



Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 17 March 2015¹

Case C-127/14

Andrejs Surmačs

v

Finanšu un kapitāla tirgus komisija

(Request for a preliminary ruling from the Augstākā tiesa (Latvia))

(Directive 94/19/EC — Deposit-guarantee scheme — Exclusion of certain depositors from deposit-guarantee schemes — Point 7 of Annex I to Directive 94/19/EC — Terms ‘director’ and ‘manager’ — Significant influence)

1. By this request for a preliminary ruling, the Augstākā tiesa, the Supreme Court of the Republic of Latvia, has referred to the Court for a preliminary ruling three questions concerning the interpretation of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes² and, specifically, point 7 of Annex I thereto.

2. That directive, which has recently been recast by Directive 2014/49/EU³ providing for its gradual repeal,⁴ ensured a harmonised minimum level of guarantee for bank deposits in the event of such deposits being unavailable as a result of a crisis in a credit institution. As part of those rules, point 7 of Annex I to Directive 94/19 provided that Member States may exclude from the guarantee deposits made by, inter alia, directors and managers of the credit institution concerned.

3. The questions referred in this case arose in the context of a dispute between Mr Andrejs Surmačs and the Finanšu un kapitāla tirgus komisija (Financial and Capital Market Commission; ‘the FKTK’) concerning the latter’s decision to exclude from the guarantee the deposits made by Mr Surmačs, who held the post of Vice-President of a failed Latvian bank. These questions essentially concern the interpretation of the two abovementioned terms ‘director’ and ‘manager’. Although the new rules laid down in Directive 2014/49 no longer provide that the Member States may exclude those categories of persons from the deposit guarantee, the interpretation of those terms has a relevance of systematic nature, in that the rules on deposit guarantees now form part of the Single Rulebook for Financial Services and constitute an element of the European Banking Union.⁵

1 — Original language: Italian.

2 — OJ 1994 L 135, p. 5.

3 — 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).

4 — See, in particular, Articles 20 and 21 of Directive 2014/49.

5 — The comprehensive and detailed Single Rulebook for Financial Services (Single Rulebook), of which the rules on deposit guarantee now contained in Directive 2014/49 form part, constitutes one of the three pillars of the European Banking Union, together with the Single Supervisory Mechanism and the Single Resolution Mechanism. In that regard, see recitals 11 and 12 of the preamble to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

I – Legal background

A – EU law

4. It is clear from the first and second recitals of the preamble to Directive 94/19 that, by introducing a deposit-guarantee scheme in all the Member States and harmonising the relevant guarantees as from a minimum amount, that directive was intended to promote the harmonious development of the activities of credit institutions throughout the Union by eliminating any restrictions of freedom of establishment and the freedom to provide services, while increasing the stability of the banking system and the protection of savers.⁶

5. To that end, Article 3 of Directive 94/19 provides that each Member State is to ensure that within its territory one or more deposit-guarantee schemes are introduced. Under Article 7(1) and (1a) of that directive, Member States are to ensure that the coverage for the aggregate deposits of each depositor is set at EUR 100 000 in the event of deposits being unavailable.⁷

6. The deposit-guarantee scheme introduced by Directive 94/19 provides for certain exceptions. That follows from the 16th recital which, on the one hand, states that the minimum guarantee level prescribed in that directive should not leave too great a proportion of deposits without protection, but, on the other, makes it clear that it would not be appropriate to impose a level of protection that might in certain cases have the effect of encouraging the unsound management of credit institutions.

7. Furthermore, according to the 18th recital of the preamble to that directive, ‘a Member State must be able to exclude certain categories of specifically listed deposits or depositors, if it does not consider that they need special protection, from the guarantee afforded by deposit-guarantee schemes’.

8. From that point of view, on the one hand, Article 2 of Directive 94/19 excludes certain types of deposits from any repayment by guarantee schemes⁸ and, on the other, Article 7(2) of that Directive allows Member States to provide that certain depositors or deposits are excluded from the guarantee.

9. The list of exclusions referred to in Article 7(2) of Directive 94/19 appears in Annex I thereto. According to point 7 of Annex I, ‘[d]eposits by a credit institution’s own directors, managers, members personally liable, holders of at least 5% of the credit institution’s capital, persons responsible for carrying out the statutory audits of the credit institution’s accounting documents and depositors of similar status in other companies in the same group’ can be excluded from guarantee.

