Criminal sanctions for market abuse (market abuse directive)

2011/0297(COD) - 19/10/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Arlene McCARTHY (S&D, UK) on the proposal for a directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation.

The committee recommends that the position of the European Parliament in first reading following the ordinary legislative procedure should amend the commission proposal as follows:

Subject matter and scope: Members consider that the Directive should **ensure the integrity of financial markets** in the Union and **enhance investor protection** and confidence in those markets. It should also apply to interest rates, currencies, benchmarks, inter bank offer rates, indexes and types of financial instruments, including any derivative contracts or derivative instruments, which derive their value from the value of interest rates, currencies or indexes.

Insider dealing and market manipulation: since many financial instruments are priced by reference to benchmarks, it necessary to complement the general prohibition of insider dealing and market manipulation by **prohibiting the manipulation of the benchmark itself** and any transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark, including the benchmark's methodology. The mere transmission of false or misleading information relating to an interbank offer rate or other benchmark should be covered by the definition of market manipulation.

Criminal sanctions: Members consider that the imposition of criminal sanctions for the most serious market abuses will have an increased deterrent effect on potential offenders.

To ensure that sanctions have a dissuasive effect on the public at large, they shall, where appropriate, be published, **without undue delay**, including at least information on the type and nature of the crime and the identity of persons responsible for it, unless such publication would seriously jeopardise the stability of financial markets. Where publication would cause disproportionate damage to the parties involved, competent authorities shall publish the measures and sanctions on an anonymous basis.

The criminal offences referred to in the directive should be punishable by **a maximum term of imprisonment of between two and five years,** depending on the offence committed.

In assessing the **proportionality of sanctions**, Member States shall take into account the profits made or losses avoided by the persons held liable as well as the damage resulting from the offence to other persons and, where applicable, the damage to the functioning of markets or the wider economy.

Disclosure of information in the media: Members consider that where information is disclosed or disseminated for the purpose of journalism, such disclosure or dissemination of information should be assessed taking into account the rules governing **the freedom of expression, the freedom and pluralism of the media** and the rules or codes governing the journalist profession.

Jurisdiction: in order to ensure effective prosecution of cross-border cases, Member States should take the necessary measures to **establish their jurisdiction over offences**, where the offence has been committed in whole or in part within their territory or for the benefit of a natural or legal person residing or established in the territory of a Member State.

Member States should also take the necessary measures to ensure that law enforcement and judicial authorities or other services responsible for investigating offences have **sufficient resources** and are appropriately trained.