or in the event of a serious threat of a systemic crisis, the King, with a view to limiting the extent or the consequences of that crisis, may, after obtaining the opinion of the bank:

(1) adopt complementary regulations or regulations overriding the Law of 9 July 1975 on the supervision of insurance undertakings, the Law of 2 January 1991 on the sovereign debt securities market and monetary policy instruments, the Law of 22 March 1993 relating to the status and control of credit institutions, the Law of 6 April 1995 relating to the status and supervision of investment undertakings, the Law of 2 August 2002 on supervision of the financial sector and financial services, Book VIII, Title III, Chapter II, Section III, of the Companies Code, and Royal Decree No 62 on the deposit of fungible financial instruments and the winding up of those instruments, coordinated by the Royal Decree of 27 January 2004;

(2) put in place a system for granting a State guarantee in respect of commitments entered into by the institutions, subject to the supervision prescribed by the aforementioned laws, that He shall determine, or grant the State guarantee in respect of certain claims held by those institutions;

(3) put in place, if necessary by means of regulations adopted in accordance with subparagraph 1, a system for granting the State guarantee with a view to refunding to members who are natural persons their share of the capital of cooperatives, recognised in accordance with the Royal Decree of 8 January 1962 laying down the conditions governing the recognition of national cooperative groupings and cooperatives, which are institutions subject to the supervision prescribed by the aforementioned laws or at least half of the assets of which are invested in such institutions;

…’

16 Article 3 of the koninklijk besluit tot uitvoering van de wet van 15 oktober 2008 houdende maatregelen ter bevordering van de financiële stabiliteit en inzonderheid tot instelling van een staatsgarantie voor verstrekte kredieten en andere verrichtingen in het kader van de financiële stabiliteit, voor wat betreft de bescherming van de deposito’s, de levensverzekeringen en het kapitaal van erkende coöperatieve vennootschappen, en tot wijziging van de wet van 2 augustus 2002 betreffende het toezicht op de financiële sector en de financiële diensten (Royal Decree implementing the Law of 15 October 2008 on measures to promote financial stability and introducing in particular a State guarantee on credits granted and other operations conducted in the context of financial stability, concerning deposit protection, life assurance and the capital of recognised cooperatives, and amending the Law of 2 August 2002 on supervision of the financial sector and financial services), of 14 November 2008

(*Belgisch Staatsblad*, 17 November 2008, p. 61285), as amended by the koninklijk besluit (Royal Decree) of 10 October 2011 (*Belgisch Staatsblad*, 12 October 2011, p. 62641) ('Royal Decree of 14 November 2008') provides:

'A fund called "Special protection fund for deposits, life assurance and the capital of recognised cooperatives" shall be set up in the Belgian Caisse des Dépôts et Consignations (Deposit and Consignment Office).

The King shall regulate the organisation and functioning of the fund referred to in paragraph 1.'

17 Article 4(3) of the Royal Decree of 14 November 2008 provides:

'Cooperatives, recognised in accordance with the Royal Decree of 8 January 1962 laying down the conditions governing the recognition of national cooperative groupings and cooperatives, which are institutions subject to the supervision referred to in Article 36/24(2) of the Law of 22 February 1998 or at least half of the assets of which are invested directly or indirectly in such institutions, may participate at their request.

The request referred to in the first paragraph must be sent by registered letter to the Minister of Finance.

…'

18 Article 1(1) of the koninklijk besluit tot toekenning van een garantie tot bescherming van het kapitaal van erkende coöperatieve vennootschapen (Royal Decree granting a guarantee to protect the capital of recognised cooperatives) of 7 November 2011 (*Belgisch Staatsblad*, 18 November 2011, p. 68640) ('Royal Decree of 7 November 2011') provides:

'In accordance with Article 4(3) of the Royal Decree of 14 November 2008, the request for protection of the capital of the following recognised cooperatives shall be granted:

— [Arcopar]

— [Arcofin]

— [Arcoplus]

…'

19 In accordance with Article 3 of the Royal Decree of 7 November 2011, the latter entered into force on 14 October 2011.

The decision of 3 July 2014

20 In recital 1 of the decision of 3 July 2014, the European Commission states that, by letter of 7 November 2011, 'the Belgian State notified the Commission that it had put in place a guarantee scheme … to cover the shares of individual shareholders in those recognised cooperatives which are either under prudential supervision of the National Bank of Belgium … or have invested at least half of their assets in an institution subject to such supervision ("financial cooperatives")'.

21 Recital 8 of that decision is part of the Commission's introduction to the description of the 'Genesis of the notified measure'. It states:

'On 30 September 2008, Dexia announced a capital increase of EUR 6.4 billion, subscribed by its existing shareholders (one of which was ARCO) and by the authorities of Belgium, France and Luxembourg. Before a Special Commission of the Belgian Parliament investigating the circumstances of the dismantlement of Dexia …, the Belgian Minister of Finance at the time State aid was granted to Dexia in 2008 explained that, following requests to intervene in favour of ARCO, there had already been in September/October 2008 a political decision to put the cooperative guarantee scheme in place. He explained that, in order to reach an agreement on Dexia, the government had to take at the same time a decision [in particular] on ARCO … It is also clear from the statements of the current Belgian Minister of Finance that the commitment was made in 2008 in order to ensure that ARCO agreed to take part in the rescue of Dexia …'

22 In recital 9 of that decision, the Commission states that, on 10 October 2008, the Belgian Government announced by way of press release from the services of the Minister of Finance that it had decided inter alia to make available a similar scheme to other financial products, in particular, shares in financial cooperatives.

23 Recital 10 of that decision is worded as follows:

'On 21 January 2009, the Prime Minister and the Minister of Finance confirmed in a joint press release the commitment given by the previous government to introduce a cooperative guarantee scheme. On the same day, ARCO put that press release of the Belgian Government on its website. By contrast, other financial cooperatives distanced themselves from the analogy between deposits and shares in financial cooperatives which underlies the cooperative guarantee scheme.'

24 In recitals 11 to 15 of the decision of 3 July 2014, the Commission describes the legislative process which led to the adoption of the notified measure as follows:

'(11) On 15 October 2008, the Belgian Parliament approved a law allowing the Belgian Government to take measures to preserve financial stability. On 14 November 2008, the Belgian State published a Royal Decree increasing the level of coverage under the Deposit Guarantee Scheme for credit institutions to EUR 100 000, while also introducing an insurance guarantee scheme for "branch 21" life [as]surance products. …

(12) On 14 April 2009, the Belgian State amended the Law of 15 October 2008, allowing the government to put in place by Royal Decree a system to guarantee the paid-up capital of individual shareholders in financial cooperatives. By Royal Decree of 10 October 2011 the Belgian authorities modified the Royal Decree of 14 November 2008. The Royal Decree of 10 October 2011 contains further details on the cooperative guarantee scheme.

