EUROPSKI PARLAMENT 2009 - 2014

Dokument s plenarne sjednice

A7-0347/2012

22.10.2012

***I
IZVJEŠĆE

o prijedlogu Uredbe Europskog parlamenta i Vijeća o trgovanju na temelju povlaštenih informacija i manipuliranju tržištem (zlouporabi tržišta)

(COM(2011)0651 – C7-0360/2011 – 2011/0295(COD))

Odbor za ekonomsku i monetarnu politiku

Izvjestiteljica: Arlene McCarthy

PR_COD_1consamCom

Oznake postupaka

*	Postupak savjetovanja
***	Postupak suglasnosti
***I	Redovni zakonodavni postupak (prvo čitanje)
***II	Redovni zakonodavni postupak (drugo čitanje)
***III	Redovni zakonodavni postupak (treće čitanje)

(Navedeni se postupak temelji na pravnoj osnovi predloženoj u nacrtu akta.)

Izmjene nacrta akta

U amandmanima Parlamenta izmjene nacrta akta označene su ***podebljanim kurzivom***. *Obični kurziv* naznaka je tehničkim službama da se radi o dijelovima nacrta akta za koje se predlaže ispravak prilikom izrade konačnog teksta (na primjer o očitim pogreškama ili izostavcima u danoj jezičnoj verziji). Za predložene ispravke potrebna je suglasnost dotičnih tehničkih službi.

Zaglavlje svakog amandmana na postojeći akt koji se želi izmijeniti nacrtom akta sadrži i treći redak u kojem se navodi postojeći akt te četvrti redak u kojem se navodi odredba akta na koju se izmjena odnosi. Dijelovi teksta odredbe postojećeg akta koju Parlament želi izmijeniti, a koja je u nacrtu akta ostala nepromijenjena, označeni su **podebljanim slovima**. Za moguća brisanja u tim dijelovima teksta koristi se oznaka **[...]**.

SADRŽAJ

Stranica

NACRT ZAKONODAVNE REZOLUCIJE EUROPSKOG PARLAMENTA

o prijedlogu Uredbe Europskog parlamenta i Vijeća o trgovanju na temelju povlaštenih informacija i manipuliranju tržištem (zlouporabi tržišta)
(COM(2011) – C7-0360/2011 – 2011/0295(COD))

(Redovni zakonodavni postupak: prvo čitanje)

Europski parlament,

– uzimajući u obzir prijedlog Komisije upućen Europskom parlamentu i Vijeću (COM(2011)0651) i izmijenjeni prijedlog Komisije upućen Europskom parlamentu i Vijeću (COM(2012)0421),

– uzimajući u obzir članak 294. stavak 2. i članak 114 Ugovora o funkcioniranju Europske unije, u skladu s kojima je Komisija podnijela prijedlog Parlamentu (C7-0360/2011),

– uzimajući u obzir članak 294. stavak 3. Ugovora o funkcioniranju Europske unije,

– uzimajući u obzir mišljenje Europske središnje banke od 22 ožujka 2012.[1],

– uzimajući u obzir mišljenje Europskog gospodarskog i socijalnog odbora od 28. ožujka 2012[2],

– uzimajući u obzir članak 55. Poslovnika,

– uzimajući u obzir izvješće Odbora za ekonomsku i monetarnu politiku i mišljenja Odbora za okoliš, javno zdravlje i sigurnost hrane i Odbora za pravna pitanja (A7-0347/2012),

1. usvaja sljedeće stajalište u prvom čitanju;

2. traži od Komisije da predmet ponovno uputi Parlamentu ako namjerava bitno izmijeniti svoj prijedlog ili ga zamijeniti drugim tekstom;

3. nalaže svojem predsjedniku da stajalište Parlamenta proslijedi Vijeću, Komisiji i nacionalnim parlamentima.

[1] SL C 161, 7.6.2012., str. 3.
[2] SL C 181, 21.6.2012., str. 64.

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on insider dealing and market manipulation (market abuse)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure[3],

Whereas:

(1) A genuine internal market for financial services is crucial for economic growth and job creation in the Union.

(2) An integrated***,*** efficient ***and transparent*** financial market requires market integrity. The smooth functioning of securities markets and public confidence in markets are

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* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

1 OJ C 161, 7.6.2012, p. 3.

2 OJ C 181, 21.6.2012, p. 64.

3 Position of the European Parliament of …

prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.

(3) Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)[1], completed and updated the Union's legal framework to protect market integrity. However, given the legislative, market and technological developments since then that have resulted in considerable changes to the financial landscape, that Directive should now be replaced to ensure that it keeps pace with these developments. A new legislative act is also needed to ensure uniform rules and clarity of key concepts and to ensure a single rulebook in line with the conclusions of the High-Level Group on Financial Supervision in the EU.

(4) There is a need to establish a uniform framework in order to preserve market integrity***,*** to avoid potential regulatory arbitrage ***and to ensure accountability in the event of attempted manipulation,*** as well as to provide more legal certainty and less regulatory complexity for market participants. This directly applicable legal act aims at contributing in a determining manner to the smooth functioning of the internal market and should, consequently, be based on the provisions of Article 114 on the Functioning of the European Union (TFEU), as interpreted in accordance with the consistent case-law of the Court of Justice of the European Union.

(5) In order to remove the remaining obstacles to trade and significant distortions of competition resulting from divergences between national laws and to prevent any further likely obstacles to trade and significant distortions of competition from arising, it is therefore necessary to adopt a Regulation establishing uniform rules applicable in all Member States. Shaping market abuse requirements in the form of a regulation should ensure that those requirements will be directly applicable. This should ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive. This Regulation should entail that all persons follow the same rules in all the Union. This Regulation should also reduce regulatory complexity and firms' compliance costs, especially for firms operating on a cross-border basis, and contribute to eliminating competitive distortions.

(6) The Commission Communication of 25 June 2008, entitled, "Think Small First": A "Small Business Act for Europe" calls on the Union and its Member States to design rules in order to reduce administrative burdens, to adapt legislation to the needs of issuers on markets for small and medium-sized enterprises and to facilitate the access to finance of those issuers. A number of provisions in Directive 2003/6/EC impose administrative burdens on issuers, in particular those whose financial instruments are admitted to trading on SME growth markets, which should be reduced.

(7) Market abuse is the concept that encompasses all unlawful behaviour in the financial markets and for the purposes of this Regulation should be understood to consist of insider dealing or the misuse of inside information and market manipulation. Such behaviour prevents full and proper market transparency, which is a prerequisite for trading for all economic actors in integrated financial markets.

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[1] OJ L 96, 12.4.2003, p. 16.

(8) The scope of Directive 2003/6/EC focused on financial instruments admitted to trading on regulated markets but in recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). There are also financial instruments which are only traded on ***any*** other types of organised trading facilities (OTFs) such as broker crossing systems or that are only traded over the counter. The scope of this Regulation should therefore be extended to include any financial instrument traded on a MTF or an OTF, as well as financial instruments traded over the counter, such as for example credit default swaps, or any other conduct or action which can have an effect on such a financial instrument traded on a regulated market, MTF or OTF. This should improve investor protection, preserve the integrity of markets and ensure that market manipulation of such instruments through financial instruments traded over the counter is clearly prohibited.

(9) Stabilisation of financial instruments or trading in own ***financial instruments*** in buy-back programmes can be legitimate, in certain circumstances, for economic reasons and should not, therefore, in themselves be regarded as market abuse.

(10) Member States and the European System of Central Banks, the European Financial Stability Facility, national central banks and other agencies or special purpose vehicles of one or several Member States or of the Union and certain other public bodies should not be restricted in carrying out monetary, exchange-rate or public debt management ***but should do so in a transparent manner***.

(11) 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.

(12) Ex-post information may be used to check the presumption that the ex-ante information was price sensitive, but should not be used to take action against persons who drew reasonable conclusions from ex-ante information available to them.

(13) Legal certainty for market participants should be enhanced 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. For derivatives which are wholesale energy products, information required to be disclosed according to Regulation (EU) No .../2012 of the European Parliament and the Council of ... [on Wholesale Energy Market Integrity and Transparency] should be considered to be inside information.

(14) Inside information can be abused before an issuer is under the obligation to disclose

it. 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. However, such information may not be sufficiently precise for the issuer to be under an obligation to disclose it. In such cases, the prohibition against insider dealing should apply, but the obligation on the issuer to disclose the information should not.

(14a) It is possible for the use of inside information to lead to the acquisition and disposal of financial instruments. Since the acquisition or disposal of financial instruments necessarily involves a prior decision, the carrying out of such acquisition or disposal should not be deemed, in itself, to constitute insider dealing.

(14b) 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 should not be deemed, in itself, to constitute insider dealing.

(14c) Research and estimates developed from publicly available data should not be regarded as inside information and any transaction carried out on the basis of such research or estimates should not therefore be deemed, in itself, to constitute insider dealing.

(14d) 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, should not be deemed, in itself, to constitute insider dealing.

(14e) Trading in financial instruments for which a person has received a request for a locate of an individual security, or for a confirmation of reasonable expectation of settlement, in order for a client to satisfy the requirements of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps[1]can be legitimate and should not be deemed, in itself, to constitute insider dealing.

(14f) This Regulation is not intended to prohibit reasonable discussions between shareholders and other market participants and management concerning a company and its prospects. Such involvement of the shareholders in the corporate governance of a company should be considered essential to the proper functioning of the relationship between companies and shareholders.

(14g) When inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute information of a precise nature.

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[1] OJ L 86, 24.3.2012, p. 1.

(14h) Transactions or orders to trade which might be considered to constitute market manipulation may be justified on the basis that they are legitimate and in accordance with accepted practice on the regulated market concerned. A sanction could still be imposed if the competent authority established that there was another, illegitimate, reason behind these transactions or orders to trade.

(14i) A practice that is accepted in a particular market cannot be considered applicable to other markets unless the competent authorities of such other markets have officially accepted that practice.

(15) Spot markets and related derivative markets are highly interconnected and global, and market abuse may take place across markets as well as across borders***, which can lead to significant systemic risks***. This is true for both insider dealing and market manipulation. In particular, inside information from a spot market can benefit a person trading on a financial market. Therefore, 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. Moreover, manipulative strategies can also extend across spot and derivatives markets. Trading in financial instruments, including commodity derivatives, can be used to manipulate related spot commodity contracts and spot commodity contracts can be used to manipulate related financial instruments. The prohibition of market manipulation should capture these interlinkages. However, it is not appropriate or practicable to extend the scope of the Regulation to behaviour that does not involve financial instruments, for example, to trading in spot commodity contracts that only affects the spot market. In the specific case of wholesale energy products, the competent authorities should take into account the specific characteristics of the definitions of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] when they apply the definitions of the inside information, insider dealing and market manipulation of this Regulation to financial instruments related to wholesale energy products.

(15a) Pursuant to Directive 2003/87/EU of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community[1], the Commission, Member States and other officially designated bodies are responsible for the technical issuance of emission allowances, their free allocation to eligible industry sectors and new entrants and more generally the development and implementation of the Union's climate policy framework which underpins the supply of emission allowances to compliance buyers of the Union's emissions trading scheme (EU ETS). In the exercise of those duties, those public bodies have access to price-sensitive, non-public information and pursuant to Directive 2003/87/EU they may need to perform certain market operations in relation to emission allowances. In order to preserve the ability of the Commission, Member States and other officially designated bodies to develop and execute the Union's climate policy, their activities, undertaken solely in pursuit of that policy and concerning emission allowances, should be exempt from the application of this Regulation. Such exemption should not have a negative impact

[1] ***OJ L 275, 25.10.2003, p. 32.***

on overall market transparency, as those public bodies have statutory obligations to operate in a way that ensures orderly, fair and non-discriminatory disclosure of, and access to, any new decisions, developments and data that have a price-sensitive nature. Furthermore, safeguards of fair and non-discriminatory disclosure of specific price-sensitive information held by public authorities exist under Directive 2003/87/EU and the implementing measures adopted pursuant thereto. At the same time, the exemption for public bodies acting in pursuit of the Union's climate policy should not extend to cases when those public bodies engage in conduct or in transactions which are not in the pursuit of the Union's climate policy or when persons working for those bodies engage in a conduct or in transactions on their own account.

(16) As a consequence of the classification of emission allowances as financial instruments as part of the review of the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[1], those instruments will also come within the scope of this Regulation. Bearing in mind the specific nature of those instruments and structural features of the carbon market, it is necessary to ensure that the activity of Member States, the Commission and other officially designated bodies involving emission allowances is not restricted in the pursuit of the Union's climate policy. ***However, this 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 to avoid any uncontrolled or discriminatory publication to the emission allowances markets with the consequential distortion of the orderly price formation process in those markets. On the other side, these public authorities should enable a sufficient transparency for an orderly price formation process in the emission allowances markets. Thus, fair, timely and non-discriminatory publication of specific price-sensitive and non-public information held by public authorities is necessary.*** Moreover, the duty to disclose inside information needs to be addressed to the participants in that market in general. Nevertheless, in order to avoid exposing the market to reporting that is not useful and as well as to maintain cost-efficiency of the measure foreseen, it is necessary to limit the regulatory impact of that duty only to those EU ETS operators, that – by virtue of their size and activity – can reasonably be expected to be able to have a significant effect on the price of emission allowances. Where emission allowance market participants already comply with equivalent inside information disclosure duties, notably pursuant to Regulation on energy market integrity and transparency (Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency), the obligation to disclose inside information concerning emission allowances should not lead to the duplication of mandatory disclosures with substantially the same content.

(17) Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the

[1] OJ L 145, 30.4.2004, p. 1.

Council establishing a scheme for greenhouse gas emission allowances trading within the Community[1] provided for two parallel market abuse regimes applicable to the auctions of emission allowances. However, as a consequence of the classification of emission allowances as financial instruments, this Regulation should constitute a single rulebook of market abuse measures applicable to the entirety of the primary and secondary market in emission allowances. The Regulation shall also apply to the auctioning of emission allowances or other auctioned products based thereon pursuant to Regulation No 1031/2010.

(18) This Regulation should provide measures regarding market manipulation that are capable of being adapted to new forms of trading or new strategies that may be abusive. To reflect the fact that trading of financial instruments is increasingly automated, it is desirable that market manipulation should be supplemented by examples of specific abusive strategies that may be carried out by ***any available means of*** trading***,*** including ***algorithmic and*** high frequency trading***, as defined in Directive [new MiFID].*** The examples provided are neither intended to be exhaustive nor are they intended to suggest that the same strategies carried out by other means would not also be abusive.

(19) In order to complement the prohibition of market manipulation, this Regulation should include a prohibition against attempting to engage in market manipulation, given that failed attempts to manipulate the market should also be sanctioned. The attempt to engage in market manipulation should be distinguished from situations where behaviour does not have the desired effect on the price of a financial instrument. Such behaviour is considered to be market manipulation because it was likely to give false or misleading signals.

(20) This Regulation should also clarify that engaging in market manipulation or attempting to engage in market manipulation in a financial instrument may take the form of using related financial instruments such as derivative instruments that are traded on another trading venue or over the counter.

(20a) Many financial instruments are priced by reference to benchmarks. The actual or attempted manipulation of benchmarks, such as interbank offer rates, can have a serious impact on market confidence and may result in significant losses to investors or distort the real economy. Therefore, specific provisions in relation to benchmarks are required in order to preserve the integrity of the markets and ensure that competent authorities can enforce a clear prohibition of the manipulation of benchmarks. It is necessary to complement the general prohibition of market manipulation by prohibiting the manipulation of the benchmark itself and any transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark, including the benchmark's methodology. Those rules are in addition to Regulation (EU) No 1227/2011 of the European Parliament and ***of the Council of 25 October 2011 on wholesale energy market integrity and transparency[2] which prohibits the deliberate***

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1 OJ L 302, 18.11.2010, p. 1.

2 OJ L 326, 8.12.2011, p. 1.

provision of false information to undertakings which provide price assessments or market reports on wholesale energy products with the effect of misleading market participants acting on the basis of those price assessments or market reports. Furthermore, 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.

(21) In order to ensure uniform market conditions between trading venues and facilities subject to this Regulation, operators of regulated markets, MTFs and OTFs should be required to adopt ***and maintain effective and transparent arrangements and procedures*** aimed at preventing and detecting market manipulation ***and abusive*** practices.

(22) Manipulation or attempted manipulation of financial instruments may also consist in placing orders which may not be executed. Further, a financial instrument may be manipulated through behaviour which occurs outside a trading venue. Therefore, persons who professionally arrange or execute transactions ▌ are required to have ***and maintain effective arrangements and procedures*** in place to detect and report suspicious transactions***. This*** should also ***include the reporting of*** suspicious orders and suspicious transactions that take place outside a trading venue.

