



Market Abuse Directive (2003/6/EC)

Implementation status as at 10 February 2006



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This material is for general information only and is not intended to provide legal advice.

Responsible authorities: which national authority is responsible for investigating and prosecuting market abuse?

UK	Austria	Belgium	France
Financial Services Authority (FSA).	Financial market authority (FMA).	Commission for banking finance and insurance (CBFA).	Autorités des Marchés Financiers (AMF).

Scope: is the territorial, market or instrument scope of the market abuse provisions wider than required by article 10 of the Directive?

Yes: misuse of information and market manipulation prohibitions extend to all UK investment markets and OFEX.	Yes: extends, under certain conditions, to activities in or from Austria on markets of non-EU/European Economic Area countries.	Yes: misuse of information and market manipulation prohibitions extend to (i) all Belgian regulated markets and, under certain conditions, to other Belgian markets and alternative trading systems, (ii) activities in or from Belgium on regulated markets of EU and non-EU countries and to other foreign markets and alternative trading systems that are designated by the King, and (iii) any other activity concerning financial instruments, the value of which is dependent on instruments traded on the markets/systems described in (i) and (ii).	Yes: misuse of information and market manipulation prohibitions as well as rules relating to any other practice likely to jeopardize the rights of investors or have the effect of disrupting the market's normal functions apply in relation to all French markets, regulated or not, including multilateral trading facilities (MTFs) (article L621-15 II (c) of the French monetary code (FMC)).
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Commodities: when do the prohibitions become effective in relation to commodity derivatives?

They are already effective in relation to UK commodity markets.	They are already effective.	Most of them are already effective in relation to Belgian commodity markets, as commodities are included in the definition of financial instruments in respect of some articles of the act on the supervision of the financial market and financial services of 2 August 2002 (ASFM). In practice, it is safe to assume that all the prohibitions cover commodity derivatives.	They are already effective in relation to French commodity markets, as commodities are included in the definition of financial instruments (article 211-1 - II - 4 of the FMC).
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Germany	Italy	The Netherlands	Spain
Federal financial services supervisory authority (BaFin).	Commissione Nazionale per la Società e la Borsa (Consob).	Authority for the financial markets (AFM).	Spanish securities markets commission (Comisión Nacional del Mercado de Valores or CNMV).
Yes: extends, under certain conditions, to activities in or from Germany on markets of non-EU/European Economic Area countries.	Yes: literally interpreted. The second paragraph of article 182 of the financial law consolidated act (FLCA) is based on b) of article 10 of the Directive but, unlike b), does not refer to actions carried out in the member state's territory and so seems to cover actions affecting instruments admitted to any EU regulated market, wherever carried out. It seems unlikely that Consob will expend time and money pursuing actions with no nexus with Italy.	Yes: extends also to activities in or from the Netherlands on markets of non-EU countries.	No: paragraph 8 of article 84 of the Spanish securities markets act mirrors the wording of article 10 of the Directive.
They are already effective.	They are already effective in relation to commodity derivatives listed in the FLCA and admitted to trading on the Italian derivatives market (IDEM).	Already effective.	Already effective.

Misuse of information (articles 2 to 4 of the Directive)

Are these aspects of the Directive fully implemented?

UK	Austria	Belgium	France
Yes.	Yes.	Yes (article 40 ASFM).	Yes.

What laws, regulations and other measures or guidance have been made to implement the aspects of the Directive?

<p>Amendments to Part VIII Financial Services and Markets Act 2000 (FSMA), and to Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001.</p> <p>New FSA Code of Market Conduct (COMC).</p>	<p>Amendments to the Austrian stock exchange act (federal gazette I, nr. 127/2004, effective 1 January 2005) (Austrian Stock Exchange Act).</p> <p>Decree on permissible market practices (Verordnung der Finanzmarktaufsichtsbehörde über zulässige Marktpraktiken an österreichischen Finanzmärkten – Marktpraxisverordnung – MpV), (Market Practices Decree).</p> <p>Decree on issuer compliance (Verordnung der Finanzmarktaufsichtsbehörde über Grundzüge der Informationsweitergabe sowie betreffend organisatorische Massnahmen zur Vermeidung von Insiderinformations-missbrauch für Emittenten – Emittenten Compliance Verordnung – ECV) (Issuer Compliance Decree).</p> <p>Decree on the form, contents and the means of publication of ad hoc notifications and director's dealings notifications (Verordnung der Finanzmarkt-aufsichtsbehörde über Form, Inhalt und Art der Veröffentlichung und Übermittlung von Ad-hoc-Meldungen und Director's Dealings – Meldungen – Veröffentlichung und Meldeverordnung – VMV) (Notifications Decree).</p>	<p>Royal Decree of 24 August 2005 amending the ASFM (Royal Amendment Decree).</p>	<p>Section VI of the AMF General Regulation (AMF GR).</p> <p>Amendments to the FMC.</p>
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Are there criminal, civil or administrative sanctions for breach of these requirements?

Civil.	Criminal and administrative (sections 48, 48b and 48c of the Austrian Stock Exchange Act).	Criminal (articles 39, 40, section 6 ASFM) and administrative (articles 36, 70 ASFM) sanctions.	Administrative (article L. 621-15 of the FMC) and criminal (article L. 465-1 sections 1 and 2 of the FMC).
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Germany	Italy	The Netherlands	Spain
Yes.	Yes.	Yes.	Yes.
<p>Amendments to the securities trading act (Wertpapierhandelsgesetz – WpHG).</p> <p>Securities trading notifications and insider list regulation (Wertpapierhandelsanzeige und Insiderverzeichnisverordnung – WpAIV).</p> <p>Market manipulation concretisation regulation (Marktmanipulations-Konkretisierungsverordnung – MaKonV).</p> <p>Financial analysis regulation (Finanzanalyseverordnung – FinAnV).</p> <p>In addition, BaFin has published ‘issuer guidelines’ (<i>Emittentenleitfaden</i>) that provide valuable interpretative assistance.</p>	<p>Amendments to: (i) FLCA by means of law 62/2005, which introduced the new title <i>I-bis</i> in part V dedicated to sanctions; and (ii) Issuers Consob Regulation (New Issuers Regulation) approved on 29 November 2005.</p>	<p>Amendments to the supervision of securities trade act 1995 (SSTA) (Wet toezicht effectenverkeer 1995).</p> <p>New market abuse decree.</p>	<p>Act 44/2002, of 22 November, for the reform of the Spanish financial system (Finance Act) amended articles 78 to 84 of the Spanish securities markets act.</p> <p>Royal Decree 1333/2005 on market abuse.</p>
Criminal, administrative and civil.	Criminal and administrative sanctions for the provisions derived from articles 2 and 3 and administrative only for those derived from article 4.	Criminal and administrative.	Civil and criminal.

