

EIB Group Market Abuse Policy



**European
Investment
Bank Group**

EIB Group Market Abuse Policy

EIB Group – Market Abuse Policy

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Version	Date	Key changes from last version
1.0	17 Oct 2007	EIB guidelines for the prevention of insider dealing and market manipulation (market abuse).
2.0	16 Feb 2016	Approval and publication of the revised EIB Group guidelines for the prevention of insider dealing and market manipulation (MAG).
3.0	05 Jul 2022	EIB Group Market Abuse Policy which (together with the EIB Market Abuse Procedure) repeals and replaces the MAG.

Information Classification



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Glossary

CSMAD (also the “Market Abuse Directive”) — Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on Criminal Sanctions for Market Abuse.

Data Protection Regulation — See Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by EU institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

ESMA — The European Securities and Markets Authority.

EIB — The European Investment Bank.

EIB Group — The EIB Group consists of the EIB, the EIF and any additional entity majority-owned by the EIB that may become part of the EIB Group at a later date.

EIB Group entity or EIB Group entities — Any or all entities of the EIB Group.

EIF — The European Investment Fund.

External associates — Third parties performing tasks for any of the EIB Group entities whose contractual, appointment or employment relationship is such that they fall within the scope of the EIB Group Market Abuse Policy.

Financial instruments — See Annex I — Section C of MiFID, included in the Annex.

Inside information — See Article 7 of MAR, included in the Annex.

Insider dealing — See Article 8 of MAR, included in the Annex.

Insider list — See Article 18 of MAR, included in the Annex.

MAG — (Revised) EIB Group Guidelines for the prevention of insider dealing and market manipulation.

Market abuse — See Article 1 of MAR, included in the Annex.

Market Abuse Regulation (MAR) — 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.

Markets in Financial Instruments Directive (MiFID) — Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

Market manipulation — See Article 12 of MAR, included in the Annex.

Market sounding(s) — See Article 11 of MAR, included in the Annex.

Owner — Any relevant person who first receives or originates inside information in the course of his or her working activities at an EIB Group entity.

Person discharging managerial responsibilities (PDMR) — See Article 3, Definitions, (1)(25) of MAR, included in the Annex.

Personal transaction — See Article 28 of the Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (MiFID), also included in the Annex.

Relevant persons — EIB Group entities' staff members, the members of the EIB Board of Directors, the members of the EIB Audit Committee, the members of the EIB Management Committee, the members of the EIF Board of Directors, the members of the EIF Audit Board, the EIF Chief Executive and Deputy Chief Executive, and external associates.

Restricted counterparty — EIB Group entities' counterparties for which a relevant person has access to inside information.

Stabilisation — See Article 3, Definitions (2)(d) of MAR, included in the Annex.

Staff member — Any EIB Group entity's employee (on a permanent, fixed-term or temporary contract) or intern.

Trading venue — See Article 3, Definitions (1)(10) of MAR, and Article 4(1)(24) of MiFID, included in the Annex.

Unlawful disclosure of inside information — See Article 10 of MAR, included in the Annex.

In the event of discrepancy between the terms defined in the glossary and the MAR and MiFID definitions, the latter shall prevail.

1. Preamble

1.1 Introduction

The EIB Group's mission is to contribute to the pursuit of the European Union's objectives, while working closely with other EU institutions and bodies. The EIB Group is therefore committed to applying the highest standards of integrity and market conduct in its activities worldwide, and takes any form of market abuse seriously.

Regulation No 596/2014 on market abuse (**the Market Abuse Regulation or MAR**) and Directive 2014/57/EU on criminal sanctions for market abuse (**Market Abuse Directive**) are intended to reinforce the integrity of the European financial markets, thereby increasing investor protection and confidence. MAR requirements are further outlined in additional regulatory technical standards, implementing technical standards, delegated acts, and implementing acts, ESMA guidelines and recommendations.

