

Freedom of the press and the protection of financial markets (Ruling n°22-10.472)

14/02/2024



It follows from the clear and precise provisions of Article 21 of Regulation (EU) No 596/2014 of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (the MAR regulation) that, where the dissemination of information is made for the purposes of journalism, the infringement involving the dissemination of false or misleading information as provided for in Article 12(1)(c) of that Regulation must be assessed by taking into account the rules relating to the freedom of press and freedom of expression in other media and the rules or codes governing the journalist profession, unless the persons concerned or persons closely associated with them derive, directly or indirectly, an advantage or profits from the dissemination of the information or if such dissemination was carried out with the intention of misleading the market. (2) The fact that the infringement involving the dissemination of false or misleading information provided for in Article 12, paragraph 1, subsection c) of the MAR regulation may, pursuant to Article L. 621-15 of the Monetary and Financial Code, be the subject of a financial penalty of a maximum amount of one hundred million euros does not constitute interference in the exercise of freedom of expression that is not necessary in a democratic society, once a balance has been made between, on the one hand, the public policy objective of protecting financial markets and investors and combating market abuse and, on the other, the freedom of the press and expression, and that the maximum amount is therefore proportionate to the objective pursued. (3) From the findings and assessments of the ruling, it follows that Bloomberg did not act in accordance with the rules and codes governing its profession, as provided in Article 21 of the MAR Regulation, and that the failure to fulfil its obligations resulted in significant financial losses for

investors and undermined the integrity of the capital markets and the confidence of investors in those markets, whereas Bloomberg, whose most recent account statements are not public, did not wish to disclose its total turnover, as provided in Article L. 621-15 of the Monetary and Financial Code, for the purpose of applying the penalty, and did not argue that the penalty imposed on it compromised its existence or the continuation of its journalistic activities, the *cour d'appel* (Court of Appeal) exactly deduced that a penalty of three million euros constituted an interference with Bloomberg's right to freedom of expression that was both necessary and proportionate to the legitimate objectives pursued.

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

RULING OF THE COMMERCIAL, FINANCIAL AND ECONOMIC CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION) OF 14 FEBRUARY 2024

Bloomberg LP, a company incorporated under US law, with registered office at [Address 5] (USA), lodged appeal No. 22-10.472 against the ruling delivered on 16 September 2021 by the *cour d'appel* (Court of Appeal) of Paris (Division 5, Chamber 7) in the dispute between: (1) the Autorité des Marchés Financiers (AMF, Securities and Markets Authority), whose registered office is [Address 2], (2) the Prosecutor-General to the *cour d'appel* (Court of Appeal) of Paris, domiciled at [Address 7], respondents in the quashings. Parties: (1) the association Reporters Without Borders, with registered office at [Address 4], (2) the National Union of Journalists, with registered office at [Address 3], (3) the Reporters Committee for Freedom of the Press, a group incorporated under US law, with registered office at [Address 1] (USA), (4) the International Federation of Journalists, (5) the European Federation of Journalists, both with registered offices at [Address 6] (Belgium). The appellant bases its appeal on two pleas for quashing. The case file has been sent to the Prosecutor-General. On the report by Ms Ducloz, judge, the written and oral observations of SCP Spinosi, lawyers of Bloomberg LP, SCP Ohl and Vexliard, lawyers of the Autorité des Marchés Financiers (AMF, Securities and Markets Authority), Ms Haas, lawyer of the Reporters Without Borders association and the National Journalists Union, SCP Célice, Texidor, Périer, lawyers of the US group Reporters Committee For Freedom of the Press, SCP Lyon-Caen and Thirir, lawyers of the International Federation of Journalists and of the European Federation of Journalists, and the advisory opinion of Mr Lecaroz, Advocate-General, after deliberations in the public hearing of 19 December 2023, attended by Mr Vigneau, President, Ms Ducloz, judge-rapporteur, Mr Mollard, Elder Judge, Ms Graff-Daudret, Ms Daubigney, Mr Ponsot, Ms Fevre, Ms Alt, Ms Calloch, judges, Ms Vigneras, Ms Lefeuvre, Ms Tostain, Mr Maigret, judge-referees, Mr Lecaroz, Advocate-General, and Ms Fornarelli, Chamber Registrar, the Commercial, Financial and Economic Chamber of the *Cour de cassation* (Court of Cassation), composed, pursuant to Article R. 431-5 of the Judicial Code, of the abovementioned President and judges, after deliberation thereof in accordance with the Law, has delivered the present ruling.

