



European Securities and  
Markets Authority

# Supervisory Practices under MAD

Peer review report and Good Practices



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## **I. Introduction**

1. In December 2011, the ESMA Board of Supervisors approved the Review Panel peer review work stream on the supervisory practices with regard to enforcement of Market Abuse issues – e.g. the spreading of misleading information through rumours, breach of reporting obligations and market abuse.
2. In August 2012 it was clarified that the work needed to be concluded by the year end and it was therefore decided that the peer review part of the work would be conducted partly in parallel with the fact finding work already undertaken in the form of answers to a wide ranging questionnaire covering all six areas of the mandate.
3. The Review Panel has therefore decided to concentrate its peer review on those areas which lend themselves to a peer review on supervisory practices most easily, bearing in mind that some of the areas covered in the mandate are not well suited for a peer review.
4. The current peer review is therefore covering three main topics: (i) Firstly the supervisory practices in place in Competent Authorities with regard to the obligation they have to see to that investment firms and regulated markets/MTFs have in place structural provisions fulfilling the requirements under MAD; (ii) secondly the handling of insider lists and (iii) thirdly the handling of rumours. On these three areas it was considered that there is sufficient material in order to carry out a peer review.
5. Article 6(6) of MAD L1 provides for market operators to adopt structural provisions aimed at preventing and detecting market manipulation practices. In this context it is worthwhile to recall that Article 43 of MiFID requires that regulated markets shall have in place effective arrangements and procedures for the regular monitoring of members or participants and that regulated markets shall monitor the transactions undertaken on their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse. Operators shall report such significant breaches to the competent authority. The regulated market shall also provide the relevant information without delay to the competent authority for the investigation and prosecution of market abuse and provide full assistance. Article 26 of MiFID provides corresponding rules and obligations for investment firms and market operators who are operating an MTF. These MiFID provisions as such, i.e. Competent Authorities' supervision in this regard, are not in the material scope of this peer review.
6. Article 6(9) of MAD L1 and Articles 7 -11 of Directive 2004/72 require that any person professionally arranging transactions in financial instruments who reasonably suspects that a transaction might constitute insider dealing or market manipulation shall notify the competent authority without delay and file suspicious transaction reports (STRs). The work also takes into account the guidance provided in Section II of the Third Set of CESR Guidance and Information (CESR/09-219) on Suspicious Transactions reports and Section V of the First Set of CESR Guidance and Information (CESR/04-505b).
7. Section B of the peer review questionnaire includes questions on the handling of insider lists. Article 6(3) of MAD L1 and Article 5 of Directive 2004/72 provide for the treatment of insider lists.

The work also takes into account the guidance provided in Section I of the Third Set of CESR Guidance and Information (CESR/09-219) on insider lists and Section IV of the Second Set of CESR Guidance and Information (CESR/06-562b).

8. Section D of the peer review questionnaire includes the handling of rumours in accordance with the mandate. The work addresses in particular how the dissemination of rumours is handled in terms of supervising the disclosure obligation by issuers or barriers to rumour dissemination by investment firms. Article 6(7) of MAD L1 provides that the competent authorities may take all necessary measures to ensure that the public is correctly informed. Para 1.5 of the Second set of CESR Guidance (CESR/06-562b) and Section 4.1 of the Third Set of CESR Guidance (CESR/09-219) deal with the treatment of false rumours by issuers.

### Country codes and acronyms of Competent Authorities and Member States

Country codes Member States EC/EEA		Competent Authorities Acronyms	
AT	Austria	Financial Market Authority	FMA
BE	Belgium	Financial Services and Markets Authority	FSMA
BG	Bulgaria	Financial Supervision Commission	FSC
CY	Cyprus	Cyprus Securities and Exchanges Commission	CySEC
CZ	Czech Republic	Czech National Bank	CNB
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
DK	Denmark	Finanstilsynet	Finanstilsynet
EE	Estonia	Estonian Financial Supervision Authority	EFSA
EL	Greece	Capital Market Commission	HCMC
ES	Spain	Comision Nacional del Mercado de Valores	CNMV
FI	Finland	Finanssivalvonta	FIN-FSA
FR	France	Autorité des Marchés Financiers	AMF
HU	Hungary	Hungarian Financial Supervisory Authority	HFSA
IE	Ireland	Central Bank of Ireland	CBoI
IS	Iceland	Financial Supervisory Authority	FME
IT	Italy	Commissione Nazionale per le Società e la Borsa	Consob
LI	Liechtenstein	Finanzmarktsaufsicht Liechtenstein	FMA
LT	Lithuania	Lietuvos Bankas	LB
LU	Luxembourg	Commission de Surveillance du Secteur Financier	CSSF
LV	Latvia	Financial and Capital Markets Commission	FCMC
MT	Malta	Malta Financial Services Authority	MFSA
NL	Netherlands	Autoriteit Financiële Markten	AFM
NO	Norway	Finanstilsynet	Finanstilsynet
PL	Poland	Polish Financial Supervision Authority	KNF
PT	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM
RO	Romania	Romanian National Securities Commission	CNVMR
SE	Sweden	Finansinspektionen	Finansinspektionen
SI	Slovenia	Securities Market Agency	SMA
SK	Slovakia	National Bank of Slovakia	NBS
UK	United Kingdom	Financial Services Authority	FSA

## II - Executive Summary

### A. PEER REVIEW

9. This report reflects the peer review carried out by ESMA on the supervisory practices applied by the competent authorities under the Market Abuse regime and identifies good practices which it may be of benefit to adopt. The peer review has been conducted partly in parallel with the on-going fact finding work (mapping exercise) based on the answers given to a wide ranging questionnaire covering all six areas of the mandate. It is worth pointing out that the peer review has been based on the same questions that were used for the mapping part of the work.
10. The Review Panel has decided to concentrate its peer review on those areas for which Competent Authorities are required to comply with legal requirements as emanating from the Market Abuse Directives (L1 and L2) but also on the 1st, 2nd and 3rd Set of CESR Guidance (CESR/04-505b) (CESR/06-562b) (CESR/09-219) respectively. Therefore, the peer review has been based on specific questions selected among those identified for the mapping exercise. In particular, the peer review focused on three main topics: (i) firstly the supervisory practices of Competent Authorities with regard to their obligation to supervise that investment firms and regulated markets/ MTFs have in place structural provisions fulfilling the requirements under MAD; (ii) secondly, the handling of insider lists and (iii) thirdly, the handling of rumours. On these three areas it was considered that there is sufficient material in order to carry out a peer review.
11. The analysis under this peer review has been conducted on the basis of the written evidence provided by the responding Competent Authorities demonstrating the practices adopted in order to implement the above-mentioned provisions. The vast majority of CAs have adequately provided review documents supporting their responses. The written evidence included a wide range of documents (e.g. excerpt from national implementing measures, guidelines and circular by the regulators, internal procedures, etc.) and had to be translated into English.
12. From the written evidence provided, it appears that in twenty-three Member States (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PT, SE and the UK) the supervisory practices applied by Competent Authorities in all the above-mentioned three areas fulfill the requirements of this peer review exercise.
13. With reference to the first area, relating to the obligation of Competent Authorities to supervise that firms and regulated markets/ MTFs have in place structural provisions fulfilling the requirements under MAD, one Member State (RO) has been assessed as partially applying the key issues, whilst Three Member States (LI, PL, SI) have been considered as not applying sufficient supervisory practices in all aspects in this respect.
14. With reference to the second area, four Member States (BG, LI, SI and SK) were considered as not applying sufficient supervisory practices related to handling of insider lists.
15. With reference to the third area, one Member States (BG) has been assessed as partially applying and one member (LI) as not applying the supervisory practices required in relation to the handling of rumours.

16. A summary table with tick boxes showing the assessment of all Members according to the peer review is provided below:

**Table 1. Peer Review overall summary table**

	A T	B E	B G	C Y	C Z	D E	D K	E E	E L	E S	F I	F R	H U	I E	I S	I T	L I	L T	L U	L V	M T	N L	N O	P L	P T	R O	S E	S I	S K	U K	
A	√	√	√	√	√	√	√	√	√	√	√	√	√	√	●	√	●	√	√	√	√	√	√	●	√	□	√	●	√	√	
B	√	√	●	√	√	√	√	√	√	√	√	√	√	√	●	√	●	√	√	√	√	√	√	√	√	√	√	√	√	●	√
C	√	√	□	√	√	√	√	√	√	√	√	√	√	√	√	√	●	√	√	√	√	√	√	√	√	√	√	√	√	√	√

√: fully implemented

●: non implemented

□: partially implemented

17. **Section A** deals with the supervisory practices applied by Competent Authorities in order to supervise that structural provisions aimed at preventing and detecting market abuse cases by market operators exist and that at least the larger investment firms arranging transactions in financial instruments drew up systems and procedures to fulfill the requirements established by Article 6(9) of the Market Abuse Directive and Articles 7 -11 of the Directive 2004/72.

18. In summary, the peer review shows that:

- Twenty-five CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PT, SE, SK and UK) are fully applying the standards identified in the key issues of the aforesaid section. In LI the CA can request insiders' lists according to its power to obtain information according to its powers to have access to any document in any form whatsoever and to receive a copy thereof as well as to request information from any person.
- Twenty-seven CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SK, UK) are monitoring whether investments firms, regulated markets (and MTFs, if applicable) have sufficient resources (IT, software, etc.) in place in order to be able fulfill their obligations to detect and identify market abuse cases.
- Twenty-seven CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LI, LT, LU, LV, MT, NL, NO, PT, SE, SI, SK, UK) are proactive in their efforts to increase the frequency and quality of STRs, e.g. by providing guidance to their industry.
- All CAs can take actions against those CAs that do not fulfill their obligations to have systems, staff or resources in place for the detection of market abuse cases.

19. In this respect, the Review Panel wishes to recommend that during the authorization phase of both investment firms and regulated markets (and MTFs, if applicable) but also at the time of conducting routine on-site supervisory visits, the relevant procedures and systems should be also assessed in the light of the requirements provided by the Market Abuse Directive. In particular, during the authorisation process, the Competent Authorities deal with a multitude of obligations, including those focusing on market abuse detection systems and procedures. For that reason, the Review Panel recommends that the Competent Authorities and their staff give sufficient emphasis to this aspect. Although the awareness level is very good, it appears that, during the authorization process, the Competent Authorities in general do not give deep attention to the procedures and systems allowing investment firms, regulated markets and MTFs to fulfill their obligations under MAD to prevent and detect market abuse cases.
20. It is observed that further work could be carried out in this area, in order to find out more details (possibly by conducting on-site visits) about the precise efforts made by the Competent Authorities, and for the purpose to reach further convergence and increase the quality of supervision across EU. The number, type and level of sanctions for non-fulfillment of the obligations in this respect could be further examined.
21. **Section B** deals with the supervisory practices applied by Competent Authorities in relation to the treatment of insider lists.
22. In summary, the peer review shows that:
  - a) Twenty-six CAs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, UK) fully apply the requirements of the obligations to use insider lists in their work.
  - b) Almost all CAs receive insider lists either automatically (CZ, LV, MT, RO and SI) or upon request AT, BE, BG, CY, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LI, LU, MT, NL, NO, PL, PT, SE, SI, SK, UK..
  - c) Twenty-seven CAs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, UK) have also demonstrated that they keep and use insider's lists in the course of an investigation and that they use insider's list as a first instance tool. One CA (DE) clarified that it does not routinely ask for insider's lists at the beginning of an investigation in order not to warn suspicious persons within the issuer of the on-going investigation The RP considers such a method of acting to be within the scope of the expected supervisory practices applied by CAs to efficiently use insider lists as a first instance tool in the course of an investigation.
  - d) Twenty-four CAs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, NO, RO, SE, SI, and UK) undertake actions when there are missing insider lists or shortcomings, with regard to completeness, preciseness and accuracy in them. Taking action by a Competent Authority may vary from informal measures, such as phone calls and written correspondence with the issuers, to enforcement action or imposition of sanctions. In LI there was no case thus far. In LI the obligation to draw up and maintain and update insiders' lists exists only for issuers whose financial instruments are admitted to trading on a regulated market in Liechtenstein. As there is no regulated in Liechtenstein this obligation to draw up insiders' lists does not exist

- e) Twenty-four CAs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, NO, RO, SE, SI, UK) indicatively included in insider lists the following categories of persons: members of the board of directors, CEOs, relevant persons discharging management responsibility, related staff members (such as secretaries and personal assistants), internal auditors, people having access to databases on budgetary control, or balance sheet analyses, people, who work in units that have regular access to inside information.
  - f) Some CAs do not explicitly name the categories of persons above but have general clauses in their legislation stating that all persons having access to inside information shall be considered as insiders and must be included in the insider lists. A few CAs have additional categories of persons explicitly mentioned in their national provisions.
  - g) Twenty-four CAs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, NO, RO, SI, SE, UK) reported that the following information is included in the insider lists: registered names, names of third parties, names of employees of third parties, reasons of including these persons, date of (update of the) list, job title.
  - h) Twenty-six CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LU, MT, NL, NO, PL, PT, RO, SE, SI, SK and UK) require, indicatively, the inclusion of the following categories of professionals: auditors, attorneys, accountants and tax advisors, managers of issuers (like corporate and investment banks), communication and IT agencies, rating agencies, investor relation agencies, investment analysts/journalists.
  - i) No Competent Authority has exclusions (nor provide for any defense) of any category of persons and/or professionals to be included in insider lists.
23. With reference to the treatment of insider lists by a Competent Authority, it is noted that it might be interesting to further examine the type and frequency of actions taken against issuers when insider lists are incomplete, imprecise or inaccurate.
24. The last section (**Section D**) of this Peer Review Report deals with the supervisory practices related to the monitoring of rumours.
25. In summary, the peer review shows that:
- a) All CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LI, LT, LV, LU, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) do play a role when monitoring rumours.
  - b) Similarly, almost all CAs with the exception of IS and LI monitor trading either ahead or after the dissemination of rumours which have led to price movements.
  - c) All CAs, with the exception of BG, look at communications within investment firms, regulated markets and MTF, if applicable, (e.g. phone calls, email messages, instant messages and Bloomberg messages) if there has been a rumour.
  - d) All CAs with the exception of LI intervene to ensure that the rumours which contain a leak of inside information are adequately addressed through public disclosure and, where applicable, the issuer is requested (or even forced) to make proper disclosure.

Disciplinary action can be taken when appropriate. In LI the obligation to disclose inside information is not applicable according to the market abuse legislation as such obligation is only for issuers whose financial instruments that are admitted to trading on a regulated market in Liechtenstein. This obligation is not applicable as there is no regulated market in Liechtenstein. The CA can only intervene according to the Disclosure Act but not according to the market abuse legislation.

### III – Findings of the Peer Review

#### 1. Background information

26. In order to provide some background on the market sizes below information is provided on the number of investment firms and credit institutions providing investment services in the respective markets.

**Table 2. Market places regulated markets etc.**

MS	Investment Firms	Credit Institutions providing investment services	Others	Total Number
AT	92	842		934
BE	43	67		110
BG	51	26		77
CY	124	14		138
CZ	24	12		36
DE				2550
DK	44	127		171
EE	6	4		10
EL	68	17	14	99
ES	94	204		298
FI	55	281	10	346
FR	97	266	590	953
HU	25	18		43
IE	148	73	79	300
IS	22	5		27
IT	98	676	51	825
LI	107	17		124
LT	8	10		18
LU	104	104	22	230
LV	6	25		31
MT	127	10		137
NL	284	47	59	390
NO	130	29		159
PL	54	15		69
PT	25	30	10	65

RO	1.347 <sup>1</sup>	12	13	1.372
SE	127	73		200
SI	7	16		23
SK	16	10	7	33
UK				8493

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<sup>1</sup> RO: This number represents: 47 investment firms and 1300 passported investment firms (providing services according to the free movement).

