



Date: 29th June 2000
Ref.: Fesco/00-0961

MARKET ABUSE

FESCO's response to the call for views from the
Securities Regulators under the EU's
Action Plan for Financial Services COM(1999)232



A EUROPEAN REGIME AGAINST MARKET ABUSE

A. Introduction

Purpose

1. Market integrity is a must to maintain investor confidence in the financial system and to promote the competitiveness of financial markets. The aim of FESCO's work in this area is to help to prevent Market Abuse, which involves insider dealing, market manipulation and the dissemination of false or misleading information.
2. Enhancing investors' confidence in the integrity of the financial system is essential to support the development of efficient and competitive financial markets in Europe. Market Abuse undermines that confidence and prejudices the smooth operation of the market. Investors will avoid trading in such markets and the cost of capital for European companies will rise.
3. All these considerations are relevant to the issues addressed in this paper, whose purpose is to support the delivery of the EU's Action Plan for Financial Services by providing expert regulatory input to the Commission prior to the latter's formulation of a Directive on Market Manipulation (the Directive).
4. FESCO's aim is to submit to the EU Commission the supervisors' view on how Market Abuse should be regulated on an administrative law basis that is enforced and sanctioned by an administrative authority.
5. In doing so, FESCO has taken into account the international character of financial services and balanced the benefits against the costs of imposing requirements or restrictions on the markets and their participants.
6. In particular, the paper recommends that the EU Commission adopts an approach that combines a high level definition of Market Abuse with the necessary framework to deliver an effective regime against Market Abuse. This regime focuses on the common objectives and powers of each national Competent Authority and emphasises the crucial role of preventative measures in safeguarding integrity.

Structure of the paper

7. All the members of FESCO have varying degrees of legal competence together with experience of defending the integrity of markets within their own jurisdiction. **Part one** of this paper draws directly from this experience and sets out the supervisor's view on how Market Abuse should be defined (section B) together with the scope of future legislation (section C). Section D then sets out the key preventative measures that should be put in place to protect market integrity.
8. **Part two** on "Enforcement and Co-operation" is more tentative as it touches many political and legal issues, which must be of course decided by National and EU Authorities. Nevertheless, FESCO is of the opinion that a Directive that just delivered part



one of this paper would fail to establish an effective regime against Market Abuse. For such a regime to work in Europe, the Directive must do more not only to enhance co-operation between supervisors (ideas in section E) but also to establish a more common approach to detection and investigation (section F) as well as enforcement (section G).

Existing EU legislation

9. The main EU legislation addressing Market Abuse is:
 - a) The Insider Dealing Directive (89/592/EEC).
 - b) The Investment Services Directive (93/22/EEC) in which article 11 requires that “Member States draw up rules of conduct which investment firms shall observe at all times”. These rules need to implement certain agreed principles including the following:
 - i) Acting “honestly and fairly in conducting its business activities in the best interests of the integrity of the market”;
 - ii) Acting “with due skill, care and diligence, in the best interests of the integrity of the market”.
 - c) The directives that deal with the provision of information to the market: The Admission to Trading Directive (79/279/EEC); The Public Offer Directive (89/298); The Regular Information Directive (82/121); The Listing Particulars Directive (80/390); the Major Holdings Directive (88/627); amendments included in the Insider Dealing Directive (89/592/EEC).
10. European legislation is aimed at ensuring that markets adopt high standards of regulation. This principle has been further developed in FESCO’s paper on Standards for Regulated Markets (99-FESCO-C). For the members of FESCO, adequate regulations for trading are an important element of deterrence and prevention of Market Abuse.

The patchwork of existing national legal frameworks

11. The legislative framework for market manipulation is incomplete in certain European countries and the framework for insider dealing is considered less than effective in many cases. In a number of jurisdictions, the legislation is being modernised.
12. The current approaches in Member States are very diverse with different systems and different powers existing across the EEA. Criteria vary among jurisdictions regarding concepts used to define infringements and to impose sanctions, as well as the persons subject to the Market Abuse regime. The range of criminal sanctions varies and many jurisdictions have few administrative sanctions available in this area, except with regard to regulated entities.

