

Market abuse

2011/0295(COD) - 22/10/2012 - Committee report tabled for plenary, 1st reading/single reading

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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