

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive 2001/0118(COD)	Procedure completed
Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC) Amended by 2006/0301(COD) Amended by 2009/0161(COD) Repealed by 2011/0295(COD)	
Subject 2.50 Free movement of capital 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 4.60.06 Consumers' economic and legal interests	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		28/05/2001
		PSE GOEBBELS Robert	
	Former committee responsible		
	ECON Economic and Monetary Affairs		28/05/2001
		PSE GOEBBELS Robert	
	Former committee for opinion		
	JURI Legal Affairs and Internal Market		10/07/2001
		PPE-DE LEHNE Klaus-Heiner	
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	2471	03/12/2002
	Economic and Financial Affairs ECOFIN	2446	19/07/2002
	Economic and Financial Affairs ECOFIN	2424	07/05/2002
	Economic and Financial Affairs ECOFIN	2401	13/12/2001
	Justice and Home Affairs (JHA)	2376	16/10/2001
	Economic and Financial Affairs ECOFIN	2375	16/10/2001
European Commission	Commission DG	Commissioner	
	Financial Stability, Financial Services and Capital Markets Union		

Key events			
30/05/2001	Legislative proposal published	COM(2001)0281	Summary

05/07/2001	Committee referral announced in Parliament, 1st reading		
16/10/2001	Debate in Council	2376	
16/10/2001	Debate in Council	2376	
13/12/2001	Debate in Council	2401	
26/02/2002	Vote in committee, 1st reading		Summary
26/02/2002	Committee report tabled for plenary, 1st reading	A5-0069/2002	
13/03/2002	Debate in Parliament		
14/03/2002	Decision by Parliament, 1st reading	T5-0113/2002	Summary
19/07/2002	Council position published	09359/6/2002	Summary
05/09/2002	Committee referral announced in Parliament, 2nd reading		
08/10/2002	Vote in committee, 2nd reading		Summary
08/10/2002	Committee recommendation tabled for plenary, 2nd reading	A5-0343/2002	
24/10/2002	Debate in Parliament		
24/10/2002	Decision by Parliament, 2nd reading	T5-0513/2002	Summary
03/12/2002	Act approved by Council, 2nd reading		
28/01/2003	Final act signed		
28/02/2003	End of procedure in Parliament		
12/04/2003	Final act published in Official Journal		

Technical information

Procedure reference	2001/0118(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amended by 2006/0301(COD) Amended by 2009/0161(COD) Repealed by 2011/0295(COD)
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed
Committee dossier	ECON/5/16096

Documentation gateway

Legislative proposal	COM(2001)0281 OJ C 240 28.08.2001, p. 0265 E	30/05/2001	EC	Summary
Document attached to the procedure	BCE(2001)0038	22/11/2001	ECB	Summary

		OJ C 024 26.01.2002, p. 0008-0010			
Economic and Social Committee: opinion, report		CES0035/2002 OJ C 080 03.04.2002, p. 0061	16/01/2002	ESC	
Committee report tabled for plenary, 1st reading/single reading		A5-0069/2002	26/02/2002	EP	
Text adopted by Parliament, 1st reading/single reading		T5-0113/2002 OJ C 047 27.02.2003, p. 0417-0511 E	14/03/2002	EP	Summary
Council position		09359/6/2002 OJ C 228 25.09.2002, p. 0019 E	19/07/2002	CSL	Summary
Commission communication on Council's position		SEC(2002)0889	14/08/2002	EC	Summary
Committee recommendation tabled for plenary, 2nd reading		A5-0343/2002	08/10/2002	EP	
Text adopted by Parliament, 2nd reading		T5-0513/2002 OJ C 300 11.12.2003, p. 0442-0542 E	24/10/2002	EP	Summary
Commission opinion on Parliament's position at 2nd reading		COM(2002)0724	11/12/2002	EC	Summary
Implementing legislative act		32003L0124 OJ L 339 24.12.2003, p. 0070-0072	22/12/2003	EU	
Implementing legislative act		32003L0125 OJ L 339 24.12.2003, p. 0073-0077	22/12/2003	EU	
Implementing legislative act		32003R2273 OJ L 336 23.12.2003, p. 0033-0038	22/12/2003	EU	
Implementing legislative act		32004L0072 OJ L 162 30.04.2004, p. 0070-0075	29/04/2004	EU	Summary

