

# MARKET ABUSE REGULATION - GUIDELINES ON DELAY IN THE DISCLOSURE OF INSIDE INFORMATION

## ESMA'S CONSULTATION

### AMAFI's answer

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*AMAFI is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.*

AMAFI welcomes the opportunity to comment on [ESMA's consultation on the review of the MAR Guidelines on delay in the disclosure of inside information](#).

AMAFI broadly supports the objective of aligning the Guidelines with the European Commission Delegated regulation on protracted processes adopted on 8 April 2026<sup>1</sup> resulting from the amendment of the Market Abuse Regulation (MAR) by the Listing Act (*Regulation n° 596/2014, art. 17 (2) amended*).

AMAFI calls for the retention of the current legitimate interest relating to situations where the issuer's financial viability is in grave and imminent danger, as this case does not fully overlap with the list of protracted processes contained in the [Delegated regulation on protracted processes](#) adopted on 8 April 2026. AMAFI also supports the additional legitimate interests proposed by ESMA, while stressing that the Guidelines should clarify that the list remains indicative and non-exhaustive and does not prejudice the qualification of the information as inside information or any assessment by the issuer on a case-by-case basis.

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<sup>1</sup> [Commission delegated regulation \(EU\) .../... supplementing Regulation \(EU\) No 596/2014 of the European Parliament and of the Council as regards disclosure of inside information in protracted processes and delay of disclosure.](#)

**Q1 – DO YOU SEE MERITS IN MAINTAINING THE LEGITIMATE INTEREST CURRENTLY DESCRIBED IN POINT B OF GUIDELINE 1 (I.E. POSSIBILITY FOR THE ISSUER TO DELAY THE DISCLOSURE OF ITS FINANCIAL SITUATION, WHERE AN IMMEDIATE PUBLICATION MAY JEOPARDISE THE MEASURES TO REESTABLISH ITS VIABILITY)? PLEASE INDICATE THE ARGUMENTS SUPPORTING YOUR ANSWER.**

AMAFI sees value in maintaining the current legitimate interest referred to in point (b) of Guideline 1, i.e. the possibility to delay the disclosure of inside information where the financial viability of the issuer is in grave and imminent danger and immediate disclosure would jeopardise negotiations designed to ensure its financial recovery.

Although this situation is close to the Commission’s list of protracted processes contained in the Commission delegated regulation, it does not fully overlap with it. In practice, negotiations aimed at restoring an issuer’s viability may take place before the opening of formal pre-insolvency, restructuring or insolvency proceedings, or may remain outside the precise perimeter of the list of final events of protracted processes. For that reason, deleting this legitimate interest altogether could remove useful guidance in situations where issuers still need to rely on the possibility of delaying the disclosure of inside information (*MAR, art. 17(4)*).

Maintaining this item would therefore enhance legal certainty and would ensure that issuers continue to have a clear reference point for situations of severe financial stress that do not fall squarely within the listed protracted processes, while remaining subject to the usual safeguards relating to the delay in the disclosure of inside information (*MAR, art. 17(4)*), including confidentiality and the obligation to disclose as soon as the circumstances justifying the delay cease to exist.

**Q2 - WHAT IS YOUR VIEW ON THE LEGITIMATE INTERESTS WHICH ARE PROPOSED TO BE ADDED TO THE MAR GUIDELINES? WHEN COMMENTING ON A SPECIFIC LEGITIMATE INTEREST, PLEASE REPORT IN YOUR ANSWER THE TITLE AS GIVEN IN THE RELEVANT SUBSECTION.**

AMAFI agrees with the three additional legitimate interests proposed by ESMA. However, the final Guidelines should make clear that this list remains indicative and non-exhaustive, and that the inclusion of an example in Guideline 1 does not predetermine the characterisation of the information as inside information or the outcome of the issuer’s case-by-case assessment under Article 17.4 MAR.

This clarification would ensure consistency with the approach adopted in the [European Commission’s draft Regulation on protracted processes](#). That Regulation expressly provides that the non-exhaustive list of final events or final circumstances in protracted processes is without prejudice to the assessment of whether, in the circumstances of a specific case, the protracted process gives rise to inside information (*European Commission’s draft Regulation on protracted processes, recital 3*). It follows that information relating to such a final event or final circumstances does not automatically constitute

inside information within the meaning of Article 7 MAR. Where the issuer concludes, on the basis of a case-by-case assessment, that the information does not qualify as inside information, no disclosure obligation arises under the requirement for issuers to inform the public as soon as possible of inside information which directly concerns them (*MAR, art. 17(1)*). The same logic should be reflected in ESMA's Guidelines: examples of legitimate interests may usefully guide issuers, but they should not be understood as creating any presumption, either as to the existence of inside information or as to the possibility to delay the disclosure of the information.

**Q3 - IN ADDITION TO THE CASE OF PARALLEL PROCUREMENTS OF THE SAME NATURE, ARE YOU AWARE OF OTHER INSTANCES WHERE DISCLOSURE OF SENSITIVE COMMERCIAL INFORMATION MAY JEOPARDISE AN ISSUER'S BUSINESS OPPORTUNITY, AND SHOULD THUS QUALIFY AS A LEGITIMATE INTEREST FOR THE DELAY?**

At this stage, AMAFI does not consider that further examples are necessary beyond the legitimate interests proposed by ESMA and the retention of the current item on grave and imminent danger to the issuer's financial viability.

**Q4 - IN YOUR VIEW, WHICH LEGITIMATE INTERESTS COULD BE ADDED TO THE MAR GUIDELINES FOR THE PURPOSE OF THE DELAY IN THE DISCLOSURE?**

At this stage, AMAFI does not consider that additional legitimate interests are necessary beyond those proposed by ESMA and the retention of the current item on grave and imminent danger to the issuer's financial viability.

