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from: General Secretariat
to: Permanent Representatives Committee/Council
Subject: Proposal for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation
– Outcome of the European Parliament's first reading
(Strasbourg, 3 to 6 February 2014)

I. INTRODUCTION

The Committee on Economic and Monetary Affairs submitted one amendment to the proposal for a Directive (amendment 1).

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the Committee on Economic and Monetary Affairs tabled a further, compromise, amendment (amendment 2). This amendment had been agreed during the informal contacts referred to above. It was intended to supersede - rather than to complement - the amendment already submitted by the Committee.

II. VOTE

When it voted on 4 February 2014, the plenary adopted the compromise amendment (amendment 2). No other amendments were adopted.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto ¹.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position. The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Criminal sanctions for insider dealing and market manipulation *I**

European Parliament legislative resolution of 4 February 2014 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 2012¹,
 - having regard to the opinion of the European Economic and Social Committee of 28 March 2012¹,
 - having regard to the undertaking given by the Council representative by letter of 20 December 2013 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - 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.

¹ OJ C 161, 7.6.2012, p. 3.

P7_TC1-COD(2011)0297

Position of the European Parliament adopted at first reading on 4 February 2014 with a view to the adoption of Directive 2014/.../EU 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,

¹ OJ C 181, 21.6.2012, p. 64.

* TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION.

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

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure³,

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, derivatives ***and benchmarks***.

¹ OJ C 161, 7.6.2012, p. 3.

² OJ C 181, 21.6.2012, p. 64.

³ Position of the European Parliament of 4 February 2014.

- (2) Directive 2003/6/EC of the European Parliament and the Council¹ **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 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 **High-Level** Group concluded that Member States' sanctioning regimes are in general weak and heterogeneous.

¹ Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L 96, 12.4.2003, p. 16).

- (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, therefore, needed to ensure common minimum rules across the Union.*
- (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 a social disapproval of a qualitatively different nature compared to administrative penalties. Establishing criminal offences for *at least* 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.

- (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. ***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 recent Libor scandal, which concerned a serious case of benchmark manipulation, demonstrated that relevant problems and loopholes impact gravely on market confidence and may result in significant losses to investors and distortions of the real economy. 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. In addition, the imposition of criminal sanctions for market abuse offences will have an increased deterrent effect on potential offenders.***

- (8) The introduction of criminal sanctions for ***at least*** serious market abuse offences by all Member States is therefore essential to ensure the effective implementation of Union policy on fighting market abuse ■ .
- (9) In order for the scope of this Directive to be aligned with that of Regulation (EU) No.../2014 of the ***European Parliament and of the Council***¹ [MAR], trading in own shares ***in*** buy-back programmes ***and trading in securities or associated instruments for the stabilisation of securities***, as well as transactions, orders or behaviours carried out ***in pursuit of monetary, exchange-rate or public debt management policy***, and activities concerning emission allowances undertaken in pursuit of the Union's climate policy, ***as well as activities undertaken in the pursuit of the Union's Common Agricultural Policy and the Union's Common Fisheries Policy***, should be exempt from this Directive.
- (10) Member States should be under the obligation to ***provide that at least serious cases*** of insider dealing, market manipulation ***and unlawful disclosure of inside information constitute criminal offences*** when ■ committed with intent.

¹ ***Regulation of the European Parliament and of the Council of ... on ... [MAR] (OJ L ...)***.

- (10a)** *For the purpose of this Directive, insider dealing and unlawful disclosure of inside information should be deemed to be serious in cases such as those where the impact on the integrity of the market, the actual or potential profit derived or loss avoided, the level of damage caused to the market, or the overall value of the financial instruments traded is high. Other circumstances that might be taken into account are, for instance, if the offence has been committed within the framework of a criminal organisation or if the person already has committed such an offence before.*
- (10b)** *For the purpose of this Directive, market manipulation should be deemed to be serious in cases such as those where the impact on the integrity of the market; the actual or potential profit derived or loss avoided, the level of damage caused to the market, the level of alteration of the value of the financial instrument or spot commodity contract or the amount of funds originally used is high or whether the manipulation is performed by a person employed or working in the financial sector or in a supervisory or regulatory authority.*

