OPINION OF ADVOCATE GENERAL MENGOZZI
delivered on 26 October 2006 [1]

I — Introduction

1. In these proceedings, the Court has been asked by the Simvoulio tis Epikratias (Council of State) (Greece) to give a ruling on the interpretation of the provisions of Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing. [2]

2. More specifically, the Court is asked to interpret the concepts of possessing and 'taking advantage' of inside information within the meaning of Directive 89/592.

1 — Original language: French.
2 — OJ 1989 L 334, p. 30.

II — Legislative background

A — *Community legislation*

3. In view of the importance of the role performed by the secondary market in transferable securities in the financing of economic agents, the fourth recital in the preamble to Directive 89/592 states that the smooth operation of that market depends to a large extent on the confidence it inspires in investors.

4. The fifth recital in the preamble to Directive 89/592 states that such confidence depends inter alia on the assurance afforded to investors that they are placed on an equal footing and that they will be protected against the improper use of inside information.

5. Pursuant to Article 1(1) of Directive 89/592, 'inside information' means 'information which has not been made public of a precise nature relating to one or several issuers of transferable securities or to one or several transferable securities, which, if it were made public, would be likely to have a significant effect on the price of the transferable security or securities in question'.

6. According to Article 1(2), 'transferable securities' are defined in particular as including shares and debt securities, and securities equivalent to shares and debt securities, when they are admitted to trading on a market which is regulated and supervised by authorities recognised by public bodies, operates regularly and is accessible directly or indirectly to the public.

7. Article 2 of Directive 89/592 provides as follows:

'1. Each Member State shall prohibit any person who:

— by virtue of his membership of the administrative, management or supervisory bodies of the issuer,

— by virtue of his holding in the capital of the issuer, or

— because he has access to such information by virtue of the exercise of his employment, profession or duties,

possesses inside information from taking advantage of that information with full knowledge of the facts by acquiring or disposing of for his own account or for the account of a third party, either directly or indirectly, transferable securities of the issuer or issuers to which that information relates.

2. Where the person referred to in paragraph 1 is a company or other type of legal person, the prohibition laid down in that paragraph shall apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

3. The prohibition laid down in paragraph 1 shall apply to any acquisition or disposal of transferable securities effected through a professional intermediary.

Each Member State may provide that this prohibition shall not apply to acquisitions or disposals of transferable securities effected without the involvement of a professional intermediary outside a market as defined in Article 1(2) *in fine*.

...'

8. Article 3 of Directive 89/592 requires the Member States to prohibit any person who is subject to the prohibition laid down in Article 2 and who possesses inside information from:

'(a) disclosing that inside information to any third party unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;

(b) recommending or procuring a third party, on the basis of that inside information, to acquire or dispose of transferable securities admitted to trading on its securities markets as referred to in Article 1(2) *in fine*.'

9. Article 4 of Directive 89/592 provides that the Member States are also to impose the prohibition provided for in Article 2 of that directive on any person other than those referred to in that article who, with full knowledge of the facts, possesses inside information, the direct or indirect source of which could not be other than a person referred to in Article 2.

10. Article 6 of Directive 89/592 allows the Member States to adopt provisions more stringent than those laid down by the directive or additional provisions, provided that such provisions are applied generally.

11. The 11th recital in the preamble to Directive 89/592 provides that 'since the acquisition or disposal of transferable securities necessarily involves a prior decision to acquire or to dispose taken by the person who undertakes one or other of these operations, the carrying-out of this acquisition or disposal does not constitute in itself the use of inside information'.

12. According to the 12th recital in the preamble to Directive 89/592, 'insider dealing involves taking advantage of inside information' and therefore 'the fact of carrying out transactions with the aim of stabilising the price of new issues or secondary offers of transferable securities should not in itself be deemed to constitute use of inside information'.

B — *National legislation*

13. Article 1 of Greek Presidential Decree No 53/1992 on insider dealing, which implements Directive 89/592 (hereinafter 'Decree No 53/1992'), as in force at the material time, provides that the purpose of that decree is to bring Greek legislation governing stock exchanges into line with the abovementioned directive.

14. Articles 2, 3, 4 and 5 of Decree No 53/1992 reproduce, respectively, Articles 1, 2, 3 and 4 of Directive 89/592.

15. Decree No 53/1992 does not lay down provisions giving wider scope to the terms used and the prohibitions imposed by Directive 89/592. The Hellenic Republic has thus not availed itself of the opportunity provided by Article 6 of Directive 89/592.

