



European Securities and
Markets Authority

Peer Review on Supervisory Practices against Market Abuse

Follow-up report



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Acronyms used

<i>ESMA</i>	European Securities and Markets Authority
<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010, p.84.
<i>FIU</i>	Financial Intelligence Unit
<i>MAD</i>	Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ L 96, 12.4.2003, p.16.
<i>MiFID</i>	Markets in Financial Instruments Directive - Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145, 30.4.2004, p.1.
<i>MiFID Implementing Directive</i>	Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ L 241, 2.9.2006, p.26.
<i>MTF</i>	Multilateral Trading Facility
<i>NCA</i>	National Competent Authority, as defined in Article 11 of MAD
<i>STR</i>	Suspicious Transaction Report Reports to competent authorities required under Article 6(9) of MAD where a person professionally arranging transactions reasonably suspects that a transaction might constitute insider dealing or market manipulation.

National Competent Authorities

<i>ASF</i>	Autoritatea de Supraveghere Financiară, ASF, Romania
<i>FMA</i>	Finanzmarktsaufsicht, Liechtenstein
<i>FSC</i>	Financial Services Commission, Bulgaria
<i>FME</i>	Fjármálaeftirlitið, Iceland
<i>KNF</i>	Komisja Nadzoru Finansowego, Poland
<i>NBS</i>	Národná banka Slovenska, Slovakia
<i>SMA</i>	Agencija za trg vrednostnih papirjev/ Securities Market Agency, Slovenia

1 Executive Summary

ESMA published on 1st July 2013 its peer review report and good practices related to the supervisory practices under the Market Abuse regime. As a number of national competent authorities (NCAs) appeared not fully compliant, ESMA decided to conduct a follow-up peer review in relation to the FSC (Bulgaria), FME (Iceland), KNF (Poland), ASF (Romania), NBS (Slovakia), and SMA (Slovenia). In addition a full peer review has been conducted in relation to FMA (Liechtenstein) as the relevant provisions of the Market Abuse regime had not yet been integrated in the national framework in 2013.

This follow up peer review is limited to the areas where shortcomings were noted previously. Depending on the specific situation at each NCA, the review covers one, two or three of the following areas: (i) supervisory practices put in place at NCAs in order to monitor the application of the obligations of investment firms, regulated markets and Multilateral Trading Facilities (MTFs) to have necessary market abuse investigation capabilities (referred to as section A of the original review), (ii) supervisory practices to monitor compliance with the provisions relating to Insider lists (section B), and/or (iii) practices in place at authorities to deal with Rumours (section D).

The results show that all the authorities subject to this follow-up review have taken important steps towards full application of practices in line with the requirements set by the relevant rules and the CESR Guidelines.

Four NCAs are considered fully compliant. This is the case for the FSC (Bulgaria), which has been assessed as regards both the treatment of insiders' lists and the handling of rumours. Similarly, the ASF (Romania) and the SMA (Slovenia) have been found fully compliant as having in place adequate supervisory practices as regards the monitoring of the obligations of investment firms, regulated markets and/or MTFs to have necessary market abuse investigation capabilities. Lastly, the NBS (Slovakia) has been found fully compliant with the requirements regarding insiders' lists.

The FME (Iceland) is assessed as being partly compliant with the requirements related to obligations for investment firms, regulated markets and MTFs and as having fully implemented the obligations related to insiders' lists.

New legislation that came into force on 8 September 2015 requires investment firms, regulated markets and MTFs at the authorisation phase to have in place procedures that will allow them to detect and identify potential market abuse cases. In KNF's view, this new legal framework should enable compliance with the relevant requirements, which can be reviewed by the Review Panel in the future. However during the Review Period and up to this date the KNF (Poland) has been assessed as not having had supervisory practices in place as required following the CESR Guidelines since it has not implemented all relevant requirements in relation to obligations of investment firms, regulated markets and MTFs to

have necessary market abuse investigation capabilities.

