



Regulation (EU) 596/2014 and Directive 2014/57/EU

Market Abuse Regulation

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DG FISMA, Securities Markets Unit
9 April 2019

The legal framework

Market Abuse Regulation ('MAR')

Regulation (EU) 596/2014 on Insider Dealing and Market Manipulation (*legally binding and directly applicable – obligation to notify the implementing measures of certain provisions*)
+ delegated and implementing acts

Criminal Sanctions for Market Abuse Directive ('CSMAD')

Directive 2014/57/EU on Criminal Sanctions for Market Abuse (*requires transposition by the Member States*)
+ delegated and implementing acts

Whistleblowing directive

Directive (EU) 2015/2392 on reporting to competent authorities of actual or potential infringements (*requires transposition by the Member States*)

Main objectives of the MAR Framework

- **Address market and technological developments;**
- **Update and strengthen EU market abuse framework** by reinforcing capacity of regulators to detect and sanction abuse and enhance cooperation between regulators;
- Response to **LIBOR scandal** - extend market abuse rules to manipulation of benchmarks and criminalise such manipulation across the EU.

Scope of the Market Abuse Framework

1. **Transactions, orders or behaviours** relating to a **financial instrument** requested/admitted to trading or traded on a regulated market, MTF or OTF, or whose price depends on or has an effect on such an instrument (e.g. CDS); includes emission allowances;
2. **irrespective of whether or not** the behaviour or transactions actually take place on a trading venue;
3. Interactions between spot commodity contracts (not wholesale energy products) and financial instruments;
4. Behaviours in relation to benchmarks;
5. Actions and omissions in the Union and a third country.

Exemptions

- Exemptions apply to transactions, orders or behaviour, by:
 - Member States, members of ESCB, the Union, the Commission, ministries and other public bodies (listed in Article 6 of MAR), in pursuit of monetary, exchange rate or public debt management policy
 - Extended to certain third-country central banks
 - Activities of a Member State, the Commission or other officially designated bodies in pursuit of Union's climate policy or Union's Common Fisheries Policy
- Exemption for **buy-back programmes** and **stabilisation**

Under Article 6 of MAR, transactions, orders or behaviours carried out in pursuit of public debt management policy by the authorities listed below are exempt from MAR:

- 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.
- *others*

Inside Information and Insider Dealing

- **Inside information** = information of a **precise** nature, which is **not public**, relating to an issuer or a financial instrument, and which, if made public, would have a significant effect on **prices**;
- Significant effect on price means information a reasonable investor would be likely to use as part of the basis of investment decisions;
- **Insider dealing** = where a person **uses inside information** by transacting, on his own account or for the account of a third party, in a financial instrument to which that inside information relates.
- **Engaging, attempting, inducing is banned.**

Legitimate behaviour

For persons in possession of inside information, no presumption of insider dealing for trading in specific cases, such as

- **Adequate and effective arrangements** in place for legal persons (Information Wall);
- Legitimate business of buying /selling financial instruments by **market makers** / persons authorised to **execute orders on behalf of third parties**;
- Transaction carried out **in the discharge of an obligation** (that arose before inside information) that has become due.

Unlawful disclosure of inside information

- **Unlawful to disclose inside information** to any other person, **except** where the disclosure is made **in the normal exercise of an employment, a profession or duties.**
- Strict criteria for **market soundings** (gauging the interest of potential investors in a possible transaction – can involve communication of inside information)
 - **Consent and information of the person receiving the market sounding, written records**

Market Manipulation

- Entering into a transaction or behaviour that:
 - gives or is likely to give false or **misleading signals** as to the supply/demand/price of financial instrument; or
 - secures or is likely to secure the price of a financial instrument at an **artificial/abnormal level**.
 - Unless carried out for legitimate reasons pursuant to accepted market practice
- Employing a **fictitious device** or other form of deception;
- **Disseminating misleading information**;
- Transmitting false or misleading information, providing false or misleading inputs, or any action which **manipulates the calculation of a benchmark**

Prevention and Detection of Market Abuse

- Obligation on **trading venues** to have arrangements, procedures and systems aimed at preventing and detecting market abuse
- Obligation on any **professional** arranging or executing transactions in financial instruments to have arrangements and systems to detect and report suspicious orders and transaction

Disclosure Requirements (1/2)

