



Formal comments of the EDPS on the Commission implementing regulation laying down implementing technical standards for the application of Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to the format of insider lists and their updates

1. Introduction and background

- The Commission implementing regulation laying down implementing technical standards for the application of Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to the format of insider lists and their updates ('the draft implementing regulation') is based on Article 18 of Regulation (EU) No 596/2014 (Market Abuse Regulation or 'MAR')¹, which requires the adoption by implementing regulation of an implementing technical standard with regard to the format for insider lists².
- The draft implementing regulation is accompanied by three annexes, containing the format for the insider lists and for the permanent insiders section of insider lists referred to in Articles 1(1), 1(2), 2(1) and 2(2) of the draft implementing regulation.
- These comments are provided in reply to the request for legislative consultation on the draft implementing regulation and its annex by the Commission of 12 April 2021 pursuant to Article 42(1) of Regulation (EU) 2018/1725 ('the EUDPR')³. We limited our comments below to the provisions of the Proposal that are relevant from a data protection perspective.
- These formal comments do not preclude any future additional comments by the EDPS, in particular if further issues are identified or new information becomes available, for example as a result of the adoption of other related implementing or delegated acts, pursuant to MAR. Furthermore, these formal comments are without prejudice to any future action that may be taken by the EDPS in the exercise of his powers pursuant to Article 58 of the EUDPR.

¹ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ L 173, 12.6.2014, p. 1.

² An insider list is a list of all persons who have access to inside information and who are working for issuers (or any person on their behalf) under a contract of employment, or otherwise performing tasks through which they have access to inside information. See Article 18 MAR and recital (2) of the draft implementing regulation.

³ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (Text with EEA relevance), OJ L 295, 21.11.2018, p. 39–98.

2. Comments

- The EDPS notes that the draft implementing regulation repeals and replaces implementing regulation (EU) 2016/347⁴. The draft implementing regulation does not however change the categories of personal data required for the insiders' list. In fact, it narrows down the scope of persons to be included in the insiders list by SMEs, with a view of reducing administrative burden⁵.
- The EDPS welcomes this update and encourages the Commission to continue to regularly consider reviewing, in line with the data protection principles of data minimisation and accuracy under Article 5(1)(c) and 5(1)(d) of Regulation (EU) 2016/679⁶, the scope of application as well as the format of the insider list.

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⁴ Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council, OJ L 65, 11.3.2016, p. 49.

⁵ See recitals (3) and (14) in particular of the draft implementing regulation. Recital (3): "However, pursuant to Article 18(6) of Regulation (EU) No 596/2014 in its version as amended by Regulation (EU) 2019/2115, **SME growth market issuers are only obliged to include in their insider lists those persons who, due to the nature of their function or position within the issuer, have regular access to inside information.** By way of derogation from that provision, Member States may require SME growth market issuers to **include in their insider lists all persons referred to in Article 18(1)(a) of Regulation (EU) No 596/2014.**"; Recital (14): "Where Member States choose to make use of the derogation in the second subparagraph of Article 18(6) of Regulation (EU) No 596/2014 and SME growth market issuers therefore are to **include in their insider lists all the persons who have access to their inside information, the required content of those lists should be limited to what is strictly necessary for the identification of the relevant individuals, as it is necessary to reduce the administrative burden on those issuers.** It is therefore necessary not to impose on such issuers the requirement of using an electronic format for submitting the insiders lists to competent authorities provided that the completeness, confidentiality and integrity of the information is ensured. **Those issuers should also have the possibility to list persons who, due to the nature of their function or position, have access to all inside information at all times in a permanent insiders section of the insider list instead of adding those persons to each deal-specific or event-based list.**"

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.