Following legislative changes of November 2014, the FMA (Liechtenstein) is assessed as fully compliant with the requirements related to obligations for investment firms and regulated markets and/or MTFs, and also in relation to insiders' lists, where the authority has developed a new web-based environment reporting platform named "e-service", which went into function on 1 July 2015 and is expected to be used for insiders' lists in latter part of 2016. Although insiders' lists are mostly used by FMA in market abuse inquiries or investigations, as a tool to be used in the initial stages of an investigation, without prejudice to further investigations, the FMA has not undertaken any action for any infringement during the review period since the updated Market Abuse Act and Ordinance has entered into force on 1 January 2015. Therefore, the Assessment Group recommends to have an update in the future in order to check whether the FMA has undertaken any action for any infringement since the updated Market Abuse Act and Ordinance has entered into force and subsequently whether investigations linked to market abuse have been launched.

Although the FMA was unable to respond in an affirmative way to all questions related to the handling of rumours, since there is no regulated market in Liechtenstein that is subject to the FMA's supervision and the FMA does not investigate price movements on foreign markets because it lacks a mandate to do so, the FMA may be considered as compliant with these requirements, taking its scope of action into account. It will be important to further check whether cases of detecting rumours exist and what the FMA's action will be.

This first follow-up review has demonstrated a good trend towards greater convergence of the supervisory practices that emanate from market abuse legislation and CESR Guidelines, and as such underlined the usefulness of conducting follow-up exercises.

2 Background

1. On 1st July 2013, ESMA published its Guidance on Supervisory Practices under Market Abuse Directive (MAD) in the form of a peer review report and good practices (2013/ESMA/2013/805).
2. As a follow up to that exercise, in November 2013, the Review Panel Chair sent letters to the Chairs of the national competent authorities (NCAs) where the peer review report concluded that some shortcomings existed, namely to FSC (Bulgaria), FME (Iceland), KNF (Poland), ASF (Romania), NBS (Slovakia), and SMA (Slovenia).
3. Based on the responses received in 2013, the Review Panel decided that in relation to the NCAs which mentioned in their replies to have introduced changes or made steps to ensure full application of all the requirements provided by the MAD regime under review, these NCAs would be subject to a follow-up peer review limited to the areas where shortcomings were noted. On the 30th of October 2014, formal invitations were sent to the above-mentioned NCAs asking them to complete specific parts of the MAD supervisory practices peer review – benchmarking questionnaires (All questions, which are referred to later in this report, can be found in ESMA/2012/RP/28 rev 1).
4. Moreover, the FMA (Liechtenstein) had been assessed as being not complying with the good practices in the initial peer review undertaken by the Review Panel in 2013, as the Market Abuse Directive was not fully transposed into the Liechtenstein national law at that time. Therefore, the FMA was subject to a full follow up peer review.
5. The findings of the peer review are presented in this report.

3 Assessment of MAD supervisory practices of the FSC Bulgaria, FME Iceland, FMA Liechtenstein, KNF Poland, ASF Romania, NBS Slovakia and SMA Slovenia

3.1 FSC Bulgaria

Insider lists

6. FSC Bulgaria provided updated responses regarding questions 1, 4, 5, 6 and 8 of section B on insider lists, and in relation to questions 1, 2, 3 and 4 in section D on rumours.

