

Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 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 (Text with EEA relevance)

REGULATION (EU) No 596/2014 OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 April 2014

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

(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 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 of the Council⁽⁴⁾ completed and updated the Union's legal framework to protect market integrity. However, 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, that Directive should now be replaced. A new legislative instrument is also needed to ensure that there are uniform rules and clarity of key concepts and a single rule book in line with the conclusions of the report of 25 February 2009 by the High Level Group on Financial Supervision in the EU, chaired by Jacques de Larosière (the 'de Larosière Group').

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) There is a need to establish a more uniform and stronger framework in order to preserve market integrity, to avoid potential regulatory arbitrage, to ensure accountability in the event of attempted manipulation, and to provide more legal certainty and less regulatory complexity for market participants. This Regulation aims at contributing in a determining manner to the proper functioning of the internal market and should therefore be based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), as interpreted consistently in the case-law of the Court of Justice of the European Union.
- (5) In order to remove the remaining obstacles to trade and the significant distortions of competition resulting from divergences between national laws and to prevent any further obstacles to trade and significant distortions of competition from arising, it is necessary to adopt a Regulation establishing a more uniform interpretation of the Union market abuse framework, which more clearly defines rules applicable in all Member States. Shaping market abuse requirements in the form of a regulation will ensure that those requirements are directly applicable. This should ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive. This Regulation will require that all persons follow the same rules in all the Union. It will also reduce regulatory complexity and firms' compliance costs, especially for firms operating on a cross-border basis, and it will contribute to eliminating distortions of competition.
- (6) The Commission Communication of 25 June 2008 on '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 (SMEs) and to facilitate access to finance for those issuers. A number of provisions in Directive 2003/6/EC impose administrative burdens on issuers, in particular on those whose financial instruments are admitted to trading on SME growth markets, which should be reduced.
- (7) Market abuse is a concept that encompasses unlawful behaviour in the financial markets and, for the purposes of this Regulation, it should be understood to consist of insider dealing, unlawful disclosure 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.
- (8) The scope of Directive 2003/6/EC focused on financial instruments admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made. However, in recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). There are also financial instruments which are traded only on other types of organised trading facilities (OTFs) or only over the counter (OTC). The scope of this Regulation should therefore include any financial instrument traded on a regulated market, an MTF or an OTF, and any other conduct or action which can have an effect on such a financial instrument irrespective of whether it takes place on a trading venue. In the case of certain types of MTFs which, like regulated markets, help companies to raise equity finance, the prohibition against market abuse also applies where a request for admission to trading on such a market has been made.

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

The scope of this Regulation should therefore include financial instruments for which an application for admission to trading on an MTF has been made. This should improve investor protection, preserve the integrity of markets and ensure that market abuse of such instruments is clearly prohibited.

- (9) 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. A second notification should be made when the instrument ceases to be admitted to trading. Such obligations should also apply to financial instruments for which there has been a request for admission to trading on their trading venue and financial instruments that have been admitted to trading prior to the entry into force of this Regulation. The notifications should be submitted to the European Securities and Markets Authority (ESMA) by the competent authorities and ESMA should publish a list of all of the financial instruments notified. This Regulation applies to financial instruments whether or not they are included in the list published by ESMA.
- (10) It is possible that certain financial instruments which are not traded on a trading venue are used for market abuse. This includes financial instruments the price or value of which depends or has an effect on financial instruments traded on a trading venue, or the trading of which has an effect on the price or value of other financial instruments traded on a trading venue. Examples of where such instruments can be used for market abuse include inside information relating to a share or bond, which can be used to buy a derivative of that share or bond, or an index the value of which depends on that share or bond. Where a financial instrument is used as a reference price, an OTC-traded derivative can be used to benefit from manipulated prices, or be used to manipulate the price of a financial instrument traded on a trading venue. A further example is the planned issue of a new tranche of securities that do not otherwise fall within the scope of this Regulation, but where trading in those securities could affect the price or value of existing listed securities that fall within the scope of this Regulation. This Regulation also covers the situation where the price or value of an instrument traded on a trading venue depends on an OTC-traded instrument. The same principle should apply to spot commodity contracts the prices of which are based on that of a derivative and to the buying of spot commodity contracts to which financial instruments are referenced.
- (11) Trading in securities or associated instruments for the stabilisation of securities or trading in own shares in buy-back programmes can be legitimate for economic reasons and should, therefore, in certain circumstances, be exempt from the prohibitions against market abuse provided that the actions are carried out under the necessary transparency, where relevant information regarding the stabilisation or buy-back programme is disclosed.
- (12) Trading in own shares in buy-back programmes and Stabilising a financial instrument which would not benefit from the exemptions under this Regulation should not of itself be deemed to constitute market abuse.

