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**NOTE**

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from: Presidency  
to: delegations

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No. prev. doc.: 17642/13 DROIPEN 186 EF 308 ECOFIN 1063 CODEC 3017  
No. Cion prop.: 16000/11 DROIPEN 125 EF 145 ECOFIN 717

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Subject: Proposal for a Directive of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) [First reading]  
- General approach

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Delegations find in Annex Presidency's technical drafting suggestions on alignment of certain provisions with MAR. In case of substantial problems with these suggestions, delegations are asked to submit written comments by **18.12.2013, 12h00pm**. Please do not comment on provisions which are still being discussed at political level (marked in the table with "Depending on the outcome at political level").

	EP and Council text identical
	Areas where technical alignment to MAR is necessary
	Technical drafting suggestions

	Article	COM text	Council text	EP text	Compromise text
<b>RECITALS</b>					
1	Recital 1	(1) An integrated and efficient financial market 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 and derivatives.	(1) An integrated and efficient financial market 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 and derivatives.	(1) An integrated and efficient financial market <b><i>and stronger investor confidence</i></b> 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 and derivatives.	(1) An integrated and efficient financial market <b><i>and stronger investor confidence</i></b> 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 <b><i>and benchmarks</i></b> .

	Article	COM text	Council text	EP text	Compromise text
2	Recital 2	(2) Directive 2003/6/EC 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.	(2) Directive 2003/6/EC <del>+</del> 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.	(2) Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) <sup>13</sup> <b><i>completed and updated the Union's legal framework to protect market integrity.</i></b> It also required Member States to ensure that competent authorities have the powers to detect and investigate market abuse. Without prejudice to the right of Member States to impose criminal sanctions, Directive 2003/6/EC also required Member States to ensure that the appropriate administrative measures can be taken or administrative sanctions can be imposed against the persons responsible for violations of the national rules implementing that Directive.	(2) Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) <sup>13</sup> <b><i>completed and updated the Union's legal framework to protect market integrity.</i></b> It also required Member States to ensure that competent authorities have the powers to detect and investigate market abuse. Without prejudice to the right of Member States to impose criminal sanctions, Directive 2003/6/EC also required Member States to ensure that the appropriate administrative measures can be taken or administrative sanctions can be imposed against the persons responsible for violations of the national rules implementing that Directive.

	Article	COM text	Council text	EP text	Compromise text
3	Recital 3	(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.	(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.	(3) The report by the High-Level Group on Financial Supervision in the EU ( <i>the High-Level Group</i> ) recommended that a sound prudential and conduct of business framework for the financial sector must rest on strong supervisory and sanctioning regimes. To <i>that</i> end, the <i>High-Level Group</i> 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, <b><i>in order to preserve market integrity</i></b> . The Group concluded that Member States sanctioning regimes are in general weak and heterogeneous.	(3) The report by the High-Level Group on Financial Supervision in the EU ( <i>the High-Level Group</i> ) recommended that a sound prudential and conduct of business framework for the financial sector must rest on strong supervisory and sanctioning regimes. To <i>that</i> end, the <i>High-Level Group</i> 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, <b><i>in order to preserve market integrity</i></b> . The Group concluded that Member States sanctioning regimes are in general weak and heterogeneous.

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4	Recital 4	(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.	(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.	(4) A well-functioning legislative framework on market abuse requires effective enforcement. An evaluation of the national regimes for administrative sanctions under Directive 2003/6/EC showed that not all national competent authorities had a full set of powers at their disposal to ensure that they could respond to market abuses with the appropriate sanction. In particular, not all Member States had pecuniary administrative sanctions available for insider dealing and market manipulation, and the level of sanctions varied widely among Member States. <b><i>A new legislative act 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.</i></b>	(4) A well-functioning legislative framework on market abuse requires effective enforcement. An evaluation of the national regimes for administrative sanctions under Directive 2003/6/EC showed that not all national competent authorities had a full set of powers at their disposal to ensure that they could respond to market abuses with the appropriate sanction. In particular, not all Member States had pecuniary administrative sanctions available for insider dealing and market manipulation, and the level of sanctions varied widely among Member States. <b><i>A new legislative act is, therefore, needed to ensure common minimum rules across the Union.</i></b>
5	Recital 5	(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.	(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.	(5) The adoption of administrative sanctions by the Member States has <b><i>so far</i></b> proven <i>to be</i> insufficient to ensure compliance with the rules on preventing and fighting market abuse.	(5) The adoption of administrative sanctions by the Member States has <b><i>so far</i></b> proven <i>to be</i> insufficient to ensure compliance with the rules on preventing and fighting market abuse.

