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*Committee on Legal Affairs*

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**2011/0295(COD)**

20.6.2012

# OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the proposal for a regulation of the European Parliament and of the Council  
on insider dealing and market manipulation (market abuse)  
(COM(2011)0651 – C7-0360/2011 – 2011/0295(COD))

Rapporteur: Alexandra Thein

PA\_Legam

## SHORT JUSTIFICATION

The rapporteur warmly welcomes the Commission's aim of stepping up and updating measures to combat market abuse and insider dealing.

To this end, replacing the existing directive with a regulation is also the right approach, as this will ensure that uniform rules and definitions apply in the EU and that the measures are applied uniformly in the Member States. This is desirable because the existing directive leaves scope for interpretation which lead to legal uncertainty and may also result in loopholes which can be exploited to breach its provisions.

This opinion is intended, in particular, to put forward criticisms from the legal point of view and propose solutions. The rapporteur considers it important to point out that the proposed amendments are not intended to allow anybody to evade penalties or punishments which they have deserved. The aim is rather to bring about legal certainty and clarity and thus facilitate prosecution and retribution for market abuse in practice.

The rapporteur's main criticisms are as follows:

- She doubts whether the blanket exclusion of monetary and public debt management activities and climate policy activities is justified, and would like to see this aspect reviewed.
- The definition of 'inside information' is complex and difficult. The main issue here is the clarity of the definition, which is ultimately the basis for imposing penalties and hence for holding infringers accountable. It is regrettable that it was not possible for the Commission proposal to take into account the Court of Justice's decision on the request for a preliminary ruling submitted by Germany's Federal Court of Justice (submitted on 14 January 2011, Markus Geltl v Daimler AG, Case C-19/11). The request concerns vital aspects of the definition, such as the existence of inside information in the case of a protracted process involving a number of intermediate steps, and the concept of reasonable expectation. The Conclusions of the Advocate General, which interpret the concept very broadly, have been available since 21 March 2012. The Court's decision will have to weigh carefully the definition and any necessary demarcations, for example in relation to the newly created category of inside information pursuant to Article 6(1)(e). However, bearing in mind that the Court of Justice has yet to take its decision, the rapporteur has decided not to table any amendments concerning this point at this stage.
- The proposal to penalise even an attempt to commit a breach is in principle to be welcomed, as it expands the circumstances in which retribution is possible. However, it is not clear whether and how, in practice, an attempt can actually be shown to have been made.
- The preventive and defensive systems provided for by Article 11(2) of the proposal should take account of whether the persons concerned can actually meet the requirements in the light of the nature and extent of the dealings undertaken, and must be proportionate.
- The unit threshold of EUR 20 000 for disclosure of managers' own transactions does not take sufficient account of circumstances in the Member States, particularly the average volume of trading, which may vary greatly, for example depending on the size of the stock

exchange or of transactions in a Member State. It would therefore be preferable, while legislating for a threshold, to leave it to Member States to decide where the line should be drawn within a range from EUR 20 000 to 100 000. This would already render the law considerably more uniform than it is at present.

– When announcing the imposition of penalties, the identity of the persons responsible for breaches should not be published. This would be disproportionate, particularly bearing in mind that in many Member States violent offenders cannot be publicly identified either, under data protection legislation. The type and nature of the breach should not be indicated either, if this would cause disproportionate damage to those concerned.

– On the subject of whistle-blowing, it is to be welcomed that, for the time being, the creation of financial incentives is only proposed as an option for Member States. Differing legal traditions exist in the EU in this regard; the proposed amendments to the text are intended to emphasise this more clearly.

– The procedures for reporting breaches should be decided not by means of implementing acts pursuant to Article 291 TFEU but by means of delegated acts pursuant to Article 290 TFEU, as their adoption serves to supplement non-essential elements of the provisions of the Regulation.

– The *ne bis in idem* principle, particularly where both administrative and criminal-law penalties are applicable, should be explicitly stipulated.

