



Press and Information

Court of Justice of the European Union

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Judgment in Case C-19/11
Markus Geltl v Daimler AG

A step preceding a decision by a listed corporation may constitute inside information which must be disclosed to the financial markets

In order to ensure the integrity of the financial markets in the EU and investor confidence in those markets, Directive 2003/6¹ prohibits insider dealing and requires issuers of financial instruments to disclose, as soon as possible, inside information which is of direct concern to them.

'Inside information' is defined as information which (i) is of a precise nature, (ii) has not been made public, (iii) relates, directly or indirectly, to one or more financial instruments or their issuers and (iv) if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments. Directive 2003/124² gives a closer definition of the notion of 'precise information'. Thus, the information must refer to a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so.

The Bundesgerichtshof (Federal Court of Justice, Germany) sought clarification from the Court of Justice on the notion of 'precise information' in connection with proceedings before it between Mr Geltl and Daimler AG concerning the loss he claims to have suffered as a result of the allegedly late public disclosure by that company of information relating to the early departure of Mr Schrempp as Chairman of its Board of Management. On 28 July 2005 Daimler's share price rose sharply following the announcement of the decision, adopted the same day, of Daimler's Supervisory Board that Mr Schrempp would step down at the end of the year and be replaced by Mr Zetsche. Mr Geltl had sold Daimler shares before that announcement.

The Bundesgerichtshof asked, *inter alia*, whether precise information could exist before the Supervisory Board's decision on 28 July 2005. On 17 May 2005, Mr Schrempp had already discussed his plans to resign with the Chairman of the Supervisory Board and, subsequently, other members of the Supervisory Board and the Board of Management were also informed.

In its judgment delivered today, the Court replies that, in the case of a protracted process intended to bring about a particular circumstance or to generate a particular event, not only may that future circumstance or future event be regarded as precise information, but also the intermediate steps of that process which are connected with bringing about that future circumstance or event. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event in the meaning normally attributed to those terms. This interpretation does not hold true only for those steps which have already come into existence or have already occurred, but also concerns steps which may reasonably be expected to come into existence or occur.

Any other interpretation risks undermining the objectives of the directive, which are to protect the integrity of the EU financial markets and to enhance investor confidence in those markets. To rule out the possibility that information relating to an intermediate step in a protracted process may be

¹ 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).

² Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6 as regards the definition and public disclosure of inside information and the definition of market manipulation (OJ 2003 L 339, p. 70).

of a precise nature would remove the obligation to disclose that information, even if it were quite specific and even though the other elements making up inside information were also present. In such a situation, certain parties who possessed inside information could be in an advantageous position vis-à-vis other investors and be able to profit from that information, to the detriment of those who are unaware of it.

The Court holds that the notion of a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so refers to future circumstances or events from which it appears, on the basis of an overall assessment of the factors existing at the relevant time, that there is a realistic prospect that they will come into existence or occur. It is, accordingly, not necessary that proof be made out of a high probability of the circumstances or events in question coming into existence or occurring. Moreover, the magnitude of their possible effect on the prices of the financial instruments concerned is immaterial in the interpretation of that notion.

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

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