



EUROPEAN PARLIAMENT

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*Plenary sitting*

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**A7-0344/2012**

19.10.2012

**\*\*\*I**  
**REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on criminal sanctions for insider dealing and market manipulation  
(COM(2011)0654 – C7-0358/2011 – 2011/0297(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Arlene McCarthy

### *Symbols for procedures*

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### *Amendments to a draft act*

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS (*).....	19
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS .....	32
PROCEDURE .....	41

(\*) Associated committee – Rule 50 of the Rules of Procedure



## DRAFT EUROPEAN PARLIAMENT 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 (COM(2011)0654 – C7-0358/2011 – 2011/0297(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0654), and the amended proposal (COM(2012)0420),
  - having regard to Article 294(2) and Article 83(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0358/2011),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the German Bundesrat, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Central Bank of 22 March 2012<sup>1</sup>,
  - having regard to the opinion of the European Economic and Social Committee of 28 March 2012<sup>2</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Legal Affairs (A7-0344/2012),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 161, 7.6.2012, p. 3.

<sup>2</sup> OJ C 181, 21.6.2012, p. 64.

AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on criminal sanctions for insider dealing and market manipulation**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank of 22 March 2012<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

Whereas:

- (1) An integrated and efficient financial market ***and stronger investor confidence*** requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.
- (2) Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)<sup>13</sup> ***completed and updated the Union's legal framework to protect market integrity. It also*** required Member States to ensure that competent authorities have the powers to detect and investigate market abuse. Without prejudice to the right of Member States to impose criminal sanctions, Directive 2003/6/EC also required Member States to ensure that the

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ■.

<sup>1</sup> OJ C 161, 7.6.2012, p. 3.

<sup>2</sup> OJ C 318, 29.10.2011, p. 163.

<sup>3</sup> Position of the European Parliament of ...

appropriate administrative measures can be taken or administrative sanctions can be imposed against the persons responsible for violations of the national rules implementing that Directive.

- (3) The report by the High-Level Group on Financial Supervision in the EU (the High-Level Group) recommended that a sound prudential and conduct of business framework for the financial sector must rest on strong supervisory and sanctioning regimes. To that end, the High-Level Group considered that supervisory authorities must be equipped with sufficient powers to act and that there should also be equal, strong and deterrent sanctions regimes against all financial crimes, sanctions which should be enforced effectively, *in order to preserve market integrity*. The Group concluded that Member States sanctioning regimes are in general weak and heterogeneous.
- (4) A well-functioning legislative framework on market abuse requires effective enforcement. An evaluation of the national regimes for administrative sanctions under Directive 2003/6/EC showed that not all national competent authorities had a full set of powers at their disposal to ensure that they could respond to market abuses with the appropriate sanction. In particular, not all Member States had pecuniary administrative sanctions available for insider dealing and market manipulation, and the level of sanctions varied widely among Member States. *A new legislative act is also needed to ensure uniform rules and clarity of key concepts and to ensure a single rulebook in line with the conclusions of the High-Level Group.*
- (5) The adoption of administrative sanctions by the Member States has *so far* proven to be insufficient to ensure compliance with the rules on preventing and fighting market abuse.
- (6) It is essential that compliance be strengthened by the availability of criminal sanctions which demonstrate social disapproval of a qualitatively different nature compared to administrative penalties. Establishing criminal offences for the most serious forms of market abuse sets clear boundaries in law that such behaviours are regarded as unacceptable and sends a message to the public and potential offenders that these are taken very seriously by competent authorities.
- (6a) *Many financial instruments are priced by reference to benchmarks. The actual or attempted manipulation of benchmarks, such as interbank offer rates, can have a serious impact on market confidence and may result in significant losses to investors and distort the real economy. Therefore, specific provisions in relation to benchmarks are required in order to preserve the integrity of the markets. It is 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. Furthermore, competent authorities should not be required to demonstrate the direct link between the misconduct of one or more individuals and the end effect on one or more financial instruments; it should be sufficient that there is a relationship, even if indirect, between the abusive*

***behaviour and a financial instrument. For example, 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.***

- (7) Not all Member States have provided for criminal sanctions for some forms of serious breaches of national legislation implementing Directive 2003/6/EC. These different approaches undermine the uniformity of conditions of operation in the internal market and may provide an incentive for persons to carry out market abuse in Member States which do not provide for criminal sanctions in relation to those offences. In addition, there is no Union-wide understanding on which conduct is considered to be such a serious breach. Therefore, minimum rules concerning the definition of criminal offences committed by natural and legal persons and of sanctions should be set. Common minimum rules would make it also possible to use more effective methods of investigation and effective cooperation within and between Member States. ***In light of the aftermath of the financial crisis, it is evident that market manipulation has a potential for widespread damage on the lives of millions of people. The absence of common criminal sanction regimes across the Union creates opportunities for perpetrators of market abuse to take advantage of lighter regimes in some Member States. This leads to lack of citizen's trust in the rule of law and the legitimacy of institutions. The imposition of criminal sanctions for the most serious market abuses will have an increased deterrent effect on potential offenders.***
- (8) The introduction of criminal sanctions for the most serious market abuses by all Member States is therefore essential to ensure the effective implementation of Union policy on fighting market abuse, in line with the requirements described in the Commission Communication of 20 September 2011 entitled, "Towards an EU criminal policy – Ensuring the effective implementation of EU policies through criminal law".
- (9) In order for the scope of this Directive to be aligned with that of Regulation (EU) No.../... [MAR], trading in own shares ***and other financial instruments*** for stabilisation and buy-back programmes, as well as transactions, orders or behaviours carried out for the purposes of monetary and public debt management activities and activities concerning emission allowances in pursuit of the Union's climate policy, should be exempt from this Directive.
- (9a) ***It is possible for the use of inside information to lead to the acquisition and disposal of financial instruments. Since the acquisition or disposal of financial instruments necessarily involves a prior decision, the carrying out of such acquisition or disposal should not be deemed, in itself, to constitute insider dealing.***
- (9b) ***Having access to inside information relating to another company and using it in the context of a public takeover bid for the purpose of gaining control of that company or proposing a merger with that company should not be deemed, in itself, to constitute insider dealing.***
- (9c) ***Research and estimates developed from publicly available data should not be regarded as inside information and any transaction carried out on the basis of such research or estimates should not therefore be deemed, in itself, to constitute insider***



