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*****I** **REPORT**

on the proposal for a European Parliament and Council directive on insider dealing and market manipulation (market abuse)
(COM(2001) 281 – C5-0262/2001 – 2001/0118(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Robert Goebbels
Draftsman of opinion(*): Klaus-Heiner Lehne,
Committee on Legal Affairs and the Internal Market

(*):Hughes procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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(*) Hughes procedure

PROCEDURAL PAGE

By letter of 1 June 2001 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 95 of the EC Treaty, the proposal/amended proposal for a European Parliament and Council directive on insider dealing and market manipulation (market abuse) (COM(2001) 281 - 2001/0118 (COD)).

At the sitting of 5 July 2001 the President of Parliament announced that she had referred this proposal to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0262/2001).

At the sitting of 6 September 2001 the President of Parliament announced that the report would be drawn up under the Hughes procedure by the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market as the committee ask for its opinion.

The Committee on Economic and Monetary Affairs had appointed Robert Goebbels rapporteur at its meeting of 28 May 2001.

It considered the Commission proposal and draft report at its meetings of 19 June 2001, 11 July 2001, 15 October 2001, 19 December 2001, 22 January 2002, 19 February 2002 and 26 February 2002.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Christa Randzio-Plath, chairwoman, John Purvis, vice-chairman; Robert Goebbels, rapporteur; Generoso Andria, Pervenche Berès, Hans Blokland, Hans Udo Bullmann, Chris Davies (for Karin Riis-Jørgensen, pursuant to Rule 153(2)), Harald Ettl, Marie-Hélène Gillig (for Helena Torres Marques, pursuant to Rule 153(2)), Lisbeth Grönfeldt Bergman, Christopher Huhne, Othmar Karas, Piia-Noora Kauppi, Christoph Werner Konrad, Werner Langen (for Ingo Friedrich), Alain Lipietz, Astrid Lulling, Jules Maaten (for Carles-Alfred Gasòliba i Böhm, pursuant to Rule 153(2)), Thomas Mann (for Hans-Peter Mayer), Ioannis Marinos, Helmuth Markov (for Philippe A.R. Herzog), Barbara O'Toole (for Mary Honeyball), Fernando Pérez Royo, Alexander Radwan, Herman Schmid (for Armonia Bordes), Olle Schmidt, Peter William Skinner, Bruno Trentin, Ieke van den Burg (for Giorgos Katiforis) and Theresa Villiers.

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 27 February 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council directive on insider dealing and market manipulation (market abuse) (COM(2001) 281 – C5-0262/2001 – 2001/0118(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

Amendment 1 Recital 5 a (new)

The resolution of the European Parliament on the implementation of financial services legislation of 4 February 2002 also endorsed the Committee of Wise Men's report, on the basis of the solemn declaration delivered in plenary session the same day by the European Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the chair of the Committee on Economic and Monetary Affairs with regard to the safeguards for the European Parliament's role in this process¹

1. Minutes of the sitting of 4.2.2002

Justification

It is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation

Amendment 2 Recital 6 a (new)

Whereas the Parliament will be given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. However in urgent cases, duly justified, this period may be shortened. If, within that period, a resolution is passed by the Parliament, the Commission will re-examine the draft

¹ OJ C 240 E, 28.8.2001, p. 265.

measures. Discussions could also take place between representatives of the Parliament, the Council and the Commission in order to seek to identify appropriate solutions.

Justification

It is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation.

Amendment 3
Recital 10

(10) Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing was adopted more than a decade ago. Given the changes in financial markets and in Community legislation since its adoption, that Directive should now be replaced, to ensure consistency with legislation against market manipulation. A new Directive is also needed to avoid loopholes in Community legislation which could be used for wrongful conduct and which would undermine public confidence and therefore prejudice the smooth functioning of the markets.

(10) Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing was adopted more than a decade ago. Given the changes in financial markets and in Community legislation since its adoption, that Directive should now be replaced, to ensure consistency with legislation against market manipulation. A new Directive is also needed to avoid loopholes in Community legislation which could be used for wrongful conduct and which would undermine public confidence and therefore prejudice the smooth functioning of the markets.

This Directive meets also the concerns expressed by the Member States following the terrorist attacks on 11 September 2001 as regards the fight against financing terrorist activities.

Justification

To account for the fact that the directive is not only targeted against terrorism, but also against potential misconducts by some markets participants.

Amendment 4

Recital 11

(11) Insider dealing and market manipulation prevent full and proper market transparency, which is a prerequisite for trading for all economic actors in integrated financial markets.

(11) Insider dealing and market manipulation prevent full and proper market transparency, which is a prerequisite for trading for all economic actors in integrated financial markets.

Inside information is any information which directly or indirectly relates to one or more issuers of financial instruments or to one or more financial instruments. An information which could have a significant effect on the evolution and forming of the prices of a regulated market as such could be considered as an information which indirectly relates to one or more issuers of financial instruments or to one or more financial instruments.

As regards to insiders, account should be taken of the cases where the source of inside information is not a profession or function but the criminal activities carried out, preparation or execution of which could have a significant effect on the prices of one or more financial instruments or on the forming of the prices of the regulated market as such.

*Use of inside information can consist in acquiring or disposing of financial instruments while the party concerned knows or ought to have known that the information possessed is inside information. In this respect, the competent authorities should consider what a normal and reasonable person would know or should have known under the given circumstances. Moreover, the mere fact that market-makers, bodies authorised to act as *contrepartie*, or stockbrokers with inside information confine themselves, in the first two cases, to pursuing their legitimate business of buying or selling securities or, in the last case, to carrying out an order dutifully, should not in itself be deemed to*

constitute use of such inside information.

The person who enters into transactions or orders to trade which are constitutive of market manipulation could establish that his reasons to enter into such transactions or orders to trade were legitimate and that these transactions and orders to trade are in conformity with acceptable practices on the regulated market concerned. A sanction could still be taken if the competent authority establishes that there is another, illegitimate, reason behind these transactions or orders to trade.

The competent authority may issue guidance on matters covered by the directive, e.g. what is inside information in relation to derivatives on commodities; acceptable practices relating to the definition of market manipulation. This guidance shall be in conformity with the provisions of the directive and the implementing measures adopted in accordance with the comitology procedure as referred to in Article 17(2).

Member States may be able to choose the most appropriate way to regulate the different categories of persons concerned by the provisions of Article 6(4), including appropriate mechanisms for self-regulation, which shall be notified to the Commission.

Justification

This compromise amendment takes on board amendments tabled by M. Thomas Mann, M. Garcia-Margallo and Mrs Villiers. Inside information should be clearly defined and its misuse effectively punished. However, it is necessary to make it clear that professionals acting as intermediaries merely pursuing their day-to-day business cannot be plainly seen as "misusers" of inside information. It is necessary to analyse eventual misbehaviours on a case-by-case basis. Furthermore, analysts and professionals producing or disseminating research or investment advice must comply with the principles of fair presentation of information and disclose of conflict of interests.

Amendment 5
Recital 12 a (new)

(12a) Modern communication methods make it possible for financial market professionals and private investors to have more equal access to financial information, but also increase the risk of the spread of false or misleading information.

Justification

With regard to the use of modern communication methods, it is also useful to emphasise their negative aspects, and this will explain the approach taken to them in the main text of the directive under examination. (Complements the rapporteur's amendment).

Amendment 6
Recital 12b (new)

(12b) Greater transparency vis-à-vis the public of transactions conducted by persons discharging managerial responsibilities within issuing institutions and, where applicable, persons closely associated with them, constitutes a preventive measure as a counterpart to sanctions. This can also be a highly valuable source of information to investors.

Justification

Greater transparency of transactions conducted by persons discharging managerial responsibilities and their associates within issuing institutions must be aimed for. Europe must adopt this transparent declaration mechanism following the example of the United States, where it has existed for decades to all-round satisfaction

Amendment 7
Recital 12 c (new)

(12c) This Directive is to be interpreted, and implemented by Member States, in a manner consistent with the requirements for effective regulation 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 exercise or conversion) when the company is subject to a takeover bid or other proposed change of control. In particular, this Directive does not in any way prevent a Member State from putting or having in place such measures as it sees fit for these purposes.

Justification

The purpose of this provision is, first, to ensure that the requirements for effective takeover regulation can be taken into account when implementing the Directive and, secondly, to make clear that, although the Directive sets a common standard, it does not prevent a Member State from putting or having in place measures (including additional prohibitions) which are designed to prevent abuse of target company shareholders.

Amendment 8
Recital 13 a (new)

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

Justification

This recital is taken from Directive 89/592/EC (the previous Insider Dealing Directive). It is intended to indicate that knowledge of one's own dealing intentions cannot be inside information.

Amendment 9
Recital 13 b (new)

Research and estimates developed from publicly available data cannot be regarded as inside information and, therefore, any transaction carried out on the basis of such research or estimates does not constitute insider dealing within the meaning of this Directive.

Justification

This recital is taken from Directive 89/592/EC (the previous Insider Dealing Directive), but with a minor clarification by adding reference to research explicitly. It is intended to indicate that information generated from research in publicly available data cannot be inside information.

Amendment 10
Recital 16

16. Establishing a level playing field in Community financial markets requires wide geographical application of the provisions governed by this Directive.

16. Establishing a level playing field in Community financial markets requires wide geographical application of the provisions governed by this Directive. ***As regards derivative instruments not admitted to trading but falling within the scope of the present Directive, every Member State should be competent to sanction actions carried out on its territory or abroad and which concern underlying financial instruments admitted to trading on a regulated market situated or operating within its territory or for which a request for admission to trading on such a regulated market has been made. Every Member State should also be competent to sanction actions carried out on its territory which concern underlying financial instruments admitted to trading on a regulated market in a Member State or for which a request for admission to trading on such a market***

has been made.

Justification

Self-explanatory

Amendment 11

Recital 17

(17) A variety of competent authorities in Member States, having different responsibilities, creates unnecessary cost and confusion among economic actors. A single competent authority, of an administrative nature guaranteeing its autonomy from economic actors and avoiding conflicts of interest, ***should be designated in each Member State to deal with market abuse.***

(17) A variety of competent authorities in Member States, having different responsibilities, creates unnecessary cost and confusion among economic actors. A single competent authority ***should be designated in each Member State to assume at least final responsibility for supervising compliance with the provisions adopted pursuant to this Directive, as well as international collaboration. Such authority should be*** of an administrative nature guaranteeing its autonomy from economic actors and avoiding conflicts of interest. ***That authority shall provide itself with a consultative committee composed of representatives of financial services providers and consumers so as to be fully informed of their observations.***

Justification

The Directive needs to provide more flexibility as to the precise role of the single competent authority. This will enable the competent authority to agree appropriate operating arrangements with the body regulating takeovers to allow the takeover regulator to provide swift answers in takeovers with the necessary degree of certainty.

Amendment 12

Recital 18

18. A common minimum set of strong tools and powers for the competent authorities will guarantee supervisory effectiveness.

18. A common minimum set of strong tools and powers for the competent ***authority of each Member State*** will guarantee supervisory effectiveness. ***Market undertakings and all economic actors must also contribute at their level***

to market integrity. In this sense, the designation of a single competent authority for market abuse does 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 adopted pursuant to this Directive.

Justification

To make it clear that in the case of delegation of supervisory powers to other authorities or market undertakings, the responsibility shall remain with the single competent authority designated pursuant to Article 11.