…

(14) On 13 October 2011, the three cooperative undertakings of ARCO … applied to participate in the cooperative guarantee scheme. The Belgian Government approved that request by a Royal Decree of 7 November 2011. …

…'

25 In recital 80 et seq. of that decision, the Commission sets out its assessment of the measure notified.

26 As regards the determination of the beneficiary of that measure, the Commission notes, in recital 81 of that decision, that there is an important difference between the ARCO Group, including the recognised cooperatives Arcopar, Arcoplus and Arcofin (together 'the ARCO Group cooperatives'), which in 2001 became the main shareholder of Dexia, and the other financial cooperatives which are potentially eligible to participate in the cooperative guarantee scheme.

27 Recitals 82 to 84 of the decision of 3 July 2014 state:

'(82) From the description of the facts, it is clear that the cooperative guarantee scheme was from the beginning tailor-made for ARCO, which had run into trouble because of its investments in Dexia. ARCO was ultimately the only financial cooperative that applied to participate in the measure.

(83) In relation to the other financial cooperatives, the Commission notes that the cooperative guarantee scheme is a voluntary scheme, that the Council of Ministers had discretion over whether and if so on what conditions to admit an applicant financial cooperative to the cooperative guarantee scheme, that none of the other financial cooperatives applied to join the cooperative guarantee scheme and that some of them actively distanced themselves from it. The Commission also observes that no other financial cooperative had problems with its investments to the same extent as ARCO had with Dexia.

(84) Therefore, the Commission concludes that the only real beneficiary with economic activities from the cooperative guarantee scheme is ARCO.'

28 In recital 90 of that decision, the Commission concludes that the announcement and the implementation of the cooperative guarantee scheme have to be dealt with as a single measure, for the reasons set out in recitals 85 to 89 of that decision, as follows:

'(85) The Commission observes that the measure was decided and announced by the government on 10 October 2008. It is clear that the Belgian Government had made the decision to offer ARCO the benefit of a cooperative guarantee scheme at the same time as the measure in favour of Dexia was designed in 2008. Another press release of 21 January 2009 further detailed the measure and after that the legal transposition of the government's commitment began.

(86) The Commission takes note of the binding and unambiguous language in the press releases of 10 October 2008 and 21 January 2009, which used terms such as 'décidé' and 'l'engagement', thus creating a legitimate expectation as to their fulfilment.

(87) The press releases were also sent out via the official channels: the press release of 10 October 2008 was sent out by the services of the Minister of Finance, while the press release of 10 January 2009 was sent on behalf of the Prime Minister and the Minister of Finance. The repeated nature of the press communication strengthened the underlying message.

(88) The Commission notes that it was clear already at the time of the press release of 10 October 2008 that the cooperative guarantee scheme would be designed as an extension of the deposit guarantee scheme. The press release of 21 January 2009 contains further technical details. As soon as the press release of 21 January 2009 was published, ARCO put it on its website. The latter step was clearly taken with a view to reassuring its individual shareholders. Moreover the Commission notes the consistency of the measure over time given that the measure has not materially changed between the initial announcement on 10 October 2008 and the final Royal Decree.

(89) In its judgment [of 19 March 2013, *Bouygues and Bouygues Télécom* v *Commission and Others* and *Commission* v *France and Others*, (C-399/10 P and C-401/10 P, EU:C:2013:175)], the Court of Justice held that the announcement of a measure and the effective implementation can be analysed as one single intervention, if to do so is justified by the chronology and purpose of the announcement and the implementation and by the circumstances of the undertaking at the time of such intervention. In a similar manner, in the case of this measure the Belgian State decided and announced a measure on 10 October 2008, which was later implemented for the same purpose in respect of the originally intended beneficiary. Moreover, in its own decisions, the Commission has considered an announcement and an implementation to be one measure and considered an advantage to have been created as of the date of the announcement. Indeed, the current Belgian Minister of Finance qualified the measure in question as a commitment made in 2008.'

29 The examination of the existence of State aid, within the meaning of Article 107(1) TFEU, is set out in recitals 91 to 110 of the decision of 3 July 2014. Recital 99 thereof, relating to the condition of commitment of State resources, is worded as follows:

'(99) As regards the imputability of the measure to the Belgian State, it is clear that the cooperative guarantee scheme cannot be seen as a transposition of … Directive [94/19]. [That directive] only obliges Member States to introduce a deposit guarantee scheme for deposits of credit institutions and Article 2 of that Directive explicitly provides that all instruments that fall within the definition of own funds of credit institutions are excluded from repayment by deposit guarantee schemes. If a Member State decides to establish other repayment schemes guaranteeing other financial products, such a decision does not stem from Union law but is an initiative from the Member State itself …'

30 Recitals 101 to 107 of that decision, relating to the existence of a selective advantage, state:

'(101) The measure is also clearly selective. In the first place, it only applies to holders of financial cooperative shares and not to persons holding investment products issued by competing undertakings. Thus financial players which offered conservative bond or money market funds or capital-guaranteed mutual funds could not offer their clients a similar guarantee. The Belgian State argues that individual shares of financial cooperatives are in essence similar to deposits. However, a number of the elements which the Belgian State invoked refer to cooperatives in general not to financial cooperatives. In addition, the description of financial cooperative shares offered by the Belgian State does not contain references to relevant information, such as the risks of investing in those instruments, which are not characteristic of deposits.

(102) The selective nature of the measure can also be seen when the treatment of financial cooperatives is compared to other recognised cooperatives that are non-financial. The Belgian State relied on [the judgment of 8 September 2011, *Paint Graphos and Others* (C-78/08 to C-80/08, EU:C:2011:550),] to plead in favour of special treatment for individual shareholders of financial cooperatives. …

(103) The Commission considers that the argument of the Belgian State cannot succeed because the nature of the advantage conferred by the measure is qualitatively different from that which was examined by the Court in *Paint Graphos* [*and Others* (C-78/08 to C-80/08)]. The measure put in place by Belgium involves the creation of a positive benefit and not relief from a fiscal burden or from an obligation to pay a charge. As such, the standard three-part analysis which the Union courts have endorsed when examining whether a fiscal advantage or exemption from a levy is selective cannot be applied to the measure.

(104) In any event, even if the *Paint Graphos* [*and Others* (C-78/08 to C-80/08)] analysis could be applied to the measure, the latter's specific features are such that its selective nature would remain.

(105) First the Commission observes that *Paint Graphos* [*and Others* (C-78/08 to C-80/08)] refers to all producers' and workers' cooperatives, not to a relatively small subsector such as financial cooperatives. If, as Belgium claims, there should be special treatment for "genuine" cooperatives, that special treatment should apply to all recognised cooperatives. The limited focus of the measure on financial cooperatives only is therefore sufficient in itself to establish the selective nature of the measure.

(106) Second, the Commission observes that in the view of the Belgian State, financial cooperatives seemed to deserve additional privileges as of 10 October 2008. The Commission observes that prior to that date recognised cooperatives got a form of favourable treatment as a result of their special status in the form of a withholding tax exemption. The Commission does not take a view in the present Decision on whether that tax advantage is proportionate but it believes that there was no reason to introduce suddenly on 10 October 2008 additional compensation for, or protection of, companies which have the status of financial cooperatives.