Additional information

European Commission

[EUR-Lex](#)

Final act

[Directive 2003/6](#)

[OJ L 096 12.04.2003, p. 0016-0025](#) Summary

Final legislative act with provisions for delegated acts

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

PURPOSE: to present a Commission proposal for a directive of the European Parliament and of the Council on insider dealing and market manipulation (market abuse). **CONTENT:** the aim of this Directive so to ensure the integrity of European financial markets, to establish and implement common standards against market abuse throughout Europe, and to enhance investor confidence in these markets. The main provisions of the proposed directive relate to the following: - general definition of what constitutes market abuse; - recognition that, in particular circumstances and for perfectly understandable economic reasons, exemption (so called 'safe harbours') will need to be allowed, where certain prohibitions would not apply; - that Member States designate a single regulatory and supervisory authority with a common minimum set of responsibilities; - general obligations for Member States to impose and determine sanctions to be imposed for infringement of measures pursuant to the Directive in a way that is sufficient to promote compliance with its requirements; - setting up a Securities Committee to function as a regulatory committee. ?

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

In general, the ECB considers that the proposed directive constitutes an important step towards the harmonisation of the currently divergent national rules addressing market manipulation and insider dealing. On specific points, it makes the following comments: - The ECB welcomes the use of the comitology procedure. It holds to the view that the application of the procedure to securities market regulation should take account of the advisory role that the Treaty confers upon the ECB, by allowing for the incorporation of its views in the regulatory process. - The core definitions related to the purpose of the protection of market integrity should be clarified, so as to avoid any discrepancy between the various national laws of the Member States. - Without prejudging any future Commission proposal on the Investment Services Directive, consistency should be ensured between the proposed directive and the future ISD, particularly regarding legal concepts used, and the allocation of responsibilities between the different parties. - The ECB welcomes the provisions on cross-border cooperation between the competent single administrative authorities. Broadening the scope of the cooperation should be considered. The ECB sees potential benefits in a closer cooperation between the administrative authorities and the competent authorities in charge of supervising credit institutions, investment firms, insurance undertakings, and perhaps, collective investment undertakings to the extent that they are distinct from the designated administrative authorities. The staff of these regulated entities often possess inside information. - It should be further considered how the pursuit of the convergence of supervisory practices could be best fostered to ensure a level playing field. A committee of representatives of the administrative authorities in charge of promoting convergence might be valuable.?

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

The committee adopted the report by Robert GOEBBELS (PES, L) tabling a large number of mainly technical amendments to the proposal under the codecision procedure (1st reading) with the aim of clarifying the text and amplifying the definitions. One of the amendments laid down a more precise definition of 'inside information'. Another expanded the definition of primary insiders to include anyone who possesses inside information "by virtue of his criminal activities", in order to combat the financing of terrorist activities in the wake of the events of 11 September 2001. Other amendments clarified some of the provisions relating to sanctions. For example, the committee felt that, to ensure equality of treatment between European investors, it was important that the administrative measures and sanctions drawn up by the various authorities should not diverge from each other substantially. It therefore sought to clarify the legal situation and called on the Commission to draw up an indicative list of measures and sanctions as guidance for national authorities. In another amendment, the committee deleted the provision enabling Member States to introduce specific measures for journalists. It argued that this would stigmatise a particular profession and that, in any case, another part of the proposal (Article 3(a)) dealt satisfactorily with the problems raised by journalistic activity. Lastly, a number of amendments sought to bring the legislation in line with the new Lamfalussy procedures approved by Parliament at the February 2002 part-session in Strasbourg.?

