OPINION OF ADVOCATE GENERAL LÉGER

delivered on 12 October 2000 [1]

1. Mr Verdonck, Mr Everaert and Mrs De Baedts [2] are all three members of the board of directors of NV Ter Beke, [3] which resolved to purchase Chilled Food Business, a branch of NV Unilever. [4] The defendants are being prosecuted in the Belgian courts for insider dealing. They stand accused of having taken advantage of this inside information to place orders on the stock exchange for the purchase of shares in Ter Beke.

2. The defendants in the main proceedings claim that the Belgian legislation on stock exchange transactions, under which proceedings have been brought against them, is not in conformity with Council Directive 89/592/EEC of 13 November 1989 co-ordinating regulations on insider dealing. [5]

3. The defendants rely on Article 6 of the Directive, under which Member States may adopt provisions more stringent than those laid down by the Directive, provided, however, that such provisions are applied generally.

4. According to the defendants, the Belgian legislation is more stringent than the Directive, in that it does not require the existence of a causal connection between the possession of inside information by an insider and the conclusion by the insider of a stock exchange transaction to be proved. On the other hand, the legislation introduces an exception for holding companies. [6] According to the defendants, by making the criminal charge applied to them stricter while excluding holding companies, the Belgian legislation fails to comply with the Community provisions.

5. Consequently, the Court of Justice has been requested to interpret Article 6 of the Directive in order to assess the freedom of action available to a Member State when it decides to implement the Directive by rules more stringent than those it sets out, while limiting those rules in a way favourable to holding companies.

1 — Original language: French.

2 — Hereinafter 'the defendants in the main proceedings' or 'the defendants'.

3 — Hereinafter 'Ter Beke'.

4 — Hereinafter 'Unilever'.

5 — OJ 1989 L 334, p. 30, hereinafter 'the Directive'.

6 — This concept is defined at paragraph 14 of this Opinion.

I — Legal background

A — *Community law*

6. According to the Directive, the adoption of coordinated regulations, at the Community level, on insider dealing is justified by the necessity of ensuring that the secondary market in transferable securities operates smoothly. [7] The market must inspire confidence in investors, [8] since it plays an important role in the financing of economic agents. [9] Confidence 'depends [on factors that] include 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'. [10]

7. According to Article 1(1) of the Directive, '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'.

8. Under Article 2 of the Directive:

'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.

7 — Third recital.
8 — Fourth recital.
9 — Second recital.
10 — Fifth recital.

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.'

9. The first sentence of Article 6 of the Directive provides as follows:

'Each Member State may adopt provisions more stringent than those laid down by this Directive or additional provisions, provided that such provisions are applied generally.'

B — *National law*

10. The Directive was transposed into Belgian law by Articles 181 to 189 of the Law of 4 December 1990 on financial transactions and financial markets. [11]

11 — *Belgisch Staatsblad* of 22 December 1990, p. 23800, hereinafter 'the 1990 Law'.

11. Article 181 of the 1990 Law defines the concept of 'inside information' as follows:

'Inside information, for the purposes of this Code, shall mean information which has not been made public, of a sufficiently precise nature, relating to one or several issuers of transferable securities or other financial instruments or to one or several transferable securities or other financial instruments, which, if it were made public, would be likely to have a significant effect on the price of the transferable security or securities or the other financial instrument or instruments in question.

Insider information does not include information which holding companies possess because of their role in the management of companies in which they have a shareholding, unless it is information which must be made public pursuant to the statutory and regulatory provisions concerning the obligations arising from the official listing of transferable securities on the stock exchange.'

12. Under Article 182(1) of the 1990 Law:

'Any person who:

(i) by virtue of his membership of the administrative, management or supervisory bodies of the issuer,

(ii) by virtue of his holding in the capital of the issuer,

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

possesses inside information that he or she knows is inside information, or cannot reasonably be unaware that it is such, shall be prohibited from acquiring or disposing of, for his own account or for the account of a third party, either directly or indirectly, transferable securities or other financial instruments to which that information relates.'

13. The definition of 'holding companies' is found at Article 1 of Royal Decree No 64 of 10 November 1967 regulating the statutes of holding companies [12] as amended, most recently, by the Law of 22 March 1993.

