

Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

19 March 2026 (\*)

( Reference for a preliminary ruling – Regulation (EU) No 596/2014 – Market abuse – Article 7(1) – Concept of ‘inside information’ – Article 7(2) – Information of a ‘precise nature’ – Email containing information relating to the inclusion of a person in an insider list – No statement of the reasons that led to that inclusion – Correct assessment of the circumstances – Correct information – Necessity )

In Case C-363/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Högsta domstolen (Supreme Court, Sweden), made by decision of 8 May 2024, received at the Court on 17 May 2024, in the proceedings

**Finansinspektionen**

v

**Carnegie Investment Bank AB,**

THE COURT (Fourth Chamber),

composed of I. Jarukaitis, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Fourth Chamber, M. Condisanzi (Rapporteur), N. Jääskinen and R. Frendo, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 21 May 2025,

after considering the observations submitted on behalf of:

- Finansinspektionen, by M. Eiderbrant and E. Leijonram, acting as Agents,
- Carnegie Investment Bank AB, by M. Bengtsson, N. Rockborn and D. Waerne, advokater,
- the German Government, by J. Möller and R. Kanitz, acting as Agents,
- the Finnish Government, by M. Pere, acting as Agent,
- the Norwegian Government, by E. Skjelland and B. Stankovic, acting as Agents,
- the European Commission, by C. Auvret and M. Björkland, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2025,

gives the following

### **Judgment**

1 The request for a preliminary ruling concerns the interpretation of Article 7(2) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ 2014 L 173, p. 1, and corrigendum OJ 2016 L 287, p. 320).

2 The request has been made in proceedings between Finansinspektionen (Financial Supervisory Authority, Sweden) and Carnegie Investment Bank AB ('Carnegie'), a bank established in Sweden, concerning that authority's form of order seeking to have Carnegie ordered to pay a fine for having infringed the prohibition against insider dealing within the meaning of Articles 8 and 14 of Regulation No 596/2014.

### **Legal context**

#### ***European Union law***

##### *Regulation No 596/2014*

3 Recitals 2, 14 and 24 of Regulation No 596/2014 state as follows:

'(2) An integrated, efficient and transparent financial market requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.

...

(14) Reasonable investors base their investment decisions on information already available to them, that is to say, on *ex ante* available information. Therefore, the question whether, in making an investment decision, a reasonable investor would be likely to take into account a particular piece of information should be appraised on the basis of the *ex ante* available information. Such an assessment has to take into consideration the anticipated impact of the information in light of the totality of the related issuer's activity, the reliability of the source of information and any other market variables likely to affect the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances in the given circumstances.

...

(24) ... The question whether a person has infringed the prohibition on insider dealing or has attempted to commit insider dealing should be analysed in the light of the purpose of this Regulation, which is to protect the integrity of the financial market and to enhance investor confidence, which is based, in turn, on the assurance that investors will be placed on an equal footing and protected from the misuse of inside information.'

4 Article 1 of that regulation provides:

'This Regulation establishes a common regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation (market abuse) as well as measures to prevent market abuse to ensure the integrity of financial markets in the [European] Union and to enhance investor protection and confidence in those markets.'

5 Article 7 of that regulation, entitled 'Inside information', provides:

'1. For the purposes of this Regulation, inside information shall comprise the following types of information:

(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, 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;

...

2. For the purposes of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. ...

...

4. For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

...'

6 Article 8 of that regulation, entitled 'Insider dealing', provides in paragraph 1:

'For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. ...'

7 Article 9 of Regulation No 596/2014, entitled 'Legitimate behaviour', provides as follows in paragraphs 3 and 6:

'3. For the purposes of Articles 8 and 14, it shall not be deemed from the mere fact that a person is in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal where that person conducts a transaction to acquire or dispose of financial instruments and that transaction is carried out in the discharge of an obligation that has become due in good faith and not to circumvent the prohibition against insider dealing and:

(a) that obligation results from an order placed or an agreement concluded before the person concerned possessed inside information; or

(b) that transaction is carried out to satisfy a legal or regulatory obligation that arose, before the person concerned possessed inside information.

...

6. Notwithstanding paragraphs 1 to 5 of this Article, an infringement of the prohibition of insider dealing set out in Article 14 may still be deemed to have occurred if the competent authority establishes that there was an illegitimate reason for the orders to trade, transactions or behaviours concerned.'