Have the misuse of information prohibitions been simply ‘copied out’, or are the implementing measures different in any material respect?

UK	Austria	Belgium	France
<p>The basic prohibition applies to dealings ‘based on’ inside information, rather than referring to ‘using’ inside information. There is a definition of acquiring and disposing, which covers agreeing to do so and also creation and extinction of rights (eg under a derivative). The second prohibition is phrased as requiring or encouraging, rather than recommending or inducing, and the third refers to ‘proper’, rather than ‘normal’, course of exercise of employment etc. In the definition of ‘insider’ the expression ‘could reasonably be expected to know’ is used instead of ‘ought to have known’.</p>	<p>In principle same as Directive.</p>	<p>The misuse of information prohibitions have been ‘copied out’ in article 40 of the ASFM.</p>	<p>The misuse of information prohibitions have been ‘copied out’ in articles 622-1 and 622-2 of section VI of the AMF GR.</p>

Are there any express defences other than any implementing articles 7 and 8?

<p>There are express defences that reproduce the last sentence of recital (18) – legitimate principal business (MAR1.3.7C) and dutiful execution of another’s orders (MAR1.3.11C), recital (29) – bid/merger related activity (MAR1.3.17C), recital (30) – giving effect to one’s own intentions (MAR1.3.6C) and recital (31) – research based on publicly available information is not inside information (section 118C(8) FSMA). Article 2(3) – dealing to give effect to a pre-existing obligation – is reproduced in the COMC.</p>	<p>No.</p>	<p>No, but the general criminal law defences apply as far as the criminal sanctions are concerned.</p>	<p>No. Moreover, the AMF has not implemented the exemption in article 7.</p>
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How does the ‘reasonable investor’ test in article 1(2) of Directive 2003/124/EC affect the price sensitivity test for investments that are not commodity derivatives?

<p>The legislative drafting could be interpreted either as imposing a dual test or as substituting the reasonable investor test for the price sensitivity one. The latter interpretation appears inconsistent with article 17(2) of the Directive and guidance given by the FSA in the Disclosure Rules supports something closer to the former interpretation – that the purpose of the reasonable investor test is to assist in deciding whether the information is price sensitive.</p>	<p>The information is deemed to be price sensitive if a reasonable investor would be likely to use this information as part of the basis of his investment decision (section 48a (1) of the Austrian Stock Exchange Act). The ‘reasonable investor’ test assists in interpreting when information is ‘price sensitive’.</p>	<p>Information is deemed to be price sensitive if a reasonable investor would be likely to use this information as part of the basis of his investment decision. The ‘reasonable investor’ test assists in interpreting when information is ‘price sensitive’.</p>	<p>The information that is likely to be price sensitive is information that a reasonable investor would be likely to use as part of the basis of his investment decisions (article 621-1 (3) of the AMF GR).</p>
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Germany	Italy	The Netherlands	Spain
<p>The implementing wording is not entirely 'copied out' of the Directive, but there should be no material deviations.</p>	<p>The prohibition on 'acquiring and disposing of financial instruments' has been extended to include 'carrying on any other deal'. There is no express provision regarding the attempt to acquire or dispose of financial instruments ('trying'), though it could be covered by the 'carrying on' provision.</p>	<p>In principle same as Directive.</p>	<p>Articles 2, 3 and 4 of the Directive have been copied out into articles 81.1 and 83-ter of the Spanish securities markets act.</p>
<p>Recitals (unless reflected in the text of the Directive or the implementing regulations) have generally not been implemented into statutory law, but may be taken into account for interpretative purposes. Generally available defences under criminal law also apply.</p>	<p>No.</p>	<p>(Conditional) exemptions apply to employee share/option plans; transactions required to satisfy a pre-existing obligation; 'irrevocables' in public offer situations or in relation to an intended share issuance; stock dividends; execution of orders by intermediaries, but only if in possession of inside information relating to the trade.</p> <p>Note that buying of target shares by bidder while in takeover negotiations is not, as such, exempted (cf. recital (29)).</p>	<p>A 'dutiful execution of another's orders' defence based on the last sentence of recital (18) has been copied out into article 81.3 of the Spanish securities markets act.</p>
<p>The reasonable (knowledgeable: <i>verständiger</i>) investor test is interpreted such that it will suffice if, from his perspective, assuming that he had all relevant information at the time of his action, it appears likely that the information would have a significant effect on the price.</p> <p>In essence, if it can be assumed that a reasonable investor would have taken certain information into account when making his investment decision, there is almost a presumption that it was price sensitive.</p>	<p>The reasonable investor test, which is set out in article 181, paragraph 4 of FLCA, assists in interpreting when something is price sensitive.</p>	<p>SSTA uses the phrase 'significant' influence on the price. According to the Dutch legislator, significant must be construed as 'meaningful, ie information of which a reasonably acting investor will probably make use to partially base his investment decision on'.</p>	<p>Article 1.1 of Royal Decree 1333/2005 merely copies out article 1.2 of Directive 2003/124/EC and does not clarify the relationship between the tests.</p>

Is there any guidance on the meaning of 'pending order' (see the third sub-paragraph of article 1(1) of the Directive)?

