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COMMISSION DELEGATED REGULATION (EU) .../...

of 17.12.2015

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

1.1 General background and objectives

On 20 October 2011, the Commission adopted its proposal for a Regulation on insider dealing and market manipulation (market abuse)¹. The Regulation (hereinafter: “MAR”) was adopted by the European Parliament and the Council on 16 April 2014, published in the Official Journal on 12 June 2014² and will enter into application on 3 July 2016³. MAR establishes a common regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation (market abuse), as well as measures to prevent market abuse. MAR framework aims at ensuring the integrity of financial markets in the Union and enhancing investor protection and market confidence. To this end, MAR updates and strengthens the currently applicable framework of Directive 2003/6/EC on insider dealing and market manipulation (market abuse)⁴ by extending its scope to new markets and trading strategies and by introducing new requirements aimed at preventing market abuse. In particular, the new MAR framework is aimed at ensuring that regulation keeps pace with market developments, as well as at strengthening the fight against market abuse across commodity and related derivative markets, reinforcing the investigative and administrative sanctioning powers of regulators and harmonising certain key elements, such as reporting and notification requirements.

Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive)⁵ complements MAR by requiring all Member States to provide for harmonised criminal offences of insider dealing and market manipulation, and, in particular, to impose maximum criminal penalties for the most serious market abuse offences.

1.2 Legal background

In order to specify the requirements set out in MAR, the Commission is empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (“TFEU”) and to specify therein certain elements where the co-legislators have deemed it necessary to grant respective empowerments to the European Commission, including those that would facilitate compliance by market participants with MAR and its enforcement by competent authorities, in particular on the following key matters:

¹ Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse). COM(2011) 651 final.

² Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

³ Notably Article 4(4) and (5), Article 5(6), Article 6(5) and (6), Article 7(5), Article 11(9), (10) and (11), Article 12(5), Article 13(7) and (11), Article 16(5), the third subparagraph of Article 17(2), Article 17(3), (10) and (11), Article 18(9), Article 19(13), (14) and (15), Article 20(3), Article 24(3), Article 25(9), the second, third and fourth subparagraphs of Article 26(2), Article 32(5) and Article 33(5), apply from 2 July 2014.

⁴ Directive (EC) No 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 96, 12.4.2003, p. 16), as amended.

⁵ OJ L 173, 12.6.2014, p. 179.

- Article 6(5) of MAR: extending the exclusion from the scope of MAR to third-country central banks and certain public bodies concerning transactions, orders or behaviour in pursuit of monetary, exchange rate or public debt management policy;
- Article 12(5) of MAR: specifying the indicators of market manipulation laid down in Annex I of MAR, in order to clarify their elements and to take into account technological developments on financial markets;
- Article 17(2) of MAR: establishing a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of application of the exemption from the obligation to disclose inside information;
- Article 17(3) of MAR: specifying the competent authority for the notifications of delays of public disclosure of inside information;
- Article 19(13) of MAR: specifying the circumstances under which trading during a closed period may be permitted by the issuer, including the circumstances that would be considered exceptional and the types of transactions that would justify the permission for trading; and
- Article 19(14) of MAR: specifying types of transactions conducted by the persons discharging managerial responsibilities and persons closely associated with them that would trigger a requirement to notify such transactions.

In addition to these key issues, Article 6(3) of MAR contains an exemption from its scope for the activity of a Member State, the Commission or any other officially designated body, or of any person acting on their behalf, which concerns emission allowances and which is undertaken in pursuit of the Union's climate policy in accordance with Directive 2003/87/EC⁶. According to Article 6(6) of MAR, the Commission is empowered to adopt delegated acts in order to extend the exemption set out in Article 6(3) of MAR to certain designated public bodies of third countries that have entered into an agreement with the Union pursuant to Directive 2003/87/EC. The exemption for certain designated public bodies of third countries means that, were the European Union to enter into a linking agreement with third countries, the delegated act could specify the public bodies of such third countries to whom the exemption from the application of MAR would also apply.

In this connection, it should be noted that Directive 2003/87/EC refers to agreements with third countries which have ratified the UNFCCC Kyoto Protocol to provide for the mutual recognition of allowances between the Union scheme and other greenhouse gas emissions trading schemes, as well as to agreements providing for the recognition of allowances between the Union scheme and compatible mandatory greenhouse gas emissions trading systems with absolute emissions caps established in any other country or in sub-federal or regional entities. At the time of adoption of the delegated acts under MAR, no agreement exists linking the European Union scheme and the greenhouse gas emission trading scheme of any third country. Furthermore, pending negotiations with third countries on linking their emission trading system with the Union scheme have so far not resulted a signing of an agreement. Since the empowerment in Article 6(6) of MAR enables the extension of the exemption to the designated public bodies of a third country that already has a linking agreement, in the absence of such linking agreements no delegated acts in this area can be adopted at this stage.

⁶ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

According to Regulation (EU) No 1095/2010⁷, the European Securities and Markets Authority (“ESMA”) serves as an independent advisory body to the Commission, and may upon a request from the Commission or on its own initiative provide opinions to the Commission on all issues related to its area of competence.