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6	Recital 6	(6) It is essential that compliance be strengthened by the availability of criminal sanctions which demonstrate a social disapproval of a qualitatively different nature compared to administrative penalties. Establishing criminal offences for the most serious forms of market abuse sets clear boundaries in law that such behaviours are regarded as unacceptable and sends a message to the public and potential offenders that these are taken very seriously by competent authorities.	(6) It is essential that compliance be strengthened by the availability of criminal sanctions which demonstrate a social disapproval of a qualitatively different nature compared to administrative penalties. Establishing criminal offences for [...] <u>at least</u> serious forms of market abuse sets clear boundaries in law that such behaviours are regarded as unacceptable and sends a message to the public and potential offenders that these are taken very seriously by competent authorities.	(6) It is essential that compliance be strengthened by the availability of criminal sanctions which demonstrate social disapproval of a qualitatively different nature compared to administrative penalties. Establishing criminal offences for the most serious forms of market abuse sets clear boundaries in law that such behaviours are regarded as unacceptable and sends a message to the public and potential offenders that these are taken very seriously by competent authorities.	[text in square brackets depending on outcome at political level] (6) It is essential that compliance be strengthened by the availability of criminal sanctions which demonstrate a social disapproval of a qualitatively different nature compared to administrative penalties. Establishing criminal offences for [ <u>at least/the most</u> ] serious forms of market abuse sets clear boundaries in law that such behaviours are regarded as unacceptable and sends a message to the public and potential offenders that these are taken very seriously by competent authorities.

	Article	COM text	Council text	EP text	Compromise text
7	Recital 6a (new)			<p><i>(6a) Many financial instruments are priced by reference to benchmarks. The actual or attempted manipulation of benchmarks, such as interbank offer rates, can have a serious impact on market confidence and may result in significant losses to investors and distort the real economy. Therefore, specific provisions in relation to benchmarks are required in order to preserve the integrity of the markets. It is necessary to complement the general prohibition of insider dealing and market manipulation by prohibiting the manipulation of the benchmark itself and any transmission of false or misleading information, provision of false or misleading inputs, or any other action that manipulates the calculation of a benchmark, including the benchmark's methodology. Furthermore, competent authorities should not be required to demonstrate the direct link between the misconduct of one or more individuals and the end effect on one or more financial instruments; it should be sufficient that there is a relationship, even if indirect, between the abusive behaviour and a financial instrument. For example, the mere transmission of false or misleading information relating to an interbank offer rate or other benchmark should be covered by the definition of market manipulation.</i></p>	Deletion [Covered by recital 7]

	Article	COM text	Council text	EP text	Compromise text
8	Recital 7	<p>(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 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.</p>	<p>(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 [...] <u>persons, of the liability of</u> legal persons and of sanctions should be set. Common minimum rules would make it also possible to use more effective methods of investigation and effective cooperation within and between Member States. [...] <u>In addition, the imposition of criminal sanctions for market abuse offences will have an increased deterrent effect on potential offenders.</u></p>	<p>(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 in relation to those offences. In addition, there is 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 within and between Member States. <b><i>In light of the aftermath of the financial crisis, it is evident that market manipulation has a potential for widespread damage on the lives of millions of people. The 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. This leads to lack of citizen's trust in the rule of law and the legitimacy of institutions. The imposition of criminal sanctions for the most serious market abuses will have an increased deterrent effect on potential offenders.</i></b></p>	<p>(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 <u>persons, of the liability of</u> legal persons and of sanctions should be set. Common minimum rules would make it also possible to use more effective methods of investigation and effective cooperation within and between Member States. <b><i>In light of the aftermath of the financial crisis, it is evident that market manipulation has a potential for widespread damage on the lives of millions of people. The recent Libor scandal, which concerned a serious case of benchmark</i></b></p>



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					<p><b>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.</b> In addition, the imposition of criminal sanctions for market abuse offences will have an increased deterrent effect on potential offenders.</p>

