http://dx.doi.org/10.18623/rvd.v22.n3.3365

MECHANISM OF BANK SECRECY PROTECTION: COMPARATIVE LEGAL ANALYSIS OF SOME EUROPEAN STATES

MECANISMO DE PROTEÇÃO DO SIGILO BANCÁRIO: ANÁLISE JURÍDICA COMPARATIVA DE ALGUNS ESTADOS EUROPEUS

Article received on: 7/25/2025
Article accepted on: 9/26/2025

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The authors declare that there is no conflict of interest

Abstract
The global regulation of bank secrecy is defined by two conflicting trends: a move toward greater transparency and liberalization of access to information, versus the stringent defense of its inviolability. Ukraine, influenced by European deoffshorization efforts, has amended its legislation to enhance information sharing. Despite these reforms, significant legal debates persist in Ukraine regarding the scope of information that should be accessible to law enforcement agencies. Specifically, there is uncertainty and controversy surrounding the disclosure of data on account openings/closures (including e-wallets) and safe deposit box leases. This creates a legal gap that hinders effective law enforcement while raising concerns about privacy. This article aims to address this problem by comparing the mechanisms for protecting

Resumo
A regulamentação global do sigilo bancário é definida por duas tendências conflitantes: um movimento em direção a uma maior transparência e liberalização do acesso à informação, versus a defesa rigorosa da sua inviolabilidade. A Ucrânia, influenciada pelos esforços europeus de desoffshoreização, alterou a sua legislação para melhorar a partilha de informações. Apesar dessas reformas, persistem debates jurídicos significativos na Ucrânia sobre o âmbito das informações que devem ser acessíveis às agências de aplicação da lei. Especificamente, há incerteza e controvérsia em torno da divulgação de dados sobre aberturas/encerramentos de contas (incluindo carteiras eletrónicas) e alugueres de cofres. Isto cria uma lacuna jurídica que dificulta a aplicação eficaz da lei, ao mesmo tempo que

bank secrecy in Ukraine with those in leading foreign countries, with the goal of formulating recommendations to improve Ukraine's legal framework. The research employs dialectical, systemic-structural, formal-legal, and comparative-legal methods. The analysis reveals that disclosing information on account openings/closures and safe deposit box agreements to law enforcement is a common and effective practice in many EU states. It is concluded that implementing a similar model in Ukraine would be a viable step. Furthermore, the study proves the necessity of amending Ukrainian legislative provisions concerning the designated holders of bank secrecy.

Keywords: Bank. Bank Secrecy. Liability for Disclosure of Bank Secrecy. Disclosure of Bank Secrecy by a Court Decision. Protection of Bank Secrecy. Civil Procedure.

suscita preocupações sobre a privacidade. Este artigo visa abordar este problema, comparando os mecanismos de proteção do sigilo bancário na Ucrânia com os de países estrangeiros líderes, com o objetivo de formular recomendações para melhorar o quadro jurídico da Ucrânia. A investigação emprega métodos dialéticos, sistémicos-estruturais, formais-jurídicos e comparativos-jurídicos. A análise revela que a divulgação de informações sobre aberturas/encerramentos de contas e contratos de cofres a autoridades policiais é uma prática comum e eficaz em muitos estados da UE. Conclui-se que a implementação de um modelo semelhante na Ucrânia seria uma medida viável. Além disso, o estudo comprova a necessidade de alterar as disposições legislativas ucranianas relativas aos detentores designados do sigilo bancário.

Palavras-chave: *Banco. Sigilo Bancário. Responsabilidade Pela Divulgação do Sigilo Bancário. Divulgação do Sigilo Bancário Por Decisão Judicial. Proteção do Sigilo Bancário. Processo Civil.*

1 INTRODUCTION

Formally, bank secrecy in its modern form appeared in Swiss banking law in 1934, but its historical roots are much deeper. As early as 4000 years ago, the Code of Hammurabi provided for the protection of confidential information of bankers' clients, as evidenced by the possibility of its disclosure by a banker only in the event of a dispute with a client. Historical parallels can also be traced in the examples of other countries. Thus, in Ancient Rome, the principle of discretion was protected by the *actio iniuriarum* claim, and among barbarian tribes, - by the *lex visigothorum* institute. As early as the 16th century, Austrian consumer law contained provisions for the protection of financial secrecy, and in 19th-century Germany, it had already become a constitutional norm. Today, bank secrecy exists in almost every legal system (ŻYGADŁO, 2011, p. 25).

The analysis of global practice in State regulation of banking activities, particularly concerning the legal regime of bank secrecy, allows for the identification of two main trends. The first involves the introduction of strict measures of State regulation and control over financial flows by certain countries, as well as the liberalization of access to information constituting bank secrecy. The second trend is characterized by the defense

of maximum inviolability of bank secrecy. Ukraine belongs to the group of countries where bank secrecy is positioned as an institution of public law, where the interests of society and the State are prioritized in its protection.

Accordingly, the purpose of our research is to compare the mechanisms for protecting bank secrecy in Ukraine and some other leading foreign countries with the aim of improving the legal regulation of this institution in our State.