– As application and implementation are fundamental to the success of EU law, a review clause should be inserted. This will also make it possible to review the effect of certain provisions such as those concerning retribution for attempted market abuse and the exclusion of monetary and public debt management activities and climate policy activities.

## AMENDMENTS

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

### Amendment 1

#### Proposal for a regulation

#### Recital 22

*Text proposed by the Commission*

(22) Manipulation or attempted manipulation of financial instruments may also consist in placing orders which may not be executed. Further, a financial instrument may be manipulated through behaviour which occurs outside a trading

*Amendment*

(22) Manipulation or attempted manipulation of financial instruments may also consist in placing orders which may not be executed. Further, a financial instrument may be manipulated through behaviour which occurs outside a trading

venue. Therefore, persons who professionally arrange or execute transactions and are required to have systems in place to detect and report suspicious transactions should also report suspicious orders and suspicious transactions that take place outside a trading venue.

venue. Therefore, persons who professionally arrange or execute transactions and are required to have systems in place to detect and report suspicious transactions should also report suspicious orders and suspicious transactions that take place outside a trading venue. ***In the context of regulatory technical standards, ESMA should lay down appropriate rules and procedures as well as appropriate systems and notification templates, with the proviso that, for the purpose of assessing appropriateness, account should always also be taken of the extent to which compulsory notification can reasonably be expected of the parties concerned, in the light of the nature and size of their transactions.***

## Amendment 2

### Proposal for a regulation

#### Recital 28

##### *Text proposed by the Commission*

(28) Greater transparency of transactions conducted by persons discharging managerial responsibilities at the issuer level and, where applicable, persons closely associated with them, constitutes a preventive measure against market abuse. The publication of those transactions on at least an individual basis can also be a highly valuable source of information to investors. It is necessary to clarify that the obligation to publish those managers' transactions also includes the pledging or lending of financial instruments and also transactions by another person exercising discretion for the manager. ***In order to*** ensure an appropriate balance between the level of transparency and the number of reports notified to competent authorities and the public, a ***uniform*** threshold should be introduced in this Regulation below

##### *Amendment*

(28) Greater transparency of transactions conducted by persons discharging managerial responsibilities at the issuer level and, where applicable, persons closely associated with them, constitutes a preventive measure against market abuse. The publication of those transactions on at least an individual basis can also be a highly valuable source of information to investors. It is necessary to clarify that the obligation to publish those managers' transactions also includes the pledging or lending of financial instruments and also transactions by another person exercising discretion for the manager. ***A resolution of this issue should on the one hand*** ensure an appropriate balance between the level of transparency and the number of reports notified to competent authorities and the public ***while on the other hand, however,***

which transactions shall not be *notified*.

*taking account of circumstances in the Member States, particularly the average volume of trading, which may vary greatly, for example depending on the size of the stock exchange or of transactions in a Member State. A threshold should therefore be introduced in this Regulation below which transactions shall not be subject to compulsory notification, which Member States may set within a certain range.*

### Amendment 3

#### Proposal for a regulation Recital 36

##### *Text proposed by the Commission*

(36) Whistleblowers bring new information to the attention of competent authorities which assists them in detecting and sanctioning cases of insider dealing and market manipulation. However, whistleblowing may be deterred for fear of retaliation, or for lack of incentives. This Regulation should therefore *ensure that adequate arrangements are in place to encourage* whistleblowers to alert competent authorities to possible breaches of this Regulation and *to protect them* from retaliation. However, whistleblowers should only be eligible for those incentives where they bring to light new information which they are not already legally obliged to notify and where this information results in a sanction for a breach of this Regulation. Member States should also ensure that whistleblowing schemes they implement include mechanisms that provide appropriate protection of a reported person, particularly with regard the right to the protection of his personal data and procedures to ensure the right of the reported person of defence and to be heard before the adoption of a decision concerning him as well as the right to seek