The EIB's Statute (Article 12) require its activities to conform to best banking practices, provided that such practices do not conflict with the EIB's public policy, mission and governance structure as set out in the EU Treaties, the EIB Statute and its Rules of Procedure. Pursuant to the criteria set out in the EIB's guiding principles for best banking practice, the EIB applies the relevant MAR requirements with certain adaptations reflecting its supranational status and statutory provisions.

The EIF's Statute (Article 2) requires its activities to be based on sound banking principles or other sound commercial principles and practices as applicable. The EIF's activities are similar to the activities within an investment firm's or asset manager's remit to which MAR applies to ensure a robust surveillance framework of market abuse risks. The EIF's procedural documentation shall therefore be aligned to ensure the EIF complies with MAR requirements, as MAR forms part of the EIF's repository of best market practices.

1.2 Purpose

This policy sets out the general principles and obligations that apply to EIB Group entities and relevant persons, and aims to ensure compliance with MAR requirements and prohibitions.

In addition to applying this policy, EIB Group entities shall adopt specific implementing procedures tailored to their own specific characteristics. Such implementing procedures shall be read in conjunction with this policy and updated periodically to ensure their effective application.

This policy shall also be read in conjunction with the relevant provisions of the applicable EIB Group Codes of Conduct, and the respective EIB and EIF Staff Regulations and Anti-Fraud Policy, in addition to other relevant policies and guidelines as amended and supplemented over time.

2. Scope

The EIB Group Market Abuse Policy applies to EIB Group entities and relevant persons.

EIB Group entities are:

- a) The European Investment Bank (the EIB);
- b) The European Investment Fund (the EIF); and
- c) Any additional entity that is majority-owned by the EIB and may become part of the EIB Group at a later date.

Relevant persons¹ are:

- a) **Staff members** of EIB Group entities (employees on permanent, fixed-term or temporary contracts, or interns);
- b) The members of the EIB Board of Directors;
- c) The members of the EIB Audit Committee;
- d) The members of the EIB Management Committee;
- e) The members of the EIF Board of Directors;
- f) The members of the EIF Audit Board;
- g) The EIF Chief Executive and Deputy Chief Executive;
- h) External associates — third parties performing tasks for any of the EIB Group entities whose contractual, appointment or employment relationship is such that they come under the remit of the EIB Group Market Abuse Policy.

This policy covers:

- a) Financial instruments² (which include emission allowances and derivative instruments) admitted to trading on regulated markets, multilateral trading facilities and organised trading facilities;
- b) Transactions, orders, behaviours, conduct, actions or omissions which could have an effect on the price, value, supply of, or demand for such financial instruments;
- c) Spot commodity contracts which could potentially impact the price or value of financial instruments;
- d) Behaviours in relation to benchmarks and auctioning on an auction platform.

¹ The applicability of this policy to the members of the EIB Audit Committee should be confirmed by a decision of the EIB Board of Governors; the applicability of this policy to the members of the EIF Audit Board should be confirmed by a decision of the EIF General Meeting.

² Financial instruments and specified markets, as defined by MAR and MiFID. Please refer to the glossary or Annex 1 for further information.

3. Key regulatory concepts

This policy sets out prohibitions, duties and rights vis-à-vis key regulatory concepts, including:

- a) inside information;
- b) insider dealing;
- c) personal transactions;
- d) unlawful disclosure of inside information;
- e) market manipulation.

The EIB Group's definitions of these terms are the same as those used in the relevant regulatory provisions (MAR and MiFID). These terms are referenced in the glossary and detailed below.

3.1 Inside information

The main characteristics of **inside information** are the following:

“information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments³, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.”

In the context of this policy, inside information may refer (but not be limited) to:⁴

- a) Inside information relating to counterparties that are issuers of financial instruments, and which has been obtained in the course of the appraisal of, advising on, execution, monitoring or restructuring of a transaction or operation;
- b) Inside information relating to an EIB Group entity issuing financial instruments (such as EIB bonds).

3.2 Insider dealing

Insider dealing occurs when a person possessing inside information uses that information to directly or indirectly acquire or dispose of financial instruments (or other instruments under the scope of this policy) to which that information relates, either on his or her own behalf or on behalf of a third party.

