Basic information

2011/0297(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Criminal sanctions for market abuse (market abuse directive) **Subject** 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.10 Financial supervision 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	MCCARTHY Arlene (S&D)	21/09/2010
	Shadow rapporteur PIETIKÄINEN Sirpa (PPE) KLINZ Wolf (ALDE) BESSET Jean-Paul (Verts /ALE) SWINBURNE Kay (ECR) MATIAS Marisa (GUE /NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	THEIN Alexandra (ALDE)	21/11/2011
LIBE Civil Liberties, Justice and Home Affairs (Associated committee)	BOZKURT Emine (S&D)	20/03/2012

Council of the European Union

Council configuration	Meetings	Date
Foreign Affairs	3309	2014-04-14
Justice and Home Affairs (JHA)	3162	2012-04-26
Justice and Home Affairs (JHA)	3195	2012-10-25

European Commission

Commission DG	Commissioner

	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

Key events

Date	Event	Reference	Summary
20/10/2011	Legislative proposal published	COM(2011)0654	Summary
15/11/2011	Committee referral announced in Parliament, 1st reading		
26/04/2012	Debate in Council		Summary
24/05/2012	Referral to associated committees announced in Parliament		
09/10/2012	Vote in committee, 1st reading		
19/10/2012	Committee report tabled for plenary, 1st reading	A7-0344/2012	Summary
25/10/2012	Debate in Council		
04/02/2014	Decision by Parliament, 1st reading	T7-0057/2014	Summary
04/02/2014	Results of vote in Parliament		
04/02/2014	Debate in Parliament		
14/04/2014	Act adopted by Council after Parliament's 1st reading		
16/04/2014	Final act signed		
16/04/2014	End of procedure in Parliament		
12/06/2014	Final act published in Official Journal		

Technical information

Procedure reference	2011/0297(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the European Union TFEU 083-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/07609

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE485.917	26/03/2012	

Committee opinion	JURI	PE486.199	20/06/2012	
Committee opinion	LIBE	PE487.968	13/07/2012	
Amendments tabled in committee		PE489.420	13/07/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0344/2012	19/10/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0057/2014	04/02/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00008/2014/LEX	16/04/2014	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2011)0654	20/10/2011	Summary
Document attached to the procedure	SEC(2011)1217	20/10/2011	
Document attached to the procedure	SEC(2011)1218	20/10/2011	
Supplementary legislative basic document	COM(2012)0420	25/07/2012	Summary
Commission response to text adopted in plenary	SP(2014)446	20/05/2014	
Follow-up document	COM(2020)0099	13/03/2020	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	BE_CHAMBER	COM(2011)0654	23/01/2012	
Contribution	PT_PARLIAMENT	COM(2011)0654	23/01/2012	
Contribution	DE_BUNDESTAG	COM(2011)0654	08/06/2012	
Contribution	IT_SENATE	COM(2011)0654	26/07/2012	
Contribution	IT_CHAMBER	COM(2011)0654	06/08/2012	
Contribution	PT_PARLIAMENT	COM(2012)0420	25/02/2013	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
	Document attached to the	N7-0076/2012		

EDPS	procedure	OJ C 177 20.06.2012, p. 0001	10/02/2012	Summary
ECB	European Central Bank: opinion, guideline, report	CON/2012/0021 OJ C 161 07.06.2012, p. 0003	22/03/2012	Summary

Additional information		
Source	**Document**	**Date**
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act	
Directive 2014/0057 OJ L 173 12.06.2014, p. 0179	Summary

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 policythe 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 manipulationthat 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.

Criminal sanctions for market abuse (market abuse directive)

2011/0297(COD) - 26/04/2012

The Council reached a **partial general approach** on a directive on criminal sanctions for insider dealing and market manipulation ("market abuse directive").

The partial general approach serves as a base for future discussion on the draft directive. It concerns in particular provisions on "**inciting, aiding and abetting, and attempt**" (Art. 5), "**criminal sanctions**" (Art. 6), "**liability of legal persons**" (Art. 7), "**sanctions for legal persons**" (Art. 8) and the **report on the application of the directive** (Art. 9).

