

Criminal sanctions for market abuse (market abuse directive)

2011/0297(COD) - 04/02/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 618 votes to 20, with 43 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation.

Parliament adopted its position at first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of an agreement reached between the European Parliament and the Council. They amended the proposal as follows:

Criminal offences: in order to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets, Member States should take the necessary measures to ensure that **insider dealing, recommending or inducing another person to engage in insider dealing constitute criminal offences** at least in serious cases and when committed intentionally.

Criminal penalties for natural persons: Member States should take the necessary measures to ensure that the following offences are punishable by a **maximum term of imprisonment of at least four years**:

(1) Insider dealing, recommending or inducing another person to engage in insider dealing:

- Insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for his own account or the account of a third party, either directly or indirectly, financial instruments to which that information relates.
- The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered as insider dealing.

(2) Market manipulation: market manipulation shall comprise the following activities:

- entering into a transaction, placing an order to trade or any other behaviour which: (i) gives false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract; or (ii) secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level;
- adopting any other behaviour which manipulates the calculation of a benchmark such as EURIBOR and LIBOR benchmarks for interbank lending rates by a number of banks.

Member States should take the necessary measures to ensure that the **offences relating to the unlawful disclosure of inside information** are **punishable by a maximum term of imprisonment of at least two years**.

Sanctions for legal persons: Member States should take the necessary measures to ensure that a legal person held liable pursuant to the Directive is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

- exclusion from entitlement to public benefits or aid;
- temporary or permanent disqualification from the practice of commercial activities;
- placing under judicial supervision;

- judicial winding-up;
- temporary or permanent closure of establishments which have been used for committing the offence.

Jurisdiction: Member States should take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 (insider dealing) and 5 (inciting, aiding and abetting, and attempt) where the offence has been committed: (a) in whole or in part within their territory; or (b) by one of their nationals, at least in cases where the act is an offence where it was committed.

Training: Member States should request those responsible for the training of judges, prosecutors, police, judicial and those competent authorities' staff involved in criminal proceedings and investigations to provide appropriate training with respect to the objectives of this Directive.

This Directive should be applied taking into account the legal framework established by the [Regulation on insider dealing and market manipulation](#) (market abuse) [MAR] and its implementing measures.