(23) Manipulation or attempted manipulation of financial instruments may also consist in disseminating false or misleading information. The spreading of false or misleading information can have a significant impact on the prices of financial instruments in a relatively short period of time. It may consist in the invention of manifestly false information, but also the wilful omission of material facts, as well as the knowingly inaccurate reporting of information. This form of market manipulation is particularly harmful to investors, because it causes them to base their investment decisions on incorrect or distorted information. It is also harmful to issuers, because it reduces the trust in the available information related to them. A lack of market trust can in turn jeopardise an issuer's ability to issue new financial instruments or to secure credit from other market participants in order to finance its operations. Information spreads through the market place very quickly. As a result, the harm to investors and issuers may persist for a relatively long-time until the information is found to be false or misleading, and can be corrected by the issuer or those responsible for its dissemination. It is therefore necessary to qualify the spreading of false or misleading information, including rumours and false or misleading news, as being a breach of this Regulation. It is therefore appropriate not to allow those active in the financial markets to freely express information contrary to their own opinion or better judgement, which they know or should know to be false or misleading, to the detriment of investors and issuers.

(23a) Given the rise in the use of websites, blogs and social media types by both issuers and investors, it is important to clarify that 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.

(24) The prompt public disclosure of inside information by an issuer is essential to avoid insider trading and ensure that investors are not mislead. Issuers should therefore be required to inform the public as soon as possible of inside information, unless a delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of the information.

(25) At times, ▌ it may be in the best interest of financial stability for the disclosure of inside information to be delayed when the information is of systemic importance. It should therefore be possible for the competent authority to ***decide*** a delay in the disclosure of inside information.

(25a) In respect of financial institutions, in particular where they are receiving central bank lending including emergency liquidity assistance, 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 relevant central bank, the competent authority supervising the issuer and, as appropriate, the national macro-prudential authority.

(26) The requirement to disclose inside information can be burdensome for issuers, whose financial instruments are admitted to trading on SME growth markets, given the costs of monitoring information in their possession and seeking legal advice about whether and when information needs to be disclosed. Nevertheless, prompt disclosure of inside information is essential to ensure investor confidence in those issuers. Therefore, the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[1] should be able to issue guidelines which assist issuers to comply with the obligation to disclose inside information without compromising investor protection.

(27) Insider lists are an important tool for regulators when investigating possible market abuse, but national differences in regards to data to be included in those lists impose unnecessary administrative burdens on issuers. Data fields required for insider lists should therefore be uniform ***and subject to full harmonisation*** in order to reduce those costs ***for companies of all sizes***. ***It is important that persons included on insider lists are informed of that fact and of its implications under this Regulation and Directive .../.../EU [new MAD]. Since such persons have access to inside information, it should further more be an obligation under this Regulation for them to disclose any information they have of actual or potential market abuse***.

(28) Greater transparency of transactions conducted by persons discharging managerial responsibilities at the issuer level and, where applicable, persons closely associated with them, constitutes a preventive measure against market abuse. ***Therefore, highest possible standards should be used for the disclosure of manager's***

[1] OJ L 331, 15.12.2010, p. 12.

transactions and in all of their public communication. The publication of those transactions on at least an individual basis can also be a highly valuable source of information to investors. It is necessary to clarify that the obligation to publish those managers' transactions also includes the pledging or lending of financial instruments and also transactions by another person exercising discretion for the manager.

(29) A set of effective tools and powers for the competent authority of each Member State guarantees supervisory effectiveness. Market undertakings and all economic actors should also contribute to market integrity. In this sense, the designation of a single competent authority for market abuse should not exclude collaboration links or delegation under the responsibility of the competent authority, between that authority and market undertakings with a view to guaranteeing efficient supervision of compliance with the provisions in this Regulation.

(30) For the purpose of detecting cases of insider dealing and market manipulation, it is necessary for competent authorities to have the possibility to have access to private premises and seize documents. The access to private premises is necessary in particular where: the person to whom a demand for information has already been made fails (wholly or in part) to comply with it; or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which the information requirement relates, would be removed, tampered with or destroyed.

(31) Existing ***records of*** telephone ***conversations, electronic communications*** and data traffic records from investment firms executing transactions, and existing telephone and data traffic records from ***telecommunication*** operators constitute crucial, and sometimes the only, evidence to detect and prove the existence of insider dealing and market manipulation. Telephone and data traffic records may establish the identity of a person responsible for the dissemination of false or misleading information, that persons have been in contact at a certain time, and that a relationship exists between two or more people. ***Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by an investment firm in accordance with Directive [new MiFID].*** In order to introduce a level playing field in the Union in relation to the access by competent authorities to telephone and existing data traffic records held by a telecommunication operator ▌competent authorities should be able to require existing telephone and existing data traffic records held by ***them***, ***where such telephone and data traffic records*** may be relevant to prove insider dealing or market manipulation as defined in Directive .../.../EU [new MAD] in violation of this Regulation or Directive .../.../EU [new MAD]. ***Such records should not include the content of voice communications by telephone, unless authorisation from a judicial authority has been given to include such content.***

(32) Since market abuse can take place across borders and markets, competent authorities should be required to cooperate and exchange information with other competent and regulatory authorities, and with ESMA, in particular in relation to investigation activities. Where a competent authority is convinced that market abuse is being, or has been, carried out in another Member State or affecting financial instruments

traded in another Member State, it should notify that fact to the competent authority and ESMA. In cases of market abuse with cross-border effects, ESMA should be ***able*** to coordinate the investigation if requested to do so by one of the competent authorities concerned ***or, where appropriate, with regard to the objectives of this Regulation, on its own initiative***.

(32a) Early detection and effective investigation of market manipulation poses substantial difficulties for competent authorities. In particular, when such manipulation is conducted through order-book activity the fragmentation of trading venues hinders market oversight due to lack of consolidated data. In order to address this shortcoming, an effective mechanism needs to be established to allow cross-market order-book surveillance. To that end, the competent authorities of the trading venue where the issuer was first admitted to trading need to receive comprehensive order-book data on a daily basis from regulated markets and MTFs. In accordance with Article 69(2) of Directive .../.../EU [new MiFID] competent authorities should be able to delegate surveillance tasks to third parties.(33) In order to ensure exchanges of information and cooperation with third country authorities in relation to the effective enforcement of this Regulation, competent authorities should conclude cooperation arrangements with their counterparts in third countries. Any transfer of personal data carried out on the basis of those agreements shall comply with Directive (EC) 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[1] and with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[2].

(34) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory and sanctioning regimes. To this end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent sanctions regimes against all financial misconduct, sanctions which should be enforced effectively. However, the High Level Group considered that none of these elements is currently in place. 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 of 8 December 2010 on reinforcing sanctioning regimes in the financial sector. ***This Regulation, together with Directive 2012/.../EU of the European Parliament and of the Council of ... [on criminal sanctions for insider dealing and market manipulation] aims at establishing a detailed framework concerning, in particular, the sanctions that are to be imposed to combat market abuse.***

(35) Therefore**,** ▌a set of administrative measures, sanctions and fines should be laid down ***by this Regulation*** to ensure a common approach in Member States and to enhance their deterrent effect. Administrative fines should take into account factors

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1 OJ L 281, 23.11.1995, p. 31.

2 OJ L 8, 12.1.2001, p. 1.

such as the disgorgement of any identified financial benefit, the gravity and duration of the breach, any aggravating or mitigating factors, 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, and,*** where appropriate, include a discount for cooperation with the competent authority. The adoption and publication of sanctions should respect fundamental rights as laid down in the_Charter of Fundamental Rights of the European Union.

(35a) On the other hand, Directive 2012/.../EU 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. Both acts are intended to be complementary and should, together, provide the necessary instruments and tools to impose the appropriate sanctions as the case may be. However, nothing should oblige the authorities in question to choose from the beginning of the investigation the type of sanctions that they wish to impose. In other words, the fact that an investigation is started with a view to imposing administrative sanctions should not exclude the imposition of criminal sanctions, depending on the specificities of the case.

(36) Whistleblowers bring new information to the attention of competent authorities which assists them in detecting and sanctioning cases of insider dealing and market manipulation. However, whistleblowing may be deterred for fear of retaliation, or for lack of incentives. This Regulation should therefore ensure that adequate arrangements are in place to encourage whistleblowers to alert competent authorities to possible breaches of this Regulation and to protect them from retaliation. However, whistleblowers should only be eligible for those incentives where they bring to light new information which they are not already legally obliged to notify and where this information results in a sanction for a breach of this Regulation. Member States should also ensure that whistleblowing schemes they implement include mechanisms that provide appropriate protection of a reported person, particularly with regard the right to the protection of his personal data and procedures to ensure the right of the reported person of defence and to be heard before the adoption of a decision concerning him as well as the right to seek effective remedy before a court against a decision concerning him.

(37) Since Member States have adopted legislation implementing Directive 2003/6/EC, and since delegated acts and implementing technical standards are foreseen which should be adopted before the framework to be introduced can be usefully applied, it is necessary to defer the application of the substantive provisions of this Regulation for a sufficient period of time.

(38) In order to facilitate a smooth transition to the entry into application of this Regulation, market practices existing before the entry into force of this Regulation and accepted by competent authorities in accordance with Commission Regulation

(EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments[1] for the purpose of applying point 2(a) of Article 1 of Directive 2003/6/EC, may remain applicable until one year after the date specified for effective application of this Regulation provided that they are notified to ESMA.

(39) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, as enshrined in the Treaty on the Functioning of the European Union (TFEU), in particular the right to respect for private and family life, the right to the protection of personal data, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice for the same offence. Limitations placed on these rights are in accordance with Article 52(1) of the Charter as they are necessary to ensure the general interest objectives of the protection of investors and the integrity of financial markets, and appropriate safeguards are provided to ensure that rights are limited only to the extent necessary to meet these objectives and by measures that are proportionate to the objective to be met. In particular, reporting of suspicious transactions is necessary to ensure that competent authorities may detect and sanction market abuse. Prohibiting attempts to engage in market manipulation is necessary to enable competent authorities to sanction such attempts where they have evidence of intent to commit market manipulation, even in the absence of an identifiable effect on market prices. Access to data and telephone records is necessary to provide evidence and investigative leads on possible insider dealing or market manipulation, and therefore for the detection and sanctioning of market abuse. The conditions imposed by this Regulation ensure compliance with fundamental rights. Measures on whistleblowing are necessary to facilitate the detection of market abuse and to ensure the protection of the whistleblower and of the reported person, including the protection of their private life, personal data, and the right to be heard and to an effective remedy before a court. Introducing common minimum rules for administrative measures, sanctions and fines is necessary to ensure that comparable market abuse breaches are sanctioned in a comparable way and to ensure that sanctions imposed are proportionate to the breach. This Regulation does not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media.

(40) Directive 95/46 and Regulation (EU) No 45/2001 govern the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. And any exchange or transmission of information by ESMA should be in accordance with

[1] OJ L 336, 23.12.2003, p. 33.

the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.

(41) This Regulation, as well as the delegated acts, standards and guidelines adopted in accordance with it, are without prejudice to the application of the Union rules on competition.

(42) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU. In particular, delegated acts should be adopted in respect of the conditions for buy-back programmes and stabilisation of financial instruments, the indicators for manipulative behaviour listed in Annex 1, the ***thresholds*** for determining the application of the public disclosure obligation to emission allowance market participants, the conditions for drawing up insider lists and the threshold and conditions relating to managers' transactions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

▌

(44) Technical standards in financial services should ensure uniform conditions across the Union in matters covered by this Regulation. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory technical standards and draft implementing technical standards which do not involve policy choices, for submission to the Commission.

(45) The Commission should adopt the draft regulatory technical standards developed by ESMA in relation to procedures and arrangements for trading venues aimed at preventing and detecting market abuse and of systems and templates to be used by persons in order to detect and notify suspicious orders and transactions and in respect of technical arrangements for categories of persons for objective presentation of information recommending an investment strategy and for disclosure of particular interests or indications of conflicts of interest by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(46) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to public disclosure of inside information, formats of insider lists and formats and procedures for the cooperation and exchange of information of competent authorities among themselves and with ESMA.

(47) Since the objective of this Regulation, namely to prevent market abuse in the form of insider dealing and market manipulation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this

Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(48) The provisions of Directive 2003/6/EC being no longer relevant and sufficient, that Directive should be repealed from ***[...]****. The requirements and prohibitions of this Regulation are strictly related to those in the Directive [new *MiFID]*, therefore they should enter in to application on the date of entry into application of the MiFID review,

HAVE ADOPTED THIS REGULATION:

CHAPTER I
GENERAL PROVISIONS

SECTION 1

SUBJECT MATTER AND SCOPE

Article 1
Subject matter

This Regulation establishes 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.

Article 2
Scope

1. This Regulation applies to the following:

(a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;

(b) financial instruments traded on a MTF or on an OTF in at least one Member State;

(c) behaviour or transactions relating to a financial instrument referred to in points (a) or (b) irrespective of whether or not the behaviour or transaction actually

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* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

takes place on a regulated market, on an MTF or on an OTF;

(d) behaviour or transactions, including bids, relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to Regulation (EU) No 1031/2010.

Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any requirements and prohibitions in this Regulation referring to orders to trade shall apply to such bids.

2. Articles 7 and 9 also apply to the acquisition or disposal of financial instruments not referred to in paragraph 1(a) and (b) but the value of which relates to a financial instrument referred to in that paragraph. This includes derivative instruments for the transfer of credit risk that relate to a financial instrument referred to paragraph 1 and financial contracts for differences that relate to such a financial instrument.

2a. Articles 7 to 10 shall also apply to interest rates, currencies, benchmarks, inter bank offer rates, indexes and types of financial instruments, including any derivative contracts or derivative instruments, which derive their value from the value of interest rates, currencies or indexes.

3. Articles 8 and 10 also apply to transactions, orders to trade or other behaviour relating to:

(a) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order or behaviour has or is likely or intended to have an effect on a financial instrument referred to in paragraph 1(a) and (b);

(b) spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has or is likely or intended to have an effect on a financial instrument referred to in paragraph 1(a) and (b); or

(c) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order or behaviour has or is likely or intended to have an effect on spot commodity contracts.

4. The prohibitions and requirements in this Regulation shall apply to actions carried out in the Union or outside the Union concerning instruments referred to in paragraphs 1, 2 and 3.

4a. ESMA shall publish and maintain a list setting out the instruments referred to in paragraph 1(a) and (b) and the trading venues on which they are traded. That list shall not limit the scope of this Regulation.

SECTION 2

EXCLUSION FROM THE SCOPE

Article 3
Exemption for buy-back programmes and stabilisation

1. The prohibitions in Articles 9 and 10 of this Regulation do not apply to trading in ***financial instruments*** in buy-back programmes when the full details of the programme are disclosed ***and approved by the competent authority*** prior to the start of trading, trades are reported as being part of the buy-back programme to the competent authority and subsequently disclosed to the public, and adequate limits with regards to price and volume are respected.

2. The prohibitions in Articles 9 and 10 of this Regulation do not apply to ▌the stabilisation of a financial instrument when stabilisation is carried out for a limited time period, when relevant information about the stabilisation is disclosed ***to and approved by the competent authority***, and adequate limits with regard to price are respected.

2a. 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 shall not in itself be deemed to constitute insider dealing.

2b. 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.

3. The Commission shall adopt delegated acts in accordance with Article 31 ***defining the objectives and*** specifying the conditions ***that the*** buy-back programmes and stabilisation measures ***must meet in order to benefit from the exemption*** referred to in paragraphs 1 and 2 ▌, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.

3a. ESMA shall develop draft regulatory technical standards to specify the conditions that such buy-back programmes and stabilisation measures referred to in paragraphs 1 and 2 must meet, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.

ESMA shall submit those draft regulatory technical standards to the Commission by [....]*.

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* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 4

Exclusion for monetary and public debt management activities and climate policy activities

1. This Regulation does not apply to transactions ***or*** orders ▌ carried out in pursuit of monetary, exchange rate or public debt management policy by a Member State, by the European System of Central Banks, by a national central bank of a Member State, by any other ministry, agency or special purpose vehicle of a Member State, or by any person acting on their behalf and, in the case of a Member State that is a federal state, to such transactions, orders or behaviours carried out by a member making up the federation. It shall also not apply to such transactions, orders or behaviours carried out by the Union, a special purpose vehicle for several Member States, the European Investment Bank, an international financial institution established by two or more Member States, which has the purpose to mobilise funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems or the European Financial Stability Facility.

1a. Any body that uses the exemptions provided for under this Article shall ensure that it has robust internal rules to monitor and mitigate conflicts of interest as well as systems and controls to prevent market abuse by internal employees or any outside contractors.

