



TABLE OF CONTENTS

<i>Table of Cases</i>	xix
<i>Table of Legislation</i>	xxiii
<i>List of Abbreviations and Legislation</i>	xxxix
<i>List of Contributors</i>	xlv
PART A: ANNOTATED GUIDE	1
A1. History, Application, Interpretation, and Legal Sources of the Market Abuse Regulation	3
<i>Sebastian Mock</i>	
I. The Market Abuse Regulation as a European Regulation	A.1.01
II. Historical Development	A.1.03
III. Interpretation of the Market Abuse Regulation	A.1.10
IV. Legal Sources of the (New) Market Abuse Regime	A.1.13
V. Additional Regulation of Market Abuse by the Member States	A.1.18
A2. The Concept of Insider Dealing	13
<i>Marco Ventoruzzo</i>	
I. Introduction	A.2.01
II. An Historical and Comparative Perspective	A.2.07
III. The Rationale of the Prohibition: Economic and Ethical Perspectives	A.2.19
IV. Insider Trading in the Market Abuse Regulation	A.2.28
V. Open Questions and New Challenges	A.2.34
VI. Conclusions	A.2.47
A3. The Concept of Market Manipulation	33
<i>Sebastian Mock</i>	
I. Historical Development of the Prohibition of Market Manipulation	A.3.01
II. Prohibition of Market Manipulation in European Capital Markets Law	A.3.02

Table of Contents

III. Forms of Market Manipulation	A.3.06
IV. Market Manipulation and Insider Trading	A.3.11
V. The 'Missing' Intent Requirement for Market Manipulation	A.3.12
VI. Enforcement of the Prohibition of Market Manipulation	A.3.14
VII. Market Manipulation and General Criminal Law	A.3.23
A4. Public Disclosure of Inside Information and Market Abuse	47
<i>Alain Pietrancosta</i>	
I. Overview	A.4.01
II. Impact of the Market Abuse Regulation	A.4.05
III. Ad Hoc Disclosure (Article 17)	A.4.13
IV. Additional Legislative Measures to Prevent Market Abuse	A.4.30
A5. Public Enforcement of the Market Abuse Regulation	63
<i>Sofie Cools</i>	
I. Introduction	A.5.01
II. History	A.5.03
III. Enhanced Powers of Competent Authorities	A.5.13
IV. Closer Involvement of Market Actors	A.5.19
V. Improved Cooperation between Authorities	A.5.25
VI. Efficiency and Importance	A.5.32
A6. Private Enforcement of the Market Abuse Regulation in European Law	85
<i>Danny Busch</i>	
I. Introduction	A.6.01
II. Questions under Consideration	A.6.04
III. May Civil Courts Be Less Strict than the Market Abuse Regulation?	A.6.05
IV. May Civil Courts Be Stricter than the Market Abuse Regulation?	A.6.32
V. Influence of the Market Abuse Regulation on the Requirement of Relativity	A.6.40
VI. Influence of the Market Abuse Regulation on Proof of Causal Link	A.6.43
VII. Are the Courts Obligated to Apply the Market Abuse Regulation of their Own Motion?	A.6.48

Table of Contents

VIII. Proof of Failure by Civil Parties to Provide Prompt Public Disclosure of Inside Information	A.6.51
IX. Conclusion	A.6.69
PART B: COMMENTARY	115
BI. General Provisions	117
<i>Article 1: Subject matter</i>	117
<i>Sebastian Mock</i>	
I. General Remarks	B.1.01
II. Subject Matter of the Market Abuse Regulation	B.1.03
III. Related Subjects Outside the Subject Matter of the Market Abuse Regulation	B.1.09
<i>Article 2: Scope</i>	122
<i>Sebastian Mock</i>	
I. General Remarks	B.2.01
II. Primary Scope of Application (Article 2(1))	B.2.03
III. Extended Scope of Application for the Prohibition of Market Manipulation (Article 2(2))	B.2.09
IV. No Limitation to Transactions, Orders, or Behaviour on Trading Venues (Article 2(3))	B.2.13
V. Territorial Scope of Application (Article 2(4))	B.2.14
<i>Article 3: Definitions</i>	129
<i>Sebastian Mock</i>	
I. General Remarks	B.3.01
II. General Definitions (Article 3(1))	B.3.03
<i>Article 4: Notifications and list of financial instruments</i>	149
<i>Sebastian Mock</i>	
I. General Remarks	B.4.01
II. Notification (Article 4(1))	B.4.03
III. Transfer to ESMA (Article 4(2))	B.4.06
IV. Content of the Transferred List (Article 4(3))	B.4.07
V. Competence to Develop Regulatory Technical Standards (Article 4(4))	B.4.08
VI. Adoption of the Technical Standards (Article 4(5))	B.4.09