2 LITERATURE REVIEW

The issue of bank secrecy protection is a subject matter of research by a number of scholars. For example, the study by Chernei et al. (2023, p. 311) provides a comparative analysis of the legislative frameworks governing liability for the breach of bank secrecy in European nations and the United States. The paper by Dora Neo (2017, p. 3) scrutinizes the conceptual foundations of bank secrecy, including the core duty of confidentiality, recognized exceptions, and obligations for mandatory disclosure. This analysis is framed by the inherent tension between the right to privacy and the demands of state regulation, offering a robust conceptual model for interpreting the law of bank secrecy. The primary objective of the publication by Basysta et al. (2020, p. 298) is to investigate the mechanisms for protecting banking secrecy in Ukraine. It analyzes the risks of unlawful disclosure, particularly in the context of criminal proceedings, and identifies specific legislative gaps and conflicts. Based on this analysis, the paper proposes recommendations aimed at resolving these issues to ultimately enhance public trust in the Ukrainian banking system. Picard and Pieretti (2011, p. 955) tried to find a link between money laundering and bank secrecy and states that only by undermining confidentiality laws can the fight against financial crime be achieved.

3 METHOD

The methodological basis of the study is a set of general scientific and special methods of cognition. The basic method is the dialectical approach, which enabled a systematic consideration of the institution of bank secrecy, its essence, and the mechanisms of its disclosure and protection. Using the systemic-structural method, the place of bank secrecy among other types of restricted information was determined, and

identifies its features were identified. The formal legal (dogmatic) method was applied to analyze the regulatory framework governing the institution of bank secret in Ukraine and in some other countries. The logical methods of analysis, synthesis, abstraction and generalization were used to study the legal nature of bank secrecy and to clarify the conceptual framework, e.g. the concept of “bank secrecy”, “confidential information”, “commercial secret”, etc. The comparative legal method made it possible to study the legislation of foreign countries in this area, and the method of empirical analysis allowed to distinguish bank secrecy from related legal categories.

4 RESULT AND DISCUSSION

4.1 Ukraine

Article 32 of the Constitution of Ukraine stipulates that "то one shall be subject to interference in his/her private and family life, except in cases envisaged by the Constitution of Ukraine. The collection, storage, use, and dissemination of confidential information about a person without his/her consent shall not be permitted, except in cases determined by law and only in the interests of national security, economic welfare, and human rights» (UKRAINE, 1996). Based on this, we note that bank secrecy is one of the guarantees of this provision of the Main Law of Ukraine. To implement this constitutional rule, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Protection of Personal Data", which contains the following provision: "Personal data includes details or a set of details about the individual, which is or may be explicitly identified" (Article 2) (UKRAINE, 2010).

The concept of "secrecy" is understood as information not subject to disclosure; and if in the case of personal information, we can only talk about its protection by moral rules, then for the protection of State or commercial secrets, relevant legal provisions are applied. The latter refers to the protection of banking data as well. The understanding of "bank secrecy" stems from the concept of "information with restricted access," which includes confidential, secret, and official information. Article 21 of the Law of Ukraine "On Information" defines confidential information as data about an individual, as well as information to which access is restricted by its owner (an individual or a legal entity, except for subjects of public authority). The dissemination of confidential information

occurs at the will (consent) of the respective person in the manner and under the conditions determined by him(her), as well as in other cases established by law (UKRAINE, 1992).

There are a number of approaches to this concept in academic literature, which indicates its multifaceted and multidimensional nature. Thus, the institution under study is considered, in particular, in broad and narrow meanings. In the first case, it is understood as the bank's obligation to keep confidential information about its clients' operations, their accounts, and deposits, as well as about the operations and accounts of its correspondents. First and foremost, this obligation is aimed at protecting clients from the disclosure of information that could be used against them by competitors or other ill-wishers. In the second case, it is understood as a type of official secret. This means that any confidential information about a client that becomes known to a bank employee in the course of his (her) work also falls under the protection of bank secrecy (SEVASTIANENKO & MYKOLIUK, 2024, p. 258).

D. Hetmantsev (2003, p. 7) notes that, firstly, bank secrecy is information regarding the activities and financial condition of a client that became known to the bank in the process of serving him (her), and secondly, it is a sub-institute of financial law that regulates public relations concerning bank secrecy.

According to the research by Ustinova-Boichenko (2023, p. 100), it is impossible to unequivocally classify bank secrecy as an institution exclusively of financial or civil law. This conclusion is justified by the fact that its regulation, in addition to the specialized Law No. 2121-III, is also carried out by the norms of the Law of Ukraine "On Information," individual provisions of the Civil Code of Ukraine, the Civil Procedure Code of Ukraine, the Commercial Code of Ukraine, as well as by resolutions of the Cabinet of Ministers of Ukraine ("On the list of information that does not constitute a commercial secret") and the Board of the National Bank of Ukraine ("On the approval of the Rules for storage, protection, use and disclosure of bank secrecy"). The scholar also determines that the main elements of this legal category are the information itself, its content, and its legal regime.

Yu. Vashchenko (2006, p. 144), in the process of researching this concept, comes to the conclusion that, on the one hand, it is a complex institution of civil law, which is the bank's obligation to keep clients' operations secret from third parties, primarily competitors of a particular bank client, as well as the operations, accounts, and deposits

of its clients and correspondents, and on the other one, it is a type of official secret, i.e., confidential information about a client that became known to a bank employee.