(107) Finally, even if the Commission were to enter into a *Paint Graphos and Others* (C-78/08 to C-80/08, EU:C:2011:550)] analysis as proposed by Belgium, it believes that there is no justification for providing a 100% guarantee to individual shareholders of ARCO …, whose entities were limited liability companies. Because of the nature of such companies as determined by Belgium's general rules on company law, individual shareholders of ARCO should have been aware that they could lose their entire capital in case of a liquidation. Moreover, protecting 100% of all capital subscribed by the individual shareholders of financial cooperatives is not a proportionate measure … as those shareholders would be shielded from any risk, which would create an undue advantage for the undertakings of which they are shareholders.'

31 The examination of the distortion of competition and the fact that trade between Member States was affected is set out in recitals 108 and 109 of the decision of 3 July 2014. Those recitals are worded as follows:

'(108) The cooperative guarantee scheme provides financial cooperatives with an advantage that other players offering retail investment products and other non-financial recognised cooperatives do not have. Thanks to the measure ARCO has been able to preserve market share for a longer period of time. ARCO did not suffer from capital outflows, or they only occurred later and at a lower level than would have been the case in the absence of the measure. As a result, capital that would otherwise have been available for investment did not become available to those other players, which had to compete on their merits and could not rely on the cooperative guarantee scheme. Therefore, the cooperative guarantee scheme distorts competition.

(109) Where a Member State grants aid to an undertaking, internal activity may be maintained or increased as a result, so that the opportunities for undertakings established in other Member States to (further) penetrate the market are thereby reduced. As there are many international providers of investment products active on the Belgian market, the measure most definitely has an effect on Union-wide trade.'

32 On the basis of the analysis carried out in recitals 91 to 109 of that decision, the Commission concludes, in recital 110 of that decision, that the scheme to guarantee recognised cooperatives operating in the financial sector at issue in the main proceedings 'involves State resources, represents a selective advantage to ARCO, distorts competition and affects intra-Union trade' and that 'it therefore meets all the State aid criteria'. The Commission considers, also, that 'all of those elements

were in place at the latest when the Royal Decree of 10 October 2011 was adopted but the advantage created by the measure was already in existence as from the announcement by the Belgian authorities on 10 October 2008 that such a measure would be created'.

33 In recitals 111 to 128 of the decision of 3 July 2014, the Commission assesses the compatibility of that aid with the internal market. It concludes, in recital 129 of that decision, that that aid 'cannot be considered compatible with the internal market because it is neither appropriate nor necessary nor proportionate for the purposes of Article 107(3)(b) [TFEU] and it does not come within the scope of any other provision governing compatibility of State aid'.

34 In conclusion, the Commission notes, in recital 143 of that decision, that 'the cooperative guarantee scheme constitutes State aid in favour of Arcopar, Arcofin and Arcoplus that Belgium has unlawfully implemented in breach of Article 108(3) [TFEU]'. In the same recital, it considers that 'the Belgian State should withdraw the legislation underlying the cooperative guarantee scheme (in particular the Law of 14 April 2009 and the Royal Decree of 10 October 2011) and should recover the advantage from Arcopar, Arcofin and Arcoplus'.

35 Article 1 of the decision of 3 July 2014 declares 'the guarantee scheme unlawfully adopted by Belgium for the financial cooperatives of [the] ARCO [Group], … in breach of Article 108(3) [TFEU] … incompatible with the internal market'.

36 Article 2(1) of that decision requires the Kingdom of Belgium to recover that aid from the beneficiaries, according to the calculations provided by the Commission. Article 2(4) of that decision provides that 'Belgium shall continue to refrain from making any payments under the scheme referred to in Article 1 with effect from the date of notification of this decision'.

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

37 In the context of the financial crisis and in particular as part of the recapitalisation of the Belgian-French Dexia Bank, the Belgian authorities established, in accordance with Article 36/24 of the Law of 22 February 1998, a guarantee scheme providing for the repayment, by means of a Special protection fund for deposits, up to a maximum of EUR 100 000, of funds invested by natural persons in shares issued by financial cooperatives which were admitted to that guarantee scheme in the event of default on the part of those cooperatives. Pursuant to the Royal Decree of 14 November 2008, as amended by the Royal Decree of 10 October 2011, the cooperatives of the ARCO Group, one of Dexia's main shareholders, were admitted, by the Royal Decree of 7 November 2011, to that scheme.

38 Between December 2011 and January 2012, Mr Vervloet, Mr De Wit, Mr Timperman, Ms Van Braekel, Mr Beckx, Mr De Schryver, Mr Deneire and Mr Van Hoof, the Ogeo Fund pension fund body, the municipality of Schaarbeek and Mr Ensch Famenne brought actions before the Raad van State (Belgian Council of State) seeking to have the Royal Decrees of 10 October and 7 November 2011 annulled. To that end, they claimed, in essence, that those royal decrees infringe the principle of equality enshrined in the Belgian Constitution, in so far as they create a difference in treatment between the shareholders, being natural persons, of cooperatives, who are able to benefit from the guarantee scheme established in particular by those royal decrees, and the shareholders, being natural persons, of companies close to the financial sector, who are excluded from that scheme.

39 Since it considers that those royal decrees have their basis in Article 36/24 of the Law of 22 February 1998, that, therefore, they are part of the limitations which the Belgian legislature itself established and that the difference in treatment invoked results from a legislative norm, the Raad van State (Council of State) referred several preliminary questions to the Grondwettelijk Hof (Constitutional Court, Belgium) concerning the compatibility of that article with the Belgian Constitution.

40 The Grondwettelijk Hof (Constitutional Court) states, in the first place, that the Council of Ministers maintains, in order to justify that difference in treatment, that the shares of a recognised cooperative operating in the financial sector are similar to bank deposits in respect of which Directive 94/19 requires Member States to provide for a guarantee scheme. The ARCO Group cooperatives, which are intervening parties in the proceedings before the Raad van State (Council of State), claim that the first subparagraph of Article 36/24(1), point 3, of the Law of 22 February 1998 constitutes a transposition of that directive, in so far as the shares of cooperatives possess the characteristics of a savings product.

41 In those circumstances, the referring court considers that, in order to assess whether the Belgian legislature could, without infringing the principle of equality enshrined in the Belgian Constitution, empower the King to establish a scheme intended to guarantee, in addition to bank deposits, the value of shares held by a natural person, as a member, in a recognised cooperative operating in the financial sector, it is necessary to determine whether that legislature was empowered, or even required, to act in that manner in accordance with Article 2 of Directive 94/19, read in the light, as the case may be, of Articles 20 and 21 of the Charter of Fundamental Rights of the European Union ('the Charter') and of the general principle of equal treatment.

42 As regards, in the second place, the Commission decision of 3 July 2014, the Grondwettelijk Hof (Constitutional Court) notes that the assessment of the potentially selective nature of a measure, for the purposes of the application of Article 107 TFEU, presents certain similarities with the assessment of respect for the principle of equal treatment and non-discrimination guaranteed by the Belgian Constitution. That court states that the Belgian State and the ARCO Group cooperatives, which contest, before it, the validity of that decision, brought actions for annulment of that decision before the General Court of the European Union. The referring court points out that the arguments advanced before it by those companies are reaffirmed and developed in the context of the action for annulment brought by them before the General Court, to which those companies referred.