	Article	COM text	Council text	EP text	Compromise text
9	Recital 8	(8) The introduction of criminal sanctions for the most serious market abuse offences by all Member States is therefore essential to ensure the effective implementation of Union policy on fighting market abuse, in line with the requirements described in the Communication "Towards an EU criminal policy – Ensuring the effective implementation of EU policies through criminal law".	(8) The introduction of criminal sanctions for [...] <u>at least</u> serious market abuse offences by all Member States is therefore essential to ensure the effective implementation of Union policy on fighting market abuse [...].	(8) The introduction of criminal sanctions for the most serious market abuses by all Member States is therefore essential to ensure the effective implementation of Union policy on fighting market abuse, in line with the requirements described in the Commission Communication of 20 September 2011 entitled, "Towards an EU criminal policy – Ensuring the effective implementation of EU policies through criminal law".	[text in square brackets depending on outcome at political level] (8) The introduction of criminal sanctions for <u>[at least/the most]</u> serious market abuse offences by all Member States is therefore essential to ensure the effective implementation of Union policy on fighting market abuse [...].
10	Recital 9	(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.	(9) In order for the scope of this Directive to be aligned with that of Regulation [...] [MAR], 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 <u>or activities related to public agricultural policy and activities</u> concerning emission allowances in pursuit of the Union's climate policy, should be exempt from this Directive.	(9) In order for the scope of this Directive to be aligned with that of Regulation (EU) No.../... [MAR], trading in own shares <b>and other financial instruments</b> 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.	(9) In order for the scope of this Directive to be aligned with that of Regulation (EU) No.../... [MAR], trading in own shares in buy-back programmes and trading in securities or associated instruments for the stabilisation of securities, as well as transactions, orders or behaviours carried out in pursuit of monetary, exchange-rate or public debt management policy, and activities concerning emission allowances undertaken in pursuit of the Union's climate policy, as well as activities undertaken in the pursuit of the Union's Common Agricultural Policy and the Union's Common Fisheries Policy, should be exempt from this Directive.

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11	Recital 9a (new)			<i>(9a) It is possible for the use of inside information to lead to the acquisition and disposal of financial instruments. Since the acquisition or disposal of financial instruments necessarily involves a prior decision, the carrying out of such acquisition or disposal should not be deemed, in itself, to constitute insider dealing.</i>	Deletion [Covered by Art. 3(8) – so recitals 9a-9d not deemed necessary]
12	Recital 9b (new)			<i>(9b) 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 be deemed, in itself, to constitute insider dealing.</i>	Deletion [Covered by Art. 3(8) – so recitals 9a-9d not deemed necessary]
13	Recital 9c (new)			<i>(9c) Research and estimates developed from publicly available data should not be regarded as inside information and any transaction carried out on the basis of such research or estimates should not therefore be deemed, in itself, to constitute insider dealing.</i>	Deletion [Covered by Art. 3(8) – so recitals 9a-9d not deemed necessary]
14	Recital 9d (new)			<i>(9d) The mere fact that market-makers or persons authorised to act as counterparties, with inside information, confine themselves to pursuing their legitimate business of buying or selling financial instruments or that persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not be deemed, in itself, to constitute insider dealing.</i>	Deletion [Covered by Art. 3(8) – so recitals 9a-9d not deemed necessary]

	Article	COM text	Council text	EP text	Compromise text
15	Recital 10	(10) Member States should be under the obligation to subject the offences of insider dealing and market manipulation to criminal sanctions according to this Directive only when they are committed with intent.	(10) Member States should be under the obligation to [...] <u>provide that at least serious cases of insider dealing [...], market manipulation [...] and unlawful disclosure of inside information constitute criminal offences when [...]</u> committed with intent.	(10) Member States should subject the offences of insider dealing and market manipulation to criminal sanctions according to this Directive only when they are committed with intent.	Depending on the outcome at political level
16	Recital 10a (new)		(10a) <u>For the purpose of this Directive, insider dealing and unlawful disclosure of inside information should be deemed 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.</u>		Depending on the outcome at political level
17	Recital 10b (new)		(10b) <u>For the purpose of this Directive, market manipulation should be deemed serious in cases such as those where the impact on the integrity of the market; the actual or potential profit derived or loss avoided, the level of damage caused to the market, the level of alteration of the value of the financial instrument or spot commodity contract or the amount of funds originally used is high or whether the manipulation is performed by a person employed or working in the financial sector or in a supervisory or regulatory authority.</u>		Depending on the outcome at political level