Amendment 13

Recital 19

19. In order to ensure that a Community framework against market abuse is sufficient, any infringement of the prohibitions or requirements laid down **by** this Directive will have to be promptly **and effectively** sanctioned.

19. In order to ensure that a Community framework against market abuse is sufficient, any infringement of the prohibitions or requirements laid down **pursuant to** this Directive will have to be promptly **detected and** sanctioned. **To this end, sanctions should be sufficiently dissuasive, proportionate to the gravity of the infringement and the gains realised and consistently enforced.**

Justification

Refinement and clarification.

Amendment 1

Recital 19a (new)

(19a) Member States must remain alert, in determining the administrative measures and sanctions referred to in Article 14, to

the need to ensure a degree of uniformity of regulation from one country to another.

Justification

To ensure fair conditions of competition between European markets, it will be essential for administrative measures and sanctions not to diverge excessively.

Amendment 15

Recital 20

20. Increasing cross-border activities require improved co-operation and a comprehensive set of provisions for the exchange of information between national competent authorities.

20. Increasing cross-border activities require improved co-operation and a comprehensive set of provisions for the exchange of information between national competent authorities. ***The organisation of the supervision and of the investigatory powers in each Member State should not hinder the co-operation between the competent national authorities.***

Justification

Clarification to ensure the effectiveness of international co-operation.

Amendment 16

Recital 22

Technical guidance and ***modifications*** to the rules laid down in this Directive may from time to time be necessary to take account of new developments on financial markets; the Commission should accordingly be empowered ***to make such modifications as are necessary*** after consulting the European Securities Committee established by Commission Decision 2001/.../EC

Technical guidance and ***implementing measures*** to the rules laid down in this Directive may from time to time be necessary to take account of new developments on financial markets; the Commission should accordingly be empowered ***to adopt implementing measures, provided that these do not modify the essential elements of this Directive and the Commission acts according to the principles set out in this Directive***, after consulting the European Securities Committee established by Commission Decision 2001/.../EC

Justification

It is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation.

Amendement 17
Recital 22 a (new)

In exercising its implementing powers in accordance with this directive, the Commission shall respect the following principles:

- ***the need to ensure confidence in financial markets among households and SMEs by promoting high standards of transparency in financial markets;***
- ***the need to provide investors with a wide range of competing investments and a level of disclosure and protection tailored to their circumstances;***
- ***the need to ensure that independent regulatory authorities enforce consistently the rules, especially as regards the fight against white-collar crime;***
- ***the need for high levels of transparency and consultation with all market participants and with the European Parliament and Council;***
- ***the need to encourage innovation in financial markets if they are to be dynamic and efficient;***
- ***the need to ensure systemic stability of the financial system by a close and reactive monitoring of financial innovation;***
- ***the importance of reducing the cost of, and increasing access to, capital;***
- ***the balance of costs and benefits to***

- market participants on a long term basis (including small and medium-sized businesses and small investors) in any implementing measures;*
- *the need to foster the international competitiveness of EU financial markets without prejudice to a much-needed extension of international cooperation);*
- *the need to achieve a level field of play for all market participants by establishing EU-wide regulations every time it is appropriate*
- *the need to respect differences in national markets where these do not unduly impinge on the coherence of the single market;*
- *the need to ensure coherence with other EU legislation in this area, because imbalances in information and a lack of transparency may jeopardise the operation of the markets and above all harm consumers and small investors.*

Justification

This sets out principles to guide the Commission when exercising its implementing powers

Amendment 18
Recital 24

This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.

This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union *and in particular by its Article 11 as well as Article 10 of the European Convention on Human Rights.*

Justification

Due to the fact that the current draft EU directive would be detrimental to the freedom of expression, Article 11 of the Charter of Fundamental Rights of the European Union should be

especially emphasised. Furthermore the article does not seem to take into account fundamental principles set down in Article 10 of the European Convention on Human Rights.

Amendement 19
Article 1, paragraph 1

(1) 'Inside information' shall mean information which has not been made public of a precise nature relating to one or more issuers of financial instruments or to one or more financial instruments, which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments.

(1) 'Inside information' shall mean information which has not been made public of a precise nature relating, ***directly or indirectly***, to one or more issuers of financial instruments or to one or more financial instruments, which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments.

In relation to derivatives on commodities, "inside information" shall mean information which has not been made public, of a precise nature relating directly or indirectly to one or more such derivatives, and which users of markets on which such derivatives are traded would expect to receive in conformity with acceptable practices. For persons charged with the execution of orders on such markets, inside information shall also mean information conveyed by a client and related to the client's pending orders.

Justification

This compromise amendment takes on board the amendments of MM. Garcia-Margallo, Mann and Tannock. I added a last sentence to take account of the dishonest tactic called "frontrunning", which creates prejudice to other market participants and otherwise would not be covered by the more narrow definition applicable to commodity derivatives.

Amendment 20
Article 1, paragraph 1, point (a)b (new)

(a)b 'Information of a precise nature' shall mean any tangible factor or event

having a significant probability of occurring in future.

Justification

The definition of 'information of a precise nature' must be specified to as to encompass not only tangible events but also events having a significant possibility of happening in the future, since such events can rationally justify an investment decision.

Amendment 21

Article 1, paragraph 1, point (a)c (new)

(a)c 'Information made public' shall mean any information disseminated through traditional or electronic media.

Justification

Clarification of the definition of what is meant by public information that recognises the leading part played not only by the traditional media but also by the internet as an information vector for market participants. Paragraph 5 of the same article empowers comitology to specify that definition, which will ensure some flexibility in introducing secondary legislation.

Amendement 22

Article 1, paragraph 2

(2) 'Market manipulation' shall mean :

(a) Transactions or orders to trade, which give, or are likely to give, false or misleading signals as to the supply, demand or price of financial instruments, or which secure, by one or more persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level, or which employ fictitious devices or any other form of deception or contrivance.

(2) 'Market manipulation' shall ***chiefly*** mean

(a) Transactions or orders to trade, which give, or are likely to give, false or misleading signals as to the price or volume traded, or the supply or demand of one or several financial instruments, or which employ fictitious devices or any other form of deception or contrivance.

(b) Conduct by one or more persons acting in collaboration to secure for themselves a dominant position over the supply and

(b) Dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply, demand or price of financial instruments, including the dissemination of rumours and false or misleading news.

demand for a financial instrument having the effect of fixing, directly or indirectly, purchase or sale prices or other unfair trading conditions .

(b)a Buying or selling financial instruments repeatedly at the close of the market with the effect of misleading investors acting on the basis of closing prices.

(b)b The provisions of these three paragraphs shall not apply to the conduct of any person in so far as such conduct is for legitimate reasons and accepted methods of operation on the regulated market are adhered to. The Commission shall draw up, pursuant to the procedure laid down in Article 17(2) guidelines for market participants, specifying in particular what shall be meant by legitimate reasons and accepted methods of operation that may be invoked.

(b)c Taking advantage of occasional or regular access to the media (traditional or electronic) by stating opinions about a financial instrument (or indirectly about its issuer) while having previously taken positions on that financial instrument and profiting subsequently from the impact of the opinions stated on the price of that instrument, without having simultaneously disclosed that conflict of interests to the public.

(b)d Dissemination of false or misleading information as to material facts, or dissemination of information which gives, or is likely to give, false or misleading signals as to the supply, demand or price of financial instruments, whether through traditional or electronic media or by any other means likely to have a significant impact on the price of one or several financial instruments with the effect that the disseminator of such information or the persons informed of the manipulation derive an advantage or profits therefrom, whereas the person having disseminated such

information knew or ought to have known that the information was false or misleading.

b(e) The definitions of market manipulation shall be successively so amended and extended as to ensure that new patterns of activity that constitute market manipulation in practice can be included.

Justification

This compromise amendment takes on board many welcomed suggestions. Paragraph (a) has been altered to stick to the wishes of MM. Radwan, Garcia-Margallo and Huhne. Paragraph b(b) meets the concerns of MM. Mann, Garcia-Margallo, Tannock and Radwan. The last sentence of paragraph b(d) uses the same wording as in amendments from MM. Garcia-Margallo, Huhne and Tannock. Finally, in order to add adaptability to future forms of market manipulation, paragraph b(e) mirrors an amendment tabled by M. Mann. As it is, this effect-based definition is fully compatible with the Commission's original draft and constitutes the right balance between precision and flexibility.

Amendment 23 Article 1, paragraph 3

(3) 'Financial instrument' shall mean *instruments listed in Section A of the Annex.*

'Financial Instrument' shall mean:
- *transferable securities as defined in Directive 93/22/EEC;*
- *units in collective investment undertakings;*
- *money-market instruments;*
- *financial-futures contracts, including equivalent cash-settled instruments;*
- *forward interest-rate agreements;*
- *interest-rate, currency and equity swaps;*
- *options to acquire or dispose of any instrument falling in these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;*
- *derivatives on commodities;*

- any other instrument admitted to trading on a regulated market in a Member State or for which a request for admission to trading on such a market has been made.

Justification

Annex A is incorporated into the main text of the directive for the same reasons as Annex B. The purpose is to guarantee greater legal certainty to market participants while ensuring that any new financial products are included within the scope of the directive.

Amendment 24
Article 1, paragraph 4a (new)

4a. 'Person' shall mean any natural or legal person.

Justification

Clarification of the text of the directive.

Amendment 25
Article 1, paragraph 4b (new)

4b. 'Competent authority' shall mean the administrative authority designated in accordance with Article 11.

Justification

Clarification of the text of the directive.

Amendment 26
Article 1, paragraph 5

5. The definitions referred to in **this Article and Section A of the Annex** shall in order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive be **clarified and adapted** by the Commission in accordance with the procedure referred to in Article 17(2).

5. In order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive, the Commission shall, in accordance with the procedure referred to in Article 17(2), **adopt implementing measures concerning subparagraphs (a), (a)a, (a)b and (a)c of paragraph 1 and in paragraph 2 of this article.**

Justification

It is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation

Amendment 27

Article 2, paragraph 1, first subparagraph

1. Member States shall prohibit any **natural or legal** person who possesses inside information from **taking advantage of** that information by acquiring or disposing of for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates.

1. Member States shall prohibit **any person referred to in subparagraphs 2 and 3** who possesses inside information from **using** that information by acquiring or disposing of, **or by trying to acquire or dispose of**, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates.

Justification

The first change has been presented to be consistent with the introduction in article 1 of a definition of the term 'person'.

The mere use of inside information should be sanctioned in the administrative context, therefore any final or intentional element should be deleted.

Finally, the new wording covers also the attempt, given that what is at stake in the administrative context is market integrity and this should be also protected through the punishment of unsuccessful behaviours.

Amendment 28
Article 2, paragraph 1, second subparagraph

The first subparagraph shall apply ***regardless of whether such person has obtained*** that information:

- (a) by virtue of his membership of the administrative, management or supervisory bodies of the issuer, or
- (b) by virtue of his holding in the capital of the issuer, or
- (c) by virtue of his having access to the information through the exercise of his employment, profession or duties.

The first subparagraph shall apply ***to any person who possesses*** that information:

- (a) by virtue of his membership of the administrative, management or supervisory bodies of the issuer, or
- (b) by virtue of his holding in the capital of the issuer, or
- (c) by virtue of his having access to the information through the exercise of his employment, profession or duties.

