



*European Association of Co-operative Banks*  
*Groupement Européen des Banques Coopératives*  
*Europäische Vereinigung der Genossenschaftsbanken*

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## EACB answer to the call for evidence of the European Commission on the review of the Market Abuse Directive (MAD)

10 June 2009

The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.200 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 160 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

For further details, please visit [www.eurocoopbanks.coop](http://www.eurocoopbanks.coop)

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### AN ASSOCIATION ON THE MOVE

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## GENERAL REMARKS

1. The European Association of Co-operative Banks (EACB) would like to thank the European Commission for the opportunity to contribute to the important review of the Market Abuse Directive (2003/6/EC).
2. The EACB fully shares the Commission's assessment on the new developments and trends relevant to market integrity and to fighting market abuse. We welcome the intention to amend those provisions in the MAD that create excessive burden.

## Scope of the MAD (2.1)

3. The Commission proposes the extension of the scope of the MAD beyond regulated markets and in particular the inclusion of multilateral trading facilities (MTFs). In order to avoid competitive disadvantages and to create a level playing field we would welcome the extension of the scope of the MAD to alternative trading facilities.
4. However we would like to highlight the fact that the MAD cannot be extended to cover the non-regulated markets as a whole as only some of the regulations can be seen applicable to the non-regulated markets, for instance due to the illiquidity and non-existence of secondary markets of certain MTF-products.

## Financial Instruments covered by the MAD (in comparison with the MiFID) (2.1.2)

5. The Market in Financial Instruments Directive (MiFID) contains a more detailed set of definitions with respect to financial instruments than the MAD. In order to capture all relevant activities of investment firms in the regulatory regime of the MAD we would welcome an explicit reference to the definitions of financial instruments as outlined in the MiFID.
6. In the current version of the MAD there is no definition for commodity derivatives. The application of the MAD to this financial instrument remains therefore unclear. With respect to legal certainty we would welcome a clear definition of commodity derivatives.

## Introduction of MAD framework for physical markets (2.1.3)

7. We do not see a need for the introduction of the MAD framework to cover physical commodity derivatives markets.

## Definition of inside information (2.2.1)

8. We agree with the Commission's stand not to introduce further definitions of inside information. In practice, when weighing whether a certain piece of information should be regarded as inside information, very detailed rules are rarely helpful as the real life



situations may not fit in the law framing and detailed rules may also easily create new interpretation problems.

9. We agree with the assessment of the Commission in relation to the missing reference to circumstances which have, or are likely to have, a significant effect on the prices of commodity derivatives. We therefore support an alignment of the inside information definition for commodity derivative with the general definition of the directive.

#### **Dissemination of inside information and deferred disclosure mechanism (2.2.2)**

10. We do not see any need for changes to the definition of inside information for disclosure purposes. However we do see a need to clarify the situations where the issuer is allowed to defer the disclosure of the inside information.
11. We would wish to see the amendments to the MAD framework either on the level 1 or 2 as we do not consider the level 3 guidance as sufficient. It is also a question of legal protection from the market practitioner's point of view as the level 3 guidance is available in English, but often not in other EU-languages, whereas the level 1 and 2 directives are translated to local languages.
12. Also in terms of the emergency measures and exemption to defer the disclosure of the inside information, we would welcome less dramatic means as relying on the central bank's aid is an extreme measure.
13. There are various options to balance the financial stability before leaning against national central banks and in the current turbulent market conditions it would be extremely important to be able to have flexibility in order to protect financial stability.

#### **Prohibition of insider dealing (2.2.3)**

14. The EACB agrees with the position of the Commission to wait for the decision of the European Court of Justice before any new measures in this respect are envisaged.

#### **Insider lists (2.2.4.1)**

15. As a general comment we would like to point out that in most countries of our member banks the rules on insider lists were literally transposed into national law. However we welcome every measure to reduce the administrative burden of the maintenance and updating of those lists.

#### **Reporting of suspicious transactions (2.2.4.3)**

16. We do not see any need for modifications regarding the suspicious transaction reporting.



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### The competent authorities' right of access to telephone and existing data traffic records (2.2.5)

17. We consider the amendment of the MAD to allow the competent authorities to require telephone and existing data traffic records despite of the e-Privacy directive as acceptable.

### Definition of market manipulation (2.3.1)

18. We do not see any needs for amendment in respect of the definition of market manipulation.

### Accepted market practices (2.3.2)

19. We consider that the rules on accepted market practices should be amended in the MAD framework and that the right level for the amendments is a level 3 guidance.

#### Contact:

The EACB trusts that its comments will be taken into account. For further information or questions on this paper, please contact:

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