Article 4a
Accepted market practices

1. Competent authorities may establish an accepted market practice on the basis of the following criteria:

(a) the level of transparency of the relevant market practice to the whole market;

(b) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand;

(c) the degree to which the relevant market practice has an impact on market liquidity and efficiency;

(d) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;

(e) the risk inherent in the relevant practice for the integrity of directly or

indirectly related markets, whether regulated or not, in the relevant financial instrument within the Union;

(f) the outcome of any investigation of the relevant market practice by a competent authority or by another authority, in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, whether on the market in question or on directly or indirectly related markets within the Union;

(g) the structural characteristics of the relevant market, whether regulated or not, including the types of financial instruments traded and the type of market participants, including the extent of retail investors participation in the relevant market.

2. Before establishing an accepted market practice, a competent authority shall notify ESMA and the other competent authorities of the intended accepted market practice and provide details of the assessment made according to the criteria laid down in paragraph 1. Such notification shall be made not less than six months before the accepted market practice is intended to take effect.

3. Within three months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of each accepted market practice with the requirements established in paragraph 1 and specified in the regulatory technical standards adopted pursuant to paragraph 5 and considering whether the establishment of the accepted market practice would not threaten the market confidence in the Union's financial market. The opinion shall be published on ESMA's website.

4. Where a competent authority establishes an accepted market practice contrary to an ESMA opinion issued according to paragraph 3, it shall publish on its website within 24 hours of establishing the accepted market practice a notice setting out in full its reasons for doing so, including why the accepted market practice does not threaten market confidence.

5. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the detailed procedure for establishing an accepted market price under paragraphs 2 and 3.

*ESMA shall submit those draft regulatory technical standards to the Commission by [....]**

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. Competent authorities shall review regularly the market practices they have accepted, in particular taking into account significant changes to the relevant

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** OJ please insert date: 12 months after the date of entry into force of this Regulation.*

market environment, such as changes to trading rules or to market infrastructures.

7. ESMA shall publish on its website a list of accepted market practices and in which Member States they are applicable.

8. ESMA shall monitor the application of the accepted market practices and shall submit an annual report to the Commission on how they are applied in the markets concerned.

9. An accepted market practice established by a competent authority before the entry into force of this Regulation continues to apply in the Member State concerned until it has been submitted to ESMA in accordance with paragraph 2. Competent authorities shall submit such accepted market practices to ESMA within three months of the adoption by the Commission of the regulatory technical standards under paragraph 5.

SECTION 3

DEFINITIONS

Article 5
Definitions

1. For the purposes of this Regulation, the following definitions apply:

(1) "financial instrument" means any instrument within the meaning of Article 2(1)(8) of Regulation [MiFIR];

(2) "regulated market" means a multilateral system in the Union within the meaning of Article 2(1)(5) of Regulation (EU) No .../... [MiFIR];

(3) "multilateral Trading Facility (MTF)" means a multilateral system in the Union within the meaning of Article 2(1)(6) of Regulation (EU) No .../... [MiFIR];

(4) "organised Trading Facility (OTF)" means a system or facility in the Union referred to in Article 2(1)(7) of Regulation (EU) No .../... [MiFIR];

(4a) "accepted market practices" means practices that are reasonably expected in one or more financial markets and are accepted by the competent authority in accordance with Article 4a;

(4b) "stabilisation" means any purchase or offer to purchase relevant financial instruments, or any transaction in associated instruments equivalent thereto, by investment firms or credit institutions, which is undertaken in the context of a significant distribution of such relevant securities exclusively for supporting the market price of these relevant securities for a predetermined period of time, due to a selling pressure in such securities;

(5) "trading venue" means a system or facility in the Union referred to in Article 2(1)(25) of Regulation (EU) No .../... [MiFIR];

(6) "SME growth market" means a MTF in the Union within the meaning of Article 4(1)(11) of Directive .../.../EU [new MiFID];

(7) "competent authority" means the competent authority designated in accordance with Article 16;

(8) "person" means any natural or legal person;

(9) "commodity" means commodity within the meaning of Article 2(1) of Commission Regulation (EC) No 1287/2006[1];

(10) "spot commodity contract" means any contract for the supply of a commodity traded on a spot market which is promptly delivered when the transaction is settled including any derivative contract that must be settled physically;

(11) "spot market" means any commodity market in which commodities are sold for cash and promptly delivered when the transaction is settled;

(12) "buy-back programme" means trading in own shares in accordance with Articles 19 to 24 of Directive 77/91/EEC[2];

(13) "algorithmic trading" means trading of financial instruments using computer algorithms within the meaning of Article 4(1)(30) of Directive .../.../EU [new MiFID];

(14) "emission allowance" means a financial instrument referred to point (11) of Section C of Annex I of Directive .../.../EU [new MiFID];

(15) "emission allowance market participant" means a person who enters into transactions, including the placing of orders to trade, in emission allowances;

(16) "issuer of a financial instrument" means issuer within the meaning of Article 2(1)(h) of Directive 2003/71/EC[3];

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1 Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1).

2 Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 26, 31.1.1977, p. 1).

3 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or

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(18) "wholesale energy products" means wholesale energy products as defined in Article 2(4) of Regulation (EU) No 1227/2011[1];

(19) "national regulatory authority" means national regulatory authority as defined in Article 2(10) of Regulation (EU) No 1227/2012 ;

(19a) "order-book data" means information which is required to be provided in relation to a single order sent to the regulated market or the MTF for the purpose of entering the order book which is held and maintained by the person operating the regulated market or the MTF concerned;

(19b) "commodity derivatives" means commodity derivatives within the meaning of Article 2(1)(15) of Regulation (EU) No .../... [MiFIR];

(20) "benchmark" means any published ***rate, index or figure, by reference to which the amount payable under a financial instrument is determined, including an interbank offer rate,*** calculated by the application of a formula to***, or otherwise derived from:***

(a) the price or value of one or more underlying assets; or

(b) the interest rate (whether actual or estimated) applied to the borrowing of funds;

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 concerning measures to specify the technical elements of or amend the definitions laid down in paragraph 1, if appropriate, in line with the definitions laid down in Regulation (EU) No .../2012 [MIFIR] and Directive 2012/.../EU [new MiFID] in order to take into account of:

(a) technical developments on financial markets;

(b) the list of abusive practices referred to in Article 34b(b).

SECTION 4

INSIDE INFORMATION, INSIDER DEALING AND MARKET MANIPULATION

Article 6
Inside information

admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

[1] Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

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 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;

(b) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such derivatives or to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts ***or to have a distortive effect on the functioning of the commodity derivatives markets or to hinder supervision of the market concerned***; ***and*** information which is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs, on the relevant commodity derivatives or spot markets.

(c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments ***and which is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs, on the relevant commodity derivatives or spot markets***;

(d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and related to the client's pending orders in financial instruments, 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, the price of related spot commodity contracts, or on the price of related derivative financial instruments;

(e) information not falling within points (a), (b), (c) or (d) relating to one or more issuers of financial instruments or to one or more financial instruments, which ***although*** is not generally available to the public, ***is of a type that is reasonably considered to require subsequent disclosure and*** which, if it were available to a reasonable investor, who regularly deals on the market and in the financial instrument or a related spot commodity contract concerned, would be regarded ***as relevant*** by that person ▌ when deciding the terms on which transactions in the financial instrument or a related spot commodity contract should be effected ***and where any type of conduct upon such information is likely to be regarded by a reasonable investor who regularly deals on the market as a***

failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in such position in relation to that market.

2. For the purposes of applying paragraph 1, information shall be deemed to be of a precise nature if it indicates 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 do so and if 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, the related spot commodity contracts***, the emission allowances*** or the auctioned products based ***thereon***.

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

3a. In order to ensure consistent application of paragraph 1(c), ESMA shall develop draft regulatory technical standards providing a definition of inside information in relation to emission allowances or auctioned products based thereon.

ESMA shall submit those draft regulatory technical standards to the Commission, following a public consultation, by [...]*.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

3b. In order to ensure consistent application of paragraph 1(e) to diverse market activities, ESMA shall issue guidelines providing assistance in determining appropriate standards of behaviour in relation to relevant markets.

Article 7
Insider dealing and improper disclosure of inside information

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 his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates. The use of inside information to cancel or amend 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 as insider dealing.

2. For the purposes of this Regulation, attempting to engage in insider dealing arises where a person possesses inside information and ***uses that information to attempt*** to

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* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates. The attempt to cancel or amend an order concerning a financial instrument to which the information relates on the basis of inside information where the order was placed before the person concerned possessed the inside information, shall also be considered an attempt to engage in insider dealing. ***Attempting to acquire or dispose of financial instruments under this Article means taking any step necessary to effect, cancel or amend a trade.***

3. For the purposes of this Regulation, a person recommends that another person engages in insider dealing, or induces another person to engage in insider dealing, if the person possesses inside information and recommends***, on the basis of that inside information, that*** another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal.

3a. The use or onward disclosure of the recommendations or inducements referred to in paragraph 3 amounts to insider dealing when the person using or disclosing the recommendation or inducement knows or ought to know, that it is based upon insider information.

3b. For the purposes of this Regulation, a person recommends that another person engages in insider dealing, or induces another person to engage in insider dealing, if the person possesses inside information and recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, without disclosing the inside information to that person, or induces that person to make such a cancellation or amendment.

4. For the purposes of the Regulation, improper disclosure of inside information arises where a person possesses inside information and discloses the inside information to any other person, except where the disclosure is made in the normal course of the exercise of duties resulting from an employment or profession.

5. Paragraphs 1, 2, 3 and 4 apply to any person who possesses inside information as a result of any of the following situations:

(a) being a member of the administrative, management or supervisory bodies of the issuer;

(b) having a holding in the capital of the issuer;

(c) his having access to the information through the exercise of duties resulting from an employment or profession;

(d) being involved in ***illegal*** activities.

Paragraphs 1, 2, 3 and 4 also apply to any inside information obtained by a person under circumstances other than those referred to in points (a) to (d) and which the

person knows or ought to know, is inside information.

6. Where the person referred to in paragraph 1 and 2 is a legal person, the provisions of those paragraphs shall also apply to natural persons who take part in or influence the decision to carry out, or attempt to carry out, the acquisition or disposal for the account of the legal person concerned.

7. This Article shall not apply to a legal person, that carries out a transaction if that person***:***

(a) did not encourage, recommend, induce or otherwise influence the natural person who made the decision on its behalf to acquire or dispose of financial instruments to which the information relates; and

(b) had ***established, implemented and maintained adequate and*** effective ***internal*** arrangements ***and procedures to*** ensure that ***neither the natural*** person ***referred to*** in ***point (a), nor any other natural person who may have*** had any ▌influence ***on*** the decision ***to acquire*** or ***dispose of*** those ***instruments, was*** in ***possession of*** the ***inside*** information ***referred to in point (a)***.

8. ***This Article*** shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement concluded, or is to satisfy a legal or regulatory obligation that arose, before the person concerned possessed inside information.

9. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010, the prohibition under paragraph 1 shall also apply to the use of inside information by submitting, modifying or withdrawing a bid for own account of the person that possesses inside information or for the account of a third party.

9a. A person possessing inside information shall be deemed not to use that information, and therefore not to commit insider dealing, where that person:

(a) acts as a market maker or as a person authorised to act as a counterparty and the acquisition or disposal of financial instruments to which that information relates is made legitimately in the normal course of the exercise of his employment, profession or duties; or

(b) is authorised to execute orders on behalf of third parties, and the acquisition or disposal of financial instruments to which the order relates is made to carry out such an order legitimately in the normal course of the exercise of his employment, profession or duties.

Article 8
Market manipulation

1. For the purposes of this Regulation, market manipulation shall comprise the following activities:

(a) entering into a transaction, placing an order to trade or any other behaviour which ▌:

- ▌gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract; or

- ▌ 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;

(b) entering into a transaction, placing an order to trade or any other ***activity or*** behaviour affecting***, or likely to affect,*** the price of one or several financial instruments or a related spot commodity contract, which employs a fictitious device or any other form of deception or contrivance;

(c) disseminating information through the media, including the internet, or by any other means, which has ***or is likely to have*** the consequences referred to in point (a), where the person who made the dissemination knew, or ought to have known, that the information was false or misleading; or

(d) transmitting false or misleading information, providing false or misleading inputs, or any ***other behaviour relating to benchmarks, which involves the making of, or the request to make, a false or misleading representation of any kind.***

Where information is disseminated for the purposes of journalism under point (c) of the first subparagraph, such dissemination of information shall be assessed taking into account the rules governing the freedom ▌ of expression ***and the freedom and pluralism of the*** media ***as well as the rules or codes governing the journalist profession***, unless:

- those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or

- the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.

2. For the purposes of this Regulation, an attempt to engage in market manipulation shall comprise the following***, regardless of whether it has the intended net effect***:

(a) attempting to enter into a transaction, trying to place an order to trade or trying to engage in any other behaviour as defined in paragraph 1(a) or (b); or

(b) attempting to disseminate information as defined in paragraph 1(c).

2a. Making an attempt for the purpose of this Article is the taking of any step necessary to effect any of the activities referred to in paragraph 2(a) and (b).

3. The following behaviour shall be considered***, inter alia,*** as market manipulation or attempts to engage in market manipulation:

(a) conduct by a person, or persons acting in collaboration, to secure a dominant position ***or otherwise*** over the supply of or demand for a financial instrument or related spot commodity contracts which has, ***or is likely to have,*** the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions, ***or setting prices to an abnormal and artificial level;***

(b) the buying or selling of financial instruments**,** at ***any stage of*** the ***trading period*** of the market, ***which has or is likely to have*** the effect or intention of misleading investors acting on the basis of ***the displayed*** prices, ***including the closing prices***;

(c) the ***placing*** of orders to a trading venue***, including any cancellation or modification thereof, generally within a short period*** by ***any available*** means of ▌trading including ***electronic means, such as algorithmic and*** high frequency trading ***strategies, as defined in Directive .../.../EU [new MiFID], which consists of at least one of*** the ***following:***

- disrupting or delaying the functioning of the trading system of the trading venue***, or making it more likely to do so***;

- making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or ***making it more likely to do so, including by entering orders which result in the overloading or destabilisation of the order book***; or

- creating a false or misleading impression about the supply of or demand for***, or price of*** a financial instrument***, in particular by entering orders to initiate or exacerbate a trend, or making it more likely that such an impression is created;***

(d) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument or related spot commodity contract (or indirectly about its issuer) while having previously taken positions on that financial instrument or related spot commodity contract and ***aiming at*** profiting subsequently from the impact of the opinions voiced on the price of that instrument or related spot commodity contract, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way;

(e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the

auctions.

4. For the purposes of applying paragraph 1(a) and (b), and without prejudice to the forms of behaviour set out in paragraph 3, Annex I defines non-exhaustive indicators related to the employment of fictitious devices or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing.

4a. Trading venues shall ensure that they have regimes in place, as outlined in Article 59 of Directive …/… [new MiFID], to ensure that no person acting in collaboration can secure a dominant position over the supply of, or demand for, a financial instrument or related spot commodity contracts which have the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions.

4b. In order to ensure orderly markets, market participants shall disclose additional information to the trading venue and the competent authority, in order to facilitate their ability to detect abusive behaviour and conduct an investigation.

That information should be comprised of the following:

(a) who stands behind an order;

(b) whether the order was executed manually or electronically; and

(c) which strategy was used for the execution.

5. ***ESMA shall develop draft regulatory technical standards to specify*** the indicators laid down in Annex I, in order to clarify their elements and to take into account technical developments on financial markets.

ESMA shall submit those draft regulatory technical standards to the Commission by [....]*.

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

** OJ please insert date: 12 months after the date of entry into force of this Regulation.*

CHAPTER 2
INSIDER DEALING AND MARKET MANIPULATION

Article 9
Prohibition of insider dealing and of improperly disclosing inside information

A person shall not:

(a) engage or attempt to engage in insider dealing;

(b) recommend that another person engages in insider dealing or induce another person to engage in insider dealing; or

(c) improperly disclose inside information.

Article 10
Prohibition of market manipulation

A person shall not engage in market manipulation or attempt to engage in market manipulation.

Article 10a
Abusive order entry

1. Any person who operates the business of trading venue shall have in place rules to avoid abusive order entry in line with Article 51(5a) of Directive …/… [new MiFID], 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 be able to adjust its fees for cancelled orders according to the length of time for which the order was maintained and to calibrate the fees to each financial instrument to which they apply.