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (13) Member States, members of the European System of Central Banks (ESCB), ministries and other agencies and special purpose vehicles of one or several Member States, and the Union and certain other public bodies or persons acting on their behalf should not be restricted in carrying out monetary, exchange-rate or public debt management policy insofar as they are undertaken in the public interest and solely in pursuit of those policies. Neither should transactions or orders carried out, or behaviour by, the Union, a special purpose vehicle of one or several Member States, the European Investment Bank, the European Financial Stability Facility, the European Stability Mechanism or an international financial institution established by two or more Member States, be restricted in mobilising funding and providing financial assistance to the benefit of its members. Such an exemption from the scope of this Regulation may, in accordance with this Regulation, be extended to certain public bodies charged with, or intervening in, public debt management and to central banks of third countries. At the same time, the exemptions for monetary, exchange-rate or public debt management policy should not extend to cases where those bodies engage in transactions, orders or behaviour other than in pursuit of those policies or where persons working for those bodies engage in transactions, orders or behaviour on their own account.
- (14) 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.
- (15) Ex post information can 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.
- (16) Where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration. An intermediate step should be deemed to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.
- (17) Information which relates to an event or set of circumstances which is an intermediate step in a protracted process may relate, for example, to 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,

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

provisional terms for the placement of financial instruments, or the consideration of the inclusion of a financial instrument in a major index or the deletion of a financial instrument from such an index.

- (18) 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 in accordance with Regulation (EU) No 1227/2011 of the European Parliament and of the Council⁽⁵⁾ should, in particular, be considered as inside information.
- (19) This Regulation is not intended to prohibit discussions of a general nature regarding the business and market developments between shareholders and management concerning an issuer. Such relationships are essential for the efficient functioning of markets and should not be prohibited by this Regulation.
- (20) 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. Inside information in relation to a derivative of a commodity should be defined as information which both meets the general definition of inside information in relation to financial markets and which is required to be made public in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs on the relevant commodity derivative or spot market. Notable examples of such rules include Regulation (EU) No 1227/2011 for the energy market and the Joint Organisations Database Initiative (JODI) database for oil. Such information may serve as the basis of market participants' decisions to enter into commodity derivatives or the related spot commodity contracts and should therefore constitute inside information required to be made public, where it is likely to have a significant effect on the prices of such derivatives or related spot commodity contracts.
- 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 inter-linkages. However, it is not appropriate or practicable to extend the scope of this 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 1227/2011 when they apply the definitions of inside information, insider dealing and market manipulation under this Regulation to financial instruments related to wholesale energy products.

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (21) Pursuant to Directive 2003/87/EC of the European Parliament and of the Council⁽⁶⁾, the 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 to compliance buyers of the Union's emissions trading scheme (EU ETS). In the exercise of those duties, those public bodies can, inter alia, have access to price-sensitive, non-public information and, pursuant to Directive 2003/87/EC, may need to perform certain market operations in relation to emission allowances. As a consequence of the classification of emission allowances as financial instruments as part of the review of Directive 2004/39/EC of the European Parliament and of the Council⁽⁷⁾, those instruments will also fall within the scope of this Regulation.
- In order to preserve the ability of the Commission, Member States and other officially designated bodies to develop and implement the Union's climate policy, the activities of those public bodies, insofar as they are undertaken in the public interest and explicitly 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 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/EC 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 in which 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 conduct or in transactions on their own account.
- (22) Pursuant to Article 43 TFEU and to the implementation of international agreements concluded under the TFEU, the Commission, Member States and other officially designated bodies are, inter alia, responsible for pursuing the Common Agricultural Policy (CAP) and the Common Fisheries Policy (CFP). In the exercise of those duties, those public bodies undertake activities and take measures aiming to manage the agricultural markets and fisheries, including those of public intervention, imposing additional, or suspending, import duties. In the light of the scope of this Regulation, certain provisions thereof that apply to spot commodity contracts which have or which are likely to have an effect on financial instruments and financial instruments the value of which depends on the value of spot commodity contracts and which have or which are likely to have an effect on spot commodity contracts, it is necessary to ensure that the activity of the Commission, Member States and other bodies officially designated to pursue the CAP and the CFP, is not restricted. In order to preserve the ability of the Commission, Member States and other officially designated bodies to develop and pursue the CAP and the CFP, their activities, insofar as they are undertaken in the public interest and solely in pursuance of those policies, should be exempted from the application of this Regulation. Such exemption should not have a negative impact on

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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. At the same time, the exemption for public bodies acting in pursuance of the CAP and the CFP should not extend to cases where those public bodies engage in conduct or in transactions which are not in pursuance of the CAP and the CFP or where persons working for those bodies engage in conduct or in transactions on their own account.