UK	Austria	Belgium	France
Yes: see MAR 1.2.16E.	No.	No.	No.

Are there any additional misuse of information prohibitions in law or regulation?

Yes: part V Criminal Justice Act 1993 (which implements the Insider Dealing Directive (89/592/EC)), some additional provisions of part VIII FSMA that apply only to UK publicly traded investments and FSA Principle for Businesses 5, which requires a person authorised under the FSMA to observe proper standards of market conduct.	No.	Yes: article 38 ASFM prohibits the use of information in such a way that exploits the weakness or ignorance of others to carry out transactions in financial instruments at a price or under conditions that are clearly unrelated to the real value of the instruments.	Under the FMC, insider dealing is also criminal.
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Germany	Italy	The Netherlands	Spain
Yes: see issuer guidelines III.2.1.5 (although not very precise).	No.	Yes: see explanatory notes to market abuse decree, article 2 (g) and (h).	This sub-paragraph of the Directive has not yet been implemented.
No.	No.	No.	Article 285 Spanish criminal code: this requires intention and there is an economic threshold.

Release and control of inside information by issuers and insider lists (articles 6(1) to (3) of the Directive)

Are these aspects of the Directive fully implemented?

UK	Austria	Belgium	France
Yes.	Yes.	Yes, save for the requirement in article 6 (1), section 2 of the Directive (the obligation to post inside information on the issuer's website). Article 10, section 1, 1° and section 1- <i>bis</i> of the ASFM allows the King to define the circumstances in which information <i>can</i> be posted on the issuer's website but no obligations to do so have been created.	Yes: see section II-5 of the AMF GR.

What laws, regulations and other measures or guidance have been made to implement the aspects of the Directive?

Amendments to part VI FSMA and FSA Disclosure Rules.	Amendments to the Austrian Stock Exchange Act (section 48a) and the Notifications Decree.	The Royal Amendment Decree.	Information obligation: article 222-1 to 222-11 of the AMF GR. Insider list: <ul style="list-style-type: none"> • article L.621-18-4 FMC; • section II-5 of the AMF GR (articles 221-16 et seq); and • AMF's position of 18 January 2006.
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Are there criminal, civil or administrative sanctions for breach of these requirements?

Civil (failure to disclose could also breach section 397 FSMA).	Administrative (section 48 of the Austrian Stock Exchange Act).	Administrative sanctions (article 36 and article 70 ASFM).	Administrative.
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Have the article 6(1) to 6(3) requirements been simply 'copied out', or are the implementing measures different in any material respect?

An issuer has one day after announcement to post inside information on its internet site and must maintain it there for a year. Information release must be synchronised with non-EU markets. There is a lot of guidance.	Copied out.	Article 6 (1) to (3) has in principle been copied out in the ASFM, except for article 6 (1) paragraph 2, as mentioned above.	Copied out.
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Germany	Italy	The Netherlands	Spain
Yes.	Yes.	Yes.	Yes.
WpHG and WpAIV.	Amendments to articles 114, 115 and article 115- <i>bis</i> of FLCA by means of Law 62/2005, the New Issuers Regulation and the Markets Consob Regulations (New Markets Regulation) approved on 29 November 2005.	SSTA and market abuse decree.	The 2002 Finance Act amended articles 78 to 84 of the Spanish securities markets act. Royal Decree 1333/2005 on market abuse.
Criminal and administrative.	Administrative, including for directors.	Criminal and administrative.	Civil.
The implementing wording is not entirely 'copied out' of the Directive, but there should be no material deviations.	Article 114 FLCA replaced the pre-existing concept of 'price sensitive facts' with the Directive concept of 'inside information'. An issuer has to post inside information on its internet site one day after announcement and must maintain it there for two years (New Issuers Regulation).	In principle same as Directive. Issuer must maintain information on its internet site for a year.	The law draws a distinction between inside and relevant information and requires an issuer to announce both kinds. 'Relevant information' is information the knowledge of which can reasonably influence an investor to deal in instruments, and is therefore capable of significantly influencing pricing (it is, therefore, in practice, very similar to information meeting the reasonable investor test). Article 82(i) Spanish securities markets act refers to 'make immediately public' and deals with insider lists and delay based on protection of legitimate interests.

Is there any guidance for issuers on identifying inside information?

UK	Austria	Belgium	France
Yes: DR2.23G – 2.28G.	No.	The guidance on the definition of inside information as set out in article 14 of Directive 2003/124/EC is copied out in the ASFM. In addition, the explanatory notes to the ASFM and the Royal Amendment Decree elaborate on the interpretation of inside information.	No.

Are there any provisions, other than those derived from article 3(1) of Directive 2003/124/EC, on the legitimate interests exception?

No and the FSA construes the exception narrowly.	No.	No.	No.
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Is there any guidance on dealing with rumours?

Yes: DR2.7.	No.	No.	No.
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Do persons acting on behalf or for the account of the issuer have a direct obligation to maintain an insider list, or must they be required to do so by the issuer?