Reasons for a Directive

13. There is a clear lack of common provision at EU level for Market Abuse, with the exception of insider dealing. Even in this area there are still significant uncertainties regarding the legal requirements and the application of the Directive.
14. At present, there are disparities between national requirements and legislation for tackling Market Abuse, but the impact has been limited because trading has – more or less – been confined within national borders. However, regulators are now faced with a number of related developments which make these disparities difficult to justify:
 - a) There is a substantial growth in cross-border trading and remote membership of exchanges;
 - b) Exchanges are considering links to facilitate access by members of one exchange to trading on the other;
 - c) Competition between exchanges and between exchanges and alternative trading systems will increasingly mean that the same Financial Instrument is traded on multiple platforms;
 - d) As new indices and new index derivative contracts are developed, often based on the same underlying cash instrument, the scope for the same manipulation simultaneously to affect a number of markets is magnified.

All these developments underscore the need for a common approach to behaviour that constitutes Market Abuse.

15. To ensure that the approach remains relevant in rapidly changing markets, the forthcoming Directive should define Market Abuse and establish a common legal framework to seek to prevent, detect, investigate and sanction market manipulation and the dissemination of false or misleading information. To achieve this the Directive will need to:
 - a) Be more explicit about the powers and obligations to be conferred by a Member State on a single Competent Authority. This is necessary to provide the common basis on which to build the enhanced co-operation necessary in a truly single market;
 - b) Ensure that these Competent Authorities act together to develop co-ordinated implementing rules and guidance. The latter are increasingly important for FESCO members in order to maintain a high level of market integrity and investor confidence irrespective of the domestic or cross border nature of the financial markets;
 - c) Establish high level preventative measures to reduce the likelihood that the integrity of Regulated Markets will be undermined;
 - d) Ensure that these Competent Authorities have equivalent powers to detect, investigate and sanction on an administrative law basis any misconduct which undermines the integrity of the markets. In a truly unified market, any misconduct should be investigated and sanctioned in a uniform way, regardless of whether it is a purely domestic or a cross-border transaction.



16. From a technical point of view, a single Directive on Market Abuse would be preferable. Members of FESCO however recognise that, as the Insider Dealing Directive has already been implemented, a more manageable approach would be to adopt a Directive on Market Manipulation that included necessary amendments to the Insider Dealing Directive. These amendments should ensure that the approach to Insider Dealing is consistent with the innovations proposed in this paper including the use of a network of Competent Authorities, the use of preventative measures, the establishment of common powers of detection and investigation and the introduction of administrative sanctions.
17. The legal and trading diversity in Europe means that Member States should not be precluded from establishing higher standards than those set down in any Directive. Member States should be free to establish a specific criminal law regime.



PART ONE: MARKET ABUSE

B. Definition of Market Abuse

18. The objective of an European legislative framework to combat Market Abuse is to defend the integrity of the market.
19. Market Abuse is behaviour which involves the misuse of Material Information (information as defined in paragraph 34), the dissemination of false or misleading information or behaviour which abnormally or artificially affects, or is likely to affect, the formation of prices or volumes of Financial Instruments.
20. Consequently, an European regime against Market Abuse should cover:
 - a) Misuse of Material Information in relation to Financial Instruments traded on a Regulated Market before that information has been disclosed to the public in accordance with existing disclosure requirements. Material Information can be misused:
 - i) through trading, or
 - ii) encouraging others to trade, or
 - iii) through passing on the information to any third party except if such disclosure is made during the normal course of the exercise of a person's employment, profession or duties and the recipient is made aware that the information is material and has not been disclosed to the rest of the market.
 - b) Dissemination of information which gives, or is likely to give, false or misleading signals as to the supply, demand or price of Financial Instruments traded on a Regulated Market. It will include:
 - i) the dissemination of misleading rumours;
 - ii) the dissemination of false or misleading news about companies;
 - c) Trades, or orders to trade in a Regulated Market, which either:
 - i) give, or are likely to give, false or misleading signals as to the supply, demand or price of Financial Instruments traded on a Regulated Market;or
 - ii) Interfere with the interaction of supply and demand and produce, or is likely to produce, an abnormal or artificial effect on prices or volumes of Financial Instruments traded on Regulated Markets.