Account of the dispute

Facts and Procedure

1. According to the ruling under appeal (Paris, 16 September 2021), the company incorporated under US law, Bloomberg LP (the company Bloomberg), specialises in providing business and financial information intended, in particular, for professionals in the financial markets. Its news agency, Bloomberg News, disseminates this information via the

"Bloomberg terminals" and various media outlets. 2. On 22 November 2016 at 16:05, the "speed desk" of the Paris office of the Bloomberg News agency, which publishes real-time financial information from press releases or other sources, received, in the form of an e-mail, a press release purporting to have been issued by Vinci, whose shares are admitted to trading on the regulated market Euronext Paris, entitled "Vinci launches a review of its consolidated accounts for the year 2015 and the first half of 2016." 3. This press release announced a review of the consolidated accounts of the Vinci group following the discovery, during an internal audit, of accounting irregularities resulting in a net loss for the financial year 2015 and the first half of 2016, as well as the dismissal of the chief financial officer, named, of the company Vinci and the holding of a press conference the following day. 4. On the same day, between 16:06:04 and 16:07, the speed desk disseminated several dispatches on the Bloomberg terminals relaying the content of the press release. 5. As a result of these dispatches, the price of the Vinci shares fell by 18.28%. 6. On the same day, between 16:14:07 and 16:52, the speed desk deleted the dispatches and disseminated dispatches correcting and denying them. 7. At 17:02 p.m., Vinci published a press release on its website denying the information contained in the "fake Vinci press release published by Bloomberg." 8. Following an investigation into the financial information and market for the Vinci shares that began on 23 November 2016, the Board of the Autorité des Marchés Financiers (AMF, Securities and Markets Authority) decided on 22 October 2018 to notify Bloomberg of the complaint alleging the dissemination of information it should have known to be false or misleading and likely to set the price of the Vinci shares at an abnormal or artificial level, in breach of Articles 12, 15 and 21 of Regulation (EU) No. 596/2014 of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (the MAR Regulation). 9. By decision No. 18 of 11 December 2019, the AMF Sanctions Committee held that the alleged infringement had been characterised and pronounced against Bloomberg with a financial penalty of five million euros, reduced, on appeal by Bloomberg, to three million euros by the *cour d'appel* (Court of Appeal) of Paris. On the admissibility of the accessory voluntary interventions by the National Union of Journalists, the Reporters Without Borders association, the US-based group Reporters Committee for Freedom of the Press, the International Federation of Journalists and the European Federation of Journalists, contested by the defence 10. The AMF objected to the admissibility of the accessory voluntary intervention by the National Union of Journalists, the Reporters Without Borders association, the Reporters Committee for Freedom of the Press, the International Federation of Journalists and the European Federation of Journalists. It maintains, first of all, that the accessory voluntary intervention by the Reporters Without Borders association in support of Bloomberg's appeal before the *Cour d'appel* (Court of Appeal) of Paris was declared inadmissible by an irrevocable provisional ruling of that court dated 18 February 2021; second, that the specific nature of the dispute relating to the sanctions decided by the AMF Sanctions Committee renders any intervention by a third party inadmissible, thirdly, that none of the voluntary interveners justifies an interest in supporting Bloomberg to preserve their rights. 11. According to articles 327 and 330 of the Civil Procedure Code, voluntary interventions are allowed to proceed before the *Cour de cassation* (Court of Cassation) only if they are made as an accessory measure in support of a party's claims and only if the author has an interest in defending that party to preserve their rights. 12. Firstly, the authority of *res judicata* attached to the ruling of the *cour d'appel* (Court of Appeal) of Paris of 18 February 2021 declaring inadmissible the voluntary intervention of the Reporters without Borders association in support of the action for annulment or reformation of the decision of the AMF Sanctions Committee lodged by Bloomberg before that court does not have the effect of depriving that same association of its right to voluntarily intervene before the *Cour de cassation* (Court of Cassation) in support of the appeal lodged by Bloomberg, since said intervention does not have the same purpose. 13. Secondly, the personal nature of the sanctions decided by the AMF Sanctions Committee, which implies that their challenge is reserved for the person who is the subject thereof, does not have the effect of rendering inadmissible an accessory voluntary intervention, which is limited to supporting the claims of a party. 14. Finally, the dispute concerning in particular the conditions under which a journalist may, pursuant to Articles 12, 15 and 21 of the MAR Regulation, be sanctioned for the infringement to disseminate, for the purposes of journalism, information that he should have known to be inaccurate or misleading, the National Union of Journalists, the Reporters Without Borders association, the Reporters Committee for Freedom of the Press group, the International Federation of Journalists and the European Federation of Journalists, whose purpose is to defend the freedom of the press and the journalist profession, justify an interest in supporting Bloomberg to protect their rights. 15. Their voluntary interventions in support of Bloomberg are therefore admissible.

