



Court of Justice of the European Union

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Press and Information

UBS Europe and Others and in C-594/16 Enzo Buccioni v Banca d'Italia

Judgments in Cases C-358/16

**National financial supervisory authorities may have an obligation to disclose information covered by professional secrecy in order to safeguard the rights of the defence or in order that the information may be used in civil or commercial proceedings**

*It is for the competent national authorities and courts to weigh up the opposing interests of the parties*

**Case C-358/16**

In 2010, the Luxembourg financial supervisory authority ('the CSSF') declared that Mr DV was no longer trustworthy and was therefore required to resign from his post of director of an entity regulated by the CSSF. The CSSF based its decision, *inter alia*, on the role played by Mr DV in the setting-up and operation of Luxalpha, a company allegedly involved in the fraudulent activities of Mr Bernard Madoff.

In order to be able to defend his rights, Mr DV requested the CSSF to send him certain documents that it had collected during its investigation of Luxalpha and its depository bank, UBS. According to Mr DV, those documents are necessary in order to understand the roles of the various persons involved in the setting-up of Luxalpha, in particular in connection with the Madoff case. The CSSF refused to forward the documents, invoking its obligation to maintain professional secrecy in its capacity as a financial supervisory authority.

The Cour administrative du Luxembourg (Higher Administrative Court, Luxembourg), before whom the matter was brought, is uncertain whether the CSSF is bound by an obligation of professional secrecy, so that it must refuse to forward the documents requested by Mr DV. The directive on markets in financial instruments<sup>1</sup> provides that the obligation of professional secrecy may exceptionally be disregarded in cases covered by criminal law. The Cour administrative du Luxembourg (Higher Administrative Court, Luxembourg) is uncertain whether that provision is applicable in this case, since the measure imposed on Mr DV is, under Luxembourgish law, an administrative sanction, but it is covered by criminal law in a broad sense as defined by the European Court of Human Rights. If this is not the case, that court asks how the obligation of professional secrecy and the respect for the rights of the defence should be reconciled.

**Case C-594/16**

Mr Enzo Buccioni has held a current account with an Italian credit institution, the Banca Network Investimenti SpA ('the BNI'), since 2004. Following the compulsory liquidation of that institution in 2012, Mr Buccioni received only a partial reimbursement from the *Fondo Interbancario di Tutela dei Depositi* (Interbank Deposit Protection Fund). In 2015, with the aim of obtaining additional information in order to assess whether it is appropriate to bring legal proceedings against the Banca d'Italia ('the Bdl') and the BNI, Mr. Buccioni requested the Bdl to disclose several documents relating to the supervision of the BNI. The Bdl partially refused that request on the

<sup>1</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

grounds, inter alia, that certain documents whose disclosure was requested contained confidential information covered by its obligation of professional secrecy. Mr Buccioni subsequently brought an action before the Italian administrative courts seeking annulment of that decision.

The Consiglio di Stato (Council of State, Italy), which is the court of final appeal, decided to stay the proceedings and to refer questions to the Court for a preliminary ruling. It asks the Court whether Directive 2013/36<sup>2</sup> precludes the competent authorities of Member States (the Bdl in the present case) from disclosing confidential information to a person who so requests in order to be able to bring civil or commercial proceedings with a view to protecting proprietary interests which were prejudiced as a result of the compulsory liquidation of a credit institution.

In its judgment today in Case C-358/16, the Court first states that **the directive on markets in financial instruments**, when it provides that the obligation of professional secrecy may exceptionally be disregarded in 'cases covered by criminal law', **covers only the communication or use of confidential information for the purpose of conducting proceedings** or imposing sanctions **in accordance with national criminal law**.

The Court goes on to examine to what extent the obligation of professional secrecy provided for by the directive is restricted by the respect for the rights of the defence enshrined in the Charter of Fundamental Rights of the European Union. In that regard, the Court takes the view that the right to disclosure of the documents relevant to the defence is not unlimited and unfettered and that the protection of the confidentiality of the information covered by the obligation of professional secrecy on the competent authorities must be guaranteed and implemented in such a way as to reconcile it with the rights of the defence.

The Court recalls that it is for the competent authorities and courts to seek to strike a balance between those opposing interests in the light of the circumstances of each case. Therefore, where a competent authority invokes the obligation of professional secrecy provided for by the directive in order to refuse to disclose documents in its possession that are not in the file concerning a person who is the subject of a measure adversely affecting him, **it is for the competent national court to ascertain whether that information is objectively connected to the complaints upheld against him and, should this be the case, to weigh up the interests at issue before taking a decision whether to communicate each of the requested pieces of information**.

In Case C-594/16, the Court recalls at the outset that the effective implementation of the prudential supervision regime for credit institutions requires that both the supervised credit institutions and the competent authorities can **have confidence that the confidential information provided will, in principle, remain confidential**. Therefore, in order to protect not only the specific interests of the credit institutions directly concerned, but also the public interest linked, in particular, to the stability of the financial system within the European Union, **Directive 2013/36 imposes, as a general rule, the obligation to maintain professional secrecy**.

The Court goes on to observe that Directive 2013/36 provides for exceptions to that general rule. In the present case, the directive permits confidential information which does not concern third parties involved in attempts to rescue that credit institution to be disclosed by the competent authority, **for use in civil or commercial proceedings**, only to persons directly concerned by the bankruptcy or compulsory liquidation of the credit institution.

The Court notes that, in accordance with well-established case-law, it is appropriate to strictly interpret the derogations from the general prohibition on the disclosure of confidential information. Consequently, the possibility of excluding the obligation of professional secrecy requires that the request for disclosure must relate to information in respect of which the applicant puts forward precise and consistent evidence plausibly suggesting that it is relevant **for the purposes of civil or commercial proceedings which are under way or to be initiated**, the subject matter of which

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<sup>2</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338).

must be specifically identified by the applicant and without which the information in question cannot be used.

It is for the competent authorities and courts to weigh up the interest of the applicant in having the information in question and the interests connected with maintaining the confidentiality of the information covered by the obligation of professional secrecy, before disclosing each piece of confidential information requested.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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*The full texts of the judgments ([C-358/16](#) and [C-549/16](#)) are published on the CURIA website on the day of delivery.*

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