# Procedure file

## Basic information

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| COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation | 2011/0295(COD) |
| Market abuse<br><br>Repealing Directive 2003/6/EC 2001/0118(COD)<br>Amended by 2013/0314(COD)<br>Amended by 2016/0034(COD)<br>Amended by 2018/0165(COD)<br><br>Subject<br>2.50.03 Securities and financial markets, stock exchange, CIUTS, investments<br>2.50.10 Financial supervision | Procedure completed |

## Key players

| | | | |
|---|---|---|---|
| European Parliament | Committee responsible | Rapporteur | Appointed |
| | ECON Economic and Monetary Affairs | | 21/09/2010 |
| | | S&D MCCARTHY Arlene | |
| | | Shadow rapporteur | |
| | | PPE PIETIKÄINEN Sirpa | |
| | | ALDE KLINZ Wolf | |
| | | Verts/ALE BESSET Jean-Paul | |
| | | ECR SWINBURNE Kay | |
| | Committee for opinion | Rapporteur for opinion | Appointed |
| | BUDG Budgets | The committee decided not to give an opinion. | |
| | ENVI Environment, Public Health and Food Safety | | 15/12/2011 |
| | | PPE SEEBER Richard | |
| | JURI Legal Affairs | | 21/11/2011 |
| | | ALDE THEIN Alexandra | |
| | LIBE Civil Liberties, Justice and Home Affairs | The committee decided not to give an opinion. | |
| Council of the European Union | Council configuration | Meeting | Date |
| | Foreign Affairs | 3309 | 14/04/2014 |
| | Economic and Financial Affairs ECOFIN | 3252 | 09/07/2013 |
| | Economic and Financial Affairs ECOFIN | 3220 | 12/02/2013 |
| European Commission | Commission DG | Commissioner | |
| | Financial Stability, Financial Services and Capital Markets Union | BARNIER Michel | |

## Key events

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|---|---|---|---|
| 20/10/2011 | Legislative proposal published | COM(2011)0651 | Summary |
| 15/11/2011 | Committee referral announced in Parliament, 1st reading | | |
| 09/10/2012 | Vote in committee, 1st reading | | |
| 22/10/2012 | Committee report tabled for plenary, 1st reading | A7-0347/2012 | Summary |
| 12/02/2013 | Debate in Council | 3220 | |
| 09/07/2013 | Debate in Council | 3252 | Summary |
| 10/09/2013 | Results of vote in Parliament |  | |
| 10/09/2013 | Debate in Parliament |  | |
| 10/09/2013 | Decision by Parliament, 1st reading | T7-0342/2013 | Summary |
| 14/04/2014 | Act adopted by Council after Parliament's 1st reading | | |
| 16/04/2014 | Final act signed | | |
| 16/04/2014 | End of procedure in Parliament | | |
| 12/06/2014 | Final act published in Official Journal | | |

## Technical information

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|---|---|
| Procedure reference | 2011/0295(COD) |
| Procedure type | COD - Ordinary legislative procedure (ex-codecision procedure) |
| Procedure subtype | Legislation |
| Legislative instrument | Regulation |
| | Repealing Directive 2003/6/EC 2001/0118(COD)<br>Amended by 2013/0314(COD)<br>Amended by 2016/0034(COD)<br>Amended by 2018/0165(COD) |
| Legal basis | Treaty on the Functioning of the EU TFEU 114-p1 |
| Other legal basis | Rules of Procedure EP 165 |
| Stage reached in procedure | Procedure completed |
| Committee dossier | ECON/7/07581 |

## Documentation gateway

| | | | | | |
|---|---|---|---|---|---|
| Legislative proposal | | COM(2011)0651 | 20/10/2011 | EC | Summary |
| Document attached to the procedure | | SEC(2011)1217 | 20/10/2011 | EC | |
| Document attached to the procedure | | SEC(2011)1218 | 20/10/2011 | EC | |
| Document attached to the procedure | | N7-0076/2012<br>OJ C 177 20.06.2012, p. 0001 | 10/02/2012 | EDPS | Summary |

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|---|---|---|---|---|---|
| Committee draft report | | PE485.914 | 20/03/2012 | EP | |
| European Central Bank: opinion, guideline, report | | CON/2012/0021<br>OJ C 161 07.06.2012, p. 0003 | 22/03/2012 | ECB | Summary |
| Economic and Social Committee: opinion, report | | CES0819/2012 | 28/03/2012 | ESC | |
| Amendments tabled in committee | | PE489.421 | 11/05/2012 | EP | |
| Amendments tabled in committee | | PE489.467 | 11/05/2012 | EP | |
| Committee opinion | ENVI | PE485.944 | 30/05/2012 | EP | |
| Committee opinion | JURI | PE486.201 | 20/06/2012 | EP | |
| Supplementary legislative basic document | | COM(2012)0421 | 25/07/2012 | EC | Summary |
| Committee report tabled for plenary, 1st reading/single reading | | A7-0347/2012 | 22/10/2012 | EP | Summary |
| Text adopted by Parliament, 1st reading/single reading | | T7-0342/2013 | 10/09/2013 | EP | Summary |
| Commission response to text adopted in plenary | | SP(2013)774 | 06/12/2013 | EC | |
| Draft final act | | 00078/2013/LEX | 16/04/2014 | CSL | |
| Follow-up document | | COM(2015)0647 | 16/12/2015 | EC | Summary |
| Follow-up document | | COM(2019)0068 | 30/01/2019 | EC | |
| Follow-up document | | COM(2024)0248 | 17/06/2024 | EC | |