- (23) The essential characteristic of insider dealing consists in an unfair advantage being obtained from inside information to the detriment of third parties who are unaware of such information and, consequently, the undermining of the integrity of financial markets and investor confidence. Consequently, the prohibition against insider dealing should apply where a person who is in possession of inside information takes unfair advantage of the benefit gained from that information by entering into market transactions in accordance with that information by acquiring or disposing of, by attempting to acquire or dispose of, by cancelling or amending, or by attempting to cancel or amend, an order to acquire or dispose of, for his own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. Use of inside information can also consist of trading in emission allowances and derivatives thereof and of bidding in the auctions of emission allowances or other auctioned products based thereon that are held pursuant to Commission Regulation (EU) No 1031/2010⁽⁸⁾.
- (24) Where a legal or natural person in possession of inside information acquires or disposes of, or attempts to acquire or dispose of, for his own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates, it should be implied that that person has used that information. That presumption is without prejudice to the rights of the defence. The question whether a person has infringed the prohibition on insider dealing or has attempted to commit insider dealing should be analysed in the light of the purpose of this Regulation, which is to protect the integrity of the financial market and to enhance investor confidence, which is based, in turn, on the assurance that investors will be placed on an equal footing and protected from the misuse of inside information.
- (25) Orders placed before a person possesses inside information should not be deemed to be insider dealing. However, where a person comes into possession of inside information, there should be a presumption that any subsequent change relating that information to orders placed before possession of such information, including the cancellation or amendment of an order, or an attempt to cancel or amend an order, constitutes insider dealing. That presumption could, however, be rebutted if the person establishes that he or she did not use the inside information when carrying out the transaction.
- (26) Use of inside information can consist of the acquisition or disposal of a financial instrument, or an auctioned product based on emission allowances, of the cancellation or amendment of an order, or the attempt to acquire or dispose of a financial instrument or to cancel or amend an order, by a person who knows, or ought to have known, that the information constitutes inside information. In this respect, the competent authorities

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

should consider what a normal and reasonable person knows or should have known in the circumstances.

- (27) This Regulation should be interpreted in a manner consistent with the measures adopted by the Member States to protect the interests of holders of transferable securities carrying voting rights in a company (or which may carry such rights as a consequence of the exercise of rights or conversion) where the company is subject to a public take-over bid or any other proposed change of control. In particular this Regulation should be interpreted in a manner consistent with the laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council⁽⁹⁾.
- (28) Research and estimates based on publicly available data, should not per se be regarded as inside information and the mere fact that a transaction is carried out on the basis of research or estimates should not therefore be deemed to constitute use of inside information. However, for example, where the publication or distribution of information is routinely expected by the market and where such publication or distribution contributes to the price-formation process of financial instruments, or the information provides views from a recognised market commentator or institution which may inform the prices of related financial instruments, the information may constitute inside information. Market actors must therefore consider the extent to which the information is non-public and the possible effect on financial instruments traded in advance of its publication or distribution, to establish whether they would be trading on the basis of inside information.
- (29) In order to avoid inadvertently prohibiting forms of financial activity which are legitimate, namely where there is no effect of market abuse, it is necessary to recognise certain legitimate behaviour. This may include, for example, recognising the role of market makers, when acting in the legitimate capacity of providing market liquidity.
- (30) 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, cancelling or amending an order dutifully, should not be deemed to constitute use of such inside information. However, the protection, laid down in this Regulation, of market makers, bodies authorised to act as counterparties or persons authorised to execute orders on behalf of third parties with inside information, does not extend to activities clearly prohibited under this Regulation including, for example, the practice commonly known as ‘front-running’. Where legal persons have taken all reasonable measures to prevent market abuse from occurring but nevertheless natural persons within their employment commit market abuse on behalf of the legal person, this should not be deemed to constitute market abuse by the legal person. Another example that should not be deemed to constitute use of inside information is transactions conducted in the discharge of a prior obligation that has become due. The mere fact of having access to inside information relating to another

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

company and using it 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 to constitute insider dealing.

- (31) 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 those operations, the mere fact of making such an acquisition or disposal should not be deemed to constitute use of inside information. Acting on the basis of one's own plans and strategies for trading should not be considered as using inside information. However, none of those legal or natural persons should be protected by virtue of their professional function; they should only be protected if they act in a fit and proper manner, meeting both the standards expected of their profession and of this Regulation namely market integrity and investor protection. An infringement could still be deemed to have occurred if the competent authority established that there was an illegitimate reason behind those transactions or orders or that behaviour, or that the person used inside information.
- (32) Market soundings are interactions between a seller of financial instruments and one or more potential investors, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and its pricing, size and structuring. Market soundings could involve an initial or secondary offer of relevant securities, and are distinct from ordinary trading. They are a highly valuable tool to gauge the opinion of potential investors, enhance shareholder dialogue, ensure that deals run smoothly, and that the views of issuers, existing shareholders and potential new investors are aligned. They may be particularly beneficial when markets lack confidence or a relevant benchmark, or are volatile. Thus the ability to conduct market soundings is important for the proper functioning of financial markets and market soundings should not in themselves be regarded as market abuse.
- (33) Examples of market soundings include situations in which the sell-side firm has been in discussions with an issuer about a potential transaction, and it has decided to gauge potential investor interest in order to determine the terms that will make up a transaction; where an issuer intends to announce a debt issuance or additional equity offering and key investors are contacted by a sell-side firm and given the full terms of the deal to obtain a financial commitment to participate in the transaction; or where the sell-side is seeking to sell a large amount of securities on behalf of an investor and seeks to gauge potential interest in those securities from other potential investors.
- (34) Conducting market soundings may require disclosure to potential investors of inside information. There will generally only be the potential to benefit financially from trading on the basis of inside information passed in a market sounding where there is an existing market in the financial instrument that is the subject of the market sounding or in a related financial instrument. Given the timing of such discussions, it is possible that inside information may be disclosed to the potential investor in the course of the market sounding after a financial instrument has been admitted to trading on a regulated market or has been traded on an MTF or an OTF. Before engaging in a market sounding, the