10. Article 3(1) of 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/EC⁹ contains the following definitions:

‘(7) “management body” means an institution’s body or bodies, which are appointed in accordance with national law, which are empowered to set the institution’s strategy, objectives and overall direction, and which oversee and monitor management decision-making, and include the persons who effectively direct the business of the institution;

6 — See judgment in *Germany v Parliament and Council*, C-233/94, EU:C:1997:231, paragraph 13, and also p. 2 of the explanatory memorandum on the Proposal for a Council Directive on deposit-guarantee schemes ((COM(92) 188), OJ 1992 C 163, p. 6).

7 — Article 7 was thus amended by Article 1(3) of Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (OJ 2009 L 68, p. 3).

8 — This relates, more specifically, to deposits made by other credit institutions on their own behalf and for their own account, deposits which would fall within the definition of ‘own funds’ and deposits arising out of transactions in connection with which there has been a criminal conviction for money laundering.

9 — OJ 2013 L 176, p. 338.

- (8) “management body in its supervisory function” means the management body acting in its role of overseeing and monitoring management decision-making;
- (9) “senior management” means those natural persons who exercise executive functions within an institution and who are responsible, and accountable to the management body, for the day-to-day management of the institution;

...’

11. Title 1, paragraph 2, of the Guidelines on the assessment of the suitability of members of the management body and key function holders issued by the European Banking Authority¹⁰ for the purposes of Article 16 of Regulation 1093/2010/EU¹¹ (‘European Banking Authority Guidelines’) contains the following definitions:

- ‘a. “management body” means the governing body (or bodies) of a credit institution, comprising the supervisory and the management function, which has ultimate decision-making authority and is empowered to set the credit institution’s strategy, objectives and overall direction;
- b. “management body in its supervisory function” means the management body acting in its supervisory function and overseeing and monitoring management decision-making;
- c. “member” means a proposed or appointed member of the management body;
- d. “key function holders” are those staff members whose positions give them significant influence over the direction of the credit institution, but who are not members of the management body. Key function holders might include heads of significant business lines, EEA branches, third country subsidiaries, support and internal control functions.’

B – *National law*

12. Latvia’s deposit-guarantee scheme is governed by the Noguldījumu garantiju likums (Law on the deposit-guarantee scheme), which transposes Directive 94/19 into Latvian law.

13. Article 3(1) of that law establishes the amount of guaranteed compensation in respect of a deposit made in a credit institution, which is the amount of the deposit, up to a limit of EUR 100 000.

14. Article 17 of that law lists the exclusions from the payment of the guaranteed compensation. Under paragraph 4 of that article, in the version in force since 19 June 2009, the guaranteed compensation is not to be paid in respect of ‘[d]eposits made by persons holding a significant shareholding in a credit institution, by members of the supervisory board or the administrative board or by its president, by the director of the internal audit service, the institution’s auditor and other employees of the credit institution who carry out and are responsible for the planning, management and supervision of its activity’.

10 — EBA/GL/2012/06, of 22 November 2012

(<http://www.eba.europa.eu/documents/10180/106695/EBA-GL-2012-06--Guidelines-on-the-assessment-of-the-suitability-of-persons-.pdf>).

11 — Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ 2010 L 331, p. 12).

II – Facts, national procedure and questions referred

15. The request for a preliminary ruling made by the national court relates to proceedings arising from the failure of the Latvian bank Latvijas Krājbanka. By a decision of 21 November 2011, the FKTK suspended the provision of financial services by Latvijas Krājbanka and removed the members of the supervisory board and the administrative board.

16. At that time Mr Andrejs Surmačs, the applicant before the national court, held the post of Vice-President of international and financial law matters at the bank. Wherefore, by decision of 5 January 2012, the FKTK refused, pursuant to Article 17(4) of the Latvian law on deposit guarantees, to pay Mr Surmačs guaranteed compensation on the grounds that he was an employee of the credit institution responsible for the planning, management and supervision of that institution's activity.

17. Mr Surmačs challenged the decision of the FKTK before the Administratīvā apgabaltiesa (Regional administrative court), contending that his post was merely an honorary position, devoid of any decision-making power whatsoever, and claiming therefore that the court should order the FKTK to recognise his right to the guaranteed compensation.

