

Thursday 14 March 2002

P5_TA(2002)0113

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

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2001) 281) ⁽¹⁾,
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0262/2001),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0069/2002),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

⁽¹⁾ OJ C 240 E, 28.8.2001, p 265.

P5_TC1-COD(2001)0118**Position of the European Parliament adopted at first reading on 14 March 2002 with a view to the adoption of European Parliament and Council Directive 2002/.../EC on insider dealing and market manipulation (market abuse)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

having regard to the proposal from the Commission ⁽¹⁾,having regard to the opinion of the Economic and Social Committee ⁽²⁾,*having regard to the opinion of the European Central Bank ⁽³⁾,*having regard to the opinion of the Committee of the Regions ⁽⁴⁾,acting in accordance with the procedure laid down in Article 251 ⁽⁵⁾.

⁽¹⁾ OJ C 240 E, 28.8.2001, p. 265.

⁽²⁾ OJ C ...

⁽³⁾ OJ C 24, 26.1.2002, p. 8.

⁽⁴⁾ OJ C ...

⁽⁵⁾ *Position of the European Parliament of 14 March 2002.*

Thursday 14 March 2002

whereas:

- (1) A genuine single market for financial services is crucial for economic growth and job creation in the Community.
- (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.
- (3) The Communication of 11 May 1999 from the Commission 'Implementing the framework for financial markets: action plan'⁽¹⁾ identifies a series of actions that are needed in order to complete the single market for financial services. Heads of State and Government, at the Lisbon *European Council* of April 2000, called for the implementation of that action plan by 2005. The action plan stresses the need to draw up a Directive against market manipulation.
- (4) At its meeting on 17 July 2000, the Council set up the Committee of Wise Men on the Regulation of European Securities Markets. In its final report the Committee of Wise Men proposed the introduction of new legislative techniques based on a four level approach, namely framework principles, implementing measures, cooperation and enforcement. Level 1, the Directive, should confine itself to broad general 'framework' principles while Level 2 should contain technical implementing measures to be adopted by the Commission with the assistance of a committee.
- (5) The Stockholm European Council Resolution endorsed the final report of the Committee of Wise Men and the proposed four level approach to make the regulatory process for Community securities legislation more efficient and transparent.
- (6) ***The resolution of the European Parliament of 5 February 2002 on the implementation of financial services legislation⁽²⁾ also endorsed the Committee of Wise Men's report, on the basis of the solemn declaration made before Parliament the same day by the Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the chair of Parliament's Committee on Economic and Monetary Affairs with regard to the safeguards for the European Parliament's role in this process.***
- (7) According to the Stockholm European Council Level 2 implementing measures should be used more frequently, to ensure that technical provisions can be kept up to date with market and supervisory developments and deadlines should be set for all stages of Level 2 work.
- (8) ***The European Parliament should be given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, this period may be shortened. If, within that period, a resolution on these measures is passed by the European Parliament, the Commission will re-examine the draft measures. Discussions could also take place between representatives of the European Parliament, the Council and the Commission in order to seek to identify appropriate solutions.***
- (9) New financial and technical developments enhance the incentives, means and opportunities for market abuse: through new products, new technologies, increasing cross-border activities and the Internet.
- (10) The existing Community legal framework to protect market integrity is incomplete. Legal requirements vary between the jurisdictions of Member States, leaving economic actors often uncertain over concepts, definitions and enforcement. In some Member States there is no legislation addressing the issues of price manipulation and the dissemination of misleading information.

⁽¹⁾ COM(1999) 232 final.

⁽²⁾ OJ C ...