- (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.
- (11a) This Directive should oblige Member States to provide in their national legislation for criminal penalties in respect of the behaviours of insider dealing, market manipulation and unlawful disclosure of inside information to which this Directive applies. This Directive should not create obligations regarding the application of such penalties or any other available system of law enforcement, to individual cases.***
- (12) This Directive should also require Member States to ensure that inciting, aiding and abetting the criminal offences are also punishable. ■
- (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 .../2014 [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 .../2014 [MAR], Member States should extend liability *for the offences provided for in this Directive* to legal persons *through the imposition of criminal or non-criminal sanctions or measures which are effective, proportionate and dissuasive, such as for example set out in Regulation (EU) No .../2014 [MAR]. Such measures may also include the publication of a final decision on a sanction including the identity of the liable legal person, taking into account fundamental rights and the principle of proportionality and risks for the stability of financial markets and on-going investigations. Member States should where appropriate and where national law provides for criminal liability for legal persons, extend such criminal liability, in accordance with national law, for the offences provided for in this Directive. This Directive should not prevent Member States from publishing final decisions on liability or sanctions.*

- (14a)** *Member States should take necessary measures to ensure that law enforcement, judicial authorities and other competent authorities responsible for investigating or prosecuting the offences provided for in this Directive have the ability to use effective investigative tools. Taking into account, inter alia, principle of proportionality, the use of such tools in accordance with national law should be commensurate with the nature and seriousness of the offences under investigation.*
- (15) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules for market abuse.
- (15a)** *Member States may for example provide that the conduct described in Article 4 committed recklessly or by serious negligence constitutes a criminal offence.*
- (15b)** *The obligations under Articles 6 and 8 do not exempt Member States from the obligation to provide in national law for administrative sanctions and measures for the breaches set out in Regulation (EU) No .../2014 [MAR] unless Member States have decided, in accordance with the provisions of Regulation (EU) No .../2014 [MAR], to lay down only criminal sanctions for such breaches in their national law.*

- (15c)** *The scope of this Directive is defined in such a way as to complement and ensure the effective implementation of the provisions set out in Regulation (EU) No .../2014 [MAR]. Whereas offences should be punishable in accordance with this Directive when committed intentionally and at least in serious cases, sanctions for breaches of Regulation (EU) No .../2014 [MAR] do not require that intent is proven or that they are qualified as serious. In the application of the law transposing this Directive, Member States should ensure that imposition of criminal sanctions on the basis of offences foreseen by this Directive and of administrative sanctions in accordance with the Regulation (EU) No .../2014 [MAR] does not lead to the breach of the principle of ne bis in idem.*
- (15d)** *Without prejudice to the general rules of national criminal law on the application and execution of sentences in accordance with the concrete circumstances in each individual case, proportionality of sanctions should 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.*

- (17) Since the objective of this Directive, namely to ensure the availability of criminal sanctions for **at least** serious market **abuses** across the Union, cannot be sufficiently achieved by the Member States but can rather, 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) ***Increasing cross-border activities require efficient and effective cooperation between national authorities which are competent for the investigation and prosecution of market abuse offences. The organisation and competencies of the national authorities in the different Member States should not hinder their cooperation.***

- (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 ***right to protection of personal data (Article 8)***, the ***freedom of expression (Article 11)***, 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 ***in criminal proceedings*** for the same offence (Article 50).
- (18a) ***In implementing this Directive Member States should ensure procedural rights of suspected or accused persons in criminal proceedings. Their obligations under this Directive are without prejudice to their obligations under the already adopted Union legislation on procedural rights in criminal proceedings. Nothing in this Directive is intended to restrict freedom of press and freedom of expression in the media in so far as they are guaranteed in the Union and in the Member States, in particular under Article 11 of the Charter of Fundamental Rights and other relevant provisions. This should be emphasized in particular as regards disclosure of inside information in accordance with Article 3a.***

- █
- (20) Without prejudice to Article 4 of 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 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.
 - (22) In accordance with Articles 1 and 2 of 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 ***insider dealing, unlawful disclosure of inside information*** 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 ***applies to the following:***
 - (a) ***financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;***

 - (b) ***financial instruments traded, admitted to trading or for which a request for admission to trading on an MTF has been made;***

 - (c) ***financial instruments traded on an OTF;***

- (d) *financial instruments not covered by points (a), (b) or (c), the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.*

This Directive **■** also *applies* to behaviour or transactions, including bids, relating to the auctioning of emission allowances or other auctioned products based *thereupon* pursuant to Commission Regulation (EU) No 1031/2010¹. *Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any provision* in this Directive referring to orders to trade shall apply to *such* bids **■** .

