

Press and Information Division

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Opinion of Advocate General Stix-Hackl in Case C-222/02

*Peter Paul and Others v Federal Republic of Germany*

**IN THE VIEW OF THE ADVOCATE GENERAL, NONE OF THE DIRECTIVES CONCERNING BANKING LAW CONFERS ON INDIVIDUALS THE RIGHT TO DEMAND THAT THE BANKING SUPERVISORY BODY TAKE APPROPRIATE SUPERVISORY MEASURES AND THE RIGHT TO COMPENSATION IN THE EVENT OF MISCONDUCT BY IT.**

*The directive on deposit-guarantee schemes constitutes an exhaustive set of special rules for all cases of unavailability of deposits.*

In 1987 the BVH Bank obtained authorisation from the Bundesaufsichtsamt für das Kreditwesen (the German Federal Banking Supervisory Authority) to engage in banking transactions, subject to the condition that it engage in deposit business only if it was a member of a guarantee scheme of an association of credit institutions, and, as long as that was not the case, that it inform customers that there was no guarantee scheme. From 1987 to 1992 the bank applied unsuccessfully for admission to the deposit-guarantee fund, after which it withdrew from the admission procedure since it did not fulfil the conditions for admission. The bank's difficult financial situation prompted the Bundesaufsichtsamt to carry out various special examinations of the bank's affairs, and in November 1997 it filed a bankruptcy petition and withdrew the bank's authorisation to engage in banking transactions.

Mr Paul and Others held term accounts with the bank totalling approximately DEM 300,000 (roughly EUR 150,000). The directive on deposit-guarantee provides that, in the event of deposits being unavailable, the aggregate deposits of a depositor must be *covered up to EUR 20,000*. The Landgericht Bonn (Regional Court, Bonn) awarded each of the claimants that sum because of the late implementation of that directive. However, the claimants seek

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<sup>1</sup> 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).

compensation from the Federal Republic of Germany in respect of their *loss exceeding that sum*, on the ground that the Bundesaufsichtsamt did not discharge its banking supervision obligation properly.

The Bundesgerichtshof (German Federal Court of Justice), before which the case was brought as the final appellate court, has asked the Court of Justice of the European Communities to decide whether depositors are conferred the right by the directive on deposit-guarantee schemes or other directives concerning banking law to demand that the banking supervisory body take appropriate supervisory measures. It has also asked about the scope of the principle of State liability for losses caused to individuals by infringements of Community law which are attributable to the State.

**Advocate General Stix-Hackl has delivered her Opinion in this case today.**

As regards the **directive on deposit-guarantee schemes**, the Advocate General comes first of all to the conclusion that the provisions concerning supervisory measures in that directive **are not unconditional in content and sufficiently precise to confer on depositors a right requiring the competent authorities to avail themselves of the measures referred to in those provisions.**

In her assessment, the Advocate General reaches the further conclusion **with regard to State liability** that since the necessary preconditions for such liability are not met, **no entitlement is granted to redress for losses which have been caused to individual depositors by the failure of the competent authority** to adopt the measures set out in that directive and exceed the compensation specified in the special rule contained in Article 7 of the directive.

The Advocate General points out in relation to **the other directives concerning banking law** that **it follows neither from their objective nor their wording that individual depositors are to have a right to implementation of supervisory measures.**

Several of the directives concerning banking law admittedly mention investor protection in the recitals in their preamble, but the Advocate General points out **that the effect of recitals is not so far-reaching as to enable an individual to derive rights from them.**

The Advocate General therefore comes to the conclusion that the other directives concerning banking law likewise do not confer on individuals the right to require implementation of supervisory measures by the competent authorities and to obtain compensation in that regard in the event of misconduct. **The directive on deposit-guarantee schemes constitutes an exhaustive set of special rules for all cases of unavailability of deposits**, especially as that directive alone grants depositors an express right to compensation which can be enforced before national courts.

**Reminder: The Opinion of the Advocate General does not bind the Court of Justice. The task of the Advocate General is to propose to the Court, in complete independence, a legal solution to the case in question. The Court will now begin its deliberations in this case and the judgment will be delivered at a later date.**

*Unofficial document, for media use only, which does not bind the Court of Justice.*

*Available languages: DE, EN, FR, ES, IT.*

*The full text of the Opinion can be found on the internet ([www.curia.eu.int](http://www.curia.eu.int)).*

*In principle it will be available from midday CET on the day of delivery.*

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