



**TISCALI SPA**

**PROCEDURE FOR KEEPING AND UPDATING THE REGISTER OF PERSONS WITH ACCESS TO  
PRIVILEGED INFORMATION AT TISCALI SPA**

Revision: Board of Directors of April 28, 2017

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## 1. Introduction

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Art. 18 of (EU) Regulation 596/2014 of the European Parliament and European Union Council of 16 April 2014 regarding market abuse (*Market Abuse Regulation*) (“**MAR**”) establishes the obligation for the “issuers or persons who act in their name and on their account” to draw up, manage and update a register (the “**Register**”) of persons with access to privileged information as defined by Art. 7 MAR (“**Privileged Information**”).

According to the provisions of above-mentioned Art. 7 MAR, “Privileged Information” means “information precise in nature that has not been made public, that directly or indirectly concerns one or more issuers or one or more financial instruments, and that if made public, might significantly affect the prices of said financial instruments or the prices of associated derivative instruments”<sup>1</sup>.

The obligations of setting up and keeping the Register are aimed at providing operators incentives to pay greater attention to the value of the Privileged Information and therefore to stimulate the establishment of adequate internal procedures for monitoring its circulation before it is disclosed to the public. The regulations set forth under Art. 18 MAR and the relevant rules for implementation found in Implementing Regulation (EU) 2016/347 of the European Commission of 10 March 2016 (“ITS 347”) is also aimed at helping the competent Authority to perform the insider trading investigations.

This procedure (“**Procedure**”) has been adequately circulated within the Tiscali Group (“**Group**”) to the interested parties and has been published on the Tiscali website in the “Investors” section ([www.tiscali.com](http://www.tiscali.com)).

The Procedure in question is connected with the procedure concerning identification of the significant parties and disclosure of the transactions that they carry out, also through third parties, regarding shares issued by Tiscali S.p.A. (hereinafter “**Tiscali**” or the “**Issuer**”) or other financial instruments connected to them (“**Internal Dealing Procedure**”) approved by the Chief Executive Officer after the approval of the Internal Audit Committee.

The Procedure also has the aim of guaranteeing that the operational activities are carried out in conformity with the principles of professional competence, transparency and correctness, in compliance with Italian Legislative Decree 231/2001 and, more generally, with the applicable Laws and regulations, as well as in observance of the Company Code of Ethics and Organisation, Management and Control Model pursuant to Italian Legislative Decree 231/2001.

## 2. Obligations related to the Register

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Pursuant to Art. 18, paragraph 1 MAR, Tiscali:

- (a) draws up the Register;
- (b) promptly updates the Register pursuant to Art. 3 of this Procedure; and
- (c) sends the Register to the competent Authority as soon as possible upon its request.

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<sup>1</sup> It is clarified that pursuant to Art. 7, paragraph 2 MAR, information is “precise in nature” if “it refers to a set of circumstances that exist or that can be reasonably believed may generate either an event that has taken place or that can be reasonably believed will take place and if said information is specific enough to allow conclusions to be drawn on the possible effect of said set of circumstances or of said event on the prices of the financial instruments or relevant derivative instrument, of the foreign exchange spots on associated goods or products subject to auction based on the emission allowances. To this regard, in the case of a prolonged process intended to form, or that will determine, a particular circumstance or a particular event, said future circumstance or future event, as well as the intermediate stages of said process that are connected with the materialisation or determination of the future circumstance or event might be considered information precise in nature”. Therefore, it is necessary to enter the persons who have access to privileged information regarding both events or sets of circumstances that have already occurred and events or sets of circumstances that may be reasonably believed possible to become generated or occur in the Register, as better described in the “Procedure for disclosing Privileged Information to the public” adopted by the Company.

All of the following must be entered in the Register: (i) those who have access to Privileged Information; (ii) those with whom the Company has a professional collaboration agreement (an employment contract or other); (iii) those who have access to the Privileged Information when performing certain duties (for example, consultants, accountants or credit rating agencies).

### 3. Setting up the Register

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3.1 The Company sets up the Register in compliance with the provisions of Art. 18 MAR and ITS 347. The Corporate Affairs Manager of the Company ("**Party in Charge**") keeps the Register.