Using inside information to cancel or amend an order concerning a financial instrument to which that information relates is also considered insider dealing when the order was placed before the person concerned came into possession of the information.

³ For the purposes of this policy, financial instruments are instruments traded, or admitted to trading, on regulated markets, multilateral trading facilities and organised trading facilities.

⁴ The EIB's decision to finance an issuer may in some cases be inside information. Also, an intermediate step in a protracted process (such as the status of contract negotiations, the possibility of the placement of financial instruments, a report on issuers with perceived financial difficulties, potential breach of lending covenants, etc.) may also be deemed inside information, if such information satisfies the criteria used to define inside information.

3.3 Personal transactions

For the purposes of this policy, a **personal transaction** is a trade or order in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria is met:

- a) The relevant person is acting outside the scope of the activities he/she carries out in his/her professional capacity;
- b) The trade or order is carried out on behalf of (i) any relevant person, or (ii) any person with whom the relevant person has a family relationship or a close link.

3.4 Unlawful disclosure of inside information

Unlawful disclosure of inside information occurs when a person possesses inside information and discloses that information to any other person, except where the disclosure is made on a need-to-know basis as part of the person's normal discharge of his or her professional duties.

Accordingly, inside information should be disclosed only to persons who need the information to discharge their professional duties after they have been made aware of the obligations arising from the possession of inside information.

3.5 Market manipulation

Market manipulation comprises activities and behaviours which may disrupt the markets and have a negative impact on them.

Market manipulation may involve entering into a transaction, placing an order, disseminating information or engaging in any other behaviour which, amongst others:

- a) Gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of a financial instrument; or
- b) Secures, or is likely to secure, the price of one or several financial instruments at an abnormal or artificial level.

Market manipulation may, for example, occur through the dissemination of false or misleading information, including rumours:

- a) Where the person who disseminated the information knew, or ought to have known, that the information was false or misleading; and
- b) Which sends, or is likely to send, the price of a financial instrument in a direction which may be favourable to the position held or to a transaction planned by the person who disseminated the information.

Market manipulation may occur in connection with financial instruments, spot commodity contracts or an auctioned product based on emission allowances.

4. General market abuse prohibitions

4.1 General EIB Group prohibitions regarding market abuse

EIB Group entities and relevant persons shall not:

- a) Engage in, attempt to engage in, recommend, or induce another person to engage in insider dealing;
- b) Disclose inside information unlawfully; or
- c) Engage in or attempt to engage in market manipulation.

This policy outlines specific requirements for each of the general prohibitions listed above.

4.2 Extent of the general prohibitions

General prohibitions linked to the existence of inside information are applicable to EIB Group entities and relevant persons until the inside information becomes public or is declassified.

General prohibitions related to market manipulation are applicable to EIB Group entities and any relevant person until the end of their mandate, employment or contractual relationship with EIB Group entities.

Such prohibitions apply in addition to any other professional secrecy requirements or contractually agreed restrictions.

5. Specific requirements relating to the prohibition of insider dealing

5.1 Personal transaction prohibitions

Relevant persons shall refrain from carrying out a personal transaction which involves financial instruments⁵ issued by:

- a) Any EIB Group entity; or
- b) EIB Group entities' counterparties for which the relevant person has been given access to inside information (**restricted counterparty**). The relevant person shall freeze⁶ any existing investment position of the restricted counterparty's financial instruments already held, until the inside information is made public or is declassified.

This prohibition does not apply to transactions where the relevant person does not have any power to influence investment decisions regarding the acquisition or the disposal of financial instruments.

Each EIB Group entity shall establish, implement and maintain robust arrangements, including relevant exceptions, regarding checks on personal transactions. Such arrangements shall include any relevant measure(s) with respect to managers' transactions (defined in MAR as a person discharging managerial responsibilities, or a PDMR).

5.2 Professional transaction prohibitions

EIB Group entities shall refrain from carrying out any transaction where a relevant person involved in the transaction is in possession of inside information relating to that transaction.

EIB Group entities shall, where needed, adopt implementing procedures⁷ preventing such situations from occurring.