*dealing.*

- (9d) *The mere fact that market-makers or persons authorised to act as counterparties, with inside information, confine themselves to pursuing their legitimate business of buying or selling financial instruments or that persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not be deemed, in itself, to constitute insider dealing.*
- (10) Member States should subject the offences of insider dealing and market manipulation to criminal sanctions according to this Directive only when they are committed with intent.
- (11) Due to the adverse effects attempted insider dealing and attempted market manipulation have on the integrity of the financial markets and on investor confidence in these markets, these forms of behaviour should also be punishable as a criminal offence.
- (12) This Directive should also require Member States to ensure that inciting as well as aiding and abetting the criminal offences are also punishable. In this context, causing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates should be considered inciting to insider dealing.
- (12a) *In order for the sanctions for the offences referred to in this Directive to be effective and dissuasive, a minimum level for the maximum term of imprisonment should be set in this Directive.*
- (13) This Directive should be applied taking into account the legal framework established by Regulation (EU) No .../2012 [MAR] and its implementing measures.
- (14) In order to ensure effective implementation of the European policy for ensuring the integrity of the financial markets set out in Regulation (EU) No .../2012 [MAR], Member States should also extend liability to legal persons, including, whenever possible, criminal liability.
- (14a) *Member States should take the necessary measures to ensure that law enforcement and judicial authorities or other services responsible for investigating or prosecuting the offences referred to in this Directive have sufficient resources and are appropriately trained. Member States should take the necessary measures to ensure that effective investigative tools are available for law enforcement and judicial authorities or other services responsible for investigating or prosecuting the offences referred to in this Directive.*
- (15) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules for market abuse.
- (16) Any processing of personal data undertaken in the implementation of this Directive should be in compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the

processing of personal data and on the free movement of such data<sup>1</sup>.

- (16a) *Every conviction imposed according to this Directive should be promptly made public and include at least information on the type and nature of the offence, of the sanction and the identity of the convicted natural or legal person, unless such publication would seriously jeopardise ongoing official investigations.*
- (16b) *In the current equity trading landscape, it is very difficult, if not impossible, for competent authorities to detect cross-venue market manipulation. Supervisory experience at national and Union level shows evidence of market abuse cases involving participants in multiple Member States. As markets become more integrated there is an increasing trend towards more cross-border market abuse. Ensuring effective cooperation and data exchange is vital to allow national competent authorities to fulfil their surveillance tasks. Failure to establish cross-border surveillance mechanisms exacerbates the existing gaps and loopholes and aids those who wish to commit cross-border abuses.*
- (17) Since the objective of this Directive, namely to ensure the availability of criminal sanctions for the most serious market abuses across the Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (17a) *In order to ensure effective prosecution of cross-border cases, Member States should take the necessary measures to establish their jurisdiction over an offence under this Directive 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.*
- (18) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the TFEU. Specifically, it should be applied with due respect for the freedom to conduct a business (Article 16), the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and right of defence (Article 48), the principles of legality and proportionality of criminal offences and penalties (Article 49), and the right not to be tried or punished twice for the same offence (Article 50). **Member States should fully respect the *ne bis in idem* principle.**
- (18a) *In implementing this Directive Member States should ensure procedural rights of suspected or accused persons in criminal proceedings and, in particular, should take into consideration the Council Resolution of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings<sup>2</sup>, Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal*

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<sup>1</sup> OJ L 281, 23.11.1995, p. 31.

<sup>2</sup> OJ C 295, 4.12.2009, p. 1.

*proceedings<sup>1</sup>, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings<sup>32</sup> and any other Union legal act in this area.*

- (19) The Commission should assess the implementation of this Directive in the Member States, also with a view to assessing a possible future need for introducing minimum harmonisation of the types and levels of criminal sanctions. ***In particular, the Commission should seek to obtain information on the cross-border nature of many of the transactions constituting an offence according to this Directive, thus respecting the principle of subsidiarity.***
- (20) [In accordance with Articles 1, 2, 3 and 4 of the Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty, the United Kingdom has notified its wish to participate in the adoption and application of this Directive] OR [Without prejudice to Article 4 of the Protocol No 21 on the position of the United Kingdom in respect of the area of freedom, security, and justice, annexed to the Treaty, the United Kingdom will not participate in the adoption of this Directive and is therefore not bound by or be subject to its application.]
- (21) [In accordance with Articles 1, 2, 3 and 4 of the Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty, Ireland has notified its wish to take part in the adoption and application of this Directive] OR [Without prejudice to Article 4 of the Protocol No 21 on the position of Ireland in respect of the area of freedom, security, and justice annexed to the Treaty, Ireland will not take part in the adoption of this Directive and is therefore not bound by it or be subject to its application.
- (22) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to the Treaty, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application.