2a. *This Directive does not apply to:*

- (a) *trading in own shares in buy-back programmes, where such trading is carried out in accordance with Article 3(1), (1a) and (1b) of Regulation (EU) No .../2014 [MAR];*

¹ *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 of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).*

- (b) trading in securities or associated instruments for the stabilisation of securities, where such trading is carried out in accordance with Article 3(2), (2a) and (2b) of Regulation (EU) No .../2014 [MAR];*
- (c) transactions, orders or behaviours carried out in pursuit of monetary, exchange rate or public debt management policy in accordance with Article 4(1), transactions order or behaviours carried out in accordance with Article 4(1a), activities in the pursuit of the Union's climate policy in accordance with Article 4(2), or activities in the pursuit of the Union's Common Agricultural Policy or of the Union's Common Fisheries Policy in accordance with Article 4(2a) of Regulation (EU) No .../2014 [MAR];*

2b. *Article 4 also applies to:*

- (a) spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has an effect on the price or value of a financial instrument referred to in paragraph 2 of this Article;*

(b) types of financial instruments, including derivative contracts or derivative instruments for the transfer of credit risk where the transaction, order, bid or behaviour has an effect on the price or value of a spot commodity contract where the price or value depends on the price or value of those financial instruments;

(c) behaviour in relation to benchmarks.

2c. This Directive applies to any transaction, order or behaviour concerning the financial instrument, as defined in paragraphs 2 and 5 of this Article, irrespective of whether or not such transaction, order or behaviour takes place on a trading venue.

Article 2
Definitions

For the purposes of this Directive, **the following definitions shall apply:**

1. "financial instrument" means any instrument within the meaning of Article 4(2)(14) of **Directive 2014/.../EU of the European Parliament and of the Council¹ [MiFID];**

¹ **Directive 2014/.../EU of the European Parliament and of the Council of ... on ... [MiFID] (OJ L ...).**

- 1a. *"spot commodity contract" means any contract within the meaning of Article 5(10) of Regulation (EU) No .../2014 [MAR];*
- 1b. *"buy-back programme" means trading in own shares in accordance with Articles 21 to 27 of Directive 2012/30/EU of the European Parliament and of the Council¹;*
2. *"inside information" means information within the meaning of Article 6(1), (2), (2a) and (3) of Regulation (EU) No .../2014 [MAR];*
- 2a. *"emission allowance" means a financial instrument as defined in point (11) of Section C of Annex I of Directive 2014/.../EU [MiFID];*
- 2b. *"benchmark" means a benchmark as defined in Article 5(20) of Regulation (EU) No .../2014 [MAR];*

¹ *Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 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 54 of the Treaty on the Functioning of the European Union, 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 (OJ L 315, 14.11.2012, p. 74).*

- 2c. *"accepted market practice" means specific market practices that are accepted by the competent authority of a given Member State in accordance with Article 8a of Regulation (EU) No .../2014 [MAR];*
- 2d. *"stabilisation" means stabilisation as defined in Article 5(4b) of Regulation (EU) No .../2014 [MAR];*
- 2e. *"regulated market" means a regulated market as defined in Article 2(1)(5) of Regulation (EU) No .../2014 of the European Parliament and of the Council¹ [MiFIR];*
- 2f. *"multilateral trading facility" or "MTF" means a multilateral trading facility as defined in Article 2(1)(6) of Regulation (EU) No .../2014 [MiFIR];*
- 2g. *"organised trading facility" or "OTF" means an organised trading facility as defined in Article 2(1)(7) of Regulation (EU) No .../2014 [MiFIR];*
- 2h. *"trading venue" means trading venue as defined in Article 2(1)(25) of Regulation (EU) No .../2014 [MiFIR].*

¹ *Regulation (EU) No .../2014 of the European Parliament and of the Council of ... on ... [MiFIR] (OJ L ...).*

- 2i. **"wholesale energy product" has the same meaning as in Article 2(4) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council¹;**
- 2j. **"issuer" means "issuer of a financial instrument" as defined in Article 5(16) of Regulation (EU) No .../2014 [MAR].**

Article 3

Insider dealing, ***recommending or inducing another person to engage in insider dealing***

1. Member States shall take the necessary measures to ensure that ***insider dealing, recommending or inducing another person to engage in insider dealing as defined in this Article constitute criminal offences at least in serious cases and*** when committed intentionally.
2. ***For the purposes of this Directive, 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.***

¹ ***Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).***

3. *This Article applies to any person who possesses inside information as a result of any of the following situations:*

- (a) being a member of the administrative, management or supervisory bodies of the issuer;*
- (b) having a holding in the capital of the issuer;*
- (c) his having access to the information through the exercise of an employment, profession or duties;*
- (d) being involved in criminal activities.*

This Article also applies to any person who has obtained inside information under circumstances other than those referred to in the first subparagraph where that person knows that it is inside information.