The first subparagraph shall also apply to any person who possesses that information by virtue of his criminal activities.

Justification

The definition of primary insiders is modified in order to fight against financing terrorist activities and to take account of the events of 11 September 2001.

Amendment 29
Article 2, paragraph 3a (new)

3a. This article shall not apply to transactions conducted in the discharge of an obligation that has fallen due to acquire or dispose of financial instruments where that obligation results from an agreement concluded before becoming party to inside information.

Justification

Since the directive advocates an objective approach to the definition of insider and market-manipulation operations, it is reasonable to provide market participants with the option of

defending their actions in cases where they act on the basis of contracts concluded before they had obtained inside information.

Amendment 30
Article 2, paragraph 3 b(new)

The provisions of this paragraph shall not prevent an undertaking from mounting a public takeover bid for all or part of the capital of another undertaking for the purpose of gaining control thereof, or from draining off capital in conjunction with such a bid, or from acquiring shares after the bid has been made public where the bidder is party to inside information about the target undertaking subsequent to contacts in advance of the bid with the target undertaking, and where the bidder considers that the interests of the holders of the shares concerned, not being party to that inside information, will not be harmed.

Justification

The amendment refers to public takeover bids and exchange offers. Prior to such bids and offers it is not unusual for negotiations to be held between the potential bidder company and the target company, leading to exchanges of inside information. It is therefore necessary for a target company not to be able to prevent the launch of a public takeover bid by revealing inside information to the company that is on the point of launching such a procedure.

Amendment 31
Article 3

Member States shall prohibit any person subject to the prohibition laid down in Article 2 ***who possesses inside information*** from:

(a) disclosing that inside information to any ***third party*** unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;

Member States shall prohibit any person subject to the prohibition laid down in Article 2 from:

(a) disclosing inside information to any ***other person*** unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;

(b) recommending or procuring

(b) recommending or procuring **a third party**, on the basis of that inside information, to acquire or dispose of financial instruments to which that information relates. **another person**, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.

Justification

This amendment is just for refinement.

Amendment 32
Article 4

Member States shall also **impose the prohibitions** provided for in Articles 2 and 3 on any person other than those persons referred to in those Articles **who with full knowledge of the facts** possesses inside information

Member States shall **ensure that Articles 2 and 3 also apply** to any person other than those persons referred to in those Articles who possesses inside information **while that person knows or ought to have known that it is inside information.**

Justification

The new wording covers not only intentional actions but also negligent behaviours.

Amendment 33
Article 5, second paragraph

A non-exhaustive list of typical methods used for market manipulation is laid down in Section B of the Annex. The Commission shall adopt, in accordance with the procedure referred to in Article 17(2), amendments of the examples of these methods.

Deleted.

Justification

Annex B is deleted to be consistent with Article 1.

Amendment 34
Article 5, third paragraph

Member States may decide to introduce specific provisions to cover persons acting for journalistic purposes in the normal course of the exercise of their profession.

Deleted.

Justification

The provisions applicable to journalists appear to be less than clear, stigmatise a particular profession and are, in any event, redundant, since Article 3(a) deals satisfactorily with the problems raised by journalistic activity

Amendment 35
Article 6, paragraph 1

1. Member States shall ensure that issuers of financial instruments inform the public as soon as possible of inside information.

1. Member States shall ensure that issuers of financial instruments inform the public ***within the meaning of paragraph 1(a)c of Article 1*** as soon as possible of inside information ***which directly concerns said issuers.***

Justification

Simple clarification consistent with the amendments to Article 1. The last sentence is added just for clarification purposes.

Amendment 36
Article 6, paragraph 1, first subparagraph - a (new)

Without prejudice to any measures taken to comply with the provisions of the previous paragraph, Member States shall ensure that issuers shall, for an appropriate period, post on their internet sites any and all inside information that they are required to disclose.

Justification

Improving investor access to financial information by assembling all inside information relating to an issuer on one and the same virtual site.

Amendment 37
Article 6, paragraph 2, (a)

2. Member States shall require that whenever an issuer, or a person acting on its behalf, discloses any inside information to any third party in the normal exercise of his employment, profession or duties, as referred to in Article 3 (a), it must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, promptly in the case of a non-intentional disclosure.

The provisions of the first sub-paragraph shall not apply:

a) if the person receiving the information owes a duty of trust or confidence to the issuer, or expressly agrees to maintain the disclosed information in confidence ; or

2. Member States shall require that whenever an issuer, or a person acting on its behalf ***or for its account***, discloses any inside information to any third party in the normal exercise of his employment, profession or duties, as referred to in Article 3(a), it must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, promptly in the case of a non-intentional disclosure.

The provisions of the first sub-paragraph shall not apply if the person receiving the information owes a duty of trust or confidence, ***regardless of whether such duty is based on a law, on regulations, on articles of association or on a contract.***

Justification

With reference to the Commission's proposal, accepted by the Rapporteur's report except for what shall be explained below, the essentials of this re-located provision remain the same and all changes are for clarification and explanatory purposes.

Removal of the specific mention to the credit rating agencies is based on this goal: the purpose of a Directive should be to regulate a specific issue or activity, laying down as few exceptions as possible to the general regime. Re-formulation in this regard goes from the specific case to the more general one, without unnecessary distinctions ('persons who owe a duty of trust or confidence, regardless of whether such duty is based on a law, on regulations ...')

Regarding the regularly updated list of insiders, for surveillance and prevention purposes, it is convenient to make it clear that this list shall be at the supervisory authority's disposal at any time upon request.

Amendment 38

Article 6, paragraph 2, (b)

b) if the primary business of the entity receiving the information is the issuance of mandatory credit ratings, provided the information is solely for the purpose of developing a credit rating which will be publicly available. ***Delete***

Justification

See justification to amendment 37 .

Amendment 39

Article 6, paragraph 2, point (b) second subparagraph

Member States shall require that issuers, or entities acting on their behalf, ***establish*** a ***regularly updated*** list of those persons working for them and having access to inside information.

In order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive, the Commission shall, in accordance with the procedure referred to in Article 17(2), adopt implementing measures concerning the conditions under which issuers, or bodies acting on their behalf, ***shall draw up*** a list of those persons working for them and having access to inside information, ***together with the conditions under which such lists shall be updated.***

Justification

The obligation on issuers to draw up a list of persons privy to inside information should be treated within the framework of comitology in order to maintain its adaptability to rapid changes on the markets. The process of updating the list, instead of being at regular intervals, could be carried out at the request of the competent authority on the occasion of a particular operation (such as a merger or acquisition operation). It is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation

Amendment 40 Article 6, paragraph 2a (new)

2a. Persons discharging managerial responsibilities with an issuer of financial instruments and, where applicable, persons closely associated with them, shall notify to the competent authority the existence of any transaction conducted on their own account relating to financial instruments issued by the institution of which they are members or to derivative financial instruments linked to them. Member States shall ensure that public access to such information is readily available without delay. In order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive, the Commission shall, in accordance with the procedure referred to in Article 17(2), adopt implementing measures concerning the categories of persons subject to the disclosure referred to in paragraph 2 and the technical arrangements applicable to disclosure to the competent authority.

Justification

This measure offers five advantages:

- greater fairness as between investors;*
- 'preventive' restriction on insider dealing by management staff by notifying transactions*

after the event;

- helping investors to identify a 'fair price' for an enterprise on the markets, since it has been demonstrated in American studies that insiders secure a better return than other investors;
- reliability and effectiveness of the mechanism, which has been operating for decades in the United States to all-round satisfaction;
- advantage in terms of financial macro-stability, since it has been shown that insiders sell when they perceive that the share price is reaching unreasonable levels. Conversely, they buy when they consider that the stock has been oversold.

It is also necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation

Amendment 41
Article 6 paragraph 3

3. An issuer may at its own risk delay the public disclosure of **particular** information such as not to prejudice his legitimate interests provided that such omission would not be likely to mislead the public and that the issuer is able to ensure the confidentiality of this information.

3. An issuer may at his own risk delay the public disclosure of **inside** information, **as referred to in paragraph 1**, such as not to prejudice his legitimate interests provided that such omission would not be likely to mislead the public and that the issuer is able to ensure the confidentiality of this information.

Member States shall require that an issuer shall without delay notify its competent authority of the decision to delay the public disclosure of inside information. Each national competent authority handles such notifications according to its own procedures.

Justification

This compromise amendment creates a notification procedure when an issuer wants to retain inside information. I lay emphasis on the leeway granted to national competent authorities to use such notifications.

Amendment 42
Article 6, paragraph 4

Member States shall **require** that **natural and/or legal persons being responsible for the production or dissemination of research or other relevant information to distribution channels or to the public** take reasonable

Member States shall **ensure** that persons **producing or disseminating research concerning financial instruments or issuers of financial instruments or producing or disseminating other information**

care to ensure that information is fairly presented and disclose their interests or indicate conflicts of interest in the financial instruments to which that information relates.

recommending investment strategy, meant for distribution channels or for the public, take reasonable care to ensure that information is fairly presented and disclose their interests or indicate conflicts of interest in the financial instruments to which that information relates.

Justification

This amendment is necessary to clarify the intention of this article. This should serve to limit the scope of the Article to the financial sector.

Amendment 43

Article 6, paragraph 4 a (new)

With a view to ensuring compliance with paragraphs 1 to 4 of this Article, the competent authority may take all necessary measures to ensure that the public is correctly informed.

Justification

As supplementary measure in relation to that introduced by Amendment 35, competent authorities should have sufficient powers to compulsorily demand the disclosure of inside information, to delay such a disclosure or to take any other measure aimed at ensuring that the public is always up-to-date and that misleading information is immediately verified and endorsed, rectified or denied by the issuer.

Amendment 44

Article 6, paragraph 4b (new)

4b. Public institutions disseminating statistics amounting to inside information shall apply the provisions referred to in paragraph 1.

Justification

The heart of the financial markets beats to the rhythm of economic and financial statistics and it is essential for public institutions producing statistics to be fully aware of the responsibilities incumbent upon them: they must provide statistics without delay while

ensuring equal access to the information.

Amendment 45
Article 6, paragraph 5

5. Member States shall require that ***a natural person, or an entity***, professionally arranging transactions in financial instruments ***shall refrain from entering into transactions, and reject orders on behalf of its clients, if it reasonably suspects that a transaction would be based on inside information or would constitute market manipulation.***

5. Member States shall require that ***any person*** professionally arranging transactions in financial instruments shall ***notify the competent authority without delay if that person reasonably suspects that a transaction might constitute insider-dealing or market-manipulation .***

Justification

Whereas the insistence on a single competent authority is one of the Directive's strongpoints, it is somewhat paradoxical for the power to refuse to execute a transaction to be granted to every financial intermediary when the latter have neither a regulator's expertise nor the time to scrutinise in depth every trading order processed by their services. It seems preferable for the intermediary to notify the regulator of transactions that he considers as suspect by analogy with the measures applied to banks in the fight against money laundering.

Amendment 46
Article 6, paragraph 6

6. The Commission shall ***adopt***, in accordance with the procedure referred to in Article 17(2), implementing measures ***on***
- the technical modalities of appropriate public disclosure of inside information as referred to in paragraphs 1 and 2,
- the technical modalities of fair presentation of research and other relevant information and the disclosure of particular interests or conflicts of interest as referred to in paragraph 4.