To fulfil its mandate stemming from MAR empowerments to further specify certain elements of MAR in delegated acts, the Commission has mandated ESMA to provide it with a technical advice on possible delegated acts concerning MAR. On 8 October 2013, the Commission services sent a formal request for technical advice to ESMA on possible delegated acts concerning the MAR.⁸ On 14 November 2013, ESMA published a Discussion Paper⁹ and received over 50 responses.¹⁰ Based on the feedback by stakeholders, on 11 July 2014 ESMA published a Consultation Paper¹¹ which contained targeted questions to stakeholders. An open hearing was held by ESMA in its premises on 8 October 2014. The consultation closed on 15 October 2014. The responses were submitted by European and national associations, as well as individual asset management firms, banks, investment firms, issuers, regulated markets and trading systems, as well as academics and citizens. Moreover, ESMA also consulted the Securities and Markets Stakeholder Group set up in accordance with Article 37 of Regulation (EU) No 1095/2010.

Based on the public consultations and its work, ESMA provided to the Commission on 2 February 2015 a Final Report pertaining to ESMA's technical advice on possible delegated acts concerning the MAR.¹² In its technical advice, ESMA has also submitted an explanation of how the outcome of the consultation has been taken into account in the development of the final technical advice submitted to the Commission.

The main elements of the delegated acts have been discussed by the Expert Group of the European Securities Committee at the meetings of 11 February 2015, 23 April 2015 and 19 May 2015. Specific discussions with the relevant Members of the European Parliament have also taken place. When carrying out appropriate consultations during its preparatory work, including at expert level and when preparing and drawing-up delegated acts, the Commission services have also ensured a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

3. IMPACT ASSESSMENT

The extensive process of consultation and field testing described above was complemented by an Impact Assessment report. The Impact Assessment Board delivered a positive opinion on 22 May 2015.

⁷ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) (OJ L 331, 15.12.2010, p. 84).

⁸ Request to ESMA for technical advice on possible delegated acts concerning the Regulation on insider dealing and market manipulation (market abuse). Available: http://ec.europa.eu/finance/securities/docs/abuse/131023_esma-mandate_en.pdf.

⁹ Available: http://www.esma.europa.eu/system/files/2013-1649_discussion_paper_on_market_abuse_regulation_0.pdf.

¹⁰ Available: <http://www.esma.europa.eu/content/ESMA%E2%80%99s-policy-orientations-possible-implementing-measures-under-Market-Abuse-Regulation>.

¹¹ ESMA/2014/808. Available: http://www.esma.europa.eu/system/files/esma_2014-808_consultation_paper_on_mar_draft_technical_advice_0.pdf.

¹² Final Report ESMA 2015/224. Available at: <http://www.esma.europa.eu/system/files/2015-224.pdf>.

The Impact Assessment report discussed in detail various elements of the Delegated Regulation and concentrated on the assessment of the policy options best suited to implement the empowerment set out in Regulation (EU) No 596/2014. The objective of the Delegated Regulation is to ensure investor protection against market abuse (insider dealing, unlawful disclosure of inside information and market manipulation) and to improve transparency, integration and integrity of financial markets in the Union.

3.1 Analysis of costs and benefits

The impact assessment of the delegated acts looked at policy options on separate issues relating to Regulation (EU) No 596/2014, and given that for each issue analysed in the impact assessment only one policy option was chosen, there is relatively little interaction, overlap or interference across the preferred options.

The impact assessment analysed a variety of impacts, including the costs and benefits (cost savings), social impacts, impacts on the SME growth market issuers, impact on third countries and impact on EU competitiveness, as well as broader societal impacts, such as environmental impacts and impacts on fundamental rights. The analysed policy options are expected, on balance, to contribute to ensuring market integrity, transparency and better price formation in financial markets. They are also going to limit compliance costs and help reduce administrative burden. Finally the package of preferred options is expected to contribute to the effective enforcement of Regulation (EU) No 596/2014.

3.2 Subsidiarity and proportionality

The European Commission's and the EU's right to act is analysed in the impact assessment accompanying the proposal for a Market Abuse Regulation. The legal basis for action is provided and delineated by the power to adopt delegated acts and implementing measures conferred upon the Commission in Regulation (EU) No 596/2014, which requires delegated acts to be adopted in specified areas to ensure that Regulation (EU) No 596/2014 is implemented in a consistent way across the European Union.

According to the principle of subsidiarity (Article 5.3 of the TFEU), action on EU level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the European Union. The analysis of concrete options for the provision of the implementing measures considers the precise nature and extent to which harmonisation is necessary, always with the principle of subsidiarity in view.

However, action solely at Member State level would not be able to effectively or efficiently address these issues given the cross-border nature of financial markets and would lead to further fragmentation of the single market with differing rules in place in different Member States with regard to the transparency and integrity of financial markets, which would clearly go against the letter and spirit of Regulation (EU) No 596/2014. In other words, if rules are not further specified, there remains a risk that the underlying problems described in the impact assessment accompanying the Market Abuse Regulation will not be addressed properly and the objectives of policy action of Regulation (EU) No 596/2014 will not be achieved. Proportionality is assessed in this impact assessment at the analysis of options, examining effectiveness and costs at which the different options achieve the desired objectives, in order to ensure that a given option does not go beyond what is necessary to achieve the policy goals.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

4.1 Chapter II: Exemption for certain public bodies and central banks of third countries

Article 6(1) of Regulation (EU) No 596/2014 contains an exemption from its scope for transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy by a Member State, the members of the ESCB, a ministry, agency or special purpose vehicle of one or several Member States, or by a person acting on its behalf, or, in the case of a Member State that is a federal state, a member making up the federation.

