COUNCIL OF THE EUROPEAN UNION

Brussels, 25 June 2013

11384/13

Interinstitutional File: 2011/0295(COD)

EF 137
ECOFIN 618
DROIPEN 81
CODEC 1567

NOTE

From:	Presidency
To	Permanent Representatives Committee (part2)
Subject:	Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) (MAR) - Validation of the provisional agreement with the European Parliament

1. On 25 October 2011 the Commission submitted to the Council the above-mentioned proposal, which aims to increase market integrity and investor protection, while ensuring a single rulebook and level playing field and increasing the attractiveness of securities markets for capital raising. The proposal was accompanied by a proposal for a Directive on criminal sanctions for insider dealing and market manipulation. These two proposals together constitute the review of the current Market Abuse Directive (MAD).

2. The proposed Regulation (MAR) has been examined by the Working Party on Financial Services under the ECOFIN Council, whereas the proposed Directive (MAD) has been examined by the Working Party on Substantive Criminal Law under the JHA Council.

3. The EP ECON Committee voted on its report in October 2012, and the Council agreed on its general approach on MAR in December 2012.

4. Following intensive negotiations with the European Parliament, which were concluded on 20 June 2013 with some technical work thereafter, provisional agreement on MAR has been reached, as set out in the fourth column of the table and the annex attached. This agreement, however, remains subject to a technical alignment following the outcome of the trilogue negotiations on the revised rules for markets in financial instruments (MiFID and MiFIR). This technical alignment relates to the cross references in MAR to MiFID/MiFIR, principally concerning scope and definitions.

5. The Presidency considers that the agreement it has reached with European Parliament is a very balanced one, and meets to a very large extent the positions expressed in the Council's general approach, while making substantial technical improvements across the text. The Presidency also considers that this agreement is acceptable to a very large number of delegations, which represent a strong qualified majority.

6. In these circumstances, the Permanent Representatives Committee (Part II) is invited to:

   (a) validate the provisional agreement as set out in the fourth column of the table and the annex attached, and

   (b) confirm that the Presidency can indicate to the European Parliament that, should the European Parliament adopt its position at first reading in the exact form as set out in the fourth column of the table and the annex attached, subject to a future technical alignment following the outcome of the trilogue negotiations on revised rules for markets in financial instruments (MiFID and MiFIR) and to revision by the legal linguists of both institutions, the Council would approve the European Parliament's position and the Act shall be adopted in the wording which corresponds to the European Parliament's position.

MAR - Insider dealing and market manipulation (market abuse) (Regulation)
COM - COUNCIL - EP TEXT
25 June 2013

Row Nr.	Ref.	COM Proposal	Council text	EP text	25 June Package Text
			Recitals		
1.	(1)	(1) A genuine single market for financial services is crucial for economic growth and job creation in the Union.	(1) A genuine single market for financial services is crucial for economic growth and job creation in the Union.	(1) A genuine ***internal*** market for financial services is crucial for economic growth and job creation in the Union.	(1) A genuine ***internal*** market for financial services is crucial for economic growth and job creation in the Union.
2.	(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 and derivatives.	(2) An integrated**,** efficient ***and transparent*** financial market requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.	(2) An integrated**,** efficient ***and transparent*** financial market requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.

3.	(3)	(3) Directive 2003/6/EC of the European Parliament and the Council on insider dealing and market manipulation (market abuse), adopted on 28 January 2003, completed and updated the Union's legal framework to protect market integrity. However, given the legislative, market and technological developments since then that have resulted in considerable changes to the financial landscape, that Directive should now be replaced to ensure that it keeps pace with these developments. A new legislative instrument is also needed to ensure uniform rules and clarity of key concepts and to ensure a single rulebook in line with the conclusions of the High Level Group on Financial Supervision .	(3) Directive 2003/6/EC of the European Parliament and the Council on insider dealing and market manipulation (market abuse), adopted on 28 January 2003, completed and updated the Union's legal framework to protect market integrity. However, given the legislative, market and technological developments since then that have resulted in considerable changes to the financial landscape, that Directive should now be replaced to ensure that it keeps pace with these developments. A new legislative instrument is also needed to ensure uniform rules and clarity of key concepts and to ensure a single rulebook in line with the conclusions of the High Level Group on Financial Supervision .	(3) Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), completed and updated the Union's legal framework to protect market integrity. However, given the legislative, market and technological developments since then that have resulted in considerable changes to the financial landscape, that Directive should now be replaced to ensure that it keeps pace with these developments. A new legislative act is also needed to ensure uniform rules and clarity of key concepts and to ensure a single rulebook in line with the conclusions of the High-Level Group on Financial Supervision in the EU.	(3) Directive 2003/6/EC of the European Parliament and the Council on insider dealing and market manipulation (market abuse), adopted on 28 January 2003, completed and updated the Union's legal framework to protect market integrity. However, given the legislative, market and technological developments since then that have resulted in considerable changes to the financial landscape, that Directive should now be replaced to ensure that it keeps pace with these developments. A new legislative instrument is also needed to ensure uniform rules and clarity of key concepts and to ensure a single rulebook in line with the conclusions of the High Level Group on Financial Supervision .

4.	(4)	(4) There is a need to establish a uniform framework in order to preserve market integrity and to avoid potential regulatory arbitrage as well as to provide more legal certainty and less regulatory complexity for market participants. This directly applicable legal act aims at contributing in a determining manner to the smooth functioning of the internal market and should, consequently, be based on the provisions of Article 114 TFEU, as interpreted in accordance with the consistent case-law of the Court of Justice of the European Union.	(4) There is a need to establish a **more** uniform **and stronger** framework in order to preserve market integrity and to avoid potential regulatory arbitrage as well as to provide more legal certainty and less regulatory complexity for market participants. This directly applicable legal act aims at contributing in a determining manner to the smooth functioning of the internal market and should, consequently, be based on the provisions of Article 114 TFEU, as interpreted in accordance with the consistent case-law of the Court of Justice of the European Union.	(4) There is a need to establish a uniform framework in order to preserve market integrity***,*** to avoid potential regulatory arbitrage ***and to ensure accountability in the event of attempted manipulation,*** as well as to provide more legal certainty and less regulatory complexity for market participants. This directly applicable legal act aims at contributing in a determining manner to the smooth functioning of the internal market and should, consequently, be based on the provisions of Article 114 on the Functioning of the European Union (TFEU), as interpreted in accordance with the consistent case-law of the Court of Justice of the European Union.	(4) There is a need to establish a **more** uniform **and stronger** framework in order to preserve market integrity and to avoid potential regulatory arbitrage ***and to ensure accountability in the event of attempted manipulation,*** as well as to provide more legal certainty and less regulatory complexity for market participants. This directly applicable legal act aims at contributing in a determining manner to the smooth functioning of the internal market and should, consequently, be based on the provisions of Article 114 TFEU, as interpreted in accordance with the consistent case-law of the Court of Justice of the European Union.

5.	(5)	(5) In order to remove the remaining obstacles to trade and significant distortions of competition resulting from divergences between national laws and to prevent any further likely obstacles to trade and significant distortions of competition from arising, it is therefore necessary to adopt a Regulation establishing uniform rules applicable in all Member States. Shaping market abuse requirements in the form of a Regulation should ensure that those requirements will be directly applicable. This should ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive. This Regulation should entail that all persons follow the same rules in all the Union. A Regulation should also reduce regulatory complexity and firms' compliance costs, especially for firms operating on a cross-border basis, and contribute to eliminating competitive distortions.	(5) In order to remove the remaining obstacles to trade and significant distortions of competition resulting from divergences between national laws and to prevent any further likely obstacles to trade and significant distortions of competition from arising, it is therefore necessary to adopt a Regulation **to establish a more uniform interpretation of the EU market abuse framework which more clearly defines** rules applicable in all Member States. Shaping market abuse requirements in the form of a Regulation should ensure that those requirements will be directly applicable. This should ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive. This Regulation should entail that all persons follow the same rules in all the Union. A Regulation should also reduce regulatory complexity and firms' compliance costs, especially for firms operating on a cross-border basis, and contribute to eliminating competitive distortions.	(5) In order to remove the remaining obstacles to trade and significant distortions of competition resulting from divergences between national laws and to prevent any further likely obstacles to trade and significant distortions of competition from arising, it is therefore necessary to adopt a Regulation establishing uniform rules applicable in all Member States. Shaping market abuse requirements in the form of a regulation should ensure that those requirements will be directly applicable. This should ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive. This Regulation should entail that all persons follow the same rules in all the Union. This Regulation should also reduce regulatory complexity and firms' compliance costs, especially for firms operating on a cross-border basis, and contribute to eliminating competitive distortions.	(5) In order to remove the remaining obstacles to trade and significant distortions of competition resulting from divergences between national laws and to prevent any further likely obstacles to trade and significant distortions of competition from arising, it is therefore necessary to adopt a Regulation **establishing a more uniform interpretation of the EU market abuse framework which more clearly defines** rules applicable in all Member States. Shaping market abuse requirements in the form of a Regulation should ensure that those requirements will be directly applicable. This should ensure uniform conditions by preventing diverging national requirements as a result of the transposition of a directive. This Regulation should entail that all persons follow the same rules in all the Union. A Regulation should also reduce regulatory complexity and firms' compliance costs, especially for firms operating on a cross-border basis, and contribute to eliminating competitive distortions.

6.	(6)	(6) The Commission Communication on "A Small Business Act for Europe" calls on the Union and its Member States to design rules in order to reduce administrative burdens, to adapt legislation to the needs of issuers on markets for small and medium sized enterprises and to facilitate the access to finance of those issuers. A number of provisions in Directive 2003/6/EC impose administrative burdens on issuers, notably those whose financial instruments are admitted to trading on SME growth markets, that should be reduced.	(6) The Commission Communication on "A Small Business Act for Europe" calls on the Union and its Member States to design rules in order to reduce administrative burdens, to adapt legislation to the needs of issuers on markets for small and medium sized enterprises and to facilitate the access to finance of those issuers. A number of provisions in Directive 2003/6/EC impose administrative burdens on issuers, notably those whose financial instruments are admitted to trading on SME growth markets, that should be reduced.	(6) The Commission Communication of 25 June 2008, entitled, "Think Small First": A "Small Business Act for Europe" calls on the Union and its Member States to design rules in order to reduce administrative burdens, to adapt legislation to the needs of issuers on markets for small and medium-sized enterprises and to facilitate the access to finance of those issuers. A number of provisions in Directive 2003/6/EC impose administrative burdens on issuers, in particular those whose financial instruments are admitted to trading on SME growth markets, which should be reduced.	(6) The Commission Communication on "A Small Business Act for Europe" calls on the Union and its Member States to design rules in order to reduce administrative burdens, to adapt legislation to the needs of issuers on markets for small and medium sized enterprises and to facilitate the access to finance of those issuers. A number of provisions in Directive 2003/6/EC impose administrative burdens on issuers, notably those whose financial instruments are admitted to trading on SME growth markets, that should be reduced.
7.	(7)	(7) Market abuse is the concept that encompasses all unlawful behaviour in the financial markets and for the purposes of this Regulation it should be understood to consist of insider dealing or the misuse of inside information and market manipulation. Such behaviours prevent full and proper market transparency, which is a pre requisite for trading for all economic actors in integrated financial markets.	(7) Market abuse is the concept that encompasses ~~all~~ unlawful behaviour in the financial markets and for the purposes of this Regulation it should be understood to consist of insider dealing or the misuse of inside information and market manipulation. Such behaviours prevent full and proper market transparency, which is a pre requisite for trading for all economic actors in integrated financial markets.	(7) Market abuse is the concept that encompasses all unlawful behaviour in the financial markets and for the purposes of this Regulation should be understood to consist of insider dealing or the misuse of inside information and market manipulation. Such behaviour prevents full and proper market transparency, which is a prerequisite for trading for all economic actors in integrated financial markets.	(7) Market abuse is the concept that encompasses ~~all~~ unlawful behaviour in the financial markets and for the purposes of this Regulation it should be understood to consist of insider dealing or the misuse of inside information and market manipulation. Such behaviours prevent full and proper market transparency, which is a pre requisite for trading for all economic actors in integrated financial markets.

8.	(8)	(8) The scope of Directive 2003/6/EC focused on financial instruments admitted to trading on regulated markets but in recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). There are also financial instruments which are only traded on other types of organised trading facilities (OTFs) such as broker crossing systems or only traded over the counter. The scope of this Regulation should therefore be extended to include any financial instrument traded on a MTF or an OTF, as well as financial instruments traded over the counter, such as for example credit default swaps, or any other conduct or action which can have an effect on such a financial instrument traded on a regulated market, MTF or OTF. This should improve investor protection, preserve the integrity of markets and ensure that market manipulation of such instruments through financial instruments traded over the counter is clearly prohibited.	(8) The scope of Directive 2003/6/EC focused on financial instruments admitted to trading on regulated markets **or for which a request for admission to trading on such a market had been made. However,** in recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). There are also financial instruments which are only traded on other types of organised trading facilities (OTFs) ~~such as broker crossing systems~~ or only traded over the counter. The scope of this Regulation should therefore be extended to include any financial instrument traded on a MTF or an OTF, ~~as well as financial instruments traded over the counter, such as for example credit default swaps,~~ or any other conduct or action which can have an effect on such a financial instrument traded on a regulated market, MTF or OTF. **In the case of certain types of MTFs which, like regulated markets, help companies raise equity finance, the prohibition against market abuse equally applies when a request for admission to trading on such a market has been made; therefore, the scope of this Regulation should include the period beginning when an application for admission to trading on a MTF has been made, where relevant. This includes but is not necessarily limited to SME growth markets. For transparency**	(8) The scope of Directive 2003/6/EC focused on financial instruments admitted to trading on regulated markets but in recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). There are also financial instruments which are only traded on ***any*** other types of organised trading facilities (OTFs) such as broker crossing systems or that are only traded over the counter. The scope of this Regulation should therefore be extended to include any financial instrument traded on a MTF or an OTF, as well as financial instruments traded over the counter, such as for example credit default swaps, or any other conduct or action which can have an effect on such a financial instrument traded on a regulated market, MTF or OTF. This should improve investor protection, preserve the integrity of markets and ensure that market manipulation of such instruments through financial instruments traded over the counter is clearly prohibited.	(8) The scope of Directive 2003/6/EC focused on financial instruments admitted to trading on regulated markets **or for which a request for admission to trading on such a market had been made. However,** in recent years financial instruments have been increasingly traded on multilateral trading facilities (MTFs). There are also financial instruments which are only traded on other types of organised trading facilities (OTFs) or only traded over the counter. The scope of this Regulation should therefore include any financial instrument traded on a **Regulated Market,** MTF or an OTF, or any other conduct or action which can have an effect on such a financial instrument irrespective of whether it takes place on a trading venue. **In the case of certain types of MTFs which, like regulated markets, help companies raise equity finance, the prohibition against market abuse equally applies when a request for admission to trading on such a market has been made; therefore, the scope of this Regulation should include the period beginning when an application for admission to trading on a MTF has been made.** This should improve investor protection, preserve the integrity of markets and ensure that market manipulation of such

9.	(8a)		**(8a) Certain financial instruments which are not traded on a trading venue may be used for market abuse. This includes instruments whose value depends on financial instruments traded on a trading venue, or whose trading has an effect on the value of other financial instruments traded on a trading venue, typically derivatives. Examples may include inside information relating to a share or bond, which can be used to buy a derivative of that share or bond, or an index whose value depends on that share or bond. When a financial instrument is used as a reference price, an OTC traded derivative can be used to benefit from manipulated prices, or be used to manipulate the price of a financial instrument traded on a venue. This regulation also covers financial instruments whose trading has an effect on the value of other financial instruments traded on a trading venue. This would include, for example, the planned issuance of a new tranche of securities not otherwise within the scope of this Regulation, but where trading in those instruments could affect the price of existing listed securities that are within the scope of this Regulation. This Regulation also covers the possible situation where the value of the instrument traded on a trading venue depends on the OTC traded instrument.**		**(8aa) Certain financial instruments which are not traded on a trading venue may be used for market abuse. This includes financial instruments ~~whose~~ the price or value of which depends on or has an effect on financial instruments traded on a trading venue, or the ~~whose~~ trading of which has an effect on the price or value of other financial instruments traded on a trading venue.~~, typically derivatives~~. Examples may include inside information relating to a share or bond, which can be used to buy a derivative of that share or bond, or an index ~~whose~~ the value of which depends on that share or bond. When a financial instrument is used as a reference price, an OTC traded derivative can be used to benefit from manipulated prices, or be used to manipulate the price of a financial instrument traded on a venue. A further example is the planned issuance of a new tranche of securities that are not otherwise within the scope of this Regulation, but where trading in those instruments could affect the price or value of existing listed securities that are within the scope of this Regulation. This Regulation also covers the possible situation where the price or value of the instrument traded on a trading venue depends on the OTC traded**

10	(8b)		**(8b) Activities of trading in own shares in buy-back programmes and of stabilisation of a financial instrument which would not benefit from the exemption of the prohibitions of this Regulation as provided for by Article 3 , should not in themselves be deemed to constitute market abuse.**		**(8b) Activities of trading in own shares in buy-back programmes and of stabilisation of a financial instrument which would not benefit from the exception of the prohibitions of this Regulation as provided for by Article 3 , should not in themselves be deemed to constitute market abuse.**
11	(9)	(9) Stabilisation of financial instruments or trading in own shares in buy-back programmes can be legitimate, in certain circumstances, for economic reasons and should not, therefore, in themselves be regarded as market abuse.	(9) Stabilisation of **securities** or trading in own shares in buy-back programmes can be legitimate, in certain circumstances, for economic reasons and should not, therefore, in themselves be regarded as market abuse **provided the actions are carried out under the necessary transparency as provided for by Article 3, where relevant information regarding the statbilisation or buy-back programme is disclosed**.	(9) Stabilisation of financial instruments or trading in own ***financial instruments*** in buy-back programmes can be legitimate, in certain circumstances, for economic reasons and should not, therefore, in themselves be regarded as market abuse.	(9) Trading in securities or associated instruments for the stabilisation of **securities** or trading in own shares in buy-back programmes can be legitimate, in certain circumstances, for economic reasons and should not, therefore, in themselves be regarded as market abuse **provided the actions are carried out under the necessary transparency, where relevant information regarding the stabilisation or buy-back programme is disclosed.**

12	(10)	(10) Member States and the European System of Central Banks, the European Financial Stability Facility, national central banks and other agencies or special purpose vehicles of one or several Member States as well as the Union and certain other public bodies should not be restricted in carrying out monetary, exchange-rate or public debt management or climate policy.	(10) Member States and the European System of Central Banks, ~~*the European Financial Stability Facility,*~~ national central banks and other agencies or special purpose vehicles of one or several Member States **or third countries** as well as the Union and certain other public bodies **or persons acting on their behalf** should not be restricted in carrying out monetary, exchange-rate or public debt management or climate policy**. Neither should transactions or orders carried out by the Union, a special purpose vehicle for several Member States or third countries, the European Investment Bank,** *the European Financial Stability Facility,* **or an international financial institution established by two or more Member States or third countries be restricted in actions with the purpose of mobilising funding and provide financial assistance to the benefit of its members**.	(10) Member States and the European System of Central Banks, the European Financial Stability Facility, national central banks and other agencies or special purpose vehicles of one or several Member States or of the Union and certain other public bodies should not be restricted in carrying out monetary, exchange-rate or public debt management ***but should do so in a transparent manner***.	(10) Member States, members of the European System of Central Banks, ministries, and other agencies or special purpose vehicles of one or several Member States, or as well as the Union and certain other public bodies or persons acting on their behalf should not be restricted in carrying out monetary, exchange-rate or public debt management policy insofar as they are undertaken in the public interest and solely in pursuit of these policies. Neither should transactions, orders or behaviours carried out by the Union, a special purpose vehicle for one or several Member States, the European Investment Bank, the European Financial Stability Facility, the European Stability Mechanism or an international financial institution established by two or more Member States be restricted in mobilising funding and provide financial assistance to the benefit of its members. This exclusion from the scope of the Regulation may, in accordance with this Regulation, be extended to certain public bodies charged with or intervening in the management of the public debt and central banks of third countries. At the same time, these exemptions for monetary, exchange-rate or public debt management policy should not extend to cases where those public bodies engage in transactions, orders or behaviours which are not in the pursuit of

13	(11)	(11) Reasonable investors base their investment decisions on information already available to them, that is to say, on ex ante available information. Therefore, the question whether, in making an investment decision, a reasonable investor would be likely to take into account a particular piece of information should be appraised on the basis of the ex ante available information. Such an assessment has to take into consideration the anticipated impact of the information in light of the totality of the related issuer's activity, the reliability of the source of information and any other market variables likely to affect the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances in the given circumstances.	(11) Reasonable investors base their investment decisions on information already available to them, that is to say, on ex ante available information. Therefore, the question whether, in making an investment decision, a reasonable investor would be likely to take into account a particular piece of information should be appraised on the basis of the ex ante available information. Such an assessment has to take into consideration the anticipated impact of the information in light of the totality of the related issuer's activity, the reliability of the source of information and any other market variables likely to affect the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances in the given circumstances.	(11) Reasonable investors base their investment decisions on information already available to them, that is to say, on ex-ante available information. Therefore, the question whether, in making an investment decision, a reasonable investor would be likely to take into account a particular piece of information should be appraised on the basis of the ex-ante available information. Such an assessment has to take into consideration the anticipated impact of the information in light of the totality of the related issuer's activity, the reliability of the source of information and any other market variables likely to affect the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances in the given circumstances.	(11) Reasonable investors base their investment decisions on information already available to them, that is to say, on ex ante available information. Therefore, the question whether, in making an investment decision, a reasonable investor would be likely to take into account a particular piece of information should be appraised on the basis of the ex ante available information. Such an assessment has to take into consideration the anticipated impact of the information in light of the totality of the related issuer's activity, the reliability of the source of information and any other market variables likely to affect the price of financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances in the given circumstances.
14	(12)	(12) Ex post information may be used to check the presumption that the ex ante information was price sensitive, but should not be used to take action against persons who drew reasonable conclusions from ex ante information available to them.	(12) Ex post information may be used to check the presumption that the ex ante information was price sensitive, but should not be used to take action against persons who drew reasonable conclusions from ex ante information available to them.	(12) Ex-post information may be used to check the presumption that the ex-ante information was price sensitive, but should not be used to take action against persons who drew reasonable conclusions from ex-ante information available to them.	(12) Ex post information may be used to check the presumption that the ex ante information was price sensitive, but should not be used to take action against persons who drew reasonable conclusions from ex ante information available to them.

15	(12a)		**(12a) An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration. An intermediate step maybe inside information if, by itself meets the criteria set forth in this Regulation for inside information.**		**(12a) When inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration. An intermediate step maybe inside information if it, by itself, meets the criteria set forth in this Regulation for inside information.**

16	(13)	(13) Legal certainty for market participants should be enhanced through a closer definition of two of the elements essential to the definition of inside information, namely the precise nature of that information and the significance of its potential effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances. For derivatives which are wholesale energy products, notably information required to be disclosed according to Regulation [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] should be considered as inside information.	(13) Legal certainty for market participants should be enhanced through a closer definition of two of the elements essential to the definition of inside information, namely the precise nature of that information and the significance of its potential effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances. For derivatives which are wholesale energy products, notably information required to be disclosed according to Regulation [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] should be considered as inside information.	(13) Legal certainty for market participants should be enhanced through a closer definition of two of the elements essential to the definition of inside information, namely the precise nature of that information and the significance of its potential effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances. For derivatives which are wholesale energy products, information required to be disclosed according to Regulation (EU) No .../2012 of the European Parliament and the Council of ... [on Wholesale Energy Market Integrity and Transparency] should be considered to be inside information.	(13) Legal certainty for market participants should be enhanced through a closer definition of two of the elements essential to the definition of inside information, namely the precise nature of that information and the significance of its potential effect on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances. For derivatives which are wholesale energy products, notably information required to be disclosed according to Regulation [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] should be considered as inside information.

17	(14)	(14) Inside information can be abused before an issuer is under the obligation to disclose it. The state of contract negotiations, terms provisionally agreed in contract negotiations, the possibility of the placement of financial instruments, conditions under which financial instruments will be marketed, or provisional terms for the placement of financial instruments may be relevant information for investors. Therefore, such information should qualify as inside information. However, such information may not be sufficiently precise for the issuer to be under an obligation to disclose it. In such cases, the prohibition against insider dealing should apply, but the obligation on the issuer to disclose the information should not.	(14) **Information which relates to an event or set of circumstances which is an intermediate stage in a protracted process, may consitute inside information as defined in this regulation. Such inside information may relate for example to, the** state of contract negotiations, terms provisionally agreed in contract negotiations, the possibility of the placement of financial instruments, conditions under which financial instruments will be marketed, ~~or~~ provisional terms for the placement of financial instruments**, the consideration of the inclusion of a financial instrument in a major index or the deletion of a financial instrument from such index.**	(14) Inside information can be abused before an issuer is under the obligation to disclose it. The state of contract negotiations, terms provisionally agreed in contract negotiations, the possibility of the placement of financial instruments, conditions under which financial instruments will be marketed, or provisional terms for the placement of financial instruments may be relevant information for investors. Therefore, such information should qualify as inside information. However, such information may not be sufficiently precise for the issuer to be under an obligation to disclose it. In such cases, the prohibition against insider dealing should apply, but the obligation on the issuer to disclose the information should not.	(14) **Information which relates to an event or set of circumstances which is an intermediate stage in a protracted process, may constitute inside information as defined in this regulation. Such inside information may relate, for example, to~~,~~ the** state of contract negotiations, terms provisionally agreed in contract negotiations, the possibility of the placement of financial instruments, conditions under which financial instruments will be marketed, ~~or~~ provisional terms for the placement of financial instruments**, the consideration of the inclusion of a financial instrument in a major index or the deletion of a financial instrument from such index.**
18	(14a)/(14b)		**(14b) 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 in itself to constitute the use of inside information.**	***(14a) It is possible for the use of inside information to lead to the acquisition and disposal of financial instruments. Since the acquisition or disposal of financial instruments necessarily involves a prior decision, the carrying out of such acquisition or disposal should not be deemed, in itself, to constitute insider dealing.***	Please refer to recital 16h on legitimate behaviours.

19	(14c)			***[moved alongside Council (16g)]***	
20	(14d)			***[moved alongside Council (16d)]***	
21	(14e)			***(14e) Trading in financial instruments for which a person 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 Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps can be legitimate and should not be deemed, in itself, to constitute insider dealing.***	[Delete as not present in the text of MAR]
22	(14f) (14a)		**(14a) The intention of this Regulation is not to prohibit discussions of a general nature regarding the business and market developments between shareholders and management concerning an issuer. Such relationships are essential for the efficient functioning of markets and should not be prohibited by this Regulation.**	***(14f) This Regulation is not intended to prohibit reasonable discussions between shareholders and other market participants and management concerning a company and its prospects. Such involvement of the shareholders in the corporate governance of a company should be considered essential to the proper functioning of the relationship between companies and shareholders.***	**This Regulation is not intended to prohibit discussions of a general nature regarding the business and market developments between shareholders and management concerning an issuer. Such relationships are essential for the efficient functioning of markets and should not be prohibited by this Regulation**

23	(14g)			***(14g) When inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute information of a precise nature.***	[Delete already detailed above]
24	(14h)			***(14h) Transactions or orders to trade which might be considered to constitute market manipulation may be justified on the basis that they are legitimate and in accordance with accepted practice on the regulated market concerned. A sanction could still be imposed if the competent authority established that there was another, illegitimate, reason behind these transactions or orders to trade.***	[Delete – moved to 19a]
25	(14i)			***(14i) A practice that is accepted in a particular market cannot be considered applicable to other markets unless the competent authorities of such other markets have officially accepted that practice.***	[Delete – moved to 19a]

26	(15)	(15) Spot markets and related derivative markets are highly interconnected and global, and market abuse may take place across markets as well as across borders. This is true for both insider dealing and market manipulation. In particular, inside information from a spot market can benefit a person trading on a financial market. Therefore, the general definition of inside information in relation to financial markets and commodity derivatives should also apply to all information which is relevant to the related commodity. Moreover, manipulative strategies can also extend across spot and derivatives markets. Trading in financial instruments, including commodity derivatives, can be used to manipulate related spot commodity contracts and spot commodity contracts can be used to manipulate related financial instruments. The prohibition of market manipulation should capture these interlinkages. However, it is not appropriate or practicable to extend the scope of the Regulation to behaviour that does not involve financial instruments, for example, to trading in spot commodity contracts that only affects the spot market. In the specific case of wholesale energy products, the competent authorities should take into account the specific characteristics of the definitions of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy	(15) Spot markets and related derivative markets are highly interconnected and global, and market abuse may take place across markets as well as across borders. This is true for both insider dealing and market manipulation. In particular, inside information from a spot market can benefit a person trading on a financial market. Therefore, the general definition of inside information in relation to financial markets ~~and commodity derivatives~~ should also apply to all information which is relevant to **a derivative or the related commodity. In particular this include, information which is required to be made public in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs on the relevant comodity derivatives or spot market and which is likely to have a significant effect on the prices on such derivatives or related spot commodity contracts. Notable examples of such rules are REMIT for the energy market and the JODI database for oil. Such information may serve as the basis of market participants' decisions to enter into commodity derivatives or the related spot commodity contracts and therefore constitutes inside information required to be made public, where it is likely to have a significant effect on the prices on such derivatives or related spot**	(15) Spot markets and related derivative markets are highly interconnected and global, and market abuse may take place across markets as well as across borders**, *which can lead to significant systemic risks***. This is true for both insider dealing and market manipulation. In particular, inside information from a spot market can benefit a person trading on a financial market. Therefore, the general definition of inside information in relation to financial markets and commodity derivatives should also apply to all information which is relevant to the related commodity. Moreover, manipulative strategies can also extend across spot and derivatives markets. Trading in financial instruments, including commodity derivatives, can be used to manipulate related spot commodity contracts and spot commodity contracts can be used to manipulate related financial instruments. The prohibition of market manipulation should capture these interlinkages. However, it is not appropriate or practicable to extend the scope of the Regulation to behaviour that does not involve financial instruments, for example, to trading in spot commodity contracts that only affects the spot market. In the specific case of wholesale energy products, the competent authorities should take into account the specific characteristics of the definitions of [Regulation (EU) No…of the	(15) Spot markets and related derivative markets are highly interconnected and global, and market abuse may take place across markets as well as across borders which can lead to significant systemic risks. This is true for both insider dealing and market manipulation. In particular, inside information from a spot market can benefit a person trading on a financial market. The definition of inside information in relation to a derivative of a commodity should be information which both meets the general definition of inside information in relation to financial markets and **which is required to be made public in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs on the relevant commodity derivative or spot market. Notable examples of such rules are REMIT for the energy market and the JODI database for oil. Such information may serve as the basis of market participants' decisions to enter into commodity derivatives or the related spot commodity contracts and therefore constitutes inside information required to be made public, where it is likely to have a significant effect on the prices on such derivatives or related spot commodity contracts.**

27	(15a)			***(15a) Pursuant to Directive 2003/87/EU of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community, the Commission, Member States and other officially designated bodies are responsible for the technical issuance of emission allowances, their free allocation to eligible industry sectors and new entrants and more generally the development and implementation of the Union's climate policy framework which underpins the supply of emission allowances to compliance buyers of the Union's emissions trading scheme (EU ETS). In the exercise of those duties, those public bodies have access to price-sensitive, non-public information and pursuant to Directive 2003/87/EU they may need to perform certain market operations in relation to emission allowances. In order to preserve the ability of the Commission, Member States and other officially designated bodies to develop and execute the Union's climate policy, their activities, undertaken solely in pursuit of that policy and concerning emission allowances, should be exempt from the application of this Regulation. Such exemption should not have a negative impact on overall market transparency, as those public bodies have statutory obligations to operate in a way that ensures***	Relevant text in Recital 16 of Council

28	(16) /(16a)	(16) As a consequence of the classification of emission allowances as financial instruments as part of the review of the Markets in Financial Instruments Directive, those instruments will also come within the scope of this Regulation. Bearing in mind the specific nature of those instruments and structural features of the carbon market, it is necessary to ensure that the activity of Member States, the European Commission and other officially designated bodies involving emission allowances is not restricted in the pursuit of the Union's climate policy. Moreover, the duty to disclose inside information needs to be addressed to the participants in that market in general. Nevertheless, in order to avoid exposing the market to reporting that is not useful and as well as to maintain cost-efficiency of the measure foreseen, it appears necessary to limit the regulatory impact of that duty to only those EU ETS operators, that – by virtue of their size and activity – can reasonably be expected to be able to have a significant effect on the price of emission allowances. Where emission allowance market participants already comply with equivalent inside information disclosure duties, notably pursuant to Regulation on energy market integrity and transparency (Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency),	(16) As a consequence of the classification of emission allowances as financial instruments as part of the review of the Markets in Financial Instruments Directive, those instruments will also come within the scope of this Regulation. ~~Bearing in mind the specific nature of those instruments and structural features of the carbon market, it is necessary to ensure that the activity of Member States,~~ **Pursuant to the EU Emissions Trading Scheme (ETS) Directive the Commission. Member States and other officially designated bodies are *inter alia* responsible for the technical issuance of emission allowances, their free allocation to eligible industry sectors and new entrants and more generally the development and implementation of the Union's climate policy framework which underpins the supply of emission allowances for the EU ETS compliance buyers. In the exercise of those duties those public bodies have access to price-sensitive non-public information. In order to perserve the ability of** the European Commission**, Member States** and other officially designated bodies ~~involving emission allowances is not restricted in the pursuit of the Union's climate policy.~~ **to develop and execute the Union's climate policy, the activities of those public bodies, undertaken in the pursuit of that policy and concerning emission allowances, should be exempt**	(16) As a consequence of the classification of emission allowances as financial instruments as part of the review of the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, those instruments will also come within the scope of this Regulation. Bearing in mind the specific nature of those instruments and structural features of the carbon market, it is necessary to ensure that the activity of Member States, the Commission and other officially designated bodies involving emission allowances is not restricted in the pursuit of the Union's climate policy. ***However, this Regulation takes into account the high sensitivity of supply-side information under the control of public authorities and officials for the emission allowance market and, therefore, the need for such information to be managed with due care under clear procedures with adequate control to avoid any uncontrolled or discriminatory publication to the emission allowances markets with the consequential distortion of the orderly price formation process in those markets. On the other side, these public authorities should enable a sufficient transparency for an orderly price formation process in the emission allowances markets. Thus, fair, timely and non-discriminatory publication of specific price-sensitive and non-***	(16) Pursuant to Directive 2003/87/EU of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community, the Commission, Member States and other officially designated bodies are inter alia responsible for the technical issuance of emission allowances, their free allocation to eligible industry sectors and new entrants and more generally the development and implementation of the Union's climate policy framework which underpins the supply of emission allowances to compliance buyers of the Union's emissions trading scheme (EU ETS). In the exercise of those duties, those public bodies may inter alia have access to price-sensitive, non-public information and pursuant to Directive 2003/87/EU they may need to perform certain market operations in relation to emission allowances. As a consequence of the classification of emission allowances as financial instruments as part of the review of the Markets in Financial Instruments Directive, those instruments will also come within the scope of this Regulation. In order to preserve the ability of the Commission, Member States and other officially designated bodies to develop and execute the Union's climate policy, the activities of those public
1138	4/13			OM/mf DGG 1B	20 EN

29	(16b)		**(16b) The essential characteristic of insider dealing consists in an unfair advantage being obtained from inside information to the detriment of third parties who are unaware of it and, consequently, the undermining of the integrity of financial markets and investor confidence. Consequently, the prohibition on insider dealing applies where an insider who is in a possession of inside information takes unfair advantage of the benefit gained from that information by entering into market transactions in accordance with that information. An insider in possession of inside information who carries out any transaction related to that information shall be presumed to have used that information. Orders placed before a person possesses inside information should not be presumed to be insider dealing, but when a person has received inside information, any subsequent change related to that information to these orders, including the cancellation or amendment of an order, or an attempt to cancel or amend an order, should be presumed to constitute insider dealing. The presumption may, however, be rebutted if the person establishes that he did not use the inside information in carrying out the transaction. Examples of not using inside information may include,**		**(16b) The essential characteristic of insider dealing consists in an unfair advantage being obtained from inside information to the detriment of third parties who are unaware of it and, consequently, the undermining of the integrity of financial markets and investor confidence. Consequently, the prohibition on insider dealing applies where an insider who is in a possession of inside information takes unfair advantage of the benefit gained from that information by entering into market transactions in accordance with that information** by acquiring or disposing of, or attempting to acquire or dispose of, or by cancelling or amending or attempting to cancel or amend an order to acquire or dispose, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates**.** **Use of inside information can also consist of trading in emission allowances and derivatives thereof and of bidding in the auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010** **(16bc) A person in possession of inside information who carries out any transaction related to**
11384/13		OM/mf DGG 1B			21 **EN**

30	(16c)		**(16c) When a legal or natural person in possession of inside information, acquires or disposes of, or attempts to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates it should be implied that the person has "used that information". This presumption is without prejudice to the rights of defence. The question whether a person has infringed the prohibition on insider dealing or attempt to commit insider dealing should be analysed in the light of the purpose of this Regulation, which is to protect the integrity of the financial market and to enhance investor confidence, which is based, in turn, on the assurance that investors will be placed on an equal footing and protected from the misuse of inside information.**		**(16c) When a legal or natural person in possession of inside information, acquires or disposes of, or attempts to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates it should be implied that the person has "used that information". This presumption is without prejudice to the rights of defence. The question whether a person has infringed the prohibition on insider dealing or attempt to commit insider dealing should be analysed in the light of the purpose of this Regulation, which is to protect the integrity of the financial market and to enhance investor confidence, which is based, in turn, on the assurance that investors will be placed on an equal footing and protected from the misuse of inside information.**

31	(16d)/(14d)		**(16d) Use of inside information can consist in the acquisition or disposal of a financial instrument, or an auctioned product based on emission allowances, or in the cancellation or amendment of an order, or in an attempt to acquire or dispose of a financial instrument or to cancel or amend an order, by a person who knows, or ought to have known, that the information possessed constitutes inside information. In this respect, the competent authorities should consider what a normal and reasonable person would know or should have known in the circumstances. Moreover, the mere fact that 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, cancelling or amending an order dutifully, should not in itself be deemed to constitute use of such inside information.**	***(14d) The mere fact that market makers or persons authorised to act as counterparties, confine themselves to pursuing their legitimate business of buying or selling financial instruments or that persons authorised to execute orders on behalf of third parties with inside information confine themselves to carrying out an order dutifully, should not be deemed, in itself, to constitute insider dealing.***	**(16d) Use of inside information can consist in the acquisition or disposal of a financial instrument, or an auctioned product based on emission allowances, or in the cancellation or amendment of an order, or in an attempt to acquire or dispose of a financial instrument or to cancel or amend an order, by a person who knows, or ought to have known, that the information possessed constitutes inside information. In this respect, the competent authorities should consider what a normal and reasonable person would know or should have known in the circumstances.**

32	(16e)/(14b)		**(16e) This Regulation should be interpreted in a manner consistent with the measures adopted by the Member States to protect the interests of holders of transferable securities carrying voting rights in a company (or which may carry such rights as a consequence of the exercise of rights or conversion) when the company is subject to a public take-over bid or other proposed change of control. In particular this Regulation should be interpreted in a manner consistent with the laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.**	***(14b) Having access to inside information relating to another company and using it in the context of a public take-over bid for the purpose of gaining control of that company or proposing a merger with that company should not be deemed, in itself, to constitute insider dealing.***	**16e) This Regulation should be interpreted in a manner consistent with the measures adopted by the Member States to protect the interests of holders of transferable securities carrying voting rights in a company (or which may carry such rights as a consequence of the exercise of rights or conversion) when the company is subject to a public take-over bid or other proposed change of control. In particular this Regulation should be interpreted in a manner consistent with the laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids.**

33	(16g)/(14c)		**(16g) Research and estimates developed from publicly available data, should not be regarded in itself as inside information and, therefore, any transaction carried out on the basis of such research or estimates should not in itself be deemed to constitute the use of inside information. An example of where this information may constitute inside information is where the information's publication or distribution is routinely expected by the market and it contributes to the price-formation process of financial instruments, or the information provides views from a recognised market commentator or institution which may inform the prices of related financial instruments. Market actors must therefore consider the extent to which the information is non-public and the possible effect on financial instruments if they were to trade on this in advance of its publication or distribution, to establish whether they would be trading on the basis of inside information.**	***(14c) Research and estimates developed from publicly available data should not be regarded as inside information and any transaction carried out on the basis of such research or estimates should not therefore be deemed, in itself, to constitute insider dealing.***	**(16g) Research and estimates developed from publicly available data, should not be regarded in itself as inside information and, therefore, any transaction carried out on the basis of such research or estimates should not in itself be deemed to constitute the use of inside information. An example of where this information may constitute inside information is where the information's publication or distribution is routinely expected by the market and it contributes to the price-formation process of financial instruments, or the information provides views from a recognised market commentator or institution which may inform the prices of related financial instruments. Market actors must therefore consider the extent to which the information is non-public and the possible effect on financial instruments if they were to trade on this in advance of its publication or distribution, to establish whether they would be trading on the basis of inside information.**