3.2 The Issuer ensures that the Register is divided into distinct sections, one for every piece of Privileged Information ("**Single Section**"). Every time a new piece of Privileged Information is identified, a new and specific Single Section is added to the Register. Each Single Section carries only the data of the persons having access to the Privileged Information contemplated in the same section.

Without prejudice to the provisions of Art. 3.5 below, the parties to be entered into the Single Section of the Register, or to be removed from it, are identified by the Party in Charge, who promptly enters or removes them in the Single Section of the Register according to normal diligence, all as better explained under Art. 4 of the Procedure below.

3.3 The Company draws up and updates the Register in electronic format in order to guarantee the confidentiality of the information it contains, its accuracy and access and retrieval of the previous versions of the Register at all times. Said electronic format is compliant with Specimen 1 of Annex 1 of ITS 347, reproduced in paper format under Annex "A" to this Procedure.

3.4 The Company has decided to add a supplementary section (the "Permanent Section") to the Register, in which the data of the persons who have access to Privileged Information on a regular basis ("Permanent Access Owners", and together with the parties entered in the Single Section, the "Entered Parties") due to the positions they hold are entered. Said section is drawn up in an electronic format compliant with Specimen 2 of Annex 1 of ITS 347, reproduced in paper format under Annex "B" to this Procedure. The data of the Permanent Access Owners entered into the Permanent Section are not indicated in the Single Sections of the Register.

For the purposes of this Procedure, the parties who hold the offices or positions specified below are considered necessary to enter into the Permanent Section:

- (a) the CEO and members of the Board of Directors;
- (b) the appointed regulatory independent auditing firm;
- (c) the first management lines (executives or directors);
- (d) the members of the Board of Statutory Auditors (statutory auditors);
- (e) the secretarial staff of the CEO;
- (f) the members of the Supervisory Body;
- (g) any other company employees having regular access to Privileged Information, as identified by the Party in Charge.

3.5 The Entered Parties must in turn identify, as far as is to their knowledge: (a) any other persons within their company structure and/or office within the Issuer or Group under it that may have access to Privileged Information, and (b) the third parties who have a collaboration agreement with the Company (for example, legal or tax consultants, advisors, etc.) who (i) may have access to Privileged Information and who therefore are to be entered into a Single Section of the Register, or (ii) who have ceased to have access to Privileged Information and who therefore are to be removed from a Single Section of the Register.

Pursuant to Art. 4.4 below, the Entered Parties report the names of the parties identified according to the foregoing to the Party in Charge, who promptly updates the Register with normal diligence, all as is better explained under Art. 4 below herein.

#### **4. Keeping, storing and updating the Register**

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4.1 The Executive in Charge keeps the Register and makes the entries and updates, if deemed advisable, based on the information received from the parties indicated under Art. 3.4 and 3.5 above. The Executive in Charge also monitors the parties entered in each Single Section of the Register and checks that the entry matches the parties indicated under Art. 3.5, who by virtue of the provisions of the same article are delegated to send the Executive in Charge the information on the persons to be entered in or removed from the Single Section of the Register.

It remains understood that the Entered Parties are responsible for the quality of the information given to the Party in Charge and are required to ensure that it is complete and promptly updated.

4.2 The Register must be promptly updated when the following events occur:

- (a) a change in the reason behind inclusion of a Party entered in the Register occurs;
- (b) there is a new person who has access to Privileged Information and must therefore be entered in the Register;
- (c) the Entered Party no longer has access to Privileged Information.

Every update indicates the date and time when the change making said update necessary occurs.

4.3 The data regarding the Parties entered in the Register are stored for five years after the circumstances causing the entry or update cease to exist.

4.4 The reports of the Entered Parties to the Party in Charge regarding the entries in, or the removals from, the Single Section of the Register described in Art. 3.5 above of the Procedure are sent in writing by electronic mail to the email address of the Party in Charge and must contain all the information necessary for correct and complete entries in and updating of the Register pursuant to this Procedure. The Party in Charge enters the information received in the Register. If the Party in Charge finds that one or more data is missing, he/she contacts the Entered Parties, who shall promptly communicate the missing data.