## Additional information

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| National parliaments | IPEX |
| European Commission | EUR-Lex |

## Final act

Regulation 2014/596
OJ L 173 12.06.2014, p. 0001 Summary

Corrigendum to final act 32014R0596R(03)
OJ L 287 21.10.2016, p. 0320

Final legislative act with provisions for delegated acts

## Delegated acts

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|---|---|
| 2015/3038(DEA) | Examination of delegated act |
| 2016/2597(DEA) | Examination of delegated act |
| 2016/2602(DEA) | Examination of delegated act |
| 2016/2614(DEA) | Examination of delegated act |
| 2016/2615(DEA) | Examination of delegated act |
| 2016/2735(DEA) | Examination of delegated act |
| 2016/2616(DEA) | Examination of delegated act |

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| 2019/2550(DEA) | Examination of delegated act |
| 2021/2792(DEA) | Examination of delegated act |
| 2022/2775(DEA) | Examination of delegated act |

## Market abuse

PURPOSE: to prevent market abuse through insider dealing and market manipulation.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: market abuse harms the integrity of financial markets and public confidence in securities and derivatives.

Directive 2003/6/EC of the European Parliament and the Council on insider dealing and market manipulation (market abuse) completed and updated the Union's legal framework to protect market integrity.

The European Commission has assessed the application of the Directive and has identified a number of problems which have negative impacts in terms of market integrity and investor protection, lead to an uneven playing field and result in compliance costs and disincentives for issuers, whose financial instruments are admitted to trading on SME growth markets, to raise capital. The main problems are as follows:

- market and technological developments, gaps in the regulation of new markets, platforms and over the counter instruments have emerged. Similarly, these same factors have led to gaps in the regulation of commodities and related derivatives.
- regulators lack certain information and powers, and sanctions are either lacking or insufficiently dissuasive, which mean that regulators cannot effectively enforce the Directive;
- lastly, the existence of numerous options and discretions in the Directive, as well as a lack of clarity on certain key concepts, undermines the effectiveness of the Directive.

The importance of market integrity has been highlighted by the current global economic and financial crisis. In line with the G20 findings, the report by the High-Level Group on Financial Supervision in the EU recommended that a sound prudential and conduct of business framework for the financial sector must rest on strong supervisory and sanctioning regimes.

In its Communication on "Ensuring efficient, safe and sound derivatives markets: Future policy actions" the Commission undertook to extend relevant provisions of the Directive in order to cover derivatives markets in a comprehensive fashion.

Furthermore, a review of existing sanctioning powers and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities has been carried out in the Commission Communication on sanctions in the financial services sector.

The Directive should now be replaced to ensure that it keeps pace with developments in the market, given the legislative, market and technological developments that have resulted in considerable changes to the financial landscape. The aim is to increase market integrity and investor protection, while ensuring a single rulebook and level playing field and increasing the attractiveness of securities markets for raising capital.

IMPACT ASSESSMENT: the initiative is the result of extensive consultations with all major stakeholders, including public authorities (governments and securities regulators), issuers, intermediaries and investors.

The Commission conducted an impact assessment of policy alternatives. Policy options related to: (i) regulation of new markets, platforms and OTC instruments, commodities and related derivatives; (ii) sanctions, (iii) powers of competent authorities; (iii) clarification of key concepts and (iv) reducing administrative burdens.

The overall impact of all the preferred policy options will lead to considerable improvements in addressing market abuse within the EU. This will be done through:

- improving market integrity and investor protection by clarifying which financial instruments and markets are covered, ensuring that instruments admitted to trading only on a multilateral trading facility (MTF) and other new types of organised trading facilities (OTFs) are covered;
- improving protection against market abuse through commodity derivatives by improved market transparency ;
- ensuring better detection of market abuse by offering the necessary powers to competent authorities to perform investigations and improve the deterrence of sanctioning regimes by introducing minimum principles for administrative measures or sanctions;
- a more coherent approach regarding market abuse by reducing options and discretions for Member States;
- introducing a proportionate regime for issuers, whose financial instruments are admitted to trading on SME growth markets.

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union.

CONTENT: the proposed regulation aims to establish a common regulatory framework on market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.

Scope: the development of new platforms, new technologies such as high frequency trading and an increase in trading across different venues has made it more difficult to monitor for possible market abuse.