34	(16h)		**(16h) Protections from the charge of insider dealing are necessary in order to avoid inadvertently prohibiting forms of financial activity which are legitimate, namely where there is no effect of market abuse. This may include, for example, recognising the role of market makers, when acting in the legitimate capacity of providing market liquidity. However, the protections in this Regulation to market makers, bodies authorised to act as counter parties or persons authorised to execute orders on behalf of third parties with inside information do not extend to activities clearly prohibited under this Regulation and, in particular to the practice commonly known as "front-running" Another example may be rebutting the liability of legal persons, when natural persons within their employment commit abuse in circumstances where those legal persons have taken all reasonable measures to prevent abuse from occurring. However, none of these persons, either legal or natural persons as appropriate, will be protected by virtue of their professional function; they will only be protected if they act in a fit and proper manner, meeting both the standards expected of their profession and of this Regulation namely market integrity and investor protection.**		Not yet discussed **(16h) In order to avoid inadvertently prohibiting forms of financial activity which are legitimate, namely where there is no effect of market abuse., it is necessary to recognise certain legitimate behaviours.** **This may include, for example, recognising the role of market makers, when acting in the legitimate capacity of providing market liquidity.** ***(14d) The mere fact that market makers or persons authorised to act as counterparties, confine themselves to pursuing their legitimate business of buying or selling financial instruments or that persons authorised to execute orders on behalf of third parties with inside information confine themselves to carrying out*** **cancelling or amending** ***an order dutifully, should not be deemed, in itself, to constitute*** **use of such inside information..** **However, the protections in this Regulation to market makers, bodies authorised to act as counter parties or persons authorised to execute orders on behalf of third parties with inside information do not extend to activities clearly prohibited under this Regulation including**
11384/13					

35	(16i)		**(16i) Market soundings are interactions between a seller of financial instruments and one or more potential investors, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and its pricing, size and structuring. Market soundings may involve an initial or secondary offer of relevant securities, and are distinct from ordinary trading. They are a highly valuable tool to gauge the opinion of potential investors, enhance shareholder dialogue, ensure that deals run smoothly, and that the views of issuers, existing shareholders and potential new investors are aligned. They may be particularly beneficial when markets lack confidence or a relevant benchmark, or are volatile. Thus the ability to conduct market soundings is important for the proper functioning of capital markets and market soundings should not in themselves be regarded as market abuse.**		**(16i) Market soundings are interactions between a seller of financial instruments and one or more potential investors, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and its pricing, size and structuring. Market soundings may involve an initial or secondary offer of relevant securities, and are distinct from ordinary trading. They are a highly valuable tool to gauge the opinion of potential investors, enhance shareholder dialogue, ensure that deals run smoothly, and that the views of issuers, existing shareholders and potential new investors are aligned. They may be particularly beneficial when markets lack confidence or a relevant benchmark, or are volatile. Thus the ability to conduct market soundings is important for the proper functioning of capital markets and market soundings should not in themselves be regarded as market abuse.**

36	(16j)		**(16j) Examples of market soundings would include, but are not limited to, where the sell-side firm has been in discussions with an issuer about a potential transaction, and it has decided to gauge potential investor interest in order to determine the terms that will make up a transaction; where an issuer intends to announce a debt issuance or additional equity offering and key investors are contacted by a sell-side firm and given the full terms of the deal to obtain a financial commitment to participate in the transaction; or where the sell-side is seeking to sell a large amount of securities on behalf of an investor and seeks to gauge potential interest in these securities from other potential investors.**		**(16j) Examples of market soundings would include, but are not limited to, where the sell-side firm has been in discussions with an issuer about a potential transaction, and it has decided to gauge potential investor interest in order to determine the terms that will make up a transaction; where an issuer intends to announce a debt issuance or additional equity offering and key investors are contacted by a sell-side firm and given the full terms of the deal to obtain a financial commitment to participate in the transaction; or where the sell-side is seeking to sell a large amount of securities on behalf of an investor and seeks to gauge potential interest in these securities from other potential investors.**

37	(16k)		**(16k) Conducting market soundings may require disclosure to potential investors of inside information. There will generally only be the potential to benefit financially from trading on the basis of inside information passed in a market sounding where there is an existing market in the financial instrument that is the subject of the market sounding or in a related financial instrument. Given the timing of such discussions, it is possible that inside information may be disclosed to the investor in the course of the market sounding after a financial instrument has been admitted to trading on a regulated market or traded on a MTF or OTF. Before engaging in a market sounding, the disclosing market participant must assess whether that market sounding will involve the disclosure of inside information.**		**(16k) Conducting market soundings may require disclosure to potential investors of inside information. There will generally only be the potential to benefit financially from trading on the basis of inside information passed in a market sounding where there is an existing market in the financial instrument that is the subject of the market sounding or in a related financial instrument. Given the timing of such discussions, it is possible that inside information may be disclosed to the potential investor in the course of the market sounding after a financial instrument has been admitted to trading on a regulated market or traded on a MTF or OTF. Before engaging in a market sounding, the disclosing market participant must assess whether that market sounding will involve the disclosure of inside information.**

38	(16l)		**(16l) Inside information is disclosed legitimately if it is disclosed in the normal course of the exercise of a person's employment, profession or duty. Where a market sounding involves the disclosure of inside information, the disclosing market participant will be considered to be acting within the course of his employment, profession or duty where, at the time of making the disclosure, he informs the person to whom the disclosure is made that he may be given inside information; that he will be restricted by the provisions of this Regulation from trading or acting on that information; that reasonable steps must be taken to protect the ongoing confidentiality of the information; and that he must inform the disclosing market participant of the identities of all natural and legal persons to whom the information is disclosed in the course of developing a response to the market sounding.** **The disclosing market participant must also comply with the obligations, to be set out in detail in regulatory technical standards, regarding the maintenance of records of information disclosed.** **Market participants who do not comply with the detailed provisions of this Regulation when conducting a market sounding should not be presumed to have improperly disclosed inside information but they cannot take**		**(16l) Inside information ~~is~~ should be deemed as being disclosed legitimately if it is disclosed in the normal course of the exercise of a person's employment, profession or duty. Where a market sounding involves the disclosure of inside information, the disclosing market participant will be considered to be acting within the course of his employment, profession or duty where, at the time of making the disclosure, he informs and receives the consent of the person to whom the disclosure is made that he may be given inside information; that he will be restricted by the provisions of this Regulation from trading or acting on that information; that reasonable steps must be taken to protect the ongoing confidentiality of the information; and that he must inform the disclosing market participant of the identities of all natural and legal persons to whom the information is disclosed in the course of developing a response to the market sounding.** **The disclosing market participant must also comply with the obligations, to be set out in detail in regulatory technical standards, regarding the maintenance of records of information disclosed.** **Market participants who do not comply with the detailed**
1138	4/13				

39	(16m)		**(16m) Potential investors who are the subject of a market sounding in turn should consider if the information disclosed to them amounts to inside information so that they are prohibited from dealing on the basis of it or further disclosing the inside information. Potential investors remain subject to insider dealing and improper disclosure rules, as set out in this Regulation. In order to assist potential investors in their considerations and as regards what steps they should take so as not to contravene the provisions of this Regulation, ESMA shall issue guidelines.**		**(16m) Potential investors who are the subject of a market sounding in turn should consider if the information disclosed to them amounts to inside information which would prohibit them from dealing on the basis of it or further disclosing the inside information. Potential investors remain subject to insider dealing and improper disclosure rules, as set out in this Regulation. In order to assist potential investors in their considerations and as regards what steps they should take so as not to contravene**

40	(17)	(17) Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community provided for two parallel market abuse regimes applicable to the auctions of emission allowances. However, as a consequence of the classification of emission allowances as financial instruments, this Regulation should constitute a single rulebook of market abuse measures applicable to the entirety of the primary and secondary market in emission allowances. The Regulation shall also apply to the auctioning of emission allowances or other auctioned products based thereon pursuant to Commission Regulation No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community.	(17) Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community provided for two parallel market abuse regimes applicable to the auctions of emission allowances. However, as a consequence of the classification of emission allowances as financial instruments, this Regulation should constitute a single rulebook of market abuse measures applicable to the entirety of the primary and secondary market in emission allowances. The Regulation shall also apply to the auctioning of emission allowances or other auctioned products based thereon pursuant to Commission Regulation No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community.	(17) Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community provided for two parallel market abuse regimes applicable to the auctions of emission allowances. However, as a consequence of the classification of emission allowances as financial instruments, this Regulation should constitute a single rulebook of market abuse measures applicable to the entirety of the primary and secondary market in emission allowances. The Regulation shall also apply to the auctioning of emission allowances or other auctioned products based thereon pursuant to Regulation No 1031/2010 [...].	(17) Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community provided for two parallel market abuse regimes applicable to the auctions of emission allowances. However, as a consequence of the classification of emission allowances as financial instruments, this Regulation should constitute a single rulebook of market abuse measures applicable to the entirety of the primary and secondary market in emission allowances. The Regulation shall also apply to the auctioning of emission allowances or other auctioned products based thereon pursuant to Commission Regulation No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community.

41	(18)	(18) This Regulation should provide measures regarding market manipulation that are capable of being adapted to new forms of trading or new strategies that may be abusive. To reflect the fact that trading of financial instruments is increasingly automated, it is desirable that market manipulation should be supplemented by examples of specific abusive strategies that may be carried out by algorithmic trading including high frequency trading. The examples provided are neither intended to be exhaustive nor are they intended to suggest that the same strategies carried out by other means would not also be abusive.	(18) This Regulation should provide measures regarding market manipulation that are capable of being adapted to new forms of trading or new strategies that may be abusive. To reflect the fact that trading of financial instruments is increasingly automated, it is desirable that **the definition of** market manipulation ~~should be supplemented by~~ **provides** examples of specific abusive strategies that may be carried out by algorithmic trading including high frequency trading. The examples provided are neither intended to be exhaustive nor are they intended to suggest that the same strategies carried out by other means would not also be abusive.	(18) This Regulation should provide measures regarding market manipulation that are capable of being adapted to new forms of trading or new strategies that may be abusive. To reflect the fact that trading of financial instruments is increasingly automated, it is desirable that market manipulation should be supplemented by examples of specific abusive strategies that may be carried out by ***any available means of*** trading**,** including ***algorithmic and*** high frequency trading***, as defined in Directive [new MiFID].*** The examples provided are neither intended to be exhaustive nor are they intended to suggest that the same strategies carried out by other means would not also be abusive.	(18) This Regulation should provide measures regarding market manipulation that are capable of being adapted to new forms of trading or new strategies that may be abusive. To reflect the fact that trading of financial instruments is increasingly automated, it is desirable that **the definition of** market manipulation **provides** examples of specific abusive strategies that may be carried out by ***any available means of*** trading including algorithmic and high frequency trading. The examples provided are neither intended to be exhaustive nor are they intended to suggest that the same strategies carried out by other means would not also be abusive

42	(18a)		**(18a) The prohibitions on insider dealing and market manipulation should also cover those persons who act in collaboration to commit market abuse. Examples may include, but are not limited to, brokers who devise and recommend a trading strategy designed to result in market abuse, persons who encourage a person with inside information to disclose that information improperly, persons who develop software in collaboration with a trader for the purpose of facilitating market abuse.**		**(18a) The prohibitions on insider dealing and market manipulation should also cover those persons who act in collaboration to commit market abuse. Examples may include, but are not limited to, brokers who devise and recommend a trading strategy designed to result in market abuse, persons who encourage a person with inside information to disclose that information improperly, persons who develop software in collaboration with a trader for the purpose of facilitating market abuse.**
					(18aa) To ensure that liability is conferred on both the legal person and any natural person who participates in the decision making of the legal person, it is necessary to give recognition of the different national legal mechanisms in Member States. This relates directly to the methods of attribution of liability in national law.

43	(19)	(19) In order to complement the prohibition of market manipulation, this Regulation should include a prohibition against attempting to engage in market manipulation, given that failed attempts to manipulate the market should also be sanctioned. The attempt to engage in market manipulation should be distinguished from situations where behaviour does not have the desired effect on the price of a financial instrument. Such behaviour is considered to be market manipulation because it was likely to give false or misleading signals.	(19) In order to complement the prohibition of market manipulation, this Regulation should include a prohibition against attempting to engage in market manipulation~~, given that failed attempts to manipulate the market should also be sanctioned. The~~**. An** attempt to engage in market manipulation should be distinguished from **actual behaviour which is likely to result in market manipulation (as provided for in article 8) as both activities are prohibited under this Regulation. Such an attempt may include, but not be limited to, situations where the activity is started but not completed, for example as a result of failed technology or an instruction to trade which is not acted upon.**	(19) In order to complement the prohibition of market manipulation, this Regulation should include a prohibition against attempting to engage in market manipulation, given that failed attempts to manipulate the market should also be sanctioned. The attempt to engage in market manipulation should be distinguished from situations where behaviour does not have the desired effect on the price of a financial instrument. Such behaviour is considered to be market manipulation because it was likely to give false or misleading signals.	**(**19) In order to complement the prohibition of market manipulation, this Regulation should include a prohibition against attempting to engage in market manipulation. **An** attempt to engage in market manipulation should be distinguished from **actual behaviour which is likely to result in market manipulation as both activities are prohibited under this Regulation. Such an attempt may include, but not be limited to, situations where the activity is started but not completed, for example as a result of failed technology or an instruction to trade which is not acted upon. Prohibiting attempts to engage in market manipulation is necessary to enable competent authorities to sanction such attempts*, even in the absence of an identifiable effect on market prices.***

44	(19a)		**(19a) Without prejudice to the aim of this Regulation and its directly applicable provisions, a person who enters into transactions or issues orders to trade which may be deemed to constitute market manipulation may be able to establish that his reasons for entering into such transactions or issuing orders to trade were legitimate and that the transactions and orders to trade were in conformity with accepted practice on the market concerned. An accepted market practice can only be established by the competent authority responsible for the market abuse supervision of the market concerned. A sanction could still be imposed if the competent authority established that there was another, illegitimate, reason behind these transactions or orders to trade.**		**(19a) Without prejudice to the aim of this Regulation and its directly applicable provisions, a person who enters into transactions or issues orders to trade which may be deemed to constitute market manipulation may be able to establish that his reasons for entering into such transactions or issuing orders to trade were legitimate and that the transactions and orders to trade were in conformity with accepted practice on the market concerned. An accepted market practice can only be established by the competent authority responsible for the market abuse supervision of the market concerned.** ***A practice that is accepted in a particular market cannot be considered applicable to other markets unless the competent authorities of such other markets have officially accepted that practice.*** **A breach could still be deemed to have occurred if the competent authority established that there was an illegitimate, reason behind these transactions or orders to trade.**

45	(20)	(20) This Regulation should also clarify that engaging in market manipulation or attempting to engage in market manipulation in a financial instrument may take the form of using related financial instruments such as derivative instruments that are traded on another trading venue or over the counter.	(20) This Regulation should also clarify that engaging in market manipulation or attempting to engage in market manipulation in a financial instrument may take the form of using related financial instruments such as derivative instruments that are traded on another trading venue or over the counter. **Prohibitting attempts to engage in market manipulation is necessary to enable competent authorities to sanction such attempts, even in the absence of an identifiable effect on market prices.**	(20) This Regulation should also clarify that engaging in market manipulation or attempting to engage in market manipulation in a financial instrument may take the form of using related financial instruments such as derivative instruments that are traded on another trading venue or over the counter.	(20) This Regulation should also clarify that engaging in market manipulation or attempting to engage in market manipulation in a financial instrument may take the form of using related financial instruments such as derivative instruments that are traded on another trading venue or over the counter.

46	(20a)	"(20a) Many financial instruments are priced by reference to benchmarks. The actual or attempted manipulation of benchmarks, such as interbank offer rates, can have a serious impact on market confidence and may result in significant losses to investors or distort the real economy. Therefore, specific provisions in relation to benchmarks are required in order to preserve the integrity of the markets and ensure that competent authorities can enforce a clear prohibition of the manipulation of benchmarks. It is necessary to complement the general prohibition of market manipulation by prohibiting the manipulation of the benchmark itself and any transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark, including the benchmark's methodology. Those rules are in addition to Regulation (EU) No 1227/2011 of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency which prohibits the deliberate provision of false information to undertakings which provide price assessments or market reports on wholesale energy products with the effect of misleading market participants acting on the basis of those price assessments or market reports."	(20a) Many financial instruments are priced by reference to benchmarks. The actual or attempted manipulation of benchmarks**,** **including** interbank offer rates, can have a serious impact on market confidence and may result in significant losses to investors or distort the real economy. Therefore, specific provisions in relation to benchmarks are required in order to preserve the integrity of the markets and ensure that competent authorities can enforce a clear prohibition of the manipulation of benchmarks. **These provisions should cover all published benchmarks indluing those accessible through the internet whether free of charge or not such as CDS benchmarks and indices of indices.** It is necessary to complement the general prohibition of market manipulation by prohibiting the manipulation of the benchmark itself and **the** transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark, **where calculation is broadly defined to include the receipt and evaluation of all data which relates to the calculation of that benchmark and include in particular trimmed data, and** including the benchmark's methodology, **whether algorithmic or judgement based in whole or in part.** Those rules are in addition to Regulation (EU) No 1227/2011 *of*	(20a) Many financial instruments are priced by reference to benchmarks. The actual or attempted manipulation of benchmarks, such as interbank offer rates, can have a serious impact on market confidence and may result in significant losses to investors or distort the real economy. Therefore, specific provisions in relation to benchmarks are required in order to preserve the integrity of the markets and ensure that competent authorities can enforce a clear prohibition of the manipulation of benchmarks. It is necessary to complement the general prohibition of market manipulation by prohibiting the manipulation of the benchmark itself and any transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark, including the benchmark's methodology. Those rules are in addition to Regulation (EU) No 1227/2011 of the European Parliament and ***of the Council of 25 October 2011 on wholesale energy market integrity and transparency which prohibits the deliberate provision of false information to undertakings which provide price assessments or market reports on wholesale energy products with the effect of misleading market participants acting on the basis of those price assessments or market reports. Furthermore, competent authorities should not be required***	**(20a) Many financial instruments are priced by reference to benchmarks. The actual or attempted manipulation of benchmarks, including interbank offer rates, can have a serious impact on market confidence and may result in significant losses to investors or distort the real economy. Therefore, specific provisions in relation to benchmarks are required in order to preserve the integrity of the markets and ensure that competent authorities can enforce a clear prohibition of the manipulation of benchmarks. These provisions should cover all published benchmarks including those accessible through the internet whether free of charge or not such as CDS benchmarks and indices of indices. It is necessary to complement the general prohibition of market manipulation by prohibiting the manipulation of the benchmark itself and the transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark, where calculation is broadly defined to include the receipt and evaluation of all data which relates to the calculation of that benchmark and include in particular trimmed data, and including the benchmark's methodology, whether**

47	(21)	(21) In order to ensure uniform market conditions between trading venues and facilities subject to this Regulation, operators of regulated markets, MTFs and OTFs should be required to adopt proportionate structural provisions aimed at preventing and detecting market manipulation practices.	(21) In order to ensure uniform market conditions between trading venues and facilities subject to this Regulation, **any person who operates the business** of regulated markets, MTFs and OTFs should be required to adopt proportionate structural provisions aimed at preventing and detecting market manipulation practices.	(21) In order to ensure uniform market conditions between trading venues and facilities subject to this Regulation, operators of regulated markets, MTFs and OTFs should be required to adopt ***and maintain effective and transparent arrangements and procedures*** aimed at preventing and detecting market manipulation ***and abusive*** practices.	(21) In order to ensure uniform market conditions between trading venues and facilities subject to this Regulation, **any person who operates the business** of regulated markets, MTFs and OTFs should be required to adopt effective arrangements, systems and procedures aimed at preventing and detecting market manipulation and abusive practices.
48	(22)	(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.	(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 **and maintain** systems in place to detect and report suspicious transactions**.** **This** should also **include reporting** suspicious orders and suspicious transactions that take place outside a trading venue.	(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 ¦are required to have ***and maintain effective arrangements and procedures*** in place to detect and report suspicious transactions***.*** ***This*** should also ***include the reporting of*** suspicious orders and suspicious transactions that take place outside a trading venue.	(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 **and maintain effective arrangements,** systems and procedures in place to detect and report suspicious transactions**.** **This** should also **include reporting** suspicious orders, and suspicious transactions that take place outside a trading venue.

49	(23)	(23) Manipulation or attempted manipulation of financial instruments may also consist in disseminating false or misleading information. The spreading of false or misleading information can have a significant impact on the prices of financial instruments in a relatively short period of time. It may consist in the invention of manifestly false information, but also the wilful omission of material facts, as well as the knowingly inaccurate reporting of information. This form of market manipulation is particularly harmful to investors, because it causes them to base their investment decisions on incorrect or distorted information. It is also harmful to issuers, because it reduces the trust in the available information related to them. A lack of market trust can in turn jeopardise an issuer's ability to issue new financial instruments or to secure credit from other market participants in order to finance its operations. Information spreads through the market place very quickly. As a result, the harm to investors and issuers may persist for a relatively long-time until the information is found to be false or misleading, and can be corrected by the issuer or those responsible for its dissemination. It is therefore	(23) Manipulation or attempted manipulation of financial instruments may also consist in disseminating false or misleading information. The spreading of false or misleading information can have a significant impact on the prices of financial instruments in a relatively short period of time. It may consist in the invention of manifestly false information, but also the wilful omission of material facts, as well as the knowingly inaccurate reporting of information. This form of market manipulation is particularly harmful to investors, because it causes them to base their investment decisions on incorrect or distorted information. It is also harmful to issuers, because it reduces the trust in the available information related to them. A lack of market trust can in turn jeopardise an issuer's ability to issue new financial instruments or to secure credit from other market participants in order to finance **his** operations. Information spreads through the market place very quickly. As a result, the harm to investors and issuers may persist for a relatively long-time until the information is found to be false or misleading, and can be corrected by the issuer or those responsible for its dissemination. It is therefore	(23) Manipulation or attempted manipulation of financial instruments may also consist in disseminating false or misleading information. The spreading of false or misleading information can have a significant impact on the prices of financial instruments in a relatively short period of time. It may consist in the invention of manifestly false information, but also the wilful omission of material facts, as well as the knowingly inaccurate reporting of information. This form of market manipulation is particularly harmful to investors, because it causes them to base their investment decisions on incorrect or distorted information. It is also harmful to issuers, because it reduces the trust in the available information related to them. A lack of market trust can in turn jeopardise an issuer's ability to issue new financial instruments or to secure credit from other market participants in order to finance its operations. Information spreads through the market place very quickly. As a result, the harm to investors and issuers may persist for a relatively long-time until the information is found to be false or misleading, and can be corrected by the issuer or those responsible for its dissemination. It is therefore	(23) Manipulation or attempted manipulation of financial instruments may also consist in disseminating false or misleading information. The spreading of false or misleading information can have a significant impact on the prices of financial instruments in a relatively short period of time. It may consist in the invention of manifestly false information, but also the wilful omission of material facts, as well as the knowingly inaccurate reporting of information. This form of market manipulation is particularly harmful to investors, because it causes them to base their investment decisions on incorrect or distorted information. It is also harmful to issuers, because it reduces the trust in the available information related to them. A lack of market trust can in turn jeopardise an issuer's ability to issue new financial instruments or to secure credit from other market participants in order to finance its operations. Information spreads through the market place very quickly. As a result, the harm to investors and issuers may persist for a relatively long-time until the information is found to be false or misleading, and can be corrected by the issuer or those responsible for its dissemination. It is therefore
1138	4/13	necessary to qualify the spreading of false or misleading information, including rumours and false or misleading news, as being a breach of this Regulation. It is therefore appropriate not to allow those active	necessary to qualify the spreading of false or misleading information, including rumours and false or misleading news, as being a breach of this Regulation. It is therefore appropriate not to allow those active	necessary to qualify the spreading of false or misleading information, including rumours and false or misleading news, as being a breach of this Regulation. It is therefore appropriate not to allow those active	necessary to qualify the spreading of false or misleading information, including rumours and false or misleading news, as being a breach

50	(23a)			***(23a) Given the rise in the use of websites, blogs and social media types by both issuers and investors, it is important to clarify that disseminating false or misleading information via the internet, including social media sites or unattributable blogs, should be considered market abuse in the same way as doing so via more traditional communication channels.***	***(23a) Given the rise in the use of websites, blogs and social media, it is important to clarify that disseminating false or misleading information via the internet, including through social media sites or unattributable blogs, should be considered for the purposes of this Regulation in the same way as doing so via more traditional communication channels.***

51	(24)	(24) The prompt public disclosure of inside information by an issuer is essential to avoid insider trading and ensure that investors are not mislead. Issuers should therefore be required to inform the public as soon as possible of inside information, unless a delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of the information.	(24) The ~~prompt~~ public disclosure of inside information by an issuer is essential to avoid insider trading and ensure that investors are not misle~~a~~d. Issuers should therefore be required to inform the public as soon as possible of inside information~~,~~ **However this obligation may under special circumstances prejudice the legitimate interests of the issuer. In such circumstances, delayed disclosure should, be permitted provided that the** delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of the information. **The issuer of a financial instrument is only under an obligation to disclose inside information if he has requested or approved admission of the financial instrument to trading.**	(24) The prompt public disclosure of inside information by an issuer is essential to avoid insider trading and ensure that investors are not mislead. Issuers should therefore be required to inform the public as soon as possible of inside information, unless a delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of the information.	24) The public disclosure of inside information by an issuer is essential to avoid insider trading and ensure that investors are not misled. Issuers should therefore be required to inform the public as soon as possible of inside information~~.~~ **However this obligation may under special circumstances prejudice the legitimate interests of the issuer. In such circumstances, delayed disclosure should, be permitted provided that the** delay would not be likely to mislead the public and the issuer is able to ensure the confidentiality of the information. **The issuer of a financial instrument is only under an obligation to disclose inside information if it has requested or approved admission of the financial instrument to trading.**

52	(24a)		**(24a) For the purposes of applying paragraph 12(3) of this Regulation, legitimate interests may, in particular, relate to the following non-exhaustive circumstances:** **(a) negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure** ***would seriously jeopardise the*** **interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer;** **(b) decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organisation of such an issuer requires the separation between these bodies, provided that a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public.**		**(24a) For the purposes of applying paragraph 12(3) and 12(4) of this Regulation, legitimate interests may, in particular, relate to the following non-exhaustive circumstances:** **(a) negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure** ***would seriously jeopardise the*** **interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer;** **(b) decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organisation of such an issuer requires the separation between these bodies, provided that a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by**
1138	4/13				

53	(25)	(25) At times, where a financial institution is receiving emergency lending assistance, it may be in the best interest of financial stability for the disclosure of inside information to be delayed when the information is of systemic importance. It should therefore be possible for the competent authority to authorise a delay in the disclosure of inside information.	(25) **In order to protect the public interest, to preserve the stability of the financial system and for example to avoid that liquidity crises in [financial institutions] turn into solvency crises due to a sudden withdrawal of funds, it may be appropriate to allow, in exceptional circumstances, the delay of the disclosure of inside information for [financial institutions]. In particular, this may apply to information pertinent to temporary liquidity problems, where they need to receive central banking lending including emergency liquidity assistance from a central bank where disclosure of the information would have a systemic impact. This delay should be conditional upon the issuer obtaining the consent of the relevant competent authority and it being clear that the wider public and economic interest in delaying disclosure outweights the interest of the market in receiving the information which is subject to delay.**	(25) At times, ¦it may be in the best interest of financial stability for the disclosure of inside information to be delayed when the information is of systemic importance. It should therefore be possible for the competent authority to ***decide*** a delay in the disclosure of inside information.	(25) **In order to protect the public interest, to preserve the stability of the financial system and for example to avoid that liquidity crises in financial institutions turn into solvency crises due to a sudden withdrawal of funds, it may be appropriate to allow, in exceptional circumstances, the delay of the disclosure of inside information for credit institutions or other financial institutions. In particular, this may apply to information pertinent to temporary liquidity problems, where they need to receive central banking lending including emergency liquidity assistance from a central bank where disclosure of the information would have a systemic impact. This delay should be conditional upon the issuer obtaining the consent of the relevant competent authority and it being clear that the wider public and economic interest in delaying disclosure outweights the interest of the market in receiving the information which is subject to delay.**

54	(25a)		**(25a) In respect to [financial institutions], notably where they receive central bank lending, including emergency liquidity assistance, the assessment of whether the information is of systemic importance and whether delay of disclosure is in the public interest should be made by the competent authority, after consulting with the relevant central bank and or any other relevant national authority.**	***(25a) In respect of financial institutions, in particular where they are receiving central bank lending including emergency liquidity assistance, the assessment of whether the information is of systemic importance and whether a delay of disclosure is in the public interest should be made in close cooperation with the relevant central bank, the competent authority supervising the issuer and, as appropriate, the national macro-prudential authority.***	**(25a) In respect to financial institutions, notably where they receive central bank lending, including emergency liquidity assistance, the assessment of whether the information is of systemic importance and whether delay of disclosure is in the public interest should be made by the competent authority, after consulting as appropriate with the ~~relevant~~ central bank, the macro-prudential authority or any other relevant national authority.**

55	(25b)		**(25b) The use or attempted use of inside information to trade either on one's own account or on the account of a third party should be clearly prohibited. Use of inside information can also consist of trading in emission allowances and derivatives thereof and of bidding in the auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010 by persons who know, or ought to know, that the information they possess constitutes inside information. Information regarding the market participant's own plans and strategies for trading should not be considered as inside information, although information regarding a third party's plans and strategies for trading may amount to inside information. When in possession of inside information, transactions conducted only in order to reduce risks (hedging) directly related to a commercial activity on the commodity market should not in itself be deemed to constitute insider dealing.**		**(25b) The use or attempted use of inside information to trade either on one's own account or on the account of a third party should be clearly prohibited. Use of inside information can also consist of trading in emission allowances and derivatives thereof and of bidding in the auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010 by persons who know, or ought to know, that the information they possess constitutes inside information. Information regarding the market participant's own plans and strategies for trading should not be considered as inside information, although information regarding a third party's plans and strategies for trading may amount to inside information.**

56	(26)	(26) The requirement to disclose inside information can be burdensome for issuers, whose financial instruments are admitted to trading on SME growth markets, given the costs of monitoring information in their possession and seeking legal advice about whether and when information needs to be disclosed. Nevertheless, prompt disclosure of inside information is essential to ensure investor confidence in those issuers. Therefore, the European Securities and Markets Authority (ESMA) should be able to issue guidelines which assist issuers to comply with the obligation to disclose inside information without compromising investor protection.	(26) The requirement to disclose inside information can be burdensome for **small and medium-sized enterprises, [as defined by [new MiFID recast]]**, whose financial instruments are admitted to trading on SME growth markets, given the costs of monitoring information in their possession and seeking legal advice about whether and when information needs to be disclosed. Nevertheless, prompt disclosure of inside information is essential to ensure investor confidence in those issuers. Therefore, the European Securities and Markets Authority (ESMA) should be able to issue guidelines which assist issuers to comply with the obligation to disclose inside information without compromising investor protection.	(26) The requirement to disclose inside information can be burdensome for issuers, whose financial instruments are admitted to trading on SME growth markets, given the costs of monitoring information in their possession and seeking legal advice about whether and when information needs to be disclosed. Nevertheless, prompt disclosure of inside information is essential to ensure investor confidence in those issuers. Therefore, the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council should be able to issue guidelines which assist issuers to comply with the obligation to disclose inside information without compromising investor protection.	(26) The requirement to disclose inside information can be burdensome for **small and medium-sized enterprises, [as defined by [new MiFID recast]]**, whose financial instruments are admitted to trading on SME growth markets, given the costs of monitoring information in their possession and seeking legal advice about whether and when information needs to be disclosed. Nevertheless, prompt disclosure of inside information is essential to ensure investor confidence in those issuers. Therefore, the European Securities and Markets Authority (ESMA) should be able to issue guidelines which assist issuers to comply with the obligation to disclose inside information without compromising investor protection.

57	(27)	(27) Insider lists are an important tool for regulators when investigating possible market abuse, but national differences in regards to data to be included in those lists impose unnecessary administrative burdens on issuers. Data fields required for insider lists should therefore be uniform in order to reduce those costs. The requirement to keep and constantly update insider lists imposes administrative burdens specifically on issuers on SME growth markets. As competent authorities are able to exercise effective market abuse supervision without having those lists available at all times for those issuers they should be exempt from this obligation in order to reduce the administrative costs imposed by this Regulation.	(27) Insider lists are an important tool for regulators when investigating possible market abuse, but national differences in regards to data to be included in those lists impose unnecessary administrative burdens on issuers. Data fields required for insider lists should therefore be uniform in order to reduce those costs. The requirement to keep and constantly update insider lists imposes administrative burdens specifically on issuers **in** SME growth markets. As competent authorities are able to exercise effective market abuse supervision without having those lists available at all times for those issuers they should be exempt from this obligation in order to reduce the administrative costs imposed by this Regulation.	(27) Insider lists are an important tool for regulators when investigating possible market abuse, but national differences in regards to data to be included in those lists impose unnecessary administrative burdens on issuers. Data fields required for insider lists should therefore be uniform ***and subject to full harmonisation*** in order to reduce those costs ***for companies of all sizes***. ***It is important that persons included on insider lists are informed of that fact and of its implications under this Regulation and Directive .../.../EU [new MAD]. Since such persons have access to inside information, it should further more be an obligation under this Regulation for them to disclose any information they have of actual or potential market abuse***.	(27) Insider lists are an important tool for regulators when investigating possible market abuse, but national differences in regards to data to be included in those lists impose unnecessary administrative burdens on issuers. Data fields required for insider lists should therefore be uniform in order to reduce those costs. It is important that persons included on insider lists are informed of that fact and its implications under this Regulation and Directive …/…/EU [new MAD]. The requirement to keep and constantly update insider lists imposes administrative burdens specifically on issuers **on** SME growth markets. As competent authorities are able to exercise effective market abuse supervision without having those lists available at all times for those issuers they should be exempt from this obligation in order to reduce the administrative costs imposed by this Regulation. However. such issuers should provide an insider list to the competent authorities upon request.

58	(27a)		**(27a) The establishment, by issuers or persons acting on their account, of lists of persons working for them under a contract of employment or otherwise and having access to inside information relating, directly or indirectly, to the issuer, is a valuable measure for protecting market integrity. These lists may serve issuers or such persons to control the flow of inside information and thereby manage their confidentiality duties. Moreover, these lists may also constitute a useful tool for competent authorities to which any insider has access and the date on which it gained access thereto is necessary for issuers and competent authorities. Access to inside information relating, directly or indirectly, to the issuer by persons included on such a list is without prejudice to their duty to refrain from insider dealing on the basis of any inside information as defined in this Regulation.**		**(27a) The establishment, by issuers or any person acting on their behalf or account, of lists of persons working for them under a contract of employment or otherwise and having access to inside information relating, directly or indirectly, to the issuer, is a valuable measure for protecting market integrity. These lists may serve issuers or such persons to control the flow of inside information and thereby help manage their confidentiality duties. Moreover, these lists may also constitute a useful tool for competent authorities to identify any person who has access to inside information and the date on which they gained access. Access to inside information relating, directly or indirectly, to the issuer by persons included on such a list is without prejudice to their duty to refrain from insider dealing.**

59	(28)	(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 which transactions shall not be notified.	(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**, particularly insider dealing**. The publication of those transactions on at least an individual basis can also be a highly valuable source of information to investors. It is necessary**, therefore,** to clarify that the obligation to publish those managers' transactions also includes the pledging or lending of financial instruments**, as the pledging of shares can result in a material and potentially destabilising impact on the company in the event of a sudden, unforeseen disposal. Without disclosure, the market would not know that there was the increased possibility of, for example, a significant future change in share ownership; increase in the supply of shares to the marketplace; or loss of voting rights in that company. For this reason, a routine pledge of securities in connection with the depositing of the securities in a custody account will not require notification under this Regulation, unless the pledge of the securities is made as part of a wider transaction in which the manager pledges the securities as collateral in order to gain credit from a third party. Additionally, full and proper market**	(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. ***Therefore, highest possible standards should be used for the disclosure of manager's transactions and in all of their public communication.*** 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.	**(**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**, particularly insider dealing**. The publication of those transactions on at least an individual basis can also be a highly valuable source of information to investors. It is necessary to clarify that the obligation to publish those managers' transactions also includes the pledging or lending of financial instruments**, as the pledging of shares can result in a material and potentially destabilising impact on the company in the event of a sudden, unforeseen disposal. Without disclosure, the market would not know that there was the increased possibility of, for example, a significant future change in share ownership; increase in the supply of shares to the marketplace; or loss of voting rights in that company. For this reason, notification under this Regulation will be required where the pledge of the securities is made as part of a wider transaction in which the manager pledges the securities as collateral to gain credit from a third party. Additionally, full and proper market transparency is a prerequisite for the**

60	(28a)		**(28a) The notification of transactions conducted by a person discharging managerial responsibilities within an issuer on their own account, or by person closely associated with them, is not only a valuable information for market participants, but also constitutes an additional means for competent authorities to supervise markets. The obligation by senior executive to notify transactions is without prejudice to their duty to refrain from insider dealing on the basis of any inside information as defined in this regulation.**		**(28a) The notification of transactions conducted by a person discharging managerial responsibilities within an issuer on their own account, or by person closely associated with them, is not only valuable information for market participants, but also constitutes an additional means for competent authorities to supervise markets. The obligation to notify transactions is without prejudice to the duty to refrain from insider dealing.**

61	(28aa)		**(28aa) Some member states have seen an increase in the number of investors that use life insurance contracts (including endowment insurance) as a means of investing in financial instruments. For certain types of life insurance contracts, although the financial instruments are owned by the insurer, the policyholder has the right to execute transactions in the financial instruments through a power of attorney. Since these insurance contracts are connected to securities custody accounts that the insured investors may use to execute transactions in the financial instruments, investors frequently use these insurances as their private securities custody accounts. It would impair transparency and impede the detection of market abuse if these transactions were not published. For these reasons, it is important to clarify that the obligation to notify transactions undertaken by persons discharging managerial responsibilities within an issuer, also includes transactions in financial instruments that are included in an insurance contract where the investment risk is born by the policyholder and where the policyholder has the power to make investment decisions regarding the specific instruments included in the insurance. In order to avoid multiple reports of the same transactions, the insurance company is not**		**(28b) Notification of transactions should be in accordance with the rules on transfer of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on protection of individuals with regard to the processing of personal data and on the movement of such data.**

62	(28b)		**(28b) Notification of transactions should be in accordance with the rules on transfer of personal data laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on protection of individuals with regrad to the processing of personal data and on the movement of such data.**		(28c) *Persons discharging managerial responsibilities within an issuer should be prohibited from trading before the announcement of an interim financial report or a year-end report which the relevant issuer is obliged to make public according to the rules of the trading venue where the issuer's shares are admitted to trading or according to national law ~~issuer's annual, half-year and quarterly~~ ~~results~~, unless specific and restricted circumstances exist which would justify a permission of trading by the issuers. However, any such permission by the issuer is without prejudice to the duty of the persons discharging managerial responsibilities to refrain from insider dealing.*

63	(29) /(29a)	(29) A set of effective tools and powers for the competent authority of each Member State guarantees supervisory effectiveness. Market undertakings and all economic actors should also contribute to market integrity. In this sense, the designation of a single competent authority for market abuse should not exclude collaboration links or delegation under the responsibility of the competent authority, between that authority and market undertakings with a view to guaranteeing efficient supervision of compliance with the provisions in this Regulation.	(29) A set of effective tools and powers for the competent authority of each Member State guarantees supervisory effectiveness. **This Regulation therefore in particular foresees a minimum set of supervisory and investigative powers competent authorities of Member States should be entrusted with in accordance with national law. Those powers should be exercised, where the national law so requires, by application to the competent judicial authorities.** (29a) Market undertakings and all economic actors should also contribute to market integrity. In this sense, the designation of a single competent authority for market abuse should not exclude collaboration links or delegation under the responsibility of the competent authority, between that authority and market undertakings with a view to guaranteeing efficient supervision of compliance with the provisions in this Regulation.	(29) A set of effective tools and powers for the competent authority of each Member State guarantees supervisory effectiveness. Market undertakings and all economic actors should also contribute to market integrity. In this sense, the designation of a single competent authority for market abuse should not exclude collaboration links or delegation under the responsibility of the competent authority, between that authority and market undertakings with a view to guaranteeing efficient supervision of compliance with the provisions in this Regulation.	(29) A set of effective tools powers **and resources** for the competent authority of each Member State guarantees supervisory effectiveness. **This Regulation therefore in particular foresees a minimum set of supervisory and investigative powers competent authorities of Member States should be entrusted with in accordance with national law. Those powers should be exercised, where the national law so requires, by application to the competent judicial authorities.** *When exercising their powers under this Regulation competent authorities should act objectively and impartially and remain autonomous in their decision making.* (29a) Market undertakings and all economic actors should also contribute to market integrity. In this sense, the designation of a single competent authority for market abuse should not exclude collaboration links or delegation under the responsibility of the competent authority, between that authority and market undertakings with a view to guaranteeing efficient supervision of compliance with the provisions in this Regulation. W*here persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy in one or more financial*

64	(30)	(30) For the purpose of detecting cases of insider dealing and market manipulation, it is necessary for competent authorities to have the possibility to have access to private premises and seize documents. The access to private premises is necessary in particular where: the person to whom a demand for information has already been made fails (wholly or in part) to comply with it; or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which the information requirement relates, would be removed, tampered with or destroyed.	(30) For the purpose of detecting cases of insider dealing and market manipulation, it is necessary for competent authorities to have **in accordance with national law** the possibility to have access to **the** premises ~~and~~**of natural and legal persons in order to** seize documents. The access to **such premises is necessary when there is reasonable suspicion that documents and other data related to the sublect matter of an inspection or investigation exist and may be relevant to prove a possible violation of this Regulation. Additionally the access to such premises is necessary** where: the person to whom a demand for information has already been made fails (wholly or in part) to comply with it; or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which the information requirement relates, would be removed, tampered with or destroyed. **If prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power for access into premises shall be used after having obtained that prior judicial authorisation.**	(30) For the purpose of detecting cases of insider dealing and market manipulation, it is necessary for competent authorities to have the possibility to have access to private premises and seize documents. The access to private premises is necessary in particular where: the person to whom a demand for information has already been made fails (wholly or in part) to comply with it; or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which the information requirement relates, would be removed, tampered with or destroyed.	(30) For the purpose of detecting cases of insider dealing and market manipulation, it is necessary for competent authorities to have, **in accordance with national law,** the ability access to **the** premises **of natural and legal persons in order to** seize documents. The access to **such premises is necessary when there is reasonable suspicion that documents and other data related to the subject matter of an investigation exist and may be relevant to prove a case of insider dealing or market manipulation. Additionally the access to such premises is necessary** where: the person to whom a demand for information has already been made fails (wholly or in part) to comply with it; or where there are reasonable grounds for believing that if a demand were to be made, it would not be complied with, or that the documents or information to which the information requirement relates, would be removed, tampered with or destroyed. **If prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power for access into premises shall be used after having obtained that prior judicial authorisation.**

65	(31)	(31) Existing telephone and data traffic records from investment firms executing transactions, and existing telephone and data traffic records from telecom operators constitute crucial, and sometimes the only, evidence to detect and prove the existence of insider dealing and market manipulation. Telephone and data traffic records may establish the identity of a person responsible for the dissemination of false or misleading information, that persons have been in contact at a certain time, and that a relationship exists between two or more people. In order to introduce a level playing field in the Union in relation to the access by competent authorities to telephone and existing data traffic records held by a telecommunication operator or by an investment firm, competent authorities should be able to require existing telephone and existing data traffic records held by a telecommunication operator or by an investment firm, where a reasonable suspicion exists that such records related to the subject-matter of the inspection may be relevant to prove insider dealing or market manipulation as defined in [new MAD] in violation of this Regulation or Directive [new MAD]. Telephone and data traffic records do not encompass the content of such records.	(31) Existing **recordings of** telephone **conversations** and data traffic records from investment firms executing **and documenting the executions of** transactions, **as well as** existing telephone and data traffic records from **telecommunications** operators constitute crucial, and sometimes the only, evidence to detect and prove the existence of insider dealing and market manipulation. Telephone and data traffic records may establish the identity of a person responsible for the dissemination of false or misleading information**, or** that persons have been in contact at a certain time, and that a relationship exists between two or more people. **Acces to data and telephone records is necessary to provide evidence and investigate leads on possible insider dealing or market manipulation, and therefore for the detection and sanctioning of market abuse.** In order to introduce a level playing field in the Union in relation to the access ~~by competent authorities~~ to telephone and existing data traffic records held by a telecommunication operator or **the existing recordings of telephone conversations and data traffic held** by an investment firm, competent authorities should **in conformity with national law** be able to require existing telephone and existing data traffic records held by a telecommunication operator ~~insofar as permitted under~~	(31) Existing ***records of*** telephone ***conversations, electronic communications*** and data traffic records from investment firms executing transactions, and existing telephone and data traffic records from ***telecommunication*** operators constitute crucial, and sometimes the only, evidence to detect and prove the existence of insider dealing and market manipulation. Telephone and data traffic records may establish the identity of a person responsible for the dissemination of false or misleading information, that persons have been in contact at a certain time, and that a relationship exists between two or more people. ***Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by an investment firm in accordance with Directive [new MiFID].*** In order to introduce a level playing field in the Union in relation to the access by competent authorities to telephone and existing data traffic records held by a telecommunication operator ¦competent authorities should be able to require existing telephone and existing data traffic records held by ***them***, ***where such telephone and data traffic records*** may be relevant to prove insider dealing or market manipulation as defined in Directive .../.../EU [new MAD] in violation of this Regulation or Directive .../.../EU [new MAD]. ***Such records should***	(31) Existing **recordings of** telephone **conversations** and data traffic records from investment firms executing **and documenting the executions of** transactions, **as well as** existing telephone and data traffic records from **telecommunications** operators constitute crucial, and sometimes the only, evidence to detect and prove the existence of insider dealing and market manipulation. Telephone and data traffic records may establish the identity of a person responsible for the dissemination of false or misleading information**, or** that persons have been in contact at a certain time, and that a relationship exists between two or more people. ***Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by an investment firm or credit institution in accordance with Directive [new MiFID].*** **Access to data and telephone records is necessary to provide evidence and investigate leads on possible insider dealing or market manipulation, and therefore for the detection and sanctioning of market abuse.** In order to introduce a level playing field in the Union in relation to the access to telephone and existing data traffic records held by a telecommunication operator or **the existing recordings of telephone**

					(31A) While this Regulation specifies a minimum set of powers competent authorities should have, these powers are to be exercised within a complete system of national law which guarantees the respect for fundamental rights, including the right to privacy. For the exercise of those powers, which may amount to serious interferences with the right to respect private and family life, home and communications, Member States should have in place adequate and effective safeguards against any abuse, for instance, where appropriate prior authorisation from the judicial authorities of a Member State concerned. Member States should allow the possibility for competent authorities to exercise such intrusive powers to the extent necessary for the proper investigation of serious cases where there are no equivalent means for effectively achieving the same result.