## 2. Supervisory Practices regarding structural provisions to detect market abuse practices (section A)

### Box 1

1. These requirements of Articles 6(6) and (9) of MAD L1 apply to:
  - Investment firms and
  - Regulated markets and MTFs, and
  - Any person professionally arranging transactions in financial instruments.
2. Market operators must adopt structural provisions aimed at preventing and detecting market manipulation practices.
3. Any person professionally arranging transactions in financial instruments who reasonably suspects that a transaction might constitute insider dealing or market manipulation shall notify the competent authority without delay and file suspicious transaction reports (STRs)

27. The following **Key Issues** were established:

28. Article 6(6) of MAD L1 provides for market operators to adopt structural provisions aimed at preventing and detecting market manipulation practices.
29. Article 6(9) of MAD L1 and Articles 7 -11 of the Directive 2004/72 require that any person professionally arranging transactions in financial instruments who reasonably suspects that a transaction might constitute insider dealing or market manipulation shall notify the competent authority without delay and file suspicious transaction reports (STRs)
30. Article 43 of MiFID requires that regulated markets shall have in place effective arrangements and procedures for the regular monitoring of members or participants and that regulated markets shall monitor the transactions undertaken on their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse. Operators shall report such significant breaches to the competent authority. The regulated market shall also provide the relevant information without delay to the competent authority for the investigation and prosecution of market abuse and to provide full assistance. Article 26 of MiFID provides corresponding rules and obligations for investment firms and market operators who are operating an MTF.

### Key Questions

QA1. Is the relevant CA in your jurisdiction aware of the 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? (**combination of q. 6, 12, 13 and 14 of the mapping questionnaire**)

QA2. Is the relevant CA in your jurisdiction aware of the 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 have in place to detect and identify potential market

abuse cases at the time of conducting routine on-site supervisory visits? **(combination of q. 6, 12, 13 and 14 of the mapping questionnaire)**

QA3. Is the relevant CA in your jurisdiction aware of the procedures (alarms/signals, systems or mechanisms) that the relevant investment firm, regulated market or MTF have in place to detect and identify potential market abuse cases at the time of conducting a market abuse investigation on a specific case? **(combination of q. 6, 12, 13 and 14 of the mapping questionnaire)**

QA4. Does the relevant Authority in your jurisdiction monitor whether investment firms, regulated markets or MTF have sufficient resources (IT, software, etc.) in place to fulfil their obligations on detecting and identifying potential market abuse cases? **(q. 7 of the mapping questionnaire)**

QA5. Is the relevant Authority in your jurisdiction proactive in enhancing the communication of suspicious transaction and on increasing the quality of these communications? (elaboration of q.18 of the mapping questionnaire)

QA6. Does the relevant Authority in your jurisdiction have the ability to take action<sup>2</sup> over those investment firms, regulated markets or MTF which do not fulfil its obligation to detect and identify potential market abuse cases or which lack resources to properly comply with these obligations? **(combination of q.3., 4 and 5 of the mapping questionnaire)**

27. The following **benchmarks** were established:

*Fully implemented: Requires affirmative responses to all applicable Questions.*

*Partly implemented: Requires affirmative responses to all applicable Questions except to Questions 1 and/or 5.*

*Not implemented: Inability to respond affirmatively to Questions 2, 3, 4 and/or 6.*

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<sup>2</sup> Taking action by a CA may vary from informal measures such as, e.g. phone calls and written correspondence with the issuers, to taking enforcement action or imposing sanctions and for that reason a description of the action is required.

## 2.1 Application of the structural provisions to detect market abuse

### Summary Table – Section A

	1	2	3	4	5	6	Assessment
AT	Y	Y	Y	Y	Y	Y	✓
BE	Y	Y	Y	Y	Y	Y	✓
BG	Y	Y	Y	Y	Y	Y	✓
CY	Y	Y	Y	Y	Y	Y	✓
CZ	Y	Y	Y	Y	Y	Y	✓
DE	Y	Y	Y	Y	Y	Y	✓
DK	Y	Y	Y	Y	Y	Y	✓
EL	Y	Y	Y	Y	Y	Y	✓
EE	Y	Y	Y	Y	Y	Y	✓
ES	Y	Y	Y	Y	Y	Y	✓
FR	Y	Y	Y	Y	Y	Y	✓
FI	Y	Y	Y	Y	Y	Y	✓
HU	Y	Y	Y	Y	Y	Y	✓
IE	Y	Y	Y	Y	Y	Y	✓
IS	N	Y	Y	N	N	Y	●
IT	Y	Y	Y	Y	Y	Y	✓
LI	Y	N	Y	Y	Y	Y	●
LV	Y	Y	Y	Y	Y	Y	✓
LT	Y	Y	Y	Y	Y	Y	✓
LU	Y	Y	Y	Y	Y	Y	✓
MT	Y	Y	Y	Y	Y	Y	✓
NL	Y	Y	Y	Y	Y	Y	✓
NO	Y	Y	Y	Y	Y	Y	✓
PL	N	Y	N	Y	N	Y	●
PT	Y	Y	Y	Y	Y	Y	✓
RO	Y	Y	Y	Y	N	Y	□
SK	Y	Y	Y	Y	Y	Y	✓
SI	N	Y	Y	N	Y	Y	●
SE	Y	Y	Y	Y	Y	Y	✓
UK	Y	Y	Y	Y	Y	Y	✓

31. All competent authorities have provided explanations on the way they comply with the key questions. According to the peer review, twenty-five Competent Authorities (AT, BE, BG, CY, CZ,

DE, DK, EE, EL, ES, FR, FI, HU, IE, IT, LT, LU, LV, MT, NL, NO, PT, SE, SK, UK) apply supervisory practices which are in line with the relevant key issues, whilst in four Member States (IS, LI, PL, SI) that is not the case. (RO is considered as partly applying the key issues).

32. It should be noted for LI that there is no regulated market and no MTF in Liechtenstein.

## **2.2 Awareness of the procedures in place at the time of applying for authorisation**

33. Most CAs are aware of the procedures that larger investment firms, regulated markets and MTFs have in place to detect and identify potential market abuse cases at the time of the application for a license. IS stated 'no' to this question, so that consequently no evidence can be provided.
34. All CAs, with the exception of, PL and SI, include, among the documents which have been reviewed by the reviewers in the process, evidence of the assessment being made in the Competent Authorities of whether an applicant firm complies with the conditions to carry out a reserved activity, those procedures aimed at detecting and identifying market abuse cases.
35. AT specifies that there is no specific focus on such systems while licensing credit institutions and investment firms but the CA conducts an in-depth analysis of the risk management systems and procedures in place at those entities.
36. In IT, investment firms applying for authorization are required to submit a detailed description of their internal organization, resources, policies, procedures and controls. The organizational requirements to be set up include, among other, the establishment of appropriate systems of client protection, risk management and internal and operational controls, an effective internal signalling system and communication of information, as well as the instruments, systems and mechanisms established to detect and identify potential market abuse. With reference to regulated markets/MTFs, the CA grants the authorisation upon positive assessment of the adequacy (in terms of technological resources and human skills) of the surveillance arrangements set by the market operator for the monitoring and supervision of trading, in order to guarantee, among others, the identification of suspicious transactions which may trigger market abuse violations.
37. CY clarified that there have not been any routine on-site-visits to investment firms, which targeted this issue.
38. LI specified that larger investment firms and credit institutions have internal guidance and codes of conduct and compliance mechanisms as well as depending on their size IT systems in place with has to be documented in the authorisation procedure. During the authorisation process, the FMA carries out a sound analysis of the requirements. There is no regulated market and no MTF in Liechtenstein so that the key question is not applicable to LI regarding the awareness of procedures in place in order to detect and identify potential market abuse cases at the time of application for a license of regulated markets and MTFs.
39. In LT regulated markets and investment firms are required to have efficient procedures in order to monitor and detect potential market abuse cases at the time of application for a license.

40. LV states in answer to the questions in Section A that the Commission examines the procedures that are submitted by investment brokerage firms and credit institutions during the authorization process and while conducting on-site inspections and investigations.
41. In MT the application process for the authorisation of an investment firm or regulated market, includes a review of the entity's procedures in place to detect and identify potential market abuse cases. This process is carried out for all applications received by the MFSA and involves the review of the entity's manual of procedures. As part of the licensing process, every Applicant will be asked to identify one individual who will be responsible for ensuring the License Holder's adherence to the Licence conditions (including the compliance with the market abuse legislation and circulars). As part of the licensing process, every Applicant has to identify one individual who will be responsible for ensuring the Licence Holder's adherence to the Licence Conditions (i.e. a Compliance officer). In particular, the Compliance Officer must pay particular attention to Licence Conditions which require the Licence Holder to establish, implement and maintain adequate policies and procedures to identify the breaches of Licence Holder of the applicable regulatory requirements, and to minimise the risk of such breaches. Regarding regulated markets in MT, a regulated market must monitor the transactions undertaken by its members or participants under its systems in order to inter alia identify conduct that may involve market abuse.
42. NL has stated that the AFM does not explicitly check which procedures investment firm (IF), regulated market (RM) or multilateral trading facilities (MTF) intend to use to detect and identify a possible cases of market abuse, but has provided evidence in the peer review process of its Financial Sector Assessment on the observance of IOSCO Principles. That report finds NL fully in line with principles 25, 27 and 29, which accord sufficiently with the affirmative answers to key questions 1 and 4.
43. In NO, the CA, Finanstilsynet does not specifically review the policies and procedures regarding the identification and detection of market abuse cases. However, for investment firms (IF) Finanstilsynet does review entities policies in relation to the handling of inside information (e.g. Chinese Walls and the recording of telephone conversations). Finanstilsynet has also published and circulated guidelines (only available in Norwegian) detailing the requirements necessary when applying for a licence, e.g. organizational and record keeping requirements (STA 10-31 to 10.34). For regulated markets and MTF's in analysing an application of regulated markets and MTF's for authorization, Finanstilsynet verifies that they have in place adequate procedures for market surveillance, including the detection and identification of market abuse.
44. In SK the legislation does not set out specific requirements or to have resources to detect potential market abuse, but the regulation set out the duty to have all necessary resources to provide investment services in accordance with the law. On that ground the CA verifies IT and technical resources to detect market abuse.
45. As a general conclusion it should be emphasised that in the future Competent Authorities should focus more in depth at the analysis of adequate procedures for RM/MTS, credit institutions and investment firms, at least for the largest entities, when conducting an authorization exercise.
46. In PL there are no legal provisions or procedures that provide for obligations for investment firms, regulated markets and MTFs to provide information about such procedures in an application for a license, although it is possible that the aforesaid procedures are included to the application for a licence on a voluntary basis.

47. SI noted that at the time of the licensing they do not pay particular attention to the requirements regarding market abuse, however investment firms are obliged to meet the conditions and requirements reflected in their national regulation for the performance of investment and other services. Therefore, the CA considers that the investment firms indirectly meet all requirements regarding preparation of internal regulations and policies regarding the adequacy with regulations and risk management.
48. Three CAs (IS, PL, and SI) have been assessed as not applying the key issue.

### **2.3 Awareness of the procedures in place at the time of conducting a routine on-site visit.**

49. All CAs (with the exception of LI) are aware of the procedures that larger investment firms, regulated markets and MTFs have in place to detect and identify potential market abuse cases at the time of conducting routine on-site supervisory visits and include, among the documents and procedures which are checked in a routine on-site visit, those procedures aimed at detecting such cases. At least in those cases where a suspicion exists that the procedures are not working properly or for those entities which generate a higher risk.
50. BE emphasised that investment firms have to keep a series of documents at the disposal of the FSMA, which include among others a description of the policy and procedures to prevent market abuse. These documents are a permanent source of information for the FSMA, in particular before conducting an on-site inspection.
51. IE clarified that a check on the general systems, controls and mechanisms is a key part of routine supervisory visits conducted by the CA.
52. In IT, the CA has recently conducted specific inspections on a regulated market operator and a bank authorised to provide investment services focused on the appropriate procedures concerning the detection and reporting of suspicious transactions.
53. In LT regulated markets and investment firms are required to have efficient procedures in order to monitor and detect potential market abuse cases. In order to fulfil these requirements established in said law, regulated markets and investment firms must have appropriate tools (IT, people, etc) in order to identify potential market abuse cases. This issue is checked by the Bank of Lithuania at the time of on-site visits.
54. LV has stated that procedures, signals and alarms that are used by entities to identify potential market abuse cases are examined both during on-site inspections and investigations.
55. During on-site visits in MT, officials of the MFSA request a copy of the entity's procedures' manual of that relevant investment firm or regulated market and they seek to obtain the necessary assurance/documentation that the procedures in place to detect and identify potential market abuse cases are being followed.

56. NL has detailed that the AFM is aware of the procedures that are in place which concern staffing and IT resources and in particular for the larger IFs, RMs and MTFs, these matters are present on the recurring agenda for periodic meetings that the AFM conducts with these entities.
57. NO states that as part of on-site inspections Finanstilsynet asks investment firms, regulated markets and multilateral trading facilities for updated descriptions of market surveillance and other relevant systems that they use and the circumstances whereby the surveillance team follow up on alerts.
58. SI noted that in the scope of on-site supervisory visits such monitoring and surveillance have not been performed yet. Within the individual supervision of the specific investment firms the CA has requested report about the mechanisms and procedures for prevention and detection of market abuse.
59. In PL, depending on supervisory needs and plan of the supervisory visit, the CA may require information from investment firms, regulated markets and MTFs on the procedures in place to fulfil their obligations on detecting and identifying potential market abuse cases.
60. In LI after being 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. The FMA's general approach is that systems, internal guidance, organisational structures, and codes of conduct are evaluated by audit firms that report directly to the FMA. Shortcomings identified in these reports are addressed by the competent supervisory department within the FMA. On the other hand the FMA also receives suspicious trading reports, international administrative assistance requests and conducts its own press monitoring. Any potential failure to comply with the duty and report market abuse would be dealt in a timely manner. The FMA can conduct extraordinary (i.e. non-regular) on-site visits or accompany the auditors whenever necessary. This includes on-site visits to investigate shortcomings identified by the auditors in the course of the regular audits. However, the FMA does not carry out routine on-site supervisory visits at least the larger investment firms, or those which generate a higher risk to the market in relation to the procedures in place in order to detect market abuse. Therefore, LI is considered as not implemented. Finally, it should be mentioned that in LI there is no regulated market and no MTF in Liechtenstein so that the key question is not applicable to LI regarding the awareness of procedures in place in order to detect and identify potential market abuse cases at the time of routine on-site visits of regulated markets and MTFs.

## **2.4 Awareness of the procedures in place at the time of conducting a specific investigation**

61. All the CAs with the exception of PL are aware of the procedures that larger investment firms, regulated markets and MTFs have in place to detect and identify potential market abuse cases at the time of conducting a market abuse investigation on a specific case.
62. In BG all internal rules, procedures and systems of the investment firms are approved by the CA in the licensing process. Moreover according to the national law the CA is informed of all changes of the said rules and systems of the investment intermediaries or trading venue. Respectively all

documents are kept in the registers of the FSC and are available to all supervisory units at any time, including on-site inspections as stated in the previous question and market abuse investigations.