43 In that regard, those companies complain, according to the Grondwettelijk Hof (Constitutional Court), that the Commission infringes, in particular, Article 107(1), Article 108(2) and the second paragraph of Article 296 TFEU as well as the procedural rules governing the burden of proof and taking of evidence, by invoking two pleas relating to the validity of the part of the decision of 3 July 2014 which classifies the measure at issue as new State aid. They claim, first, that they did not benefit from a selective advantage and, secondly, that that measure is not capable of distorting or threatening to distort competition, or of affecting trade between Member States.

44 In the context of their first plea, those companies contest, first, the Commission's conclusion that they are beneficiaries of the State aid declared in the decision of 3 July 2014. The direct beneficiaries of the measure at issue are the natural persons, who are members of cooperatives operating in the financial sector and Dexia, in which the ARCO Group cooperatives invested. The aid granted to Dexia was authorised by the Commission.

45 The ARCO Group cooperatives contest, secondly, the Commission's conclusion that the statements of 10 October 2008 and 21 January 2009 and the Royal Decree of 7 November 2011 constitute a single intervention by the State. They note, in that regard, that the press release of 10 October 2008 does not specifically name them.

46 Those companies contest, thirdly, the Commission's conclusion that those companies obtain an advantage resulting from the fact that their members, being natural persons, had assurance, from 10 October 2008, that their shares would be protected by the Belgian State. The Commission has not adduced evidence substantiating that conclusion. The measure at issue did not grant the ARCO Group cooperatives a better access to the capital market. The statements made by the Belgian Government in 2008 and 2009 had no effect on the competitive position of those companies. Furthermore, the Commission cannot rely on presumption as to the existence of an advantage, since the guarantee granted by the Belgian State is neither unlimited nor free.

47 The ARCO Group cooperatives claim, fourthly, that the measure at issue is in no way selective. The Commission does not provide any justification for the comparison it makes between financial cooperatives, on the one hand, and non-financial cooperatives and other financial companies, on the other hand. It does not show a difference in treatment between undertakings in a comparable legal and factual situation and it infringed its duty to state reasons. The situation of financial cooperatives is specific in the light, in particular, of their shareholding structure, 99% of which consists of small investors, of the existence of an authorisation which eliminates any speculative endeavour, of the limitations on dividends capable of being received and of the tax treatment of those dividends, which is similar to that of income generated by savings deposits. In any event, a possible difference in treatment is justified by the nature or general scheme of the scheme at issue. In that regard, the ARCO Group cooperatives refer to the judgment of 8 September 2011, *Paint Graphos and Others* (C-78/08 to C-80/08, EU:C:2011:550).

48 Those companies claim, fifthly, that the decision of 3 July 2014 is inadequately reasoned. The Commission failed to give adequate reasons regarding the existence of an advantage.

49 In support of their second plea, the ARCO Group cooperatives contest, first, the Commission's conclusion that the measure at issue is capable of distorting competition. The Commission was not justified in considering that the capital of recognised cooperatives operating in the financial sector was available for providers of investment products or for recognised non-financial cooperatives. Secondly, those companies claim that the Commission did not substantiate its conclusion to the effect that trade between Member States is liable to be threatened.

50 Having regard to those arguments, the referring court questions the validity of the decision of 3 July 2014, in the light of Articles 107 and 296 TFEU.

51 That court considers, in the third place, that, in the event of the Court holding that that decision is invalid due to the Commission's failure to properly justify the classification of the scheme provided for in the first subparagraph of Article 36/24(1), point 3, of the Law of 22 February 1998 as new State aid, it is necessary to ensure that there is no other reasoning allowing that scheme to be classified as new State aid, which should have been notified to the Commission in accordance with Article 108(3) TFEU.

52 In the fourth place, the referring court considers that, in the event that the Court holds the decision of 3 July 2014 to be valid, it would be necessary to determine the date from which the State aid at issue was put into effect. That decision does not expressly identify that date. In that regard, that court notes, first, that it follows from that decision that the guarantee scheme at issue was notified to the Commission by letter of 7 November 2011 and, secondly, that the Royal Decree of 3 March 2011, under which the first subparagraph of Article 36/24(1), point 3, of the Law of 22 February 1998 was given force of law, entered into force on 1 April 2011. Although that State aid could not be regarded as having been put into effect on the date the Royal Decree of 3 March 2011 was adopted or entered into force, there is doubt as to whether the Belgian State failed to fulfil an obligation under Article 108(3) TFEU. The first subparagraph of Article 36/24(1), point 3, of the Law of 22 February 1998 only empowers the King to establish the guarantee scheme at issue at it is only by the Royal Decree of 7 November 2011 that such a guarantee was actually granted, on the basis of the Royal Decree of 10 October 2011. Moreover, there are doubts as to whether the Commission could conclude, in recital 110 of the decision of 3 July 2014, that all the elements constituting State aid were in place at the latest when the Royal Decree of 10 October 2011 was adopted, but that the advantage created by the measure at issue was already in existence as from the announcement made on 10 October 2008.

53 Finally, according to the Grondwettelijk Hof (Constitutional Court), it is not clear from the decision of 3 July 2014 that the Commission considered that the State aid at issue was put into effect on the date the Royal Decree of 3 March 2011 was adopted, the date on which it entered into force or on a date

prior to that adoption or entry into force, or indeed that that institution considered that that aid was put into effect on a date later than those events. In the first of those cases, it would be necessary to confirm that Article 108(3) TFEU precluded the adoption of that royal decree. In the second of those cases, it would be necessary to determine whether, in the light of the time which has elapsed between the entry into force of that royal decree and the adoption of the royal decrees implementing that royal decree, Article 108(3) TFEU precluded the adoption of the Royal Decree of 3 March 2011, in so far as that provision requires that the Commission be informed 'in sufficient time'.

54 In those circumstances, the Grondwettelijk Hof (Constitutional Court) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Must Articles 2 and 3 of Directive 94/19 …, where appropriate read in conjunction with Articles 20 and 21 of the Charter … and with the general principle of equality, be interpreted as meaning that:

(a) they impose an obligation on the Member States to guarantee the shares of recognised cooperatives operating in the financial sector in the same way as deposits;

(b) they preclude a Member State from entrusting to the body which is partially responsible for guaranteeing the deposits referred to in that directive the task of also guaranteeing, in an amount up to EUR 100 000, the value of the shares of the members, being natural persons, of a recognised cooperative operating in the financial sector?

(2) Is [the decision of 3 July 2014] compatible with Articles 107 and 296 TFEU in so far as it classifies the guarantee scheme which forms the subject of that decision as new State aid?

(3) In the event of a negative answer to the second question, must Article 107 TFEU be interpreted as meaning that a scheme concerning the State guarantee granted to the members, being natural persons, of recognised cooperatives operating in the financial sector, within the meaning of the first subparagraph of Article 36/24(1), point 3, of the Law of 22 February 1998, constitutes new State aid which must be notified to the … Commission?

(4) In the event of an affirmative answer to the second question, is Decision 2014/686 compatible with Article 108(3) TFEU if it is interpreted as holding that the State aid at issue was put into effect before 3 March 2011 or 1 April 2011 or on one or other of those dates, or, conversely, if it is interpreted as holding that the State aid at issue was put into effect at a later date?