66	(32)	(32) Since market abuse can take place across borders and markets, competent authorities should be required to cooperate and exchange information with other competent and regulatory authorities, and with ESMA, in particular in relation to investigation activities. Where a competent authority is convinced that market abuse is being, or has been, carried out in another Member State or affecting financial instruments traded in another Member State, it should notify that fact to the competent authority and ESMA. In cases of market abuse with cross-border effects, ESMA should be required to coordinate the investigation if requested to do so by one of the competent authorities concerned.	(32) Since market abuse can take place across borders and markets, competent authorities should be required to cooperate and exchange information with other competent and regulatory authorities, and with ESMA, in particular in relation to investigation activities. Where a competent authority is convinced that market abuse is being, or has been, carried out in another Member State or affecting financial instruments traded in another Member State, it should notify that fact to the competent authority and ESMA. In cases of market abuse with cross-border effects, ESMA **may** coordinate the investigation if requested to do so by one of the competent authorities concerned.	(32) Since market abuse can take place across borders and markets, competent authorities should be required to cooperate and exchange information with other competent and regulatory authorities, and with ESMA, in particular in relation to investigation activities. Where a competent authority is convinced that market abuse is being, or has been, carried out in another Member State or affecting financial instruments traded in another Member State, it should notify that fact to the competent authority and ESMA. In cases of market abuse with cross-border effects, ESMA should be ***able*** to coordinate the investigation if requested to do so by one of the competent authorities concerned ***or, where appropriate, with regard to the objectives of this Regulation, on its own initiative***.	(32) Since market abuse can take place across borders and markets, in all but exceptional circumstances competent authorities should be required to cooperate and exchange information with other competent and regulatory authorities, and with ESMA, in particular in relation to investigation activities. Where a competent authority is convinced that market abuse is being, or has been, carried out in another Member State or affecting financial instruments traded in another Member State, it should notify that fact to the competent authority and ESMA. In cases of market abuse with cross-border effects, ESMA ~~**may**~~ should be able to coordinate the investigation if requested to do so by one of the competent authorities concerned.

67	(32a)			***(32a) Early detection and effective investigation of market manipulation poses substantial difficulties for competent authorities. In particular, when such manipulation is conducted through order-book activity the fragmentation of trading venues hinders market oversight due to lack of consolidated data. In order to address this shortcoming, an effective mechanism needs to be established to allow cross-market order-book surveillance. To that end, the competent authorities of the trading venue where the issuer was first admitted to trading need to receive comprehensive order-book data on a daily basis from regulated markets and MTFs. In accordance with Article 69(2) of Directive .../.../EU [new MiFID] competent authorities should be able to delegate surveillance tasks to third parties.***	***(32a) It is necessary for competent authorities to have the necessary tools for effective cross market order-book surveillance. Pursuant to [Article 51(7)] of MiFID, competent authorities are able to request and receive data from other competent authorities relating to the order book to assist in monitoring and detecting market manipulation on a cross border basis.***

68	(33)	(33) In order to ensure exchanges of information and cooperation with third country authorities in relation to the effective enforcement of this Regulation, competent authorities should conclude cooperation arrangements with their counterparts in third countries. Any transfer of personal data carried out on the basis of those agreements shall comply with Directive (EC) 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data .	(33) In order to ensure exchanges of information and cooperation with third country authorities in relation to the effective enforcement of this Regulation, competent authorities should conclude cooperation arrangements with their counterparts in third countries. Any transfer of personal data carried out on the basis of those agreements shall comply with Directive (EC) 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data .	(33) In order to ensure exchanges of information and cooperation with third country authorities in relation to the effective enforcement of this Regulation, competent authorities should conclude cooperation arrangements with their counterparts in third countries. Any transfer of personal data carried out on the basis of those agreements shall comply with Directive (EC) 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.	(33) In order to ensure exchanges of information and cooperation with third country authorities in relation to the effective enforcement of this Regulation, competent authorities should conclude cooperation arrangements with their counterparts in third countries. Any transfer of personal data carried out on the basis of those agreements shall comply with Directive (EC) 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data .

69	(34)	(34) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory and sanctioning regimes. To this end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent sanctions regimes against all financial misconduct, sanctions which should be enforced effectively. However, the High Level Group considered that none of these elements is currently in place. A review of existing sanctioning powers and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities has been carried out in the Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial sector .	(34) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory**, investigatory** and sanctioning regimes. To this end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent sanctions regimes against all financial misconduct, sanctions which should be enforced effectively. However, the High Level Group considered that none of these elements is currently in place. A review of existing sanctioning powers and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities has been carried out in the Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial sector.	(34) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory and sanctioning regimes. To this end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent sanctions regimes against all financial misconduct, sanctions which should be enforced effectively. However, the High Level Group considered that none of these elements is currently in place. A review of existing sanctioning powers and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities has been carried out in the Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial sector. ***This Regulation, together with Directive 2012/.../EU of the European Parliament and of the Council of … [on criminal sanctions for insider dealing and market manipulation] aims at establishing a detailed framework concerning, in particular, the sanctions that are to be imposed to combat market abuse.***	(34) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory**, investigatory** and sanctioning regimes. To this end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent sanctions regimes against all financial misconduct, sanctions which should be enforced effectively. However, the High Level Group considered that none of these elements is currently in place. A review of existing sanctioning powers and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities has been carried out in the Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial sector.

70	(35)	(35) Therefore, as well as providing regulators with effective supervisory tools and powers, a set of administrative measures, sanctions and fines should be laid down to ensure a common approach in Member States and to enhance their deterrent effect. Administrative fines should take into account factors such as the disgorgement of any identified financial benefit, the gravity and duration of the breach, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority. The adoption and publication of sanctions should respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8) and the right to an effective remedy and to a fair trial (Article 47).	(35) **Sanctions applied in specific cases should be determined taking into account where appropriate** factors such as the disgorgement of any identified financial benefit, the gravity and duration of the breach, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority. **In particular, the actual amount of administrative fines to be imposed in a specific case may reach the maximum level provided for in this Regulation, or the higher level provided for in national law, for very serious breaches, while fines significantly lower than the maximum level may be applied to minor breaches or in case of settlement. This regulation should not limit Member States in their ability to provide for higher levels of administrative sanctions.**	(35) Therefore**,** ¦a set of administrative measures, sanctions and fines should be laid down ***by this Regulation*** to ensure a common approach in Member States and to enhance their deterrent effect. Administrative fines should take into account factors such as the disgorgement of any identified financial benefit, the gravity and duration of the breach, any aggravating or mitigating factors, the ***impact of the breach on third parties and the orderly functioning of markets, the*** need for fines to have a deterrent effect and ***prevent repeated breaches***, ***including the possibility of permanent disbarment from functions within investment firms or market operators, and,*** where appropriate, include a discount for cooperation with the competent authority. The adoption and publication of sanctions should respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union.	(35) Therefore**,** a set of administrative measures, sanctions and fines should be provided for ~~laid down ***by this Regulation*** ~~to ensure a common approach in Member States and to enhance their deterrent effect. **The possibility of a disbarment from management functions within investment firms should be available to the competent authority.** **Sanctions applied in specific cases should be determined taking into account where appropriate** factors such as the disgorgement of any identified financial benefit, the gravity and duration of the breach, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority. **In particular, the actual amount of administrative fines to be imposed in a specific case may reach the maximum level provided for in this Regulation, or the higher level provided for in national law, for very serious breaches, while fines significantly lower than the maximum level may be applied to minor breaches or in case of settlement.** **The possibility of a disbarment from management functions within investment firms should be available to the competent authority.**	

71	(35a)			***(35a) On the other hand, Directive 2012/.../EU of the European Parliament and of the Council of ... [on criminal sanctions for insider dealing and market manipulation] should introduce a requirement for all Member States to put in place effective, proportionate and dissuasive criminal sanctions for the most serious insider dealing and market manipulation offences. Both acts are intended to be complementary and should, together, provide the necessary instruments and tools to impose the appropriate sanctions as the case may be. However, nothing should oblige the authorities in question to choose from the beginning of the investigation the type of sanctions that they wish to impose. In other words, the fact that an investigation is started with a view to imposing administrative sanctions should not exclude the imposition of criminal sanctions, depending on the specificities of the case.***	[deleted]

72	(35aa)		**(35aa) Even though nothing prevents Member States from laying down rules for administrative sanctions as well as criminal sanctions on the same infringements, Member States should not be required to lay down rules for administrative sanctions on the infringements of this Regulation which are already subject to national criminal law by [24 months after entry into force of this Regulation]. In conformity with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they can do so if their national law permits them. However, the maintenance of criminal sanctions for violations of this Regulation or of Directive [New MAD] should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.**		**(35aa) Even though nothing prevents Member States from laying down rules for administrative sanctions as well as criminal sanctions on the same infringements, Member States should not be required to lay down rules for administrative sanctions on the infringements of this Regulation which are already subject to national criminal law by 24 months after entry into force of this Regulation. In conformity with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they can do so if their national law permits them. However, the maintenance of criminal sanctions instead of administrative sanctions for violations of this Regulation or of Directive [New MAD] should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Regulation, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.**

73	(35b)		**(35b) In order to ensure that decisions made by competent authorities have a dissuasive effect on the public at large, they should normally be published. The publication of decisions is also an important tool for competent authoritites to inform market participants of what behaviour is considered to be a violation of this Regulation and to promote wider good behaviour amongst market participants. If such publication causes disproportionate damage to the persons involved, jeopardises the stability of financial markets or an ongoing investigation the competent authority should publish the sanctions and measures on an anonymous basis in a manner which is in conformity with national law or delay the publication or not publish at all.**		**(35b) In order to ensure that decisions made by competent authorities have a dissuasive effect on the public at large, they should normally be published. The publication of decisions is also an important tool for competent authorities to inform market participants of what behaviour is considered to be a violation of this Regulation and to promote wider good behaviour amongst market participants. If such publication causes disproportionate damage to the persons involved, jeopardises the stability of financial markets or an ongoing investigation the competent authority should publish the sanctions and measures on an anonymous basis in a manner which is in conformity with national law or delay the publication. Competent authorities should have the option not to publish sanctions where anonymous or delayed publication is considered insufficient to ensure that the stability of financial markets will not be jeopardised. Competent authorities are also not required to publish measures which are deemed to be of a minor nature where publication would be disproportionate.**

74	(36)	(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 effective remedy before a court against a decision concerning him	(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. **Reporting of suspicious transactions is necessary to ensure that competent authority may detect and sanction market abuse. Measures on whistleblowing are necessary to facilitate detection of market abuse and to ensure the protection and the respect of the rights of the whistleblower and the reported person.** 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. **Member States may provide for financial incentives for those persons who offer salient information about potential breaches of this Regulation.** 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,	(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 effective remedy before a court against a decision concerning him.	(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. **Reporting of violations of this Regulation is necessary to ensure that a competent authority may detect and sanction market abuse. Measures on whistleblowing are necessary to facilitate detection of market abuse and to ensure the protection and the respect of the rights *of the whistleblower and* the accused person.** This Regulation should therefore ensure that adequate arrangements are in place to enable whistleblowers to alert competent authorities to possible breaches of this Regulation and to protect them from retaliation. **Member States may provide for financial incentives for those persons who offer salient information about potential breaches of this Regulation.** 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

75	(37)	(37) Since Member States have adopted legislation implementing Directive 2003/6/EC, and since delegated acts and implementing technical standards are foreseen which should be adopted before the framework to be introduced can be usefully applied, it is necessary to defer the application of the substantive provisions of this Regulation for a sufficient period of time.	(37) Since Member States have adopted legislation implementing Directive 2003/6/EC, and since delegated acts and implementing technical standards are foreseen which should be adopted before the framework to be introduced can be usefully applied, it is necessary to defer the application of the substantive provisions of this Regulation for a sufficient period of time.	(37) Since Member States have adopted legislation implementing Directive 2003/6/EC, and since delegated acts and implementing technical standards are foreseen which should be adopted before the framework to be introduced can be usefully applied, it is necessary to defer the application of the substantive provisions of this Regulation for a sufficient period of time.	(37) Since Member States have adopted legislation implementing Directive 2003/6/EC, and since delegated acts and implementing technical standards are foreseen which should be adopted before the framework to be introduced can be usefully applied, it is necessary to defer the application of the substantive provisions of this Regulation for a sufficient period of time.

76	(38)	(38) In order to facilitate a smooth transition to the entry into application of this Regulation, market practices existing before the entry into force of this Regulation and accepted by competent authorities in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments for the purpose of applying point 2(a) of Article 1 of Directive 2003/6/EC, may remain applicable until one year after the date specified for effective application of this Regulation provided that they are notified to ESMA.	(38) In order to facilitate a smooth transition to the entry into application of this Regulation, market practices existing before the entry into force of this Regulation and accepted by competent authorities in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments for the purpose of applying point 2(a) of Article 1 of Directive 2003/6/EC, may remain applicable until one year after the date specified for effective application of this Regulation provided that they are notified to ESMA.	(38) In order to facilitate a smooth transition to the entry into application of this Regulation, market practices existing before the entry into force of this Regulation and accepted by competent authorities in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments for the purpose of applying point 2(a) of Article 1 of Directive 2003/6/EC, may remain applicable until one year after the date specified for effective application of this Regulation provided that they are notified to ESMA.	(38) In order to facilitate a smooth transition to the entry into application of this Regulation, market practices existing before the entry into force of this Regulation and accepted by competent authorities in accordance with Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments for the purpose of applying point 2(a) of Article 1 of Directive 2003/6/EC, may remain applicable until one year after the date specified for effective application of this Regulation provided that they are notified to ESMA.

77	(39)	(39) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaty, notably the right to respect for private and family life, the right to the protection of personal data, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice for the same offence. Limitations placed on these rights are in accordance with article 52(1) of the Charter as they are necessary to ensure the general interest objectives of the protection of investors and the integrity of financial markets, and appropriate safeguards are provided to ensure that rights are limited only to the extent necessary to meet these objectives and by measures that are proportionate to the objective to be met. In particular, reporting of suspicious transactions is necessary to ensure that competent authorities may detect and sanction market abuse. Prohibiting attempts to engage in market manipulation is necessary to enable competent authorities to sanction such attempts where they have evidence of intent to commit market manipulation, even in the absence of an identifiable effect on market prices.	(39) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. **Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles. Notably, when this Regulation refers to rules governing the freedom of the press and the freedom of expression in other media and the rules or codes governing the journalist professions, consideration should be given to these freedoms as they are guaranteed in the Union and in the Member States and as recognised under Article 11 of the Charter of Fundamental Rights and other relevant provisions.**	(39) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, as enshrined in the Treaty on the Functioning of the European Union (TFEU), in particular the right to respect for private and family life, the right to the protection of personal data, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial, the presumption of innocence and right of defence, the principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice for the same offence. Limitations placed on these rights are in accordance with Article 52(1) of the Charter as they are necessary to ensure the general interest objectives of the protection of investors and the integrity of financial markets, and appropriate safeguards are provided to ensure that rights are limited only to the extent necessary to meet these objectives and by measures that are proportionate to the objective to be met. In particular, reporting of suspicious transactions is necessary to ensure that competent authorities may detect and sanction market abuse. Prohibiting attempts to engage in market manipulation is necessary to enable competent authorities to sanction such attempts where they have evidence of intent to commit market manipulation,	**(39) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. Accordingly, this Regulation should be interpreted and applied in accordance with those rights and principles. Notably, when this Regulation refers to rules governing the *freedom of the press and* the freedom of expression in other media and the rules or codes governing the journalist professions, consideration should be given to these freedoms as they are guaranteed in the Union and in the Member States and as recognised under Article 11 of the Charter of Fundamental Rights and other relevant provisions.**

					New Recital (39A) In order to increase transparency and to better inform the operation of the sanctions regimes, competent authorities should provide anonymised and aggregated data to ESMA on an annual basis. This data should comprise of the number of investigative case that have been opened, the number that are ongoing and the number that have been closed during the relevant period.

78	(40)	(40) Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data , govern the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. And any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.	(40) Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data , govern the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. And any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.	(40) Directive 95/46 and Regulation (EU) No 45/2001 govern the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. And any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.	40) Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data , govern the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. And any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.

79	(41)	(41) This Regulation, as well as the delegated acts, standards and guidelines adopted in accordance with it, are without prejudice to the application of the Union rules on competition.	(41) This Regulation, as well as the delegated acts, standards and guidelines adopted in accordance with it, are without prejudice to the application of the Union rules on competition.	(41) This Regulation, as well as the delegated acts, standards and guidelines adopted in accordance with it, are without prejudice to the application of the Union rules on competition.	(41) This Regulation, as well as the delegated acts, standards and guidelines adopted in accordance with it, are without prejudice to the application of the Union rules on competition.

80	(42)	(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.	(42) The Commission should be empowered to adopt delegated acts in accordance with Article 290 **TFEU**. 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.	(42) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU. 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 ***thresholds*** 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.	(42) The Commission should be empowered to adopt delegated acts in accordance with Article 290 **TFEU**. In particular, delegated acts should be adopted to extend the exclusion from the scope of the Regulation to certain public bodies and central banks of third countries and to certain designated public bodies of third countries that have a linking agreement with the EU in the meaning of Article. 25 of Directive 2003/87/EC, in respect of the indicators for manipulative behaviour listed in Annex 1, the **thresholds** 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 circumstances under which trading during a closed period may be permitted*. 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.

81	(43)	(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.	(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***	(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 to specify the procedures, including the modalities for following up of the reports and measures for the protection of ~~employees~~ persons working under a contract of employment and measures for the protection of personal data. Those powers should be exercised in accordance with Regulation (EU) No 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.

82	(44)	(44) Technical standards in financial services should ensure uniform conditions across the Union in matters covered by this Regulation. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.	(44) Technical standards in financial services should ensure uniform conditions across the Union in matters covered by this Regulation. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.	(44) Technical standards in financial services should ensure uniform conditions across the Union in matters covered by this Regulation. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory technical standards and draft implementing technical standards which do not involve policy choices, for submission to the Commission.	44) Technical standards in financial services should ensure uniform conditions across the Union in matters covered by this Regulation. As a body with highly specialised expertise, it would be efficient and appropriate to entrust ESMA, with the elaboration of draft regulatory technical standards and draft implementing technical standards which do not involve policy choices, for submission to the Commission.

83	(45)	(45) The Commission should adopt the draft regulatory technical standards developed by ESMA in relation to procedures and arrangements for trading venues aimed at preventing and detecting market abuse and of systems and templates to be used by persons in order to detect and notify suspicious orders and transactions and in respect of technical arrangements for categories of persons for objective presentation of information recommending an investment strategy and for disclosure of particular interests or indications of conflicts of interest by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.	(45) The Commission should adopt the draft regulatory technical standards developed by ESMA in relation to procedures and arrangements for trading venues aimed at preventing and detecting market abuse and of systems and templates to be used by persons in order to detect and notify suspicious orders and transactions and in respect of technical arrangements for categories of persons for objective presentation of information recommending an investment strategy and for disclosure of particular interests or indications of conflicts of interest by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.	(45) The Commission should adopt the draft regulatory technical standards developed by ESMA in relation to procedures and arrangements for trading venues aimed at preventing and detecting market abuse and of systems and templates to be used by persons in order to detect and notify suspicious orders and transactions and in respect of technical arrangements for categories of persons for objective presentation of information recommending an investment strategy and for disclosure of particular interests or indications of conflicts of interest by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.	45) The Commission should adopt the draft regulatory technical standards developed by ESMA to specify the content of notifications that will have to be made by the operators of regulated markets, MTFs and OTFs concerning the financial instruments that are admitted to trading traded or for which a request for admission to trading in their venue has been made, the manner and conditions of compilation, publication and maintenance of the list of these instruments by ESMA, to specify the conditions that buy back programmes and stabilisation measures must meet including conditions for trading, time and volume restrictions, disclosure and reporting obligations and price conditions ~~and specification of associated instruments~~ for the stabilisation, in relation to procedures and arrangements systems for trading venues aimed at preventing and detecting market abuse and of systems and templates to be used by persons in order to detect and notify suspicious orders and transactions, to specify appropriate arrangements, procedures and record-keeping requirements ~~including with regard to information which is disclosed in oral communications.~~ in the process of market soundings and in respect of technical arrangements for categories of persons for objective presentation of information recommending an

84	(46)	(46) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to public disclosure of inside information, formats of insider lists and formats and procedures for the cooperation and exchange of information of competent authorities among themselves and with ESMA.	(46) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to public disclosure of inside information, formats of insider lists and formats and procedures for the cooperation and exchange of information of competent authorities among themselves and with ESMA.	(46) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to public disclosure of inside information, formats of insider lists and formats and procedures for the cooperation and exchange of information of competent authorities among themselves and with ESMA.	(46) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1093/2010. ESMA should be entrusted with drafting implementing technical standards for submission to the Commission with regard to public disclosure of inside information, formats of insider lists and formats and procedures for the cooperation and exchange of information of competent authorities among themselves and with ESMA.

85	(47)	(47) Since the objective of the proposed action, namely to prevent market abuse in the form of insider dealing and market manipulation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the measures, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.	(47) Since the objective of the proposed action, namely to prevent market abuse in the form of insider dealing and market manipulation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the measures, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.	(47) Since the objective of this Regulation, namely to prevent market abuse in the form of insider dealing and market manipulation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.	(47) Since the objective of the proposed action, namely to prevent market abuse in the form of insider dealing and market manipulation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the measures, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
86	(48)	(48) The provisions of Directive 2003/6/EC being no longer relevant and sufficient, that Directive should be repealed from [24 months after entry into force of this Regulation].The requirements and prohibitions of this Regulation are strictly related to those in the MiFD, therefore they should enter in to application on the date of entry into application of the MiFID review.	(48) The provisions of Directive 2003/6/EC being no longer relevant and sufficient, that Directive should be repealed from [24 months after entry into force of this Regulation].The requirements and prohibitions of this Regulation are strictly related to those in the MiFD, therefore they should enter in to application on the date of entry into application of the MiFID review.	(48) The provisions of Directive 2003/6/EC being no longer relevant and sufficient, that Directive should be repealed from ***[...]****. The requirements and prohibitions of this Regulation are strictly related to those in the Directive [new *MiFID]*, therefore they should enter in to application on the date of entry into application of the MiFID review,	(48) The provisions of Directive 2003/6/EC being no longer relevant and sufficient, that Directive should be repealed from [24 months after entry into force of this Regulation].The requirements and prohibitions of this Regulation are strictly related to those in the MiFD, therefore they should enter in to application on the date of entry into application of the MiFID review.

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

87	(49)		**(49) For the correct application of this Regulation, it is necessary that certain provisions of this Regulation, namely Article [16, 17, 24, 26, 29 and 30a], are implemented by Member States before entry into application of this Regulation.**		**(49) For the correct application of this Regulation, it is necessary that certain provisions of this Regulation, namely Articles 16, 17, 26, 29 and 30a, are implemented by Member States before entry into application of this Regulation.**
			ARTICLES		
88	Art. 1	This Regulation establishes a common regulatory framework on market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.	This Regulation establishes a common regulatory framework on market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.	This Regulation establishes a common regulatory framework on market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.	This Regulation establishes a common regulatory framework on insider dealing, misuse of **inside information and market manipulation as well as measures to prevent market abuse** to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.
89	Art 2, para 1, introd. part	1. This Regulation applies to the following:	1. This Regulation **concerns misuse of inside information and market manipulation as well as measures to prevent market abuse and applies in relation** to the following **financial instruments**:	1. This Regulation applies to the following:	1. This Regulation applies to the following:
90	Art 2, para 1, point a	(a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;	(a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;	(a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;	(a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;

91	Art 2, para 1, point b and b a (new)	(b) financial instruments traded on a MTF or on an OTF in at least one Member State;	(b) financial instruments traded**, admitted to trading or for which a request for admission to trading on a MTF has been made;** **(ba) financial instruments traded on an OTF;**	(b) financial instruments traded on a MTF or on an OTF in at least one Member State;	(b) financial instruments traded**, admitted to trading or for which a request for admission to trading on a MTF has been made;** **(ba) financial instruments traded on an OTF;**
92	Art 2, para 1, point c	(c) behaviour or transactions relating to a financial instrument referred to in points (a) or (b) irrespective of whether or not the behaviour or transaction actually takes place on a regulated market, MTF or OTF;	**(c) financial instruments not covered by subparagraph (a) or (b) or (ba) whose price or value depends on or has an effect on the price or value of** a financial instrument referred to in **those sub-paragraphs and which may include, but are not limited to, credit default swaps or contracts for difference.**	(c) behaviour or transactions relating to a financial instrument referred to in points (a) or (b) irrespective of whether or not the behaviour or transaction actually takes place on a regulated market, on an MTF or on an OTF;	**(c) financial instruments not covered by points (a) or (b) or (ba) the price or value of which depends on or has an effect on the price or value of** a financial instrument referred to in **those points, including, but not limited to, credit default swaps and contracts for difference.**

93	Art 2, para 1, point d/ subpara 1a	(d) behaviour or transactions, including bids, relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to Commission Regulation No 1031/2010. Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any requirements and prohibitions in this Regulation referring to orders to trade shall apply to such bids.	~~(d) behaviour or transactions, including~~**This Regulation also concerns misuse of inside information and market manipulation as well as measures to prevent market abuse in relation to** bids, relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to Commission Regulation No 1031/2010. Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any requirements and prohibitions in this Regulation referring to orders to trade shall apply to such bids.	(d) behaviour or transactions, including bids, relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to Regulation (EU) No 1031/2010. Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any requirements and prohibitions in this Regulation referring to orders to trade shall apply to such bids.	**This Regulation also applies to** bids relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to Regulation (EU) No 1031/2010. Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any requirements and prohibitions in this Regulation referring to orders to trade shall apply to such bids.
94	Art. 2 para 2	2. Articles 7 and 9 also apply to the acquisition or disposal of financial instruments not referred to in points (a) and (b) of paragraph 1 but whose value relates to a financial instrument referred to in that paragraph. This notably includes derivative instruments for the transfer of credit risk that relate to a financial instrument referred to paragraph 1 and financial contracts for differences that relate to such a financial instrument.	**deleted**	2. Articles 7 and 9 also apply to the acquisition or disposal of financial instruments not referred to in paragraph 1(a) and (b) but the value of which relates to a financial instrument referred to in that paragraph. This includes derivative instruments for the transfer of credit risk that relate to a financial instrument referred to paragraph 1 and financial contracts for differences that relate to such a financial instrument.	[EP/COM text covered by new wording of point c)] [deleted]

95	Art. 2 para 2		**2. Market operators of regulated markets shall notify the competent authority of each financial instrument the first time that it is admitted to trading, or when a request for admission to trading has been made. Investment firms and market operators operating an MTF or an OTF shall notify the competent authority of each financial instrument the first time that it has been traded or for which there has been a request for admission to trading on their system. These notifications are to be transmitted by competent authorities without delay to ESMA, which shall publish them immediately on its website. Such notifications shall include, in particular, details of the names and numbers of the instruments, and the date and time at which the trade, request for admission to trading or the admission to trading was made.** **The reference to competent authority in the first subparagraph shall be the competent authority defined in article 16.**		**2.Market operators of regulated markets and investment firms and market operators operating an MTF or an OTF shall without delay, notify their competent authority of each financial instrument the first time that is admitted to trading, has been traded or for which there has been a request for admission to trading on their trading venue. A second notification shall be made when the instrument in question ceases to trade or be admitted to trading. Where the date when the instrument in question will cease to trade or be admitted to trading is known and included in the first notification, no second notification shall be required.** **Such notifications shall include, in particular, details of the names and numbers of the instruments, and the date and time at which the first trade was entered into, or the request for admission to trading or the admission to trading was made.** **Market operators and investment firms shall also transmit to their competent authority all information required under the previous paragraphs for the financial instruments which are admitted to trading or for which a request for admission to trading on their trading venue has been made prior to the entry into force of this Regulation.** **These notifications shall be**

96	Art. 2 para 2 a (new)			***[EP text moved after para 3]***	
97	Art 2, para 3, point a, b, c	3. Articles 8 and 10 also apply to transactions, orders to trade or other behaviour relating to: (a) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order or behaviour has or is likely or intended to have an effect on a financial instrument referred to in points (a) and (b) of paragraph 1; (b) spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has or is likely or intended to have an effect on a financial instrument referred to in points (a) and (b) of paragraph 1; or (c) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order or behaviour has or is likely or intended to have an effect on spot commodity contracts.	3. Articles 8 and 10 **shall** also apply to ~~transactions, orders to trade or other behaviour relating to~~**:** (a) ~~types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order or behaviour has or is likely or intended to have an effect on a financial instrument referred to in points (a) and (b) of paragraph 1; (b)~~spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has or is likely ~~or intended~~ to have an effect on **the price or value of** a financial instrument referred to in **paragraph 1 of this Article; or** **(b) financial instruments referred to in paragraph 1 in this Article, where the transaction, order, bid or behaviour has or is likely to have an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments; or**	3. Articles 8 and 10 also apply to transactions, orders to trade or other behaviour relating to: (a) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order or behaviour has or is likely or intended to have an effect on a financial instrument referred to in paragraph 1(a) and (b); (b) spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has or is likely or intended to have an effect on a financial instrument referred to in paragraph 1(a) and (b); or (c) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order or behaviour has or is likely or intended to have an effect on spot commodity contracts.	3. Articles 8 and 10 **shall** also apply to: a) spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has or is likely to have an effect on **the price or value of** a financial instrument referred to in **paragraph 1 of this Article; or** **(b) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order, bid or behaviour has or is likely to have an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments.**

98	Art 2, para 3, point d	"(d) benchmarks, where any transmission of information, input, calculation or behaviour is used to affect, affects, or is likely to affect the calculation of the benchmark."	(c) **behaviour in relation to benchmarks.**	***deleted***	New Paragraph 3a. Articles 8 and 10 shall also apply to behaviour in relation to benchmarks.
99	Art. 2 para 2 a (new)			***2a. Articles 7 to 10 shall also apply to interest rates, currencies, benchmarks, inter bank offer rates, indexes and types of financial instruments, including any derivative contracts or derivative instruments, which derive their value from the value of interest rates, currencies or indexes.***	**DELETE**
10	Art 2, para 4 (new)		**4. This Regulation shall apply to any financial instruments as defined in paragraph 1 and 3 of this Article, irrespective of whether or not the transaction, order or behaviour itself actually takes place on a trading venue, systematic internaliser or is an OTC trading.**		**4. This Regulation applies to any transaction, order or behaviour concerning the financial instruments as defined in paragraph 1 and 3 of this Article, irrespective of whether** or not **such transaction, order or behaviour takes place on a trading venue.**
10	Art 2, para 4/5	4. The prohibitions and requirements in this Regulation shall apply to actions carried out in the Union or outside the Union concerning instruments referred to in paragraphs 1 to 3.	5. The prohibitions and requirements in this Regulation shall apply to actions **and ommissions,** carried out in the Union or outside the Union**,** concerning instruments referred to in paragraphs 1 to 3.	4. The prohibitions and requirements in this Regulation shall apply to actions carried out in the Union or outside the Union concerning instruments referred to in paragraphs 1, 2 and 3.	5. The prohibitions and requirements in this Regulation shall apply to actions **and omissions,** carried out in the Union or outside the Union**,** concerning instruments referred to in paragraphs 1 to 3.

10	Art 2, para 4 a / 6 (new)		**6. In order to ensure uniform conditions of application of paragraph 1, ESMA shall develop draft implementing technical standards defining the timing and the format of information to be provided and published in accordance with paragraph 2. The implementing technical standards shall also include a mechanism for the list of financial instruments to be reviewed and updated in regards to financial instruments no longer covered by paragraph 1. ESMA shall submit those draft implementing technical standards to the Commission by [ ] 2013.** **Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No. 1095/2010.**	***4a. ESMA shall publish and maintain a list setting out the instruments referred to in paragraph 1(a) and (b) and the trading venues on which they are traded. That list shall not limit the scope of this Regulation.***	**Article 2(6) - Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation (EU) No. 1095/2010 regarding the:** **a) the content of the notifications under paragraph 2** **b) the manner and conditions of the compilation, publication and maintenance of the list** **Article 2(7) Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No. 1095/2010 defining the timing and the format and template of the notifications under paragraph 2 [pertaining to the list of the financial instruments].**

10	Art 3, para 1,	1. The prohibitions in Articles 9 and 10 of this Regulation do not apply to trading in own shares in buy-back programmes when the full details of the programme are disclosed prior to the start of trading, trades are reported as being part of the buy-back programme to the competent authority and subsequently disclosed to the public, and adequate limits with regards to price and volume are respected.	1. The prohibitions in Articles 9 and 10 of this Regulation do not apply to trading in own shares in buy-back programmes when the full details of the programme are disclosed prior to the start of trading, trades are reported as being part of the buy-back programme to the competent authority and subsequently disclosed to the public, and adequate limits with regards to price and volume are respected. **Such trading must be carried out in accordance with the objectives specified in paragraph 2 and the measures specified in accordance with paragraph 4 of this Article.**	1. The prohibitions in Articles 9 and 10 of this Regulation do not apply to trading in ***financial instruments*** in buy-back programmes when the full details of the programme are disclosed ***and approved by the competent authority*** prior to the start of trading, trades are reported as being part of the buy-back programme to the competent authority and subsequently disclosed to the public, and adequate limits with regards to price and volume are respected.	1. The prohibitions in Articles 9 and 10 of this Regulation do not apply to trading in own shares in buy-back programmes when the full details of the programme are disclosed prior to the start of trading, trades are reported as being part of the buy-back programme to the competent authority and subsequently disclosed to the public, and adequate limits with regards to price and volume are respected. **Such trading must be carried out in accordance with the objectives specified in paragraph 2 and the regulatory technical standards referred to in paragraph 3b of this Article.**

10			**2. In order to benefit from the exemption provided for in this Article, the sole purpose of that buy-back programme must be to reduce the capital of an issuer (in value or in number of shares) or to meet obligations arising from any of the following:** **(a) debt financial instruments exchangeable into equity instruments;** **(b) share option programmes or other allocations of shares, to employees or to members of the administrative management or supervisory bodies of the issuer or of an associate company.**		**2. In order to benefit from the exemption provided for in this Article, a buy-back programme shall comply with conditions for buy-back programmes laid down in the regulatory technical standards referred to in paragraph 3b. In addition, the sole purpose of that buy-back programme must be to reduce the capital of an issuer (in value or in number of shares) or to meet obligations arising from any of the following:** **(a) debt financial instruments exchangeable into equity instruments;** **(b) share option programmes or other allocations of shares, to employees or to members of the administrative management or supervisory bodies of the issuer or of an associate company.** **2a The issuer must have in place the mechanisms ensuring that it fulfils trade reporting obligations to the competent authority of the regulated market on which the shares have been admitted to trading. These mechanisms must record each transaction related to "buy-back" programmes, including the information specified in Article 20(1) of Directive 93/22/EEC.**

10	Art 3, para 2/3	2. The prohibitions in Articles 9 and 10 of this Regulation do not apply to trading in own shares for the stabilisation of a financial instrument when stabilisation is carried out for a limited time period, when relevant information about the stabilisation is disclosed, and adequate limits with regards to price are respected.	3. The prohibitions in Articles 9 and 10 of this Regulation do not apply to ~~trading in own shares for~~ the stabilisation of **securities** when stabilisation is carried out for a limited time period, when relevant information about the stabilisation is disclosed, **notified to the competent authority,** and adequate limits with regards to price are respected **and provided such trading is in accordance with the measures in accordance with paragraph 4 of this article**	2. The prohibitions in Articles 9 and 10 of this Regulation do not apply to the stabilisation of a financial instrument when stabilisation is carried out for a limited time period, when relevant information about the stabilisation is disclosed ***to and approved by the competent authority***, and adequate limits with regard to price are respected.	3. The prohibitions in Articles 9 and 10 of this Regulation do not apply to **trading in securities or associated instruments for** the stabilisation of **securities** when stabilisation is carried out for a limited time period, when relevant information about the stabilisation is disclosed, **notified to the competent authority,** and adequate limits with regards to price are respected **and provided that such trading it complies with the conditions for stabilisation laid down in the regulatory technical standards referred to in paragraph 3b of this Article.** **3a. For the purposes of this Article, "securities" shall mean:** **(a) shares and other securities equivalent to shares;** **(b) bonds and other forms of securitised debt, or** **(c) securitised debt convertible or exchangeable into shares or into other securities equivalent to shares.** **3aa. Without prejudice to Article 17(1) of this Regulation, the details of all stabilisation transactions must be notified by issuers, offerors, or entities undertaking the stabilisation acting, or not, on behalf of such persons, to the competent authority of the relevant market no later than the end of the seventh daily market session following the date of execution of**

10	Art 3, para 2 a (new)			***[EP text moved alongside Council Art. 7a for ease of reference]***	[Consider alongside Council Art. 7a]
10	Art 3, para 2 b (new)			***[EP text moved alongside Council Art. 7a]***	[Consider alongside Council Art. 7a]

10	Art 3, para 3	3. The Commission shall adopt, by means of delegated acts in accordance with Article 31, measures specifying the conditions such buy-back programmes and stabilisation measures referred to in paragraphs 1 and 2 need to adhere to, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.	**Deleted**	3. The Commission shall adopt delegated acts in accordance with Article 31 ***defining the objectives and*** specifying the conditions ***that the*** buy-back programmes and stabilisation measures ***must meet in order to benefit from the exemption*** referred to in paragraphs 1 and 2 ***|***, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.	[deleted]

10	Art 3, para 3a/4(new)		**4. ESMA shall develop draft regulatory technical standards to specify the conditions such buy-back programmes and stabilisation measures referred to in paragraph 1 and 3 need to adhere to, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations and price conditions.** **ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [xx months after the entry into force of this Regulation].** **Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Article 10 to 14 of Regulation 1095/2010.**	***3a. ESMA shall develop draft regulatory technical standards to specify the conditions that such buy-back programmes and stabilisation measures referred to in paragraphs 1 and 2 must meet, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.*** ***ESMA shall submit those draft regulatory technical standards to the Commission by [....]*.*** ***Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***	[Deadline to be decided later] ***3b. ESMA shall develop draft regulatory technical standards to specify the conditions that buy-back programmes and stabilisation measures referred to in paragraphs 1 and 3 must meet, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions -*** ***ESMA shall submit those draft regulatory technical standards to the Commission by 24 months.*** ***Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

11	Art 4, para 1	1. This Regulation does not apply to transactions, orders or behaviours carried out in pursuit of monetary, exchange rate or public debt management policy by a Member State, by the European System of Central Banks, by a national central bank of a Member State, by any other ministry, agency or special purpose vehicle of a Member State, or by any person acting on their behalf and, in the case of a Member State that is a federal state, to such transactions, orders or behaviours carried out by a member making up the federation. It shall also not apply to such transactions, orders or behaviours carried out by the Union, a special purpose vehicle for several Member States, the European Investment Bank, an international financial institution established by two or more Member States, which has the purpose to mobilise funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems or the European Financial Stability Facility.	1. This Regulation does not apply to transactions, orders or behaviours carried out in pursuit of monetary, exchange rate, ~~or~~ public debt management policy **or in relation to public agricultural policy** by a Member State**, the Commission**, by the European System of Central Banks, by a national central bank of a Member State, by any other ministry, agency or special purpose vehicle of a Member State, or by any person acting on their behalf and, in the case of a Member State that is a federal state, to such transactions, orders or behaviours carried out by a member making up the federation. It shall also not apply to such transactions, orders or behaviours carried out by the Union, a special purpose vehicle for several Member States, **[European Stability Mechanism],** the European Investment Bank, *the European Financial Stability Facility*, an international financial institution established by two or more Member States, which has the purpose to mobilise funding and provide financial assistance to the benefit of its members ~~that are experiencing or threatened by severe financing problems or the European Financial Stability Facility~~.	1. This Regulation does not apply to transactions ***or*** orders carried out in pursuit of monetary, exchange rate or public debt management policy by a Member State, by the European System of Central Banks, by a national central bank of a Member State, by any other ministry, agency or special purpose vehicle of a Member State, or by any person acting on their behalf and, in the case of a Member State that is a federal state, to such transactions, orders or behaviours carried out by a member making up the federation. It shall also not apply to such transactions, orders or behaviours carried out by the Union, a special purpose vehicle for several Member States, the European Investment Bank, an international financial institution established by two or more Member States, which has the purpose to mobilise funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems or the European Financial Stability Facility.	1. This Regulation does not apply to transactions, orders or behaviours carried out in pursuit of monetary, exchange rate or public debt management policy by a Member State, by the members of the European System of Central Banks (ESCB), by any other ministry, agency or special purpose vehicle of one or several Member States, or by any person acting on their behalf and, in the case of a Member State that is a federal state, to such transactions, orders or behaviours carried out by a member making up the federation. It shall also not apply to transactions, orders or behaviours carried out by the European Commission or any other officially designated body or by any person acting on its behalf, in pursuit of public debt management policy. 1a new. This Regulation shall also not apply to transactions, orders or behaviours carried out by the Union, a special purpose vehicle for one or several Member States, the European Financial Stability Facility, European Stability Mechanism, the European Investment Bank or an international financial institution established by two or more Member States, which has the purpose to mobilise funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems.	