Table of Contents

<i>Article 5: Exemption for buy-back programmes and stabilisation</i>	154
<i>Sebastian Mock</i>	
I. General Remarks	B.5.01
II. Buy-back Programmes (Article 5(1) to (3))	B.5.10
III. Stabilization (Article 5(4) and (5))	B.5.33
IV. Competence to Develop Regulatory Technical Standards (Article 5(6))	B.5.45
 <i>Article 6: Exemption for monetary and public debt management activities and climate policy activities</i>	169
<i>Sebastian Mock</i>	
I. General Principles	B.6.01
II. Exemption of Monetary, Exchange Rate, or Public Debt Management (Article 6(1))	B.6.03
III. Exemption for Transactions, Orders, or Behaviour Carried Out by the Commission (Article 6(2))	B.6.04
IV. Exemption for Climate Policy (Article 6(3))	B.6.05
V. Exemption for Agricultural and Fisheries Policy (Article 6(4))	B.6.06
VI. Adoption of Delegated Acts to Certain Public Bodies and Central Banks of Third Countries (Article 6(5))	B.6.07
VII. Adoption of Delegated Acts to Public Bodies of Third Countries (Article 6(6))	B.6.09
VIII. No Application to Persons Working for the Entities (Article 6(7))	B.6.10
 B2. Inside Information, Insider Dealing, Unlawful Disclosure of Inside Information, and Market Manipulation	175
<i>Article 7: Inside information</i>	175
<i>Marco Ventoruzzo and Chiara Picciau</i>	
I. General Remarks	B.7.01
II. Constitutive Elements of the (Reformed) Definition of Inside Information	B.7.25
III. Concluding Remarks	B.7.75
 <i>Article 8: Insider dealing</i>	208
<i>Jesper Lau Hansen</i>	
I. General Remarks	B.8.01
II. Section I: Behaviour that Constitutes Insider Dealing	B.8.33

Table of Contents

III. Section 2: Tipping	B.8.106
IV. Section 3: Tippee Liability	B.8.114
V. Section 4: Primary and Secondary Insiders	B.8.120
VI. Section 5: Legal Persons as Insiders	B.8.132
VII. Section 6: The Subjective Condition— <i>Mens Rea</i>	B.8.140
<i>Article 9: Legitimate behaviour</i>	254
<i>Jesper Lau Hansen</i>	
I. General Remarks	B.9.01
II. Section 1: Liability of Legal Persons	B.9.20
III. Section 2: Market Makers and Execution of Orders	B.9.32
IV. Section 3: Subsequent Possession of Inside Information	B.9.45
V. Section 4: Takeovers and Mergers	B.9.61
VI. Section 5: Own Knowledge	B.9.75
VII. Section 6: Illegitimate Reasons	B.9.80
<i>Article 10: Unlawful disclosure of inside information</i>	275
<i>Chiara Mosca</i>	
I. General Remarks	B.10.01
II. Equal Access of Information and Unlawful Disclosure of Inside Information	B.10.27
III. Possession of Inside Information and Disclosure to Third Parties	B.10.39
IV. Conclusion	B.10.79
<i>Article 11: Market soundings</i>	297
<i>Arad Reisberg</i>	
I. General Remarks	B.11.01
II. Contours of Market Sounding	B.11.06
III. Nature and Functionality	B.11.09
IV. Sections 1, 2, and 3: What Constitutes a Market Sounding	B.11.12
V. Sections 4 and 5: Unlawful Disclosures	B.11.15
VI. Section 7: Market Sounding Recipient to Determine whether They Have Inside Information	B.11.16
VII. Section 11: Receiving Information: Factors to Consider	B.11.17