16. Under Article 11 of Decree No 53/1992, in the event of infringement of Articles 3(1) and (2), 4 and 5 thereof, apart from the penalties prescribed in Article 30(1) and (3) of Law No 1806/1988, the Capital Market Commission is to impose a fine of between GRD 10 million and GRD 1 000 million, or of an amount equal to five times the profit made by any person taking advantage of the inside information.

17. Article 30 of Law No 1806/1988 lays down criminal penalties applicable to holders of confidential information who use it unlawfully.

18. Furthermore, Article 34 of Law No 3632/1928 imposes a custodial sentence and a fine of up to GRD 50 000, or either of such penalties, on any person who, with a view to illicit gain, knowingly does anything liable to deceive the public in order to influence stock-market prices.

19. In addition, Article 72(1) of Law No 1969/1991 provides that any person who knowingly discloses, through the press or by any other means, false or incorrect information which might have an impact on the price of one or more transferable securities listed on a stock exchange is to be liable to imprisonment and a fine of up to GRD 100 million.

20. Finally, Article 76(10) of Law No 1969/1991 provides that, without prejudice to the application of the relevant

criminal provisions, the Capital Market Commission is to be empowered to impose fines not exceeding GRD 100 million on undertakings which infringe the legislation on the capital market or decisions of that commission.

III — The dispute in the main proceedings and the question referred to the Court

21. At the beginning of 1996, Mr Georgakis and members of his family, referred to by the national court as the 'Georgakis group', were the main shareholders of the company Parnassos. Parnassos and its subsidiary, Syrios AVEE, held a majority of the shares — all registered shares — in the company ATEMKE. Most of the members of the Georgakis group were members of the board of directors of the companies Parnassos and ATEMKE, in which they performed managerial functions.

22. The members of the Georgakis group then decided to support the value of Parnassos shares, in accordance with a suggestion from their financial advisers. In order to acquire the majority prescribed by Greek law for adopting the relevant resolution in a general meeting, they agreed to acquire shares in order to secure 75% of the capital in that company and to be able to impose that resolution on the other shareholders.

23. Between May and December 1996, the members of the Georgakis group carried out share transactions in the companies Parnassos and ATEMKE. They sold to Parnassos shares in the company ATEMKE and, using the funds thus obtained, purchased shares in Parnassos. In October 1996, Parnassos transferred 835 000 shares in the company ATEMKE to Merrill Lynch Capital Markets plc, subject to a buy-back clause which was not disclosed to the market. That transaction made available to Parnassos short-term financing for the purchase of its own shares, the shares in its subsidiary ATEMKE being used as a guarantee.

24. The Capital Market Commission imposed on Mr Georgakis a fine totalling GRD 70 million for having participated in the transactions described in the foregoing point of this Opinion whilst holding inside information directly obtained by him in his capacity as shareholder and director of the abovementioned companies or indirectly, through other persons who occupied managerial posts in the companies in question, contrary to Articles 3(1), 4 and 5 of Decree No 53/1992. Mr Georgakis lodged an objection against the penalty notice.

25. At first instance, the Trimeles Diikitiko Protodikio (Administrative Court of First Instance), Livadia (Greece), held in particular that Mr Georgakis had taken advantage of

inside information relating to transactions between members of the Georgakis group designed artificially to increase the volume of trading in Parnassos shares, in order to give a misleading impression as to their value, not truly reflecting the value they would have had if those transactions had not taken place. The court of first instance thus confirmed the fine imposed by the Capital Market Commission.

26. On an appeal brought by Mr Georgakis, the Diikitiko Efetio Piraios (Administrative Appeal Court, Piraeus (Greece)) allowed the appeal and quashed both the judgment at first instance and the penalty notice.

27. That court declared that the decision to impose the fine was unlawful on the ground that the provisions of Directive 89/592, transposed into Greek law by Decree No 53/1992, apply to transactions carried out between holders of inside information and third-party investors and presuppose that advantage is taken of inside information, whereas, in the case of purchase or disposal of a large number of shares previously agreed on between two individuals, the existence of such information is inconceivable, since both are aware of the purpose of and circumstances surrounding the transaction. The Diikitiko Efetio Piraios therefore declared that if the purchase and transfer of a large number of shares previously agreed on between two individuals could not in itself be regarded as the result of taking advantage of inside information, the manipulations in which the appellant had engaged with members of the Georgakis group did not come within the scope of Directive 89/592 and Decree No 53/1992.