HAVE ADOPTED THIS DIRECTIVE:

Article 1  
Subject matter and scope

1. This Directive establishes minimum rules for criminal sanctions for the most serious market abuses, namely insider dealing and market manipulation, ***to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.***
2. This Directive does not apply to trading in own shares in buy-back programmes or for the stabilisation of a financial instrument, where such trading is carried out in

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<sup>1</sup> *OJ L 280, 26.10.2010, p. 1.*

<sup>2</sup> *OJ L 142, 1.6.2012, p. 1.*

accordance with Article 3 of Regulation (EU) No.../2012 [MAR], or to transactions **or** orders carried out for the purposes of monetary and public debt management activities and activities concerning emission allowances in pursuit of the Union's climate policy, in accordance with Article 4 of Regulation (EU) No.../2012 [MAR].

3. This Directive shall also apply to behaviour or transactions, including bids, relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and the Council establishing a scheme for greenhouse gas emission allowances trading within the Community<sup>1</sup>. Any provisions in this Directive referring to orders to trade shall apply to bids submitted in the context of an auction.
- 3a. *This Directive shall 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.*

## Article 2 Definitions

For the purposes of this Directive:

1. "financial instrument" means any instrument within the meaning of Article 2(1)(8) of Regulation (EC) No .../... [MiFIR];
  - 1a. *"spot commodity contract" means a contract for the supply of a commodity traded on a spot market, which is promptly delivered when the transaction is settled including any derivative contract that must be settled physically;*
  - 1b. *"buy-back programme" means trading in own shares in accordance with Articles 19 to 24 of Council Directive 77/91/EEC on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent<sup>2</sup>;*
2. "inside information" means information within the meaning of Article 6 of Regulation (EU) No .../2012 [MAR];
  - 2a. *"competent authority" means the competent authority designated in accordance with Article 16 of Regulation (EU) No .../2012 [MAR];*

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<sup>1</sup> OJ L 302, 18.11.2010, p. 1.

<sup>2</sup> OJ L 26, 31.1.1977, p. 1.

- 2b. *"person" means any natural or legal person;*
- 2c. *"emission allowance" means a financial instrument within the meaning of point (11) of Section C of Annex I of Directive .../.../EU [new MiFID];*
3. *"benchmark" means a published rate, index or figure, by reference to which the amount payable under a financial instrument is determined, including an interbank offer rate, calculated by the application of a formula to, or otherwise derived from:*
- (a) *the price or value of one or more underlying assets; or*
  - (b) *the interest rate (whether actual or estimated) applied to the borrowing of funds;*
- 3a. *"accepted market practices" means practices that are reasonably expected in one or more financial markets and are accepted by the competent authority in accordance with Article 4a of Regulation (EU) No .../... [MAR];*
- 3b. *"stabilisation" means any purchase or offer to purchase relevant financial instruments, or any transaction in associated instruments equivalent thereto, by investment firms or credit institutions, which is undertaken in the context of a significant distribution of such relevant securities exclusively for supporting the market price of these relevant securities for a predetermined period of time, due to a selling pressure in such securities.*

### Article 3

#### Insider dealing *and improper disclosure of inside information*

Member States shall take the necessary measures to ensure that the following conduct constitutes a criminal offence, when committed intentionally:

- (a) *where a person possesses inside information and, while being aware of the nature of that information, uses that information by acquiring or disposing, directly or indirectly, of financial instruments to which that information relates, ■ for his/her own account or for the account of a third party;*
- (aa) *where a person uses inside information to cancel or amend an order concerning a financial instrument to which **the** information relates and **the** order was placed before **the person concerned possessed the** inside information,*
- (ab) *where a person uses inside information to influence the value of 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, benchmarks, inter-bank offer rates, indexes and types of financial instruments;*

- (ac) *where a person possesses inside information and recommends, on the basis of that inside information, that another person, acquire or dispose of financial instruments to which that inside information relates or induces that person to make such an acquisition or disposal;*
- (ad) *where a person uses or onwardly discloses a recommendation referred to in point (ac);*
- (ae) *where a person possesses inside information and recommends, on the basis of that inside information, that another person cancel or amend an order concerning a financial instrument to which that information relates, without disclosing that inside information to that person, or induces that person to make such a cancellation or amendment;*
- (b) *where a person possesses inside information and discloses that inside information to any other person, except where the disclosure is made in the normal course of the exercise of duties resulting from an employment or profession.*

Article 4  
Market manipulation

Member States shall take the necessary measures to ensure that the following conduct constitutes a criminal offence, when committed *recklessly or* intentionally:

- (a) *entering into a transaction, placing an order to trade or any other behaviour which has the following consequences:*
  - (i) *it gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, including the value of 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, benchmarks, inter bank offer rates, indexes and types of financial instruments or a related spot commodity contract; or*
  - (ii) *it secures, or is likely to secure, the price of one or several financial instruments, including the value of 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, benchmarks, inter bank offer rates, indexes and types of financial instruments or a related spot contract at an abnormal or artificial level;*
- (c) *entering into a transaction, placing an order to trade or any other activity or behaviour affecting, or likely to affect, the price of one or several financial instruments or a related spot commodity contract, which employs a fictitious device or any other form of deception or contrivance;*

- (d) ***disseminating information through the media, including the internet, or by any other means, which, directly or indirectly, has the consequences referred to in point (a), where the person who made the dissemination knew, or ought to have known, that the information was false or misleading or which brings about a concealment;***
- (e) transmitting false or misleading information, providing false or misleading inputs, or any other equivalent activity which ***is also intended to manipulate*** the calculation of a benchmark.

#### Article 5

##### Inciting, aiding and abetting, and attempt

1. Member States shall take the necessary measures to ensure that inciting, aiding and abetting ***and attempting to commit*** the criminal offences referred to in Articles 3 and 4 are punishable as criminal offences.
2. Member States shall take the necessary measures to ensure that the attempt to commit any of the offences referred to in Articles 3(a), ***(aa) to (ae)*** and 4(a), (c), and (e) is punishable as a criminal offence.