14. Under that article, holding companies are defined as:

'(i) companies incorporated under Belgian law that have shareholdings in one or more Belgian or foreign subsidiaries, conferring on them, in law or in fact, the power to direct the activities of those subsidiaries, in so far as:

(a) those companies or all or some of their subsidiaries, or subsidiaries of their subsidiaries, have issued an offer to subscribe to the Belgian public for the purpose of flotation or securing investment in their shares or stocks;

(b) the value of their shareholdings is at least five hundred million francs in aggregate or which represents at least half of their own capital;

12 — *Belgische Staatsblad* of 14 November 1967, p. 11815.

(ii) companies incorporated under Belgian law that have, or whose subsidiaries or subsidiaries of their subsidiaries have, issued an offer to subscribe to the Belgian public, for the purpose of flotation or securing investment in their shares or stocks and which are subsidiaries or subsidiaries of subsidiaries of foreign companies or institutions having, directly or indirectly, in companies incorporated under Belgian law, shareholdings whose value is at least five hundred million francs in aggregate or which represents at least half of their own capital.'

II — Facts in the main proceedings and procedure

15. At its meetings of 22 August and 10 October 1995, the board of directors of Ter Beke considered the possibility of taking over Chilled Food Business. The following 19 December, the board of directors approved a takeover bid for that company.

16. On 5 March 1996, Ter Beke and Unilever signed a declaration of intent made public on the same day, in which the parties expressed the wish to continue the existing discussions on an exclusive basis. After publication of the declaration of intent, the price of shares in Ter Beke rose on 18 March 1996 from BEF 2 800 to BEF 3 230, an increase of 15.3%.

17. The acquisition agreement relating to Chilled Food Business was signed on 14 May 1996 by Ter Beke and Unilever.

18. Between 6 and 8 February 1996, the defendants in the main proceedings had placed orders on the stock exchange that led to the acquisition of shares in Ter Beke at a price of BEF 2 590.

19. The Openbaar Ministerie brought proceedings before the Rechtbank van Eerste Aanleg (Court of First Instance), Ghent, Belgium against the defendants in the main proceedings, on the ground that, in purchasing shares in Ter Beke before the declaration of intent between itself and Unilever became public, they made unlawful use of inside information, in breach of Articles 181,182,183 and 189 of the 1990 Law.

III — The national court's questions

20. Considering that the outcome of the proceedings depends on interpretation of the Directive, the Rechtbank van Eerste

Aanleg, Ghent, by judgment of 27 January 1999, stayed the proceedings and referred the following questions to the Court of Justice:

'(1) Does Article 6 of Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing, which reads as follows: "Each Member State may adopt provisions more stringent than those laid down by this Directive or additional provisions, provided that such provisions are applied generally" allow a Member State to provide for a more stringent definition in its legislation, whilst providing for a specific exemption from that more stringent definition for a given category, namely holding companies?

(2) Is the implementation of Directive 89/592/EEC, transposed in Belgium by Article 181 of the Law of 4 December 1990, compatible with Article 6 of the Directive? Article 181 reads as follows:

"Inside information, for the application of this Code, shall mean information which has not been made public, of a sufficiently precise nature, relating to one or more issuers of transferable securities or other financial instruments or to one or more transferable securities or other financial instruments, which, if it were made public, would be likely to have a significant effect on the price of the transferable security or securities or the other financial instrument or instruments in question.

Inside information does not include information which holding companies possess because of their role in the management of companies in which they have a shareholding, unless it is information which must be made public pursuant to the statutory and regulatory provisions concerning the obligations arising from the official listing of transferable securities on the stock exchange.

The provisions of this Code are applicable to transferable securities and other financial instruments within the meaning of Article 1."

(3) If the Member State has implemented Directive 89/592/EEC as the Belgian legislature has done in Article 181 of the Law of 4 December 1990, and such implementation is contrary to the directive, does this mean that the more stringent provisions are deemed not to

form part of national legislation, or that they remain fully applicable in the case of holding companies as well?'

IV — Preliminary observations

21. The first and second questions both relate to the validity, under the Directive, of national legislation such as the 1990 Law, which exempts holding companies in part from the prohibition on insider dealing laid down in the Directive, by allowing them to use certain information which they possess by virtue of their role in the management of other companies.