11	Art 4, para 1 a (new)			***1a. Any body that uses the exemptions provided for under this Article shall ensure that it has robust internal rules to monitor and mitigate conflicts of interest as well as systems and controls to prevent market abuse by internal employees or any outside contractors.***	[deleted]
11	Art 4, para 2	2. This Regulation does not apply to the activity of a Member State, the European Commission or any other officially designated body, or of any person acting on their behalf, which concerns emission allowances and which is undertaken in the pursuit of the Union's climate policy.	2. This Regulation does not apply to the activity of a Member State, the European Commission or any other officially designated body, or of any person acting on their behalf, which concerns emission allowances and which is undertaken in the pursuit of the Union's climate policy.	***deleted***	2. This Regulation does not apply to the activity of a Member State, the European Commission or any other officially designated body, or of any person acting on their behalf, which concerns emission allowances and which is undertaken in the pursuit of the Union's climate policy in accordance with Directive 2003/87/EC.

11	Art 4, para 3 (new)		**3. The Commission shall be empowered to adopt delegated acts in accordance with Article 31 to extend the exclusion set out in paragraph 1 to certain public bodies and central banks of third countries.** **To that end, the Commission shall prepare and present to the European Parliament and the Council a report by [12 months after the entry into force of this Regulation] assessing the international treatment of public bodies charged with or intervening in the management of the public debt and central banks in third countries.** **The report shall include a comparative analysis of the treatment of those bodies and of central banks within the legal framework of third countries, and the risk management standards applicable to the transactions entered into by those bodies and the central banks in those jurisdictions. If the report concludes, in particular in regard to the comparative analysis, that the exemption of the monetary responsibilities of those third-country central banks from the obligations and prohibitions of this Regulation is necessary the Commission shall include them in the list set out in paragraphs 1 and 2.**		3. This Regulation does not apply to the activity of a Member State, the European Commission or any other officially designated body, or of any person acting on their behalf, which is undertaken in the pursuit of the Union's Common Agricultural Policy or in the pursuit of the Union's Common Fisheries Policy in accordance with acts adopted or international agreements concluded under the Treaty.

11	Art 4, para 4 (new)		**4. The Commission shall also be empowered to adopt delegated acts in accordance with Article 31 to extend the exclusion set out in paragraph 2 to certain designated public bodies of third countries that have a linking agreement with the EU in the meaning of Article. 25 of Directive 2003/87/EC.** **To that end, the Commission shall prepare and present to the European Parliament and the Council a report assessing the treatment of such designated public bodies charged with the climate policy or intervening in the carbon market in those third countries that have a linking agreement with the EU.**		4. The Commission shall be empowered to adopt delegated acts in accordance with Article 31 to extend the exclusion set out in paragraph 1 to certain public bodies and central banks of third countries. To that end, the Commission shall prepare and present to the European Parliament and the Council a report by [24 months after the entry into force of this Regulation] assessing the international treatment of public bodies charged with or intervening in the management of the public debt and central banks in third countries. The report shall include a comparative analysis of the treatment of those bodies and of central banks within the legal framework of third countries, and the risk management standards applicable to the transactions entered into by those bodies and the central banks in those jurisdictions. If the report concludes, in particular in regard to the comparative analysis, that the exemption of the monetary responsibilities of those third-country central banks from the obligations and prohibitions of this Regulation is necessary the Commission shall include them in the list set out in paragraphs 1 and 2.

11	Art 4 a (new)			***moved alongside Council Article 8a***	
11	Art 5, para 1, introd. part	For the purposes of this Regulation, the following definitions apply:	For the purposes of this Regulation, the following definitions apply:	***1.*** For the purposes of this Regulation, the following definitions apply:	1. For the purposes of this Regulation, the following definitions apply:
11	Art 5, para 1, point 1	1. "financial instrument" means any instrument within the meaning of Article 2(1)(8) of Regulation [MiFIR].	1. "financial instrument" means any instrument within the meaning of Article 4**(2)(14) of Directive [MiFID new].**	(1) "financial instrument" means any instrument within the meaning of Article 2(1)(8) of Regulation [MiFIR];	[1. "financial instrument" means any instrument within the meaning of Article 4**(2)(14) of Directive [MiFID new].]** **Cross Reference MiFID/MiFIR**
11	Art 5, para 1, point 1 a (new)		**1a. "investment firm" means any person within the meaning of Article 2(1)(1) of Regulation [MiFIR].**		**[1a. "investment firm" means any person within the meaning of Article 2(1)(1) of Regulation [MiFIR].]** **Cross Reference MiFID/MiFIR**
11	Art 5, para 1, point 1 b (new)		**1b. "Credit institution or other financial institutions" means a credit institution or other financial institutions within the meaning of Article 4 Directive 2006/48.**		**1b. "Credit institution or other financial institutions" means a credit institution or other financial institutions within the meaning [of Article 4 Directive 2006/48.]**
12	Art 5, para 1, point 1 c (new)		**moved to EP point 4a new**		[Council text moved alongside EP text for ease of reference. The exact place to be considered upon agreement on substance]

12	Art 5, para 1, point 2	2. "regulated market" means a multilateral system in the Union within the meaning of Article 2(1)(5) of Regulation[MiFIR].	2. "regulated market" means a multilateral system in the Union within the meaning of Article 2(1)(5) of Regulation[MiFIR].	(2) "regulated market" means a multilateral system in the Union within the meaning of Article 2(1)(5) of Regulation (EU) No .../... [MiFIR];	2. "regulated market" means a multilateral system in the Union within the meaning of Article 2(1)(5) of Regulation[MiFIR]. **Cross Reference MiFID/MiFIR**
12	Art. 5, para 1, point 3	3. "multilateral Trading Facility (MTF)" means a multilateral system in the Union within the meaning of Article 2(1)(6) of Regulation[MiFIR].	3. "multilateral Trading Facility (MTF)" means a multilateral system in the Union within the meaning of Article 2(1)(6) of Regulation[MiFIR].	(3) "multilateral Trading Facility (MTF)" means a multilateral system in the Union within the meaning of Article 2(1)(6) of Regulation (EU) No .../... [MiFIR];	3. "multilateral Trading Facility (MTF)" means a multilateral system in the Union within the meaning of Article 2(1)(6) of Regulation[MiFIR]. **Cross Reference MiFID/MiFIR**
12	Art 5, para 1, point 4	4. "organised Trading Facility (OTF)" means a system or facility in the Union referred to in Article 2(1)(7) of Regulation[MiFIR].	4. "organised Trading Facility (OTF)" means a system or facility in the Union referred to in Article 2(1)(7) of Regulation[MiFIR].	(4) "organised Trading Facility (OTF)" means a system or facility in the Union referred to in Article 2(1)(7) of Regulation (EU) No .../... [MiFIR];	(4) "organised Trading Facility (OTF)" means a system or facility in the Union referred to in Article 2(1)(7) of Regulation (EU) No .../... [MiFIR]; **Cross Reference MiFID/MiFIR**
12	Art 5, para 1, point 1 c (new) /4 a (new)		**1c. "accepted market practices" means specific market practices that are accepted by the competent authority of a given Member State in accordance with Article [8a] of this Regulation.**	***(4a) "accepted market practices" means practices that are reasonably expected in one or more financial markets and are accepted by the competent authority in accordance with Article 4a;***	1c. "accepted market practices" means specific market practices that are accepted by the competent authority of a given Member State in accordance with Article [8a] of this Regulation.

12	Art 5, para 1, point point 13 (new)/ 4 b (new)		**13. "stabilisation" means any purchase or offer to purchase relevant financial instruments, or any transaction in associated instruments equivalent thereto, by investment firms or credit institutions, which is undertaken in the context of a significant distribution of such relevant securities exclusively for supporting the market price of these relevant securities for a predetermined period of time, due to a selling pressure in such securities;**	***(4b) "stabilisation" means any purchase or offer to purchase relevant financial instruments, or any transaction in associated instruments equivalent thereto, by investment firms or credit institutions, which is undertaken in the context of a significant distribution of such relevant securities exclusively for supporting the market price of these relevant securities for a predetermined period of time, due to a selling pressure in such securities;***	"stabilisation" means any purchase or offer to purchase relevant securities, or any transaction in associated instruments equivalent thereto, by investment firms or credit institutions, which is undertaken in the context of a significant distribution of such relevant securities exclusively for supporting the market price of these relevant securities for a predetermined period of time, due to a selling pressure in such securities; **"associated instruments" means the following financial instruments (including those which are not admitted to trading on a regulated market, or for which a request for admission to trading on such a market has not been made, provided that the relevant competent authorities have agreed to standards of transparency for transactions in such financial instruments):** **(a) contracts or rights to subscribe for, acquire or dispose of relevant securities;** **(b) financial derivatives on relevant securities;** **(c) where the relevant securities are convertible or exchangeable debt instruments, the securities into which such convertible or exchangeable debt instruments may be converted or exchanged;**

12	Art 5, para 1, point 5	5. "trading venue" means a system or facility in the Union referred to in Article 2(1)(26) of Regulation[MiFIR].	5. "trading venue" means a system or facility in the Union referred to in Article 2(1)(**25**) of Regulation[MiFIR].	(5) "trading venue" means a system or facility in the Union referred to in *Article 2(1)(25)* of Regulation (EU) No .../... [MiFIR];	5. "trading venue" means a system or facility in the Union referred to in Article 2(1)(**25**) of Regulation[MiFIR]. **Cross Reference MiFID/MiFIR**
12	Art 5, para 1, point 5 a (new)		**5a "Significant distribution" means an initial or secondary offer of securities that is distinct from ordinary trading both in terms of the amount in value of the securities to be offered and the selling method to be employed.**		**5a "Significant distribution" means an initial or secondary offer of securities that is distinct from ordinary trading both in terms of the amount in value of the securities to be offered and the selling method to be employed.**
12	Art 5, para 1, point 6	6. "SME growth market" means a MTF in the Union within the meaning of Article 4(1)(17) of Directive [new MiFID].	6. "SME growth market" means a MTF in the Union within the meaning of Article 4(**2**)(**11**) of Directive [new MiFID].	(6) "SME growth market" means a MTF in the Union within the meaning of *Article 4(1)(11)* of Directive .../.../EU [new MiFID];	6. "SME growth market" means a MTF in the Union within the meaning of Article 4(**2**)(**11**) of Directive [new MiFID]. **Cross Reference MiFID/MiFIR**
12	Art 5, para 1, point 7	7. "competent authority" means the competent authority designated in accordance with Article 16.	7. "competent authority" means the competent authority designated in accordance with Article 16.	(7) "competent authority" means the competent authority designated in accordance with Article 16;	7. "competent authority" means the competent authority designated in accordance with Article 16.
13	Art 5, para 1, point 8	8. "person" means any natural or legal person.	8. "person" means any natural or legal person.	(8) "person" means any natural or legal person;	8. "person" means any natural or legal person.

13	Art 5, para 1, point 9	9. "commodity" means a commodity within the meaning of Article 2(1) of Commission Regulation (EC) No 1287/2006 .	9. "commodity" means a commodity within the meaning of Article 2(1) of Commission Regulation (EC) No 1287/2006 .	(9) "commodity" means commodity within the meaning of Article 2(1) of Commission Regulation (EC) No 1287/2006;	9. "commodity" means a commodity within the meaning of Article 2(1) of Commission Regulation (EC) No 1287/2006 .
13	Art 5, para 1, point 10	10. "spot commodity contract" means any contract for the supply of a commodity traded on a spot market which is promptly delivered when the transaction is settled including any derivative contract that must be settled physically.	10. "spot commodity contract" means any contract for the supply of a commodity traded on a spot market which is promptly delivered when the transaction is settled**, as well as other contracts (such as physically settled forward contracts) for the supply of a commodity that are not financial instruments.**	(10) "spot commodity contract" means any contract for the supply of a commodity traded on a spot market which is promptly delivered when the transaction is settled including any derivative contract that must be settled physically;	10. "spot commodity contract" means any contract for the supply of a commodity traded on a spot market which is promptly delivered when the transaction is settled**, as well as other contracts for the supply of a commodity (such as physically settled forward contracts) that are not financial instruments.**
13	Art 5, para 1, point 11	11. "spot market" means any commodity market in which commodities are sold for cash and promptly delivered when the transaction is settled.	11. "spot market" means any commodity market in which commodities are sold for cash and promptly delivered when the transaction is settled**, as well as other non financial markets, such as forward markets for commodities**.	(11) "spot market" means any commodity market in which commodities are sold for cash and promptly delivered when the transaction is settled;	11. "spot market" means any commodity market in which commodities are sold for cash and promptly delivered when the transaction is settled**, as well as other non financial markets, such as forward markets for commodities**.
13	Art 5, para 1, point 12	12. "buy-back programme" means trading in own shares in accordance with Articles 19 to 24 of Council Directive 77/91/EEC .	12. "buy-back programme" means trading in own shares in accordance with Articles 19 to 24 of Council Directive 77/91/EEC .	(12) "buy-back programme" means trading in own shares in accordance with Articles 19 to 24 of Directive 77/91/EEC;	(12) "buy-back programme" means trading in own shares in accordance with **Articles 21 to 27 of Directive 2012/30/EU**;
13	Art 5, para 1, point 13 (new)		**moved up to EP point 4b (new)**		[Council text moved alongside EP text for ease of reference. The exact place to be considered upon agreement on substance]

13	Art 5, para 1, point 13	13. "algorithmic trading" means trading of financial instruments using computer algorithms within the meaning of Article 4(1)(37) of Directive [new MiFID].	**14.** "algorithmic trading" means trading of financial instruments using computer algorithms within the meaning of Article 4(2)(30) of Directive [new MiFID].	(13) "algorithmic trading" means trading of financial instruments using computer algorithms within the meaning of *Article 4(1)(30)* of Directive .../.../EU [new MiFID];	**14.** "algorithmic trading" means trading of financial instruments using computer algorithms within the meaning of Article 4(2)(30) of Directive [new MiFID]. **Cross Reference MiFID/MiFIR**
13	Art 5, para 1, point 14	14. "emission allowance" means a financial instrument as defined in point (11) of Section C of Annex I of Directive [new MiFID].	**15.** "emission allowance" means a financial instrument as defined in point (11) of Section C of Annex I of Directive [new MiFID].	(14) "emission allowance" means a financial instrument referred to point (11) of Section C of Annex I of Directive .../.../EU [new MiFID];	**15.** "emission allowance" means a financial instrument as defined in point (11) of Section C of Annex I of Directive [new MiFID]. **Cross Reference MiFID/MiFIR**
13	Art 5, para 1, point 15	15. "emission allowance market participant" means any person who enters into transactions, including the placing of orders to trade, in emission allowances.	**16.** "emission allowance market participant" means any person who enters into transactions, including the placing of orders to trade, in emission allowances.	(15) "emission allowance market participant" means a person who enters into transactions, including the placing of orders to trade, in emission allowances;	**16.** "emission allowance market participant" means any person who enters into transactions, including the placing of orders to trade, in emission allowances.
13	Art 5, para 1, point 16	16. "issuer of a financial instrument" means an issuer as defined in Article 2(1)(h) of Directive 2003/71/EC .	**17.** "issuer of a financial instrument" means **a legal entity governed by private or public law, which issues or proposes to issue financial instruments, the** issuer **being, in case of depository receipts representing financial instruments, the issuer of the financial instrument represented. .**	(16) "issuer of a financial instrument" means issuer within the meaning of Article 2(1)(h) of Directive 2003/71/EC;	**17.** "issuer of a financial instrument" means **a legal entity governed by private or public law, which issues or proposes to issue financial instruments, the** issuer **being, in case of depository receipts representing financial instruments, the issuer of the financial instrument represented.**

14	Art 5, para 1, point 17	17. "ACER" means the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No. 713/2009 .	**18.** "ACER" means the Agency for the Cooperation of Energy Regulators established under Regulation (EC) No. 713/2009 .	***deleted***	DELETE
14	Art 5, para 1, point 18	18. "wholesale energy product" has the same meaning as in Article 2(4) of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency]	**19.** "wholesale energy product" has the same meaning as in Article 2(4) of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency]	(18) "wholesale energy products" ***means wholesale energy products as defined in Article 2(4) of Regulation (EU) No 1227/2011;***	**19.** "wholesale energy product" has the same meaning as in Article 2(4) of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency]
14	Art 5, para 1, point 19	19. "national regulatory authority" has the same meaning as in Article 2(7) of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency]	**20.** "national regulatory authority" has the same meaning as in Article 2(7) of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency]	(19) "national regulatory authority" ***means national regulatory authority as defined in Article 2(10) of Regulation (EU) No 1227/2012 ;***	**20.** "national regulatory authority" has the same meaning as in Article 2(10) of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency]
14				***(19a) "order-book data" means information which is required to be provided in relation to a single order sent to the regulated market or the MTF for the purpose of entering the order book which is held and maintained by the person operating the regulated market or the MTF concerned;***	[Delete]

14				***(19b) "commodity derivatives" means commodity derivatives within the meaning of Article 2(1)(15) of Regulation (EU) No .../... [MiFIR];***	***(19b) "commodity derivatives" means commodity derivatives within the meaning of Article 2(1)(15) of Regulation (EU) No .../... [MiFIR];*** **Cross Reference MiFID/MiFIR**
14	Art 5, para 1, point 21 (new)		**21. "Person discharging managerial responsibilities within an issuer" shall mean a person who is:** **a. A member of the administrative management or supervisory bodies of the issuer.** **b. A senior executive, who is not a member of the bodies as referred to in point (a), having regular access to inside information relating, directly or indirectly, to the issuer, and the power to make managerial decisions affecting the future developments and business prospects of this issuer.**		**21. "Person discharging managerial responsibilities within an issuer" shall mean a person who is:** **a. A member of the administrative management or supervisory bodies of the issuer.** **b. A senior executive, who is not a member of the bodies as referred to in point (a), having regular access to inside information relating, directly or indirectly, to the issuer, and the power to make managerial decisions affecting the future developments and business prospects of this issuer.**

14	Art 5, para 1, point 22 (new)		**22. "Persons closely associated with another" shall mean:** **a. The spouse of the person, or any partner of that person considered by national law as equivalent to the spouse;** **b. According to national law, dependent children;** **c. Other relatives of the person, who have shared the same household as that person for at least one year on the date of the transaction concerned;** **d. Any legal person, trust or partnership, whose managerial responsibilities are discharged by a person referred to in point 21 of this Article or in letters (a), (b) and (c) of this point, or which is directly or indirectly controlled by such a person, or that is set up for the benefit of such a person, or whose economic interests are substantially equivalent to those of such person.**		**22. "Persons closely associated with another" shall mean:** **a. The spouse of the person, or any partner of that person considered by national law as equivalent to the spouse;** **b. According to national law, dependent children;** **c. Other relatives of the person, who have shared the same household as that person for at least one year on the date of the transaction concerned;** **d. Any legal person, trust or partnership, whose managerial responsibilities are discharged by a person referred to in point 21 of this Article or in letters (a), (b) and (c) of this point, or which is directly or indirectly controlled by such a person, or that is set up for the benefit of such a person, or whose economic interests are substantially equivalent to those of such person.**

14	Art 5, para 1, point 23 (new)		**23. "recommendation" means any information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public.**		DELETE

14	Art 5, para 1, point 24 (new)		**24. "information recommending or suggesting investment strategy" means:** **(a) information produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce recommendations or a natural person working for them under a contract of employment or otherwise, that, directly or indirectly, expresses a particular investment recommendation in respect of a financial instrument or an issuer of financial instruments;** **(b) information produced by persons other than the persons referred to in (a) which directly recommends a particular investment decision in respect of a financial instrument.**		DELETE

14	Art 5, para 1, point 25 (new)		**25. "data traffic records" means the records of traffic data as defined in Article 2 para b of Directive 2002/58/EC of the European Parliament and the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector;**		**25. "data traffic records" means the records of 'traffic data' as defined in Article 2 point b of Directive 2002/58/EC of the European Parliament and the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector;**
15	Art 5, para 1, point 26 (new)		**26. "persons professionally arranging or executing transactions in financial instruments" means an investment firm, credit institution or other financial institution, or natural persons in their employment, professionally engaged in the reception and transmission of orders or in the execution of transactions in financial instruments;**		**26. "persons professionally arranging or executing transactions in financial instruments" means a person, professionally engaged in the reception and transmission of orders or in the execution of transactions in financial instruments;**

15	Art 5, para 1, point 20	"20. 'benchmark' means any commercial index or published figure calculated by the application of a formula to the value of one or more underlying assets or prices, including estimated prices, interest rates or other values, or surveys by reference to which the amount payable under a financial instrument is determined"	**27.** "benchmark" means **(a)** any **published** index or published figure calculated by the application of a formula to**, or on the basis of,** the value of one or more underlying assets, or prices, **including estimated prices, actual or estimitated** interest rates or other values, or surveys**, where the input in the formula comes from more than one party; and** **(b)** by reference to which the amount payable under a financial instrument **or the value of the financial instrument** is determined.	(20) "benchmark" means any published ***rate, index or figure, by reference to which the amount payable under a financial instrument is determined, including an interbank offer rate,*** calculated by the application of a formula to***, or otherwise derived from:*** ***(a) the price or value of*** one or more underlying assets; or ***(b) the interest rate (whether actual or estimated) applied to the borrowing of funds;***	"benchmark" means any rate, index or figure, made available to the public or published that is periodically or regularly determined by the application of a formula to, or on the basis of: the value of one or more underlying assets, or prices, including estimated prices, actual or estimated interest rates or other values, or surveys, and by reference to which the amount payable under a financial instrument or the value of a financial instrument is determined.
15	Art 5, para 1, point 28 (new)		**28. "Stakebuilding" means an acquisition of securities by a person in a company which does not trigger a legal or regulatory obligation to make a takeover bid in relation to that company;**		MOVE TO Article 7A
15	Art 5, para 1, point 29 (new)		**29. "systematic internaliser" means an investment firm trading on own account within the meaning of article 2(1)(3) of Regulation [MiFIR] ;**		DELETE
15	Art 5, para 1, point 31 (new)		**31. "market maker" means a person within the meaning of Article 4(2)(6) of Directive [new MiFID]**		**31. "market maker" means a person within the meaning of Article 4(2)(6) of Directive [new MiFID]**

15	Art 5, para 2 (new)			***2. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 concerning measures to specify the technical elements of or amend the definitions laid down in paragraph 1, if appropriate, in line with the definitions laid down in Regulation (EU) No .../2012 [MIFIR] and Directive 2012/.../EU [new MiFID] in order to take into account of:*** ***(a) technical developments on financial markets;*** ***(b) the list of abusive practices referred to in Article 34b(b).***	DELETE
15	Art 6, para 1, point (a)	1. For the purposes of this Regulation, inside information shall comprise the following types of information: (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.	1. For the purposes of this Regulation, inside information shall comprise the following types of information: (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.	1. For the purposes of this Regulation, inside information shall comprise the following types of information: (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;	1. For the purposes of this Regulation, inside information shall comprise the following types of information: (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;

15	Art 6, para 1, point (b)	(b) in relation to derivatives on commodities, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such derivatives or to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts; notably information which is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs, on the relevant commodity derivatives or spot markets.	(b) in relation to derivatives on commodities, information of a precise nature, which has not been made public, relating, directly or indirectly~~,~~ to one or more such derivatives or **relating directly** to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts **and where this is** information which is **reasonably expected to be disclosed or** required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts**, practices** or customs, on the relevant commodity derivatives or spot markets.	(b) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such derivatives or to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts ***or to have a distortive effect on the functioning of the commodity derivatives markets or to hinder supervision of the market concerned***; ***and*** information which is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs, on the relevant commodity derivatives or spot markets.	(b) in relation to derivatives on commodities, information of a precise nature, which has not been made public, relating, directly or indirectly~~,~~ to one or more such derivatives or **relating directly** to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts **and where this is** information which is **reasonably expected to be disclosed or** required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts**, practices** or customs, on the relevant commodity derivatives or spot markets

15	Art 6, para 1, point (c)	(c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments.	(c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly [or indirectly], to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments.	(c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments ***and which is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs, on the relevant commodity derivatives or spot markets***;	(c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments;

15	Art 6, para1, point (d)	(d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and related to the client's pending orders in financial instruments, 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, the price of related spot commodity contracts, or on the price of related derivative financial instruments.	(d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and related to the client's pending orders in financial instruments, 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, the price of related spot commodity contracts, or on the price of related derivative financial instruments.	(d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and related to the client's pending orders in financial instruments, 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, the price of related spot commodity contracts, or on the price of related derivative financial instruments;	(d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and related to the client's pending orders in financial instruments, 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, the price of related spot commodity contracts, or on the price of related derivative financial instruments;

16	Art 6, para1, point (e)	(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	(e) information not falling within points (a), (b), (c) or (d) relating to one or more issuers of financial instruments or to one or more financial instruments, which ***although*** is not generally available to the public, ***is of a type that is reasonably considered to require subsequent disclosure and*** 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 ***as relevant*** by that person ¦when deciding the terms on which transactions in the financial instrument or a related spot commodity contract should be effected ***and where any type of conduct upon such information is likely to be regarded by a reasonable investor who regularly deals on the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in such position in relation to that market***.	DELETED – note changes to 6(3) below

16	Art. 6, para 2	2. For the purposes of applying paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances.	2. For the purposes of applying paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances. **In this respect in the case of a protracted process intended to bring about, or that results in, a particular circumstance or a particular event, not only may that future circumstance or future event be regarded as precise information, but also the intermediate steps of that process which are connected with bringing about or resulting in that future circumstance or event.**	2. For the purposes of applying paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments, the related spot commodity contracts***, the emission allowances*** or the auctioned products based ***thereon***.	2. For the purposes of applying paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances. **In this respect in the case of a protracted process intended to bring about, or that results in, a particular circumstance or a particular event, not only may that future circumstance or future event be regarded as precise information, but also the intermediate steps of that process which are connected with bringing about or resulting in that future circumstance or event.**

16	Art. 6, para 2 a (new)		**2a. An intermediate step in a protracted process can be inside information if, by itself, it satisfies the criteria of inside information as referred to in this article.**		**2a. An intermediate step in a protracted process can be inside information if, by itself, it satisfies the criteria of inside information as referred to in this article.**

16	Art. 6, para 3	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.	3. For the purposes of applying paragraph 1, **namely** 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**, account** shall **be taken of to the extent which** a reasonable investor would be likely to use **that information** as part of the basis of his investment decision~~s~~. **In the case of emission allowance market participants with aggregate emissions or rated thermal input at or below the threshold set in accordance with the third subparagraph of Article 12(2), information about their physical operations shall be deemed not to have a significant effect on the price of emission allowances, auctioned products based thereon or on the prices of related derivative financial instruments.**	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, ***the emission allowances*** or the auctioned products based ***thereon*** shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.	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 financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall **mean information** a reasonable investor would be likely to use as part of the basis of his investment decisions. **In the case of emission allowance market participants with aggregate emissions or rated thermal input at or below the threshold set in accordance with the third subparagraph of Article 12(2), information about their physical operations shall be deemed not to have a significant effect on the price of emission allowances, auctioned products based thereon or on the prices of related derivative financial instruments.**

16	Art. 6, para 4 (new)		**4. ESMA shall issue guidelines to establish a non exhaustive indicative list of information which is reasonably expected or required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts, practices or customs, on the relevant commodity derivatives or spot markets as referred to in paragraph 1(b) of this Article. ESMA shall dully take into account specificities of these markets.**		**4. ESMA shall issue guidelines to establish a non exhaustive indicative list of information which is reasonably expected or required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts, practices or customs, on the relevant commodity derivatives or spot markets as referred to in paragraph 1(b) of this Article. ESMA shall dully take into account specificities of these markets.**

16	Art. 6, para 3 a (new)			***3a. In order to ensure consistent application of paragraph 1(c), ESMA shall develop draft regulatory technical standards providing a definition of inside information in relation to emission allowances or auctioned products based thereon.*** ***ESMA shall submit those draft regulatory technical standards to the Commission, following a public consultation, by [...]*.*** ***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***	[deletion]
16	Art. 6, para 3 b (new)			***3b. In order to ensure consistent application of paragraph 1(e) to diverse market activities, ESMA shall issue guidelines providing assistance in determining appropriate standards of behaviour in relation to relevant markets.***	[deletion] [covered by row 164]
16	Art 7, title	Insider dealing and improper disclosure of inside information	Insider dealing ~~and improper disclosure of inside information~~	Insider dealing and improper disclosure of inside information	Insider dealing

***** ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

16	Art 7, para 1	1. For the purposes of this Regulation, insider dealings arises where a person possesses inside information and uses 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. The use of inside information to cancel or amend an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered as insider dealing.	1. For the purposes of this Regulation, insider dealings arises where a person possesses inside information and uses 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. ~~The use of inside information to cancel or amend an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered as insider dealing.~~	1. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses 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. The use of inside information to cancel or amend an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered as insider dealing.	1. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses 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. The use of inside information by cancelling or amending ~~to cancel or amend~~ an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered as insider dealing. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010, the **use of inside information** shall also **comprise submitting,** modifying or withdrawing a bid **by a person** for **its** own account or for the account of a third party.

16	Art 7, para 2	2. For the purposes of this Regulation, attempting to engage in insider dealing arises where a person possesses inside information and attempts 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. The attempt to cancel or amend an order concerning a financial instrument to which the information relates on the basis of inside information where the order was placed before the person concerned possessed the inside information, shall also be considered an attempt to engage in insider dealing.	deleted	2. For the purposes of this Regulation, attempting to engage in insider dealing arises where a person possesses inside information and ***uses that information to attempt*** 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. The attempt to cancel or amend an order concerning a financial instrument to which the information relates on the basis of inside information where the order was placed before the person concerned possessed the inside information, shall also be considered an attempt to engage in insider dealing. ***Attempting to acquire or dispose of financial instruments under this Article means taking any step necessary to effect, cancel or amend a trade.***	Delete

17	Art 7, para 3/5	3. For the purposes of this Regulation, a person recommends or induces another person to engage in insider dealing if the person possesses inside information and recommends or induces another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.	**5.** For the purposes of this Regulation, **recommending or inducing** another person to engage in insider dealing **arises when a** person **who** possesses inside information, ~~and~~ recommends or induces another person on the basis of **that** information, to acquire or dispose of financial instruments to which that information relates.	3. For the purposes of this Regulation, a person recommends that another person engages in insider dealing, or induces another person to engage in insider dealing, if the person possesses inside information and recommends***, on the basis of that inside information, that*** another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal.	3. For the purposes of this Regulation, recommending that another person engages in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and a) recommends**, on the basis of that information, that** another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal or b) recommends, on the basis of that information, that another person **cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment**.
17	Art 7, para 3 a (new)/6		**6. The use of recommendations or inducements referred to in paragraph 5 amounts to insider dealing when the person using the recommendation or inducement knows or ought to know it is based on inside information.**	***3a. The use or onward disclosure of the recommendations or inducements referred to in paragraph 3 amounts to insider dealing when the person using or disclosing the recommendation or inducement knows or ought to know, that it is based upon insider information.***	***3a. The use of the recommendations or inducements referred to in paragraph 3 amounts to insider dealing when the person using the recommendation or inducement knows or ought to know, that it is based upon insider information.***

17	Art 7, para 3 b (new)			***3b. For the purposes of this Regulation, a person recommends that another person engages in insider dealing, or induces another person to engage in insider dealing, if the person possesses inside information and recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, without disclosing the inside information to that person, or induces that person to make such a cancellation or amendment.***	[deletion]
17	Art 7, para 4	4. For the purposes of the Regulation, improper disclosure of inside information arises where a person possesses inside information and discloses the inside information to any other person, except where the disclosure is made in the normal course of the exercise of duties resulting from an employment or profession.	deleted	[EP text moved alongside Council Art. 7b(1)]	[deletion]
17	Art 7, para 5, subpara 1, / para 2 introductory part	5. Paragraphs 1, 2, 3 and 4 apply to any person who possesses inside information as a result of any of the following situations:	**2. This article applies to any legal or natural** person who possesses inside information as a result of any of the following situations:	5. Paragraphs 1, 2, 3 and 4 apply to any person who possesses inside information as a result of any of the following situations:	**5. This article applies to any legal or natural** person who possesses inside information as a result of any of the following situations:

17	Art 7, para 5, subpara 1, point a / para 2 point b	(a) being a member of the administrative, management or supervisory bodies of the issuer;	(b) being a member of the administrative, management or supervisory bodies of the issuer,	(a) being a member of the administrative, management or supervisory bodies of the issuer;	(a) being a member of the administrative, management or supervisory bodies of the issuer;
17	Art 7, para 5, subpara 1, point b/ para 2 point c	(b) having a holding in the capital of the issuer;	(c) having a holding in the capital of the issuer,	(b) having a holding in the capital of the issuer;	(b) having a holding in the capital of the issuer;
17	Art 7, para 5, subpara 1, point c/ para 2 point d	(c) his having access to the information through the exercise of duties resulting from an employment or profession;	(d) ~~his~~ having access to the information through the exercise of duties resulting from **his employment**, profession or **duties;**	(c) his having access to the information through the exercise of duties resulting from an employment or profession;	(c) having access to the information through the exercise of an **employment**, profession or **duties.**
17	Art 7, para 5, subpara 1, point d/ para 2 point e	(d) being involved in criminal activities.	(e) being involved in criminal activities.	(d) being involved in ***illegal*** activities.	(d) being involved in criminal activities.