6. In order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive, the Commission shall, in accordance with the procedure referred to in Article 17(2), ***adopt implementing measures concerning paragraphs 1, 2, 2a, 3 and 4.***

Justification

The comitology implementing measures are authorised within the limit fixed by the more precise and detailed drafting of the relevant paragraphs of Article 6. It is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation.

Amendment 47 Article 7

This Directive shall not apply to transactions carried out in pursuit of monetary, exchange-rate or public debt-management policy by a Member State, by the European System of Central Banks, a national central bank or any other officially designated body, or by any person acting on their behalf. Member States may extend this exemption to their federated States in respect of the management of their public debt.

This Directive shall not apply to transactions carried out in pursuit of monetary, exchange-rate or public debt-management policy by a Member State, by the European System of Central Banks, a national central bank or any other officially designated body, or by any person acting on their behalf. Member States may extend this exemption to their federated States **or similar local authorities** in respect of the management of their public debt.

Justification

This is necessary to address concerns of some Member States which are internally organised in territorial authorities other than federated States. This wording is in line with Article 2 of Directive 1989 on Insider Dealing.

Amendment 48 Article 8, paragraph 2

2. The Commission shall **determine these** technical **conditions** in accordance with the procedure referred to in Article 17(2).

2. In order to take account of technical developments on financial markets and to ensure uniform application in the

Community of this Directive, the Commission shall, in accordance with the procedure referred to in Article 17(2), **adopt implementing measures concerning these technical conditions.**

Justification

It is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation.

Amendment 49
Article 9

The provisions of this Directive shall apply to any financial instrument admitted, **or going to be admitted**, to trading on a regulated market in at least one Member State, irrespective of whether the transaction itself actually takes place on that market or not.

The provisions of this Directive shall apply to any financial instrument admitted to trading on a regulated market in at least one Member State, **or for which a request for admission to trading on such market has been made**, irrespective of whether the transaction itself actually takes place on that market or not.

Articles 2 to 4 shall also apply to any financial instrument not admitted to trading on a regulated market in a Member State but the value of which depends on a financial instrument as referred to in paragraph 1.

Article 6, paragraphs 1 to 3, shall not apply to issuers who have not requested or approved admission of their financial instruments to trading on a regulated market in a Member State.

Justification

Changes do not add substance, but try to clarify the scope of the Directive in a more accurate way. The first sentence contributes to add legal certainty to the open term 'going to be admitted' of the former version. The other two are mere explanations in order to solve potential application doubts regarding the scope.

Amendment 50
Article 10

Every Member State shall apply the prohibitions and requirements provided for in this Directive *at least* to actions undertaken within its territory *whenever* the financial instruments *concerned* are admitted, *or going to be admitted*, to trading in a Member State.

Every Member State shall apply the prohibitions and requirements provided for in this Directive:

- to actions undertaken within its territory *and relating to* financial instruments *that* are admitted to trading *on a regulated market* in a Member State *or for which an application for admission to trading has been lodged in a Member State; and*
- to actions undertaken within their territory or abroad that affect financial instruments admitted to trading on a regulated market located or operating within its territory or in respect of which an application for admission to trading on such a market has been lodged.

Justification

By introducing a clear connection between the territory and the regulated market located on the territory of a Member State, this wording is more precise and will limit misunderstandings between competent authorities.

Amendment 51
Article 11

Every Member State shall designate a single administrative authority competent to ensure that the provisions of this Directive are applied.

Without prejudice to the competences of the juridical authorities, every Member State shall designate a single administrative authority competent to ensure that the provisions *adopted pursuant to* of this Directive are applied.

Member States shall establish a consultative committee within each competent authority, the membership of which shall reflect as far as possible the diversity of market participants, be they

providers of financial services or consumers.

Member States shall ensure adequate financing of the competent authority.

Justification

This compromise amendment creates a consultative committee within each competent authority and secures an adequate financing for the competent authority.

Amendment 52
Article 12 first paragraph

The competent authority shall be given all supervisory and investigatory powers that are necessary for the exercise of its functions. It shall exercise such powers **either** directly or, **where appropriate**, in collaboration with other authorities, including judicial authorities.

1. The competent authority shall be given all supervisory and investigatory powers that are necessary for the exercise of its functions. It shall exercise such powers :

(a) directly or
(b) in collaboration with other authorities or with the market undertakings, or

(c) under the responsibility of the competent authority by delegation to such authorities or to the market undertakings, or

(d) by request to the competent judicial authorities.

Justification

The main objective of this alternative text is to refine the wording, especially in order to make it clear that in the case of delegation of supervisory powers to other authorities or market undertakings, the responsibility shall remain with the single competent authority designated pursuant to Article 11.

Amendment 53
Article 12 second paragraph

These powers shall include at least the

2. Without prejudice to Article 6,

right to:

paragraph 5, these powers shall **be exercised in conformity with national law and** include at least the right to:

Justification

In line with Amendment 39. Changes introduced for purposes of clarification of the scope.

Amendment 54

Article 12 second paragraph point a)

a) have access to any document and to receive a copy of it;

(a) have access to any document ***in any form whatsoever***, and to receive a copy of it;

Justification

Clarification of the term 'document' to include, for instance, records in an electronic format.

Amendment 55

Article 12 second paragraph point b)

b) demand information from any person, and if needed, ***to require the testimony of a person*** ;

(b) demand information from any person, ***including those who successively intervene in transmitting orders or in carrying out the operations concerned, as well as their principals***, and if needed, ***to summon and hear a person***;

Justification

Clarification and refinement to avoid terms which might be confusing, given that they are traditionally used in the judicial context.

Amendment 56

Article 12 second paragraph point c) a (new)

(c)a. require to put a stop to a practice that is contrary to the provisions laid down pursuant to this Directive;

Justification

This text tries to refine the wording to adjust it to existing regulatory practices.

Amendment 57
Article 12, second paragraph, point (c)b (new)

(c)b. suspend trading in the financial instruments concerned;

Justification

Additional courses of action available to the regulator.

Amendment 58
Article 12, second paragraph, point (d)

(d) require telephone and data traffic records;

Without prejudice to its national legislation, the competent authority shall be authorised to apply to the judicial authorities to:

(d) demand existing telephone records of persons conducting operations on financial instruments on a professional basis, existing records of telephone calls and ***existing*** data traffic records;

Justification

For reasons of clarity, the competent authority's direct powers have been separated from powers, the exercise of which will require application to the judicial authority. The competent authorities shall maintain all supervisory and investigatory powers that have been granted to them according to national law. The range of persons who may, where necessary, be subjected to interception of telephone calls has been confined to market professionals in order to ensure an adequate balance between the effectiveness of regulators' inquiries and public freedoms.

Amendment 59

Article 13

Member States shall provide that all persons who work or who have worked for the competent authority, as well as auditors and experts instructed by the competent authority, shall be bound by the obligation of professional secrecy. Information covered by professional secrecy may not be divulged to any person or authority except by virtue of provisions laid down by law.

Member States shall provide that all persons who work or who have worked for the competent authority, as well as auditors and experts instructed by the competent authority, shall be bound by the obligation of professional secrecy.

Information covered by professional secrecy may ***be divulged to any authority or market undertaking to whom the competent authority has delegated its powers or with whom it has agreed to collaborate in the exercise of its powers but may not otherwise*** be divulged to any person or authority except by virtue of provisions laid down by law.

Justification

The proposed amendment is to enable the competent authority to operate delegations and collaboration arrangements effectively and to allow it to disclose information to delegates and other regulatory authorities.

Amendment 60

Article 14, paragraph 1

1. Member States shall ensure that the appropriate measures be taken, including of administrative and criminal sanctions in conformity with their national law, against the natural or legal persons responsible where the provisions of this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.

1. ***Without prejudice to the right of Member States to impose criminal sanctions, Member States shall ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible where the provisions adopted pursuant to this Directive*** have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.

Justification

In some Member States administrative sanctions cannot be imposed in addition to criminal sanctions. This fact is respected in the provisions of the Directive. Member States should not be obliged to adopt administrative sanctions if they are not in conformity with the national law or the constitution.

Amendment 61 Article 14, paragraph 1a (new)

1a. The Commission shall, in accordance with the procedure referred to in Article 17(2), draw up an indicative list of the administrative measures and sanctions referred to in paragraph 1

Justification

To ensure equality of treatment between European investors, it will be essential for the administrative measures and sanctions subsequently drawn up by the competent authorities not to diverge from each other substantially. For that reason, the creation of an indicative list that will guide - but not bind - the competent authorities would be a welcome development.

Amendment 62 Article 14, paragraph 3

3. Member States shall provide that the competent authority may disclose to the public every sanction that will be imposed for infringement of the measures taken pursuant to this Directive, unless the disclosure would jeopardise the financial markets or cause disproportionate damage to the parties involved.

3. Member States shall provide that the competent authority may disclose to the public every sanction that will be imposed for infringement of the measures taken pursuant to this Directive, unless the disclosure would ***seriously*** jeopardise the financial markets or cause disproportionate damage to the parties involved.

Justification

Public disclosure of sanctions is an important deterrent. It is for that reason that it is important for major institutions not to be allowed to plead the impact on the market to ask for their offences to be kept secret. Only if a threat of a systemic nature were to be feared should the sanctions imposed be hushed up.

Amendment 63 Article 16 paragraph 1

1. Competent authorities of Member States shall co-operate with each other whenever necessary for the purpose of carrying out their duties, making use of their powers, whether set out in this Directive or in national law. Competent authorities shall render assistance to competent authorities of other Member States. In particular, they shall exchange information and co-operate in investigation activities.

1. Competent authorities of Member States shall co-operate with each other whenever necessary for the purpose of carrying out their duties, making use of their powers, whether set out in this Directive or in national law. Competent authorities shall render assistance to competent authorities of other Member States. ***At the request of the national authority administrative assistance within national borders shall also be extended to other authorities and delegates.*** In particular, they shall exchange information and co-operate in investigation activities.

Justification

This amendment will enable national authorities to cooperate effectively with other authorities and to delegate monitoring powers to others.

Amendment 64 Article 16 paragraph 2 second subparagraph

The competent authorities may refuse to act on a request for information where communication might adversely affect the sovereignty, security or public policy of the State addressed, or where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities

The competent authorities may refuse to act on a request for information where communication might adversely affect the sovereignty, security or public policy of the State addressed, or where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the

of the State addressed or where final judgement has already been passed on such persons for the same actions *by the competent authorities of* the State addressed.

authorities of the State addressed or where final judgement has already been passed on such persons for the same actions *in* the State addressed.

In such case, they shall notify the requesting competent authority accordingly, providing information, as detailed as possible, on those proceedings or judgement.

A competent authority whose request for information is not acted upon within a reasonable time may bring that non-compliance to the attention of the European Securities Committee, which shall instruct the competent authority failing to comply to provide an answer without delay. A competent authority whose request for information is rejected may request arbitration by the European Securities Committee, which shall issue a ruling without delay.

Justification

In recognition of the many problems or obstructions that can affect efforts to mobilise international judicial coordination, it is only to be expected that such problems will recur under the cross-border administrative cooperation referred to in Article 16. It would for that reason be preferable for the directive to invest an existing body with a power of arbitration in the event that a competent authority refused to cooperate. Such a body might well be the European Securities Committee.