63. In LT regulated markets and investment firms are required to have efficient procedures in order to monitor and detect potential market abuse cases. In order to fulfil these requirements established in said law, regulated markets and investment firms must have appropriate tools (IT, people, etc) in order to identify potential market abuse cases. This issue is checked by the Bank of Lithuania at the time of a specific investigation.
64. In MT the MFSA has the power to have access to any form whatsoever and to receive a copy of it and to demand the concerned documentation from any person, at any point in time, including during investigations into possible market abuse.
65. In NL CA the investigation units in the CA will when appropriate consult the particular policy documents of the IF, RM or MTF in question. References to such procedures occur, in particular, when the CA has suspicions in relation to a failure to report a suspicious transaction.
66. In NO the CA has the authority to collect all relevant information to a case from any party in any form and they also have a relationship with the Norwegian National Authority for the Investigation and Prosecution of Economic and Environmental Crime, in relation to the investigation and prosecution of criminal market abuse offences.
67. In LI when in 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 and credit institution.
68. PL is assessed as not fulfilling the criteria due to lack of evidence.

## **2.5 Monitoring of sufficient resources**

69. Twenty-eight CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LI, LT, LU, LV, NL, NO, MT, PL, PT, RO, SE, SK, UK) monitor whether investment firms, regulated markets or MTFs have sufficient resources in place to fulfil their obligations on detecting and identifying potential market abuse cases. Usually, this monitoring is carried out at the time of conducting on-site supervisory visits or when conducting a specific investigation.
70. In LI each entity has to proof sufficient human and technical resources as well as an adequate organisational structure in relation with its intended business activities in the course of the licensing procedures. Being licensing requirements these requirements are annually reviewed by external audit firms. Any shortcomings with regard to organisational structure human resources or technical infrastructure would be addressed or dealt with the competent FMA division.
71. In LT markets and investment firms are required to have efficient procedures in order to monitor and detect potential market abuse cases. In order to fulfil these requirements established in said law, regulated markets and investment firms must have appropriate tools (IT, people, etc) in order to identify potential market abuse cases. This issue is checked by the Bank of Lithuania at the time of a specific investigation, on-site inspections and questionnaires.

72. In MT the MFSA requires its license holders to maintain sufficient and adequate resources to fulfil their relevant obligations. The MFSA checks that such systems are appropriate/adequate during on-site supervision, whilst considering the nature scale and complexity of the investment firm and quality of STRs. Licence Holders may consider the use of IT tools to detect instances which require STR.
73. In SE the CA has continuous meetings with the concerned entities and regularly check s whether they have made any changes relating to resources or technical systems used for detecting and identifying potential market abuse.
74. In NL the CA did not impose the obligation on investment firms to actually monitor trades for signs of market abuse, but merely to report when such trades signalled market abuse. The CA advises entities to have adequate IT systems in place and in the event that such systems are in place, it critically evaluates them to see if they are adequate.
75. In NO the CA monitors whether IFs, RMs and MTFs have sufficient human and technical resources in place to comply with their duty to detect and report market abuse as part of the CA's on-site inspection programme.
76. In FR the CA developed a desk-based approach in this respect. Among others, the AMF on a regular basis asks for specific reports from regulated entities.
77. In PL, the CA does not verify on a periodic basis whether investment firms, regulated markets and MTFs have sufficient resources in place to fulfil their obligations on detecting and identifying potential market abuse cases. While conducting on-site supervisory visits, depending on supervisory needs, the CA discusses with supervised entities solutions and resources relevant to fulfil their obligations in this regard, although they cannot legally require from supervised entities to implement in this context any specific standards or solutions.
78. The CAs of IS and SI have not been assessed as to monitor whether investment firms, regulated markets or MTFs have sufficient resources in place to fulfil their obligations on detecting and identifying potential market abuse cases.
79. SI responded that the Agency started general review/supervision overall investment firms and banks performing investment services at the end of November 2012 where it requested detailed and comprehensive reports of all participants in the area of their operations of detection and prevention of market abuse. All documents, reports, technical characteristics and specifications of IT systems related to mechanisms for market abuse detection shall be submitted to the Agency by January 25 2013 at the latest. On the other hand the Ljubljana Stock Exchange (regulated market) has its own internal rules for monitoring its members (investment firms) and their operations as of 1st March 2011. The procedures of stock exchange monitoring and inspections are specified in the document, together with the preparation of its report about the findings and its reporting to the Agency as well as cooperation with the Central Securities Clearing Corporation (KDD). Additionally there is so called ALAMO system in place that stock exchange uses for supervision over market abuse and as a basis for reporting to the Agency in accordance with Article 362 of the ZTFI.

## 2.6 Proactivity in enhancing STRs

80. All CAs with the exception of IS, PL<sup>3</sup> and RO reported that they are proactive in enhancing the communication of suspicious transactions and on increasing the quality of these communications.
81. In AT the FMA has a close cooperation with the Vienna Stock Exchange and sent letter to credit institutions providing investment services in order to inform them of a new possibility to transmit STRs and of the form that provided by the FMA.
82. In IT the CA issued several guidance on the detection and identification of market abuse cases and organised meetings with investment firms, regulated markets and MTFs on this topic. Moreover, the Italian Banking Association has also issued “Guidance for the implementation of organisational models” pursuant to the market abuse legislation. Said document identifies the measures and procedures to be implemented by firms in connection with market abuse detections.
83. In IE the CA had written communications with investment firms, stressing the importance of raising STR’s. There is an inspection programme targeting STR’s planned for 2013. Further enforcement action has recently been taken against an investment firm who did not raise an STR, resulting in the imposition of an administrative pecuniary sanction
84. In LI the Liechtenstein Financial Unit (FIU) – the competent authority to receive STR and forward them to the FMA – is going to publish a new guideline on suspicious transaction reports (1st April 2013). In addition, the FMA together with the FIU and third parties offer training to compliance staff of credit institutions and investment firms focussing besides AML also on market abuse and general reporting duties. Furthermore, the FMA states that it is engaged in regular and active dialogue with financial participants and associations. This proactive exchange and its involvement in working groups ensure rapid communication with intermediaries, associations and other market participants, and it takes account of high qualitative standards on the Liechtenstein financial centre.
85. In FR, the CA contacts the regulated entities in order to report any deficiency detected and ask for clarifications or suggest measures to be taken.
86. In PT the CA also issued specific guidance on the concept of insider information and market manipulation, and guidelines on the communication of suspicious transactions.
87. In LT the CA is conducting discussions with investment firms and regulated market in order to improve this duty to be fulfilled but it has no specific strategy or plan to increase STRs.
88. In SI the recent change of the relevant law is expected to raise the number of suspicious transactions provided by investments firms. In February 2012 the CA established national systems for the electronic submission of reports.
89. In MT the CA plans to keep educating the industry by means of circulars, meetings with participants and further guidance notes. The MFSA organised in September 2012 a forum for Listed Companies, represented by their Company Secretaries, on the different transparency

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<sup>3</sup> In PL, the CA has recently initiated some analyses concerning the possibility to orient the investment firms to particular signals which could be crucial from the potential market abuse point of view, and which could in fact be detected by the investment firms themselves

requirements under the Listing Rules which transposes the Transparency Directive and the Market Abuse requirements including the compilation of the Lists of Insiders and timely publication of inside information. Another such meeting is scheduled for the beginning of February 2013.

90. In LV the national law requires the prompt submission of STR's, and to date they have had no difficulties in the receipt of same from investment brokerage firms. They further stated that if there are any errors or inaccuracies on a Suspicious Transaction Report that the Commission will require the investment brokerage firm or the credit institution that submitted the STR, to correct it.
91. In NL in 2012 the AFM initiated a project to increase the number and quality of STR's. The CA has also embarked upon a process of centralizing its handling of STR's and other reports of market activity in an attempt to increase consistency and to create shorter lines of communications with reporting investment firms, regulated markets and multi-lateral trading facilities.
92. In NO the CA has placed a focus on suspicious transaction reports during their on-site inspections. Should entities of their employees not report suspicious transactions there is a risk to the entity of accessory liability.
93. CY has stated that its market surveillance section, which monitors the market on line, would immediately contact the relevant investment firm if any unusual transaction is noted.
94. In BE and CZ forms for STRs are provided. In addition to that when the measures preventing market abuse came into force in May 2006, the CA organised an information-session for the investment firms and issued guidance.
95. In CZ and DE mentioned that information and reporting advice are given on the website of the competent authority.
96. In the UK within the last two years the CA has particularly enjoyed success with three civil enforcement actions against approved persons for failure to submit STRs.
97. Three CAs (IS, PL and RO) are considered as not applying this key issue. In particular:
98. RO clarified that no strategy has been adopted so far, but, considering the low number of STRs, the Competent Authority is analysing the necessity of preparing a plan for STR.
99. In PL, as for today, the CA does not take up proactive measures, but the CA has recently initiated some analyses concerning the possibility to orient the investment firms to particular signals which could be crucial from the potential market abuse point of view, and which could in fact be detected by the investment firms themselves.
100. For IS evidence is lacking.

## **2.7 Ability to take action**

101. All CAs have demonstrated the ability to take action over those investment firms, regulated markets or MTFs which do not fulfil their obligation to detect and identify potential market abuse cases or which lack resources to properly comply with these obligations.
102. In AT the action can range from a simple phone call to enforcement measures and administrative sanctions. The CA specified that in most cases meetings, calls or letters will suffice.
103. In IT the CA has extensive powers vis-à-vis investment firms, regulated markets and MTFs to enforce compliance with said obligations. The CA has also inflicted sanctions in this respect.
104. In LI the FMA has the ability to impose administrative measures and fines (up to 30 000 Swiss Francs).
105. In LT financial penalties may be inflicted if regulated markets or investment firms fail to comply with said obligation.
106. In LV the CA may commence an administrative procedure, should an investment brokerage firm or credit institution fail to fulfil their obligation to detect and identify market abuse cases. The administrative procedure can result in a written warning being issued to the entity, the imposition of a fine or the restriction of the business of a participant in the financial services market of up to six months.
107. In MT the MFSA may inflict administrative sanctions. The MFSA has to date not undertaken any of such actions in this regard. However, the MFSA has in various instances sent emails, requested meetings or made telephone conversations when investment firms or regulated markets did not appear to fulfil their obligations to detect and identify potential market abuse cases or which appear to lack resources to properly comply with these obligations.
108. In NL the CA can levy a fine against any firm where they feel that the entity has not complied with its obligation to report suspicious transactions. These fines can be made public.
109. In NO the CA can take action should the obligation to report STR's (STA 3-11) be violated, citing STA 17-3 as evidence for the level of penalties.
110. In SI the CA is able to take certain actions as regards investment firms, RM or MTFs which do not fulfil their obligations in this respect. However, the powers are more limited than the general supervisory powers in other cases (such as issuing an order to eliminate breach, issuing a warning, administrative fine and others); no direct administrative fine applies for the breach of Article 391 of the ZTFI (Suspicious Transactions Reporting obligations). Additionally all STR applies to the obligation in case of grounded suspicion of prohibited actions. This means that the Agency has ability to take action against investment firms, RM and MTFs in case they do not respond to the Agency's request to explain why they have failed to send the report in a specific supervisory case and not in general.

### 3. Supervisory practices regarding Insider lists (section B)

#### Box 2

The peer review questions of Section B have taken into consideration Article 6 (3) and MAD L1 and Article 5 of the Directive 2004/72/EC which both provide for the treatment of insider lists. The peer review questions of Section B have also taken into account the guidance provided in Section I of the third set of CESR guidance and information (CESR/09-219) on insider lists and Section IV of the second set of CESR guidance and information (CESR/06-562b). Please note that when a peer review question is asked on issuers, information is also provided on any other third party acting on their behalf or for their account (e.g. advisors) where relevant.

111. The following **key issues** were established:

- i) Issuers, or persons acting on their behalf or for their account, draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to inside information. Issuers and persons acting on their behalf or for their account shall regularly update this list and transmit it to the competent authority whenever the latter requests it. (article 6, para 3, 3<sup>rd</sup> sub-para of MAD). In this context it should be noted that under the MAD a competent authority only needs to be supplied with an insider list if it requests it from the issuer: there is no obligation on an issuer spontaneously to provide its insider list to the competent authority or inform it of updates to the list. (2<sup>nd</sup> set of CESR Guidance, para 4.6.)
- ii) Insider lists are used by the competent authorities as a first instance tool in a market abuse enquiry or investigation, without prejudice for the authority to require additional information from the issuers, as it is usually done, when a case is investigated. (3<sup>rd</sup> set of CESR Guidance, para 9).
- iii) The insider lists should fulfil the requirements of completeness and preciseness. (3<sup>rd</sup> set of CESR Guidance, para 9).
- iv) Insider lists can contain, among others, specific categories of persons within an issuer, who have access to inside information. Typically, these people might include: members of the board of directors, CEOs, relevant persons discharging management responsibility, related staff members (such as secretaries and personal assistants), internal auditors, people having access to databases on budgetary control or balance sheet analyses, people who work in units that have regular access to inside information (such as IT people). (3<sup>rd</sup> set of CESR Guidance, para 14).
- v) Insider lists shall state at least: the identity of any person having access to inside information, the reason why such person is on the list, the date at which the insider list was created and updated. (Article 5, para 2 of Directive 2004/72/EC).
- vi) Professionals acting on behalf of the issuers or for their account who have access to inside information are also included in the insider lists. Examples of such professionals may include, but not be limited to, auditors, attorneys, accountants and tax advisors, managers of issuers

(like corporate and investment banks), communication and IT agencies, rating agencies, and investor relations agencies. In all jurisdictions of CESR members the legislation does not limit the scope of the professionals providing services to the issuers to be included in the insider lists. The general rules on drawing up insider lists are applicable, including any third parties hiring other professionals working on their behalf or for their account when these parties have access to inside information. (3rd set of CESR Guidance, para 15).

- vii) To be included by a company on its insider list, the concept of having access to inside information means that the person concerned must have access to information as a result of his activities or duties within the issuer or persons acting on their behalf, as opposed to obtaining access by other means, such as by accident, of which the issuer is not aware. (3rd set of CESR Guidance, para 11).
- viii) Emphasis should be on the access (regular/occasional) of persons to inside information rather than on the existence, in some jurisdictions, of a distinction between regular and occasional insiders. (3rd set of CESR Guidance, para 12).
- ix) For issuers subject to the jurisdiction of more than one EU or EEA Member State with respect to insider list requirements, it is recommended that the relevant competent authorities recognise insider lists prepared according to the requirements of the Member State where the issuer in question has its registered office. (2nd set of CESR Guidance, para 4.5.)
- x) Insider lists are prepared in their domestic official language but CESR members would be willing to accept insider lists submitted to them in a foreign language other than their official language, should this language be customary in the sphere of international finance. (3rd set of CESR Guidance, para 16).

### Key questions

1. Does the CA receive insider lists and updates of said lists automatically? Y/N **(combination of q. 19, 21 of the mapping questionnaire)**
2. Do you receive them upon request?<sup>4</sup> Y/N **(q. 20 of the mapping questionnaire)**
3. Does the CA keep the information included in the insider lists (electronic or in papers) in the course of an investigation? Y/N **(elaboration of q. 22 of the mapping questionnaire)**
4. Are insider lists mostly used by CA in a market abuse inquiry or investigation? Y/N. **(elaboration of q. 24 of the mapping questionnaire)**
5. Are insider lists mostly used by CA as a first instance tool in a market abuse inquiry or investigation?<sup>5</sup> Y/N If not are there other specific reasons to proceed otherwise? Please describe. **(q.24 of the mapping questionnaire)**

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<sup>4</sup> 3<sup>rd</sup> Set of CESR Guidance, para 10.

<sup>5</sup> 3<sup>rd</sup> Set of CESR Guidance, para 9.

