BUSINESSEUROPE

POSITION PAPER

GO FOR GROWTH

AN AGENDA FOR THE EU IN 2010-2014

3 September 2010

Market Abuse Directive

COMMISSION CONSULTATION

BUSINESSEUROPE supports a single definition of inside information for all sorts of trade, including commodity derivates, as long as this does not impose unnecessary disclosure obligations. BUSINESSEUROPE would also like to highlight the difficulties created by the implementation of the definition of inside information in the Market Abuse Directive which applies to both prohibition of insider trading and duty of information disclosure by the issuer. This problem, that creates serious concerns to issuers, was also pointed out by a report by the European Securities Markets Expert Group from 2007[1].

BUSINESSEUROPE does not think the scope of the Market Abuse Directive needs to be extended regarding attempts to manipulate markets. BUSINESSEUROPE fears that such extension could endanger the legal certainty for those conducting legitimate market operations and would in any case be very difficult to enforce. However, if the scope is extended, the applicable definitions must be clear, especially if the burden of proof is reversed (placed on the accused). Uncertainty about what can be classified as an 'attempt' can result in unnecessary, costly and time-consuming efforts to prove one's innocence. Furthermore, a clear definition of 'attempt' would enable companies to issue internal directives regarding activities that are not allowed.

BUSINESSEUROPE would like to express its reservation concerning an unduly extension of the scope of the Market Abuse Directive regime beyond regulated markets as well as over-the-counter instruments. It is important to avoid exchange-regulated markets or multilateral trading facilities being covered entirely by the Market Abuse Directive – especially with respect to issuers' duties. Both issuers and investors should have the choice between regulated markets and markets with lighter regulation. Without lighter regulated markets that are tailored to the special needs of small and medium-sized enterprises (SMEs) and start-up companies, those enterprises would find it much more difficult to raise capital, with negative effects for the economy as a whole. Considering the heterogeneous nature of these markets and instruments, we believe self-regulation could be a good option to secure an appropriate level of information.

[1] ESME Report**,** Market abuse EU legal framework and its implementation by Member States: a first evaluation Brussels, July 6th, 2007.

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BUSINESSEUROPE therefore recommends a general and horizontal simplification of the Market Abuse Directive for all regulated markets rather than a vertical segmentation depending on the size of the companies; this would be beneficial for all companies, SMEs included which could choose between listing on regulated markets or on multilateral trading facilities.

Regarding enforcement powers and sanctions, BUSINESSEUROPE shares the view that the surveillance should be better coordinated between the competent authorities of Member States. The cooperation between countries should be facilitated, both within the EU and with third countries.

BUSINESSEUROPE regrets that the Market Abuse Directive offers Member States a number of options and discretions in implementing the regulatory framework. One important effect of this is more administrative burden and consequently higher costs for companies having to comply with different rules in different markets. Therefore, efforts should be made to achieve greater coordination between lawmakers in the Member States. Since securities are traded cross-border, the rules should be coordinated with the objective of enhancing convergence across the EU and thereby reducing costs for companies.

As regards the proposal on the obligation to disclose inside information, we are of the opinion that the decision to delay the disclosure should ultimately rest with issuers. They have the best information on each situation and background. Stifling issuers' powers in this matter might have adverse effects in terms of market and public trust. The typical situation when a company wants to delay the public disclosure of inside information is when a large acquisition/merger is imminent. To secure the execution of the acquisition it is decisive that the information about the acquisition is kept within a very limited group of individuals.

If the Commission is of the opinion that there is a need for the permission from the competent authority to delay disclosure, this regulation has to be supplemented with effective rules on confidentiality. These rules should also state that the authority in question is liable to indemnification in case confidential information leaks and hinders or renders the acquisition/merger impossible. The same situation should be applied for a strategically important sale.

BUSINESSEUROPE agrees that the threshold for the notification to regulators of transactions by managers of issuers should be raised. The current threshold of EUR 20,000 is still too low as it still is capable of flooding markets with superfluous information.

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