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***“COMMERCIAL LAW FROM A
EUROPEAN PERSPECTIVE:
BETWEEN OVERREGULATION AND DEREGULATION,
MANDATORY RULES AND PRIVATE ORDERING,
HARMONIZATION AND FLEXIBILITY”***

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***“VADO, MA DOVE...?": LA SEMPLIFICAZIONE
E IL PROBLEMA DEL METODO.
SPUNTI ALLA LUCE DELLA RIFORMA DEL REGOLAMENTO
SUGLI ABUSI DI MERCATO.***

Abstract

The paper analyses the reform of Article 17 of the Market Abuse Regulation (MAR), as amended by the EU Listing Act, within the wider debate on the “simplification” of EU financial regulation. The amendment concerns the disclosure of inside information arising in the intermediate steps of protracted processes and replaces the previous regime—shaped by the *Geltl/Daimler* judgment and codified in MAR—with a “final-event-oriented” model. While formally framed as a measure of simplification, the reform raises deeper structural and methodological questions regarding the architecture of EU financial law and the meaning of simplification itself.

The paper first reconstructs the historical trajectory of the relevant rules. Under the 2003 Market Abuse Directive (MAD), the treatment of inside information generated in multi-stage processes was not expressly clarified,

leading to divergent national approaches. In several jurisdictions, disclosure was considered to arise only upon completion of the process. The Court of Justice's decision in *Geltl/Daimler* introduced a more expansive reading, holding that intermediate steps in a protracted process may themselves constitute inside information if they satisfy the criteria of precision and price sensitivity. This interpretation was subsequently incorporated into MAR, which expressly recognised the possibility that intermediate stages could trigger disclosure obligations. However, the practical operation of this regime proved controversial. Empirical evidence and supervisory experience—also acknowledged by ESMA—showed a significant increase in the systematic use of delayed disclosure during protracted processes. Issuers were required to implement complex internal governance systems to identify, track and document successive informational thresholds, often in highly fluid negotiation contexts. The result was a regime that formally enhanced informational symmetry but, in practice, generated compliance burdens, legal uncertainty and limited transparency gains. The Listing Act reverses this approach by excluding intermediate steps from the disclosure obligation and confining mandatory communication to the final event or circumstance of the process. Yet the reform does not redefine the concept of inside information itself, which continues to apply for the purposes of insider dealing prohibitions. This asymmetry—between a narrower disclosure duty and an unchanged substantive notion of inside information—creates a new equilibrium whose systemic implications remain to be fully assessed.

The delegated act envisaged under Article 17(11) MAR further complicates the picture. Through the new non-exhaustive catalogue of “final events,” the Union has moved toward a granular classification of recurring corporate, financial, supervisory and judicial situations. Although presented as a technical exercise aimed at ensuring consistency and legal certainty, this development represents a subtle but significant evolution: it introduces, for the first time, a quasi-taxonomical approach to inside information within the EU framework. Traditionally, the European model has resisted predefined catalogues, favouring instead an open-textured, principle-based conception anchored in continuous disclosure. The emergence of a structured list of final events may therefore signal either a pragmatic clarification or the beginning of a deeper conceptual shift.

The MAR reform is then situated within a broader structural diagnosis of EU financial regulation. The paper identifies persistent fragmentation of sources (hard and soft law under the Lamfalussy framework), the increasing “hardening effect” of European supervisory guidelines, ambiguities in core legal definitions (such as the precision of information, the reasonable investor benchmark, and the dual dimension of publicity), and enduring divergences in national interpretation. In this context, simplification is frequently invoked in political discourse but remains conceptually unstable, often conflated with deregulation. The removal of the intermediate-step disclosure obligation may therefore be better characterised as a circumscribed deregulation rather than as a genuine simplification of the regulatory architecture.

Against this background, the paper argues that episodic, case-specific legislative adjustments cannot resolve structural complexity. A credible simplification agenda requires a robust methodological framework. Two complementary strategies are proposed: a top-down approach involving conceptual rethinking and possible codification of EU financial law; and a bottom-up comparative analysis grounded in national jurisprudence and supervisory practice, aimed at identifying common traditions and operational convergence across Member States. Without a serious effort to refine taxonomies, clarify definitions and integrate interpretative practice into legislative design, simplification risks becoming a cosmetic exercise. Simplification, properly understood, is not the art of subtraction but the art of meaning. Its success should not be measured by the number of repealed obligations, but by the degree to which the remaining rules achieve clarity, coherence and proportionality, and express the normative logic of a more unified European capital market.