8 Article 14 of that regulation, entitled 'Prohibition of insider dealing and of unlawful disclosure of inside information', is worded as follows:

'A person shall not:

- (a) engage or attempt to engage in insider dealing;
- (b) recommend that another person engage in insider dealing or induce another person to engage in insider dealing; or
- (c) unlawfully disclose inside information.'

9 Article 17 of that regulation, entitled 'Public disclosure of inside information', provides in paragraphs 1 and 4:

'1. An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer.

...

4. An issuer or an emission allowance market participant, may, on its own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

- (a) immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;
- (b) delay of disclosure is not likely to mislead the public;
- (c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information.

...'

10 Article 18 of that same regulation, entitled 'Insider lists', provides:

'1. Issuers or any person acting on their behalf or on their account, shall:

- (a) draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies (insider list);
- (b) promptly update the insider list in accordance with paragraph 4; and
- (c) provide the insider list to the competent authority as soon as possible upon its request.

...

3. The insider list shall include at least:

- (a) the identity of any person having access to inside information;
- (b) the reason for including that person in the insider list;
- (c) the date and time at which that person obtained access to inside information; and
- (d) the date on which the insider list was drawn up.

...'

11 Article 19 of Regulation No 596/2014, entitled 'Managers' transactions', is worded as follows:

'1. Persons discharging managerial responsibilities, as well as persons closely associated with them, shall notify the issuer or the emission allowance market participant and the competent authority referred to in the second subparagraph of paragraph 2:

(a) in respect of issuers, of every transaction conducted on their own account relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto;

(b) in respect of emission allowance market participants, of every transaction conducted on their own account relating to emission allowances, to auction products based thereon or to derivatives relating thereto.

Such notifications shall be made promptly and no later than three business days after the date of the transaction.

The first subparagraph applies once the total amount of transactions has reached the threshold set out in paragraph 8 or 9, as applicable, within a calendar year.

2. For the purposes of paragraph 1, and without prejudice to the right of Member States to provide for notification obligations other than those referred to in this Article, all transactions conducted on the own account of the persons referred to in paragraph 1, shall be notified by those persons to the competent authorities.

...'

#### *Implementing Regulation (EU) 2016/347*

12 Article 2 of Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (OJ 2016 L 65, p. 49) provided:

'1. Issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor, or any person acting on their behalf or on their account, shall ensure that their insider list is divided into separate sections relating to different inside information. ...

Each section of the insider list shall only include details of individuals having access to the inside information relevant to that section.

2. The persons referred to in paragraph 1 may insert a supplementary section into their insider list with the details of individuals who have access at all times to all inside information ("permanent insiders").

The details of permanent insiders included in the supplementary section referred to in the first subparagraph shall not be included in the other sections of the insider list referred to in paragraph 1.

...'

#### *Swedish law*

13 Lag (2016:1306) med kompletterande bestämmelser till EU:s marknadsmissbruksförordning (Law (2016:1306) supplementing the EU market abuse regulation) of 20 December 2016 (SFS 2016, No 1306) contains provisions supplementing Regulation No 596/2014.

14 Paragraph 1(1) of Chapter 5 of that law provides that the Financial Supervisory Authority is obliged to take action against any person who has infringed the prohibition on insider dealing. Paragraph 3(6) of that chapter provides that that action may take the form of a financial penalty.

#### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

15 It is apparent from the order for reference that, on the date of the facts of the main proceedings, the company Varvtre AB was owned by BAK, who was then also the Chief Executive Officer and main shareholder of the Swedish listed video game development company Starbreeze AB. Varvtre had a 'depository loan' with Carnegie, under which Varvtre had obtained from Carnegie a credit in exchange for pledging shares in the bank's depository as collateral.

16 In particular, under that contract, Varvtre had a credit of 35 million kronor (SEK) (approximately EUR 3 275 131) in return for pledging shares in Starbreeze up to a certain value. That contract provided that those shares could only be used as collateral up to a certain level and that Carnegie had the right to terminate the credit for immediate payment if the collateral for the credit was no longer adequate. In such circumstances, Carnegie also had the right to use the pledge deposit as it saw fit.

17 On account of a fall in the price of Starbreeze's shares, Varvtre's credit with Carnegie became over-indebted. On 14 November 2018, the over-indebtedness amounted to approximately SEK 5 million (approximately EUR 467 875). The next morning, Carnegie initiated a sale of the Starbreeze shares pledged by Varvtre, in performance of the relevant contract provisions.