⁵ This also includes related derivative instruments and other financial instruments linked thereto.

⁶ This also includes refraining from changing existing orders, or placing any new orders.

⁷ This may include stabilisation and buy-back programmes where needed.

6. Specific requirements relating to the prohibition of unlawful disclosure of inside information

6.1 Insider list and central register

To manage appropriate access to inside information, a **central register** of lists of recipients of inside information (**insider lists**) shall be maintained by the compliance staff of EIB Group entities. This register will facilitate cross-referencing and shall be updated when appropriate by duly authorised staff members.

Inside information cannot be contained or referred to, in whole or in part, in documents generally accessible to persons other than those on the insider list and will therefore be stored in secure and restricted areas. Relevant persons accessing this area shall be considered insiders, and entered on the appropriate insider list.

The central register shall be used for all activities involving inside information carried out by EIB Group entities. Access to the central register, for example for creation, consultation and maintenance purposes, is restricted to designated staff members.

Each EIB Group entity shall not have access to each other's insider lists and inside information unless the appropriate notification and registration requirements have been met (equivalent to those performed by such entities towards any third party with whom inside information is shared).

EIB Group entities shall, where needed, adopt implementing procedures detailing the management, including the declassification, of insider lists and the maintenance of their own central registers.

6.2 Unlawful disclosure of inside information

Any relevant person who receives or originates inside information is prohibited from disclosing that information to any other person, except where the disclosure is made on a need-to-know basis as part of the person's normal discharge of his or her professional duties, and provided that:

- a) The intended recipient acknowledges, in writing, the legal and regulatory duties related to being an insider, and the sanctions applicable to insider dealing and the unlawful disclosure of inside information; and
- b) The intended recipient is registered in the relevant insider list as per the relevant market abuse procedure for the setup of such lists.

The above prohibition supplements any professional secrecy or non-disclosure obligation, data protection requirement, or conflict of interest requirement which may otherwise exist, and which may require the creation of specific arrangements, such as segregation of information, segregation of duties, etc.

Additionally, the requirements and prohibitions of this policy that are intended to prevent the unlawful disclosure of inside information shall be taken into account in the application of the disclosure exceptions laid down in the EIB Group Transparency Policy⁸.

⁸ Please see the EIB website for the latest version of the EIB Group Transparency Policy.

6.3 Handling of inside information by its owner

Any relevant person (hereafter the **owner**), who first receives or originates inside information in the course of his or her working activities in or for an EIB Group entity, shall manage the appropriate classification and handling of such inside information within that entity, until either:

- a) There is a formal transfer of such duties to another relevant person;
- b) The inside information has been made public and/or is declassified; or
- c) The relevant person's mandate, employment or contractual relationship with the EIB Group entities comes to an end.

In particular, the owner shall promptly:

- a) make available in the central register the mandatory details required to maintain inside information and the related insider lists;
- b) keep such lists and information up to date, and declassify the inside information as soon as it no longer qualifies as inside information.

6.4 Segregation of information and segregation of duties (Chinese walls)

EIB Group entities shall:

- a) Ensure a segregation of information and duties that prevents unlawful disclosure of inside information;
- b) Put in place measures to identify, prevent and manage conflicts of interest when inside information is present⁹.

EIB Group entities shall, where needed, adopt implementing procedures detailing information segregation registers, wall-crossing instances and the related escalation measures and controls.

6.5 Public disclosure of inside information

Any EIB Group entity issuing financial instruments shall inform the public as soon as possible of inside information that concerns this entity.

The disclosure of inside information may only be delayed when all the following conditions are met:

- a) There is a legitimate interest in delaying the publication of inside information; and
- b) Delaying the disclosure is not likely to mislead the public; and
- c) The entity can ensure that information remains confidential.

EIB Group entities shall, where needed, adopt implementing procedures that outline the circumstances and requirements for public disclosure of inside information.

⁹ Such measures would also be subject to the applicable conflict of interest policies and guidelines of the relevant EIB entity.