During the discussions, some delegations expressed the necessity that the directive should also approximate the types and levels of penalties, while some other delegations opposed to this view. The proposed compromise establishes that by four years after the entry into force of the directive, the European Commission shall report on the application of the directive and, if necessary, on the need to review it, including with regard to the appropriateness of introducing common minimum rules on types and levels of criminal sanctions.

Since many elements in the draft directive depend directly or indirectly from the content of other instruments (in particular the regulation on insider dealing and market manipulation - "MAR"), the Council will await the result of the discussions in the preparatory bodies to properly address the remaining parts (Articles 1 to 4). It has to be noted that the partial general approach does not prejudice further discussions on such remaining parts and may in the future need further elaboration if necessary, before enter into negotiations with the European Parliament, co-legislator in this matter.

Criminal sanctions for market abuse (market abuse directive)

2011/0297(COD) - 22/03/2012

OPINION OF THE EUROPEAN CENTRAL BANK

The ECB's opinion is given in response to requests from the Council of the European Union for opinions on the following :

- a proposal for a directive on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council;
- a proposal for a regulation on markets in financial instruments and amending Regulation (EMIR) on OTC derivatives, central counterparties and trade repositories;
- this **proposal for a directive** on criminal sanctions for insider dealing and market manipulation (MAD Regulation); and
- a proposal for a regulation on insider dealing and market manipulation (market abuse) (MAR Regulation).

The ECB supports the proposed measures to improve the regulation of markets in financial instruments as an important step towards strengthening the protection of investors and creating a sounder and safer financial system in the European Union. It makes the following general observations:

Single European rulebook in the financial sector and ECB's advisory role: the ECB strongly supports the development of a single European rulebook for all financial institutions. It recommends ensuring that only framework principles reflecting basic political choices and substantive matters remain subject to the ordinary legislative procedure and that technical rules should be adopted as delegated or implementing acts as appropriate through the prior development of draft regulatory or draft implementing

standards by the European Supervisory Authorities (ESAs).

The ECB expects to be consulted as appropriate in due time on these proposed Union acts. Additionally, it recommends ensuring cross-sectoral consistency of Union financial services legislation.

Powers of competent authorities, role of ESMA and of macro-prudential authorities: the ECB welcomes that the proposed framework strengthens and aligns the powers of the authorities supervising investment firms and markets in financial instruments as well as the exercise of their investigatory powers, putting special emphasis on cross-border cooperation.

It supports the strong role of the European Securities and Market Authority (ESMA) in the proposed framework and notably with regard to the facilitation and coordination function and the development of technical standards. It recoomends:

- further improvements in the cooperation and exchange of information within the European System of Financial Supervision and between supervisory authorities and ESCB central banks, including the ECB, when this information is relevant for the performance of their respective tasks;
- setting up and enhancing adequate cooperation procedures with macro-prudential authorities where threats to the stability of financial system have to be assessed. This might imply cooperation between competent authorities and the national macro-prudential authorities or, in other instances, cooperation by ESMA with the European Systemic Risk Board (ESRB).

Moreover, to ensure transparency and consistency of the administrative sanctions adopted within the Union, Member States should notify the Commission and ESMA of the applicable national rules and any subsequent amendments to them.

Review of Directive 2003/6/EC (market abuse)

- General provisions: the ECB supports the Commission's proposal to expand the scope of the market abuse framework.

The prohibitions and requirements in the proposed MAR will also apply to actions carried out outside the Union, to hinder circumvention by moving activities outside the Union. For the effective control and sanctioning of such actions, the ECB considers cooperation agreements with third countries essential. In this respect, the ECB welcomes that the proposed MAR addresses this and also provides for ESMA to coordinate and facilitate this process through templates. Against this background, the ECB recommends extending the exclusion regime to monetary and public debt management activities in some cases also beyond the Union.