	Article	COM text	Council text	EP text	Compromise text
18	Recital 11	(11) Due to the adverse effects attempted insider dealing and attempted market manipulation have on the integrity of the financial markets and on investor confidence in these markets, these forms of behaviour should also be punishable as a criminal offence.	(11) Due to the adverse effects attempted insider dealing and attempted market manipulation have on the integrity of the financial markets and on investor confidence in these markets, these forms of behaviour should also be punishable as a criminal offence.	(11) Due to the adverse effects attempted insider dealing and attempted market manipulation have on the integrity of the financial markets and on investor confidence in these markets, these forms of behaviour should also be punishable as a criminal offence.	(11) Due to the adverse effects attempted insider dealing and attempted market manipulation have on the integrity of the financial markets and on investor confidence in these markets, these forms of behaviour should also be punishable as a criminal offence.
19	Recital 11a (new)		<u>(11a) This Directive should oblige Member States to provide in their national legislation for criminal penalties in respect of the behaviours of insider dealing, market manipulation and unlawful disclosure of inside information to which this Directive applies. This Directive should not create obligations regarding the application of such penalties or any other available system of law enforcement, to individual cases.</u>		<u>(11a) This Directive should oblige Member States to provide in their national legislation for criminal penalties in respect of the behaviours of insider dealing, market manipulation and unlawful disclosure of inside information to which this Directive applies. This Directive should not create obligations regarding the application of such penalties or any other available system of law enforcement, to individual cases</u>

	Article	COM text	Council text	EP text	Compromise text
20	Recital 12	(12) This Directive should also require Member States to ensure that inciting as well as aiding and abetting the criminal offences are also punishable. In this context, causing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates should be considered inciting to insider dealing.	(12) This Directive should also require Member States to ensure that inciting as well as aiding and abetting the criminal offences are also punishable [...].	(12) This Directive should also require Member States to ensure that inciting as well as aiding and abetting the criminal offences are also punishable. In this context, causing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates should be considered inciting to insider dealing.	(12) This Directive should also require Member States to ensure that inciting, aiding and abetting the criminal offences are also punishable [...].
21	Recital 12a (new)			<i>(12a) In order for the sanctions for the offences referred to in this Directive to be effective and dissuasive, a minimum level for the maximum term of imprisonment should be set in this Directive.</i>	Depending on the outcome at political level
22	Recital 13	(13) This Directive should be applied taking into account the legal framework established by the Regulation (EU) No...of the European Parliament and the Council on insider dealing and market manipulation and its implementing measures.	(13) This Directive should be applied taking into account the legal framework established by the Regulation [...] [MAR] and its implementing measures.	(13) This Directive should be applied taking into account the legal framework established by Regulation (EU) No .../2012 [MAR] and its implementing measures.	(13) This Directive should be applied taking into account the legal framework established by Regulation (EU) No .../2012 [MAR] and its implementing measures.

	Article	COM text	Council text	EP text	Compromise text
23	Recital 14	(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, whenever possible, criminal liability of legal persons.	(14) In order to ensure effective implementation of the European policy for ensuring the integrity of the financial markets set out in Regulation [...] [MAR], Member States should also extend liability for the offences provided for in this Directive to legal persons [...] where such offences have been committed for their benefit, through the imposition of criminal or non-criminal sanctions or measures which are effective, proportionate and dissuasive, such as for example those set out in MAR.	(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 .../2012 [MAR], Member States should also extend liability to legal persons, including, whenever possible, criminal liability.	Depending on the outcome at political level
24	Recital 14a (new)			<i>(14a) Member States should take the necessary measures to ensure that law enforcement and judicial authorities or other services responsible for investigating or prosecuting the offences referred to in this Directive have sufficient resources and are appropriately trained. Member States should take the necessary measures to ensure that effective investigative tools are available for law enforcement and judicial authorities or other services responsible for investigating or prosecuting the offences referred to in this Directive.</i>	Depending on the outcome at political level
25	Recital 15	(15) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules for market abuse.	(15) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules for market abuse.	(15) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules for market abuse.	(15) As this Directive provides for minimum rules, Member States are free to adopt or maintain more stringent criminal law rules for market abuse.

	Article	COM text	Council text	EP text	Compromise text
26	Recital 15a (new)		<u>(15a) The obligations under Articles 6 and 8 do not exempt Member States from the obligation to provide in national law for administrative sanctions and measures for the breaches set out in Regulation [MAR] unless Member States have decided, in accordance with the provisions of Regulation [MAR], to lay down only criminal sanctions for such breaches in their national law.</u>		Depending on the outcome at political level
27	Recital 15b (new)		<u>(15b) The scope of this Directive is defined in such a way as to complement and ensure the effective implementation of the provisions set out in Regulation [MAR]. In the application of the law transposing this Directive, Member States should ensure that imposition of criminal sanctions on the basis of offences foreseen by this Directive and of administrative sanctions in accordance with the Regulation [MAR] does not lead to the breach of the principle of ne bis in idem.</u>		Depending on the outcome at political level
28	Recital 16	(16) Any processing of personal data undertaken in the implementation of this Directive should be in compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data .	[...]	(16) Any processing of personal data undertaken in the implementation of this Directive should be in compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>1</sup> .	Deletion

OJ L 281, 23.11.1995, p. 31.