Thursday 14 March 2002

- (11) Market abuse consists of insider dealing and market manipulation. The objective of legislation against insider dealing is the same as legislation against market manipulation: to ensure the integrity of Community financial markets and to enhance investor confidence in those markets. It is therefore advisable to adopt combined rules to combat both insider dealing and market manipulation. A single Directive ensures throughout the Community the same framework for allocation of responsibilities, enforcement and *cooperation*.
- (12) Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing⁽¹⁾ was adopted more than a decade ago. Given the changes in financial markets and in Community legislation since its adoption, that Directive should now be replaced, to ensure consistency with legislation against market manipulation. A new Directive is also needed to avoid loopholes in Community legislation which could be used for wrongful conduct and which would undermine public confidence and therefore prejudice the smooth functioning of the markets. ***This Directive also meets the concerns expressed by the Member States following the terrorist attacks of 11 September 2001 as regards the fight against financing terrorist activities.***
- (13) Insider dealing and market manipulation prevent full and proper market transparency, which is a prerequisite for trading for all economic actors in integrated financial markets. ***Inside information is any information which directly or indirectly relates to one or more issuers of financial instruments or to one or more financial instruments. Information which could have a significant effect on the evolution and forming of the prices of a regulated market as such could be considered as information which indirectly relates to one or more issuers of financial instruments or to one or more financial instruments. As regards to insiders, account should be taken of cases where a person possesses inside information not through the exercise of his employment, profession or duties but by virtue of his criminal activities, the preparation or execution of which could have a significant effect on the prices of one or more financial instruments or on the forming of the prices of the regulated market as such. Use of inside information can consist in acquiring or disposing of financial instruments while the party concerned knows or ought to have known that the information possessed is inside information. In this respect, the competent authorities should consider what a normal and reasonable person would know or ought to have known under the given circumstances. Moreover, the mere fact that market-makers, bodies authorised to act as contrepartie, or stockbrokers with inside information confine themselves, in the first two cases, to pursuing their legitimate business of buying or selling financial instruments or, in the last case, to carrying out an order dutifully, should not in itself be deemed to constitute use of such inside information. The person who enters into transactions or orders to trade which constitute market manipulation could establish that his reasons to enter into such transactions or orders to trade were legitimate and that these transactions and orders to trade are in conformity with acceptable practices on the regulated market concerned. A sanction could still be imposed if the competent authority establishes that there is another, illegitimate, reason behind these transactions or orders to trade. The competent authority may issue guidance on matters covered by the Directive, e.g. what is inside information in relation to derivatives on commodities and what are acceptable practices relating to the definition of market manipulation. This guidance should be in conformity with the provisions of the Directive and the implementing measures adopted in accordance with the comitology procedure as referred to in Article 17(2). Member States should be able to choose the most appropriate way to regulate the different categories of persons concerned by the provisions of Article 6(4), including appropriate mechanisms for self-regulation, which should be notified to the Commission.***
- (14) Prompt and fair disclosure of information to the public enhances market integrity, whereas selective disclosure by issuers can lead to a loss of investor confidence in the integrity of financial markets. Professional economic actors must contribute to market integrity ***by various means. Such measures include for instance the creation of 'grey lists', the application of 'window trading' to sensitive categories of personnel, the application of internal codes of conduct and the establishment of 'Chinese walls'. Obviously, such preventive measures may contribute to combating market abuse only if they are enforced with determination and dutifully controlled. Adequate enforcement control would imply for instance the designation of compliance officers within the bodies concerned and periodic checks conducted by independent auditors.***

⁽¹⁾ OJ L 334, 18.11.1989, p. 30.