17	Art 7, para 2, subpara 1, point f(new) and subpara 2	Paragraphs 1, 2, 3 and 4 also apply to any inside information obtained by a person under circumstances other than those referred to in points (a) to (d) and which the person knows or ought to know, is inside information.	**(f) obtaining inside information under circumstances other than those in points (b) to (f) and which the person knows or ought to know is inside information.**	Paragraphs 1, 2, 3 and 4 also apply to any inside information obtained by a person under circumstances other than those referred to in points (a) to (d) and which the person knows or ought to know, is inside information.	This Article also applies to **any legal or natural** person who has obtained inside information **under circumstances other than those referred to in subparagraph 1 where** that person knows or ought to know that it is inside information,
18	Art 7, para 6/7	6. Where the person referred to in paragraph 1 and 2 is a legal person, the provisions of those paragraphs shall also apply to the natural persons who take part in or influence the decision to carry out, or attempt to carry out, the acquisition or disposal for the account of the legal person concerned.	**7. In conformity with national law, where the person referred to in this Article is a legal person, the provisions shall also apply to the natural persons who participate in the decision to carry out, the acquisition or disposal or cancellation or amendment of an order for the account of the legal person concerned.**	6. Where the person referred to in paragraph 1 and 2 is a legal person, the provisions of those paragraphs shall also apply to natural persons who take part in or influence the decision to carry out, or attempt to carry out, the acquisition or disposal for the account of the legal person concerned.	**7. In conformity with national law, where the person referred to in this Article is a legal person, the provisions shall also apply to the natural persons who participate in the decision to carry out, the acquisition or disposal or cancellation or amendment of an order for the account of the legal person concerned.**

18	Art 7, para 7	7. Where the person referred to in paragraph 1 is a legal person, the provisions of that paragraph shall not apply to a transaction by the legal person if the legal person had in place effective arrangements which ensure that no person in possession of inside information relevant to the transaction had any involvement in the decision or behaved in such a way as to influence the decision or had any contact with those involved in the decision whereby the information could have been transmitted or its existence could have been indicated.	deleted	***[EP text moved alongside Council Art. 7a para 1]***	[deletion]
18	Art 7, para 8	8. Paragraph 1 shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement concluded, or is to satisfy a legal or regulatory obligation that arose, before the person concerned possessed inside information.	deleted	***[EP text moved alongside Council Art. 7a para 3]***	[deletion]

18	Art 7, para 9/3	9. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010, the prohibition under paragraph 1 shall also apply to the use of inside information by submitting, modifying or withdrawing a bid for own account of the person that possesses inside information or for the account of a third party.	**3. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered as insider dealing.** In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010, the **use of inside information referred to in first subparagraph** shall also **comprise** modifying or withdrawing a bid **by a person** for **its** own account ~~of the person that possesses inside information~~ or for the account of a third party.	9. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010, the prohibition under paragraph 1 shall also apply to the use of inside information by submitting, modifying or withdrawing a bid for own account of the person that possesses inside information or for the account of a third party.	[deletion]
18	Art 7, para 5		[Council text moved alongside EP para 3]		
18	Art 7, para 6 (new)		[Council text moved alongside EP para 3a]		
18	Art 7, para 7 (new)		[Council text moved alongside EP para 6]		

18	Art 7, para 9 a (new)			***[EP text moved alongside Council Art. 7a, para 2]***	

18	Art 7 a (new)		**Article 7a** **Legitimate behaviour** **1. For the purpose of applying article 7, a legal person in possession of inside information shall not be deemed to have used that information or consequently to have engaged in insider dealing on the basis of circumstances where the legal person:** **(a) had established, implemented and maintained adequate and effective internal arrangements and procedures that effectively ensure that neither the natural persons, who made the decision on its behalf to acquire or dispose of financial instruments to which the information relates, nor any other natural person who may have had any influence on the decision to acquire or dispose of those instruments, are in possession of the inside information; and** **(b) did not encourage, recommend, or induce or otherwise influence the natural person to acquire or dispose of financial instruments to which the information relates.**	***[moved from EP Art 7(7)]*** 7. This Article shall not apply to a legal person, that carries out a transaction if that person***:*** ***(a) did not encourage, recommend, induce or otherwise influence the natural person who made the decision on its behalf to acquire or dispose of financial instruments to which the information relates; and*** ***(b)*** had ***established, implemented and maintained adequate and*** effective ***internal*** arrangements ***and procedures to*** ensure that ***neither the natural*** person ***referred to*** in ***point (a), nor any other natural person who may have*** had any ¦influence ***on*** the decision ***to acquire*** or ***dispose of*** those ***instruments, was*** in ***possession of*** the ***inside*** information ***referred to in point (a)***.	**Article 7a** **Legitimate Behaviour** 1. ***For the purposes of Articles 7 and 9, a legal person in possession of inside information shall not, in itself, be deemed to have used that information or consequently to have engaged in insider dealing on the basis of an acquisition or disposal, where the legal person***: ***a)*** had ***established, implemented and maintained adequate and*** effective ***internal*** arrangements ***and procedures that*** **effectively** ensure that ***neither the natural*** person ***who made the decision on its behalf to acquire or dispose of financial instruments to which the information relates, nor any other natural person who may have*** had any ¦influence ***on*** that decision ***was*** in ***possession of*** the ***inside*** information; ***and*** **b) did not encourage, recommend to, induce or otherwise influence the natural person who on behalf of the legal person acquired or disposed of financial instruments to which the information relates;**

18			**2. For the purpose of applying Article 7, a person possessing inside information shall not be deemed to have used that information, or consequently to have engaged in insider dealing, on the basis of the following circumstances:** **(a) where that person is a market maker for the financial instrument to which that information relates or a body authorised to act as a counter party and the acquisition or disposal of financial instruments to which that information relates is made legitimately in the normal course of their duties as a market maker or a counter party;** **(b) where that person is authorised to execute orders on behalf of third parties, and the acquisition or disposal of financial instruments to which the order relates is made to carry out such an order legitimately in the normal course of the exercise of his employment, profession or duties;**	***[moved from EP Art 7(9a)]*** ***9a. A person possessing inside information shall be deemed not to use that information, and therefore not to commit insider dealing, where that person:*** ***(a) acts as a market maker or as a person authorised to act as a counterparty and the acquisition or disposal of financial instruments to which that information relates is made legitimately in the normal course of the exercise of his employment, profession or duties; or*** ***(b) is authorised to execute orders on behalf of third parties, and the acquisition or disposal of financial instruments to which the order relates is made to carry out such an order legitimately in the normal course of the exercise of his employment, profession or duties.***	2. ***For the purposes of Articles 7 and 9, a person in possession of inside information shall not, in itself, be deemed to have used that information or consequently to have engaged in insider dealing on the basis of an acquisition or disposal where th***at person: a) ***is a market maker*** **for the financial instrument to which that information relates** ***or a person authorised to act as a counterparty*** ***for the financial instrument to which that information relates*** ***and the acquisition or disposal of financial instruments to which that information relates is made legitimately in the normal course of the exercise of their function*** **as a market maker or a counter party for that financial instrument; or** ***(b) is authorised to execute orders on behalf of third parties, and the acquisition or disposal of financial instruments to which the order relates is made to carry out such an order legitimately in the normal course of the exercise of his/her employment, profession or duties.***

19			**(c) where that person enters into transactions, places or withdraws orders in relation to derivatives on commodities the sole purpose of which is to cover direct losses from their existing contractual obligations, except where the inside information concerned is reasonably expected or required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts practices, or customs, on the relevant commodity derivatives or spot markets.**		**[deleted]**

19			**3. Transactions conducted in the discharge of an obligation to acquire or dispose of financial instruments, undertaken in good faith and not as a part of a plan to evade the prohibition of insider dealing, shall not constitute insider dealing where that obligation results from an order placed, or an agreement concluded, or is to satisfy a legal or regulatory obligation that arose, before the person concerned possessed inside information.**	***[moved from EP Art 7(8)]*** 8. ***This Article*** shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement concluded, or is to satisfy a legal or regulatory obligation that arose, before the person concerned possessed inside information.	3. ***For the purposes of Articles 7 and 9, a person in possession of inside information shall not, in itself, be deemed to have used that information or consequently to have engaged in insider dealing on the basis of an acquisition or disposal where th***at person conducts a transaction to acquire or dispose of financial instruments ***where that transaction is carried out*** in the discharge of an obligation that has become due **in good faith and not to circumvent the prohibition of insider dealing and**: a) that obligation results from **an order placed** or an agreement concluded before the person concerned possessed inside information; or b) is to satisfy a legal or regulatory obligation that arose, before the person concerned possessed inside information.

19			**3a. Insider dealing shall be deemed not to arise in itself where a person possessing inside information obtained in the conduct of a public takeover or merger with a company, uses that information solely for the purpose of proceeding with a merger with, or a public takeover of that company, provided that at the point of approval of the merger or acceptance of the offer by the shareholders of that company, any inside information has been made public or has otherwise ceased to be inside information.** **This paragraph does not apply to stakebuilding using inside information.**	***[moved from EP Art. 3(2a)]*** ***2a. Having access to inside information relating to another company and using it in the context of a public take-over bid for the purpose of gaining control of that company or proposing a merger with that company shall not in itself be deemed to constitute insider dealing.***	4. **Insider dealing shall be deemed not to arise in itself where a person possessing inside information obtained in the conduct of a public takeover or merger with a company, uses that information solely for the purpose of proceeding with that merger or public takeover, provided that at the point of approval of the merger or acceptance of the offer by the shareholders of that company, any inside information has been made public or has otherwise ceased to be inside information.** **This paragraph does not apply to stakebuilding using inside information.** **Stakebuilding using inside information shall not be deemed to constitute a legitimate behaviour in accordance with this paragraph.** "Stakebuilding" means an acquisition of securities in a company which does not trigger a legal or regulatory obligation to make an announcement of a takeover bid in relation to that company

19			**3b. A person that uses his own knowledge that he decided to acquire or dispose of financial instruments shall not be deemed, in itself, to be using inside information when he acquires or disposes those financial instruments..**	***[moved from EP Art. 3(2b)]*** ***2b. 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 shall not be deemed in itself to constitute the use of inside information.***	**3b. The mere fact that a person uses their own knowledge that they have decided to acquire or dispose of financial instruments in the acquisition or disposal of those financial instruments shall not in itself constitute the use of inside information.**
19			**4. Notwithstanding paragraphs 1, 2, 3 and 3a, a breach can still be deemed to have occurred if the competent authority establishes that there was an illegitimate reason behind these transactions, orders to trade or behaviours.**		**6. Notwithstanding paragraphs 1, 2, 3, 4 and 5, a breach of the prohibition of insider dealing set out in Article 9 can still be deemed to have occurred if the competent authority establishes that there was an illegitimate reason behind the orders to trade, transactions or behaviours concerned.**

19	Art 7 b (new) para 1		**Article 7b** **Improper disclosure of inside information** **1. Improper disclosure of inside information arises when a person who possesses inside information discloses that information to others, except where the disclosure is made in the normal course of the exercise of his employment, profession or duties.**	To be considered together with Article 7 [moved from EP 7 para 4] 4. For the purposes of the Regulation, improper disclosure of inside information arises where a person possesses inside information and discloses the inside information to any other person, except where the disclosure is made in the normal course of the exercise of duties resulting from an employment or profession.	**Article 7b** **Improper disclosure of inside information** 1. For the purposes of this Regulation improper disclosure of inside information arises where a person **that** possesses inside information discloses that information to any other person, except where the disclosure is made in the normal course of the exercise of an employment, profession or duties. **This paragraph applies to any natural or legal person in the situations or circumstances referred to in Art. 7(5)**
19	Art 7 b (new) para 3		**3. The onward disclosure of recommendations or inducements referred to in Article 7(5) amounts to improper disclosure under this Article when the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.**	See EP text in EP Art. 7(3a)_	2. For the purposes of this Regulation **the onward disclosure of recommendations or inducements referred to in Article 7(3) amounts to improper disclosure of inside information under this Article when the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.**

19	Art 7 b (new) para 2		**2. This article applies to any natural or legal person who possesses inside information as a result of any of the following situations:** **(a) Deleted,** **(b) being a member of the administrative, management or supervisory bodies of the issuer,** **(c) having a holding in the capital of the issuer,** **(d) having access to the information through the exercise of duties resulting from his employment, profession or duties;** **(e) being involved in criminal activities.** **(f) obtaining inside information under circumstances other than those in points (a) to [(e)] and which the person knows or ought to know is inside information.**		[deletion]

19	Art 7 c (new)		**Article 7c** **Market soundings** **1. A market sounding comprises the communication of information, prior to the announcement of a transaction, to one or more potential investors:** **(a) by an issuer of a financial instrument;** **(b) by a secondary offeror of a financial instrument, in such quantity or value that the transaction is distinct from ordinary trading and involves a selling method based on the prior assessment of potential interest from potential investors;** **(c) by an emission allowance market participant; or** **(d) by a third party acting on behalf of or on the account of any of (a) to (c) above,** **in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing.** **In this Regulation, the expression "a disclosing market participant" shall refer to a natural or legal person falling into any of the categories set out in sub-paragraphs (a) to (d) of paragraph 1 and paragraph 1a, who discloses information in the course of a market sounding.**	***[EP text from Art. 11, para 2 d (new) and para. 3 point c)]*** ***2d. A person in a professional capacity who intends to query one or more investors with a view to setting the terms of a possible future significant distribution or buy-back of securities in which it is acting at the request of an issuer or seller, shall maintain appropriate records of its queries.*** ***Prior to the query, should the information to be communicated be inside information, it shall obtain the investor's agreement to receive such information.*** 3. ESMA shall develop draft regulatory technical standards to determine*:* **....** ***(c) the type of queries that are deemed to be carried out in the context of a possible future significant distribution or buy-back of securities on behalf of an issuer or seller and the recording arrangements that are appropriate to comply with the requirements established in paragraph 2d.*** ESMA shall submit those draft regulatory technical standards to the Commission by [...]*. Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.	**Article 7c** **Market soundings** **1. A market sounding comprises the communication of information, prior to the announcement of a transaction, to one or more potential investors:** **(a) by an issuer of a financial instrument;** **(b) by a secondary offeror of a financial instrument, in such quantity or value that the transaction is distinct from ordinary trading and involves a selling method based on the prior assessment of potential interest from potential investors;** **(c) by an emission allowance market participant; or** **(d) by a third party acting on behalf of or on the account of any of (a) to (c) above,** **in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing.** **1a. Without prejudice to Article 17.4, disclosure of inside information by a person intending to make a takeover bid for the securities of a company or a merger with a company to parties entitled to the securities, shall also constitute a market sounding, provided that:** **(a) the information is**

19	Art 8, para 1, point a	1. For the purposes of this Regulation, market manipulation shall comprise the following activities: (a) entering into a transaction, placing an order to trade or any other behaviour which has the following consequences: – it gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract; or – it secures, or is likely to secure, the price of one or several financial instruments or a related spot commodity contracts at an abnormal or artificial level;	1. For the purposes of this Regulation, market manipulation shall comprise the following activities: (a) entering into a transaction, placing an order to trade or any other behaviour which ~~has the following consequences~~: – ~~it~~ gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract; or – ~~it~~ secures, or is likely to secure, the price of one or several financial instruments or a related spot commodity contracts at an abnormal or artificial level; **unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate, and that these transactions or orders to trade are in conformity with accepted market practices on the trading venue concerned; or**	1. For the purposes of this Regulation, market manipulation shall comprise the following activities: (a) entering into a transaction, placing an order to trade or any other behaviour which ¦: - ¦gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract; or - ¦ secures, or is likely to secure, the price of one or several financial instruments or a related spot commodity contracts at an abnormal or artificial level;	1. For the purposes of this Regulation, market manipulation shall comprise the following activities: (a) entering into a transaction, placing an order to trade or any other behaviour which: - gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract; or - secures, or is likely to secure, the price of one or several financial instruments or a related spot commodity contracts at an abnormal or artificial level; **unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate, and that these transactions or orders to trade are in conformity with accepted market practices; or**

* ***OJ please insert date: 12 months following the date of entry into force of this Regulation.***

20	Art 8, para 1, point b	(b) entering into a transaction, placing an order to trade or any other behaviour affecting the price of one or several financial instruments or a related spot commodity contract, which employs a fictitious device or any other form of deception or contrivance; or	(b) entering into a transaction, placing an order to trade or any other behaviour **which affects or is likely to affect** the price of one or several financial instruments or a related spot commodity contract, which employs a fictitious device or any other form of deception or contrivance; or	(b) entering into a transaction, placing an order to trade or any other ***activity or*** behaviour affecting***, or likely to affect,*** the price of one or several financial instruments or a related spot commodity contract, which employs a fictitious device or any other form of deception or contrivance;	(b) entering into a transaction, placing an order to trade or any other ***activity or*** behaviour **which affects or is likely to affect** the price of one or several financial instruments or a related spot commodity contract, which employs a fictitious device or any other form of deception or contrivance;
20	Art 8, para 1, point c	(c) disseminating information through the media, including the Internet, or by any other means, which has the consequences referred to in subparagraph (a), where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.	(c) disseminating 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 of, demand for, or price of*** **a financial instrument or a related spot commodity contract, or secures or is likely to secure the price of one or several financial instruments or a related spot commodity contract at an abnormal or artifical level, including the dissemination of rumours and false or misleading news**, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading-**or**	(c) disseminating information through the media, including the internet, or by any other means, which has ***or is likely to have*** the consequences referred to in point (a), where the person who made the dissemination knew, or ought to have known, that the information was false or misleading; or	(c) disseminating 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 of, demand for, or price of, a financial instrument or a related spot commodity contract or secures, or is likely to secure, the price of one or several financial instruments or a related spot commodity contracts at an abnormal or artificial level, including the dissemination of rumours*** where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

20	Art 8, para 1, point d	"(d) transmitting false or misleading information, providing false or misleading inputs, or any action which manipulates the calculation of a benchmark."	(d) transmitting false or misleading information **or** providing false or misleading inputs **where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading,** or any **other behaviour** which manipulates the calculation of a benchmark.	(d) transmitting false or misleading information, providing false or misleading inputs, or any ***other behaviour relating to benchmarks, which involves the making of, or the request to make, a false or misleading representation of any kind.***	(d) transmitting false or misleading information **or** providing false or misleading inputs **where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading,** or any **other behaviour** which manipulates the calculation of a benchmark
20	Art 8, para 1, second subpara	When information is disseminated for the purposes of journalism, such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless: – those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or – the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.	deleted	Where information is disseminated for the purposes of journalism under point (c) of the first subparagraph, such dissemination of information shall be assessed taking into account the rules governing the freedom ¦ of expression ***and the freedom and pluralism of the*** media ***as well as the rules or codes governing the journalist profession***, unless: - those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or - the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.	[Covered by Article 15a]

20	Art 8, para 2, points a and b / para 2a	2. For the purposes of this Regulation, an attempt to engage in market manipulation shall comprise the following: (a) attempting to enter into a transaction, trying to place an order to trade or trying to engage in any other behaviour as defined in paragraph 1(a) or (b); or (b) attempting to disseminate information as defined in paragraph 1(c).	deleted	2. For the purposes of this Regulation, an attempt to engage in market manipulation shall comprise the following***, regardless of whether it has the intended net effect***: (a) attempting to enter into a transaction, trying to place an order to trade or trying to engage in any other behaviour as defined in paragraph 1(a) or (b); or (b) attempting to disseminate information as defined in paragraph 1(c). ***2a. Making an attempt for the purpose of this Article is the taking of any step necessary to effect any of the activities referred to in paragraph 2(a) and (b).***	[Delete]

20	Art 8, para 3/2, point a	3. The following behaviour shall be considered as market manipulation or attempts to engage in market manipulation: (a) conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument or related spot commodity contracts which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions,	**2.** The following behaviour shall**, inter alia,** be considered as market manipulation **where it has an effect referred to in paragraph 1 (a), 1 (b), 1 (c) or 1 (d)**: (a) conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument or related spot commodity contracts which has **or is likely to have** the effect of fixing, directly or indirectly, purchase or sale prices or **create or is likely to create** other unfair trading conditions,	3. The following behaviour shall be considered***, inter alia,*** as market manipulation or attempts to engage in market manipulation: (a) conduct by a person, or persons acting in collaboration, to secure a dominant position ***or otherwise*** over the supply of or demand for a financial instrument or related spot commodity contracts which has, ***or is likely to have,*** the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions, ***or setting prices to an abnormal and artificial level;***	The following behaviour shall***, inter alia,*** be considered as market manipulation: (a) conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument or related spot commodity contracts which has, ***or is likely to have,*** the effect of fixing, directly or indirectly, purchase or sale prices or **creates, or is likely to create,** other unfair trading conditions;
20	Art 8, para 3/2, point b	(b) the buying or selling of financial instruments at the close of the market with the effect or intention of misleading investors acting on the basis of closing prices,	(b) the buying or selling of financial instruments at the close of the market with the effect or **likely effect** of misleading investors acting on the basis of closing prices,	(b) the buying or selling of financial instruments**,** at ***any stage of*** the ***trading period*** of the market, ***which has or is likely to have*** the effect or intention of misleading investors acting on the basis of ***the displayed*** prices, ***including the closing prices***;	(b) the buying or selling of financial instruments**,** at the ***opening or*** close of the market, ***which has or is likely to have*** the effect of misleading investors acting on the basis of ***the*** prices ***displayed***, ***including the opening or closing prices***;

20	Art 8, para 3/2, point c	(c) the sending of orders to a trading venue by means of algorithmic trading, including high frequency trading, without an intention to trade but for the purpose of: – disrupting or delaying the functioning of the trading system of the trading venue; – making it more difficult for other persons to identify genuine orders on the trading system of the trading venue; or – creating a false or misleading impression about the supply of or demand for a financial instrument.	(c) the **placing** of orders to a trading venue **or facility including any cancellation or modification thereof,** by means of algorithmic **strategies**, including high frequency trading**, strategies, which has one of the effects referred to in paragraph 1 (a) or 1 (b) by**: – disrupting or delaying the functioning of the trading system of the trading venue **or facility, or which is likely to do so or**; – making it more difficult for other persons to identify genuine orders on the trading system of the trading venue~~;~~ or **facility or which is likely to do so, for example by entering orders which result in the overloading and destabilisation of the order book; or** – creating **or being likely to create** false or misleading **signals** about the supply of or demand for **or price of** a financial instrument**, for example by entering orders to initiate or exacerbate a trend**.	(c) the ***placing*** of orders to a trading venue***, including any cancellation or modification thereof, generally within a short period*** by ***any available*** means of ¦trading including ***electronic means, such as algorithmic and*** high frequency trading ***strategies, as defined in Directive .../.../EU [new MiFID], which consists of at least one of*** the ***following:*** - disrupting or delaying the functioning of the trading system of the trading venue***, or making it more likely to do so***; - making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or ***making it more likely to do so, including by entering orders which result in the overloading or destabilisation of the order book***; or - creating a false or misleading impression about the supply of or demand for***, or price of*** a financial instrument***, in particular by entering orders to initiate or exacerbate a trend, or making it more likely that such an impression is created;***	(c) the ***placing*** of orders to a trading venue***, including any cancellation or modification thereof,*** by ***any available*** means of trading including ***electronic means, such as algorithmic and*** high frequency trading ***strategies,*** **and which has one of the effects referred to in paragraph 1(a) or 1(b) by:** - disrupting or delaying the functioning of the trading system of the trading venue or which is likely to do so; - making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or which is likely to do so***, including by entering orders which result in the overloading or destabilisation of the order book***; or - creating or being likely to create a false or misleading **signal** about the supply of or demand for***, or price of*** a financial instrument***, in particular by entering orders to initiate or exacerbate a trend;***

20	Art 8, para 3/2, point d	(d) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument or related spot commodity contract (or indirectly about its issuer) while having previously taken positions on that financial instrument or related spot commodity contract and profiting subsequently from the impact of the opinions voiced on the price of that instrument or related spot commodity contract, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.	(d) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument or related spot commodity contract (or indirectly about its issuer) while having previously taken positions on that financial instrument or related spot commodity contract and profiting subsequently from the impact of the opinions voiced on the price of that instrument or related spot commodity contract, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.	(d) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument or related spot commodity contract (or indirectly about its issuer) while having previously taken positions on that financial instrument or related spot commodity contract and ***aiming at*** profiting subsequently from the impact of the opinions voiced on the price of that instrument or related spot commodity contract, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way;	(d) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument or related spot commodity contract (or indirectly about its issuer) while having previously taken positions on that financial instrument or related spot commodity contract and profiting subsequently from the impact of the opinions voiced on the price of that instrument or related spot commodity contract, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way;
20	Art 8, para 3/2, point e	(e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.	(e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.	(e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.	(e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.

21	Art 8, para 4/3	4. For the purposes of applying points (a) and (b) of paragraph 1 of Article 8, and without prejudice to the forms of behaviour set out in paragraph 3, Annex I defines non-exhaustive indicators related to the employment of fictitious devices or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing.	**3.** For the purposes of applying points (a) and (b) of paragraph 1 of **this** Article**,** and without prejudice to the forms of behaviour set out in paragraph **2,** Annex I defines non-exhaustive indicators related to the employment of fictitious devices or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing**.**	4. For the purposes of applying paragraph 1(a) and (b), and without prejudice to the forms of behaviour set out in paragraph 3, Annex I defines non-exhaustive indicators related to the employment of fictitious devices or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing.	4. For the purposes of applying paragraph 1(a) and (b), and without prejudice to the forms of behaviour set out in paragraph 3, Annex I defines non-exhaustive indicators related to the employment of fictitious devices or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing.
21	Art 8, para 4 (new)		**4. In conformity with national law, where the person referred to in this Article is a legal person, the provisions shall also apply to the natural persons who participate in the decision to carry out, activities for the account of the legal person concerned.**		**4. In conformity with national law, where the person referred to in this Article is a legal person, the provisions shall also apply to the natural persons who participate in the decision to carry out, activities for the account of the legal person concerned.**

21	Art 8, para 4 a (new)			***4a. Trading venues shall ensure that they have regimes in place, as outlined in Article 59 of Directive …/… [new MiFID], to ensure that no person acting in collaboration can secure a dominant position over the supply of, or demand for, a financial instrument or related spot commodity contracts which have the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions.***	[Delete]

21	Art 8, para 4 b (new)			***4b. In order to ensure orderly markets, market participants shall disclose additional information to the trading venue and the competent authority, in order to facilitate their ability to detect abusive behaviour and conduct an investigation.*** ***That information should be comprised of the following:*** ***(a) who stands behind an order;*** ***(b) whether the order was executed manually or electronically; and*** ***(c) which strategy was used for the execution.***	[Delete]
21	Art 8, para 5/ 6	5. The Commission may adopt, by means of delegated acts in accordance with Article 31, measures specifying the indicators laid down in Annex I, in order to clarify their elements and to take into account technical developments on financial markets.	**6.** The Commission may adopt, by means of delegated acts in accordance with Article 31, measures specifying the indicators laid down in Annex I, in order to clarify their elements and to take into account technical developments on financial markets.	5. ***ESMA shall develop draft regulatory technical standards to specify*** the indicators laid down in Annex I, in order to clarify their elements and to take into account technical developments on financial markets. ***ESMA shall submit those draft regulatory technical standards to the Commission by [....]*.*** ***Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***	**6.** The Commission may adopt, by means of delegated acts in accordance with Article 31, measures specifying the indicators laid down in Annex I, in order to clarify their elements and to take into account technical developments on financial markets.

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

21	Art.4a / 8a (new), title		**Article 8a** **Accepted Market Practices**	*Article 4a* *Accepted market practices*	*Accepted market practices*
21	Art.8a (new), para 1		**1. The prohibition in Article 10 of this Regulation shall not apply to the activities indicated in Article 8(1)(a) provided that they are carried out for legitimate reasons and have been accepted by the competent authority in accordance with this article. A practice that is accepted in a particular market cannot be considered applicable to other markets unless the competent authorities of such other markets have officially accepted that practice.**		**1. The prohibition in Article 10 shall not apply to the activities indicated Article 8(1)(a) provided that the person entering** into a transaction, placing an order to trade or any other behaviour **establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and are in conformity with accepted market practices, established in accordance with this Article.**

21	Art.4a /8a (new), para 1/2		**2. Competent authorities shall be able to establish an accepted market practice taking into account the following criteria:** **(a) the specific market practice has a substantial level of transparency to the market;** **(b) the specific market practice shall ensure a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand;** **(c) the specific market practice shall have a positive impact on market liquidity and efficiency;** **(d) the specific market practice shall take into account the trading mechanism of the relevant market and enable market participants to react properly and in a timely manner to the new market situation created by that practice;** **(e) the specific market practice shall not create risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the whole Union;** **(f) the outcome of any investigation of the relevant market practice by any competent authority or other authority, in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, be it on the market in**	***1. Competent authorities may establish an accepted market practice on the basis of the following criteria:*** ***(a) the level of transparency of the relevant market practice to the whole market;*** ***(b) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand;*** ***(c) the degree to which the relevant market practice has an impact on market liquidity and efficiency;*** ***(d) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;*** ***(e) the risk inherent in the relevant practice for the integrity of directly or indirectly related markets, whether regulated or not, in the relevant financial instrument within the Union;*** ***(f) the outcome of any investigation of the relevant market practice by a competent authority or by another authority, in particular whether the relevant market practice breached rules or regulations designed to prevent ~~market abuse, or codes of conduct,~~ whether on the market in question or on directly or indirectly related markets within the Union;*** ***(g) the structural characteristics of the relevant***	**2. Competent authorities shall be able to establish an accepted market practice taking into account the following criteria:** **(a) the specific market practice has a substantial level of transparency to the market;** **(b) the specific market practice ensures a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand;** **(c) the specific market practice has a positive impact on market liquidity and efficiency;** **(d) the specific market practice takes into account the trading mechanism of the relevant market and enable market participants to react properly and in a timely manner to the new market situation created by that practice;** **(e) the specific market practice does not create risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the Union;** **(f) the outcome of any investigation of the relevant market practice by any competent authority or other authority, in particular whether the relevant market practice breached rules or regulations designed to prevent market**
1138	4/13				

21	Art.4a (new), para 2/3		**3. When considering to accept a market practice, competent authorities shall notify ESMA and other competent authorities of the intention to recognise a market practice and provide details of the assessment made according to the criteria laid down in paragraph 2. Notification of the intention to establish an accepted market practice shall be made not less than 3 months before the accepted market practice is intended to take effect. Within 2 months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of each market practice with the requirements established in paragraph 2 and specified in the regulatory technical standards adopted pursuant to paragraph 5. The opinion shall be published on ESMA's website.**	***2. Before establishing an accepted market practice, a competent authority shall notify ESMA and the other competent authorities of the intended accepted market practice and provide details of the assessment made according to the criteria laid down in paragraph 1. Such notification shall be made not less than six months before the accepted market practice is intended to take effect .3. Within three months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of each accepted market practice with the requirements established in paragraph 1 and specified in the regulatory technical standards adopted pursuant to paragraph 5 and considering whether the establishment of the accepted market practice would not threaten the market confidence in the Union's financial market. The opinion shall be published on ESMA's website.***	**2a. Before** ***establishing an accepted market practice in accordance with paragraph 1,*** **the competent authorities shall notify ESMA** ***and the other competent authorities*** **of the intention to establish an** ***accepted market practice and provide details of the assessment made according to the criteria laid down in paragraph 2. Such notification shall be made not less than 3 months before the accepted market practice is intended to take effect.*** ***3. Within 2 months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of each accepted market practice with the requirements established in paragraph 1 and specified in the regulatory technical standards adopted pursuant to paragraph 5. Such opinion shall also consider whether the establishment of the accepted market practice would not threaten the market confidence in the Union's financial market. The opinion shall be published on ESMA's website.***

21	Art.4a (new), para 4/4a		**4. Where a competent authority establishes an accepted market practice contrary to an ESMA opinion issued according to paragraph 3, it shall publish on its website within 24 hours of establishing the accepted market practice, a notice fully explaining its reasons for doing so.** **4.a If a competent authority considers that another competent authority has not met the requirements of paragraph 2 in establishing an accepted market practice, ESMA shall assist those authorities in reaching an agreement in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.** **If the competent authorities concerned fail to reach an agreement, ESMA may take a decision in accordance with Article 19(3) of Regulation (EU) No 1095/2010.**	***4. Where a competent authority establishes an accepted market practice contrary to an ESMA opinion issued according to paragraph 3, it shall publish on its website within 24 hours of establishing the accepted market practice a notice setting out in full its reasons for doing so, including why the accepted market practice does not threaten market confidence.***	***4. Where a competent authority establishes an accepted market practice contrary to an ESMA opinion issued in accordance with paragraph 3, it shall publish on its website within 24 hours of establishing the accepted market practice a notice setting out in full its reasons for doing so, including why the accepted market practice does not threaten market confidence.*** ***4a.*** **Where a competent authority considers that another competent authority has not met the requirements of paragraph 2 in establishing an accepted market practice, ESMA shall assist those authorities in reaching an agreement in accordance with its powers under Article 19 of Regulation (EU) No 1095/2010.** **If the competent authorities concerned fail to reach an agreement, ESMA may take a decision in accordance with Article 19(3) of Regulation (EU) No 1095/2010.**

22	Art.4a (new), para 5		**5. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the criteria, the process and the requirements conceived under paragraphs 2 and 3.** **ESMA shall submit those draft regulatory technical standards to the Commission by XXX.** **Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.**	***5. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the detailed procedure for establishing an accepted market price under paragraphs 2 and 3.*** ***ESMA shall submit those draft regulatory technical standards to the Commission by [....]**** ***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***	***6. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the* criteria, the *procedure* and the requirements *for establishing an accepted market price under paragraphs 2, 2a and 3 as well as for maintaining or not or modifying the conditions for it acceptance.*** ***ESMA shall submit those draft regulatory technical standards to the Commission by 24 months.*** ***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

22	Art.4a (new), para 6		**6. Taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructures, competent authorities shall review every two years each accepted market practice, with a view to decide whether or not to maintain it or to modify the conditions for its acceptance.**	***6. Competent authorities shall review regularly the market practices they have accepted, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructures.***	***5. Competent authorities shall review regularly and at least every two years, the accepted market practices they have established, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructures, with a*** **view to decide whether or not to maintain it or to modify the conditions for its acceptance.**
22	Art.4a (new), para 7		**7. ESMA shall publish on its website a list of accepted market practices and in which Member States they are applicable.**	***7. ESMA shall publish on its website a list of accepted market practices and in which Member States they are applicable.***	***7. ESMA shall publish on its website a list of accepted market practices and in which Member States they are applicable.***
22	Art.4a (new), para 8		**8. ESMA shall monitor the application of the accepted market practices and shall submit an annual report to the Commission on how they're applied in the markets concerned.**	***8. ESMA shall monitor the application of the accepted market practices and shall submit an annual report to the Commission on how they are applied in the markets concerned.***	***8. ESMA shall monitor the application of the accepted market practices and shall submit an annual report to the Commission on how they are applied in the markets concerned.***

22	Art.4a (new), para 9		**9. Accepted market practice established by competent authorities before the entry into force of this regulation can continue to apply in respective Member States concerned until competent authorities made a decision regarding the continuation of this practice following ESMA's opinion according to paragraph 3. Competent authorities shall submit the accepted market practices to ESMA within 3 months after the regulatory technical standards under paragraph 5 are adopted by the Commission.**	***9. An accepted market practice established by a competent authority before the entry into force of this Regulation continues to apply in the Member State concerned until it has been submitted to ESMA in accordance with paragraph 2. Competent authorities shall submit such accepted market practices to ESMA within three months of the adoption by the Commission of the regulatory technical standards under paragraph 5.***	***9. Competent authority shall submit accepted market practices established by them before the entry into force of this Regulation to ESMA within three months of the adoption by the Commission of the regulatory technical standards under paragraph 5;*** ***Such accepted market practices shall continue to apply in the Member State concerned until the competent authority has*** **made a decision regarding the continuation of this practice following ESMA's opinion according to paragraph 3.**
22	Art 9,	A person shall not: (a) engage or attempt to engage in insider dealing; (b) recommend or induce another person to engage in insider dealing; or (c) improperly disclose inside information.	A person shall not: (a) engage or attempt to engage in insider dealing; **or** (b) recommend or induce another person to engage in insider dealing; or (c) improperly disclose inside information~~.~~	A person shall not: (a) engage or attempt to engage in insider dealing; (b) recommend that another person engages in insider dealing or ***induce another person to engage in insider dealing; or*** (c) improperly disclose inside information.	A person shall not: (a) engage or attempt to engage in insider dealing; (b) recommend that another person engages in insider dealing or ***induce another person to engage in insider dealing; or*** (c) improperly disclose inside information.
22	Art 10	A person shall not engage in market manipulation or attempt to engage in market manipulation.	A person shall not engage in market manipulation or attempt to engage in market manipulation.	A person shall not engage in market manipulation or attempt to engage in market manipulation.	A person shall not engage in market manipulation or attempt to engage in market manipulation.

22	Art 10 a (new)			***Article 10a*** ***Abusive order entry*** ***1. Any person who operates the business of trading venue shall have in place rules to avoid abusive order entry in line with Article 51(5a) of Directive …/… [new MiFID], such as imposing a higher fee for market participants placing an order that is subsequently cancelled and lower fees for an order which is executed, or imposing a higher fee on market participants placing a high ratio of cancelled orders to executed orders and imposing higher fees on those operating a high frequency trading strategy in order to reflect the additional burden on system capacity. Any person who operates the business of trading venue shall be able to adjust its fees for cancelled orders according to the length of time for which the order was maintained and to calibrate the fees to each financial instrument to which they apply.*** ***2. Any person who operates the business of trading venue shall report systematic and repetitive breaches of these rules to competent authorities in order for competent authorities to take appropriate action under this Regulation.*** ***3. In accordance with the provisions of Article 17 of Directive …/… [new MiFID], if any firm which engages in algorithmic trading fail to report to their competent authority a material item***	Delete

22	Art 11, para 1	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.	1. **Market operators operating a regulated market and market operators and investment firms operating an MTF or OTF shall establish** and maintain effective arrangements and **systems** aimed at preventing and detecting market abuse~~,~~ **and attempted market abuse** in accordance with [articles 31 and 56] in Directive [New MIFID]. **They shall report orders and transactions that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing to the competent authority without delay.**	1. Any person who operates the business of a trading venue ***or trading over the counter*** 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.	1. Market operators and investment firms that operate a trading venue **shall establish** and maintain effective arrangements, **systems** and procedures aimed at preventing and detecting market abuse **and attempts to engage in market abuse** in accordance with [Articles 31 and 56] of Directive [new MiFID]. Any person referred to in the first subparagraph **shall report orders and transactions that might constitute insider dealing, market manipulation or an attempt to engage in insider dealing or market manipulation to the competent authority without delay.**
	Art 11, para 1a			***1a. Any person who operates the business of a trading venue shall adopt and maintain effective arrangements and procedures to exchange information with other persons who operate the business of a trading venue with significant liquidity in the same or closely related instruments aimed at preventing and detecting market abuse across such venues.***	DELETE

22	Art. 11, para 2	2. Any person professionally arranging or executing transactions in financial instruments shall have systems in place to detect and report orders and transactions that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing. If that person reasonably suspects that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing, the person shall notify the competent authority without delay.	2. Any person professionally arranging or executing transactions in financial instruments shall **establish and maintain effective arrangements and** systems ~~in place~~ to detect and report **suspicious** orders and transactions ~~that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing. If that person reasonably suspects~~**. Whenever such a person has a reasonable suspicion** that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing, the person shall notify the competent authority without delay.	**2. Any person professionally arranging or executing transactions in financial instruments shall *adopt and maintain effective arrangements and procedures* to detect and report orders and transactions that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing. If that person reasonably suspects that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing, the person shall notify the competent authority without delay.**	**2. Any person professionally arranging or executing transactions in financial instruments shall establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions.** **Whenever such a person has a reasonable suspicion that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, might constitute insider dealing, market manipulation or an attempt to engage in insider dealing or market manipulation the person shall notify the competent authority without delay.**

23	Art. 11, para 2 a (new)			***[EP text moved alongside Article 29***	**3. Without prejudice to Article 16 of this Regulation, persons professionally arranging transactions shall be subject to the rules of notification of the Member State in which they are registered or have their head office, or in the case of a branch, the Member State where the branch is situated. The notification shall be addressed to the competent authority of this Member State.** **Member States shall ensure that competent authorities receiving the notification of suspicious transactions transmit such information immediately to the competent authorities of the regulated markets concerned.**
23	Art. 11, para 2 b (new)			***[EP text moved alongside Article 13]***	

23	Art. 11, para 2 c(new)			***2c. The notification in good faith to the competent authority as referred to in Articles 7 to 10 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in liability of any kind related to such notification.***	Deleted – moved to 17(5)

23	Art. 11, para 2 d (new)			***[EP text moved alongside Council 7c]***	
23	Art. 11, para 3	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. ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation 1095/2010.	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 **paragraphs 1 and** 2. ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation 1095/2010.	3. ESMA shall develop draft regulatory technical standards to determine***:*** ***(a)*** appropriate arrangements and procedures for persons to comply with the requirements established in paragraph 1; ***(b)*** the systems and notification templates to be used by persons to comply with the requirements established in paragraph 2***; and*** ***(c) [EP text moved alongside Council 7c]*** ESMA shall submit those draft regulatory technical standards to the Commission by [...] *. Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.	3. ESMA shall develop draft regulatory technical standards to determine***:*** a) appropriate arrangements, **systems** and procedures for persons to comply with the requirements established in paragraphs 1 and 2; b) the notification templates to be used by persons to comply with the requirements established in **paragraphs 1 and** 2. ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 24 months. Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation 1095/2010.

* ***OJ please insert date: 12 months following the date of entry into force of this Regulation.***

23	Art 12, para 1	1. An issuer of a financial instrument shall inform the public as soon as possible of inside information, which directly concerns the issuer, and shall, for an appropriate period, post on its Internet site all inside information it is required to disclose publicly.	1. An issuer of a financial instrument shall inform the public as soon as possible of inside information~~,~~ which directly concerns **said issuer.** **The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assesment of the information by the public and, where applicable, in the Officially Appointed Mechanism referred to in [Transparency Directive]. The issuer must not combine inside information to the public with the marketing of its activities. The issuer shall post and maintain on its official website for a period of at least five years,** all inside information it is required to disclose publicly. **This article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of instruments only being traded on a MTF or an OTF, issuers who have approved trading of their financial instruments on a MTF or an OTF or have requested admission to trading of their financial instruments on a MTF in a Member State.**	1. An issuer of a financial instrument shall inform the public ***and the competent authority*** as soon as possible, of inside information, which directly concerns the issuer, and shall, for an appropriate period, post on its Internet site all inside information it is required to disclose publicly.	1. An issuer of a financial instrument shall inform the public as soon as possible of inside information~~,~~ which directly concerns **said issuer.** **The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public and, where applicable, in the Officially Appointed Mechanism referred to in [Transparency Directive]. The issuer must not combine the disclosure of inside information to the public with the marketing of its activities.** **The issuer shall post and maintain on its official website for a period of at least five years~~,~~** all inside information it is required to disclose publicly. **This article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of instruments only being traded on a MTF or an OTF, issuers who have approved trading of their financial instruments on a MTF or an OTF or have requested admission to trading of their financial instruments on a MTF in a Member State.**

23	Art 12, para 2, first subpara	2. An emission allowance market participant shall publicly, effectively and in a timely manner disclose inside information concerning emission allowances which it holds in respect of its business, including aviation activities as specified in Annex I of Directive 2003/87/EC or installations within the meaning of Article 3(e) of the same Directive which the participant concerned, or parent undertaking or related undertaking, owns or controls or for which the participant, or its parent undertaking or related undertaking, is responsible for operational matters, either in whole or in part. With regard to installations, such disclosure shall include relevant information to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.	2. An emission allowance market participant shall publicly, effectively and in a timely manner disclose inside information concerning emission allowances which it holds in respect of its business, including aviation activities as specified in Annex I of Directive 2003/87/EC or installations within the meaning of Article 3(e) of the same Directive which the participant concerned, or parent undertaking or related undertaking, owns or controls or for which the participant, or its parent undertaking or related undertaking, is responsible for operational matters, either in whole or in part. With regard to installations, such disclosure shall include relevant information to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.	2. An emission allowance market participant shall publicly, effectively and in a timely manner disclose inside information concerning emission allowances which it holds in respect of its business, including aviation activities as specified in Annex I of Directive 2003/87/EC or installations within the meaning of Article 3(e) of that Directive which the participant concerned, or parent undertaking or related undertaking, owns or controls or for which the participant, or its parent undertaking or related undertaking, is responsible for operational matters, either in whole or in part. With regard to installations, such disclosure shall include relevant information to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.	2. An emission allowance market participant shall publicly, effectively and in a timely manner disclose inside information concerning emission allowances which it holds in respect of its business, including aviation activities as specified in Annex I of Directive 2003/87/EC or installations within the meaning of Article 3(e) of that Directive which the participant concerned, or parent undertaking or related undertaking, owns or controls or for which the participant, or its parent undertaking or related undertaking, is responsible for operational matters, either in whole or in part. With regard to installations, such disclosure shall include relevant information to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.