O.A. Kostiuchenko (2001, p. 51) proposes a broader interpretation of bank secrecy, including information about the bank's operations, its transactions, the state of clients' accounts, the terms of contracts concluded by the bank, as well as data on management, finance, and other economic activities, the disclosure of which could harm the bank's interests. However, in our opinion, information about the internal activities of the bank is rather a commercial secret, the scope and protection of which the bank determines independently. Moreover, we consider it incorrect to link the status of bank secrecy to the potential harm to the bank's interests, as, by this logic, information whose disclosure would not harm the client would not be considered bank secrecy. It remains unclear who and by what criteria should assess the possibility of such harm.

The legislative definition of this concept is enshrined in Article 60 of the Law of Ukraine "On Banks and Banking", according to which bank secrecy is information regarding the activities and financial condition of a client that became known to the bank in the process of serving the client and in its relationship with him(her), or became known to third parties when providing services to the bank or performing functions defined by law, as well as information about the bank defined in this article (Ukraine, 2000).

In legal doctrine, bank secrecy is often defined as a type of secret or confidential information. Based on the analysis of current legislation, we conclude that bank secrecy belongs to information with restricted access, specifically to the category of secret information (in particular, as part of commercial secret).

An important issue in this context is the differentiation between bank and commercial secrets. Although bank secrecy, as an important principle of commercial banks' activities, is a type of commercial secret, a legislative analysis allows us to highlight their significant differences. Firstly, bank secrecy is classified as "secret" information by its nature, while commercial secret, according to the Law of Ukraine "On Information", is classified as "confidential". Secondly, the legal regime of these secrets is different: the scope and content of a commercial secret, as well as the procedure for accessing it, are determined by its owner. In contrast, the list of information constituting bank secrecy and the obligations for its preservation are clearly regulated by law. Thirdly, they have different objects of regulation: bank secrecy concerns "foreign" information – data about clients and correspondents, which the bank cannot freely dispose of without

their consent; whereas a commercial secret may include information that is the property of the bank itself (ZINCHENKO, 2013, p. 262). This difference is also reflected in the legal regulation: commercial secrecy is regulated by the Commercial Code of Ukraine, while bank secrecy is regulated by the Civil Code of Ukraine and specific banking legislation.

According to the rules of the aforementioned Article 60 of the Law of Ukraine "On Banks and Banking", bank secrecy consists of: ● information about clients' bank accounts; ● information about operations conducted for or on behalf of a client, and agreements concluded by him(her); ● financial and economic condition of clients; ● information about the organization and implementation of the bank's security and the security of persons on the bank's premises; ● information about the organizational and legal structure of a client – legal entity, its managers, and areas of activity; ● information regarding the commercial activities of clients or commercial secrets, any project, inventions, product samples, and other commercial information; – information regarding the reporting of an individual bank; ● codes used by banks to protect information; ● information about an individual who intends to conclude a consumer credit agreement; ● information on the organization and performing the collection of funds and/or transportation of currency values ● information about banks or bank clients collected during banking supervision.

The list of information that constitutes bank secrecy can include the following categories of information: a) personal data regarding an individual client, which includes information about the facts and circumstances of a citizen's life allowing them to be identified as a person (passport data; information on the presence/absence of savings books; information on deposits made to the client's account by third parties, account number, other information that became known to the bank in the process of serving the client); b) information about a client-legal entity. In the case where the bank's client is a legal entity, the content of information primarily includes statutory documents, a registration certificate, a taxpayer certificate, as well as cards with samples of the seal and signatures establishing who has the right of the first and second signature, and the term of their authority, licenses, accounting reports, information regarding the client's credit history, the content and terms of the credit agreement and the agreement on securing the fulfillment of obligations, etc.; c) information about property held in storage at the bank,

which includes information about the owner of the property, a list and value of this property, as well as information about the types of bank storage.

Therefore, among the main features of information constituting bank secrecy, the following can be distinguished: 1) it is an intangible good: reflected and in some way recorded on paper or electronic media; 2) its circulation is legislatively limited; 3) upon the transfer of information containing bank secrecy and the legal confirmation of such fact, the right to use it shall be transferred (KOZYNETS & MAKOHIN, 2019, p. 240).

The procedure for disclosure of information containing bank secrecy is regulated by Chapter 12, Section IV of the Civil Procedure Code of Ukraine. Pursuant to Article 347 of the Code, an application for disclosure by a bank of information containing bank secrecy regarding legal entity or individual in cases established by law shall be filed with the court at the location of the bank serving such legal entity or individual. Such application should contain: 1) name of the court to which the application is submitted; 2) name (family name) of the applicant and the person in respect of whom the disclosure of information containing bank secrecy is required, their place of residence or location, as well as the name of the applicant's representative, if the application is submitted by a representative; 3) name and location of the bank serving the person in respect of whom the disclosure of bank secrecy is required; 4) justification of the necessity and circumstances under which it is required to disclose information containing bank secrecy, indicating the provisions of laws providing the relevant powers or the rights and interests that have been violated; 5) the scope (limits of disclosure) of information containing bank secrecy regarding the person and the purpose of its use.

If during the court proceedings it is established that the applicant demands disclosure of information containing bank secrecy regarding a legal entity or an individual without the grounds and powers specified by law, the court shall decide to dismiss the application. Applications for disclosure of information containing bank secrecy regarding a legal entity or individual are considered by the bank serving such legal entity or individual (UKRAINE, 2004).