The proposal:

- extends the scope of the market abuse framework applying to any financial instrument admitted to trading on a MTF or an OTF, as well as to any related financial instruments traded OTC which can have an effect on the covered underlying market;
- specifies further specific examples of strategies using algorithmic trading and high frequency trading, such as quote stuffing, layering and spoofing, that fall within the prohibition against market manipulation;
- extends the scope of the Directive so that the general definition of inside information in relation to financial markets and commodity derivatives should also apply to all information which is relevant to the related commodity;

- expressly prohibits attempts at market manipulation, which will enhance market integrity;
- reclassifies emission allowances as financial instruments as part of the review of the Markets in Financial Instruments Directive. As a result, they will also fall into the scope of the market abuse framework.

Inside information: the state of contract negotiations, terms provisionally agreed in contract negotiations, the possibility of the placement of financial instruments, conditions under which financial instruments will be marketed, or provisional terms for the placement of financial instruments may be relevant information for investors. Therefore, such information should qualify as inside information.

Public disclosure of inside information:

- in accordance with the proposal, issuers will be required to inform the competent authorities of their decision to delay the disclosure of inside information immediately after such a disclosure is made. The responsibility for assessing whether such delay is justified remains with the issuer. Competent authorities will have the power to investigate ex post whether in fact the specific conditions for the delay were met will increase investor protection and market integrity;
- the market abuse framework is adapted to the characteristics and needs of issuers, whose financial instruments are admitted to trading on SME growth markets. Issuers are exempt, under certain conditions, from the obligation to keep and constantly update insiders' lists, and benefit from the new threshold for the reporting of manager's transactions mentioned below. The proposal introduces a threshold of EUR 20 000, uniform in all Member States, which triggers the obligation to report such manager's transactions.

ESMA and Competent Authorities:

- the proposed regulation allows competent authorities access to continuous data by requiring such data to be directly submitted to them in a specified format. By gaining access to spot commodity market traders' systems, competent authorities are also able to monitor real-time data flows;
- competent authorities will be able to require existing telephone and existing data traffic records held by a telecommunication operator or by an investment firm, or to have access to private premises and seize documents, where a reasonable suspicion exists that such records related to the subject-matter of the inspection may be relevant to prove insider dealing or market manipulation as defined in the proposal;
- as market abuse can take place across borders and different markets, ESMA has a strong coordination role and competent authorities are required to cooperate and exchange information with other competent authorities and, when applicable to commodity derivatives, with the regulatory authorities responsible for the related spot markets, within the Union and in third countries.

Sanctions: this Regulation introduces minimum rules for administrative measures, sanctions and fines. This does not prevent individual Member States from fixing higher standards.

The proposal provides for the disgorgement of any profits where identified, including interests, and, in order to ensure an appropriate deterrent effect, it introduces fines which must exceed any profit gained or loss avoided as a result of the violation of this Regulation. Moreover, criminal sanctions have a stronger deterrent effect than administrative measures and sanctions. The proposal for a Directive on sanctions introduces the requirement for all Member States to put in place effective, proportionate and dissuasive criminal sanctions for the most serious insider dealing and market manipulation offences.

Protection and incentives for whistleblowers: the regulation enhances the market abuse framework in the Union introducing appropriate protection for whistleblowers reporting suspected market abuse, the possibility of financial incentives for persons who provide competent authorities with salient information that leads to a monetary sanction, and enhancements of Member States' provisions for receiving and reviewing whistleblowing notifications.

BUDGETARY IMPLICATIONS: the specific budget implications of the proposal relate to task allocated to ESMA. Total appropriations are estimated at EUR 832 000 from 2013 to 2015.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 TFEU.

## Market abuse

Opinion of the European Data Protection Supervisor (EDPS) on the Commission proposals for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation, and for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation.

The proposed Regulation and Directive were sent by the Commission to the EDPS for consultation and received on 31 October 2011. On 6 December 2011, the Council of the European Union consulted the EDPS on the proposals.

The EDPS notes that several of the measures planned in the proposals to achieve the increasing of market integrity and investor protection impact upon the rights of individuals relating to the processing of their personal data. While the proposed Regulation contains several provisions that may affect the individual's right to protect their personal data, the proposed Directive does not as such involve processing of personal data.

This opinion is based on the proposed Regulation and notably on the following issues :

1. Applicability of data protection legislation : the EDPS very much welcomes this overarching provision and appreciates in general the attention specifically paid to the data protection legislation in the proposed Regulation. However, the EDPS suggests that the provision should be rephrased emphasising the applicability of existing data protection legislation. Moreover, the reference to Directive 95/46/EC should be clarified by specifying that the provisions will apply in accordance with the national rules which implement Directive 95/46/EC.

2. Insider lists : the proposed Regulation contains the obligation for issuers of a financial instrument or emission allowances market participants to draw up a list of all persons working for them, under a contract of employment or otherwise, who have access to inside information.