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

3. In accordance with the provisions of Article 17 of Directive …/… [new MiFID], if any firm which engages in algorithmic trading fail to report to their competent authority a material item or a material change in the function of their algorithm or their algorithmic trading strategy, then any resulting detrimental impact upon the market shall be considered abusive and dealt with via the full force of this

Regulation.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 specifying the requirements laid down in this Article, and, in particular:

(a) to ensure that fee structures do not create incentives for disorderly trading conditions or market abuse;

(b) to specify the ratio of cancelled orders to executed orders referred to in paragraph 1;

(c) to ensure that algorithmic or high-frequency trading systems cannot create or contribute to disorderly trading conditions on the market.

Article 11
Prevention and detection of market abuse

1. Any person who operates the business of a trading venue ***or trading over the counter*** shall adopt and maintain effective arrangements and procedures in accordance with [Articles 31 and 56] of Directive [new MiFID] aimed at preventing and detecting market abuse.

1a. Any person who operates the business of a trading venue shall adopt and maintain effective arrangements and procedures to exchange information with other persons who operate the business of a trading venue with significant liquidity in the same or closely related instruments aimed at preventing and detecting market abuse across such venues.

2. Any person professionally arranging or executing transactions in financial instruments shall ***adopt and maintain effective arrangements and procedures*** to detect and report orders and transactions that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing. If that person reasonably suspects that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing, the person shall notify the competent authority without delay**.**

2a. ESMA and the national competent authority shall provide one or more secure communication channel for persons to provide notification of market abuse. Such channels shall ensure that the identity of persons providing information is known only to ESMA or the national competent authority.

2b. Any person included on an insider list that becomes aware of activities that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing shall report such information through the channels referred to in paragraphs 2 and 2a.

2c. ***The notification in good faith to the competent authority as referred to in Articles 7 to 10 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in liability of any kind related to such notification.***

2d. ***A person in a professional capacity who intends to query one or more investors with a view to setting the terms of a possible future significant distribution or buy-back of securities in which it is acting at the request of an issuer or seller, shall maintain appropriate records of its queries.***

Prior to the query, should the information to be communicated be inside information, it shall obtain the investor's agreement to receive such information.

3. ESMA shall develop draft regulatory technical standards to determine***:***

(a) appropriate arrangements and procedures for persons to comply with the requirements established in paragraph 1;

(b) the systems and notification templates to be used by persons to comply with the requirements established in paragraph 2***; and***

(c) ***the type of queries that are deemed to be carried out in the context of a possible future significant distribution or buy-back of securities on behalf of an issuer or seller and the recording arrangements that are appropriate to comply with the requirements established in paragraph 2d.***

ESMA shall submit those draft regulatory technical standards to the Commission by [...]*.

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

CHAPTER 3
DISCLOSURE REQUIREMENTS

Article 12
Public disclosure of inside information

1. An issuer of a financial instrument shall inform the public ***and the competent authority*** as soon as possible, of inside information, which directly concerns the issuer, and shall, for an appropriate period, post on its Internet site all inside information it is required to disclose publicly.

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* ***OJ please insert date: 12 months following the date of entry into force of this Regulation.***

2. An emission allowance market participant shall publicly, effectively and in a timely manner disclose inside information concerning emission allowances which it holds in respect of its business, including aviation activities as specified in Annex I of Directive 2003/87/EC or installations within the meaning of Article 3(e) of that Directive which the participant concerned, or parent undertaking or related undertaking, owns or controls or for which the participant, or its parent undertaking or related undertaking, is responsible for operational matters, either in whole or in part. With regard to installations, such disclosure shall include relevant information to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.

The first subparagraph shall not apply to an emission allowance market participant where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold.

The Commission shall ***be empowered to*** adopt delegated acts in accordance with Article 31 ***modifying the*** minimum threshold of carbon dioxide equivalent and ***the*** minimum threshold of rated thermal input for the purposes of application of the exemption provided for in the second subparagraph. ***Before adopting the delegated act referred to in this subparagraph, the Commission shall assess whether modifying the minimum threshold of carbon dioxide equivalent or the minimum threshold of rated thermal input responds to the needs arising from new technological and market developments.***

3. Paragraphs 1 and 2 shall not apply to information which is only inside information within the meaning of Article 6(1)(e).

4. Without prejudice to paragraph 5, an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his legitimate interests provided that both of the following conditions are met:

(a) the omission would not be likely to mislead the public;

(b) the issuer of a financial instrument or emission allowance market participant is able to ensure the confidentiality of that information.

Where an issuer of a financial instrument or emission allowance market participant ***intends to delay*** the disclosure of inside information under this paragraph it shall inform the competent authority ***of*** that ***intention and provide sufficient information to justify the necessity*** of the ***delay according to the criteria set out in paragraph 5. In the event that the competent authority does not permit the delay in accordance with paragraph 5, the*** information ***shall be disclosed*** immediately after the ***refusal has been communicated. Such information to competent authorities shall not preclude in any way the power of competent authorities to sanction a breach of this Regulation***.

5. A competent authority may permit the delay by an issuer of a financial instrument ***or an emission allowance market participant*** of the public disclosure of inside information provided that the following conditions are satisfied**:**

(a)- the information is of systemic importance;

(b) it is in the public interest to delay its publication;

(c) the confidentiality of that information can be ensured.

The competent authority shall, where appropriate, keep ESMA informed of developments in accordance with Article 18(1) of Regulation (EU) No 1095/2010.

The decision to grant or withhold permission shall be ***communicated*** in writing. The competent authority shall ensure that the delay is only for such period as is necessary in the public interest.

The competent authority shall at least once every week review whether the delay continues to be appropriate and shall revoke the authorisation immediately if any of the conditions in point (a), (b) or (c) are no longer satisfied.

6. Where an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his duties resulting from employment or profession, as referred to in Article 7(4), he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, and promptly in the case of a non-intentional disclosure. This paragraph shall not apply if the person receiving the information owes a duty of confidentiality, ***which prevents that person from disclosing the relevant information to another third party***, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract.

7. Inside information relating to issuers of a financial instrument, whose financial instruments are admitted to trading on an SME growth market, may be posted by the trading venue on its website instead of on the website of the issuer where the trading venue chooses to provide this facility for issuers on that market. In that event such issuer is deemed to have fulfilled the obligation in paragraph 1.

8. This Article shall not apply to issuers who have not requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of an instrument only traded on a MTF or an OTF, have not requested or approved trading of their financial instruments on a MTF or an OTF in a Member State.

9. ESMA shall develop draft ***regulatory*** technical standards to ***specify the conditions***:

– for appropriate public disclosure of inside information as referred to in paragraphs 1, 6 and 7;

– for delaying the public disclosure of inside information as referred to in paragraphs 4 and 5.

ESMA shall submit those draft ***regulatory*** technical standards to the Commission by [...]*.

Power is conferred to the Commission to adopt the ***regulatory*** technical standards referred to in the first subparagraph in accordance with Article ***10 to 14*** of Regulation (EU) No 1095/2010.

Article 13
Insider lists

1. Issuers of a financial instrument or emission allowance market participants, not exempted pursuant to the second subparagraph of Article 12(2), and any person acting on their behalf or on their account, shall:

(a) draw up a list of all persons working for them, under a contract of employment or otherwise, who have access to inside information;

(b) regularly update that list; and

(c) provide the list to the competent authority as soon as possible upon its request.

1a. Issuers referred to in paragraph 1 and persons acting on their behalf or for their account shall ensure when drawing such a list that any person on it acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information.

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4. ***ESMA*** shall ***develop draft regulatory technical standards*** to ***determine the*** information as to the identities and the reasons for persons to be included on an insider list ***as referred to in paragraph 1***, and ***to specify*** the conditions under which issuers of a financial instrument or emission allowance market participants, or entities acting on their behalf, are to draw up such a list, including the conditions under which such lists are to be updated, the time for which they are kept, and the responsibilities of the persons thereon. ***In the case of SMEs, ESMA shall provide proportionate and simplified draft regulatory technical standards to reduce the administrative burdens on issuers of financial instruments whose financial instruments are admitted to trading on SME growth markets.***

ESMA shall submit those draft regulatory technical standards to the Commission by [...]*.

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* ***OJ please insert date: 12 months after entry into force of this Regulation.***

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. This Article shall also apply to any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010.

6. ESMA shall develop draft implementing technical standards to determine the precise format of insider lists and the format for updating insider lists referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by ***[...]*.**

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 14
Manager's transactions

1. Persons discharging managerial responsibilities within an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), as well as persons closely associated with them, shall ensure that information is made public about the existence of transactions conducted on their own account relating to the shares of that issuer, or to derivatives or other financial instruments linked to them, or in emission allowances. Such persons shall ensure that the information is made public within two business days after the day on which the transaction occurred.

2. For the purposes of paragraph 1 transactions that must be ***made public*** shall include:

(a) the pledging or lending of financial instruments by or on behalf of a person referred to in paragraph 1;

(b) transactions undertaken by a portfolio manager or other person on behalf of a person referred to in paragraph 1 including where discretion is exercised by that manager or other person.

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4. This Article shall also apply to any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010.

4a. A person discharging managerial responsibilities within an issuer of a financial instrument shall not conduct any transactions on his or her own account relating to the shares of that issuer or to derivatives or other financial instruments linked to

them outside a trading window.

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6. The Commission shall adopt delegated acts in accordance with Article 32, measures specifying:

(a) the professional functions of persons who are considered to discharge managerial responsibility as referred to in paragraph 1,

(b) the types of association, including by birth as well as under civil and contractual law, considered to create a close personal association,

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(c) the arrangements and the conditions for the application of trading windows in accordance with paragraph 4a and, in particular, the start and the end point of such trading windows, as well as the conditions related to possession of price sensitive information attached to the ban on trading outside a trading window.

ESMA shall provide the Commission with technical advice before the delegated acts referred to in the first subparagraph are drafted.

6a. ESMA shall develop draft regulatory technical standards to specify the characteristics of a transaction referred to in paragraph 2 which trigger the duty referred to in that paragraph, the information that must be made public as required under paragraph 1 and the means of informing the public. In developing those draft regulatory standards ESMA may, if appropriate, establish a threshold for amount or volume of transactions referred to in paragraph 2, which triggers the duty referred to in that paragraph, and which may vary depending on the type of persons concerned.

ESMA shall submit those draft regulatory technical standards to the Commission by [...]*.

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6b. In order to ensure uniform application of paragraph 1, ESMA may develop draft implementing technical standards concerning the format [template] in which the information referred to in paragraph 1 is to be made public.

ESMA shall submit those draft implementing technical standards to the Commission by [...]*.

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* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 15
Investment recommendations and statistics

1. Persons who produce or disseminate information recommending or suggesting an investment strategy, intended for distribution channels or for the public, shall take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.

1a. Where the persons referred to in paragraph 1 trade on their own account in instruments for which they give the advice referred to in paragraph 1, competent authorities may request such information as they deem necessary from such persons and, where appropriate, other competent authorities in order to determine whether the advice is compliant with the requirements under paragraph 1.

2. Public institutions disseminating statistics liable to have a significant effect on financial markets shall disseminate them in an objective and transparent way.

3. ESMA shall develop draft regulatory technical standards to determine the technical arrangements, for the various categories of person referred to in paragraph 1, for objective presentation of information recommending ***or suggesting*** an investment strategy and for disclosure of particular interests or indications of conflicts of interest.

ESMA shall submit those draft regulatory technical standards to the Commission by ***[...]*.***

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 15a
Disclosure or dissemination of information in the media

Where information is disclosed or disseminated and where recommendations are produced or disseminated for the purpose of journalism, such disclosure or dissemination of information shall be assessed taking into account the rules governing the freedom of expression, the freedom and pluralism of the media and the rules or codes governing the journalist profession, unless:

(a) the persons concerned or persons closely associated with them derive,

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* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

directly or indirectly, an advantage or profits from the disclosure or the dissemination of the information in question; or

(b) the disclosure or the dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.

CHAPTER 4
ESMA AND COMPETENT AUTHORITIES

Article 16
Competent authorities

Without prejudice to the competences of the judicial authorities, each Member State shall designate a single administrative competent authority for the purpose of this Regulation ***and provide sufficient resources to that authority to fulfil its powers provided for in this Regulation***. The competent authority shall ensure that the provisions of this Regulation are applied on its territory, regarding all actions carried out on its territory, and those actions carried out abroad relating to instruments admitted to trading on a regulated market, for which a request for admission to trading on such market has been made, or which are traded on an MTF or OTF operating, within its territory. Member States shall inform the Commission, ESMA and the competent authorities of other Member States thereof.

Article 17
Powers of competent authorities

1. Competent authorities shall exercise their functions in any of the following ways:

   (a) directly;

   (b) in collaboration with other authorities or with the market undertakings;

   (c) under their responsibility by delegation to such authorities or to market undertakings;

   (d) by application to the competent judicial authorities.

2. In order to fulfil their duties under this Regulation, competent authorities shall have, in conformity with national law ***and powers***, at least the following supervisory and investigatory powers:

   (a) ***have*** access to any document in any form, and to receive or take a copy thereof*;*

   (b) request information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned,

as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;

(c) in relation to commodity derivatives, request information from market participants on related spot markets according to standardized formats, obtain reports on transactions, and have direct access to traders' systems;

(d) carry out on-site inspections at sites other than private premises with or without announcement;

(e) after having obtained prior authorisation from the judicial authority of the Member State concerned in accordance with national law, and where a reasonable suspicion exists that documents related to the subject-matter of the inspection may be relevant to prove a case of insider dealing or market manipulation in violation of this Regulation or Directive .../.../EU [new MAD], enter private premises in order to seize documents in any form;

(ea) refer matters for criminal prosecution;

(f) require existing ***records of*** telephone ***conversations, electronic communications*** and ▌data traffic records held by ▌an investment firm ***in accordance with [new MIFID];***

(fa) require existing telephone and existing data traffic records held by a telecommunication operator, where such records may be relevant to prove insider dealing or market manipulation in violation of this Regulation or Directive .../.../EU [new MAD];

The records referred to in this point shall not include the content of voice communications by telephone, unless authorisation from a judicial authority has been given;

(fb) request the freezing and/ or sequestration of assets;

(fc) suspend trading of the financial instrument concerned;

(fd) require temporary cessation of any practice that is contrary to the provisions of this Regulation.

2a. The operations referred to in points (e), (f) and (fa) may be performed by law enforcement authorities in cooperation with supervisory authorities in accordance with national law.

3. The competent authorities shall exercise the supervisory and investigatory powers, referred to in paragraph 2, in accordance with national law. ***The competent authorities shall neither seek nor take instructions from any person associated with the person under investigation.***

4. The processing of personal data collected in the exercise of the supervisory and investigatory powers pursuant to this Article shall be carried out in accordance with

Directive 95/46/EC.

5. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.

Article 17a
Cross-market order-book surveillance

1. For any financial instrument admitted to trading on a regulated market or an MTF, the competent authority of the Member State concerning the trading venue where the financial instrument was first admitted to trading shall have the power to conduct cross-market supervision of market manipulation conducted through order-book activity.

In accordance with Article 71(1) of [new MiFID] the competent authorities should be able to delegate surveillance tasks to third parties.

2. Operators of trading venues shall provide order-book data regarding financial instruments that are actively traded on that regulated market or MTF to their home Member State competent authority.

Where that competent authority is not the competent authority referred to in paragraph 1, it shall make the necessary arrangements to consolidate and forward the corresponding order-book data to the competent authority referred to in paragraph 1.

In any event, the home Member State competent authority of the regulated markets or MTF shall remain responsible for ensuring that regulated markets and MTFs under its supervision report orders in compliance with applicable data standards.

3. The order-book data referred to in paragraph 2 shall be clear, precise and appropriately detailed so as to allow the competent authorities to perform cross-market supervision pursuant to paragraph 1. Such data shall include the following:

(a) the identification code of the member which transmitted the order to the regulated market or MTF;

(b) the identification of the financial instrument;

(c) the date and time (with milliseconds) on which the order was transmitted to the regulated market or MTF;

(d) the characteristics of the order including in particular:

- the buy / sell indicator;

- *the initial and remaining / outstanding quantity (taking into account any partial execution(s) or event(s) affecting the order), both displayed and hidden;*

- *the type of the order (e.g., market, limit, stop);*

- *the limit price (if applicable);*

- *the validity period as specified by the market participant (e.g., end of day, good till cancelled, any specified date and time, next closing);*

- *any condition(s) for the order to be executed (e.g., minimum executable size, stop price);*

(e) date and time (with milliseconds) of any event affecting those characteristics;

(f) type of event which resulted in a change of these characteristics (e.g., modification of characteristics by the market participant, cancellation, partial (or full) execution, market interruption, stop trigger);

(g) the identification code of the order;

(h) whether the order is entered by the market member (of the regulated market and, where available, the MTF) on own account (principal capacity) or on behalf of a third party (agent capacity).

