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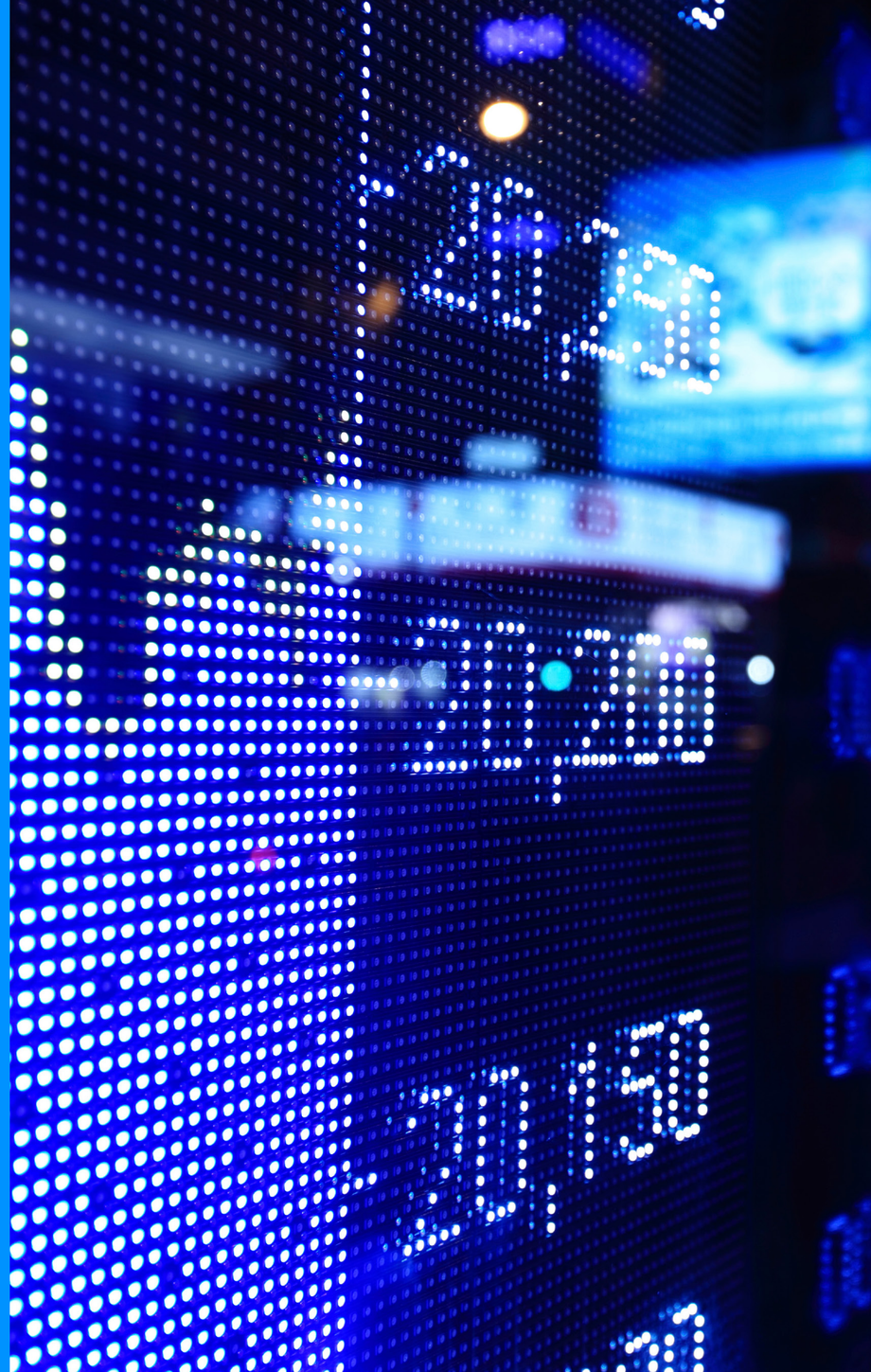
EU Listing Act — Regulatory Divergence Between EU and UK MAR

The EU Listing Act reforms are leading to notable divergence between the EU and UK market abuse regimes, with key changes impacting disclosure requirements for issuers.

