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**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the Council common position for adopting a European Parliament and Council directive on insider dealing and market manipulation (market abuse) (9359/6/2002 – C5-0384/2002 – 2001/0118(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Robert Goebbels

### ***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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## PROCEDURAL PAGE

At the sitting of 14 March 2002 Parliament adopted its position at first reading on the 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 September 2002 the President of Parliament announced that the common position had been received and referred to the Committee on Economic and Monetary Affairs (9359/6/2002 – C5-0384/2002).

The committee had appointed Robert Goebbels rapporteur at its meeting of 28 May 2002.

It considered the common position and draft recommendation for second reading at its meetings of 11 September 2002, 2 October 2002 and 8 October 2002.

At the last meeting it adopted the draft legislative resolution by 35 votes to 0, with 3 abstentions.

The following were present for the vote: Christa Randzio-Plath, chairwoman ; José Manuel García-Margallo y Marfil and Philippe A.R. Herzog, vice-chairmen; Robert Goebbels, rapporteur; Luis Berenguer Fuster (for Fernando Pérez Royo), Hans Blokland, Armonia Bordes, Hans Udo Bullmann, Niels Busk (for Carles-Alfred Gasòliba i Böhm, pursuant to Rule 153(2)), Richard Corbett (for Peter William Skinner), Manuel António dos Santos (for a full member to be nominated), Enrico Ferri (for John Purvis , pursuant to Rule 153(2)), Ingo Friedrich, Mary Honeyball, Christopher Huhne, Anne Elisabet Jensen (for Karin Riis-Jørgensen, pursuant to Rule 153(2)), Othmar Karas, Giorgos Katiforis, Piiia-Noora Kauppi, Werner Langen (for Christoph Werner Konrad), Alain Lipietz, Astrid Lulling, Ioannis Marinos, Helmuth Markov (for Ioannis Patakis), David W. Martin, Hans-Peter Mayer, Miquel Mayol i Raynal, Paolo Pastorelli (for Generoso Andria , pursuant to Rule 153(2)), Karla M.H. Peijs (for Lisbeth Grönfeldt Bergman), Alexander Radwan, Bernhard Rapkay, Amalia Sartori (for Jonathan Evans, pursuant to Rule 153(2)), Olle Schmidt, Helena Torres Marques, Bruno Trentin, Jaime Valdivielso de Cué (for Mónica Ridruejo), Ieke van den Burg (for Pervenche Berès), and Stefano Zappalà (for Renato Brunetta, pursuant to Rule 153(2)).

The recommendation for second reading was tabled on 8 October 2002.

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

## DRAFT LEGISLATIVE RESOLUTION

### European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on insider dealing and market manipulation (market abuse) (9359/6/2002 – C5-0384/2002 – 2001/0118(COD))

#### (Codecision procedure: second reading)

*The European Parliament,*

- having regard to the Council common position (9359/6/2002 – C5-0384/2002),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(2001) 281<sup>2</sup>),
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 80 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Economic and Monetary Affairs (A5-0343/2002),
1. Amends the common position as follows;
  2. Instructs its President to forward its position to the Council and Commission

Common position of the Council

Amendments by Parliament

#### Amendment 1 Recital 26

26) Greater transparency of transactions conducted by persons discharging managerial responsibilities within issuers and, where applicable, persons closely associated with them, constitutes a preventive measure against market abuse. The publication of those transactions on **either** an individual **or an aggregated** basis can also be a highly valuable source of information to investors.

26) Greater transparency of transactions conducted by persons discharging managerial responsibilities within issuers 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.

<sup>1</sup> OJ C not yet published

<sup>2</sup> OJ C 240E, 28.8.2001, p. 265

### *Justification*

*Linked to our amendment 8. Tabled to adjust the recitals with the amended contents of the text.*

#### Amendment 2 Recital 36

36) A variety of competent authorities in Member States, having different responsibilities, may create 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 an authority should be of an administrative nature guaranteeing its independence of economic actors and avoiding conflicts of interest. That authority should have adequate arrangements for consultation concerning possible changes in national legislation such as a consultative committee composed of representatives of issuers, financial services providers and consumers, so as to be fully informed of their views and concerns.

36) A variety of competent authorities in Member States, having different responsibilities, may create 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 an authority should be of an administrative nature guaranteeing its independence of economic actors and avoiding conflicts of interest. ***In accordance with national law, Member States should ensure appropriate financing of the competent authority.*** That authority should have adequate arrangements for consultation concerning possible changes in national legislation such as a consultative committee composed of representatives of issuers, financial services providers and consumers, so as to be fully informed of their views and concerns.