#### Article 6

##### Criminal sanctions

1. Member States shall take the necessary measures to ensure that criminal offences referred to in Articles 3 to 5 are punishable by criminal sanctions which are effective, proportionate and dissuasive.

***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.***

- 1a. ***Member States shall take the necessary measures to ensure that the criminal offences referred to in points (a) to (ac) of Article 3 and points (a), (c) and (e) of Article 4 are punishable by a maximum term of imprisonment of at least five years.***
- 1b. ***Member States shall take the necessary measures to ensure that the criminal offences referred to in points (ad), (ae) and (b) of Article 3 and in point (d) of Article 4 are punishable by a maximum term of imprisonment of at least two years.***
- 1c. ***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.*

Article 7  
Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 5 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, based on:
  - (a) a power of representation of the legal person;
  - (b) an authority to take decisions on behalf of the legal person; or
  - (c) an authority to exercise control within the legal person.
2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in Articles 3 to 5 for the benefit of the legal person by a person under its authority.
3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in the offences referred to in Articles 3 to 5.

Article 8  
Sanctions for legal persons

Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 7 are punishable by effective, proportionate and dissuasive sanctions.

*Article 8a*  
*Jurisdiction*

*Member States shall take the necessary measures to establish their jurisdiction over an offence referred to in Articles 3 to 5, where:*

- (a) *the offence has been committed in whole or in part within their territory; or*
- (b) *the offence has been committed for the benefit of a natural or a legal person residing or established in their territory.*

*Article 8b*  
*Disclosure or dissemination of information in the media*

*Where information is disclosed or disseminated and where recommendations are produced*



*or disseminated for the purpose of journalism, such disclosure or dissemination of information shall 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, unless:*

- (a) the persons disclosing or disseminating the information or persons closely associated with them derive, directly or indirectly, an advantage or profits from the disclosure or the dissemination of the information in question; or*
- (b) the disclosure or the dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.*

**Article 8c**  
**Training and investigative tools**

- 1. Member States shall take the necessary measures to ensure that law enforcement and judicial authorities and other services responsible for investigating or prosecuting the offences referred to in Articles 3 to 5 have sufficient resources and are appropriately trained.*
- 2. Member States shall take the necessary measures to ensure that effective investigative tools are available for law enforcement and judicial authorities and other services responsible for investigating or prosecuting the offences referred to in Articles 3 to 5.*

**Article 9**  
**Report**

By ...\*, the Commission shall report to the European Parliament and the Council on the application of this Directive and, if necessary, on the need to review it, in particular with regard to the appropriateness of introducing common minimum rules on types and levels of criminal sanctions.

The Commission shall submit its report accompanied, if appropriate, by a legislative proposal.

Article 10  
Transposition

1. Member States shall adopt and publish, by ...\*, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those measures from ...\* or on the date of the entry into force of Regulation (EU) No.../... [MAR], whichever the later.

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\* *OJ please insert date: 12 months after the date of entry into force of this Directive.*

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive and a table indicating the correlation between those provisions and this Directive.

Article 12  
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 13  
Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

13.6.2012

## **OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS (\*)**

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation  
(COM(2011)0654 – C7-0358/2011 – 2011/0297(COD))

Rapporteur(\*): Emine Bozkurt

(\*) Associated committee – Rule 50 of the Rules of Procedure

### **SHORT JUSTIFICATION**

Adopted in early 2003, the Market Abuse Directive (MAD) 2003/6/EC, despite introducing a comprehensive framework to tackle insider dealing and market manipulation practices, has not achieved the objective to increase investor confidence and market integrity.

According to the report by the High-Level Group on Financial Supervision in the EU, one of the main reasons lies in the Member States sanctioning regimes, considered weak and heterogeneous.

Moreover, the Commission impact assessment highlights 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. 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 for forum shopping. The impact assessment concluded that criminal sanctions for the most serious market abuse offences were essential to ensure the effective implementation of the Union policy on market abuse.

The proposal for the Directive, based on Article 83 (2) of the TFEU, aims to implement the recommendations of the High-Level Group on Financial Supervision in the EU and of the European Commission impact assessment. It is to be seen as part of a package including also the proposal for a Regulation on insider dealing and market manipulation (market abuse) COM(2011)0651 final. In this view, the maximum consistency between the two legal instruments should be ensured. This implies that definitions of administrative and criminal

offences should be consistent while at the same time respecting the principle of legal certainty by describing the elements of a criminal offence as precisely as possible to allow individuals to understand precisely what actions will make him/her criminally liable (amendments on Articles 3 and 4). On the other side, the principle of *ne bis in idem* should apply in order not to punish a person twice for the same fact (Amendment on Article 6 1 c) new).

As one of the main concerns raised on the current legal framework is the weak and heterogeneous sanctioning regime, harmonising at least the minimum of the maximum sanction seems more than appropriate (Amendment to Article 6 1 a) new and 6 1 b) new) .

## AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a directive

#### Recital 7

*Text proposed by the Commission*

(7) Not all Member States have provided for criminal sanctions for some forms of serious breaches of national legislation implementing Directive 2003/6/EC. These different approaches undermine the uniformity of conditions of operation in the internal market and may provide an incentive for persons to carry out market abuse in Member States which do not provide for criminal sanctions for these offences. In addition, until now there has been no Union-wide understanding on which conduct is considered to be such a serious breach. Therefore, minimum rules concerning the definition of criminal offences committed by natural and legal persons and of sanctions should be set. Common minimum rules would make it also possible to use more effective methods of investigation and effective cooperation within and between Member States.