- **Public disclosure of inside information** as soon as possible. Special cases:
 - SME Growth Markets (possible publication on a trading venue's website)
 - Emission allowance market participants (not if below minimum threshold)
- Where publication is delayed for legitimate reasons - ex post notification to CA
- Where information is systemically important, disclosure may be delayed only with prior consent of the CA
- Insider lists and Managers' transactions

Disclosure Requirements (2/2)

- Issuers must draw **insider lists**, i.e. lists of all person who have access to inside information (employees and third parties working on behalf or for the account of the issuer).
- Notifications of managers' transactions : persons discharging managerial responsibilities within an issuer ('PDMR') and persons closely associated to the PDMRs ('PCA') have to notify the market authority and the issuer of transactions in securities of the said issuer.
 - The annual threshold to report is set at 5.000 € (option to extend to 20.000 €)
 - The issuer must disclose the information to the market.
 - Transactions are prohibited during closed periods.

Powers of Competent Authorities

- Designation by each Member State of a single CA.
- CAs have supervisory and investigatory powers, including:
 - Access any document in any form, taking copies thereof
 - Request information from any person, summon and question any person
 - In relation to commodity derivatives, to request information from market participants, reports on transactions, direct access to traders' systems
 - Access to private premises (prior authorisation by a judge)
 - Telephone and Data Traffic Records held by telecommunication operators and investment firms

Cooperation between Competent Authorities and ESMA

- Cooperation with ESMA, with each other, with ACER and with national regulatory authorities for energy
- Rendering assistance
- **Exchanging information (without delay)**
- Cooperating in investigations, on-site inspections and enforcement activities (*coordination role of ESMA on request*)
- Enforcement (cross-border and cross-market detection to avoid duplication)
- ESMA to perform a facilitation and coordination role in relation to the cooperation and exchange of information
- Draft technical standards

Cooperation with Third Countries

- Cooperation arrangements between the CAs and competent authorities of third countries:
 - Exchange of Information
 - Enforcement of obligations arising from MAR
- ESMA in charge of coordinating the cooperation
- Professional secrecy (confidentiality of data received and exchanged, including obligation on persons and CAs)
- Data protection obligations when disclosing personal data to a third country

Administrative Measures and Sanctions

- **Maximum administrative pecuniary sanctions :**
 - At least three times the profit/loss avoided
 - At least EUR 5 million (natural persons) for the main offences
 - At least EUR 15 million or 15% of total annual turnover (legal persons) for the main offences
- Also: disgorgement of profits gained/losses avoided, withdrawal or suspension of authorisations, ban against members of the firms' bodies
- Member States may provide for additional sanctioning powers and higher levels of sanctions than those in MAR

Criminal Sanctions for Market Abuse Directive (CSMAD)

- Criminal sanctions have a greater **deterrent effect** – fear of imprisonment and a criminal record
- Minimum rules on criminal offences and on criminal sanctions were essential for ensuring the effectiveness of the EU policy on market integrity.
- Criminal sanctions demonstrate social disapproval of a qualitatively different nature compared to administrative sanctions or compensation mechanisms under civil law
- **Article 83(2) of the Treaty** (*first time*)

- **Minimum Rules** harmonising criminal offences of **Market Abuse** (when committed **intentionally** and at least in **serious cases**)
 - Insider Dealing, unlawful disclosure of inside information and market manipulation
 - Inciting, Aiding and Abetting
 - Attempt
- Scope of application the same as MAR
- Exclusions from the scope: buy-back programmes, stabilisation, monetary, exchange rate and public debt management activities; climate, agriculture and fisheries policies
- Accepted market practices, legitimate behaviours, market Soundings

The Whistleblowing directive

Objectives

- **Whistleblowers may bring new information to the attention of competent authorities** which assists them in detecting and imposing sanctions in cases of insider dealing and market manipulation.
- However, **whistleblowing may be deterred for fear of retaliation**, or for lack of incentives.
- Measures regarding whistleblowing are necessary to facilitate detection of market abuse and to **ensure the protection and the respect of the rights of the whistleblower and the accused person.**

Rules on the protection of whistleblowers

The whistleblowing directive lays down rules in relation to procedures for the receipt of **reports of infringements and their follow-up**

Covering in particular

- The need for dedicated staff;
- The protection of persons working under a contract of employment;
- Record-keeping
- The Processing of reports of infringements and reported persons' personal data

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Report on MAR application

By 3 July 2019, the Commission shall present a report to the European Parliament and the Council on the application and functioning of MAR.

The Commission will be sending shortly a request for technical advice to ESMA.

Thank you for your attention

DG FISMA / Unit C3 securities markets

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