7. Regarding insider lists, the FSC does not automatically receive insider lists and does not update them automatically, as the electronic registers of the FSC do not provide the opportunity for automatic receipt of these lists. Moreover, the FSC explained that due to budgetary restrictions and cost savings, the FSC does not have financial resources to build a new system or upgrade its existing electronic records to enable automatic receipt of these lists. Despite these limitations, all lists of persons with access to inside information which are requested during the performance of FSC inspections are available in paper registers and are accessible at any point in time (question1).
8. The FSC reports a positive trend in the use of insider lists in market abuse inquiries and investigations by an increased usage rate as follows: 6% from the total number of investigations for 2011, to 15% for 2012 and to 27% for 2013 (question 4). The FSC also responded that when there is a suspicion of market abuse, an investigation often starts with the request of insiders' lists.
9. The FSC indicates that insider lists are mostly used as a first instance tool. If there is suspicion of market abuse, the investigation often starts with a requirement for a statement by the Central Securities Depository (CSD), from which the parties, dates and prices regarding the transactions for the specific investigation period are evident. When the information received from the CSD provides solid grounds for a suspicion that a market abuse has been conducted, a formal letter with a request to provide the relevant insider list is sent to the issuer (question 5). The information provided in the insider lists includes all information items included in the CESR Guidelines. The FSC has not undertaken any actions for infringements during the review period (question 6).
10. The assessment group considers that the FSC has taken steps towards a level of supervision which is more in line with the requirements set by this review than what was the case in the initial peer review.
11. In this follow-up review the FSC is therefore assessed as fully applying supervisory practices responding to the requirements following from the Guidelines as regards section B. This assessment is based on the fact that the FSC reports that it has undertaken supervisory actions for shortcomings identified in the course of investigations, related to the requirements of completeness, preciseness and accuracy of insiders' lists, (question 6). The FSC has, however, reported that during the review period, in some cases, the content presented in the FSC insiders' lists did not meet the recommendations of the Guidelines, although they formally satisfied the requirements of article 15, para. 2 of the Law on measures against market abuses with financial instruments (LMMAFI). They also reported that if in such a case the FSC imposes a penalty for incomplete content of the insiders' list according to the Guidelines of CESR, the issued penalty is likely to be canceled by the court as it would constitute a too broad interpretation of the legal requirements laid down in the LMMAFI. The FSC has provided as evidence an example where the insiders' list did not include all persons according to CESR's guidelines and thus additional

information was required. The FSC has also mentioned that in the last two years, although it has not imposed sanctions for violation of the Guidelines, there is a positive trend in terms of compliance of the received lists with the requirements of the Guidelines. The benchmarks set reflect the view of the Review Panel that a very important element in the application of insider lists is to be able to demonstrate that there is an active supervision in place as regards the practical use of insiders' lists, as exemplified by various supervisory actions. An affirmative answer to question 6 is according to the benchmark a condition for being assessed as either fully or partially compliant.

Rumours

12. As regards section D regarding the handling of rumours the initial peer review of 2013 found that the FSC was partially applying practices responding to the requirements of the Guidelines.
13. The FSC has in the follow-up review repeated its replies to questions 1, 2 and 4 with affirmative answers as was the case also in the initial peer review. The FSC explains that the FSC, and its Deputy Chairperson in charge of the Investment Activity Supervision Division, has the obligation to control compliance with the national law on measures against market abuse with financial instruments. Article 6(1), 3 of the national law includes the dissemination of rumours and false or misleading news where the person who made the dissemination knew, or ought to have known that the information was false or misleading. Therefore – in reply to the question on the role of the FSC with regard to rumours – that the FSC has such a role according to law.
14. The FSC also clarified that in case of revealing rumours and false or misleading news, especially in cases related to price-sensitive information, an inspection is conducted. The validity of the revealed information is verified (rumours and misleading news) and whether the information in question is price-sensitive (question 2).
15. The FSC responded that it does look at communications within investment firms, regulated markets and MTFs, where applicable, in order to check whether there has been any rumour (question 3).
16. Furthermore the FSC states that it examines whether specific information is publicly revealed, but for the time being it has not had any cases to report for which it has intervened- forcing firms to reveal the information publicly. Instead the FSC has only issued statements for unrevealed inside information (question 4).
17. Question 3 asks to what extent the Authority looks at communication within investment firms, regulated market or MTFs, where applicable, when there has been a rumour. The affirmative answer the FSC gave is different from the one provided in

the original peer review in 2013, when the FSC responded that it did not make such interventions.

18. On this basis the FSC is assessed as having fully implemented the requirements of section D since it is looking at the communication within investment firms, regulated markets and MTFs if there has been a rumour that can be relevant to a case and the FSC has been able to substantiate and demonstrate its reply by providing evidence in support of this reply.