Pleas

Reviewing pleas On the first plea Statement of plea

16. Bloomberg objects to the ruling dismissing its petition for annulment Decision No. 18 of the Sanctions Committee of 11 December 2019, whereas: "(1) whereas article 21 of the MAR Regulation, which is intended to ensure respect for the freedom of expression of journalists and freedom of the press in the context of the application of the repressive provisions provided for in particular by Articles 12 and 15 of the same regulation, provides that journalists and press agencies may not in principle be sanctioned for market manipulation; that this article is only an exception to this principle in two alternative situations, namely, on the one hand, when the journalists or agencies concerned have gained an advantage or benefit from the disclosure or dissemination of the information in question and, on the other, when the disclosure or dissemination of the information in question occurred with the intention of misleading the market. In this case, by holding, in dismissing Bloomberg's petition for annulment, that Article 21 of the MAR Regulation could be interpreted as allowing for the punishment of journalists or press agencies who had relayed false information in good faith, without directly or indirectly deriving any benefit or gain from it and without having had the intention of misleading the market, the *cour d'appel* (Court of Appeal) infringed Articles 12, 15 and 21 of the MAR Regulation. (2) whereas any interference in the exercise of the freedom of expression of journalists and the freedom of the press must be "provided for by law"; whereas this requirement involves a qualitative dimension, since the persons concerned must be able to assess in advance the lawfulness of their conduct by identifying, to a reasonable degree, the consequences that may result from their acts or omissions; whereas in this case, by holding, in order to dismiss Bloomberg's petition for annulment, that Article 21 of the MAR Regulation could be interpreted as allowing for the punishment of journalists or press agencies that are victims of manipulative editing that have relayed false information in good faith, and in particular without their deriving any direct or indirect advantage or benefit and without having intended to mislead the market, although it was undoubtedly apparent from the legislative history of this article, and in particular from all the press releases of the European Commission [of the European Union] and the European parliamentary work available, that journalists or press agencies in good faith would not be subject to the sanctions provided for by European laws, such that there was, at the very least, real and legitimate uncertainty as to the meaning and scope of this text, the purpose of which was to guarantee the freedom of expression of journalists and the freedom of the press, the *cour d'appel* (Court of Appeal) held that interpretation of Article 21 of the MAR Regulation, disregarding the scope of the requirement that any interference in the exercise of freedom of expression and freedom of the press must be "provided for by law", thereby infringed Articles 12, 15 and 21 of the MAR Regulation, 11 of the Charter of Fundamental Rights of the European Union and 10(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, together with the principle of the legality of criminal offences and penalties; (3) whereas any interference in the exercise of the freedom of expression of journalists and the freedom of the press must be "provided for by law"; whereas this requirement involves a qualitative dimension, since the persons concerned must be able to assess in advance the lawfulness of their conduct by identifying, to a reasonable degree, the consequences that may result from their acts or omissions; whereas in this case, by holding, in order to dismiss Bloomberg's petition for annulment, that Article 21 of the MAR Regulation could be interpreted as allowing for the punishment of journalists or press agencies that are victims of manipulative editing that have relayed false information in good faith, and in particular without their deriving any direct or indirect advantage or benefit and without having intended to mislead the market, although there was, at the very least, real and legitimate uncertainty as to the meaning and scope of this text, the purpose of which was to guarantee the freedom of expression of journalists and the freedom of the press, the *cour d'appel* (Court of Appeal) held that interpretation of Article 21 of the MAR Regulation, disregarding the scope of the requirement that any interference in the exercise of freedom of expression and freedom of the press must be "provided for by law", thereby infringed Articles 12, 15 and 21 of the MAR Regulation, 11 of the Charter of Fundamental Rights of the European Union and 10(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, together with the principle of the legality of criminal offences and penalties; (4) whereas any interference in the exercise of the freedom of expression of journalists and the freedom of the press must be "provided for by law"; whereas this requirement involves a qualitative dimension, since the persons concerned must be able to assess in advance the lawfulness of their conduct by identifying, to a reasonable degree, the consequences that may result from their acts or omissions; whereas in this case, by holding, in order to dismiss Bloomberg's application for annulment, that Article 21 of the MAR Regulation could be interpreted as allowing for the