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

disclosing market participant should assess whether that market sounding will involve the disclosure of inside information.

- (35) Inside information should be deemed as being disclosed legitimately if it is disclosed in the normal course of the exercise of a person's employment, profession or duties. Where a market sounding involves the disclosure of inside information, the disclosing market participant will be considered to be acting within the normal course of his employment, profession or duties where, at the time of making the disclosure, he informs and receives the consent of the person to whom the disclosure is made that he may be given inside information; that he will be restricted by the provisions of this Regulation from trading or acting on that information; that reasonable steps must be taken to protect the ongoing confidentiality of the information; and that he must inform the disclosing market participant of the identities of all natural and legal persons to whom the information is disclosed in the course of developing a response to the market sounding. The disclosing market participant should also comply with the obligations, to be set out in detail in regulatory technical standards, regarding the maintenance of records of information disclosed. There should be no presumption that market participants that do not comply with this Regulation when conducting a market sounding have unlawfully disclosed inside information but they should not be able to take advantage of the exemption given to those who have complied with such provisions. The question whether they have infringed the prohibition against the unlawful disclosure of inside information should be analysed in light of all the relevant provisions of this Regulation, and all disclosing market participants should be under an obligation to record in writing their assessment, before engaging in a market sounding, whether that market sounding will involve the disclosure of inside information.
- (36) Potential investors who are the subject of a market sounding should, in turn, consider if the information disclosed to them amounts to inside information which would prohibit them from dealing on the basis of it or further disclosing that information. Potential investors remain subject to the rules on insider dealing and unlawful disclosure of inside information, as set out in this Regulation. In order to assist potential investors in their considerations and as regards what steps they should take so as not to contravene this Regulation, ESMA should issue guidelines.
- (37) Regulation (EU) No 1031/2010 provides 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 rule book of market abuse measures applicable to the entirety of the primary and secondary markets in emission allowances. This Regulation should also apply to behaviour or transactions, including bids, relating to the auctioning on an auction platform authorised as a regulated market of emission allowances or other auctioned products based thereon, including when auctioned products are not financial instruments, pursuant to Regulation (EU) No 1031/2010.
- (38) 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 in financial instruments is increasingly automated, it

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

is desirable that the definition of market manipulation provide examples of specific abusive strategies that may be carried out by any available means of trading including algorithmic and high-frequency trading. The examples provided are neither intended to be exhaustive nor intended to suggest that the same strategies carried out by other means would not also be abusive.

- (39) The prohibitions against market abuse should also cover those persons who act in collaboration to commit market abuse. Examples could include, but are not limited to, brokers who devise and recommend a trading strategy designed to result in market abuse, persons who encourage a person with inside information to disclose that information unlawfully or persons who develop software in collaboration with a trader for the purpose of facilitating market abuse.
- (40) To ensure that liability is conferred on both the legal person and any natural person who participates in the decision-making of the legal person, it is necessary to give recognition of the different national legal mechanisms in Member States. Such mechanisms should relate directly to the methods of attribution of liability in national law.
- (41) In order to complement the prohibition of market manipulation, this Regulation should include a prohibition against attempting to engage in market manipulation. An attempt to engage in market manipulation should be distinguished from behaviour which is likely to result in market manipulation as both activities are prohibited under this Regulation. Such an attempt may include situations where the activity is started but is not completed, for example as a result of failed technology or an instruction to trade which is not acted upon. Prohibiting attempts to engage in market manipulation is necessary to enable competent authorities to impose sanctions for such attempts.
- (42) Without prejudice to the aim of this Regulation and its directly applicable provisions, a person who enters into transactions or issues orders to trade which may be deemed to constitute market manipulation may be able to establish that his reasons for entering into such transactions or issuing orders to trade were legitimate and that the transactions and orders to trade were in conformity with accepted practice on the market concerned. An accepted market practice can only be established by the competent authority responsible for the market abuse supervision of the market concerned. 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. An infringement could still be deemed to have occurred if the competent authority established that there was an illegitimate reason behind these transactions or orders to trade.
- (43) 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 OTC.
- (44) Many financial instruments are priced by reference to benchmarks. The actual or attempted manipulation of benchmarks, including interbank offer rates, can have a serious impact on market confidence and may result in significant losses to investors

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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. Those provisions should cover all published benchmarks including those accessible through the internet whether free of charge or not such as CDS benchmarks and indices of indices. It is necessary to complement the general prohibition of market manipulation by prohibiting the manipulation of the benchmark itself and the transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark, where that calculation is broadly defined to include the receipt and evaluation of all data which relates to the calculation of that benchmark and include in particular trimmed data, and including the benchmark's methodology, whether algorithmic or judgement-based in whole or in part. Those rules are in addition to Regulation (EU) No 1227/2011 which prohibits the deliberate 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.

