



WHEN IS INFORMATION DEEMED “PUBLIC” UNDER THE MARKET ABUSE REGULATION?

On 16 April 2026, the Court of Justice of the European Union (CJEU) ruled in *Brännelius* (C-229/24) on when “inside information” becomes “public” under the Market Abuse Regulation (MAR). In this newsletter, Moalem Weitemeyer assesses the ruling and its implications.

Introduction

A fundamental premise under the Market Abuse Regulation (EU) No 596/2014 (“MAR”) is that a person may not trade on inside information that has not yet been made public. Under Article 7 of MAR, “inside information” means information of a precise nature, which has not been made public, relating directly or indirectly to one or more issuers or financial instruments, and which, if it were made public, would be likely to have a significant effect on the price of those financial instruments. Despite how important the concept of “public” is to this definition, neither MAR nor its implementing technical standards offer any guidance on when information should be regarded as having crossed the line from non-public to “public”. The question may seem simple, but the answer has major consequences for companies, investors, and the market as a whole.

In its judgment of 16 April 2026 in Brännelius (C-229/24), the Court of Justice of the European Union (“CJEU”) appears to conclude that inside information can only become public when the issuer (or a third party authorised by the issuer) formally discloses it. If applied broadly, this would mark a shift from current market practice in the European Union and could limit investors’ ability to trade on information that has been made available by someone other than the issuer. With that in mind, we set out our assessment of the judgment below.

The Case and the CJEU’s Decision

The case arose from a public procurement process in Sweden concerning the supply of electric buses and charging infrastructure. Hybricon Bus Systems AB (“Hybricon”), a publicly traded Swedish company, was one of the unsuccessful tenderers. The result of the procurement process was communicated by email to a limited group consisting of five (5) participating companies and twenty-two (22) additional interested persons. Before Hybricon published its own announcement later that same day, two of its shareholders received the information from a Hybricon employee and sold their Hybricon shares. They were later found guilty of insider dealing by the lower Swedish courts.

The Swedish Supreme Court referred the matter to the CJEU, seeking guidance on whether the email notification from the municipal body, or the fact that the decision was “public” and therefore could be requested under Swedish freedom-of-information rules, was sufficient to render the information “public” under Article 7(1)(a) of MAR before Hybricon’s own press release.

In her Opinion of 10 July 2025, Advocate General Kokott suggested that information should be considered public once it is effectively accessible to a reasonably diligent investor, irrespective of whether formal disclosure by the issuer under Article 17 of MAR has taken place. She nevertheless considered that disclosure to the small procurement group in *Brännelius* was not enough to render such information public and that the persons receiving such information would instead qualify as secondary insiders.

The CJEU, however, took a narrower view. It stressed that for information to be “public” under MAR and Implementing Regulation (EU) 2016/1055, it must be shared in a way that is non-discriminatory, free of charge, and reaches the widest possible audience across the European Union. Based on this, the CJEU pointed to the “key role of the issuer in the public disclosure of inside information” and appears to conclude that inside information only becomes public when it has been disclosed in accordance with Article 17 of MAR, either by the issuer itself or through a third party acting on behalf of the issuer, as long as the disclosure is done properly and lawfully.

Significance of the Ruling

This judgment is the first time the CJEU has clearly ruled that inside information can only lose its “inside” status if it is disclosed through the formal process set out in Article 17 of MAR. At first glance, the CJEU appears to reject the argument, which Advocate General Kokott and some legal scholars had supported, that informal or partial sharing of information is enough to strip it of its inside information character.

The judgment provides guidance on a question that had been unresolved: the difference between information that is merely accessible and information that is truly public under MAR. That said, in our view, the ruling should not be read as saying that inside information can only become public through a formal announcement by the issuer itself. Such a practice would be detrimental to the efficiency of European capital markets, which the EU legislature is already working to improve (e.g., through the EU Listing Act), as it would, among other things, to a greater degree subject investors to a MAR assessment when trading on information that comes from sources other than the company.

Instead, the judgment should, in our view, be understood in light of the specific facts before the CJEU, namely a restricted procurement notification concerning a very recent event, sent to a small group and information that could only be obtained by making a request under Swedish freedom-of-information rules. Both of these clearly fell short of the broad, non-discriminatory, and simultaneous sharing of information that MAR requires. Such was also seconded by Advocate General Kokott.

What supports this reading is that the CJEU leaves the door open for information disclosed by “third parties qualified on account of their relationship with the issuer and by media in which the public has reasonable confidence” to meet MAR’s requirements for non-discriminatory, wide, and free-of-charge sharing of information. For example, this could cover situations where a newspaper reports a leaked transaction involving the issuer, a major customer of the issuer entering into insolvency proceedings, or the ripple effects from a foreign government’s decision to conduct military operations affecting a key source of natural resources. This broader view would be more consistent with how markets generally operate in practice.

Practical Takeaways

The main takeaway of the Brännelius-judgment is that information shared with a very small group, or information regarding a very recent event that can only be obtained by making a request under national freedom-of-information rules, but not publicly disseminated, is not enough to make that information “public” under MAR.

However, further clarity is needed, particularly from a market efficiency and practical standpoint, on whether the CJEU meant to limit the role of the discloser strictly to the issuer or a third party authorised by the issuer.

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