18 At 13:32 on 15 November 2018, the head of communications at Starbreeze, who also assisted BAK and Varvtre in their dealings with Carnegie, sent an email to Carnegie ('the email of 15 November 2018') stating that BAK had been logged on Starbreeze's transparency register and could not sell after 13:33. At 13:35, an insider list was opened at Starbreeze ('the list of Starbreeze insiders') and, at 13:37, BAK was registered in that list. Carnegie has argued that the information in the message was not correct because BAK had not yet been included in the insider list when that email was sent.

19 According to the head of communications at Starbreeze, the reason why BAK was included in that list was that he had been informed that Starbreeze's Chief Financial Officer had resigned. However, the email of 15 November 2018 did not contain any information regarding the reason for BAK's inclusion in the insider list. In that regard, according to Carnegie, there was no information which related directly or indirectly to Starbreeze and which constituted inside information. Carnegie has also asserted that the information relating to the resignation of that Chief Financial Officer did not constitute inside information.

20 After Carnegie received the email of 15 November 2018, the sale of Starbreeze shares that had been initiated that morning was suspended. The sale was then resumed in the afternoon by Carnegie. Between that date and up to and including 19 November 2018, a total of just over SEK 16 million (approximately EUR 1 497 202) worth of shares was sold. For Varvtre, that sale entailed a loss limitation of approximately SEK 4.9 million (approximately EUR 426 000).

21 On 23 November 2018, Starbreeze issued a press release stating, inter alia, that the company's sales revenue was lower than expected and that the company's CFO no longer held that post.

22 The Financial Supervisory Authority brought an action against Carnegie, requesting that the bank be ordered to pay a fine of SEK 35 million (approximately EUR 3 045 000) for having infringed the prohibition against insider dealing laid down in Articles 8 and 14 of Regulation No 596/2014. In support of that action, that authority argued that, by receiving the email of 15 November 2018, Carnegie had had access to inside information when the sale of the Starbreeze shares was carried out.

23 The Tingsrätt (District Court, Sweden) ruled that the information in the email constituted inside information and upheld the action. In particular, in the view of the Tingsrätt (District Court), the information in that email could only be understood as being negative financial information in respect

of Starbreeze. The Tingsrätt (District Court) ruled that it was possible to draw conclusions from that information as to their potential effect on the price of Starbreeze shares, irrespective of the exact information that had led to that company's insider list being drawn up.

24 The Svea Hovrätt (Svea Court of Appeal, Stockholm, Sweden) overruled the judgment of the Tingsrätt (District Court) and dismissed the action brought by the Financial Supervisory Authority, on the ground that the information in the email of 15 November 2018 did not constitute inside information. According to the Svea Hovrätt (Svea Court of Appeal, Stockholm), that information was not such as to enable the recipient to understand why BAK was considered to be an insider and therefore prohibited from selling. Nor, therefore, could the recipient have known that that information in itself was likely to influence the Starbreeze share price. According to the Svea Hovrätt (Svea Court of Appeal, Stockholm), the content of that email could rather be categorised as 'vague' or 'general' and thus not of a precise nature.

25 The Financial Supervisory Authority appealed against that judgment of the Svea Hovrätt (Svea Court of Appeal, Stockholm) to the Högsta domstolen (Supreme Court, Sweden), the referring court. The Högsta domstolen (Supreme Court) notes that, in order for information to constitute 'inside information' within the meaning of Regulation No 596/2004, it must be of a precise nature. In the main proceedings, the question arises as to whether it follows from that requirement that it is not sufficient to provide information to the effect that a person has been included on an insider list and has been deemed to be prevented from selling shares, but that it is also necessary that the recipient of the information has been able to comprehend the underlying circumstances which led to the person being included on the insider list. Moreover, in that latter scenario, questions arise as to the level of precision and degree of certainty enabling the recipient to draw conclusions about those circumstances.

26 In those circumstances the Högsta domstolen (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can a communication that a particular person has been included in an insider list and is prevented from selling shares in an issuer be of a sufficiently specific nature to constitute inside information under Article 7(2) of [Regulation No 596/2014], even if the reasons for the person's inclusion are not clear?

(2) If that is the case, then under what conditions?

(3) Is it relevant to the assessment of whether a communication of the kind referred to in Question 1 constitutes inside information, if the issuer's assessment that the circumstances which led to the person's inclusion in the insider list constituted inside information was correct?

(4) Is it relevant to the assessment of whether a communication such as that referred to in Question 1 constitutes inside information, if the information contained in the communication was correct?'