6.6 Market soundings

Market soundings are interactions between an issuer or a seller of financial instruments and one or more potential investors, prior to the announcement of a transaction, that serve to gauge the interest of potential investors in the transaction, its pricing, size and structuring.

An issuer or a seller of financial instruments may lawfully share inside information with prospective buyers in the course of market soundings, provided that certain regulatory requirements are met.

EIB Group entities shall, where needed, adopt implementing procedures that detail the requirements for market soundings.

6.7 Investment recommendations and statistics

The production and dissemination of recommendations or other information recommending or suggesting an investment strategy shall be made with reasonable care to ensure that such information is presented objectively, and discloses EIB Group entities' interests, or indicates conflicts of interest concerning the financial instrument to which that information relates.

7. Specific requirements relating to the prohibition of market manipulation

7.1 Requirements regarding market manipulation

EIB Group entities shall, where needed, adopt implementing procedures that detail measures, legitimate practices and controls to prevent and detect market manipulation, including those which:

- a) Ensure that reasons for entering into transactions or issuing orders to trade¹⁰ are legitimate and conform to accepted practice on the market concerned;
- b) Detect any indicators of attempted or actual manipulative behaviours when examining transactions and orders;
- c) Ensure that information and recommendations disclosed or disseminated through the media, including the internet, and which relate to financial instruments¹¹ and their respective issuers (including EIB Group entities), are not false or misleading, or result in an advantage or profits for the persons concerned by their disclosure or dissemination.

¹⁰ "Order to trade" encompasses all types of orders, including initial orders, modifications, updates and cancellations, irrespective of whether or not they have been executed, the means used to access the trading venue, carry out a transaction or enter an order to trade, and whether or not the order has been entered in the trading venue's order book.

¹¹ This also includes spot commodity contracts and auctioned products based on emission allowances.

8. Additional requirements in the prevention and detection of market abuse

8.1 Obligations of Group entities

EIB Group entities shall establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting attempted or actual insider dealing, the unlawful disclosure of inside information and market manipulation.

Each organisational unit that is exposed to and manages market abuse risk shall:

- a) Manage inside information and insider lists according to the principles laid out in this policy;
- b) Develop and maintain implementing and control procedures relevant to the specific market abuse risks it is exposed to;
- c) Contribute to awareness-raising measures and training for relevant persons to ensure they understand market abuse concepts and prohibitions, and the relevant EIB Group entity's measures which address them.

8.2 Obligations of compliance staff

The compliance staff of EIB Group entities shall:

- a) Identify, assess, and monitor the compliance risk (on applicable market abuse rules) of their specific entity;
- b) Advise staff on establishing and maintaining effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, the unlawful disclosure of inside information and market manipulation;
- c) Maintain a central register of insider lists, and support staff on its use;
- d) Coordinate and support staff who organise awareness-raising measures and training sessions regarding market abuse;
- e) Establish, update, and execute entity-wide implementing and control procedures;
- f) Maintain this policy in cooperation with the staff concerned at EIB Group entities and propose any appropriate update, taking into account regulatory developments, for approval by the appropriate Board of Directors.

8.3 Reporting obligations

EIB entities and relevant persons shall report any actual or potential infringements, including suspicions, of market abuse prohibitions (insider dealing, market manipulation, and/or unlawful disclosure of inside information) pursuant to the relevant reporting mechanisms (including the EIB Group Whistleblowing Policy where applicable).

9. Data protection

Personal data submitted to the EIB Group entities under this policy and its implementing procedures are processed in accordance with the Data Protection Regulation¹² as periodically amended and supplemented.

The processing of personal data for the purposes of market abuse is considered by the EIB Group entities to be a matter of public interest. As such, it considers the processing lawful for the purposes of the Data Protection Regulation.

Data subjects are entitled to request access, rectification and, for duly justified reasons, blockage and erasing of the data (rights of the data subject), and may exercise their rights by contacting the data controller¹³. Data subjects also have the right to appeal to the European Data Protection Supervisor at any time.

