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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the delegation of power to adopt delegated acts conferred on the Commission pursuant to 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

1. Introduction

Regulation (EU) No 596/2014 of the European Parliament and of the Council[1] was adopted on 16 April 2014. Regulation (EU) No 596/2014 has subsequently been amended by Regulation (EU) 2016/1011 of the European Parliament and of the Council[2], Regulation (EU) 2016/1033 of the European Parliament and of the Council[3], Regulation (EU) 2019/2115 of the European Parliament and of the Council[4] and Regulation (EU) 2023/2869 of the European Parliament and of the Council[5].

To ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets, Regulation (EU) No 596/2014 establishes a common regulatory framework on insider dealing, the unlawful disclosure of inside information, and market manipulation (market abuse), and lays down measures to prevent such market abuse.

Article 35 of Regulation (EU) No 596/2014 lays down the conditions under which the Commission is empowered to adopt delegated acts. Article 35(2) of Regulation (EU) No 596/2014 (as amended by Regulation (EU) 2019/2115) specifies that the power to adopt delegated acts is conferred on the Commission for an initial period of five years from 31 December 2019, and stipulates the conditions for the extension of that power. The initial five-year period expires on 31 December 2024. At the end of this period, the Commission is required to prepare a report. This report aims to fulfil that requirement.

2. Legal basis

Pursuant to Article 35(2) of Regulation (EU) No 596/2014, the Commission is to prepare a report in respect of the delegation of power no later than nine months before the end of the five-year period.

Article 35(2) of Regulation (EU) No 596/2014 also provides that the delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension no later than three months before the end of each period.

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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, ELI: http://data.europa.eu/eli/reg/2014/596/oj).

2 Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, (OJ L 171, 29.6.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/1011/oj).

3 Regulation (EU) 2016/1033 of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) No 596/2014 on market abuse and Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories (OJ L 175, 30.6.2016, p. 1, ELI: http://data.europa.eu/eli/reg/2016/1033/oj).

4 Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1, ELI: http://data.europa.eu/eli/reg/2019/2115/oj).

5 Regulation (EU) 2023/2869 of the European Parliament and of the Council of 13 December 2023 amending certain Regulations as regards the establishment and functioning of the European single access point (OJ L, 2023/2869, 20.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2869/oj).

3. Exercise of the delegation

3.1. Delegated acts adopted

The Commission adopted the following delegated acts.

Delegated Acts	**Empowerments**
Commission Delegated Regulation (EU) 2016/522 of 17 December 2015[6]	Art. 6(5), Art. 12(5), Art. 17(2), Art. 17(3), Art. 19(13), Art. 19(14)
Commission Delegated Regulation (EU) 2019/461[7]	Art. 6(5)

The adoption of those delegated acts was carried out under the empowerment to adopt delegated acts conferred to the Commission under Article 35(2) of Regulation (EU) No. 596/2014, which was granted for an indeterminate period of time from 2 July 2014. Regulation (EU) No. 2019/2115 amended Article 35(2) of Regulation (EU) No. 596/2014 and limited to five years from 31 December 2019 the power to adopt delegated acts. The delegation of power is tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

For the reasons set out in Section 3.2, the Commission did not yet use the empowerment laid down in Article 35(2) of Regulation (EU) No 596/2014 as regards Article 6(6) and Article 38 of Regulation (EU) No. 596/2014. In accordance with Article 35(2) of Regulation (EU) No 596/2014, the Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period, i.e. before 31 March 2024.

3.2. Need for extending the empowerment to adopt delegated acts

As indicated in Section 3.1., the Commission has not yet used the empowerment as regards Article 6(6) and Article 38 of Regulation (EU) No. 596/2014.

The following delegated acts have thus not yet been adopted:

Delegated Acts	**Empowerments**
Extending the exemption set out in Article 6(3) of Regulation (EU) No. 596/2014 to certain designated public bodies of third countries	Art. 6(6)

[6] Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions (OJ L 88, 5.4.2016, p. 1, ELI: http://data.europa.eu/eli/reg_del/2016/522/oj).