### **Consideration of the questions referred**

#### ***The first and second questions***

27 By its first and second questions, which should be examined together, the referring court asks, in essence, whether Article 7(2) of Regulation No 596/2014 must be interpreted as meaning that, for the purposes of categorising information as 'inside', a communication from an issuer to the effect that a person has been included in an insider list and is prevented from selling shares in that issuer, even if

the reasons for the person's inclusion are not clear therefrom, is capable of constituting information which is 'of a precise nature' within the meaning of Article 7(1) and (2) thereof.

28 It should be noted, as a preliminary point, that Regulation No 596/2014 repealed and replaced, with effect from 3 July 2016, 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). Article 7(1) of that regulation corresponds, in essence, to point 1 of Article 1 of that directive, so that the case-law relating to that latter provision is relevant for interpreting Article 7(1) of Regulation No 596/2014.

29 As held by the Court previously, the definition of 'inside information' under Article 7(1) of Regulation No 596/2014 comprises four essential elements. First, the information must be of a precise nature. Secondly, the information must not have been made public. Thirdly, it must relate, directly or indirectly, to one or more financial instruments or their issuers. Fourthly, it must be information which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments concerned or on the price of related derivative financial instruments (see, to that effect, judgments of 11 March 2015, *Lafonta*, C-628/13, EU:C:2015:162, paragraph 24, and of 15 March 2022, *Autorité des marchés financiers*, C-302/20, EU:C:2022:190, paragraph 33).

30 Moreover, under Article 7(2) of that regulation, for the purposes of application of Article 7(1) thereof, information is to be deemed to be of a 'precise nature' if it satisfies two conditions: (i) it must indicate 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 occur; and (ii) it must be specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments concerned or related derivative financial instruments.

31 In the present case, the alleged inside information was contained in the email of 15 November 2018, by which the head of communications at Starbreeze informed Carnegie that BAK, who was at the time Starbreeze's Chief Executive Officer and main shareholder, had just been placed on Starbreeze's insider list and could not sell Starbreeze's shares.

32 In that regard, the first condition referred to in paragraph 30 above will be examined as part of the analysis of the third and fourth questions.

33 As regards the second condition referred to in paragraph 30 of the present judgment, the Court has clarified that, in order to ascertain whether the information in question may be considered to be 'sufficiently precise', that information must be sufficiently exact or specific to constitute a basis on which to assess whether the set of circumstances or the event mentioned in that information is likely to have an effect on the price of the financial instruments to which it relates. Consequently, the only information excluded from the concept of 'inside information' by virtue of Article 7(1) and (2) of Regulation No 596/2014 is 'information that is vague or general, from which it is impossible to draw a conclusion as regards its possible effect on the prices of the financial instruments concerned' (see, to that effect, judgment of 15 March 2022, *Autorité des marchés financiers*, C-302/20, EU:C:2022:190, paragraph 38 and the case-law cited). Thus, a case-by-case examination is necessary (see, to that effect, judgment of 15 March 2022, *Autorité des marchés financiers*, C-302/20, EU:C:2022:190, paragraphs 41 and 42).

34 It follows that, in order to ascertain whether the second condition referred to in paragraph 30 above is satisfied and, therefore, whether information is 'sufficiently precise' within the meaning of Article 7(2) of Regulation No 596/2014, it is necessary to establish, on the basis of an assessment of the specific facts of each case, whether that information enables a conclusion to be drawn as to the

possible effect of the circumstances or event to which it refers on the prices of the financial instruments concerned.

35 With that clarification, the Court finds that the inclusion in an insider list of persons who have access to inside information and who work for an issuer under a contract of employment or otherwise perform tasks through which they have access to such information, as well as updates and the provision of such a list to the competent authorities, comes within the obligation issuers of financial instruments have under Article 18 of Regulation No 596/2014 and, therefore, the internal organisation of the issuer concerned, under the supervision of the competent authority to which the insider list must be provided pursuant to Article 18(1)(c) thereof.

36 Consequently, a communication stating that such a person has been included in the insider list does not, in principle, per se and in the absence of additional clarifications relating to the context in which that person was included in that list, have an effect on the prices of the financial instruments concerned, thereby satisfying the condition that information must inter alia be capable of having a significant effect on those prices in order to constitute 'inside information' within the meaning of Article 7(1) of that regulation.