3.2 FME Iceland

19. FME Iceland (FME) provided updated responses regarding questions 1, 4, and 5 of Section A dealing with:

- the NCAs' procedures (alarms/signals, systems or mechanisms) that, at least the larger investment firms, regulated markets and MTF or those which generate a higher risk to the market intend to have in place to detect and identify potential market abuse cases at the time that the relevant competent authority analyses the application for a license,

- the NCAs' monitoring activities on whether investment firms, regulated markets or MTFs have sufficient resources (IT, software, etc.) in place to fulfil their obligations on detecting and identifying potential market abuse cases and the NCAs in being proactive in enhancing the communication of suspicious transaction and on increasing the quality of these communications.

20. Moreover, the FME provided updated responses regarding questions 2, 4, 5, 7, 8 and 9 of Section B dealing with NCAs' supervisory practices as regards the treatment of insiders' lists by issuers or persons acting on their behalf or for their account.

21. In this follow-up review, the FME is assessed as having partly implemented the requirements of section A. More specifically, the FME confirmed its awareness of the procedures which should be in place to detect and identify potential market abuse cases at the time that the FME analyses the application for a license at least for the largest investment firms. Moreover, FME responded that it monitors whether investment firms, regulated markets or MTFs have sufficient resources (IT, software, etc.) in place to fulfil their obligations on detecting and identifying potential market abuse cases particularly by looking into such matters during on-site visits and/or through desk-based examinations. During the review period (2010-2011), the FME has however not communicated with investment firms to encourage them sending suspicious transaction reports (STRs). The Authority has only undertaken, in 2009,

an initiative by publishing a circular on the subject encouraging firms to set up procedures to enhance STRs from employees.

22. The FME is assessed as having fully implemented the requirements of section B. More specifically, the FME provided sufficient evidence and responded that it receives insiders' lists automatically (as well as it can request issuers to provide them with relevant insiders' lists, if needed). Moreover, FME confirmed that it uses insiders' lists mostly as a first instance tool in a market abuse investigation or inquiry. In the FME's insider lists' forms, issuers must choose from categories of relations when specifying each insider's relation to the issuer. In the FME's insider lists' forms, issuers must also specify the registered names of insiders, names of third parties and names of employees of third parties. The approach in their national legislation is that if any party has access to inside information or possesses information by virtue of his/her employment, position or responsibilities, they should be included in these lists.

3.3 FMA Liechtenstein

23. The FMA, Liechtenstein, has been assessed as not compliant in the peer review undertaken by the Review Panel in 2013, as the Market Abuse Directive was not fully transposed into the Liechtenstein national law at that time.
24. The FMA has revised its responses to the relevant peer review questionnaire in the course of this follow-up work following legislative changes that took place in November 2014.

Supervisory practices as regards the obligations of investment firms, regulated markets and MTFs to have necessary market abuse investigation capabilities

25. The FMA reports in terms of background information that it has 122 investment firms (asset management companies), one investment firm under the Liechtenstein Banking Act (since June 2014) and 17 credit institutions. There are no regulated markets or MTFs in Liechtenstein.
26. The FMA has for the years 2010-2013 lead one investigation per year desk-based and one formal investigation including onsite. There have been no administrative sanctions.
27. The FMA reports that in 2012 it sent one offence report to the public prosecutor and in 2013 three such reports.
28. In terms of resources the FMA indicates that the Financial Intelligence Unit (FIU) is responsible for analysing notices made according to article 6 paragraph 1 of the Market Abuse Act. The FIU in turn informs the FMA. The FMA has the statutory mandate to ensure the stability and functioning of the reports made.