The latter: a contract should be put in place by the issuer.	The former: a direct obligation.	Persons acting on behalf or for the account of the issuer have a direct obligation to maintain an insider list (article 25- <i>bis</i> , section 1 of the ASFM). Please note that article 25- <i>bis</i> ASFM does not enter into force until it is executed by a royal decree. As at the date of this publication no such decree had been published.	The former.
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Germany	Italy	The Netherlands	Spain
Yes: see issuer guidelines IV.2.2.1 and IV.2.2.9.1.	No.	Not officially but to some extent in informative brochure of the AFM.	No.
No and the BaFin construes the exception narrowly.	Article 66- <i>bis</i> of the New Issuers Regulation copies out Level 2 Directive 2003/124/EC provisions but adds a general guideline for identifying further cases of legitimate delay, which is essentially based on (i) the interests of the issuer or (ii) the interests of the investor which might be prejudiced by the timely disclosure of information that is not yet sufficiently precise.	No and the AFM is likely to construe the exception narrowly.	No.
Yes: see issuer guidelines IV.3.3 and VI.3.2. Generally, if an issuer has no reason to believe that there is a confidentiality loophole in its sphere of influence it is exempt from any requirement to comment. Otherwise, a disclosure will be required. If it continues to rely on the exemption, it must not give signals that would be misleading in the light of (correct) rumours and must adhere to a 'no comment' policy. Spreading unfounded rumours can be prosecuted as market abuse.	Yes: article 66, paragraph 8 of the draft New Issuers Regulation.	Not officially but to some extent contained in informative brochure of the AFM (which does allow a 'no comment').	No.
The obligation is directly on the persons acting on behalf of the issuer. However, the issuer is required to inform the persons on the list about their obligations. It can delegate this obligation to the entity acting on behalf of the issuer (and should monitor compliance by such entity with this delegated obligation).	Article 115- <i>bis</i> of the FLCA imposes an obligation on issuers <i>or</i> on persons acting on their behalf or for their account. However, Consob has interpreted this provision as imposing a direct obligation on persons acting on behalf or for the account of issuers.	The former: a direct obligation.	The latter: the issuer must inform them of their confidentiality obligations.

Do the insider list requirements apply in relation to persons acting for a subsidiary of the issuer?

UK	Austria	Belgium	France
Not unless they act on behalf or for the account of the issuer.	Not unless they act on behalf or for the account of the issuer.	Not unless they act on behalf or for the account of the issuer.	Not unless they act on behalf or for the account of the issuer.

Is there any guidance on when a list has to be kept or who should be included in it or how expansive the reason for being on it needs to be?

Yes: see the FSA's Market Watch, issue 12.	Yes: see the Issuer Compliance Decree.	No, not beyond the provisions of the Directive. Article 25- <i>bis</i> , section 1 allows the King to execute this provision in more detail. However, this has not yet been done (article 25- <i>bis</i> section 1 ASFM does not enter into force until it is executed by a royal decree. As at the date of this publication no such decree had been published).	Yes: see article 222-16 <i>et seq</i> of the AMF GR and the AMF's position of 16 January 2006.
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What evidence of identity is required?

First name and surname and business address.	First name and surname; date and place of birth; address.	The ASFM allows the King to set out further details/additional requirements in connection with the list. There is currently no royal decree that does so and, therefore, there are no specific legal requirements in this respect.	Name or corporate name ('dénomination').
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Does the list have to be given to the issuer?

Yes, on request.	Not as a matter of statutory law.	There are no specific legal requirements in this respect.	Yes: article L. 621-18-2 of the FMC as amended by a statute dated 21 July 2005. 'The persons mentioned in a) and c) have to disclose to the issuer, at the same time as the communication to the AMF as described in the first paragraph, a copy of this communication'.
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Are there any additional issuer disclosure or insider list requirements beyond these?

Yes, as regards disclosure: the FSA's Listing Rules include certain specific announcement obligations. No, as regards insider lists, but the FSA has made clear it will expect a different list if it launches an insider dealing investigation.	Yes: there are additional disclosure requirements under Austrian listing rules, mainly referring to corporate actions or changes in the rights of listed financial instruments.	The issuer disclosure rules are copied out from the Directive. However, in the context of an investigation by the CBFA, each person may be required to provide the CBFA with any information it requests. The Euronext Rule Books also provide for some limited additional disclosure requirements.	No. The amendments proposed by the AMF to the AMF GR are a 'copy out' of the Directive.
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Germany	Italy	The Netherlands	Spain
No, unless the relevant subsidiary is also a service provider to the issuer (acting on behalf of the issuer). Employees of a subsidiary who also work for the issuer and get to know insider information must be included in the issuer's insider list.	Yes, but one list can be kept for companies belonging to the same group and persons acting for them.	Not unless they act on behalf or for the account of the issuer.	Not unless they act on behalf or for the account of the issuer.
Yes: see WpAIV and issuer guidelines VII.	Yes, see New Issuer Regulation, title VII, chapter I, article 152- <i>bis</i> . In general Consob's approach to the insider lists obligation is very liberal, as it does not want to impose an additional burden over and above recording the identity of the insiders of which the person obliged to keep the list is aware as a consequence of their direct experience.	Yes, in the market abuse decree. Note that the obligation relates to Dutch law incorporated issuers listed <i>anywhere in the world</i> and to non-EU issuers listed in the Netherlands.	No.
First name and surname; date and place of birth; private and business address.	First name and surname.	First name and surname.	Personal details (full name and address).
Not as a matter of statutory law, but advisable as a matter of contract law to enable the issuer to demonstrate its compliance with applicable rules.	No.	No.	Not clear.
Yes: there are additional disclosure requirements under German listing rules, mainly referring to corporate actions or changes in the rights of listed financial instruments.	No.	Yes, limited additional requirements in Euronext Rule Books.	No.

Senior management transaction reporting (article 6(4) of the Directive)

Are these aspects of the Directive fully implemented?

UK	Austria	Belgium	France
Yes.	Yes.	Yes, they will be when article 25- <i>bis</i> , section 2 ASFM is executed by a royal decree. As at the date of this publication no such decree had been published.	No.

What laws, regulations and other measures or guidance have been made to implement the aspects of the Directive?

Amendment to part VI FSMA and FSA Disclosure Rules.	Amendment to the Austrian Stock Exchange Act (section 48(d) paragraph 4) and the Notifications Decree.	Royal Amendment Decree.	The FMC has implemented these aspects (article 621-18-2). However, this article needs to be completed by specific provisions of the AMF GR. The relevant section of the AMF GR has been drafted but, as at the date of this publication, is still awaiting final approval.
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Are there criminal, civil or administrative sanctions for breach of these requirements?