punishment of journalists or press agencies that are victims of manipulative editing that have relayed false information in good faith, and in particular without their deriving any direct or indirect advantage or benefit and without having intended to mislead the market, although the mere reference in this article to the "rules or codes governing the profession of journalist", which do not exist in France, was clearly not such as to satisfy the requirement of a legal basis laid down by European case-law, the *cour d'appel* (Court of Appeal) disregarded the scope of the requirement that any interference in the exercise of freedom of expression and freedom of the press must be "provided for by law" and, in so doing, infringed Articles 12, 15 and 21 of the MAR Regulation, 11 of the Charter Fundamental Rights of the European Union and 10 § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, together with the principle of the legality of criminal offences and penalties; (5) whereas any interference in the exercise of the freedom of expression of journalists and the freedom of the press must be "necessary in a democratic society"; whereas the deterrent effect that the fear of excessive sanctions is likely to have on journalists' exercise of their freedom of expression is one of the factors to be taken into account when assessing the necessity and, consequently, the justifiability of the sanctions incurred; whereas in this case, by holding, in dismissing Bloomberg's petition for annulment, that Article 21 of the MAR Regulation could be interpreted as allowing for the punishment of journalists or press agencies who are victims of manipulative editing and have relayed false information in good faith, and in particular without deriving and direct or indirect advantage or benefit from it and without having intended to mislead the market, although the threat of a penalty of up to several million euros imposed on journalists or agencies in good faith would clearly be out of any reasonable and even counterproductive proportion in the light of the legitimate objective pursued of protecting financial markets, the *cour d'appel* (Court of Appeal) adopted an interpretation of Article 21 of the MAR Regulation which disregarded the condition relating to the "necessity" of interference in the exercise of the freedom of expression and the freedom of the press and, by so doing, it infringed Articles 12, 15 and 21 of the MAR Regulation, together with Articles 11 of the Charter of Fundamental Rights of the European Union and 10(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms."

Statement of reasons

Court's response

17. According to Article 10, §2 of the Convention for the Protection of Human Rights and Fundamental Freedoms the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence.. 18. According to Article 11 of the Charter of Fundamental Rights of the European Union, everyone has the right to freedom of expression. "This right shall include freedom to hold opinions and to receive or impart information and ideas without interference by public authorities and regardless of frontiers. The freedom and pluralism of the media shall be respected". According to Article 52, paragraph 3, of this Charter, insofar as it contains rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, their meaning and scope are the same as those laid down by that Convention. 19. According to Article 12(1)(c) of the MAR Regulation, for the purposes of this regulation, the concept of 'market manipulation' includes the dissemination of information, whether through the media, including the internet, or by any other means, that sets or is likely to set the price of one or more financial instruments at an abnormal or artificial level, where the person who made such dissemination knew or should have known that said information was false or misleading. 20. According to Article 15 of this Regulation, a person must not engage in market manipulation. 21. Article 21 of the same regulation provides: "For the purposes of (...) Article 12(1)(c), (...) where information is disclosed or disseminated and where recommendations are produced or disseminated for the purpose of journalism or other form of expression in the media, such disclosure or dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media and the rules or codes governing the journalist profession, unless: (a) the persons concerned, or persons closely associated with them, derive, directly or indirectly, an advantage or profits from the disclosure or the dissemination of the information in