May 2025



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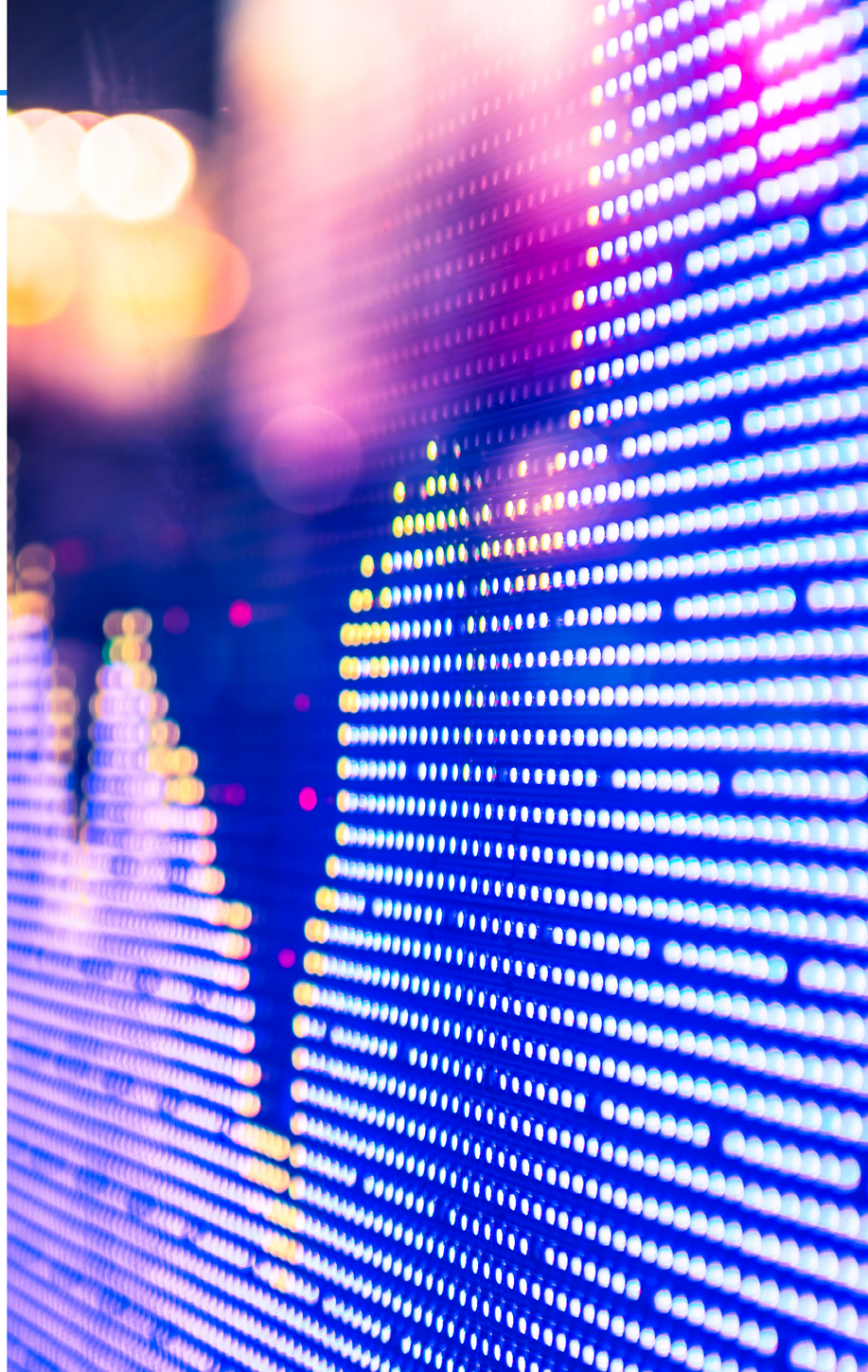
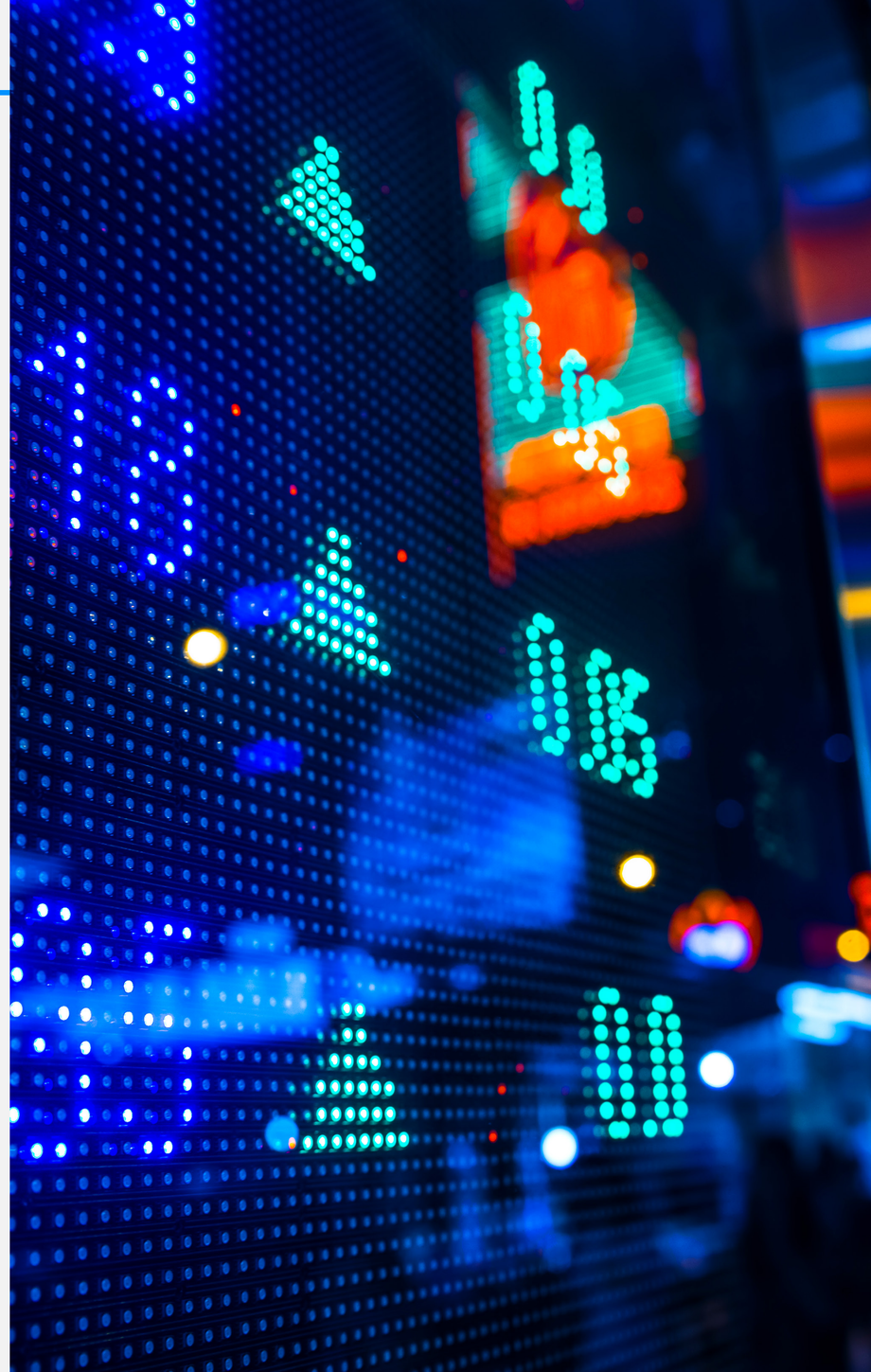