Civil.	Administrative.	Administrative sanctions (article 36 and article 70 et seq).	Administrative.
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Germany	Italy	The Netherlands	Spain
Yes.	Yes.	Yes.	Yes.
WpHG and WpAIV.	Amendments to article 114, paragraph 7 of FLCA and to the New Issuers Regulation approved on 29 November 2005 (articles 87, 101, 103, 152- <i>sexies</i> , <i>septies</i> and <i>octies</i>). Attachment 3F to the New Issuers Regulation gives practical instructions for communication to Consob and public disclosure.	SSTA and market abuse decree.	The 2002 Finance Act amended articles 78 to 84 of the Spanish securities markets act. Royal Decree 1333/2005 on market abuse.
Criminal and administrative.	Administrative.	Criminal and administrative.	Civil.

Have the article 6.4 requirements been simply ‘copied out’, or are the implementing measures different in any material respect?

UK	Austria	Belgium	France
<p>The definition of ‘connected person’ is wider than the Directive definition of ‘person closely associated’.</p> <p>The manager/connected person must notify the issuer, which must make a public announcement.</p>	<p>Copied out.</p>	<p>Article 6.4 has in principle been copied out.</p>	<p>Article L. 621-18-2 of the FMC code refers to the notion of ‘close personal link’ instead of ‘person closely associated’ and covers any person (not just a senior executive) who has the power to take managerial decisions affecting the future developments and business prospects of the issue, and has regular access to inside information relating to the issuer.</p> <p>The scope of article L. 621-18-2 of the FMC is wider than the Directive, as the notification obligation applies to transactions by certain natural persons in the securities of any person making a public offering (whether or not it involves an application for admission to trading on a regulated market).</p> <p>The transactions to be notified are not limited to the issuer’s securities and financial futures transactions involving those securities but are extended to general financial instruments involving those securities. This includes convertible and redeemable bonds.</p> <p>The word ‘transaction’ in the Directive is replaced by ‘acquisition, disposal, subscription or exchange’.</p> <p>The AMF, in an announcement dated 27 December 2004, provided a definition of close personal links and the transactions to be notified. However, an implementing decree in Conseil d’Etat still needs to be adopted.</p>

Germany	Italy	The Netherlands	Spain
The implementing wording is not entirely 'copied out' of the Directive, but there should be no material deviations.	One material difference is that significant shareholders (whose shareholdings are equal to or greater than 10 per cent of the share capital of a listed issuer, as well as those who control a listed issuer) are also subject to transaction reporting.	In principle same as Directive.	Copied out.

Is there any guidance on who is a person 'discharging managerial responsibilities' or a 'person closely associated'?

UK	Austria	Belgium	France
Yes: see FSA Market Watch issue 12.	No.	No.	No.

Are persons discharging managerial responsibilities within subsidiaries of the issuer caught?

They may be: see FSA Market Watch issue 12.	Yes, they may be.	Yes, they may be.	They may be. The AMF amendments may include specific provisions on this matter.
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Do you expect persons discharging managerial responsibilities to differ from those included in insider lists?

Yes: in many cases.	Yes.	Yes.	Yes.
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Does the 'person closely associated' definition give rise to interpretational difficulties?

Yes: with senior investment professionals who are non-executive directors of issuers.	The definition is quite precise and, as regards family relationships, attaches to Austrian family law. Interpretation difficulties may arise when foreign family law concepts differ from the Austrian concepts.	Yes, the phrase 'whose economic interests are substantially equivalent to those of such person' can give rise to interpretational difficulties.	Not yet, as it has not been adopted.
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Are there additional senior management transaction reporting requirements beyond these?

Yes: for directors and certain others under section 324 Companies Act 1985 (although this is expected to be repealed). Part VI Companies Act 1985 will also be relevant in relation to significant stakes.	Not as yet.	No.	No.
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Germany	Italy	The Netherlands	Spain
Yes: see issuer guidelines V.1.2.	Yes, they are defined in great detail in article 152- <i>sexies</i> of the New Issuers Regulation.	Not on the first; on the latter (persons closely associated): yes, see article 5 market abuse decree.	No.
Yes.	Yes: see article 152- <i>sexies</i> letter c) 3. The relevant concept of a 'subsidiary' is 'controlled, whether directly or indirectly by a listed issuer, when the value of the shares held in such subsidiary company is more than 50% of the total assets of the listed issuer'.	Yes, they may be.	No.
Yes.	Yes, in many cases.	Yes.	Yes.
The definition is quite precise and, as regards family relationships, attached to German family law. Interpretative difficulties may arise when foreign family law concepts differ from the German concepts.	Although article 152- <i>sexies</i> letter d) is very detailed, some doubts arise with reference to the concept of trust (d.2) and control (d.3).	Not as yet.	Yes, because the wording of the Royal Decree 1333/2005 is very general.
Yes, as regards reporting obligations for substantial shareholdings, and under accounting rules (information to be provided in the annual report).	Articles 87 and 101 of FLCA impose a reporting obligation on senior management dealing in relation to companies belonging to the issuer group. Article 103 imposes a senior management dealing reporting obligation relating to asset management companies of closed-ended funds.	Yes, in the disclosure of major holdings act (which, if complied with, will automatically also discharge reporting obligation under SSTA).	No.

Market manipulation (article 5 of the Directive)

Are these aspects of the Directive fully implemented?

UK	Austria	Belgium	France
Yes.	Yes.	Yes (article 25, section 1, 2° of the ASFM).	Yes.

What laws, regulations and other measures or guidance have been made to implement the aspects of the Directive?

Amendments to part VI FSMA and the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001. New Code of Market Conduct.	Amendment to the Austrian Stock Exchange Act (section 48(c)) and Market Practices Decree.	The ASFM and the Royal Amendment Decree.	Article L. 465-2 of the FMC. AMF GR, section VI – articles 631-1 to 632-1.
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Are there criminal, civil or administrative sanctions for breach of these requirements?

