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*Committee on Economic and Monetary Affairs*

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**2011/0297(COD)**

26.3.2012

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## **DRAFT REPORT**

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))

Committee on Economic and Monetary Affairs

Rapporteur: Arlene McCarthy

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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),
  - 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 Economic and Social Committee of ...<sup>1</sup>,
  - 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 Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2012),
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.

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<sup>1</sup> OJ C [...], [...], p. [...].

## Amendment 1

### Proposal for a directive Article 9 – paragraph 1

*Text proposed by the Commission*

By **[4 years after entry into force of this Directive]**, the Commission shall report to the European Parliament and the Council on the application of this Directive and, if necessary, on the need to review it, in particular with regard to the appropriateness of introducing common minimum rules on types and levels of criminal sanctions.

*Amendment*

By ... \*, the Commission shall report to the European Parliament and the Council on the application of this Directive and, if necessary, on the need to review it, in particular with regard to the appropriateness of introducing common minimum rules on types and levels of criminal sanctions.

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**\* OJ please insert date: two years after entry into force of this Directive.**

Or. en

## Amendment 2

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

*Text proposed by the Commission*

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

*Amendment*

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

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**\* OJ please insert date: 12 months after entry into force of this Directive.**

Or. en

### **Amendment 3**

#### **Proposal for a directive**

#### **Article 10 – paragraph 1 – subparagraph 2**

##### *Text proposed by the Commission*

They shall apply those provisions from **[24 months after entry into force of this Directive]** and subject to and on the date of the entry into force of Regulation (EU) No...of the European Parliament and the Council on insider dealing and market manipulation.

##### *Amendment*

They shall apply those provisions from ...\* and subject to and on the date of the entry into force of Regulation (EU) No...of the European Parliament and the Council on insider dealing and market manipulation.

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**\* OJ please insert date: 12 months after entry into force of this Directive.**

Or. en

## EXPLANATORY STATEMENT

The gravity of crimes of market abuse merits the application, where appropriate, of criminal penalties. The introduction of a Directive aimed at harmonising the criminal sanctions regimes for market abuse across the EU is essential to ensure effective implementation of EU financial services legislation. The proposal for a Regulation on Market Abuse adds a significant innovation to the current market abuse framework by providing a detailed list of infringements that must be sanctioned, a detailed list of measures and sanctions that must at least be available to the competent authorities and criteria for the application of sanctions. The proposal for a Regulation makes it clear that these sanctions must be effective, proportionate and dissuasive.

The European Commission's Communication on 'Reinforcing sanctioning regimes in the financial sector'<sup>1</sup>, argues that criminal sanctions, in particular imprisonment, are generally considered to be strong deterrent for perpetrators of financial crime. Nevertheless in the case of market abuse, it is clear that criminal sanctions are not appropriate for all cases of inside dealing and market manipulation.

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"<sup>2</sup>. Supervisory authorities must therefore be equipped with sufficient powers to act and should be able to rely on "equal, strong and deterrent sanctions regimes against all financial crimes, sanctions which should be enforced effectively".

There are currently considerable divergences between Member States' approaches to market abuse. Five Member States do not provide for criminal sanctions for disclosure of inside information by primary insiders and eight Member States do not do so for secondary insiders. In addition, one Member State does not currently impose criminal sanctions for insider dealing by a primary insider and four do not do so for market manipulation. It is important to harmonise minimum rules on criminal sanctions in order to ensure perpetrators cannot exploit differences in regimes across the EU.

This is the first directive of its kind in the financial services area and it is important to ensure that it provides a strong and robust framework to tackle market abuse while leaving the details of sanctions and penalties up to the Member States. Market abuse crimes are complex and Member States must therefore have the flexibility to apply their own range of sanctions and penalties in accordance with their national laws and provisions.

Given the importance of tackling market abuse and the EU's commitment to a tougher and more robust regime these measures should be implemented in 12 months and the Commission should report back to the European Parliament and Council on their implementation within 2

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<sup>1</sup> European Commission, Communication on *Reinforcing sanctioning regimes in the financial sector*, COM (2010) 716, 8 December 2010.

<sup>2</sup> *Report of the High-Level Group on Financial Supervision in the EU*, Brussels, 25.2.2009, p. 23.

years of the application of this Directive.