18. However, by judgment of 24 January 2013 the Administratīvā apgabaltiesa dismissed Mr Surmačs' claims. It held, in the first place, that given the meaning of the title 'vice-president' in Latvian, anyone holding such a post must be regarded as an employee with managerial duties. In the present case, that is demonstrated by the fact that Mr Surmačs was directly subordinate to the highest-ranking officer of the credit institution, namely: the President of the Board of Directors. In the second place, the Administratīvā apgabaltiesa pointed out that, in the professional classification in the list of professions, Mr Surmačs' post was included in the category 'Managing directors and company managers' whose principal tasks include the determining and establishing of the principal trend of the company's activities and the planning, management and coordination of that activity. In the third place, it remarked that it could be concluded from the responsibilities mentioned in the description of the post held by Mr Surmačs that the tasks entrusted to him included the management and structuring of the credit institution's activity in relation to its international operations and to others of its important financial operations.¹² Therefore, although Mr Surmačs' post was not included in the list of posts which entitled their holder to sign documents, the Administratīvā apgabaltiesa considered that there could be no doubt that, in view of the powers attached to the post, he could influence the activity of the credit institution.

19. Mr Surmačs brought an appeal on a point of law against the judgment of the Administratīvās apgabaltiesa before the court making the reference, claiming that the court of first instance had not examined in detail the nature of the obligations, rights and responsibilities of his post and that the Administratīvā apgabaltiesa had applied the Latvian law without taking into account of Directive 94/19, in particular, point 7 of Annex I thereto. The national court considers that the action gives rise to some uncertainty as to the interpretation of Directive 94/19.

20. That court asks, in the first place, whether the list of persons linked to the institution, who can be refused payment of the guaranteed compensation for the purposes of point 7 of Annex I to Directive 94/19, must be regarded as exhaustive.

¹² — More specifically, that description indicated that the principal responsibilities inherent in the post of vice-president were planning, coordinating and supervising the provision of legal assistance in relation to financial law and international operations, other important financial operations for the bank and new financial products, and advising the bank's supervisory board and administrative board in relation to matters of financial law and producing relevant opinions and drafting legal opinions on particularly complex legal issues.

21. In the second place, the national court asks whether exclusion from payment of the guaranteed compensation provided for in point 7 of Annex I to Directive 94/19 is admissible only in respect of those persons who are responsible for the credit institution's activity in its entirety or also in respect of those persons whose responsibility is limited to a specific function or branch of the credit institution's activity. In the second case, it would then be necessary, in the view of the national court, also to clarify whether the nature of that branch of activity or of the function of the person concerned must be taken into consideration in the sense that, in view of the rationale of the provision at issue, only those persons whose actions could substantially influence the results of the credit institution's activities and, consequently, favour or give rise to the unavailability of deposits, may be refused payment of the guaranteed compensation.

22. In the third place, the national court considers that it is essential to clarify whether, for the purposes of applying the exception for the persons referred to in point 7 of Annex I to Directive 94/19, it is necessary for the employee to have full responsibility in relation to the area of activity entrusted to him, or whether it is sufficient for him to have the mere possibility of influencing to a greater or lesser extent the institution's approach in that area. In that second case, it would be necessary to determine what criteria can be used to establish that the influence exercised by an employee on the activities of the credit institution is sufficiently substantial for him to be regarded as a 'manager' within the meaning of that provision, and whether only the rights and obligations of the position held by the employee, as referred to in the job description, are relevant for that purpose, or whether, the influence in practice, or even informally, of the person in question on the credit institution or on the areas of its activity exerted by the employee in question can also be relevant in the light of all the circumstances.

23. In the light of those considerations, the Augstākā tiesa decided to stay the main proceedings and to refer the following three questions to the Court for a preliminary ruling:

- '(1) Must point 7 of Annex I to Directive 94/19 EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes be interpreted as meaning that the list set out there of persons who must be regarded as linked to the credit institution in question, and who must be refused the right to guaranteed compensation, is exhaustive?
- (2) May a person who, according to the description of his position, has the power to plan, coordinate and supervise a branch of the credit institution's activity or the execution of a function, but not the credit institution's activity in its entirety, and who is not entitled to give orders or make binding decisions on behalf of other persons be regarded as a manager of a credit institution or as any other of the persons mentioned in point 7 of Annex I to the Directive? Must the nature of that branch of the credit institution's activity or of that function be taken into account?
- (3) Must point 7 of Annex I of the Directive be interpreted as meaning that a Member State may refuse payment of the guaranteed compensation to a person who, having regard to the rights and obligations set out in the description of his position, cannot be regarded as a manager but who has de facto a considerable influence over the credit institution's managers or the persons personally responsible for that institution? Can merely informal influence, deriving from the authority, skills or knowledge of the person in relation to the credit institution's activity, be relevant in that context?'