6. Has the CA undertaken any action<sup>6</sup> for any infringements, identified in the course of an investigation, related to the requirements of completeness, preciseness and accuracy of insider lists? Y/N. If yes, please describe. **(elaboration of q.26 of the mapping questionnaire)**

7. According to the CA's rules/regulations/guidance<sup>7</sup>, are the following categories of persons included indicatively<sup>8</sup> in the insider lists, as long as they have access to inside information: **(q. 31 of the mapping questionnaire)**

- a. members of the board of directors? Y/N
- b. CEOs? Y/N
- c. relevant persons discharging management responsibility? Y/N
- d. related staff members (such as secretaries and personal assistants)? Y/N
- e. internal auditors? Y/N
- f. people having access to databases on budgetary control, or balance sheet analyses? Y/N
- g. people who work in units that have regular access to inside information (such as IT people)? Y/N
- h. other (please specify)
- i. none (please explain)

8. Is the following information included in the insider lists: **(q. 32 of the mapping questionnaire)**

- a. registered names? Y/N
- b. names of third parties? Y/N
- c. names of employees of third parties? Y/N
- d. reason of including these persons? Y/N
- e. date of (update of the) list, etc.? Y/N
- f. job title? Y/N
- g. others (please specify)

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<sup>6</sup> Taking action by a CA may vary from informal measures such as, e.g. phone calls and written correspondence with the issuers, to taking enforcement action or imposing sanctions and for that reason a description of the action is required.

<sup>7</sup> Including published best practice recommendation

<sup>8</sup> 3<sup>rd</sup> Set of CESR Guidance, para 14.

9. According to the CA's rules/regulations/guidance<sup>9</sup>, are the following categories of professionals considered indicatively<sup>10</sup> as relevant for inclusion of persons in the insider lists, as long as they have access to inside information: **(combination of q. 33 and 35 of the mapping questionnaire)**

- a. auditors, Y/N
- b. attorneys, Y/N
- c. accountants and tax advisors, Y/N
- d. managers of issues (like corporate and investment banks), Y/N
- e. communication and IT agencies, Y/N
- f. rating agencies, Y/N
- g. investor relation agencies, Y/N
- h. investment analysts/journalists Y/N
- i. other (please specify)
- j. none (please explain)

10. Does the law and/or CA's rules/regulations/guidance<sup>11</sup> not provide for any exclusion (provide for any defence) of any categories of persons and/or professionals? Y/N If yes, please describe. **(new question)**

11. The following **benchmarks** were established:

- Fully implemented: *Requires affirmative responses to questions 1 and/or 2, and to questions 3, 4, 5, 6, 7, 8, 9, 10.*
- Partly implemented: *Requires affirmative responses to questions 1 and/or 2, and to questions 3, 6, 7, 8, 9, 10.*
- Not implemented: *Inability to respond affirmatively to questions 1 and/or 2, and/or questions 3, 4, 5, 6, 7, 8, 9, 10.*

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<sup>9</sup> Including published best practice recommendation

<sup>10</sup> 3<sup>rd</sup> Set of CESR Guidance, para 15.

<sup>11</sup> Including published best practice recommendation

### 3.1 Application of the relevant provisions

#### Summary Table-section B

	1	2	3	4	5	6	7a	7b	7c	7d	7e	7f	7g	7h	7i	8a	8b	8c	8d	8e	8f	8g	9a	9b	9c	9d	9e	9f	9g	9h	9i	9j	10	Assessment			
<b>AT</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√		
<b>BE</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	N	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√	
<b>BG</b>	N	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y		Y	N	N	Y	Y	N		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	●		
<b>CY</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√	
<b>CZ</b>	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√	
<b>DE</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√	
<b>DK</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√
<b>EE</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	N	N	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√	
<b>EL</b>	N	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√	
<b>ES</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√	
<b>FI</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√	
<b>FR</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	N		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√	
<b>HU</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√	
<b>IE</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	√	
<b>IS</b>	Y	N	Y	N	N	Y	N	N	N	N	N	N	N			Y	N	N	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N	N	N	Y	●		



### **3.2 Automatically receipt of insider lists and/or receipt of insider lists upon request**

112. All CAs with the exceptions of CZ, IS, LV, RO receive insider lists upon request.
113. The CAs of CZ, IS, LT, LV, MT, RO and SI receive the insider lists and their updates automatically.
114. In LT insider lists are received both automatically after every annual general meeting of shareholders and also upon request when LT authority needs the latest version of the insider list when it conducts an insider dealing investigation.
115. In LI the obligation to draw up and maintain and update insiders' lists exists only for issuers whose financial instruments are admitted to trading on a regulated market in Liechtenstein. As there is no regulated market in Liechtenstein this obligation to draw up insiders' lists does not exist. However, when an issuer is obliged to draw up an insiders' list according to the legislation of country of the regulated market where it has its financial instruments admitted to trading the FMA has the power to request an insiders' list in the course of an investigation of a market abuse case. Indeed, the FMA receives the insiders' list upon request according to its general supervisory powers to have access to any document in any form whatsoever, and to receive a copy thereof and to demand information from any person.
116. In MT the insider lists are submitted electronically and follow a prescribed schedule. In addition, the MFSA may request an updated List of Insiders and such requests are usually made whenever the MFSA Officials notice any publication through company announcements, on the local / international media (newspapers, radios, television, etc.) or the internet relating to changes in officers of the issuer, such as a new appointment of a CEO.

### **3.3 Keeping of the information included in the insider list in course of an investigation**

117. Twenty-nine CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, UK) have been assessed as to keep the information included in the insider lists in the course of an investigation.
118. In AT legislation requires that records of investigations have to be destroyed after seven years.
119. In NO the handling of such information is governed by the Open files Act, the Public Administration Act and the Archive Act.
120. According to the Lithuanian CA's supervisory practice the information included in insider lists is kept in electronic version in the course of an investigation. If the investigation is successful and the case transmitted to Court, all relevant is provided to Court. If the investigation was not successful, the information contained in the insider list is destroyed.

121. In LI the FMA is obliged to maintain records for at least ten years. However, in enforcement cases it can be even longer.
122. In LT insider lists are received both automatically after every annual general meeting of shareholders and also upon request when LT authority needs the latest version of the insider list when it conducts an insider dealing investigation.
123. SK has been assessed as not fulfilling this requirement due to missing or insufficient evidence.

### **3.4 Use of the insider list in a market abuse inquiry or investigation- mostly used as first instance tool**

124. Twenty-seven CAs (AT, BE, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LI, LT, LU, LV, NL, NO, MT, PL, PT, RO, SE, SI, UK) mostly use insider lists in a market abuse inquiry and they consider that insider lists are a first instance tool in a market abuse inquiry or investigation.
125. In BE insider lists are requested systematically. In BG the CA when conducting an investigation on the alleged use of inside information requested information about when the inside information occurred, who had access to such information and in which moment but they do not request the insider list as such in investigations.
126. In DE within a multiple-step procedure it is possible that no insider list is requested. In case that there is a confirmed contact of the issuer, insider lists are not requested most of the time. But if a contact is not obvious or known by the CA it requests the insider lists routinely for the further investigation. Usually the CA does not request insider lists at the very beginning of the investigation not to warn suspicious person within the issuer of the on-going investigation.
127. In CZ and IE insider lists are considered to be a critical piece of evidence in any market abuse investigation.
128. LI specifies that the FMA had more market manipulation than insider dealing investigations and that the FMA has relied rather on credit institutions information on client trading or broker records as well as spam newsletters and mailing campaign documentation than on insiders' lists. But if the case will arise, insiders' lists are used as relevant information for compliance supervision (on-site inspections). FMA states furthermore that the FMA would use insiders' lists as a primary tool in insider investigations because they consider it an ideal way of identifying potential suspects.
129. MT confirmed that all market abuse enquiries or investigations would refer to relevant list of insiders as part of the process. Insider lists are one of the tools used in a market abuse inquiry or investigation given that the list of insiders sent by the issuers to the MFSA are forwarded to MSE-CSD, and are in turn used to trigger trades in the daily transaction reports, carried out by insiders. A unique identification number is used to link the person trading on the market with the persons/entities listed on the List of insiders.

130. In UK the need of requesting an insider list is assessed on a case by case basis. Insider lists are usually requested in conjunction with a chronology of events that illustrates what material facts are evident at which time.
131. FR specified that, in particular for insider trading investigations, AMF requests the insider lists from the issuer and the persons acting on its behalf and check that they include the names and contact information (telephone numbers and email addresses) of each person as well as of course the date on which they became insiders; afterwards, it verifies the behaviour of each person.
132. BG, IS, and SK has been assessed as not fulfilling the key issue due to insufficient evidence.

### **3.5 Actions for any infringement**

133. Twenty-three CAs (AT, BE, CZ, DE, DK, EE, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, RO, SE, SI and UK) have undertaken action for any infringement, identified in the course of an investigation, related to the requirements of completeness, preciseness and accuracy of insider lists.
134. The actions taken by CAs do not always amount to the imposition of a sanction but these actions are frequently direct communication with the issuer (by letter or on the phone) to make it aware of the inefficiency or problem detected and requesting it to solve it for the future or making recommendations on the way to improve its systems and controls.
135. CAs assessed as fulfilling the key issue emphasised that actions are possible and available to the competent authority when applicable.
136. In BG, CY, EL, PL and PT the CAs have not taken any action until now since CAs explained that no infringement had been detected.
137. In DE phone calls and written correspondence have already taken place in case of infringements.
138. In EE the CA has drawn by means of circulars the attention of issuers to the fact that lists are incomplete. The CA has seen no need for formal enforcement or sanctioning. There are on-going supervisory proceedings to establish management transaction reports correctness and completeness of insider lists. Timeframe is mid-January.
139. In ES in 2011 the CA opened a sanctioning file for not fulfilling the requirements on insider lists.
140. In IS the CA has undertaken a number of cases to obtain insiders' lists from issuers as they are required to be sent lists no less frequently than at six-month intervals.
141. In FR and IT administrative fines have been inflicted for such breach.
142. LI did not have a case thus far as the FMA has not conducted an insider dealing investigation during 2010 and 2011. In addition, in LI the obligation to draw up and maintain and update insiders' lists exists only for issuers whose financial instruments are admitted to trading on a regulated market in Liechtenstein. As there is no regulated market in Liechtenstein this obligation to draw up insiders' lists does not exist.

143. In LV the CA issued a warning to an issuer in 2011.
144. In MT the MFSA has in number of instances sent emails, requested meetings or made telephone conversations with investment firms or regulated markets when they did not appear to fulfil their obligations related to the requirements of completeness, preciseness and accuracy of insider lists.
145. For SE, the CA has found numerous instances of incompleteness and lack of preciseness which, however, did not lead to legal infringements. Nevertheless the CA observed that, in case deficiencies not serious enough to be considered a violation of the relevant legislation are detected, informs the company by phone or in writing and explain which corrections should be undertaken in order to comply with guidance and regulation.
146. One CA (BG,) were found not to fulfil this key issue for lack of demonstrating that they can take action.
147. SK responded in the negative, and did not provide evidence, and explained that it had undertaken actions (mostly informal such as phone calls and written letter) in case of irregularities related to the requirements of completeness, preciseness and accuracy of insider lists identified in past supervision procedures. The CA explained it is planning a circular letter disclosing and explaining recent findings determined under review over insider list to all public companies.

### **3.6 Categories of persons included indicatively in the insider lists**

148. CAs were asked whether the following categories of persons are indicatively included in the insider list as long as they have access to inside information: members of the board of directors, CEOs, relevant persons discharging management responsibility, related staff members (such as secretaries and personal assistants), internal auditors, people having access to databases on budgetary control, or balance sheet analyses, people, who work in units that have regular access to inside information.
149. Twenty-seven CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SI, SE, UK) require the inclusion indicatively of all the above-mentioned categories of persons in their insider lists in the case that these categories of persons have access to inside information.
150. In AT issuers have to have constant areas of confidentiality including the board of directors, board of managers, members of the works council, controlling, finance, accounting, and communication. The national law and regulations specifies furthermore the content of insider lists as follows: personal data of all persons as long as they have access to inside information, reason for including persons in the insider list, the issue and the update date of the list. EE provided the following notion of an insider: An insider is a person who, by reason of being a full partner or a member of the management or supervisory body of the issuer of a security due to his or her holding in the issuer of a security or his or her work, profession or duties, or as a result of an offence committed by him or her is in possession of inside information.
151. LV, NL and NO have added that any other person with access, on a regular or incidental basis, to inside information should be included on the insider list.

152. PL specified that, however, it is the actual access to information, not the post held, which constitutes the final factor.
153. PT only provides for a general clause covering persons to be included in the insider lists. In particular, it is required that “issuers, or persons acting on their behalf or for their account, shall draw up and regularly update a list of those persons working for them, under an employment contract or otherwise, who have regular or occasional access to inside information, and shall inform these persons that their names have been included in the said list and of the legal consequences attaching to misuse or improper circulation of such information”.
154. Some CAs gave examples of requiring additional persons to be covered.
155. In BE, CY, ES the following is additionally named as a category: any other person with access to insider information or who is relevant to the case. In CZ, DE and DK the following additional categories are to be included indicatively in the insider list: translators, lawyers/attorneys, tax consultants and auditors when they have access to inside information.
156. FI clarified that secretaries of the board of directors of issuers can also be included in the insider lists and IE responded that any person with access to inside information as defined in Market Abuse legislation.
157. RO additionally named as a category the significant shareholders of the issuer, the subsidiaries of the issuer and the companies controlled by the issuer.
158. In IT the legislation requires to include into the insider list any persons who, in the exercise of their employment, profession or duties, have access to inside information 2006. The CA issued specific guidance providing recommendations and clarifications on the persons to be included in the insider list.<sup>12</sup> The CA clarified, among other, that the list shall identify the persons which, according to the issuer’s internal procedures, effectively may access inside information, typically the persons which may possess inside information in a legitimate and authorised way. Moreover, the list shall also identify all the persons which effectively possess inside information, even though occasionally. Access to inside information shall not be interpreted as pure eventuality to have access to inside information.
159. In HU the following definition of insider applies:

Insider person shall mean:

- a) the executive officers and supervisory board members of an issuer;
- b) any legal person or business association lacking the legal status of a legal person, including their directors, executive officers and supervisory board members, in which the issuer holds a share or voting rights, directly or indirectly, of twenty-five per cent or more;
- c) any legal person or business association lacking the legal status of a legal person, including their directors, executive officers and supervisory board members, that holds, directly or indirectly, a share or voting rights of ten per cent or more in an issuer;
- d) any organization, including its director, executive officer or supervisory board member, that has, in any way or form, been engaged in the placement of securities or the arrangement of a takeover bid as specified under Chapter VII, as well as any employee of the issuer or an organization

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<sup>12</sup> CONSOB Communication no DME/6027054 of March 28, 2006

participating in the issuing and marketing operations, who has had access to insider information during his employment, for a period of one year after being placed on the market;

e) any natural or legal person holding a share, directly or indirectly, of ten per cent or more in the capital of an issuer;

f) any credit institution, including its executive officers, supervisory board members and directors, in which the issuer has an account;

g) any person obtaining inside information as part of his job or when discharging his usual duties in an official capacity, or in any other way relating to work performed under contract of employment or otherwise;

h) any person who obtained inside information through criminal activities;

i) any person living under the same roof with the persons referred to in Paragraphs a)-h), or his close relative;

j) any legal person or business association lacking the legal status of a legal person, including any person acting on their behalf, in which an insider person referred to in Paragraphs a)-i) has a qualifying interest.

160. In IS does not include these categories as they define the obligation to provide insider lists in a way not related to the profession/ position of persons. In IS the following definition of insider applies : an insider shall mean the following:

i. A primary insider, i.e. a party who has, as a rule, access to insider information regular or incidental access to insider information by virtue of his/her membership of a board of directors, management or supervisory bodies or owing to other work for an issuer of financial instruments;

ii. a temporary insider, i.e. a party who is not considered a primary insider but who possesses insider information by virtue of his/her employment, position or responsibilities; and

iii. any other insider, i.e. a party who is considered neither a primary insider nor a temporary insider, but has knowledge of insider information, provided that the person in question knew or should have known the nature of this information.