- (45) In order to ensure uniform market conditions between trading venues and facilities subject to this Regulation, any person who operates regulated markets, MTFs and OTFs should be required to establish and to maintain effective arrangements, systems and procedures aimed at preventing and detecting market manipulation and abusive practices.
- (46) Manipulation or attempted manipulation of financial instruments may also consist in placing orders which may not be executed. Furthermore, a financial instrument may be manipulated through behaviour which occurs outside a trading venue. Persons professionally arranging or executing transactions should be required to establish and to maintain effective arrangements, systems and procedures in place to detect and report suspicious transactions. They should also report suspicious orders and suspicious transactions that take place outside a trading venue.
- (47) The 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. That 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 an infringement of this

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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.

- (48) Given the rise in the use of websites, blogs and social media, it is important to clarify that disseminating false or misleading information via the internet, including through social media sites or unattributable blogs, should be considered, for the purposes of this Regulation, to be equivalent to doing so via more traditional communication channels.
- (49) The public disclosure of inside information by an issuer is essential to avoid insider dealing and ensure that investors are not misled. Issuers should therefore be required to inform the public as soon as possible of inside information. However that obligation may, under special circumstances, prejudice the legitimate interests of the issuer. In such circumstances, delayed disclosure should be permitted provided that the delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of the information. The issuer is only under an obligation to disclose inside information if it has requested or approved admission of the financial instrument to trading.
- (50) For the purposes of applying the requirements relating to public disclosure of inside information and delaying such public disclosure, as provided for in this Regulation, legitimate interests may, in particular, relate to the following non-exhaustive circumstances: (a) ongoing negotiations, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer; (b) decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organisation of such an issuer requires the separation between those bodies, provided that public disclosure of the information before such approval, together with the simultaneous announcement that the approval remains pending, would jeopardise the correct assessment of the information by the public.
- (51) Moreover, the requirement to disclose inside information needs to be addressed to the participants in the emission allowance market. In order to avoid exposing the market to reporting that is not useful and to maintain cost-efficiency of the measure foreseen, it appears necessary to limit the regulatory impact of that requirement to only those EU ETS operators which, 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, of auctioned products based thereon, or of derivative financial instruments relating thereto and for bidding in the auctions pursuant to Regulation (EU) No 1031/2010. The Commission should adopt measures establishing a minimum threshold for the purposes of application of that exemption by means of a delegated act. The information

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

to be disclosed should concern the physical operations of the disclosing party and not own plans or strategies for trading emission allowances, auctioned products based thereon, or derivative financial instruments relating thereto. Where emission allowance market participants already comply with equivalent inside information disclosure requirements, notably pursuant to Regulation (EU) No 1227/2011, the obligation to disclose inside information concerning emission allowances should not lead to the duplication of mandatory disclosures with substantially the same content. In the case of participants in the emission allowance market with aggregate emissions or rated thermal input at or below the threshold set, since the information about their physical operations is deemed to be non-material for the purposes of disclosure, it should also be deemed not to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of the derivative financial instruments relating thereto. Such participants in the emission allowance market should nevertheless be covered by the prohibition of insider dealing in relation to any other information they have access to and which is inside information.

- (52) In order to protect the public interest, to preserve the stability of the financial system and, for example, to avoid liquidity crises in financial institutions from turning into solvency crises due to a sudden withdrawal of funds, it may be appropriate to allow, in exceptional circumstances, the delay of the disclosure of inside information for credit institutions or financial institutions. In particular, this may apply to information pertinent to temporary liquidity problems, where they need to receive central banking lending including emergency liquidity assistance from a central bank where disclosure of the information would have a systemic impact. This delay should be conditional upon the issuer obtaining the consent of the relevant competent authority and it being clear that the wider public and economic interest in delaying disclosure outweighs the interest of the market in receiving the information which is subject to delay.
- (53) In respect of financial institutions, in particular where they receive central bank lending, including emergency liquidity assistance, the assessment of whether the information is of systemic importance and whether delay of disclosure is in the public interest should be made by the competent authority, after consulting, as appropriate, the national central bank, the macro-prudential authority or any other relevant national authority.
- (54) The use or attempted use of inside information to trade on one's own account or on the account of a third party should be clearly prohibited. Use of inside information can also consist of trading in emission allowances and derivatives thereof and of bidding in the auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010 by persons who know, or who ought to know, that the information they possess constitutes inside information. Information regarding the market participant's own plans and strategies for trading should not be considered to be inside information, although information regarding a third party's plans and strategies for trading may amount to inside information.
- (55) The requirement to disclose inside information can be burdensome for small and medium-sized enterprises, as defined in Directive 2014/65/EU of the European Parliament and of the Council⁽¹⁰⁾, whose financial instruments are admitted to trading

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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, ESMA should be able to issue guidelines which assist issuers to comply with the obligation to disclose inside information without compromising investor protection.