Amendment 65

Article 16 paragraph 2 subparagraph 3

Without prejudice to the obligations to which they are subject in judicial proceedings under criminal law, the authorities which receive information pursuant to paragraph 1 may use it only for the exercise of their functions within the scope of this Directive and in the context of administrative or judicial proceedings *specifically related to the*

Without prejudice to the obligations to which they are subject in judicial proceedings under criminal law, the *national* authorities, *together with their delegates within national borders and other authorities*, which receive information pursuant to paragraph 1 may *at all events* use it only for the exercise of their functions within the scope of this

exercise of those functions. However, where the competent authority communicating information consents thereto, the authority receiving the information may use it for other purposes or forward it to other States' competent authorities.

Directive and in the context of administrative or judicial proceedings. However, where the competent authority communicating information consents thereto, the authority receiving the information, ***together with their delegates within national borders***, may use it for other purposes or forward it to other States' competent authorities.

Justification

This amendment will enable national authorities to cooperate effectively with other authorities and delegate supervisory duties to others.

Amendment 66 Article 16 paragraph 3

3. Where a competent authority is convinced that ***activities*** contrary to the provisions of this Directive are being or have been carried out on the territory of another Member State, it shall notify this in as specific a manner as possible to the competent authority of the other Member State. The competent authority of the other Member State shall take appropriate action. It shall inform the notifying competent authority of the outcome and, to the extent possible, of significant interim developments.

3. Where a competent authority is convinced that ***acts*** contrary to the provisions of this Directive are being or have been carried out on the territory of another Member State ***or that acts are affecting financial instruments traded on a regulated market situated in another Member State***, it shall notify this in as specific a manner as possible to the competent authority of the other Member State. The competent authority of the other Member State shall take appropriate action. It shall inform the notifying competent authority of the outcome and, to the extent possible, of significant interim developments. ***This paragraph shall not prejudice the competences of the competent authority, in accordance with Article 10, that has forwarded the information. The competent authorities of the various Member States competent in accordance with Article 10 shall consult each other on the proposed follow-up to their action.***

Justification

Clarification and consistency with the Rapporteur's position on Article 10 (Distribution of competences in the case of involvement of various Member States)

Amendment 67
Article 16 (4) (2)

It may further request that some of its own personnel be allowed to accompany the personnel of the competent authority of that other Member State during the course of the investigation.

It may further request that some of its own personnel, ***or the personnel of its delegates or of any other authority with which it has agreed to collaborate in the exercise of its powers***, be allowed to accompany the personnel of the competent authority of that other Member State during the course of the investigation.

Justification

The proposed amendment is to enable the competent authority to operate delegations and collaboration arrangements effectively.

Amendment 68
Article 16 paragraph 4, subparagraph 4

The competent authorities may refuse to act on a request for carrying out an investigation as provided for in the first subparagraph of this paragraph, or on a request for its personnel to be accompanied by another Member State competent authority personnel as provided for in the second subparagraph of this paragraph, where such an investigation might adversely affect the sovereignty, security or public policy of the State addressed, or where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the State addressed or

The competent authorities may refuse to act on a request for carrying out an investigation as provided for in the first subparagraph of this paragraph, or on a request for its personnel to be accompanied by another Member State competent authority personnel, ***or the personnel of its delegates, or of any other authority with which that competent authority has agreed to collaborate in the exercise of its powers***, as provided for in the second subparagraph of this paragraph, where such an investigation might adversely affect the sovereignty, security or public policy of the State addressed, or where judicial proceedings have already been

where final judgement has already been passed on such persons for the same actions **by the competent authorities of the State** addressed.

initiated in respect of the same actions and against the same persons before the authorities of the State addressed or where final judgement has already been passed on such persons for the same actions **in the State** addressed.

In such case, they shall notify the requesting competent authority accordingly, providing information, as detailed as possible, on those proceedings or judgement.

Without prejudice to the provisions of Article 226 of the EC Treaty, a competent authority whose application to open an inquiry or seeking authorisation for its officials to accompany those of the other Member State's competent authority is not acted upon within a reasonable time may bring that non-compliance to the attention of the European Securities Committee, which shall instruct the competent authority failing to comply to provide an answer without delay. A competent authority whose application to open an inquiry or seeking authorisation for its officials to accompany those of the other Member State's competent authority is rejected may request arbitration by the European Securities Committee, which shall issue a ruling without delay.

Justification

This amendment provides the option of an out-of-court settlement in the event of refusal to open an inquiry or authorise participation by officials of the competent authority. Although it is not legally binding, this procedure will make for greater consistency of routine activity, and not just of principles, by the competent authorities. Furthermore the proposed amendment is to enable the competent authority to operate delegations and collaboration arrangements effectively.

Amendment 69
Article 17 paragraph 2

Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply in compliance with Article 7 and Article 8 thereof.

Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply in compliance with Article 7 and Article 8 thereof, ***provided that the implementing measures adopted according to this procedure do not modify the essential provisions of this Directive.***

Justification

It is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation.

Amendment 70
Article 17 paragraph 3 a (new)

Without prejudice to the implementing measures already adopted, on the expiry of a four-year period following its entry into force the application of the provisions of this directive stipulating the adoption of technical rules and decisions in accordance with the procedure referred to in Article 17 paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the EC Treaty and, to that end, they shall review them prior to the expiry of the period referred to above';

Justification

In the absence of a permanent procedure for democratic oversight of Commission implementing measures, including a legally binding call-back mechanism, the Parliament must protect its prerogatives by setting a time limit on the powers accorded to the Commission and the Securities Committee. This amendment will ensure that the Commission takes due account of the Parliament's position on implementing measures, since it will know that its powers to adopt new implementing measures will not be renewed by the Parliament unless it does. Any potential for a legal vacuum is minimised, first because existing legislation and implementing rules will not be repealed, and second because the amendment requires the Council and Parliament to review the provisions on the basis of a Commission proposal prior

to the expiry of the 4 year period. This amendment is taken from conclusion 17 of the von Wogau report on the implementation of financial services legislation (A5-0011/2002). It is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation.

Amendment 71
Article 18 a (new)

Article 11 is without prejudice to the possibility for a Member State to make separate legal and administrative arrangements for overseas European territories for whose external relations that Member State is responsible.

Justification

This clarification is necessary to address the specific case of delegation of powers in favour of overseas regulatory authorities such as those of Gibraltar.

Amendment 72
Article 19

Directive 89/592/EEC is repealed with effect from the date shown in Article 20.

Directive 89/592/EEC ***and Articles 68(1) and 81(1) of Directive 2001/34/EC*** are repealed with effect from the date shown in Article 20.

Justification

In order to avoid overlaps in Community law in force, the repeal of the provisions applicable on on-going reporting is necessary since this issue is regulated (in very similar terms) in this Directive. As these obligations and the rest of regulatory provisions relating to issuers have been merged in Directive 2001/34/EC, repeal of this instrument is also necessary.

Amendment 73
Annex, section A

Financial Instruments

Deleted.

'Financial Instrument' shall mean :

- Transferable securities as defined in Directive 93/22/EEC***
- Units in collective investment undertakings***
- Money-market instruments***
- Financial-futures contracts, including equivalent cash-settled instruments***
- Forward interest-rate agreements***
- Interest-rate, currency and equity swaps***
- Options to acquire or dispose of any instrument falling in these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates***
- Derivatives on commodities.***

Justification

See justification to Amendment .

Amendment 74
Annex, section B

The following illustrative examples of methods being used for market manipulation are not exhaustive, but shall serve the interpretation of the general definition provided by Article 1 (2):

Deleted.

**** Trade-based actions intended to create a false impression of activity:***

- Transactions in which there is no genuine change in actual ownership of the financial instruments ("Wash sales")***
- ;***

- - *Transactions where both buy and sell orders are entered at the same time, with the same price and quantity by different, but colluding parties ("improper Matched orders");*
- - *Engaging in a series of transactions that are reported on a public display facility to give the impression of activity or price movement in a financial instrument ("Painting the tape");*
- *Engaging in an activity designed by a person or persons acting in collaboration to push the price of a financial instrument to an artificially high level (pumping the financial instruments on the market) and then to sell its or their own financial instruments massively ("Pumping and dumping");*
- *Increasing the bid for a financial instrument to increase its price (creating the impression of strength or the illusion that stock activity was causing the increase). "Advancing the bid");*
- * *Trade-based actions intended to create a shortage:*
 - *Securing such a control of the bid or demand-side of the derivative and/or the underlying asset that the manipulator has a dominant position which can be exploited to manipulate the price of the derivative and/or the underlying asset ("Cornering") ;*
 - *Like "cornering" taking advantage of a shortage in an asset by controlling the demand-side and exploiting market congestion during such shortages in such a way as to create artificial prices. Having significant influence over supply or delivery, having the right to require delivery and using that to dictate arbitrary and abnormal prices ("Abusive squeezes") ;*
- * *Time-specific trade-based actions:*
 - *Buying or selling financial instruments at the close of the market in an effort to alter the closing price of the financial instrument and therefore misleading those acting on the basis of closing prices ("Marking the close") ;*

- Trading specifically to interfere with the spot or settlement price of derivative contracts;

- Trading to influence the particular spot price for a financial instrument that had been agreed as determining the value of a transaction:

** Information-related actions:*

- Purchasing a financial instrument for one's own account before recommending it to others and then selling it at a profit on the rise in the price following the recommendation ("Scalping")

- Spreading false rumours to induce buying or selling by others;

- Making untrue statements of material facts;

Non-disclosure of material facts or material interests.

Justification

Annex B is deleted because its substance has been incorporated into the definitions specified in Article 1.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on insider dealing and market manipulation (market abuse) (COM(2001) 281 – C5-0262/2001 – 2001/0118(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2001) 281¹),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0262/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0069/2002),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 240 E, 28.8.2001, p 265.

EXPLANATORY STATEMENT

In 1474, the Dominican Antonius Florentius published in Venice a small book entitled *Summula Confessionis*. As a guide to confession, addressed to the businessmen of the time, it listed a number of sins they were exhorted not to commit, including 'trading with the Ottoman Sultan without papal authorisation', as well, in particular, as the contemporary variants of exchange-rate manipulation, insider dealing and profiteering.

Trade has moved on considerably since the days of the Republic of Venice. The financial sphere has assumed preponderance in economic activity. But the temptations of easy money, market manipulation for personal profit, and other forms of insider dealing unfortunately remain topical. As financial products have become more and more sophisticated, so too have market abuses become more subtle, and harder to detect and combat. Financial markets live or die by anticipating rises or falls, which is to say by taking risks. The temptation is enormous to use inside information or disseminate false or misleading information in the attempt to influence in one direction or another price-fixing mechanisms for all kinds of financial instruments.

Before getting to the heart of the matter, your rapporteur wishes to draw attention to a key aspect of his approach, one already emphasised in his report on the reform of the international financial system. Far too often, political discussion on the subject of the financial markets has been conducted on ideological grounds. Some reject the existence of the markets out of hand and show no interest whatsoever in their day-to-day operations. Others, under the pretext of defending the markets, accept all their operating practices, including those which are most opaque and most unfair.

It is high time that a middle way was found - one that acknowledges the importance and legitimacy of the financial markets. It will be the task of the legislator to resolve the small number of problems which seriously hamper their more effective operation.

