

# Procedure file

Basic information			
COD - Ordinary legislative procedure (ex-codecision procedure) Directive		2011/0297(COD)	
Criminal sanctions for market abuse (market abuse directive)		Procedure completed	
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
	<b>ECON</b> Economic and Monetary Affairs		21/09/2010
		S&D <a href="#">MCCARTHY Arlene</a>	
		Shadow rapporteur	
		PPE <a href="#">PIETIKÄINEN Sirpa</a>	
		ALDE <a href="#">KLINZ Wolf</a>	
		Verts/ALE <a href="#">BESSET Jean-Paul</a>	
		ECR <a href="#">SWINBURNE Kay</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>JURI</b> Legal Affairs		21/11/2011
		ALDE <a href="#">THEIN Alexandra</a>	
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs (Associated committee)		20/03/2012
		S&D <a href="#">BOZKURT Emine</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Foreign Affairs</a>	<a href="#">3309</a>	14/04/2014
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3195</a>	25/10/2012
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">3162</a>	26/04/2012
European Commission	Commission DG	Commissioner	
	<a href="#">Financial Stability, Financial Services and Capital Markets Union</a>	BARNIER Michel	
Key events			
20/10/2011	Legislative proposal published	<a href="#">COM(2011)0654</a>	Summary
15/11/2011	Committee referral announced in Parliament, 1st reading		

## Key events

20/10/2011	Legislative proposal published	<a href="#">COM(2011)0654</a>	Summary
15/11/2011	Committee referral announced in Parliament, 1st reading		

26/04/2012	Debate in Council	<a href="#">3162</a>	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	<a href="#">A7-0344/2012</a>	Summary
25/10/2012	Debate in Council	<a href="#">3195</a>	
04/02/2014	Results of vote in Parliament		
04/02/2014	Debate in Parliament		
04/02/2014	Decision by Parliament, 1st reading	<a href="#">T7-0057/2014</a>	Summary
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 EU TFEU 083-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/07609

### Documentation gateway

Legislative proposal		<a href="#">COM(2011)0654</a>	20/10/2011	EC	Summary
Document attached to the procedure		<a href="#">SEC(2011)1217</a>	20/10/2011	EC	
Document attached to the procedure		<a href="#">SEC(2011)1218</a>	20/10/2011	EC	
Document attached to the procedure		<a href="#">N7-0076/2012</a> <a href="#">OJ C 177 20.06.2012, p. 0001</a>	10/02/2012	EDPS	Summary
European Central Bank: opinion, guideline, report		<a href="#">CON/2012/0021</a> <a href="#">OJ C 161 07.06.2012, p. 0003</a>	22/03/2012	ECB	Summary
Committee draft report		<a href="#">PE485.917</a>	26/03/2012	EP	
Committee opinion	<b>JURI</b>	<a href="#">PE486.199</a>	20/06/2012	EP	
Committee opinion	<b>LIBE</b>	<a href="#">PE487.968</a>	13/07/2012	EP	
Amendments tabled in committee		<a href="#">PE489.420</a>	13/07/2012	EP	
Supplementary legislative basic document		<a href="#">COM(2012)0420</a>	25/07/2012	EC	Summary

Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0344/2012</a>	19/10/2012	EP	Summary
Text adopted by Parliament, 1st reading/single reading	<a href="#">T7-0057/2014</a>	04/02/2014	EP	Summary
Draft final act	<a href="#">00008/2014/LEX</a>	16/04/2014	CSL	
Commission response to text adopted in plenary	<a href="#">SP(2014)446</a>	20/05/2014	EC	
Follow-up document	<a href="#">COM(2020)0099</a>	13/03/2020	EC	Summary

#### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

#### Final act

[Directive 2014/57](#)  
[OJ L 173 12.06.2014, p. 0179](#) Summary

## Criminal sanctions for market abuse (market abuse directive)

**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 policy"](#) the 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 manipulation](#) that 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)

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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)

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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)

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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 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. 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)

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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.

## Criminal sanctions for market abuse (market abuse directive)

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**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)

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

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

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

General overview of the assessment

A detailed assessment of notified transposition measures confirmed that a majority of Member States has transposed the Directive completely and correctly in all its aspects. The report stated that findings of non-conformity often concerned relatively minor issues. For instance, no

transposition issues were found with regard to the provisions on inciting, aiding and abetting, and attempt (Article 6); on sanctions for legal persons (Article 9); on jurisdiction (Article 10); and on training (Article 11). The transposition of criminal penalties for natural persons (Article 7) and liability of legal persons (Article 8) only gave rise to concerns in two Member States, respectively.

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

#### Main findings

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

The report stated that:

- in a number of Member States, Article 1 (subject matter and scope) has not been transposed correctly and comprehensively;
- in one Member State, definitions (Article 2) were missing or incomplete;
- insider dealing and recommending that another person engage in insider dealing (Article 3) have not been fully criminalised in three Member States;
- one Member State has not comprehensively criminalised unlawful disclosure of inside information (Article 4);
- the transposition of Article 5 (market manipulation) was often incomplete as some of its elements were not covered in the national legislation.

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

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

#### Infringement procedures

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

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