III – Proceedings before the Court of Justice

24. The order for reference was received at the Court Registry on 18 March 2014. Written observations were submitted by Mr Surmačs, the Latvian Government and the Commission.

IV – Legal assessment

A – *The first question referred for a preliminary ruling*

25. By Question 1, the national court essentially asks whether the list in point 7 of Annex I to Directive 94/19, which sets out certain categories of depositors whom the Member States may exclude from the deposit guarantee in the event of deposits being unavailable, is exhaustive, or whether the Member States may extend the scope of such exclusions to other persons not referred to in that list.

26. In my view, various factors militate in favour of a restrictive approach's being adopted to the list of depositors contained in point 7 of Annex I to Directive 94/19.

27. In the first place, it must be pointed out that, as stated expressly in the explanatory memorandum accompanying the proposal for a directive presented by the Commission, on the basis of which Directive 94/19 was then adopted, the 'list contained in Annex I is limitative and Member States may exclude from the guarantee only the institutions and persons mentioned therein, with any other exclusion contravening the Directive'.¹³

28. In the second place, Article 7(2) of Directive 94/19 and Annex I thereto, to which that provision refers, must be interpreted in the light of the 18th recital thereto, mentioned at point 7 of this Opinion, which undoubtedly refers to the exceptions laid down in that provision. According to that recital, Member States may exclude from the guarantee afforded by deposit-guarantee schemes certain categories of *specifically listed* deposits or depositors.

29. That recital does not expressly state that the list of deposits or depositors in Annex I to Directive 94/19 is exhaustive. It is, however, to be concluded from the fact that they must be specifically listed that the Member States must, if they should opt to exclude certain categories of deposits or depositors from the guarantee, set out in their national legislation the categories of deposits and depositors to which the exclusion applies exhaustively.¹⁴ The fact that provision is made for the list of exclusions in national implementing legislation to be exhaustive, in my view, also militates clearly in favour of an interpretation that the Member States may not deviate from the classification of deposits and depositors in respect of which the directive provides for possible exclusion from the guarantee, and may not extend the subjective scope of that exclusion.

30. In the third place, it is to be noted that, as has been pointed out, Directive 94/19 provides for the introduction in the Member States of one or more deposit-guarantee schemes in pursuit of the twofold aim of eliminating all restrictions of the right of establishment and the freedom to provide services, and of protecting savers and ensuring the stability of the banking system.

31. Article 7(2) of Directive 94/19 confers on the Member States the option of providing for the exclusion or reduction of the abovementioned guarantee in respect of certain deposits or depositors referred to in Annex 1 thereto. Therefore, that provision constitutes a derogation with regard to the introduction of the deposit guarantee provided for in Directive 94/19. Unlike Article 2, which provides for certain compulsory exclusions, Article 7(2) of Directive 94/19 leaves to the Member States the choice whether or not to provide for exclusions from the guarantee in respect of the depositors referred to in Annex I.

¹³ — See p. 18 of the explanatory memorandum on the proposal for a directive referred to in footnote 6 above.

¹⁴ — Although the other language versions could give rise to different interpretations, the reading of the 18th recital that I am proposing is, in my view, particularly clear from a reading of the German version of Directive 94/19 which states explicitly that the categories of deposits and depositors *must be specifically listed* ('ausdrücklich genannt werden müssen') clearly in national implementing legislation. The Dutch version, which uses the terms 'in een limitatieve lijst vermelde', confirms that interpretation.

32. According to a criterion for interpretation regularly applied by the Court in its settled case-law, derogations from, or extensions or exceptions to, a principle or rule of general application laid down by EU law are to be interpreted strictly.¹⁵

33. In accordance with that criterion for interpretation, because the provision that confers on the Member States the right to provide for exclusion or reduction of the guarantee afforded by deposit-guarantee schemes constitutes a derogation from the introduction of such a guarantee scheme by the directive, it has to be interpreted strictly.