The European Parliament can, in that connection, only encourage the Commission in its commitment to combating market manipulation in all its forms. The objectives of the proposal for a directive are the right ones. They are compatible with the proposals contained in the report by the committee of Wise Men on regulation of European securities markets. The single financial market sought by the Lisbon European Council implies broadly harmonised legislation imposing compliance with very strict ethical rules incorporated into legal standards.

Stamping out market abuses will boost healthier forms of competition on European financial markets. Establishing a common judicial framework applicable to market manipulation is all the more urgent in that the increasing technicality of financial operations and market internationalisation are tending to exacerbate the phenomenon of market manipulation.

For the purpose of counteracting the diversity of rules and standards in the different countries of the Union, it would have been better to have had recourse to a Community regulation. But the Treaty does not allow it. Criminal sanctions can only be authorised by the Member States.

That is all the more reason to shape the directive to be adopted as an instrument for bringing

about not only harmonisation of the rules, including prudential rules, applicable to financial markets, but at the same time enabling close cooperation between national authorities confronting what is essentially a transnational financial system.

Since the rules - short-sighted as they are - of the European Parliament restrict every report, even a legislative one, to just 8448 characters, your rapporteur can only touch on the main points in the Commission proposal and on the amendments proposed.

We live in an information society. The vital ingredient in any insider dealing operation is clearly information. According to the Commission, inside information can be defined as information 'which, ... if it were made public, would be likely to have a significant effect on the price of those financial instruments [concerned]'. The definition of market manipulation also focuses on the impact of such manipulation, rather than on the intention of committing an offence.

According to the detractors, the offence is defined without reference to the intention of profiting from the inside information. An individual could therefore be penalised without there being any real proof that he or she intended to carry out an insider dealing operation. Moreover, 'accidental or benign' interventions could be regarded as instances of market manipulation.

These criticisms raise extremely complex legal issues. In the case of the relevant criminal penalties, it is difficult to imagine sending someone to prison without proof that he or she intended to commit an offence. On the other hand, the evidence needed to prove intent is so difficult to gather that the investigations sometimes drag on for more a decade. Judges often either reject the accusations, or impose very modest penalties. How can dynamic market operators, who carry out dozens or indeed hundreds of transactions per day, be deterred from engaging in insider dealing by penalties which, if imposed at all, are minimal and located in the distant future?

The nature of the penalties for insider dealing, outlined in Article 14, is also proving controversial. Are both administrative and criminal penalties needed? Given that legal issues are still covered by the third pillar, the European legislator's margin for manoeuvre is somewhat restricted. Moreover, national laws vary considerably from one country to another. Ideally, the penalties should be harmonised, but there is little prospect of such a step under the proposal for a directive. Some representatives of the financial world are proposing that the words 'administrative and criminal sanctions' should be replaced by 'administrative or criminal sanctions', arguing that the current wording may be at odds with the European Convention on Human Rights and the general principle of *non bis in idem*. The Commission, however, takes the view that the Court of Justice has authorised a combination of administrative and criminal penalties and that the incorporation of the word 'or' would force States to choose between the two procedures, which would, on the one hand, exacerbate the problem of varying national penalties, and, on the other, compel States to choose between decriminalisation or an approach based solely on criminal penalties, the effectiveness of which has by no means been proven.

Your rapporteur's approach consists in proposing that the directive should lay down 'administrative measures and sanctions', without prejudice to the right of Member States to impose criminal penalties. The Commission is asked to draw up an indicative list of

administrative measures and sanctions to be laid down. Member States are asked to give some thought to harmonising criminal penalties.

Moreover, in the interests both of protecting judicial standards and safeguarding defendants' rights, the rapporteur has proposed some more precise definitions. That applies in particular to the definition of 'inside information'. It applies more especially to behaviour characteristic of market manipulation.

It is proposed that the term 'information made public' apply to any information disseminated by traditional or electronic media. In that connection the following point must be made: The proposal for a directive nowhere seeks to restrict press freedom. All the media can continue their work of informing, investigating and commenting on all aspects of the financial markets. Verification of sources is an absolute ethical rule for all journalists. If a journalist nevertheless allows himself to be manipulated in connection with insider dealing or a market abuse, it must be the perpetrators of the offence who are prosecuted, not its unwitting messenger. (Unless of course the latter were to have profited personally from the manipulation). For those reasons, your rapporteur proposes deleting the Commission proposal calling on Member States to adopt specific provisions applicable to journalists.

The proposal for a directive proposes empowering the Commission to make technical modifications to the directive once it has been adopted. To that end, it is proposed that the Commission should be assisted by the European Securities Committee.

That approach results from one of the main conclusions of the 'Group of Wise Men' chaired by Mr Alexandre Lamfalussy. Your rapporteur is in favour of developing 'secondary legislation' in some such way. But to authorise a committee of senior officials working under the authority of the European Commission to 'specify' the terms of certain proposals drawn up by a directive of the European Parliament and the Council has two serious implications: firstly, that the work of the Securities Committee must be conducted with the most complete transparency and after consulting all interested parties; and, secondly, the two legislative branches - Parliament and Council - must have the right to inspect the measures drawn up by the Commission on the basis of the work of the European Securities Committee so as to check whether there has been any infringement of the original legislative framework.

At the Stockholm European Council, the Commission conceded that, without having a legal basis in the Treaty, it would not act counter to a 'preponderant view' in the Council. In order to guarantee institutional balance and satisfy a basic democratic right of inspection for the European Parliament, the Commission should make a similar commitment to the latter by agreeing to respect any resolution concluding that the technical modifications proposed exceeded the implementation powers provided for by the directive.

19 February 2002

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council on insider dealing and market manipulation (market abuse)
(COM(2001) 281 – C5-0262/2001 – 2001/0118((COD)))

Draftsman (*): Klaus-Heiner Lehne

(*): Hughes Procedure

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Klaus-Heiner Lehne draftsman at its meeting of 10 July 2001.

It considered the draft opinion at its meetings of 19 December 2001 and 19 February 2002.

At the latter meeting it adopted the following amendments unanimously.

The following were present for the vote: Giuseppe Gargani, chairman; Willi Rothley, Ioannis Koukiadis, Bill Miller, vice-chairmen; Klaus-Heiner Lehne, draftsman; Paolo Bartolozzi, Luis Berenguer Fuster, Maria Berger, Ward Beysen, Isabelle Caullery, Michel J.M. Dary (for François Zimeray pursuant to Rule 153(2)), Willy C.E.H. De Clercq, Bert Doorn, Francesco Fiori, Nicole Fontaine, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Heidi Anneli Hautala, The Lord Inglewood, Othmar Karas, Kurt Lechner, Neil MacCormick, Helmuth Markov (for Alain Krivine pursuant to Rule 153(2)), Manuel Medina Ortega, Angelika Niebler, Elena Ornella Paciotti, Marianne L.P. Thyssen, Rijk van Dam, Michiel van Hulten, Theresa Villiers, Diana Wallis and Stefano Zappalà.

SHORT JUSTIFICATION

1. Remarks on comitology

The Stockholm European Council¹ called on the Commission to set up a Securities Committee of high-level officials from Member States chaired by the Commission. Alongside its advisory role, it is intended to function primarily as a regulatory committee² to assist the Commission when it takes decisions on implementing measures within the meaning of Decision 1999/468/EC.

The Commission complied with this request and by decision of 6 June 2001 set up a 'European Securities Committee'³. This body is now due to intervene in the cases described in Article 1, paragraph 5, Article 5, Article 6, paragraph 6, Article 8, paragraph 2 and Article 16, paragraph 5:

- all the legal definitions of Article 1 shall 'take account of technical developments on financial markets and ... be clarified and adapted by the Commission', i.e. the definitions of 'inside information', 'market manipulation', 'financial instrument' and 'regulative market'.
- All the financial instruments listed in the Annex, Section A, shall also be 'clarified and adapted ... in accordance with the procedure referred to in Article 17(2).'
- The non-exhaustive list of typical methods of market manipulation set out in Section B of the Annex shall be amended using the comitology procedure;
- all the 'technical' details concerning the disclosure of inside information and the drawing-up of the list of insiders (Article 6(1) and (2)) are declared implementing measures;
- the conditions for 'buy-back' programmes and stabilising financial instruments which are to be exempt from the ban on market manipulation shall be adopted in accordance with the comitology procedure;
- all the rules for cooperation between the national authorities and cross-border investigations described in Article 16 (official assistance, exchanges of information, requests for information, telephone and data traffic recording) shall be fleshed out by the implementing measures adopted in the comitology procedure.

2. Reservations from the point of view of the rule of law

In criminal law, the legislative authority is required to define all substantive criminal acts itself and not to leave this to the executive authorities. This follows from the principles of the rule of law such as the parliamentary scrutiny reservation. If, as occurs in the present proposal, the task of defining insider dealing and market manipulation (which are to be punishable under criminal law – Article 14(1)) is declared to be made an 'implementing measure'⁴ under Article 17(2), defendants in criminal proceedings in a Member State could claim that the act or omission in question did not constitute a criminal offence at the time when it was committed (Article 7(1) of the Convention for the Protection of Human Rights

¹ Conclusions of the Stockholm European Council of 23 March, Annex I, paragraph 4.

² Ibid, paragraph 5.

³ 2001/528/EC: Decision of Commission of 6 June 2001 establishing a European Securities Committee – OJ L 191, 13.7.2001, pp. 45-46.

⁴ Council Decision of 28 June 1999 (OJ L 184, 17.7.1999, pp. 23-26) laying down the procedure for the exercise of **implementing powers** conferred on the Commission.

and Fundamental Freedoms – no punishment without law - and Article 49(1) of the Charter of Fundamental Rights).

Since fundamental rights may be very substantially curtailed in the event of sanctions imposed by criminal law, it is particularly important in this instance that the legislative authorities themselves – i.e. the Council and Parliament – rather than the Commission or the European Securities Committee, determine the basis of what constitutes a punishable offence.

3. Institutional reservations

Under heading ‘**6. The major problem: the current regulatory system is not working**’ of the final report of the Committee of Wise Men (the Lamfalussy group) which was submitted to the Stockholm European Council, the Committee criticises the fact that the procedure is too slow, too rigid, produces too much ambiguity and is too random¹. In particular it fails to distinguish ‘between core, enduring, essential framework principles and practical, day-to-day, implementing rules’². The core principles, i.e. the substantive elements of a proposal, should therefore continue to be decided by co-decision procedure (level 1), while the technical implementation of the framework should take place as part of a procedure without any change in the framework rules (level 2). The report unwittingly adds a touch of humour when it states that the comitology process is to be used when the essential provisions of the basic instruments are applied or certain non-essential provisions of a basic instrument are adapted or updated³.

In short it is quite clear that ‘detailed rules’ frequently conceal significant changes to fundamental legal and political decisions.

The only satisfactory solution would be to leave it to the legislative authorities, namely Parliament and the Council, to decide what is essential and what is not. This is why the President of the European Parliament stated in her address to the European Council in Stockholm on 23 March 2001 that ‘in order to avoid the emergence of legislative measures disguised as technical measures – this being a frequent cause of friction between our institutions, as you know – a right of recourse before Parliament along the lines of a ‘call back’ ought to be provided for’. Only on this basis is Parliament prepared to accept the proposed fast track procedure for regulating European securities markets.