(5) Must Article 108(3) TFEU be interpreted as precluding a Member State from adopting a measure, such as that contained in Article 36/24(1), point 3, of the Law of 22 February 1998, if that measure puts State aid into effect or constitutes State aid which has already been put into effect and that State aid has not yet been notified to the … Commission?

(6) Must Article 108(3) TFEU be interpreted as precluding a Member State from adopting, without prior notification to the European Commission, a measure, such as that contained in Article 36/24(1), point 3, of the Law of 22 February 1998, if that measure constitutes State aid which has not yet been put into effect?'

Consideration of the questions referred for a preliminary ruling

Admissibility of the questions referred

55 Some of the interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union who submitted observations to the Court have expressed doubts relating to the admissibility of the questions posed by the referring court, on the ground that those questions are not connected with the issue of the main proceedings. Since that dispute concerns only Belgian constitutional law, Directive 94/19 and Articles 107 and 108 TFEU do not relate to it.

56 In that regard, it must be borne in mind that, according to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgments of 15 January 2013, *Križan and Others*, C-416/10, EU:C:2013:8, paragraph 53, and of 5 March 2015, *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 34 and the case-law cited).

57 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments of 15 January 2013, *Križan and Others*, C-416/10, EU:C:2013:8, paragraph 54, and of 30 May 2013, *Halaf*, C-528/11, EU:C:2013:342, paragraph 29 and the case-law cited).

58 In this case, it is apparent from the order for reference that the Grondwettelijk Hof (Constitutional Court) is ruling on the question whether the first subparagraph of Article 36/24(1), point 3, of the Law of 22 February 1998 infringes the principle of equality and non-discrimination guaranteed by Articles 10 and 11 of the Belgian Constitution, in so far as it establishes a difference in treatment between the shareholders, being natural persons, of recognised cooperatives operating in the financial sector, and the shareholders, being natural persons, of other companies operating in that sector.

59 As pointed out, in essence, by the Advocate General in points 30 and 31 of her Opinion, it follows both from that decision and from the answer given by the referring court in response to the request for clarification sent to it by the Court under Article 101 of its Rules of Procedure, that that court considers that, before ruling on the compatibility with the Belgian Constitution of the guarantee of shares of individual members of recognised cooperatives operating in the financial sector, authorised by the first subparagraph of Article 36/24(1), point 3, of the Law of 22 February 1998, it must determine whether that provision is compatible with EU law. Therefore, should it prove that the guarantee scheme at issue in the main proceedings was imposed by Directive 94/19, a difference in treatment between the shareholders, being natural persons, of recognised cooperatives operating in the financial sector, on the one hand, and the shareholders, being natural persons, of other companies operating in that sector, on the other hand, could be justified. If, on the other hand, it should prove the case that EU law precludes such a guarantee scheme, on the ground that it is not compatible with the provisions of Directive 94/19 or with Articles 107 and 108 TFEU, a difference in treatment between those shareholders could not be justified.

60 In those circumstances, it is not obvious that the interpretation of EU law sought by the referring court bears no relation to the actual facts of the main action or its purpose.

61 Therefore, the referring court's questions must be declared admissible.

The first question

62 By its first question, the referring court asks, in essence, whether Articles 2 and 3 of Directive 94/19, read, as the case may be, in conjunction with Articles 20 and 21 of the Charter and the general principle of equal treatment, must be interpreted as requiring Member States to adopt a scheme to guarantee the shares of recognised cooperatives operating in the financial sector, such as that at issue in the main proceedings, and, in the event of an answer in the negative, whether they preclude a Member State from adopting such a scheme.

63 Under the first subparagraph of Article 3(1) of Directive 94/19, Member States are to ensure that within their territory one or more deposit-guarantee schemes are introduced and officially recognised.

64 In order to assess the scope of the obligation imposed by that provision on Member States so as to determine whether that obligation involves adopting a scheme to guarantee the shares of recognised cooperatives operating in the financial sector, such as that at issue in the main proceedings, it is necessary to examine whether such shares come within the material and personal scope of application of Directive 94/19.

65 As regards, in the first place, the material scope of application of Directive 94/19, it is apparent from the very title of that directive that it relates to 'deposit' guarantee schemes. Under the first subparagraph of Article 1(1) of that directive, 'deposit' means, for the purposes of that directive, first, 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, secondly, any debt evidenced by a certificate issued by that credit institution.

66 It is apparent from the file available to the Court that the shares of companies such as recognised cooperatives operating in the financial sector at issue in the main proceedings do not fall within that definition. As the Advocate General stated in point 40 of her Opinion, it appears that such shares are essentially participations in the own capital of the undertaking concerned, whereas the deposits referred to in Directive 94/19 are distinguished by the fact that they form part of the borrowed capital of a credit institution.

67 Moreover, although the deposits must, in accordance with the definition in the first subparagraph of Article 1 of Directive 94/19, be repaid to their depositors under the legal and contractual conditions applicable, the amount received, in the case of withdrawal, by the holder of shares in recognised cooperatives operating in the financial sector at issue in the main proceedings, reflects those undertakings' performance. The acquisition of such shares is thus more comparable to the acquisition of shares in companies, with respect to which no guarantees are provided by Directive 94/19, than to a payment made into a bank account.

68 Moreover, contrary to the apparent views of the Belgian Government, shares of recognised cooperatives operating in the financial sector, such as those at issue in the main proceedings, cannot be equated with the shares of British or Irish building societies, which are regarded as deposits for the purposes of the second subparagraph of Article 1(1) of Directive 94/19.

69 First, that special extension of the concept of 'deposit' relates by its very wording only to shares in British and Irish *building societies*, and not shares in recognised Belgian cooperatives operating in the financial sector. Nothing in the wording or in the origin of the second subparagraph of Article 1(1) of Directive 94/19 suggests that that provision is not intended to cover instruments other than those which are expressly referred to therein. Secondly, that provision expressly excludes from that

extension shares in those building societies which are of a capital nature. Shares in recognised cooperatives operating in the financial sector, such as those at issue in the main proceedings, constitute, as is apparent from paragraph 66 of the present judgment, a participation in the own capital of a company.

70 As regards, in the second place, the personal scope of application of Directive 94/19, it should be noted that both types of deposit referred to in the first subparagraph of Article 1(1) of that directive have in common the fact that they were made with a credit institution. Therefore, in order for it to be possible to regard the shares in recognised cooperatives operating in the financial sector as being 'deposits', within the meaning of Directive 94/19, it is, in any event, necessary that those undertakings can be regarded as 'credit institutions', within the meaning of that directive.

71 In that regard, Article 1(4) of Directive 94/19 defines the concept of 'credit institution' as covering undertakings the business of which is to receive deposits or other repayable funds from the public and to grant credits for their own account. It is not apparent either from the order for reference or from the observations submitted before the Court that those undertakings' activity consists in granting credits for their own account. It does not appear that such undertakings receive deposits from the public or grant regularly, like banks, credits for their own account.