The ECB welcomes that the proposed MAR illustrates specific cases of market manipulation, referring to new trading techniques such as **algorithmic trading** including high-frequency trading. As mentioned above, although algorithmic trading practices may have legitimate purposes, they may also present a considerable risk, as they may disturb the normal functioning of the market and increase volatility, which would not serve the public interest. The ECB therefore welcomes strict monitoring of such trading techniques to protect the orderly functioning of the market and the public interest.

The proposed MAR implicitly identifies trading at the close of the market as market manipulation or an attempt to engage in market manipulation. The ECB would recommend a more detailed analysis or improvement of this definition of market manipulation.

- Definition of inside information: the ECB welcomes the scope of the definition of inside information. However, the reference to the commodity suggests that the spot market of a given commodity can be used to manipulate the derivatives market for the same commodity or other commodities and vice versa. A clearer definition should be provided, since, as the proposed MAR implicitly assumes, the spot and derivatives markets are interconnected both across commodities and borders and as such it is difficult to understand what type of spot trading will be able to affect only the spot market.

- Disclosure of inside information of systemic importance: the proposed MAR requires an issuer of financial instruments to inform the public as soon as possible of inside information which directly concerns the issuer. Moreover, the proposed MAR provides, as a new element of the disclosure regime, that a competent authority may ex ante permit the delay of the public disclosure by the issuer where: (i) the information is of systemic importance; (ii) it is in the public interest to delay its publication; and (iii) the confidentiality of information may be ensured.

The ECB supports further enhancement of the legal framework for delayed disclosure under the proposed MAR. The following comments have been made:

- in the case of financial institutions, the assessment of whether the information is of systemic importance, and whether a delay of disclosure is in the public interest, should be made in close cooperation with the national central bank and the national supervisory authority, and — if different from the central bank or supervisor — with the macro-prudential authority;
- appropriate and efficient procedures to ensure timely involvement of these authorities should be put in place at national level, underpinned by a set of principles at Union level;
- where justified by systemic importance and public interest, the competent authority should be empowered to order the delay of publication;
- notably information on central bank lending or other liquidity facilities provided to a particular credit institution, including emergency liquidity assistance, may need to be kept confidential to contribute to the stability of the financial system as a whole and maintain public confidence in a crisis.

- Criminal sanctions for insider dealing and market manipulation: the ECB welcomes the proposed MAD provisions defining minimum rules for criminal sanctions for the most serious market abuse offences. These rules are essential to ensure the effectiveness and success of the legislative framework and thereby the effective implementation of Union policy on fighting market abuse. Moreover, equal, strong and deterrent sanctions regimes against financial crimes and their consistent and effective enforcement are crucial components of the rule of law, as conducive to safeguarding financial stability.

Criminal sanctions for market abuse (market abuse directive)

2011/0297(COD) - 10/02/2012

Opinion of the European Data Protection Supervisor (EDPS) on the Commission proposals for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation, and for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation.

The proposed Regulation and Directive were sent by the Commission to the EDPS for consultation and received on 31 October 2011. On 6 December 2011, the Council of the European Union consulted the EDPS on the proposals.

The EDPS notes that several of the measures planned in the proposals to achieve the increasing of market integrity and investor protection impact upon the rights of individuals relating to the processing of their personal data. While the proposed Regulation contains several provisions that may affect the individual's right to protect their personal data, the proposed Directive does not as such involve processing of personal data.

This opinion is based on the proposed Regulation and notably on the following issues :

1. Applicability of data protection legislation : the EDPS very much welcomes this overarching provision and appreciates in general the attention specifically paid to the data protection legislation in the proposed Regulation. However, the EDPS suggests that the provision should be rephrased emphasising the applicability of existing data protection legislation. Moreover, the reference to Directive 95/46/EC should be clarified by specifying that the provisions will apply in accordance with the national rules which implement Directive 95/46/EC.