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

The European Parliament approved by 398 votes to 3 with 37 abstentions the proposal to deal with insider trading, with a few amendments. The rapporteur was Robert GOEBBELS (PES, Luxembourg). (Please refer to the text dated 26/02/02). An amendment is made ensuring that the precise definition of inside information does not include publicly available research material. The definition of "insider trading" now covers trading after hours which could mislead investors and the dissemination of false information which could also mislead investors. Parliament has amended the annex to the directive, inserting a non-exhaustive list of examples of methods being used for market manipulation. Professional economic actors must contribute to market integrity by various means. These could include the creation of "grey lists", the application of "window trading" to sensitive categories of personnel, the application of internal codes of conduct and the establishment of Chinese walls. Preventive measures must be enforced with determination and dutifully controlled, which implies the designation of compliance officers and periodic checks conducted by independent auditors. An amendment is inserted to the effect that Member States are to ensure that market operators adopt structural provisions making market manipulation more difficult. Such provisions, inter alia, include maintaining a minimum level of liquidity for each financial instrument, transparency of transactions concluded, total disclosure of price-regularisation agreements, and a fair system of order pairing. Parliament is concerned that a variety of competent authorities in Member States creates confusion among economic actors. A single competent authority should be designated in each Member State to supervise compliance with the directive. A European body is to be responsible for settling cross-border disputes. Parliament seeks to clarify the legal situation on sanctions and the Commission is asked to draw up an indicative list of measures and sanctions as a guidance for national authorities.?

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

The common position follows the approach adopted in the Commission's proposal as amended by the European Parliament and only differs on a few points. Of the 77 amendments proposed by the European Parliament, 60 have been fully accepted and incorporated in the common position, 10 have only been partly accepted. The main changes introduced in the common position are the following: - preamble: the recitals embody the EP amendments about comitology procedure; a single competent authority; sanctions; on co-operation; respect of Human Rights; the line of the EP on terrorist attacks; on transparency, equal treatment and preventative measures; on 'insider dealing'; on take-over cases. The common position also takes on board the elements of EP amendment on the territorial scope of the Directive. Finally, another recital incorporates the wish of the EP to introduce "frontrunning" into the scope of this Directive. - definitions: regarding the definition of 'market manipulation', the Common Position takes into account the European Parliament's view to reduce the broad scope of application of an effect based definition by introducing two cumulative defences (legitimate reasons and accepted market practices). Regarding the sub-definition of 'dissemination of false or misleading information', the European Parliament proposes the introduction of knowledge and profit tests for any person concerned. The Council introduced a knowledge test in the definition applicable to anybody and a profit test applicable to journalists only. Therefore, any possible exemption for journalists by Member States, as initially proposed, was deleted. The Common Position takes also into account European Parliament's amendments by incorporation of the initially annexed list of non-exhaustive examples of market manipulation into the Article itself. Regarding the definition of 'Financial Instruments', the Common Position takes into account the European Parliament's view to incorporate the initially annexed list of financial instruments into the Article itself and to extend it to any future instrument