28. The tax authority appealed in cassation against that judgment to the Simvoulio tis Epikratias.

29. From the information contained in the order for reference from the Simvoulio tis Epikratias it appears that the transactions carried out between members of the Georgakis group had been agreed upon in advance and that those members knew that the value of the Parnassos shares had changed under the influence of an artificial demand which they themselves had created and which was based on substantial financing of various kinds.

30. As regards the question whether the conduct concerned could be classified as taking advantage of inside information, the referring court took the view that the interpretation of the provisions of Directive 89/592 involved in the dispute before it was not free from reasonable doubt, in particular regarding the meaning of the terms 'inside information' and 'persons possessing inside

information', and the scope of the prohibition imposed on such persons from carrying out certain transactions. Therefore, the Simvoulio tis Epikratias decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Where stock-market transactions agreed on in advance which result in the increase or artificial inflation of the price of the securities transferred are carried out between persons or groups of persons having one of the characteristics set out in Article 2(1) of ... Directive 89/592/EEC, are the persons carrying out those transactions to be regarded as persons possessing inside information within the meaning of Articles 1 and 2 of that directive, so that their actions fall within the prohibition, laid down by Articles 2, 3 and 4 of the directive, on taking advantage of inside information?'

IV — Proceedings before the Court of Justice

31. The defendant in the main proceedings, the Greek and Italian Governments and the Commission of the European Communities submitted written observations to the Court, in accordance with Article 23 of the Statute of the Court of Justice. Those parties also presented oral argument at the hearing on 13 July 2006, with the exception of the Italian Government, which was not represented.

V — Examination of the question submitted

32. First of all, it is appropriate to highlight certain factors which, from a reading of the question submitted and the order for reference, appear to be undisputed.

33. First, the material events, which occurred in 1996, took place exclusively whilst Directive 89/592 and the Greek legislation implementing it were in force. Therefore, the Court is not directly called upon to interpret the provisions of Directive 2003/6 of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), [3] which entered into force on 12 April 2003 and on the same day repealed Directive 89/592 by virtue of its Articles 20 and 21.

34. It is also common ground that the members of the Georgakis group are persons covered by Directive 89/592 and the national implementing legislation, by reason of their being members of the board of directors or

3 — OJ 2003 L 96, p. 16.

management of the Parnassos and ATEMKE companies, or by reason of their interests in the capital of those companies.

35. Also, the shares involved in the transactions at issue in the main proceedings are indeed transferable securities within the definition in Article 1(2) of Directive 89/592.

36. Finally, from the account of the facts given by the national court it appears that the transactions concluded and agreed upon in advance by the persons in question had the effect of artificially increasing the price of the transferable securities traded.

37. Against that background, the referring court is essentially asking the Court of Justice to indicate whether persons liable to be regarded as persons possessing inside information within the meaning of Directive 89/592 possess and take advantage of inside information within the meaning of that directive by completing stock exchange transactions agreed on in advance which involve artificially increasing the price of the securities transferred.

38. It should be borne in mind, first of all, that Directive 89/592 does not prohibit the actual possession of inside information by the persons indicated in Article 2(1) of that directive but rather the taking advantage of such inside information in full knowledge of the facts. [4] The Court of Justice also made this point in its judgment in *Verdonck and Others*. [5]

39. It is clear in particular from Article 2(1) of Directive 89/592 that the taking advantage of inside information necessarily presupposes the material existence of such information. The inside information must therefore exist before advantage can be taken of it. Therefore, advantage can be taken of inside information only by a person who has previously come into possession of it, regardless of whether he is a 'primary' person in possession of inside information, that is to say, someone coming within one of the classifications listed in Article 2(1) of Directive 89/592, or a 'secondary' person in possession of inside information, as contemplated by Article 4 of that directive.

40. The parties which submitted observations to the Court have put forward conflicting interpretations as to whether persons carrying out transactions of the kind at issue in the main proceedings possess inside information, within the meaning of Directive 89/592, the taking advantage of which is prohibited by that directive.

4 — Article 2(1) of Directive 89/592.

5 — Case C-28/99 [2001] ECR I-3399, paragraph 29.

41. For both Mr Georgakis, the defendant in the main proceedings, and the Commission, a situation of the kind at issue here does not come within the scope of Directive 89/592.