### *Justification*

*In order to reassure member States on the subsidiarity issue, the following text "in accordance with national law" has been added at the beginning of the sentence. Therefore amendment 1 is withdrawn and replaced by this amendment.*

#### Amendment 3

*For persons charged with the execution of orders concerning financial instruments inside information shall also mean information conveyed by a client and related to the client's pending orders, which is of a precise nature, which relates 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 4  
Article 6, paragraph 4

4. Persons discharging managerial responsibilities within an issuer of financial instruments and, where applicable, persons closely associated with them, shall, at least, notify to the competent authority the existence of transactions conducted on their own account relating to shares of the said issuer, or to derivatives or other financial instruments linked to them. Member States shall ensure that public access to information concerning such transactions, on *either* an individual *or on an aggregated* basis, is readily available as soon as possible.

4. Persons discharging managerial responsibilities within an issuer of financial instruments and, where applicable, persons closely associated with them, shall, at least, notify to the competent authority the existence of transactions conducted on their own account relating to shares of the said issuer, or to derivatives or other financial instruments linked to them. Member States shall ensure that public access to information concerning such transactions, on *at least* an individual basis, is readily available as soon as possible.

*Justification*

*As the publication of individual reporting is what matters in our opinion, we accept the proposal of some member States to insert the words "at least" in article 6-4. Therefore amendment 3 is withdrawn and replaced by amendment 8.*

Amendment 5  
Article 6, paragraph 10, point 6

– technical arrangements, for the various categories of person referred to in paragraph 5, for fair presentation of research and other information recommending investment strategy and for disclosure of particular interests or conflicts of interest as referred to in paragraph 5,

– technical arrangements, for the various categories of person referred to in paragraph 5, for fair presentation of research and other information recommending investment strategy and for disclosure of particular interests or conflicts of interest as referred to in paragraph 5. ***Such arrangements shall take into account the rules, including self-regulation, governing the profession of journalist;***



## EXPLANATORY STATEMENT

When the Committee on Economic and Monetary Affairs began considering this directive on market abuse more than one year ago, the value of the proposal was already clear. Today your rapporteur would like to stress firmly that this directive is not only vital as far as principles are concerned, but must also be rapidly enforced so as to help restore confidence in the financial markets.

The series of scandals affecting US financial markets has highlighted the lack of professional integrity among certain financial intermediaries. We have seen accounts falsified by unscrupulous company bosses, accounting documents destroyed by a firm of auditors, duplicity on the part of financial analysts, who pour scorn privately on shares they are recommending to the public, and complicity by commercial banks prompted by the conflict of interests they face. In addition, allegations of insider dealing have been made against companies quoted on the stock exchange. Knowing of the critical position facing their company, managers are said to have divested themselves of large amounts of stock, while continuing to publicly recommend that their employees take advantage of the fall in value to top up their portfolios. The rest is a familiar story.

Insider trader is a form of theft, akin to an arbitrary milking of the market as a whole, which penalises all honest operators, be they small shareholders or professional investors. It is therefore necessary to find genuine and effective penalties for this type of behaviour, as well as the other kinds of market manipulation covered by the directive.

The European Parliament tabled 77 amendments to the proposal at first reading. Your rapporteur welcomes the broad agreement that was reached among the legislators. As the Council points out, 60 amendments have been incorporated fully and 10 partially. Following on from the Belgian Presidency, the Spanish Presidency has done an efficient job, recognising the quality of the positions adopted by the European Parliament in what is a rather technical subject area.

Your rapporteur therefore believes that the outcome of the first reading was highly positive from Parliament's point of view. He substantially supports the common position and does not wish to see the second reading become excessively drawn out. He has therefore tabled three minor amendments which should secure a broad consensus. The first relates to a recital concerning the competent authority, stressing that it should receive adequate financing to overcome the current shortcomings in implementing regulatory provisions which have been adopted. The second concerns the definition of inside information. It is difficult to see why the commodities markets, which seem already to benefit from a less stringent definition of inside information, should also be exempt from proceedings relating to frontrunning. Lastly, the third amendment ensures that declarations of transactions by persons discharging managerial responsibilities within an issuer of financial instruments are readily available to investors.

Everything is therefore in place to enable consideration of this directive to be concluded in the same harmonious and responsible spirit which prevailed at first reading. Nevertheless, final adoption does not mean that Parliament should let the matter rest. This directive is somewhat 'experimental' since it is the first directive where the Commission will have to submit secondary legislation committee provisions, known as level 2 provisions, under the

Lamfalussy procedure. Care will therefore have to be taken to ensure that the level 2 provisions adopted by the Commission comply strictly with the letter and spirit of the directive adopted at level 1.