Thursday 14 March 2002

- (15) *Modern communication methods make it possible for financial market professionals and private investors to have more equal access to financial information, but also increase the risk of the spread of false or misleading information.*
- (16) *Greater transparency vis-à-vis the public of transactions conducted by persons discharging managerial responsibilities within issuing institutions and, where applicable, persons closely associated with them, constitutes a preventive measure as a counterpart to sanctions. This can also be a highly valuable source of information to investors.*
- (17) *This Directive should be interpreted and implemented by Member States in a manner consistent with the requirements for effective regulation to protect the interests of holders of transferable securities carrying voting rights in a company (or which may carry such rights as a consequence of exercise or conversion) when the company is subject to a takeover bid or other proposed change of control. In particular, this Directive does not in any way prevent a Member State from putting or having in place such measures as it sees fit for these purposes.*
- (18) Member States and the European System of Central Banks or national central banks should not be restricted in carrying out monetary, exchange-rate or public debt management policy.
- (19) *Since the acquisition or disposal of financial instruments necessarily involves a prior decision to acquire or dispose taken by the person who undertakes one or other of these operations, the carrying out of this acquisition or disposal does not constitute in itself the use of inside information.*
- (20) *Research and estimates developed from publicly available data cannot be regarded as inside information and, therefore, any transaction carried out on the basis of such research or estimates does not constitute insider dealing within the meaning of this Directive.*
- (21) Stabilisation or trading in own shares can be legitimate, in certain circumstances, for economic reasons and should not, therefore, in themselves be regarded as market abuse. Common standards should be developed to provide practical guidance.
- (22) The widening scope of financial markets, the rapid change and the range of new products and developments require a wide application of this Directive to financial instruments and techniques involved, in order to guarantee the integrity of Community financial markets.
- (23) *Establishing a level playing field in Community financial markets requires wide geographical application of the provisions governed by this Directive. As regards derivative instruments not admitted to trading but falling within the scope of this Directive, every Member State should be competent to sanction actions undertaken within its territory or abroad and which concern underlying financial instruments admitted to trading on a regulated market located or operating within its territory or for which a request for admission to trading on such a regulated market has been made. Every Member State should also be competent to sanction actions undertaken within its territory which concern underlying financial instruments admitted to trading on a regulated market in a Member State or for which a request for admission to trading on such a market has been made.*
- (24) *A variety of competent authorities in Member States, having different responsibilities, creates unnecessary cost and confusion among economic actors. A single competent authority should be designated in each Member State to assume at least final responsibility for supervising compliance with the provisions adopted for the implementation of this Directive and for international collaboration. Such an authority should be of an administrative nature guaranteeing its autonomy from economic actors and avoiding conflicts of interest. It should have a consultative committee composed of representatives of financial services providers and consumers, so as to be fully informed of their observations.*

Thursday 14 March 2002

- (25) A common minimum set of strong tools and powers for the competent **authority of each Member State** will guarantee supervisory effectiveness. **Market undertakings and all economic actors should also contribute at their level to market integrity. In this sense, the designation of a single competent authority for market abuse does not exclude collaboration links or delegation, under the responsibility of the competent authority, between that authority and market undertakings with a view to guaranteeing efficient supervision of compliance with the provisions adopted pursuant to this Directive.**
- (26) In order to ensure that a Community framework against market abuse is sufficient, any infringement of the prohibitions or requirements laid down **pursuant to** this Directive will have to be promptly **detected and** sanctioned. **To this end, sanctions should be sufficiently dissuasive, proportionate to the gravity of the infringement and the gains realised and consistently enforced.**
- (27) **Member States should remain alert, in determining the administrative measures and sanctions referred to in Article 14, to the need to ensure a degree of uniformity of regulation from one country to another.**
- (28) Increasing cross-border activities require improved *cooperation* and a comprehensive set of provisions for the exchange of information between national competent authorities. **The organisation of the supervision and of the investigatory powers in each Member State should not hinder cooperation between the competent national authorities.**
- (29) In accordance with the principle of proportionality as set out in Article 5 of the Treaty, the objectives of the proposed measures, 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 by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (30) Technical guidance and **implementing measures** to the rules laid down in this Directive may from time to time be necessary to take account of new developments on financial markets; the Commission should accordingly be empowered to **adopt implementing measures, provided that these do not modify the essential provisions of this Directive and the Commission acts according to the principles set out in this Directive**, after consulting the Committee of European Securities Regulators established by Commission Decision 2001/527/EC⁽¹⁾.
- (31) **In exercising its implementing powers in accordance with this Directive, the Commission should respect the following principles:**
- **the need to ensure confidence in financial markets among households and SMEs by promoting high standards of transparency in financial markets;**
 - **the need to provide investors with a wide range of competing investments and a level of disclosure and protection tailored to their circumstances;**
 - **the need to ensure that independent regulatory authorities enforce the rules consistently, especially as regards the fight against white-collar crime;**
 - **the need for a high level of transparency and consultation with all market participants and with the European Parliament and Council;**
 - **the need to encourage innovation in financial markets if they are to be dynamic and efficient;**
 - **the need to ensure systemic stability of the financial system by a close and reactive monitoring of financial innovation;**
 - **the importance of reducing the cost of, and increasing access to, capital;**

⁽¹⁾ OJ L 191, 13.7.2001, p. 43.