22. Both questions seek an interpretation of Article 6 of the Directive, which makes the right to adopt implementing provisions more stringent than those laid down by the Directive conditional on those provisions being applied generally. The national legislature chose a more stringent provision, in that Article 182 of the 1990 Law does not require a causal connection to be shown between the possession of inside information and the action of the insider on the transferable securities market with which that information is linked. Consequently, evidence of infringement may be more easily adduced.

23. The first question seeks to ascertain whether the exception by which holding companies are not covered, in certain cases, by the prohibition on insider dealing, such as that implemented more stringently by national law, is permissible.

24. In the second question, the national court, although it refers to Article 6 of the Directive, does not refer more directly to the more stringent definition of insider dealing, in so far as it concerns the omission by Belgian law to make causality a relevant factor. The national court asks the Court of Justice for a preliminary ruling on the definition, under national law, of 'inside information', a category from which some information which holding companies possess is excluded, allowing them to use that information to their advantage without incurring the penalties laid down for those infringing the legislation relating to financial transactions and financial markets.

25. It may be surprising that interpretation of Article 6 is considered necessary in order to reply to the second question. Article 181 of the 1990 Law clearly does not lay down any 'more stringent' rule, within the meaning of that provision.

26. Since, under Article 181 of the 1990 Law, some information which holding companies possess is not considered as inside information, those companies are excluded from the scope of application of

the provision prohibiting insider dealing where those companies make use of that information. Therefore, it appears that the 1990 Law appears rather less stringent than the Directive, since it excludes from the prohibition on insider dealing a certain number of stock exchange transactions carried out by holding companies on the basis of information not intended to be made public.

27. In actual fact, a combined reading of the two questions reveals that the national court wants to be given guidance on a point which, in the final analysis, constitutes one single question: is the exception to the stricter charge laid down by national law on insider dealing, which is expressed by a specific definition of 'inside information', compatible with Article 6 of the Directive?

28. Consequently, the first two questions must be considered together.

V — The first two questions

29. First of all, it should be observed that, according to settled case-law, although it is not a matter for the Court of Justice, under Article 177 of the EC Treaty (now Article 234 EC), to rule on the compatibility of national legislation with Community law, the Court may, however, provide the national court with all the elements of interpretation of Community law which may enable it to assess the compatibility of that legislation with Community law, for the purposes of the judgment of the case brought before it. [13]

30. The national court's questions require further clarification before they can be resolved. The second paragraph of Article 181 of the 1990 Law distinguishes, amongst the information which the holding companies possess, between information which is not inside information and information which must be given that description on the ground that it 'must be made public pursuant to the statutory and regulatory provisions concerning the obligations arising from the official listing of transferable securities on the stock exchange'.

31. By this distinction, this provision provides a definition of non-inside information which clearly does not cover all information which may be possessed by holding companies. That is not to say that all information concerning companies in

13 — See, *inter alia*, Case 38/77 *Enka* [1977] ECR 2203, paragraphs 20 and 21; Case C-241/89 *SARPP* [1990] ECR I-4695, paragraph 8, and Case C-373/97 *Diamantis* [2000] ECR I-1705, paragraph 35.

which holding companies have a shareholding escapes, for that reason alone, that classification. It would therefore be premature to conclude, as the defendants in the main proceedings do, [14] that holding-company status is sufficient to determine the legal regime applicable to the information.

32. In order to be helpful to the Belgian court, the reply to the questions referred for a preliminary ruling requires the nature of the information which, under the second paragraph of Article 181 of the 1990 Law, remains 'inside information' to be known precisely. The reference for a preliminary ruling does not offer help on this point. On the other hand, the Belgian government has observed that: 'At the time of the acts with which the accused are charged, the companies whose shares had been officially listed on the stock exchange were required to "immediately make public any act or decision of which they were aware and which, if it were made public, would be likely to have a significant effect on the market price of those shares"'. [15]

33. Consequently, we have to assume that the information referred to in the second paragraph of Article 181 of the 1990 Law as that which must be made public pursuant to the statutory and regulatory provisions concerning the obligations arising from official listing of transferable securities on a stock exchange is information whose disclosure might have a significant effect on the market price of the shares concerned. Under national law, that information remains 'inside information'.

