Javier Carvajal García-Valdecasas, Eduardo Arbizu Lostao and Andrea Zubiaga

REGULATORY UPDATES ON MARKET ABUSE: COMMISSION DELEGATED REGULATION (EU) 2026/789 AND COMMISSION IMPLEMENTING REGULATION (EU) 2026/1291

I. INTRODUCTION

In July 2026, two instruments supplementing Regulation (EU) No 596/2014 on market abuse (the Market Abuse Regulation, or "**MAR**"), both derived from amendments introduced by the Listing Act (Regulation (EU) 2024/2809 of 23 October 2024), were published and entered into force.

This Legal Briefing analyses, firstly, Commission Delegated Regulation (EU) 2026/789 of 8 April 2026 supplementing Regulation (EU) No 596/2014 as regards disclosure of inside information in protracted processes and delay of disclosure (published in the Official Journal of the European Union on 16 July 2026) (the "**Delegated Regulation**"); and, secondly, Commission Implementing Regulation (EU) 2026/1291 of 12 June 2026 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 repealing Commission Implementing Regulation (EU) 2022/1210 (in force since 5 July 2026) (the "**Implementing Regulation**").

II. DELEGATED REGULATION (EU) 2026/789: DISCLOSURE OF INSIDE INFORMATION IN PROTRACTED PROCESSES AND DELAY OF DISCLOSURE

1. Background

Article 17(1) MAR requires issuers to publicly disclose, as soon as possible, any inside information which directly concerns them.

The Listing Act amended the regime for the disclosure of inside information in protracted processes and the delay of disclosure under Article 17(4) MAR, and required the European Commission to adopt delegated acts that establish non-exhaustive lists of:

i) the final events or final circumstances that determine the moment at which inside information that arises in the context of a protracted process must be disclosed; and

ii) situations where the inside information the disclosure of which is intended to be delayed contrasts with the issuer's previous public communications, thereby precluding the application of the power to delay under Article 17(4) MAR.

Delegated Regulation (EU) 2026/789 gives effect to that mandate.

2. Concept of protracted process and rationale of the regulation

A protracted process involves a series of actions, steps, or decisions spread in time which the issuer must carry out, at least in part, to achieve an intended objective or result (i.e. events that unfold in several phases, such as mergers, acquisitions or other complex contractual arrangements).

The Listing Act amended Article 17(1) MAR to clarify that the obligation of immediate disclosure does not encompass intermediate steps in a protracted process where those steps are connected with bringing about or resulting in the particular circumstances or the particular event which the process is intended to complete: only the final circumstances or final event must be disclosed.

This rule applies independently of the delay of disclosure under Article 17(4) MAR: this is expressly stated in the new Article 17(4a) MAR, which excludes the non-disclosure of intermediate steps from being subject to the conditions set out in that provision. Accordingly, an issuer does not need to demonstrate compliance with the requirements for delay (see Section 4 below in this regard) in order to refrain from disclosing information that relates to intermediate steps; rather, the disclosure obligation simply does not arise until the final event or final circumstances have occurred.

Determining the exact moment at which the disclosure obligation arises, and the possibility of delaying such disclosure, have given rise to interpretative and practical difficulties since MAR entered into force; these are the issues that the Delegated Regulation seeks to resolve.

3. Non-exhaustive list of final events or final circumstances in protracted processes and timing of disclosure

Annex I to the Delegated Regulation organises protracted processes into seven categories. For each category, it identifies the final event or final circumstances that trigger the moment of disclosure. The categories and their principal examples are as follows:

Category	Main scenarios	Moment of disclosure
A. Business strategy	Agreements (including the acquisition or disposal of relevant assets or subsidiaries); mergers; major corporate reorganisations; voluntary termination of a material agreement by the issuer.	As soon as possible after the signing of the agreement or any other equivalent act with binding effect, or after the approval or final decision of the issuer's governing body[1] (mergers, reorganisations and voluntary terminations).
B. Capital structure, dividends and interest payments	Capital increase; issuance of new instruments; share buy-back; conversion of instruments; dividends; postponement or cancellation of interest payments or redemption payments.	As soon as possible after the final decision of the issuer's governing body (or, in the case of dividends, after the decision to submit the proposal to the shareholders for approval).
C. Financial information	Acknowledgement or approval of financial reports and interim financial reports; acknowledgement or approval of forecasts.	As soon as possible after the issuer's governing body has acknowledged or approved the financial results or forecasts.
D. Corporate governance	Appointment or removal of members of the issuer's governing body or of managers holding a key role; significant amendments to the articles of incorporation or the by-laws.	As soon as possible after the decision of the issuer's governing body (appointments or removals) or its decision to submit the proposed amendments to the shareholders for approval.
E. Interventions by public authorities	Application for and granting, rejection or withdrawal of licences or authorisations; recognition of intellectual property (IP) rights; authorisation to commercialise products; medical/clinical trials; award of contracts in a public procurement process; pre-insolvency/restructuring proceedings and insolvency.	In general, as soon as possible after the issuer has submitted the application or after receipt of the formal notification from the competent authority.
F. Credit institutions, insurance undertakings and reinsurance undertakings	Supervisory review and evaluation process (SREP); reduction of own funds; resolution action (banking and insurance); insolvency proceedings supervised by the competent authority.	As soon as possible after receipt of the formal decision of the competent authority or publication of the resolution action.
G. Legal proceedings, sanctions and delisting	Administrative and judicial proceedings; precautionary measures; sanctions; voluntary or compulsory delisting.	As soon as possible after notification of the decision, even where the decision may be or is subject to an appeal. In the case of voluntary delisting, after the final decision of the issuer's governing body.

The list is non-exhaustive. For protracted processes that have not been included, issuers must carry out a case-by-case assessment and may, by analogy, rely on the scenarios set out in the list where appropriate.

1 The Delegated Regulation uses the term "governing body" as a generic concept covering the different specific features of Member States (e.g. unitary and dual systems of governance). References to the "governing body" should be understood, in the context of Spanish law, as referring to the board of directors.

Upon request by the competent authority, the issuer must be able to justify the identification of the final event or final circumstances and the relevant moment of disclosure.

4. Situations where the delay of disclosure is not permitted due to a contrast with previous communications

Article 17(4) MAR allows issuers to delay, on their own responsibility, the disclosure of inside information provided that all of the following conditions are met:

a) immediate disclosure is likely to prejudice the legitimate interests of the issuer;

b) delay of disclosure is not likely to mislead the public; and

c) the issuer is able to ensure the confidentiality of that information.

As noted above in Section 2, the delay of disclosure does not apply to intermediate steps in a protracted process, which are governed by Article 17(1) and 17(4a) MAR and which must not be disclosed until the final event or final circumstances have occurred.

The Delegated Regulation specifies which situations result in the inside information being in contrast with previous communications and, consequently, where the condition set out in point (b) above is not met, prevent the delay. Annex II sets out a non-exhaustive list of those situations:

- Inside information concerning a material change to forecasts, financial results or business objectives as previously publicly announced or communicated (such as, profit warnings or earnings surprises).
- Inside information concerning a material change to the environmental or social impact of a project or a product as previously publicly announced or communicated (such as, environmental targets that are not met).
- Inside information concerning the financial viability of an issuer where materially different information regarding its financial conditions was previously publicly announced or communicated (such as, the need for a capital increase that was not anticipated).
- Inside information concerning the fact that the results or the deadlines of a product or a project under development will not be met, where those results or deadlines were previously publicly announced or communicated.
- Inside information concerning a material change to the capital structure as previously publicly announced or communicated (such as, a significant modification in the issuance of financial instruments).
- Inside information concerning a material change in a business strategy that was previously publicly announced or communicated (such as, a decision to enter a new geographical market segment).
- Inside information concerning a material change to core elements of a contract or a deal that was previously publicly announced or communicated (such as, the termination of a commercial partnership or, in the case of an acquisition, the choice of a different target company).
- Inside information concerning a material change to the corporate governance as previously publicly announced or communicated, including management structure and codes of conduct.

For the purposes of assessing whether there is a contrast, the issuer shall consider the latest public announcement or communication and, in exceptional circumstances, where it is not possible to draw a clear conclusion from that latest announcement or communication alone, other types of communication on the same matter to which the inside information refers. In the latter case, Annex III to the Delegated Regulation further specifies which other types of communication must be considered: any communication or press release published by the issuer, including via social or other media and on its website; public interviews delivered by any person formally representing the issuer; publicly accessible events (pre-close calls, roadshows, webinars); advertising and marketing campaigns; publicly accessible regulatory filings; publicly accessible communications delivered in the context of the issuer's shareholders' meetings; and any other communication to the public delivered by any person formally representing the issuer. In all of these cases, if the inside information is in contrast with what was previously communicated, the delay of disclosure will not be permitted.