23	Art 12, para 2, second subpara	The first subparagraph shall not apply to an emission allowance market participant where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold.	The first subparagraph shall not apply to an emission allowance market participant where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold.	The first subparagraph shall not apply to an emission allowance market participant where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold.	The first subparagraph shall not apply to an emission allowance market participant where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of carbon dioxide equivalent and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold.

23	Art 12, para 2, third subpara	The Commission shall adopt, by means of a delegated act in accordance with Article 31, measures establishing a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of application of the exemption provided for in the second subparagraph.	The Commission shall adopt, by means of a delegated act in accordance with Article 31, measures establishing a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of application of the exemption provided for in the second subparagraph.	The Commission shall ***be empowered to*** adopt delegated acts in accordance with Article 31 ***modifying the*** minimum threshold of carbon dioxide equivalent and ***the*** minimum threshold of rated thermal input for the purposes of application of the exemption provided for in the second subparagraph. ***Before adopting the delegated act referred to in this subparagraph, the Commission shall assess whether modifying the minimum threshold of carbon dioxide equivalent or the minimum threshold of rated thermal input responds to the needs arising from new technological and market developments.***	The Commission shall adopt, by means of a delegated act in accordance with Article 31, measures establishing a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of application of the exemption provided for in the second subparagraph. **The Commission shall adopt, by means of a delegated act in accordance with Article 31, measures establishing a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of application of the exemption provided for in the second subparagraph of paragraph 2 of the present article and to specify the competent authority for the notifications of paragraphs 3 and 4 of the present article**.

23	Art 12, para 3	3. Paragraphs 1 and 2 shall not apply to information which is only inside information within the meaning of point (e) of paragraph 1 of Article 6.	**3. An issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of this Article, may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, provided that all of the following conditions are met:** **– the immediate disclosure would likely prejudice his legitimate interests;** **– the omission would not be likely to mislead the public;** **– the issuer of a financial instrument or emission allowance market participant is able to ensure the confidentiality of that information.** **Subject to the conditions referred to above, in the case of a protracted process which occurs in stages, intended to bring about or which results in a particular circumstance or a particular event, an issuer may under his own responsibility delay the public disclosure of inside information relating to this process.** **Where an issuer of a financial instrument or emission allowance market participant has delayed the disclosure of inside information under this paragraph it shall inform the competent authority that disclosure of the information was delayed and provide in writing an explanation**	3. Paragraphs 1 and 2 shall not apply to information which is only inside information within the meaning of Article 6(1)(e).	**3. An issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of this Article, may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, provided that all of the following conditions are met:** **– the immediate disclosure would likely prejudice his legitimate interests;** **– the omission would not be likely to mislead the public;** **– the issuer of a financial instrument or emission allowance market participant is able to ensure the confidentiality of that information.** **Subject to the conditions referred to above, in the case of a protracted process, which occurs in stages, intended to bring about or which results in a particular circumstance or a particular event, an issuer may under his own responsibility delay the public disclosure of inside information relating to this process.** **Where an issuer of a financial instrument or emission allowance market participant has delayed the disclosure of inside information under this paragraph, it shall inform the competent authority that disclosure of the information was**

24	Art 12, para 4, fisrt subpara	4. Without prejudice to paragraph 5, an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his legitimate interests provided that both of the following conditions are met: – the omission would not be likely to mislead the public; – the issuer of a financial instrument or emission allowance market participant is able to ensure the confidentiality of that information.	4. **In order to preserve the stability of the financial system,** an issuer of a financial instrument **which is a credit institution or other financial institution, may under its** own responsibility delay the ~~public~~ disclosure of inside information**,** ~~—~~**including, but not limited to, information which is related to a temporary liquidity problem, including the need to receive temporary liquidity assistance from a central bank or lender of last resort,** provided that **all** the following conditions are **satisfied:** – ~~the omission would not be likely to mislead the public;~~ – ~~the issuer of a financial instrument or emission allowance market participant is able to ensure~~ **(a) the disclosure of the information entails a risk to undermine the financial stability of the issuer and of the financial system;** **(b) it is in the public interest to delay the disclosure** **(c) the confidentiality of that information can be ensured; and** **(d) the competent authority has consented to the delay on the basis that the conditions at sub-paragraphs (a) to (c) are met.**	4. Without prejudice to paragraph 5, an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his legitimate interests provided that both of the following conditions are met: (a) the omission would not be likely to mislead the public; (b) the issuer of a financial instrument or emission allowance market participant is able to ensure the confidentiality of that information.	**In order to preserve the stability of the financial system,** an issuer of a financial instrument **which is a credit institution or other financial institution, may under its** own responsibility delay the disclosure of inside information**, including, but not limited to, information which is related to a temporary liquidity problem, including the need to receive temporary liquidity assistance from a central bank or lender of last resort,** provided that **all** the following conditions are **satisfied:** **(a) the disclosure of the information entails a risk of undermining the financial stability of the issuer and of the financial system;** **(b) it is in the public interest to delay the disclosure** **(c) the confidentiality of that information can be ensured; and** **(d) the competent authority has consented to the delay on the basis that the conditions at sub-paragraphs (a) to (c) are met.**

24	Art 12, para 4, second subpara	Where an issuer of a financial instrument or emission allowance market participant has delayed the disclosure of inside information under this paragraph it shall inform the competent authority that disclosure of the information was delayed immediately after the information is disclosed to the public.	~~Where an issuer of a financial instrument or emission allowance market participant has delayed the disclosure of inside information under this paragraph it shall inform the competent authority that disclosure of the information was delayed immediately after the information is disclosed to the public~~ **In order to satisfy the conditions at sub-paragraphs (a) to (c), the issuer shall notify the competent authority of its intention to delay the disclosure of the inside information referred to in the first sub-paragraph and provide evidence that the conditions set out in sub-paragraph (a) to (c) are met. The competent authority shall consult as appropriate the central bank and or the macro-prudential Authority where instituted or, otherwise the following Authority:** **– if the issuer is a credit institution or an investment firm the Authority determined according to art 124a par. 1 a) of Directive [New CRD IV];** **– in other cases the Authority in charge with the supervision.** **The competent authority shall ensure that the delay is only for such period as is necessary in the public interest, and the competent authority shall as a minimum evaluate on a weekly basis if the conditions set out in sub-paragraph (a) to (c) are met.** **If the competent authority does**	Where an issuer of a financial instrument or emission allowance market participant ***intends to delay*** the disclosure of inside information under this paragraph it shall inform the competent authority ***of*** that ***intention and provide sufficient information to justify the necessity*** of the ***delay according to the criteria set out in paragraph 5. In the event that the competent authority does not permit the delay in accordance with paragraph 5, the*** information ***shall be disclosed*** immediately after the ***refusal has been communicated. Such information to competent authorities shall not preclude in any way the power of competent authorities to sanction a breach of this Regulation***.	**In order to satisfy the conditions at sub-paragraphs (a) to (c), the issuer shall notify the competent authority of its intention to delay the disclosure of the inside information referred to in the first sub-paragraph and provide evidence that the conditions set out in sub-paragraph (a) to (c) are met. The competent authority shall consult as appropriate the central bank and or the macro-prudential authority where instituted or, otherwise the following authority:** **– if the issuer is a credit institution or an investment firm the Authority determined according to Article 124a par. 1 a) of Directive [New CRD IV];** **– in other cases the authority responsible for the supervision of the issuer.** **The competent authority shall ensure that the delay is only for such period as is necessary in the public interest. The competent authority shall as a minimum evaluate on a weekly basis if the conditions set out in sub-paragraph (a) to (c) are met.** **If the competent authority does not consent to the delay, the issuer shall disclose the information immediately.** **This paragraph shall apply to cases where the issuer decides not to delay the disclosure of inside information according to paragraph 3.**

24	Art 12, para 4 a (new)		**4a. If the confidentiality of inside information not disclosed under the conditions of paragraphs 3 or 4, is no longer ensured, the issuer has to inform the public of this inside information as soon as possible. This includes situations where a rumour explicitly relates to a piece of inside information which is not disclosed under paragraphs 3 or 4 when that rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured.**		**4a. If the confidentiality of inside information not disclosed under the conditions of paragraphs 3 or 4, is no longer ensured, the issuer has to inform the public of this information as soon as possible. This includes situations where a rumour explicitly relates to a piece of inside information which has not been disclosed under paragraphs 3 or 4 when that rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured.**
24	Art 12, para 5, first subpara	5. A competent authority may permit the delay by an issuer of a financial instrument of the public disclosure of inside information provided that the following conditions are satisfied: – the information is of systemic importance; – it is in the public interest to delay its publication; – the confidentiality of that information can be ensured.	deleted	5. A competent authority may permit the delay by an issuer of a financial instrument ***or an emission allowance market participant*** of the public disclosure of inside information provided that the following conditions are satisfied**:** (a)- the information is of systemic importance; (b) it is in the public interest to delay its publication; (c) the confidentiality of that information can be ensured. ***The competent authority shall, where appropriate, keep ESMA informed of developments in accordance with Article 18(1) of Regulation (EU) No 1095/2010.***	[deleted]

24	Art 12, para 5, second subpara	That permission shall be in writing. The competent authority shall ensure that the delay is only for such period as is necessary in the public interest.	deleted	***The decision to grant or withhold*** permission shall be ***communicated*** in writing. The competent authority shall ensure that the delay is only for such period as is necessary in the public interest.	[deleted]
24	Art 12, para 5, third subpara	The competent authority shall at least once every week review whether the delay continues to be appropriate and shall revoke the authorisation immediately if any of the conditions in points (a), (b) or (c) are no longer satisfied.	deleted	The competent authority shall at least once every week review whether the delay continues to be appropriate and shall revoke the authorisation immediately if any of the conditions in point (a), (b) or (c) are no longer satisfied.	[deleted]

24	Art 12, para 5/6	6. Where an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his duties resulting from employment or profession, as referred to in Article 7(4), he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, and promptly in the case of a non-intentional disclosure. This paragraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract.	5. Where an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his duties resulting from employment or profession, as referred to in Article 7(4), he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, and promptly in the case of a non-intentional disclosure. This paragraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract.	6. Where an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), or a person acting on his behalf or for his account, discloses any inside information to any third party in the normal exercise of his duties resulting from employment or profession, as referred to in Article 7(4), he must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, and promptly in the case of a non-intentional disclosure. This paragraph shall not apply if the person receiving the information owes a duty of confidentiality, ***which prevents that person from disclosing the relevant information to another third party***, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract.	5. Where an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of this article, or a person acting on their behalf or for their account, discloses any inside information to any third party in the normal course of the exercise of an employment, profession or duty, as referred to in Article 7b(1), they must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, and promptly in the case of a non-intentional disclosure. This paragraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract.

24	Art 12, para 6/7	7. Inside information relating to issuers of a financial instrument, whose financial instruments are admitted to trading on an SME growth market, may be posted by the trading venue on its website instead of on the website of the issuer where the trading venue chooses to provide this facility for issuers on that market. In that event such issuer is deemed to have fulfilled the obligation in paragraph 1.	6. Inside information relating to issuers ~~of a financial instrument~~, whose financial instruments are admitted to trading on an SME growth market, may be posted by the trading venue on its website instead of on the website of the issuer where the trading venue chooses to provide this facility for issuers on that market. ~~In that event such issuer is deemed to have fulfilled the obligation in paragraph 1.~~	7. Inside information relating to issuers of a financial instrument, whose financial instruments are admitted to trading on an SME growth market, may be posted by the trading venue on its website instead of on the website of the issuer where the trading venue chooses to provide this facility for issuers on that market. In that event such issuer is deemed to have fulfilled the obligation in paragraph 1.	6. Inside information relating to issuers whose financial instruments are admitted to trading on an SME growth market, may be posted by the trading venue on its website instead of on the website of the issuer where the trading venue chooses to provide this facility for issuers on that market.

24	Art 12, para 8	8. This Article 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 or, in the case of an instrument only traded on a MTF or an OTF, have not requested or approved trading of their financial instruments on a MTF or an OTF in a Member State.	deleted	8. This Article 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 or, in the case of an instrument only traded on a MTF or an OTF, have not requested or approved trading of their financial instruments on a MTF or an OTF in a Member State.	[deleted]

24	Art 12, para 7-9	9. ESMA shall develop draft implementing technical standards to determine: – the technical means for appropriate public disclosure of inside information as referred to in paragraphs 1, 6 and 7; – the technical means for delaying the public disclosure of inside information as referred to in paragraphs 4 and 5. ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.	7. ESMA shall develop draft implementing technical standards to determine: – the technical means for appropriate public disclosure of inside information as referred to in paragraphs 1and 6 ~~and 7;~~ – the technical means for delaying the public disclosure of inside information as referred to in paragraphs **3 and** 4 ~~and 5~~ ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010. **8. ESMA shall issue guidelines to establish a non exhaustive indicative list of the legitimate interests of the issuer, as referred to in paragraph 3.**	9. ESMA shall develop draft ***regulatory*** technical standards to ***specify the conditions***: – for appropriate public disclosure of inside information as referred to in paragraphs 1, 6 and 7; – for delaying the public disclosure of inside information as referred to in paragraphs 4 and 5. ESMA shall submit those draft ***regulatory*** technical standards to the Commission by [...]*. Power is conferred to the Commission to adopt the ***regulatory*** technical standards referred to in the first subparagraph in accordance with Article ***10 to 14*** of Regulation (EU) No 1095/2010.	7. ESMA shall develop draft implementing technical standards to determine: – the technical means for appropriate public disclosure of inside information as referred to in paragraphs 1, 5 and 6 – the technical means for delaying the public disclosure of inside information as referred to in paragraphs **3 and** 4 ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 24 months. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010. **8. ESMA shall issue guidelines to establish a non-exhaustive indicative list of the legitimate interests of the issuer and of situations where the omitted disclosure is likely to mislead the public as referred to in paragraph 3.**

* ***OJ please insert date: 12 months after entry into force of this Regulation.***

25	Art 13, para 1	1. Issuers of a financial instrument or emission allowance market participants, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, and any person acting on their behalf or on their account, shall: – draw up a list of all persons working for them, under a contract of employment or otherwise, who have access to inside information; – regularly update the list; and – provide the list to the competent authority as soon as possible upon its request.	1. Issuers of a financial instrument~~ or emission allowance market participants, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, and any person~~**, and persons** acting on their behalf or on their account, shall: – draw up a list of all persons working for them, under a contract of employment or **acting as advisers, accountants, credit rating agencies or otherwise performing tasks through which they get** access to inside information; – ~~regularly update the list; and~~ – provide the list to the competent authority as soon as possible upon its request**; and**	1. Issuers of a financial instrument or emission allowance market participants, not exempted pursuant to the second subparagraph of Article 12(2), and any person acting on their behalf or on their account, shall: (a) draw up a list of all persons working for them, under a contract of employment or otherwise, who have access to inside information; (b) regularly update that list; and (c) provide the list to the competent authority as soon as possible upon its request.	1. Issuers of a financial instrument or any person acting on their behalf or on their account, shall: (a) draw up a list of all persons who **have** access to inside information, where such persons are working for them under a contract of employment, or **otherwise performing tasks through which they have** access to inside information, such **as advisers, accountants or credit rating agencies;** (b) ***promptly*** update that list ***in accordance with paragraph 3***; and c) provide the list to the competent authority as soon as possible upon its request;

25	Art 13, para 1 a (new)		**– take all reasonable steps to ensure that any person on the list acknowledges the legal and regulatory duties entailed and is aware of the sanctions applicable to the misuse or improper disclosure of such information in writing.** **When an issuer has delegated the task to draw up and update the list to a person acting on its behalf, the issuer must take reasonable measures to ensure that the person fulfils the obligation under this Regulation. The Issuer must always retain a right of access to the list.**	***1a. Issuers referred to in paragraph 1 and persons acting on their behalf or for their account shall ensure when drawing such a list that any person on it acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information.***	1a. Issuers of a financial instrument or any person acting on their behalf or on their account, shall **take all reasonable steps to ensure that any person on the list acknowledges in writing the legal and regulatory duties entailed** ***and is aware of the sanctions*** **applicable to** ***the misuse or improper*** **disclosure of such information.** Where another person acting on behalf or the account of the issuer assumes the task of drawing up and updating the insider list, the issuer remains fully responsible for compliance with **the obligation under this Article. The issuer shall always retain a right of access to the list.**
25	Art. 11, para 2 b (new)			***[moved from EP Article 11(2b]*** ***2b. Any person included on an insider list that becomes aware of activities that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing shall report such information through the channels referred to in paragraphs 2 and 2a.***	DELETE

25	Art 13, para 3		**3. The insider list shall document at least:** **(a) the identity of any person having access to inside information;** **(b) the reason for being included in the list;** **(c) the date at which the list of insiders was created and updated;** **(d) the date and time at which such person obtained access to inside information;** **(e) the date and time at which such person ceased to have access to inside information;**		**2. The insider list shall include at least:** **(a) the identity of any person having access to inside information;** **(b) the reason for including that person in the list;** **(c) the date and time at which such person obtained access to inside information;** **(d) the date at which the insider list was created;**
25	Art 13, para 2		**2. The insider list shall be promptly updated:** **(a) when there is a change in the reason why any person is already on the list;** **(b) when any new person has to be added to the list;**		**3. The insider list shall be promptly updated, including the date of the update in the following circumstances:** **(a) when there is a change in the reason for including a person already on the list;** **(b) when there is a new person** who has access to inside information **and needs, therefore, to be added to the list;** **(c) when a person ceases to have access to inside information.** **Each update shall specify the date and time when the change triggering the update occurred.**

25	Art 13, para 4		**4. The insider list should be kept by the issuer or, if applicable, the person acting on his behalf for a period of at least [5] years after being drawn up or updated. Notwithstanding the retention period of at least [5] years, the issuer or, if applicable, the person acting on his behalf, shall retain the records for a longer period when asked to do so by the competent authority.**		**4. The insider list shall be retained by the issuers and any person acting on their behalf or account for a period of at least 5 years after being drawn up or updated.**

25	Art. 13, para 2/5	2. Issuers of a financial instrument whose financial instruments are admitted to trading on an SME growth market shall be exempt from drawing up such a list. However, if requested to do so by the competent authority as part of the exercise of its supervisory or investigatory functions, that issuer shall provide the competent authority with a list identifying those persons working for them with access to inside information.	**5.** Issuers **whose** financial instruments are admitted to trading on an SME growth market shall be exempted from drawing up such a list **if the following conditions are met:** ~~: exempt from drawing up such a list. However, if requested to do so by the competent authority as part of the exercise of its supervisory or investigatory functions, that issuer shall provide the competent authority with a list identifying those persons working for them with access to inside information.~~ **(a) the issuer takes all reasonable steps to ensure that any person with access to inside information acknowlegdes the legal and regulatory duties entailed and is aware of the sanctions applicable to the misuse or improper circulation of such information, and** **(b) the issuer is able to provide the competent authority, upon request, with the insider list of this article.**	***deleted***	**5.** Issuers **whose** financial instruments are admitted to trading on an SME growth market shall be exempted from drawing up such a list **if the following conditions are met:** **(a) the issuer takes all reasonable steps to ensure that any person with access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions applicable to the misuse or improper circulation of such information, and** **(b) the issuer is able to provide the competent authority, upon request, with the insider list of this article.**

25	Art 13, para 3/6	3. This Article 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 or, in the case of an instrument only traded on a MTF or an OTF, have not requested or approved trading of their financial instruments on a MTF or an OTF in a Member State.	**6. This Article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of an instrument only traded on a MTF or an OTF, have approved trading of their financial instruments on a MTF or an OTF or have requested admission to trading of their financial instruments on a MTF in a Member State.**	***deleted***	**6. This Article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of an instrument only traded on a MTF or an OTF, have approved trading of their financial instruments on a MTF or an OTF or have requested admission to trading of their financial instruments on a MTF in a Member State.**

25	Art 13, para 4	4. The Commission shall adopt, by means of delegated acts in accordance with Article 31, measures determining the content of a list as referred to in paragraph 1, including information as to the identities and the reasons for persons to be included on an insider list, and the conditions under which issuers of a financial instrument or emission allowance market participants, or entities acting on their behalf, are to draw up such a list, including the conditions under which such lists are to be updated, the time for which they are kept, and the responsibilities of the persons thereon.	deleted	4. ***ESMA*** shall ***develop draft regulatory technical standards*** to ***determine the*** information as to the identities and the reasons for persons to be included on an insider list ***as referred to in paragraph 1***, and ***to specify*** the conditions under which issuers of a financial instrument or emission allowance market participants, or entities acting on their behalf, are to draw up such a list, including the conditions under which such lists are to be updated, the time for which they are kept, and the responsibilities of the persons thereon. ***In the case of SMEs, ESMA shall provide proportionate and simplified draft regulatory technical standards to reduce the administrative burdens on issuers of financial instruments whose financial instruments are admitted to trading on SME growth markets. ESMA shall submit those draft regulatory technical standards to the Commission by [...]**. Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***	DELETE

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

25	Art 13, para 5	5. This Article shall also apply to any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010.	deleted	5. This Article shall also apply to any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010.	[deletion]
26	Art 13, para 6 (new)		**[moved alongside para 3]**		[move above]
26	Art 13, para 7 (new)		**7. Paragraphs 1 to 4 of this Article shall apply to an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12 in relation to inside information concerning emission allowances and auctioned products based thereon that arises in relation to the physical operations of that emission allowance market participant.** **Paragraphs 1 to 4 of this Article shall also apply to any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010.**		**7. Paragraphs 1 to 4 of this Article shall also apply to emission allowance market participants, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12 in relation to inside information concerning emission allowances and auctioned products based thereon that arises in relation to the physical operations of that emission allowance market participant.** **Paragraphs 1 to 4 of this Article shall also apply to any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010.**

26	Art 13, para 6/8	6. ESMA shall develop draft implementing technical standards to determine the precise format of insider lists and the format for updating insider lists referred to in this Article. ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.	**8.** ESMA shall develop draft implementing technical standards to determine the precise format of insider lists and the format for updating insider lists referred to in this Article. ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.	6. ESMA shall develop draft implementing technical standards to determine the precise format of insider lists and the format for updating insider lists referred to in this Article. ESMA shall submit those draft implementing technical standards to the Commission by ***[...]*.*** Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	8. ESMA shall develop draft implementing technical standards to determine the precise format of insider lists and the format for updating insider lists referred to in this Article. ESMA shall submit those draft implementing technical standards to the Commission by ***24 months*** Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

26	Art 14, para 1	1. Persons discharging managerial responsibilities within an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, as well as persons closely associated with them, shall ensure that information is made public about the existence of transactions conducted on their own account relating to the shares of that issuer, or to derivatives or other financial instruments linked to them, or in emission allowances. Such persons shall ensure that the information is made public within two business days after the day on which the transaction occurred.	1. Persons discharging managerial responsibilities within an issuer of a financial instrument ~~or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12,~~ as well as persons closely associated with them, shall **as soon as possible and in any evet within 3 business days of the transaction notify the issuer and the competent authority** about the existence of **every transaction** conducted on their own account relating to the shares **or debt instruments** of that issuer, or to derivatives or other financial instruments linked to them, or in emission allowances **or related derivatives, once the total amount of the transactions has reached the threshold set in paragraph 6 within a calendar year. The issuer** shall ensure that the information is made public **in a manner, as specified in Article 12.7, ensuring fast access to this information on a non-discriminatory basis and makes it available to the competent authority and, where applicable in the officially appointed mechanism referred to in [transparency directive] as soon as possible, and in any event within 3** business days after the day on which the transaction occurred. **The issuer shall use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community.**	1. Persons discharging managerial responsibilities within an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), as well as persons closely associated with them, shall ensure that information is made public about the existence of transactions conducted on their own account relating to the shares of that issuer, or to derivatives or other financial instruments linked to them, or in emission allowances. Such persons shall ensure that the information is made public within two business days after the day on which the transaction occurred.	1. Persons discharging managerial responsibilities within an issuer of a financial instrument, as well as persons closely associated with them, shall **notify the issuer and the competent authority** about the existence of **every transaction** conducted on their own account relating to the shares **or debt instruments** of that issuer, or to derivatives or other financial instruments linked to them, or in emission allowances **or related derivatives.** **Such notifications shall be made promptly and no later than 3 business days after the transaction.** **This obligation applies once the total amount of the transactions has reached the threshold set in paragraph 6 within a calendar year.** **1a For the purposes of applying paragraph 1 of this Article, and without prejudice to the right of Member States to provide for other notification obligations than those covered by this Article, Member States shall ensure that all transactions related to shares admitted to trading on a regulated market, or to derivatives or other financial instruments linked to them, conducted on the own account of persons referred paragraph 1 above, are notified to the competent authorities. The rules of notification to which**

26	Art 14, para 2 (new)		**2. The Issuer shall notify the persons discharging managerial responsibilities of their obligations under this article in writing. The issuer shall draw up a list of all persons discharging managerial responsibilities and their closely associated persons.** **Persons discharging managerial responsibilities within an issuer shall notify the persons closely associated with them of their obligations under this article in writing. The manager shall keep a copy of this notification.**		2. Issuer**s** shall notify the persons discharging managerial responsibilities **within that issuer** of their obligations under this article in writing. Issuers shall draw up a list of all persons discharging managerial responsibilities and **persons closely associated with them.** Persons discharging managerial responsibilities within an issuer shall notify the persons closely associated with them of their obligations under this article in writing **and shall keep a copy of this notification.**

26	Art 14, para 3 (new)		**3. The notification of transactions shall contain the following information:** **a. Name of the person;** **b. Reason for notification;** **c. Name of the relevant issuer;** **d. Description and identity of the financial instrument;** **e. Nature of the transaction(s) (e.g. acquisition or disposal), indicating whether it is linked to the exercise of share option programmes or to the case set out in paragraph 5;** **f. Date and place of the transaction(s); and** **g. Price and volume of the transaction(s). In the case of a pledge whose terms provide for its value to change, this should be disclosed together with its value at the date of the pledge.**		**3. The notification of transactions referred to in paragraph 1 shall contain the following information:** **a. Name of the person;** **b. Reason for notification;** **c. Name of the relevant issuer;** **d. Description and identity of the financial instrument;** **e. Nature of the transaction(s) (e.g. acquisition or disposal), indicating whether it is linked to the exercise of share option programmes or to the specific examples set out in paragraph 4;** **f. Date and place of the transaction(s); and** **g. Price and volume of the transaction(s). In the case of a pledge whose terms provide for its value to change, this should be disclosed together with its value at the date of the pledge.**

26	At 14, para 2/5	2. For the purposes of paragraph 1 transactions that must be notified shall include: – the pledging or lending of financial instruments by or on behalf of a person referred to in paragraph 1; – transactions undertaken by a portfolio manager or other person on behalf of a person referred to in paragraph 1 including where discretion is exercised by that manager or other person.	**5.** For the purposes of paragraph 1 transactions that must be notified shall include: – the pledging or lending of financial instruments by or on behalf of a person referred to in paragraph 1; – transactions undertaken by **any person professionally arranging or executing transactions or by any** other person**,** on behalf of a person **discharging managerial responsibilities** referred to in paragraph 1 including where discretion is exercised ~~by that manager or other person~~**.** **– transactions made under a life insurance policy defined in accordance with Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009, where the policyholder is a person discharging managerial responsibilities within an issuer of a financial instrument or a person closely associated with a person discharging managerial responsibilities, the investment risk is born by the policyholder, and where the policyholder has the power or discretion to make investment decisions regarding specific instruments in that life insurance policy or execute transactions regarding specific instruments for that life insurance policy.** **A pledge, or other similar security interest, of securities in connection with the depositing of the**	2. For the purposes of paragraph 1 transactions that must be ***made public*** shall include: (a) the pledging or lending of financial instruments by or on behalf of a person referred to in paragraph 1; (b) transactions undertaken by a portfolio manager or other person on behalf of a person referred to in paragraph 1 including where discretion is exercised by that manager or other person.	4. For the purposes of paragraph 1 transactions that must be notified shall also include: (a) the pledging or lending of financial instruments by or on behalf of a person referred to in paragraph 1; (b) transactions undertaken by **any person professionally arranging or executing transactions or by any** other person**,** on behalf of a person **discharging managerial responsibilities or a person closely associated with such person** referred to in paragraph 1 including where discretion is exercised**.** **(c) transactions made under a life insurance policy, defined in accordance with Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009, where:** **- the policyholder is a person discharging managerial responsibilities within an issuer of a financial instrument or a person closely associated with such person,** **- the investment risk is born by the policyholder, and** **- the policyholder has the power or discretion to make investment decisions regarding specific instruments in that life insurance policy or to execute transactions regarding specific instruments for that life insurance policy.** **For the purposes of point (a) a pledge, or other similar security interest, of securities in**

26	At 14, para 3/6	3. Paragraph 1 shall not apply to transactions totalling under EUR 20,000 over the period of a calendar year.	**6.** Paragraph 1 shall ~~not~~ apply to **any subsequent transaction once a total amount of EUR 5,000 has been reached within** a calendar year. **The threshold of EUR 5,000 shall be computed by summing up without netting all transactions mentioned in paragraph 1.**	***deleted***	**6.** Paragraph 1 shall ~~not~~ apply to **any subsequent transaction once a total amount of EUR 5,000 has been reached within** a calendar year. **The threshold of EUR 5,000 shall be calculated by adding without netting all transactions mentioned in paragraph 1.**
26	Art 14, para 6a (new)		**6a. A competent authority may decide to increase the threshold set in paragraph 6 to EUR 20000 and shall inform ESMA of its decision and the justification of its decision with specific reference to market conditions, to adopt the higher threshold prior to its application. ESMA shall publish on its website the list of thresholds that apply in accordance with this article.**		**6a. A competent authority may decide to increase the threshold set in paragraph 6 to EUR 20,000 and shall inform ESMA of its decision and the justification of its decision with specific reference to market conditions, to adopt the higher threshold prior to its application. ESMA shall publish on its website the list of thresholds that apply in accordance with this article and the justifications provided by competent authorities for such thresholds.**

26	At 14, para 4/7	4. This Article shall also apply to any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010.	**7.** This Article shall apply to **persons discharging managerial responsibilities within** emission **allowance market participants not exempted pursuant to the second subparagraph of paragraph 2 of Article 12 as well as to persons closely associated with them in so far as their transactions involve emission allowances, derivatives thereof or auctioned products based thereon.** This Article shall also apply to **persons discharging managerial responsibilities within** any auction platform, auctioneer and auction monitor **involved in the auctions held under** Regulation (No) 1031/2010 **as well as to persons closely associated with them in so far as their transactions involve emission allowances, derivatives thereof or auctioned products based thereon.**	4. This Article shall also apply to any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010.	This Article shall also apply to **persons discharging managerial responsibilities within** emission allowance market participants, not exempted pursuant to the second subparagraph of Article 12(2), as well as persons closely associated with them **in so far as their transactions involve emission allowances, derivatives thereof or auctioned products based thereon.** This Article shall also apply to **persons discharging managerial responsibilities within** any auction platform, auctioneer and auction monitor **involved in the auctions held under** Regulation (No) 1031/2010 **as well as to persons closely associated with them in so far as their transactions involve emission allowances, derivatives thereof or auctioned products based thereon.**

27	At 14, para 4 a (new)			***4a. A person discharging managerial responsibilities within an issuer of a financial instrument shall not conduct any transactions on his or her own account relating to the shares of that issuer or to derivatives or other financial instruments linked to them outside a trading window.***	***4a. Without prejudice to the general prohibition of insider dealing and market manipulation, a person discharging managerial responsibilities within an issuer shall not conduct any trading on the person's account or for the account of a third party directly or indirectly, relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked to them, during a closed period of thirty calendar days before the announcement of an interim financial report or a year-end report which the relevant issuer is obliged to make public according to the rules of the trading venue where the issuer's shares are admitted to trading, or according to national law ~~[implementing the Transparency Directive],~~ unless a set of circumstances exists where dealing during this closed period may be permitted by the issuer, either on a case by case basis due to the existence of exceptional circumstances which require the immediate sale of shares, such as severe financial difficulty, or due to the characteristics of the dealing involved for dealings made under or related to an employee's share scheme, saving schemes, qualification or entitlements of shares or dealings where the beneficial interest in the relevant security does not change.***

27	At 14, para 5	5. The Commission may adopt, by means of delegated acts in accordance with Article 31, measures modifying the threshold in paragraph 3 taking into account the developments in financial markets.	deleted	***deleted***	[deleted]

27	Art 14, para 6	6. The Commission shall adopt, by means of delegated acts in accordance with Article 31, measures specifying the professional functions of persons who are considered to discharge managerial responsibility as referred to in paragraph 1, the types of association, including by birth as well as under civil and contractual law, considered to create a close personal association, the characteristics of a transaction referred to in paragraph 2 which trigger that duty, and the information that must be made public and the means of informing the public.	**9.** The Commission shall adopt, by means of delegated acts in accordance with Article 31, measures**,** specifying the ~~professional functions of persons who are considered to discharge managerial responsibility as referred to in paragraph 1, the types of association, including by birth as well as under civil and contractual law, considered to create a close personal association, the~~ characteristics of a transaction referred to in paragraph **5** which trigger that duty~~, and the information that must be made public and the means of informing the public~~.	6. The Commission shall adopt delegated acts in accordance with Article *32*, measures specifying: ***(a)*** the professional functions of persons who are considered to discharge managerial responsibility as referred to in paragraph 1, ***(b)*** the types of association, including by birth as well as under civil and contractual law, considered to create a close personal association, ¦ ***(c) the arrangements and the conditions for the application of trading windows in accordance with paragraph 4a and, in particular, the start and the end point of such trading windows, as well as the conditions related to possession of price sensitive information attached to the ban on trading outside a trading window.*** ***ESMA shall provide the Commission with technical advice before the delegated acts referred to in the first subparagraph are drafted.***	**9.** The Commission shall adopt, by means of delegated acts in accordance with Article 31, measures specifying the characteristics of a transaction referred to in paragraph **5** which trigger that duty~~.~~

27	Art 14, para 6 a (new)			***6a. ESMA shall develop draft regulatory technical standards to specify the characteristics of a transaction referred to in paragraph 2 which trigger the duty referred to in that paragraph, the information that must be made public as required under paragraph 1 and the means of informing the public. In developing those draft regulatory standards ESMA may, if appropriate, establish a threshold for amount or volume of transactions referred to in paragraph 2, which triggers the duty referred to in that paragraph, and which may vary depending on the type of persons concerned.*** ***ESMA shall submit those draft regulatory technical standards to the Commission by [...]*.*** ***Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***	[Delete]

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

27	Art 14, para 6 b (new)			***6b. In order to ensure uniform application of paragraph 1, ESMA may develop draft implementing technical standards concerning the format [template] in which the information referred to in paragraph 1 is to be made public.*** ***ESMA shall submit those draft implementing technical standards to the Commission by [...]*.*** ***Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.***	***6b. In order to ensure uniform application of paragraph 1, ESMA may develop draft implementing technical standards concerning the format [template] in which the information referred to in paragraph 1 is to be notified and made public.*** ***ESMA shall submit those draft implementing technical standards to the Commission by*** *24 months.* ***Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.***

27	Art 15, para 1	1. Persons who produce or disseminate information recommending or suggesting an investment strategy, intended for distribution channels or for the public, shall take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.	1. Persons who produce or disseminate **recommendations concerning financial instruments or issuers of financial instruments and persons who produce or disseminate other** information recommending or suggesting an investment strategy, intended for distribution channels or for the public, shall take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.	1. Persons who produce or disseminate information recommending or suggesting an investment strategy, intended for distribution channels or for the public, shall take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.	1. Persons who produce or disseminate **investment recommendations or other information recommending or suggesting an investment strategy, as defined in paragraph 2** shall take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates. ***For the purposes of applying this Article:*** **(a) investment recommendations means any information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers of financial instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public;** ***(b) recommending or suggesting an investment strategy means:*** ***(i) information produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce*** **investment recommendations** ***or a natural person working for them under a contract of employment or otherwise, that, directly or indirectly, expresses a particular investment*** **proposals**

27	Art 15, para 1 a (new)			***1a. Where the persons referred to in paragraph 1 trade on their own account in instruments for which they give the advice referred to in paragraph 1, competent authorities may request such information as they deem necessary from such persons and, where appropriate, other competent authorities in order to determine whether the advice is compliant with the requirements under paragraph 1.***	[consider alongside Art. 17/19]

27	Art 15, para 2	2. Public institutions disseminating statistics liable to have a significant effect on financial markets shall disseminate them in an objective and transparent way.	2. Public institutions disseminating statistics **or forecasts** liable to have a significant effect on financial markets shall disseminate them in an objective and transparent way.	2. Public institutions disseminating statistics liable to have a significant effect on financial markets shall disseminate them in an objective and transparent way.	2. Public institutions disseminating statistics **or forecasts** liable to have a significant effect on financial markets shall disseminate them in an objective and transparent way.
27	Art 15, para 3	3. ESMA shall develop draft regulatory technical standards to determine the technical arrangements, for the various categories of person referred to in paragraph 1, for objective presentation of information recommending an investment strategy and for disclosure of particular interests or indications of conflicts of interest. ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation 1095/2010.	3. ESMA shall develop draft regulatory technical standards to determine the technical arrangements, for the various categories of person**s** referred to in paragraph 1, for objective presentation of information recommending an investment strategy and for disclosure of particular interests or indications of conflicts of interest. ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation 1095/2010.	3. ESMA shall develop draft regulatory technical standards to determine the technical arrangements, for the various categories of person referred to in paragraph 1, for objective presentation of information recommending ***or suggesting*** an investment strategy and for disclosure of particular interests or indications of conflicts of interest. ESMA shall submit those draft regulatory technical standards to the Commission by ***[...]****. Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.	3. ESMA shall develop draft regulatory technical standards to determine the technical arrangements, for the various categories of person referred to in paragraph 1, for objective presentation of **investment recommendations or other information recommending or suggesting an investment strategy** and for disclosure of particular interests or indications of conflicts of interest. ESMA shall submit those draft regulatory technical standards to the Commission by ***24 months.*** Power is conferred to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

					The technical arrangements laid down in the regulatory technical standards referred to in paragraph 3 shall not apply to journalists subject to equivalent appropriate regulation in the Member States, including equivalent appropriate self-regulation, provided that such regulation achieves similar effects as those technical arrangements. The text of that equivalent national regulation shall be notified to the Commission.

27	Art. 15a (new)		**Article 15a** **Disclosure or dissemination of information in the media** **For the purpose of applying Articles 7b, 8(1)(c) and 15, disclosure or dissemination of information or recommendations for the purpose of journalism or other form of expression in the media, shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media and the rules or codes governing the journalist profession, unless:** **(a) the persons concerned or persons closely associated with them derive, directly or indirectly, an advantage or profits from the disclosure or the dissemination of the information in question; or** **(b) the disclosure or the dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.**	***Article 15a*** ***Disclosure or dissemination of information in the media*** ***Where information is disclosed or disseminated and where recommendations are produced or disseminated for the purpose of journalism, such disclosure or dissemination of information shall be assessed taking into account the rules governing the freedom of expression, the freedom and pluralism of the media and the rules or codes governing the journalist profession, unless:*** ***(a) the persons concerned or persons closely associated with them derive, directly or indirectly, an advantage or profits from the disclosure or the dissemination of the information in question; or*** ***(b) the disclosure or the dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.***	**Article 15a** **Disclosure or dissemination of information in the media** **For the purpose of applying Articles 7b, 8(1)(c) and 15** ***where information is disclosed or disseminated and where recommendations are produced or disseminated for the purpose of journalism*** **or other form of expression in the media** ***such disclosure or dissemination of information shall be assessed taking into account the rules governing the freedom of*** **the press and freedom of expression in other media and the rules or codes governing the journalist profession, unless:** ***(a) the persons concerned or persons closely associated with them derive, directly or indirectly, an advantage or profits from the disclosure or the dissemination of the information in question; or*** ***(b) the disclosure or the dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.***

28	Art. 16	Without prejudice to the competences of the judicial authorities, each Member State shall designate a single administrative competent authority for the purpose of this Regulation. The competent authority shall ensure that the provisions of this regulation are applied on its territory, regarding all actions carried out on its territory, and those actions carried out abroad relating to instruments admitted to trading on a regulated market, for which a request for admission to trading on such market has been made, or which are traded on an MTF or OTF operating, within its territory. Member States shall inform the Commission, ESMA and the competent authorities of other Member States thereof.	Without prejudice to the competences of the judicial authorities~~,~~ **and paragraph 1 of article 17,** each Member State shall designate a single administrative competent authority for the purpose of this Regulation. The competent authority shall ensure that the provisions of this regulation are applied on its territory, regarding all actions carried out on its territory, and those actions carried out abroad relating to instruments admitted to trading on a regulated market, for which a request for admission to trading on such market has been made, or which are traded on **a** MTF or OTF **or for which a request for admission to trading has been made on a MTF** operating~~,~~ within its territory. Member States shall inform the Commission, ESMA and the competent authorities of other Member States thereof.	Without prejudice to the competences of the judicial authorities, each Member State shall designate a single administrative competent authority for the purpose of this Regulation ***and provide sufficient resources to that authority to fulfil its powers provided for in this Regulation***. The competent authority shall ensure that the provisions of this Regulation are applied on its territory, regarding all actions carried out on its territory, and those actions carried out abroad relating to instruments admitted to trading on a regulated market, for which a request for admission to trading on such market has been made, or which are traded on an MTF or OTF operating, within its territory. Member States shall inform the Commission, ESMA and the competent authorities of other Member States thereof.	Without prejudice to the competences of the judicial authorities, each Member State shall designate a single administrative competent authority for the purpose of this Regulation**. .** Member States shall inform the Commission, ESMA and the competent authorities of other Member States of same. The competent authority shall ensure that the provisions of this regulation are applied on its territory, regarding all actions carried out on its territory, and those actions carried out abroad relating to instruments admitted to trading on a regulated market, for which a request for admission to trading on such market has been made, or which are traded on **a** MTF or OTF **or for which a request for admission to trading has been made on a MTF** operating~~,~~ within its territory.

