



**COUNCIL OF
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"I/A" ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee/Council

Subject: Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) **(first reading)**

- Adoption of the legislative **(LA + S)**

= Statements

Statement by Sweden, Austria and Germany

The agreement means that administrative authorities will be able to access data traffic records held by providers of public electronic communications networks. This amounts to a serious interference with the right to respect of private and family life and the right to protection of personal data. Issues of privacy and surveillance are highly sensitive topics that need to be dealt with in a consistent manner across all EU policy areas. We welcome that the recitals clarify that Member States should have adequate and effective safeguards, i.e. prior judicial authorization, for the exercise of those powers. We would have preferred that the requirement of adequate and effective judicial safeguards was reflected in the Article as well. In this context the opinion of the EDPS should be duly considered. Further, we assume, and strongly suggested that it was explicitly mentioned, that the access does not cover data retained for the purposes of Directive 2006/24/EC (the Data Retention Directive), as this would circumvent the requirement in the Data Retention Directive of retention only for the purposes of investigating, detecting and prosecuting serious crimes. Any expansion in the access to traffic data outside judicial procedures would set a dangerous precedent for other EU dossiers.

Statement by Portugal and Spain

Portugal and Spain welcome the agreement on the Market Abuse Regulation, in particular the ambitious sanctions regime foreseen therein.

Portugal and Spain note that the sanctions regime is highly sensitive. Member States operate under very different legal and institutional frameworks and these national frameworks need to remain coherent as harmonisation of the sanctions regime is pursued at European level. The difficulties of these discussions are well known and most Member States specificities have been addressed, in particular when they are grounded on constitutional concerns.

Portugal and Spain will strive to implement the permanent ban on the exercise of management functions in investment firms in conformity with national law.