That information shall be provided for every characteristic validity period of the order, defined as a period of time during which the characteristics listed in point (d) remain the same and are not affected by any event. For the avoidance of doubt, that information shall include for each characteristic validity period its start date / time (with milliseconds), end date or time (with milliseconds) and the type of event which resulted in its ending.

4. The competent authority referred to in paragraph 1 shall make order-book data available to any other competent authority on its request.

5. ESMA shall develop draft regulatory technical standards in order to specify:

(a) the list of financial instruments that should be subject to cross-market supervision, the details and the technical specifications for order book data as well as the periodicity in which such data must be provided;

(b) the instances where other competent authorities may in accordance with paragraph 4 request order book data from the competent authority of the Member State of the trading venue where the issuer was first admitted to trading;

(c) the treatment of data with regard to delegation of tasks to third parties and sanctions for the misuse of such data by third parties.

ESMA shall submit those draft regulatory technical standards to the Commission by ...*.

Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. By ...* ESMA shall draw up a report assessing the functioning of cross-market order book surveillance including how ESMA could assist and support the execution of this task.

Article 18
Cooperation with ESMA

1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.

3. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraph 2.

ESMA shall submit those draft implementing technical standards to the Commission by ***[...]**.***

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 19
Obligation to cooperate

1. Competent authorities shall cooperate with each other and ESMA where it is necessary for the purposes of this Regulation. ▌Competent authorities shall render assistance to competent authorities of other Member States and ESMA***. In particular, they shall*** exchange information***, without undue delay,*** and cooperate in investigation and enforcement activities.

The obligation to cooperate and assist laid down in the first subparagraph shall also apply as regards the Commission in relation to the exchange of information relating to commodities which are agricultural products listed in Annex I to the

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** **OJ please insert date: 12 months after the date of entry into force of this Regulation.***

** **OJ please insert date: 24 months after the date of entry into force of this Regulation.***

*** **OJ please insert date: 12 months after the date of entry into force of this Regulation.***

TFEU**.**

2. Competent authorities and ESMA shall cooperate with the Agency for the Cooperation of Energy Regulators (ACER), established under Regulation (EC) No 713/2009[1] and the national regulatory authorities of the Member States to ensure that a coordinated approach is taken to the enforcement of the relevant rules where transactions, orders to trade or other actions or behaviours relate to one or more financial instruments to which this Regulation applies and also to one or more wholesale energy products to which Article 3, 4 and 5 of Regulation (EU) No .../2012 [on Wholesale Energy Market Integrity and Transparency] apply. Competent authorities shall consider the specific characteristics of the definitions of Article 2 of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] and the provisions of Article 3, 4 and 5 of Regulation (EU) No .../2012 [on Wholesale Energy Market Integrity and Transparency] when they apply Articles 6, 7 and 8 of this Regulation to financial instruments related to wholesale energy products.

3. Competent authorities shall, on request, immediately supply any information required for the purpose referred to in paragraph 1.

4. Where a competent authority is convinced that acts contrary to the provisions of this Regulation are being, or have been, carried out on the territory of another Member State or that acts are affecting financial instruments traded on a trading venue situated in another Member State, it shall give notice of that fact in as specific a manner as possible to the competent authority of the other Member State and to ESMA and, in relation to wholesale energy products, to ACER. The competent authorities of the various Member States involved shall consult each other and ESMA and, in relation to wholesale energy products, ACER, on the appropriate action to take and inform each other of significant interim developments. They shall coordinate their action, in order to avoid possible duplication and overlap when applying administrative measures, sanctions and fines to those cross border cases in accordance with Articles 24, 25, 26, 27 and 28, and assist each other in the enforcement of their decisions.

5. The competent authority of one Member State may request assistance of the competent authority of another Member State with regard to on-site inspections or investigations.

The competent authority shall inform ESMA of any request referred to in the first subparagraph. In case of an investigation or an inspection with cross-border effect, ESMA shall if requested to do so by one of the competent authorities***, or on its own initiative, where appropriate with regard to the objectives of this Regulation,*** coordinate the investigation or inspection.

Where a competent authority receives a request from a competent authority of

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[1] Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (OJ L 211, 14.8.2009, p. 1).

another Member State to carry out an on-site inspection or an investigation, it may do any of the following:

(a) carry out the on-site inspection or investigation itself;

(b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation;

(c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself;

(d) appoint auditors or experts to carry out the on-site inspection or investigation;

(e) share specific tasks related to supervisory activities with the other competent authorities.

6. Without prejudice to Article 258 TFEU, a competent authority whose request for information or assistance in accordance with paragraphs 1, 2, 3 and 4 is not acted upon within a reasonable time or whose request for information or assistance is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA.

In those situations, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.

7. Competent authorities shall cooperate and exchange information with relevant national and third country regulatory authorities responsible for the related spot markets where they have reasonable grounds to suspect that acts, which constitute ***insider dealing or*** market ***manipulation*** in accordance with ***this Regulation or with Directive 2012/.../EU [new MAD]***, are being, or have been, carried out. This cooperation shall ensure a consolidated overview of the financial and spot markets, and detect and sanction cross-market and cross-border market abuses.

In relation to emission allowances, the co-operation and exchange of information provided for under the preceding subparagraph shall also be ensured with:

(a) the auction monitor, with regard to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010;

(b) competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with the supervision of compliance under Directive 2003/87/EC.

ESMA shall perform a facilitation and coordination role in relation to the cooperation and exchange of information between competent authorities and regulatory authorities in other Member states and third countries. Competent authorities shall wherever possible conclude cooperation arrangements with third

country regulatory authorities responsible for the related spot markets in accordance with Article 20.

8. The disclosure of personal data to a third country shall be governed by Articles 22 and 23.

9. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information and assistance as referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by ***[...]****.

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.

Article 19 a
Resolution of disagreements between competent authorities

Where a competent authority disagrees about the procedure or content of an action or inaction of another competent authority of another Member State related to any provisions of that Regulation or of the Directive (EU) No .../... [new MAD], ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010.

Article 20
Cooperation with third countries

1. The competent authorities of Member States shall where necessary conclude cooperation arrangements with competent authorities of third countries concerning the exchange of information with competent authorities in third countries and the enforcement of obligations arising under this Regulation in third countries. These cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.

A competent authority shall inform ESMA and other competent authorities of Member States where it proposes to enter into such an arrangement.

1a. Where the Union participates in an emission trading scheme with a third country, emission allowances under this scheme and auctioned products based thereon shall fall into the scope of this Regulation. Where necessary, the Commission shall adopt, by means of delegated acts in accordance with Article 32, measures establishing the criteria for the inclusion of those emission allowances and auctioned products in the scope of this Regulation.

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* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

2. ESMA shall ***facilitate and*** coordinate the development of cooperation arrangements between the competent authorities of Member States and the relevant competent authorities of third countries. ***In accordance with Article 15 of Regulation (EU) No 1095/2010***, ESMA shall ***develop draft regulatory technical standards containing*** a template document for cooperation arrangements that ***are to*** be used by competent authorities of Member States ***where possible***.

ESMA shall submit those draft regulatory technical standards to the Commission by ...*.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

2a. ESMA shall also ***facilitate and*** coordinate the exchange between competent authorities of Member States of information obtained from competent authorities of third countries that may be relevant to the taking of measures under Articles 24, 25, 26, 27 and 28.

3. The competent authorities shall conclude cooperation arrangements on exchange of information with the competent authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 21. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

4. The disclosure of personal data to a third country shall be governed by Articles 22 and 23.

Article 21
Professional secrecy

1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 2 and 3.

2. The obligation of professional secrecy applies to all persons who work or who have worked for the competent authority or for any authority or market undertaking to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by law.

3. All information exchanged between competent authorities under this Regulation ***that concern business or operational conditions and other economic or personal affairs*** shall be considered confidential, except when the competent authority states at the time of communication that the information may be disclosed or where such

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* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

disclosure is necessary for legal proceedings.

Article 22
Data protection

With regard to the processing of personal data carried out by Member States within the framework of this Regulation, competent authorities shall apply the provisions of Directive 95/46/EC. With regard to the processing of personal data by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001.

Personal data shall be retained for a maximum period of 5 years.

Article 23
Disclosure of personal data to third countries

1. The competent authority of a Member State may transfer personal data to a third country provided the requirements of Directive 95/46/EC, particularly of Article 25 or 26, are fulfilled and only on a case-by-case basis. The competent authority of the Member State shall ensure that the transfer is necessary for the purpose of this Regulation. The competent authority shall ensure that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State. Personal data may only be transferred to a third country which provides an adequate level of protection of personal data.

2. The competent authority of a Member State shall only disclose information received from a competent authority of another Member State to a competent authority of a third country where the competent authority of the Member State concerned has obtained express agreement of the competent authority which transmitted the information and, where applicable, the information is disclosed solely for the purposes for which that competent authority gave its agreement.

3. Where a cooperation agreement provides for the exchange of personal data, it shall comply with Directive 95/46/EC.

CHAPTER 5
Administrative measures and sanctions

Article 24
Administrative measures and sanctions

1. Member States shall lay down the rules on administrative measures and sanctions applicable in the event of conduct referred to in Article 25 to the persons responsible for breaches of the provisions of this Regulation and shall take all measures

necessary to ensure that they are implemented. The measures and sanctions provided for shall be effective, proportionate and dissuasive.

By ***[...]**** the Member States shall notify the rules referred to in the first subparagraph to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.

2. In the exercise of their sanctioning powers in the event of conduct referred to in Article 25, competent authorities shall cooperate closely to ensure that the administrative measures and sanctions produce the desired results of this Regulation and coordinate their action in order to avoid possible duplication and overlap when applying administrative measures and sanctions and fines to cross border cases in accordance with Article 19.

2a. Competent authorities shall also cooperate closely with the authorities of any Member State responsible for the investigation or prosecution of any criminal offences arising from conduct referred to in Article 25, to ensure that that the administrative and criminal measures and sanctions produce the desired result and to coordinate their action to avoid possible duplication or overlap where the breach may result in both criminal sanctions and administrative measures or sanctions.

Article 25
Sanctioning powers

This Article shall apply to the following conduct:

(a) a person engages ***or attempts to engage*** in insider dealing in breach of Article 9;

(b) a person recommends or induces another person to engage in insider dealing in breach of Article 9;

(c) a person improperly discloses insider information in breach of Article 9;

(d) a person engages in market manipulation in violation of Article 10;

(e) a person attempts to engage in market manipulation in violation of Article 10;

(f) a person who operates the business of a trading venue of a trading venue fails to adopt and maintain effective arrangements and procedures aimed at preventing and detecting market manipulation practices, in breach of Article 11(1) ;

(g) a person professionally arranging or executing transactions fails to have in place systems to detect and report transactions that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or fails to notify suspicious orders or transactions to the competent authority without delay, in breach of Article 11(2);

** **OJ please insert date: 12 months after the date of entry into force of this Regulation.***

(h) an issuer of a financial instrument or emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), fails to inform the public as soon as possible of inside information or to post on its Internet site inside information to be disclosed publicly, in breach of Article 12(1);

(i) an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), delays the disclosure of inside information where such a delay is likely to mislead the public or without ensuring the confidentiality of that information, in breach of Article 12(2);

(j) an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), fails to inform the competent authority that the disclosure of inside information was delayed, in breach of Article 12(***4***);

(k) an issuer of a financial instrument or an emission allowance market participant, or a person acting on their behalf or on their account fails to disclose to the public the inside information disclosed to any person in the normal exercise of duties resulting from employment or profession, in breach of Article 12(***6***);

(l) an issuer of a financial instrument, an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), or a person acting on their behalf or on their account fails to draw up, regularly update or transmit to the competent authority on request a list of insiders, in breach of Article 13(1);

(m) a person discharging managerial responsibilities within an issuer of financial instruments, an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), or a person closely associated with them fails to make public the existence of transactions conducted on their own account, in breach of Article 14(1) and (2);

(n) a person producing or disseminating information recommending or suggesting an investment strategy intended for distribution channels or for the public fails to take reasonable care to ensure the information is objectively presented or to disclose interests or conflicts of interest, in breach of Article 15(1);

(o) a person who works or has worked for a competent authority or for any authority or market undertaking to whom the competent authority has delegated its tasks discloses information covered by professional secrecy in breach of Article 21;

(p) a person fails to grant the competent authority access to a document and to provide a copy of it, requested in accordance with Article 17(2)(a);

(q) a person fails to provide information or to respond to a summons demanded by the competent authority in accordance with Article 17(2)(b);

(r) a market participant fails to provide competent authority with information in relation to commodity derivatives or with suspicious transaction reports or to grant direct access to traders' systems, requested in accordance with Article 17(2)(c);

(s) a person fails to grant access to a site for inspection, requested by the competent authority in accordance with Article 17(2)(d) ;

(t) a person fails to grant access to existing telephone and data traffic records requested in accordance with Article 17(2)(f);

(u) a person fails to comply with a request by the competent authority to cease a practice contrary to this Regulation, to suspend trading of financial instruments or to publish a corrective statement;

(v) a person carries out an activity when prohibited from doing so by the competent authority.

Article 26
Administrative measures and sanctions

1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 17, in the event of a breach ***of Article 9 or 10 or in the event of conduct referred to in Article 25***, competent authorities shall, in conformity with national law, have the power to impose at least the following administrative measures and sanctions:

(a) an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;

(b) measures to be applied for failure to cooperate in an investigation covered by Article 17;

(c) measures which have the effect of putting an end to a continuous breach of this Regulation and eliminating its effect;

(d) a public statement which indicates the person responsible and the nature of the breach, published on the website of competent authorities;

(e) correction of false or misleading disclosed information including by requiring any issuer or other person who has published or disseminated false or misleading information to publish a corrective statement;

(f) temporary ***or permanent*** prohibition of an activity;

(g) withdrawal of the authorisation of an investment firm as defined in Article 4 (1) of Directive [new MiFID];

(h) a temporary ***or permanent*** ban against any member of an investment firm's body or any other natural person, who is held responsible, to exercise functions in investment firms**.**

Where such a person has committed a breach of the provisions on insider trading or market manipulation, they will be prohibited for two years from

trading on a trading venue subject to this Regulation.

Where such a person has been previously subject to sanctions for insider trading or market manipulation, they shall be permanently prohibited from trading on a trading venue subject to this Regulation.

(i) suspend trading of the financial instruments concerned;

(j) request the freezing or sequestration of assets;

(k) administrative pecuniary sanctions of up to ***ten times*** the amount of the profits gained or losses avoided because of the breach where those can be determined***, if higher than any of the maximum amounts referred to in points (l) or (m), as applicable****;*

(l) ***without prejudice to point (k),*** in respect of a natural person, administrative pecuniary sanctions of up to ***an unlimited amount***;

(m) ***without prejudice to point (k),*** in respect of a legal person, administrative pecuniary sanctions of up to ***20*** % of its total annual turnover in the preceding business year; where the legal person is a subsidiary of a parent undertaking [as defined in Articles 1 and 2 of Directive 83/349/EEC], the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

2. Competent authorities may have other sanctioning powers in addition to those referred to in paragraph 1 and may provide for higher levels of administrative pecuniary sanctions than those established in that paragraph. ***In setting levels of administrative pecuniary sanctions above those established in paragraph 1, competent authorities may take into consideration the extent to which a breach of one or more of the requirements of this Regulation has negatively impacted the functioning of markets, the financial positions of participants in those markets and broader economic, social and environmental interests.***

3. Every administrative measure and sanction imposed for breach of this Regulation shall be published 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 publication would seriously jeopardise the stability of financial markets. Where publication would cause disproportionate damage to the ***natural persons*** involved, competent authorities shall publish the measures and sanctions ***against such natural persons*** on an anonymous basis.

Article 27
Effective application of sanctions

1. ***Member States shall ensure that when*** determining the type of administrative measures***,*** sanctions ***and level of fines***, competent authorities shall take into account all relevant circumstances, including:

(a) the gravity and duration of the breach;

(b) the degree of responsibility of the person concerned;

(ba) where applicable, the extent to which an employee has been encouraged or pressured to act in a certain way by the internal rules, instructions or practices of the relevant institution;

(c) the financial strength of the person concerned, as indicated by the total turnover of the legal person concerned or the annual income of the responsible natural person;

(d) the importance of the profits gained or losses avoided by the person responsible, insofar as they can be determined;

(e) the level of cooperation of the person concerned with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(f) previous breaches by the person concerned.

Additional factors may be taken into account by competent authorities, if such factors are specified in national law.

2. ***In order to ensure their consistent application and dissuasive effect across the Union,*** ESMA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation No (EU) 1095/2010 on types of administrative measures and sanctions and level of fines.

Article 28
Appeal

Member States shall ensure that decisions taken by the competent authority in accordance with this Regulation are subject to the right of appeal.