Introduction

Until recently, the UK and EU post-Brexit market abuse regimes remained substantially aligned. However, the passing of the EU Listing Act reforms in 2024 has meant that UK and EU MAR have started to diverge meaningfully for the first time and we must now start to consider them as separate regimes. Although most of the changes to EU MAR took effect in late 2024, arguably the most impactful amendment (to when issuers need to announce inside information in certain circumstances) will not take effect until mid-2026. Generally, the EU Listing Act changes to EU MAR seek to reduce the regulatory burden for issuers and thereby make EU capital markets more attractive. Therefore, the amendments do not change the core offences under MAR or the definition of inside information, but rather aim to address some of the more onerous compliance aspects that issuers face and make these requirements more proportionate.

Notably, although UK MAR is due for review as part of the broader exercise of repealing and restating assimilated law initiated under the Edinburgh Reforms, the timing for this is unclear and neither HM Treasury nor the FCA has indicated which, if any, areas of UK MAR it might seek to change. There is no suggestion as yet that the UK will seek to replicate the changes being made to EU MAR. However, as many of the changes focus on making the regulatory environment more competitive, the UK is likely to consider whether it should be making similar, or indeed more wide-reaching, reforms to UK MAR as part of its pro-growth agenda.

In this article, we outline the key changes that the EU Listing Act has introduced or will introduce to EU MAR, how the changes create divergence with UK MAR, and what we think the implications are for market practice.



Changes on the Horizon

Public Disclosure of Inside Information

Intermediate Steps in a Protracted Process

One of the most important changes the EU Listing Act will make to EU MAR is to update Article 17 such that issuers will not have to announce inside information related to intermediate steps in a protracted process. Instead, they will only be required to make an announcement once the final circumstances or event have occurred. This change will not take effect until 5 June 2026, so issuers have time to consider the new approach.

The recitals to the EU Listing Act Regulation explain the rationale for this change as follows: “The requirement to disclose inside information aims, primarily, to enable investors to take well-informed decisions. When information is disclosed at a very early stage and is of a preliminary nature, it might mislead investors, rather than contribute to efficient price formation and address information asymmetry. Therefore, in a protracted process, the disclosure requirement should not cover announcements of mere intentions, ongoing negotiations or, depending on the circumstances, the progress of negotiations, such as a meeting between company representatives”.

However, issuers will be required to disclose the final circumstances or event in the process, as soon as possible after it has occurred. Arguably, this could introduce uncertainty and complexity for issuers. As the recitals acknowledge, identifying exactly when the final event in a process occurs is not always straightforward. Therefore, the European Commission is mandated to produce level 2 measures to provide examples of final circumstances or final events in protracted processes which would trigger the obligation to disclose and, for each event or circumstance, the moment when the event or circumstance is deemed to have occurred.

ESMA has provided technical advice to the Commission to inform the drafting of the level 2 measures. ESMA has prepared a list of 34 different examples, representing several categories of protracted processes, including those relating to business strategy, capital structure, provision of financial information, corporate governance, interventions by public authorities, credit institutions, and legal proceedings and sanctions. For example:

- **Major corporate reorganisation:** Disclosure required as soon as possible after the issuer’s governing body has taken the decision to proceed with a corporate reorganisation, whose core elements have been defined.
- **Financial reports or interim financial reports:** Disclosure required as soon as possible after the financial results have been acknowledged or approved by the issuer’s governing body.
- **Change of management:** Disclosure required as soon as possible after the issuer’s governing body has taken the decision to appoint/remove a member of the governing body or a manager holding a key role for which the governing body’s decision is needed.

Whilst in some circumstances this clarifies rather than changes the prior position, the final bullet point above is notably different to the position that the FCA set out recently in Primary Market Bulletin 52 (see further below, and in this Latham newsletter).

ESMA notes that the different processes can be grouped into three main categories: (i) protracted processes that are entirely internal to the issuer; (ii) processes that involve the issuer and external counterparties; and (iii) protracted processes that involve the issuer and public authorities.

ESMA attempts to set out the moment when the requisite level of certainty is achieved, depending on the parties involved (summarised in the table below). For example, if it is just the issuer driving the process, disclosure should be made as soon as possible after the board makes its decision (even if shareholder approval is still required).

Parties Involved in the Process	Party Driving the Process	Moment of Disclosure
Issuer	Issuer	As soon as possible after the issuer's governing body has taken the decision.
Issuer and another private party	Issuer	As soon as possible after the signing of the agreement or any other equivalent act with binding effects. In case of agreements to be previously approved by the shareholders before the signing, as soon as possible after the parties' governing bodies have taken the decision to propose the agreement to their respective shareholders, after the core conditions have been agreed upon.
Issuer and a public authority	Issuer	As soon as possible after the issuer has submitted the application to the public authority.
	Public authority	As soon as possible after the issuer has received the formal notification of the authority decision, even when the issuer and the public authority previously exchanged preliminary information that may on its own amount to inside information.