29. Two divisions in the FMA are responsible for financial market participants and associations: the banking division and the securities division. The banking division supervises credit institutions and investment firms. There are 15 full time employees in the banking division, eight of whom deal with supervision.
30. The securities division of the FMA licenses domestic investment undertakings and their management companies, and issues marketing licenses for foreign investment undertakings under the Investment Undertaking Act. It is also responsible for authorisation under the UCITS act of domestic undertakings for collective investment in transferable securities and of management companies. There are 15 full time employees of which six deal with supervision.
31. The FMA describes its general supervisory approach to market abuse to be seen in the context of the general supervisory approach regarding conduct of business of investment firms, which in the Liechtenstein legal setting includes the use of selected audit firms in the supervision of investment firms.
32. The FMA explains that the FMA considers that there are key advantages in using audit firms, being: (i) leverage of resources, (ii) close supervision, (iii) simulation to comply, (iv) authorisation and supervision of audit firms. In addition the FMA conducts a number of direct supervision activities being: management interviews according to a five-year rotating plan; on-site inspections; and accompanied on-site inspections (the FMA jointly with the audit firm).
33. The FMA performs on-site inspections in order to examine the technical infrastructure and human resources, whether the firm has issued good practices on how to detect and identify market abuse cases and how to report them to the FMA. Firms need to have in place procedures as regards telephone conversation recordings, regulatory obligations, compliance, training and education. The FMA is aware of the procedures in place in larger investment firms and credit institutions in order to detect and identify potential market abuse cases. These criteria include i.a.:
- proportionality of orders/trades compared to the daily volume of transaction;
 - transactions that lead to no change in beneficial ownership;
 - transactions including position reversals;
 - concentrated trading within a short time leading to price change subsequently reversed;
 - orders changing the representation of best bid;
 - transactions around a specific time that lead to price changes on settlement prices and valuations;

- orders by persons that are preceded or followed by dissemination of false or misleading information;
- orders/transactions by persons before or after the same persons release research or investment recommendations which are erroneous or biased.

34. These IT-tools are developed by third parties and include training of personnel. The FMA has increased its focus on STR and has also highlighted the importance of STRs to the audit firms and to the FIU.

Specifically on the peer review questionnaire

35. The FMA reports that it is aware of the procedures the firms in Liechtenstein have in place in order to detect and identify potential market abuse cases at the time of authorisation (question 1), as well as on an on-going basis, (question 2).

36. Before authorisation the Securities division performs on-site inspections to examine and document the technical infrastructure and resources. The FMA checks and approves the internal rules of investment firms regarding market abuse and relevant procedures. These procedures are examined by the audit firms on a yearly basis. The FMA receives a report from the firm at a half-yearly basis. The base supervision by the audit firms covers also the supervision of market abuse. Audit firms examine that firms comply with all applicable market abuse rules and can also perform management interviews.

37. IT-systems that Liechtenstein firms have are most often standard software.

38. Furthermore, at the time of conducting market abuse investigations the FMA is ensuring the existence of systems and of mechanisms and whether the processes are functioning well.

39. The FMA also supervises whether at the time of authorization the investment firm has sufficient resources (question 4) in place in order to fulfil its obligations on detecting and identifying potential market abuse cases.

40. After having received a license, the firms are obliged by law to have annual audits carried out by regulated audit firms.

41. In terms of proactive work on suspicious transaction reporting and the increased quality of these communications, the FMA reports that it has increased the number of on-site inspections and informed the audit firms of the importance of STRs.

42. The FMA finally reports (question 6) that it has the powers to take action over those investment firms which do not fulfil their obligations to detect and identify potential market abuse cases or which lack resources in this regard. The FMA states that there

have been desk-based investigations, onsite visits and management meetings to emphasize the importance of this issue. In addition annual audit reports of credit institutions and as well as investment firms are evaluated by the FMA with regard to compliance, market abuse and regulatory practices. Fines up to 30 000 Swiss Francs are possible.

Conclusion

43. The Assessment Group considers that the FMA Liechtenstein (FMA) shall be assessed as having fully in place the supervisory practices needed to respond to the relevant requirements dealt with in Section A. More specifically, although the FMA has pointed out that there are no regulated markets or MTFs established in Liechtenstein, the FMA responded that before issuing the authorisation, the securities division performs on-site inspections to examine and document the technical infrastructure and human resources. The FMA checks and approves the internal regulation of investment firms regarding market abuse. Moreover, after licensed, the investment firms and credit institutions are obliged by law to have annual audits carried out by regulated audit firms. The auditors inspect books and records and establish whether systems are in place to inter alia mitigate market abuse risks. In addition, when a market abuse investigation shows or gives the impression that the systems or mechanisms are unreliable, the findings will be discussed and addressed with the management of the investment firm or credit institution. The FMA also clarified that it receives reports from its supervised entities on a half-year basis. These reports contain information on the human resources of the supervised entities. The FMA has also increased the number of on-site inspections as well as informed and made aware the external audit firms about the importance of suspicious transaction reports. Lastly, the FMA has the power to impose sanctions.