Table of Contents

<i>Article 12: Market manipulation</i>	309
<i>Arad Reisberg</i>	
I. General Remarks	B.12.01
II. Definition of Market Manipulation (Article 12(1))	B.12.06
III. Additional Actions and Behaviours as Market Manipulation (Article 12(2))	B.12.10
IV. Article 12: Wider Purview	B.12.12
 <i>Article 13: Accepted market practices</i>	 318
<i>Arad Reisberg</i>	
I. General Remarks	B.13.01
II. Section 2: The Concept of Accepted Market Practice	B.13.02
III. Establishing an Accepted Market Practice	B.13.03
IV. Section 3: Ensuring Functioning Markets and Public Confidence	B.13.05
V. Section 5: Publication of a Notice	B.13.06
VI. Section 7: Technical Standards	B.13.07
VII. Section 9: Accepted Market Practice	B.13.08
VIII. Section 11: Notification of Accepted Market Practice	B.13.09
IX. Legal Protection	B.13.11
 <i>Article 14: Prohibition of insider dealing and of unlawful disclosure of inside information</i>	 326
<i>Jesper Lau Hansen</i>	
I. General Remarks	B.14.01
II. Sanctions Provided by Article 14	B.14.04
III. Attempt to Engage in Insider Dealing	B.14.09
 <i>Article 15: Prohibition of market manipulation</i>	 332
<i>Sebastian Mock</i>	
I. General Principles	B.15.01
II. Prohibition of Market Manipulation	B.15.03
III. No Requirement of a Specific Intent	B.15.06
IV. Violation of the Prohibition	B.15.07

Table of Contents

<i>Article 16: Prevention and detection of market abuse</i>	337
<i>Sebastian Mock</i>	
I. General Principles	B.16.01
II. Arrangements, Systems, and Procedures to Prevent Market Abuse (Article 16(1))	B.16.03
III. Detection and Reporting of Suspicious Orders and Transactions (Article 16(2))	B.16.04
IV. Notification System (Article 16(3))	B.16.05
V. Transmission of Notifications (Article 16(4))	B.16.06
VI. Development of Technical Regulatory Standards (Article 16(5))	B.16.07
VII. Prevention and Detection of Market Abuse and Compliance	B.16.08
B3. Disclosure Requirements	343
<i>Article 17: Public disclosure of inside information</i>	343
<i>Alain Pietrancosta</i>	
I. General Remarks	B.17.01
II. The Requirement to Disclose Inside Information Publicly	B.17.28
III. Sanctions	B.17.102
<i>Article 18: Insider lists</i>	385
<i>Marco Dell'Erba</i>	
I. General Remarks	B.18.01
II. Insider Lists: Information and Template	B.18.19
III. Sanctions	B.18.37
<i>Article 19: Managers' transactions</i>	400
<i>Marco Dell'Erba</i>	
I. General Remarks	B.19.01
II. Critical Remarks	B.19.18
III. Sanctions	B.19.53
<i>Article 20: Investment recommendations and statistics</i>	422
<i>Marco Dell'Erba</i>	
I. General Remarks	B.20.01
II. Critical Remarks	B.20.12
III. Sanctions	B.20.32