##### *Amendment*

(36) Whistleblowers bring new information to the attention of competent authorities which assists them in detecting and sanctioning cases of insider dealing and market manipulation. However, whistleblowing may be deterred for fear of retaliation, or for lack of incentives. This Regulation should therefore *contain provisions concerning encouragement for* whistleblowers to alert competent authorities to possible breaches of this Regulation and *concerning their protection* from retaliation. *At the same time, however, the various legal traditions in the Member States should be taken into account, for example regarding the creation of financial incentives. Member States should accordingly have the option of encouraging whistleblowers to notify the competent authorities of possible breaches of this Regulation, in accordance with their existing domestic legal systems.* However, whistleblowers should only be eligible for those incentives where they bring to light new information which they are not already legally obliged to notify and where this information results in a sanction for a breach of this

effective remedy before a court against a decision concerning him

Regulation. Member States should also ensure that whistleblowing schemes they implement include mechanisms that provide appropriate protection of a reported person, particularly with regard the right to the protection of his personal data and procedures to ensure the right of the reported person of defence and to be heard before the adoption of a decision concerning him as well as the right to seek effective remedy before a court against a decision concerning him

#### **Amendment 4**

##### **Proposal for a regulation**

##### **Recital 42**

###### *Text proposed by the Commission*

(42) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty. In particular, delegated acts should be adopted in respect of the conditions for buy-back programmes and stabilisation of financial instruments, the indicators for manipulative behaviour listed in Annex 1, the threshold for determining the application of the public disclosure obligation to emission allowance market participants, the conditions for drawing up insider lists *and* the threshold and conditions relating to managers' transactions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

###### *Amendment*

The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty. In particular, delegated acts should be adopted in respect of the conditions for buy-back programmes and stabilisation of financial instruments, the indicators for manipulative behaviour listed in Annex 1, the threshold for determining the application of the public disclosure obligation to emission allowance market participants, the conditions for drawing up insider lists, the threshold and conditions relating to managers' transactions *and the procedures for notifying breaches of this Regulation*. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

## Amendment 5

### Proposal for a regulation Recital 43

*Text proposed by the Commission*

*Amendment*

***(43) In order to ensure uniform conditions for the implementation of this Regulation in respect of procedures for the reporting of violations of this Regulation implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 183/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.***

*deleted*

## Amendment 6

### Proposal for a regulation Recital 48 a (new)

*Text proposed by the Commission*

*Amendment*

***(48a) Investment advice as defined in MiFID, through the provision of a personal recommendation to a client in respect of one or more transactions relating to financial instruments (in particular, informal short-term investment recommendations, originating from inside the sales or trading departments of an investment firm or a credit institution, expressed to their clients), which are not likely to become publicly available, should not be considered in themselves as recommendations within the meaning of this Regulation.***



### *Justification*

*This amendment makes clear that investment advice and informal short-term investment recommendations, which are not likely to become publicly available, should not be subject to the research disclosure rules. This wording is based on Recital 3 of Commission Directive 2003/125/EC implementing the provision of Article 6(5) of MAD (2003).*

### **Amendment 7**

#### **Proposal for a regulation Recital 48 b (new)**

*Text proposed by the Commission*

*Amendment*

***(48b) The mere fact that, in good faith market-makers, bodies authorised to act as counterparties, or persons authorised to execute orders on behalf of third parties with inside information confine themselves, in the first two cases, to pursuing their legitimate business of buying or selling financial instruments or, in the last case, to carrying out an order dutifully, should not be deemed alone to constitute use of such inside information.***

### *Justification*

*For legal certainty purposes, recitals establishing the scope of the insider dealing offence mentioned in MAD 2003 should be reinserted in MAR (i.e. Recital 18). Furthermore, the ECJ Spector Photo case recognises that a person is able to establish a defence to a charge under certain circumstances, by such as market-makers and bodies authorized to act as counterparties (Paragraph 58 of Spector Photo NV v CBFA (Case C-45/08)).*