Thursday 14 March 2002

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

(32) Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.

(33) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, **in particular by Article 11 thereof, and Article 10 of the European Convention on Human Rights.**

HAVE ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

1. 'Inside information' shall mean:

- (a) information which has not been made public of a precise nature relating, **directly or indirectly**, to one or more issuers of financial instruments or to one or more financial instruments, which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments. **In respect of derivatives on commodities, 'inside information' shall mean information which has not been made public of a precise nature relating directly or indirectly to one or more such derivatives, and which users of markets on which such derivatives are traded would expect to receive in conformity with acceptable practices. For persons charged with the execution of orders on such markets, inside information shall also mean information conveyed by a client and related to the client's pending orders.**
- (b) **'Information of a precise nature' shall mean any tangible factor or any event having a significant probability of occurring in future.**
- (c) **'Information made public' shall mean any information disseminated through traditional or electronic media.**

2. 'Market manipulation' shall mean:

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

In particular, the following definitions are derived from the core definition expressed above:

- (b) **Conduct by one or more persons acting in collaboration to secure for themselves a dominant position over the supply and demand for a financial instrument, having the effect of fixing, directly or indirectly, purchase or sale prices or other unfair trading conditions.**

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

Thursday 14 March 2002

- (c) *Buying or selling financial instruments at the close of the market with the effect of misleading investors acting on the basis of closing prices.*
- (d) *Taking advantage of occasional or regular access to the traditional or electronic media by stating an opinion about a financial instrument (or indirectly about its issuer) while having previously taken a position on that financial instrument and profiting subsequently from the impact of the opinion stated on the price of that instrument, without having simultaneously disclosed that conflict of interests to the public.*
- (e) *Dissemination of false or misleading information as to material facts, or dissemination of information which gives, or is likely to give, false or misleading signals as to the supply, demand or price of financial instruments, whether through traditional or electronic media or by any other means likely to have a significant impact on the price of one or several financial instruments with the effect that the person having disseminated such information or the persons informed of the manipulation derive, directly or indirectly, an advantage or profits therefrom, when the person having disseminated such information knew or could without reasonable doubt be considered to have known that the information was false or misleading.*

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

The definitions of market manipulation shall be adapted so as to ensure that new patterns of activity that constitute market manipulation in practice can be included.

3. 'Financial instrument' shall mean:
 - (a) *transferable securities as defined in Council Directive 93/22/EEC of 10 May on investment services in the securities field⁽¹⁾;*
 - (b) *units in collective investment undertakings;*
 - (c) *money-market instruments;*
 - (d) *financial-futures contracts, including equivalent cash-settled instruments;*
 - (e) *forward interest-rate agreements;*
 - (f) *interest-rate, currency and equity swaps;*
 - (g) *options to acquire or dispose of any instrument falling in these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates;*
 - (h) *derivatives on commodities;*
 - (i) *any other instrument admitted to trading on a regulated market in a Member State or for which a request for admission to trading on such a market has been made.*
4. 'Regulated market' shall mean a market as defined by Article 1 (13) of Directive 93/22/EEC.
5. 'Acceptable market practices or accepted methods of operation' shall mean practices that are customary in one or several financial markets and accepted by the competent authority in accordance with guidelines adopted by the Commission pursuant to the procedure laid down in Article 17(2).
6. 'Person' shall mean any natural or legal person.
7. 'Competent authority' shall mean the administrative authority designated in accordance with Article 11.

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

⁽¹⁾ OJ L 141, 11.6.1993, p. 27.

Thursday 14 March 2002

Article 2

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

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

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

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

2. Where the person referred to in paragraph 1 is a company or other type of legal person, the prohibition laid down in that paragraph shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

3. The prohibition laid down in paragraph 1 shall apply to any acquisition or disposal of financial instruments.

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

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

Article 3

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

- (a) disclosing inside information to any **other person** unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;
- (b) recommending or procuring **another person**, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.

Article 4

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

Article 5

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

Article 6

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

Thursday 14 March 2002

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

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

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

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

3. ***Persons discharging managerial responsibilities within an issuer of financial instruments and, where applicable, persons closely associated with them, shall notify the competent authority of the existence of any transaction conducted on their own account relating to financial instruments issued by the institution of which they are members or to derivative financial instruments linked to them.***

Member States shall ensure that public access to such information is readily available without delay.