42. According to Mr Georgakis, Directive 89/592 is intended to ensure that people who, by reason of their duties, possess inside information do not take advantage of that information for their own benefit and to the detriment of third parties with whom they are dealing. Therefore, one of the preconditions for the application of those provisions is that the party dealing with the holder of the inside information is unaware of that information. That is not the situation in the case in the main proceedings. In fact, in this case, all the contracting parties to the transaction in question are joint holders, and also creators, of shared information concerning a stock market security. Consequently, first, that information is not inside information as far as they are concerned and, second, inside information held by one of them cannot be exploited to the detriment of the others.

43. For its part, the Commission considers that from the facts, as set out by the referring court in its order for reference, it does not appear that inside information induced the members of the Georgakis group to enter into the transactions in question. On the contrary, the Commission observes that those transactions were carried out on the basis of a decision of the Georgakis group to support the value of shares in Parnassos, in accordance with a proposal from its financial advisers. Therefore, such transactions do not in themselves amount to the use of inside information. The Commission adds that transactions based on the decision of certain members of the board of directors of an issuer to support the value of a stock-market security come within the scope of Directive 2003/6, in so far as the latter is concerned with market manipulation, but that directive is not applicable to the present case.

44. By contrast, the Greek and Italian Governments submit that a situation such as that in the main proceedings does come within the scope of Directive 89/592.

45. The Greek Government emphasises that prearranged dealings in shares in the same company or fictitious purchases and disposals between the same persons for the purpose of increasing the tradability and the price of the shares constitute information of crucial importance, the exploitation of which may have a serious impact on market transparency. The decisive element of the inside information held by the members of a group which has entered into an agreement consists in the fact of knowing that the present value of the security derives from an artificial increase in demand brought about by the members of the group themselves and not by a favourable development or prospect of development of the financial indicators of the company in question, and that clearly it is not the result of greater tradability of the security quoted on the stock exchange. According to the Greek Government, the concept of possession of inside information encompasses not only the acquisition of such information but also the creation of it. Application of the legislation governing transactions carried out by persons pos-

sessing inside information is not excluded where the persons taking advantage of the inside information are those from whom it emanates. At the hearing, the Greek Government added that a situation such as that in the main proceedings might constitute both the exploitation of inside information and market manipulation.

46. The Italian Government takes the view, in essence, that, in the light of the objectives of Directive 89/592 of creating maximum transparency in the operation of the financial markets and guaranteeing parity as between investors, persons who have decided upon a transaction or a series of transactions artificially to support the value of a stock-market security must also be included among the holders of such information, represented by the plan to sell and purchase transferable securities, decided upon in advance for the purpose of artificially supporting the value of a security quoted on the stock exchange without the public being informed. According to that government, that plan undoubtedly constitutes inside information, within the meaning of Directive 89/592, the exploitation of which is prohibited.

47. It should also be observed that the parties that took part in the hearing are in agreement in considering that the operations carried out by the Georgakis group fall within the practice known as 'painting the tape'.

48. In the financial and stock-exchange world, this practice is generally defined as one in which a number of investors carry out between themselves a number of transactions in certain securities, creating the illusion of a high volume of trading and significant investor interest in those securities, which is liable to induce third parties to invest in them, thereby prompting an increase in their quoted price. [6]

49. For the reasons set out in the following points of this Opinion, I am inclined to take the view, in the light of the factual information to hand, that a situation of the kind described by the referring court does not come within the scope of Directive 89/592.

50. It should be borne in mind that Article 2(1) of Directive 89/592 prohibits a person from taking advantage of insider information with full knowledge of the facts. In my opinion, 'taking advantage [of information] with full knowledge of the facts' involves two separate constituent elements. First, a psychological factor and, second, a material factor. The psychological factor consists of the intention or the decision knowingly to take advantage of information which is

6 — See, in particular, the definitions appearing on the internet sites www.investorwords.com and www.investopedia.com.

known on an inside basis. The material factor is the implementation of that intention or decision by means of transactions involving transferable securities carried out directly or through a financial intermediary. [7]

51. Therefore, given that, as I emphasised in point 39 above, the existence of inside information by definition precedes the exploitation of it, the inside information must precede both the psychological component of the exploitation of that information, namely the intention or the decision to take advantage of it, and the material component, namely the implementation of that intention or decision.

52. From the account of the facts contained in the order for reference, it appears that the decision of the Georgakis group members, dating back to the beginning of 1996, to undertake transactions intended to 'support' the value of the shares in Parnassos was adopted following a suggestion from their financial advisers. Therefore, in the absence of other factual information, it does not appear that the decision of the Georgakis group members was adopted on the basis of inside information within the meaning of Directive 89/592. Nor does it appear from the order for reference that the proposal from the Georgakis group's financial advisers was made on the basis of inside information within the meaning of that directive.