### **Amendment 8**

#### **Proposal for a regulation Recital 48 c (new)**

*Text proposed by the Commission*

*Amendment*

***(48c) Having access to inside information relating to another company in the context of a public takeover bid for the purpose of gaining control of that company or proposing a merger with that company should not be deemed alone to***

*constitute insider dealing.*

*Justification*

*For legal certainty purposes, recitals establishing the scope of the insider dealing offence mentioned in MAD 2003 should be reinserted in MAR (i.e. Recital 29). Furthermore, the ECJ Spector Photo case recognises that a person would be able to establish a defence to a charge under certain circumstances, by such as market-makers and bodies authorized to act as counterparties (Paragraph 60 of Spector Photo NV v CBFA (Case C-45/08)).*

**Amendment 9**

**Proposal for a regulation**

**Recital 48 d (new)**

*Text proposed by the Commission*

*Amendment*

***(48d) 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 should not be deemed alone to constitute the use of inside information.***

*Justification*

*For legal certainty purposes, recitals establishing the scope of the insider dealing offence mentioned in MAD 2003 should be reinserted in MAR (i.e. Recital 30). Furthermore, the ECJ Spector Photo Case recognises that a person is able to establish a defence to a charge under certain circumstances, such as the prior decision to acquire or dispose (Paragraph 60 of Spector Photo NV v CBFA (Case C-45/08)).*

**Amendment 10**

**Proposal for a regulation**

**Recital 48 e (new)**

*Text proposed by the Commission*

*Amendment*

***(48e) Research and estimates developed from publicly available data should not be regarded as inside information; and, therefore, any transaction carried out on the basis of such research or estimates***

***should not be deemed alone to constitute insider dealing within the meaning of this Regulation.***

*Justification*

*For legal certainty purposes, recitals establishing the scope of the insider dealing offence mentioned in MAD 2003 should be reinserted in MAR (i.e. Recital 31). Research and estimates developed from publicly available data should not be considered inside information; otherwise, this would adversely undermine the efficient functioning of financial markets.*

**Amendment 11**

**Proposal for a regulation  
Recital 48 f (new)**

*Text proposed by the Commission*

*Amendment*

***(48f) Information regarding the market participant's own plans and strategies for trading should not be considered as inside information.***

*Justification*

*This recital is particularly important where disclosure obligations of the kind envisaged by Recital 12 of REMIT are placed upon all market participants for a particular market. Otherwise, market participants would be required to publish their trading plans and strategies.*

**Amendment 12**

**Proposal for a regulation  
Recital 48 g (new)**

*Text proposed by the Commission*

*Amendment*

***(48g) Trading in financial instruments for which a firm has received a request for a locate of an individual security, or for a confirmation of reasonable expectation of settlement, in order for a client to satisfy the requirements of the "Regulation on Short Selling and certain aspects of Credit Default Swaps" can be legitimate and should not therefore be alone regarded as***

***insider dealing.***

*Justification*

*Due to the interaction between MAR and Short Selling, information relating to a short sale could be considered inside information under MAR. The knowledge that a client is going to enter into a short sale is technically inside information, which we could not therefore act upon, without it being considered as potentially criminal. The present amendment provides the appropriate carve-out for an activity performed by firms carrying out their regular business.*

**Amendment 13**

**Proposal for a regulation**

**Article 6 – paragraph 1 – point a**

*Text proposed by the Commission*

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

*Amendment*

(a) ***specific*** information which has not been made public relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments, and which if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;

*(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)*

**Amendment 14**

**Proposal for a regulation**

**Article 6 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) in relation to spot commodities and financial instruments other than derivatives on commodities,***

***(i) other than relevant information of precise nature which if it were made***

*public, would be likely to have a material and significant effect on the price of such financial instruments, and*

*(ii) where the use of such information would be regarded by a reasonable investor who regularly deals on the market and in the financial instrument concerned as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the relevant markets;*