4.5 The Party in Charge communicates the entry in the Register and any other subsequent updates (including cancellation) to the interested party promptly and however by and no later than 5 business days from the date the event occurs. To this end, the Party in Charge delivers to the Entered Parties or sends them by electronic mail a specific notice ("Letter of Transmission") through which the Entered Parties are informed that they have been entered in the Register (or have later been updated) and - in the case of the first entry - of the legal and regulatory obligations arising from this Procedure and of the penalties applicable should they be breached. A copy of this Procedure shall be annexed to the aforesaid Letter of Transmission (drawn up in conformity with Annex "C" herein). The Entered Parties are required to notify the Party in Charge that they have received the information and to return to the Party in Charge a copy of the Procedure initialled on every page as sign of recognition by and no later than 5 business days from delivery or receipt of the Letter of Transmission.

#### **5. Content of the entry in the Register and relevant updates**

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5.1 Considering the sections making up the Register pursuant to Art. 3 (i.e. Single Sections or Permanent Section), the Party in Charge enters the following information into the Register:

(A) date and time the section is created, meaning the date and time when the Privileged Information was identified;

(B) for each Entered Party:

i. date and time the person is entered in the Register and date and time when the Entered Party had access to the Privileged Information;

- ii. identity of the person who has access to the Privileged Information:
  - (a) if a natural person, the name, surname, business and private (home and personal mobile phone) telephone numbers, date of birth, tax code, complete private address (street, street number, town, postal code, country), and electronic mail address for communications regarding the Procedure;
  - (b) if a corporate body, entity or association of professional, the following must be indicated: company name, registered office and VAT number, and all the data listed under (a) relating to a party of reference who is able to identify the persons (belonging to the corporate body, entity or association of professionals or however tied to said entity) who have had access to Privileged Information;
- iii. company they belong to and type of relationship with the Issuer;
- iv. reason why the person is entered in the Register;
- v. update and reason for the update of the information in the Register;
- vi. date and time of each update of the information already entered in the Register;
- vii. cancellation and reason for the cancellation from the Register;
- viii. date and time of cancellation of the person from the Register, meaning the date and time when the Entered Party stopped having regular access to the Privileged Information.

## 6. Processing of personal data

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6.1 For the purposes set out in this Procedure, the Company may be required to process certain personal data of the Parties entered in the Register. Said parties are therefore required to give their consent to the processing of the respective personal data by the Company or by managers and/or their delegates pursuant to and under the terms of Italian Legislative Decree 196/2003 as amended, as they are informed about:

- (a) the purpose and the methods of processing to which the data will be subject;
- (b) the mandatory nature of providing the data;
- (c) the parties or categories of parties to whom the data may be communicated and the area of circulation of the same data;
- (d) the rights pursuant to Art. 7 of Italian Legislative Decree 196/2003;
- (e) the name and surname, company name and domicile, residence or address of the owner and controller:
  - owner: Tiscali S.p.A.;
  - controller: Legal Representative of Tiscali S.p.A..

6.2 With the delivery to the Party in Charge of the communication described in Art. 4.5 duly signed by the Entered Party, consent is considered validly provided pursuant to Italian Legislative Decree 196/2003.

## 7. Final provisions

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The CEO introduces the amendments and supplements that should become necessary as the result of regulatory measures or organisational changes of Tiscali, and in view of the practical experience gained and market practice in this area.

## Annexes

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- Annex "A": Specimen 1 of annex I of ITS 347.
- Annex "B": Specimen 2 of annex I of ITS 347.
- Annex "C": Specimen of Letter of Transmission

**ANNEX A - SPECIMEN 1 OF ANNEX I OF ITS 347**

**List of persons having access to privileged information - Section on [specify the privileged information specific to a contract or relating to an event]**

**Date and time (this section of the list is created or when the privileged information was identified): [ yyyy-mm-dd, hh:mm UTC (coordinated universal time) ]**

**Date and time (last update): [ yyyy-mm-dd, hh:mm UTC (coordinated universal time) ]**

**Date of transmission to the competent authority: [ yyyy-mm-dd ]**

Name of access owner	Surname of access owner	Birth surname of the access owner (if different)	Business telephone numbers (direct landline and mobile phone line)	Name and address of the company	Position and reason for the access to privileged information	Obtained (date and time when the owner obtained access to privileged information)	Ceased (date and time when the owner ceased to have access to privileged information)	Date of birth	National ID number (if applicable)	Private telephone numbers (home and personal mobile)	Complete private address (street, street number, town, postal code, country)
[text]	[text]	[text]	[numbers (without spaces)]	[address of the issuer/emission allowance market participant/auction platform/auctioneer/auction monitor or third party of the access owner]	[description of the role, function and reason for presence on the list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd]	[number and/or text]	[numbers (without spaces)]	[complete private address of the access owner]