2. Insider lists : the proposed Regulation contains the obligation for issuers of a financial instrument or emission allowances market participants to draw up a list of all persons working for them, under a contract of employment or otherwise, who have access to inside information.

The EDPS acknowledges the necessity of such list as an important tool for competent authorities when investigating possible insider dealing or market abuse. However, as far as these lists will involve the processing of personal data, main data protection rules and guarantees should be laid down in the basic law. Therefore the EDPS recommends making an **explicit reference to the purpose of such list** in a substantive provision of the proposed Regulation. the EDPS recommends: (i) including the main elements of the list (in any event the reasons for persons to be included) in the proposed Regulation itself; (ii) including a reference to the need to consult the EDPS in so far as the delegated acts concern the processing of personal data.

3. Powers of the competent authorities : two powers in particular need particular attention due to their interference with the rights of privacy and data protection: the power to enter private premises in order to seize documents in any form and the power to require existing telephone and data traffic records. The EDPS recommends :

- the **power to enter private premises** in order to seize documents in any form is highly intrusive and interferes with the right of privacy. It should therefore be subjected to strict conditions and surrounded with adequate safeguards;
- the **power to require existing telephone and existing data traffic records,** by formal decision specifying the legal basis and the purpose of the request and what information is required, the time-limit within which the information is to be provided as well as the right of the addressee to have the decision reviewed by the Court of Justice;
- **specifying the categories of telephone and data traffic records** which competent authorities can require. Such data must be adequate, relevant, and not excessive in relation to the purpose for which they are accessed and processed;
- limit Article 17.2 (f) to **data normally processed ('held') by telecommunications operators in the framework of E-Privacy Directive 2002/58/EC.**

4. Systems in place to detect and report suspicious transactions : the proposed Regulation foresees that any person who operates the business of a trading venue shall adopt and maintain effective arrangements and procedures aimed at preventing and detecting market abuse.

As far as these systems will most probably involve personal data (e.g. monitoring of transactions made by persons referred to on insider's list), the EDPS would underline that these standards should be developed according to the principle of 'privacy by design', i.e. the integration of data protection and privacy from the very inception of new products, services and procedures that entail the processing of personal data. In addition, the EDPS recommends including a reference to the need to consult the EDPS in so far as these regulatory standards concern the processing of personal data.

5. Exchange of information with third states : the EPDS notes the reference to Directive 95/46/EC, particularly to Articles 25 or 26 and the specific safeguards mentioned in Article 23 of the proposed Regulation concerning the disclosure of personal data to third countries.

6. Publication of sanctions : the proposed Regulation obliges Member States to ensure that the competent authorities publish every administrative measure and sanction imposed for breaches of the proposed Regulation without undue delay, including at least information on the type and nature of the breach and the identity of persons responsible for it, unless such disclosure would seriously jeopardise the stability of financial markets. The EDPS is not convinced that the mandatory publication of sanctions, as it is currently formulated, meets the requirements of data protection law as clarified by the Court of Justice in the the Schecke judgment. He takes the view that the purpose, necessity and proportionality of the measure are not sufficiently established and that, in any event, adequate safeguards should be provided for against the risks for the rights of the individuals should have been foreseen.

7. Reporting of breaches : Article 29 of the proposed Regulation requires Member States to put in place effective mechanisms for reporting breaches, also known as whistle-blowing schemes. While they may serve as an effective compliance tool, these systems raise significant issues from a data protection perspective.

The EDPS highlights the **need to introduce a specific reference to the need to respect the confidentiality of whistleblowers' and informants' identity**. The EDPS recommends to add in letter b of Article 29.1 the following provision: 'the identity of these persons should be guaranteed at all stages of the procedure, unless its disclosure is required by national law in the context of further investigation or subsequent judicial proceedings. The EDPS is

pleased to see that Article 29.1 (c) requires Member States to ensure the protection of personal data of both accused and the accusing person, in compliance with the principles laid down in Directive 95/46/EC. He suggests however removing 'the principles laid down in', to make the reference to the Directive more comprehensive and binding.

