COUNCIL OF
THE EUROPEAN UNION

Brussels, 10 December 2012

16512/12
ADD 1 REV 2

Interinstitutional File:
2011/0295 (COD)

EF 269
ECOFIN 968
DROIPEN 165
CODEC 2741

ADDENDUM TO "I" ITEM NOTE

from:	General Secretariat
to:	Coreper (part 2)
Subject:	Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) (MAR) - General approach = Statements to the minutes of Coreper

Statement by Austria

“The Austrian constitutional law presently does not allow for administrative pecuniary sanctions in the amount provided for in Article 26 para 1a and para 2 MAR. Therefore, we cannot currently commit to the implementation of this provision, as implementation would require an amendment to constitutional law. It is not predictable whether such an amendment to the Constitution will be adopted.”

Statement by Portugal, Italy, Spain, Belgium and France

"Despite the acceptance of the proposed approach, Portugal, Italy, Spain, Belgium, France consider that the possibility provided in the Market Abuse Regulation for Member States not to lay down administrative sanctions and to establish new criminal measures for MAR sanctions by 24 months after the entry into force of this Regulation will not ensure the desired harmonization of the sanctioning regimes for market abuse at the European Union level.

We acknowledge that the imposition of administrative sanctions must take into account the existence of criminal sanctions for similar offences, but regret it was not possible to achieve a more coherent, effective and harmonized regime, as envisaged by the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions reinforcing sanctioning regimes in the financial services sector (Brussels, 8.12.2010 - COM(2010) 716). The crucial role of a full administrative system was strongly recommended by FESCO (now ESMA) more than ten years ago (FESCO/00-096l) and more recently stressed by ESMA – as a powerful tool for competent authorities to perform the task of ensuring compliance with EU Directives - in the response to the Communication on Reinforcing Sanctioning Regimes in the Financial Services sector of 22 February 2011 and in the Report Actual use of sanctioning powers under MAD - ESMA/2012/270 of 26 April 2012.

Portugal, Italy, Spain, Belgium, France expect that these subjects can be revisited during the negotiations with the European Parliament to achieve a more effective and harmonised regime."

Statement by Spain and Portugal

"Despite the acceptance of the proposed approach, Spain and Portugal consider that the direct application of MAR provisions will imply in some cases important changes to the enforcement and sanctioning of market abuse. In view of its direct applicability, some new provisions, notably in Article 7a, would warrant further discussion to reduce the uncertainty as to how they will be interpreted and applied.

Spain and Portugal expect that these subjects can be revisited during the negotiations with the European Parliament to achieve a clearer regime on these issues."