#### *Justification*

*The new Article 6(1)(da) introduces a free standing category of inside information, which is neither 'precise' nor price sensitive', but which is simply treated as insider information by virtue of the application of a 'reasonable investor test'.*

#### **Amendment 15**

##### **Proposal for a regulation**

##### **Article 6 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

*(e) information not falling within paragraphs (a), (b), (c) or (d) relating to one or more issuers of financial instruments or to one or more financial instruments, which is not generally available to the public, but which, if it were available to a reasonable investor, who regularly deals on the market and in the financial instrument or a related spot commodity contract concerned, would be regarded by that person as relevant when deciding the terms on which transactions in the financial instrument or a related spot commodity contract should be effected.*

*deleted*

#### **Amendment 16**

**Proposal for a regulation**  
**Article 6 – paragraph 3**

*Text proposed by the Commission*

3. For the purposes of **applying** paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.

*Amendment*

3. For the purposes of **supplementing** paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.

*Justification*

*The text proposed by the Commission leads to significant legal uncertainty, since the 'significant effect on price' will depend on the test conducted by the relevant authority, based on what a reasonable investor would be likely to use as part of the basis of his investment decision (vague and imprecise criterion).*

**Amendment 17**

**Proposal for a regulation**  
**Article 11 – paragraph 1**

*Text proposed by the Commission*

1. Any person who operates the business of a trading venue shall adopt and maintain effective arrangements and procedures in accordance with [Articles 31 and 56] of Directive [new MiFID] aimed at preventing and detecting market abuse.

*Amendment*

1. Any person who operates the business of a trading venue shall adopt and maintain effective arrangements and procedures in accordance with [Articles 31 and 56] of Directive [new MiFID] aimed at preventing and detecting market abuse.  
***These shall be notified to the competent supervisory authority.***

## Amendment 18

### Proposal for a regulation

#### Article 11 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

3. ESMA shall develop draft regulatory technical standards to determine appropriate arrangements and procedures for **persons to comply** with the requirements established in paragraph 1 and to determine **the systems and** notification templates to be used **by persons to comply** with the requirements established in paragraph 2.

*Amendment*

3. ESMA shall develop draft regulatory technical standards to determine appropriate arrangements and procedures for **compliance** with the requirements established in paragraph 1 and to determine **appropriate** notification templates to be used **for compliance** with the requirements established in paragraph 2. **For the purpose of assessing appropriateness, ESMA shall take account of the extent to which compliance with the requirements established in paragraph 2 can reasonably be expected of the persons concerned, in the light of the nature and size of their transactions.**

## Amendment 19

### Proposal for a regulation

#### Article 14 – paragraph 3

*Text proposed by the Commission*

3. Paragraph 1 shall not apply to transactions totalling **under EUR 20,000** over the period of a calendar year.

*Amendment*

3. Paragraph 1 shall not apply to transactions totalling **less than a threshold figure to be determined by the Member States** over the period of a calendar year; **Member States shall set this threshold figure at between EUR 20 000 and 100 000.**

## Amendment 20

### Proposal for a regulation

#### Article 14 – paragraph 5

*Text proposed by the Commission*

**5. The Commission may adopt, by means**

*Amendment*

**deleted**

*of delegated acts in accordance with Article 31, measures modifying the threshold in paragraph 3 taking into account the developments in financial markets.*

## **Amendment 21**

### **Proposal for a regulation Article 17 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. A person shall not be considered in breach of any restriction on disclosure of information posed by a contract or by any legislative, regulatory or administrative provision when making information available in accordance with paragraph 2.***

*Justification*

*It should be clear that a contravention of MAR provisions due to the application of this Regulation does not invalidate any transaction or render any transaction unenforceable. This principle is already reflected in Article 9(4) of EMIR (text adopted by the European Parliament on 29 March 2012).*

## **Amendment 22**

### **Proposal for a regulation Article 24 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Competent authorities shall also cooperate closely with the authorities of any Member State responsible for the investigation or prosecution of any criminal offences arising from a breach referred to in Article 25, to ensure that that the administrative and criminal measures and sanctions produce the desired result and to coordinate their action to avoid possible duplication or overlap where the breach may result in both criminal sanctions and***