72 It follows that shares in recognised cooperatives operating in the financial sector, such as those at issue in the main proceedings, come within neither the material nor the personal scope of application of Directive 94/19. Consequently, it cannot be concluded that the first subparagraph of Article 3(1) of Directive 94/19 imposes on Member States the obligation to adopt a scheme to guarantee shares in recognised cooperatives operating in the financial sector such as that at issue in the main proceedings.

73 That conclusion is not called into question in the light of the general principle of equal treatment, also raised by the referring court in its first question.

74 In that regard, the Court has already held that the principle of equal treatment is a general principle of EU law, enshrined in Articles 20 and 21 of the Charter, which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, inter alia, the judgment of 14 September 2010, *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission and Others*, C-550/07 P, EU:C:2010:512, paragraphs 54 and 55 and the case-law cited).

75 As is apparent from paragraphs 65 to 72 of the present judgment and as the Advocate General pointed out in point 49 of her Opinion, from the point of view of the subject matter of the EU-law deposit guarantee scheme, shares of recognised cooperatives operating in the financial sector, such as those at issue in the main proceedings, are different from deposits made with credit institutions, and that is so even though they may resemble traditional savings products in many respects, in particular due to their taxation, their regulation by the State and their popularity with the public.

76 It is therefore necessary to examine the question whether Directive 94/19 precludes Member States from adopting a guarantee scheme as regards shares in recognised cooperatives operating in the financial sector such as those at issue in the main proceedings.

77 In that regard, it must be noted that, in accordance with the second indent of Article 2 of Directive 94/19, all instruments which fall within the definition of 'own funds', as set out in Article 2 of Directive 89/299, are excluded from any repayment by guarantee schemes.

78 Article 2 of Directive 89/299 covers only the unconsolidated own funds 'of credit institutions', which are defined, in accordance with Article 1(2) of that directive, referring to Article 1 of Directive 77/780, as amended by Directive 86/524, as undertakings whose business is to receive deposits or other repayable funds from the public and to grant credits for their own account. That definition is, moreover, the same as that in Article 1(4) of Directive 94/19.

79 However, as is apparent from paragraph 71 of the present judgment, recognised cooperatives operating in the financial sector, such as those at issue in the main proceedings, do not come within that definition of credit institutions.

80 In that context, it should be noted that Article 57 of Directive 2006/48, which replaces Directive 89/299, covers also the unconsolidated own funds of 'credit institutions', which are also defined, in Article 4(1) of the first of those directives, in the same way as the credit institutions covered by Directive 94/19.

81 In those circumstances, the extension of a deposit guarantee scheme, such as that provided for under Belgian law, to shares in recognised cooperatives operating in the financial sector, such as those at issue in the main proceedings, does not appear, in itself, to be incompatible with the second indent of Article 2 of Directive 94/19.

82 That interpretation is supported by the fact that Directive 94/19, as is apparent from recitals 8, 16 and 17 thereof, merely provides for a minimum level of harmonisation in matters relating to deposit guarantees.

83 Although the provisions of Directive 94/19 do not, therefore, prevent Member States from extending to shares in recognised cooperatives operating in the financial sector the deposit-guarantee scheme provided for by their national legislation in accordance with those provisions, such an extension must not undermine the practical effectiveness of the deposit-guarantee scheme that that directive requires them to establish (see, to that effect, judgment of 23 November 2006, *Lidl Italia*, C-315/05, EU:C:2006:736, paragraph 48) or infringe the provisions of the FEU Treaty, in particular Articles 107 and 108 TFEU.

84 As was, in essence, stated by the Advocate General in point 58 of her Opinion, it cannot be ruled out that the practical effectiveness of the deposit-guarantee imposed by EU law is undermined where a Member State considerably encumbered its national deposit-guarantee scheme predominantly with risks not directly related to the purpose of that scheme. The higher the risks to be secured are, the more the deposit guarantee is watered down and the less the deposit-guarantee scheme is able, from the same resources, to contribute towards the attainment of the objective pursued by Directive 94/19, which, as is apparent from recital 1 thereof, is to protect savers in the event of the unavailability of deposits made in credit institutions and of increasing the stability of the banking system (see, to that effect, judgment of 2 September 2015, *Surmačs*, C-127/14, EU:C:2015:522, paragraph 21).

85 It is therefore for the referring court to determine whether the adoption of a guarantee scheme concerning shares in recognised cooperatives operating in the financial sector, such as those at issue in the main proceedings, is liable to undermine the practical effectiveness of the deposit-guarantee scheme provided for by Belgian legislation in accordance with Directive 94/19.

86 In that regard, the referring court must in particular take into account the fact that the adoption of such a scheme concerning shares in recognised cooperatives operating in the financial sector, such as those at issue in the main proceedings, benefit, in this case, a large number of small investors of the Belgian deposit-guarantee scheme, and the fact that the ARCO Group cooperatives, which were admitted to that guarantee scheme a short time before the guarantee provided for by that scheme was invoked, did not make any contribution in the past towards the financing of the scheme.

87 In the light of all the above considerations, the answer to the first question is that Articles 2 and 3 of Directive 94/19 must be interpreted as not requiring Member States to adopt a scheme to guarantee shares in recognised cooperatives operating in the financial sector, such as that at issue in the main proceedings, and as not precluding Member States from adopting such a scheme, in so far as that scheme does not undermine the practical effectiveness of the deposit-guarantee scheme that that directive requires Member States to establish, which is a matter to be determined by the referring court, and provided that it complies with the FEU Treaty, in particular with Articles 107 and 108 TFEU.

The second question

88 By its second question, the referring court asks, in essence, whether the decision of 3 July 2014 infringes Article 107 TFEU, first, and Article 296 TFEU, secondly, in so far as that decision classifies the scheme to guarantee shares in recognised cooperatives operating in the financial sector at issue in the main proceedings as new State aid.

89 As regards, first, Article 107 TFEU, it is settled case-law that classification as State aid, for the purposes of that provision, requires all the following conditions to be fulfilled. First, there must be intervention by the State or through State resources. Secondly, the intervention must be liable to affect trade between Member States. Thirdly, it must confer an advantage on the recipient. Fourthly, it must distort or threaten to distort competition (see, inter alia, judgments of 10 June 2010, *Fallimento Traghetti del Mediterraneo*, C-140/09, EU:C:2010:335, paragraph 31, and of 29 March 2012, *3M Italia*, C-417/10, EU:C:2012:184, paragraph 37).

90 Although the fact that the scheme to guarantee shares in recognised cooperatives operating in the financial sector at issue in the main proceedings is the responsibility of the State and that that scheme involves State resources is not contested in itself, the ARCO Group cooperatives and the Belgian Government consider, on the contrary, that the other three conditions allowing that guarantee scheme to be classified as 'State aid', are not satisfied. They contest the fact that that scheme confers a selective advantage on the ARCO Group cooperatives, that it affects trade between Member States and that it distorts competition. It is therefore necessary to examine whether those three conditions are satisfied, in order to determine whether the Commission could validly classify that scheme as 'State aid' in the decision of 3 July 2014.

91 As regards the condition relating to the advantage conferred by the scheme to guarantee shares in recognised cooperatives operating in the financial sector at issue in the main proceedings on the ARCO Group cooperatives, it should be noted, first, that, in recitals 82 to 84 of the decision of 3 July 2014, the Commission considered that ARCO was the only real beneficiary of the scheme.