According to these definitions of the Act on Securities Trading, as well as each issuer's further definition of who should be listed as insiders, according to Article 6 of Rules No. 987/2006 on handling of insider information and insider trading, the issuer sends information to FME.

161. In LT all categories of persons mentioned in questionnaire should be included in the insider's lists.

162. In LI the obligation to draw up and maintain and update an insiders' lists exists only for issuers whose financial instruments are admitted to trading on a regulated market in Liechtenstein. As there is no regulated market in Liechtenstein this obligation to draw up insiders' lists does not exist. In addition, the LI FMA has not issued any rules/regulations/guidance in relation to insider's lists.

163. In LU the legislation does not enumerate in a limitative manner all the persons that should be mentioned on an insider list but states that the persons who, due to their involvement at management decision level, have regular access to inside information and the power to make managerial decisions affecting the future developments and business prospects of the issuer have to be included in the insider list. Moreover, the list shall include those persons working regularly on sensitive issues (i.e. permanent insiders such as persons involved at a certain level in the preparation of annual, quarterly or semi-annual results) and, where applicable those persons working on an occasional basis on files containing inside information. The list of insiders shall not include persons that might have access to inside information by accident. Where it has been

confirmed however that those persons have indeed had access to such information, those persons shall of course be included in the list. As Luxembourg legislation does not enumerate in a limitative way the person who should be included in the insider list but indicates what kind of persons should be included in the insider list and as emphasis is given to the access to inside information (indifferently occasional or regular), all the persons enumerated (members of the board of directors, CEOs, relevant persons discharging management responsibility, related staff members (such as secretaries and personal assistants), internal auditors, people having access to databases on budgetary control, or balance sheet analyses, people, who work in units that have regular access to inside information) have to be included in the insider list.

164. In SE the legislation provides for a general clause including all physical persons that are employed or have an assignment for the listed company and who have access to inside information concerning the company and persons in another company which receives inside information.
165. In SK the CA issued a circular to industry pointing to a general obligation to include all persons who have regular or occasional access to inside information.
166. The following countries considered as non- applying this key issue: IS, LI and SK.

### **3.7 Information included in the insider lists**

167. The CAs were asked whether the following information is included in the insider list: registered names, names of third parties, names of employees of third parties, reasons of including these persons, date of (update of the) list, job title.
168. Twenty- CAs (AT, , CY, CZ, DE, DK, EL, ES, FI, , HU, IE, IT, LT, LU, MT, NO, PL<sup>13</sup>, SE, SI, UK) require the inclusion of all the above mentioned information in their insider lists.
169. In FR, the issuer's list shall show the registered name or the name of third parties but is not required to include the names of employees of third parties. However, the C A requests third parties to draw up their own list, which, further to the list drawn up by the issuer, shall include the names of the individual employees of the third parties having insider status by virtue of their professional relationship with the issuer. There must be a clear link between the issuer's list and the third party's list, as the first one has to show the name for legal entities/third parties.
170. In SE "it is the listed company's obligation to specify the persons who, due to their employment or assignment, work for the listed company and receive insider information. External parties that are called into processes that prescribe establishing an insider list logbook may naturally keep their own insider lists' of those to whom they disseminate information. These "subordinate insider lists " should always be available to the principal and included in the "main insider list" whenever the listed company so wishes. If the CA requests the logbook from the listed company, it should be submitted complete with subordinate insider lists".

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<sup>13</sup> PL does not explicitly require inclusion of the names of third parties and third parties' employees, but there is a general requirement to include the name of "the person having access to specific inside information". Moreover, it does explicitly require inclusion of the job title, but generally requires to include the legal link between the person and the issuer.

171. BG, EE and IS do not require the names of employees of third parties; AT, BG, EE, FR, IS, LI, LT, LV, MT, PT, RO and SI do not require the job title, as detailed below.
172. In AT the inclusion of job-titles etc. is not a legal requirement under Austrian law (including any guidance etc.), however, insider lists submitted to the FMA often contain such additional information. The FMA regards the inclusion of such additional information as being useful for their supervisory purposes and, therefore, has identified it as “best practice”.
173. In BE the date of the list is asked on a legal basis, but in supervisory practice there is rather a focus on the date on which the person has been put on the list.
174. In BG the names of third parties and the names of employees of third parties as well as job titles are not requested.
175. In FR, there is not an explicit requirement to include the job title in the issuer’s list, although the CA considers that this will in principle practice be included among the reasons for the appearing of a person on inclusion in the insider list. If there is a change in the reason for the person’s appearing on the list (i.e. job change), the list should be updated.
176. CZ, EE, ES, PL, SE, and UK require additional information to be included in the insider list, as detailed below.
177. CZ additionally to the named information the date of birth, address of the employee, address of the employees of third parties, address of the third parties have to be included in the insider lists.
178. In ES the CA also requests information on the name of the spouse and children and identification of the companies owned or controlled by the insider.
179. IS requires all the information to be included in insider lists except the information for third parties (8 b and c). Furthermore they include other information in their lists: Address, postal code, city, country, phone number of issuer; name, identification number, email of the issuer’s compliance officer and deputy compliance officers; regulated market of which the financial instruments of the issuer have been admitted to trading or where they have been requested to be admitted to trading or the multilateral trading facility where the financial instruments of the issuer are traded, date of when a party attains the status of a primary insider and others.
180. In PL the CA requires the inclusion, in addition to the before mentioned information the ID number, the date as of which the person has had access to inside information and, where applicable, the information that the person included in the list has been cautioned about consequences of insider trading have to be included in the insider list. In PT there is not an explicit requirement to include the job title in the issuer’s list, but such information always results from the reasons for including a person in the list (e.g., that the person is the financial director of the issuer or a lawyer assisting on transaction).
181. In SE the CA requires additional information regarding who submitted the information to the person to be entered in the insider list and date and time of when the person in question received the information.

182. UK has also provided the following information: Employer name, occupation title, insider involvement (Core insider, super insider, perimeter insider), previous employer, previous occupation and job title, home address, email address, date and time when the individual became aware of the information and date and time when the individual became aware that an announcement would be issued.
183. NO requires indication that the time of day that the person is entered onto the insider list is recorded.
184. LI was considered as non-implemented. In LI the obligation to draw up and maintain and update an insiders' list exists only for issuers whose financial instruments are admitted to trading on a regulated market in Liechtenstein. As there is no regulated market in Liechtenstein this obligation to draw up insiders' lists does not exist. In addition, the FMA hasn't issued any rules/regulations/guidance in relation to insider's lists.

### **3.8 According to the CA's rules/regulations/guidance categories of professionals considered indicatively as relevant for inclusion of persons in the insider list, as long as they have access to inside information**

185. The following categories of professionals were identified in the question as relevant for inclusion in the insider list: auditors, attorneys, accountants and tax advisors, managers of issuers (like corporate and investment banks), communication and IT agencies, rating agencies, investor relation agencies, investment analysts/journalists.
186. All CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IT, LT, LV, LU, MT, NL, NO, PL, PT, RO, SE, SI, SK and UK) with the exception of IS, LI, LV require in their legislation the inclusion indicatively of all the above-mentioned categories of professionals in their insider lists in the case that these categories of professionals have access to inside information.
187. In AT where professionals have access to inside information as a result of their activities or services to the issuer or persons acting on their behalf they would always have to be included in the insider list.
188. In CY any person with access to inside information should be included in the insider list. Therefore, Communication and IT agencies, rating agencies, investor relation agencies and investment analysts/journalists although not included as special categories in the insider list, should they be in the position to have access to inside information, would be caught under the category 'other'.
189. FI clarified that investment analysts/journalists are included if the external investment analyst has been working for or on behalf of the issuer.
190. In HU everyone who has access to inside information shall be included into insider lists.
191. In IT the persons to be included in the list are all those who, in the exercise of their employment, profession or duties, have access to the inside information, regardless of the functional level exercised in the corporate organisation of the issuer and of the persons belonging to the same

issuers' group or of relevant third parties. The CA issued specific guidance providing recommendations and clarifications on the persons to be included in the insider list.<sup>14</sup>

192. In LV all persons listed in the questions are covered if they have inside information.
193. LU and UK both stated responded that their legislation does not provide for any enumeration of the professionals that should be included in the insider lists. Moreover, UK explained that the test is that the person should be acting 'on behalf of the issuer' in order to be included in the insider lists.
194. SE provides for a general clause including all physical persons that are employed or have an assignment for the listed company and who have access to inside information concerning the company and persons in another company which receive inside information. No reference is made to the inclusion of legal persons in the lists.
195. LT responded that all categories of persons mentioned in questionnaire should be included in the insider's lists.
196. In EL investment analysts/journalists are included as additional category in the insider list if they have access to inside information fulfilling the relevant criteria.
197. In FR, even though investment analysts/journalists should not in principle be included in the insider lists, in case they come into possession of insider information through their professional relations with the issuer, they have to be added to the issuer's insider list.
198. NL clarified that investment analysts/journalists are included as additional category in the insider list if they have access to inside information fulfilling the relevant criteria.
199. Some CAs mentioned categories in addition to those mentioned in the question:
200. BE additionally named translators.
201. In CZ investment analysts/journalists are a category and included in the insider lists where the person provides services to an issuer under a contract,. CZ also mentioned additional professions such as external consultants in the field of investment relations and employees from translation services providers.
202. In LI the obligation to draw-up and maintain insiders' lists does not exist and the FMA hasn't issued any rules/regulations/guidance in relation to insider's lists.
203. In MT any person working for the issuer, under a contract of employment or otherwise, who has access to inside information, has to be included in the insider list.
204. In NO any other person outside categories 9 (a – h) who has access to inside information shall also be included on the insider list.
205. In PL only those persons who have actually gained access to inside information should be included in the list. Rating agencies, investment analysts and journalists may only be included in the insider lists when they are connected to the issuer or another entity acting on behalf of an issuer in a way

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<sup>14</sup> CONSOB Communication no DME/6027054 of March 28, 2006

that they are working for such entity (either as a full-time employee or on a basis of a free-lance agreement) or hold positions in supervisory body of an issuer.

206. PT provides a general rule covering persons to be included in insider lists. In PT in case an investment analyst or journalist working or otherwise cooperating for an issuer or for a third party who is acting on its behalf and such person has access to inside information, either on a regular or occasional basis, this person must be included in the insider list.

207. RO does not make reference to the specific categories of professionals. However, in RO, the following persons are presumed to have access to inside information: a) the members of the board of directors and of the executive management body of the issuer, its subsidiaries and of the companies controlled by the issuer; b) the employees of the issuer, its subsidiaries and of the companies controlled by the issuer who, due the specificity of their job, may have access to inside information; c) the persons who perform professional services for the issuer, its subsidiaries and for the companies controlled by the issuer and who have access to inside information (auditors, lawyers, consultants); d) significant shareholders of the issuer. In case they are legal persons, the members of their board of directors and executive management body; e) all the persons known to have obtained inside information from the persons mentioned in letters a)-d); f) all the persons who act in concert with the persons mentioned in letter a)-e); g) all the subsidiaries of the issuer.

208. In IS, LI, LV, the CAs do not require the inclusion of all the categories of person.

209. IS does not include investment analysts/journalists.

### **3.9 Exclusions (any defence) in the law and/or CA's rules/regulations/guidance of any categories of persons and/or professionals**

210. All CAs have responded and demonstrated that there are no exclusions in their legislations.

211. In DE there is one exclusion namely annual auditors, who are not obliged to provide an insider list. However, this exclusion is only applicable when the auditor is acting in its capacity as examiner of the annual accounts but does not apply when the auditor is providing services to the issuer in any other capacity (consultant for a specific corporate transaction, etc).

212. In DK there is an exclusion for Member States and Central Banks in regards monetary debt management (according to MAD 2003/6 art 7).

213. The exceptions reported by DE and DK do not represent an obstacle for these competent authorities being in compliance with this benchmark.

214. In SE no reference is made to the inclusion of legal persons in the lists.

215. In UK the CA provides for exclusion for issuers to maintain a list of all the individuals working for another firm or company acting on its behalf or its account in certain circumstances.<sup>15</sup>
216. UK clarified also that sub-contractors to an adviser of an issuer would be deemed to be working for the adviser rather than the issuer (unless the contrary was obviously the case for example, they were charging time to the issuer). Such sub-contractors to advisors would therefore not need to be included on insider lists.
217. IT states that the list shall also identify all the persons which effectively possess inside information, even though occasionally the inclusion in the list does not consider persons accessing the inside information for a pure eventuality.
218. In PL every person may be included in the insider list, regardless of his/her profession, position held, etc.

#### 4. Supervisory practices regarding Rumours (Section D)

##### Box 3

###### Section D :

Rumours fall into many possible categories including: false or malicious rumours intended to affect the price of an investment; leaks of inside information; and general speculation based on limited publicly available facts. There is no definition of what might constitute a rumour in the MAD, level 2 or level 3 guidance although logically a rumour might contain price sensitive information that has not been officially confirmed by an issuer.

For the peer review questions the Market Abuse Directive, the level 2 Commission Directive 2003/124/EC implementing Directive 2003/6/EC have been taken into consideration.

The first set of CESR guidance and information on the common operation of the Directive (CESR/04~505b) briefly touches on the topic of rumours under paragraph 4.14.

The third set of CESR guidance and information on the common operation of the Directive (CESR/09~219) has few references to how Competent Authorities should regulate their markets with respect to rumours.

The situation is further complicated by rumours either being public, i.e. available to all through access to the media, or private, i.e. being available to a select group of individuals through access to a specific communication such as email.

219. The following key **issues** were identified in the questionnaire:

<sup>15</sup> . It states “for the purposes of DTR 2.8.1 R it is not necessary for an issuer to maintain a list of all the individuals working for another firm or company acting on its behalf of its account where it has: (a) recorded the name of the principal contact(s) at that firm or company; (b) made effective arrangements, which are likely to be based in contract, for that firm of company to maintain its own list of persons both acting on behalf of the issuer and with access to inside information on the issuer; and (c) made effective arrangements for that firm or company to provide a copy of its list to the issuer as soon as possible upon request.”

- a. Transactions or orders to trade which employ fictitious devices, and dissemination of information which gives, or is likely to give, false or misleading signals as to financial instruments, constitute market manipulation (Article 1, paragraph 2, letters b) and c) of MAD).

Market manipulation includes dissemination of information, including rumours and false or misleading news, through the media, including the Internet, or by any other means. Spreading false/misleading information through official recognized channels for disseminating information to users of regulated markets is particularly serious as it is important that market participants are able to rely on information dissemination via such official channels (1<sup>st</sup> Set of CESR Guidance, para. 4.14(a)).

- b. Orders to trade or transactions may be preceded or followed by dissemination of false or misleading information by the same persons or persons linked with them. Evidence of such signals of possible market manipulation shall be taken into account by Competent Authorities and market participants in order, respectively, to detect and avoid engaging in market manipulation (Article 5, letter a), of Directive 2003/124/EC; 1<sup>st</sup> Set of CESR Guidance, para. 4.2 and 4.13.b).
- c. For the purposes of the above, Competent Authorities shall look at whether unusual price movements that could be indicative of manipulative behaviour or a leak of inside information could be caused by false or misleading statements or improperly disclosed information spread through the public media, including the Internet, or by any other means<sup>16</sup>.
- d. Competent Authorities may take any necessary measures to ensure that the public is correctly informed (Article 6, paragraph 7, of MAD). In particular, if and when a publication (eg. articles published in the press or internet postings) or rumours relate explicitly to a piece of information that is inside information within the issuer, the Competent Authority shall monitor that the issuer reacts and responds to the relevant publication or rumours by publishing an ad hoc announcement without undue delay (3<sup>rd</sup> Set of CESR Guidance, Section 4.1).

