

Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive)

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PARLIAMENT AND OF THE COUNCIL

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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⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

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.
- (2) Directive 2003/6/EC of the European Parliament and the Council⁽⁴⁾ completed and updated the Union's legal framework to protect market integrity. It also required Member States to ensure that competent authorities have the power 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 of 25 February 2009 by the High-Level Group on Financial Supervision in the EU, chaired by Jacques de Larosière (the 'de Larosière 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 de Larosière 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

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market integrity. The de Larosière Group concluded that Member States' sanctioning regimes are in general weak and heterogeneous.

- (4) A well-functioning legislative framework in relation to 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 abuse with the appropriate sanction. In particular, not all Member States provided for pecuniary administrative sanctions 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 Member States has, to date, proven to be insufficient to ensure compliance with the rules on preventing and fighting market abuse.
- (6) It is essential that compliance with the rules on market abuse be strengthened by the availability of criminal sanctions which demonstrate a stronger form of social disapproval compared to administrative penalties. Establishing criminal offences for at least serious forms of market abuse sets clear boundaries for types of behaviour that are considered to be particularly unacceptable and sends a message to the public and to potential offenders that competent authorities take such behaviour very seriously.
- (7) Not all Member States have provided for criminal sanctions for some forms of serious breaches of national law implementing Directive 2003/6/EC. Different approaches by Member States 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 those offences. In addition, there has, to date, been no Union-wide understanding of conduct that is considered to constitute a serious breach of the rules on market abuse. Therefore, minimum rules should be established with regard to the definition of criminal offences committed by natural persons, liability of legal persons and the relevant sanctions. Common minimum rules would also make it possible to use more effective methods of investigation and enable more effective cooperation within and between Member States. In the light of the financial crisis, it is evident that market manipulation has a potential for widespread damage on the lives of millions of people. The 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. The imposition of criminal sanctions for market abuse will have an increased deterrent effect on potential offenders.
- (8) The introduction by all Member States of criminal sanctions for at least serious market abuse offences 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 596/2014 of the European Parliament and of the Council⁽⁵⁾, trading in own shares in buy-

back programmes and trading in securities or associated instruments for the stabilisation of securities; transactions, orders or behaviour in pursuit of monetary, exchange-rate or public debt management policy; activities concerning emission allowances undertaken in pursuit of the Union's climate policy; and activities undertaken in 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 required to provide at least for serious cases of insider dealing, market manipulation and unlawful disclosure of inside information to constitute criminal offences when committed with intent.
- (11) For the purposes 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, where an offence has been committed within the framework of a criminal organisation or where the person has committed such an offence before.
- (12) For the purposes 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 where the manipulation is committed by a person employed or working in the financial sector or in a supervisory or regulatory authority.
- (13) Due to the adverse effects of attempted insider dealing and attempted market manipulation on the integrity of the financial markets and on investor confidence in those markets, those forms of behaviour should also be punishable as a criminal offence.
- (14) This Directive 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 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.
- (15) This Directive should also require Member States to ensure that inciting, aiding and abetting the criminal offences are also punishable.
- (16) 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.
- (17) This Directive should be applied taking into account the legal framework established by Regulation (EU) No 596/2014 and its implementing measures.
- (18) In order to ensure effective implementation of the European policy for ensuring the integrity of the financial markets set out in Regulation (EU) No 596/2014, Member States should extend liability for the offences provided for in this Directive to legal

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persons through the imposition of criminal or non-criminal sanctions or other measures which are effective, proportionate and dissuasive, for example those provided for in Regulation (EU) No 596/2014. Such sanctions or other measures may include the publication of a final decision on a sanction, including the identity of the liable legal person, taking into account fundamental rights, the principle of proportionality and the risks to the stability of financial markets and ongoing investigations. Member States should, where appropriate and where national law provides for criminal liability of legal persons, extend such criminal liability, in accordance with national law, to the offences provided for in this Directive. This Directive should not prevent Member States from publishing final decisions on liability or sanctions.

- (19) 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, the 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.
- (20) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules for market abuse.
- (21) Member States may, for example, provide that market manipulation committed recklessly or by serious negligence constitutes a criminal offence.
- (22) The obligations in this Directive to provide for penalties on natural persons and sanctions on legal persons in their national law do not exempt Member States from the obligation to provide in national law for administrative sanctions and other measures for breaches provided for in Regulation (EU) No 596/2014 unless Member States have decided, in accordance with Regulation (EU) No 596/2014, to provide only for criminal sanctions for such breaches in their national law.
- (23) The scope of this Directive is determined in such a way as to complement, and ensure the effective implementation of, Regulation (EU) No 596/2014. Whereas offences should be punishable under this Directive when committed intentionally and at least in serious cases, sanctions for breaches of Regulation (EU) No 596/2014 do not require that intent is proven or that they are qualified as serious. In the application of national law transposing this Directive, Member States should ensure that the imposition of criminal sanctions for offences in accordance with this Directive and of administrative sanctions in accordance with the Regulation (EU) No 596/2014 does not lead to a breach of the principle of ne bis in idem.
- (24) 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, the imposition of sanctions should be proportionate, taking 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, to the functioning of markets or the wider economy.

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- (25) Since the objective of this Directive, namely to ensure the availability of criminal sanctions for at least serious market abuse 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 (TEU). 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.
- (26) 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 competences of those national authorities in the different Member States should not hinder their cooperation.
- (27) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (the Charter) as recognised in the TEU. Specifically, it should be applied with due respect for the right to protection of personal data (Article 8), the freedom of expression and information (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).
- (28) 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 Union law on procedural rights in criminal proceedings. Nothing in this Directive is intended to restrict the freedom of press or the 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 and other relevant provisions. This should be emphasised in particular as regards disclosure of inside information in accordance with the provisions on such disclosure in this Directive.
- (29) Without prejudice to Article 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 TEU and to the Treaty on the Functioning of the European Union (TFEU), the United Kingdom will not participate in the adoption of this Directive and is therefore not bound by or be subject to its application.
- (30) 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 TEU and to the TFEU, Ireland has notified its wish to take part in the adoption and application of this Directive.
- (31) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application.

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(32) The European Data Protection Supervisor delivered an opinion on 10 February 2012⁽⁶⁾,
HAVE ADOPTED THIS DIRECTIVE;

- (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 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.
- (4) 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](#)).
- (5) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (see page 1 of this Official Journal).
- (6) [OJ C 177, 20.6.2012, p. 1.](#)