- (56) Insider lists are an important tool for regulators when investigating possible market abuse, but national differences in regard to data to be included in those lists impose unnecessary administrative burdens on issuers. Data fields required for insider lists should therefore be uniform in order to reduce those costs. It is important that persons included on insider lists are informed of that fact and of its implications under this Regulation and Directive 2014/57/EU of the European Parliament and of the Council⁽¹¹⁾. The requirement to keep and constantly update insider lists imposes administrative burdens specifically on issuers on SME growth markets. As competent authorities are able to exercise effective market abuse supervision without having those lists available at all times for those issuers, they should be exempt from this obligation in order to reduce the administrative costs imposed by this Regulation. However, such issuers should provide an insider list to the competent authorities upon request.
- (57) The establishment, by issuers or any person acting on their behalf or account, of lists of persons working for them under a contract of employment or otherwise and having access to inside information relating, directly or indirectly, to the issuer, is a valuable measure for protecting market integrity. Such lists may serve issuers or such persons to control the flow of inside information and thereby help manage their confidentiality duties. Moreover, such lists may also constitute a useful tool for competent authorities to identify any person who has access to inside information and the date on which they gained access. Access to inside information relating, directly or indirectly, to the issuer by persons included on such a list is without prejudice to the prohibitions laid down in this Regulation.
- (58) 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, particularly insider dealing. 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, as the pledging of shares can result in a material and potentially destabilising impact on the company in the event of a sudden, unforeseen disposal. Without disclosure, the market would not know that there was the increased possibility of, for example, a significant future change in share ownership, an increase in the supply of shares to the marketplace or a loss of voting rights in that company. For that reason, notification under this Regulation is required where the pledge of the securities is made as part of a wider transaction in which the manager pledges the securities as collateral to gain credit from a third party. Additionally, full and proper market transparency is a prerequisite for the confidence of market actors and, in particular, the confidence of a company's shareholders. It is also necessary to clarify that the

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

obligation to publish those managers' transactions includes 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, thresholds should be introduced in this Regulation below which transactions need not be notified.

- (59) The notification of transactions conducted by persons discharging managerial responsibilities on their own account, or by a person closely associated with them, is not only valuable information for market participants, but also constitutes an additional means for competent authorities to supervise markets. The obligation to notify transactions is without prejudice to the prohibitions laid down in this Regulation.
- (60) Notification of transactions should be in accordance with the rules on transfer of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council⁽¹²⁾.
- (61) Persons discharging managerial responsibilities should be prohibited from trading before the announcement of an interim financial report or a year-end report which the relevant issuer is obliged to make public according to the rules of the trading venue where the issuer's shares are admitted to trading or according to national law, unless specific and restricted circumstances exist which would justify a permission by the issuer allowing a person discharging managerial responsibilities to trade. However, any such permission by the issuer is without prejudice to the prohibitions laid down in this Regulation.
- (62) A set of effective tools and powers and resources for the competent authority of each Member State guarantees supervisory effectiveness. Accordingly, this Regulation, in particular, provides for a minimum set of supervisory and investigative powers competent authorities of Member States should be entrusted with under national law. Those powers should be exercised, where the national law so requires, by application to the competent judicial authorities. When exercising their powers under this Regulation competent authorities should act objectively and impartially and should remain autonomous in their decision making.
- (63) Market undertakings and all economic actors should also contribute to market integrity. In that 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. Where persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy in one or more financial instruments also deal on own account in such instruments, the competent authorities should, inter alia, be able to require or demand from such persons any information necessary to determine whether the recommendations produced or disseminated by that person are compliant with this Regulation.
- (64) For the purpose of detecting cases of insider dealing and market manipulation, it is necessary for competent authorities to have, in accordance with national law, the ability to access the premises of natural and legal persons in order to seize documents. Access

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

to such premises is necessary where there is a reasonable suspicion that documents and other data relating to the subject matter of an investigation exist and may be relevant to prove a case of insider dealing or market abuse. Additionally access to such premises is necessary where the person of 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. If prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, access to premises should take place after having obtained that prior judicial authorisation.