### Key questions

Q1. Does the relevant CA in your jurisdiction have a role in monitoring rumours? (cf. question 55 of the mapping questionnaire)

Q2. Does the *relevant* CA in your jurisdiction monitor trading ahead of or after the dissemination of rumours (whether in the media or more generally in the market) which have led to price movements<sup>17</sup>? (cf. question 63a of the mapping questionnaire)

Q3. Does the relevant Competent Authority in your jurisdiction look at communications within investment firms, regulated markets and MTFs, where applicable (e.g. phone call, email, instant

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<sup>16</sup> It is understood that a market abuse investigation may start either following the detection of unusual price movements or when the relevant Competent Authority becomes aware of rumours or news disseminated through the media, including the Internet, or by any other means which are indicative of a market manipulation or a leak of inside information.

<sup>17</sup> The question is intended to ascertain whether the relevant CA looks at whether unusual price movements that could be indicative of manipulative behavior or a leak of inside information could be caused by false or misleading statements or improperly disclosed information through the media, including through Internet, or by any other means as stated in key issue 3.

messages and Bloomberg messages) if there has been a rumour? (cf. question 63b of the mapping questionnaire)

Q4. Does the relevant Competent Authority in your jurisdiction intervene to ensure that rumours which contain a leak of inside information are adequately addressed through public disclosure? (cf. question 70 of the mapping questionnaire)

**220. The following benchmark was established in the questionnaire:**

- Fully Implemented: *Requires affirmative responses to all applicable Questions.*
- Partly Implemented: *Requires affirmative responses to all applicable Questions except to Questions 2 and/or 3.*
- Not Implemented: *Inability to respond affirmatively to Questions 1 and/or 4.*

## 4.1. Application of the regulations and Guidelines

### Summary table-Section D

	1	2	3	4	Assessment
AT	Y	Y	Y	Y	√
BE	Y	Y	Y	Y	√
BG	Y	Y	N	Y	□
CY	Y	Y	Y	Y	√
CZ	Y	Y	Y	Y	√
DE	Y	Y	Y	Y	√
DK	Y	Y	Y	Y	√
EE	Y	Y	Y	Y	√
EL	Y	Y	Y	Y	√
ES	Y	Y	Y	Y	√
FI	Y	Y	Y	Y	√
FR	Y	Y	Y	Y	√
HU	Y	Y	Y	Y	√
IE	Y	Y	Y	Y	√
IS	Y	Y	Y	Y	√
IT	Y	Y	Y	Y	√
LI	Y	N	Y	N	●
LT	Y	Y	Y	Y	√
LU	Y	Y	Y	Y	√
LV	Y	Y	Y	Y	√
MT	Y	Y	Y	Y	√
NL	Y	Y	Y	Y	√
NO	Y	Y	Y	Y	√
PL	Y	Y	Y	Y	√
PT	Y	Y	Y	Y	√
RO	Y	Y	Y	Y	√
SK	Y	Y	Y	Y	√
SE	Y	Y	Y	Y	√
SI	Y	Y	Y	Y	√
UK	Y	Y	Y	Y	√

## 4.2 Monitoring of rumours

221. Thirty CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) have a role in monitoring rumours.
222. The range of investigative tools available for investigation of market abuse includes: (i) use of alerts on abnormal market volumes and price movements; (ii) monitoring of the press ; (iii) dedicated tools to monitor the history and development of rumours on internet forums which includes searches by keyword, company name or forum participant ID ; (iv) IT-tools and human resources following the trading in markets of financial instruments on real time ; (v) communiqués on the regulated markets/MTFs websites (BE, RO); databases of the Competent Authorities and of regulated markets/MTFs , supervision of the disclosure of relevant inside information.
223. In DK and EL the CAs undertake a daily monitoring of newspapers and the internet. In IT the CA carries out a continuous monitoring of several potential sources of rumours, including press, website and on-line forums; monitoring is expanded on the occasion of market anomalies and in proximity to significant corporate events.
224. In FI monitoring information dissemination is part of normal supervisory activities.
225. In IE the CA examines market rumours and stories of which it becomes aware (including press articles and broker research and comment) which may be causing, or may have given rise to suspicious movements in the price of securities.
226. In LI the authority monitors rumours by press monitoring (daily conducted monitoring FACTIVE etc.) and the review of other publically available sources. Relevant findings are matched with recent disclosures.
227. In MT the MFSA – SMU’s work in monitoring rumours/possible false information on the market, is referred to in the Securities and Markets Supervision Unit (“SMSU”) - Off-site Compliance Team Procedures Manual.
228. In PL the supervision is carried out on a day-to-day basis and the CA observes and analyzes the stock price indexes and trading and analyzes data obtained from the stock exchange, current and period reports received from issuers, but also information concerning the securities market and issuers stemming from other sources, such as information sent by the information agencies, press information and information found in the Internet.
229. In SE the main responsibility for monitoring rumours is transferred to the marketplace. However, the Competent Authority, in addition to the surveillance’s responsibility, supervises communication media in order to monitor dissemination of rumours. The Competent Authority has internal instructions specifying all information channels to be monitored and describing the use of internal systems.
230. In SK there are no provisions in national legislation regarding the handling of rumours, but they generally monitor trades conducted on the stock exchange, monitor media on a daily basis, websites of supervised entities and investigate complaints from natural and legal persons.

### **4.3 Analyses of trading ahead of or after the dissemination of rumours which have led the price movements and/or looking at whether unusual price movements that could be indicative of manipulative behaviour or a leak of inside information could be caused by false or misleading statements or improperly disclosed information through the media, including through Internet, or by any other means**

231. Twenty-nine CAs (AT, BE, BG, CY, CZ, DE, DK, EL, ES, FI, FR, HU, IE, IS, IT, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) monitor trading ahead of or after the dissemination of rumours (whether in the media or more generally in the market) which have led to price movements and/or look at whether unusual price movements that could be indicative of manipulative behaviour or a leak of inside information could be caused by false or misleading statements or improperly disclosed information through the media, including through Internet, or by any other means as stated in key issue 3.
232. CZ clarified that there is a wide range of investigative tools available for investigation of market abuse. The use of especially (i) analyse of trading in order to establish who might benefit from rumours, (ii) determine of the source of information through interviews with the people engaged in the dissemination of the information or search of communication such as e-mail communication.
233. DK specified that in the TRS database there are built alarms, which react on unusual reactions in the price of a financial instrument.
234. In EL if the rumour turns out to be inside information the above-mentioned analyses and controls are made.
235. In FI the CA looks at trading ahead or after that dissemination of rumours as part of normal routine, and goes through suspicious trading in cases where abnormal price movements are noticed.
236. IS conducts daily monitoring of the market. One aspect of this is monitoring of unusual price movements on the market, which can indicate dissemination of rumours, among other things.
237. As there is neither regulated market nor MTF in Liechtenstein the FMA states that it cannot investigate price movements on foreign markets because of conflicting jurisdictions. As there is however a role for a CA to monitor its markets (including also OTC transactions among investment firms based in LI), and thus also trading ahead (ie. OTC transactions) of or after the dissemination of rumours LI has been assessed as non-implemented with regard to this key question.
238. In MT the MFSA looks at price movements that could indicatively lead to market manipulation; however market rumours identified through MFSA's monitoring function also trigger further investigation into the relevant trades. The MFSA – SMSU's work in monitoring rumours / possible false information, is referred to in the Securities and Markets Supervision Unit ("SMSU") – Off-site Compliance Team Procedures Manual.
239. In PL the CA always takes into consideration the fact that such a rumour may be connected with the significant movement in prices, which may in fact seriously affect the market.

240. In the UK the CA has provided informal best practice recommendations to regulated firms on how to identify and prevent rumours from being disseminated within their firms. UK has further issued informal best practice recommendations to issuers and regulated firms on how to reduce the risks of leaks of inside information to the media.
241. LV has noted that the CA inquires to see if such dissemination has led to price movements.
242. In SE the main responsibility for monitoring rumours is transferred to the marketplace, even if the CA supervises price movements in shares where it receives “in-house” indications of rumours or tip-offs regarding a specific case.

#### **4.4 Looking at communications within investment firms, regulated markets and MTFs, where applicable (e.g. phone call, e-mail, instant messages and Bloomberg messages) if there has been a rumour**

243. All CAs with the exception of BG look at the communications within investment firms, regulated markets and MTFs, where applicable (e.g. phone call, email, instant messages and Bloomberg messages) if there has been a rumour and it can be relevant to the case.
244. In AT the CA does not investigate such communications on a regular basis, but where relevant for market abuse investigations the CA would request also such information from the relevant persons in order to identify the source of rumour.
245. In FI the CA does so if there are reasons to suspect market abuse.
246. In IE the CA does so only in the course of an investigation. The CA (CBoI) gathers, as part of its standard investigative procedures, communication and information, including recordings of conversations, e-mails, Bloomberg messages and any other information relevant to investigating suspicious transactions associated with market rumours. This information may be gathered from investment firms, regulated markets and MTFs, investors, issuers and other regulators.
247. LI specifies that the CA can obtain existing records of telephone calls and data transmissions from regulated investment firms. This power is only applied in a course of a market abuse investigation and not in daily operations.
248. In LU the CA will, according to its internal best practices, start an investigation and thus also look at communications if there has been a rumour in order to find out whether there has been a leak of inside information or whether there has been a market manipulation (e.g. spread of false or misleading information) and whether the secondary market has been affected. The CA will look at the information published in the newspapers (local and international) and other media (such as radio, TV, Internet, Bloomberg), request information from the relevant financial intermediaries, request information from the issuer or the market operator<sup>18</sup> (. Information requested from Issuers might include, where considered relevant for the related investigation, the whole transmission process and chain as well as transmission methods for the information which is suspected being the origin of a rumour.

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<sup>18</sup> As the UK, we do not expect market operators to have records of rumours because they generally do not communicate with investors but they might have received indications of the origins of rumours from issuers or from the members of the markets they operate).

249. IT refers to its extensive investigatory powers in order to monitor the accuracy of information disclosed to the public and to assess whether a market abuse has arisen.
250. The MFSA in MT may request any information from any entity upon request under the PFMA Act. Any such rumours which are not immediately confirmed through a company announcement are followed up with the company to ensure that if the rumour is based on inside information the company issues an appropriate announcement. However, the issuer is not obliged to respond to rumours which are not based on inside information. Such rumours would be further investigated to understand whether they are indicative of a possible manipulative practice. Such further investigation will include review of communications within the investment firms of regulated markets if applicable. The MFSA has among its investigatory powers also the power to require existing telephone records and existing data traffic records.
251. In NL in the case of a formal investigation the CA has such a power and that they will analyse it in the context of all other information, pertinent to the investigation.
252. In NO the CA has the power to gather all communications from investment firms.<sup>19</sup>
253. PT clarified that such powers are in principle used within an investigation for market abuse.
254. BG has been assessed as non-implemented with regard to this key question.
255. In UK the CA will review all types of communication that may have been used to disseminate a rumour. However it will generally be most appropriate to review communications that have occurred within investment firms rather than those that have occurred within regulated markets or MTFs.<sup>20</sup> EE stated, that non-public information such as phone call, email, instant messages and Bloomberg messages is looked only when market abuse suspicion has aroused.

#### **4.5 Intervention to ensure that rumours which appear to contain a leak of inside information are adequately addressed through public disclosure**

256. Thirty CAs (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HU, IE, IS, IT, LI, LT, LU, LV, MT, NL, NO, PL, PT, RO, SE, SI, SK, UK) confirmed that they intervene to ensure that the rumour which contain a leak are adequately addressed through public disclosure and, when applicable, the issuer is requested (or even forced) to make a proper disclosure and, even, disciplinary actions can be taken when appropriate.
257. FI clarified that they have the power to stop trading and to oblige the company to disclose immediately the material information by exchange release.
258. IE clarified that they do so either directly or through the Irish stock exchange. Contact with the relevant issuer would be made to ensure that rumours which appear to contain a leak of inside information are adequately addressed through public disclosure.

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<sup>19</sup> Sections -15-2 and 45 of the STA.

<sup>20</sup> As regulated markets and MTFs do not generally communicate with investors they do not expect that their communications systems will hold records of rumours.

259. In IT the CA has the power to request the issuer to comment rumours whenever there is the risk that the public is misled on relevant facts and circumstances and to publish the information and documents needed to inform the public. This measure is very common and has been used in several cases. The CA has also the power to require the market operator to suspend – or, in the case of necessity and as a matter of urgency, the power to suspend - financial instruments from trading with the aim of ensuring the transparency of the market, the orderly conduct of trading and the protection of investors.
260. In MT the MFSA may request any information from any entity upon request under the PFMA Act. Any such rumours which are not immediately confirmed through a company announcement are followed up with the company to ensure that if the rumour is based on inside information the company issues an appropriate announcement. However, the issuer is not obliged to respond to rumours which are not based on inside information. Such rumours would be further investigated to understand whether they are indicative of a possible manipulative practice.
261. In LI there was no case thus far. However, should a rumour that could potentially mislead investors come to the attention to the FMA that points towards a leak of inside information the FMA would intervene and order the issuer to disclose the information according to the respective stock exchange regulations (as there is no RM and no MTF in LI). The LI disclosure act states that all shareholders should be treated equally. Indeed, the obligation to disclose inside information is not applicable according to the market abuse legislation as such obligation is only for issuers whose financial instruments that are admitted to trading on a regulated market in Liechtenstein. As there is no regulated market in Liechtenstein this obligation is not applicable. LI has been assessed as non-implemented with regard to this key question.
262. In PL if there is a rumour that affects the price of a certain issuer, they require the issuer to publicly respond to the rumour (official statement, etc.)
263. In SE, the obligation to intervene in cases when rumours that contain inside information leak to the market have been officially delegated to the market operators. In case a rumour containing inside information is detected by the CA, it can contact the market operator in order to take immediate action.
264. In the UK the CA monitors certain security price movements and sometimes this may entail reviewing rumours related to such price movements to determine if an announcement is required by the issuer.

## 5. Good Practices

The following good practices result from the peer review that was undertaken by ESMA concerning certain supervisory practices under the current market abuse regime and should be considered as recommendable elements of supervision fostering convergence in NCAs' practices throughout the EU. These practices should not pre-empt the discussion under the current market abuse review or any future ESMA's work on this topic.

### General approach

#### Good practices identified by the RP

1. The mapping questionnaire included a number of questions which were not specifically benchmarked in the latter peer review work. The answers received to those questions have served in order to analyse in details how the application of said supervisory practices is made and enforced on a day-to-day basis, with a view to assessing the degree of convergence of the practices across the EU and identifying good practices which might be of benefit for competent authorities (see Article 30 of ESMA Regulation and paragraph 51 of the peer review methodology). The need to converge and develop good practices using the practices in place among supervisory authorities is of great importance and follows as a direct consequence from the obligations in the ESMA Regulation.
2. ESMA believes that the practices analysed in this Report could contribute to the identification of a common supervisory approach.
3. It is understood that supervisory practices should duly take into account the structure of the supervised industry.
4. Supervision is usually a mixture of ex ante reviews, which take place when an entity is set up and relevant documentations is approved / service providers or related persons are appointed and on-going monitoring, which takes place after approval/appointment on the basis of routine information collected from supervised entities and non-routine information from different sources, assessment of risks, on-site visits and inspections, etc.
5. The following identified good practices should be proportionate and risk-based, upon approval by the ESMA's BoS, all Competent Authorities agree that it is helpful to follow them.

