

2009 - 2014

# Committee on Economic and Monetary Affairs

2011/0297(COD)

13.7.2012

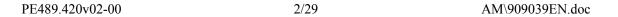
# **AMENDMENTS** 4 - 58

**Draft report Arlene McCarthy**(PE485.917v02-00)

on the proposal for a directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation

Proposal for a directive (COM(2011)0654 – C7-0358/2011 – 2011/0297(COD))

AM\909039EN.doc PE489.420v02-00



## Amendment 4 Elena Băsescu

# Proposal for a directive Recital 2

Text proposed by the Commission

(2) Directive 2003/6/EC<sup>13</sup> of the European Parliament and the Council on insider dealing and market manipulation (market abuse) 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 be imposed against the persons responsible for violations of the national rules implementing that Directive.

# Amendment

(2) Directive 2003/6/EC<sup>13</sup> of the European Parliament and the Council on insider dealing and market manipulation (market abuse), adopted on 28 January 2003, 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 be imposed against the persons responsible for violations of the national rules implementing that Directive.

Or. en

## Amendment 5 Elena Băsescu

# Proposal for a directive Recital 3

Text proposed by the Commission

(3) 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 considered that

#### Amendment

(3) 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 considered that

supervisory authorities must be equipped with sufficient powers to act and there should also be equal, strong and deterrent sanctions regimes against all financial crimes, sanctions which should be enforced effectively. The Group concluded that Member States sanctioning regimes are in general weak and heterogeneous.

supervisory authorities must be equipped with sufficient powers to act and 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 Group concluded that Member States sanctioning regimes are in general weak and heterogeneous.

Or. en

# Amendment 6 Elena Băsescu

# Proposal for a directive Recital 4

Text proposed by the Commission

(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 these sanctions varied widely among Member States.

#### Amendment

(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 these sanctions varied widely among Member States. A new legislative instrument is also needed to ensure uniform rules and clarity of key concepts and to ensure a single rulebook in line with the conclusions of the High-Level Group on Financial Supervision.

Or. en

# Amendment 7 Elena Băsescu

# Proposal for a directive Recital 5

Text proposed by the Commission

(5) The adoption of administrative sanctions by the Member States has proven insufficient to ensure compliance with the rules on preventing and fighting market abuse.

#### Amendment

(5) The adoption of administrative sanctions by the Member States has *so far* proven insufficient to ensure compliance with the rules on preventing and fighting market abuse.

Or. en

Amendment 8 Kay Swinburne

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

#### Amendment

(6 a) The scope of this Directive, and the framing of the prohibitions, is deliberately broad, so as to capture wider behaviour or conduct which may, directly or indirectly, have an effect on financial instruments. It is not necessary for competent authorities to demonstrate the precise link between the misconduct of one or more individuals and the end effect on one or more financial instruments; it is sufficient that there is a relationship, even if indirect, between the abusive behaviour and a financial instrument. For example, the dissemination of false or misleading information relating to an interbank offer rate or other benchmark, as this would be covered as a result of related instruments, such as interest rate swaps, being traded on venues which are within the scope. It would not be necessary for the competent authority to demonstrate that the dissemination of false or misleading

information actually had influenced the relevant interbank offer rate or bench mark, or that this actually had influenced the price of a financial instrument; it is enough that these were likely consequences of the dissemination of the false or misleading information.

Similarly, the likely impact on the price of a financial instrument should be applied broadly, to encompass not only situations where the transaction or behaviour might influence the price of a traded financial instrument but also, for example, where it might influence the profit or advantage gained on a derivative contract.

Or. en

# Amendment 9 Wolf Klinz

# Proposal for a directive Recital 7

Text proposed by the Commission

(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 and 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

### Amendment

(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

within and between Member States. Convictions for market abuse offences under criminal law often result in extensive media coverage, which helps to deter potential offenders, as it draws public attention to the commitment of competent authorities to tackling market abuse.

investigation and effective cooperation within and between Member States. Convictions for market abuse offences under criminal law often result in extensive media coverage, which helps to deter potential offenders, as it draws public attention to the commitment of competent authorities to tackling market abuse.

Or. de

# Amendment 10 Kay Swinburne

# Proposal for a directive Recital 9

Text proposed by the Commission

(9) In order for the scope of this Directive to be aligned with that of Regulation (EU) No...of the European Parliament and the Council on insider dealing and market manipulation, trading in own shares for stabilisation and buy-back programmes, as well as transactions, orders or behaviours carried out for the purposes of monetary and public debt management activities and activities concerning emission allowances in pursuit of the Union's climate policy, should be exempt from this Directive.