Insider lists

44. The FMA reports that it receives insider lists automatically and on request (questions 1 and 2). It has been developing a new web-based reporting platform that has started to function on 1 July 2015. Market participants will get a unique access to the electronic platform in order to be able to upload data as for example AIFMD reporting. The FMA is the host of this platform and can programme it to different reporting messages. It is planned to implement an electronic reporting template for insider lists in latter part of 2016, which will facilitate a more efficient updating of the lists, which will be available to the staff of the FMA. The lists will be archived electronically as well as physically, and the system will be subject to regular updates.

45. The updated Liechtenstein Market Abuse Act entered into force on 1 January 2015. There have been no investigations in the previous years covered by the review,

mainly due to the fact that Liechtenstein does not have a regulated market/MTF and very few issuers. Hence the FMA has no experience in handling insider lists.

46. The FMA has instructions for and checks the content of insider lists.

47. The categories of persons that shall be included in the lists are all those mentioned in the relevant question 7, being the following:

- board members,
- CEOs,
- persons with managerial responsibilities,
- related staff members,
- auditors,
- persons having access to databases on budgetary control or balance sheet analyses,
- people who work in units with regular access to inside information.

48. All the information items mentioned in the relevant question 8 is included in the insider list being:

- registered names,
- names of third parties,
- names of employees of third parties,
- reason of including these persons,
- date of list,
- job title.

49. All sorts of professional relations described in the question 9 are covered by the insider lists. These are:

- auditors,
- attorneys,
- accountants and tax advisors.

- managers of issues,
- communication and IT-agencies,
- rating agencies,
- investor relation agencies.

50. The FMA responded that due to the very small number of issuers, it raises awareness that all persons who might be expected to have access to inside information are to be included in the insiders' lists which are sent to the FMA, further to the legal requirements, in bilateral meetings and communications with the firms. The FMA also clarified that they recognise insiders' lists according to the requirements of the MS where the issuer has its registered office, but they might request additional details to be included in the list. Lastly - the FMA clarified that it can accept insiders' lists in German or English.

Conclusion

51. The Assessment Group considers that the FMA shall be assessed as having in place supervisory practices which fully meet the relevant requirements dealt with in Section B. The FMA responded that their updated Market Abuse Act and Ordinance has entered into force since 1 January 2015. The FMA has developed a new web-based environment reporting platform named "e-service", which has become functional as of 1 July 2015 and as of latter part of 2016 is planned also to work for insiders' lists. The electronic reporting via the secure reporting platform will facilitate a more efficient updating of the insiders' lists, which are also received upon request. Moreover, after the introduction of the electronic reporting, the records will be kept electronically only. Although insiders' lists are mostly used by FMA in market abuse inquiries or investigations, as a first instance tool, the FMA has not undertaken any action for any infringement during the review period since the updated Market Abuse Act and Ordinance has entered into force on 1 January 2015 and subsequently there were no such investigations in 2010 and 2011. For questions 7 to 9, FMA responded that all the required categories of persons and all persons which have access to inside information the same way, are included in their insiders' lists, all the required information is included in the insiders' lists and all the categories of professionals are considered as relevant for inclusion in the insiders' lists, with external investment analysts/journalists to be possible to be included in relevant lists. The FMA also responded that they did not conduct any insider investigation since the third set of CESR Guidance had entered into force, thus they have no experience in overseeing said obligation so far. In relation to question 10 and whether the FMA rules/regulations /guidance provide any exclusion (defence) of any categories of persons and /or professionals, the FMA responds that there is an absence of the possibility to exclude categories of persons or professionals. Therefore, the FMA is

assessed as fully implemented as regards the requirements included in section B on insider lists. The Assessment Group recommends having an update in the future to check whether the FMA has undertaken any action for any infringement since the updated Market Abuse Act and Ordinance has entered into force on 1 January 2015 and subsequently there are such investigations.