37 That holds true not only when that communication relates to the inclusion of a person who, due to the nature of his or her functions, has access to inside information at all times and, in that capacity, may have been included as a 'permanent insider' by the issuer, if the issuer has exercised the option available to it under Article 2(2) of Implementing Regulation 2016/347 to insert a supplementary section relating to that specific category of insiders into its insider list, but also when that communication relates to the inclusion of an 'occasional insider' who has access to inside information from time to time.

38 However, the possibility cannot prima facie be ruled out that a communication stating that a person has been placed on the insider list of an issuer may, because of other elements attached thereto – such as, in particular, the statement that that person is prevented from selling shares in that issuer or the circumstances surrounding its disclosure – be considered to be 'sufficiently precise' within the meaning of Article 7(2) of Regulation No 596/2014, inasmuch as it discloses or indirectly implies the existence of an underlying event which may have an effect on the prices of the financial instruments concerned or related derivative financial instruments.

39 To that end, it should be ascertained inter alia whether, in view of all the circumstances of a given case, it has been established that the communication of such information is capable of enabling the recipient thereof to profit therefrom, directly or indirectly, in order to buy or sell shares, thereby placing himself or herself in a more favourable position vis-à-vis other investors.

40 In that regard, it should be borne in mind that the objective of Regulation No 596/2014, as is apparent from recitals 2 and 24 and Article 1 thereof, is to protect the integrity of EU financial markets and to enhance investor confidence in those markets, a confidence which depends, inter alia, on investors being placed on an equal footing and being protected against the improper use of inside information. The purpose of the prohibition against insider dealing and the unlawful disclosure of inside information, laid down in Article 14 of that regulation, is to ensure equality between investors participating in stock-market transactions by preventing one of them who possesses inside information and who is, therefore, in an advantageous position vis-à-vis other investors, from profiting from that information, to the detriment of those who are unaware of it (see, to that effect, judgment of 15 March 2022, *Autorité des marchés financiers*, C-302/20, EU:C:2022:190, paragraph 43 and the case-law cited).

41 It is for the referring court to determine, in the light of all the circumstances of the main proceedings, whether it has been established that the communication in question satisfied the conditions laid down in Article 7(2) of Regulation No 596/2014 so as to be held to be ‘sufficiently precise’ and accordingly constitute ‘inside information’ within the meaning of Article 7(1) thereof.

42 In that analysis, that court must *inter alia* take account of both the content of the email of 15 November 2018 and the identity of the persons concerned by that email and their role within the issuer concerned.

43 On that last point, it should be emphasised that if, in the present case, BAK, as the Starbreeze’s Chief Executive Officer and main shareholder, necessarily had to have access to commercial information capable of constituting ‘inside information’ within the meaning of Article 7(1) of Regulation No 596/2014, given his role and functions within that company, under Article 19 of that regulation that fact alone did not mean that he could not trade in the financial instruments of that company. Moreover, as stated in paragraph 36 of the present judgment, a communication stating merely that BAK was placed on Starbreeze’s insider list does not, in principle, have the required degree of precision, in the absence of any additional information, in order for the first condition referred to in paragraph 29 above to be satisfied and therefore to constitute ‘inside information’ within the meaning of Article 7(1) of that regulation.

44 On the other hand, the fact that the information contained in the email of 15 November 2018 refers not only to BAK’s placement on Starbreeze’s insider list but also to the sales prohibition on BAK relating to the shares in that company, attached to that placement, is capable of having a bearing on the examination of the second condition referred to in paragraph 30 of the present judgment and, therefore, the analysis relating to the first element of the concept of ‘inside information’ referred to in paragraph 29 above, relating to the degree of precision of the information concerned.

45 The Court notes that, although information relating to the mere fact that a person has been placed on the insider list of a company is, in principle and *per se*, neutral in relation to the question whether it would be appropriate for an investor to buy or sell shares in that company, the addition of further information concerning a sales prohibition on that person relating to shares in that company necessarily implies that that person has knowledge of an event having adverse implications for the interests of that company and capable, therefore, of incentivising an investor aware of that fact to sell rather than buy such shares or, at any rate, be capable of influencing that investor’s decisions on the market concerned once he or she is aware.

46 It follows that such information, relating not only to the placement of a person on the insider list of a securities issuer but also to the fact that a prohibition on selling the securities of that issuer has been placed on that person, even if it does not enable an investor to know the underlying reason for that placement, could, in certain circumstances, be used by a reasonable investor as part of the basis of his or her investment decisions within the meaning of Article 7(4) of Regulation No 596/2014, with the result that the fourth element referred to in paragraph 29 of the present judgment, relating to the fact that the information in question, if it were made public, would be likely to have a significant effect on the prices of the financial instruments concerned, has been established.