According to Article 6(5), the Commission is empowered to adopt delegated acts in order to extend this exemption to certain public bodies and central banks of third countries. In line with Article 6(5) subparagraph 2, the Commission prepared and presented to the European Parliament and to the Council a report assessing the international treatment of certain public bodies charged with, or intervening in, public debt management and of central banks in third countries. The report included a comparative analysis of the treatment of certain bodies and central banks within the legal framework of third countries, and the risk management standards applicable to the transactions entered into by those public bodies and central banks in those jurisdictions. The report concluded that it was appropriate to extend the exemption set out in Article 6(1) also to certain public bodies and central banks of those third countries.

This part of the Delegated Regulation fulfils the empowerment stemming from Regulation (EU) No 596/2014 specifying such public bodies and central banks of third countries benefitting from the exemption under Article 6(1) of Regulation (EU) No 596/2014.

4.2 Chapter III: Indicators of market manipulation

According to Article 12(5) of Regulation (EU) No 596/2014, the Commission shall be empowered to adopt delegated acts specifying the indicators of market manipulation laid down in Annex I, in order to clarify their elements and to take into account technological developments on financial markets.

Regulation (EU) No 596/2014 foresees the activities that will constitute market manipulation and behaviours that should be considered as market manipulation and draws up a non-exhaustive list of indicators related to false or misleading signals and to price securing and indicators related to employments of fictitious devices or any other form of deception or contrivance (Article 12(1) to Article 12(3) and Annex I).

This part of the Delegated Regulation fulfils the empowerment stemming from Regulation (EU) No 596/2014 specifying the indicators of market manipulation laid down in Annex I of Regulation (EU) No 596/2014.

4.3 Chapter IV: Minimum thresholds for the exemption of certain participants in the emission allowance market from the requirement to publicly disclose inside information

Article 17(2) of Regulation (EU) No 596/2014 requires emission allowance market participants to publicly disclose inside information concerning emission allowances in respect of their business, including on aviation activities or installations as set out in the EU Emissions Trading System (ETS) Directive. Such disclosure should include information on the capacity and utilisation of their installations, including on the unavailability of such installations. However, Regulation (EU) No 596/2014 sets out that participants in the

emission allowances market are not deemed to be emission allowance market participants provided that the emissions from their installations or aviation activities are below the minimum emissions thresholds of carbon dioxide equivalent and, if combustion activities are carried out, of rated thermal input. Participants in the emission allowance markets not falling under the definition of emission allowance market participants are not subject to the abovementioned inside information disclosure requirements because they are deemed not to have a significant effect on the price of emission allowances or auctioned products. This part of the Delegated Regulation fulfils the empowerment stemming from Article 17(2) subparagraph 3 of Regulation (EU) No 596/2014 and establishes minimum thresholds for the disclosure of inside information by emission allowance market participants.

The delegated act sets, based on a study carried out by external contractors (Europe Economics and Norton Rose Fulbright), thresholds that would cover the largest emitters but would, at the same time, not capture smaller participants whose emissions are not expected to have a significant effect on the price of emission allowances or their derivatives. The study was published in July 2014 and recommended the threshold of 6 million tonnes of carbon dioxide. This emissions threshold would be equivalent to a threshold of 2,430 MW of rated thermal input. According to the result of the study, these thresholds would capture 70 companies (around 857 companies would be exempt) covering thus around 70% of total 2011 emissions.

4.4 Chapter V: Determination of the competent authority for the notifications of delays in public disclosure of inside information

Article 17(3) of Regulation (EU) No 596/2014 empowers the Commission to adopt delegated acts specifying the competent authority to be notified in case of the delay of where the public disclosure of inside information has been delayed or is going to be delayed. Article 17(1) requires issuers of financial instruments to inform the public as soon as possible of specific non-public price sensitive information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments of the said issuer when this information directly concerns the said issuer. A similar obligation applies also to emission allowance market participants according to Article 17(2). By exception to the immediate public disclosure requirement, according to Article 17(4) and (5), an issuer or an emission allowance market participant, may, on its own responsibility, delay the public disclosure of inside information. In such case the issuer or the emission allowance market participant will have to notify the competent authority that will be specified in a delegated act according to Article 17(3).

In particular, according to Article 17(4), an issuer or an emission allowance market participant, may, on its own responsibility, delay the public disclosure of inside information, for example if immediate public disclosure of the inside information would likely prejudice the legitimate interests of the issuer (negotiations in course that may be affected if made public or cases where an approval of another body of the issuer is required for a decision or a contract to become effective etc. and thus should not be made public before its finalisation). In such cases, where an issuer or an emission allowance market participant has delayed the disclosure of inside information, it is required, according to Article 17(4), to inform ex post the competent authority that disclosure of inside information was delayed. Furthermore, according to Article 17(5), in order to preserve the stability of the financial system, where the disclosure of inside information entails a risk of undermining the financial stability of the issuer and of the financial system, the issuer is required, to notify ex ante the competent authority of its intention to delay and receive the consent of this competent authority.