[7] Commission Delegated Regulation (EU) 2019/461 of 30 January 2019 amending Delegated Regulation (EU) 2016/522 as regards the exemption of the Bank of England and the United Kingdom Debt Management Office from the scope of Regulation (EU) No 596/2014 of the European Parliament and of the Council (OJ L 80, 22.3.2019, p. 10, ELI: http://data.europa.eu/eli/reg_del/2019/461/oj).

that have entered into an agreement with the Union pursuant to Article 25 of Directive 2003/87/EC of the European Parliament and of the Council[8].	
Adjusting the thresholds laid down in Article 19(1a), points (a) and (b), of Regulation (EU) No 596/2014	Art. 38, fourth paragraph.

The reasons for the delayed adoption of the delegated acts listed above are the following:

- The empowerment laid down in Article 6(6) of Regulation (EU) No. 596/2014 relates to the agreements referred to in Article 25(1) of Directive 2003/87/EC which are to be concluded with the third countries listed in Annex B to the Kyoto Protocol. Therefore, for the Commission to use that empowerment, the Union should first enter into such agreements. Currently, the Union has entered into such an agreement with the Swiss Confederation[9]. That agreement was signed on 23 November 2017 and entered into force on 1 January 2020. No other agreements have been signed with other third countries. To date, the Commission has not had the opportunity to use the empowerment laid down in Article 6(6) of Regulation (EU) No. 596/2014, given that Regulation (EU) No. 596/2014 remains outside the scope of the Swiss linking agreement. However, the Commission services consider it essential that the empowerment laid down in Article 6(6) of Regulation (EU) No. 596/2014 is extended. This is justified as future agreements referred to in Article 25(1) of Directive 2003/87/EC with third countries could require the use of the empowerment if the agreements would lay down that Regulation (EU) No. 596/2014 would apply to third country national authorities.

- The empowerment laid down in Article 38, fourth paragraph, of Regulation (EU) No. 596/2014 empowers the Commission to adjust the thresholds referred to in Article 19(1a), points (a) and (b), of that Regulation. The Commission considered the technical advice received from the European Securities and Markets Authority (ESMA) on 23 September 2020[10], including the results of the public consultation carried out by ESMA, in which both ESMA and respondents considered that those thresholds are still appropriate. Based on that technical advice, the Commission considers that, at this stage, there is no need for adjusting them. However, as it cannot be excluded that those thresholds might need to be adjusted in the future, the empowerment to the Commission to do so should be extended.

The Commission considers important that the empowerments provided for in Article 6(5) and (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) and (14), and Article 38of Regulation (EU) 596/2014 are maintained beyond the initial five-year period. This is why, as part of the Listing Act legislative proposal, the Commission proposed the co-legislators to give the Commission additional powers to adopt delegated acts under Regulation (EU) 596/2014 and to maintain the existing mandates. The Commission notes that,

[8] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, ELI: http://data.europa.eu/eli/dir/2003/87/oj).

[9] Agreement between the European Union and the Swiss Confederation on the linking of their greenhouse gas emissions trading systems; OJ L 322, 7.12.2017, p. 3–26.

[10] MAR Review report (ESMA70-156-2391).

in the final compromise text for the Listing Act regulation[11], the co-legislators have indeed agreed to renew the delegation of powers to adopt the delegated acts referred to in Article 6(5) and (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) and (14), and Article 38 of Regulation (EU) 596/2014 for a further period of five years. The European Parliament and the Council have also agreed to give the Commission the power to also adopt delegated acts under the second subparagraph of Article 17(1) and Article 25a(5), (5a) and (6) for the same period of time. A new report must be drawn up by the Commission before the end of such period. The Listing act was adopted by the European Parliament in plenary session on 24 April 2024 and is subject to the so-called "corrigendum procedure" which will lead to the publication on the Official Journal later this year.

4. Conclusion

Given the explanation provided in Section 3, the Commission considers that there is a clear need for the extension of the empowerments provided for in Article 6(5) and (6), Article 12(5), the third subparagraph of Article 17(2), Article 17(3), Article 19(13) and (14), and Article 38 of Regulation (EU) 596/2014, as proposed by the Commission as part of the Listing Act proposal, for a further period of five years.

The Commission invites the European Parliament and the Council to take note of this report.

[11] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2017/1129, (EU) No 596/2014 and (EU) No 600/2014 to make public capital markets in the Union more attractive for companies and to facilitate access to capital for small and medium-sized enterprises - Confirmation of the final compromise text with a view to agreement (2022/0411 (COD)).