Notably, this new approach does not change the underlying definition of inside information for the purposes of the core offences under EU MAR, and therefore it does not affect the question of whether information relating to steps in a protracted process is inside information. It relates only to when issuers are expected to announce any inside information. Consequently, issuers will still be required to consider whether the information meets the definition of inside information and, if it does, to have the appropriate systems and controls in place to ensure the confidentiality of that information, including drawing up insider lists. They will also be required to make an announcement as soon as possible if there is a leak. However, an issuer will not need a specific justification to delay announcing until the final circumstances or event has occurred, making this conceptually different from a delayed disclosure under Article 17(4) of MAR (which currently provides that the announcement of inside information relating to steps in a protracted process may only be delayed if the conditions in Article 17(4) are met). Therefore, issuers will not need to analyse whether a delay is “legitimate” and, therefore, permitted. The Commission and ESMA envisage that the change will likely make reliance on Article 17(4) less common, though of course issuers still may need to consider delaying disclosure under Article 17(4) at the point when the obligation to announce arises.

Although this amendment sounds helpful on the face of it, we would question whether issuers will take full advantage of the relaxation in practice, given the challenges involved in handling and controlling inside information for a potentially prolonged period of time, and the complexity involved in identifying exactly when to announce. Issuers may also prefer to avoid holding on to inside information for too long, particularly as this can have other impacts such as preventing dealing by anyone aware of the information. Further, an issuer’s ability to rely on this relaxation is conditional upon its ability to ensure the confidentiality of the inside information and the absence of a leak.

Issuers with listings elsewhere, or with other group entities listed elsewhere, may face obligations to announce in other jurisdictions. Such issuers may still prefer uniformity and consistency in their approach to making announcements, to obviate the concerns relating to possessing inside information and also to align with market expectations in light of past practice, thereby limiting the utility of the EU’s relaxation in this regard. Issuers may also look to avoid revisiting their in-house approach to announcements of steps in a protracted process if they consider this to be working effectively in practice, owing to the costs of implementing this change compared to the potentially limited benefit. However, it might give issuers greater flexibility in deciding exactly when to announce, and it will free them from having to meet the conditions under Article 17(4) if they wish to delay disclosure.

There is no indication that the same change to when issuers need to announce is planned under UK MAR. In fact, the FCA recently reiterated the need to announce inside information on a timely basis during scenarios involving protracted processes. Primary Market Bulletin 52 provides examples relating to offer processes, periodic financial information, and CEO resignations and appointments. It also reminds firms that the trigger point for determining there is inside information that needs to be announced may be earlier than they think. Consequently, when the EU changes take effect, these divergent approaches could lead to misunderstandings among issuers and their advisers as to when issuers need to make announcements. Dual-listed companies or groups with several listed entities in the UK and EU will need to be particularly mindful of the different approaches.

Delaying Disclosure

A further change under the EU Listing Act, which will also take effect on 5 June 2026, is to the circumstances in which an issuer may delay disclosure of inside information under Article 17(4). There are currently three conditions that need to be met:

1. Immediate disclosure is likely to prejudice the legitimate interests of the issuer.
2. Delay of disclosure is not likely to mislead the public.
3. The issuer is able to ensure the confidentiality of that information.

The second limb will be replaced with “the inside information that the issuer or emission allowance market participant intends to delay is not in contrast with the latest public announcement or other type of communication by the issuer or emission allowance market participant on the same matter to which the inside information refers”. This change is intended as a clarification rather than a new approach, to promote a more consistent interpretation of this requirement. It is also intended to reduce the burden on issuers by making this limb more focused and so narrowing the assessment that issuers need to conduct.

In its technical advice to the Commission, ESMA has provided a list of eight examples of situations involving such a contrast. These include information that relates to circumstances such as profit warnings, a need for a capital increase, material changes to business strategy, or termination of a commercial partnership, in which the changes relate to information that the issuer previously announced. ESMA has also suggested a non-exhaustive list of the types of communication that would be relevant to an issuer’s assessment in this regard.

The level of divergence from UK MAR is likely to depend on the final level 2 measures and how EU issuers interpret the new limb in practice. Issuers and their advisers will need to remain vigilant as to the content of the final delegated act and whether differing market practices develop in the EU.

Insider Lists

ESMA has been mandated to review the implementing technical standards on the abbreviated format of insider lists for issuers whose financial instruments are admitted to trading on SME growth markets, and extend the use of this abbreviated format to all insider lists. ESMA has published a draft of these standards for comment, which it intends to finalise in Q4 2025. In ESMA's draft, the abbreviated format for all issuers does not include some of the more personal data items, such as personal phone numbers and home addresses. However, it still requires either a national identification number or date of birth (but not both of these items). The result is that, once the new technical standards have been issued, all issuers will be able to use a simplified format for insider lists, reducing the regulatory burden.