question; or (b) the disclosure or the dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments." 22. According to Article 30(2)(j)(i) of the MAR Regulation, in the event of manipulation by a legal person, Member States shall, in accordance with their national law, ensure that the competent authorities have the power to impose a maximum administrative pecuniary sanction of at least fifteen million euros. 23. According to recital 2 of the MAR Regulation, for a financial market to be integrated, efficient and transparent, market integrity is necessary and market abuse harms the integrity of financial markets and harms public confidence in securities and derivatives. According to recital 77 of that regulation, when it refers to rules governing freedom of the press and freedom of expression in other media, as well as to rules or codes governing the journalist profession, account must be taken of those freedoms as guaranteed in the Union and in the Member States and recognised pursuant to Article 11 of the Charter of Fundamental Rights of the European Union and other relevant provisions. 24. According to Article L. 621-15 of the Monetary and Financial Code, any infringement involving the dissemination of false or misleading information may be subject to a financial penalty of a maximum of one hundred million euros. In implementing that penalty, account must be taken, in particular, of the seriousness and length of the infringement, of the standing and involvement of the person in question, of the financial situation and capacity of the person in question, in particular with regard to his assets and, in the case of a legal person, its total turnover, of the significance of either the gains or benefits obtained or the losses or costs avoided by the person in question, insofar as they can be determined, the losses suffered by third parties as a result of the infringement, insofar as they can be determined, the level of cooperation with the AMF demonstrated by the person in question, without prejudice to the need to ensure the restitution of the advantage received by that person, the deficiencies previously committed by the person in question, and any circumstances specific to the person in question, in particular the measures taken by that person to remedy the deficiencies noted, caused by the infringement that is attributable to him and, where appropriate, to compensate for the damages caused to third parties, as well as to avoid any recurrence of the infringement. 25. First, it follows from the clear and precise provisions of Article 21 of the MAR Regulation that when information is disseminated for the purposes of journalism, the infringement of disseminating false or misleading information provided for in Article 12(1)(c) of that regulation must be assessed taking into account the rules relating to freedom of the press and freedom of expression in other media and the rules or codes governing the profession of journalist, unless the persons concerned or persons closely linked to them derive a direct or indirect advantage or benefit from the dissemination of the information or if that intention was carried out with the intention of misleading the market. 26. This text, which has the objective of reconciling the public interest, as set out in recital 2 of the MAR Regulation, of protecting the integrity of financial markets, of strengthening investor confidence in those markets and of combating market abuse, such as the dissemination of false or misleading information, with freedom of the press and freedom of expression, thus provides journalists who have disseminated false or misleading information as defined in Article 12(1)(c) of that regulation with a specific protection regime relating to the taking into account of rules relating to freedom of the press and freedom of expression, as well as rules or codes relating to the profession of journalist. However, Article 21 of the MAR Regulation dismisses the application of this specific regime where this information has been disseminated in one of the cases referred to in subparagraph (a) or (b). 27. It follows that a journalist who, without taking an advantage of it or intending to mislead the market, has disseminated false or misleading information for the purposes of journalism, cannot be sanctioned for manipulating the market provided for in Article 12, paragraph 1, subsection c) of the MAR Regulation if he has complied with the rules or codes relating to his profession. Conversely, a journalist who, without benefiting from it or intending to mislead the market, has, without observing the rules or codes of his profession, disseminated false or misleading information for the purposes of journalism, may be sanctioned for this breach when the rules on freedom of the press and freedom of expression so allow. Finally, a journalist who has disseminated false or misleading information in order to obtain an advantage or benefit from it or to mislead the market may be sanctioned for manipulating the market without it being necessary to apply the rules relating to freedom of the press and freedom of expression and the rules or codes relating to his profession in order to assess the characterization of such infringement. 28. Accordingly, the ruling rightly deduced that according to Article 21 of the MAR Regulation said text does not limit or impose a penalty against a journalist or a press body for disseminating false or misleading information only to cases where it is demonstrated that the latter benefited from that dissemination or acted with the intention of misleading the market 29. It follows that the interference in the exercise of freedom of expression constituted by Article 21 of the MAR Regulation in conjunction with Articles 12(1)(c) and 15 of that regulation is provided for by law, in that it is based on a text that has the accessibility, clarity and foreseeability required by Article 10(2) of the Convention for the Protection of Human Rights and Fundamental

Freedoms, to which the combined application of Articles 11 and 52(3) of the Charter of Fundamental Rights of the European Union refers. 30. Second, it follows from Article 21 of the MAR Regulation that this text relates, for the purposes of the application of Article 12(1)(c) of that regulation, to the assessment of the infringement of disseminating false or misleading information when that dissemination is made for the purposes of journalism. It follows that, when it is made for the purposes of journalism, the determination of the lawful or unlawful nature of the dissemination of false or misleading information must be based on Article 12(1)(c) of the MAR Regulation while taking into account the details set out in Article 21 of that regulation (as regards the unlawful disclosure of inside information, CJEU, ruling of 15 March 2022, *Autorité des Marchés Financiers* (Securities and Markets Authority), C-302/20, points 74 and 75). 31. The ruling therefore rightly holds that Article 21 of the MAR Regulation participates in the definition of an infringement to disseminate false or misleading information when journalists are accused of that infringement and that it must, consequently, satisfy the requirements of the principle of legality of criminal offences and penalties enshrined in Article 49 of the Charter of Fundamental Rights of the European Union. 32. According to recital 77 of that regulation, when it refers to rules governing freedom of the press and freedom of expression in other media, as well as to rules or codes governing the profession of journalist, account must be taken of those freedoms as guaranteed in the Union and in the Member States and enshrined in Article 11 of the Charter of Fundamental Rights of the European Union and other relevant provisions. 33. It follows from the case-law of the Court of Justice of the European Union that, for the purpose of interpreting Article 11 of the Charter of Fundamental Rights of the European Union, account must be taken, in accordance with Article 52(3) of the Charter, of the case-law of the European Court of Human Rights relating to Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (CJEU, ruling *Autorité des Marchés Financiers* (Securities and Markets Authority), *supra*, point 67). 34. The ruling states that it follows from the case-law of the European Court of Human Rights that a law may satisfy the requirement of foreseeability even if the person concerned must resort to enlightened advice to assess, to a degree that is reasonable in the circumstances of the case, the consequences that may result from a specific act, and that this is specifically true of professionals, who are accustomed to proceed with a high degree of caution in the exercise of their profession, such that they can be expected to take particular care to assess the risks involved (ECHR, ruling of 15 November 1996, *Cantoni v. France*, No. 17862/91, § 35; ECHR, ruling of 20 October 2015, *Vasiliauskas v. Lithuania*, No. 35343/05, § 157). 35. The ruling adds that, according to the settled case law of the European Court of Human Rights, due to the duties and liabilities inherent in freedom of expression, on the one hand, the protection offered by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms to journalists is subject to the condition that they act in good faith, on the basis of correct facts, and provide reliable and precise information in accordance with journalistic ethics (ECHR, ruling of 25 September 2002, *Colombani v. France*, No. 51279/99, § 65; ECHR, ruling of 14 May 2008, *July and Sarl Libération v. France*, No. 20893/03, § 63; ECHR, ruling of 21 April 2016, *De Carolis and France Television v. France*, No. 19313/10, § 44 and 45; ECHR, ruling of 12 July 2016, *Reichman v. France*, No. 50147/11, § 54), on the other hand, the obligation of a journalist to ensure the existence of a sufficiently precise and reliable factual basis, which is proportionate to the nature and force of his allegation, is rooted in the rules of the journalistic profession and the standards of liable journalism, including, under the relevant texts, the Declaration of the Duties and Rights of Journalists, adopted in Munich on 24 and 25 November 1971 by the professional organisations of journalists of the Member States of the European Community and endorsed by the International Federation of Journalists at the Istanbul Congress of 1972, which provides that the essential duties of the journalist in the research, drafting and comment of events are, *inter alia*, to publish only information of known origin or to accompany it, if necessary, with the necessary reservations (ECHR, ruling of 10 November 2015, *Couderc and Hachette Filipacchi v. France*, No. 40454/07, § 44). The ruling notes that, must be considered as relevant texts:

- i) the Charter of Professional Ethics for Journalists published by the National Union of Journalists in 1918 (updated in 1938 and 2011), which provides that the notion of urgency in disseminating information or exclusivity must not take precedence over the seriousness of the investigation and the verification of sources, that a journalist 'worthy of the name' places in particular the failure to verify facts among 'the most serious professional abuses' and that he or she must exercise the utmost vigilance before disseminating information;
- ii) the World Charter of Journalists, adopted by the International Federation of Journalists on 12 June 2019, which supplements the 1954 Code of Principles on the Conduct of Journalists known as the 'Bordeaux Declaration', and states that journalists should only report facts of which they know the origin, and that the notion of urgency or immediacy in the dissemination of information does not take precedence over the verification of sources. 36. From these statements,

findings and assessments, it follows that Article 21 of the MAR Regulation, insofar as it refers to the rules or codes governing the journalist profession, is based on settled case law of the European Court of Human Rights concerning the duties and liabilities of journalists and on the rules of ethics relating to that profession set out in various charters or declarations and therefore has the accessibility, clarity and foreseeability required by Article 10, §2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, regardless of whether there are any laws or regulations governing the journalist profession in French law. Indeed, the *cour d'appel* (Court of Appeal) rightly deduced that an informed journalist is fully able, starting from the wording of Article 21 of the MAR regulation, to assess to a reasonable degree the risks incurred in the event of the dissemination of false or misleading information, even if it means obtaining the assistance of specialised legal counsel, and that this text does not therefore disregard the principle of legality of criminal offences and penalties. 37. Lastly, the Conseil constitutionnel (Constitutional Council) ruled (Decision No. 2017-634 QPC of 2 June 2017) that the provisions of Article L. 621-15 of the Monetary and Financial Code, adopted for the application of Article 30 of the MAR Regulation and setting the maximum amount of the financial penalty at one hundred million euros in the event, in particular, of the dissemination of false or misleading information, do not disregard the principles of necessity and proportionality of penalties since, on the one hand, by instituting a financial penalty intended to punish violations likely to undermine the protection of investors or the proper functioning of the market, the legislator has pursued the objective of preserving economic public order and that such an objective implies that the amount of penalties laid down by law should be sufficient deterrent to fulfil the function of preventing the infringements assigned to the punishment. Furthermore, that by providing for a fine of up to one hundred million euros to be imposed for violations that undermine investor protection or the smooth operation of the market, the legislator has not introduced a penalty that is manifestly disproportionate to the nature of the violations that are being punished, the risks of disruption to the financial markets, the size of the gains that may be made and the losses that may be suffered by investors. 38. The fact that the dissemination of false or misleading information provided for in Article 12, paragraph 1, subsection c) of the MAR Regulation may, pursuant to Article L. 621-15 of the Monetary and Financial Code, be subject to a financial penalty of a maximum amount of one hundred million euros does not constitute an interference in the exercise of freedom of expression that is not necessary in a democratic society. On the one hand, as the Conseil constitutionnel (Constitutional Council) has ruled, to ensure the preservation of the public order objective of protecting the integrity of financial markets and investors and combating market abuse, which implies, in view of the very possibly high financial consequences of the spread of false or misleading information, that the amount of the penalty is sufficient deterrent to fulfil the function of preventing the infringement assigned to the penalty, this maximum amount of penalty pursues a legitimate aim. On the other hand, as stated in paragraph 26, Article 21 of the MAR Regulation establishes, with regard to journalists, a specific protection regime relating, in order to determine the lawful or unlawful nature of the dissemination of false or misleading information, to the taking into account of the rules relating to freedom of the press and freedom of expression and the rules or codes governing their profession, a regime which is only set aside if the information in question was disseminated for the purpose of obtaining or gaining an advantage or benefit from it or with the intention of misleading the market, such that the consideration has included, on the one hand, the objective of public order of protecting the financial markets and investors and combating market abuse, and, on the other, freedom of the press and freedom of expression and that, consequently, this maximum amount is proportionate to the objective pursued. 39. Moreover, and as noted in paragraph 24, in implementing the penalty, account must be taken in particular of the financial situation and capacity of the person in question, in view of his assets and, in the case of a legal person, its total turnover. 40. The plea is therefore unfounded. 41. And, in the absence of doubt as to the interpretation of Article 21 of the MAR Regulation, it is not necessary to refer the requests for preliminary ruling proposed by Bloomberg to the Court of Justice of the European Union.