### Amendment

(9) In order for the scope of this Directive to be aligned with that of Regulation (EU) No...of the European Parliament and the Council on insider dealing and market manipulation, trading in own shares *and other financial instruments* for stabilisation and buy-back programmes, as well as transactions, orders or behaviours carried out for the purposes of monetary and public debt management activities and activities concerning emission allowances in pursuit of the Union's climate policy, should be exempt from this Directive.

Or. en

## Justification

This should be aligned with the rapporteur's suggestions on MAR.

Amendment 11 Sirpa Pietikäinen

# Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9 a) It is possible for the use of inside information to consist of the acquisition and disposal of financial instruments by a person. Since the acquisition or disposal of financial instruments necessarily involves a prior decision on the part of that person, the carrying out of such acquisition or disposal should not be deemed in itself to constitute the use of inside information.

Or. en

Amendment 12 Sirpa Pietikäinen

Proposal for a directive Recital 9 b (new)

Text proposed by the Commission

Amendment

(9 b) Having access to inside information relating to another company and using it in the context of a public takeover bid for the purpose of gaining control of that company or proposing a merger with that company should not in itself be deemed to constitute insider dealing

Or. en

Amendment 13 Sirpa Pietikäinen

Proposal for a directive Recital 9 c (new)

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Amendment

(9 c) Research and estimates developed from publicly available data should not be regarded as inside information and, therefore, any transaction carried out on the basis of such research or estimates should not be deemed in itself to constitute insider dealing within the meaning of this Directive.

Or. en

Amendment 14 Sirpa Pietikäinen

Proposal for a directive Recital 9 d (new)

Text proposed by the Commission

Amendment

(9 d) The mere fact that market-makers, bodies authorised to act as counterparties, or persons authorised to execute orders on behalf of third parties with inside information confine themselves, in the first two cases, to pursuing their legitimate business of buying or selling financial instruments or, in the last case, to carrying out an order dutifully, should not in itself be deemed to constitute use of such inside information

Or. en

Amendment 15 Ramon Tremosa i Balcells

Proposal for a directive Recital 11 a (new)

Amendment

(11 a) Deliberate manipulation of financial indexes as LIBOR or EURIBOR should be included in the scope of this legislation, as well as hiding information on the near term future viability of a company before its IPO.

Or. en

Amendment 16 Ramon Tremosa i Balcells

Proposal for a directive Recital 11 b (new)

Text proposed by the Commission

Amendment

(11 b) Deliberate selling of complex financial products to private investors with no financial experience that may endanger their lifetime saving should be included in the scope of this legislation.

Or. en

Amendment 17 Wolf Klinz

Proposal for a directive Recital 14

Text proposed by the Commission

(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...of the European Parliament and the Council on insider dealing and market manipulation, Member States should also extend liability to legal persons, including,

Amendment

(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...of the European Parliament and the Council on insider dealing and market manipulation, Member States should also extend liability to legal persons, including,

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whenever possible, criminal liability of legal persons.

whenever possible, criminal liability of legal persons, where this is compatible with the national legislation applicable.

Or. de

Amendment 18 Sylvie Goulard

# Proposal for a directive Recital 18

Text proposed by the Commission

(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 Treaty. Specifically, it should be applied with due respect for 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 for the same offence (Article 50).

#### Amendment

(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 Treaty. Specifically, it should be applied with due respect for 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 for the same offence (Article 50). This Directive does not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media as well as self-regulatory instruments which apply to journalistic professions.

Or. en

Amendment 19 Wolf Klinz

# Proposal for a directive Recital 18

Text proposed by the Commission

(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 Treaty. Specifically, it should be applied with due respect for 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 for the same offence (Article 50).

### Amendment

(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 Treaty. Specifically, it should be applied with due respect for 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 for the same offence (Article 50). In this respect, Member States should ensure that the same offence is not punished by both criminal and administrative sanctions.

Or. de

Amendment 20 Elena Băsescu

Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive establishes minimum rules for criminal sanctions for the most serious market abuse offences, namely insider dealing and market manipulation.

### Amendment

1. This Directive establishes minimum rules for criminal sanctions for the most serious market abuse offences, namely insider dealing and market manipulation, to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.

Or. en

# Amendment 21 Sirpa Pietikäinen

# Proposal for a directive Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive establishes minimum rules for criminal sanctions for the most serious market abuse offences, namely insider dealing and market manipulation.

#### Amendment

1. This Directive establishes minimum rules for criminal sanctions for the most serious market abuse offences, namely insider dealing and market manipulation *in financial instruments as referred to in Article 2 of the Regulation [MAR]*.