Detailed provisions, the duration of data retention and the categories of data processed in relation to the application of MAR and this policy shall be outlined in the relevant EIB Group entity's procedures for implementing such topics.

10. Sanctions and penalties

Relevant persons breaching the prohibitions laid down in this policy may be subject to sanctions, penalties and disciplinary proceedings, notably under the relevant EIB Group entity's Staff Regulations and applicable Codes of Conduct and laws.

Insider dealing, the unlawful disclosure of inside information and market manipulation may also qualify as criminal offences, which may lead to criminal proceedings¹⁴.

11. Implementation and review of the policy

This policy was approved by the EIB and EIF Boards of Directors on 22 July 2021 and 21 July 2021 respectively. It repeals and replaces the revised EIB Group guidelines for the prevention of insider dealing and market manipulation.

This policy shall be published on EIB Group entities' websites, and will apply from 8 July 2022¹⁵.

¹² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by EU institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC

¹³ For the EIB please refer to dataprotectionofficer@eib.org; for the EIF, please refer to dpo@eif.org.

¹⁴ The minimum standards for criminal sanctions within the European Union for infringements of the market abuse rules are set forth in the Market Abuse Directive.

¹⁵ The date of applicability of this policy to the members of the EIB Audit Committee should be confirmed by a decision of the EIB Board of Governors; the date of applicability of this policy to the members of the EIF Audit Board should be confirmed by a decision of the EIF General Meeting.

12. Annex 1 — Extracts of relevant regulations

Financial Instruments: According to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID) — ANNEX I SECTION C, financial instruments are:

1. Transferable securities;
2. Money-market instruments;
3. Units in collective investment undertakings;
4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
5. Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;
6. Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;
7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;
8. Derivative instruments for the transfer of credit risk;
9. Financial contracts for differences;
10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF;
11. Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).

Insider Dealing: Article 8 of the MAR - Insider dealing

1. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010, the use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.
2. For the purposes of this Regulation, recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:
 - a) recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal, or
 - b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.
3. The use of the recommendations or inducements referred to in paragraph 2 amounts to insider dealing within the meaning of this Article where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.
4. This Article applies to any person who possesses inside information as a result of:
 - a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;
 - b) having a holding in the capital of the issuer or emission allowance market participant;
 - c) having access to the information through the exercise of an employment, profession or duties; or
 - d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.

5. Where the person is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out the acquisition, disposal, cancellation or amendment of an order for the account of the legal person concerned.

Inside Information: Article 7 of the MAR, Inside information

1. For the purposes of this Regulation, inside information shall comprise the following types of information:
 - a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;
 - b) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets;
 - c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments;
 - d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.
2. For the purposes of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

4. An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.
5. For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

In the case of participants in the emission allowance market with aggregate emissions or rated thermal input at or below the threshold set in accordance with the second subparagraph of Article 17(2), information about their physical operations shall be deemed not to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of derivative financial instruments.

6. ESMA shall issue guidelines to establish a non-exhaustive indicative list of information which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets as referred to in point (b) of paragraph 1. ESMA shall duly take into account specificities of those markets. Insider Dealing - Arises where a person possesses Inside Information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, Financial Instruments to which that information relates. The use of Inside Information by cancelling or amending an order concerning a Financial Instrument to which the Inside Information relates, and where the order was placed before the person concerned possessed the Inside Information, is also considered to be Insider Dealing.

Insider List: Article 18 of the MAR - Insider lists

1. Issuers or any person acting on their behalf or on their account, shall:
 - a) draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies (insider list);
 - b) promptly update the insider list in accordance with paragraph 4; and
 - c) provide the insider list to the competent authority as soon as possible upon its request.
2. Issuers or any person acting on their behalf or on their account, shall take all reasonable steps to ensure that any person on the insider list acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.

Where another person acting on behalf or on the account of the issuer assumes the task of drawing up and updating the insider list, the issuer remains fully responsible for complying with this Article. The issuer shall always retain a right of access to the insider list.