	Article	COM text	Council text	EP text	Compromise text
29	Recital 16a (new)			<i>(16a) Every conviction imposed according to this Directive should be promptly made public and include at least information on the type and nature of the offence, of the sanction and the identity of the convicted natural or legal person, unless such publication would seriously jeopardise ongoing official investigations.</i>	Depending on the outcome at political level
30	Recital 16b (new)			<i>(16b) In the current equity trading landscape, it is very difficult, if not impossible, for competent authorities to detect cross-venue market manipulation. Supervisory experience at national and Union level shows evidence of market abuse cases involving participants in multiple Member States. As markets become more integrated there is an increasing trend towards more cross-border market abuse. Ensuring effective cooperation and data exchange is vital to allow national competent authorities to fulfil their surveillance tasks. Failure to establish cross-border surveillance mechanisms exacerbates the existing gaps and loopholes and aids those who wish to commit cross-border abuses.</i>	deletion

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31	Recital 17	(17) Since the objective of this Directive, namely to ensure the availability of criminal sanctions for the most serious market abuse offences across the Union, cannot be sufficiently achieved by the Member States and can therefore, 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. 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.	(17) Since the objective of this Directive, namely to ensure the availability of criminal sanctions for [...] <u>at least</u> serious market abuse offences across the Union, cannot be sufficiently achieved by the Member States and can therefore, 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. 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.	(17) Since the objective of this Directive, namely to ensure the availability of criminal sanctions for the most serious market abuses across the Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.	[text in square brackets depending on outcome at political level] (17) Since the objective of this Directive, namely to ensure the availability of criminal sanctions for [at least/the most] serious market abuses across the Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
32	Recital 17a (new)			<i>(17a) In order to ensure effective prosecution of cross-border cases, Member States should take the necessary measures to establish their jurisdiction over an offence under this Directive where the offence has been committed in whole or in part within their territory or for the benefit of a natural or legal person residing or established in the territory of a Member State.</i>	Depending on outcome at political level

	Article	COM text	Council text	EP text	Compromise text
33	Recital 18	(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).	(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 <u>the right to protection of personal data (Article 8), the freedom of expression (Article 11),</u> 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 <u>in criminal proceedings</u> for the same offence (Article 50).	(18) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the TFEU. Specifically, it should be applied with due respect for the 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). <b>Member States should fully respect the ne bis in idem principle.</b>	[last grey bit of EP text to be considered alongside recital 15b] 18) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the TFEU. Specifically, it should be applied with due respect for <u>the right to protection of personal data (Article 8), the freedom of expression (Article 11),</u> 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 <u>in criminal proceedings</u> for the same offence (Article 50).

	Article	COM text	Council text	EP text	Compromise text
34	Recital 18a (new)		<u>(18a) Nothing in this Directive is intended to restrict freedom of press and freedom of expression in the media in so far as they are guaranteed in the Union and in the Member States, in particular under Article 11 of the Charter of Fundamental Rights and other relevant provisions. This should be emphasized in particular as regards disclosure of inside information in accordance with Article 3a.</u>	<i>(18a) In implementing this Directive Member States should ensure procedural rights of suspected or accused persons in criminal proceedings and, in particular, should take into consideration the Council Resolution of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings<sup>2</sup>, Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings<sup>3</sup>, Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings<sup>34</sup> and any other Union legal act in this area.</i>	<i>(18a) In implementing this Directive Member States should ensure procedural rights of suspected or accused persons in criminal proceedings. Their obligations under this Directive are without prejudice to their obligations under the already adopted Union legislation on procedural rights in criminal proceedings.</i> __Nothing in this Directive is intended to restrict freedom of press and freedom of expression in the media in so far as they are guaranteed in the Union and in the Member States, in particular under Article 11 of the Charter of Fundamental Rights and other relevant provisions. This should be emphasized in particular as regards disclosure of inside information in accordance with Article 3a.
35	Recital 19	(19) The Commission should assess the implementation of this Directive in the Member States, also with a view to assessing a possible future need for introducing minimum harmonisation of the types and levels of criminal sanctions.	(19) The Commission should assess the implementation of this Directive in the Member States, also with a view to assessing a possible future need for introducing minimum harmonisation of the types and levels of criminal sanctions.	(19) The Commission should assess the implementation of this Directive in the Member States, also with a view to assessing a possible future need for introducing minimum harmonisation of the types and levels of criminal sanctions. <b><i>In particular, the Commission should seek to obtain information on the cross-border</i></b>	Depending on the outcome at political level