Or. en

Amendment 22 Arlene McCarthy

Proposal for a directive Article 1 – paragraph 3 a (new)

Text proposed by the Commission

#### Amendment

3 a. This Directive shall also apply to interest rates, currencies or indexes and types of financial instruments, including derivative contracts or derivative instruments, which derive their value from the value of interest rates, currencies or indexes.

Or. en

Amendment 23 Sylvie Goulard

Proposal for a directive Article 1 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. This Directive shall not apply to

# information which is disseminated for the purposes of journalism.

Or. en

# Justification

This Directive should exempt information disseminated for the purposes of journalism in order to respect the freedom of expression, freedom of the press and Member States constitutional traditions in this area.

**Amendment 24 Sharon Bowles** 

Proposal for a directive Article 2 – paragraph 1 – point 1

Text proposed by the Commission

1. 'Financial instrument' means any instrument within the meaning of Article 2(1)(8) of Regulation (EU) No...of the European Parliament and the Council on markets in financial instruments

#### Amendment

1. 'Financial instrument' for the purpose of this Directive, and the Market Abuse Regulation [MAR] means any instrument within the meaning of Article 2(1)(8) of Regulation (EU) No...of the European Parliament and the Council on markets in financial instruments (MiFIR); and additionally it includes any inter-bank offer rate, index, benchmark, estimate or indicator used - directly or indirectly - in financial markets, insurance or banking for, or assisting with, pricing, rate-setting, or which has an influence or effect on market participants, supervisors or compliance.

Or. en

Amendment 25 Sirpa Pietikäinen

Proposal for a directive Article 2 – paragraph 1 – point 1

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1. 'Financial instrument' means any instrument within the meaning of Article 2(1)(8) of Regulation (EU) No...of the European Parliament and the Council on markets in financial instruments.

#### Amendment

1. *"financial* instrument" means any instrument within the meaning of Article 2(1)(8) of Regulation *[MiFIR]*.

Or. en

Amendment 26 Sirpa Pietikäinen

Proposal for a directive Article 2 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

1 a. "commodity" means a commodity within the meaning of Article 2(1) of Commission Regulation (EC) No 1287/2006.

Or. en

Amendment 27 Sirpa Pietikäinen

Proposal for a directive Article 2 – paragraph 1 – point 1 b (new)

Text proposed by the Commission

Amendment

1 b. "spot commodity contract" means any contract for the supply of a commodity traded on a spot market which is promptly delivered when the transaction is settled including any derivative contract that must be settled physically.

Or. en

Amendment 28 Sirpa Pietikäinen

Proposal for a directive Article 2 – paragraph 1 – point 1 c (new)

Text proposed by the Commission

Amendment

1 c. "buy-back programme" means trading in own shares in accordance with Articles 19 to 24 of Council Directive 77/91/EEC.

Or. en

Amendment 29 Sirpa Pietikäinen

Proposal for a directive Article 2 – paragraph 1 – point 2

Text proposed by the Commission

2. 'Inside information' means information within the meaning of Article 6 of Regulation (EU) No...of the European Parliament and the Council on insider dealing and market manipulation.

Amendment

2. 'Inside information' means information within the meaning of Article 6 of Regulation *[MAR]*.

Or. en

Amendment 30 Sirpa Pietikäinen

Proposal for a directive Article 2 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

Amendment

2 a. "competent authority" means the competent authority designated in accordance with Article 16 of Regulation [MAR].

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Amendment 31 Sirpa Pietikäinen

Proposal for a directive Article 2 – paragraph 1 – point 2 b (new)

Text proposed by the Commission

Amendment

2 b. "person" means any natural or legal person.

Or. en

Amendment 32 Sirpa Pietikäinen

Proposal for a directive Article 3 – title

Text proposed by the Commission

Amendment

Insider dealing

Insider dealing and improper disclosure of inside information

Or. en

Amendment 33 Sirpa Pietikäinen

Proposal for a directive Article 3 – paragraph 1 – point a

Text proposed by the Commission

(a) when in possession of inside information, using that information to acquire or dispose of financial instruments to which that information relates for one's own account or for the account of a third party. This also includes

Amendment

(a) where a person possesses inside information and uses that information by acquiring or disposing of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information

using inside information to cancel or amend an order concerning a financial instrument to which that information relates where that order was placed before entering into possession of that inside information; or

relates. The use of inside information to cancel or amend 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;