Article 28 a
Rights of the defence

Member States shall put in place appropriate procedures to ensure the rights of the defence of the person who is subject to an investigation on the basis of this Regulation. Such procedures shall ensure that the person concerned is heard before the adoption of a decision concerning him or her, and that that person has the right to seek effective judicial remedy against a decision concerning him or her.

Article 29
Reporting of violations

1. Member States shall ***ensure that effective mechanisms are*** put in place ▌to ***supplement those referred to in Article 11(2a) to*** encourage reporting of breaches of this Regulation to competent authorities, including at least specific procedures for the receipt of reports of breaches and their follow-up***. Such procedures shall ensure that the following principles are complied with:***

(a) appropriate protection***, including full anonymity,*** for persons who report potential or actual breaches***, in particular and without prejudice to national provisions regulating judicial proceedings, the confidentiality of the identity of those persons during all stages of the procedure***;

(b) protection of personal data concerning both the person who reports the potential or actual breaches and the accused person in compliance with the principles laid down in Directive 95/46/EC;

(c) appropriate ***protection for*** the accused person***; and***

(d) appropriate protection from adverse treatment at work for, and provision of legal assistance to, both the person who reports and the accused person.

1a. Member States shall require all financial institutions and trading venues to have anti-fraud strategies.

2. Financial incentives to persons who offer salient information about potential breaches of this Regulation may be granted in conformity with national law where such persons do not have a pre-existing legal or contractual duty to report such information, that the information is new, and it results in the imposition of an administrative sanction or measure or a criminal sanction for a breach of this Regulation.

3. The Commission shall adopt, by means of ***delegated*** acts in accordance with Article ***32***, measures to specify the procedures referred to in paragraph 1, including the modalities of reporting and the modalities for following-up of reports, the measures for the protection of persons.

Article 30
Exchange of information with ESMA

1. Competent ▌authorities shall provide ESMA annually with aggregated information regarding all administrative measures, sanctions and fines imposed***, either by them or by judicial authorities,*** in accordance with Articles 24, 25, 26, 27, 28 and 29. ESMA shall publish this information in an annual report.

2. Where the competent authority has disclosed administrative measures, sanctions and fines to the public, it shall simultaneously report those administrative measures, sanctions and fines to ESMA.

3. Where a published administrative measure, sanction and fine relates to an investment

firm authorised in accordance with Directive [new MiFID], ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3) of Directive [new MiFID].

4. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by ***[...]**.

Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

CHAPTER 6
DELEGATED ACTS

▌

Article 32
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. ▌ The power ***to adopt delegated acts referred to in Article 5(2), Article 10(4), Article 12(2), Article 14(6) and Article 29(3)*** shall be conferred ***on the Commission*** for an indeterminate period of time from the date referred to in Article 36(1).

3. The delegation of power ***referred to in Article 5(2), Article 10(4), Article 12(2), Article 14(6) and Article 29(3)*** may be revoked at any time by the European Parliament or by the Council. A decision *to revoke* shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act ***adopted pursuant to Article 5(2), Article 10(4), Article 12(2), Article 14(6) and Article 29(3)*** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***three months*** of notification of that act to the European Parliament and the Council or if,

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* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ***three months*** at the initiative of the European Parliament or the Council.

Article 32a
Deadline for the adoption of delegated acts

The Commission shall adopt delegated acts under Article 5(2), Article 10(4), Article 12(2), Article 14(6) and Article 29(3) by ...*.

CHAPTER 8
FINAL PROVISIONS

Article 34
Repeal of Directive 2003/6/EC

Directive 2003/6/EC shall be repealed with effect from ***[...]***. References to Directive 2003/6/EC shall be construed as references to this Regulation.

Article 34a
Review and report

By 30 June 2014, the Commission shall, after consulting the competent authorities and ESMA, report to the European Parliament and the Council on the appropriateness of the proportionate regime for issuers of financial instruments admitted to trading on a SME growth market, in particular as provided for in Article 12(4).

Article 34b
ESMA advisory committee on high-frequency trading

By 30 June 2014, ESMA shall set up an advisory committee of national experts to determine developments of high-frequency trading that could potentially constitute market manipulation with a view to:

(a) increasing ESMA's knowledge about high-frequency trading; and

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* ***OJ: please insert date: 18 months after the date of entry into force of this Regulation.***

** ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

(b) providing a list of abusive practices with regard to high-frequency trading, including spoofing, quote stuffing and layering, for the purposes of Article 5(2a).

Article 34c
ESMA advisory committee on technology in financial markets

By 30 June 2014, ESMA shall establish an advisory committee of national experts to establish which technological developments in the markets could potentially constitute market abuse or market manipulation with a view to:

(a) increase ESMA's knowledge about new technology related trading strategies and their potential for abuse,

(b) add to the list of abusive practices that have already been identified that relate specifically to high frequency trading strategies and

(c) assess the effectiveness of different trading venues approaches to dealing with the risks associated with any new trading practices.

As a result of the analysis, ESMA should produce additional guidelines for best practice across the EU financial markets.

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Article 35a
Staff and resources of ESMA

By ...*, ESMA shall assess its staffing and resources needs arising from the assumption of its powers and duties under this Regulation and submit a report to the European Parliament, the Council and the Commission.

Article 36
Entry into force and application

1. This Regulation shall enter into force [on the twentieth day following that] of its publication in the Official Journal of the European Union.

2. It shall apply ***[...]**** except for Article 3(2), Article 8(5), Article 11(3), Article 12(9), Article 13(4) and(6), 14(5) and(6), Article 15(3), Article 18(9), Article 19(9), Article 28(3) and Article 29(3) which shall apply immediately following the entry into force of this Regulation.

** **OJ please insert date: 12 months after the date of entry into force of this Regulation.***

*** **OJ please insert date: 12 months after the date of entry into force of this Regulation.***

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...;

For the European Parliament
The President

For the Council
The President

ANNEX I

A.

Indicators of manipulative behaviour related to false or misleading signals and to price securing

For the purposes of applying point (a) of paragraph 1 of Article 8 of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 3 thereof, the following non-exhaustive indicators, which should not necessarily be deemed in themselves to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

(a) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant financial instrument, related spot commodity contract, or auctioned product based on emission allowances, in particular when these activities lead to a significant change in their prices;

(b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances, lead to significant changes in the price of that financial instrument, related spot commodity contract, or auctioned product based on emission allowances;

(c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances;

(d) the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances, and might be associated with significant changes in the price of a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances;

(e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;

(f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances, or more generally the representation of the order book available to market participants, and are removed before they are executed;

(g) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

B.

Indicators of manipulative behaviours related to the employment of fictitious devices or any other form of deception or contrivance

For the purposes of applying point (b) of paragraph 1 of Article 8 of this Regulation, and without prejudice to the forms of behaviour set out in the second paragraph of point 3 thereof, the following non-exhaustive indicators, which should not necessarily be deemed in themselves to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

(a) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them;

(b) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate investment recommendations which are erroneous or biased or demonstrably influenced by material interest.

30.5.2012

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

for the Committee on Economic and Monetary Affairs

on the proposal for a regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)
(COM(2011)0651 – C7-0360/2011 – 2011/0295(COD))

Rapporteur: Richard Seeber

SHORT JUSTIFICATION

The Market Abuse Directive (MAD) 2003/6/EC introduced a comprehensive framework to tackle "market abuse" (insider dealing and market manipulation practices). The proposed Regulation extends the scope of the market abuse framework to any financial instrument covered by the Markets in Financial Instruments Directive (MiFID), aiming to increase market integrity and investor protection, while ensuring a single rulebook and level playing field.

The recast of the MiFID, proposed by the Commission at the same time, reclassifies emission allowances under the EU Emission Trading System (ETS) as financial instruments, thus rendering the entire EU emission allowances market subject to financial market regulation. While over 80% of the market of emission allowances is a derivative market, and is therefore already covered by MiFID and MAD, the new Market Abuse Regulation aims at extending market protection to the primary market and unregulated spot markets of emission allowances, in order to avoid fraudulent practices that could undermine trust in the ETS. MiFID and the Directive 2003/6/EC on market abuse would apply, upgrading the security of the market without interfering with its purpose, which remains emissions reduction.

If ETS emission allowances are reclassified as financial instruments as part of the review of the MiFID and emission allowances fall into the scope of the market abuse framework, provisions will need to be adjusted in consideration of the specific nature of these instruments.

Therefore, the proposal for a Regulation introduces a specific definition of inside information for emission allowances. Unlike for traditional financial instruments, the obligation to disclose inside information is not placed on the issuer (the public authority in charge, such as the Commission, whose climate policy goals should not be hindered by disclosure obligations), but is placed on market participants instead. The information to be disclosed will

normally concern the physical activity of the disclosing party, such as the capacity and utilisation of installations.

The Rapporteur for opinion supports the Commission proposal for what concerns the inclusion of emission allowances into the market abuse framework, to ensure that all organised trading is conducted on regulated trading venues, with nearly identical requirements of transparency, organisation and market surveillance. At the same time, a number of amendments have been put forward in order to improve the effectiveness of the proposal.

In particular, an important aspect of the Regulation is that it foresees an exemption from the obligation to disclose inside information for those market participants that are likely to have no material impact on the price formation of emission allowances. The Commission intends to set the minimum threshold for the exemption (expressed in terms of annual CO_2 emissions or thermal input or a combination thereof) by means of a delegated act.

In practice, only information concerning the activity of the largest emitters in the ETS (typically belonging to the EU power sector) can be expected to have a significant impact on the carbon price formation: in the EU, it is estimated that only around 7% of installations (the "large" ones emitting over 500.000 tons of CO_2 per year) represent 80% of emissions, while just 20 companies hold nearly half of the allowances allocated on the market.

It would then be appropriate, to avoid market uncertainty, if the above mentioned thresholds were explicitly set from the outset in the text of the Regulation. The Rapporteur proposes to set the thresholds to 3 million tons of carbon dioxide equivalent and 300 MW of rated thermal input for combustion activities, aiming at imposing information disclosure obligations only on the most relevant market players. It is however deemed appropriate to empower the Commission with the power of modifying these thresholds by delegated acts, in order to take into account technological and market developments, for instance to address price volatility or perceived market asymmetries.

Moreover, it is clarified that Commission and Member States officials with access to inside information should clearly be prohibited from engaging in market abuse practices.

Finally, a provision is added to include into the scope of the Regulation future emission trading schemes the EU may participate in as a result of global agreements, so as to ensure the same level of market protection for these new markets as for the EU ETS.

AMENDMENTS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation
Recital 15 a (new)

Text proposed by the Commission	Amendment
	(15a) As a consequence of the classification of emission allowances as financial instruments as part of the review of the Markets in Financial Instruments Directive, those instruments will also come within the scope of this Regulation. Pursuant to the EU Emissions Trading Scheme (ETS) Directive, the European Commission, Member States and other officially designated bodies are inter alia responsible for the technical issuance of emission allowances, their free allocation to eligible industry sectors and new entrants and more generally the development and implementation of the Union's climate policy framework which underpins the supply of emission allowances for the EU ETS compliance buyers. In the exercise of those duties, those public bodies have access to price-sensitive non-public information and pursuant to the EU ETS Directive they may need to perform certain market operations in relation to emission allowances. In order to preserve the ability of the European Commission, Member States and other officially designated bodies to develop and execute the Union's climate policy, the activities of those public bodies, undertaken solely in the pursuit of that policy and concerning emission allowances, should be exempt from the application of this Regulation. Such exemption should not have a negative impact on the overall market transparency, as those public bodies have statutory obligations to operate in a way that ensures orderly, fair and non-discriminatory disclosure of and access to any new decisions, developments and data, which have a price-sensitive nature.

Furthermore, safeguards of fair and non-discriminatory disclosure of specific price-sensitive information held by public authorities exist under the EU ETS Directive and its implementing acts. At the same time, the exemption for public bodies acting in pursuit of the Union's climate policy should not extend to cases when those public bodies engage in a conduct or in transactions which are not in the pursuit of the Union's climate policy or when physical persons working for any of those bodies engage in a conduct or in transactions on their own account.

(See Amendment 2 to Recital 16.)

Justification

The reasons and boundaries of the exclusion of public bodies (issuers of emission allowances) from the scope of this Regulation, when their actions are undertaken in the pursuit of the Union's climate policy, should be better clarified. It should also be made clear that public officials with access to inside information about emission allowances are prohibited from using it to engage in market abuse conduct.

Amendment 2

Proposal for a regulation
Recital 16

Text proposed by the Commission	Amendment
(16) ***As a consequence of the classification of emission allowances as financial instruments as part of the review of the Markets in Financial Instruments Directive, those instruments will also come within the scope of this Regulation. Bearing in mind the specific nature of those instruments and structural features of the carbon market, it is necessary to ensure that the activity of Member States, the European Commission and other officially designated bodies involving emission allowances is not restricted in***	(16) ***Since considerable amounts of price-sensitive non-public information impacting the demand for emission allowances are held by individual market participants, it is appropriate that*** the duty to disclose inside information ***is*** addressed to the participants in that market in general. Nevertheless, in order to avoid exposing the market to reporting that is not useful as well as to maintain cost-efficiency of the measure foreseen, it appears necessary to limit the regulatory impact of that duty to only those EU ETS operators, that – by

the pursuit of the Union's climate policy. Moreover, the duty to disclose inside information ***needs to be*** addressed to the participants in that market in general. Nevertheless, in order to avoid exposing the market to reporting that is not useful ***and*** as well as to maintain cost-efficiency of the measure foreseen, it appears necessary to limit the regulatory impact of that duty to only those EU ETS operators, that – by virtue of their size and activity – can reasonably be expected to be able to have a significant effect on the price of emission allowances. Where emission allowance market participants already comply with equivalent inside information disclosure duties, notably pursuant to Regulation on energy market integrity and transparency (Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency), the obligation to disclose inside information concerning emission allowances should not lead to the duplication of mandatory disclosures with substantially the same content.

virtue of their size and activity – can reasonably be expected to be able to have a significant effect on the price of emission allowances. ***Appropriate minimum thresholds for the purpose of the application of this exemption should be set in this Regulation and the Commission should be empowered to adopt measures modifying these minimum thresholds by means of a delegated act. The information to be disclosed should concern the physical operations of the disclosing party and not its plans or strategies for trading emission allowances.*** Where emission allowance market participants already comply with equivalent inside information disclosure duties, notably pursuant to Regulation on energy market integrity and transparency (Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency), the obligation to disclose inside information concerning emission allowances should not lead to the duplication of mandatory disclosures with substantially the same content.

(See Amendment 1 to Recital 15a.)

Justification

For the sake of market certainty, it is appropriate that the thresholds for the exemption from the obligation to disclose inside information are set in the text of the Regulation and mentioned in a Recital together with the reasons why they are introduced. It is also important to explicitly exclude trading strategies from the information that is required to be disclosed.

Amendment 3

Proposal for a regulation
Recital 42

Text proposed by the Commission	Amendment
(42) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty.	(42) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty.

In particular, delegated acts should be adopted in respect of the conditions for buy-back programmes and stabilisation of financial instruments, the indicators for manipulative behaviour listed in Annex 1, the ***threshold*** for determining the application of the public disclosure obligation to emission allowance market participants, the conditions for drawing up insider lists and the threshold and conditions relating to managers' transactions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.	In particular, delegated acts should be adopted in respect of the conditions for buy-back programmes and stabilisation of financial instruments, the indicators for manipulative behaviour listed in Annex 1, the ***thresholds*** for determining the application of the public disclosure obligation to emission allowance market participants, the conditions for drawing up insider lists and the threshold and conditions relating to managers' transactions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Justification

There are two thresholds, one expressed in terms of carbon dioxide equivalent and another in terms of rated thermal input for combustion activities.

Amendment 4

Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission	Amendment
2. This Regulation does not apply to the activity of a Member State, the European Commission or any other officially designated body, or of any person acting on their behalf, which concerns emission allowances and which is undertaken in the pursuit of the Union's climate policy.	2. This Regulation does not apply to the activity of a Member State, the European Commission or any other officially designated body, or of any person acting on their behalf, which concerns emission allowances and which is undertaken ***solely*** in the pursuit of the Union's climate policy.

Justification

It should be clarified that the exclusion from the scope is provided to bodies acting exclusively

in the pursuit of the Union's climate policy, while individual public officials with access to inside information that may influence the market of emission allowances are still covered in full by the rules on market abuse.

Amendment 5

Proposal for a regulation
Article 6 – paragraph 2

Text proposed by the Commission	Amendment
2. For the purposes of applying paragraph 1, information shall be deemed to be of a precise nature if it indicates 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 do so and if 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, the related spot commodity contracts, or the auctioned products based ***on the emission allowances***.	2. For the purposes of applying paragraph 1, information shall be deemed to be of a precise nature if it indicates 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 do so and if 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, the related spot commodity contracts, ***the emission allowances*** or the auctioned products based ***thereon***.