One of the most significant issues in the context of our research is precisely the preservation of bank secrecy, which is ensured, in particular, by: limiting the circle of persons who have access to information constituting bank secrecy; organizing special document management with documents containing bank secrecy; using technical means to prevent unauthorized access to electronic and other information carriers; applying

reservations regarding the preservation of bank secrecy and liability for its disclosure in contracts and agreements between the bank and the client. Managers and employees of banks are obliged not to disclose or use information constituting bank secrecy, which became known to them in connection with the performance of their official duties for their own benefit or for the benefit of third parties, about which they sign a relevant document upon taking office (UKRAINE, 2000).

Although the Law of Ukraine "On Banks and Banking" does not contain clear definitions of the owner and holder of bank secrecy, an analysis of the legislation allows for the formulation of their legal statuses. Thus, the owner of bank secrecy is the bank's client, meaning "any individual or legal entity that uses the bank's services". The holders of bank secrecy can be considered persons who gained access to it during the performance of their official duties. This category includes the National Bank of Ukraine, banks and their officials, as well as relevant state authorities listed in paragraphs 2–6 of Part 1 of Article 62 of the said Law.

The same article contains an exhaustive list of actors to whose official requests information regarding legal and natural persons, constituting bank secrecy, is disclosed. Accordingly, such information is provided: 1) upon the request or with the written permission of the respective legal or natural person; 2) by a court decision; 3) upon requests from the prosecutor's offices of Ukraine, the Security Service of Ukraine, the State Bureau of Investigation, the National Police of Ukraine, the National Anti-Corruption Bureau of Ukraine, the Economic Security Bureau of Ukraine, the National Agency on Corruption Prevention, the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes; 4) the bodies of the Antimonopoly Committee of Ukraine; 5) upon requests from the central executive body implementing the State tax policy; 6) the central executive body implementing the state policy in the sphere of prevention and counteraction to the legalization (laundering) of proceeds from crime or terrorism financing; 7) the bodies of the State executive service, private enforcement officers; 8) the National Securities and Stock Market Commission; 9) other banks; 10) the central executive body ensuring the formation and implementation of State financial and budgetary policy; 11) notaries, officials of local self-government bodies authorized to perform notarial acts, consular institutions; 12) the holder of the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Formations; 13) arbitration managers (UKRAINE, 2000).

These actors are entitled to receive only a limited amount of information, and only that which corresponds to their functions and powers. The request from the relevant state body must be properly formalized and contain all necessary details and attachments as defined by law. In cases where the request, in its form or content, does not comply with legislative requirements, the bank refuses to disclose confidential data. Information constituting bank secrecy is disclosed to the extent specified in the relevant written request or permission.

Since bank secrecy is protected by law, legal liability is provided for its unlawful disclosure. The main types of legal liability for the disclosure of bank secrecy are: disciplinary (for violation of labor discipline), civil-legal (for detected violations of contractual obligations), criminal (for committing a crime), and administrative (for committing an administrative offense).

Thus, officials and employees of banks can be brought to disciplinary responsibility in accordance with general labor legislation (Articles 147 – 147-1 of the Labor Code of Ukraine providing for a mechanism of disciplinary action for violation of labor discipline (UKRAINE, 1971) or special legislation regulating their legal status (for example, the Law of Ukraine "On Civil Service" regulates the procedure for bringing civil servants to disciplinary responsibility).

Accordingly, bank employees bear disciplinary responsibility for violating their obligations to preserve bank secrecy. In such cases, the bank's management has the right to apply measures such as a reprimand or dismissal. It is important to note that the application of disciplinary responsibility does not exclude the possibility of simultaneously applying other types of liability, such as civil-legal or criminal. At the same time, primary financial monitoring entities, their officials, and other employees do not bear disciplinary, administrative, civil-legal, and criminal liability for submitting information to the specially authorized body, if they act in accordance with the law, even when their actions cause harm to legal or natural persons, and for other actions related to the implementation of the law (Article 12 of the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime, Terrorism Financing and Financing of Proliferation of Weapons of Mass Destruction") (UKRAINE, 2019).

The civil-legal liability of bank employees may lie in compensating the bank's client for the corresponding material and moral damage. Thus, according to Part 2 of

Article 1076 of the Civil Code of Ukraine, in the event of disclosure by a bank of information constituting bank secrecy, the client has the right to demand compensation from the bank for the damages and moral harm caused (Law No. 435-IV, 2003). This is also emphasized in Article 61 of the Law of Ukraine "On Banks and Banking Activities": persons guilty of disclosing information constituting bank secrecy, and/or using it for their own benefit or for the benefit of third parties, which caused losses to the bank or its client, are obliged to compensate for the damages and moral harm in accordance with the law (UKRAINE, 2000).

Criminal liability is provided for the illegal collection for the purpose of use or use of information that constitutes banking or trade secrets (Article 231) and the disclosure of a commercial, bank secret, or professional secret on the capital markets and organized commodity markets (Article 232 of the Criminal Code of Ukraine). In the first case, liability is established in the form of a fine from 3 000 to 8 000 of non-taxable minimum incomes of citizens; in the second one – a fine from 1 000 to 3 000 of non-taxable minimum incomes of citizens with deprivation of the right to hold certain positions or engage in certain activities for a period of up to three years. In addition, the application of criminal sanctions for the disclosure of bank secrecy is possible under Articles 361 – 363-1 of the Criminal Code of Ukraine (UKRAINE, 2001).