**ANNEX B - SPECIMEN 2 OF ANNEX I OF ITS 347**

**Section of permanent accesses of the list of persons having access to privileged information**

**Date and time (of creation of the section of permanent accesses)** [yyyy-mm-dd, hh:mm UTC (coordinated universal time)]

**Date and time (last update):** [ yyyy-mm-dd, hh:mm UTC (coordinated universal time) ]

**Date of transmission to the competent authority:** [ yyyy-mm-dd ]

Name of access owner	Surname of access owner	Birth surname of the access owner (if different)	Business telephone numbers (direct landline and mobile phone line)	Name and address of the company	Position and reason for the access to privileged information	Entered (date and time when the owner was entered into the section of permanent accesses)	Date of birth	National ID number (if applicable)	Private telephone numbers (home and personal mobile)	Complete private address (street, street number, town, postal code, country)
[text]	[text]	[text]	[numbers (without spaces)]	[address of the issuer/emission allowance market participant/auction platform/auctioneer/auction monitor or third party of the access owner]	[description of the role, function and reason for presence on the list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd ]	[number and/or text]	[numbers (without spaces)]	[complete private address of the access owner]

## ANNEX C - SPECIMEN OF LETTER OF TRANSMISSION

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To whom it may concern Company  
[●]  
[ Address ]

*Sent by email*

### **Re: Entry in the Register of persons who have access to privileged information**

We hereby inform you that on [●] you were entered in the “Register of persons with access to privileged information” (“**Register**”) set up at Tiscali S.p.A. (“**Company**”) – according to what is prescribed by Art. 18 of (EU) Regulation 596/2014 of the European Parliament and European Union Council of 16 April 2014 regarding market abuse (*Market Abuse Regulation*) (“**MAR**”) and the relative rules for implementation found in Implementing Regulation (EU) 2016/347 of 10 March 2016 - with reference to *[Note: in case of entry (i) in a Single Section (Art. 2.2 of the Procedure): indicate the transaction/event with reference to which the entry is made; (ii) in the Permanent Section (Art. 2.4 of the Procedure): indicate the office/role covered by the Entered Party that justifies the entry]*.

The “Procedure for managing the Register of Persons with access to Privileged Information” (“**Procedure**”) is in effect since \_\_\_\_\_.

Please refer to Art. 7 MAR a copy of which is annexed hereto for the notion of privileged information, and to the “Procedure for disclosing Privileged Information to the public” adopted by the Company.

As established by Art. 4.1 of the Procedure, the party in charge of keeping the Register is the Corporate Affairs Manager.

Please provide the above-mentioned Party in Charge with the data indicated in Art. 5.1 of the Procedure, and identify any addition parties who always have access to all the privileged information that you are in possession of and provide their data if you should deem it opportune. To this regard, we are send the Form to be used annexed hereto.

The Company will inform you when you will be removed from the Register with reference to *[Note: indicate, as the case may be, (i) the transaction/event with reference to which the entry was made; or (ii) office/role held that justifies the entry]*, in addition to every update of it that may concern you.

Please review the regulations provided in the annex hereto (regulatory appendix) regarding the legal and regulatory obligations arising from the Procedure and the penalties applicable should it be breached and any subsequent amendments and supplements.

We inform you that by virtue of your role, you are bound to an obligation of confidentiality with regard to the privileged information you become acquainted with when exercising your activity and that you are bound to not circulate in any way whatsoever.

Please return to us a copy of this communication duly signed by and no later than 5 business days from its receipt, together with a copy of the annexed Procedure initialled on every page as sign of recognition, with one of the following methods:

• by fax to:\_\_\_\_\_;

•by electronic mail to the address:\_\_\_\_\_.

[place, date]

TISCALI S.P.A.