*Convictions for market abuse offences under criminal law often result in extensive media coverage, which helps to deter potential offenders, as it draws public attention to the commitment of competent authorities to tackling market abuse.*

*Amendment*

(7) Not all Member States have provided for criminal sanctions for some forms of serious breaches of national legislation implementing Directive 2003/6/EC. These different approaches undermine the uniformity of conditions of operation in the internal market and may provide an incentive for persons to carry out market abuse in Member States which do not provide for criminal sanctions for these offences. In addition, until now there has been no Union-wide understanding on which conduct is considered to be such a serious breach. Therefore, minimum rules concerning the definition of criminal offences committed by natural and legal persons and of sanctions should be set. Common minimum rules would make it also possible to use more effective methods of investigation and effective cooperation within and between Member States. *In light of the aftermath of the financial crisis, it has been evident that market manipulation has a potential for widespread damage on the lives of millions of people. The absence of harmonised criminal sanctions is rightly seen by citizens as creating an environment of impunity where market manipulators can thrive, taking advantage of a borderless market while operating*

*from jurisdiction that are not prosecuting them or have deficient penal frameworks in dealing with these matters. In turn, this creates reasons for an increased societal perception of corruption and the corresponding lack of trust in the rule of law and the legitimacy of institutions. In addition, the imposition of criminal sanctions for market abuse offences will have an increased deterrent effect on potential offenders.*

## **Amendment 2**

### **Proposal for a directive Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

*(12a) In order for the sanctions for the offences referred to in Articles 3 and 4 to be effective and dissuasive, a minimum of the maximum term of imprisonment should be set in this Directive.*

## **Amendment 3**

### **Proposal for a directive Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

*(13a) Member States should fully respect the ne bis in idem and the favor rei principles and ensure that if an administrative sanction has already been applied, no criminal sanction shall be applied in relation to the same facts, in case the administrative and the criminal sanctions are of the same nature.*

## **Amendment 4**

**Proposal for a directive**  
**Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

*(14a) Member States should take the necessary measures to ensure that law enforcement and judicial authorities or other services responsible for investigating or prosecuting the offences referred to in Articles 3 and 4 are appropriately trained. Member States should take the necessary measures to ensure that effective investigative tools are available for law enforcement and judicial authorities or other services responsible for investigating or prosecuting the offences referred to in Articles 3 and 4.*

**Amendment 5**

**Proposal for a directive**  
**Recital 16 a (new)**

*Text proposed by the Commission*

*Amendment*

*(16a) Every conviction imposed according to this Directive should be promptly made public and include at least information on the type and nature of the offence, of the sanction and the identity of the convicted natural or legal person, to the extent that this would not seriously jeopardise the stability of financial markets or cause disproportionate damage to the parties involved.*

**Amendment 6**

**Proposal for a directive**  
**Recital 17**

*Text proposed by the Commission*

(17) **Since** the objective of this Directive, namely to ensure the availability of criminal sanctions for the most serious market abuse offences across the Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

*Amendment*

(17) **Although at the moment limited statistics are available about the cross-border dimension of insider dealing and market manipulation, considering the integration of financial markets inside the Union, it can be safely assumed that many of these offences are not limited to transactions in one Member State only. Against that background,** the objective of this Directive, namely to ensure the availability of criminal sanctions for the most serious market abuse offences across the Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

**Amendment 7**

**Proposal for a directive  
Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

**(17a) In order to ensure effective prosecution of cross-border cases, Member States should take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 and 4, 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.**



## **Amendment 8**

### **Proposal for a directive Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

***(18a) In implementing this Directive Member States should ensure procedural rights of suspected or accused persons in criminal proceedings and, in particular, should take into consideration the Council Resolution of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings<sup>1</sup>, Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings<sup>2</sup>, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings<sup>3</sup> and any other Union legal act or recommendation in this area.***

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<sup>1</sup> OJ C 295, 4.12.2009, p. 1.

<sup>2</sup> OJ L 280, 26.10.2010, p. 1.

<sup>3</sup> OJ L 142, 1.6.2012, p. 1.

#### *Justification*

*It is important to underline the importance of fundamental rights and notably procedural rights in criminal proceedings.*

## **Amendment 9**

### **Proposal for a directive Recital 19**

*Text proposed by the Commission*

(19) The Commission should assess the implementation of this Directive in the Member States, also with a view to assessing a possible future need for introducing minimum harmonisation of the types and levels of criminal sanctions.

*Amendment*

(19) The Commission should assess the implementation of this Directive in the Member States, also with a view to assessing a possible future need for introducing minimum harmonisation of the types and levels of criminal sanctions. ***In particular, the Commission should seek to obtain information on the cross-border nature of many of the transactions constituting an offence according to this Directive, thus respecting the subsidiarity principle.***

**Amendment 10**

**Proposal for a directive  
Article 3 – point a**

*Text proposed by the Commission*

(a) *when in possession of* inside information, using that information to acquire or dispose of financial instruments to which that information relates for one's own account or for the account of a third party. This also includes using inside information to cancel or amend an order concerning a financial instrument to which that information relates where that order was placed before entering into possession of that inside information; ***or***

*Amendment*

(a) *possessing* inside information, ***and, while being aware of the nature of that information, using,*** that information ***directly or indirectly*** to acquire or dispose of, ***to recommend the acquisition or disposal of, or to induce another person to acquire or dispose of, financial instruments*** to which that information relates for one's own account or for the account of a third party. This also includes using inside information to cancel or amend an order concerning a financial instrument to which that information relates where that order was placed before entering into possession of that inside information ***and was effectively cancelled or amended;***

*Justification*

*This amendment applies the principle of legal certainty: the description of the elements of a criminal offence must be worded as precisely as possible to the effect that an individual shall be able to predict actions that will make him/her criminally liable*

## Amendment 11

### Proposal for a directive Article 3 – point b

*Text proposed by the Commission*

(b) disclosing inside information to any other person, unless such disclosure is made in the lawful course of the exercise of duties resulting from employment or profession.