Table of Contents

<i>Article 21: Disclosure or dissemination of information in the media</i>	435
<i>Marco Dell’Erba</i>	
I. General Remarks	B.21.01
II. Freedom of Press versus Transparency Rules	B.21.08
III. Sanctions	B.21.11
B4. ESMA and Competent Authorities	439
<i>Article 22: Competent authorities</i>	439
<i>Johannes Zollner</i>	
I. General Remarks	B.22.01
II. Establishment of the Competent Authority	B.22.06
III. Jurisdiction of the Administrative Authority	B.22.12
<i>Article 23: Powers of competent authorities</i>	444
<i>Johannes Zollner</i>	
I. General Remarks	B.23.01
II. Guidelines for the Exercise of the Powers	B.23.06
III. Supervisory and Investigatory Powers	B.23.15
IV. ‘Whistle-blowing’	B.23.19
<i>Article 24: Cooperation with ESMA</i>	451
<i>Johannes Zollner</i>	
I. General Remarks	B.24.01
II. Cooperation with ESMA	B.24.05
III. Technical Standards	B.24.08
<i>Article 25: Obligation to cooperate</i>	453
<i>Johannes Zollner</i>	
I. General Remarks	B.25.01
II. Duty of Cooperation with Authorities	B.25.10
III. Cooperation with the Judicial Authorities	B.25.21
IV. Nature of Cooperation	B.25.22
V. Consequences of Violating the Obligation to Cooperate	B.25.33
VI. Special Provisions for Spot Markets and Emissions Allowances	B.25.39
VII. Technical Standards	B.25.42

Table of Contents

<i>Article 26: Cooperation with third countries</i>	464
<i>Johannes Zollner</i>	
I. General Remarks	B.26.01
II. Cooperation Agreements	B.26.04
III. Duties of ESMA	B.26.11
 <i>Article 27: Professional secrecy</i>	 468
<i>Johannes Zollner</i>	
I. General Remarks	B.27.01
II. Confidential Information	B.27.05
III. Addressees	B.27.07
IV. Ban on Disclosure	B.27.12
 <i>Article 28: Data protection</i>	 471
<i>Johannes Zollner</i>	
I. General Remarks	B.28.01
II. Personal Data	B.28.05
III. Processing of Personal Data	B.28.07
IV. Storage of Personal Data	B.28.11
 <i>Article 29: Disclosure of personal data to third countries</i>	 474
<i>Johannes Zollner</i>	
I. General Remarks	B.29.01
II. Disclosure to Third Countries	B.29.06
III. Cooperation Agreements	B.29.12
 B5. Administrative Measures and Sanctions	 477
<i>Article 30: Administrative sanctions and other administrative measures</i>	477
<i>Sofie Cools</i>	
I. General Remarks	B.30.01
II. Pecuniary Sanctions	B.30.10
III. Other Administrative Sanctions and Measures	B.30.14
IV. Relationship with Criminal Sanctions	B.30.19
 <i>Article 31: Exercise of supervisory powers and imposition of sanctions</i>	 492
<i>Sofie Cools</i>	
I. General Remarks	B.31.01

Table of Contents

II. Relevant Circumstances	B.31.06
III. Cooperation between Competent Authorities	B.31.14
<i>Article 32: Reporting of infringements</i>	499
<i>Sofie Cools</i>	
I. General Remarks	B.32.01
II. External Whistle-blowing Mechanisms	B.32.06
III. Rewards for Whistle-blowers	B.32.14
IV. External versus Internal Whistle-blowing	B.32.22
<i>Article 33: Exchange of information with ESMA</i>	513
<i>Sofie Cools</i>	
I. General Remarks	B.33.01
II. Implementing Technical Standards	B.33.06
<i>Article 34: Publication of decisions</i>	518
<i>Sofie Cools</i>	
I. General Remarks	B.34.01
II. Sanction or Preventive Measure	B.34.07
III. Fair Trial and Data Protection	B.34.14
B6. Delegated Acts and Implementing Acts	529
<i>Article 35: Exercise of the delegation</i>	529
<i>Sebastian Mock</i>	
<i>Article 36: Committee procedure</i>	532
<i>Sebastian Mock</i>	
B7. Final Provisions	533
<i>Article 37: Repeal of Directive 2003/6/EC and its implementing measures</i>	533
<i>Sebastian Mock</i>	
<i>Article 38: Report</i>	534
<i>Sebastian Mock</i>	
<i>Article 39: Entry into force and application</i>	535
<i>Sebastian Mock</i>	
<i>Index</i>	537