which will be admitted on a regulated market. The Common Position takes largely into account the European Parliament's view on the definition of 'market practices'. It also integrates the European Parliament's introduction of a definition of 'Person' and of 'Competent authority'. The Common Position fully respects wishes of the European Parliament regarding comitology. Following the 11 September events, the Common Position includes persons having criminal activities into the circle of 'primary insiders', as endorsed by the European Parliament in first reading. It also integrates attempts and provides for exempting transactions based on obligations resulting from agreements concluded before becoming insider. In order to reduce the broad scope of inside information to be publicly disclosed by issuers of financial instruments, the Common Position limits the obligation to information which directly concerns such issuers. It introduces as well the European Parliament's amendment about web-posting of inside information by issuers. Concerning delaying public disclosure of inside information, the Council decided to follow partially the European Parliament's amendment about prior information to the competent authority by the issuer of this delay. The European Parliament had asked for mandatory information of this delay to competent authority. Instead, the Common Position leaves discretion to Member States to provide for such a prior information. The Commission thinks this is a sensible compromise between the wishes of the European Parliament and the Commission's initial proposal (no provision on this aspect). The Common Position is in line with the European Parliament's amendments clarifying the non-application of the selective disclosure rule and deletes the initially proposed exemption for credit rating agencies. The Common Position takes largely on board the European Parliament's amendment on mandatory disclosure of trades by corporate insiders. It also introduces the possibility for Member States to take into account specific regulation (including self-regulation) to ensure fair presentation of research and disclosure of interests or conflicts of interest. In addition, it takes on board the principle of a European Parliament's amendment on structural measures to be taken by market operators against market abuse. The Common Position embodies the European Parliament's amendment on introducing a general clause for competent authorities to intervene in order to guarantee that the public are correctly informed. The Common Position follows in part an amendment from the European Parliament, by introducing an obligation of dissemination of statistics by public institutions in a fair way. The Common Position deletes the Commission's proposal to forbid financial intermediaries to enter into suspicious transactions. Instead, the Common Position takes into account the European Parliament's amendment about mandatory notification of suspicious trades by intermediaries to the competent authority. The Common Position incorporates the European Parliament's amendment to extend the exemption from the application of the Directive to local authorities in order to carry out their debt management. The Common Position takes into account European Parliament's amendment on comitology in order to define the application of safe harbours. In line with the European Parliament, the Common Position has introduced the exemption of public disclosure of inside information for issuers who did not request or approve admission to trading in a Member State. The Common Position adds, in line with the European Parliament, two powers as compared to the original proposal of the European Commission: power of injunction and suspension of trading. In line with the European Parliament, the Common Position clarifies that criminal sanctions can still be provided by Member States, but are not dealt by this Directive (principle of subsidiarity). Following European Parliament's amendment, the Common Position requests the Commission to draw up an informative list of administrative measures and sanctions. The Commission believes such a list could be helpful for reaching more homogeneous European standards. In line with the European Parliament, the Common Position provides for exemption of public disclosure of administrative measures or sanctions in case of serious jeopardy of the markets. In case of non-compliance from a competent authority to co-operate with the competent authority of another Member State, the Common Position provides for discussion of such case in the Committee of European Securities Regulators (CESR). Although the amendment of the European Parliament (amendments 83 and 84) to establish a system of arbitration has not been taken on board, the Commission thinks the Common Position has found a fair compromise, increasing pressure on competent authorities to comply with the co-operation requirements. Lastly, the common position has extended the period of transposition for Member States from 12 to 18 months. The Commission recognises that some Member States need an extended transposition period due to their constitution.?

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

The Commission considers that the Common Position adopted by the Council is faithful to the objectives and the spirit of the Commission proposal. The Commission also considers that the Common Position meets the main concerns of the European Parliament and follows the key elements of Parliament's amendments. In short, the Commission believes that the Common Position achieves a good balance. The Commission hopes that the Directive can be approved by the end of the year, in line with the deadline Heads of State and Government set at Barcelona European Council.?

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

The committee adopted the report by Robert GOEBBELS (PES, L) broadly approving the Council's common position, which had taken up a large number of amendments adopted by Parliament at 1st reading. The committee nevertheless tabled a few amendments to the common position under the 2nd reading of the codecision procedure, as follows: - Member States should ensure appropriate financing of the competent authority, in accordance with national law; - a new clause should be added to the definition of "inside information", stipulating that, "for persons charged with the execution of orders concerning financial instruments, inside information shall also mean information conveyed by a client and related to the client's pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuers of financial instruments 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"; - to safeguard the position of journalists when acting in a professional capacity, technical arrangements designed to ensure the accurate dissemination of financial information should take into account self-regulation rules applying to journalists. ?

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

The European Parliament adopted a resolution drafted by Robert GOEBBELS (PES, Lux) on insider trading and market abuse. It made some changes to the common position. (Please refer to the document dated 8/10/02.)?

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

The Parliament has amended the Council common position with 5 amendments. The Commission accepts all these amendments. These concern in particular: - the clarification that manager dealings have to be disclosed on an individual basis at least; - the requirement of adequate financing of competent authorities by Member States; - the introduction of frontrunning on commodity derivative markets into the scope of the Directive; - the clarification that manager dealings have to be disclosed on an individual basis at least; - the clarification that rules governing the profession of journalists, including self-regulation, have also to be taken into account when establishing implementing measures through comitology procedure.?