34. Consequently, it is possible to formulate the questions more precisely. They must be construed as seeking to ascertain whether Article 6 of the Directive precludes national legislation, such as that at issue in the main proceedings, which sets more stringent conditions than those laid down in the Directive, while excluding from the scope of its application information which holding companies possess because of their role in the management of their subsidiaries, where that information is not capable of having an effect on the market price of transferable securities.

35. A reading of Article 181 of the 1990 Law shows that the exception for holding companies does not specifically exclude those companies from the more stringent prohibition laid down by the 1990 Law but, more generally, excludes them from the actual prohibition, stated in the Directive, of knowingly taking advantage of inside information. The 1990 Law does not merely reserve for those companies a set of rules characterised by a less strict

14 — The defendants in the main proceedings claim in fact that: 'Instead of changing the definition of the prohibition [of insider dealing] and excluding from it certain dealings by holding companies, the legislature exempts those companies (almost) completely from the prohibition of taking advantage of inside information' (pp. 11 and 12 of the French translation of their written observations).

15 — Point 6.2.3 of the Belgian Government's written observations. The provision referred to by the Belgian Government is Article 4(1)(i) of the Royal Decree of 18 December 1990, relating to obligations arising from an initial public listing of transferable securities on the primary market of the Belgian stock exchange (*Belgische Staatsblad* of 22 September 1990, p. 18138), as amended, most recently, by the Royal Decree of 30 July 1994. The Belgian Government states that this provision has since been replaced by the amended Royal Decree of 3 July 1996, on obligations concerning ad hoc information of issuers whose financial instruments are listed on the primary market and on a new market for transferable securities (*Belgische Staatsblad* of 6 July 1996, p. 18700). This reform did not result in any change in the obligation to make public certain information incumbent on quoted companies.

definition of the scope of the prohibition. It simply excludes certain information in the possession of holding companies from the definition which it gives of 'inside information', whose use is prohibited by the Directive. In doing this, the 1990 Law introduces an exception to the actual principle of prohibiting insider dealings, irrespective of the way in which the national legislature has chosen to transpose this in its law. It does not therefore distinguish between a stricter fundamental provision, which would be characterised by penalties which would not be dependent on demonstrating a causal connection, and an exception reserved for holding companies, by which they would be liable to the same penalties, provided that such a connection were proved.

36. Therefore, if one wishes to be satisfied that there is no discrimination between the various economic operators, in accordance with Article 6 of the Directive, the first matter to be examined is whether the latter allows the exclusion from the scope of its application of a category of operators such as holding companies.

37. In such a case, Member States enacting more stringent provisions would not contravene the condition requiring the implementing provision to be applied generally, since, right from the beginning, the Community provision would allow some companies to be excluded from the scope of its application. The more stringent provisions of the national law would then have to be regarded as being applied generally, within the meaning of Article 6 of the Directive.

38. If this were not the case, the legal validity of the exception to the stricter definition which the national law gives to insider dealing would be weakened. It is likely that Article 6 of the Directive would preclude more stringent legislation that did not include in the scope of its application economic operators covered by the Directive, thus revealing the discriminatory nature of the national rules.

The scope of application of the Directive: the right of holding companies to make use of certain information on the transferable securities market

39. Under Article 1(1) of the Directive, the term 'inside information' consists of three factors. In order to be inside information, the information must be precise, not have been made public and likely to have a significant effect on the price of the transferable securities to which it relates. [16]

16 — Gaillard, E., and Pingel, I., 'Les opérations d'initiés dans la Communauté économique européenne', *Revue trimestrielle de droit européen*, 26 (2), April-June 1990, p. 329, I-A; Calvet, H., 'La directive du Conseil des Communautés européennes relative aux opérations d'initiés', *Semaine juridique*, Ed. E, No 49, p. 760, I-B, and Lambrecht, P., 'La directive européenne relative aux opérations d'initiés', *Revue de la Banque*, 8-9/1990, p. 455, II-3-a.

40. A straightforward assumption, by its vague and uncertain nature, is not sufficient to constitute inside information. Similarly, if information is already known to investors, the prohibition of taking advantage of it on the market is no longer of any use since the fact that it is in the public domain means that it is no longer inside information. Equality between investors, which the Directive specifically seeks to have observed in order to maintain the smooth operation of the market, is ensured when everyone is able to buy or sell transferable securities on the basis of the same information.