21. The proper dissemination of information as set out in 9(c) is central to protecting market integrity. The scope set out in 20 (b) is a key aspect of the behaviour that constitutes Market Abuse. Furthermore, the failure to disclose material information is already a duty under European law. Under the proposed regime against Market Abuse, this duty should be sanctionable as a breach of preventative measures, as set out in part D of this paper.
22. The definition in 20(c) above is designed to prohibit, non exhaustively, the following conduct:
 - a) The creation of a false or misleading appearance of trading in a Financial Instrument;
 - b) Trading by one or more persons in collaboration with each other which has the effect of securing the market price of a Financial Instrument at an abnormal or artificial level;
 - c) The employment of any fictitious transaction or devices or any other form of deception or contrivance;
23. The definition in 20(c) above is not designed to prohibit the following conduct:
 - a) Trading undertaken under agreed stabilisation rules;
 - b) Trading undertaken under agreed rules governing share buyback programmes.
24. In determining whether a market participant's behaviour amounted to Market Abuse, regard must be had to the extent to which the market participant took all preventative measures to avoid engaging in Market Abuse.
25. A question of particular concern to FESCO is that the definition of Market Abuse should be drafted in the form set out in this paper without adding requirements such as the infractors acting with a specific manipulative intent or with the aim to defraud or to obtain a personal enrichment or with the full knowledge of the facts. This does not of course mean that FESCO advocates a regime of strict or objective liability.
26. All attempts to undertake Market Abuse should also be sanctionable.
27. In order to give the necessary legal force to the regime against Market Abuse, the Directive should establish the high level regulation against Market Abuse. This high level regulation will be implemented through national law, or by whatever other means chosen by each Member State. However, market participants are entitled to a greater level of detail as to the behaviour that would constitute Market Abuse. To provide this level of detail, the Directive must set up the right framework for delivering the appropriate level of detail in the context of rapidly changing global markets. (see part two of this paper for a possible framework to deliver the detail).

C. Scope

28. The expert group considers that the current scope of Regulated Market as set out in the ISD might be too narrow in the light of market developments and the exclusion of markets in commodity derivatives. An effective European regime against Market Abuse might include this wider set of markets. The group therefore advocates that the scope for Regulated Markets is broadened in the forthcoming revision to the ISD.
29. Furthermore, to assist in the implementation of this regime against Market Abuse, the Investment Services Directive should be amended to ensure that there is a common European approach to the question of where a regulated market is located.
30. Financial Instrument shall mean:
- a) Those listed in the Annex B of the ISD (Directive 93/22/EEC) when admitted to a Regulated Market;
 - b) Derivatives on commodities.
31. The following activities should also be included in the regime against Market Abuse:
- a) All off market transactions – including OTC transactions - which affect, directly or indirectly, the Financial Instruments traded on Regulated Markets.
 - b) Primary market activity in Financial Instruments that will be admitted to trading on Regulated Markets.
32. Listed Entity shall mean all entities covered by the Public Offer Directive (89/298) and the Listing Particulars Directive (80/390). In the context of this paper, Listed Entity will also include applicants for listing.
33. Authorised Entity, as set out in FESCO's paper on Categorisation of Investors for the Purpose of Conduct of Business Rules (00- FESCO- A), shall mean entities which are required to be authorised or regulated to operate in the financial markets, namely:
- Credit institutions,
 - Investment firms,
 - Other authorised or regulated financial institutions,
 - Insurance companies,
 - Management companies of collective investment schemes,
 - Management companies of pension funds.
34. Material Information¹ shall include:
- Inside information as defined in the Insider Dealing Directive;
 - Additional information on any major developments in an issuer's sphere of activity which is not public knowledge and which may have a substantial effect on the issuer's assets and liabilities, financial position or general course of its business;

