



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from:	Presidency
to:	Council
No. Cion proposal:	16000/11 DROIPEN 125 EF 145 ECOFIN 717
No. prev. doc.:	9019/12 DROIPEN 46 EF 98 ECOFIN 344 CODEC 1049
Subject:	Proposal for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation - Partial general approach

I. INTRODUCTION

1. On 21 October 2011 the Commission presented a proposal for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation (hereinafter "MAD") as a part of a broader "package" of measures, including proposals currently under discussion in other preparatory bodies of the Council (Directive on markets in financial instruments - "MiFID"; Regulation on markets in financial instruments and OTC - "MiFIR"; Regulation on insider dealing and market manipulation - "MAR").
2. The proposal for MAD was examined by the Working Party for substantive criminal law (DROIPEN) at its meetings on 5 and 25 January 2012.

3. Furthermore, at the informal meeting of the Justice and Home Affairs Ministers, held in Copenhagen on 26-27 January 2012, questions have been put to the attention of Ministers concerning the provisions in MAD dealing with the approximation of penalties for the offences provided for in the instrument.

II. DRAFT DIRECTIVE

4. DROIPEN examined the proposal further at its meeting on 28 March 2012. Following that meeting, the Presidency concluded that on a part of the Directive, and namely on Articles 5 to 12, there was broad support for the text of the Articles and for the corresponding recitals.
5. Concerning the remaining parts of the instrument, and in particular Articles 1-4, discussions so far have been very productive and have indicated several issues which will need to be addressed and resolved in the future course of negotiations at the technical level. Indeed, on certain issues, the Presidency submitted a discussion paper to delegations,¹ inviting them to express their views as guidance for future discussions.²
6. On the basis of the outcome of this written consultation, the Presidency believes that the continuation of discussions on Articles 1-4 of the draft Directive should await further developments in the ongoing discussions in other preparatory bodies of the Council on the other instruments included in the Commission "package", and in particular on MAR.
7. This said, and in order to mark a concrete step forward in the discussions on the draft Directive, the Presidency turns to Council to confirm the partial general approach on Articles 5 -12 and the corresponding recitals.

¹ See doc. 6693/12.

² See doc. 7623/1/12.

8. The draft text of the relevant provisions of the Directive was discussed by Coreper on 18 April 2012. The Presidency could note wide support for the text. Some reservations by Member States remain nevertheless outstanding³.
9. Among other issues, some delegations maintain their reservation on Article 5, requesting that the description of the attempt to commit one of the offences described in the Directive only be relevant if, were it to be completed, it is likely to produce a negative effect. One delegation maintains a reservation in general on the criminalisation of attempt.
10. Furthermore, on Article 6, some delegations maintain their point of view that the Directive should not only approximate the constitutive elements of the offences, but also the types and levels of sanctions which should follow from their commission. One delegation also submitted a declaration to the minutes of Coreper on this matter.
11. On the other hand, other delegations oppose the introduction in the text of Article 9 of a specific reference, in relation to the future Commission report on the application of the Directive, to the "appropriateness of introducing common minimum rules on types and levels of criminal sanctions".
12. The Presidency takes note of outstanding reservations, including those mentioned above. It nevertheless invites delegations to endorse the partial general approach as it stands. In particular, the present combined wording of Articles 6 and 9 should be seen as a "package." This addresses the concerns both of the majority of Member States who at this stage do not want approximation of the types and levels of penalties, and the concerns of those Member States who advocate the need to review in the future the effectiveness of the Directive with a particular focus on this aspect.
13. In the course of discussions at Coreper, several delegations highlighted that the content of this partial general approach will have to be confirmed once negotiations on the remaining provisions of the Directive have been concluded.

³ See doc. 9019/12.

14. In this regard it is understood that this partial general approach does not exclude the possibility of further discussions within the Council on the relevant provisions and recitals, should this be appropriate in the light of the outcome of the discussions on the remaining text of the instrument.

III. CONCLUSION

15. In light of the above, the Presidency invites the Council:

- to confirm the partial general approach on Articles 5 to 12 and the corresponding recitals as resulting from discussions at the meeting of Coreper on 18 April 2012.