Civil.	Criminal and administrative.	Criminal (article 36 ASFM) and administrative (article 45 and article 70 et seq ASFM) sanctions.	Administrative. Criminal: article L. 465-2 of the FMC.
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Have the Directive market manipulation prohibitions been simply 'copied out' or are the implementing measures different in any material respect?

'Ought to have known' has been replaced with 'could reasonably be expected to have known'.	Copied out.	In principle the same as Directive.	Copied out.
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Are there any accepted market practices?

Yes: practices set out on the LME's 'Market Aberrations: the Way Forward'.	Yes: practices set out in the Market Practices Decree.	No, only legal framework to establish AMPs (article 30-3°).	Yes: articles 621-1 to 612-4 of the AMF GR. In addition, the AMF has accepted as accepted market practices: <ul style="list-style-type: none"> a liquidity agreement concluded in accordance with the new compliance charter of the Association Française des entreprises d'investissement (AMF's decision, 22 March 2005, <i>Bulletin Officiel de l'AMF</i>, 1 April 2005); and the repurchase of shares for conservation, and resale afterwards in the framework of external growth transactions (AMF's decision, 22 March 2005, <i>Bulletin Officiel de l'AMF</i>, 1 April 2005).
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Germany	Italy	The Netherlands	Spain
Yes.	Yes.	Yes.	Yes.
WpHG and MaKonV.	New title <i>I-bis</i> , on part V of FLCA and the New Markets Regulation issued on 29 November 2005.	SSTA and market abuse decree.	The 2002 Finance Act amended articles 78 to 84 of the Spanish securities markets act. Royal Decree 1333/2005 on market abuse.
Criminal and administrative.	Administrative and criminal.	Criminal and administrative.	Civil.
The implementing wording is not entirely 'copied out' of the Directive, but there should be no material deviations.	Article 187-ter of the FLCA implementing article 1, paragraph 2, letters a), b), c) of the Directive does not include the dissemination 'of rumours and false or misleading news, where the persons who were responsible for the dissemination knew, or ought to have known, that the information was false or misleading'.	In principle same as Directive.	Mere copy-out.
No, only legal framework to establish AMPs. BaFin is expected to do so within wider CESR context (cf Level 3 guidance).	No, only legal framework to establish AMPs. Consob is determining them within wider CESR context (cf Level 3 guidance).	No, only legal framework to establish AMPs. AFM is expected to do so within wider CESR context (cf Level 3 guidance).	No. However, Royal Decree 1333/2005 provides for the criteria that the CNMV is to consider when preparing a list of accepted market practices.

Are there any express defences in relation to these prohibitions other than any to implement articles 7 and 8 of the Directive?

UK	Austria	Belgium	France
No.	No.	No.	No.

Is there any guidance on what the order to trade or transaction must be in or any other aspect of the prohibition?

Yes: see MAR 1.6, 1.7 and 1.8.	No.	Yes, in the explanatory notes to the ASFEM and the Royal Amendment Decree.	No.
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Are there any additional market manipulation prohibitions beyond those required by the Directive?

Section 397 FSMA, which establishes criminal offences relating to misleading statements and practices; there are prohibitions on requiring and encouraging market abuse; some additional provisions of part VIII FSMA that apply only in relation to UK publicly traded investments; and Principle for Businesses 5, which require a person authorised under FSMA to observe proper standards of market conduct.	General principles of civil and criminal law apply alongside the specific market abuse regime.	The market manipulation prohibition also covers (i) each agreement that may lead to prohibited market manipulation; and (ii) a person who encourages another to commit a prohibited act.	Yes. It is an offence (i) publicly to disseminate, by whatever channel or means, false or deceptive information concerning the prospects or the situation of an issuer whose securities are admitted to trading on a regulated market, or the likely trend of a financial instrument admitted to trading on a regulated market, which would be likely to influence the price thereof (article 465-1 of the FMC) or (ii) to carry out or attempt to carry out, directly or through an intermediary, a manoeuvre intended to impede the normal operation of a financial instruments market by misleading others (article 465-2 of the FMC).
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Germany	Italy	The Netherlands	Spain
No. Generally available defences under criminal law also apply.	No.	No.	No.
Yes: see sections 3 and 4 MaKonV.	No.	Yes, in informative brochure of the AFM, which is a compilation of the guidance given in the Directive and the CESR Level 3 advice.	No.
General principles of civil and criminal law apply alongside the specific market abuse regime. It is also conceivable that the BaFin may sanction certain behaviour as an 'irregularity' (<i>Mißstand</i>) in the business of a financial institution in accordance with its general powers.	No, but it should be remembered that the Italian legislator has made great use of criminal sanctions including ancillary sanctions and confiscation.	No, although there are rules dealing with civil law liability in the case of misleading accounts (book 2 of the civil code) and rules of tort on which the concept of prospectus liability is based which may overlap in particular cases.	General criminal code provisions could apply (fraudulent pricing alteration).

Suspicious transaction reporting (article 6(9) of the Directive)

Are these aspects of the Directive fully implemented?

UK	Austria	Belgium	France
Yes.	Yes.	Yes, they will be when article 25- <i>bis</i> , section 4 ASFM is executed by a royal decree. As at the date of this publication no such decree had been published.	Yes. However, the provision of article 321-144 of the AMF GR, which requires credit institutions, investment firms and members of a regulated market to implement internal rules and an organisation process to comply with the provisions regarding suspicious transaction reporting will enter into force only on 1 July 2006.

What laws, regulations and other measures or guidance have been made to implement the aspects of the Directive?

FSA Supervision Manual: SUP 15.10.	Amendment to the Austrian Stock Exchange Act (section 48d paragraph 9).	Royal Amendment Decree and ASFM.	Articles L. 621-17-2 to L. 621-17-7 of the FMC. Articles 321-142 to 321-144 of the AMF GR.
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Are there criminal, civil or administrative sanctions for breach of these requirements?