The current Code of Ukraine on Administrative Offenses does not contain elements of offenses where bank secrecy is the direct object. However, offenders can be brought to administrative liability for violating the bank secrecy regime based on articles of this Code, in which such violations are reflected indirectly, within a more general subject matter. Among such articles, one can distinguish Articles 166-5 (Violation of banking legislation), 172-6 (Violation of financial control requirements), 166-9 (Violation of legislation on prevention and counteraction to the legalization (laundering) of proceeds from crime, terrorism financing, and financing of the proliferation of weapons of mass destruction). The main type of penalty for committing these offenses is a fine (UKRAINE, 1984).

4.2 Switzerland

Now let us turn to foreign experience in regulating the issue under study. As already mentioned, bank secrecy in its modern form appeared in Switzerland in 1936. In

this country, it is understood as the obligation of banks, their representatives, employees, and experts to keep secret any professional affairs of their clients, or third parties, which they learned about in the performance of their duties (SWITZERLAND, 1934).

The legal regulation of bank secrecy in Switzerland has a dual nature: criminal and civil-legal. The main norm is Article 47 of the Banking Act, which establishes criminal liability for the disclosure of client data. Thus, according to this article, bank employees and persons acting on behalf of a bank may be punished by imprisonment for up to 5 years or a fine for disclosing customer account information to third parties. Since 2015, this article has been expanded to cover third parties (e.g., journalists) who disseminate illegally obtained banking information, even if such publication is in the public interest. Negligent disclosure is punishable by a fine of up to CHF 250,000 (SWITZERLAND, 1934). Similar secrecy obligations are enshrined in laws regulating the activities of stock exchanges (Article 43); financial market infrastructure (Article 147), and collective investment schemes (Article 148).

The civil-legal obligation to maintain secrecy stems from Article 28 of the Swiss Civil Code (the right to personal and economic privacy) (SWITZERLAND, 1907) and Article 398 of the Code of Obligations, which obliges the bank to act in good faith and maintain client confidentiality (SWITZERLAND, 1911).

The actors, upon whom the duty to maintain secrecy is imposed are legal and natural persons. The former include banks licensed in Switzerland, including branches of foreign banks, private banks, and savings banks that accept deposits from the public or finance themselves through loans. The second category includes members of governing and supervisory bodies, employees, bank representatives, bank liquidators, as well as members and employees of audit firms. This duty does not cease even after the bank's license is revoked or the person is dismissed.

Article 47 of the aforementioned Banking Act broadly interprets the object of protection, not providing an exhaustive list of data protected. Accordingly, all information arising from the business relationship between the bank and the client is protected, including personal data, information about accounts, loans, investments, terms of agreements, financial condition, as well as information about the client's relationships with other banks and even the bank's own transactions if their disclosure could harm the client (SWITZERLAND, 1934).

Although Swiss legislation establishes strict rules for maintaining bank secrecy, there are a number of exceptions allowing for its disclosure. These include requests from State authorities, the need for consolidated supervision, cases of overriding private or public interest, as well as the fulfillment of obligations to supervisory authorities (FINMA) and in the sphere of combating money laundering. In addition, disclosure is possible within the framework of international agreements, such as the OECD Model Convention, AEOI, and FATCA.

Unlike many other countries, the Swiss Banking Act does not explicitly mention client consent as a basis for disclosure; however, such consent, properly formalized, makes the disclosure lawful from the perspective of civil law, so banks actively use this mechanism when opening accounts. Such consent must be clearly formulated and understandable. Before obtaining consent, banks must check whether disclosure is possible under the provisions of the legislation, as in such a case, permission from the client is not required.

In cases of disclosure of bank secrecy by a court decision, the balance of interests plays a key role. Thus, in civil proceedings, persons may refuse to disclose information if the interest in preserving secrecy outweighs the interest in establishing the truth. Within criminal proceedings, persons obliged to maintain secrecy must testify, although they may be exempted from this duty if the interest in preserving confidentiality still prevails. In the process of providing legal assistance during international cooperation, bank secrecy is disclosed only if the illegal act is a crime under Swiss law as well (Hofmann, 2019).

4.3 Germany

The issue of bank secrecy in Germany began to be discussed long before the codification of the general right to privacy, which, prior to the Constitution of 1947 (where it was recognized as a "personal right" – Persönlichkeitrecht), had appeared only occasionally in case law. The origin of this right was unclear, although the Supreme Court pointed to the precedential nature of a German tort for invasion of privacy, reminiscent of the American system. An early precedent was a 1927 case in which the Reichsgericht (the Supreme Court at the time) upheld a merchant's claim against a credit bureau for disclosing information about his criminal past, despite a pardon granted twenty years earlier, classifying it as a "violation of good morals". Another case from the 1950s

involved a bank owner who had arranged a loan to avoid bankruptcy. After a newspaper published information about his financial difficulties, he sued for breach of bank secrecy. The Federal Supreme Court rejected the claim, finding that the plaintiff's bankruptcy was not a consequence of the publication, as he was already in a state of actual or near-bankruptcy at the time the article was released (LYTVYNENKO, 2019, p. 308).

Since Germany lacks a specific law governing issues related to bank secrecy, the conceptual foundations of this institution are primarily based on civil law contractual relationships between a banking institution and its client, which entail the bank's obligation to maintain the confidentiality of client's information. Additionally, bank secrecy is a key aspect of capital markets; consequently, it is also protected by German tax law, which aims to foster a relationship of trust between citizens and the State to ensure its proper functioning. The duty of confidentiality and bank secrecy imposed on German financial institutions can be overridden only by specific government-level legal acts or with the client's waiver of the right to bank secrecy.