*Amendment*

(b) disclosing inside information to any other person ***while being aware of the nature of that information***, unless such disclosure is made in the lawful course of the exercise of duties resulting from employment or profession;

#### *Justification*

*This amendment applies the principle of legal certainty: the description of the elements of a criminal offence must be worded as precisely as possible to the effect that an individual shall be able to predict actions that will make him/her criminally liable*

## Amendment 12

### Proposal for a directive Article 3 – point b a (new)

*Text proposed by the Commission*

*Amendment*

***(ba) while in possession of inside information, recommending the acquisition or disposal of, or inducing another person to acquire or dispose of, financial instruments to which the information relates, or to cancel or amend an order concerning a financial instrument to which that information relates, without disclosing the inside information to that person.***

## Amendment 13

### Proposal for a directive Article 5 – paragraph 1

*Text proposed by the Commission*

1. Member States shall take the necessary

*Amendment*

1. Member States shall take the necessary

measures to ensure that inciting, aiding and abetting the criminal offences referred to in Articles 3 and 4 are punishable as criminal offences.

measures to ensure that inciting, aiding and abetting **and attempting to commit** the criminal offences referred to in Articles 3 and 4 are punishable as criminal offences.

## **Amendment 14**

### **Proposal for a directive Article 6 – paragraph 1a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall take the necessary measures to ensure that the criminal offences referred to in point (a) of Article 3 and points (a), (b) and (c) of Article 4 are punishable by a maximum term of imprisonment of at least five years.***

*Justification*

*If the need for this legal instrument lies on the fact that Member States sanctioning regimes are in general weak and heterogeneous, sanctions should be to a certain extent harmonised.*

## **Amendment 15**

### **Proposal for a directive Article 6 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. Member States shall take the necessary measures to ensure that the criminal offences referred to in points (b) and (ba) of Article 3 and in point (d) of Article 4 are punishable by a maximum term of imprisonment of at least two years.***

*Justification*

*If the need for this legal instrument lies on the fact that Member States sanctioning regimes*

*are in general weak and heterogeneous, sanctions should be to a certain extent harmonised.*

## **Amendment 16**

### **Proposal for a directive Article 8 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 8a*

#### *Jurisdiction*

*Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 and 4, where :*

*(a) the offence has been committed in whole or in part within their territory; or*

*(b) the offence has been committed for the benefit of a natural or a legal person residing or established in the territory of a Member State.*

## **Amendment 17**

### **Proposal for a directive Article 8 b (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 8b*

#### *Ne bis in idem*

*Members States shall ensure that if an administrative sanction has already been applied, no criminal sanction shall be applied in relation to the same facts in case the administrative and the criminal sanctions are of the same nature.*

## **Amendment 18**

### **Proposal for a directive Article 8 c (new)**

***Article 8c***

***Training and investigative tools***

***1. Member States shall take the necessary measures to ensure that law enforcement and judicial authorities or other services responsible for investigating or prosecuting the offences referred to in Articles 3 and 4 are appropriately trained.***

***2. Member States shall take the necessary measures to ensure that effective investigative tools are available for law enforcement and judicial authorities or other services responsible for investigating or prosecuting the offences referred to in Articles 3 and 4.***

## PROCEDURE

<b>Title</b>	Criminal sanctions for insider dealing and market manipulation
<b>References</b>	COM(2011)0654 – C7-0358/2011 – 2011/0297(COD)
<b>Committee responsible</b> Date announced in plenary	ECON 15.11.2011
<b>Opinion by</b> Date announced in plenary	LIBE 15.11.2011
<b>Associated committee(s) - date announced in plenary</b>	24.5.2012
<b>Rapporteur</b> Date appointed	Emine Bozkurt 20.3.2012
<b>Discussed in committee</b>	21.3.2012
<b>Date adopted</b>	10.7.2012
<b>Result of final vote</b>	+: 45 –: 0 0: 4
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Edit Bauer, Mario Borghezio, Rita Borsellino, Emine Bozkurt, Arkadiusz Tomasz Bratkowski, Simon Busuttil, Carlos Coelho, Ioan Enciu, Frank Engel, Monika Flašíková Beňová, Hélène Flautre, Kinga Göncz, Nathalie Griesbeck, Sylvie Guillaume, Monika Hohlmeier, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Baroness Sarah Ludford, Monica Luisa Macovei, Svetoslav Hristov Malinov, Véronique Mathieu, Anthea McIntyre, Claude Moraes, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Renate Sommer, Rui Tavares, Nils Torvalds, Wim van de Camp, Axel Voss, Josef Weidenholzer, Cecilia Wikström, Tatjana Ždanoka
<b>Substitute(s) present for the final vote</b>	Elena Oana Antonescu, Michael Cashman, Leonidas Donskis, Dimitrios Droutsas, Lorenzo Fontana, Hubert Pirker, Raül Romeva i Rueda, Salvador Sedó i Alabart, Bogusław Sonik, Michèle Striffler
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Nadja Hirsch

20.6.2012

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the proposal for a directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation (COM(2011)0654 – C7-0358/2011 – 2011/0297(COD))

Rapporteur: Alexandra Thein

### SHORT JUSTIFICATION

The introduction of criminal sanctions against market abuse is an important innovation and a welcome addition to the toolkit to combat market abusive behaviour. The rapporteur welcomes the fact that the Commission is, for the first time in this key area, making use of the new powers introduced by the Lisbon Treaty to approximate criminal-law provisions to ensure the effective implementation of harmonisation measures (Article 83(2) TFEU).