The delegated act intends to ensure that in all instances the single competent authority receiving the notification would be the one with the most interests in market supervision and to avoid the exercise of discretion by the issuer. Concerning the emission allowance market participant, the choice of the competent authority of the Member State where the emission allowance market participant is registered is a solution that always identifies with certainty a single competent authority, and this limits the administrative burden on emission allowance market participants by ensuring that they do not have to make multiple and parallel notifications to several competent authorities.

4.5 Chapter VI: Trading during closed period

Article 19(11) of Regulation (EU) No 596/2014 prohibits managers to conduct transactions during a closed period, which is a 30-day period before the disclosure of an annual or interim report according to the trading venue rules or national law. The prohibition to conduct transactions during a closed period is not, however, absolute and to that end Article 19(12) provides for an exemption from this prohibition. In particular, the issuer can allow a manager to trade during a closed period on a case-by-case basis due to the existence of exceptional circumstances, such as severe financial difficulty of the manager, which require the immediate sale of shares. Trading during closed period can also be exceptionally allowed due to the characteristics of the trading involved for transactions made under or in relation, for instance, to an employee share or saving scheme, or if transactions do not change the beneficial interest in the relevant security. Article 19(13) of Regulation (EU) No 596/2014 empowers the Commission to adopt delegated acts specifying the circumstances under which trading during a closed period may be permitted by the issuer.

This part of the Delegated Regulation fulfils the empowerment and specifies the circumstances under which trading during a closed period may be permitted by the issuer.

4.6 Chapter VII: Types of notifiable managers' transactions

Given the emphasis on the transparency of financial markets, Article 19 of Regulation (EU) No 596/2014 requires that managers and closely associated persons notify their transactions in shares or debt instruments or other linked financial instruments to the issuer and to the competent authority. Similar notification requirement exists for emission allowance market participants (EAMPs) with respect to transactions relating to emission allowances, auction products or derivatives relating thereto. The issuer or the EAMP should ensure that the notified information is published promptly and no later than three business days after the transaction. Article 19(7) of Regulation (EU) No 596/2014 sets out a non-exhaustive list of three types of notifiable transactions: pledging or lending financial instruments, transactions undertaken by a person professionally arranging or executing transactions, including by discretionary managers, and certain life insurance related transactions. This part of the Delegated Regulation fulfils the empowerment in Article 19(14) of Regulation (EU) No 596/2014 and specifies types of transactions that would trigger the notification requirement.

COMMISSION DELEGATED REGULATION (EU) .../...

of 17.12.2015

supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC¹, and in particular Article 6(5), Article 12(5), Article 17(2) and (3), and Article 19(13) and (14) thereof,

Whereas:

- (1) Regulation (EU) No 596/2014 confers on the Commission the power to adopt delegated acts in a number of closely related matters pertaining the exemption of certain third countries public bodies and central banks from the scope of application of that Regulation, the indicators of market manipulation, the thresholds for the disclosure by emission allowance market participants of inside information, the specification of the competent authority for the notification of delays in the public disclosure of inside information, the circumstances under which trading during closed period can be permitted by the issuer and the types of notifiable managers' transactions.
- (2) Member States, members of the European System of Central Banks, ministries and other agencies and special purpose vehicles of one or several Member States, and the Union and certain other public bodies or persons acting on their behalf should not be restricted in carrying out monetary, exchange-rate or public debt management policy insofar as those operations are undertaken in the public interest and solely in pursuit of those policies.
- (3) An exemption from the scope of Regulation (EU) No 596/2014 for operations undertaken in the public interest may, in accordance with Article 6(5) of Regulation (EU) No 596/2014, be extended to certain public bodies charged with, or intervening in, public debt management and to central banks of third countries when they fulfil the relevant requirements. For that purpose, the Commission prepared and presented to the European Parliament and to the Council a report assessing the international treatment of certain public bodies charged with, or intervening in, public debt management and

¹ OJ L 173, 12.6.2014, p. 1.

of central banks in third countries. The report included a comparative analysis of the treatment of certain bodies and central banks within the legal framework of third countries, and the risk management standards applicable to the transactions entered into by those public bodies and central banks in those jurisdictions. The report concluded in the comparative analysis the appropriateness of the extension of the exemption for transactions, orders or behaviour, in pursuit of monetary, exchange rate or public debt management policy, also to certain public bodies and central banks of those third countries.