#### Supervisory practices regarding structural provisions to detect and prevent market abuse cases (Section A of the peer review report)

6. Irrespective of their particular organization and structure, Competent Authorities should ensure adequate and effective communication and cooperation takes place at all times between authorising and supervising Divisions and those dealing with detection of market abuse and market surveillance.
7. Competent Authorities should ascertain, as part of their supervisory function, whether investment firms, regulated markets and MTFs have in place systems and procedures in order to detect, identify and prevent potential market abuse cases and take appropriate actions thereto (e.g. inform the CA).
8. *It is a good practice for Competent Authorities to supervise at three stages whether appropriate systems to detect and report market abuse are in place:*
  - *Firstly, when authorizing investment firms and regulated markets/MTFs Competent Authorities should supervise whether appropriate systems to detect and report market abuse are in place.*

*This means that authorization can only be granted when appropriate processes or proper surveillance systems are in place at the time of licensing.*

- *Secondly, Competent Authorities should establish and have in place on-going supervision and on-site visits/inspections. Especially during on-site visits the adequacy and effectiveness of procedures and arrangements established by investment firms and regulated markets/MTFs to detect and report market abuse cases to the Competent Authority can be a topic of the visits. However, it should be ensured that the supervision of the systems at the time of authorisation or as part of on-going supervision does not impede in any way the Competent Authority from dealing with a market abuse case and taking enforcement action, in a case where such systems have been found adequate and appropriate.*
  - *Thirdly, Competent Authorities should carry out analyses/investigations ‘ex post’, meaning that if a potential breach of the obligation of investment firms and regulated markets/MTFs to detect and report market abuse to the CA is identified by the CA, they should consider whether it is proportionate to conduct further investigations/ inspections or take any other action<sup>21</sup>.*
9. Competent authorities should have a strategy or plan in place to increase the number of qualitative STRs communicated by the industry. In particular, it is good practice for Competent Authorities to engage with the industry, including through meetings, to help clarify for the industry to develop appropriate systems to detect, identify and communicate suspicious transactions in a complete and timely manner.
10. Moreover, it is a good practice for Competent Authorities to impress on investment firms, regulated markets and MTFs the importance of developing and implementing suitable training and compliance programs, to ensure that staff (especially staff involved in the detection/compliance areas and in trading and order routing) are aware of their obligations and the rules in place to allow detection/reporting of market abuse.

### **Supervisory practices regarding the treatment of insiders’ lists (Section B of the peer review report)**

11. Competent Authorities should ensure that issuers comply with their obligations to draw up insiders’ lists. Mostly during an investigation, CAs should cross check the insiders’ list with external and internal data. In this regard, Competent Authorities should check the completeness/accuracy of information included in the insiders’ lists and which information is provided by the issuers or the persons acting on their behalf.<sup>22</sup>

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<sup>21</sup> Take action by a CA varies from informal measures such as, e.g. phone call and written correspondence to imposing sanctions or taking other enforcement actions.

<sup>22</sup> It is reminded that according to the third set of CESR guidance and information (CESR/09-219) on insiders’ lists Competent Authorities should request from their issuers that specific categories of persons should be included in their insiders’ lists (e.g. members of the board of directors of issuers, CEOs, relevant persons discharging managerial responsibilities, related staff members, internal auditors, people having access to databases on budgetary control, or balance sheet analyses, people who work in units that have regular access to inside information (such as IT people) and in any case any person who has regular or incidental access to inside information should be included in insiders’ lists.

It is reminded Competent Authorities should request from their issuers that the lists of insider include any person covered by Article 6(3) of MAD who has regular or occasional access to inside information relating, directly or indirectly, to the issuer, taking into account the issuer’s internal organization and information flows. For this purpose, competent Authorities may issue any kind of public communication via guidance or a circular.

Pursuant to Commission Directive 2004/72/EC, Member States shall ensure that the persons required to draw up lists of insiders take the necessary measures to ensure that any person on such a list that has access to inside information acknowledges the legal

### **Supervisory practices regarding the handling of rumours (Section D of the peer review report)**

12. Competent Authorities should monitor for rumours, including those affecting the secondary market. It is a good practice in this regard to use specific IT-tools to issue alerts on unusual trading activity or a particular financial instrument.
13. In effectively monitoring rumours, the monitoring by CAs should be proportionate and as such, might be more focused on those rumours that seem to be reckless or give rise to a significant movement in the price of a financial instrument or lead to significant difficulties for an issuer or its advisor to dispel.
14. It is a good practice for Competent Authorities, among other strategies, to establish criteria to evaluate the relevance of the rumours detected and the steps to be taken in relation to the type of rumour by the CAs. Notably, such criteria are indicative and Competent Authorities should be able to review each case on an ad hoc basis.
15. It is a good practice for Competent Authorities to communicate to market participants that they could consider the dissemination of rumours as indicative of a market manipulation or a leak of inside information, which will help to encourage firms to report such behaviour.
16. Competent Authorities should encourage that regulated investment firms, MTF and Regulated Markets monitor trading ahead or after the dissemination of rumours which may have led to price movements.
17. Competent Authorities should use their powers available under the E.U. Directives and national law to investigate whether a rumour may be indicative of a market manipulation or a leak of inside information. In particular, Competent Authorities could review when appropriate and feasible the communications within regulated investment firms.
18. Competent Authorities shall take actions to ensure that rumours which are found to contain a leak of inside information are adequately addressed through public disclosure. Competent Authorities shall intervene, if necessary, in real time to ensure that the public is correctly informed.

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and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information. For this, Competent Authorities should issue any kind of public communication via guidance or a circular.

Pursuant to the Third set of CESR guidance and information on the common operation of the Directive to the market, insiders' lists submitted in a foreign language other than their official language should be accepted by the Competent Authority, if this foreign language is customary in the sphere of international finance. In this context English should be the standard. According to the above mentioned third set of CESR guidance, this should be the same in case of a multi-listed issuer and third persons acting on behalf or for the account of the issuer, if required to send its own insiders' lists to the CA, where relevant in national law, if not using the same language as that of the issuer.

## **Annex 1 - Self-assessment Report**

### **Table of Contents**

- I - Introduction
- II – Section A
- III – Section B
- IV – Section D

**Table 1. Country codes and acronyms of Competent Authorities and Member States**

Country codes Member States EC/EEA		Competent Authorities-Acronyms	
AT	Austria	Financial Market Authority	FMA
BE	Belgium	Financial Services and Markets Authority	FSMA
BG	Bulgaria	Financial Supervision Commission	FSC
CY	Cyprus	Cyprus Securities and Exchanges Commission	CySEC
CZ	Czech Republic	Czech National Bank	CNB
DE	Germany	Bundesanstalt für Finanzdienstleistungsaufsicht	BaFin
DK	Denmark	Finanstilsynet	Finanstilsynet
EE	Estonia	Estonian Financial Supervision Authority	EFSA
EL	Greece	Capital Market Commission	HCMC
ES	Spain	Comision Nacional del Mercado de Valores	CNMV
FI	Finland	Finanssivalvonta	FIN-FSA
FL	Liechtenstein	Finanzmarktsaufsicht Liechtenstein	FMA
FR	France	Autorité des Marchés Financiers	AMF
HU	Hungary	Hungarian Financial Supervisory Authority	HFSA
IE	Ireland	Central Bank of Ireland	CBoI
IS	Iceland	Financial Supervisory Authority	FME
IT	Italy	Commissione Nazionale per le Società e la Borsa	Consob
LI	Liechtenstein	Finanzmarktsaufsicht Liechtenstein	FMA
LT	Lithuania	Lietuvos Bankas	LB
LU	Luxembourg	Commission de Surveillance du Secteur Financier	CSSF
LV	Latvia	Financial and Capital Markets Commission	FCMC
MT	Malta	Malta Financial Services Authority	MFSA
NL	Netherlands	Autoriteit Financiële Markten	AFM
NO	Norway	Finanstilsynet	Finanstilsynet
PL	Poland	Polish Financial Supervision Authority	KNF
PT	Portugal	Comissão do Mercado de Valores Mobiliários	CMVM
RO	Romania	Romanian National Securities Commission	CNVMR
SE	Sweden	Finansinspektionen	Finansinspektionen
SI	Slovenia	Securities Market Agency	SMA
SK	Slovakia	National Bank of Slovakia	NBS
UK	United Kingdom	Financial Services Authority	FSA

**Table 1. Overall summary table**

	A	B	D	Assessment
AT	✓	✓	✓	✓
BE	✓	✓	✓	✓
BG	✓	●	□	●
CY	✓	✓	✓	✓
CZ	✓	✓	✓	✓
DE	✓	✓	✓	✓
DK	✓	✓	✓	✓
EE	✓	✓	✓	✓
EL	✓	✓	✓	✓
ES	✓	✓	✓	✓
FI	✓	✓	✓	✓
FR	✓	✓	✓	✓
HU	✓	✓	✓	✓
IE	✓	✓	✓	✓
IS	●	●	✓	●
IT	✓	✓	✓	✓
LI	✓	✓	✓	✓
LT	✓	✓	✓	✓
LU	✓	✓	✓	✓
LV	✓	✓	✓	✓
MT	✓	✓	✓	✓
NL	✓	✓	✓	✓
NO	✓	✓	✓	✓
PL	●	●	✓	●
PT	✓	✓	✓	✓
RO	□	✓	✓	□
SE	✓	✓	✓	●
SI	●	□	✓	●
SK	✓	●	✓	●
UK	✓	✓	✓	✓



## **i. Introduction**

This document contains the responses in the self-assessment phase of the work to the questions for the peer review phase of the work of the Review Panel in relation to MAD Supervisory practices.

This document details questions in relation to the areas of Competent Authorities supervisory practices as regards investment firms, regulated markets and MTFs obligations to have in place the necessary market abuse investigation capabilities; secondly the Competent Authorities Supervisory practices as regards the treatment of insider lists by issuers or persons acting on their behalf or for their account.

The questions below build on those of the questionnaire circulated in early August for response by 28 September (2012-ESMA-21), Therefore all Competent Authorities had already for the most part already reflected on the responses needed for the questions below and can consult the answers already given in order to respond to these questions.

All authorities were asked to respond to the questions below within the **deadline of 9 November 2012**.

In addition all Competent Authorities needed shall within the same deadline have provided support their responses by evidence demonstrating what the supervisory practices that the Competent Authority follows. The sort of evidence which may be provided includes, but is not limited to, Competent Authorities relevant guidelines and internal procedures, internal reports or documentation which demonstrates supervisory activities in the relevant domain, like letters to supervised entities, annual reports demonstrating supervisory activities in the relevant domain, enforcement data in the field etc. The evidence had to be provided in English.

## **ii. Section A**

Competent Authorities supervisory practices as regards investment firms, regulated markets and MTF obligations to have in place the necessary market abuse investigation capabilities as well as on the procedures that investment firms, regulated markets and MTFs (if applicable) have in place and the measures they apply in order to fulfil their obligations of having the necessary market abuse investigation capabilities, including the submission of suspicious transaction reports to the competent Authorities and the provision of any necessary information and support to the Competent Authorities in a possible market abuse investigation

The questions of Section A have taken into consideration:

- Article 6(9) of MAD L1 and Articles 7 -11 of the Directive 2004/72 require that any person professionally arranging transactions in financial instruments who reasonably suspects that a transaction might constitute insider dealing or market manipulation shall notify the competent authority without delay and file suspicious transaction reports (STRs). The work also takes into account the guidance provided in Section II of the third set of CESR guidance and information (CESR/09-219) on suspicious transactions reports and Section V of the first set of CESR guidance and information (CESR/04-505b).

- Article 6(6) of MAD L1 provides for market operators to adopt structural provisions aimed at preventing and detecting market manipulation practices. In this context it is worthwhile to recall that

Article 43 of MiFID requires that regulated markets shall have in place effective arrangements and procedures for the regular monitoring of members or participants and that regulated markets shall monitor the transactions undertaken on their systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse. Operators shall report such significant breaches to the competent authority. The regulated market shall also provide the relevant information without delay to the competent authority for the investigation and prosecution of market abuse and to provide full assistance. Article 26 of MiFID provides corresponding rules and obligations for investment firms and market operators who are operating an MTF.

## KEY QUESTIONS

1. Is the relevant CA in your jurisdiction aware of the 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? **(combination of q. 6, 12, 13 and 14 of the mapping questionnaire)**
2. Is the relevant CA in your jurisdiction aware of the 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 have in place to detect and identify potential market abuse cases at the time of conducting routine on-site supervisory visits? **(combination of q. 6, 12, 13 and 14 of the mapping questionnaire)**
3. Is the relevant CA in your jurisdiction aware of the procedures (alarms/signals, systems or mechanisms) that the relevant investment firm, regulated market or MTF have in place to detect and identify potential market abuse cases at the time of conducting a market abuse investigation on a specific case? **(combination of q. 6, 12, 13 and 14 of the mapping questionnaire)**
4. Does the relevant Authority in your jurisdiction monitor whether investment firms, regulated markets or MTF have sufficient resources (IT, software, etc.) in place to fulfil their obligations on detecting and identifying potential market abuse cases? **(q. 7 of the mapping questionnaire)**
5. Is the relevant Authority in your jurisdiction proactive in enhancing the communication of suspicious transaction and on increasing the quality of these communications? **(elaboration of q.18 of the mapping questionnaire)**
6. Does the relevant Authority in your jurisdiction have the ability to take action<sup>23</sup> over those investment firms, regulated markets or MTF which do not fulfil its obligation to detect and identify potential market abuse cases or which lack resources to properly comply with these obligations? **(combination of q.3., 4 and 5 of the mapping questionnaire)**

## BENCHMARKING

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<sup>23</sup> Taking action by a CA may vary from informal measures such as, e.g. phone calls and written correspondence with the issuers, to taking enforcement action or imposing sanctions and for that reason a description of the action is required.



**Fully implemented**

*Requires affirmative responses to all applicable Questions*

**Partly implemented**

*Requires affirmative responses to all applicable Questions except to Questions 1 and/or 5.*

**Not implemented**

*Inability to respond affirmatively to Questions 2, 3, 4 and/or 6.*

### Summary Table – Section A

	1	2	3	4	5	6	Assessment
<b>AT</b>	Y	Y	Y	Y	Y	Y	√
<b>BE</b>	Y	Y	Y	Y	Y	Y	√
<b>BG</b>	Y	Y	Y	Y	Y	Y	√
<b>CY</b>	Y	Y	Y	Y	Y	Y	√
<b>CZ</b>	Y	Y	Y	Y	Y	Y	√
<b>DE</b>	Y	Y	Y	Y	Y	Y	√
<b>DK</b>	Y	Y	Y	Y	Y	Y	√
<b>EE</b>	Y	Y	Y	Y	Y	Y	√
<b>EL</b>	Y	Y	Y	Y	Y	Y	√
<b>ES</b>	Y	Y	Y	Y	Y	Y	√
<b>FI</b>	Y	Y	Y	Y	Y	Y	√
<b>FR</b>	Y	Y	Y	Y	Y	Y	√
<b>HU</b>	Y	Y	Y	Y	Y	Y	√
<b>IE</b>	Y	Y	Y	Y	Y	Y	√
<b>IS</b>	N	Y	Y	N	N	Y	●
<b>IT</b>	Y	Y	Y	Y	Y	Y	√
<b>LI</b>	Y	Y	Y	Y	Y	Y	√
<b>LT</b>	Y	Y	Y	Y	Y	Y	√
<b>LU</b>	Y	Y	Y	Y	Y	Y	√
<b>LV</b>	Y	Y	Y	Y	Y	Y	√
<b>MT</b>	Y	Y	Y	Y	Y	Y	√
<b>NL</b>	Y	Y	Y	Y	Y	Y	√
<b>NO</b>	Y	Y	Y	Y	Y	Y	√
<b>PL</b>	N	N	N	N	N	Y	●
<b>PT</b>	Y	Y	Y	Y	Y	Y	√
<b>RO</b>	Y	Y	Y	Y	N	Y	□
<b>SE</b>	Y	Y, but it depends on the purposes of the investigation	Y	Y	Y	Y	√
<b>SI</b>	N	Y	N	N	Y	Y	●
<b>SK</b>	Y	Y	Y	Y	Y	Y	√
<b>UK</b>	Y	Y	Y	Y	Y	Y	√



Y: CA gave a positive answer to the question    N: CA gave a negative answer to the question    N/A: Not applicable

Empty space: Missing response

✓: fully applied            ●: non applied            □: partially applied

### iii. Section B

#### **Competent Authorities Supervisory practices as regards the treatment of insider lists by issuers or persons acting on their behalf or for their account**

The questions of Section B have taken into consideration Article 6 (3) and MAD L1 and Article 5 of the Directive 2004/72/EC which both provide for the treatment of insider lists. The questions of Section B have also taken into account the guidance provided in Section I of the third set of CESR guidance and information (CESR/09-219) on insider lists and Section IV of the second set of CESR guidance and information (CESR/06-562b). Please note that when a question is asked on issuers, information should be also provided on any other third party acting on their behalf or for their account (e.g. advisors) where relevant.