34. It is, therefore, in my view, clear from the foregoing considerations that the list of depositors referred to in point 7 of Annex I to Directive 94/19 must be interpreted as meaning that the Member States may not extend the scope of the derogation from the deposit guarantee to persons not included in the classification of depositors referred to therein.

35. However, as will become clearer when Questions 2 and 3 are assessed, the terms appearing in point 7 of Annex I to Directive 94/19, and specifically, as regards the case pending before the national court, the terms ‘director’ and ‘manager’ are concepts of EU law and must be construed in functional terms. They must, therefore, be coordinated with the terms used in the national law of every Member State and in business practice. To that effect, exclusion from the guarantee can apply to persons who hold a position whose title in national law or commercial practice differs from that of ‘director’ or ‘manager’, provided that the functions specifically exercised can be regarded as covered by the definition of those terms. On the other hand, it will not be possible to extend the exclusion from the guarantee to persons who are not functionally covered by those terms. It is for the national court to carry out an assessment in order to determine whether or not a person is covered, irrespective of the title of his post, by the terms ‘director’ or ‘manager’.

36. Thus, a person who, under national law or according to national business practice or that of the credit institution at issue, holds, as for example in the case before the national court, the post of vice-president, could well fall within the exclusion from the protection provided for in Directive 94/19 if, from a functional point of view, his position can be regarded as covered by the terms ‘director’ or ‘manager’ within the meaning of that directive.

37. In conclusion, the answer to Question 1 referred by the Augstākā tiesa must be that the list set out in point 7 of Annex I to Directive 94/19 is exhaustive in the sense that national legislation may not extend the scope of the exclusion from the deposit guarantee to persons who, irrespective of the title of their position, are not functionally covered by the terms set out in that list.

B – *The second and third questions*

38. By the second and third questions, which in my view can be dealt with together, the national court essentially asks the Court to clarify what level and scope of the responsibility in managing the credit institution the senior management thereof must have in order to be regarded as persons to whom the exclusion from the deposit guarantee provided for in point 7 of Annex I to Directive 94/19 applies. The national court asks a series of specific questions which, in its view, are decisive to the resolution of the case before it, concerning the objective scope, the level and nature of that responsibility, and the way in which that responsibility must be established.

15 — See to that effect, judgments in *Honyvem Informazioni Commerciali*, C-465/04, EU:C:2006:199, paragraph 24, and *Pfeiffer and Others*, C-397/01 to C-403/01, EU:C:2004:584, paragraph 52 and the case-law cited.

39. The point must first be made that, although the national court does not expressly say so, it is clear from the wording of the questions and the case file that the scope of Questions 2 and 3 must be construed as limited to the interpretation, among the various categories of depositors provided for in point 7 of Annex I to Directive 94/19, only of the categories of ‘director’ and ‘manager’. The other categories of depositors referred to in point 7 of Annex I to Directive 94/19 are not relevant to the resolution of the case before the national court.

40. Neither Annex I to Directive 94/19 nor any other provision thereof defines the terms ‘director’ or ‘manager’. In those circumstances, it is necessary to give an interpretation of those two terms that allows their meaning and scope to be clarified.

41. In that regard, it must first of all be observed that, by Directive 94/19, the Union legislature sought, on the basis of the principle of minimum harmonisation,¹⁶ to harmonise the main elements of deposit-guarantee schemes,¹⁷ among them the system of exclusions from the guarantee for certain categories of depositors, which include those referred to in point 7 of Annex I to that directive.

42. It must also be noted that the Court has consistently held that from the necessity of ensuring both uniform application of EU law and also the principle of equality it follows that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union.¹⁸

43. It follows from those considerations that the terms ‘director’ and ‘manager’ in point 7 of Annex I to Directive 94/19 have their own autonomous dimension in EU law and do not necessarily correspond to the meaning which they have in national law.

44. Because those are concepts of EU law, for the purposes of their interpretation account must be taken, according to settled case-law, not only of the wording of the provision in which they appear but also of the context in which they are used and of the aims of the legislation of which they are part.¹⁹ The origins of a provision of EU law may also provide information relevant to its interpretation.²⁰

45. As regards, firstly, the literal interpretation of the two terms in question, it should be noted that in Italian the term ‘amministratore’ (director) refers to the power/function of administration and can be construed, in common legal parlance, as a term referring to a member of the board of directors of a company. The term ‘dirigente’ (manager), on the other hand, refers to the power/function of management and refers in general to an employee who predominantly performs managerial functions in an undertaking.