- (4) A list of exempted public bodies and central banks of third countries should be set out and reviewed whenever necessary.
- (5) It is essential to specify the indicators of manipulative behaviour relating to false or misleading signals and to price securing laid down in Annex I to Regulation (EU) No 596/2014, in order to clarify their elements and to take into account technical developments on financial markets. Therefore, a non-exhaustive list of such indicators including examples of practices should be provided.
- (6) For some practices, additional indicators should be identified as they can respectively clarify and illustrate such practices. Those indicators should neither be deemed exhaustive nor determinative and their relations to one or more examples of practices should not be deemed limitative. The examples of practices should not be considered to constitute market manipulation *per se*, but should be taken into account where transactions or orders to trade are examined by market participants and competent authorities.
- (7) A proportionate approach should be followed, taking into consideration the nature and specific characteristics of the financial instruments and markets concerned. The examples may be linked to and illustrate one or more indicators of market manipulation as provided in Annex I to Regulation (EU) No 596/2014. As a result, a specific practice may involve more than one indicator of market manipulation laid down in Annex I to Regulation (EU) No 596/2014 depending on how it is used, and there can be some overlap. Similarly, although not specifically referenced in this Regulation, certain other practices may illustrate each of the indicators set out in this Regulation. Therefore, market participants and competent authorities should take into account other unspecified circumstances that could be considered to be potential market manipulation in accordance with the definition set out in Regulation (EU) No 596/2014.
- (8) Certain examples of practices set out in this Regulation describe cases that are included in the notion of market manipulation or that, in some respects, refer to manipulative conduct. On the other hand, certain examples of practices may be considered legitimate if, for instance, 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 in conformity with an accepted practice on the market concerned.
- (9) For the purposes of listing examples of practices referring to indicators of market manipulation as provided in Annex I to Regulation (EU) No 596/2014, cross-referencing in Annex II to this Regulation includes both the relevant example of practice and the additional indicator associated with that example.
- (10) For the purpose of indicators of manipulative behaviour set out in this Regulation, any reference to “order to trade” encompasses all types of orders, including initial orders,

modifications, updates and cancellations, irrespective of whether or not they have been executed, of the means used to access the trading venue or to carry out a transaction or to enter an order to trade and of whether or not the order has been entered into the trading venue's order-book.

- (11) Emission allowance market participants are a specific sub-set of the participants in the emission allowance market. Among the participants in the emission allowance market, those above certain minimum thresholds should qualify as emissions allowance market participants, and the requirement of public disclosure of inside information should apply only to them. Therefore, those minimum thresholds should be clearly established.
- (12) Following the definition of inside information under Article 7(4) of Regulation (EU) No 596/2014, an emissions allowance market participant has to assess on a case by case basis whether the information under consideration meets the criteria of inside information. This implies that an emissions allowance market participant is not expected to publicly disclose all information about its physical operations. The emissions allowance market participant should properly assess the information at stake, taking into account the market circumstances and other external factors that may have a price effect on an emission allowance at the particular point in time when the information arises.
- (13) The exemption set out in Article 17(2) of Regulation (EU) No 596/2014 excludes from the definition of emissions allowance market participant those participants in the emission allowance market where the installations or aviation activities they own, control or are responsible for, have had in the preceding year 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. Hence, the minimum thresholds should relate to all business, including aviation activities or installations, which the participant in the emission allowance market concerned, or its parent undertaking or related undertaking owns or controls or for the operational matters of which the participant concerned, or its parent undertaking or related undertaking is responsible, in whole or in part.
- (14) Furthermore, the annual carbon dioxide equivalent threshold and the rated thermal input threshold should be taken into consideration cumulatively in order for the requirement not to apply. Therefore, exceeding one of the two thresholds should be sufficient for the disclosure obligations under Article 17(2) to apply.
- (15) To enhance the integrity of the market while avoiding excessive disclosure, it is appropriate to set the minimum thresholds at a level which exempts companies which are unlikely to hold inside information.
- (16) The minimum thresholds should be reviewed as appropriate to assess their functioning with regards to, inter alia, the expected increase in transparency of the emission allowance market, including number of events reported and the administrative burden involved, the development and maturity of the emission allowance market, the number of participants in the emission allowance market and the impact on availability of firm-specific information and on price formation or investment decisions in the emission allowance market.
- (17) Taking into account the expanded scope of Regulation (EU) No 596/2014 in terms of financial instruments covered, the fact that the ex post notification to the competent authority requirement applies 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 traded on a multilateral trading facility (MTF) or on other types of organised trading facilities (OTFs), issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF in a Member State and the fact that such issuers may have their financial instruments admitted to trading or traded on trading venues in different Member States, it should be ensured that in all instances the single competent authority receiving the notification would be the one with the most interests in market supervision and to avoid the exercise of discretion by the issuer. This approach relies on using the notion of equity securities.

- (18) The duty to notify delays in disclosure of inside information to the competent authority set out in Article 17(4) of Regulation (EU) No 596/2014 also applies to emission allowance market participants. In terms of scope, Regulation (EU) No 596/2014 applies to emission allowance market participants active either on the primary market of emission allowances or auctioned product based thereon (bidding in the auctions) and on secondary markets of emission allowances of derivatives thereof.
- (19) To ensure that a single competent authority is identified with certainty for emission allowance market participants, the competent authority for the purpose of the notifications under Article 17(4) of Regulation (EU) No 596/2014 should be the competent authority of the Member State where the emission allowance market participant is registered, as under Article 19(2) of that Regulation, rather than the competent authority of each of the trading venues where the emission allowances are traded
- (20) The choice of the competent authority of the Member State where the emission allowance market participant is registered is a solution that always identifies with certainty a single competent authority, and this limits the administrative burden on emission allowance market participants by ensuring that they do not have to make multiple and parallel notifications to several competent authorities.
- (21) An issuer may allow a person discharging managerial responsibilities to proceed with immediate sales of its shares during a closed period under exceptional circumstances. The issuer's permission should be given on a case-by-case basis, and the first criterion should be that a person discharging managerial responsibilities has requested, and respectively obtained, prior to any trading, the issuer's permission to trade. To allow the issuer to assess the individual circumstances of each single case, that request should be reasoned and include an explanation of the transaction envisaged and description of the exceptional character of the circumstances.
- (22) The decision to grant the permission to trade should only be envisaged if the reason for requesting to enter a transaction is exceptional. That exemption should be construed narrowly without unduly widening the scope of the exemption of prohibition to trade during a closed period. The circumstances in which an exception may be granted should be not only extremely urgent but also unforeseen, compelling and not being generated by the person discharging managerial responsibilities.
- (23) Where the persons discharging managerial responsibilities present situations which are unforeseen, compelling and beyond their control, they should only be allowed to sell shares to obtain the necessary financial resources. Those situations could stem from a financial commitment that the person discharging managerial responsibilities has to fulfil, such as a legally enforceable demand, including a court order, and provided that the person discharging managerial responsibilities cannot reasonably meet this