Civil.	Criminal and administrative.	Administrative sanctions (articles 36 and 70 et seq ASFM).	Administrative.
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Has the obligation been simply 'copied out' or are the implementing measures different in any material respect?

Applies to a wider range of persons and in respect of a wider range of markets.	In principle the same as Directive.	'A person professionally arranging transactions in financial instruments' has been replaced with 'qualified intermediaries having their office in Belgium or which provide investment services through a branch in Belgium'. A 'qualified intermediary' is defined in the ASFM by a list of intermediaries (article 25- <i>bis</i> , section 4 ASFM and article 2-10° ASFM).	The implementation of article 11(3) of the Directive 2004/72/EC provides more protection for the persons notifying and the text is more precise in terms of exempting liability than the Directive (see article L. 621-17-7).
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Has any additional guidance been given on suspicious transactions other than the CESR Level 3 guidance published in May 2005 especially on what is meant by 'reasonably suspects'?

No.	No.	No.	No.
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Germany	Italy	The Netherlands	Spain
Yes.	Yes.	Yes.	Yes.
WpHG and WpAIV.	Article 187- <i>nonies</i> of FLCA and articles 63 to 69 of the New Markets Regulation.	SSTA and market abuse decree.	The 2002 Finance Act amended articles 78 to 84 of the Spanish securities markets act. Royal Decree 1333/2005 on market abuse.
Criminal and administrative.	Administrative, see article 190 of FLCA.	Criminal and administrative.	Civil.
The implementing wording is not entirely 'copied out' of the Directive, but there should be no material deviations.	Slightly different: market operators (eg Borsa Italiana) are also included.	In principle same as Directive.	Applies to any investment firms and credit institutions. Royal Decree 1333/2005 provides for information to be provided to the CNMV and confidentiality obligations.
No.	No.	No.	No.

Does the requirement to report suspicious transactions cover suspicious unexecuted orders?

UK	Austria	Belgium	France
No, but in practice businesses may choose to alert the FSA in these circumstances.	Not explicitly but the wording merely refers to 'transaction' and arguably could be interpreted to also encompass unexecuted orders.	Strictly speaking the ASFM refers only to suspicious 'transactions'. There is no guidance on whether or not the term transaction must be construed to refer only to 'completed transactions'. It seems fair to assume that qualified intermediaries may also feel compelled to report suspicious 'orders'.	Yes.

How does this reporting obligation relate to obligations to report suspected money laundering?

There is overlap where the behaviour reasonably suspected may also amount to a criminal offence. Two reports have to be made – one to the National Criminal Intelligence Service (NCIS), one to the FSA – in these circumstances.	Overlap is possible but there are distinct obligations.	An overlap is possible but there are two distinct reporting requirements; in the case of suspected money laundering the information should be made available to the Cel voor financiële informatieverwerking and in the case of suspicious transactions under the ASFM to the CBFA.	This reporting is independent from the obligation to disclose the transaction to Traitement du renseignement et action contre les circuits financiers clandestins (TRACFIN) as far as a criminal offence is concerned.
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Are there any other overlapping reporting requirements?

No.	No.	No.	No.
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Germany	Italy	The Netherlands	Spain
Yes.	Yes.	Yes: explicitly covers transactions and orders to execute a transaction.	No, but practical reasons could imply that these are covered.
Overlap is possible but these are distinct obligations.	There is no overlap nor has Consob indicated that they consider there is any.	Overlap is possible but these are distinct obligations to different authorities (AFM and MOT).	Overlap: two reports should be filed – one with the CNMV and one with the Bank of Spain.
No.	No.	No.	No.

Research recommendations (article 6(5) of the Directive)

Are these aspects of the Directive fully implemented?

UK	Austria	Belgium	France
Yes.	Yes.	Yes, by article 2 and article 25-bis, section 3 ASFM when the latter is executed by a royal decree. As at the date of this publication no such decree had been published.	Yes.

What laws, regulations and other measures or guidance have been made to implement the aspects of the Directive?

Amendments to FSA's conduct of business rules: COB 7.17.	Amendment to the Austrian Stock Exchange Act (section 48f).	Royal Amendment Decree and ASFM.	Article L 621-7 FMC (as amended by statute dated 27 July 2005). Articles 321-122 to 321-141 AMF GR.
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Are there criminal, civil or administrative sanctions for breach of these requirements?

Civil.	Criminal and administrative.	Administrative sanctions (articles 36 and 70 et seq ASFM).	Administrative.
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Have the requirements of article 6.5 of the Directive, and the Level 2 Directive 2003/125/EC, been simply 'copied out' or are the implementing measures different in any material respect?

'Distribution channels' is interpreted as 'large number of persons'. A firm is required to retain records to substantiate its recommendations. There are provisions to ensure information held behind a Chinese wall or only in compliance does not have to be disclosed.	Mainly copied out without any material differences.	Mainly copied out without any material differences.	'Distribution channels' is interpreted as 'large number of persons'. A firm is required to retain records to substantiate its recommendations (article 544-3 of the FMC). No priority can be given to the internal departments.
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How do they apply to trading ideas and recommendations put out by sales and trading personnel?

Informal short term personal recommendations are excluded provided they are not likely to become available to the public/a large number of persons.	Informal short-term personal recommendations are excluded provided they are not likely to become available to the public/a large number of persons.	Advice from rating agencies and personal investment advice do not fall within the scope of 'recommendations' as referred to in article 25-bis, section 3 (explanatory notes to the Royal Amendment Decree).	Informal short term personal recommendations are excluded provided they are not likely to become available to the public/a large number of persons.
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Are there any additional presentation and disclosure requirements?

