EUROPEAN UNION

THE EUROPEAN PARLIAMENT **THE COUNCIL**

Strasbourg, 16 April 2014
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DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CRIMINAL SANCTIONS FOR MARKET ABUSE (MARKET ABUSE DIRECTIVE)

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)

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],

[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.

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[1] 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 market integrity. The de Larosière 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 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…/2014 of the European Parliament and of the Council[1*], 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.

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

[*] OJ: Please insert the number of the regulation contained in document COD 2011/0295 and complete the footnote with number, date and OJ reference.

(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 .../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 .../2014[*], 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 other measures which are effective, proportionate and dissuasive, for example those provided for in Regulation (EU) No .../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.

[*] OJ: Please insert the number of the regulation contained in document COD 2011/0295.

(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 .../2014[*] unless Member States have decided, in accordance with Regulation (EU) No .../2014[*], to provide only for criminal sanctions for such breaches in their national law.

[*] OJ: Please insert the number of the regulation contained in document COD 2011/0295.

(23) The scope of this Directive is determined in such a way as to complement, and ensure the effective implementation of, Regulation (EU) No .../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 .../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 .../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.

(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.

* OJ: Please insert the number of the regulation contained in document COD 2011/0295.

(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.

(32) The European Data Protection Supervisor delivered an opinion on 10 February 2012[1],

HAVE ADOPTED THIS DIRECTIVE;

[1] OJ C 177, 20.6.2012, p. 1.

Article 1

Subject matter and scope

1. This Directive establishes minimum rules for criminal sanctions for insider dealing, for unlawful disclosure of inside information and for 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 on a multilateral trading facility (MTF), admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;

   (c) financial instruments traded on an organised trading facility (OTF);

   (d) financial instruments not covered by point (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 on an auction platform authorised as a regulated market of emission allowances or other auctioned products based thereon, including when auctioned products are not financial instruments, pursuant to Commission Regulation (EU) No 1031/2010[1]. Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any provisions in this Directive referring to orders to trade shall apply to such bids.

3. 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 5(1), (2) and (3) of Regulation (EU) No .../2014[*];

(b) trading in securities or associated instruments as referred to in points (a) and (b) of Article 3(2) of Regulation (EU) No .../2014[*] for the stabilisation of securities, where such trading is carried out in accordance with Article 5(4) and (5) of that Regulation;

[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).

[*] OJ: Please insert the number of the regulation contained in document COD 2011/0295.

(c) transactions, orders or behaviours carried out in pursuit of monetary, exchange rate or public debt management policy in accordance with Article 6(1) of Regulation (EU) No .../2014*, transactions order or behaviours carried out in accordance with Article 6(2) thereof, activities in pursuit of the Union's climate policy in accordance with Article 6(3) thereof, or activities in pursuit of the Union's Common Agricultural Policy or of the Union's Common Fisheries Policy in accordance with Article 6(4) thereof;

4. Article 5 also applies to:

(a) spot commodity contracts that 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.

5. This Directive applies to any transaction, order or behaviour concerning any financial instrument as referred to in paragraphs 2 and 4, irrespective of whether or not such transaction, order or behaviour takes place on a trading venue.

* OJ: Please insert the number of the regulation contained in document COD 2011/0295.

Article 2

Definitions

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

(1) "financial instrument" means a financial instrument as defined in point (15) of Article 4(1) of Directive 2014/.../EU of the European Parliament and of the Council[1*];

(2) "spot commodity contract" means a spot commodity contract as defined in point (15) of Article 3(1) of Regulation (EU) No .../2014[**];

(3) "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 Council[2];

(4) "inside information" means information within the meaning of Article 7(1) to (4) of Regulation (EU) No .../2014[**];

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1 Directive 2014/.../EU of the European Parliament and of the Council of ... on markets in financial instruments and amending Directive 2011/61/EU and Directive 2002/92/EC (OJ L ...).

* OJ: Please insert the number of the directive contained in document COD 2011/0298 and complete the footnote with number, date and OJ reference.

** OJ: Please insert the number of the regulation contained in document COD 2011/0295.

2 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).