46. However, both the term ‘director’ and the term ‘manager’ can have meanings with different nuances in the various languages of the Union. To that effect, the Latvian Government has, for example, emphasised in its observations that the term used in the Latvian version of the directive to indicate ‘manager’, that is to say, the term ‘vadītājs’, has a broader scope than the corresponding terms used in the English version (manager) and the French version (dirigeants).

16 — See recital 6 of the preamble to Directive 2014/49.

17 — See the ninth recital of the preamble to Directive 94/19.

18 — See judgment in *Deckmyn and Vrijheidsfonds*, C-201/13, EU:C:2014:2132, paragraph 14 and the case-law cited.

19 — See judgment in *Circul Globus București*, C-283/10, EU:C:2011:772, paragraph 32. To the same effect, see also judgments in *Partena*, C-137/11, EU:C:2012:593, paragraph 56, and *Koushkaki*, C-84/12, EU:C:2013:862, paragraph 34 and the case-law cited therein.

20 — See judgment in *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 50.

47. In my view, it therefore follows, and without its being necessary subsequently to develop the textual analysis, that a literal interpretation of those two terms cannot provide a conclusive answer as to their scope. A teleological and systematic construction must, therefore, be placed on the provision which contains those two terms, regard being had to the origins of that provision.

48. As regards the teleological interpretation of the provision in question, it is clear from the 18th recital that the logic that warrants conferring on the Member States the option of excluding certain depositors from the guarantee afforded by deposit-guarantee schemes is to be found in the fact that those deposits or depositors do not require particular protection. It may be inferred from the Commission proposal on the basis of which Directive 94/19 was adopted that the idea underlying the exclusions in question was not to afford the deposit guarantee to persons whom it would be difficult to regard as warranting protection because not sufficiently competent or well informed.²¹

49. It is also clear from the 16th recital in the preamble to Directive 94/19, mentioned at point 6 of this Opinion, that the 1994 legislature considered that the minimum level of guarantee prescribed in the directive must not impose a level of protection that could have the effect of encouraging the unsound management of credit institutions. As the Commission pointed out, that recital highlights how the possible exclusion of certain categories of persons, and in particular the management staff of credit institutions, was, in the context of Directive 94/19, connected with the aim of avoiding moral hazard. The underlying idea was that directors or managers of credit institutions who could rely on the fact that, if there were problems relating to the bank's activities, their deposits would, at all events, be protected, albeit only to a limited amount, could have been induced to take decisions that were riskier and, therefore, potentially prejudicial to the credit institution.²²

50. In that connection I must, however, point out that, although it is certainly true that this is the rationale underlying the legislature's choice in 1994 to provide for the deposits of managers and directors of credit institutions to be excluded from the guarantee, the 2014 legislature appears, in new Directive 2014/49, to have chosen no longer to pursue that objective. That new provision does not lay down either an exclusion from the guarantee for those categories of depositors or a reference, in the preamble thereto, to the necessity of pursuing that objective. In that context, although it is clear that Directive 2014/49 is *ratione temporis* not applicable to the case before the national court, I consider that the fact that that objective is no longer referred to in the new directive indicates that in the EU scheme that objective was not pursued with any great assiduity even before the adoption of Directive 2014/49.

51. As regards the systematic interpretation, the provision concerning deposit-guarantee schemes now has to be considered to constitute one piece of an EU regulatory framework for banks and other financial institutions.²³ More particularly, it now constitutes one element of the European Banking Union.²⁴ On the other hand, Directive 94/19 formed part of a broader regulatory framework, as is demonstrated by the references to various other directives contained in some of the recitals in the preamble thereto.²⁵ The interpretation of the terms 'director' and 'manager' must therefore take account of the legislative system of which they are part.²⁶ The fact that certain provisions of that legislative system were not in force at the material time does not, in my view, prevent those provisions being used as means of interpretation.

21 — See p. 18 of the explanatory memorandum on the proposal for a directive referred to in footnote 6 above.

22 — See, in that regard, also the considerations contained in paragraph 167 of the judgment in Case E-16/11 *EFTA Surveillance Authority v Iceland* [2013] EFTA Ct. Rep. 4.