(See Amendment 6 to Article 6, paragraph 3.)

Justification

The change is introduced to harmonise the wording with other provisions in the Regulation.

Amendment 6

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission	Amendment
3. For the purposes of applying paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned	3. For the purposes of applying paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments, the related spot commodity contracts, ***the emission***

products based ***on the emission allowances*** shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.	***allowances*** or the auctioned products based ***thereon*** shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.

(See Amendment 5 to Article 6, paragraph 2.)

Amendment 7

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 2

Text proposed by the Commission	Amendment
The first subparagraph shall not apply to an emission allowance market participant where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold.	The first subparagraph shall not apply to an emission allowance market participant where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of ***3 million tonnes of*** carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold ***of 300 megawatts***.

Justification

To increase market certainty, it is appropriate to set the thresholds for the exemption from disclosure obligations from the outset in the text of the Regulation. The specific figures have been chosen to include only large market participants, whose activities are likely to have material impact on price formation, covering approximately 75% of the overall market of allowances. Note that 3 million tons of carbon dioxide equivalent correspond to 6 "large" installations emitting 500.000 tons each.

Amendment 8

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 3

Text proposed by the Commission	Amendment
The Commission shall adopt, by means of a delegated act in accordance with Article	The Commission shall ***be empowered to*** adopt, by means of a delegated act in

31, measures ***establishing a*** minimum threshold of carbon dioxide equivalent and ***a*** minimum threshold of rated thermal input for the purposes of application of the exemption provided for in the second subparagraph.	accordance with Article 31, measures ***modifying the*** minimum threshold of carbon dioxide equivalent and ***the*** minimum threshold of rated thermal input for the purposes of application of the exemption provided for in the second subparagraph. ***While adopting the delegated act referred to in this subparagraph, the Commission shall assess whether modifying the minimum threshold of carbon dioxide equivalent or the minimum threshold of rated thermal input responds to the needs arising from new technological and market developments.***

Justification

While setting a threshold from the outset is instrumental in ensuring more clarity for market participants and avoid legal uncertainty, it is still useful for the Commission to be empowered to modify the thresholds by a delegated act, in order to be able to address market problems (perceived asymmetries, price volatility, etc.) and/or policy needs (such as emissions diminishing over time due to the Union's climate policy).

Amendment 9

Proposal for a regulation
Article 12 – paragraph 5 – introductory part

Text proposed by the Commission	Amendment
5. A competent authority may permit the delay by an issuer of a financial instrument of the public disclosure of inside information provided that the following conditions are satisfied:	5. A competent authority may permit the delay by an issuer of a financial instrument ***or an emission allowance market participant*** of the public disclosure of inside information provided that the following conditions are satisfied:

Justification

There is no reason for emission allowance market participants to be excluded from the possibility of being given official permission to delay the disclosure of inside information.

Amendment 10

Proposal for a regulation
Article 20 – paragraph 1a (new)

Text proposed by the Commission	Amendment
	1a. Where the Union participates in an emission trading scheme with a third country, emission allowances under this scheme and auctioned products based thereon shall fall into the scope of this Regulation. Where necessary, the Commission shall adopt, by means of delegated acts in accordance with Article 31, measures establishing the criteria for the inclusion of those emission allowances and auctioned products in the scope of this Regulation.

Justification

Market protection should be guaranteed also for trading schemes the Union may in the future participate in as a result of global agreements.

Amendment 11

Proposal for a regulation
Article 31

Text proposed by the Commission	Amendment
The Commission shall be empowered to adopt delegated acts in accordance with Article 32 concerning the supplementing and amending of the conditions for buy-back programmes and stabilisation of financial instruments, the definitions in this Regulation, the conditions for drawing up insider lists, the conditions relating to managers' transactions and the arrangements for persons who provide information that may lead to the detection of breaches of this Regulation.	The Commission shall be empowered to adopt delegated acts in accordance with Article 32 concerning the supplementing and amending of the conditions for buy-back programmes and stabilisation of financial instruments, the definitions in this Regulation, ***the thresholds for determining the application of the public disclosure obligation to emission allowance market participants,*** the conditions for drawing up insider lists, the conditions relating to managers' transactions and the arrangements for persons who provide information that may lead to the detection of breaches of this Regulation.

Justification

The emission thresholds should be mentioned among the provisions that the Commission may supplement or amend by means of delegated acts.

PROCEDURE

Title	Insider dealing and market manipulation (market abuse)
References	COM(2011)0651 – C7-0360/2011 – 2011/0295(COD)
Committee responsible Date announced in plenary	ECON 15.11.2011
Opinion by Date announced in plenary	ENVI 1.12.2011
Rapporteur Date appointed	Richard Seeber 15.12.2011
Discussed in committee	25.4.2012
Date adopted	30.5.2012
Result of final vote	+: 44 –: 3 0: 1
Members present for the final vote	Kriton Arsenis, Sophie Auconie, Lajos Bokros, Milan Cabrnoch, Martin Callanan, Esther de Lange, Anne Delvaux, Bas Eickhout, Edite Estrela, Jill Evans, Elisabetta Gardini, Matthias Groote, Satu Hassi, Jolanta Emilia Hibner, Karin Kadenbach, Christa Klaß, Corinne Lepage, Peter Liese, Kartika Tamara Liotard, Zofija Mazej Kukovič, Linda McAvan, Radvilė Morkūnaitė-Mikulėnienė, Miroslav Ouzký, Vladko Todorov Panayotov, Andres Perello Rodriguez, Mario Pirillo, Pavel Poc, Anna Rosbach, Oreste Rossi, Kārlis Šadurskis, Carl Schlyter, Richard Seeber, Theodoros Skylakakis, Bogusław Sonik, Salvatore Tatarella, Åsa Westlund, Glenis Willmott, Sabine Wils
Substitute(s) present for the final vote	Gaston Franco, James Nicholson, Eva Ortiz Vilella, Justas Vincas Paleckis, Vittorio Prodi, Britta Reimers, Michèle Rivasi, Alda Sousa, Marita Ulvskog, Andrea Zanoni

20.6.2012

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the proposal for a regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)
(COM(2011)0651 – C7-0360/2011 – 2011/0295(COD))

Rapporteur: Alexandra Thein

SHORT JUSTIFICATION

The rapporteur warmly welcomes the Commission's aim of stepping up and updating measures to combat market abuse and insider dealing.

To this end, replacing the existing directive with a regulation is also the right approach, as this will ensure that uniform rules and definitions apply in the EU and that the measures are applied uniformly in the Member States. This is desirable because the existing directive leaves scope for interpretation which lead to legal uncertainty and may also result in loopholes which can be exploited to breach its provisions.

This opinion is intended, in particular, to put forward criticisms from the legal point of view and propose solutions. The rapporteur considers it important to point out that the proposed amendments are not intended to allow anybody to evade penalties or punishments which they have deserved. The aim is rather to bring about legal certainty and clarity and thus facilitate prosecution and retribution for market abuse in practice.

The rapporteur's main criticisms are as follows:

– She doubts whether the blanket exclusion of monetary and public debt management activities and climate policy activities is justified, and would like to see this aspect reviewed.

– The definition of 'inside information' is complex and difficult. The main issue here is the clarity of the definition, which is ultimately the basis for imposing penalties and hence for holding infringers accountable. It is regrettable that it was not possible for the Commission proposal to take into account the Court of Justice's decision on the request for a preliminary ruling submitted by Germany's Federal Court of Justice (submitted on 14 January 2011, Markus Geltl v Daimler AG, Case C-19/11). The request concerns vital aspects of the definition, such as the existence of inside information in the case of a protracted process

involving a number of intermediate steps, and the concept of reasonable expectation. The Conclusions of the Advocate General, which interpret the concept very broadly, have been available since 21 March 2012. The Court's decision will have to weigh carefully the definition and any necessary demarcations, for example in relation to the newly created category of inside information pursuant to Article 6(1)(e). However, bearing in mind that the Court of Justice has yet to take its decision, the rapporteur has decided not to table any amendments concerning this point at this stage.

– The proposal to penalise even an attempt to commit a breach is in principle to be welcomed, as it expands the circumstances in which retribution is possible. However, it is not clear whether and how, in practice, an attempt can actually be shown to have been made.

– The preventive and defensive systems provided for by Article 11(2) of the proposal should take account of whether the persons concerned can actually meet the requirements in the light of the nature and extent of the dealings undertaken, and must be proportionate.

– The unit threshold of EUR 20 000 for disclosure of managers' own transactions does not take sufficient account of circumstances in the Member States, particularly the average volume of trading, which may vary greatly, for example depending on the size of the stock exchange or of transactions in a Member State. It would therefore be preferable, while legislating for a threshold, to leave it to Member States to decide where the line should be drawn within a range from EUR 20 000 to 100 000. This would already render the law considerably more uniform than it is at present.

– When announcing the imposition of penalties, the identity of the persons responsible for breaches should not be published. This would be disproportionate, particularly bearing in mind that in many Member States violent offenders cannot be publicly identified either, under data protection legislation. The type and nature of the breach should not be indicated either, if this would cause disproportionate damage to those concerned.

– On the subject of whistle-blowing, it is to be welcomed that, for the time being, the creation of financial incentives is only proposed as an option for Member States. Differing legal traditions exist in the EU in this regard; the proposed amendments to the text are intended to emphasise this more clearly.

– The procedures for reporting breaches should be decided not by means of implementing acts pursuant to Article 291 TFEU but by means of delegated acts pursuant to Article 290 TFEU, as their adoption serves to supplement non-essential elements of the provisions of the Regulation.

– The ne bis in idem principle, particularly where both administrative and criminal-law penalties are applicable, should be explicitly stipulated.

– As application and implementation are fundamental to the success of EU law, a review clause should be inserted. This will also make it possible to review the effect of certain provisions such as those concerning retribution for attempted market abuse and the exclusion of monetary and public debt management activities and climate policy activities.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation
Recital 22

Text proposed by the Commission	Amendment
(22) Manipulation or attempted manipulation of financial instruments may also consist in placing orders which may not be executed. Further, a financial instrument may be manipulated through behaviour which occurs outside a trading venue. Therefore, persons who professionally arrange or execute transactions and are required to have systems in place to detect and report suspicious transactions should also report suspicious orders and suspicious transactions that take place outside a trading venue.	(22) Manipulation or attempted manipulation of financial instruments may also consist in placing orders which may not be executed. Further, a financial instrument may be manipulated through behaviour which occurs outside a trading venue. Therefore, persons who professionally arrange or execute transactions and are required to have systems in place to detect and report suspicious transactions should also report suspicious orders and suspicious transactions that take place outside a trading venue. ***In the context of regulatory technical standards, ESMA should lay down appropriate rules and procedures as well as appropriate systems and notification templates, with the proviso that, for the purpose of assessing appropriateness, account should always also be taken of the extent to which compulsory notification can reasonably be expected of the parties concerned, in the light of the nature and size of their transactions.***

Amendment 2

Proposal for a regulation
Recital 28

Text proposed by the Commission	Amendment
(28) Greater transparency of transactions	(28) Greater transparency of transactions

conducted by persons discharging managerial responsibilities at the issuer level and, where applicable, persons closely associated with them, constitutes a preventive measure against market abuse. The publication of those transactions on at least an individual basis can also be a highly valuable source of information to investors. It is necessary to clarify that the obligation to publish those managers' transactions also includes the pledging or lending of financial instruments and also transactions by another person exercising discretion for the manager. ***In order to*** ensure an appropriate balance between the level of transparency and the number of reports notified to competent authorities and the public***,*** a ***uniform*** threshold should be introduced in this Regulation below which transactions shall not be ***notified***.

conducted by persons discharging managerial responsibilities at the issuer level and, where applicable, persons closely associated with them, constitutes a preventive measure against market abuse. The publication of those transactions on at least an individual basis can also be a highly valuable source of information to investors. It is necessary to clarify that the obligation to publish those managers' transactions also includes the pledging or lending of financial instruments and also transactions by another person exercising discretion for the manager. ***A resolution of this issue should on the one hand*** ensure an appropriate balance between the level of transparency and the number of reports notified to competent authorities and the public ***while on the other hand, however, taking account of circumstances in the Member States, particularly the average volume of trading, which may vary greatly, for example depending on the size of the stock exchange or of transactions in a Member State.*** A threshold should ***therefore*** be introduced in this Regulation below which transactions shall not be ***subject to compulsory notification, which Member States may set within a certain range***.

Amendment 3

Proposal for a regulation
Recital 36

Text proposed by the Commission	Amendment
(36) Whistleblowers bring new information to the attention of competent authorities which assists them in detecting and sanctioning cases of insider dealing and market manipulation. However, whistleblowing may be deterred for fear of retaliation, or for lack of incentives. This Regulation should therefore ***ensure that adequate arrangements are in place to***	(36) Whistleblowers bring new information to the attention of competent authorities which assists them in detecting and sanctioning cases of insider dealing and market manipulation. However, whistleblowing may be deterred for fear of retaliation, or for lack of incentives. This Regulation should therefore ***contain provisions concerning encouragement for***

encourage whistleblowers to alert competent authorities to possible breaches of this Regulation and ***to protect them*** from retaliation. However, whistleblowers should only be eligible for those incentives where they bring to light new information which they are not already legally obliged to notify and where this information results in a sanction for a breach of this Regulation. Member States should also ensure that whistleblowing schemes they implement include mechanisms that provide appropriate protection of a reported person, particularly with regard the right to the protection of his personal data and procedures to ensure the right of the reported person of defence and to be heard before the adoption of a decision concerning him as well as the right to seek effective remedy before a court against a decision concerning him	whistleblowers to alert competent authorities to possible breaches of this Regulation and ***concerning their protection*** from retaliation. ***At the same time, however, the various legal traditions in the Member States should be taken into account, for example regarding the creation of financial incentives. Member States should accordingly have the option of encouraging whistleblowers to notify the competent authorities of possible breaches of this Regulation, in accordance with their existing domestic legal systems.*** However, whistleblowers should only be eligible for those incentives where they bring to light new information which they are not already legally obliged to notify and where this information results in a sanction for a breach of this Regulation. Member States should also ensure that whistleblowing schemes they implement include mechanisms that provide appropriate protection of a reported person, particularly with regard the right to the protection of his personal data and procedures to ensure the right of the reported person of defence and to be heard before the adoption of a decision concerning him as well as the right to seek effective remedy before a court against a decision concerning him

Amendment 4

Proposal for a regulation
Recital 42

Text proposed by the Commission	Amendment
(42) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty. In particular, delegated acts should be adopted in respect of the conditions for buy-back programmes and stabilisation of financial instruments, the indicators for manipulative behaviour listed in Annex 1,	The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty. In particular, delegated acts should be adopted in respect of the conditions for buy-back programmes and stabilisation of financial instruments, the indicators for manipulative behaviour listed in Annex 1, the threshold for

the threshold for determining the application of the public disclosure obligation to emission allowance market participants, the conditions for drawing up insider lists ***and*** the threshold and conditions relating to managers' transactions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.	determining the application of the public disclosure obligation to emission allowance market participants, the conditions for drawing up insider lists**,** the threshold and conditions relating to managers' transactions ***and the procedures for notifying breaches of this Regulation***. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Amendment 5

Proposal for a regulation
Recital 43

Text proposed by the Commission	Amendment
(43) In order to ensure uniform conditions for the implementation of this Regulation in respect of procedures for the reporting of violations of this Regulation implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 183/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.	***deleted***

Amendment 6

Proposal for a regulation
Recital 48 a (new)

Text proposed by the Commission	Amendment
	(48a) Investment advice as defined in MiFID, through the provision of a personal recommendation to a client in respect of one or more transactions relating to financial instruments (in particular, informal short-term investment recommendations, originating from inside the sales or trading departments of an investment firm or a credit institution, expressed to their clients), which are not likely to become publicly available, should not be considered in themselves as recommendations within the meaning of this Regulation.

Justification

This amendment makes clear that investment advice and informal short-term investment recommendations, which are not likely to become publicly available, should not be subject to the research disclosure rules. This wording is based on Recital 3 of Commission Directive 2003/125/EC implementing the provision of Article 6(5) of MAD (2003).

Amendment 7

Proposal for a regulation
Recital 48 b (new)

Text proposed by the Commission	Amendment
	(48b) The mere fact that, in good faith market-makers, bodies authorised to act as counterparties, or persons authorised to execute orders on behalf of third parties with inside information confine themselves, in the first two cases, to pursuing their legitimate business of buying or selling financial instruments or, in the last case, to carrying out an order dutifully, should not be deemed alone to constitute use of such inside information.