¹ As set out in FESCO's paper on Market Conduct Standards for Participants in an Offering (99-FESCO-A)



- And, in the case of an offering, examples of additional information would include the state of the order book and forecasts of the likely level of demand and allotment policy.
35. In the implementation of the Directive, Member States should have discretion to extend the scope.
36. All natural and legal persons (including their directors and employees), irrespective of the jurisdiction in which a natural person is resident or a legal person is incorporated should be included.

D. Preventative measures

37. As a key defence of market integrity, the Directive should include high level preventative measures that need to be implemented and enforced by the relevant Competent Authorities. FESCO members believe that any damage to market integrity has such widespread consequences that preventative measures need to be put in place to reduce the possibility of abuse occurring in the first place. These preventative measures should be broadly defined in the Directive, and further developed through harmonized implementing rules and guidance.
38. For preventative measures to be effective, market participants must be able to establish that they took measures to avoid engaging in Market Abuse and Competent Authorities must have the power to sanction proven breaches of these measures. Any sanction should reflect the extent to which market integrity has been put at risk by a breach of these measures.
39. The preventative measures would include the following:

Core preventative measures to be imposed on Authorised and Listed entities

40. **Confidentiality of Material Information:** The integrity of markets will be threatened if all Authorised and Listed Entities do not maintain the confidentiality of Material Information. It is therefore critical that entities maintain effective controls over the flow of this information within their organisation. Appropriate systems and controls will need to be put in place. These might include:
- a) The use of Chinese Walls between the trading area and other business areas;
 - b) Trading restrictions on the company itself, company directors and significant shareholders represented on the Board.



41. Where these systems and controls are not in place, or are not complied with, the Material Information must be deemed to be held by the whole firm².
42. **Internal codes of conduct:** Each Authorised and Listed Entity must establish an internal code of conduct (“the Code”). The Code should be approved as fit for purpose and its implementation regularly monitored and reviewed, by each entity’s Management Board. The Code should be made available on request to the Competent Authority. The Code should include procedures to enable the entity to comply with the implementing rules and guidance issued by the Competent Authorities under the powers established by this Directive.

Measures to be imposed on Authorised Entities

43. **General duty of care:** Authorised Entities should refrain from entering into transactions, and reject orders on behalf of clients, if the provider can reasonably expect that a transaction would constitute Market Abuse.
44. **Research:** Where an Authorised Entity issues research relating to a Listed Entity, it should ensure that the material has been prepared to a high standard of due diligence, is fairly presented and discloses the interest of the firm in the company³.

Measures to be imposed on Listed Entities

45. **Information disclosure to the market:** As set out in paragraph 9(c) above, there are a range of Directives governing the disclosure duties of Listed Entities. Failure to fulfil the disclosure duties set out in these Directives will threaten the integrity of markets. If a Listed Entity fails to disclose promptly and fairly all price sensitive information to the market, in accordance with these duties, this failure should be sanctioned by the Competent Authority.

² See the FESCO document “Market Conduct Standards for Participants in an Offering” (99-FESCO-A)).