- (65) Existing recordings of telephone conversations and data traffic records from investment firms, credit institutions and financial institutions executing and documenting the execution of transactions, as well as existing telephone and data traffic records from telecommunications 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 or 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, a credit institution or a financial institution in accordance with Directive 2014/65/EU. Access to data and telephone records is necessary to provide evidence and investigate leads on possible insider dealing or market manipulation, and therefore for detecting and imposing sanctions for market abuse. In order to introduce a level playing field in the Union in relation to the access to telephone and existing data traffic records held by a telecommunications operator or the existing recordings of telephone conversations and data traffic held by an investment firm, a credit institution or a financial institution, competent authorities should, in accordance with national law, be able to require existing telephone and existing data traffic records held by a telecommunications operator, insofar as permitted under national law and existing recordings of telephone conversations as well as data traffic held by an investment firm, in cases where a reasonable suspicion exists that such records related to the subject matter of the inspection or investigation may be relevant to prove insider dealing or market manipulation infringing this Regulation. Access to telephone and data traffic records held by a telecommunications operator does not encompass access to the content of voice communications by telephone.
- (66) While this Regulation specifies a minimum set of powers competent authorities should have, those powers are to be exercised within a complete system of national law which guarantees the respect for fundamental rights, including the right to privacy. For the exercise of those powers, which may amount to serious interferences with the right to respect for private and family life, home and communications, Member States should have in place adequate and effective safeguards against any abuse, for instance, where appropriate a requirement to obtain prior authorisation from the judicial authorities of a Member State concerned. Member States should allow the possibility for competent

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

authorities to exercise such intrusive powers to the extent necessary for the proper investigation of serious cases where there are no equivalent means for effectively achieving the same result.

- (67) Since market abuse can take place across borders and markets, in all but exceptional circumstances 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 affects 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.
- (68) It is necessary for competent authorities to have the necessary tools for effective cross-market order book surveillance. Pursuant to Directive 2014/65/EU, competent authorities are able to request and receive data from other competent authorities relating to the order book to assist in monitoring and detecting market manipulation on a cross-border basis.
- (69) 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 should comply with Directive 95/46/EC and with Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽¹³⁾.
- (70) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory, investigation and sanction regimes. To that end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent sanction regimes against all financial misconduct, and sanctions should be enforced effectively. However, the de Larosière Group considered that none of those elements is currently in place. A review of existing powers to impose sanctions 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.
- (71) Therefore, a set of administrative sanctions and other administrative measures should be provided for to ensure a common approach in Member States and to enhance their deterrent effect. The possibility of a ban from exercising management functions within investment firms should be available to the competent authority. Sanctions imposed in specific cases should be determined taking into account where appropriate factors such as the disgorgement of any identified financial benefit, the gravity and duration of the infringement, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority. In particular, the actual amount of administrative fines to be imposed in a specific case may reach the maximum level provided for in this Regulation,

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

or the higher level provided for in national law, for very serious infringements, while fines significantly lower than the maximum level may be applied to minor infringements or in case of settlement. This Regulation does not limit Member States' ability to provide for higher administrative sanctions or other administrative measures.

- (72) Even though nothing prevents Member States from laying down rules for administrative as well as criminal sanctions for the same infringements, they should not be required to lay down rules for administrative sanctions for infringements of this Regulation which are already subject to national criminal law by 3 July 2016. In accordance with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they can do so if their national law so permits. However, maintenance of criminal sanctions rather than administrative sanctions for infringements of this Regulation or of Directive 2014/57/EU should not reduce or otherwise affect the ability of competent authorities to cooperate and access and exchange information in a timely manner with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.
- (73) In order to ensure that decisions made by competent authorities have a dissuasive effect on the public at large, they should normally be published. The publication of decisions is also an important tool for competent authorities to inform market participants of what behaviour is considered to be an infringement of this Regulation and to promote good behaviour amongst market participants. If such publication causes disproportionate damage to the persons involved or jeopardises the stability of financial markets or an ongoing investigation the competent authority should publish the administrative sanctions and other administrative measures on an anonymous basis in accordance with national law or delay the publication. Competent authorities should have the option of not publishing sanctions and other administrative measures where anonymous or delayed publication is considered to be insufficient to ensure that the stability of the financial markets will not be jeopardised. Competent authorities should also not be required to publish measures which are deemed to be of a minor nature and the publication of which would be disproportionate.
- (74) 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. Reporting of infringements of this Regulation is necessary to ensure that a competent authority may detect and impose sanctions for market abuse. 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. This Regulation should therefore ensure 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. Member States should be allowed to provide for financial incentives for those persons who offer relevant information about potential infringements of this Regulation. However, whistleblowers should only be entitled to such financial incentives where they bring to light new information which they are not already legally obliged to notify and where

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

that information results in a sanction for an infringement of this Regulation. Member States should also ensure that whistleblowing schemes that they implement include mechanisms that provide appropriate protection of an accused person, particularly with regard to the right to the protection of his personal data and procedures to ensure the right of the accused 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.