The EDPS acknowledges the necessity of such list as an important tool for competent authorities when investigating possible insider dealing or market abuse. However, as far as these lists will involve the processing of personal data, main data protection rules and guarantees should be laid down in the basic law. Therefore the EDPS recommends making an explicit reference to the purpose of such list in a substantive provision of the proposed Regulation. the EDPS recommends: (i) including the main elements of the list (in any event the reasons for persons to be included) in the proposed Regulation itself; (ii) including a reference to the need to consult the EDPS in so far as the delegated acts concern the processing of personal data.

3. Powers of the competent authorities : two powers in particular need particular attention due to their interference with the rights of privacy and data protection: the power to enter private premises in order to seize documents in any form and the power to require existing telephone and data traffic records. The EDPS recommends :

- the power to enter private premises in order to seize documents in any form is highly intrusive and interferes with the right of privacy. It should therefore be subjected to strict conditions and surrounded with adequate safeguards;
- the power to require existing telephone and existing data traffic records, by formal decision specifying the legal basis and the purpose of the request and what information is required, the time-limit within which the information is to be provided as well as the right of the addressee to have the decision reviewed by the Court of Justice;
- specifying the categories of telephone and data traffic records which competent authorities can require. Such data must be adequate, relevant, and not excessive in relation to the purpose for which they are accessed and processed;
- limit Article 17.2 (f) to data normally processed (held) by telecommunications operators in the framework of E-Privacy Directive 2002/58/EC.

4. Systems in place to detect and report suspicious transactions : the proposed Regulation foresees that any person who operates the business of a trading venue shall adopt and maintain effective arrangements and procedures aimed at preventing and detecting market abuse.

As far as these systems will most probably involve personal data (e.g. monitoring of transactions made by persons referred to on insider's list), the EDPS would underline that these standards should be developed according to the principle of privacy by design, i.e. the integration of data protection and privacy from the very inception of new products, services and procedures that entail the processing of personal data. In addition, the EDPS recommends including a reference to the need to consult the EDPS in so far as these regulatory standards concern the processing of personal data.

5. Exchange of information with third states : the EPDS notes the reference to Directive 95/46/EC, particularly to Articles 25 or 26 and the specific safeguards mentioned in Article 23 of the proposed Regulation concerning the disclosure of personal data to third countries.

6. Publication of sanctions : the proposed Regulation obliges Member States to ensure that the competent authorities publish every administrative measure and sanction imposed for breaches of the proposed Regulation without undue delay, including at least information on the type and nature of the breach and the identity of persons responsible for it, unless such disclosure would seriously jeopardise the stability of financial markets. The EDPS is not convinced that the mandatory publication of sanctions, as it is currently formulated, meets the requirements of data protection law as clarified by the Court of Justice in the the Schecke judgment. He takes the view that the purpose, necessity and proportionality of the measure are not sufficiently established and that, in any event, adequate safeguards should be provided for against the risks for the rights of the individuals should have been foreseen.

7. Reporting of breaches : Article 29 of the proposed Regulation requires Member States to put in place effective mechanisms for reporting breaches, also known as whistle-blowing schemes. While they may serve as an effective compliance tool, these systems raise significant issues from a data protection perspective.

The EDPS highlights the need to introduce a specific reference to the need to respect the confidentiality of whistleblowers' and informants' identity. The EDPS recommends to add in letter b of Article 29.1 the following provision: the identity of these persons should be guaranteed at all stages of the procedure, unless its disclosure is required by national law in the context of further investigation or subsequent judicial proceedings. The EDPS is pleased to see that Article 29.1 (c) requires Member States to ensure the protection of personal data of both accused and the accusing person, in compliance with the principles laid down in Directive 95/46/EC. He suggests however removing 'the principles laid down in', to make the reference to the Directive more comprehensive and binding.

## Market abuse

OPINION OF THE EUROPEAN CENTRAL BANK

The ECBs opinion is given in response to requests from the Council of the European Union for opinions on the following :

- a proposal for a directive on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council;
- a proposal for a regulation on markets in financial instruments and amending Regulation (EMIR) on OTC derivatives, central counterparties and trade repositories;
- a proposal for a directive on criminal sanctions for insider dealing and market manipulation (MAD Regulation); and
- this proposal for a regulation on insider dealing and market manipulation (market abuse) (MAR Regulation)

The ECB supports the proposed measures to improve the regulation of markets in financial instruments as an important step towards strengthening the protection of investors and creating a sounder and safer financial system in the European Union. It makes the following general observations:

Single European rulebook in the financial sector and ECBs advisory role: the ECB strongly supports the development of a single European rulebook for all financial institutions. It recommends ensuring that only framework principles reflecting basic political choices and substantive matters remain subject to the ordinary legislative procedure and that technical rules should be adopted as delegated or implementing acts as appropriate through the prior development of draft regulatory or draft implementing

standards by the European Supervisory Authorities (ESAs).