3. The insider list shall include at least:
 - a) the identity of any person having access to inside information;
 - b) the reason for including that person in the insider list;
 - c) the date and time at which that person obtained access to inside information; and
 - d) the date on which the insider list was drawn up.
4. Issuers or any person acting on their behalf or on their account shall update the insider list promptly, including the date of the update, in the following circumstances:
 - a) where there is a change in the reason for including a person already on the insider list;
 - b) where there is a new person who has access to inside information and needs, therefore, to be added to the insider list; and
 - c) where a person ceases to have access to inside information.

Each update shall specify the date and time when the change triggering the update occurred.

5. Issuers or any person acting on their behalf or on their account shall retain the insider list for a period of at least five years after it is drawn up or updated.
6. Issuers whose financial instruments are admitted to trading on an SME growth market shall be exempt from drawing up an insider list, provided that the following conditions are met:
 - a) the issuer takes all reasonable steps to ensure that any person with access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information; and
 - b) the issuer is able to provide the competent authority, upon request, with an insider list.

7. This Article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of an instrument only traded on an MTF or an OTF, 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.
8. Paragraphs 1 to 5 of this Article shall also apply to:
 - a) emission allowance market participants in relation to inside information concerning emission allowances that arises in relation to the physical operations of that emission allowance market participant;
 - b) any auction platform, auctioneer and auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010.
9. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine the precise format of insider lists and the format for updating insider lists referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by 3 July 2016.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Market Abuse or MA: Article 1 of the MAR – Subject matter

This Regulation 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 to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.

Market Manipulation: Article 12 of the MAR - Market manipulation

Market Manipulation comprises the following activities:

- a) entering into a transaction, placing an order to trade or any other behaviour which:
 - i. gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a Financial Instrument, a related spot commodity contract or an auctioned product based on emission allowances; or
 - ii. secures, or is likely to secure, the price of one or several Financial Instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level;
 - iii. unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13;
- b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several Financial Instruments, a related spot commodity contract or an auctioned product based on emission allowances, which employs a fictitious device or any other form of deception or contrivance;
- c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a Financial Instrument, a related spot commodity contract or an auctioned product based on emission allowances or secures, or is likely to secure, the price of one or several Financial Instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading;
- d) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.

Annex I of MAR provides further (non-exhaustive) indicators of Market Manipulation (Indicators of manipulative behaviour relating to false or misleading signals and to price securing, ... and Indicators of manipulative behaviour relating to the employment of a fictitious device or any other form of deception or contrivance).

Market Sounding(s): Article 11 of the MAR – Market soundings

1. A market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by:
 - a) an issuer;
 - b) a secondary offeror of a financial instrument, in such quantity or value that the transaction is distinct from ordinary trading and involves a selling method based on the prior assessment of potential interest from potential investors;
 - c) an emission allowance market participant; or
 - d) a third party acting on behalf or on the account of a person referred to in point (a), (b) or (c).
2. Without prejudice to Article 23(3), disclosure of inside information by a person intending to make a takeover bid for the securities of a company or a merger with a company to parties entitled to the securities, shall also constitute a market sounding, provided that:
 - a) the information is necessary to enable the parties entitled to the securities to form an opinion on their willingness to offer their securities: and
 - b) the willingness of parties entitled to the securities to offer their securities is reasonably required for the decision to make the takeover bid or merger.
3. A disclosing market participant shall, prior to conducting a market sounding, specifically consider whether the market sounding will involve the disclosure of inside information. The disclosing market participant shall make a written record of its conclusion and the reasons therefor. It shall provide such written records to the competent authority upon request. This obligation shall apply to each disclosure of information throughout the course of the market sounding. The disclosing market participant shall update the written records referred to in this paragraph accordingly.
4. For the purposes of Article 10(1), disclosure of inside information made in the course of a market sounding shall be deemed to be made in the normal exercise of a person's employment, profession or duties where the disclosing market participant complies with paragraphs 3 and 5 of this Article.
5. For the purposes of paragraph 4, the disclosing market participant shall, before making the disclosure:
 - a) obtain the consent of the person receiving the market sounding to receive inside information;
 - b) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;
 - c) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates; and

- d) inform the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential.