28	Art. 17, para 1	1. Competent authorities shall exercise their functions in any of the following ways: (a) directly; (b) in collaboration with other authorities or with the market undertakings; (c) under their responsibility by delegation to such authorities or to market undertakings; (d) by application to the competent judicial authorities.	1. Competent authorities shall exercise their functions **and powers** in any of the following ways: (a) directly; (b) in collaboration with other authorities or with the market undertakings; (c) under their responsibility by delegation to such authorities or to market undertakings; (d) by application to the competent judicial authorities.	1. Competent authorities shall exercise their functions in any of the following ways: (a) directly; (b) in collaboration with other authorities or with the market undertakings; (c) under their responsibility by delegation to such authorities or to market undertakings; (d) by application to the competent judicial authorities.	1. Competent authorities shall exercise their functions **and powers** in any of the following ways: (a) directly; (b) in collaboration with other authorities or with the market undertakings; (c) under their responsibility by delegation to such authorities or to market undertakings; (d) by application to the competent judicial authorities.
28	Art. 17, para 2, point a	2. In order to fulfil their duties under this Regulation, competent authorities shall have, in conformity with national law, at least the following supervisory and investigatory powers: (a) request access to any document in any form, and to receive or take a copy thereof;	2. **In conformity with their national law,** competent authorities shall have~~, in conformity with national law,~~ at least the following supervisory and investigatory powers**, to help fulfil their duties under this Regulation***:* (a) **have** access to any document **and other data** in any form, and to receive or take a copy thereof;	2. In order to fulfil their duties under this Regulation, competent authorities shall have, in conformity with national law ***and powers*****,** at least the following supervisory and investigatory powers: (a) ***have*** access to any document in any form, and to receive or take a copy thereof*;*	2. In order to fulfil their duties under this Regulation, competent authorities shall have, in conformity with national law at least the following supervisory and investigatory powers: (a) ***have*** access to any document **and other data** in any form, and to receive or take a copy thereof*;*

28	Art. 17, para 2, point b	(b) request information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;	(b) **require or demand** information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;	(b) request information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;	(b) **require or demand** information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;
28	Art. 17, para 2, point c	(c) in relation to derivatives on commodities, request information from market participants on related spot markets according to standardized formats, obtain reports on transactions, and have direct access to traders' systems;	(c) in relation to derivatives on commodities, request information from market participants on related spot markets according to standardized formats, obtain reports on transactions, and have direct access to traders' systems;	(c) in relation to *commodity derivatives*, request information from market participants on related spot markets according to standardized formats, obtain reports on transactions, and have direct access to traders' systems;	(c) in relation to *commodity derivatives*, request information from market participants on related spot markets according to standardized formats, obtain reports on transactions, and have direct access to traders' systems;
28	Art. 17, para 2, point d	(d) carry out on-site inspections at sites other than private premises with or without announcement;	(d) carry out on-site inspections **or investigations**;	(d) carry out on-site inspections at sites other than private premises with or without announcement;	(d) carry out on-site inspections, **or investigations at sites other than the private residences of natural persons**;

28	Art. 17, para 2, point e	(e) after having obtained prior authorisation from the judicial authority of the Member State concerned in accordance with national law, and where a reasonable suspicion exists that documents related to the subject-matter of the inspection may be relevant to prove a case of insider dealing or market manipulation in violation of this Regulation or Directive [new MAD], enter private premises in order to seize documents in any form ;	(e) **enter premises of natural and legal persons in order to seize documents and other data in any form** where a reasonable suspicion exists that documents **and other data** related to the subject-matter of the inspection **or investigation** may be relevant to prove a case of insider dealing or market manipulation in violation of this Regulation ~~or Directive [new MAD], enter private premises in order to seize documents in any form~~**; where prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power shall be used after having obtained that prior authorisation;**	(e) after having obtained prior authorisation from the judicial authority of the Member State concerned in accordance with national law, and where a reasonable suspicion exists that documents related to the subject-matter of the inspection may be relevant to prove a case of insider dealing or market manipulation in violation of this Regulation or Directive .../.../EU [new MAD], enter private premises in order to seize documents in any form;	(e) **enter premises of natural and legal persons in order to seize documents and other data in any form** where a reasonable suspicion exists that documents **and other data** related to the subject-matter of the inspection **or investigation** may be relevant to prove a case of insider dealing or market manipulation in violation of this Regulation**. Where prior authorisation is needed from the judicial authority of the Member State concerned, in accordance with national law, such power shall only be used after having obtained that prior authorisation;**
28	Art. 17, para 2, point e a (new)			***(ea) refer matters for criminal prosecution;***	***(ea) refer matters for criminal investigation;***

28	Art. 17, para 2, point f	(f) require existing telephone and existing data traffic records held by a telecommunication operator or by an investment firm, where a reasonable suspicion exists that such records related to the subject-matter of the inspection may be relevant to prove insider dealing or market manipulation as defined in[new MAD] in violation of this Regulation or Directive [new MAD]; these records shall however not concern the content of the communication to which they relate.]	(f) require existing **recordings of** telephone **conversations or electronic communications** held by ~~a telecommunication operator or by~~ an investment firm **or credit institution or other financial institutions**;	(f) require existing ***records of*** telephone ***conversations, electronic communications*** and ¦data traffic records held by ¦an investment firm ***in accordance with [new MIFID];***	(f) require existing ***recordings of*** telephone ***conversations, electronic communications*** or other data traffic records held by investment firms, **credit institutions or other financial institutions**;
28	Art. 17, para 2, point f a/h (new)		**(h) require, insofar as is permitted by national law, existing data traffic records held by a telecommunication operator, where such records may be relevant to the investigation of insider dealing or market manipulation in violation of this Regulation;**	***(fa) require existing telephone and existing data traffic records held by a telecommunication operator, where such records may be relevant to prove insider dealing or market manipulation in violation of this Regulation or Directive .../.../EU [new MAD]*** ***The records referred to in this point shall not include the content of voice communications by telephone, unless authorisation from a judicial authority has been given;***	***(fa) require, insofar as permitted by national law, existing data traffic records held by a telecommunication operator, where there is a reasonable suspicion of a breach and where such records may be relevant to*** **the investigation of** ***insider dealing or market manipulation in violation of this Regulation***
29	Art. 17, para 2, point f b/i (new)		**(i) request the freezing and/or sequestration of assets;**	***(fb) request the freezing and/ or sequestration of assets;***	***(fb) request the freezing and/ or sequestration of assets;***

29	Art. 17, para 2, point f c/j (new)		**(j) suspend trading of the financial instrument concerned;**	***(fc) suspend trading of the financial instrument concerned;***	***(fc) suspend trading of the financial instrument concerned;***
29	Art. 17, para 2, point f d /k (new)		**(k) to temporary require the cessation of any practice that is contrary to the provisions in this regulation and prevent repetition of such practice;**	***(fd) require temporary cessation of any practice that is contrary to the provisions of this Regulation.***	***(fd) require the temporary cessation of any practice that the competent authority considers contrary to the provisions of this Regulation;***
29	Art. 17, para 2, point l (new)		**(l) temporary prohibition of professionel activity;**		(fe) impose a **temporary prohibition on the exercise of professional activity;**
29	Art. 17, para 2, point m (new)		**(m) take all the necessary measure to ensure that the public is correctly informed, including correction of false or misleading disclosed information, including by requiring an issuer or other person who has published or disseminated false or misleading information to publish a corrective statement.**		**(fg) take all necessary measures to ensure that the public is correctly informed, including the correction of false or misleading disclosed information, including by requiring an issuer or other person who has published or disseminated false or misleading information to publish a corrective statement.**
29	Art. 17 para 2a (new)			***2a. The operations referred to in points (e), (f) and (fa) may be performed by law enforcement authorities in cooperation with supervisory authorities in accordance with national law.***	deleted

29	Art. 17, para 3	3. The competent authorities shall exercise the supervisory and investigatory powers, referred to in paragraph 2, in accordance with national law.	deleted	3. The competent authorities shall exercise the supervisory and investigatory powers, referred to in paragraph 2, in accordance with national law. ***The competent authorities shall neither seek nor take instructions from any person associated with the person under investigation.***	deleted
29	Art. 17, para 4	4. The processing of personal data collected in the exercise of the supervisory and investigatory powers pursuant to this Article shall be carried out in accordance with Directive 95/46/EC.	deleted	4. The processing of personal data collected in the exercise of the supervisory and investigatory powers pursuant to this Article shall be carried out in accordance with Directive 95/46/EC.	[deletion]

29	Art. 17, para 5	5. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.	**4.** Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties. **This Regulation is without prejudice to laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to ~~this~~** Article **4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids that impose requirements in addition to the requirements of this Regulation.**	5. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties.	5. Member States shall ensure that appropriate measures are in place so that competent authorities have all the supervisory and investigatory powers that are necessary to fulfil their duties. **This Regulation is without prejudice to laws, regulations and administrative provisions adopted in relation to takeover bids, merger transactions and other transactions affecting the ownership or control of companies regulated by the supervisory authorities appointed by Member States pursuant to** Article **4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids that impose requirements in addition to the requirements of this Regulation.**

29			**5. 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.**		**5a. A person making information available to the Competent Authority in accordance with this Regulation shall not be considered in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in liability of any kind related to such notification.**

30	Art. 17 a (new)			***Article 17a*** ***Cross-market order-book surveillance*** ***1. For any financial instrument admitted to trading on a regulated market or an MTF, the competent authority of the Member State concerning the trading venue where the financial instrument was first admitted to trading shall have the power to conduct cross-market supervision of market manipulation conducted through order-book activity.*** ***In accordance with Article 71(1) of [new MiFID] the competent authorities should be able to delegate surveillance tasks to third parties.*** ***2. Operators of trading venues shall provide order-book data regarding financial instruments that are actively traded on that regulated market or MTF to their home Member State competent authority.*** ***Where that competent authority is not the competent authority referred to in paragraph 1, it shall make the necessary arrangements to consolidate and forward the corresponding order-book data to the competent authority referred to in paragraph 1.*** ***In any event, the home Member State competent authority of the regulated markets or MTF shall remain responsible for ensuring that regulated markets and MTFs under its supervision report orders in compliance with applicable data***	Delete

30	Art. 18, para 1	1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.	1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.	1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.	1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.
30	Art. 18, para 2	2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.	2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.	2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.	2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.
30	Art. 18, para 3	3. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraph 2. ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.	3. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraph 2. ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.	3. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraph 2. ESMA shall submit those draft implementing technical standards to the Commission by ***[...]*****. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	3. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in paragraph 2. ESMA shall submit those draft implementing technical standards to the Commission by ***24 months.*** Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

* ***OJ please insert date: 24 months after the date of entry into force of this Regulation.***

** ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

30	Art. 19, para 1	1. Competent authorities shall cooperate with each other and ESMA where it is necessary for the purposes of this Regulation. In particular, competent authorities shall render assistance to competent authorities of other Member States and ESMA, and, without undue delay, exchange information and cooperate in investigation and enforcement activities. This cooperation and assistance shall also apply as regards the Commission in relation to the exchange of information relating to commodities which are agricultural products listed in Annex I to the Treaty.	1. Competent authorities shall cooperate with each other and ESMA where it is necessary for the purposes of this Regulation**, unless one of the exceptions in paragraph 2 apply**. In particular, competent authorities shall render assistance to competent authorities of other Member States and ESMA, and, without undue delay, exchange information and cooperate in investigation**,** **supervision** and enforcement activities. This cooperation and assistance shall also apply as regards the Commission in relation to the exchange of information relating to commodities which are agricultural products listed in Annex I to the Treaty. **The cooperation between the competent authorities and ESMA shall be done in accordance with Regulation (EU) No 1095/2010, in particular its Article 35.** **Where Member States have chosen, in accordance with Article 26(1) second subparagraph, to lay down criminal sanctions for the breaches of the provisions of this Regulation referred to in that Article, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information related to criminal investigations or proceedings commenced for possible violations of this Regulation and provide the same**	1. Competent authorities shall cooperate with each other and ESMA where it is necessary for the purposes of this Regulation. ¦Competent authorities shall render assistance to competent authorities of other Member States and ESMA**.** ***In particular, they shall*** exchange information***, without undue delay,*** and cooperate in investigation and enforcement activities. ***The obligation to cooperate and assist laid down in the first subparagraph*** shall also apply as regards the Commission in relation to the exchange of information relating to commodities which are agricultural products listed in Annex I to the TFEU**.**	1. Competent authorities shall cooperate with each other where it is necessary for the purposes of this Regulation**, unless one of the exceptions in paragraph 2 apply**. Competent authorities shall render assistance to competent authorities of other Member States and ESMA. ***In particular, they shall*** exchange information***, without undue delay,*** and cooperate in investigation, **supervision** and enforcement activities. ***The obligation to cooperate and assist laid down in the first subparagraph*** shall also apply as regards the Commission in relation to the exchange of information relating to commodities which are agricultural products listed in Annex I to the TFEU. **The cooperation between the competent authorities and ESMA shall be done in accordance with Regulation (EU) No 1095/2010, in particular its Article 35.** **Where Member States have chosen, in accordance with Article 26(1) second subparagraph, to lay down criminal sanctions for the breaches of the provisions of this Regulation referred to in that Article, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific**

30	Art. 19, para 2 (new)		**2. A competent authority may refuse to act on a request for information or request to co-operate with an investigation where:** **a. Communication might adversely affect the security of the Member State addressed, in particular the fight against terrorism and other serious crimes,** **b. Complying might adversely affect its own investigation or enforcement activities or where applicable, a criminal investigation,** **c. Judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or** **d. a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.**		**2. A competent authority may refuse to act on a request for information or request to co-operate with an investigation in the following exceptional circumstances:** **a. Communication might adversely affect the security of the Member State addressed, in particular the fight against terrorism and other serious crimes,** **b. Complying would be likely to adversely affect its own investigation or enforcement activities or where applicable, a criminal investigation,** **c. Judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or** **d. a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.**

30	Art. 19, para 2/3	2. Competent authorities and ESMA shall cooperate with ACER and the national regulatory authorities of the Member States to ensure that a coordinated approach is taken to the enforcement of the relevant rules where transactions, orders to trade or other actions or behaviours relate to one or more financial instruments to which this Regulation applies and also to one or more wholesale energy products to which Article 3, 4 and 5 of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] apply. Competent authorities shall consider the specific characteristics of the definitions of Article 2 of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] and the provisions of Article 3, 4 and 5 of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] when they apply Articles 6, 7 and 8 of this Regulation to financial instruments related to wholesale energy products.	**3.** Competent authorities and ESMA shall cooperate with ACER and the national regulatory authorities of the Member States to ensure that a coordinated approach is taken to the enforcement of the relevant rules where transactions, orders to trade or other actions or behaviours relate to one or more financial instruments to which this Regulation applies and also to one or more wholesale energy products to which Article 3, 4 and 5 of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] apply. Competent authorities shall consider the specific characteristics of the definitions of Article 2 of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] and the provisions of Article 3, 4 and 5 of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] when they apply [Articles 6, 7 and 8] of this Regulation to financial instruments related to wholesale energy products.	2. Competent authorities and ESMA shall cooperate with the Agency for the Cooperation of Energy Regulators (ACER), established under Regulation (EC) No 713/2009 and the national regulatory authorities of the Member States to ensure that a coordinated approach is taken to the enforcement of the relevant rules where transactions, orders to trade or other actions or behaviours relate to one or more financial instruments to which this Regulation applies and also to one or more wholesale energy products to which Article 3, 4 and 5 of Regulation (EU) No .../2012 [on Wholesale Energy Market Integrity and Transparency] apply. Competent authorities shall consider the specific characteristics of the definitions of Article 2 of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] and the provisions of Article 3, 4 and 5 of Regulation (EU) No .../2012 [on Wholesale Energy Market Integrity and Transparency] when they apply Articles 6, 7 and 8 of this Regulation to financial instruments related to wholesale energy products.	2. Competent authorities and ESMA shall cooperate with the Agency for the Cooperation of Energy Regulators (ACER), established under Regulation (EC) No 713/2009 and the national regulatory authorities of the Member States to ensure that a coordinated approach is taken to the enforcement of the relevant rules where transactions, orders to trade or other actions or behaviours relate to one or more financial instruments to which this Regulation applies and also to one or more wholesale energy products to which Article 3, 4 and 5 of Regulation (EU) No .../2012 [on Wholesale Energy Market Integrity and Transparency] apply. Competent authorities shall consider the specific characteristics of the definitions of Article 2 of [Regulation (EU) No…of the European Parliament and the Council on Wholesale Energy Market Integrity and Transparency] and the provisions of Article 3, 4 and 5 of Regulation (EU) No .../2012 [on Wholesale Energy Market Integrity and Transparency] when they apply Articles 6, 7 and 8 of this Regulation to financial instruments related to wholesale energy products.

30	Art. 19, para 3/4	3. Competent authorities shall, on request, immediately supply any information required for the purpose referred to in paragraph 1.	**4.** Competent authorities shall, on request, immediately supply any information required for the purpose referred to in paragraph 1.	3. Competent authorities shall, on request, immediately supply any information required for the purpose referred to in paragraph 1.	3. Competent authorities shall, on request, immediately supply any information required for the purpose referred to in paragraph 1.

30	Art. 19, para 4	4. Where a competent authority is convinced that acts contrary to the provisions of this Regulation are being, or have been, carried out on the territory of another Member State or that acts are affecting financial instruments traded on a trading venue situated in another Member State, it shall give notice of that fact in as specific a manner as possible to the competent authority of the other Member State and to ESMA and, in relation to wholesale energy products, to ACER. The competent authorities of the various Member States involved shall consult each other and ESMA and, in relation to wholesale energy products, ACER, on the appropriate action to take and inform each other of significant interim developments. They shall coordinate their action, in order to avoid possible duplication and overlap when applying administrative measures, sanctions and fines to those cross border cases in accordance with Articles 24, 25, 26, 27 and 28, and assist each other in the enforcement of their decisions.	**5.** Where a competent authority is convinced that acts contrary to the provisions of this Regulation are being, or have been, carried out on the territory of another Member State or that acts are affecting financial instruments traded on a trading venue situated in another Member State, it shall give notice of that fact in as specific a manner as possible to the competent authority of the other Member State and to ESMA and, in relation to wholesale energy products, to ACER. The competent authorities of the various Member States involved shall consult each other and ESMA and, in relation to wholesale energy products, ACER, on the appropriate action to take and inform each other of significant interim developments. They shall coordinate their action, in order to avoid possible duplication and overlap when applying administrative measures, sanctions and fines to those cross border cases in accordance with Articles 24, 25, 26, 27 and 28, and assist each other in the enforcement of their decisions.	4. Where a competent authority is convinced that acts contrary to the provisions of this Regulation are being, or have been, carried out on the territory of another Member State or that acts are affecting financial instruments traded on a trading venue situated in another Member State, it shall give notice of that fact in as specific a manner as possible to the competent authority of the other Member State and to ESMA and, in relation to wholesale energy products, to ACER. The competent authorities of the various Member States involved shall consult each other and ESMA and, in relation to wholesale energy products, ACER, on the appropriate action to take and inform each other of significant interim developments. They shall coordinate their action, in order to avoid possible duplication and overlap when applying administrative measures, sanctions and fines to those cross border cases in accordance with Articles 24, 25, 26, 27 and 28, and assist each other in the enforcement of their decisions.	4. Where a competent authority is convinced that acts contrary to the provisions of this Regulation are being, or have been, carried out on the territory of another Member State or that acts are affecting financial instruments traded on a trading venue situated in another Member State, it shall give notice of that fact in as specific a manner as possible to the competent authority of the other Member State and to ESMA and, in relation to wholesale energy products, to ACER. The competent authorities of the various Member States involved shall consult each other and ESMA and, in relation to wholesale energy products, ACER, on the appropriate action to take and inform each other of significant interim developments. They shall coordinate their action, in order to avoid possible duplication and overlap when applying administrative measures, sanctions and fines to those cross border cases in accordance with Articles 24, 25, 26, 27 and 28, and assist each other in the enforcement of their decisions.

30	Art. 19, para 5/6, first subpara	5. The competent authority of one Member State may request assistance of the competent authority of another Member State with regard to on-site inspections or investigations.	**6.** The competent authority of one Member State may request assistance of the competent authority of another Member State with regard to on-site inspections or investigations.	5. The competent authority of one Member State may request assistance of the competent authority of another Member State with regard to on-site inspections or investigations.	5. The competent authority of one Member State may request assistance of the competent authority of another Member State with regard to on-site inspections or investigations.
31	Art. 19, para 5/6, second subpara	The competent authority shall inform ESMA of any request referred to in the first subparagraph. In case of an investigation or an inspection with cross-border effect, ESMA shall if requested to do so by one of the competent authorities coordinate the investigation or inspection.	The **requesting** competent authority **may** inform ESMA of any request referred to in the first subparagraph. In case of an investigation or an inspection with cross-border effect, ESMA shall**,** if requested to do so by one of the competent authorities coordinate the investigation or inspection.	The competent authority shall inform ESMA of any request referred to in the first subparagraph. In case of an investigation or an inspection with cross-border effect, ESMA shall if requested to do so by one of the competent authorities***, or on its own initiative, where appropriate with regard to the objectives of this Regulation,*** coordinate the investigation or inspection.	The **requesting** competent authority may inform ESMA of any request referred to in the first subparagraph. In case of an investigation or an inspection with cross-border effect, ESMA shall if requested to do so by one of the competent authorities coordinate the investigation or inspection.

31	Art. 19, para 5/6, third subpara	Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may do any of the following: (a) carry out the on-site inspection or investigation itself; (b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation; (c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself; (d) appoint auditors or experts to carry out the on-site inspection or investigation; (e) share specific tasks related to supervisory activities with the other competent authorities.	Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may do any of the following: (a) carry out the on-site inspection or investigation itself; (b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation; (c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself; (d) appoint auditors or experts to carry out the on-site inspection or investigation; (e) share specific tasks related to supervisory activities with the other competent authorities.	Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may do any of the following: (a) carry out the on-site inspection or investigation itself; (b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation; (c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself; (d) appoint auditors or experts to carry out the on-site inspection or investigation; (e) share specific tasks related to supervisory activities with the other competent authorities.	Where a competent authority receives a request from a competent authority of another Member State to carry out an on-site inspection or an investigation, it may do any of the following: (a) carry out the on-site inspection or investigation itself; (b) allow the competent authority which submitted the request to participate in an on-site inspection or investigation; (c) allow the competent authority which submitted the request to carry out the on-site inspection or investigation itself; (d) appoint auditors or experts to carry out the on-site inspection or investigation; (e) share specific tasks related to supervisory activities with the other competent authorities.
31			**Competent authorities may also cooperate with competent authorities of other member states with respect to facilitate recovery of pecuniary sanctions.**		**Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.**

31	Art. 19, para 6/7, first subpara	6. Without prejudice to Article 258 TFEU, a competent authority whose request for information or assistance in accordance with paragraphs 1, 2, 3 and 4 is not acted upon within a reasonable time or whose request for information or assistance is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA.	**7.** Without prejudice to Article 258 TFEU, a competent authority whose request for information or assistance in accordance with paragraphs 1, **3, 4** and **5** is not acted upon within a reasonable time or whose request for information or assistance is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA.	6. Without prejudice to Article 258 TFEU, a competent authority whose request for information or assistance in accordance with paragraphs 1, 2, 3 and 4 is not acted upon within a reasonable time or whose request for information or assistance is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA.	6. Without prejudice to Article 258 TFEU, a competent authority whose request for information or assistance in accordance with paragraphs 1, 2, 3 and 4 is not acted upon within a reasonable time or whose request for information or assistance is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA.
31	Art. 19, para 6/7, second subpara	In those situations, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.	In those situations, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.	In those situations, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.	In those situations, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.

31	Art. 19, para 7/8, first subpara	7. Competent authorities shall cooperate and exchange information with relevant national and third country regulatory authorities responsible for the related spot markets where they have reasonable grounds to suspect that acts, which constitute market abuse in accordance with Article 2, are being, or have been, carried out. This cooperation shall ensure a consolidated overview of the financial and spot markets, and detect and sanction cross-market and cross-border market abuses.	**8.** Competent authorities shall cooperate and exchange information with relevant national and third country regulatory authorities responsible for the related spot markets where they have reasonable grounds to suspect that acts, which constitute market abuse in **violation of this Regulation,** are being, or have been, carried out. This cooperation shall ensure a consolidated overview of the financial and spot markets, and detect and sanction cross-market and cross-border market abuses.	7. Competent authorities shall cooperate and exchange information with relevant national and third country regulatory authorities responsible for the related spot markets where they have reasonable grounds to suspect that acts, which constitute ***insider dealing or*** market ***manipulation*** in accordance with ***this Regulation or with Directive 2012/.../EU [new MAD]***, are being, or have been, carried out. This cooperation shall ensure a consolidated overview of the financial and spot markets, and detect and sanction cross-market and cross-border market abuses.	7. Competent authorities shall cooperate and exchange information with relevant national and third country regulatory authorities responsible for the related spot markets where they have reasonable grounds to suspect that acts, which constitute market abuse in **violation of this Regulation,** are being, or have been, carried out. This cooperation shall ensure a consolidated overview of the financial and spot markets, and detect and sanction cross-market and cross-border market abuses.

31	Art. 19, para 7/8, second subpara	In relation to emission allowances, the co-operation and exchange of information provided for under the preceding subparagraph shall also be ensured with: (a) the auction monitor, with regard to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010; (b) competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with the supervision of compliance under Directive 2003/87/EC.	In relation to emission allowances, the co-operation and exchange of information provided for under the preceding subparagraph shall also be ensured with: (a) the auction monitor, with regard to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010; (b) competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with the supervision of compliance under Directive 2003/87/EC.	In relation to emission allowances, the co-operation and exchange of information provided for under the preceding subparagraph shall also be ensured with: (a) the auction monitor, with regard to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010; (b) competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with the supervision of compliance under Directive 2003/87/EC.	In relation to emission allowances, the co-operation and exchange of information provided for under the preceding subparagraph shall also be ensured with: (a) the auction monitor, with regard to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010; (b) competent authorities, registry administrators, including the Central Administrator, and other public bodies charged with the supervision of compliance under Directive 2003/87/EC.
31	Art. 19, para 7/8, third subpara	ESMA shall perform a facilitation and coordination role in relation to the cooperation and exchange of information between competent authorities and regulatory authorities in other Member states and third countries. Competent authorities shall wherever possible conclude cooperation arrangements with third country regulatory authorities responsible for the related spot markets in accordance with Article 20.	ESMA shall perform a facilitation and coordination role in relation to the cooperation and exchange of information between competent authorities and regulatory authorities in other Member states and third countries. Competent authorities shall wherever possible conclude cooperation arrangements with third country regulatory authorities responsible for the related spot markets in accordance with Article 20.	ESMA shall perform a facilitation and coordination role in relation to the cooperation and exchange of information between competent authorities and regulatory authorities in other Member states and third countries. Competent authorities shall wherever possible conclude cooperation arrangements with third country regulatory authorities responsible for the related spot markets in accordance with Article 20.	ESMA shall perform a facilitation and coordination role in relation to the cooperation and exchange of information between competent authorities and regulatory authorities in other Member states and third countries. Competent authorities shall wherever possible conclude cooperation arrangements with third country regulatory authorities responsible for the related spot markets in accordance with Article 20.

31	Art. 19, para 8	8. The disclosure of personal data to a third country shall be governed by Articles 22 and 23.	deleted	8. The disclosure of personal data to a third country shall be governed by Articles 22 and 23.	Delete
31	Art. 19, para 9	9. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information and assistance as referred to in this Article. ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.	9. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information and assistance as referred to in this Article. ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.	9. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information and assistance as referred to in this Article. ESMA shall submit those draft implementing technical standards to the Commission by ***[...]****. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.	9. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information and assistance as referred to in this Article. ESMA shall submit those draft implementing technical standards to the Commission by **24 months** Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

32	Art. 19 a (new)			***Article 19a*** ***Resolution of disagreements between competent authorities*** ***Where a competent authority disagrees about the procedure or content of an action or inaction of another competent authority of another Member State related to any provisions of that Regulation or of the Directive (EU) No .../... [new MAD], ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010.***	DELETE
32	Art.20, para 1, first subpara	1. The competent authorities of Member States shall where necessary conclude cooperation arrangements with competent authorities of third countries concerning the exchange of information with competent authorities in third countries and the enforcement of obligations arising under this Regulation in third countries. These cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.	1. The competent authorities of Member States shall where necessary conclude cooperation arrangements with **supervisory** authorities of third countries concerning the exchange of information with **supervisory** authorities in third countries and the enforcement of obligations arising under this Regulation in third countries. These cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.	1. The competent authorities of Member States shall where necessary conclude cooperation arrangements with competent authorities of third countries concerning the exchange of information with competent authorities in third countries and the enforcement of obligations arising under this Regulation in third countries. These cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.	1. The competent authorities of Member States shall where necessary conclude cooperation arrangements with **supervisory** authorities of third countries concerning the exchange of information with **supervisory** authorities in third countries and the enforcement of obligations arising under this Regulation in third countries. These cooperation arrangements shall ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties under this Regulation.
32	Art.20, para 1, second subpara	A competent authority shall inform ESMA and other competent authorities of Member States where it proposes to enter into such an arrangement.	A competent authority shall inform ESMA and other competent authorities of Member States where it proposes to enter into such an arrangement.	A competent authority shall inform ESMA and other competent authorities of Member States where it proposes to enter into such an arrangement.	A competent authority shall inform ESMA and other competent authorities of Member States where it proposes to enter into such an arrangement.

32	Art.20, para 1a (new)			***1a. Where the Union participates in an emission trading scheme with a third country, emission allowances under this scheme and auctioned products based thereon shall fall into the scope of this Regulation. Where necessary, the Commission shall adopt, by means of delegated acts in accordance with Article 32, measures establishing the criteria for the inclusion of those emission allowances and auctioned products in the scope of this Regulation.***	DELETE

32	Art.20, para 2, first subpara	2. ESMA shall coordinate the development of cooperation arrangements between the competent authorities of Member States and the relevant competent authorities of third countries. For that purpose, ESMA shall prepare a template document for cooperation arrangements that may be used by competent authorities of Member States.	2. ESMA shall**, wherever possible,** coordinate the development of cooperation arrangements between the competent authorities of Member States and the relevant competent authorities of third countries. For that purpose, ESMA shall prepare a template document for cooperation arrangements that may be used by competent authorities of Member States.	2. ESMA shall ***facilitate and*** coordinate the development of cooperation arrangements between the competent authorities of Member States and the relevant competent authorities of third countries. ***In accordance with Article 15 of Regulation (EU) No 1095/2010***, ESMA shall ***develop draft regulatory technical standards containing*** a template document for cooperation arrangements that ***are to*** be used by competent authorities of Member States ***where possible***. ***ESMA shall submit those draft regulatory technical standards to the Commission by...*.*** ***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***	2. ESMA shall**, wherever possible, *facilitate and*** coordinate the development of cooperation arrangements between the competent authorities of Member States and the relevant ***supervisory*** authorities of third countries. ESMA shall ***develop draft regulatory technical standards containing*** a template document for cooperation arrangements that ***are to*** be used by competent authorities of Member States ***where possible***. ***ESMA shall submit those draft regulatory technical standards to the Commission by 24 months*** ***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.***

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

32	Art.20, para 2, second subpara / para 2a	ESMA shall also coordinate the exchange between competent authorities of Member States of information obtained from competent authorities of third countries that may be relevant to the taking of measures under Articles 24, 25, 26, 27 and 28.	ESMA shall**, wherever possible,** also coordinate the exchange between competent authorities of Member States of information obtained from competent authorities of third countries that may be relevant to the taking of measures under **[**Articles 24, 25, 26, ~~27~~ and ~~28.~~**27].**	***2a.*** ESMA shall also ***facilitate and*** coordinate the exchange between competent authorities of Member States of information obtained from competent authorities of third countries that may be relevant to the taking of measures under Articles 24, 25, 26, 27 and 28.	ESMA shall also**, wherever possible,** ***facilitate and*** coordinate the exchange between competent authorities of Member States of information obtained from ***supervisory*** authorities of third countries that may be relevant to the taking of measures under [Articles ~~24, 25~~, 26, 27 and 28].
32	Art.20, para 3	3. The competent authorities shall conclude cooperation arrangements on exchange of information with the competent authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 21. Such exchange of information must be intended for the performance of the tasks of those competent authorities.	3. The competent authorities shall conclude cooperation arrangements on exchange of information with the competent authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 21. Such exchange of information must be intended for the performance of the tasks of those competent authorities.	3. The competent authorities shall conclude cooperation arrangements on exchange of information with the competent authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 21. Such exchange of information must be intended for the performance of the tasks of those competent authorities.	3. The competent authorities shall conclude cooperation arrangements on exchange of information with the ***supervisory*** authorities of third countries only where the information disclosed is subject to guarantees of professional secrecy which are at least equivalent to those set out in Article 21. Such exchange of information must be intended for the performance of the tasks of those competent authorities.
32	Art.20, para 4	4. The disclosure of personal data to a third country shall be governed by Articles 22 and 23.	4. The disclosure of personal data to a third country shall be governed by Articles 22 and 23.	4. The disclosure of personal data to a third country shall be governed by Articles 22 and 23.	[deleted]

32	Art. 21, para 1	1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraph 2 and 3.	1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraph 2 ~~and 3~~, **except when the competent authority states that the information may be disclosed or where such disclosure is necessary for legal proceedings.**	1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 2 and 3.	1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraph~~s~~ 2. 1a. All the information exchanged between the competent authorities under this Regulation that concerns business or operational conditions and other economic or personal affairs shall be considered confidential and shall be subject to the requirements of professional secrecy, except where the competent authority states at the time of communication that such information may be disclosed or such disclosure is necessary for legal proceedings.

32	Art. 21, para 2	2. The obligation of professional secrecy applies to all persons who work or who have worked for the competent authority or for any authority or market undertaking to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by law.	2. The obligation of professional secrecy applies to all persons who work or who have worked for the competent authority or for any authority or market undertaking to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by **national** law.	2. The obligation of professional secrecy applies to all persons who work or who have worked for the competent authority or for any authority or market undertaking to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by law.	2. The obligation of professional secrecy applies to all persons who work or who have worked for the competent authority or for any authority or market undertaking to whom the competent authority has delegated its powers, including auditors and experts contracted by the competent authority. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of provisions laid down by law.
33	Art. 21, para 3	3. All information exchanged between competent authorities under this Regulation shall be considered confidential, except when the competent authority states at the time of communication that the information may be disclosed or where such disclosure is necessary for legal proceedings.	deleted	3. All information exchanged between competent authorities under this Regulation ***that concern business or operational conditions and other economic or personal affairs*** shall be considered confidential, except when the competent authority states at the time of communication that the information may be disclosed or where such disclosure is necessary for legal proceedings.	[covered by para 1]

33	Art.22	With regard to the processing of personal data carried out by Member States within the framework of this Regulation, competent authorities shall apply the provisions of Directive 95/46/EC. With regard to the processing of personal data by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001. Personal data shall be retained for a maximum period of 5 years.	With regard to the processing of personal data carried out by Member States within the framework of this Regulation, competent authorities shall apply the provisions of Directive 95/46/EC **as these are implemented in national law**. With regard to the processing of personal data by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001. ~~Personal data shall be retained for a maximum period of 5 years.~~	With regard to the processing of personal data carried out by Member States within the framework of this Regulation, competent authorities shall apply the provisions of Directive 95/46/EC. With regard to the processing of personal data by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001. Personal data shall be retained for a maximum period of 5 years.	With regard to the processing of personal data within the framework of this Regulation, competent authorities shall carry out their tasks for the purposes of this Regulation **in accordance with national law implementing** Directive 95/46/EC**.** With regard to the processing of personal data by ESMA within the framework of this Regulation, ESMA shall comply with the provisions of Regulation (EC) No 45/2001. Personal data shall be retained for a maximum period of 5 years.

33	Art. 23, para 1	1. The competent authority of a Member State may transfer personal data to a third country provided the requirements of Directive 95/46/EC, particularly of Articles 25 or 26, are fulfilled and only on a case-by-case basis. The competent authority of the Member State shall ensure that the transfer is necessary for the purpose of this Regulation. The competent authority shall ensure that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State. Personal data may only be transferred to a third country which provides an adequate level of protection of personal data.	1. The competent authority of a Member State may transfer personal data to a third country provided the requirements of Directive 95/46/EC, ~~particularly of Articles 25 or 26,~~ are fulfilled and only on a case-by-case basis. The competent authority ~~of the Member State shall ensure that the transfer is necessary for the purpose of this Regulation. The competent authority~~ **shall** ensure that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State. ~~Personal data may only be transferred to a third country which provides an adequate level of protection of personal data.~~	1. The competent authority of a Member State may transfer personal data to a third country provided the requirements of Directive 95/46/EC, particularly of Article 25 or 26, are fulfilled and only on a case-by-case basis. The competent authority of the Member State shall ensure that the transfer is necessary for the purpose of this Regulation. The competent authority shall ensure that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State. Personal data may only be transferred to a third country which provides an adequate level of protection of personal data.	1. The competent authority of a Member State may transfer personal data to a third country provided the requirements of Directive 95/46/EC are fulfilled and only on a case-by-case basis. The competent authority shall ensure that the transfer is necessary for the purpose of this Regulation and that the third country does not transfer the data to another third country unless it is given express written authorisation and complies with the conditions specified by the competent authority of the Member State.