- (75) Since Member States have adopted legislation implementing Directive 2003/6/EC, and since the delegated acts, regulatory technical standards and implementing technical standards provided for in this Regulation 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.
- (76) 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⁽¹⁴⁾ for the purpose of applying point 2(a) of Article 1 of Directive 2003/6/EC, may remain applicable provided that they are notified to ESMA within a prescribed time period, until the competent authority has made a decision regarding the continuation of those practices in accordance with this Regulation.
- (77) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (Charter). Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles. In particular, when this Regulation refers to rules governing the freedom of the press and the freedom of expression in other media and the rules or codes governing the journalist profession, account should be taken of those freedoms as guaranteed in the Union and in the Member States and as recognised pursuant to Article 11 of the Charter and to other relevant provisions.
- (78) In order to increase transparency and to better inform the operation of the sanction regimes, competent authorities should provide anonymised and aggregated data to ESMA on an annual basis. That data should comprise the number of investigations that have been opened, the number that are ongoing and the number that have been closed during the relevant period.
- (79) Directive 95/46/EC and Regulation (EC) 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. Any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.
- (80) This Regulation, as well as the delegated acts, implementing acts, regulatory technical standards, implementing technical standards and guidelines adopted in accordance therewith, are without prejudice to the application of Union rules on competition.

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (81) In order to specify the requirements set out in this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the exemption from the scope of this Regulation of certain public bodies and central banks of third countries and of certain designated public bodies of third countries that have a linking agreement with the Union within the meaning of Article 25 of Directive 2003/87/EC; the indicators for manipulative behaviour listed in Annex I to this Regulation; the thresholds for determining the application of the public disclosure obligation to emission allowance market participants; the circumstances under which trading during a closed period is permitted; and the types of certain transactions conducted by persons discharging managerial responsibilities or persons closely associated with them that would trigger a requirement to notify. 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 to the Council.
- (82) In order to ensure uniform conditions for the implementation of this Regulation in respect of procedures for the reporting of infringements of this Regulation, implementing powers should be conferred on the Commission to specify those procedures, including the arrangements for following up of the reports and measures for the protection of persons working under a contract of employment and measures for the protection of personal data. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽¹⁵⁾.
- (83) 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.
- (84) The Commission should be empowered to adopt the draft regulatory technical standards developed by ESMA to specify the content of notifications that will have to be made by the operators of regulated markets, MTFs and OTFs concerning the financial instruments that are admitted to trading, traded, or for which a request for admission to trading on their trading venue has been made; the manner and conditions of compilation, publication and maintenance of the list of those instruments by ESMA; the conditions that buy-back programmes and stabilisation measures must meet including conditions for trading, time and volume restrictions, disclosure and reporting obligations and price conditions for the stabilisation; in relation to procedures and arrangements, systems 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; appropriate arrangements, procedures and record-keeping requirements in the process of market soundings; 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

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

10 to 14 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽¹⁶⁾. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

- (85) 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.
- (86) Since the objective of this Regulation, namely to prevent market abuse in the form of insider dealing, the unlawful disclosure of inside information and market manipulation, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, 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.
- (87) The provisions of Directive 2003/6/EC being no longer relevant or sufficient, that Directive should be repealed from 3 July 2016. The requirements and prohibitions of this Regulation are strictly related to those in Directive 2014/65/EU and should therefore enter into force on the date of entry into force of that Directive.
- (88) For the correct application of this Regulation, it is necessary that Member States take all necessary measures in order to ensure that their national law comply by 3 July 2016 with the provisions of this Regulation concerning competent authorities and their powers, administrative sanctions and other administrative measures, the reporting of infringements and the publication of decisions.
- (89) The European Data Protection Supervisor delivered an opinion on 10 February 2012⁽¹⁷⁾,

HAVE ADOPTED THIS REGULATION:

Status: Point in time view as at 31/12/2020.

Changes to legislation: Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (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 10 September 2013 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.
- (4) Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ([OJ L 96, 12.4.2003, p. 16.](#))
- (5) 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.](#))
- (6) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC ([OJ L 275, 25.10.2003, p. 32.](#))
- (7) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC and repealing Council Directive 93/22/EEC ([OJ L 145, 30.4.2004, p. 1.](#))
- (8) 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 of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community ([OJ L 302, 18.11.2010, p. 1.](#))
- (9) Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ([OJ L 142, 30.4.2004, p. 12.](#))
- (10) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/67/EU (see page 349 of this Official Journal).
- (11) Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) (see page 179 of this Official Journal).
- (12) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on protection of individuals with regard to the processing of personal data and on the movement of such data ([OJ L 281, 23.11.1995, p. 31.](#))
- (13) 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 ([OJ L 8, 12.1.2001, p. 1.](#))
- (14) 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 ([OJ L 336, 23.12.2003, p. 33.](#))
- (15) Regulation (EU) No 182/2011 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 ([OJ L 55, 28.2.2011, p. 13.](#))
- (16) Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC ([OJ L 331, 15.12.2010, p. 12.](#))
- (17) [OJ C 177, 20.6.2012, p. 1.](#)

Status:

Point in time view as at 31/12/2020.

Changes to legislation:

Regulation (EU) No 596/2014 of the European Parliament and of the Council, Introductory Text is up to date with all changes known to be in force on or before 05 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.