

## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Judgment of the Court (Fifth Chamber) of 13 September 2018 (request for a preliminary ruling from the Cour administrative — Luxembourg) — UBS Europe SE, formerly UBS (Luxembourg) SA, Alain Hondequin and Others**

(Case C-358/16) <sup>(1)</sup>

**(Reference for a preliminary ruling — Approximation of laws — Directive 2004/39/EC — Article 54(1) and (3) — Scope of the obligation of professional secrecy on national financial supervisory authorities — Finding of the absence of good repute — Cases covered by criminal law — Charter of Fundamental Rights of the European Union — Articles 47 and 48 — Rights of the defence — Access to the file)**

(2018/C 408/03)

Language of the case: French

**Referring court**

Cour administrative

**Parties to the main proceedings**

Appellants: UBS Europe SE, formerly UBS (Luxembourg) SA, Alain Hondequin and Others

Other parties to the proceedings: DV, EU, Commission de surveillance du secteur financier (CSSF), Ordre des avocats du barreau de Luxembourg

**Operative part of the judgment**

Article 54 of 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 must be interpreted as meaning that

- the phrase ‘cases covered by criminal law’ in paragraphs 1 and 3 of that article does not cover the situation in which the authorities established by the Member States for the purpose of fulfilling the functions set out in that directive adopt a measure, such as that at issue in the main proceedings, consisting in prohibiting a person from holding a post as director or any other post subject to accreditation in an undertaking supervised by that regulator and ordering him to resign from all related posts at the earliest opportunity, on the ground that that person no longer fulfils the requirement of good repute provided for in Article 9 of that directive, which is part of the measures that the competent authorities are required to take when exercising the powers attributed to them under Title II of that directive. That provision, in providing that the obligation of professional secrecy may exceptionally be disregarded in such cases, covers the communication or use of confidential information for the purpose of conducting proceedings or imposing sanctions in accordance with national criminal law;

- the obligation of professional secrecy provided for in paragraph 1 of that article, read in conjunction with Articles 47 and 48 of the Charter of Fundamental Rights of the European Union, must be guaranteed and implemented in such a way as to reconcile it with the rights of the defence. Accordingly, it is for the competent national court, when a competent authority invokes that obligation in order to refuse to disclose documents in its possession that are not in the file concerning the person who is the subject of a measure adversely affecting him, to ascertain whether that information is objectively connected to the complaints upheld against him and, if this should be the case, to weigh up the interest of the person in question in having access to the information necessary for him to be in a position to exercise fully his rights of defence and the interests in connection with maintaining the confidentiality of the information covered by the obligation of professional secrecy, before taking a decision whether to communicate each of the requested pieces of information.

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(<sup>1</sup>) OJ C 335, 12.9.2016.

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**Judgment of the Court (Fifth Chamber) of 19 September 2018 — European Commission v French Republic, IFP Énergies nouvelles**

(Case C-438/16 P) (<sup>1</sup>)

**(Appeal — State aid — State aid scheme implemented by France — Unlimited State guarantee conferred on the Institut français du pétrole (IFP) by the grant of the status of publicly owned industrial and commercial establishment (EPIC) — Decision declaring that measure as partially not constituting State aid and as partially constituting State aid compatible with the Internal market, subject to certain conditions — Concept of ‘aid scheme’ — Presumption of the existence of an advantage — Burden and standard of proof)**

(2018/C 408/04)

Language of the case: French

**Parties**

Appellant: European Commission (represented by: B. Stromsky and D. Grespan, acting as Agents)

Other parties to the proceedings: French Republic (represented by: D. Colas and J. Bousin, acting as Agents), IFP Énergies nouvelles (represented by: E. Morgan de Rivery and E. Lagathu, avocats)

**Operative part of the judgment**

The Court:

1. Sets aside the judgment of the General Court of the European Union of 26 May 2016, France and IFP Énergies nouvelles v Commission (T-479/11 and T-157/12, EU:T:2016:320), in so far as, by that judgment, the General Court annulled Article 1(3), (4) and (5) and Articles 2 to 12 of Commission Decision 2012/26/EU of 29 June 2011 on State aid granted by France to the Institut Français du Pétrole (Case C 35/08 (ex NN 11/08));
2. Refers the case back to the General Court of the European Union;
3. Reserves the costs.

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(<sup>1</sup>) OJ C 392, 24.10.2016.