33	Art. 23, para 2	2. The competent authority of a Member State shall only disclose information received from a competent authority of another Member State to a competent authority of a third country where the competent authority of the Member State concerned has obtained express agreement of the competent authority which transmitted the information and, where applicable, the information is disclosed solely for the purposes for which that competent authority gave its agreement.	2. The competent authority of a Member State shall only disclose **personal data** received from a competent authority of another Member State to a competent authority of a third country where the competent authority of the Member State concerned has obtained express agreement **from** the competent authority which transmitted the information and, where applicable, the**n** information is disclosed solely for the purposes for which that competent authority gave its agreement.	2. The competent authority of a Member State shall only disclose information received from a competent authority of another Member State to a competent authority of a third country where the competent authority of the Member State concerned has obtained express agreement of the competent authority which transmitted the information and, where applicable, the information is disclosed solely for the purposes for which that competent authority gave its agreement.	2. The competent authority of a Member State shall only disclose **personal data** received from a competent authority of another Member State to a **supervisory** authority of a third country where the competent authority of the Member State concerned has obtained express agreement **from** the competent authority which transmitted the data and, where applicable, the data is disclosed solely for the purposes for which that competent authority gave its agreement.
33	Art. 23, para 3	3. Where a cooperation agreement provides for the exchange of personal data, it shall comply with Directive 95/46/EC.	~~3.~~ Where a cooperation agreement provides for the exchange of personal data, it shall comply with Directive 95/46/EC **as these are implemented in national law**.	3. Where a cooperation agreement provides for the exchange of personal data, it shall comply with Directive 95/46/EC.	3. Where a cooperation agreement provides for the exchange of personal data, it shall comply with Directive 95/46/EC **as implemented in national law.**

33	Art. 24, para 1, first subpara	1. Member States shall lay down the rules on administrative measures and sanctions applicable in the circumstances defined in Article 25 to the persons responsible for breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The measures and sanctions provided for shall be effective, proportionate and dissuasive.	deleted	1. Member States shall lay down the rules on administrative measures and sanctions applicable in the event of conduct referred to in Article 25 to the persons responsible for breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The measures and sanctions provided for shall be effective, proportionate and dissuasive.	DELETE
33	Art. 24, para 1, second subpara	By [24 months after entry into force of this Regulation] the Member States shall notify the rules referred to in the first subparagraph to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.	deleted	By ***[...]**** the Member States shall notify the rules referred to in the first subparagraph to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.	DELETE

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

33	Art. 24, para 2	2. In the exercise of their sanctioning powers under circumstances defined in Article 25, competent authorities shall cooperate closely to ensure that the administrative measures and sanctions produce the desired results of this Regulation and coordinate their action in order to avoid possible duplication and overlap when applying administrative measures and sanctions and fines to cross border cases in accordance with Article 19	deleted	2. In the exercise of their sanctioning powers in the event of conduct referred to in Article 25, competent authorities shall cooperate closely to ensure that the administrative measures and sanctions produce the desired results of this Regulation and coordinate their action in order to avoid possible duplication and overlap when applying administrative measures and sanctions and fines to cross border cases in accordance with Article 19.	DELETE
33	Art. 24, para 2 a (new)			***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 conduct 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.***	DELETE

33	Art. 25, point a	This Article shall apply in all the following circumstances: (a) a person engages in insider dealing in breach of Article 9;	deleted	This Article shall apply to the following conduct: (a) a person engages ***or attempts to engage*** in insider dealing in breach of Article 9;	DELETE
34	Art. 25, point b	(b) a person recommends or induces another person to engage in insider dealing in breach of Article 9;	deleted	(b) a person recommends or induces another person to engage in insider dealing in breach of Article 9;	DELETE
34	Art. 25, point c	(c) a person improperly discloses insider information in breach of Article 9;	deleted	(c) a person improperly discloses insider information in breach of Article 9;	DELETE
34	Art. 25, point d	(d) a person engages in market manipulation in violation of Article 10;	deleted	(d) a person engages in market manipulation in violation of Article 10;	DELETE
34	Art. 25, point e	(e) a person attempts to engage in market manipulation in violation of Article 10;	deleted	(e) a person attempts to engage in market manipulation in violation of Article 10;	DELETE
34	Art. 25, point f	(f) a person who operates the business of a trading venue of a trading venue fails to adopt and maintain effective arrangements and procedures aimed at preventing and detecting market manipulation practices, in breach of Article 11 (1) ;	deleted	(f) a person who operates the business of a trading venue of a trading venue fails to adopt and maintain effective arrangements and procedures aimed at preventing and detecting market manipulation practices, in breach of Article 11(1) ;	DELETE

34	Art. 25, point g	(g) a person professionally arranging or executing transactions fails to have in place systems to detect and report transactions that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or fails to notify suspicious orders or transactions to the competent authority without delay, in breach of Article 11 (2);	deleted	(g) a person professionally arranging or executing transactions fails to have in place systems to detect and report transactions that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or fails to notify suspicious orders or transactions to the competent authority without delay, in breach of Article 11(2);	DELETE
34	Art. 25, point h	(h) an issuer of a financial instrument or emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, fails to inform the public as soon as possible of inside information or to post on its Internet site inside information to be disclosed publicly, in breach of Article 12 (1);	deleted	(h) an issuer of a financial instrument or emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), fails to inform the public as soon as possible of inside information or to post on its Internet site inside information to be disclosed publicly, in breach of Article 12(1);	DELETE
34	Art. 25, point i	(i) an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, delays the disclosure of inside information where such a delay is likely to mislead the public or without ensuring the confidentiality of that information, in breach of Article 12 (2);	deleted	(i) an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), delays the disclosure of inside information where such a delay is likely to mislead the public or without ensuring the confidentiality of that information, in breach of Article 12(2);	DELETE

34	Art. 25, point j	(j) an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, fails to inform the competent authority that the disclosure of inside information was delayed, in breach of Article 12 (2);	deleted	(j) an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), fails to inform the competent authority that the disclosure of inside information was delayed, in breach of Article 12(***4***);	DELETE
34	Art. 25, point k	(k) an issuer of a financial instrument or an emission allowance market participant, or a person acting on their behalf or on their account fails to disclose to the public the inside information disclosed to any person in the normal exercise of duties resulting from employment or profession, in breach of Article 12 (4);	deleted	(k) an issuer of a financial instrument or an emission allowance market participant, or a person acting on their behalf or on their account fails to disclose to the public the inside information disclosed to any person in the normal exercise of duties resulting from employment or profession, in breach of Article 12(***6***);	DELETE
35	Art. 25, point l	(l) an issuer of a financial instrument, an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, or a person acting on their behalf or on their account fails to draw up, regularly update or transmit to the competent authority on request a list of insiders, in breach of Article 13 (1);	deleted	(l) an issuer of a financial instrument, an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), or a person acting on their behalf or on their account fails to draw up, regularly update or transmit to the competent authority on request a list of insiders, in breach of Article 13(1);	DELETE

35	Art. 25, point m	(m) a person discharging managerial responsibilities within an issuer of financial instruments, an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, or a person closely associated with them fails to make public the existence of transactions conducted on their own account, in breach of Article 14 (1) and (2);	deleted	(m) a person discharging managerial responsibilities within an issuer of financial instruments, an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), or a person closely associated with them fails to make public the existence of transactions conducted on their own account, in breach of Article 14(1) and (2);	DELETE
35	Art. 25, point n	(n) a person producing or disseminating information recommending or suggesting an investment strategy intended for distribution channels or for the public fails to take reasonable care to ensure the information is objectively presented or to disclose interests or conflicts of interest, in breach of Article 15 (1);	deleted	(n) a person producing or disseminating information recommending or suggesting an investment strategy intended for distribution channels or for the public fails to take reasonable care to ensure the information is objectively presented or to disclose interests or conflicts of interest, in breach of Article 15(1);	DELETE
35	Art. 25, point o	(o) a person who works or has worked for a competent authority or for any authority or market undertaking to whom the competent authority has delegated its tasks discloses information covered by professional secrecy in breach of Article 21;	deleted	(o) a person who works or has worked for a competent authority or for any authority or market undertaking to whom the competent authority has delegated its tasks discloses information covered by professional secrecy in breach of Article 21;	DELETE

35	Art. 25, point p	(p) a person fails to grant the competent authority access to a document and to provide a copy of it, requested in accordance with Article 17 (2) (a);	deleted	(p) a person fails to grant the competent authority access to a document and to provide a copy of it, requested in accordance with Article 17(2)(a);	DELETE
35	Art. 25, point q	(q) a person fails to provide information or to respond to a summons demanded by the competent authority in accordance with Article 17 (2) (b);	deleted	(q) a person fails to provide information or to respond to a summons demanded by the competent authority in accordance with Article 17(2)(b);	DELETE
35	Art. 25, point r	(r) a market participant fails to provide competent authority with information in relation to commodity derivatives or with suspicious transaction reports or to grant direct access to traders' systems, requested in accordance with Article 17 (2) (c);	deleted	(r) a market participant fails to provide competent authority with information in relation to commodity derivatives or with suspicious transaction reports or to grant direct access to traders' systems, requested in accordance with Article 17(2)(c);	DELETE
35	Art. 25, point s	(s) a person fails to grant access to a site for inspection, requested by the competent authority in accordance with Article 17 (2) (d) ;	deleted	(s) a person fails to grant access to a site for inspection, requested by the competent authority in accordance with Article 17(2)(d) ;	DELETE
35	Art. 25, point t	(t) a person fails to grant access to existing telephone and data traffic records requested in accordance with Article 17 (2) (f);	deleted	(t) a person fails to grant access to existing telephone and data traffic records requested in accordance with Article 17(2)(f);	DELETE
35	Art. 25, point u	(u) a person fails to comply with a request by the competent authority to cease a practice contrary to this Regulation, to suspend trading of financial instruments or to publish a corrective statement;	deleted	(u) a person fails to comply with a request by the competent authority to cease a practice contrary to this Regulation, to suspend trading of financial instruments or to publish a corrective statement;	DELETE

36	Art. 25, point v	(v) a person carries out an activity when prohibited from doing so by the competent authority.	deleted	(v) a person carries out an activity when prohibited from doing so by the competent authority.	DELETE

36	Art. 26, para 1, introductory part	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 criminal sanctions] and without prejudice** to the supervisory powers of competent authorities in accordance with Article 17, **Member States** shall, in conformity with national law, **provide for competent authorities to** have the power to **take appropriate administrative measures and** impose administrative ~~measures and~~ sanctions for the breaches of articles 9, 10, 11(1), 11(2), 12(1), 12(2), 12(3), 12(4), 12(5), 12(6), 13(1), 13(2), 13(3), 13(4), 13(5), 14(1), 14(2), 14(3), 15(1), 15(2) and 17(2) of this Regulation. **Member States may decide not to lay down rules for administrative sanctions according to subparagraph 1 where those breaches are already subject to criminal sanctions in their national law by [24 months after entry into force of this Regulation]. In this case, Member States shall communicate to the Commission the relevant criminal law rules.** **By [24 months after entry into force of this Regulation] Member States shall notify the rules referred to in the first subparagraph to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendment thereto.**	1. Without prejudice to the supervisory powers of competent authorities in accordance with Article 17, in the event of a breach ***of Article 9 or 10 or in the event of conduct 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:	Without prejudice **to criminal sanctions and without prejudice** to the supervisory powers of competent authorities in accordance with Article 17, **Member States** shall, in conformity with national law, **provide for competent authorities to** have the power to **take appropriate administrative measures and** impose administrative sanctions for: a. the breaches of articles 9, 10, 11(1), 11(2), 12(1), 12(2), 12(3), 12(4), 12(5), 12(6), 13(1), 13(2), 13(3), 13(4), 13(5), 14(1), 14(2), 14(3), and 15(1) of this Regulation; and b. failure to cooperate or comply in an investigation or with an inspection or request covered by Article 17 (2). **Member States may decide not to lay down rules for administrative sanctions according to subparagraph 1 where those breaches are already subject to criminal sanctions in their national law by 24 months after entry into force of this Regulation. In this case, Member States shall notify in detail to the Commission and ESMA of the relevant criminal law rules.** **By 24 months after entry into force of this Regulation, Member States shall notify in detail the rules referred to in the first subparagraph to the Commission and ESMA. They shall notify the**

36			**1a. In case of a breach referred to in paragraph 1, Member States shall, in conformity with national law, provide for competent authorities to have the power to take and or impose at least the following administrative measures and sanctions:**		**1a. In case of a breach referred to in paragraph 1(a), Member States shall, in conformity with national law, provide for competent authorities to have the power to take and or impose at least the following administrative measures and sanctions**
36	Art. 26, para 1/1a, point a	(a) an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;	(a) an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;	(a) an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;	(a) an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;
36	Art. 26, para 1/1a, point b	(b) measures to be applied for failure to cooperate in an investigation covered by Article 17;	**deleted**	(b) measures to be applied for failure to cooperate in an investigation covered by Article 17;	delete
36	Art. 26, para 1/1a, point ba		**(ba) the disgorgement of the profits gained or losses avoided because of the breach where those can be determined;**		**(ba) the disgorgement of the profits gained or losses avoided because of the breach where those can be determined;**
36	Art. 26, para 1, point c	(c) measures which have the effect of putting an end to a continuous breach of this Regulation and eliminating its effect;	deleted	(c) measures which have the effect of putting an end to a continuous breach of this Regulation and eliminating its effect;	delete
36	Art. 26, para 1/1a, point d/c	(d) a public statement which indicates the person responsible and the nature of the breach, published on the website of competent authorities;	**(c)** a public **warning** which indicates the person responsible and the nature of the breach~~, published on the website of competent authorities~~;	(d) a public statement which indicates the person responsible and the nature of the breach, published on the website of competent authorities;	**(c)** a public **warning** which indicates the person responsible and the nature of the breach

36	Art. 26, para 1, point e	(e) correction of false or misleading disclosed information including by requiring any issuer or other person who has published or disseminated false or misleading information to publish a corrective statement;	deleted	(e) correction of false or misleading disclosed information including by requiring any issuer or other person who has published or disseminated false or misleading information to publish a corrective statement;	DELETED
36	Art. 26, para 1, point f	(f) temporary prohibition of an activity;	deleted	(f) temporary ***or permanent*** prohibition of an activity;	DELETED
37	Art. 26, para 1/1a, point g/f	(g) withdrawal of the authorisation of an investment firm as defined in Article 4 (1) of Directive [new MiFID];	**(f)** [withdrawal **or suspension** of the authorisation of an investment firm as defined in Article 4 (1) of Directive [new MiFID];	(g) withdrawal of the authorisation of an investment firm as defined in Article 4 (1) of Directive [new MiFID];	**(f)** [withdrawal **or suspension** of the authorisation of an investment firm as defined in Article 4 (1) of Directive [new MiFID]; **MiFID LINKED – REALLIGNMENT WILL BE NECESSSARY**

37	Art. 26, para 1/1a, point h/g	(h) a temporary ban against any member of an investment firm's body or any other natural person, who is held responsible, to exercise functions in investment firms;	**(g)** a **ban or** temporary ban against any member of an investment firm's **management** body or any other natural person, who is held responsible, to exercise **management** functions in **the** investment firm~~s~~;	(h) a temporary ***or permanent*** ban against any member of an investment firm's body or any other natural person, who is held responsible, to exercise functions in investment firms**.** ***Where such a person has committed a breach of the provisions on insider trading or market manipulation, they will be prohibited for two years from trading on a trading venue subject to this Regulation.*** ***Where such a person has been previously subject to sanctions for insider trading or market manipulation, they shall be permanently prohibited from trading on a trading venue subject to this Regulation.***	**g)** a temporary ban against any person discharging managerial responsibilities in an investment firm or any other natural person who is held responsible, from exercising **management** functions in investment firms; or (ga) In the event of repeated breaches of Article 9 or 10, a permanent ban against any person discharging managerial responsibilities in an investment firm or any other natural person who is held responsible, from exercising **management** functions in investment firms; **(gb)** a temporary ban against any person discharging managerial responsibilities in an investment firm or any other natural person who is held responsible, from dealing on own account;
37	Art. 26, para 1, point i	(i) suspend trading of the financial instruments concerned;	deleted	(i) suspend trading of the financial instruments concerned;	DELETED
37	Art. 26, para 1, point j	(j) request the freezing and/or sequestration of assets;	deleted	(j) request the freezing or sequestration of assets;	DELETED

37	Art. 26, para 1/1a, point k/j	(k) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined;	**(j)** administrative pecuniary sanctions of up to **at least** twice the amount of the profits gained or losses avoided because of the breach where those can be determined; **or**	(k) administrative pecuniary sanctions of up to ***ten times*** the amount of the profits gained or losses avoided because of the breach where those can be determined***, if higher than any of the maximum amounts referred to in points (l) or (m), as applicable****;*	**(j)** maximum administrative pecuniary sanctions of **at least** three times the amount of the profits gained or losses avoided because of the breach where those can be determined;

37	Art. 26, para 1/1a, point l/ point 1	(l) in respect of a natural person, administrative pecuniary sanctions of up to [EUR 5 000 000] or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry to force of this Regulation;	**1)** in respect of a natural person-**up to at least:** **(i) for breaches of articles 9 and 10,** [EUR 5,000,000] or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry to force of this Regulation; or **(ii) for breaches of articles not covered by articles 9, 10, 13, 14 and 15 [EUR 1,000,000] or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry to force of this Regulation;** **(iii) for breaches of articles 13, 14 and 15 [EUR 500,000] or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this regulation.**	(l) ***without prejudice to point (k),*** in respect of a natural person, administrative pecuniary sanctions of up to ***an unlimited amount***;	**1)** in respect of a natural person, maximum administrative pecuniary sanctions of **at least:** **(i) for breaches of articles 9 and 10,** EUR 5,000,000 or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry to force of this Regulation; or **(ii) for breaches of articles not covered by articles 9, 10, 13, 14 and 15 EUR 1,000,000 or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry to force of this Regulation;** **(iii) for breaches of articles 13, 14 and 15 EUR 500,000 or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this regulation.**

37	Art. 26, para 1/1a, point m/point 2	(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.	**2)** in respect of a legal person~~, administrative pecuniary sanctions of~~ up to **at least:** **(i) for breaches of articles 9 and 10, EUR[10,000,000] or, only if specifically provided for in national law,** 10 % of its total annual turnover **according to the last available accounts approved by the management body;** where the legal person is **a parent undertaking or** a subsidiary of a parent undertaking **which has to prepare consolidated financial accounts according to** [as defined in Articles 1 and 2 of Directive 83/349/EEC], the relevant total annual turnover **shall be the total annual turnover or the corresponding type of income according to the relevant accounting directives [Directive 86/635/EC for banks, Directive 91/674/EC for insurance companies] according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking; or** **(ii) for breaches not covered by articles 9, 10, 13, 14 and 15 EUR[2,500,000] or, only if specifically provided for in national law, 2 % of its total annual turnover according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial**	(m) ***without prejudice to point (k),*** in respect of a legal person, administrative pecuniary sanctions of up to ***20*** % 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.	**2)** in respect of a legal person, maximum administrative pecuniary sanctions of **at least:** **(i) for breaches of articles 9 and 10, EUR 15,000,000 or** 15 % of its total annual turnover **according to the last available accounts approved by the management body;** where the legal person is **a parent undertaking or** a subsidiary of a parent undertaking **which has to prepare consolidated financial accounts according to** [as defined in Articles 1 and 2 of Directive 83/349/EEC], the relevant total annual turnover **shall be the total annual turnover or the corresponding type of income according to the relevant accounting directives [Directive 86/635/EC for banks, Directive 91/674/EC for insurance companies] according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking; or** **(ii) for breaches not covered by articles 9, 10, 13, 14 and 15 EUR 2,500,000 or 2 % of its total annual turnover according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to [as defined in Directive 83/349/EEC], the relevant total annual turnover**
1138	4/13				

37	Art. 26, para 1a, subpara 2		**References to the competent authority in this paragraph are without prejudice to the ability of the competent authority to exercise its functions in any ways referred to in Article 17.1 .**		**References to the competent authority in this paragraph are without prejudice to the ability of the competent authority to exercise its functions in any ways referred to in Article 17.1.**
37	Art. 26, para 2	2. Competent authorities may have other sanctioning powers in addition to those referred to in paragraph 2 and may provide for higher levels of administrative pecuniary sanctions than those established in that paragraph.	2. **Member States may provide competent** authorities **under national law to** have other sanctioning powers in addition to those referred to in paragraph **1a** and may provide for higher levels of ~~administrative pecuniary~~ sanctions than those established in that paragraph.	2. Competent authorities may have other sanctioning powers in addition to those referred to in paragraph 1 and may provide for higher levels of administrative pecuniary sanctions than those established in that paragraph. ***In setting levels of administrative pecuniary sanctions above those established in paragraph 1, competent authorities may take into consideration the extent to which a breach of one or more of the requirements of this Regulation has negatively impacted the functioning of markets, the financial positions of participants in those markets and broader economic, social and environmental interests.***	2. **Member States may provide competent** authorities **under national law to** have other sanctioning powers in addition to those referred to in paragraph **1a** and may provide for higher levels of sanctions than those established in that paragraph

37	Art. 26, para 3	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.	deleted	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 ***natural persons*** involved, competent authorities shall publish the measures and sanctions ***against such natural persons*** on an anonymous basis.	**Delete**
38	Art 27, title	Effective application of sanctions	**Exercise of supervisory and sanctioning powers**	Effective application of sanctions	**Exercise of supervisory and sanctioning powers**
38	Art; 27, para 1, first subpara, point a	1. When determining the type of administrative measures and sanctions, competent authorities shall take into account all relevant circumstances, including: (a) the gravity and duration of the breach;	1. **Member States shall ensure that, when** determining the type **and level** of administrative ~~measures and~~ sanctions, competent authorities ~~shall~~ take into account all relevant circumstances, including **where appropritate**: (a) the gravity and duration of the breach;	1. ***Member States shall ensure that when*** determining the type of administrative measures***,*** sanctions ***and level of fines***, competent authorities shall take into account all relevant circumstances, including: (a) the gravity and duration of the breach;	1. **Member States shall ensure that, when** determining the type **and level** of administrative sanctions, competent authorities take into account all relevant circumstances, including **where appropriate**: (a) the gravity and duration of the breach;

38	Art; 27, para 1, first subpara, point b	(b) the degree of responsibility of the responsible person;	(b) the degree of responsibility of the responsible person;	(b) the degree of responsibility of the person concerned;	b) the degree of responsibility of the responsible person
38	Art; 27, para 1, first subpara, point b a (new)			***(ba) where applicable, the extent to which an employee has been encouraged or pressured to act in a certain way by the internal rules, instructions or practices of the relevant institution;***	**DELETE**
38	Art; 27, para 1, first subpara, point c	(c) the financial strength of the responsible person, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;	(c) the financial strength of the responsible person, as indicated **notably** by the total turnover of the responsible legal person or the annual income of the responsible natural person;	(c) the financial strength of the person concerned, as indicated by the total turnover of the legal person concerned or the annual income of the responsible natural person;	(c) the financial strength of the responsible person, as indicated **notably** by the total turnover of the responsible legal person or the annual income of the responsible natural person;
38	Art; 27, para 1, first subpara, point d	(d) the importance of the profits gained or losses avoided by the responsible person, insofar as they can be determined;	(d) the importance of the profits gained or losses avoided by the responsible person, insofar as they can be determined;	(d) the importance of the profits gained or losses avoided by the person responsible, insofar as they can be determined;	(d) the importance of the profits gained or losses avoided by the responsible person, insofar as they can be determined;
38	Art; 27, para 1, first subpara, point e	(e) the level of cooperation of the responsible person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;	(e) the level of cooperation of the responsible person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;	(e) the level of cooperation of the person concerned with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;	e) the level of cooperation of the responsible person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

38	Art; 27, para 1, first subpara, point f	(f) previous breaches by the responsible person.	(f) previous breaches by the responsible person.	(f) previous breaches by the person concerned.	(f) previous breaches by the person concerned.
38	Art; 27, para 1, first subpara, point g (new)		**(g) measures taken, after the breach, by a responsible person to prevent the repetition of the breach.**		**(g) measures taken, after the breach, by a responsible person to prevent the repetition of the breach**
38	Art; 27, para 1, second subpara	Additional factors may be taken into account by competent authorities, if such factors are specified in national law.	**deleted**	Additional factors may be taken into account by competent authorities, if such factors are specified in national law.	Delete

39	Art; 27, para 2	2. ESMA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation No (EU) 1095/2010 on types of administrative measures and sanctions and level of fines.	**2. In the exercise of their sanctioning powers under circumstances defined in Article 26,** competent authorities **shall cooperate closely to ensure that the supervisory and investigative powers and** administrative sanctions **produce the desired results of this Regulation. They shall also and coordinate their action in order to avoid possible duplication and overlap when applying supervisory and investigative powers and administrative sanctions and fines to cross border cases in accordance with Article 19.**	2. ***In order to ensure their consistent application and dissuasive effect across the Union,*** ESMA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation No (EU) 1095/2010 on types of administrative measures and sanctions and level of fines.	**2. In the exercise of their sanctioning powers under circumstances defined in Article 26,** competent authorities **shall cooperate closely to ensure that the supervisory and investigative powers and** administrative sanctions **produce the desired results of this Regulation. They shall also coordinate their action in order to avoid possible duplication and overlap when applying supervisory and investigative powers and administrative sanctions and fines to cross border cases in accordance with Article 19.**
39	Art. 28	Member States shall ensure that decisions taken by the competent authority in accordance with this Regulation are subject to the right of appeal.	deleted	Member States shall ensure that decisions taken by the competent authority in accordance with this Regulation are subject to the right of appeal.	**Delete**

39	Art. 28 a (new)			***Article 28 a*** ***Rights of the defence*** ***Member States shall put in place appropriate procedures to ensure the rights of the defence of the person who is subject to an investigation on the basis of this Regulation. Such procedures shall ensure that the person concerned is heard before the adoption of a decision concerning him or her, and that that person has the right to seek effective judicial remedy against a decision concerning him or her.***	**Delete**

39	Art. 29, para 1, introductory part	1. Member States shall put in place effective mechanisms to encourage reporting of breaches of this Regulation to competent authorities, including at least:	1. Member States shall **ensure that competent authorities establish** effective mechanisms to **enable** reporting of **actual or potential** breaches **of the provisions** of this Regulation to competent authorities~~, including at least:~~**.**	1. Member States shall ***ensure that effective mechanisms are*** put in place ¦to ***supplement those referred to in Article 11(2a) to*** encourage reporting of breaches of this Regulation to competent authorities, including at least specific procedures for the receipt of reports of breaches and their follow-up***. Such procedures shall ensure that the following principles are complied with:*** ***(a)*** appropriate protection***, including full anonymity,*** for persons who report potential or actual breaches***, in particular and without prejudice to national provisions regulating judicial proceedings, the confidentiality of the identity of those persons during all stages of the procedure***;	1. Member States shall **ensure that competent authorities establish** effective mechanisms, to **enable** reporting of **actual or potential** breaches **of the provisions** of this Regulation to competent authorities. **1a. The mechanisms referred to in paragraph 1 shall include at least:** (a) specific procedures for the receipt of reports of breaches and their follow-up, including the establishment of secure communication channels for such reports;
39	Art. 29, para 1/1a, point a	(a) specific procedures for the receipt of reports of breaches and their follow-up;	**1a. The mechanisms referred to in paragraph 1 shall include at least:** (a) specific procedures for the receipt of reports of breaches and their follow-up;		

39	Art. 29, para 1/1a, point b	(b) appropriate protection for persons who report potential or actual breaches;	(b) appropriate protection for **employees** who **denounce** breaches **committed within their employer against retaliation, discrimination or other types of unfair treatment at a minimum;**		(b) within their employment, appropriate protection for **persons working under a contract of employment,** who **report** breaches **or are accused of breaches, against retaliation, discrimination or other types of unfair treatment at a minimum.**
39	Art. 29, para 1/1a, point c/b	(c) protection of personal data concerning both the person who reports the potential or actual breaches and the accused person in compliance with the principles laid down in Directive 95/46/EC;	(c) protection of **the identity** both of the person who reports the ~~potential or actual~~ breaches and the **natural** person **who is allegedly responsible for a breach, at all stages of the procedure unless such disclosure is required by national law in the context of further investigation or subsequent judicial proceedings.**	***(b)*** protection of personal data concerning both the person who reports the potential or actual breaches and the accused person in compliance with the principles laid down in Directive 95/46/EC;	(c) protection of personal data both of the person who reports the breach and the **natural** person **who is allegedly responsible for it, including protections in relation to preserving the confidentiality of the identity of the relevant persons, at all stages of the procedure without prejudice to such disclosures being required by national law in the context of investigations or subsequent judicial proceedings.**
39	Art. 29, para 1, point d/c	(d) appropriate procedures to ensure the right of the accused person of defence and to be heard before the adoption of a decision concerning him and the right to seek effective judicial remedy against any decision or measure concerning him.	deleted	***(c)*** appropriate ***protection for*** the accused person***; and*** ***(d) appropriate protection from adverse treatment at work for, and provision of legal assistance to, both the person who reports and the accused person***.	Delete
39			**Further to the above, Member States may provide competent authorities under national law to establish additional mechanisms.**		

39	Art. 11, para 2 a (new)			***[moved from Article 11(2a)*** ***2a. ESMA and the national competent authority shall provide one or more secure communication channel for persons to provide notification of market abuse. Such channels shall ensure that the identity of persons providing information is known only to ESMA or the national competent authority.***	**Delete**
40	Art. 29, para 2 (new)		**2. Member States may require employers engaging in activities that are regulated for financial services purposes, to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.**		**2. Member States shall require employers engaging in activities that are regulated for financial services purposes, to have in place appropriate procedures for their employees to report breaches internally**

40	Art. 29, para 2/3	2. Financial incentives to persons who offer salient information about potential breaches of this Regulation may be granted in conformity with national law where such persons do not have a pre-existing legal or contractual duty to report such information, that the information is new, and it results in the imposition of an administrative sanction or measure or a criminal sanction for a breach of this Regulation.	**3. Member States may provide for financial** incentives to persons who offer salient information about potential breaches of this Regulation to be granted in conformity with national law where such persons do not have ~~a~~**other** pre-existing legal or contractual dut~~y~~**ies** to report such information, **and provided** that the information is new, and it results in the imposition of an administrative sanction or measure or a criminal sanction for a breach of this Regulation.	2. Financial incentives to persons who offer salient information about potential breaches of this Regulation may be granted in conformity with national law where such persons do not have a pre-existing legal or contractual duty to report such information, that the information is new, and it results in the imposition of an administrative sanction or measure or a criminal sanction for a breach of this Regulation.	**Member States may provide for financial** incentives to persons who offer salient information about potential breaches of this Regulation to be granted in conformity with national law where such persons do not have **other** pre-existing legal or contractual dut**ies** to report such information, **and provided** that the information is new, and it results in the imposition of an administrative sanction or measure or a criminal sanction for a breach of this Regulation.
40	Art. 29, para 3/4	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.	**4.** 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, **and** measures for the protection of **employees and measures for the protection of personal data**.	3. The Commission shall adopt, by means of ***delegated*** acts in accordance with Article ***32***, 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.	**4.** 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, **and** measures for the protection of **persons working under a contract of employment and measures for the protection of personal data**.

40	Art. 30, para 1	1. Competent and judicial authorities shall provide ESMA annually with aggregated information regarding all administrative measures, sanctions and fines imposed in accordance with Articles 24, 25, 26, 27, 28 and 29. ESMA shall publish this information in an annual report.	1. Competent ~~and judicial~~ authorities shall provide ESMA annually with aggregated information regarding all administrative measures, sanctions and fines imposed **by the competent authority** in accordance with Articles 24, 25, 26, 27, 28 and 29. ESMA shall publish this information in an annual report.	1. Competent ¦authorities shall provide ESMA annually with aggregated information regarding all administrative measures, sanctions and fines imposed***, either by them or by judicial authorities,*** in accordance with Articles 24, 25, 26, 27, 28 and 29. ESMA shall publish this information in an annual report.	1. Competent authorities shall provide ESMA annually with aggregated information regarding all administrative measures, sanctions and fines imposed **by the competent authority** in accordance with Articles ~~24, 25,~~ 26, 27, 28 and 29. ESMA shall publish this information in an annual report. Competent authorities shall also provide ESMA annually with anonymised and aggregated data regarding all administrative investigations undertaken in accordance with the above mentioned articles.

40	Art. 30, para 1 a (new)		**1a. Where Member States have chosen, in accordance with Article 26(1) second subparagraph, to lay down criminal sanctions for the breaches of the provisions of this Regulation referred to in that Article, their Competent authorities shall provide ESMA annually with aggregated information regarding all criminal penalties imposed by the judicial authorities in accordance with Articles 24, 25, 26, 27, 28 and 29. ESMA shall publish this information in an annual report.**		**1a. Where Member States have chosen, in accordance with Article 26(1) second subparagraph, to lay down criminal sanctions for the breaches of the provisions of this Regulation referred to in that Article, their competent authorities shall provide ESMA annually with anonymised and aggregated data ~~information~~ regarding all criminal investigations undertaken and criminal penalties imposed by the judicial authorities in accordance with Articles 26, 27, 28 and 29. ESMA shall publish ~~this information~~ data on criminal sanctions imposed in an annual report.**
40	Art. 30, para 2	2. Where the competent authority has disclosed administrative measures, sanctions and fines to the public, it shall simultaneously report those administrative measures, sanctions and fines to ESMA.	2. Where the competent authority has disclosed administrative measures, sanctions ~~and~~, fines **and criminal penalties** to the public, it shall simultaneously report those administrative measures, sanctions ~~and~~, fines **and criminal penalties** to ESMA.	2. Where the competent authority has disclosed administrative measures, sanctions and fines to the public, it shall simultaneously report those administrative measures, sanctions and fines to ESMA.	Where the competent authority has disclosed administrative measures, sanctions, fines **and criminal penalties** to the public, it shall simultaneously report those administrative measures, sanctions~~,~~ fines **and criminal penalties** to ESMA

40	Art. 30, para 3	3. Where a published administrative measure, sanction and fine relates to an investment firm authorised in accordance with Directive [new MiFID], ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3) of Directive [new MiFID].	3. Where a published administrative measure, sanction, fine and **criminal penalty** relates to an investment firm authorised in accordance with Directive [new MiFID], ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3) of Directive [new MiFID].	3. Where a published administrative measure, sanction and fine relates to an investment firm authorised in accordance with Directive [new MiFID], ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3) of Directive [new MiFID].	3. Where a published administrative measure, sanction, fine and **criminal penalty** relates to an investment firm authorised in accordance with Directive [new MiFID], ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3) of Directive [new MiFID].
40	Art. 30, para 4	4. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in this Article. ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.	4. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in this Article. ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by [...]. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.	4. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in this Article. ESMA shall submit those draft implementing technical standards to the Commission by ***[...]**. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.	4. ESMA shall develop draft implementing technical standards to determine the procedures and forms for exchange of information as referred to in this Article. ESMA shall submit the draft implementing technical standards referred to in the first subparagraph to the Commission by 24 months. Power is conferred to the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation 1095/2010.

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

40			**Chapter 5a** **Article 30a** **Publication of decisions** **1. A decision imposing an administrative sanction or measure for breach of this Regulation shall be published by competent authorities on their official website immediately after the person sanctioned is informed of that decision. The publication shall include at least information on the type and nature of the breach and the identity of the persons responsible. This obligation does not apply to decisions imposing measures that are of an investigatory nature.** **However, where the publication of the identity of the legal persons or personal data of natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an on-going investigation, competent authorities shall either :** **- delay the publication of the decision to impose a sanction or a measure until the moment where the reasons for non publication cease to exist;** **- publish the decision to impose a sanction or a measure on an anonymous basis in a manner which is in conformity with national law, if such anonymous**		**Chapter 5a** **Article 30a** **Publication of decisions** **1. A decision imposing an administrative sanction or measure for breach of this Regulation shall be published by competent authorities on their official website immediately after the person sanctioned is informed of that decision. The publication shall include at least information on the type and nature of the breach and the identity of the persons responsible. This obligation does not apply to decisions imposing measures that are of an investigatory nature.** **However, where the publication of the identity of the legal persons or personal data of natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an on-going investigation, competent authorities shall either :** **(a) delay the publication of the decision to impose a sanction or a measure until the moment where the reasons for non publication cease to exist;** **(b) publish the decision to impose a sanction or a measure**

40	Art. 31	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.	**As referred to in [Article 4(3), Article 12(2), Article 14(8) and (9)] 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.~~	***deleted***	Not yet discussed
41	Art. 32, para 1	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
41	Art. 32, para 2	2. The delegation of power shall be conferred for an indeterminate period of time from the date referred to in Article 36(1).	2. The delegation of power shall be conferred for an indeterminate period of time from the date referred to in Article 36(1).	2. ¦The power ***to adopt delegated acts referred to in Article 5(2), Article 10(4), Article 12(2), Article 14(6) and Article 29(3)*** shall be conferred ***on the Commission*** for an indeterminate period of time from the date referred to in Article 36(1).	2. The delegation of power shall be conferred for an indeterminate period of time from the date referred to in Article 36(1).

41	Art. 32, para 3	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.	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.	3. The delegation of power ***referred to in Article 5(2), Article 10(4), Article 12(2), Article 14(6) and Article 29(3)*** may be revoked at any time by the European Parliament or by the Council. A decision *to revoke* 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.	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.
41	Art. 32, para 4	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

41	Art. 32, para 5	5. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the 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.	5. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the 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.	5. A delegated act ***adopted pursuant to Article 5(2), Article 10(4), Article 12(2), Article 14(6) and Article 29(3)*** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of ***three 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 ***three months*** at the initiative of the European Parliament or the Council.	5. A delegated act shall enter into force only if no objection has been expressed either by the European Parliament or the 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.
41	Art. 32 a (new)			***Article 32a*** ***Deadline for the adoption of delegated acts*** ***The Commission shall adopt delegated acts under Article 5(2), Article 10(4), Article 12(2), Article 14(6) and Article 29(3) by ...*** [*].	Delete

[*] ***OJ: please insert date: 18 months after the date of entry into force of this Regulation.***

41	Art. 33, para 1	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 .	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 .	***deleted***	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.
41	Art. 33, para 2	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.	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.	***delete***	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.
41	Art. 34	Directive 2003/6/EC shall be repealed with effect from [24 months after entry into force of this Regulation]. References to Directive 2003/6/EC shall be construed as references to this Regulation.	Directive 2003/6/EC **and its implementing measures** shall be repealed with effect from [*24 months after entry into force of this Regulation*]. References to Directive 2003/6/EC shall be construed as references to this Regulation.	Directive 2003/6/EC shall be repealed with effect from ***[...]***[**]. References to Directive 2003/6/EC shall be construed as references to this Regulation.	Directive 2003/6/EC **and its implementing measures** shall be repealed with effect from *24 months after entry into force of this Regulation*. References to Directive 2003/6/EC shall be construed as references to this Regulation.

[**] ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

41	Art. 34a /			***Article 34a*** ***Review and report*** ***By 30 June 2014, the Commission shall, after consulting the competent authorities and ESMA, report to the European Parliament and the Council on the appropriateness of the proportionate regime for issuers of financial instruments admitted to trading on a SME growth market, in particular as provided for in Article 12(4).***	Delete

42	Art. 35a (new)		**Report** **By [4 years after entry into force of this Regulation], the Commission shall report to the European Parliament and the Council on the application of this Regulation and, if necessary, on the need to review it, including with regard to the appropriateness of introducing common rules on the need for all Member States to provide for administrative sanctions for insider dealing and market manipulation.** **The Commission shall submit its report accompanied, if appropriate, by a legislative proposal.**		**Report** **By 3 years after application into force of this Regulation, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, if necessary, on the need to review it, including with regard to:** **a. the appropriateness of introducing common rules on the need for all Member States to provide for administrative sanctions for insider dealing and market manipulation;** **b. whether the definition of inside information is sufficient to cover all information relevant for competent authorities to effectively combat market abuse;** **c. the appropriateness of the conditions under which the prohibition on trading is mandated in accordance with Article 14(4a) with a view to identifying whether there are any further circumstances under which the prohibition should apply; ~~and~~** **d. assessing the possibility of establishing an EU framework for cross market order book surveillance in relation to market abuse, including recommendations for such a framework; and** **e. the scope of the application of the benchmark provisions.**

42	Art. 34 b (new)			***Article 34b*** ***ESMA advisory committee on high-frequency trading*** ***By 30 June 2014, ESMA shall set up an advisory committee of national experts to determine developments of high-frequency trading that could potentially constitute market manipulation with a view to:*** ***(a) increasing ESMA's knowledge about high-frequency trading; and*** ***(b) providing a list of abusive practices with regard to high-frequency trading, including spoofing, quote stuffing and layering, for the purposes of Article 5(2a).***	DELETE

42	Art. 34 c (new)			***Article 34c*** ***ESMA advisory committee on technology in financial markets*** ***By 30 June 2014, ESMA shall establish an advisory committee of national experts to establish which technological developments in the markets could potentially constitute market abuse or market manipulation with a view to:*** ***(a) increase ESMA's knowledge about new technology related trading strategies and their potential for abuse,*** ***(b) add to the list of abusive practices that have already been identified that relate specifically to high frequency trading strategies and*** ***(c) assess the effectiveness of different trading venues approaches to dealing with the risks associated with any new trading practices.*** ***As a result of the analysis, ESMA should produce additional guidelines for best practice across the EU financial markets***	DELETE

42	Art. 35	Transitional provisions Market practices existing before the entry into force of this Regulation and accepted by competent authorities in accordance with Commission Regulation (EC) No 2273/2003 for the purpose of applying point 2(a) of Article 1 of Directive 2003/6/EC, may remain applicable until [12 months after entry into application of this Regulation] provided that they are notified to ESMA by the competent authorities concerned before the date of application of this Regulation.	***deleted***	***deleted***	Deleted
42	Art. 35 a (new)			***Article 35a*** ***Staff and resources of ESMA*** ***By ...*, ESMA shall assess its staffing and resources needs arising from the assumption of its powers and duties under this Regulation and submit a report to the European Parliament, the Council and the Commission.***	**Deleted**

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

42	Art. 36, para 1	1. This Regulation shall enter into force [on the twentieth day following that] of its publication in the Official Journal of the European Union.	1. This Regulation shall enter into force [on the twentieth day following that] of its publication in the Official Journal of the European Union.	1. This Regulation shall enter into force [on the twentieth day following that] of its publication in the Official Journal of the European Union.	1. This Regulation shall enter into force [on the twentieth day following that] of its publication in the Official Journal of the European Union.
42	Art. 36, para 2	2. It shall apply from [24 months after entry into force of this Regulation] except for Articles 3(2), , 8(5), 11(3), 12(9), 13(4), 13(6), 14(5), 14(6), 15(3), 18(9), 19(9), 28(3) and 29(3) which shall apply immediately following the entry into force of this Regulation.	2. It shall apply from [24 months after entry into force of this Regulation] except for **[**Articles 3(2), , 8(5), 11(3), 12(9), 13(4), 13(6), 14(5), 14(6), 15(3), 18(9), 19(9), ~~28(3)~~ and 29(3)**]** which shall apply immediately following the entry into force of this Regulation.	2. It shall apply ***/.../**** except for Article 3(2), Article 8(5), Article 11(3), Article 12(9), Article 13(4) and(6), 14(5) and(6), Article 15(3), Article 18(9), Article 19(9), Article 28(3) and Article 29(3) which shall apply immediately following the entry into force of this Regulation.	2. It shall apply from 24 months after entry into force of this Regulation except for **[**Articles 3(2), 8(5), 11(3), 12(9), 13(4), 13(6), 14(5), 14(6), 15(3), 18(9), 19(9), and 29(3)**]** which shall apply immediately following the entry into force of this Regulation.
42	Art. 36, para 3 (new)		**3. By 24 month after the entry into force of this Regulation Member States shall implement into national law; [Article 16, Article 17, Article 24,, Article 25,Article 26, Article 29 and Article 30a].**		**3. By 24 month after the entry into force of this Regulation Member States shall implement into national law; Article 16, Article 17, Article 26, Article 29 and Article 30a.**

* ***OJ please insert date: 12 months after the date of entry into force of this Regulation.***

A. Indicators of manipulative behaviour related to false or misleading signals and to price securing

For the purposes of applying point (a) of paragraph 1 of Article 8 of this Regulation, and without prejudice to the forms of behaviour set out in paragraph 3 thereof, the following non-exhaustive indicators, which should not necessarily be deemed in themselves to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

(a) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant financial instrument, related spot commodity contract, or auctioned product based on emission allowances, in particular when these activities lead to a significant change in their prices;

(b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances, lead to significant changes in the price of that financial instrument, related spot commodity contract, or auctioned product based on emission allowances;

(c) whether transactions undertaken lead to no change in beneficial ownership of a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances;

(d) the extent to which orders to trade given or transactions undertaken or orders cancelled include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances, and might be associated with significant changes in the price of a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances;

(e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;

(f) the extent to which orders to trade given change the representation of the best bid or offer prices in a financial instrument, a related spot commodity contract, or a auctioned product based on emission allowances, or more generally the representation of the order book available to market participants, and are removed before they are executed;

(g) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.

B. Indicators of manipulative behaviours related to the employment of fictitious devices or any other form of deception or contrivance

For the purposes of applying point (b) of paragraph 1 of Article 8 of this Regulation, and without prejudice to the forms of behaviour set out in the second paragraph of point 3 thereof, the following non-exhaustive indicators, which should not necessarily be deemed in themselves to constitute market manipulation, shall be taken into account when transactions or orders to trade are examined by market participants and competent authorities:

(a) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them;

(b) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate investment recommendations which are erroneous or biased or demonstrably influenced by material interest.