³ See the FESCO document: “Market Conduct Standards for Participants in an Offering” (99-FESCO-A)

PART 2 – ENFORCEMENT AND CO-OPERATION

A possible scenario

E. Establishment of an effective Competent Authority in each Member State

46. FESCO members agree that market structures are changing and evolving rapidly. As a general rule, regulators find it challenging to keep pace with market developments and their task is made all the more difficult when changes in rules require prior changes in legislation, whether at the European or national level.
47. FESCO is therefore concerned to introduce an element of flexibility into the proposed new approach to tackling Market Abuse, so that regulators can respond quickly and effectively to any attempt by would-be market abusers to exploit any loopholes or inflexibilities in the wording of any directives.
48. Moreover, FESCO is also seeking to address concerns that have arisen because of the inconsistent implementation and application of existing directives in the financial services arena. These inconsistencies have arisen for a variety of reasons, including the lack of common objectives and the common allocation of responsibilities by Member States.
49. FESCO is therefore proposing an innovative solution to these potential problems. The essence of this solution is that it incorporates flexibility in the detail of what constitutes Market Abuse and imposes on Member States an obligation to identify a single Competent Authority which has a duty to co-operate with its counterparts in other Member States to produce a harmonised regime.
50. In devising the approach set out below, FESCO has taken note of national approaches to the supervision of financial services of developed financial markets. In most of these Member States, supervisory powers have been vested in independent supervisors who have the possibility to issue guidance and detailed supervisory rules, within a legal framework established under national legislation. FESCO members believe that such a model should be adapted for use at a European level by creating a network of European Competent Authorities.
51. FESCO recognises that its proposals in this area raise many questions as regards legal competence, subsidiarity and accountability. In trying to resolve these questions, FESCO has devised a model based on the creation of a network of Competent Authorities. FESCO believes that this model, while requiring further detailed work, provides a useful regulatory framework for Europe's single market.
52. In choosing the legal basis (law, regulation,...) for implementing this Directive, Member States should ensure that the following framework is given full legal effect within their jurisdictions:

Designation

53. To designate a single Competent Authority that is an independent administrative authority, fully accountable and subject to judicial review. In the event of more than one Competent Authority being designated, a Member State should designate one of them as the coordinating Authority.

Objectives

54. To impose on the Competent Authority the common objectives set out in the Directive. In FESCO's view there should be an objective, among others, of protecting investors by ensuring the integrity of the markets. In doing so the Competent Authority should have regard to market stability and international standards.

Empowerment

55. To provide the Competent Authority with effective means to detect, investigate, settle and impose administrative sanctions in relation to Market Abuse. The Competent Authority must be structured with the appropriate separation of functions bearing in mind the European Convention on Human Rights;

56. To authorise the Competent Authority to issue implementing rules and guidance on the regulation of Market Abuse including the establishment of appropriate preventative measures;

57. To authorise the Competent Authority to issue rules and guidance of technical nature to accommodate any special characteristics of a national market.

European Co-operation

58. To instruct the Competent Authority to co-operate in the harmonisation of implementing rules and guidance with the other Competent Authorities to the extent necessary to achieve an uniform regime against Market Abuse in Europe;

59. To instruct the Competent Authority to co-operate with the other Competent Authorities in the enforcement of specific cases of suspected Market Abuse.

60. In compliance with the Directive, national law should instruct the Competent Authorities to establish a Network of co-operation.

61. The Network's main objectives should be:

- a) To facilitate compliance with the duty imposed on each Competent Authority to harmonise relevant implementing rules and guidance, including those relating to the adoption of preventative measures;
- b) To organise co-operation between Competent Authorities at EU and international level in order to prevent and investigate Market Abuse. In FESCO's opinion, the key aspects to achieving this include establishing, and keeping under review, a set of principles on co-operation and facilitating the pursuit of individual cases on a bilateral basis.



- c) To develop appropriate safe harbours against charges of Market Abuse and, in particular, to develop common rules and guidance on stabilisation and on issuers trading in their own shares;
- d) To approve its own rules of proceeding and arrangements for co-operation.