*administrative measures or sanctions.*

*Justification*

*This amendment aims to avoid that a person is subject to both penal as well as administrative sanctions for the same conduct.*

**Amendment 23**

**Proposal for a regulation**

**Article 25 – title**

*Text proposed by the Commission*

*Amendment*

***Sanctioning powers***

***Scope***

**Amendment 24**

**Proposal for a regulation**

**Article 26 – title**

*Text proposed by the Commission*

*Amendment*

Administrative measures and sanctions

***List and publication of*** administrative measures and sanctions

**Amendment 25**

**Proposal for a regulation**

**Article 26 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 17, in case of a breach referred to in ***paragraph 1***, competent authorities shall, in conformity with national law, have the power to impose at least the following administrative measures and sanctions:

1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 17, in the event of a breach referred to in ***Article 25***, competent authorities shall, in conformity with national law, have the power to impose at least the following administrative measures and sanctions:

## Amendment 26

### Proposal for a regulation

#### Article 26 – paragraph 1 – point m

##### *Text proposed by the Commission*

(m) in respect of a legal person, administrative pecuniary sanctions of up to 10 % of its total annual turnover in the preceding business year; where the legal person is a subsidiary of a parent undertaking [as defined in Articles 1 and 2 of Directive 83/349/EEC], the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

##### *Amendment*

(m) in respect of a legal person, administrative pecuniary sanctions of up to 10 % of its total annual turnover in the preceding business year, **but not exceeding EUR 5 000 000**; where the legal person is a subsidiary of a parent undertaking [as defined in Articles 1 and 2 of Directive 83/349/EEC], the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

## Amendment 27

### Proposal for a regulation

#### Article 26 – paragraph 3

##### *Text proposed by the Commission*

3. Every administrative measure and sanction imposed for breach of this Regulation shall be published without undue delay, including **at least** information on the type and nature of the breach **and the identity of persons responsible for it**, unless such publication would seriously jeopardise the stability of financial markets. Where publication would cause disproportionate damage to the parties involved, competent authorities shall publish the measures and sanctions **on an anonymous basis**.

##### *Amendment*

3. Every administrative measure and sanction imposed for breach of this Regulation shall be published without undue delay, including information on the type and nature of the breach, unless such publication would seriously jeopardise the stability of financial markets. Where publication would cause disproportionate damage to the parties involved, competent authorities shall publish the measures and sanctions **without indicating the type and nature of the breach**.

## Amendment 28

### Proposal for a regulation Article 26 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 26a*

*Cases where both administrative and criminal-law penalties are applicable*

*If, in the event of a breach of the provisions of this Regulation as referred to in Article 25, both an administrative measure or penalty and a criminal-law penalty are applicable, only the criminal-law penalty shall be applied. However, an administrative penalty may be imposed in relation to the breach if the criminal-law penalty is not imposed.*

## Amendment 29

### Proposal for a regulation Article 27 – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

(a) the gravity and duration of the breach;

(a) the **nature**, gravity and duration of the breach;

## Amendment 30

### Proposal for a regulation Article 27 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. An infringement of the provisions under this Regulation shall not of itself affect the validity of any transaction, render any transaction unenforceable nor give rise to any claim for compensation, when the transaction has been entered on good faith.**

*Justification*

*For legal certainty purposes, this amendment makes clear that the contravention of MAR does not invalidate any transaction or render any transaction unenforceable.*

**Amendment 31**

**Proposal for a regulation**

**Article 29 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The Commission shall adopt, ***by means of implementing acts in accordance with Article 33***, measures to specify the procedures referred to in paragraph 1, including the modalities of reporting and the modalities for following-up of reports, the measures for the protection of persons.