47 The Court notes in that regard that the very objective of ascertaining whether the information in question is sufficiently precise is to determine whether it has a sufficient degree of precision to be able to have a significant effect on the prices of the financial instruments concerned or on the price of related derivative financial instruments, if it were made public.

48 The Court has held previously that information which, if it were made public, would be likely to have a ‘significant effect’ on the prices of the securities concerned within the meaning of Article 7(1)

of Regulation No 596/2014, must be regarded, as a general rule, as satisfying the condition that the information must be of a 'precise nature', also referred to in that provision, since, in principle, information cannot have such an effect if it is not in itself of such a nature (see, to that effect, judgment of 15 March 2022, *Autorité des marchés financiers*, C-302/20, EU:C:2022:190, paragraph 55).

49 In those circumstances, the communication sent to Carnegie, stating that BAK had been placed on Starbreeze's insider list, with the additional information stating that he was prevented from selling shares in that company, could enable a conclusion to be drawn about the prices of that company's financial instruments and, consequently, could be categorised as 'sufficiently precise' within the meaning of Article 7(2) of Regulation No 596/2014. Thus, such a communication could satisfy the conditions required to constitute 'inside information' within the meaning of Article 7(1) of that regulation, which it is for the referring court to ascertain.

50 Moreover, in the application of Articles 8 and 14 of Regulation No 596/2014, the referring court must also take account of the specific context in which the inside information was communicated.

51 As discussed in paragraphs 15 to 17 of the present judgment, it is apparent from the order for reference that the sale of the Starbreeze shares held by Varvtre was initiated by Carnegie, in performance of the pledge of shares held by Carnegie under the 'depository loan' concluded by Varvtre and Carnegie.

52 In particular, under that contract, Varvtre had obtained from Carnegie a credit in exchange for pledging shares in the bank's depository as collateral. That contract provided that those shares could only be used as collateral up to a certain level and that Carnegie had the right to terminate the credit for immediate payment if the collateral for the credit was no longer adequate. In such circumstances, under the contract in question, Carnegie also had the right to use the pledge deposit as it saw fit.

53 The fall in the price of Starbreeze's shares – which was, moreover, recorded before the email of 15 November 2018 was sent – is precisely the reason why Varvtre's credit with Carnegie became over-indebted and, on the morning of 15 November 2018, Carnegie initiated a sale of the Starbreeze shares pledged by Varvtre, in performance of the relevant contract provisions.

54 It should be borne in mind in that regard that, under Article 9(3) of Regulation No 596/2014, for the purposes of Articles 8 and 14 of that regulation, it is not to be deemed from the mere fact that a person is in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal where that person conducts a transaction to acquire or dispose of financial instruments and that transaction is carried out in the discharge of an obligation that has become due in good faith and not to circumvent the prohibition against insider dealing and that obligation results from an order placed or an agreement concluded before the person concerned possessed inside information, or that transaction is carried out to satisfy a legal or regulatory obligation that arose, before the person concerned possessed inside information.

55 Article 9(6) of that regulation supplements that provision by providing that an infringement of the prohibition against insider dealing set out in Article 14 thereof may still be deemed to have occurred if the competent authority establishes that there was an illegitimate reason for the orders to trade, transactions or behaviours concerned.

56 Thus, should the referring court reach the conclusion that the email of 15 November 2018 contained inside information, it is under an obligation *inter alia* to ascertain, in view of all the circumstances of the main proceedings, whether the suspension and then resumption by Carnegie of the sale of Starbreeze's shares pledged by Varvtre following the sending of that email could come

within the scope of Article 9(3) of Regulation No 596/2014, which presupposes, inter alia, that the existence of an obligation that has become due has been established which made that sale objectively necessary.

57 In the light of the foregoing, the answer to the first and second questions is that Article 7(2) of Regulation No 596/2014 must be interpreted as meaning that, for the purposes of categorising information as ‘inside’, a communication from an issuer to the effect that a person has been included in an insider list and is prevented from selling shares in that issuer, even if the reasons for the person’s inclusion are not clear therefrom, is capable of constituting information which is ‘of a precise nature’ within the meaning of Article 7(1) and (2) thereof, provided that it can be established that a reasonable investor would be likely to use that communication as part of the basis of his or her investment decisions, with the result that the party in possession of that information obtains an advantage, to the detriment of those who do not have that information, by placing himself or herself in a more favourable position vis-à-vis other investors to trade in financial instruments.