Accountability

62. Members of FESCO recognise that the approach being adopted in this paper will result in a significant increase in supervisory powers in most EEA jurisdictions. It is therefore vital that a robust accountability framework is established in the Directive.
63. The Directive should include an accountability framework for the Network that will be established by the Competent Authorities. This Network should be obliged to:
- a) Undertake consultation on all harmonised rules and guidance;
 - b) Provide a summary of all responses received and the resulting policy decisions taken;
 - c) Include a cost/benefit analysis of the proposals in any consultation document;
 - d) Give a right to the EU Commission to participate in any group working on harmonised rules and guidance;
 - e) Submit an annual report to the European Parliament and ECOFIN on the work of the Network and, if required, to appear before the European Parliament.
64. Each Competent Authority should be accountable at an appropriate national level and subject to full judicial review of its implementing rules. Moreover, all the actions undertaken by the Competent Authority in the context of detection, investigation and enforcement will be subject to judicial protections.

F. Detection and investigation of Market Abuse

65. Currently, effort in pursuing Market Abuse in Europe is dissipated by the diversity of tools and powers available to Competent Authorities to detect and investigate Market Abuse. FESCO is already trying to improve the efficiency and effectiveness of enforcement by bringing together frontline enforcement staff within FESCOPOL. While much can be done through a better understanding of each Member State's processes, considerable efficiency gains could be achieved by a Directive setting out a common minimum set of tools and powers that should be available to the Competent Authority.
66. These tools and powers should be reasonable in scope, subject to the principle of proportionality and their exercise subject to judicial protections including national laws of self-incrimination and professional privilege.
67. FESCO proposes that the instruments and tools available to the Competent Authority should include:



Detection

68. Market surveillance: The Competent Authority should have the capacity, either directly or through a third party, to monitor the price formation process and the dissemination of information.
69. Reporting requirements (see Article 20 of the ISD): European markets are integrating their trading systems. In the face of these developments, Competent Authorities should ensure greater compatibility of the reporting requirements, to include customer identification, and the systems needed to meet those requirements. In doing, so they should take account of information available from Regulated Markets and from clearing and settlement services.
70. Record keeping requirements as set out in ISD.
71. Supervision of Authorised Entities. The Competent Authority should have in place procedures to act on information gained through routine supervisory activity within each jurisdiction.
72. Intelligence gathering: Competent Authorities should have in place a full procedure to handle intelligence gained through any complaints and other processes.

Investigation

73. Members of FESCO already have investigative powers in a number of areas. Their experience of using these powers has generally been positive. To ensure that the regime against Market Abuse is effective, FESCO believes that the Competent Authorities should have a common set of investigative powers. These should include:
 - a) The ability to obtain banking, telephone, internet and other data traffic records;
 - b) The right to obtain from any legal or natural person the name of counterparties and/or ultimate client;
 - c) The right to require statements from any natural or legal person and, in particular, seek explanations from that person of the reasons and terms of any transaction;
 - d) The power to carry out on the spot inspections;
 - e) The ability to obtain any relevant books, records and documents;
 - f) The power to search any premises and make any subsequent seizures of books, records and documents;
 - g) The right to request the sequestration of any funds or Financial Instruments that belong to the person under investigation, regardless of who may hold them.
74. FESCO members recognise that in some cases these investigative tools will only be available to a Competent Authority under the authority of a judge or by other means. This

refers in particular to 73(f) and 73(g) and, with the exception of authorised entities, 73(d). In such cases, national legislation should give the Competent Authority the power to ask a judge for the necessary authorisation or to obtain the investigative tools by other means.

75. The Competent Authority should have the tools and powers to reconstruct and analyse market activity. The Competent Authority should be able to examine the historical price or volume movements of any given Financial Instrument, especially from the reports of market transactions. The Competent Authority should be able to compare the available information with the condition of the market as a whole, and how the Financial Instrument being investigated performed compared to the overall market.
76. When an entity belonging to a non-EEA group of companies is suspected of Market Abuse, there should be an obligation on any subsidiary, branch or controlling shareholder, located in the EEA, to co-operate fully with the Competent Authority in which the investigation is carried out.
77. The investigative powers used by the Competent Authority for its own investigations should also be used to assist the investigations of other Competent Authorities.
78. Any information transmitted should be subject to a duty of confidentiality and the recipients should only use it for financial supervisory purposes, except under national rules governing criminal procedures.
79. The same principles should be extended to co-operation with non-EEA countries, subject to reciprocity and professional secrecy requirements.

