

Market abuse: Commission adopts first implementing measures

The European Commission has adopted three implementing measures related to the Directive on insider dealing and market manipulation (market abuse - 2003/6/EC). These implementing measures cover among other things detailed criteria for determining what constitutes inside information, which non exhaustive factors have to be examined when assessing possible market manipulation as well as provisions on how and when issuers must disclose inside information. They also set out standards for the fair presentation of investment recommendations (including the disclosure of conflicts of interest). Finally, they set out conditions for benefiting from exemptions from the prohibitions of market abuse in the case of share buy-back programmes and price stabilisation of financial instruments. These implementing measures are the first to be drawn up under the new procedure for deciding and applying securities legislation agreed by the European Council in March 2001 and endorsed by the European Parliament in February 2002 (see [IP/02/195](#)).

Internal Market Commissioner Frits Bolkestein said: "The adoption of these implementing measures proves that the new framework for securities legislation is working in practice –speeding up the legislative process while ensuring that the legislation keeps in touch with market realities. The open and transparent consultative process is key to this."

The three implementing measures comprise two Commission Directives and one Commission Regulation. The first Commission Directive establishes detailed criteria for determining when inside information is precise and price sensitive. In addition, it specifies a series of factors to be taken into account when examining whether specific behaviour might constitute market manipulation. Additional factors can also be considered depending on the circumstances of the case. For issuers, this implementing Directive specifies the means and time-frame for the public disclosure of inside information and details circumstances under which issuers would be able to delay such disclosure in order to protect their legitimate interests.

The second Commission Directive establishes standards for the fair presentation of investment recommendations and the disclosure of conflicts of interest. The implementing Directive makes a distinction between those producing investment recommendations (who must conform to higher standards) and those merely disseminating investment recommendation produced by a third party.

In conformity with Article 6 of the Market Abuse Directive this second implementing Directive takes into account the rules, including self-regulation, governing the profession of journalist. This means that the very specialised sub-category of financial journalists recommending or disseminating investment recommendations would have to comply with certain general principles.

However, this is subject to safeguards and allows for use of self-regulatory mechanisms to determine how these basic principles should be applied. This is a balanced solution which fully protects press freedom while also shielding investors and issuers against any risk of market manipulation by journalists exploiting for personal gain their sometimes considerable ability to influence prices.

Finally, a Commission Regulation establishes technical conditions for share buy-back programmes and price stabilisation of financial instruments. According to Article 8 of the Market Abuse Directive, and provided that such activity is carried out in compliance with these conditions, the prohibitions of the Market Abuse Directive will not apply.

In preparing the measures and in accordance with the rules of the new procedure for deciding and applying securities legislation, the Commission took account of technical advice from the Committee of European Securities Regulators (CESR). The Commission then published a preliminary draft of the legal texts for possible drafting comments from the public in March (see [IP/03/345](#)) and issued amended texts in June, taking on board comments by Member States, the European Parliament and stakeholders. The European Securities Committee (ESC) – made up of representatives of national governments – subsequently agreed unanimously to the three draft texts on 29 October 2003. On 20 November 2003 the European Parliament considered that the implementing measures, as agreed in the ESC, respected the mandate given to the Commission and did not give rise to any further remarks.

The Market Abuse Directive

The measures described above are designed to establish in detail how some provisions of the Directive on market abuse, adopted by the European Parliament and Council of Ministers in December 2002 (see [IP/02/1789](#)), will be implemented in practice.

The Directive - due to be written into national law by Member States by 12th October 2004 - will:

- reinforce market integrity
- contribute to the harmonisation throughout Europe of the rules against market abuse
- establish a strong commitment to transparency and equal treatment of market participants
- require closer co-operation and a more exchange of information between national authorities, thus ensuring the same framework for enforcement throughout the EU and reducing potential inconsistencies, confusion and loopholes.

The Directive covers both insider dealing and market manipulation. The same framework applies to both categories of market abuse. This will simplify administration and reduce the number of different rules and standards across the European Union.

It covers all financial instruments admitted to trading on at least one regulated market in the European Union. The Directive requires each Member State to designate a single authority to tackle insider dealing and market manipulation. It also establishes transparency standards requiring that people who recommend investment strategies to the public or to distribution channels take reasonable care to ensure that these strategies are fairly presented and disclose their interests or indicate conflicts of interest.