



EUROPEAN COMMISSION

MEMO

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Market abuse: Justice Ministers agree Commission proposals on criminal sanctions

In the recent LIBOR scandal, serious concerns have been raised about the manipulation of benchmarks, which can result in significant losses to consumers and investors, or distort the real economy. The integrity of financial markets is also undermined by market manipulation and insider dealing. European justice ministers meeting in the Council of the European Union have today reached agreement on the Commission's proposals for a Directive on insider dealing and market manipulation that will criminalise such behaviour (see [IP/11/1218](#) and [IP/12/846](#)). As the European Parliament Economic and Monetary Affairs Committee adopted its first reading opinion on the proposals on 9 October 2012, negotiations between the co-legislators and the Commission for their final adoption can now begin.

This follows the agreement by permanent representatives of the Member States (COREPER) on 5 December on an amended proposal for a Market Abuse Regulation, on which the criminal sanctions proposal depends for its scope and which together form a package of proposals.

Vice-President Viviane Reding, the EU's Justice Commissioner said: *"Market abuse is not a victimless offence. It is a major problem for confidence in our financial systems and we need to address it. With our proposals we want to close any possible regulatory loopholes. There must be zero tolerance for manipulators in the EU financial markets. The text as agreed by ministers is a good basis for starting negotiations with the European Parliament. I am confident that this proposal can now be swiftly adopted so we can show clearly that we are serious about fighting market abuse and in protecting the integrity of our markets in the interest of our citizens."*

Internal Market and Services Commissioner Michel Barnier said: *"Insider dealers and market manipulators will be liable for criminal sanctions throughout the European Union. Today's agreement by Justice Ministers sends a strong signal that market abuse, including the manipulation of benchmarks, will not be tolerated. I look forward to working with the co-legislators to finalise the adoption of the Commission's package of legislative measures to prevent and punish market abuse more rigorously. This week the Council has taken two important steps towards a tougher EU framework for insider dealing and market manipulation, since on Wednesday it also endorsed the Market Abuse Regulation. This brings Europe a step closer to a broader and stricter EU framework for market abuse, which equips regulators with the tools to detect and punish market abuse effectively. "*

Defining criminal offences at EU level

Insider dealing occurs when a person who has price-sensitive inside information trades in related financial instruments. Market manipulation takes place when a person artificially manipulates the prices of financial instruments through practices such as the spreading of false or misleading information and conducting trades in related instruments to profit from this. Together these practices are known as market abuse.

The Council's general approach on the proposal for a Directive defines the offences – insider dealing, unlawful disclosure of inside information and market manipulation – which should be regarded by Member States as criminal offences, at least when they are serious and are committed intentionally. The text adopted by the Council also makes manipulation of benchmarks a criminal offence.

The proposal also requires Member States to criminalise inciting, aiding and abetting insider dealing, unlawful disclosure and market manipulation, as well as attempts at these forms of market abuse. Criminal or non-criminal liability should also be extended to legal persons.

Under the new rules, Member States will have to ensure that criminal sanctions imposed for these offences are effective, proportionate and dissuasive. The text adopted by the Council today also includes a review clause requiring the Commission to report to the European Parliament and Council, within four years of the Directive's entry into force, on its application 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. If appropriate, the report shall be accompanied by legislative proposals.

This is the first legislative proposal based on the new Article 83 paragraph 2 of the Treaty on the Functioning of the European Union, which provides for the adoption of common minimum rules on criminal law when this proves essential to ensure the effective implementation of a harmonised EU policy. Current sanction regimes applied in the Member States for market abuse offences have proven not to be sufficiently effective. They do not always use the same definitions of these crimes and are too divergent, allowing perpetrators to benefit from loopholes.

See also [MEMO/12/595](#) .

More information

European Commission - Market Abuse

http://ec.europa.eu/internal_market/securities/abuse/index_en.htm

European Commission – criminal law policy:

<http://ec.europa.eu/justice/criminal/criminal-law-policy>

(see [IP 11/1049](#))

Homepage of Vice-President Viviane Reding, EU Justice Commissioner:

<http://ec.europa.eu/reding>

Homepage of Commissioner Michel Barnier, EU Internal Market and Services Commissioner

http://ec.europa.eu/commission_2010-2014/barnier/index_en.htm