4. Conclusions

Your draftsman considers that the only option is to transfer all the comitology provisions from the Annex to the articles of the Directive. This does not mean that definitions of insider dealing or market abuse will be omitted. It will merely ensure that these acts will continue to be determined through co-decision.

¹ Lamfalussy report, pp. 20/21.

² Ibid, p. 21.

³ Ibid, p. 27.

AMENDMENTS

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

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1

Recital 2

(2) An integrated and efficient 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*.

(2) An integrated and efficient 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.

Justification

Self-explanatory.

Amendment 2

Recital 12 c (new)

(12c) This Directive is to be interpreted, and implemented by Member States, in a manner consistent with the requirements for effective regulation 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 exercise or conversion) when the company is subject to a takeover bid or other proposed change of control. In particular, this Directive does not in any way prevent a Member State from putting or having in place such measures as it sees fit for these purposes.

¹ OJ C 240, 28.8.2001, p. 265.

Justification

The purpose of this provision is, first, to ensure that the requirements for effective takeover regulation can be taken into account when implementing the Directive and, secondly, to make clear that, although the Directive sets a common standard, it does not prevent a Member State from putting or having in place measures (including additional prohibitions) which are designed to prevent abuse of target company shareholders.

Amendment 3 Recital 17

(17) A variety of competent authorities in Member States, having different responsibilities, creates unnecessary cost and confusion among economic actors. A single competent authority, of an administrative nature guaranteeing its autonomy from economic actors and avoiding conflicts of interest, ***should be designated in each Member State to deal with market abuse.***

(17) A variety of competent authorities in Member States, having different responsibilities, creates unnecessary cost and confusion among economic actors. A single competent authority ***should be designated in each Member State to assume at least final responsibility for supervising compliance with the provisions adopted pursuant to this Directive, as well as international collaboration. Such authority should be*** of an administrative nature guaranteeing its autonomy from economic actors and avoiding conflicts of interest.

Justification

The Directive needs to provide more flexibility as to the precise role of the single competent authority. This will enable the competent authority to agree appropriate operating arrangements with the body regulating takeovers to allow the takeover regulator to provide swift answers in takeovers with the necessary degree of certainty.

Amendment 4 Recital 18

(18) A common minimum set of strong tools and powers for the competent ***authorities*** will guarantee supervisory effectiveness.

(18) A common minimum set of strong tools and powers for the competent ***authority of each Member State*** will guarantee supervisory effectiveness. ***The designation of a single competent authority for market abuse does not exclude collaboration links or delegation under the responsibility of the competent authority, between that authority***

and other regulatory authorities or market undertakings with a view to guaranteeing efficient supervision of compliance with the provisions adopted pursuant to this Directive.

Justification

The Directive needs to provide more flexibility as to the precise role of the single competent authority. This will enable the competent authority to agree appropriate operating arrangements with the body regulating takeovers to allow the takeover regulator to provide swift answers in takeovers with the necessary degree of certainty.

Amendment 5
Recital 23

(23) Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.

Deleted

¹OJ L 184, 17.7.1999, p. 23.

Justification

The Commission is referring here specifically to Article 2(b), first part (measures of general scope designed to apply essential provisions) of Council Decision 1999/468/EC, i.e. the regulatory procedure under Article 5. This is however inadmissible, because recourse to the regulatory committee is only possible where measures are to be taken to protect the health and safety of humans, animals or plants.

Amendment 6
Article 1, paragraph 1

'Inside information' shall mean information which has not been made public of a precise nature relating to one or more issuers of financial instruments or to one or more financial instruments, which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments.

'Inside information' shall mean information which has not been made public of a precise nature relating to one or more issuers of financial instruments or to one or more financial instruments, which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments.

Information which is derived from information which has been made public is not inside information.

Justification

The scope of the carve-out from the definition of inside information is unclear, which gives rise to uncertainty as regards the scope of the insider dealing prohibition. The amendment is based on a recital in the existing Insider Dealing Directive, whose scope is more certain.

Amendment 7
Article 1, paragraph 2, after point (b)

2. 'Market manipulation' shall mean :

(a) Transactions or orders to trade, which give, or are likely to give, false or misleading signals as to the supply, demand or price of financial instruments, or which secure, by one or more persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level, or which employ fictitious devices or any other form of deception or contrivance.

(b) Dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply, demand or price of financial instruments, including the dissemination of

2. 'Market manipulation' shall mean :

(a) Transactions or orders to trade, which give, or are likely to give, false or misleading signals as to the supply, demand or price of financial instruments, or which secure, by one or more persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level, or which employ fictitious devices or any other form of deception or contrivance, ***or***

(b) Dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply, demand or price of financial instruments, including the dissemination of

rumours and false or misleading news.

rumours and false or misleading news,

where it is undertaken in order to mislead and gain an advantage for the person involved or a third party.

Justification

Market manipulation should only cover acts intended to mislead or gain an advantage. Otherwise the issue of a takeover bid or the publication of a planned joint venture would constitute manipulation of the market.

Amendment 8

Article 1, paragraph 2 a (new)

(2a) The provisions of this paragraph do not apply to a person's behaviour where that behaviour is for legitimate purposes and in conformity with normal practices on the regulated market concerned.

Justification

The prohibition on market manipulation may prohibit accepted and acceptable practices, so the qualification above should be added.

Amendment 9

Article 1, paragraph 3

3. 'Financial instrument' shall mean ***instruments listed in Section A of the Annex.***

3. 'Financial Instrument' shall mean :
- Transferable securities as defined in Directive 93/22/EEC
- Units in collective investment undertakings
- Money-market instruments
- Financial-futures contracts, including equivalent cash-settled instruments
- Forward interest-rate agreements
- Interest-rate, currency and equity swaps
- Options to acquire or dispose of any instrument falling in these categories, including equivalent cash-settled

instruments. This category includes in particular options on currency and on interest rates
- Derivatives on commodities.

Justification

The legal definition of a financial instrument is transferred from the annex to the articles. This will ensure that in future the two legislative bodies will determine the contents of the act, rather than the Securities Committee, the Commission or the Council of Ministers alone.

Amendment 10
Article 1, paragraph 5

5. The definitions referred to in this Article and Section A of the Annex shall in order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive be clarified and adapted by the Commission in accordance with the procedure referred to in Article 17 (2).

Delete

Justification

Comitology is eliminated by deleting the annex and transferring its contents to the articles of the Directive. Nothing is omitted in this way: changes in the definition of the acts are no longer made by the Securities Committee, the Commission or the Council alone, but by the legislative bodies.

Amendment 11
Article 1, paragraph 6 a (new)

(6a) A binding arrangement that requires information held by a person in the course of carrying on one part of its business to be withheld from, or not to be used for, persons with or for whom it acts in the course of carrying on another part of its business.

Justification

Effectively working Chinese Walls prevent information leaking from one part of a business to another. Nowadays all large banks and securities houses in Europe have them, together with many insurance companies. The same is true of internationally active financial institutions in the rest of the world. The general view of the regulators policing the biggest financial markets is that Chinese Walls are an effective solution to controlling information flow.

Where inside information has not passed from one natural person within an institution across a Chinese Wall and, therefore, no natural person within an institution (the legal person) has dealt while in possession of inside information, justice and fairness demands that the legal person (the institution) should not be liable for market abuse. As the proposed Directive currently stands it is at least arguable that the legal person might be liable unless Chinese Walls are more clearly recognised as an acceptable mechanism for preventing market abuse.

Amendment 12

Article 2, paragraph 3 a (new)

(3a) Where an offeror has information which is inside information in relation to an offeree company, this paragraph shall not apply to prevent the offeror from making an offer to the holders of the securities of the offeree company to acquire all or part of such securities which has as its objective the acquisition of control of the offeree company, raising funds in connection with that offer or acquiring securities pursuant to it, provided the offeror believes that the holders of the relevant securities or other persons who do not have the inside information it has are unlikely to be prejudiced through not having that information.

Justification

It must be possible for a bidder to launch and carry out a takeover bid where it has inside information about the target company provided target company shareholders are not prejudiced by lack of that information (for example, because it is reflected in the price the bidder offers or because the board of the offeree also has the information and will take it into account in deciding its recommendation to offeree shareholders).

If no defence of this kind were available, it would be possible for a target company to prevent a takeover bid being made by giving inside information to the offeror. This would be contrary

to the interests of target company shareholders.

Amendment 13
Article 5

Member States shall prohibit any natural or legal person from engaging in market manipulation.

A non-exhaustive list of typical methods used for market manipulation is laid down in Section B of the Annex. The Commission shall adopt, in accordance with the procedure referred to in Article 17 (2), amendments of the examples of these methods.

Member States may decide to introduce specific provisions to cover persons acting for journalistic purposes in the normal course of the exercise of their profession.

1. Member States shall prohibit any natural or legal person from engaging in market manipulation.

2. *Examples of methods of market manipulation (Article 1, paragraph 2) are:*

- *Trade-based actions intended to create a false impression of activity:*
 - *Transactions in which there is no genuine change in actual ownership of the financial instruments (“Wash sales”);*
 - *Transactions where both buy and sell orders are entered at the same time, with the same price and quantity by different, but colluding parties (“improper Matched orders”);*
 - *Engaging in a series of transactions that are reported on a public display facility to give the impression of activity or price movement in a financial instrument (“Painting the tape”);*
 - *Engaging in an activity designed by a person or persons acting in collaboration to push the price of a financial instrument to an artificially high level (pumping the financial instruments on the market) and then to sell its or their own financial instruments massively (“Pumping and dumping”);*
 - *Increasing the bid for a financial instrument to increase its price (creating the impression of strength or the illusion that stock activity was causing the increase) (“Advancing the bid”);*
- *Trade-based actions intended to create*

a shortage:

- *Securing such a control of the bid or demand-side of the derivative and/or the underlying asset that the manipulator has a dominant position which can be exploited to manipulate the price of the derivative and/or the underlying asset (“Cornering”);*
- *Like “cornering”, taking advantage of a shortage in an asset by controlling the demand-side and exploiting market congestion during such shortages in such a way as to create artificial prices. Having significant influence over supply or delivery, having the right to require delivery and using that to dictate arbitrary and abnormal prices (“Abusive squeezes”);*
 - *Time-specific trade-based actions:*
 - *Buying or selling financial instruments at the close of the market in an effort to alter the closing price of the financial instrument and therefore misleading those acting on the basis of closing prices (“Marking the close”);*
 - *Trading specifically to interfere with the spot or settlement price of derivative contracts;*
 - *Trading to influence the particular spot price for a financial instrument that had been agreed as determining the value of a transaction:*
 - *Information-related actions:*
 - *Purchasing a financial instrument for one’s own account before recommending it to others and then selling it at a profit on the rise in the price following the recommendation (“Scalping”);*
 - *Spreading false rumours to induce buying or selling by others;*
 - *Making untrue statements of material facts;*
 - *Non-disclosure of material facts or material interests.*

Justification

Comitology is eliminated by transferring the contents of the annex to the articles, which

increases legal security.

Amendment 14
Article 5, paragraph 3

Member States may decide to introduce specific provisions to cover persons acting for journalistic purposes in the normal course of the exercise of their profession. **Delete**

Justification

Journalists should be treated neither better nor worse than the members of other professions or groups of persons. Article 3(a) of the proposal is sufficient for this profession.