23 — See judgments in Case E-16/11 *EFTA Surveillance Authority v Iceland*, cited in footnote 22, paragraph 128, and Case E-17/11 *Aresbank S.A. v Landsbankinn hf., Fjármálaeftirlitið and Iceland* [2013] EFTA Ct. Rep. 916, paragraphs 86 to 95.

24 — See point 3 and footnote 5 above.

25 — See, for example, the fifth and sixth recitals of the preamble to Directive 94/19.

26 — In that regard, it should be noted that part 4 of Annex I to Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ 1997 L 84, p. 22) provides for an exception identical to that provided for in point 7 of Annex I to Directive 94/19.

52. In my view, an assessment of EU law on credit institutions shows that two classifications of positions comparable to that of director and manager within the meaning of Directive 94/19 are to be considered worthy of coverage. Thus, on the one hand, EU law lays down certain provisions concerning the management body of credit institutions, in terms both of its management function, properly speaking, and of its supervisory and monitoring function. On the other, that law also concerns persons who, although not members of the management body of the credit institution, occupy within it key roles in its management and are accountable to the management body for their actions.

53. It is precisely in that sense that Directive 2013/36 laid down specific rules concerning both the management body and persons forming part thereof, defined as ‘senior management’.²⁷ That directive provides, for example, for ‘governance’ arrangements which apply to both the management body and senior management.²⁸ That directive also provides, again by way of example, that in the case of a proposed acquisition of a qualifying holding in a credit institution, the competent authorities are, in order to ensure the sound and prudent management of the credit institution in which an acquisition is proposed, to assess, *inter alia*, the reputation, knowledge, skills and experience of both the members of the management body and of the senior management who will direct the business of the credit institution as a result of the proposed acquisition.²⁹

54. From the same point of view, the European Banking Authority set out the criteria and processes which the credit institutions and competent authorities are required to follow in assessing the suitability of the members, proposed and appointed, of the management body of a credit institution in terms of management and supervision functions, but which also concern the assessment of ‘key function holders’, as defined in the Guidelines of the European Banking Authority.

55. In that legal context and in the light of the definitions contained in both Article 3(7), (8) and (9), of Directive 2013/36 and the Guidelines of the European Banking Authority, I consider that members of the company bodies of the credit institution with the task of performing the latter’s management or supervisory activities may come within the scope of the term ‘director’ within the meaning of Directive 94/19.³⁰ In my view, that notion of ‘director’ is consistent with the notion of member of the management body, as defined in both Directive 2013/36 and the Guidelines of the European Banking Authority.

56. In the same way, I consider, on the other hand, that members of the credit institution’s staff who, although not part of the management body, play essential parts in the day-to-day running of the credit institution, in that they are able to exert significant influence over the management of that institution and are accountable to the management body for those functions, can be regarded as included in the definition of ‘manager’. In my view, such a definition of ‘manager’ is also consistent with both the notion of ‘senior management’ contained in Directive 2013/36 and the notion of ‘key function holders’ within the meaning of the Guidelines of the European Banking Authority.

57. Furthermore, those definitions are consistent also with the objectives pursued by the legislature in 1994, as identified at points 48 and 49 above.

58. It will, however, be for the national court, having regard to all the circumstances of the case, to assess specifically whether or not a person linked to the credit institution can be regarded as falling within one of the two categories referred to above.

27 — See Article 3(1)(9) of Directive 2013/36, reproduced at point 10 above.

28 — See, for example, the nomination committee provided for in Article 88(2) of Directive 2013/36.

29 — See Article 23(1)(b) of Directive 2013/36.

30 — In that regard, it should be pointed out that in Commission Recommendation 2004/913/EC of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies (OJ 2004 L 385, p. 55), ‘director’ is defined as any member of the administrative, managerial or supervisory bodies of a listed company’. See specifically paragraph 2.1 of that recommendation.

59. The two terms in question having been defined, it is now possible, on the basis thereof, to answer in detail the specific questions referred by the national court. Those questions concern, on the one hand, the objective extent of the responsibility that has to be attributed to an employee of a credit institution for him to be classified as a manager within the meaning of Directive 94/19 and, on the other, the level and nature of that responsibility, and also the specific circumstances by which that responsibility has to be established.

60. As regards the objective extent of responsibility, the national court asks, first of all, whether that responsibility must extend to the activity of the credit institution as a whole or whether it is sufficient for the employee to be responsible for one branch only of its activity. In that second case, the national court asks whether the nature of that branch of activity is relevant.