3. The Commission shall ***have the power to adopt, pursuant to Article 32, delegated acts concerning*** measures to specify the procedures referred to in paragraph 1, including the modalities of reporting and the modalities for following-up of reports, the measures for the protection of persons.

**Amendment 32**

**Proposal for a regulation**

**Article 31**

*Text proposed by the Commission*

*Amendment*

***Article 31***

***deleted***

***Delegation of powers***

***The Commission shall be empowered to adopt delegated acts in accordance with Article 32 concerning the supplementing and amending of the conditions for buy-back programmes and stabilisation of financial instruments, the definitions in this Regulation, the conditions for drawing up insider lists, the conditions relating to managers' transactions and the arrangements for persons who provide information that may lead to the detection of breaches of this Regulation.***

## Amendment 33

### Proposal for a regulation Article 32 – paragraph 2

*Text proposed by the Commission*

2. *The delegation of power* shall be conferred for an indeterminate period of time *from the date referred to in Article 36(1)*.

*Amendment*

2. *The powers to adopt delegated acts referred to in Articles 3(3), 8(5), 12(2), 13(4), 14(5) and (6) and 29(3)* shall be conferred *on the Commission* for an indeterminate period of time *following [the date of entry into force of this Regulation]*.

## Amendment 34

### Proposal for a regulation Article 32 – paragraph 3

*Text proposed by the Commission*

3. The delegation of power may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in *that* decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. *It shall not affect* the validity of any delegated acts already in force.

*Amendment*

3. The delegation of power *referred to in Articles 3(3), 8(5), 12(2), 13(4), 14(5) and (6) and 29(3)* may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in *the* decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. The validity of any delegated acts already in force *shall not be affected by the decision of revocation*.

## Amendment 35

### Proposal for a regulation Article 32 – paragraph 5

*Text proposed by the Commission*

5. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the

*Amendment*

5. A delegated act *adopted pursuant to Article 3(3), 8(5), 12(2), 13(4), 14(5) or (6) or 29(3)* shall enter into force only if no

Council within a period of **2 months** of notification of **that** act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by **2 months at the initiative of the European Parliament or the Council**.

objection has been expressed either by the European Parliament or **by** the Council within a period of **three months** of **the** notification of **the legal** act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. **At the initiative of the European Parliament or the Council**, that period shall be extended by **three months**.

## Amendment 36

### Proposal for a regulation Article 33

*Text proposed by the Commission*

*Amendment*

#### *Article 33*

*deleted*

#### *Committee procedure*

**1. For the adoption of implementing acts under Article 29(3) the Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.**

**2. Where reference is made to this paragraph, Articles 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 8 thereof.**

## Amendment 37

### Proposal for a regulation Article 35 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 35a*

#### *Review*

**The Commission shall submit a report to the European Parliament and the Council**

*by [3 years after the entry into force of this Regulation] reviewing the functioning of this Regulation, inter alia with regard to the following aspects:*

*- the exclusion for monetary and public debt management activities and climate policy activities;*

*- the ban on attempted insider dealing and market manipulation;*

*The Commission shall, if appropriate, submit proposals for amending this Regulation with the report.*

## PROCEDURE

<b>Title</b>	Insider dealing and market manipulation (market abuse)		
<b>References</b>	COM(2011)0651 – C7-0360/2011 – 2011/0295(COD)		
<b>Committee responsible</b> Date announced in plenary	ECON 15.11.2011		
<b>Opinion by</b> Date announced in plenary	JURI 15.11.2011		
<b>Rapporteur</b> Date appointed	Alexandra Thein 21.11.2011		
<b>Discussed in committee</b>	26.3.2012	26.4.2012	30.5.2012
<b>Date adopted</b>	19.6.2012		
<b>Result of final vote</b>	+: -: 0:	13 8 0	
<b>Members present for the final vote</b>	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Alajos Mészáros, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka		
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Cristian Silviu Buşoi, Eva Lichtenberger, Dagmar Roth-Behrendt, Axel Voss		
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Patrice Tirolien		