<sup>2</sup> *OJ C 295, 4.12.2009, p. 1.*

<sup>3</sup> *OJ L 280, 26.10.2010, p. 1.*

<sup>4</sup> *OJ L 142, 1.6.2012, p. 1.*

	Article	COM text	Council text	EP text	Compromise text
				<i>nature of many of the transactions constituting an offence according to this Directive, thus respecting the principle of subsidiarity.</i>	

	Article	COM text	Council text	EP text	Compromise text
36	Recital 20	(20) [In accordance with Articles 1, 2, 3 and 4 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty, the United Kingdom has notified its wish to participate in the adoption and application of this Directive] OR [Without prejudice to Article 4 of Protocol (No 21) on the position of the United Kingdom in respect of the area of freedom, security, and justice, annexed to the Treaty, the United Kingdom will not participate in the adoption of this Directive and is therefore not bound by or be subject to its application.]	(20) [...] <u>Without prejudice to Article 4 of Protocol (No 21) on the position of the United Kingdom in respect of the area of freedom, security, and justice, annexed to the Treaty, the United Kingdom will not participate in the adoption of this Directive and is therefore not bound by or subject to its application.</u>	(20) [In accordance with Articles 1, 2, 3 and 4 of the Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty, the United Kingdom has notified its wish to participate in the adoption and application of this Directive] OR [Without prejudice to Article 4 of the Protocol No 21 on the position of the United Kingdom in respect of the area of freedom, security, and justice, annexed to the Treaty, the United Kingdom will not participate in the adoption of this Directive and is therefore not bound by or be subject to its application.]	[to be adapted by LL to the relevant] (20) [In accordance with Articles 1, 2, 3 and 4 of the Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty, the United Kingdom has notified its wish to participate in the adoption and application of this Directive] OR [Without prejudice to Article 4 of the Protocol No 21 on the position of the United Kingdom in respect of the area of freedom, security, and justice, annexed to the Treaty, the United Kingdom will not participate in the adoption of this Directive and is therefore not bound by or be subject to its application.]

	Article	COM text	Council text	EP text	Compromise text
37	Recital 21	(21) [In accordance with Articles 1, 2, 3 and 4 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty, Ireland has notified its wish to take part in the adoption and application of this Directive] OR [Without prejudice to Article 4 of Protocol (No 21) on the position of Ireland in respect of the area of freedom, security, and justice annexed to the Treaty, Ireland will not take part in the adoption of this Directive and is therefore not bound by it or be subject to its application.	(21) [...] <u>[In accordance with Articles 1, 2, 3 and 4 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty, Ireland has notified its wish to take part in the adoption and application of this Directive.]</u>	(21) [In accordance with Articles 1, 2, 3 and 4 of the Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty, Ireland has notified its wish to take part in the adoption and application of this Directive] OR [Without prejudice to Article 4 of the Protocol No 21 on the position of Ireland in respect of the area of freedom, security, and justice annexed to the Treaty, Ireland will not take part in the adoption of this Directive and is therefore not bound by it or be subject to its application.	[to be adapted by LL to the relevant] (21) [In accordance with Articles 1, 2, 3 and 4 of the Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty, Ireland has notified its wish to take part in the adoption and application of this Directive] OR [Without prejudice to Article 4 of the Protocol No 21 on the position of Ireland in respect of the area of freedom, security, and justice annexed to the Treaty, Ireland will not take part in the adoption of this Directive and is therefore not bound by it or be subject to its application.
38	Recital 22	(22) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application.	(22) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application.	(22) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to the Treaty, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application.	(22) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to the Treaty, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application.