Dario Amata  
(Party in Charge)

ANNEXES:

- Data communication form pursuant to Art. 5.1 of the Procedure;
- regulatory appendix;
- copy of the Procedure;

\* \* \*

By way of recognition:

\_\_\_\_\_  
[•]  
(Entered Party)

Date: \_\_\_\_\_

Place: \_\_\_\_\_

## REGULATORY APPENDIX

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### **(EU) Regulation 596/2014 of the European Parliament and Council of 16 April 2014 (“MAR”)**

#### **Chapter 2 - privileged information, abuse of privileged information, illegal disclosure of privileged information and market abuse**

##### **Article 7 MAR**

##### **Privileged information**

“1. For the purposes of this regulation, the term privileged information means:

a) information precise in nature that has not been made public, that directly or indirectly concerns one or more issuers or one or more financial instruments, and that if made public, might significantly affect the prices of said financial instruments or the prices of associated derivative instruments;

b) in connection with derivatives on goods, information precise in nature that is not disclosed to the public concerning, directly or indirectly, one or more of said derivatives or directly concerning the foreign exchange spot on associated goods and that, if disclosed to the public, might have a significant effect on the prices of said derivatives or on the foreign exchange spots on associated goods and if it is information that one might reasonably expect to be disclosed or that must be disclosed in compliance with the European Union or national legislative or regulatory provisions, the market rules, contracts, conventional practices or customs on the pertinent markets of spots or commodity derivatives;

c) in connection with the emission allowances or related productions auctioned, information precise in nature that has not been made public, that directly or indirectly concerns one or more said instruments, and that if made public, might significantly affect the prices of said instruments or the prices of associated derivative instruments;

d) in the case of persons appointed to execute orders relating to financial instruments, also the information sent by a customer and connected to the pending financial instruments orders of the customer that is precise in nature and that concerns, directly or indirectly, one or more issuers or one or more financial instruments and that if disclosed to the public might have a significant effect on the prices of said financial instruments, on the price of the foreign exchange spots on associated goods or on the price of associated derivatives.

2. For the purposes of paragraph 1, information is “precise in nature” if “it refers to a set of circumstances that exist or that can be reasonably believed may generate either an event that has taken place or that can be reasonably believed will take place and if said information is specific enough to allow conclusions to be drawn on the possible effect of said set of circumstances or of said event on the prices of the financial instruments or relevant derivative instrument, of the foreign exchange spots on associated goods or products subject to auction based on the emission allowances. To this regard, in the case of a prolonged process intended to form, or that will determine, a particular circumstance or a particular event, said future circumstance or future event, as well as the intermediate stages of said process that are connected with the materialisation or determination of the future circumstance or event might be considered information precise in nature.

3. An intermediate step in a prolonged process is considered privileged information if it meets the criteria set in this article regarding privileged information.

4. For the purposes of paragraph 1, information that a reasonable investor would most likely use as one of the elements on which they base their investment decisions is meant information that, if disclosed to the public,

would most likely have a significant effect on the prices of the financial instruments, the derivatives, the foreign exchange spots on associated goods or products subject to auction based on emission allowances.

In the case of emission allowance market participants with aggregated emissions or nominal thermal power equal to or less than the threshold set according to the provisions of Art. 17, paragraph 2, point 2, the information on their actual activity is considered to not have a significant effect on the price of the emission allowances, products subject to auction on the basis of said allowances or derivatives.

5. The ESMA publishes guidelines to establish an incomplete indicative list of the information that can reasonably be expected to be published or that must be published in compliance with the legislative or regulatory provisions of European Union or national law, the market rules, contracts, practices or customs on the pertinent markets of spots or commodity derivatives pursuant to paragraph 1, letter b). The ESMA duly takes into account the specificity of said markets”.

## **Article 18 MAR**

### **Lists of persons with access to privileged information**

“1. The issuers or persons acting in their name or on their behalf:

a) draw up a list of all those who have access to privileged information and with whom there is a professional collaboration agreement, whether it is an employment contract or other, and that when performing certain duties - for example, consultants, accountants or credit rating agencies - have access to the privileged information (list of persons with access to privileged information);

b) promptly update the list of persons with access to privileged information pursuant to paragraph 4; and

c) send the list of persons with access to privileged information to the competent authority as soon as possible when it so requests.