53. Therefore, in a case such as the present, the persons who undertook the transactions in question cannot in principle have taken advantage of inside information, in so far as the account of the facts set out by the national court gives no indication as to what inside information might have induced them to carry out those transactions.

54. Moreover, I am not persuaded by the views of the Governments that have submitted observations, which assert, essentially, that the decision of the Georgakis group members to conclude transactions designed artificially to support the value of the securities, without disclosure to the public, in itself constitutes inside information, which they are prohibited from exploiting.

55. There is, in my view, no possibility of regarding that decision of the Georgakis group members to conclude the transactions

7 — In that connection, it is irrelevant that the two factors, psychological and material, arise at points close in time to each other or almost simultaneously. Also, the psychological factor in the exploitation of information known to be inside information does not presuppose an intention to profit therefrom.

at issue in the main proceedings as being, in itself, inside information, in view of the principle underlying the 11th and 12th recitals in the preamble to Directive 89/592.

56. According to the 11th recital, 'since the acquisition or disposal of transferable securities necessarily involves a prior decision to acquire or to dispose taken by the person who undertakes one or other of these operations, the carrying-out of this acquisition or disposal does not constitute in itself the use of inside information'.

57. As regards the 12th recital in the preamble to Directive 89/592, it emphasises that 'insider dealing involves taking advantage of inside information' and therefore 'the fact of carrying out transactions with the aim of stabilising the price of new issues or secondary offers of transferable securities should not in itself be deemed to constitute use of inside information'.

58. In my view, those recitals must be interpreted as meaning that, in the two situations which they describe, the prior decision to proceed with the transactions in question cannot be in itself regarded as inside information.

59. To take the opposite view would be tantamount to preventing investors and companies issuing securities or their management from giving effect to their own decisions to proceed with the transactions in question, casting upon those persons a suspicion in principle that they were taking advantage of inside information when proceeding with such transactions. That interpretation would undoubtedly impair the proper functioning of the securities market. And that is certainly not the aim pursued by Directive 89/592.

60. It is true that a case like the one before the national court certainly cannot be brought entirely within the terms of the 11th and 12th recitals in the preamble to Directive 89/592.

61. However, I do not believe that the Community legislature, by limiting itself to mentioning the two situations referred to in the 11th and 12th recitals in the preamble to Directive 89/592, intended to express the view that, by contrast, in all other situations, including a situation such as that under

review in the main proceedings, the prior decision to carry out securities transactions must in itself be regarded as constituting inside information.

62. There is thus little persuasive value in the Italian Government's argument in that regard, according to which the 11th recital in the preamble to Directive 89/592, in so far as it mentions only the acquisition 'or' disposal of transferable securities, does not cover situations involving a number of stock-market transactions and, therefore, the view should be taken that, for that reason, the operations carried out by the Georgakis group amount to the exploitation of inside information. In fact, the use of the conjunction 'or' in the 11th recital does not seem to me to be exclusionary, but rather illustrative, as would appear to be confirmed by the use, in the plural, of the term 'transactions' in the 12th recital in the preamble to Directive 89/592.

63. Moreover, in my view, the fact that the transactions at issue were agreed upon in advance likewise does not necessarily mean that the Georgakis group's decision must be regarded as inside information. The factor of advance planning of stock exchange transactions is, to say the least, present even where the aim is (genuine) stabilisation of the price of transferable securities, which is specifically mentioned in the 12th recital in the preamble to Directive 89/592.

64. It seems to me, rather, that the 11th and 12th recitals in the preamble to Directive 89/592 are intended to illustrate the principle whereby the prior decision to carry out securities transactions does not in itself constitute inside information.

65. Such a decision may, however, represent the intentional element of the exploitation of inside information where the decision is based on that information. Moreover, where transactions are staggered over a period of time, the presence of inside information liable to change the decision initially taken by investors may indeed mean that the transactions that are carried out after that information came to light, and are based on that information, involve taking advantage of that information within the meaning of Directive 89/592.

66. However, as I have already said, in the light of the facts set out by the national court, I do not perceive the presence of

inside information in the circumstances of the main proceedings.

67. I do not consider that conclusion to be undermined by the argument of the Governments which submitted observations to the effect that the objectives of market transparency and equality of opportunity as between investors, pursued by Directive 89/592, must make it possible to bring a situation such as that at issue in the main proceedings within the scope of Directive 89/592.

