



Reports of Cases

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

Proceedings brought by Agnieška Anisimovienė and Others

(Requests for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas)

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

Summary — Judgment of the Court (Fifth Chamber), 22 March 2018

- Freedom of establishment — Freedom to provide services — Markets in financial instruments — Directive 2004/39 — Investment services or activities — Execution of orders on behalf of clients — Concept — Conclusion of a subscription agreement relating to financial instruments — Included*
(European Parliament and Council Directive 2004/39, as amended by Directive 2006/31, Art. 4(1), points 2 and 5, and Annex I, Section A, point 2)
- Freedom of establishment — Freedom to provide services — Markets in financial instruments — Directive 2004/39 — Investment services or activities — Concept — Conclusion by a credit institution of subscription agreements with its clients relating to future transferable securities — Included — Credit institution having the status of issuer of the transferable securities — Irrelevant*
(European Parliament and Council Directive 2004/39, as amended by Directive 2006/31, Art. 4(1), point 2)
- Freedom of establishment — Freedom to provide services — Credit institutions — Deposit-guarantee and investor-compensation schemes — Directives 94/19 and 97/9 — Scope — Claims relating to funds which are transferred by individuals to a credit institution in respect of subscription to future transferable securities issued by that institution and are entered in an account opened in its name — Included*
(European Parliament and Council Directives 94/19, as amended by Directive 2009/14, and 97/9)

4. *Freedom of establishment — Freedom to provide services — Credit institutions — Deposit-guarantee and investor-compensation schemes — Directives 94/19 and 97/9 — Instruments falling simultaneously within both directives — Type of claim not directed by a Member State to a scheme under one of the directives — Choice of the applicable scheme a matter for the holder of the claim*

(European Parliament and Council Directives 94/19, as amended by Directive 2009/14, and 97/9, Art. 2(3))

5. *Freedom of establishment — Freedom to provide services — Credit institutions — Deposit-guarantee and investor-compensation schemes — Directives 94/19 and 97/9 — Public undertaking entrusted with those schemes — Ability to rely on the directives against that undertaking — Scope*

(Art. 288, third para., TFEU; European Parliament and Council Directives 94/19, as amended by Directive 2009/14, Art. 1(1), and 97/9, Arts 1(4) and 2(2), second subpara.)

1. See the text of the decision.

(see paras 62-64)

2. See the text of the decision.

(see paras 66-69)

3. Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes, on the one hand, and Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, as amended by Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009, on the other, must be interpreted as meaning that claims relating to funds which were debited from accounts that individuals held with a credit institution and credited to accounts opened in that institution's name, in respect of subscription to future transferable securities of which that institution was to be the issuer, in circumstances where owing to that institution's insolvency those securities were ultimately not issued, fall within both the investor-compensation schemes provided for by Directive 97/9 and the deposit-guarantee schemes provided for by Directive 94/19.

(see para. 99, operative part 1)

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

(see para. 105, operative part 2)

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

(see para. 111, operative part 3)