

Criminal sanctions for market abuse (market abuse directive)

2011/0297(COD) - 20/10/2011 - Legislative proposal

PURPOSE: to lay down minimum rules on criminal sanctions for insider dealing and market manipulation.

PROPOSED ACT: Directive of the European Parliament and the Council.

BACKGROUND: adopted in early 2003, the Market Abuse Directive (MAD) 2003/6/EC introduced a comprehensive framework to tackle insider dealing and market manipulation practices, jointly referred to as "market abuse". However, experience has shown that the objective of the Directive, to increase investor confidence and market integrity, has not been achieved.

The report by the High-Level Group on Financial Supervision in the EU recommended that a sound prudential and conduct of business framework for the financial sector must rest on strong supervisory and sanctioning regimes. To this end, the Group considers that supervisory authorities must be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent sanctions regimes against all financial crimes, sanctions which should be enforced effectively. However, the High-Level Group considers that none of these is currently in place" and Member States sanctioning **regimes are regarded as in general weak and heterogeneous.**

The Commission has published a [Communication with regard to sanction regimes in the financial sector](#). It concluded that the Commission will assess whether the introduction of criminal sanctions, and the establishment of minimum rules on the definition of criminal offences and sanctions may prove to be essential in order to ensure the effective implementation of EU financial services legislation

Following the approach set out in the [Communication of 20 September 2011 "Towards an EU criminal policy"](#) the Commission considers that minimum rules on criminal offences and on criminal sanctions for market abuse, which would be transposed into national criminal law and applied by the criminal justice systems of the Member States, can contribute to ensuring the effectiveness of this Union policy.

IMPACT ASSESSMENT: the Commission conducted an impact assessment of policy alternatives. Policy options related to criminal sanctions were considered as part of this preparatory work. One of the problems identified in the impact assessment is the fact that the sanctions currently in place to fight market abuse offences are lacking impact and are insufficiently dissuasive, which results in ineffective enforcement of the Directive. In addition, the definition of which insider dealing or market manipulation offences constitute criminal offences diverges considerably from Member State to Member State. For example, five Member States do not provide for criminal sanctions for disclosure of inside information by primary insiders and eight Member States do not do so for secondary insiders.

Since market abuse can be carried out across borders, this divergence undermines the internal market and leaves a certain scope for perpetrators of market abuse to carry such abuse in jurisdictions which do not provide for criminal sanctions for a particular offence. The impact assessment concluded that requiring Member States to **introduce criminal sanctions for the most serious market abuse offences was essential** to ensure the effective implementation of the Union policy on market abuse.

LEGAL BASIS: Article 83 (2) of the TFEU.

CONTENT: proposals to strengthen and ensure the coherence of administrative sanctions are included in the proposal for a [Regulation of the European Parliament and the Council on insider dealing and market manipulation](#) that also intends to remedy other major problems in the existing system.

This proposal lays down a requirement for Member States to provide for minimum rules on the definition of the most serious market abuse offences and on minimum levels of criminal sanctions attached to them. The main points are as follows:

- **Criminal offences:** two forms of market abuse conduct, namely insider dealing and market manipulation, should be regarded as criminal offences if committed intentionally. The attempt to commit insider dealing and market manipulation should also be punishable as a criminal offence. The offence relating to inside information should apply to persons who possess inside information of which they know that it is inside information. The offence relating to market manipulation is applicable to anybody.
- **Inciting, aiding and abetting and attempt:** the proposal provides that inciting as well as aiding and abetting the defined criminal offences are also punishable in Member States. The attempt to commit one of the offences defined in the Directive is also covered, with the exception of improper disclosure of inside information and dissemination of information which gives false or misleading signals, as it does not seem appropriate to define attempts to commit these offences as criminal offences.
- **Criminal sanctions:** the proposal requires Member States to take the necessary measures to ensure that the criminal offences identified in the text are subject to criminal sanctions. These sanctions should be effective, proportionate and dissuasive.
- **Liability of legal persons:** the proposal requires Member States to ensure that legal persons can be held liable for the criminal offences defined in the directive.

BUDGETARY IMPLICATIONS: the proposal has no implications for the Union budget.