Market abuse

2011/0295(COD) - 16/04/2014 - Final act

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

LEGISLATIVE ACT: Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

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

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

The main elements of the Regulation are the following:

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

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

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

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

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

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

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

- **disseminating false or misleading information**, including rumours and false or misleading news, disseminating information through the media, including the **internet**, or by any other means;

- the transmission of false or misleading information, provision of false or misleading inputs, or any other action that **manipulates the calculation of a benchmark** (such as the LIBOR);

- the placing of orders to a trading venue, including by electronic means such as **algorithmic and high-frequency trading strategies**, which disrupts the functioning of the trading system.

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

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

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

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

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

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

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

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

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

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

DELEGATED ACTS: the Commission may adopt delegated acts in order to specify the requirements set out in the Regulation. The power to adopt delegated acts shall be conferred on the Commission for **an unlimited period from 2 July 2014**. The European Parliament or the Council may object to a delegated

act within a period of **three months** from the date of notification (this period can be extended for three months). If the European Parliament or the Council make objections, the delegated act will not enter into force.