41. Finally, assuming that an operator possesses information which is both precise and confidential, it is important that, in order for it to be categorised as 'inside information', use of it should be such as to afford that operator alone some advantage. The smooth operation of the market cannot be affected by use of information whose dissemination would not be followed by any discernible effect on prices. The confidentiality of a precise piece of information about the fate of a company does not necessarily provide the investor possessing that information with an arm. The choices of economic strategy made by an undertaking listed on the stock exchange, for instance, are not all necessarily accompanied by movements on the stock market.

42. So, the Directive marks out a boundary between information which could be classified as neutral and information which may reasonably be thought to influence the assessment made by investors of an undertaking and therefore the price of its transferable securities.[17] Only the latter information constitutes 'inside information', within the meaning of Article 1(1) of the Directive, the taking of advantage of which is prohibited under Article 2 of the Directive.

43. A comparison of Article 1(1) of the Directive and the second paragraph of Article 181 of the 1990 Law, read with reference to Article 4(1)(i) of the Royal Decree of 18 September 1990 reveals a great similarity between the rules set out in each provision.

44. The information which, under the second paragraph of Article 181 of the 1990 Law, remains inside information, although it is in the possession of a holding company, is information which must be made public pursuant to the statutory and regulatory provisions concerning the obligations arising from official listing of transferable securities on a stock exchange. Under Article 4(1)(i) of the Royal Decree of 18 September 1990, that information is

17 — Under American law, which adopts a similar approach, 'Inside information which has not been disclosed may be considered as being "material" where there is a substantial likelihood that disclosure of the non-divulged fact would have been considered by the reasonable investor as having significantly altered the available information, and therefore altered the share price, which, on a competitive market, reflects all the available information and fundamentally influences the decision of the investor', Bergmans, B., 'La responsabilité pour les opérations d'initiés en droit fédéral américain', *Revue internationale de droit économique*, 92 (2), p. 149.

information concerning facts or decisions which companies listed on a stock exchange have knowledge of and which, if it was made public, would be likely *to have a significant effect on the price of the shares on the stock exchange.* [18]

45. The condition concerning the effect of the information on the market is not expressed differently in Article 1(1) of the Directive and the second paragraph of Article 181 of the 1990 Law. In both provisions, it determines which information is inside information, even if the information happens to be in the possession of a holding company.

46. From a combined reading of the 1990 Law and the Royal Decree of 1990, it appears that inside information is defined as being either information in the possession of companies quoted on a stock exchange themselves, or information concerning those companies, and which is therefore which holding companies possess because of their role in the management of those companies. The Belgian Government explains that information in the possession of a holding company in relation to companies quoted on a stock exchange, on account of its role in the management of that company, must be considered as inside information only from the time when that information becomes inside information from the viewpoint of the company admitted to the official listing. [19]

Article 1(1) of the Directive does not preclude a reading of this kind, since the definition that it gives of inside information does not depend on the status of its possessor. On the contrary, Article 2 of the Directive expressly refers to natural persons [20] or legal persons [21] which, on account of their shareholding in the capital of the issuer possess inside information. But there is no doubt that holding companies are included in that definition and that the prohibition on insider dealing is not limited to the issuing company itself or its personnel.

47. However, the manner in which Article 1 of the Directive is read and transposed into the national legislation is open to doubt. The statements of the Belgian Government suggest that, under the national law, the transferable securities to

18 — I must admit that reading Article 181 of the 1990 Law and Article 4(1)(i) of the Royal Decree of 1990 left me somewhat surprised. The first paragraph defines 'inside information' as information capable of having a significant effect on stock exchange prices. The second paragraph provides for an exception for holding companies, but makes an exception to this exception, defined in identically the same way to the principle from which the first exception seeks to depart. In other words, from the reading suggested by the Belgian Government (point 7.1 of its written observations), not contradicted on this point by the other interveners and confirmed by the content of the relevant provisions, it would seem that information which holding companies possess is not 'inside information' except where it is liable to have a significant effect on stock exchange prices. This ultimately amounts to applying to holding companies the ordinary law definition of 'inside information', as laid down both in the Directive and in national legislation. See, on the difficulty of establishing the precise scope of this provision, Lambrecht, P., cited above, p. 459. In the absence of other information for guiding an interpretation, I will adhere to this reading of the national law.