The ECB expects to be consulted as appropriate in due time on these proposed Union acts. Additionally, it recommends ensuring

cross-sectoral consistency of Union financial services legislation.

Powers of competent authorities, role of ESMA and of macro-prudential authorities: the ECB welcomes that the proposed framework strengthens and aligns the powers of the authorities supervising investment firms and markets in financial instruments as well as the exercise of their investigatory powers, putting special emphasis on cross-border cooperation.

It supports the strong role of the European Securities and Market Authority (ESMA) in the proposed framework and notably with regard to the facilitation and coordination function and the development of technical standards. It recoomends:

- further improvements in the cooperation and exchange of information within the European System of Financial Supervision and between supervisory authorities and ESCB central banks, including the ECB, when this information is relevant for the performance of their respective tasks;
- setting up and enhancing adequate cooperation procedures with macro-prudential authorities where threats to the stability of financial system have to be assessed. This might imply cooperation between competent authorities and the national macro-prudential authorities or, in other instances, cooperation by ESMA with the European Systemic Risk Board (ESRB).

Moreover, to ensure transparency and consistency of the administrative sanctions adopted within the Union, Member States should notify the Commission and ESMA of the applicable national rules and any subsequent amendments to them.

Review of Directive 2003/6/EC (market abuse)

- General provisions: the ECB supports the Commissions proposal to expand the scope of the market abuse framework.

The prohibitions and requirements in the proposed MAR will also apply to actions carried out outside the Union, to hinder circumvention by moving activities outside the Union. For the effective control and sanctioning of such actions, the ECB considers cooperation agreements with third countries essential. In this respect, the ECB welcomes that the proposed MAR addresses this and also provides for ESMA to coordinate and facilitate this process through templates. Against this background, the ECB recommends extending the exclusion regime to monetary and public debt management activities in some cases also beyond the Union.

The ECB welcomes that the proposed MAR illustrates specific cases of market manipulation, referring to new trading techniques such as algorithmic trading including high-frequency trading. As mentioned above, although algorithmic trading practices may have legitimate purposes, they may also present a considerable risk, as they may disturb the normal functioning of the market and increase volatility, which would not serve the public interest. The ECB therefore welcomes strict monitoring of such trading techniques to protect the orderly functioning of the market and the public interest.

The proposed MAR implicitly identifies trading at the close of the market as market manipulation or an attempt to engage in market manipulation. The ECB would recommend a more detailed analysis or improvement of this definition of market manipulation.

- Definition of inside information: the ECB welcomes the scope of the definition of inside information. However, the reference to the commodity suggests that the spot market of a given commodity can be used to manipulate the derivatives market for the same commodity or other commodities and vice versa. A clearer definition should be provided, since, as the proposed MAR implicitly assumes, the spot and derivatives markets are interconnected both across commodities and borders and as such it is difficult to understand what type of spot trading will be able to affect only the spot market.

- Disclosure of inside information of systemic importance: the proposed MAR requires an issuer of financial instruments to inform the public as soon as possible of inside information which directly concerns the issuer. Moreover, the proposed MAR provides, as a new element of the disclosure regime, that a competent authority may ex ante permit the delay of the public disclosure by the issuer where: (i) the information is of systemic importance; (ii) it is in the public interest to delay its publication; and (iii) the confidentiality of information may be ensured.

The ECB supports further enhancement of the legal framework for delayed disclosure under the proposed MAR. The following comments have been made:

- in the case of financial institutions, the assessment of whether the information is of systemic importance, and whether a delay of disclosure is in the public interest, should be made in close cooperation with the national central bank and the national supervisory authority, and if different from the central bank or supervisor with the macro-prudential authority;
- appropriate and efficient procedures to ensure timely involvement of these authorities should be put in place at national level, underpinned by a set of principles at Union level;
- where justified by systemic importance and public interest, the competent authority should be empowered to order the delay of publication;
- notably information on central bank lending or other liquidity facilities provided to a particular credit institution, including emergency liquidity assistance, may need to be kept confidential to contribute to the stability of the financial system as a whole and maintain public confidence in a crisis.

- Criminal sanctions for insider dealing and market manipulation: the ECB welcomes the proposed MAD provisions defining minimum rules for criminal sanctions for the most serious market abuse offences. These rules are essential to ensure the effectiveness and success of the legislative framework and thereby the effective implementation of Union policy on fighting market abuse. Moreover, equal, strong and deterrent sanctions regimes against financial crimes and their consistent and effective enforcement are crucial components of the rule of law, as conducive to safeguarding financial stability.

## Market abuse

The Commission presents an amended proposal for a regulation on insider dealing and market manipulation (market abuse).

On 20 October 2011, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) (please see the summary of the same date).