No.	No.	No.	No.
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Germany	Italy	The Netherlands	Spain
Yes.	Yes.	Yes.	Yes.
WpHG and FinAnV and BaFin guidance in a circular letter dated 1 September 2005.	FLCA has been amended (see new article 114). Article 65, 69, from 69- <i>bis</i> to 69- <i>decies</i> of the New Issuers Regulation approved on 29 November 2005.	SSTA and market abuse decree.	The 2002 Finance Act amended articles 78 to 84 of the Spanish securities markets act. Royal Decree 1333/2005 on market abuse.
Criminal and administrative.	Administrative (see article 193 of FLCA).	Criminal and administrative.	Civil.
The implementing wording is not entirely 'copied out' of the Directive, but there should be no material deviations.	Mainly copied out without any material differences.	In principle same as Directive. The rules all relate to 'information addressed to the public'.	Royal Decree 1333/2005 extensively copies out Directive 2003/125/EC.
Model portfolios and simple investment recommendations that do not create the impression of a substantive analysis are excluded.	Investment advice provided to clients as personalised recommendations and unlikely to be publicly disclosed is not a 'recommendation' under article 65, paragraph 42, of the New Issuers Regulation.	Personal recommendations that are not likely to be publicly disclosed are excluded (explanatory notes to the SSTA).	The provision the question refers to is not included in Royal Decree 1333/2005.
The requirements are not copied verbatim from the Directive but should not contain material deviations.	No.	No.	No.

Stabilisation (article 8 of the Directive)

What are the requirements for the formalities of publication of the pre-stabilisation announcement?

UK	Austria	Belgium	France
The FSA accepts as adequate public disclosure: (i) disclosure through a regulatory information service or otherwise in accordance with part VI rules; or (ii) the equivalent disclosure mechanism required to be used in relation to the relevant regulated market (MAR2.3.6G).	No requirements set.	The disclosure and reporting conditions referred to in article 9.1 of European Commission Regulation 2273/2003 of 22 December 2003 must be mentioned in the prospectus. (European Commission Regulation 2273/2003 of 22 December 2003 and consultation paper CBFA with propositions for a draft royal decree relating to primary market practices, December 2004.)	Article 631-8 of the AMF GR: the issuer or offeror must disclose the information referred to in article 9.1 of European Commission Regulation 2273/2003 of 22 December 2003 before the opening of the offer period of the financial instruments, through a news release to be disseminated effectively and fully and posted on the AMF website and on the website, if any, of the issuer. This requirement will be deemed to have been fulfilled if this information is included in the prospectus submitted to the AMF for review.

Is stabilisation permitted in cases outside the scope of Regulation 2273/2003? If there is an express alternative regime (a) in relation to what types of security? and (b) broadly how does the regime differ from the Regulation?

There is an alternative safe harbour for securities admitted to trading on UK markets that are not regulated markets. It is based on the Regulation but the publicity requirements are modified and the transaction reporting requirements and some of the limits on ancillary activities are disapplied. Stabilisation outside these safe harbours is not permitted.	No.	Transactions that fall outside the scope of Regulation 2273/2003 do not necessarily constitute market abuse. The CBFA will use its normal investigation powers to assess compliance with the anti-market abuse provisions. There is no express alternative regime in this respect (explanatory notes to the Royal Amendment Decree, article 4).	Yes. However, the AMF considers in such a situation that there is no presumption of legitimacy.
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Germany	Italy	The Netherlands	Spain
<p>As per the issuer guidelines, stabilisation plans must be published before the beginning of the offer period. Both the pre- and the post-offer stabilisation announcements are published in a newspaper with national circulation.</p>	<p>The New Issuers Regulation provides that the information shall be notified through an authorised intermediary – jointly appointed by the relevant entities involved – to (i) two press agencies, (ii) the market operator (ie Borsa Italiana), which shall immediately disclose it to the public, and (iii) Consob.</p>	<p>No requirements set.</p>	<p>Article 8 of the Directive is literally implemented.</p>
<p>The stabilisation exemption expressly refers to Regulation 2273/2003. It is extended by analogy to financial instruments admitted to trading on over-the-counter markets (ie markets that are not regulated markets for Directive purposes).</p>	<p>No. Stabilisation practices were permitted in Italy in relation to a greater range of transactions than IPOs (Consob communication of 23 July 2003). Italian implementation of the Regulation has reduced it to IPOs only. We expect these wider practices to become accepted market practices in Italy.</p>	<p>No. Stabilisation exemption in the SSTA literally refers to Regulation 2273/2003. This Regulation has not been further implemented, as it has direct application.</p>	<p>No.</p>

Share buy-backs (article 8 of the Directive)

Are companies able to buy back shares without complying with Regulation 2273/2003, by ensuring that the buy-back does not involve misuse of information or market manipulation?

UK	Austria	Belgium	France
Yes: this possibility is expressly recognised by the FSA's Listing Rules.	No. This Regulation has not been further implemented, as it has direct application.	Yes, this possibility is referred to in the explanatory notes to the Royal Amendment Decree.	<p>The AMF has recently accepted two market practices for the purpose of transposing the Directive. These are liquidity agreements, prepared in accordance with the conduct of business charter drafted by the French association of investment firms (AFEI) and approved by the AMF, and the purchase of own shares to be held and subsequently remitted as compensation for acquisitions. (AMF's decision, 22 March 2005, <i>Bulletin Officiel de l'AMF</i>, 1 April 2005) and AMF's decision, 22 March 2005, <i>Bulletin Officiel de l'AMF</i>, 1 April 2005).</p> <p>However, the AMF has expressly written in these decisions that it considers there is no possibility of buying back shares without complying with Regulation 2273/2003. This is presumably why it has promulgated these accepted market practices.</p>

Germany	Italy	The Netherlands	Spain
<p>Yes: the buy-back exemption under Regulation 2273/2003 is only a safe harbour and not legally exclusive.</p> <p>Share buy-backs are also subject to compliance with German takeover legislation.</p>	<p>No. However, article 183 letter b) of the FLCA extends the scope of application of the exemption to include transactions carried out by 'subsidiaries or affiliated companies'.</p>	<p>No. Buy-back exemption in the SSTA literally refers to Regulation 2273/2003. This Regulation has not been further implemented, as it has direct application.</p>	<p>No.</p>

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