The disclosing market participant shall make and maintain a record of all information given to the person receiving the market sounding, including the information given in accordance with points (a) to (d) of the first subparagraph, and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure. The disclosing market participant shall provide that record to the competent authority upon request.

- 6. Where information that has been disclosed in the course of a market sounding ceases to be inside information according to the assessment of the disclosing market participant, the disclosing market participant shall inform the recipient accordingly, as soon as possible.

The disclosing market participant shall maintain a record of the information given in accordance with this paragraph and shall provide it to the competent authority upon request.

- 7. Notwithstanding the provisions of this Article, the person receiving the market sounding shall assess for itself whether it is in possession of inside information or when it ceases to be in possession of inside information.
- 8. The disclosing market participant shall keep the records referred to in this Article for a period of at least five years.
- 9. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards to determine appropriate arrangements, procedures and record keeping requirements for persons to comply with the requirements laid down in paragraphs 4, 5, 6 and 8.
 - a) ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.
 - b) Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.
- 10. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to specify the systems and notification templates to be used by persons to comply with the requirements established by paragraphs 4, 5, 6 and 8 of this Article, particularly the precise format of the records referred to in paragraphs 4 to 8 and the technical means for appropriate communication of the information referred to in paragraph 6 to the person receiving the market sounding.
 - a) ESMA shall submit those draft implementing technical standards to the Commission by 3 July 2015.
 - b) Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

11. ESMA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010, addressed to persons receiving market soundings, regarding:
- a) the factors that such persons are to take into account when information is disclosed to them as part of a market sounding in order for them to assess whether the information amounts to inside information;
 - b) the steps that such persons are to take if inside information has been disclosed to them in order to comply with Articles 8 and 10 of this Regulation; and
 - c) the records that such persons are to maintain in order to demonstrate that they have complied with Articles 8 and 10 of this Regulation.

Person Discharging Managerial Responsibilities (PDMR): Article 3 of the MAR, Definitions, (1)(25):

‘person discharging managerial responsibilities’ means a person within an issuer, an emission allowance market participant or another entity referred to in Article 19(10), who is:

- a) a member of the administrative, management or supervisory body of that entity; or
- b) a senior executive who is not a member of the bodies referred to in point (a), who has regular access to inside information relating directly or indirectly to that entity and power to take managerial decisions affecting the future developments and business prospects of that entity.

Personal Transaction: Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (MiFID) - Article 28 - Scope of personal transactions (Article 16(2) of Directive 2014/65/EU)

For the purposes of Article 29 and Article 37, a personal transaction shall be a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met:

- a) the relevant person is acting outside the scope of the activities he carries out in his professional capacity;
- b) the trade is carried out for the account of any of the following persons:
 - i. the relevant person;
 - ii. any person with whom he has a family relationship, or with whom he has close links;
 - iii. a person in respect of whom the relevant person has a direct or indirect material interest in the outcome of the trade, other than obtaining a fee or commission for the execution of the trade.

Stabilisation: Article 3 of the MAR - Definitions (2)(d)

‘Stabilisation’ means a purchase or offer to purchase securities, or a transaction in associated instruments equivalent thereto, which is undertaken by a credit institution or an investment firm in the context of a significant distribution of such securities exclusively for supporting the market price of those securities for a predetermined period of time, due to a selling pressure in such securities.

Trading Venue : Article 3 of the MAR - Definitions (1)(10)

‘Trading venue’ means a trading venue as defined in point (24) of Article 4(1) of Directive 2014/65/EU.

MiFID Article 4(1)(24): ‘trading venue’ means a regulated market, an MTF or an OTF.

Unlawful Disclosure of Inside Information: Article 10 of the MAR - Unlawful disclosure of inside information

1. For the purposes of this Regulation, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties.

This paragraph applies to any natural or legal person in the situations or circumstances referred to in Article 8(4).

2. For the purposes of this Regulation the onward disclosure of recommendations or inducements referred to in Article 8(2) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.

EIB Group Market Abuse Policy



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