commitment without selling the concerned shares. It could also stem from a situation entered into by the person discharging managerial responsibilities before the closed period has started (for example, a tax liability) and requiring the payment of a sum to a third party that could not be fully or partly funded by the person discharging managerial responsibilities in ways other than selling issuer's shares.

- (24) With regard to transactions made under or related to employee share or saving scheme, qualification or entitlement of shares it must be established whether they can be permitted by the issuer. Therefore, certain types of transactions should be clearly identified and determined in detail. The characteristics of such transactions relate to the nature of the transaction (e.g. a purchase or sale, exercise of option or other entitlements), the timing of the transaction or of the entering of the person discharging managerial responsibilities into a particular scheme, and whether the transaction and its characteristics (e.g. execution date, amount) was agreed, planned and organised a reasonable period before the closed period starts.
- (25) In addition, transactions where the beneficial interest does not change, could be undertaken at the initiative of the person discharging managerial responsibilities, provided that that person has requested and obtained the permission from the issuer prior to the envisaged transaction. The concerned transaction should only relate to a transfer of the concerned instruments between accounts of the person discharging managerial responsibilities (for instance, between schemes), without entailing a change in the price of the instruments transferred. This approach does not include transfer of financial instruments or other transactions such as sales or purchases between the person discharging managerial responsibilities and another person, notably a legal entity fully owned by the person discharging managerial responsibilities.
- (26) Regulation (EU) No 596/2014 imposes requirements on the persons discharging managerial responsibilities, as well as persons closely associated with them to notify to the issuer and the competent authority 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 thereto. Persons discharging managerial responsibilities, as well as persons closely associated with them should also notify emission allowance market participants of every transaction conducted on their own account relating to emission allowances, to auction products based thereon or to derivatives relating thereto.
- (27) The notification of transactions conducted by persons discharging managerial responsibilities within an issuer or emission allowance market participant on their own account, or by persons 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 by such persons to notify transactions is without prejudice to their duty to refrain from committing market abuse as defined in Regulation (EU) No 596/2014.
- (28) The obligation to notify transactions conducted by persons discharging managerial responsibilities or a person closely associated with them applies to a broad spectrum of operations, and includes every transaction conducted on their own account. Therefore, it is appropriate to identify a broad non-exhaustive list of particular types of transactions that should be notified. This should not only facilitate the achievement of full transparency of transactions by persons discharging managerial responsibilities and persons closely associated with them but also mitigate the risk of circumvention of

the notification requirement by means of identifying particular types of notifiable transactions.

- (29) Since the scope of the transactions to be covered under the empowerment of Article 19(14) is broad and cannot be limited to only the three types of transactions explicitly listed in Article 19(7), it is appropriate to identify a broad non-exhaustive list of particular types of transactions that should be notified.
- (30) In relation to conditional transactions, the requirement to notify arises with the occurrence of the condition or conditions in question, thus when the transaction in question actually takes place. Therefore, no requirement to notify both the conditional contract and the transaction executed upon fulfilment of such conditions should be laid down, since such a notification would prove confusing in practice, in particular when the conditions do not occur and the transaction is not executed.
- (31) The relevant provisions and empowerments set out in Regulation (EU) No 596/2014 only begin to apply from 3 July 2016. Therefore, it is important that the rules laid down in this Regulation also apply from the same date.
- (32) The measures provided for in this Regulation are in accordance with the opinion of the Expert Group of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

Article 1
Subject-matter and scope

This Regulation lays down detailed rules with regard to:

1. the extension of the exemption to certain public bodies and central banks of third countries from the obligations and prohibitions set out in Regulation (EU) No 596/2014 in carrying out monetary, exchange-rate or public debt management policy;
2. the indicators of market manipulation laid down in Annex I to Regulation (EU) No 596/2014;
3. the thresholds for the disclosure by emission allowance market participants of inside information;
4. the competent authority for the notifications of delays of public disclosure of inside information;
5. the circumstances under which trading during a closed period may be permitted by the issuer;
6. types of transactions triggering the duty to notify managers' transactions.

Article 2
Definitions

For the purposes of this Regulation, “equity securities” mean the class of transferable securities referred to in Article 4(1)(44)(a) of Directive 2014/65/EU.