#### **KEY ISSUES**

1. Issuers, or persons acting on their behalf or for their account, draw up a list of those persons working for them, under a contract of employment or otherwise, who have access to inside information. Issuers and persons acting on their behalf or for their account shall regularly update this list and transmit it to the competent authority whenever the latter requests it. (article 6, para 3, 3<sup>rd</sup> sub-para of MAD). In this context it should be noted that under the MAD a competent authority only needs to be supplied with an insider list if it requests it from the issuer: there is no obligation on an issuer spontaneously to provide its insider list to the competent authority or inform it of updates to the list. (2<sup>nd</sup> set of CESR Guidance, para 4.6.)
2. Insider lists are used by the competent authorities as a first instance tool in a market abuse enquiry or investigation, without prejudice for the authority to require additional information from the issuers, as it is usually done, when a case is investigated. (3<sup>rd</sup> set of CESR Guidance, para 9).
3. The insider lists should fulfil the requirements of completeness and preciseness. (3<sup>rd</sup> set of CESR Guidance, para 9).
4. Insider lists can contain, among others, specific categories of persons within an issuer, who have access to inside information. Typically, these people might include: members of the board of directors, CEOs, relevant persons discharging management responsibility, related staff members (such as secretaries and personal assistants), internal auditors, people having access to databases on budgetary control or balance sheet analyses, people who work in units that have regular access to inside information (such as IT people). (3<sup>rd</sup> set of CESR Guidance, para 14).
5. Insider lists shall state at least: the identity of any person having access to inside information, the reason why such person is on the list, the date at which the insider list was created and updated. (article 5, para 2 of Directive 2004/72/EC).
6. Professionals acting on behalf of the issuers or for their account who have access to inside information are also included in the insiders' lists. Examples of such professionals may include, but not be limited to, auditors, attorneys, accountants and tax advisors, managers of issues (like corporate and investment banks), communication and IT agencies, rating agencies, and investor relations agencies. In all jurisdictions of CESR members the legislation does not limit the scope of the professionals providing services to the issuers to be included in the insiders' lists. The general rules on drawing up insiders' lists

are applicable, including any third parties hiring other professionals working on their behalf or for their account when these parties have access to inside information. (3<sup>rd</sup> set of CESR Guidance, para 15).

7. To be included by a company on its insider list, the concept of having access to inside information means that the person concerned must have access to information as a result of his activities or duties within the issuer or persons acting on their behalf, as opposed to obtaining access by other means, such as by accident, of which the issuer is not aware. (3<sup>rd</sup> set of CESR Guidance, para 11).

8. Emphasis should be on the access (regular/occasional) of persons to inside information rather than on the existence, in some jurisdictions, of a distinction between regular and occasional insiders. (3<sup>rd</sup> set of CESR Guidance, para 12).

9. For issuers subject to the jurisdiction of more than one EU or EEA Member State with respect to insider list requirements, it is recommended that the relevant competent authorities recognise insider lists prepared according to the requirements of the Member State where the issuer in question has its registered office. (2<sup>nd</sup> set of CESR Guidance, para 4.5.)

10. Insider lists are prepared in their domestic official language but CESR members would be willing to accept insiders' lists submitted to them in a foreign language other than their official language, should this language be customary in the sphere of international finance. (3<sup>rd</sup> set of CESR Guidance, para 16).

## KEY QUESTIONS

11. Does the CA receive insider lists and updates of said lists automatically? Y/N **(combination of q. 19, 21 of the mapping questionnaire)**

12. Do you receive them upon request?<sup>24</sup> Y/N **(q. 20 of the mapping questionnaire)**

13. Does the CA keep the information included in the insider lists (electronic or in papers) in the course of an investigation? Y/N **(elaboration of q. 22 of the mapping questionnaire)**

14. Are insider lists mostly used by CA in a market abuse inquiry or investigation? Y/N. **(elaboration of q. 24 of the mapping questionnaire)**

15. Are insider lists mostly used by CA as a first instance tool in a market abuse inquiry or investigation? <sup>25</sup> Y/N If not are there other specific reasons to proceed otherwise? Please describe. **(q.24 of the mapping questionnaire)**

16. Has the CA undertaken any action<sup>26</sup> for any infringements, identified in the course of an investigation, related to the requirements of completeness, preciseness and accuracy of insider lists? Y/N. If yes, please describe. **(elaboration of q.26 of the mapping questionnaire)**

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<sup>24</sup> 3<sup>rd</sup> Set of CESR Guidance, para 10.

<sup>25</sup> 3<sup>rd</sup> Set of CESR Guidance, para 9.

<sup>26</sup> Taking action by a CA may vary from informal measures such as, e.g. phone calls and written correspondence with the issuers, to taking enforcement action or imposing sanctions and for that reason a description of the action is required.

17. According to the CA's rules/regulations/guidance<sup>27</sup>, are the following categories of persons included indicatively<sup>28</sup> in the insider lists, as long as they have access to inside information: **(q. 31 of the mapping questionnaire)**

- j. members of the board of directors? Y/N
- k. CEOs? Y/N
- l. relevant persons discharging management responsibility? Y/N
- m. related staff members (such as secretaries and personal assistants)? Y/N
- n. internal auditors? Y/N
- o. people having access to databases on budgetary control, or balance sheet analyses? Y/N
- p. people who work in units that have regular access to inside information (such as IT people)? Y/N
- q. other (please specify)
- r. none (please explain)

18. Is the following information included in the insider lists: **(q. 32 of the mapping questionnaire)**

- h. registered names? Y/N
- i. names of third parties? Y/N
- j. names of employees of third parties? Y/N
- k. reason of including these persons? Y/N
- l. date of (update of the) list, etc.? Y/N
- m. job title? Y/N
- n. others (please specify)

19. According to the CA's rules/regulations/guidance<sup>29</sup>, are the following categories of professionals considered indicatively<sup>30</sup> as relevant for inclusion of persons in the insider lists, as long as they have access to inside information: ? **(combination of q. 33 and 35 of the mapping questionnaire)**

- k. auditors, Y/N

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<sup>27</sup> Including published best practice recommendation

<sup>28</sup> 3<sup>rd</sup> Set of CESR Guidance, para 14.

<sup>29</sup> Including published best practice recommendation

<sup>30</sup> 3<sup>rd</sup> Set of CESR Guidance, para 15.

- l. attorneys, Y/N
- m. accountants and tax advisors, Y/N
- n. managers of issues (like corporate and investment banks), Y/N
- o. communication and IT agencies, Y/N
- p. rating agencies, Y/N
- q. investor relation agencies, Y/N
- r. investment analysts/journalists Y/N
- s. other (please specify)
- t. none (please explain)

20. Does the law and/or CA's rules/regulations/guidance<sup>31</sup> not provide for any exclusion (provide for any defence) of any categories of persons and/or professionals? Y/N If yes, please describe. **(new question)**

#### **BENCHMARKING**

##### **Fully implemented**

*Requires affirmative responses to questions 1 and/or 2, and to questions 3, 4, 5, 6, 7, 8, 9, 10.*

##### **Partly implemented**

*Requires affirmative responses to questions 1 and/or 2, and to questions 3, 6, 7, 8, 9, 10.*

##### **Not implemented**

*Inability to respond affirmatively to questions 1 and/or 2, and/or questions 3, 4, 5, 6, 7, 8, 9, 10.*

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<sup>31</sup> Including published best practice recommendation

	1	2	3	4	5	6	7a	7b	7c	7d	7e	7f	7g	7h	7i	8a	8b	8c	8d	8e	8f	8g	9a	9b	9c	9d	9e	9f	9g	9h	9i	9j	10	Assessment
<b>AT</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y			Y	✓
<b>BE</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	✓
<b>BG</b>	N	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y		Y	N	N	Y	Y	N		Y	Y	Y	Y	Y	Y	Y	Y			Y	●
<b>CY</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	N	N	N	N	Y		Y	✓
<b>CZ</b>	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	✓
<b>DE</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	✓
<b>DK</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	✓
<b>EE</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	✓
<b>EL</b>	N	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	✓
<b>ES</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	✓
<b>FI</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y			Y	✓
<b>FR</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y		Y <sup>32</sup>	✓	
<b>HU</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	✓
<b>IE</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	✓
<b>IS</b>	Y	N	Y	N	N	Y	N	N	N	N	N	N	N	Y		Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	N			Y	●
<b>IT</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	n/a	Y	Y	Y	Y	Y	Y	n/a	Y	Y	Y	Y	Y	Y	Y	Y	Y	n/a	Y	✓
<b>LI</b>	N	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		n/a	●	
<b>LT</b>	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y		n/a	✓	
<b>LU</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	✓	
<b>LV</b>	Y	n/a	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	N	N	N	N	N	N	N	N	N	N	N	Y	N	✓
<b>MT</b>	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	Y	Y	Y	n/a	Y	Y	Y	Y	Y	Y	Y	Y	Y		Y	✓
<b>NL</b>	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	✓

<sup>32</sup> Response was changed to 'yes' in view of the misleading wording of this question



#### iv. Section D - Rumours

##### Key issues

1. Transactions or orders to trade which employ fictitious devices, and dissemination of information which gives, or is likely to give, false or misleading signals as to financial instruments, constitute market manipulation (Article 1, paragraph 2, letters b) and c) of MAD).

Market manipulation includes dissemination of information, including rumours and false or misleading news, through the media, including the Internet, or by any other means. Spreading false/misleading information through official recognized channels for disseminating information to users of regulated markets is particularly serious as it is important that market participants are able to rely on information dissemination via such official channels (1<sup>st</sup> Set of CESR Guidance, para. 4.14(a).

2. Orders to trade or transactions may be preceded or followed by dissemination of false or misleading information by the same persons or persons linked with them. Evidence of such signals of possible market manipulation shall be taken into account by competent authorities and market participants in order, respectively, to detect and avoid engaging in market manipulation (Article 5, letter a), of Directive 2003/124/EC; 1<sup>st</sup> Set of CESR Guidance, para. 4.2 and 4.13.b).

3. For the purposes of the above, competent authorities shall look at whether unusual price movements that could be indicative of manipulative behaviour or a leak of inside information could be caused by false or misleading statements or improperly disclosed information spread through the public media, including the Internet, or by any other means<sup>33</sup>.

4. Competent authorities may take any necessary measures to ensure that the public is correctly informed (Article 6, paragraph 7, of MAD). In particular, if and when a publication (eg. articles published in the press or internet postings) or rumours relate explicitly to a piece of information that is inside information within the issuer, the competent authority shall monitor that the issuer reacts and responds to the relevant publication or rumours by publishing an ad hoc announcement without undue delay (3<sup>rd</sup> Set of CESR Guidance, Section 4.1).

##### Key questions

1. Does the relevant CA in your jurisdiction have a role in monitoring rumours? (cf. question 55 of the mapping questionnaire)

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<sup>33</sup> It is understood that a market abuse investigation may start either following the detection of unusual price movements or when the relevant competent authority becomes aware of rumours or news disseminated through the media, including the Internet, or by any other means which are indicative of a market manipulation or a leak of inside information.

2. Does the relevant CA in your jurisdiction monitor trading ahead of or after the dissemination of rumours (whether in the media or more generally in the market) which have led to price movements<sup>34</sup>? (cf. question 63a of the mapping questionnaire)
  
3. Does the relevant competent authority in your jurisdiction look at communications within investment firms, regulated markets and MTFs, where applicable (e.g. phone call, email, instant messages and Bloomberg messages) if there has been a rumour? (cf. question 63b of the mapping questionnaire)
  
4. Does the relevant competent authority in your jurisdiction intervene to ensure that rumours which contain a leak of inside information are adequately addressed through public disclosure? (cf. question 70 of the mapping questionnaire)

## **BENCHMARKING**

### **Fully implemented**

*Requires affirmative responses to all applicable Questions.*

### **Partly implemented**

*Requires affirmative responses to all applicable Questions except to Questions 2 and/or 3.*

### **Not implemented**

*Inability to respond affirmatively to Questions 1 and/or 4.*

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<sup>34</sup> The question is intended to ascertain whether the relevant CA looks at whether unusual price movements that could be indicative of manipulative behavior or a leak of inside information could be caused by false or misleading statements or improperly disclosed information through the media, including through Internet, or by any other means as stated in key issue 3.

### Summary Table – Section D

	1	2	3	4	Assessment
<b>AT</b>	Y	Y	Y	Y	✓
<b>BE</b>	Y	Y	Y	Y	✓
<b>BG</b>	Y	Y	N	Y	□
<b>CY</b>	Y	Y	Y	Y	✓
<b>CZ</b>	Y	Y	Y	Y	✓
<b>DE</b>	Y	Y	Y	Y	✓
<b>DK</b>	Y	Y	Y	Y	✓
<b>EE</b>	Y	Y	Y	Y	✓
<b>EL</b>	Y	Y	Y	Y	✓
<b>ES</b>	Y	Y	Y	Y	✓
<b>FI</b>	Y	Y	Y	Y	✓
<b>FR</b>	Y	Y	Y	Y	✓
<b>HU</b>	Y	Y	Y	Y	✓
<b>IE</b>	Y	Y	Y	Y	✓
<b>IS</b>	Y	Y	Y	Y	✓
<b>IT</b>	Y	Y	Y	Y	✓
<b>LI</b>	Y	n/a	Y	n/a	●
<b>LT</b>	Y	Y	Y	Y	✓
<b>LU</b>	Y	Y	Y	Y	✓
<b>LV</b>	Y	Y	Y	Y	✓
<b>MT</b>	Y	Y	Y	Y	✓
<b>NL</b>	Y	Y	Y	Y	✓
<b>NO</b>	Y	Y	Y	Y	✓
<b>PL</b>	Y	Y	Y	Y	✓
<b>PT</b>	Y	Y	Y	Y	✓
<b>RO</b>	Y	Y	Y	Y	✓
<b>SE</b>	Y	Y	Y	Y	✓
<b>SI</b>	Y	Y	Y	Y	✓
<b>SK</b>	Y	Y	Y	Y	✓
<b>UK</b>	Y	Y	Y	Y	✓



Y: CA gave a positive answer to the question applicable

N: CA gave a negative answer to the question N/A: Not applicable

Empty space: Missing response

√: fully applied

●: non applied

□: partially applied