92 According to the ARCO Group cooperatives, that scheme does not however benefit them, but seeks to confer an advantage on the individual members of recognised cooperatives operating in the financial sector and on the Dexia Bank, of which that group was one of the main shareholders and which the scheme to guarantee shares in recognised cooperatives operating in the financial sector at issue in the main proceedings was intended to help rescue.

93 In that regard, it must be observed that measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions are regarded as aid (see, inter alia, judgments of 8 May 2013, *Libert and Others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 83, and of 3 April 2014, *France* v *Commission*, C-559/12 P, EU:C:2014:217, paragraph 94 and the case-law cited).

94 As noted by the Advocate General in points 74 to 76 of her Opinion, there is no doubt that the ARCO Group benefits from the scheme to guarantee shares in recognised cooperatives operating in the financial sector at issue in the main proceedings, which the ARCO Group cooperatives moreover, unlike the other recognised cooperatives operating in the financial sector, themselves applied to join and, subsequently, derived the benefit thereof. It was that guarantee scheme alone which protected the ARCO Group from the imminent flight of private investors in that group and was thus able, at the same time, to participate, as main shareholder, in the recapitalisation of Dexia Bank.

95 The fact that other interested parties, namely the individual shareholders of the ARCO Group cooperatives and the Dexia Bank, were also able to benefit from certain advantages under that guarantee scheme does not mean that that group must not be regarded as the beneficiary thereof.

96 Secondly, it should be noted that Article 107(1) TFEU prohibits State aid 'favouring certain undertakings or the production of certain goods', that is to say, selective aid (judgments of 28 July 2011, *Mediaset* v *Commission*, C-403/10 P, not published, EU:C:2011:533, paragraph 36, and of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 54).

97 In the present case, although the Commission considered, in recital 101 of the decision of 3 July 2014, that the scheme to guarantee shares in recognised cooperatives operating in the financial sector at issue in the main proceedings is a 'clearly selective' measure, the ARCO Group cooperatives contest the selective character of that guarantee scheme.

98 In that regard, it follows from the Court's settled case-law that Article 107(1) TFEU requires an assessment of whether, under a particular legal regime, a national measure is such as to favour 'certain undertakings or the production of certain goods' in comparison with others which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation (judgments of 28 July 2011, *Mediaset* v *Commission*, C-403/10 P, not published, EU:C:2011:533, paragraph 36, and of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 55; of this date, *Commission* v *Hansestadt Lübeck*, C-524/14 P, paragraph 41, and of this date, *Commission* v *World Duty Free Group and Others*, C-20/15 P and C-21/15 P, paragraph 54).

99 As is apparent from paragraphs 65 to 83 of the present judgment, the Kingdom of Belgium extended the deposit-guarantee scheme provided for by Belgian legislation to shares in recognised cooperatives operating in the financial sector, such as those at issue in the main proceedings. The benefit of that guarantee scheme confers an economic advantage on those cooperatives in relation to other economic operators which offer for sale participations in their ownership in the form of shares without benefiting from such a guarantee scheme.

100 As pointed out by the Advocate General in point 81 of her Opinion, the recognised cooperatives operating in the financial sector, such as the ARCO Group cooperatives, are, in the light of the objective pursued by the deposit-guarantee scheme and consisting, as is apparent from recital 1 of Directive 94/19, in protecting savers in the event of the unavailability of deposits made in credit institutions and in increasing the stability of the banking system, in a factual and legal situation comparable, despite certain specificities resulting from the legal form of those cooperatives, to that of other economic operators, whether or not they are cooperatives, which offer for sale participations in their ownership in the form of shares, by making available to the public a form of capital investment which is not covered by the deposit-guarantee regime.

101 Consequently, the extension of the guarantee scheme provided for by Belgian legislation to shares in cooperatives operating in the financial sector has the effect of conferring an economic advantage on those cooperatives in relation to other economic operators which are, in the light of the objective pursued by that scheme, in a factual and legal situation comparable to that of those cooperatives and, therefore, has a selective character.

102 As regards the conditions relating to the effect of the scheme to guarantee the shares of recognised cooperatives operating in the financial sector at issue in the main proceedings on trade between Member States and the distortion of competition capable of being caused by that scheme, it should be noted that, for the purpose of categorising a national measure as State aid, it is not necessary to establish that the aid has a real effect on trade between Member States and that competition is actually being distorted, it being necessary only to examine whether that aid is liable to affect such trade and distort competition (judgments of 29 April 2004, *Italy* v *Commission*, C-372/97, EU:C:2004:234, paragraph 44; of 15 December 2005, *Unicredito Italiano*, C-148/04, EU:C:2005:774, paragraph 54; and of 19 March 2015, *OTP Bank*, C-672/13, EU:C:2015:185, paragraph 54).

103 In this case, it appears, first, that the Commission could consider, in paragraph 108 of the decision of 3 July 2014, that, as a result of the guarantee scheme at issue in the main proceedings, the ARCO Group was able to maintain its market share over a longer period and did not suffer from capital outflows, or they only occurred later and at a lower level than would have been the case if it had not benefited from that scheme and that, consequently, the other actors, which had to compete on their merits and could not rely on that guarantee scheme, were not able to benefit from capital that would otherwise have been available for investment.

104 Secondly, when aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in trade between Member States, that undertaking must be regarded as affected by that aid (see, inter alia, judgments of 10 January 2006, *Cassa di Risparmio di Firenze and Others*, C-222/04, EU:C:2006:8, paragraph 141, and of 8 May 2013, *Libert and Others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 77). In that regard, it is not necessary that the beneficiary undertaking itself be involved in trade between Member States. Where a Member State grants aid to an undertaking, internal activity may be maintained or increased as a result, so that the opportunities for undertakings established in other Member States to penetrate the market in that Member State are thereby reduced (judgment of 8 May 2013, *Libert and Others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 78 and the case-law cited).

105 The Court has also held that the fact that an economic sector, such as that of financial services, has been involved in a significant liberalisation process at EU level, enhancing the competition that may already have resulted from the free movement of capital provided for in the Treaty, may serve to determine that the aid has a real or potential effect on competition and affects trade between Member States (see, to that effect, judgments of 10 January 2006, *Cassa di Risparmio di Firenze and Others*, C-222/04, EU:C:2006:8, paragraphs 142 and 145, and of 5 March 2015, *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 51).

106 The fact, invoked by the Belgian Government and the ARCO Group cooperatives, that the value of shares held by individual members of cooperatives operating in the financial sector is generally low is not capable of ruling out that the guarantee scheme at issue in the main proceedings distorts competition and affects trade between Member States.

107 The effects of the guarantee scheme at issue in the main proceedings on trade between Member States must be assessed by reference to all of the shares of recognised cooperatives operating in the financial sector which it covers and not by reference to the protected capital of an individual private member of a cooperative. In any event, according to the Court's case-law, the relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected (judgments of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraph 81, and of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 68).

108 It follows that the Commission was entitled to consider that the conditions relating to the distortion of competition and the fact that trade between Member States is affected were satisfied in the present case.