In order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive, the Commission shall, in accordance with the procedure referred to in Article 17(2), adopt implementing measures concerning the categories of persons subject to the disclosure referred to in paragraph 2 and the technical arrangements applicable to disclosure to the competent authority.

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

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

5. Member States shall ***ensure*** that ***there is appropriate regulation in place to ensure that*** persons ***producing or disseminating research concerning financial instruments or issuers of financial instruments or producing or disseminating other information recommending or suggesting investment strategy, intended for*** distribution channels ***or the*** public, take reasonable care to ensure that information is fairly presented and disclose their interests or indicate conflicts of interest in the financial instruments to which that information relates. ***Such regulation shall be notified to the Commission.***

6. ***With a view to ensuring compliance with paragraphs 1 to 5, the competent authority may take all necessary measures to ensure that the public is correctly informed.***

7. ***Member States shall ensure that market operators adopt structural provisions making market manipulation more difficult. Such provisions shall in particular include maintaining a minimum level of liquidity for each financial instrument, transparency of transactions concluded, total disclosure of price-regularisation agreements, a fair system of order pairing, introduction of an effective atypical-order detection scheme, sufficiently robust financial instrument reference price fixing schemes and clarity of rules on the suspension of transactions.***

Thursday 14 March 2002

8. Public institutions disseminating statistics liable to have a significant effect on financial markets shall disseminate them in a fair and transparent way and ensure equal access to them.

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

10. **In order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive**, the Commission **shall, in** accordance with the procedure referred to in Article 17(2), **adopt** implementing measures **concerning paragraphs 1, 2, 3, 4, and 5.**

Article 7

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

Article 8

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

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

Article 9

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

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

Article 6(1) to (4), 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.

Article 10

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

- (a) to actions undertaken within its territory **and relating to** financial instruments **that** are **admitted to trading on a regulated market** in a Member State **or for which a request for admission to trading has been made in a Member State; and**
- (b) **to actions undertaken within their territory or abroad that affect financial instruments admitted to trading on a regulated market located or operating within its territory or for which a request for admission to trading on such a market has been made.**

Thursday 14 March 2002

Article 11

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

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

Member States shall ensure adequate financing of the competent authority.

Article 12

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

- (a) **directly**,
- (b) in collaboration with other authorities **or with market undertakings**,
- (c) **under its responsibility, by delegation to those other authorities or market undertakings, or**
- (d) **on application to the competent** judicial authorities.

2. **Without prejudice to Article 6(9)**, these powers shall **be exercised in conformity with national law and** include at least the right to:

- (a) have access to any document, **in any form whatsoever**, and to receive a copy of it;
- (b) demand information from any person, **including those who successively intervene in transmitting orders or in carrying out the operations concerned, as well as their principals**, and if needed, to **summon and hear** a person;
- (c) carry out on-site inspections;
- (d) **require that a practice that is contrary to the provisions laid down pursuant to this Directive be stopped;**
- (e) **suspend trading in the financial instruments concerned;**
- (f) **without prejudice to its national legislation, apply to the judicial authorities to demand existing telephone records of persons conducting transactions in financial instruments on a professional basis, existing records of telephone calls and existing data traffic records;**
- (g) request the freezing and/or the sequestration of assets;
- (h) request temporary prohibition of professional activity.

3. The first and second paragraphs shall be without prejudice to national legal provisions on professional secrecy.

Article 13

Member States shall provide that all persons who work or who have worked for the competent authority, as well as auditors and experts instructed by the competent authority, shall be bound by the obligation of professional secrecy. Information covered by professional secrecy may **be divulged to any authority or market undertaking to whom the competent authority has delegated its powers or with whom it has agreed to collaborate in the exercise of its powers but may** not **otherwise** be divulged to any person or authority except by virtue of provisions laid down by law.