5. Entry into force and application

Delegated Regulation (EU) 2026/789 entered into force on 19 July 2026 (three days after its publication in the Official Journal of the European Union on 16 July 2026) and is directly applicable in all Member States.

III. IMPLEMENTING REGULATION (EU) 2026/1291: NEW FORMAT OF INSIDER LISTS

The Listing Act amended Article 18 MAR to extend the simplified format previously applied to issuers on SME growth markets to all insider lists, and required ESMA to review the technical implementation standards accordingly.

With effect from **5 July 2026**, Commission Implementing Regulation (EU) 2026/1291 of 12 June 2026 repeals and replaces the previous Implementing Regulation (EU) 2022/1210 on the format of insider lists (Article 18 MAR).

The principal changes are as follows.

1. Unification and simplification of the format of all insider lists

The Implementing Regulation sets out the content, in accordance with the simplified format (previously reserved for SME growth market issuers) of the insider lists provided for in Article 18 MAR: this applies to both the standard insider list under Article 18(1) MAR and the "extended SME list" under the second subparagraph of Article 18(6). Those lists must now be prepared in accordance with Annex I to the new Implementing Regulation. As a consequence, the standard insider list no longer requires, among other things, birth surnames, full personal address, personal telephone numbers, or date of birth as a separate field.

2. Special regime for the SME growth market simplified list: dual specificity

The "simplified SME growth market list" (the first subparagraph of Article 18(6) MAR), as set out in Annex II to the Implementing Regulation, maintains a differentiated regime that goes beyond the mere format of data. It has two cumulative features:

i) <u>Reduced format:</u> The template in Annex II is less demanding as regards the number of fields than that in Annex I, in line with the distinction introduced by the previous legislation.

ii) <u>Restricted personal scope:</u> Issuers whose financial instruments are admitted to trading on an SME growth market are only required to include on their insider list persons who, by virtue of the nature of their role or position, have regular access to inside information (in other words, the equivalent of 'permanent insiders' on the standard list), without the need to expand the list in response to each new specific instance of inside information.

3. Other clarifications in the Implementing Regulation

The Implementing Regulation clarifies that, where a third-party service provider (legal person) acts on behalf or on the account of an issuer and has access to inside information, the issuer is only required to include the details of a single natural person acting as a contact for that provider on the list. This provision was already included in ESMA's Q&A on MAR since 2023, but has now been given binding effect by the Commission.

Furthermore, the Implementing Regulation adopts the abbreviated term 'permanent insiders', a term already in common use in the market, to refer to those persons who, by virtue of their role or position, have access at all times to the issuer's inside information.

IV. PRACTICAL CONSIDERATIONS

In light of the two instruments analysed above, the following actions are recommended for consideration:

i) **Review of internal disclosure procedures:** Issuers should review their inside information management policies and procedures in light of Annex I to the Delegated Regulation. In particular, it is advisable to map the issuer's typical protracted processes (M&A, capital increases, regulatory proceedings) against the final events or final circumstances identified in that Annex, in order to determine with precision the moment at which the disclosure obligation arises.

ii) **Update of the delay of disclosure policy:** The internal procedure for analysing the delay of disclosure under Article 17(4) MAR should be revised to incorporate the contrast test with previous communications set out in Annex II to the Delegated Regulation, including the catalogue of relevant communications contained in Annex III.

iii) **Adaptation of the format of insider lists:** Issuers must update their insider list templates to comply with Annexes I and II to the Implementing Regulation with effect from 5 July 2026. References in contracts, compliance manuals or internal circulars to Implementing Regulation (EU) 2022/1210 shall be construed as references to the new Implementing Regulation.

Contact

Javier Carvajal

Partner, Corporate/M&A

jcarvajal@perezllorca.com

T.+34 91 423 70 19

Eduardo Arbizu

Of Counsel, Corporate/M&A

earbizu@perezllorca.com

T.+34 91 389 01 05

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