Justification

For legal certainty purposes, recitals establishing the scope of the insider dealing offence mentioned in MAD 2003 should be reinserted in MAR (i.e. Recital 18). Furthermore, the ECJ Spector Photo case recognises that a person is able to establish a defence to a charge under certain circumstances, by such as market-makers and bodies authorized to act as counterparties (Paragraph 58 of Spector Photo NV v CBFA (Case C-45/08)).

Amendment 8

Proposal for a regulation
Recital 48 c (new)

Text proposed by the Commission	Amendment
	(48c) Having access to inside information relating to another company in the context of a public takeover bid for the purpose of gaining control of that company or proposing a merger with that company should not be deemed alone to constitute insider dealing.

Justification

For legal certainty purposes, recitals establishing the scope of the insider dealing offence mentioned in MAD 2003 should be reinserted in MAR (i.e. Recital 29). Furthermore, the ECJ Spector Photo case recognises that a person would be able to establish a defence to a charge under certain circumstances, by such as market-makers and bodies authorized to act as counterparties (Paragraph 60 of Spector Photo NV v CBFA (Case C-45/08)).

Amendment 9

Proposal for a regulation
Recital 48 d (new)

Text proposed by the Commission	Amendment
	(48d) 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 should not be deemed alone to constitute the use

of inside information.

Justification

For legal certainty purposes, recitals establishing the scope of the insider dealing offence mentioned in MAD 2003 should be reinserted in MAR (i.e. Recital 30). Furthermore, the ECJ Spector Photo Case recognises that a person is able to establish a defence to a charge under certain circumstances, such as the prior decision to acquire or dispose (Paragraph 60 of Spector Photo NV v CBFA (Case C-45/08)).

Amendment 10

Proposal for a regulation
Recital 48 e (new)

Text proposed by the Commission	Amendment
	(48e) Research and estimates developed from publicly available data should not be regarded as inside information; and, therefore, any transaction carried out on the basis of such research or estimates should not be deemed alone to constitute insider dealing within the meaning of this Regulation.

Justification

For legal certainty purposes, recitals establishing the scope of the insider dealing offence mentioned in MAD 2003 should be reinserted in MAR (i.e. Recital 31).Research and estimates developed from publicly available data should not be considered inside information; otherwise, this would adversely undermine the efficient functioning of financial markets.

Amendment 11

Proposal for a regulation
Recital 48 f (new)

Text proposed by the Commission	Amendment
	(48f) Information regarding the market participant's own plans and strategies for trading should not be considered as inside information.

Justification

This recital is particularly important where disclosure obligations of the kind envisaged by Recital 12 of REMIT are placed upon all market participants for a particular market. Otherwise, market participants would be required to publish their trading plans and strategies.

Amendment 12

Proposal for a regulation
Recital 48 g (new)

Text proposed by the Commission	Amendment
	(48g) Trading in financial instruments for which a firm has received a request for a locate of an individual security, or for a confirmation of reasonable expectation of settlement, in order for a client to satisfy the requirements of the "Regulation on Short Selling and certain aspects of Credit Default Swaps" can be legitimate and should not therefore be alone regarded as insider dealing.

Justification

Due to the interaction between MAR and Short Selling, information relating to a short sale could be considered inside information under MAR. The knowledge that a client is going to enter into a short sale is technically inside information, which we could not therefore act upon, without it being considered as potentially criminal. The present amendment provides the appropriate carve-out for an activity performed by firms carrying out their regular business.

Amendment 13

Proposal for a regulation
Article 6 – paragraph 1 – point a

Text proposed by the Commission	Amendment
(a) information ***of a precise nature,*** which has not been made public**,** relating**,** directly or indirectly, to one or more issuers of financial instruments or to one or more	(a) ***specific*** information which has not been made public relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial

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.	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; *(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)*

Amendment 14

Proposal for a regulation
Article 6 – paragraph 1 – point d a (new)

Text proposed by the Commission	Amendment
	(da) in relation to spot commodities and financial instruments other than derivatives on commodities,
	(i) other than relevant information of precise nature which if it were made public, would be likely to have a material and significant effect on the price of such financial instruments, and
	(ii) where the use of such information would be regarded by a reasonable investor who regularly deals on the market and in the financial instrument concerned as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the relevant markets;

Justification

The new Article 6(1)(da) introduces a free standing category of inside information, which is neither 'precise' nor price sensitive', but which is simply treated as insider information by virtue of the application of a 'reasonable investor test'.

Amendment 15

Proposal for a regulation
Article 6 – paragraph 1 – point e

Text proposed by the Commission	Amendment
(e) information not falling within paragraphs (a), (b), (c) or (d) relating to one or more issuers of financial instruments or to one or more financial instruments, which is not generally available to the public, but which, if it were available to a reasonable investor, who regularly deals on the market and in the financial instrument or a related spot commodity contract concerned, would be regarded by that person as relevant when deciding the terms on which transactions in the financial instrument or a related spot commodity contract should be effected.	***deleted***

Amendment 16

Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission	Amendment
3. For the purposes of ***applying*** paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.	3. For the purposes of ***supplementing*** paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.

Justification

The text proposed by the Commission leads to significant legal uncertainty, since the 'significant effect on price' will depend on the test conducted by the relevant authority, based on what a reasonable investor would be likely to use as part of the basis of his investment decision (vague and imprecise criterion).

Amendment 17

Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission	Amendment
1. Any person who operates the business of a trading venue shall adopt and maintain effective arrangements and procedures in accordance with [Articles 31 and 56] of Directive [new MiFID] aimed at preventing and detecting market abuse.	1. Any person who operates the business of a trading venue shall adopt and maintain effective arrangements and procedures in accordance with [Articles 31 and 56] of Directive [new MiFID] aimed at preventing and detecting market abuse. ***These shall be notified to the competent supervisory authority.***

Amendment 18

Proposal for a regulation
Article 11 – paragraph 3 – subparagraph 1

Text proposed by the Commission	Amendment
3. ESMA shall develop draft regulatory technical standards to determine appropriate arrangements and procedures for ***persons to comply*** with the requirements established in paragraph 1 and to determine ***the systems and*** notification templates to be used ***by persons to comply*** with the requirements established in paragraph 2.	3. ESMA shall develop draft regulatory technical standards to determine appropriate arrangements and procedures for ***compliance*** with the requirements established in paragraph 1 and to determine ***appropriate*** notification templates to be used ***for compliance*** with the requirements established in paragraph 2. ***For the purpose of assessing appropriateness, ESMA shall take account of the extent to which compliance with the requirements established in paragraph 2 can reasonably be expected of the persons concerned, in the light of the nature and size of their transactions.***

Amendment 19

Proposal for a regulation
Article 14 – paragraph 3

Text proposed by the Commission	Amendment
3. Paragraph 1 shall not apply to transactions totalling ***under EUR 20,000*** over the period of a calendar year.	3. Paragraph 1 shall not apply to transactions totalling ***less than a threshold figure to be determined by the Member States*** over the period of a calendar year***; Member States shall set this threshold figure at between EUR 20 000 and 100 000.***

Amendment 20

Proposal for a regulation
Article 14 – paragraph 5

Text proposed by the Commission	Amendment
5. The Commission may adopt, by means of delegated acts in accordance with Article 31, measures modifying the threshold in paragraph 3 taking into account the developments in financial markets.	***deleted***

Amendment 21

Proposal for a regulation
Article 17 – paragraph 5 a (new)

Text proposed by the Commission	Amendment
	5a. A person shall not be considered in breach of any restriction on disclosure of information posed by a contract or by any legislative, regulatory or administrative provision when making information available in accordance with paragraph 2.

Justification

It should be clear that a contravention of MAR provisions due to the application of this

Regulation does not invalidate any transaction or render any transaction unenforceable. This principle is already reflected in Article 9(4) of EMIR (text adopted by the European Parliament on 29 March 2012).

Amendment 22

Proposal for a regulation
Article 24 – paragraph 2 a (new)

Text proposed by the Commission	Amendment
	2a. Competent authorities shall also cooperate closely with the authorities of any Member State responsible for the investigation or prosecution of any criminal offences arising from a breach referred to in Article 25, to ensure that that the administrative and criminal measures and sanctions produce the desired result and to coordinate their action to avoid possible duplication or overlap where the breach may result in both criminal sanctions and administrative measures or sanctions.

Justification

This amendment aims to avoid that a person is subject to both penal as well as administrative sanctions for the same conduct.

Amendment 23

Proposal for a regulation
Article 25 – title

Text proposed by the Commission	Amendment
Sanctioning powers	***Scope***

Amendment 24

Proposal for a regulation
Article 26 – title

Text proposed by the Commission	Amendment
Administrative measures and sanctions	***List and publication of*** administrative measures and sanctions

Amendment 25

Proposal for a regulation
Article 26 – paragraph 1

Text proposed by the Commission	Amendment
1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 17, in case of a breach referred to in ***paragraph 1***, competent authorities shall, in conformity with national law, have the power to impose at least the following administrative measures and sanctions:	1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 17, in the event of a breach referred to in ***Article 25***, competent authorities shall, in conformity with national law, have the power to impose at least the following administrative measures and sanctions:

Amendment 26

Proposal for a regulation
Article 26 – paragraph 1 – point m

Text proposed by the Commission	Amendment
(m) in respect of a legal person, administrative pecuniary sanctions of up to 10 % of its total annual turnover in the preceding business year; where the legal person is a subsidiary of a parent undertaking [as defined in Articles 1 and 2 of Directive 83/349/EEC], the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.	(m) in respect of a legal person, administrative pecuniary sanctions of up to 10 % of its total annual turnover in the preceding business year***, but not exceeding EUR 5 000 000***; where the legal person is a subsidiary of a parent undertaking [as defined in Articles 1 and 2 of Directive 83/349/EEC], the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

Amendment 27

Proposal for a regulation
Article 26 – paragraph 3

Text proposed by the Commission	Amendment
3. Every administrative measure and sanction imposed for breach of this Regulation shall be published 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 publication would seriously jeopardise the stability of financial markets. Where publication would cause disproportionate damage to the parties involved, competent authorities shall publish the measures and sanctions ***on an anonymous basis***.	3. Every administrative measure and sanction imposed for breach of this Regulation shall be published without undue delay, including information on the type and nature of the breach, unless such publication would seriously jeopardise the stability of financial markets. Where publication would cause disproportionate damage to the parties involved, competent authorities shall publish the measures and sanctions ***without indicating the type and nature of the breach***.

Amendment 28

Proposal for a regulation
Article 26 a (new)

Text proposed by the Commission	Amendment
	Article 26a
	Cases where both administrative and criminal-law penalties are applicable
	If, in the event of a breach of the provisions of this Regulation as referred to in Article 25, both an administrative measure or penalty and a criminal-law penalty are applicable, only the criminal-law penalty shall be applied. However, an administrative penalty may be imposed in relation to the breach if the criminal-law penalty is not imposed.

Amendment 29

Proposal for a regulation
Article 27 – paragraph 1 – point a

Text proposed by the Commission	Amendment
(a) the gravity and duration of the breach;	(a) the ***nature,*** gravity and duration of the breach;

Amendment 30

Proposal for a regulation
Article 27 – paragraph 2 a (new)

Text proposed by the Commission	Amendment
	2a. An infringement of the provisions under this Regulation shall not of itself affect the validity of any transaction, render any transaction unenforceable nor give rise to any claim for compensation, when the transaction has been entered on good faith.

Justification

For legal certainty purposes, this amendment makes clear that the contravention of MAR does not invalidate any transaction or render any transaction unenforceable.

Amendment 31

Proposal for a regulation
Article 29 – paragraph 3

Text proposed by the Commission	Amendment
3. The Commission shall adopt***, by means of implementing*** acts ***in accordance with Article 33,*** measures to specify the procedures referred to in paragraph 1, including the modalities of reporting and the modalities for following-up of reports, the measures for the protection of persons.	3. The Commission shall ***have the power to*** adopt, ***pursuant to Article 32, delegated*** acts ***concerning*** measures to specify the procedures referred to in paragraph 1, including the modalities of reporting and the modalities for following-up of reports, the measures for the protection of persons.

Amendment 32

Proposal for a regulation
Article 31

Text proposed by the Commission	Amendment
Article 31	***deleted***
Delegation of powers	
The Commission shall be empowered to adopt delegated acts in accordance with Article 32 concerning the supplementing and amending of the conditions for buy-back programmes and stabilisation of financial instruments, the definitions in this Regulation, the conditions for drawing up insider lists, the conditions relating to managers' transactions and the arrangements for persons who provide information that may lead to the detection of breaches of this Regulation.	

Amendment 33

Proposal for a regulation
Article 32 – paragraph 2

Text proposed by the Commission	Amendment
2. ***The delegation of power*** shall be conferred for an indeterminate period of time ***from the date referred to in Article 36(1).***	2. ***The powers to adopt delegated acts referred to in Articles 3(3), 8(5), 12(2), 13(4), 14(5) and (6) and 29(3)*** shall be conferred ***on the Commission*** for an indeterminate period of time ***following [the date of entry into force of this Regulation].***

Amendment 34

Proposal for a regulation
Article 32 – paragraph 3

Text proposed by the Commission	Amendment
3. The delegation of power may be revoked	3. The delegation of power ***referred to in***

at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in ***that*** decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. ***It shall not affect*** the validity of any delegated acts already in force.	***Articles 3(3), 8(5), 12(2), 13(4), 14(5) and (6) and 29(3)*** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in ***the*** decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. The validity of any delegated acts already in force ***shall not be affected by the decision of revocation***.

Amendment 35

Proposal for a regulation
Article 32 – paragraph 5

Text proposed by the Commission	Amendment
5. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***2 months*** of notification of ***that*** act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by ***2 months at the initiative of the European Parliament or the Council***.	5. A delegated act ***adopted pursuant to Article 3(3), 8(5), 12(2), 13(4), 14(5) or (6) or 29(3)*** shall enter into force only if no objection has been expressed either by the European Parliament or ***by*** the Council within a period of ***three months*** of ***the*** notification of ***the legal*** act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. ***At the initiative of the European Parliament or the Council,*** that period shall be extended by ***three months***.

Amendment 36

Proposal for a regulation
Article 33

Text proposed by the Commission	Amendment
Article 33	***deleted***
Committee procedure	

1. For the adoption of implementing acts under Article 29(3) the Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	
2. Where reference is made to this paragraph, Articles 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 8 thereof.	

Amendment 37

Proposal for a regulation
Article 35 a (new)

Text proposed by the Commission	Amendment
	Article 35a
	Review
	The Commission shall submit a report to the European Parliament and the Council by [3 years after the entry into force of this Regulation] reviewing the functioning of this Regulation, inter alia with regard to the following aspects:
	- the exclusion for monetary and public debt management activities and climate policy activities;
	- the ban on attempted insider dealing and market manipulation;
	The Commission shall, if appropriate, submit proposals for amending this Regulation with the report.

POSTUPAK

Naslov	Trgovanje na temelju povlaštenih informacija i manipuliranje tržištem (zlouporaba tržišta)
Referentni dokumenti	COM(2011)0651 – C7-0360/2011 – 2011/0295(COD)
Nadležni odbor Datum objave na plenarnoj sjednici	ECON 15.11.2011
Odbori koji su dali mišljenje Datum objave na plenarnoj sjednici	JURI 15.11.2011
Izvjestitelj Datum imenovanja	Alexandra Thein 21.11.2011
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Datum usvajanja	19.6.2012
Rezultat konačnog glasovanja	+: 13 –: 8 0: 0
Zastupnici nazočni na konačnom glasovanju	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Alajos Mészáros, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka
Zamjenici nazočni na konačnom glasovanju	Piotr Borys, Cristian Silviu Buşoi, Eva Lichtenberger, Dagmar Roth-Behrendt, Axel Voss
Zamjenici nazočni na konačnom glasovanju prema čl. 187. st. 2.	Patrice Tirolien

POSTUPAK

Naslov	Trgovanje na temelju povlaštenih informacija i manipuliranje tržištem (zlouporaba tržišta)			
Referentni dokumenti	COM(2011)0651 – C7-0360/2011 – 2011/0295(COD)			
Datum podnošenja EP-u	20.10.2011			
Nadležni odbor Datum objave na plenarnoj sjednici	ECON 15.11.2011			
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Odbori koji nisu dali mišljenje Datum odluke	BUDG 6.2.2012	LIBE 23.11.2011		
Izvjestitelj (i) Datum imenovanja	Arlene McCarthy 21.9.2010			
Razmatranje u odboru	6.2.2012	12.4.2012	19.6.2012	
Datum usvajanja	9.10.2012			
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Zamjenici nazočni na konačnom glasovanju prema čl. 187. st. 2.	Timothy Kirkhope			
Datum podnošenja	22.10.2012			