Or. en

Amendment 34 Arlene McCarthy

Proposal for a directive Article 3 – paragraph 1 – point a

Text proposed by the Commission

(a) when in possession of inside information, using that information to acquire or dispose of financial instruments to which that information relates for one's own account or for the account of a third party. This also includes using inside information to cancel or amend an order concerning a financial instrument to which that information relates where that order was placed before entering into possession of that inside information; or

#### Amendment

(a) when in possession of inside information, using that information to acquire or dispose of financial instruments to which that information relates for one's own account or for the account of a third party. This also includes using inside information to cancel or amend an order concerning a financial instrument to which that information relates where that order was placed before entering into possession of that inside information or to influence the value of interest rates, currencies or indexes; or

Or. en

Amendment 35 Elisa Ferreira

Proposal for a directive Article 3 – paragraph 1 – point a

Text proposed by the Commission

(a) when in possession of inside information, using that information to

Amendment

(a) when in possession of inside information, using that information to

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acquire or dispose of financial instruments to which that information relates for one's own account or for the account of a third party. This also includes using inside information to cancel or amend an order concerning a financial instrument to which that information relates where that order was placed before entering into possession of that inside information; or acquire or dispose of financial instruments to which that information relates for one's own account or for the account of a third party, *either directly* or *indirectly*. This also includes using inside information to cancel or amend an order concerning a financial instrument to which that information relates where that order was placed before entering into possession of that inside information; or

Or en

Amendment 36 Elena Băsescu

Proposal for a directive Article 3 – paragraph 1 – point a

Text proposed by the Commission

(a) when in possession of inside information, using that information to acquire or dispose of financial instruments to which that information relates for one's own account or for the account of a third party. This also includes using inside information to cancel or amend an order concerning a financial instrument to which that information relates where that order was placed before entering into possession of that inside information; or

#### Amendment

(a) when in possession of inside information, using that information to acquire or dispose of financial instruments to which that information relates for one's own account or for the account of a third party, either directly or indirectly. This also includes using inside information to cancel or amend an order concerning a financial instrument to which that information relates where that order was placed before entering into possession of that inside information; or

Or. en

Amendment 37 Sirpa Pietikäinen

Proposal for a directive Article 3 – paragraph 1 – point a a (new)

#### Amendment

(a a) where a person recommends or induces another person to engage in insider dealing if the person possesses inside information and recommends or induces another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.

Or. en

Amendment 38 Sirpa Pietikäinen

Proposal for a directive Article 3 – paragraph 1 – point b

Text proposed by the Commission

(b) *disclosing* inside information to any other person, *unless such* disclosure is made in the *lawful* course of the exercise of duties resulting from employment or profession.

### Amendment

(b) where a person possesses inside information and discloses the inside information to any other person, except where the disclosure is made in the normal course of the exercise of duties resulting from an employment or profession.

Or. en

Amendment 39 Sirpa Pietikäinen

Proposal for a directive Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) *giving* false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract;

### Amendment

(a) entering into a transaction, placing an order to trade or any other behaviour which has the following consequences:

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- it 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* 

Or. en

Amendment 40 Elena Băsescu

Proposal for a directive Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) giving false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract;

#### Amendment

(a) giving, or being likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract;

Or. en

Amendment 41 Arlene McCarthy

Proposal for a directive Article 4 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(a a) giving false or misleading information on the value of interest rates, currencies or indexes or otherwise manipulating interest rates, currencies or indexes;

Or. en

Amendment 42 Sven Giegold on behalf of the Verts/ALE Group

# Proposal for a directive Article 4 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(a a) securing the value of an index upon which the prices of other financial instruments depend at an abnormal or artificial level;

Or. en

### Justification

it is not clear that point b covers cases such as the "Libor fixing scandal", this amendment is intended to bring such manipulation in scope

Amendment 43 Ramon Tremosa i Balcells

Proposal for a directive Article 4 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(a a) deliberate manipulation of financial indexes by market participants

Or. en

Amendment 44 Elena Băsescu

Proposal for a directive Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) securing the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level; Amendment

(b) securing, *or being likely to secure*, the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level;

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# Amendment 45 Sirpa Pietikäinen

# Proposal for a directive Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) *securing* the price of one or several financial instruments or a related spot commodity *contract* at an abnormal or artificial level;

#### Amendment

(b) - it secures the price of one or several financial instruments or a related spot commodity *contracts* at an abnormal or artificial level;

Or. en

Amendment 46 Sirpa Pietikäinen

Proposal for a directive Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) entering into a transaction, placing an order to trade, or any other *activity in financial markets* affecting 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;

#### Amendment

(c) entering into a transaction, placing an order to trade or any other *behaviour* affecting 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;