2. The issuers or persons acting in their name or on their behalf take all reasonable measures to ensure that all the persons on the list of persons with access to privileged information recognise, in writing, the associated legal and regulatory obligations and are aware of the applicable penalties should the privileged information be abused and the privileged information is illegally disclosed.

If another person acting in the name and on behalf of the issuer takes on the task of drawing up and updating the list of those with access to privileged information, the issuer remains fully responsible for compliance with the obligation provided for herein. The issuer always has right to access the list of persons with access to privileged information.

3. The list of persons with access to privileged information includes at least:

a) the identity of all persons with access to privileged information;

b) the reason why said persons are on the list of persons with access to privileged information;

c) the date and time said persons obtained access to privileged information; and

d) the date the list is drawn up.

4. The issuers or any other party acting in their name or on their behalf promptly updates the list of persons with access to privileged information, adding the date of the update in the following circumstances:

a) if there is a change in the reason for including a person already on the list of persons with access to privileged information;

b) if there is a new person with access to privileged information who must therefore be added to the list of persons with access to privileged information; and

(c) if a person no longer has access to privileged information.

Every update indicates the date and time when the change making the update necessary occurs.

5. The issuers or any other person acting in their name or on their behalf keep the list of persons with access to privileged information for at least five years after the processing or update.

6. The issuers whose financial instruments are admitted to trading on a growing market for the SMEs are exempt from drawing up a list of persons with access to privileged information if the following conditions are met:

a) the issuer takes all reasonable measures to ensure that all persons with access to privileged information recognise the legal and regulatory obligations that this entails and are aware of the applicable penalties if the privileged information is abused and privileged information is illegally disclosed; and

b) the issuer is able to provide, upon request, a list of persons with access to privileged information to the competent authority.

7. This article applies to issuers that have requested or authorised admission of their financial instruments to trading on a regulated market in a member State or, in the case of an instrument traded only on an MTF or an OTF, have authorised trading of their financial instruments on an MTF or OTF or have requested admission of their financial instruments to trading on an MTF in a member State.

8. Paragraphs from 1 to 5 of this article also apply to:

a) participants in the emission allowance markets as far as privileged information on the emission allowances deriving from the concrete activities of the aforesaid participants in the emission allowance markets is concerned;

b) every auction platform, auctioneer and auction monitor in connection with the emission allowance auctions or those of other related products auctioned, held pursuant to (EU) regulation 1031/2010.

9. In order to guarantee uniform conditions of execution of this article, the ESMA develops technical rules of implementation projects to establish the precise format of the lists of persons with access to privileged information and the format for updating the lists described herein.

The ESMA submits these technical rules of implementation to the Commission by 3 July 2016.

The Commission is empowered to adopt the technical rules of implementation described in paragraph 1 in compliance with Art. 15 of (EU) regulation 1095/2010".

## **Chapter 5 - Administrative measures and penalties**

### **Article 30 MAR**

#### **Administrative penalties and other administrative measures**

"1. Without prejudice to the criminal penalties and powers of control of the competent authorities in accordance with Art. 23, the member States, in compliance with national law, ensure that the competent authorities have the power to adopt the administrative penalties and other adequate administrative measures in connection with at least the following infringements:

a) the infringements of Art. 14 and 15; Art. 16, paragraphs 1 and 2; Art. 17, paragraphs 1, 2, 4, 5 and 8; Art. 18, paragraphs 1 to 6; Art. 19, paragraphs 1, 2, 3, 5, 6, 7 and 11; and Art. 20, paragraph 1; as well as

b) failure to collaborate or execute in an investigation, inspection or request as described in Art. 23, paragraph 2.

The member States may decide to not establish rules concerning administrative penalties described in paragraph 1 if the infringements listed under letters a) or b) of said paragraph are already subject to criminal penalties in the respective national law by 3 July 2016. In this case, the member States notify the Commission and the ESMA of the pertinent rules of criminal law in detail.

The member States notify the Commission and the ESMA of the rules pursuant to paragraphs 1 and 2 in detail by 3 July 2016. They inform the Commission and the ESMA of every subsequent amendment without delay.