Article 3
Exempted public bodies and central banks of third countries

Regulation (EU) No 596/2014 shall not apply to transactions, orders or behaviours, in pursuit of monetary, exchange rate or public debt management policy insofar as they are undertaken in the public interest and solely in pursuit of those policies by the public bodies and central banks of third countries set out in Annex I to this Regulation.

Article 4
Indicators of manipulative behaviour

1. In relation to indicators of manipulative behaviour relating to false or misleading signals and to price securing referred to in Section A of Annex I to Regulation (EU) No 596/2014, the practices set out in Indicators A(a) to A(g) of Annex I to Regulation (EU) No 596/2014 are laid down in Section 1 of Annex II to this Regulation
2. In relation to indicators of manipulative behaviour relating to the employment of a fictitious device or any other form of deception or contrivance referred to in Section B of Annex I to Regulation (EU) No 596/2014, the practices set out in Indicators B(a) and (b) of Annex I to Regulation (EU) No 596/2014 are laid down in Section 2 of Annex II to this Regulation.

Article 5
Minimum thresholds of carbon dioxide and rated thermal input

1. For the purposes of the second subparagraph of Article 17(2) of Regulation (EU) No 596/2014:
 - (a) the minimum threshold of carbon dioxide (CO₂) equivalent shall be 6 million tonnes a year;
 - (b) the minimum threshold of rated thermal input shall be 2,430 MW.
2. Thresholds set out in paragraph 1 shall apply at group level and relate to all business, including aviation activities or installations, which the participant in the emission allowance market concerned, or its parent undertaking or related undertaking owns or controls or for the operational matters of which the participant concerned, or its parent undertaking or related undertaking is responsible, in whole or in part.

Article 6
Determination of the competent authority

1. The competent authority to which an issuer of financial instruments must notify the delay in disclosing inside information according to Article 17(4) and (5) of Regulation (EU) No 596/2014 shall be the competent authority of the Member State where the issuer is registered in any of the following cases:
 - (a) if and as long as the issuer has equity securities which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, on a trading venue in the Member State where the issuer is registered ;

- (b) if and as long as the issuer does not have equity securities which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, on a trading venue in any Member State, provided that the issuer has any other financial instruments which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, on a trading venue in the Member State where the issuer is registered.
2. In all other cases, including in the case of issuers incorporated in a third country, the competent authority to which an issuer of financial instruments must notify the delay in disclosing inside information shall be the competent authority of the Member State where:
- (c) the issuer has equity securities which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, on a trading venue for the first time;
 - (d) the issuer has any other financial instruments which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, on a trading venue for the first time, if and as long as the issuer does not have equity securities admitted to trading or traded with its consent, or for which it has requested admission to trading, on a trading venue in any Member State.

Where the issuer has the relevant financial instruments which are admitted to trading or traded with its consent, or for which the issuer has requested admission to trading, for the first time simultaneously on trading venues in more than one Member State, an issuer of financial instruments shall notify the delay to be the competent authority of the trading venue that is the most relevant market in terms of liquidity, as determined in the Commission Delegated Regulation to be adopted under Article 26(9)(b) of Regulation (EU) No 600/2014.

3. For the purpose of the notifications under Article 17(4) of Regulation (EU) No 596/2014, an emission allowance market participant shall notify the delay in disclosing inside information to the competent authority of the Member State where the emission allowance market participant is registered.

Article 7
Trading during a closed period

1. A person discharging managerial responsibilities within an issuer shall have the right to conduct trading during a closed period as defined under Article 19(11) of Regulation (EU) No 596/2014 provided that the following conditions are met:
- (a) one of the circumstances referred to in Article 19(12) of Regulation (EU) No 596/2014 is met;
 - (b) the person discharging managerial responsibilities is able to demonstrate that the particular transaction cannot be executed at another moment in time than during the closed period.
2. In the circumstances set out in Article 19(12)(a) of Regulation (EU) No 596/2014, prior to any trading during the closed period, a person discharging managerial responsibilities shall provide a reasoned written request to the issuer for obtaining the

issuer's permission to proceed with immediate sale of shares of that issuer during a closed period.

The written request shall describe the envisaged transaction and provide an explanation of why the sale of shares is the only reasonable alternative to obtain the necessary financing.

Article 8

Exceptional circumstances

1. When deciding whether to grant permission to proceed with immediate sale of its shares during a closed period, an issuer shall make a case-by-case assessment of a written request referred to in Article 7(2) by the person discharging managerial responsibilities. The issuer shall have the right to permit the immediate sale of shares only when the circumstances for such transactions may be deemed exceptional.
2. Circumstances referred to in paragraph 1 shall be considered to be exceptional when they are extremely urgent, unforeseen and compelling and where their cause is external to the person discharging managerial responsibilities and the person discharging managerial responsibilities has no control over them.
3. When examining whether the circumstances described in the written request referred to in Article 7(2) are exceptional, the issuer shall take into account, among other indicators, whether and to the extent to which the person discharging managerial responsibilities:
 - (a) is at the moment of submitting its request facing a legally enforceable financial commitment or claim;
 - (b) has to fulfil or is in a situation entered into before the beginning of the closed period and requiring the payment of sum to a third party, including tax liability, and cannot reasonably satisfy a financial commitment or claim by means other than immediate sale of shares.