19 — Third subparagraph of point 6.2.3 of its written observations.

20 — Article 2(1).

21 — Article 2(2).

which the inside information must relate in order to justify that classification must be shares. This restriction does not appear to be in the Directive, which refers to transferable securities in general, which are, in fact, defined very broadly. [22]

48. A fuller reading of the national law discloses, however, that the Royal Decree of 1990 includes, in relation to bonds, a provision equivalent to Article 4(1)(i), namely Article 12(i). [23]

49. In any event, it is for the national court, which alone is competent to interpret its national law, [24] to state whether, under the national legislation applicable at the time of the events at issue in the main proceedings, the category of information possessed by holding companies and which they must make public, pursuant to the second paragraph of Article 181 of the 1990 Law, includes information likely to have a significant effect on the stock exchange price of the transferable securities, such as those defined in Article 1(2) of the Directive.

50. It can be concluded from the foregoing that the concept of 'inside information', within the meaning of Article 1(1) of the Directive, does not apply to information such as that defined in Article 181 of the 1990 Law. Information possessed by holding companies owing to their role in the management of companies in which they have a shareholding may thus not be considered as 'inside information' if that information does not fall into the category of information which must be made public because it is likely to have a significant effect on the price of transferable securities.

Article 6 of the Directive: the general application of more stringent provisions

51. The reasons for which the Directive does not preclude stricter legislation may be readily inferred from the foregoing

22 — Article 1(2).

23 — Article 12(i) provides as follows: 'The undertaking shall make known immediately any fact or decision of which it is aware and which, if it were made public, would be likely to have a significant effect on the stock exchange price of the bonds'. I note, in the interest of completeness, that as the Belgian Government pointed out the Royal Decree of 1990 has been replaced by the Royal Decree of 3 July 1996, cited above. Article 5(1)(i), of this provision requires companies '[to] make public immediately any fact or decision of which they are aware and which, if it were made public, would be likely to have a significant effect on the stock exchange price of financial instruments'. The broader term 'financial instruments' appears closer to the definition adopted by the Community legislature in the Directive.

24 — See, for example, Case C-37/92 *Vanacker and Lesage* [1993] ECR I-4947 and Case C-295/97 *Piaggio* [1999] ECR I-3735.

analysis which has enabled the precise scope of the Directive to be defined. The use by holding companies of information having no effect on the price of transferable securities does not therefore fall under the prohibition on insider dealing.

52. Since dealings relating to this kind of information do not fall within the scope of application of the Directive, they fall outside the ambit of not only the legal regime which the Member States are required to introduce but also of the more stringent provisions which the Member States may adopt in implementation of the Directive.

53. In the present case, holding companies, like other companies, fall under the legislation on insider dealing, as enacted in a more stringent form in national law: where information in the possession of holding companies is regarded as 'inside information', within the meaning of the national law, it is subject to the prohibition laid down in Article 182(1) of the 1990 Law. Therefore, no discrimination arises solely as a result of that information being used by that kind of company.

54. In the case of information which those companies possess and which the 1990 Law does not regard as 'inside information', the exception which it constitutes to the scope of application of the Directive removes it from the ambit of both the prohibition on insider dealing, as laid down in the Directive, and, *a fortiori*, the more stringent provisions adopted by Member States under Article 6 of the Directive.

55. Consequently, the answer to be given to the first two questions must be that the right laid down in Article 6 of the Directive to adopt more stringent provisions, provided that they are applied generally, allows national legislation to exclude from the scope of its application information possessed by holding companies if that information is not likely to have a significant effect on the price of transferable securities.

56. Having regard to all of the foregoing and given the information we have on the national legislation applicable, there is no need to reply to the third question.

Conclusion

57. In light of those considerations, I propose that the Court answer the questions referred by the Rechtbank van Eerste Aanleg, Ghent, as follows:

Article 6 of Council Directive 89/592/EEC, of 13 November 1989, coordinating regulations on insider dealing, does not preclude national legislation such as that at issue in the main proceedings, which, as far as the definition of prohibited insider dealing is concerned, adopts provisions more stringent than those laid down by the Directive while excluding from its scope of application information which holding companies possess because of their role in the management of companies in which they have a shareholding, when that information is not likely to have a significant effect on the price of the transferable securities.