Since March 2011, investigations have been taking place in relation to possible manipulation of the EURIBOR and LIBOR benchmarks for interbank lending rates by a number of banks. It is suspected that these banks had provided estimates of the interest rate at which they would

accept offers of funding which were different from the rate they would have accepted in practice.

As a result, the level of EURIBOR and LIBOR rates which are used as a benchmark for borrowing and as a reference for the pricing of many financial instruments, such as interest rate swaps may have been altered and the integrity of LIBOR and EURIBOR called into question.

The Commission has assessed whether the possible manipulation of benchmarks including LIBOR and EURIBOR would be captured by its proposals for a Regulation on insider dealing and market manipulation and the related proposal for a Directive on criminal sanctions for insider dealing and market manipulation presented in October 2011. The European Parliament has also emphasised the importance of this matter.

Given that benchmarks are not currently covered by either proposal, the Commission has concluded that direct manipulation of benchmarks does not fall within the scope of either proposal.

Therefore, in order to ensure that the manipulation of benchmarks is covered by common European rules to prevent market abuse, the Commission proposes to amend its proposal for a Regulation as follows:

- amendment to the scope of the proposed regulation (Article 2) to include benchmarks;
- amendment to the definitions (Article 5) to include a definition of benchmarks, based on an expanded version of the definition used in the proposal for a regulation on markets in financial instruments (MiFIR);
- amendments to the definition of the offence of market manipulation (Article 8) to capture manipulation of benchmarks and attempts at such manipulation; and
- addition of a recital to clarify that the extension of the scope of the Regulation and the market manipulation offence include benchmarks.

## Market abuse

The Committee on Economic and Monetary Affairs adopted the report by Arlene McCARTHY (S&D, UK) on the proposal for a regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse).

The committee recommends that the position of the European Parliament in first reading following the ordinary legislative procedure should amend the commission proposal as follows:

A transparent financial market: Members stress that an integrated, efficient and transparent financial market requires market integrity and that it is important to ensure accountability in the event of attempted manipulation.

The report states that competent authorities should not be required to demonstrate the direct link between the misconduct of one or more individuals and the end effect on one or more financial instruments. It should be sufficient that there is a relationship, even if indirect, between the abusive behaviour and a financial instrument. For example, the mere transmission of false or misleading information relating to an interbank offer rate or other benchmark should be covered by the definition of market manipulation.

Disseminating false or misleading information via the internet, including social media sites or unattributable blogs, should be considered market abuse in the same way as doing so via more traditional communication channels.

The European Securities and Markets Authority (ESMA) should publish and maintain a list setting out the instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made, as well as financial instruments traded on a multilateral Trading Facility

(MTF) or on an organised Trading Facility (OTF) in at least one Member State, together with the trading venues on which they are traded. That list shall not limit the scope of the Regulation.

Exclusion from the scope of the Regulation: the amended text specifies that the following shall not in itself be considered insider dealing:

- having access to inside information relating to another company and using it in the context of a public take-over bid for the purpose of gaining control of that company or proposing a merger with that company;
- the mere fact that market makers or persons authorised to act as counterparties, confine themselves to pursuing their legitimate business of buying or selling financial instruments or that persons authorised to execute orders on behalf of third parties with inside information confine themselves to carrying out an order dutifully;
- any transaction carried out on the basis of research and estimates developed from publicly available data.

Since the acquisition or disposal of financial instruments necessarily involves a prior decision to acquire or dispose taken by the person who undertakes one or other of these operations, the carrying out of this acquisition or disposal shall not be deemed in itself to constitute the use of inside information.

Emission allowance market: the Regulation takes into account the high sensitivity of supply-side information under the control of public authorities and officials for the emission allowance market and, therefore, the need for such information to be managed with due care under clear procedures with adequate control. In order to ensure sufficient transparency for an orderly price formation process in the emission allowances markets, the report recommends fair, timely and non-discriminatory publication of specific price-sensitive and non-public information held by public authorities.

Accepted market practices: Members introduced a new article stipulating that competent authorities may establish an accepted market practice on the basis of certain criteria such as: (i) he level of transparency of the relevant market practice to the whole market; (ii) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand; (iii) the degree to which the relevant market practice has an impact on market liquidity and efficiency; (iv) the degree to which the relevant practice takes into account the trading mechanism of the relevant market; (v) the risk inherent in the relevant practice for the integrity of directly or indirectly related markets.

Before establishing an accepted market practice, a competent authority shall notify ESMA and the other competent authorities of the intended market practice not less than six months before the accepted market practice is intended to take effect. Within three months following receipt of the notification, ESMA shall issue an opinion shall be published on ESMA's website.

Abusive order entry: a new article specifies that any person who operates the business of trading venue shall have in place rules to avoid abusive order entry, such as imposing a higher fee for market participants placing an order that is subsequently cancelled and lower fees for an order which is executed, or imposing a higher fee on market participants placing a high ratio of cancelled orders to executed orders and imposing higher fees on those operating a high frequency trading strategy in order to reflect the additional burden on system capacity.