### ***The third and fourth questions***

58 By its third and fourth questions, which should be examined together, the referring court asks, in essence, whether Article 7(1) of Regulation No 596/2014 must be interpreted as meaning that, in order to determine whether a communication constitutes ‘inside information’ within the meaning of that provision, it must be ascertained whether the issuer’s assessment that the circumstances which led to the person’s inclusion in the insider list constituted such inside information, and also whether the information contained in that communication was also correct.

59 The Court finds at the outset that the concept of ‘inside information’ referred to in Article 7(1) of Regulation No 596/2014 must be applied in an objective manner, with the result that the issuer’s assessment of whether information is ‘inside’, and also whether such an assessment is accurate or inaccurate, are, in principle, completely irrelevant circumstances in order to determine whether the information in question comes within the scope of that concept.

60 In the present case, the referring court’s doubts seem to be based, in essence, on the fact, put forward by Carnegie and referred to in paragraph 18 of the present judgment, that the email of 15 November 2018 contained incorrect information, inasmuch as that email had been sent to him at 13:32, that is to say, a few minutes before Starbreeze’s insider list was drawn up and, consequently, BAK’s inclusion therein.

61 In order to answer the third and fourth questions, the Court finds, as a preliminary point, that the fact that the information in question must be correct is not among the four essential elements comprised in the concept of ‘inside information’, set out exhaustively in Article 7(1) of Regulation No 596/2014 and referred to in paragraph 29 of the present judgment. However, the examination of the correctness of information may be relevant as part of the examination of the ‘precise nature’ of information within the meaning of Article 7(2) of that regulation.

62 As observed in paragraph 30 of the present judgment, under Article 7(2) of that regulation, for the purposes of application of Article 7(1) thereof, information is to be deemed to be of a ‘precise nature’ if it satisfies two cumulative conditions: (i) it must indicate 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 occur; and (ii) it must be specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments concerned or related derivative financial instruments.

63 As regards the first condition, the Court has held previously that it refers inter alia 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 (see, to that effect, judgment of 28 June 2012, *Geltl*, C-19/11, EU:C:2012:397, paragraph 56).

64 It follows that information must, at the very least, have a certain degree of credibility in order to for that first condition to be satisfied, which means that there must be a reasonable likelihood that the event referred to in the information will occur, as observed, in essence, by the Advocate General in point 64 of his Opinion.

65 Consequently, information may be regarded as being of a ‘precise nature’ within the meaning of Article 7(2) of Regulation No 596/2014 if it refers to a set of circumstances or specific event which is appreciable as a whole and which has occurred or which may reasonably be expected to occur and which may reasonably be expected to come into existence.

66 As is apparent, in essence, from paragraph 46 and 47 of the present judgment, information is, in principle, ‘sufficiently precise’ within the meaning of Article 7(2) of Regulation No 596/2014 if a reasonable investor would be likely to use it as part of the basis of his or her investment decisions within the meaning of Article 7(4) of that regulation. Hence, the credibility of information must be assessed, for the purposes of application of the first condition referred to in paragraph 30 of the present judgment, from the point of view of a reasonable investor, because only information relating to circumstances the current or future existence of which is sufficiently credible for that information to be taken into account by such an investor is able to satisfy that condition. As stated in recital 14 of that regulation, it is an *ex ante* assessment that is carried out when that information is used and takes account, inter alia, of the reliability of the source of information and any other variables likely to affect the financial instruments in the given circumstances.

67 In that assessment, the fact that information may turn out to be incorrect does not entail that it could not be used by an investor for the purposes of his or her investment choices if, notwithstanding that inaccuracy, it seems credible and accordingly satisfies the first condition referred to in paragraph 30 of the present judgment at the time it is communicated to the investor concerned and the investor uses it. The same holds true for when information has been presented as relating to a set of existing circumstances or a past event, when in reality it relates to a set of circumstances or event the occurrence of which is imminent or foreseeable.

68 As to the second condition laid down in Article 7(2) of Regulation No 596/2014, as observed in paragraphs 30 and 34 of the present judgment, for the purposes of ascertaining whether that condition is satisfied, the information must enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments concerned or related derivative financial instruments.