Pleas

On the second plea Statement of plea

42. Bloomberg objects to the ruling for reforming the decision of the Sanctions Committee only insofar as it awarded a sanction of five million euros and, again ruling, a financial penalty of three million euros, whereas: "(1) any interference in the exercise of freedom of expression of journalists and the freedom of the press must be "necessary in a democratic

society", this necessity having to be assessed in practice with regard to the nature and seriousness of the sanctions imposed, by relating them to the repressed actions and to all the relevant factual circumstances; in this case, by pronouncing a financial penalty against Bloomberg, even though the latter's journalists had been victims of a particularly sophisticated and credible manipulation, whereas Bloomberg worked on its own initiative for several years on particularly strict and innovative mechanisms for preventing such errors, whereas the journalists who were trapped had acted in good faith and in particular without deriving any direct or indirect benefit or gain from it and without having intended to mislead the market, and where said journalists had been the first to publish a denial considerably limiting, for the market as a whole, the damage resulting from this error, the *cour d'appel* (Court of Appeal) infringed Articles 11 of the Charter of Fundamental Rights of the European Union and 10(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms; (2) any interference in the exercise of freedom of expression of journalists and the freedom of the press must be strictly proportionate in the light of the objective pursued, this proportionality having to be assessed in practice in the light of the nature and seriousness of the penalties imposed, by relating them to the punishable acts and to all the relevant factual circumstances; in this case, by imposing a financial penalty of three million euros on Bloomberg without taking any account, on the one hand, the fact that the latter had been working on its own initiative for several years on strict and innovative measures to prevent such errors and, on the other hand, the fact that the journalists who were trapped had acted in good faith and in particular without deriving any direct or indirect benefit or gain from it and without having had the intention of misleading the market, the *cour d'appel* (Court of Appeal) infringed Article 11 of the Charter of Fundamental Rights of the European Union and Article 10(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms."

Statement of reasons

Court's response

43. After noting that the press release at issue contained manifestly unusual or atypical formulas relating to their vehement and sensational nature and the use of legal phrases specific to the English language, whereas Vinci is known to send press releases to Bloomberg written exclusively in French, and that the press release related to the existence of rumours relating to the opening of collective procedures concerning Vinci, the veracity of which was highly improbable in view of the financial health of that company, as attested to by a press release broadcast by the same company on 25 October 2016, i.e. less than one month before the facts in dispute, the ruling notes that these elements should have alerted the journalists concerned and led them, before relaying the disputed press release, to wonder about its authenticity and that they were therefore responsible for carrying out verifications in order to have a sufficiently precise and reliable factual basis, proportionate to the nature and force of their allegations. 44. The ruling adds that this verification obligation is provided for not only by the ethical rules specific to journalists contained in the Declaration of the Duties and Rights of Journalists known as the "Munich Charter", the Charter of Professional Ethics of Journalists published by the National Union of Journalists and the World Charter of Journalists, but also by Bloomberg's internal procedures such as the "Bloomberg way", a guide to good conduct stating, *inter alia*, that "accuracy is the most important journalistic principle", that "the three most important words in journalism are accuracy, accuracy and accuracy", that it is necessary for a journalist to start "by verifying the press release in order to ensure that it is authentic" and that "if any detail in a statement comes as a surprise, please check it", and the "Hoax Board" procedure, which lists examples of fake press releases and recommends certain checks before sending dispatches, including the use of the "NQUE" software to alert journalists when the e-mail address from which the press release is sent is identified as unreliable or unknown to the system. 45. After noting that one minute and four seconds had passed between the receipt of the disputed press release and the dissemination of the first dispatch, and that Bloomberg journalists had acknowledged before the AMF (Securities and Markets Authority) investigators that they had limited themselves, before the dissemination of the first dispatch, to looking at the date and place of writing of the press release, and if it appeared to come from a company they knew based on a general impression of the document, without reading it in full and without the slightest visibility on the e-mail address from which it was sent, the ruling holds that these journalists were unable to complete the sufficient checks within this short period of time and read the full 590-word press release. It adds that it was only after having been alerted by the former official correspondent of Vinci that this company had been the subject of a false press release two