Any person who operates the business of trading venue shall report systematic and repetitive breaches of these rules to competent authorities in order for the latter to take appropriate action under the Regulation.

Detection of insider dealing or market abuse: the amended text notes that existing records of telephone conversations, electronic communications and data traffic records from investment firms executing transactions, constitute crucial evidence to detect and prove the existence of insider dealing and market manipulation. Members consider, therefore, that competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by an investment firm.

Furthermore, in order to enable early detection and effective investigation of market manipulation, it is proposed to establish an effective mechanism to allow cross-market order-book surveillance.

Penalties: the regulation should lay down a set of administrative measures, sanctions and fines to ensure a common approach in Member States and to enhance their deterrent effect. Administrative fines should take into account factors such as the impact of the breach on third parties and the orderly functioning of markets, the need for fines to have a deterrent effect and prevent repeated breaches, including the possibility of permanent disbarment from functions within investment firms or market operators.

On the other hand, the Directive of the European Parliament and of the Council of on criminal sanctions for insider dealing and market manipulation should introduce a requirement for all Member States to put in place effective, proportionate and dissuasive criminal sanctions for the most serious insider dealing and market manipulation offences.

## Market abuse

The Council took note of a provisional agreement reached with the European Parliament on a draft regulation aimed at tackling insider dealing and manipulation on securities markets.

It should be noted that concerns were raised by France, Portugal, the Netherlands, Italy and Spain as regards provisions on sanctions.

This agreement will enable the presidency to start negotiations with the European Parliament on the draft directive, with the aim of adopting both regulation and directive at first reading. Negotiations on the regulation were concluded at a "trilogue" meeting with the Parliament on 20 June 2013.

## Market abuse

The European Parliament adopted by 659 votes to 20 with 28 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse).

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise between Parliament and Council. They amend the proposal as follows:

Purpose: the Regulation establishes a common regulatory framework on insider dealing, misuse of inside information and market manipulation as well as measures to prevent market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.

Extended scope: the extended scope of the Regulation includes any financial instrument traded on a regulated market, multilateral trading facilities (MTF) or an organised trading facilities (OTF), or any other conduct or action which can have an effect on such a financial instrument

The Regulation will apply to bids, relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to Regulation (EU) No 1031/2010.

Increased transparency: the Regulation stipulates that operators of a regulated market, a MTF or an OTF should notify without delay to their competent authority details of their financial instruments which they have admitted to trading, for which there has been a request for admission to trading or that have been traded on their trading venue. A second notification should also be made when the instrument ceases to be admitted to trading.

Based on these notifications, which should be notified to ESMA by the competent authorities, ESMA should publish a list of all of these financial instruments.

- Market manipulation: the new Regulation states that this covers certain activities, including: disseminating information through the media, including the internet, or by any other means, which (i) gives false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract or (ii) secures, or is likely to secure, the price of one or several financial instruments or a related spot commodity contracts at an abnormal or artificial level, including the dissemination of rumours where the person who made the dissemination knew, or ought to have known, that the information was false or misleading;
- transmitting false or misleading information or providing false or misleading inputs where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.

Market manipulation covers the placing of orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including electronic means, such as algorithmic and high frequency trading strategies by:

- disrupting or delaying the functioning of the trading system of the trading venue or which is likely to do so;
- making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or which is likely to do

so, including by entering orders which result in the overloading or destabilisation of the order book; or

- creating or being likely to create a false or misleading signal about the supply of or demand for, or price of a financial instrument, in particular by entering orders to initiate or exacerbate a trend.

Stricter penalties: the text provides that market abuse carries penalties amounting to EUR 15 000 000 or 15 % of total annual turnover.

Individuals may be subject to fines up to EUR 5000 or, in certain cases, a public warning or a permanent ban on exercising management functions in investment firms.

## Market abuse

PURPOSE: to prevent market abuse in the form of insider dealing, the unlawful disclosure of inside information and market manipulation.

LEGISLATIVE ACT: Regulation (EU) No 596/2014 of the European Parliament and of the Council 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.

CONTENT: the Regulation replaces Directive 2003/6/EC given the legislative, market and technological developments since the entry into force of that Directive, which have resulted in considerable changes to the financial landscape.

This Regulation establishes a common regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation as well as measures to prevent market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets. The new rules also include a Directive establishing a framework for criminal sanctions.

The main elements of the Regulation are the following:

Scope: Directive 2003/6/EC prohibits insider dealing and market manipulation admitted to trading on a regulated market. The emergence of new trading systems, as well as over-the-counter (OTC) negotiations have however brought competition to the regulated markets, making the detection of market abuse more difficult.

That is why the new Regulation enlarges the scope of these rules and now applies to financial instruments traded within the framework of more recently created systems, such as multilateral systems of trading (multilateral trading facilities - MTF) and systems of organised trading ( organised trading facilities - OTF), as well as over-the-counter (OTC) negotiations.