G. Enforcement

80. It has become clear to members of FESCO that the Directive should provide a consistent approach to the administrative sanctioning of Market Abuse and other contraventions that threaten the integrity of markets. In a single market, it cannot be acceptable for the same wrong to incur a heavy penalty in one country, a light penalty in another country and no penalty in a third country. It is for this reason that members of FESCO wish the Directive to establish a common administrative framework for enforcing a regime against Market Abuse.
81. All sanctions should pass the test of reasonableness and proportionality.
82. The Directive should provide for the following contraventions to be sanctioned:
 - a) Market Abuse.
 - b) Breach of a preventative measure.
 - c) Failure to co-operate in an investigation subject to national laws on self-incrimination.

83. FESCO members attach great importance to the preventative measures set out in this paper. It is therefore important that the Directive includes a power to sanction breaches of these measures independently of Market Abuse.
84. The Directive should provide for harmonised sanctions to be imposed by the Competent Authority if it is satisfied that the contraventions referred to above have been committed.
85. The sanctions should include the power to impose fines and to take other action such as the withdrawal of licences.
86. Furthermore, the Directive should require that the Competent Authority has the power to issue intervention orders during an investigation in cases where investors assets are put at risk in a case of suspected Market Abuse.
87. Members of FESCO recognise that the level of harmonisation that can be achieved in the enforcement area might well be limited. To ensure, however, an effective EU regime against Market Abuse, the Directive should establish that the penalties to be determined by Member States for infringement of the relevant provisions should be proportionate to the offence committed and sufficient to promote compliance with the relevant requirements. Any harmonised system for setting the level of fines should be based on the funds used and/or the realised and/or unrealised profits. In the event of either no profits being made or no funds being used, other criteria need to be agreed. In any event, the fine should be no less than the realised and/or unrealised profits of the action.:
88. Competent Authorities should have the power to settle any case of suspected Market Abuse in their jurisdiction with regard to the sanctions that they apply.
89. The disclosure of administrative sanctions is seen by members of FESCO to be a powerful deterrent. Disclosure can either take place at the time the sanction is imposed or once all appeal procedures have been exhausted. In deciding on the right course of action, FESCO has taken note that there can be a significant time difference before all appeal procedures are exhausted. However, if disclosure only comes at the end of all appeal procedures, investors and other market participants are being put at risk by the non-disclosure of a sanction imposed under the regime against Market Abuse proposed in this paper. This risk is particularly significant in the case of Listed and Authorised entities. In order to recognise this, Members of FESCO therefore propose that:
 - a) A duty be placed on Listed Entities to disclose any sanction imposed by the Competent Authority immediately;
 - b) That sanctions against Authorised Entities are immediately disclosed by the Competent Authority;
 - c) That sanctions against all other natural and legal persons are only disclosed once all appeal procedures are exhausted.
90. The Competent Authority should have the power to alter the timing of disclosure in cases when disclosure would either jeopardise market integrity or cause disproportionate damage to the party(ies) involved.



91. The Competent Authority must disclose any decision which overrules sanctions previously imposed.
92. In the case of infringements committed by legal persons, directors and general managers may also be held personally liable and subject to sanctions if they are personally culpable. It should be prohibited for legal persons to pay the fines of natural persons.
93. If the integrity of a market in a Member State has been affected, that Member State's Competent Authority should have territorial scope to sanction behaviour irrespective of where the abusive behaviour was undertaken.
94. Protocols should be established between Member States for the collection of fines and for common action in the event of non-payment of fines both within and outside Europe.