The UK adopted a more permissive position than in the EU post-Brexit by not requiring issuers whose financial instruments are admitted to trading on SME growth markets to draw up an insider list. However, these issuers must still be able to provide an insider list (subject to alleviated content requirements) to the FCA on request. The insider list obligations have always been considered burdensome, and no doubt the relaxation in the EU will put pressure on the UK to also consider reducing the requirements for all issuers.

Changes Already Implemented

A number of changes to EU MAR took effect on 4 December 2024. Again, these changes have not been replicated in the UK and so have resulted in some areas of divergence, as described on the next pages.

Buy-backs

The amendments to the buy-backs regime have sought to simplify the process for issuers by allowing them to only disclose to the public aggregated information about the trades conducted as part of a buy-back programme, rather than having to report each transaction. This information will need to indicate the aggregated volume and the weighted average price per day and per trading venue. This is a welcome relaxation for issuers, and may well be a change that the UK looks to adopt in the future to reduce the burden on issuers. However, issuers will still need to report all transactions to the relevant competent authority.

The changes also simplify reporting by requiring an issuer to report information on buy-back programme transactions only to the competent authority of the most relevant market in terms of liquidity for its shares, rather than to the competent authority of each trading venue on which the shares have been admitted to trading or are traded. This change is partially relevant to UK MAR, given that the UK regime extends to both UK and EU-listed shares.

For EU-listed shares, Article 5(3) of UK MAR states “the issuer must make the reports to the competent authority of the trading venue on which the shares have been admitted to trading or are traded which are required in accordance with Article 5(3) of the EU Market Abuse Regulation”. This article has not been updated in light of the changes to EU MAR, and presumably issuers should read it as if it referenced the updated Article 5(3). The practical effect is likely to be that issuers dual-listed in the EU and UK that undertake a buy-back in compliance with the safe harbour will be required to report to: (i) a single EU competent authority, being that of the “most relevant” EU trading venue (by liquidity); (ii) the FCA; and (iii) the public, on both a transaction-by-transaction and aggregated basis.

Inside Information

The EU Listing Act changes have made a small tweak to the definition of inside information, such that the limb relating to information conveyed by a client has been expanded to also include cases in which information is passed by persons acting on a client's behalf, or information is known by virtue of management of a proprietary account or managed fund. This change attempts to capture all circumstances in which information might be known about a pending order. While this change technically expands the definition, it is also a common sense approach to ensure that this limb is not interpreted too narrowly. We consider that this interpretation is largely taken in the UK already and does not present a substantive point of divergence.

Market Soundings

The changes have clarified that the market soundings regime is a safe harbour, not a mandatory regime. Some commentators always took the view that the regime was only a safe harbour, but ESMA had suggested that it was mandatory. This clarification means there is greater flexibility for issuers not to follow every element of the regime, particularly when this clashes with practices in other jurisdictions. It will be interesting to see how this affects market practice, and whether issuers and advisors therefore migrate away from following the safe harbour approach. Thanks partly to ESMA's view, the regime has generally been treated as a requirement when the sounding involved bankers based in the UK or EU, but not always followed if no UK or EU bankers are involved and the issuer is only in scope of MAR due to an involuntary listing.

There is also a further change to clarify that the market soundings regime can apply when the communication is not followed by the specific announcement of a transaction. This means that the safe harbour applies more broadly in the EU, to a range of scenarios in which inside information might be passed. As this change has not been made in the UK, the safe harbour is only available in more narrow circumstances, so issuers and their advisors will need to be mindful of this divergence.

PDMR Transactions

The basic threshold from which PDMRs are required to disclose their dealings in the issuer's securities has been changed from €5,000 to €20,000 in EU MAR. Member States may choose to raise this threshold to €50,000 or decrease it to €10,000. So far, only Malta has changed this threshold by decreasing it from €20,000 to €10,000. The UK still maintains a €5,000 threshold, although in practice many issuers require PDMRs to notify all transactions. However, this has long been an area of divergence because a number of EU Member States previously exercised the optional discretion to raise the PDMR reporting threshold to €20,000.

Further improvements have been made to Article 19 to ensure that the exemptions available to PDMRs from the prohibition on trading during a closed period cover all relevant scenarios. The exemption for transactions concerning employee share schemes has been expanded to reference financial instruments other than shares to ensure consistency across different asset classes.