109 As regards, in the second place, Article 296 TFEU, the referring court asks, in essence, whether the classification of the guarantee scheme at issue in the main proceedings as 'State aid', within the meaning of Article 107(1) TFEU, is sufficiently reasoned in the decision of 3 July 2014.

110 It is clear from the settled case-law of the Court that the statement of reasons required by Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (judgments of 15 April 2008, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraph 79, and of 5 March 2015, *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 44).

111 Since, in order for a measure to be categorised as 'State aid' for the purposes of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled, a Commission decision categorising a national measure as State aid must set out the reasons why that institution takes the view that the State measure in question fulfils all of those conditions (judgment of 5 March 2015, *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 45 and the case-law cited).

112 In the present case, the decision of 3 July 2014 fulfils those requirements.

113 It must be concluded that that decision is reasoned to the requisite degree in that it sets out clearly and unequivocally, in recitals 91 to 110 thereof, the reasons why the Commission concluded that each of the conditions referred to in Article 107(1) TFEU was fulfilled in this case.

114 In that context, it should be noted that it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, to that effect, judgments of 24 November 2005, *Italy* v *Commission*, C-138/03, C-324/03 and C-431/03, EU:C:2005:714, paragraph 55, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 94).

115 Moreover, as the Commission noted, it seems that some of the arguments raised by the ARCO Group cooperatives in support of an alleged failure to provide adequate reasons, such as they are set out in the order for reference, seek to challenge the merits of the decision of 3 July 2014 rather than the reasoning thereof. The same applies to the argument invoked by those cooperatives against the case-law cited by the Commission in support of the existence of an advantage, and to those presented by those cooperatives concerning the conditions relating to the distortion of competition and to the fact that trade between Member States is affected.

116 The Court has held that the obligation laid down in the second paragraph of Article 296 TFEU to state reasons is an essential procedural requirement that must be distinguished from the question whether the reasoning is well founded, which goes to the substantive legality of the measure at issue (see judgment of 17 September 2015, *Total* v *Commission*, C-597/13 P, EU:C:2015:613, paragraph 18 and the case-law cited).

117 It follows that examination of the second question has disclosed nothing capable of affecting the validity of the decision of 3 July 2014.

The third question

118 In view of the answer to the second question, there is no need to answer the third question.

The fourth to sixth questions

119 By its fourth to sixth questions, which should be considered together, the referring court asks, in essence, first, whether Article 108(3) TFEU must be interpreted as precluding the implementation of the guarantee scheme at issue in the main proceedings and, secondly, whether the decision of 3 July 2014 infringes that provision concerning the date on which the Commission considers that the State aid declared by it was put into effect.

120 It must be noted that the first sentence of Article 108(3) TFEU imposes on the Member States an obligation to inform the Commission of any plans to grant or alter aid. According to the last sentence of Article 108(3) TFEU, a Member State planning to grant aid may not put its proposed measures into effect until that procedure has resulted in a final decision by the Commission. The prohibition laid down by that provision is designed to ensure that aid cannot become operational before the Commission has had a reasonable period in which to study the proposed measures in detail and, if necessary, to initiate the procedure provided for in Article 108(2) TFEU (judgment of 5 March 2015, *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 57 and the case-law cited).

121 Article 108(3) TFEU thus establishes a prior control of plans to grant new aid (see judgments of 11 December 1973, *Lorenz*, 120/73, EU:C:1973:152, paragraph 2; of 21 November 2013, *Deutsche Lufthansa*, C-284/12, EU:C:2013:755, paragraph 25; and of 5 March 2015, *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 58).

122 It follows from the settled case-law of the Court that an aid measure which is put into effect in infringement of the obligations arising from Article 108(3) TFEU is unlawful (judgment of 5 March 2015, *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 59 and the case-law cited).

123 In this case, it is apparent from recital 1 of the decision of 3 July 2014 that the guarantee scheme at issue in the main proceedings was notified to the Commission only on 7 November 2011, that is to say on the date the application for capital protection by that guarantee scheme made by the ARCO Group cooperatives was accepted by the Royal Decree of that date.

124 A notification made at such a late stage cannot be regarded as being ‘in sufficient time’ within the meaning of Article 108(3) TFEU.

125 It is true that recital 110 of the decision of 3 July 2014, which states that the elements constituting State aid were in place at the latest when the Royal Decree of 10 October 2011 was adopted, but that the advantage created by the guarantee scheme at issue in the main proceedings was already in existence as from the announcement by the Belgian Government on 10 October 2008 that such a measure would be created, does not allow the date on which the Commission considers that the guarantee scheme at issue in the main proceedings was put into effect to be determined unequivocally.

126 However, without it being necessary to determine whether the State aid declared by the decision of 3 July 2014 was implemented immediately upon the announcement by the Belgian Government in a press release, on 10 October 2008, only by the Royal Decree of 7 November 2011 or, alternatively, on one of the days between those two dates mentioned by the referring court, it must be stated that, in so far as the beneficiaries of the guarantee scheme at issue in the main proceedings acquired the right to be admitted to that scheme at the latest in accordance with the Royal Decree of 7 November 2011, the notification of that scheme on that date took place, in any event, when that scheme was no longer in ‘draft form’ within the meaning of Article 108(3) TFEU. Consequently, as was stated by the Advocate General in point 118 of her Opinion, the principle of preliminary review by the Commission was infringed.

127 It follows that the Commission was entitled, in any event, to conclude, in recital 143 of the decision of 3 July 2014, that '[the Kingdom of] Belgium ha[d] unlawfully implemented [the guarantee scheme at issue in the main proceedings] in breach of Article 108(3) [TFEU]'.

128 In the light of all the above considerations, the answer to the fourth to sixth questions is that Article 108(3) TFEU must be interpreted as precluding a guarantee scheme such as that at issue in the main proceedings, in so far as the latter was put into effect in infringement of the obligations arising from that provision.

129 The examination of those questions has disclosed no factor of such a kind as to affect the validity of the decision of 3 July 2014.

Costs

130 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. **Articles 2 and 3 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 2005/1/EC of the European Parliament and of the Council of 9 March 2005, must be interpreted as not requiring Member States to adopt a scheme to guarantee shares in recognised cooperatives operating in the financial sector, such as that at issue in the main proceedings, and as not precluding Member States from adopting such a scheme, in so far as that scheme does not undermine the practical effectiveness of the deposit-guarantee scheme that that directive requires Member States to establish, which is a matter to be determined by the referring court, and provided that it complies with the FEU Treaty, in particular with Articles 107 and 108 TFEU.**

2. **The examination of the questions referred for a preliminary ruling by the Grondwettelijk Hof (Constitutional Court, Belgium) has disclosed nothing capable of affecting the validity of Commission Decision 2014/686/EU of 3 July 2014 on State aid SA.33927 (12/C) (ex 11/NN) implemented by Belgium — Guarantee scheme protecting the shares of individual members of financial cooperatives.**

3. **Article 108(3) TFEU must be interpreted as precluding a guarantee scheme such as that at issue in the main proceedings, in so far as the latter was put into effect in infringement of the obligations arising from that provision.**

[Signatures]