Credit institutions in Germany (enterprises conducting banking business commercially or on a scale requiring a commercial organization, according to Section 1(1) of the Banking Act of the Federal Republic of Germany (Kreditwesengesetz, KWG)) are not permitted to disclose confidential client's information to third parties or to bank employees not involved in servicing the client (GERMANY, 1998). However, there are certain exceptions to this general rule, listed below:

a. money transfers exceeding €12,500, not made for the transfer of goods or the payment/repayment of short-term loans, must be reported to the German Federal Bank (Bundesbank) (Section 67 of the Foreign Trade and Payments Ordinance (Außenwirtschaftsverordnung – AWV)) (GERMANY, 2022);
b. banks are obligated to inform the Federal Central Tax Office (Bundeszentralamt für Steuern) of any amounts exempt from capital gains tax and must generally cooperate with tax authorities regarding capital gains tax (which is withheld/collected by banks on behalf of the tax authorities);
c. banks have to respond to inquiries from tax authorities to determine taxable amounts, especially those involved in criminal proceedings (Sections 93, 208 of the Fiscal Code of Germany (GERMANY, 2002);
d. banks have a duty to cooperate with authorities during criminal investigations.

e. banks must report suspicious transactions related to sanctions to the relevant authorities.

Germany's bank secrecy rules apply to information concerning both natural and legal persons (regardless of their residency) in their dealings with credit institutions and banks regulated by German law. It does not matter whether the institution is physically located in the country, operates there through branches and representative offices, or works internationally. It is important to note that anonymized data is not subject to these rules.

Disclosure of bank secrecy is possible only with the client's consent or on other legal grounds (including data protection legislation). It is understood that these rules should not hinder the functioning of the credit institution, such as conducting internal audits, as this is considered to be in the client's interest (GLUGLA et al., 2024).

The obligation to disclose information was significantly strengthened with the adoption of the Fourth Financial Market Promotion Act of July 2002. This law, aimed at combating terrorism, establishes a mechanism for direct, automated access by banking supervisory authorities to master account data, which banks are required to maintain in special databases. This procedure is intended to ensure the rapid tracking and identification of cash and securities accounts held in German banks. Banking supervisory authorities have the right to access this information (a) to carry out their own functions, (b) upon the request from national and foreign law enforcement agencies and courts, and (c) upon the request from authorities responsible for enforcing financial sanctions (DEUTSCHE BUNDESBANK, 2002).

A breach of bank secrecy rules can be grounds for a client to file a lawsuit for damages under the relevant contract. Employees who unlawfully disclose banking information may face criminal or administrative liability, especially if the disclosure violates data protection laws such as the GDPR or the Federal Data Protection Act. Thus, German data protection law also plays a significant role in protecting client information, particularly for private individuals, and can be relevant in cases involving loan portfolio transactions or other data-related disclosures (RICHTER & KÄPPLINGER, 2025).

If serious breaches of bank secrecy rules impede the proper conduct of banking business, the Federal Financial Supervisory Authority (BaFin) has the authority to take measures to rectify them.

4.4 France

Until 1984, France had no specific law on bank secrecy. The regulation of this institution was based on case law, which imposed a duty of professional discretion on banking employees – the one that logically "stemmed from" the principle of loyalty and contractual liability. It was formally enshrined in Article 57 of Law 84-46 of January 24, 1984 (now Article L. 511-33 of the Monetary and Financial Code (FRANCE, 2025)). Since then, the French legislature has introduced numerous amendments and exceptions to this rule, which have ultimately demonstrated the "relative" nature of bank secrecy, as the requirement to maintain it "yields to" more pressing State interests, including:

- countering money laundering and terrorist financing (the obligation to inform TRACFIN);
- tax control (broad powers of tax authorities);
- international cooperation (e.g., the FATCA agreement, European directives on the exchange of tax information);
- the needs of criminal justice;
- prudential supervision by the ACPR (Prudential Supervision and Resolution Authority) and the Bank of France;
- the needs of the banking sector itself (the 2008 Law on the Modernization of the Economy allowed disclosure without client consent) (GAUCHON, 2025).

The legal basis for bank secrecy, as previously mentioned, is now Article L. 511-33 of the Monetary and Financial Code (FRANCE, 2025), which imposes a duty of professional secrecy on members of governing bodies (boards of directors, supervisory boards), individuals involved in management, and all employees of credit institutions and financial companies. According to legal doctrine, the persons bound by secrecy include: members of management and supervisory boards; de facto and de jure directors; employees, regardless of their position; and third parties who receive confidential data within the framework of legally defined operations (e.g., in cases of assignment or outsourcing). Importantly, and as confirmed by case law, this duty persists even after the termination of the employment relationship.

The object of bank secrecy protection is confidential information obtained by an institution in the course of its professional activities. To be eligible for protection, such information must meet the following criteria: it must be non-public; it must be obtained

in the context of the banking relationship (not in a personal capacity); it must be specific enough that its disclosure could harm the trade secrets or private life of the client or a third party.

Consequently, data regarding the existence of accounts, their status, transaction details, loan conditions, information about authorized representatives and guarantors, as well as assets entrusted to the bank or personal information provided by the client are subject to protection. The Court of Cassation (Cour de Cassation) (FRANCE, 1995) even concluded that information on the back of a check that could identify the beneficiary is cconsidered bank secrecy.