The new rules also cover the instruments on commodity derivatives which affect the price of foodstuffs and energy, negotiated on the exchanges and outside them.

Increased transparency: for the purposes of transparency, operators of a regulated market, an MTF or an OTF should notify, without delay, their competent authority of details of the financial instruments which they have admitted to trading, for which there has been a request for admission to trading or that have been traded on their trading venue.

Privileged information: the Regulation enhances legal certainty for market participants through a closer definition of two of the elements essential to the definition of inside information, namely the precise nature of that information and the significance of its potential effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances.

It is clarified that unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties.

Market manipulation: the new Regulation specifies that the market manipulation shall include:

- disseminating false or misleading information, including rumours and false or misleading news, disseminating information through the media, including the internet, or by any other means;
- the transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark (such as the LIBOR);
- the placing of orders to a trading venue, including by electronic means such as algorithmic and high-frequency trading strategies, which disrupts the functioning of the trading system.

Prevention and detection of market abuse: market operators and investment firms that operate a trading venue shall establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation.

Any person professionally arranging or executing transactions should establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions.

Powers of competent authorities: in order to fulfil their duties, competent authorities shall have, in accordance with national law, supervisory and investigatory powers.

The competent authorities should be able to, among others: i) carry out on-site inspections and investigations at sites other than at the private residences of natural persons; ii) enter the premises of natural and legal persons in order to seize documents and data; iii) require existing recordings of telephone conversations, electronic communications or data traffic records held by investment firms, credit institutions or financial institutions.

Competent authorities shall cooperate with each other and with ESMA where necessary for the purposes of this Regulation.

Stricter sanctions: the Regulation provides a set of administrative sanctions and other administrative measures to ensure a common approach in Member States and to enhance their deterrent effect.

Companies sentenced for market abuse could receive a fine of from EUR 1 million to EUR 15 million or 15% of the total annual turnover. Individuals sentenced may have imposed fines from EUR 500 000 to EUR 5 millions, or, in certain cases, a permanent ban from exercising

certain functions in investment firms

Reporting of infringements: the Regulation ensures that adequate arrangements are in place to enable whistleblowers to alert competent authorities to possible infringements of this Regulation and to protect them from retaliation. These mechanisms should cover protection of personal data both of the person who reports the infringement and the natural person who allegedly committed the infringement.

Member States may provide for financial incentives to persons who offer relevant information about potential infringements of this Regulation

ENTRY INTO FORCE: 02.07.2014. The Regulation applies from 03.07.2016 (with the exception of certain measures which apply from 02.07.2014).

DELEGATED ACTS: the Commission may adopt delegated acts in order to specify the requirements set out in the Regulation. The power to adopt delegated acts shall be conferred on the Commission for an unlimited period from 2 July 2014. The European Parliament or the Council may object to a delegated act within a period of three months from the date of notification (this period can be extended for three months). If the European Parliament or the Council make objections, the delegated act will not enter into force.

## Market abuse

The Commission presents a report under the Regulation (EU) No 596/2014 on market abuse (Market Abuse Regulation or MAR). Article 6(1) of MAR exempts certain bodies from the application of MAR. The report assesses the international treatment of public bodies charged with, or intervening in, public debt management and of central banks in third countries with the purpose of evaluating the appropriateness of the extension of the exemption.

The Market Abuse Regulation provides that the Commission's report should include a comparative analysis of the treatment of those bodies and central banks within the legal framework of third countries, and the risk management standards applicable to the transactions entered into by those bodies and central banks in those jurisdictions. If the report concludes that the exemption of the monetary responsibilities of those third-country central banks from the obligations and prohibitions of MAR is necessary, the Commission should extend the exemption to the central banks of those third countries.

The Commission produced a list comprising 13 jurisdictions (Australia, Brazil, Canada, China, Hong Kong SAR, Japan, India, Mexico, Singapore, South Korea, Switzerland, Turkey and the United States). The Commission has focused on those jurisdictions as a priority in order to decide on the appropriateness of the extension of the exemption from the obligations and prohibitions of MAR.

The Commission used external contractors to conduct a study of the countries identified. The study set the context and framework for each jurisdiction and identified the level of transparency and protection of the system, taking into account, inter alia: (i) the rules aiming at prohibiting and punishing insider dealing carried out by central banks or DMO staff members, (ii) exemption from market abuse regulation for monetary, exchange-rate or public debt management policy carried out by the central banks or DMOs and (iii) staff rules of conduct on the use of confidential information, on transactions in assets for private interests and on independence and conflicts of interest.

The report concludes that it is appropriate to grant an exemption from MAR requirements to central banks and debt management offices of Australia, Brazil, Canada, Hong Kong SAR, India, Japan, Mexico, Singapore, South Korea, Switzerland, Turkey and the United States, and to the central bank of China. The Commission intends to publish a delegated act under Article 6(5) of the Regulation.