68. Although the Community judicature has often resorted to teleological interpretation of the provisions of Community measures, I consider that such an approach does not in this case enable the range of matters covered by Directive 89/592 to be extended in the light of the very general objectives indicated in the recitals in the preamble to that directive. In fact, even though the events at issue in the main proceedings certainly detract from the proper functioning of the market, the approach suggested by the Governments that submitted observations would be tantamount to disregarding the preconditions for the applicability of Directive 89/592, in particular that regarding the existence of inside information which is at the root both of the intention to exploit and of the actual exploitation of such information.

69. Moreover, the scope of a Community measure is normally defined by the provisions of that measure itself and cannot, in principle, be extended to situations other than those which it was intended to govern. [8] In the present case, it does not appear that Directive 89/592 was intended to govern a situation involving the practice of 'painting the tape' or, more generally, market manipulation.

70. In that connection, I wish to emphasise that, by adopting Directive 2003/6, which pursues the same objectives of market transparency and integrity as Directive 89/592, [9] the Community legislature specifically sought, by replacing the latter and including in the scope of the new directive measures to combat market manipulation, to improve harmonisation of the legislation of the Member States by penalising conduct which, in the light of experience, may undermine public confidence and, therefore,

8 — See, in connection with a regulation, Case 165/84 *Krohn* [1985] ECR 3997, paragraph 13 and the case-law there cited.

9 — See, in particular, recitals (2), (11), (12), (15), (27), (41) and (43) in the preamble to Directive 89/592.

adversely affect the proper functioning of the markets. [10]

71. Pursuant to Article 1(2)(a) of Directive 2003/6, 'market manipulation' refers in particular to transactions or orders to trade which make it possible, through the action of one or more persons acting in collaboration, to secure the market price of one or more financial instruments at an abnormal or artificial level, unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for doing so are legitimate and that those transactions or orders to trade conform to accepted market practices on the regulated market concerned. That definition therefore appears to encompass practices such as 'painting the tape'. [11]

72. In the light of the Community legislative process in the area of market abuse, [12] I find it impossible to accept the argument of the Governments that have submitted observations to the effect that the scope of Directive 89/592 should be extended or, to use the nuanced terms employed by the Greek Government at the hearing, that the directive should 'be given a more elastic interpretation', so that it prohibits practices like the one at issue in the main proceedings.

73. To take the approach advocated by the Governments that submitted observations would be tantamount to ignoring the fragmentary nature of the Community legal framework as it existed when Directive 89/592 was applicable, by attributing to the latter a breadth of scope liable to oust the residual competence of the Member States to regulate and penalise market manipulation.

74. I also wish to emphasise that, at the material time, the Hellenic Republic, [13] like the vast majority of the Member States, regulated and imposed criminal penalties for market manipulation practices. [14]

10 — To that effect, see recital (13) in the preamble to Directive 2003/6. See also recital (11) in the preamble to that directive, which states that '[the] existing Community legal framework to protect market integrity is incomplete'.

11 — In that connection, it may be observed that, in its proposal for a directive, the Commission had suggested accompanying the definition of 'market manipulation' by precise examples, annexed to the text of the proposal for a directive, intended to facilitate the interpretation of that definition. Under the heading 'Trade-based actions intended to create a false impression of activity' in Section B of the annex, the practice of 'painting the tape' was included (see the proposal for a directive of 30 May 2001, COM(2001) 281 final, p. 25). Because of European Parliament opposition to use of the 'comitology' method, provided for in the proposal for a directive, for amending provisions of the annex (see, in that regard, the report of the Committee on Economic and Monetary Affairs of the European Parliament, document A5/2002/69 of 27 February 2002), the definitive text adopted by the Parliament and the Council of the European Union contains no annex.

12 — According to Directive 2003/6, both operations carried out by persons possessing inside information and market manipulation constitute market abuse.

13 — See, in particular, Article 34 of Law No 3632/1928, cited in point 18 of this Opinion.

14 — It seems that only the Republic of Austria and the Kingdom of Sweden, and, to a lesser extent, the Kingdom of the Netherlands, did not penalise market manipulation.

VI — Conclusion

75. In the light of the foregoing considerations, I propose that the Court respond as follows to the question submitted to it by the Simvoulio tis Epikratias:

Persons or groups of persons having one of the characteristics referred to in Article 2(1) of Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing who carry out stock-market transactions agreed on in advance which result in an artificial increase in the price of the transferable securities disposed of must not be regarded as persons possessing inside information within the meaning of Article 2 of that directive.