years earlier and that the domain name mentioned in the press release in dispute did not correspond to that of the company's official website, that the said journalists, a few minutes after the distribution of the dispatches relating to this press release, took steps to verify the authenticity of the press release, even though direct consultation of the official website of Vinci would have made it possible to find that the press release did not appear on the website ? and thus to confirm that it was false. The ruling concludes that the Bloomberg journalists disregarded the scope of their duties and liabilities by not carrying out the prior checks required of them in order to have a sufficiently precise and reliable factual basis, proportionate to the nature and strength of their claims. 46. The ruling adds that the disputed dispatches were disseminated during the stock exchange session and resulted in an 18.28% fall in the price of the Vinci security and a loss of EUR 6.5 million for the investors who sold their shares following the publication of the dispatches. 47. Lastly, the ruling notes that while the AMF (Securities and Markets Authority) Sanctions Committee was correct, in order to determine the amount of the financial penalty on the basis of the seriousness of the infringement, in the absence of verifications carried out prior to the publication of the disputed dispatches despite the importance of the information concerned, and the status of the person involved, in noting that Bloomberg enjoys a very strong influence and reputation that makes the capital markets and other press bodies aware of the information it disseminates, it was wrong for the committee to have overlooked the significant reactivity of Bloomberg to discontinue and then cease the distribution of the disputed dispatches and to publish a series of corrections and denials. The ruling notes in this respect that the company took these measures as from 16:14:07, i.e. a few minutes after the distribution of the disputed dispatches, and pursued these measures until 16:52. Although this responsiveness does not detract from the seriousness of the infringement, it contributed, due to Bloomberg's strong influence and reputation, to the fact that the Vinci security increased, not totally, but significantly, and that account must be taken of the measures taken to remedy the dysfunctions caused by the infringement of which it is accused. 48. The ruling concludes from all of those factors that the imposition of a financial penalty on Bloomberg is necessary in order to protect the capital markets and investors and the reputation of others, in particular that of Vinci, a listed company, and that said penalty should be set at three million euros. 49. From these findings and assessments, it follows that Bloomberg did not act in accordance with the rules and codes governing its profession, as mentioned in Article 21 of the MAR Regulation, and that the infringement for which it is accountable resulted in significant financial losses for investors and undermined the integrity of the financial markets and the confidence of investors in those markets, and that Bloomberg, whose most recent account statements are not public, did not wish to disclose its total turnover, as provided for in Article L. 621-15 of the Monetary and Financial Code, for the implementation of the sanction, and did not argue that the sanction imposed on it compromised its existence or the continuation of its journalistic activities, the *cour d'appel* (Court of Appeal) rightly deduced that a sanction of three million euros constituted an interference with Bloomberg's right to freedom of expression both necessary and proportionate to the legitimate aims pursued and thus made a fair application of Article 10, §2 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 11 of the Charter of Fundamental Rights of the European Union. 50. Moreover, in a democratic society, journalistic information relating to the financial situation of listed companies and intended for investors is not as important as journalistic information relating to subjects of general or historical interest or of great media interest, such that, in financial matters, where the journalistic activity is addressed to investors, freedom of the press may be further restricted in order to guarantee the integrity and transparency of financial markets and the protection of said investors. 51. The plea is therefore unfounded.

Operative part of the ruling

ON THESE GROUNDS, the Court:

Declares admissible the accessory voluntary interventions of the National Union of Journalists, the Reporters Without Borders association, the Reporters Committee for Freedom of the Press group, the International Federation of Journalists and the European Federation of Journalists; DISMISSES the appeal; Orders Bloomberg LP to pay the costs; Pursuant to Article 700 of the Civil Procedure Code, dismisses Bloomberg LP's claim and orders it to pay the Autorité des Marchés Financiers (Securities and Markets Authority) the sum of EUR 3,000; Thus decided by the Commercial, Financial and Economic Chamber of the *Cour de cassation* (Court of Cassation), and pronounced by the President at the public hearing on the fourteenth day of the month of February of the year two thousand and twenty-four.

Economie

Grands principes du droit

Translated rulings