61. On the basis of the definition of manager adopted at point 56 above, I consider that for a person to be classified as such it is not necessary that the responsibility linked to his position should extend to the credit institution as a whole. For a person to exercise significant influence over the direction of a credit institution, it can, in my view, suffice that that person is responsible for a branch of activity of that institution, which must, however, have special importance within the overall activity of the institution. It is therefore clear that whether or not it is possible for significant influence over the running of the credit institution to be exercised will depend on the classification and importance of the branch of activity in question. It will be for the national court to determine specifically whether or not the responsibility concerning the branch of activity in question in the case before it allows the person holding the post to exercise significant influence over the management of the institution. In that regard, I consider that responsibility for managing, structuring, planning, coordinating and supervising the activity of a credit institution in relation to its international operations and other major financial operations of that institution allows, in general and without prejudice to a detailed assessment of the specific circumstances of the case, significant influence to be exercised over the management of the institution.

62. As regards the level and nature of the responsibility necessary in order for an employee of a credit institution to be regarded as a manager within the meaning of Directive 94/19, the national court is above all uncertain whether it is necessary for that employee to have full and complete responsibility with regard to the activity of the credit institution or the area of activity of his competence, or whether the existence of the mere possibility of influencing that activity, even informally, is also sufficient. The national court is further uncertain whether it is necessary, in order for a person to be classified as a manager, for him to have the power to give orders or to make decisions binding on other persons.

63. In that respect, it may be concluded from the notion of manager, as identified at point 56 above, that in order for an employee to be classified as such he must perform a fundamental role within the credit institution that allows him to exercise significant influence over the management of that institution and must be directly accountable to the management body for his activity. In the light of that definition of manager, I consider that in order for an employee to be classified as such it is not absolutely necessary for him to have complete and total responsibility for an area of activity or the power to give orders or take binding decisions. It is conceivable that, depending on the circumstances of each individual case, the power to manage, plan, coordinate or supervise a credit institution's activity, or a considerable part of that activity, enables a person who has that power to exercise significant influence over the institution. It will, however, be for the national court to ascertain specifically, on the basis of all the circumstances of the case, whether, notwithstanding the lack of complete responsibility for an area of activity and/or of the power to give orders or take binding decisions, the employee can in practice exercise significant influence over the management of the credit institution.

64. That final consideration brings me to the answer to the final question referred by the national court, which asks whether, for the purposes of classifying an employee as a manager, only the duties and rights attaching to the post he occupies, as they appear in the job description, are relevant for that purpose, or whether the influence exerted in practice, even informally, on the credit institution's activity by the employee in question may be relevant in the light of all the circumstances. As is clear from the foregoing considerations, I believe that the national court must consider the circumstances and all the factors of the specific case in its assessment of whether or not an employee can be classified as a manager within the meaning of Directive 94/19. Therefore, it follows that, although the job description of the position held and of the tasks performed constitute an important element of the analysis, the national court must take account of the actual situation and the powers and influence exerted in practice, even informally, over the credit institution by the person in question.

V – Conclusion

65. For the reasons set out above, I therefore propose that the Court give the following answer to the questions referred by the Augstākā tiesa:

The list set out in point 7 of Annex I to Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes is exhaustive in the sense that national legislation may not extend the scope of the exclusion from the deposit guarantee to persons who, irrespective of what their position is called, are not covered functionally by the terms set out in that list.

The term 'director' appearing in point 7 of Annex I to Directive 94/19 covers members of the company bodies of the credit institution with the task of performing the latter's management and/or supervisory activities. The term 'manager' appearing in point 7 of Annex I of Directive 94/19 covers members of the staff of the credit institution who, although not part of the management body, play essential parts in the day-to-day running of the credit institution, for they are able to exert significant influence over the management of that institution and are directly accountable for that to the management body.

In order for an employee to be classified as a 'manager' within the meaning of Directive 94/19, it is not strictly necessary that the responsibility linked to the position which he holds should extend to the activity of the credit institution as a whole, or that he should have complete and total responsibility for an area of activity or the power to give orders or take binding decisions.

It is, however, for the national court, considering all the relevant circumstances of the case, including, in addition to the job description of the post held, also the actual situation and the powers actually exercised in the credit institution by the employee, to ascertain in fact whether he is in reality able to exert significant influence over the management of the credit institution.