Article 9

Characteristics of the trading during a closed period

The issuer shall have the right to permit the person discharging managerial responsibilities within the issuer to trade on its own account or for the account of a third party during a closed period, including but not limited to circumstances where that person discharging managerial responsibilities:

- (a) had been awarded or granted financial instruments under an employee scheme, provided that the following conditions are met:
 - (i) the employee scheme and its terms have been previously approved by the issuer in accordance with national law and the terms of the employee scheme specify the timing of the award or the grant and the amount of financial instruments awarded or granted, or the basis on which such an amount is calculated and given that no discretion can be exercised;
 - (ii) the person discharging managerial responsibilities does not have any discretion as to the acceptance of the financial instruments awarded or granted;

- (b) had been awarded or granted financial instruments under an employee scheme that takes place in the closed period provided that a pre-planned and organised approach is followed regarding the conditions, the periodicity, the time of the award, the group of entitled persons to whom the financial instruments are granted and the amount of financial instruments to be awarded, the award or grant of financial instruments takes place under a defined framework under which any inside information cannot influence the award or grant of financial instruments;
- (c) exercises options or warrants or conversion of convertible bonds assigned to him under an employee scheme when the expiration date of such options, warrants or convertible bonds falls within a closed period, as well as sales of the shares acquired pursuant to such exercise or conversion, provided that all of the following conditions are met:
 - (i) the person discharging managerial responsibilities notifies the issuer of its choice to exercise or convert at least four months before the expiration date;
 - (ii) the decision of the person discharging managerial responsibilities is irrevocable;
 - (iii) the person discharging managerial responsibilities has received the authorisation from the issuer prior to proceed;
- (d) acquires the issuer's financial instruments under an employee saving scheme, provided that all of the following conditions are met:
 - (i) the person discharging managerial responsibilities has entered into the scheme before the closed period, except when it cannot enter into the scheme at another time due to the date of commencement of employment;
 - (ii) the person discharging managerial responsibilities does not alter the conditions of his participation into the scheme or cancel his participation into the scheme during the closed period;
 - (iii) the purchase operations are clearly organised under the scheme terms and that the person discharging managerial responsibilities has no right or legal possibility to alter them during the closed period, or are planned under the scheme to intervene at a fixed date which falls in the closed period;
- (e) transfers or receives, directly or indirectly, financial instruments, provided that the financial instruments are transferred between two accounts of the person discharging managerial responsibilities and that such a transfer does not result in a change in price of financial instruments;
- (f) acquires qualification or entitlement of shares of the issuer and the final date for such an acquisition, under the issuer's statute or by-law falls during the closed period, provided that the person discharging managerial responsibilities submits evidence to the issuer of the reasons for the acquisition not taking place at another time, and the issuer is satisfied with the provided explanation.

Article 10
Notifiable transactions

1. Pursuant to Article 19 of Regulation (EU) No 596/2014 and in addition to transactions referred to in Article 19(7) of that Regulation, persons discharging managerial responsibilities within an issuer or an emission allowance market participant and persons closely associated with them shall notify the issuer or the emission allowance market participant and the competent authority of their transactions.

Those notified transactions shall include all transactions conducted by persons discharging managerial responsibilities on their own account relating, in respect of the issuers, to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked thereto, and in respect of emission allowance market participants, to emission allowances, to auction products based thereon or to derivatives relating thereto.

2. Those notified transactions shall include the following:
- (a) acquisition, disposal, short sale, subscription or exchange;
 - (b) acceptance or exercise of a stock option, including of a stock option granted to managers or employees as part of their remuneration package, and the disposal of shares stemming from the exercise of a stock option;
 - (c) entering into or exercise of equity swaps;
 - (d) transactions in or related to derivatives, including cash-settled transaction;
 - (e) entering into a contract for difference on a financial instrument of the concerned issuer or on emission allowances or auction products based thereon;
 - (f) acquisition, disposal or exercise of rights, including put and call options, and warrants;
 - (g) subscription to a capital increase or debt instrument issuance;
 - (h) transactions in derivatives and financial instruments linked to a debt instrument of the concerned issuer, including credit default swaps;
 - (i) conditional transactions upon the occurrence of the conditions and actual execution of the transactions;
 - (j) automatic or non-automatic conversion of a financial instrument into another financial instrument, including the exchange of convertible bonds to shares;
 - (k) gifts and donations made or received, and inheritance received;
 - (l) transactions executed in index-related products, baskets and derivatives, insofar as required by Article 19 of Regulation (EU) No 596/2014;
 - (m) transactions executed in shares or units of investment funds, including alternative investment funds (AIFs) referred to in Article 1 of Directive 2011/61/EU, insofar as required by Article 19 of Regulation (EU) No 596/2014;
 - (n) transactions executed by manager of an AIF in which the person discharging managerial responsibilities or a person closely associated with such a person has invested, insofar as required by Article 19 of Regulation (EU) No 596/2014;

- (o) transactions executed by a third party under an individual portfolio or asset management mandate on behalf or for the benefit of a person discharging managerial responsibilities or a person closely associated with such a person;
- (p) borrowing or lending of shares or debt instruments of the issuer or derivatives or other financial instruments linked thereto.

Article 11

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 3 July 2016.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17.12.2015

For the Commission
The President
Jean-Claude JUNCKER