2. In compliance with national law, the member States ensure that the competent authorities are empowered to impose at least the following administrative penalties and to adopt at least the following administrative measures in the case of infringements listed under paragraph 1, point 1, letter a):

a) a direct injunction against the party responsible for the infringement to cease the conduct in question and to not repeat it;

b) return of the earnings made or the losses avoided thanks to the infringement as far as they can be determined;

c) a public warning that specifies the party responsible for the infringement and its nature;

d) annulment or suspension of the authorisation of an investment company;

e) temporary disqualification to exercise management functions in an investment company of anyone who exercises management responsibility in an investment company or any other natural person held responsible for the infringement;

f) in the case of repeated infringements listed under Art. 14 or 15, the permanent disqualification to exercise management functions in an investment company of anyone who exercises management responsibility in an investment company or any other natural person held responsible for the infringement;

g) temporary disqualification to trade on their own behalf of anyone who exercises management responsibility in an investment company or any other natural person held responsible for the infringement;

h) maximum administrative financial penalties of a value equal to three times the amount of the earnings made or the losses avoided thanks to the infringement when they can be determined;

i) in the case of a natural person, maximum administrative financial penalties of at least:

i) for infringements of Art. 14 and 15, EUR 5,000,000 or the corresponding value in the national currency as at 2 July 2014 in member States whose official currency is not the euro;

ii) for infringements of Art. 16 and 17, EUR 1,000,000 or the corresponding value in the national currency as at 2 July 2014 in member States whose official currency is not the euro; and

iii) for infringements of Art. 18, 19 and 20, EUR 500,000 or the corresponding value in the national currency as at 2 July 2014 in member States whose official currency is not the euro; and

j) in the case of a corporate body, maximum administrative financial penalties of at least:

i) for infringements of Art. 14 and 15, EUR 15,000,000 or 15% of the total annual turnover of the corporate body based on the latest financial statements available that have been approved by the management body, or the

corresponding value in the national currency as at 2 July 2014 in the member States whose official currency is not the euro;

ii) for infringements of Art. 16 and 17, EUR 2,500,000 or 2% of the total annual turnover based on the latest financial statements available that have been approved by the management body, or the corresponding value in the national currency as at 2 July 2014 in the member States whose official currency is not the euro; and

iii) for infringements of Art. 18, 19 and 20, EUR 1,000,000 or the corresponding value in the national currency as at 2 July 2014 in member States whose official currency is not the euro.

The references to the competent authority herein do not jeopardise the ability of the competent authority to exercise its functions in one of the ways described in Art. 23, paragraph 1.

For the purposes of letters j) and ii) of paragraph 1, if the corporate body is a parent company or a daughter company that must draw up consolidated financial statements pursuant to directive 2013/34/EU, the relevant total annual turnover is the total annual turnover or the type of corresponding income in compliance with the pertinent accounting directives - directive 86/635/EEC of the European Council for banks and directive 91/674/EEC of the European Council for insurance companies - that is shown on the latest available consolidated financial statements approved by the management body of the parent company; or

3. The member States may provide for the competent authorities to have powers in addition to those indicated under paragraph 2 and may set penalties of an amount higher than that established in the forgoing paragraph”.

### **Article 31 MAR**

#### **Exercise of control powers and imposition of penalties**

“1. The member States guarantee that in establishing the type and level of administrative penalties the competent authorities take into account all pertinent circumstances including, if appropriate:

a) the seriousness and duration of the infringement;

b) the degree of responsibility of the perpetrator of the infringement;

c) the financial capacity of the perpetrator of the infringement that, for example, results from the total turnover of the corporate body or from the annual income of the natural person;

d) the amount of profits made and of losses avoided by the perpetrator of the infringement, to the extent in which they may be determined;

e) the level of cooperation that the perpetrator of the infringement has demonstrated with the competent authority, the need to guarantee return of the earnings made or of the losses avoided being understood;

f) previous infringements by the perpetrator of the infringement; and

g) measures taken by the perpetrator of the infringement in order to prevent it from being repeated.

2. In exercising their powers of imposing administrative penalties and other administrative measures in accordance with Art. 30, the competent authorities closely collaborate to ensure that the exercise of their control and investigative powers and the administrative penalties they impose and the other administrative measure they adopt are effective and appropriate on the basis of this regulation. They coordinate their actions in compliance with Art. 25 in order to avoid duplications and overlapping in the exercise of the control and investigative powers as well as in the imposition of administrative penalties in the cross-border cases”.