A new Article 19(12a) has been added to exempt transactions or trade activities that do not relate to active investment decisions undertaken by the PDMR that result exclusively from external factors or actions of third parties, or are transactions or trade activities, including the exercise of derivatives, based on predetermined terms. This addition is designed to ensure that the restriction only applies to wilful investment decisions by the PDMR.

Quick Reference Guide to Key Changes to EU MAR

Topic	Provision(s) Amended	Summary of Changes	Application Date
Buy-backs	Article 5(1)(b) and (3)	An issuer need only disclose to the public aggregated information about the trades conducted as part of a buy-back programme. An issuer need only report information on buy-back programme transactions to the competent authority of the most relevant market in terms of liquidity for its shares, rather than to the competent authority of each trading venue on which the shares have been admitted to trading or are traded.	4 December 2024
Inside information	Article 7(1)(d)	The definition of inside information relating to information conveyed by a client is expanded to also include cases in which information is passed by persons acting on a client's behalf, or information is known by virtue of management of a proprietary account or managed fund.	4 December 2024
Market soundings	Article 11(1), (4), (5), (6), (7)	The definition of a market sounding is amended to clarify that it can include the communication of information which is not followed by any specific announcement of a transaction. The changes clarify that Article 11(4) is optional for disclosing market participants (DMPs), although if followed DMPs will be deemed not to have unlawfully disclosed inside information under Article 10 (i.e., it is a safe harbour, not a mandatory regime). However, Articles 11(3) and (6) are mandatory for all DMPs, regardless of whether or not they choose to follow Article 11(4). If the information has been announced publicly, the DMP is not obliged to inform the recipient that the information disclosed as part of the market sounding has ceased to be inside information.	4 December 2024

Topic	Provision(s) Amended	Summary of Changes	Application Date
Public disclosure of inside information	Article 17(1), (1a), (4), (4a), (5), (7), (11), (12)	The disclosure requirement for issuers is amended so that an issuer does not need to announce inside information related to intermediate steps in a protracted process if those steps are connected with bringing about or resulting in particular circumstances or a particular event. Only the final circumstances or final event need to be disclosed, as soon as possible after they have occurred. The changes also clarify that an issuer must ensure the confidentiality of inside information related to intermediate steps in a protracted process that is not announced. The provision requiring the disclosure of information in a leak scenario is expanded to also encompass information that has not been disclosed because it related to intermediate steps in a protracted process. The circumstances in which an issuer may delay disclosure are amended to replace the limb “delay of disclosure is not likely to mislead the public” with “the inside information that the issuer or emission allowance market participant intends to delay is not in contrast with the latest public announcement or other type of communication by the issuer or emission allowance market participant on the same matter to which the inside information refers”. The provision allowing delayed disclosure by a credit institution or financial institution of inside information related to a temporary liquidity problem is expanded to also include an issuer that is a parent of such an institution. The Commission is empowered to adopt a delegated act setting out: (i) final events in protracted processes and, for each event, the moment when it is deemed to have occurred and must be disclosed; and (ii) situations in which the inside information that the issuer intends to delay disclosure of is in contrast with the latest public announcement or other type of communication by the issuer on the same matter to which the inside information refers.	4 December 2024 – Article 17(5), (11), and (12) (these relate to delayed disclosure by a credit or financial institution, and the Commission’s mandate to make delegated acts) 5 June 2026 – Article 17(1), (1a), (4), (4a), and (7)
Insider lists	Article 18(6) and (9)	ESMA to review the implementing technical standards on the abbreviated format of insider lists for issuers admitted to trading on SME growth markets, and extend the use of such format to all insider lists.	4 December 2024
PDMR transactions	Article 19(8), (9), (12), (12a)	Basic threshold for reporting PDMR transactions changed from €5,000 to €20,000. Member States may choose to raise this threshold to €50,000 or decrease it to €10,000 (instead of being able to choose to raise the €5,000 threshold to €20,000). Exemptions from the prohibition on trading during a closed period expanded to reference financial instruments other than shares. New Article 19(12a) also exempts transactions or trade activities that do not relate to active investment decisions undertaken by the PDMR, or that result exclusively from external factors or actions of third parties, or are transactions or trade activities, including the exercise of derivatives, based on predetermined terms.	4 December 2024

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