On the one hand, the proposed amendments seek to clarify that the liability of legal persons forms part of the existing national systems: i.e. that making legal persons punishable is only envisaged where this is already recognised in the Member States.

On the other hand, the *ne bis in idem* principle should be spelt out, particularly as regards the combination of criminal and administrative sanctions, so that this key principle is given the importance it merits.

It is also necessary to extend the scope of the proposed Commission evaluation report on the implementation of the Directive to encompass criminalisation of the attempt and the liability and punishment of legal persons, as particular attention should be paid to how these measures turn out in practice.

### AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:



## Amendment 1

### Proposal for a directive

#### Recital 1

*Text proposed by the Commission*

(1) An integrated and efficient financial market requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.

*Amendment*

(1) An integrated and efficient financial market ***and stronger investor confidence*** requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.

## Amendment 2

### Proposal for a directive

#### Recital 7

*Text proposed by the Commission*

(7) Not all Member States have provided for criminal sanctions for some forms of serious breaches of national legislation implementing Directive 2003/6/EC. These different approaches undermine the uniformity of conditions of operation in the internal market and may provide an incentive for persons to carry out market abuse in Member States which do not provide for criminal sanctions for these offences. In addition, until now there has been no Union-wide understanding on which conduct is considered to be such a serious breach. Therefore, minimum rules concerning the definition of criminal offences committed by natural ***and legal*** persons and of sanctions should be set. Common minimum rules would make it also possible to use more effective methods of investigation and effective cooperation within and between Member States. Convictions for market abuse offences under criminal law often result in extensive

*Amendment*

(7) Not all Member States have provided for criminal sanctions for some forms of serious breaches of national legislation implementing Directive 2003/6/EC. These different approaches undermine the uniformity of conditions of operation in the internal market and may provide an incentive for persons to carry out market abuse in Member States which do not provide for criminal sanctions for these offences. In addition, until now there has been no Union-wide understanding on which conduct is considered to be such a serious breach. Therefore, minimum rules concerning the definition of criminal offences committed by natural persons, ***of the liability of legal persons*** and of sanctions should be set. Common minimum rules would make it also possible to use more effective methods of investigation and effective cooperation within and between Member States. Convictions for market abuse offences

media coverage, which helps to deter potential offenders, as it draws public attention to the commitment of competent authorities to tackling market abuse.

under criminal law often result in extensive media coverage, which helps to deter potential offenders, as it draws public attention to the commitment of competent authorities to tackling market abuse.

### Amendment 3

#### Proposal for a directive Recital 14

##### *Text proposed by the Commission*

(14) In order to ensure effective implementation of the European policy for ensuring the integrity of the financial markets set out in Regulation (EU) No... of the European Parliament and the Council on insider dealing and market manipulation, Member States should also extend liability to legal persons, including, whenever possible, criminal liability of legal persons.

##### *Amendment*

(14) In order to ensure effective implementation of the European policy for ensuring the integrity of the financial markets set out in Regulation (EU) No... of the European Parliament and the Council on insider dealing and market manipulation, Member States should also extend liability to legal persons, including, whenever possible, criminal liability of legal persons, ***where this is compatible with the national legislation applicable.***

### Amendment 4

#### Proposal for a directive Recital 18

##### *Text proposed by the Commission*

(18) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaty. Specifically, it should be applied with due respect for the freedom to conduct a business (Article 16), the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and right of defence (Article 48), the principles of legality and proportionality of criminal offences and penalties (Article 49), and the right not to be tried or punished twice for the same

##### *Amendment*

(18) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaty. Specifically, it should be applied with due respect for the freedom to conduct a business (Article 16), the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and right of defence (Article 48), the principles of legality and proportionality of criminal offences and penalties (Article 49), and the right not to be tried or punished twice for the same

offence (Article 50).

offence (Article 50). ***In this respect, Member States should ensure that the same offence is not punished by both criminal and administrative sanctions.***

## Amendment 5

### Proposal for a directive Article 1 – paragraph 1

*Text proposed by the Commission*

1. This Directive establishes minimum rules for criminal sanctions for the most serious market abuse offences, namely insider dealing and market manipulation.

*Amendment*

1. This Directive establishes minimum rules for criminal sanctions for the most serious market abuse offences, namely insider dealing and market manipulation. ***This Directive shall only apply to transactions, orders or behaviours which would fall within Regulation (EU) No. ... of the European Parliament and the Council on insider dealing and market manipulation and which would be prohibited under that Regulation.***

*Justification*

*For consistency purposes, the criminal offences in MAD should be the same items of conduct prohibited in MAR, and therefore, the scope of both legal instruments should be aligned.*

## Amendment 6

### Proposal for a directive Article 3 – introductory part

*Text proposed by the Commission*

Member States shall take the necessary measures to ensure that the following conduct constitutes a criminal offence, when committed intentionally:

*Amendment*

Member States shall take the necessary measures to ensure that the following conduct constitutes a criminal offence, when committed intentionally ***by a natural person:***

*Justification*

*It should be clear that a natural person does not commit the offence of insider dealing in Article 3 (punishable as a criminal offence) unless he also knows that the information in*

*question is indeed inside information. Insider dealing provisions in MAD should only be applicable to natural persons, since the scope of corporate liability should be left to national law.*

## **Amendment 7**

### **Proposal for a directive Article 3 – point a**

*Text proposed by the Commission*

(a) when in possession of inside information, using that information to acquire or dispose of financial instruments to which that information relates for one's own account or for the account of a third party. This also includes using inside information to cancel or amend an order concerning a financial instrument to which that information relates where that order was placed before entering into possession of that inside information; or

*Amendment*

(a) when ***the person concerned is*** in possession of inside information ***and knows that the information is inside information***, using that information to acquire or dispose of financial instruments to which that information relates for one's own account or for the account of a third party. This also includes using inside information to cancel or amend an order concerning a financial instrument to which that information relates where that order was placed before entering into possession of that inside information; or

## **Amendment 8**

### **Proposal for a directive Article 3 – point b**

*Text proposed by the Commission*

(b) disclosing inside information to any other person, unless such disclosure is made in the lawful course of the exercise of duties resulting from employment or profession.

