



Press and Information

Court of Justice of the European Union

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Judgment in Case C-45/08

Spector Photo Group NV, Chris Van Raemdonck v Commissie voor het Bank, Financie- en Assurantiewezen (CBFA)

## **The Court interprets the directive on insider dealing**

Directive 2003/6<sup>1</sup> seeks to fight against insider dealing and market manipulation (market abuse) with the aim of protecting the integrity of financial markets and enhancing investor confidence.

Spector Photo Group NV is a Belgian company. In 2003, Spector bought a certain number of its own shares on the stock exchange (Euronext Brussels). Spector subsequently published certain results and information concerning its commercial policy. The company's share price then increased.

In 2006, the competent national authority, the CBFA, classed some of those purchases as insider dealing and imposed fines of EUR 80 000 on Spector and EUR 20 000 on Mr Van Raemdonck, a manager. Those parties then brought an action against that decision.

The hof van beroep te Brussel (Court of Appeal of Brussels) requests the Court of Justice to interpret the expression use of inside information. More precisely, the referring court seeks to determine whether it is sufficient, for a transaction to be classed as prohibited insider dealing, that a primary insider in possession of inside information trades on the market in financial instruments to which that information relates or whether it is necessary, in addition, to establish that that person has 'used' that information with full knowledge.

The Court states that Directive 2003/6 defines insider dealing *objectively* without the intention behind such dealing being referred to explicitly in its definition. This was done with a view to establishing an effective and uniform system for sanctioning insider dealing with the legitimate aim of protecting the integrity of financial markets.

The principle of the presumption of innocence does not preclude that the intention of the author of insider dealing can be implied implicitly from the constituent material elements of that infringement.

It follows that the fact that a primary insider who holds inside information trades on the market in financial instruments to which that information relates implies that that person 'used that information' within the meaning of Directive 2003/6, but without prejudice to the rights of the defence and, in particular, the right to be able to reverse that presumption.

However, in order to avoid extending the scope of the prohibition on insider dealing beyond what is appropriate and necessary, reference needs to be made to the purpose of the directive, which is to protect the integrity of the financial markets and to enhance investor confidence. That confidence is based, in particular, on the assurance that investors will be placed on an equal footing and protected from the unfair use of inside information. The prohibition on insider dealing applies where a primary insider who is in possession of inside information takes unfair advantage of the benefit gained from that information by entering into a market transaction in accordance with that information.

The referring court also asks whether, in order to sanction insider dealing while respecting the principle of proportionality, it is necessary to take account of the gains realised.

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<sup>1</sup> Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16).

The Court points out that Directive 2003/6 provides that the Member States are to ensure, in conformity with their national law, that appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible where the provisions adopted in the implementation of that directive have not been complied with. In that regard, the Member States are to ensure that those measures are effective, proportionate and dissuasive.

Directive 2003/6 does not establish any criteria for assessing how effective, proportionate and dissuasive a sanction is. It is for national legislation to define those criteria.

As regards the question whether the disclosure of inside information must be deemed to have influenced the price of the financial instrument concerned, the Court notes that the capacity of information to have a significant effect on the price of the financial instruments to which it relates is one of the characteristic elements of the concept of inside information.

In accordance with the purpose of Directive 2003/6, it is not necessary, in order to determine whether information is inside information, to examine whether its disclosure actually had a significant effect on the price of the financial instruments to which it relates.

As regards the question whether, in the case where a Member State has introduced the possibility of imposing a criminal financial sanction in addition to the administrative sanctions, account must be taken, at the stage when the administrative sanction is determined, of the possibility and/or the level of a criminal financial sanction which may be subsequently imposed, the Court answers in the negative.

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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 an act of the Union. 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 the same issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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