Thursday 14 March 2002

Article 14

1. **Without prejudice to the right of Member States to impose criminal sanctions**, Member States shall ensure, **in conformity with their national law**, that the appropriate **administrative** measures **can** be taken **or administrative sanctions imposed** against **the persons** responsible where the provisions **adopted pursuant to** this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive.
2. **The Commission shall, in accordance with the procedure referred to in Article 17(2), draw up an indicative list of the administrative measures and sanctions referred to in paragraph 1.**
3. Member States shall determine the sanctions to be applied for failure to *cooperate* in an investigation subject to Article 12.
4. Member States shall provide that the competent authority may disclose to the public every sanction that will be imposed for infringement of the measures taken pursuant to this Directive, unless the disclosure would **seriously** jeopardise the financial markets or cause disproportionate damage to the parties involved.

Article 15

Member States shall ensure that the decisions taken by the competent authority may be subject to the right to apply to the courts.

Article 16

1. Competent authorities of Member States shall *cooperate* with each other whenever necessary for the purpose of carrying out their duties, making use of their powers, whether set out in this Directive or in national law. Competent authorities shall render assistance to competent authorities of other Member States. **At the request of the competent authority, administrative assistance within national borders shall also be extended to other authorities and delegates.** In particular, they shall exchange information and *cooperate* in investigation activities.
2. Competent authorities shall, on request, immediately supply any information required for the purpose referred to in paragraph 1. Where necessary, the competent authorities being requested shall immediately take the necessary measures in order to gather the required information. If the requested competent authority is not able to supply the required information immediately it shall notify the requesting competent authority of the reasons. Information thus supplied shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

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

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

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

Without prejudice to the obligations to which they are subject in judicial proceedings under criminal law, the **national** authorities, **together with their delegates within national borders and other authorities**, which receive information pursuant to paragraph 1 may use it only for the exercise of their functions within the scope of this Directive and in the context of administrative or judicial **proceedings**. **However**, where the competent authority communicating information consents thereto, the authority receiving the information, **together with its delegates within national borders**, may use it for other purposes or forward it to other States' competent authorities.

Thursday 14 March 2002

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

4. A competent authority of one Member State may request that an investigation be carried out by the competent authority of another Member State, on the latter's territory.

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

A competent authority of one Member State may request that an investigation be carried out by the competent authority of another Member State, on the latter's territory.

The competent authorities may refuse to act on a request for carrying out an investigation as provided for in the first subparagraph of this paragraph, or on a request for its personnel to be accompanied by *the personnel of the competent authority of another Member State, or the personnel of its delegates or of any other authority with which that competent authority has agreed to collaborate in the exercise of its powers*, as provided for in the second subparagraph of this paragraph, where such an investigation might adversely affect the sovereignty, security or public policy of the State addressed, or where judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the State addressed or where final judgement has already been passed on such persons for the same actions **in the State addressed. In such case, they shall notify the requesting competent authority accordingly, providing as detailed information as possible on those proceedings or the judgement.**

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

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

Article 17

1. The Commission shall be assisted by the *Committee of European Securities Regulators* instituted by Commission Decision 2001/527/EC.

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

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

4. **Without prejudice to the implementing measures already adopted, on the expiry of a four-year period following the entry into force of this Directive, the application of the provisions thereof stipulating the adoption of technical rules and decisions in accordance with the procedure referred to in Arti-**

Thursday 14 March 2002

cle 17(2) shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, they shall review them prior to the expiry of the period referred to above.

Article 18

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive the [year, month, day: not later than one year after the entry into force of this Directive]. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 19

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

Article 20

Directive 89/592/EEC and Articles 68(1) and 81(1) of European Parliament and Council Directive 2001/34/EC of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities⁽¹⁾ are repealed with effect from the date shown in Article 21.

Article 21

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 22

This Directive is addressed to the Member States.

Done at ..., on ...

For the Parliament
The President

For the Council
The President

⁽¹⁾ OJ L 184, 6.7.2001, p. 1.

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Prospectus to be published when offering securities ***I

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on the prospectus to be published when securities are offered to the public or admitted to trading (COM(2001) 280 – C5-0263/2001 – 2001/0117(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2001) 280)⁽¹⁾,
- having regard to Article 251(2) of the EC Treaty and Articles 44 and 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0263/2001),

⁽¹⁾ OJ C 240 E, 28.8.2001, p. 272.