Or. en

Amendment 47 Elisa Ferreira

Proposal for a directive Article 4 – paragraph 1 – point c

(c) entering into a transaction, placing an order to trade, or any other activity in financial markets affecting 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;

#### Amendment

(c) entering into a transaction, placing an order to trade, or any other activity in financial markets affecting *or likely to affect* 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:

Or. en

Amendment 48 Elena Băsescu

Proposal for a directive Article 4 – paragraph 1 – point c

Text proposed by the Commission

(c) entering into a transaction, placing an order to trade, or any other *activity* in financial markets affecting 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;

#### Amendment

(c) entering into a transaction, placing an order to trade, or any other *behaviour* in financial markets affecting 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;

Or. en

Amendment 49 Sirpa Pietikäinen

Proposal for a directive Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) dissemination of information which gives false or misleading signals as to financial instruments or related spot commodity contracts, where those persons

#### Amendment

(d) disseminating information through the media, including the Internet, or by any other means, which has the consequences referred to in subparagraph (a), where the

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derive, *for themselves* or *another person*, an advantage or *profit* from the dissemination of the information in question.

person who made the dissemination knew, or ought to have known, that the information was false or misleading. When information is disseminated for the purposes of journalism, such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media as well as the rules or codes governing journalist profession, unless:

- those persons derive, *directly* or *indirectly*, an advantage or *profits* from the dissemination of the information in question; *or*
- the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.

Or. en

Amendment 50 Sharon Bowles

Proposal for a directive Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) dissemination of information which gives false or misleading signals as to financial instruments or related spot commodity contracts, where those persons derive, for themselves or another person, an advantage or profit from the dissemination of the information in question.

#### Amendment

(d) dissemination of information which, directly or indirectly, gives false or misleading signals as to financial instruments or related spot commodity contracts, where those persons derive, for themselves or another person, an advantage or profit from the dissemination of the information in question or which brings about a concealment.

Or. en

# Amendment 51 Elisa Ferreira

# Proposal for a directive Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) dissemination of information which gives false or misleading signals as to financial instruments or related spot commodity contracts, where those persons *derive*, for themselves or another person, an advantage or profit from the dissemination of the information in question.

#### Amendment

(d) dissemination of information which gives false or misleading signals as to financial instruments or related spot commodity contracts, where those persons *aim at deriving*, for themselves or another person, an advantage or profit from the dissemination of the information in question.

Or. en

# Amendment 52 Elena Băsescu

# Proposal for a directive Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) dissemination of information which gives false or misleading signals as to financial instruments or related spot commodity contracts, where those persons derive, for themselves or another person, an advantage or profit from the dissemination of the information in question.

#### Amendment

(d) dissemination of information which gives, *or is likely to give*, false or misleading signals as to financial instruments or related spot commodity contracts, where those persons derive, for themselves or another person, an advantage or profit from the dissemination of the information in question.

Or. en

Amendment 53 Ramon Tremosa i Balcells

Proposal for a directive Article 4 – paragraph 1 – point d a (new)

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Amendment

(d a) Participation in IPO on a financial institution where the management of the firm or the IPO underwriters are aware of near term financial problems which endanger the future viability of the company.

Or. en

Amendment 54 Ramon Tremosa i Balcells

Proposal for a directive Article 4 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(d b) Deliberate selling of complex financial products to private investors with no financial experience that may endanger their lifetime savings.

Or. en

Amendment 55 Sven Giegold on behalf of the Verts/ALE Group

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that the attempt to commit any of the offences referred to in Articles 3(a) and 4(a), (b) and (c) is punishable as a criminal offence.

#### Amendment

2. Member States shall take the necessary measures to ensure that the attempt to commit any of the offences referred to in Articles 3(a) and 4(a), (b), *(ba)* and (c) is punishable as a criminal offence.

Or. en

## Justification

Needed for consistency for Green amendment to art 4(ba) on index manipulation

Amendment 56 Sven Giegold on behalf of the Verts/ALE Group

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 7 are punishable by effective, proportionate and dissuasive sanctions.

Amendment

Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 7 are punishable by effective, proportionate and dissuasive sanctions. 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.

Or. en

### Justification

It is appropriate to base sanctions on the full economic damage to third parties and not only the economic benefit of the offender.

Amendment 57 Krišjānis Kariņš

Proposal for a directive Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall adopt and publish, by [24 months after entry into force of this Directive] at the latest, the laws,

Amendment

Member States shall adopt and publish, by [24 months after entry into force of this Directive] at the latest, the laws,

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regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Or. lv

Amendment 58 Krišjānis Kariņš

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

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 and a table indicating the correlation between those provisions and this Directive.

#### Amendment

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.

Or. lv