Criminal sanctions for market abuse (market abuse directive)

2011/0297(COD) - 25/07/2012 - Supplementary legislative basic document

The Commission presents an amended proposal for a directive on criminal sanctions for insider dealing and market manipulation.

On 20 October 2011, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) *(please see the summary of the same date)*.

Since March 2011, investigations have been taking place in relation to possible manipulation of the **EURIBOR and LIBOR benchmarks for interbank lending rates** by a number of banks. It is suspected that these banks had provided estimates of the interest rate at which they would accept offers of funding which were different from the rate they would have accepted in practice.

As a result, the level of EURIBOR and LIBOR rates –which are used as a benchmark for borrowing and as a reference for the pricing of many financial instruments, such as interest rate swaps – may have been altered and the integrity of LIBOR and EURIBOR called into question.

The Commission has assessed whether the possible manipulation of benchmarks including LIBOR and EURIBOR would be captured by its proposals for a directive on criminal sanctions for insider dealing and market manipulation and the related proposal for a regulation on insider dealing and market manipulation presented in October 2011. The **European Parliament** has also emphasised the importance of this matter.

Given that **benchmarks are not currently covered by either proposal**, the Commission has concluded that direct manipulation of benchmarks does not fall within the scope of either proposal.

Since any actual or attempted manipulation of important benchmarks can have a serious impact on market confidence and could result in significant losses for investors and distortions of the real economy, it is essential to clarify that competent authorities should be able to impose administrative sanctions as regards the offence of market manipulation in these cases, without the need to prove or demonstrate incidental issues such as price effects.

Therefore, **in order to cover the manipulation of benchmarks and in order to ensure that intentional manipulation of benchmarks is a criminal offence, the Commission proposes to amend its proposal for a Directive.**

Criminal sanctions for market abuse (market abuse directive)

2011/0297(COD) - 16/04/2014 - Final act

PURPOSE: to ensure the availability of criminal sanctions for at least serious market abuse across the Union.

LEGISLATIVE ACT: Directive 2014/57/EU of the European Parliament and of the Council on criminal sanctions for market abuse (market abuse directive).

CONTENT: This Directive establishes **minimum rules for criminal sanctions** for insider dealing, for unlawful disclosure of inside information and for market manipulation to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets. The Directive should be applied in the context of the legal framework established by the Regulation on the operations initiated and market abuse (market abuse regulation - MAR) and its implementing measures.

Specifically, the new Directive on market abuse should oblige Member States to provide in their national law for **criminal penalties** in respect of insider dealing, market manipulation and unlawful disclosure of inside information when these offences are committed intentionally.

Criminal penalties for natural persons: in order for the sanctions for the offences to be effective and dissuasive, the Directive sets a **minimum level for the maximum term of imprisonment**.

Would be punishable by a maximum term of imprisonment of **at least four years**:

- offences linked to **insider dealing** and recommending that another person engage in insider dealing, or inducing another person;
- offences linked to **market manipulations** (such as for example, offences linked to transmitting false or misleading information or providing false or misleading inputs or any other behaviour which manipulates the calculation of a benchmark, such as LIBOR).

Offences linked to unlawful disclosure of inside information would be punishable by a maximum term of imprisonment of **at least two years**.

Liability of legal persons: the Directive requires Member States to take the necessary measures to ensure that legal persons can be held liable for the offences referred to in the Directive committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person.

A legal person held liable 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.

Training: Member States shall 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.

Report: by 4 July 2018, the Commission shall report on the functioning of this Directive and, if necessary, on the need to amend it, including with regard to the interpretation of serious cases and the level of sanctions provided by Member States.

ENTRY INTO FORCE: 02.07.2014.

TRANSPOSITION : no later than 03.07.2016.

Criminal sanctions for market abuse (market abuse directive)

2011/0297(COD) - 13/03/2020 - Follow-up document

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.

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.

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.