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

PURPOSE : to ensure the integrity of Community financial markets and to enhance investor confidence in those markets by adopting combined rules to combat both insider dealing and market manipulation. **COMMUNITY MEASURE :** Directive 2003/6/EC of the European Parliament and of the Council on insider dealing and market manipulation (market abuse). **CONTENT :** the existing Community legal framework to protect market integrity is incomplete. This Directive puts in place a single framework to combat market abuse. The main provisions are as follows: - Member States must put in place rules to prohibit market abuse. Any infringement of the prohibitions or requirements laid down in this Directive must be dealt with through sanctions; - the Directive applies to any financial instrument admitted to trading on a regulated market in at least one Member State, or for which a request for admission to trading has been made, irrespective of whether the transaction itself actually takes place on that market; - a single competent authority must be designated in each Member State to assume at least final responsibility for supervising compliance with the provisions adopted in pursuance of this Directive, as well as international collaboration. The competent authority must be of an administrative nature guaranteeing its independence of economic actors and avoiding conflicts of interest; - each competent authority must have a common minimum set of effective tools and powers in order to ensure supervisory effectiveness; - competent authorities have an obligation to cooperate with each other whenever necessary for the purpose of carrying out their duties; - the Directive defines inside information. The competent authority has the power to issue guidance on matters covered by the Directive such as the definition of inside information in relation to derivatives on commodities or the implementation of the definition of accepted market practices relating to the definition of market manipulation; - Member States must tackle the practice known as 'front-running', including 'front running' in commodity derivatives, where it constitutes market abuse under the definitions contained in the Directive; - market operators must contribute to the prevention of market abuse and adopt structural provisions aimed at preventing and detecting market manipulation practices; - there are particular provisions concerning derivative instruments not admitted to trading but falling within the scope of this Directive; - the Commission will be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. **DATE OF TRANSPOSITION :** 12/10/04. **ENTRY INTO FORCE :** 12/04/03.?

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

LEGISLATIVE ACT : Commission Directive 2004/72/EC implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions. **CONTENT :** This Directive sets out the factors to be taken into account when considering whether competent authorities can accept a particular market practice. These factors include the level of transparency of the relevant market practice to the whole market, and the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand. Member States must ensure that practices, in particular new or emerging market practices are not assumed to be unacceptable by the competent authority simply because they have not been previously accepted by it. Furthermore, the Regulation makes the following points: - competent authorities, while considering the acceptance of a particular market practice, should consult other competent authorities, particularly for cases where there exist comparable markets to the one under scrutiny; - guidance is set out so that market participants on derivative markets the underlying of which is not a financial instrument, may have greater legal certainty on what constitutes inside information; - with regard to lists of insiders, Member States must ensure that lists of insiders include all persons covered by Article 6(3) of Directive 2003/6/EC who have access to inside information relating, directly or indirectly, to the issuer, whether on a regular or occasional basis. These lists may serve issuers or such persons to control the flow of such inside information and thereby manage their confidentiality duties. Moreover, these lists may also constitute a useful tool for competent authorities when monitoring the application of market abuse legislation. Identifying inside information to which any insider has access and the date on which it gained access thereto is necessary for issuers and competent authorities. Access to inside information relating, directly or indirectly, to the issuer by persons included on such a list is without prejudice to their duty to refrain from insider dealing on the basis of any inside information as defined in Directive 2003/6/EC; - the notification of transactions conducted by persons discharging managerial responsibilities within an issuer on their own account, or by persons closely associated with them, is not only a valuable information for market participants, but also constitutes an additional means for competent authorities to supervise markets. The directive sets out the rules on notification and the information which must be contained in the notification. In addition, Member States may decide that, until the total amount of transactions has reached five thousand Euros at the end of a calendar year, no notification is required or notification may be delayed until the 31 January of the following year; - notification of suspicious transactions by persons professionally arranging transactions in financial instruments to the competent authority requires sufficient indications that the transactions might constitute market abuse, i.e. transactions which give reasonable ground for suspecting that insider dealing or market manipulation is involved. Certain transactions by themselves may seem completely void of anything suspicious, but might deliver such indications of possible market abuse, when seen in perspective with other transactions, certain behaviour or other information. A "person professionally arranging transactions" as defined in this directive will decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves insider dealing or market manipulation, taking into account the elements constituting insider dealing or market manipulation, referred to in the relevant Community instruments; - finally, the Directive sets out the Timeframe for notification, the content of the notification, the acceptable means of notification and the principles on liability and professional secrecy. **ENTRY INTO FORCE :** 30 April 2004. **DATE OF TRANSPOSITION :** 12 October 2004.?