4. *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.*

5. *In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010, the use of inside information referred to in paragraph 4 shall also comprise, submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.*
6. *For the purposes of this Directive, recommending that another person engages in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:*
- (a) recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal; or*
 - (b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.*

7. *The use of the recommendations or inducements referred to in paragraph 6 amounts to insider dealing when the person using the recommendation or inducement knows, that it is based upon inside information.*
8. *For the purposes of this Article a person in possession of inside information shall not, in itself, be deemed to have used that information or consequently to have engaged in insider dealing on the basis of an acquisition or disposal, where its behaviour qualifies as legitimate behaviour under Article 7a of Regulation (EU) No .../2014 [MAR].*

Article 3a
Unlawful disclosure of inside information

1. *Member States shall take the necessary measures to ensure that unlawful disclosure of inside information as defined in this Article constitute criminal offences at least in serious cases and when committed intentionally.*

2. *For the purposes of this Directive, unlawful disclosure of inside information arises where a person that possesses inside information discloses that information to any other person, except where the disclosure is made in the normal course of the exercise of an employment, profession or duties, including where the disclosure qualifies as a market sounding made in compliance with Article 7c(1) to (9) of Regulation (EU) No .../2014 [MAR].*
3. *This Article applies to any person in the situations or circumstances referred to in Article 3(3) of the Directive.*
4. *For the purposes of this Directive the onward disclosure of recommendations or inducements referred to in Article 3(6) amounts to unlawful disclosure of inside information under this Article when the person disclosing the recommendation or inducement knows that it was based on inside information.*
5. *This Article shall be applied in accordance with the need to protect the freedom of the press and the freedom of expression.*

Article 4
Market manipulation

1. Member States shall take the necessary measures to ensure that *market manipulation as defined in this Article* constitutes **■** criminal *offences at least in serious cases and* when committed intentionally.

2. *For the purposes of this Directive, market manipulation shall comprise the following activities:*

(a) *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;

unless the reasons for so doing of the person who entered into the transactions or issued the orders to trade are legitimate, and these transactions or orders to trade are in conformity with accepted market practices on the trading venue concerned;

- (b) entering into a transaction, placing an order to trade **■** or any other activity *or behaviour which affects* 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;
- (c) *disseminating* information *through the media, including the internet, or by any other means*, which 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 *secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level* where those persons derive for themselves or another person **■** an advantage or profit from the dissemination of the information in *questions; or*
- (d) *transmitting false or misleading information or providing false or misleading inputs or any other behaviour which manipulates 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 the **■** offences referred to in *Article 3 (2) to (5)*, *Articles 3a* and *4* is punishable as *a criminal offence*.
 2. Member States shall take the necessary measures to ensure that the attempt to commit any of the offences referred to in *Article 3 (2) to (5)* and *(7)* and *Article 4* is punishable as a criminal offence.
- 2a. Article 3(8) applies accordingly.*

Article 6
Criminal *penalties for natural persons*

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

2. *Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by a maximum term of imprisonment of at least four years.*
3. *Member States shall take the necessary measures to ensure that the offences referred to in Article 3a are punishable by a maximum term of imprisonment of at least two years.*

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 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* 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 *a legal person* held liable pursuant to Article 7 *is subject to* effective, proportionate and dissuasive sanctions, *which shall include criminal or non-criminal fines and may include other sanctions, such as:*

- (a) *exclusion from entitlement to public benefits or aid;*

- (b) *temporary or permanent disqualification from the practice of commercial activities;*
- (c) *placing under judicial supervision;*
- (d) *judicial winding-up;*
- (e) *temporary or permanent closure of establishments which have been used for committing the offence.*

*Article 8a
Jurisdiction*

1. *Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 to 5 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.*

2. *A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 3 to 5 committed outside its territory where:*
- (a) the offender has his or her habitual residence in its territory; or*
 - (b) the offence is committed for the benefit of a legal person established in its territory.*

*Article 8b
Training*

Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, 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.

Article 9
Report

By ...^{*}, the Commission shall report to the European Parliament and *to* the Council on the **functioning** of this Directive and, if necessary, on the need to **amend it, including** with regard to the **interpretation of serious cases as referred to in Article 3(1), Article 3a(1) and Article 4, the level of sanctions provided for by Member States and the extent to which the optional elements referred to in this Directive have been adopted.**

The **Commission's** report **shall**, if appropriate, **be accompanied** 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 forthwith communicate to the Commission the text of those measures **█**.

* OJ please insert date: four years after **the date of application** of this Directive.

** OJ please insert date: 24 months after the date of entry into force of this Directive.

They shall apply those measures from ...* and subject to and on the date of the entry into force of Regulation *(EU) No .../2014 [MAR]*.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive ■ .

Article 11 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*.

* OJ please insert date: 24 months after the date of entry into force of this Directive.

Article 12
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