Amendment 15
Article 6, paragraph 2, point b

(b) if the primary business of the entity receiving the information is the issuance of mandatory credit ratings, provided the information is solely for the purpose of developing a credit rating which will be publicly available. **Delete**

Justification

Article 6(2)(b) should be deleted. It could be used to circumvent the UK Takeover Code prohibition on the release of forward-looking financial information which cannot be verified to an appropriate standard.

Amendment 16
Article 6, paragraph 4

Member States shall ***require that natural and/or legal persons being responsible*** for the production or dissemination of research or other relevant information to distribution channels or to the public take reasonable care to ensure that information is fairly presented and disclose their interests or indicate conflicts of interest in the financial

Member States shall ***ensure that there is appropriate regulation in place to require persons responsible*** for the production or dissemination of research or other relevant information to distribution channels or to the public ***(other than information disseminated in connection with a takeover bid or other proposed change of control to the holders of securities of the company which is subject to that bid or other change***

instruments to which that information relates.

of control) take reasonable care to ensure that information is fairly presented and disclose their interests or indicate conflicts of interest in the financial instruments to which that information relates.

Justification

The amendment is to make clear that the article does not apply in relation to offeror and offeree documents in respect of takeover transactions as they are subject to separate regulation. Overlapping regulation is undesirable in the context of takeovers because it provides tactical opportunities for parties to disrupt the bid timetable and process.

Amendment 17
Article 6, paragraph 6

6. The Commission shall adopt, in accordance with the procedure referred to in Article 17 (2), implementing measures on
- the technical modalities of appropriate public disclosure of inside information as referred to in paragraphs 1 and 2,
- the technical modalities of fair presentation of research and other relevant information and the disclosure of particular interests or conflicts of interest as referred to in paragraph 4.

Delete

Justification

This amendment ensures that 'technical' rules are issued as part of the co-decision process.

Amendment 18
Article 8, paragraph 2

1. The prohibitions of this Directive shall not apply to trading in own shares in 'buy back' programmes nor to the stabilisation of a financial instrument provided such trading is carried out under agreed

1. The prohibitions of this Directive shall not apply to trading in own shares in 'buy back' programmes nor to the stabilisation of a financial instrument provided such trading is carried out under agreed

conditions.

2. The Commission shall determine these technical conditions in accordance with the procedure referred to in Article 17 (2).

conditions.

Delete

Justification

Self-explanatory.

Amendment 19

Article 8, paragraph 2 a (new)

(2a) Member States shall not be prevented by any provision of this Directive from putting or having in place such measures as they see fit for the purposes of effective regulation 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 exercise or conversion) when the company is subject to a takeover bid or other proposed change of control.

Justification

The purpose of this amendment is to make clear that, although the Directive sets a common standard, it does not prevent a Member State from putting or having in place measures (including additional prohibitions) which are designed to prevent abuse of target company shareholders.

Amendment 20

Article 8, paragraph 2 b (new)

(2b) The prohibition in Article 2 shall not apply to legal persons where the legal person has binding Chinese Wall arrangements so that the inside information was not known by the natural persons employed by, or acting as agents for, the legal person who acquired or disposed of the financial instruments to which the information relates.

Justification

Effectively working Chinese Walls prevent information leaking from one part of a business to another. Nowadays all large banks and securities houses in Europe have them, together with many insurance companies. The same is true of internationally active financial institutions in the rest of the world. The general view of the regulators policing the biggest financial markets is that Chinese Walls are an effective solution to controlling information flow.

Where inside information has not passed from one natural person within an institution across a Chinese Wall and, therefore, no natural person within an institution (the legal person) has dealt while in possession of inside information, justice and fairness demands that the legal person (the institution) should not be liable for market abuse. As the proposed Directive currently stands it is at least arguable that the legal person might be liable unless Chinese Walls are more clearly recognised as an acceptable mechanism for preventing market abuse.

Amendment 21

Article 8, paragraph 2 c (new)

(2c) The prohibition in Article 5 shall not apply to legal persons where the legal person has binding Chinese Wall arrangements which operate to prevent information which could be used for the purposes of market manipulation from passing to natural persons employed by, or acting as agents for, the legal person unless there is evidence that the information has passed to the natural persons.

Justification

Effectively working Chinese Walls prevent information leaking from one part of a business to another. Nowadays all large banks and securities houses in Europe have them, together with many insurance companies. The same is true of internationally active financial institutions in the rest of the world. The general view of the regulators policing the biggest financial markets is that Chinese Walls are an effective solution to controlling information flow.

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Amendment 22

Article 11

Every Member State shall designate **a single** administrative **authority** competent to ensure that the provisions of this Directive are applied.

Without prejudice to Article 12, every Member State shall designate **one or more** administrative **authorities** competent to ensure that the provisions of this Directive are applied.

If a Member State appoints a number of administrative authorities it shall also designate one of these administrative authorities to coordinate the work and act as the interlocutor of the administrative authorities of the other Member States and the Commission.

Justification

It is important that Member States have significant flexibility to adopt supervisory and enforcement structures which take proper account of existing regulatory responsibilities and market structures.

Amendment 23

Article 12, first paragraph

The competent authority shall be given all supervisory and investigatory powers that are necessary for the exercise of its functions. It shall exercise such powers either directly or, where appropriate, **in collaboration with other authorities, including judicial authorities.**

The competent authority shall be given all supervisory and investigatory powers that are necessary for the exercise of its functions. It shall exercise such powers either directly, or where appropriate:

(a) by delegating them to other authorities or market undertakings or

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

(c) by request to the competent judicial authorities.

Justification

It is important that Member States have significant flexibility to adopt supervisory and

enforcement structures which take proper account of existing regulatory responsibilities and market structures.

Amendment 24
Article 14, paragraph 3

Member States shall provide that the competent authority may disclose to the public every sanction that will be imposed for infringement of the measures taken pursuant to this Directive, unless the disclosure would jeopardise the financial markets or cause disproportionate damage to the parties involved.

Member States shall provide that the competent authority may disclose to the public every sanction that will be imposed for infringement of the measures taken pursuant to this Directive unless the disclosure would jeopardise the financial markets or cause disproportionate damage to the parties involved ***or may adversely affect the interests of those holding the securities of a company which is subject to a takeover bid or other proposed change of control.***

Justification

It may, for example, be the case that announcement of sanctions could seriously disrupt a takeover bid or its timetable and thereby unfairly prejudice the interests of offeree shareholders. The competent authority needs greater flexibility on whether or not to announce sanctions.

Amendment 25
Article 14, paragraph 4 (new)

4. Member States shall refrain from imposing a sanction against a legal person under paragraph 1 if the group of persons protected by this Directive would thereby suffer further disadvantages.

Justification

The owners of the company are the shareholders, they 'are' the company. This amendment seeks to ensure that investors and shareholders who have suffered losses owing to insider dealing or a manipulation of the market are not further punished.

Amendment 26
Article 16, paragraph 1

Competent authorities of Member States shall co-operate with each other whenever necessary for the purpose of carrying out their duties, making use of their powers, whether set out in this Directive or in national law. Competent authorities shall render assistance to competent authorities of other Member States. In particular, they shall exchange information and co-operate in investigation activities.

Competent authorities of Member States shall co-operate with each other whenever necessary for the purpose of carrying out their duties, making use of their powers, whether set out in this Directive or in national law. Competent authorities shall render assistance to competent authorities of other Member States ***or, where so requested by such a competent authority, to any of its delegates or any other authority with whom that competent authority has agreed to collaborate in the exercise of its powers.*** In particular, they shall exchange information and co-operate in investigation activities.

Justification

The proposed amendment is to enable the competent authority to operate delegations and collaboration arrangements effectively.

Amendment 27
Article 16, paragraph 5

5. The Commission shall adopt, in accordance with the procedure referred to in Article 17 (2), implementing measures on the procedures of exchange of information and cross-border inspections as referred to in this Article.

Delete

Justification

Self-explanatory.

Amendment 28
Article 17

1. The Commission shall be assisted by

Delete

the European Securities Committee instituted by Commission Decision (2001/.../EC).*

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision

1999/468/EC shall apply in compliance with Article 7 and Article 8 thereof.

3. The period provided for in Article 5 (6) of Decision 1999/468/EC shall be three months.

Justification

The regulatory procedure proposed in Article 1, paragraph 5, Article 5, Article 6, paragraph 6, Article 8, paragraph 2 and Article 16, paragraph 5 is actually inadmissible because Article 2(b), first part of Decision 1999/468/EC states that recourse to the regulatory committee is only possible if measures to protect the health and safety of humans, animals or plants are to be applied.

Amendment 29
Annex, Section A

Financial Instruments

Delete

'Financial Instrument' shall mean :

- Transferable securities as defined in Directive 93/22/EEC***
- Units in collective investment undertakings***
- Money-market instruments***
- Financial-futures contracts, including equivalent cash-settled instruments***
- Forward interest-rate agreements***
- Interest-rate, currency and equity swaps***
- Options to acquire or dispose of any instrument falling in these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates***
- Derivatives on commodities.***

Justification

Comitology is eliminated by deleting the annex and transferring the contents to the articles of the directive. Nothing is omitted in this way: changes in the definition of the acts are no longer made by the Securities Committee, the Commission or the Council alone, but by the two legislative bodies.

Amendment 30
Annex, Section B

The following illustrative examples of methods being used for market manipulation are not exhaustive, but shall serve the interpretation of the general definition provided by Article 1 (2):

**** Trade-based actions intended to create a false impression of activity:***

- - Transactions in which there is no genuine change in actual ownership of the financial instruments ("Wash sales")***
;
- - Transactions where both buy and sell orders are entered at the same time, with the same price and quantity by different, but colluding parties ("improper Matched orders");***
- - Engaging in a series of transactions that are reported on a public display facility to give the impression of activity or price movement in a financial instrument ("Painting the tape");***
- Engaging in an activity designed by a person or persons acting in collaboration to push the price of a financial instrument to an artificially high level (pumping the financial instruments on the market) and then to sell its or their own financial instruments massively ("Pumping and dumping");***
- Increasing the bid for a financial instrument to increase its price (creating the impression of strength or the illusion that stock activity was causing the increase). "Advancing the bid");***

** Trade-based actions intended to create a shortage:*

- Securing such a control of the bid or demand-side of the derivative and/or the underlying asset that the manipulator has a dominant position which can be exploited to manipulate the price of the derivative and/or the underlying asset ("Cornering") ;

- Like "cornering" taking advantage of a shortage in an asset by controlling the demand-side and exploiting market congestion during such shortages in such a way as to create artificial prices. Having significant influence over supply or delivery, having the right to require delivery and using that to dictate arbitrary and abnormal prices ("Abusive squeezes") ;

** Time-specific trade-based actions:*

- Buying or selling financial instruments at the close of the market in an effort to alter the closing price of the financial instrument and therefore misleading those acting on the basis of closing prices ("Marking the close") ;

- Trading specifically to interfere with the spot or settlement price of derivative contracts;

- Trading to influence the particular spot price for a financial instrument that had been agreed as determining the value of a transaction:

** Information-related actions:*

- Purchasing a financial instrument for one's own account before recommending it to others and then selling it at a profit on the rise in the price following the recommendation ("Scalping")

- Spreading false rumours to induce buying or selling by others;

- Making untrue statements of material facts;

Non-disclosure of material facts or material interests.

Justification

Self-explanatory.