Since bank secrecy serves the client's interests, he(she) can waive it by authorizing the banker to disclose such information. However, such authorization must be direct (clear and unambiguous), informed (the client must be fully aware of the nature of the information to be transferred, the recipients, and the purpose of the transfer; a general waiver clause in the terms and conditions is often deemed insufficient to guarantee informed consent), and specific (ideally, the authorization should relate to a specific communication, for a specific purpose, and directed at a defined group of people). Vague consent is not valid, and general clauses in contracts are insufficient, especially given the 2008 Law's requirement for consent to be given "on a case-by-case basis". Heirs and legal representatives can also authorize access to the information of a deceased or incapacitated client (FRANCE, 2008).

An important exception is the provision of "commercial information" – general, objective, and non-misleading information about a client's solvency, which banks can provide to other companies. This practice is regulated by a 2007 decision of the Court of Cassation. When providing such information, the bank is liable for its accuracy.

A breach of these rules can lead to both criminal (imprisonment for up to one year and a fine of €15,000 under Article 226-13 of the Criminal Code) and civil liability (compensation for damages), with the bank being held vicariously liable for the actions of its employees.

4.5 Poland

The fundamental principles of bank secrecy in the Republic of Poland are enshrined in Article 47 (the right to the protection of private life) and Article 51 (the right

to the protection of information about oneself) of the Constitution of the State. According to these provisions, the disclosure of such data is possible only by virtue of law, and public authorities are prohibited from collecting, obtaining, or disseminating it. Exceptions to this general rule are regulated by Article 31(3) of the Constitution and are permissible only in the interests of security, public order, environmental protection, health, public morals, or the protection of the rights and freedoms of others. Importantly, such restrictions may not violate the very essence of these rights and freedoms (POLAND(a), 1997).

During the time the 1989 Banking Law Act was in force, there were attempts to interpret bank secrecy as a type of state or professional secrecy. However, an analysis of the provisions of this Act in its current version indicates that the legislator has adopted a concept whereby bank secrecy is a specific type of professional secrecy.

Currently, the institution of bank secrecy is regulated by the Banking Law Act (POLAND(b), 1997). According to Article 104 of this Act, a bank, its employees, and intermediaries are obliged to maintain bank secrecy, which covers all information related to a banking transaction, obtained at all stages of its implementation – from negotiations to execution. It should be emphasized that the scope of bank secrecy is quite broad: in addition to the contract itself, it protects the borrower's business plan, pledge agreements, data on their financial condition, the size and nature of their assets, and any other information that becomes known to the bank during its interaction with the client. Furthermore, bank secrecy covers all information related to the bank's activities, including payment card operations. Data obtained during the negotiation, conclusion, and execution of a contract (for example, during a debit card transaction) are protected. The legislative wording "all information" strengthens the protection, as it requires a broad interpretation. This means that any information for which there is doubt as to whether it constitutes bank secrecy should be treated as such. Thus, bank secrecy includes, among other things, the payment card number, the cardholder's data, the PIN, and other related information.

However, the legislation provides for a number of situations when a financial institution is released from this obligation. The disclosure of information constituting bank secrecy is permitted, in particular, when:

- it is a condition for the proper performance of a contract or related actions;

- information is transferred to external contractors within the framework of banking outsourcing to the extent necessary to provide the services;
- data is provided to attorneys or legal advisors for the purpose of obtaining legal assistance;
- disclosure is necessary for the conclusion and performance of agreements for the sale of "lost" receivables;
- the insurance of debtors of securitized debt against the risk of insolvency is carried out;
- information is exchanged with other financial institutions belonging to the same financial holding for the purpose of complying with legislation on countering money laundering and financing of terrorism (POLAND(b), 1997).

In addition to the cases mentioned, a bank may disclose information constituting bank secrecy exclusively to the entities and in the cases specified in Article 105 of the Banking Law Act. In particular, disclosure is permitted for:

- interbank operations. In such cases, information is provided to other banks and credit institutions for conducting banking operations and transactions with receivables, as well as to other institutions providing loans, on a reciprocal basis;
- consolidated supervision. This is achieved by exchanging data with banks and financial institutions within the same group for preparing consolidated financial statements, managing risks, and applying models provided for in Regulation (EU) No 575/2013;
- accounting for inheritance. Providing consolidated information to other banks, credit unions regarding the inheritance of the holder’s account;
- tax and financial supervision. Disclosing information at the request of the Head of the National Revenue Administration, the Clearing Pouse, the Bank Guarantee Fund, and the Financial Supervision Authority;
- payment services. Providing data to the providers of payment initiation and account information services;
- insurance supervision. Exchanging information with insurance and reinsurance companies for the purposes of group and supplementary supervision;
- at the court’s request. Confidential data is disclosed at the request of judicial authorities (POLAND(b), 1997).

The bank's interaction with law enforcement agencies regarding the disclosure of bank secrecy is governed by Articles 106a and 106b of the Banking Law Act. Thus, Article 106a obliges the bank to notify the prosecutor, the police, and other authorized bodies of justified suspicions that the bank is being used for criminal activities or tax offenses. Article 106b allows the prosecutor conducting a criminal or fiscal case to demand the bank to disclose bank secrecy (based on the court order) (POLAND(b), 1997).