*Amendment*

(b) ***when the person concerned is in possession of inside information and knows that the information is inside information***, disclosing inside information to any other person, unless such disclosure is made in the lawful course of the exercise of duties resulting from employment or profession.

## **Amendment 9**

### **Proposal for a directive Article 3 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) when the person concerned is in possession of inside information and knows that the information is inside information, recommending or inducing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.***

*Justification*

*This is introduced to cover cases where a person who has inside information encourages someone else to deal without disclosing the information. With this provision, the person in question may not be inciting insider dealing, since the person incited is not engaged in insider dealing (since he never possesses the inside information). Similar wording is used in Article 7(3) of MAR (Commission proposal).*

## **Amendment 10**

### **Proposal for a directive**

#### **Article 3 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Points (a) and (ba) of paragraph 1 shall not apply unless the inside information had a material influence on the decision of the person concerned to acquire or dispose of the financial instruments or to recommend or induce another person to do so.***

*Justification*

*Entering into a transaction while possessing inside information should not alone constitute a wrongdoing. This defence makes clear that it is legitimate for a person to deal in financial instruments, to recommend or induce another person, when the inside information does not have a material influence on the decision to deal.*

## Amendment 11

### Proposal for a directive Article 8

*Text proposed by the Commission*

Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 7 are punishable by effective, proportionate and dissuasive sanctions.

*Amendment*

Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 7 are punishable by effective, proportionate and dissuasive sanctions. ***In accordance with the applicable national law, these sanctions can also include criminal proceedings against legal persons.***

## Amendment 12

### Proposal for a directive Article 8 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 8a*

#### ***Combination of criminal and administrative sanctions***

***Member States shall ensure, in the context of the measures they take under this Directive, that conduct which constitutes a criminal offence and is subject to administrative measures or sanctions, is only punishable as a criminal offence. Member States shall further ensure that this conduct can be subject to administrative sanctions if the criminal sanction is not imposed.***

## Amendment 13

### Proposal for a directive Article 9 – paragraph 1

*Text proposed by the Commission*

By [4 years after entry into force of this

*Amendment*

By [4 years after entry into force of this

Directive], the Commission shall report to the European Parliament and the Council on the application of this Directive and, if necessary, on the need to review it, in particular ***with regard to*** the appropriateness of introducing common minimum rules on types and levels of criminal sanctions.

Directive], the Commission shall report to the European Parliament and the Council on the application of this Directive and, if necessary, on the need to review it. ***It shall consider***, in particular, the appropriateness of introducing common minimum rules on types and levels of criminal sanctions ***and whether criminalising the attempt, and making legal persons liable and punishable, have been valuable measures.***

## PROCEDURE

<b>Title</b>	Criminal sanctions for insider dealing and market manipulation		
<b>References</b>	COM(2011)0654 – C7-0358/2011 – 2011/0297(COD)		
<b>Committee responsible</b> Date announced in plenary	ECON 15.11.2011		
<b>Opinion by</b> Date announced in plenary	JURI 15.11.2011		
<b>Rapporteur</b> Date appointed	Alexandra Thein 21.11.2011		
<b>Discussed in committee</b>	26.3.2012	26.4.2012	30.5.2012
<b>Date adopted</b>	19.6.2012		
<b>Result of final vote</b>	+: 13	–: 8	0: 0
<b>Members present for the final vote</b>	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Alajos Mészáros, Evelyn Regner, Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka		
<b>Substitute(s) present for the final vote</b>	Piotr Borys, Cristian Silviu Buşoi, Eva Lichtenberger, Dagmar Roth-Behrendt, Axel Voss		
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Patrice Tirolien		



## PROCEDURE

<b>Title</b>	Criminal sanctions for insider dealing and market manipulation			
<b>References</b>	COM(2011)0654 – C7-0358/2011 – 2011/0297(COD)			
<b>Date submitted to Parliament</b>	20.10.2011			
<b>Committee responsible</b> Date announced in plenary	ECON 15.11.2011			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	JURI 15.11.2011	LIBE 15.11.2011		
<b>Associated committee(s)</b> Date announced in plenary	LIBE 24.5.2012			
<b>Rapporteur(s)</b> Date appointed	Arlene McCarthy 21.9.2010			
<b>Discussed in committee</b>	6.2.2012	12.4.2012	19.6.2012	20.9.2012
<b>Date adopted</b>	9.10.2012			
<b>Result of final vote</b>	+: –: 0:	39 0 1		
<b>Members present for the final vote</b>	Burkhard Balz, Elena Băsescu, Jean-Paul Basset, Sharon Bowles, Udo Bullmann, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Diogo Feio, Markus Ferber, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Wolf Klinz, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Astrid Lulling, Arlene McCarthy, Sławomir Witold Nitras, Ivari Padar, Alfredo Pallone, Anni Podimata, Antolín Sánchez Presedo, Olle Schmidt, Peter Simon, Theodor Dumitru Stolojan, Ivo Strejček, Sampo Terho, Marianne Thyssen, Ramon Tremosa i Balcells, Corien Wortmann-Kool, Pablo Zalba Bidegain			
<b>Substitute(s) present for the final vote</b>	Sari Essayah, Ashley Fox, Robert Goebbels, Olle Ludvigsson, Sirpa Pietikäinen			
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Timothy Kirkhope			
<b>Date tabled</b>	19.10.2012			