	Article	COM text	Council text	EP text	Compromise text
<b>ARTICLES</b>					
39	Article 1 – title	Subject matter and scope	Subject matter and scope	Subject matter and scope	Subject matter and scope
40	Art. 1, para 1	1. This Directive establishes minimum rules for criminal sanctions for the most serious market abuse offences, namely insider dealing and market manipulation.	1. This Directive establishes minimum rules for criminal sanctions for [...] insider dealing, <u>unlawful disclosure of inside information</u> and market manipulation.	1. This Directive establishes minimum rules for criminal sanctions for the most serious market abuses, namely insider dealing and market manipulation, <i>to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.</i>	1. This Directive establishes minimum rules for criminal sanctions for [...] insider dealing, <i>improper disclosure of insider information</i> and market manipulation <i>to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.</i>
41	Art. 1, para 2 (new)		<u>2. This Directive applies in relation to the following financial instruments:</u>		2. This Directive applies to the following:
42	Art. 1, para 2, point a (new)		<u>(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:</u>		(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;



	Article	COM text	Council text	EP text	Compromise text
43	Art. 1, para 2, point b (new)		<u>(b) financial instruments traded, admitted to trading or for which a request for admission to trading on a MTF has been made;</u>		(b) financial instruments traded, admitted to trading or for which a request for admission to trading on a MTF has been made;
44	Art. 1, para 2, point v (new)		<u>(c) financial instruments traded on an OTF</u>		(c) financial instruments traded on an OTF;
45	Art. 1, para 2, point d (new)		<u>(d) financial instruments not covered by subparagraph (a) or (b) or (c) whose price or value depends on or has an effect on the price or value of a financial instrument referred to in those subparagraphs and which may include, but are not limited to, credit default swaps or contracts for difference.</u>		(d) financial instruments not covered by points (a) or (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.

	Article	COM text	Council text	EP text	Compromise text
45a					<p><b>[covers row 47]</b></p> <p>This <b>Directive</b> also applies to <b>behaviour or transactions, including</b> bids, relating to the auctioning of emission allowances or other auctioned products based thereupon pursuant to Regulation (EU) No 1031/2010. Without prejudice to any specific provisions referring to bids submitted in the context of an auction, any <b>provision</b> in this Directive referring to orders to trade shall apply to such bids.</p>
46	Art. 1, para 2/3	<p>2. This Directive does not apply to trading in own shares in buy-back programmes or for the stabilisation of a financial instrument, where such trading is carried out in accordance with article 3 of Regulation (EU) No...of the European Parliament and the Council on insider dealing and market manipulation, or to 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, in accordance with article 4 of Regulation (EU) No...of the European Parliament and the Council on insider dealing and market manipulation.</p>	<p>[...] 3. This Directive does not apply to trading in own shares in buy-back programmes or for the stabilisation of a financial instrument, where such trading is carried out in accordance with [...] <u>Article 3</u> of Regulation (EU) No...of the European Parliament and the Council on insider dealing and market manipulation, or to transactions, orders or behaviours carried out for the purposes of monetary [...], <u>exchange rate</u>, public debt management <u>or public agricultural</u> activities and activities concerning emission allowances in pursuit of the Union's climate policy, in accordance with [...] <u>Article 4</u> of Regulation (EU) No...of the European Parliament and the Council on insider dealing and market manipulation.</p>	<p>2. This Directive does not apply to trading in own shares in buy-back programmes or for the stabilisation of a financial instrument, where such trading is carried out in accordance with Article 3 of Regulation (EU) No.../2012 [MAR], or to transactions <i>or</i> orders 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, in accordance with <b>Article 4</b> of Regulation (EU) No.../2012 [MAR].</p>	<p>3. This Directive does not apply to:</p> <p>(a) trading in own shares in buy-back programmes, <b><u>where such trading is carried out in accordance with Article 3(1), (1a) and (1b) of [MAR];</u></b></p> <p>(b) trading in securities or associated instruments for the stabilisation of securities, <b><u>where such trading is carried out in accordance with Article 3(2), (2a) and (2b) of [MAR];</u></b></p>

	Article	COM text	Council text	EP text	Compromise text
					<p>(c) transactions, orders or behaviours carried out in pursuit of monetary , exchange rate or public debt management policy <b><u>in accordance with Article 4(1), transactions order or behaviours carried out in accordance with Article 4(1a), activities in the pursuit of the Union's Climate policy in accordance with Article 4(2), or activities in the pursuit of the Union's Common Agricultural Policy or in the pursuit of Union's Common Fisheries Policy in accordance with Article 4(2a) of [MAR];</u></b></p> <p><b>Point (c)</b> shall not apply to persons working under a contract of employment or otherwise for the bodies referred to in <b>point (c)</b> when they engage in transactions, orders or behaviours, directly or indirectly, on their own account.</p>