However, the key condition for such disclosure is the written authorization of the information holder. Only with such authorization can the bank provide the data to a person or an organizational unit. The authorization can also be provided in electronic form, in which case the bank must record it on an appropriate IT medium in accordance with the Act on Informatization of the Activities of Entities Performing Public Tasks (POLAND, 2005).

5 CONCLUSIONS

In conclusion, it can be stated that developed European countries place significant emphasis on the preservation of bank secrecy, which is reflected in their well-developed and legally regulated protection mechanisms. First and foremost, the legal regulation of bank secrecy in the countries under investigation is of dual nature: on the one hand, it is enshrined in general legislation governing the overall functioning of the banking system, including bank secrecy; on the other one, there are also specific banking laws providing detailed rules for this institution.

As a rule, the scope of information constituting bank secrecy is not exhaustive. In general terms, it includes all information arising from the business relationship between the bank and the client, including personal data, information about accounts, loans, investments, the terms of agreements, financial status, as well as information about the client's relationships with other banks and even the bank's own transactions if their disclosure could harm the client.

Disclosure of bank secrecy is possible only with the client’s clear, duly executed consent or on other legal grounds (such as a court order, requests from authorized bodies, or international cooperation). Furthermore, banks must report suspicious client transactions to the relevant authorities to prevent and counter money laundering and terrorist financing, as well as to ensure proper tax control.

The legislation provides for a wide range of liability for offenders, including criminal, civil, administrative, disciplinary, and material one. However, the legal approaches differ: in some countries, liability for disclosing bank secrecy is not a separate legal offense but is considered within the context of breaching confidentiality regimes, such as those for commercial or official secrets. Bank employees who are found guilty of disclosing bank secrets are also subject to disciplinary or material liability (compensation for material losses incurred by a bank customer for disclosing bank account information, banking transactions, and personal data).

It should be noted that, on the whole, Ukraine's legislative framework for regulating and protecting this institution aligns with global trends. Indeed, until recently, the established understanding of the absolute nature of bank secrecy implied that information could almost never be provided to interested parties, except for the information holders themselves, or was provided in an extremely limited form upon request from authorized state bodies. However, over the past decade, developed countries have begun to significantly change their approach to this rule. Global trends of deoffshorization and enhanced information sharing among law enforcement, regulatory bodies, and financial institutions have also affected our country, which is reflected in numerous amendments to the Law “On Banks and Banking” and other legal acts regulating this issue.

Currently, the issue of access to bank information of Ukrainian citizens is again being actively discussed at the State level, as its disclosure is a fixed norm in the National Revenue Strategy, which, in particular, states that in 2025–2027, it is planned to disclose bank secrecy to the State Tax Service on the availability and movement of funds in the debtor’s accounts (UKRAINE, 2023). To implement this provision, draft law No. 13233 was submitted to integrate Ukraine into the SEPA (Single Euro Payments Area) payment zone, which provides for the creation of a centralized register of bank accounts and individual bank safes of all citizens. This register will contain information on opening/closing accounts, including e-wallets, and safe deposit box lease agreements; the State Tax Service, law enforcement agencies (including NABU, ESBU), the State Financial Monitoring Service, NAPC, and ARMA will have access to this register (UKRAINE, 2025). The experts consider this bill as the first step towards full disclosure of bank secrecy, and it has already caused “heated discussions” between the National

Bank of Ukraine, which is against such disclosure, and the Ministry of Finance, which believes that this process is irreversible.

In this regard, we note that disclosure of such information by banks to tax authorities in the EU is a common practice envisaged by the relevant Directives of the European Parliament and of the Council (EU) and Regulations of the European Parliament in order to counteract suspicious financial transactions, terrorism financing and money laundering; all States under study reveal necessary information upon the request of tax authorities. Besides, the draft law does not provide for disclosure of information on transactions of debiting from accounts/e-wallets and/or crediting to accounts/e-wallets, balances on such accounts/e-wallets, and content of a safe deposit box. Its provisions do not impose any restrictions or delays in the conduct of financial transactions by individuals. However, in Ukraine, the adoption of this law is possible only if the tax and customs services are thoroughly reformed. Furthermore, this issue is not scheduled to be considered by the Verkhovna Rada of Ukraine until after the war.

In addition, we believe that the provision on holders of bank secrecy in Ukraine should be amended based on foreign experience. Thus, in other countries, the obligation to maintain bank secrecy is imposed not only on banks but also on their branches, branches of foreign banks, credit institutions, financial companies, stock exchanges, and savings banks. In addition, it does not matter whether the institution is physically located in the country, operates there through branches and representative offices, or works internationally.

In Ukraine, however, the holders of bank secrecy are defined as the National Bank, banks and their officials, and state authorities. In our view, Ukrainian legislation should be amended to include provisions that impose the obligation to maintain bank secrecy on other financial institutions as well, including foreign ones operating on its territory on legal grounds.

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Authors' Contribution
Both authors contributed equally to the development of this article.

Data availability
All datasets relevant to this study's findings are fully available within the article.

How to cite this article (APA):
Svitlana, B., Andrii, T., Arkadii, Z., Anton, C., & Andrii, P. (2025). MECHANISM OF BANK SECRECY PROTECTION: COMPARATIVE LEGAL ANALYSIS OF SOME EUROPEAN STATES. *Veredas Do Direito*, 22(3), e223365. https://doi.org/10.18623/rvd.v22.n3.3365