

Market Abuse Directive (MAD) and implementing measures

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**Screening process
Explanatory meeting with Croatia and Turkey
30 March 2006**

Objective of the Market Abuse framework

Internal market background:

An integrated and efficient financial market requires market integrity. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.

Objective:

To ensure the integrity of Community financial markets and to enhance investor confidence in those markets <Recital 12 of Dir 2003/6>.

MAD framework deals with the problems of:

- (i) market manipulation**
- (ii) insider dealing**

Structure of the MAD framework

MAD - Lamfalussy-type measure – effective as of 12 October 2004

- **Level 1: Directive 2003/6/EC adopted by the European Parliament and the Council – on insider dealing and market manipulation (market abuse)**
- **Level 2: measures adopted by the Commission within the delegated powers: at present, 3 implementing directives 2003/124/EC, 2003/125/EC, 2004/72/EC and an implementing regulation 2273/2003 (this list may be subject to modifications).**
- **Level 3: Guidance, standards and interpretative recommendations agreed by the securities regulators in the Committee of European Securities Regulators (CESR)**
- **Level 4: Commission's oversight over the Member State's compliance with MAD**

Insider dealing

- **Inside information (general definition)** *<Article 1(1) of Dir 2003/6>*:
 - precise nature *<Article 1(1) of Dir 2003/124>*
 - not made public
 - relating directly or indirectly to one or more issuers / financial instruments
 - if made public, likely to have a significant effect on the price *<Article 1(2) of Dir 2003/124>*
- **Use of inside information is prohibited (acquisitions, disposals and attempts to do so)** *<Article 2(1) of Dir 2003/6>*
- **Disclosure of inside information to third parties is prohibited, unless made in normal course of employment, profession or duties** *<Article 3(a) of Dir 2003/6>*
- **Recommending or inducing on the basis of inside information is prohibited** *<Article 3(b) of Dir 2003/6>*

Market manipulation

- **Market manipulation (definition)** *<Article 1(2) of Dir 2003/6>*:
 - (1) **transactions and orders to trade**
 - giving (or likely to give) false or misleading signals as to supply/demand/price of financial instruments,
 - securing the price of one or several instruments at an abnormal/artificial level,
unless legitimate reasons and compliance with accepted market practice
 - employing fictitious devices, other form of deception
 - (2) **dissemination of information through the media or by any other means, giving (or likely to give) false or misleading signals as to financial instruments (incl. rumours)**
- **Any person is prohibited from engaging into market manipulation** *<Article 5 of Dir 2003/6>*

Preventing market abuse

Preventing insider dealing:

- **Duty of instant disclosure of inside information by issuers** <Article 6(1) of Dir 2003/6 & Article 2 of Dir 2003/124>
- **Disclosure of managerial transactions** <Article 6(4) of Dir 2003/6 & Article 6 of Dir 2004/72>
- **Insiders' lists** <Article 6(3) of Dir 2003/6 & Article 5 of Dir 2004/72>

Preventing market manipulation:

- **Duty to notify suspicious transactions by persons professionally arranging transactions** <Article 6(9) of Dir 2003/6 & Articles 7-9 of Dir 2004/72>
- **Disclosure obligations related to investment recommendations** <Article 6(5) of Dir 2003/6 & Dir 2004/125>
- **Rules applied to journalists** <Article 1(2)(c) of Dir 2003/6 & Dir 2004/125>
- **Safe harbours from market manipulation risk in regulation 2273/2003: buy-back programmes and stabilisation activities** <Article 8 of Dir 2003/6>

Sanctions for market abuse

- **Administrative measures and sanctions must be envisaged in national law for breach of MAD rules (criminal sanctions not sufficient) <Article 14(1) of Dir 2003/6>**
- **There is no harmonisation, Member States decide on specific solutions <Article 12 of Dir 2003/6>**
- **However, the measures and sanctions need to be:**
 - effective
 - proportionate
 - dissuasive
- **Commission to draw up a list for information purposes <Article 14(2) of Dir 2003/6>**

Enforcement of MAD rules

- **Single administrative competent authority (CA) to ensure application of MAD rules** <Article 11 of Dir 2003/6>
- **No “home country control” – Member States share competence to handle cross-border situations** <Article 10 of Dir 2003/6>
- **Obligation of co-operation between competent authorities:** <Article 16 of Dir 2003/6>
 - facilitating information
 - notifying suspected infringements and acting upon such notifications
 - undertaking investigations upon request
 - allowing for participation of personnel of a CA from other Member State
- **Minimum set of powers of a competent authority defined** <Article 12 of Dir 2003/6>

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For further information:

http://europa.eu.int/comm/internal_market/securities/abuse/index_en.htm

Questions:

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