Cooperation among Competent Authorities

52. This part of the review does not fall under the benchmarking part of the questionnaire, but made part of the mapping made in 2012.
53. The FMA reports that it has on average 7.2 full time employees (FTEs) working on matters of cooperation among competent authorities. The FMA reports further that the vast majority of requests do not require any further action from the FMA and only in a very limited number of cases does the FMA have to ask for additional information. The FMA has secrecy provisions to respect that can hinder it from providing information to other competent Authorities, e.g article 11 of the Market Abuse act. The FMA has not encountered any problems in responding to other Competent Authorities and all requests have been able to respond to in an expedient way.
54. The FMA had two cases in 2010 and 2011 respectively where it informed the CA of another EEA Member State of acts which were suspected to contravene the market abuse provisions. In 2013 the FMA informed one EEA NCA of a suspected case and the US SEC of another case. The FMA has not requested to be able to accompany staff members of other competent Authorities during their on-site visits. Tape recordings may be made of such meetings. The average turnaround time from a request to the delivery of information is around nine weeks.

Rumours

55. The FMA has reported (in response to question 1) that it has a role to play in the monitoring of rumours. The FMA and the FIU are together performing reviews of the relevant press and other sources on a daily basis. The FMA is also in a regular interaction with the Liechtenstein Bankers' Association, the Association of Independent Asset Managers in Liechtenstein and the Liechtenstein Investment Fund Association.
56. The FMA does not (question 2) look at trading ahead of or after the dissemination of rumours which have led to price movements and not on whether unusual price movements that could be indicative or manipulative behaviour or a leak of inside information could be caused by false or misleading statement or improperly disclosed information. The reason for this is the fact that there is no regulated market or MTF in

Liechtenstein that is subject to the supervision of the FMA and the FMA is not in a position to investigate price movements at other market places.

57. In relation to question 3 on whether the competent authority look at communication within investment firms, regulated markets and MTFs, (where applicable), the FMA reports that it can obtain records of phone calls and data transmissions from regulated investments firms based on article 10 (d) of the Market Abuse Act.

58. In response to question 4 whether competent authorities intervene to ensure that rumours which appear to contain a leak of inside information are adequately addressed through public disclosure, the FMA reports that there have not been any such cases. The FMA also states that should such a case come to the attention of the authority it would intervene and order the issuer to disclose the information according to the respective stock market regulations that would be applicable to it (not being Liechtenstein stock market regulation since that does not exist).

Conclusion

59. The Assessment Group finds that in response to the four questions posed in respect of rumours the FMA is unable to give an affirmative answer to question 2 since there is no regulated market in Liechtenstein, that is subject to the FMA's supervision and the FMA does not investigate price movements on foreign markets because it lacks jurisdictions in those markets. The FMA has, however, responded in the affirmative to the other three questions of the section. Although the FMA reported that there have been no cases of detecting rumours, should a rumour came to its attention that points towards a leak of inside information, it would intervene and order the issuer to disclose the information according to the respective stock exchange regulations. The FMA may be considered as compliant with the requirements as it is performing a role in this regard to the extent possible and recommend an update in the future to check whether cases of detecting rumours exist and what the FMA's action will be.

Evidence

60. In support of its replies the FMA has provided a form of an Ordinance of 25 November 2014 amending the Market Abuse Ordinance of 23 January 2007 introducing rules on the publication of inside information and lists of insiders, and a law of 7 November 2014 amending the Market Abuse Act of 24 November 2006.

