

# Criminal sanctions for market abuse (market abuse directive)

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The Commission presents its report from the Commission on the implementation of Directive 2014/57/EU on criminal sanctions for market abuse (market abuse directive).

As a reminder, the Directive was introduced with a view to reinforcing the integrity of financial markets and to enhancing investor protection and trust in those markets. It provides added value by buttressing these goals through criminal law and by ensuring the effective implementation of Regulation (EU) No 596 /2014 on market abuse (market abuse regulation) for at least serious cases of market abuse offences.

The report focuses on the measures Member States have taken to transpose the Directive into their national law. The Commission started to assess the compliance of national measures with the Directive as soon as Member States communicated them.

## *General overview of the assessment*

A detailed assessment of notified transposition measures confirmed that a majority of Member States has transposed the Directive completely and correctly in all its aspects. The report stated that findings of non-conformity often concerned relatively minor issues. For instance, no transposition issues were found with regard to the provisions on inciting, aiding and abetting, and attempt (Article 6); on sanctions for legal persons (Article 9); on jurisdiction (Article 10); and on training (Article 11). The transposition of criminal penalties for natural persons (Article 7) and liability of legal persons (Article 8) only gave rise to concerns in two Member States, respectively.

A large majority of Member States has correctly transposed the criminalisation of the market abuse offences, i.e. insider dealing (Article 3), unlawful disclosure of inside information (Article 4) and market manipulation (Article 5).

## *Main findings*

At the time of drafting this report, all participating Member States had notified complete transposition of the Directive. The assessment shows that the application of the Directive could still be improved: while most of the Directive's provisions have each been transposed by a large majority of the Member States, in total 11 Member States had transposition issues with one or several provisions.

The report stated that:

- in a number of Member States, Article 1 (subject matter and scope) has not been transposed correctly and comprehensively;
- in one Member State, definitions (Article 2) were missing or incomplete;
- insider dealing and recommending that another person engage in insider dealing (Article 3) have not been fully criminalised in three Member States;
- one Member State has not comprehensively criminalised unlawful disclosure of inside information (Article 4);

- the transposition of Article 5 (market manipulation) was often incomplete as some of its elements were not covered in the national legislation.

With respect to Article 1(4), which extends the scope of Article 5, a number of Member States did not specifically include all required elements. With the exception of Article 5 (market manipulation), a large majority of the Member States has correctly transposed the provisions of the Directive on criminalisation of market abuse offences, on criminal penalties and the liability of legal persons. For some articles, like the provisions on jurisdiction, no transposition issues were found at all.

With regard to market manipulation, it was usually the element of manipulation through ‘any other behaviour’ and/or ‘relating to spot commodity contracts’ that was not covered in the national legislation.

### ***Infringement procedures***

The report noted that infringement procedures for non-conformity were launched in 14 cases. During informal contacts with Member States, a number of transposition issues could be resolved in cooperation with the Member State concerned, and the relating infringement procedures for non-conformity were closed in five cases. Infringement procedures are on-going in nine cases. In six of these, a letter of formal notice was issued.

Lastly, the Commission will continue to assess Member States' compliance with the Directive and will take every appropriate measure to ensure conformity with its provisions throughout the European Union.