### **Article 34 MAR**

## **Publication of the decisions**

“1. Without prejudice to paragraph 3, the competent authorities publish the decisions regarding imposition of an administrative penalty or other administrative measure in the case of an infringement of this regulation on their websites immediately after the party receiving said decision has been informed of said decision. This publication provides information on at least the type and nature of the infringement, as well as the identity of the person receiving it.

Paragraph 1 does not apply to the decisions that impose investigative measures.

If a competent authority considers that the publication of the identity of the corporate body receiving the decision, or of the personal data of a natural person, is excessive following an assessment conducted on a case by case basis on the proportionality of publication of said data or if said publication would jeopardise an investigation in progress or the stability of the financial markets, it:

- a) postpones publication of the decision until the reasons for said postponement cease to exist; or
- b) publishes the decision in anonymous form, in compliance with national law, if the publication ensures that the personal data in question are actually protected;
- c) does not publish the decision if the competent authority considers the publication in compliance with letters a) and b) will suffice to guarantee:
  - i) that the stability of the financial markets is not in jeopardy; or
  - ii) the proportionality of publication of the decision in question with reference to measures considered of little relevance is ensured.

If a competent authority adopts the decision to publish the decision on an anonymous basis pursuant to paragraph 3, letter b), it may postpone publication of the significant data for a reasonable period of time during which it is foreseeable that the reasons for the anonymous publication will cease to exist.

2. If the decision is appealable before a judicial, administrative or other national type of authority, the competent authorities also immediately publish said information and any subsequent information on the outcome of the appeal on their websites. Any decisions that revoke an appealable decision are also published.

3. The competent authorities take steps so that every decision published pursuant to this article remains accessible on their website for at least five years following publication. The personal data contained in said publication are stored on the website of the competent authority only for the period necessary in compliance with the applicable rules on data protection”.

\* \* \*

## **(EU) Implementing Regulation 2016/347 of the European Commission of 10 March 2016 (“ITS 347”)**

### **Article 1**

#### **Definitions**

“For the purposes of this regulation the following definitions are provided:

“electronic medium”: electronic equipment for processing (including digital compression), storing and sending data by cable, radio waves, optical technologies or any other electromagnetic medium.”

## **Article 2**

### **Format for drawing up and updating the list of persons with access to privileged information**

“1. The issuer, participant in the emission allowances market, the auction platform, the auctioneer and the auction monitor, or any other party who acts in their name or on their behalf take steps to ensure that the respective list of persons with access to privileged information (“list”) is divided into distinct sections, one for each piece of privileged information. A new section is added to the list every time a new piece of privileged information is identified according to the definition given in Art. 7 of (EU) Regulation 596/2014.

Each section of the list carries only the data of the persons with access to the privileged information contemplated in the section.

2. The persons mentioned in paragraph 1 may add a supplementary section to the list, in which the data of the persons who always have access to all privileged information (“permanent access owners”) is recorded.

The data of the permanent access owners recorded in the supplementary section described in paragraph 1 are not included in the other sections of the list described in paragraph 1.

3. The persons mentioned in paragraph 1 draw up the list and keep it updated in electronic format in compliance with Specimen 1 of Annex I.

if the list contains the supplementary section described in paragraph 2, the persons mentioned in paragraph 1 draw up the section and keep it updated in an electronic format compliant with Specimen 2 of Annex I.

4. The electronic formats mentioned in paragraph 3 guarantee at all times:

a) the confidentiality of the information contained therein, ensuring that access to the list is restricted to the clearly identified persons who must access it owing to the nature of their respective office or position at the issuer company, the participant in the emission allowances market, the auction platform, the auctioneer and the auction monitor, or any other party who acts in their name or on their behalf;

b) the correctness of the information recorded in the list;

c) the access and retrieval of the previous versions of the list.

5. The list described in paragraph 3 is sent by the electronic medium indicated by the competent authority. The competent authority publishes the indication of the electronic medium on its website. The electronic medium ensures that the transmission leaves the completeness, integrity and confidentiality of the information untouched.

## **Article 4**

### **Effective date**

“This regulation enters into effect on the day following publication in the Official Journal of the European Union.

It is applicable starting from 3 July 2016.”