3.4 KNF Poland

61. Based on its responses to the questionnaire, KNF Poland (KNF) would be assessed as not applying the supervisory practices as follows from the legal requirements reflected in Section A (question5) the NCAs being proactive in enhancing the communication of suspicious transaction and on increasing the quality of these communications.
62. In relation to Section A, question 1, KNF Poland (KNF) has been previously assessed as not applying the supervisory practices, as follows from the legal requirements reflected in that Section, (namely (1) the NCAs' awareness of procedures (alarms/signals, systems or mechanisms) that, at least the larger investment firms, regulated markets and MTF or those which generate a higher risk to the market intend to have in place to detect and identify potential market abuse cases at the time that the relevant competent authority analyses the application for a license). More specifically, KNF responded that it is possible that investment firms or regulated markets and MTFs include such procedures at the stage of application for license. There was, however, no legal obligation for these entities to have in place such procedures, while applying for a license. The process of adoption of relevant procedures, resources, systems starts when the regulated entity has received a license. The ability of investment firms, regulated markets and/or MTFs to detect, identify and prevent against the market abuse cases is monitored and verified by KNF at later stage.
63. However, KNF reported that a legal change has taken place in Poland in September 2015, which requires investment firms, regulated markets and/or MTFs at the authorisation phase to have in place procedures that will allow them to detect and identify potential market abuse cases. Therefore, since 8 September 2015 KNF applies supervisory procedures that allow to verify whether all licensed by KNF investment firms, regulated markets and MTFs intend to have in place procedures to detect and identify potential market abuse cases at the time that KNF analyses the application for a license.
64. In relation to question 3 dealing with whether the relevant NCA is aware of the procedures (alarms/signals, systems or mechanisms) that the relevant investment firm, regulated market or MTF has in place to detect and identify potential market abuse cases at the time of conducting market abuse investigation on a specific case, the KNF responded that in the case where a supervised entity based on the information at hand is obliged to inform the KNF about suspicion of market abuse and failed to do so, the KNF introduces relevant supervisory measures. Such cases are however extremely rare.
65. KNF is now in the process of organisation of training program for investment firms to particular signals which could be crucial from the potential market abuse point of view, and which could be detected by the investment firms themselves.

3.5 ASF Romania

66. ASF Romania (ASF) provided their response to question 5 of Section A and was found to be proactive in enhancing the communication of suspicious transactions reports and is assessed as having in place supervisory practices fully responding to the requirements stemming from the requirements dealt with in section A of the questionnaire. More specifically, the ASF has communicated with investment firms encouraging them sending STRs, during for example regular on-site inspections, by publishing in their monthly bulletin on their website all the measures taken for those responsible not submitting the STRs, as well as by conducting awareness campaigns through public conferences/seminars in order to encourage the submission of STRs by the investment firms. Moreover, the ASF responded that it has received such STRs from November 2013-November 2014.

3.6 NBS Slovakia

67. NBS Slovakia (NBS) is assessed as having in place the supervisory practices reflected in the questions of section B dealing with the NCAs' supervisory practices as regards the treatment of insiders' lists by issuers or persons acting on their behalf or for their account. It provided responses to questions 1, 2, 3, 4, 5, 6, 7, and 8 of Section B explaining that since 2013, the NBS has adopted legislation which enables it to fulfil the requirements of said questions of Section B. More specifically, the NBS maintains insiders' lists for a ten year period, uses insiders' lists as a tool in a market abuse inquiry or investigation (by checking out potential connection between persons on the insiders' lists and persons who are under suspicion to conduct market abuse), and usually takes informal action by making phone calls to issuers.

3.7 SMA Slovenia

68. SMA Slovenia (SMA) has been assessed as having in place the supervisory practices required according to the rules reflected in questions 1 and 4 of section A dealing with (1) the NCAs' procedures (alarms/signals, systems or mechanisms) that, at least the larger investment firms, regulated markets and MTF or those which generate a higher risk to the market intend to have in place to detect and identify potential market abuse cases at the time that the relevant competent authority analyses the application for a license, and (4) the NCAs' monitoring activities on whether investment firms, regulated markets or MTFs have sufficient resources (IT, software, etc.) in place to fulfil their obligations on detecting and identifying potential market abuse cases.

69. More specifically, SMA provided evidence, namely an updated piece of legislation (article 9 of the Decision on conditions for investment services and other services

provision by investment firms (Official Journal of the Republic of Slovenia no 20 of 21 March 2014) that all investment firms, regulated markets and MTFs have procedures which should be in place to detect and identify potential market abuse cases at the time that the SMA analyses an application for licensing, which was its initial shortcoming. In addition, the SMA responded that it currently monitors whether such procedures and mechanisms are adequate and efficient as well as monitors whether regulated entities have sufficient human and technical resources.