(5) "emission allowance" means an emission allowance as described in point (11) of Section C of Annex I of Directive 2014/.../EU[*];

(6) "benchmark" means a benchmark as defined in point (29) of Article 3(1) of Regulation (EU) No .../2014[**];

(7) "accepted market practice" means a specific market practice that is accepted by the competent authority of a Member State in accordance with Article 13 of Regulation (EU) No .../2014[**];

(8) "stabilisation" means stabilisation as defined in Article 3(2)(d) of Regulation (EU) No .../2014[**];

(9) "regulated market" means a regulated market as defined in point (21) of Article 4(1) of Directive 2014/.../EU[*];

(10) "multilateral trading facility" or "MTF" means a multilateral trading facility as defined in point (22) of Article 4(1) of Directive 2014/.../EU[*];

(11) "organised trading facility" or "OTF" means an organised trading facility as defined in point (23) of Article 4(1) of Directive 2014/.../EU[*];

(12) "trading venue" means a trading venue as defined in point (24) of Article 4(1) of Directive 2014/.../EU[*];

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[*] OJ: Please insert the number of the directive contained in document COD 2011/0298.

[**] OJ: Please insert the number of the regulation contained in document COD 2011/0295.

(13) "wholesale energy product" means a wholesale energy product as defined in point (4) of Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council[1];

(14) "issuer" means an issuer as defined in point (21) of Article 3(1) of Regulation (EU) No .../2014[*].

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 referred to in paragraphs 2 to 8, 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 its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates.

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[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).

[*] OJ: Please insert the number of the regulation contained in document COD 2011/0295.

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

(a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;

(b) having a holding in the capital of the issuer or emission allowance market participant;

(c) having access to the information through the exercise of an employment, profession or duties; or

(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 to be 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 of this Article 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 engage 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 where the person using the recommendation or inducement knows that it is based upon inside information.

8. For the purposes of this Article, it shall not be deemed from the mere fact that a person is or has been in possession of inside information that that person has used that information and has thus engaged in insider dealing on the basis of an acquisition or disposal, where its behaviour qualifies as legitimate behaviour under Article 9 of Regulation (EU) No .../2014[*].

[*] OJ: Please insert the number of the regulation contained in document COD 2011/0295.

Article 4

Unlawful disclosure of inside information

1. Member States shall take the necessary measures to ensure that unlawful disclosure of inside information as referred to in paragraphs 2 to 5 constitutes a criminal offence 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 possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties, including where the disclosure qualifies as a market sounding made in compliance with Article 11(1) to (8) of Regulation (EU) No .../2014[*].

3. This Article applies to any person in the situations or circumstances referred to in Article 3(3).

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 where 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.

[*] OJ: Please insert the number of the regulation contained in document COD 2011/0295.

Article 5

Market manipulation

1. Member States shall take the necessary measures to ensure that market manipulation as referred to in paragraph 2 constitutes a criminal offence 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 those 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 the persons who made the dissemination derive for themselves or for another person an advantage or profit from the dissemination of the information in question; 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 6

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) and Articles 4 and 5 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 5 is punishable as a criminal offence.

3. Article 3(8) applies *mutatis mutandis*.

Article 7

Criminal penalties for natural persons

1. Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 6 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 5 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 offence referred to in Article 4 is punishable by a maximum term of imprisonment of at least two years.

Article 8

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 6 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 6 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 6.

Article 9

Sanctions for legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 8 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 10

Jurisdiction

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 to 6 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 6 committed outside its territory where:

   (a) the offender is an habitual resident in its territory; or

   (b) the offence is committed for the benefit of a legal person established in its territory.

Article 11

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 12

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 4(1) and Article 5(1), 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.

* OJ please insert date: 48 months after the date of application of this Directive.

Article 13

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.

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

   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.

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

[**] OJ please insert the date of application referred to in Article 39(2) of the regulation contained in document COD 2011/0295 [MAR] (24 months after the date of entry into force of that Regulation).

[***] OJ: Please insert the number of the regulation contained in document COD 2011/0295.

Article 14

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*.

Article 15

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg,

For the European Parliament	*For the Council*
The President	*The President*