69 It is true that the Court has held previously that the actual effect of a publication on the price of the securities referred to in that publication may constitute *ex post* evidence of the precise nature of the information relating to that publication (judgment of 15 March 2022, *Autorité des marchés financiers*, C-302/20, EU:C:2022:190, paragraph 56). However, the fact that information does not generate such actual influence, possibly because it turns out to be incorrect before being brought to the knowledge of the public or the future event to which it relates does not occur, is not sufficient to establish that that information was not sufficiently precise in order for a conclusion to be drawn as to the possible effect on the prices of certain financial instruments and, therefore, for it to satisfy the second condition referred to in paragraph 30 of the present judgment, at the time when an investor became aware of it and used it, without it having been made public.

70 Information which seems credible and is of a sufficiently precise nature as to potentially affect the prices of an issuer's financial instruments may, if it is made public, have a significant effect on the prices of an issuer's financial instruments – and thus confer on the party in possession of it an economic advantage vis-à-vis the other market players who do not possess that information, without being exposed to the same risks as them – even if that information or certain details thereof are incorrect or turn out after the fact to have been incorrect. As observed, in essence, by the Advocate General in point 71 of his Opinion, the inaccuracy of credible information is therefore no obstacle to the holder of that information having an advantage over other investors who are unaware of that information, in terms of acting in the financial markets.

71 Similarly, a person who is informed that an issuer has included, or is about to include, a person in an insider list and that the insider will be subject to a sales prohibition, is in possession of information which is capable of being 'inside' information within the meaning of Article 7(1) of Regulation No 596/2014, irrespective of whether that issuer's assessment of the underlying circumstances of that information, such as the elements which led to the person concerned being included in that insider list, in the present case the inclusion of BAK in Starbreeze's insider list, is not correct on all points or is incorrect.

72 Consequently, information which, in the course of an *ex post* investigation, turns out to be incorrect, may nevertheless constitute 'inside information' within the meaning of that provision if it can be established that, on the date when it was disclosed, it could be regarded as being credible and that it was capable of conferring an economic advantage on the party in possession of it vis-à-vis other investors for trading in financial instruments.

73 That holds all the more true where, as in the present case, the incorrectness of the information concerned, as alluded to in paragraph 18 of the present judgment, lies not in the fact that the inclusion of BAK in the insider list did not in fact happen, but rather solely in the fact that BAK had not yet been placed on that list when the email of 15 November 2018 was sent, that inclusion having taken place five minutes after that email was sent.

74 In the light of the foregoing, the answer to the third and fourth questions is that Article 7(1) of Regulation No 596/2014 must be interpreted as meaning that, in order to determine whether a communication constitutes 'inside information' within the meaning of that provision, it must be ascertained whether it refers to a set of circumstances or specific event which is appreciable as a whole and which has occurred or which may reasonably be expected to occur and which may reasonably be expected to come into existence. To that end, information which, in the course of an *ex post* investigation, turns out to be incorrect, may nevertheless constitute 'inside information' within the meaning of that provision if it can be established that, on the date when it was disclosed, it could be regarded as being credible and that it was capable of conferring an economic advantage on the party in possession of it in relation to other investors for trading in financial instruments.

#### **Costs**

75 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

**1. Article 7(2) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the**

European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC,

must be interpreted as meaning that, for the purposes of categorising information as ‘inside’, a communication from an issuer to the effect that a person has been included in an insider list and is prevented from selling shares in that issuer, even if the reasons for the person’s inclusion are not clear therefrom, is capable of constituting information which is ‘of a precise nature’ within the meaning of Article 7(1) and (2) thereof, provided that it can be established that a reasonable investor would be likely to use that communication as part of the basis of his or her investment decisions, with the result that the party in possession of that information obtains an advantage, to the detriment of those who do not have that information, by placing himself or herself in a more favourable position vis-à-vis other investors to trade in financial instruments.

2. Article 7(1) of Regulation No 596/2014

must be interpreted as meaning that, in order to determine whether a communication constitutes ‘inside information’ within the meaning of that provision, it must be ascertained whether it refers to a set of circumstances or specific event which is appreciable as a whole and which has occurred or which may reasonably be expected to occur and which may reasonably be expected to come into existence. To that end, information which, in the course of an *ex post* investigation, turns out to be incorrect, may nevertheless constitute ‘inside information’ within the meaning of that provision if it can be established that, on the date when it was disclosed, it could be regarded as being credible and that it was capable of conferring an economic advantage on the party in possession of it in relation to other investors for trading in financial instruments.

[Signatures]

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\* Language of the case: Swedish.