	Article	COM text	Council text	EP text	Compromise text
47	Art. 1, para 3/4	3. This Directive shall also apply to behaviour or transactions, including bids, relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to Commission Regulation No 1031/2010. Any provisions in this Directive referring to orders to trade shall apply to bids submitted in the context of an auction.	[...] 4. This Directive shall also apply to behaviour or transactions, including bids, relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to Commission Regulation No 1031/2010. Any provisions in this Directive referring to orders to trade shall apply to bids submitted in the context of an auction. <sup>5</sup>	3. This Directive shall also apply to behaviour or transactions, including bids, relating to the auctioning of emission allowances or other auctioned products based thereon pursuant to 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 the Council establishing a scheme for greenhouse gas emission allowances trading within the Community <sup>6</sup> . Any provisions in this Directive referring to orders to trade shall apply to bids submitted in the context of an auction.	Moved to paragraph 1 subparagraph 2 in order to preserve the consistency and logic of the provision. Text of MAR has been proposed, slightly amended so as to include also "behaviour or transactions, including," which does not appear in the text of MAR.

<sup>5</sup> 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 the Council establishing a scheme for greenhouse gas emission allowances trading within the Community, OJ L 302, 18.11.2010, p. 1.

<sup>6</sup> OJ L 302, 18.11.2010, p. 1.

	Article	COM text	Council text	EP text	Compromise text
48	Art. 1, para 3 a /5 (new)		<p>5. Article 4 shall also apply to:</p> <p>(a) <u>spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has an effect on the price or value of a financial instrument referred to in paragraph 2 of this Article;</u></p> <p>(b) <u>financial instruments referred to in paragraph 2 of this Article, 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;</u></p> <p>(c) <u>behaviour in relation to benchmarks.</u></p>	<p><i>3a. This Directive shall also apply to interest rates, currencies, benchmarks, inter bank offer rates, indexes and types of financial instruments, including any derivative contracts or derivative instruments, which derive their value from the value of interest rates, currencies or indexes.</i></p>	<p>5. Article 4 shall also apply to:</p> <p>(a) spot commodity contracts, which are not wholesale energy products, where the transaction, order or behaviour has <del>or is likely to have</del> an effect on the price or value of a financial instrument referred to in paragraph 2 of this Article;</p> <p>(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 <del>or is likely to have</del> 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;</p> <p>(c) behaviour in relation to benchmarks.</p>

	Article	COM text	Council text	EP text	Compromise text
49	Art. 1, para 6 (new)		6. <u>This Directive applies irrespective of whether the transaction, behaviour or order actually takes place on a trading venue, systematic internaliser, or is over the counter trading.</u>		6. This <b>Directive</b> applies to any transaction, order or behaviour concerning the financial instrument, as defined in paragraphs <b>2 and 4</b> of this Article, irrespective of whether or not such transaction, order or behaviour takes place on a trading venue.
50	Article 2 – title	Definitions	Definitions	Definitions	Definitions
51	Art 2, point 1	For the purposes of this Directive: 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.	For the purposes of this Directive: 1. "Financial instrument" means any instrument within the meaning of [...] Article 4(2)(14) of [...] Directive [MiFID new]	For the purposes of this Directive: 1. "financial instrument" means any instrument within the meaning of Article 2(1)(8) of Regulation (EC) No .../... <b>[MiFIR];</b>	For the purposes of this Directive: 1. "Financial instrument" means any instrument within the meaning of Article 4(2)(14) of Directive [MiFID new];

	Article	COM text	Council text	EP text	Compromise text
52	Art 2, point 2/1 a (new)		2. "Spot commodity contract" means any instrument within the meaning of Article 5.10 of Regulation [MAR]	<i>1a. "spot commodity contract" means a 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;</i>	<b>2. "Spot commodity contract" means any contract within the meaning of Article 5(10) of Regulation [MAR];</b>
53	Art 2, point 1 b /11 (new)		11. "buy-back programme" means trading in own shares in accordance with Articles 19 to 24 of Council Directive 77/91/EEC. <sup>7</sup>	<i>1b. "buy-back programme" means trading in own shares in accordance with Articles 19 to 24 of Council Directive 77/91/EEC 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 58 of the Treaty, 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<sup>8</sup>;</i>	11/1b. "buy-back programme" means trading in own shares in accordance with Articles 21 to 27 of Directive 2012/30/EU of the European Parliament and of the Council.
54	Art 2, point 2/3	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.	3. "Inside information" means information within the meaning of Article [...] 6(1), (2), (2a) and (3) of Regulation [...] [MAR].	2. "inside information" means information within the meaning of Article 6 of Regulation (EU) No .../2012 [MAR];	<b>2. "Inside information" means information within the meaning of Article 6(1), (2), (2a) and (3) of Regulation [...] [MAR].</b>

<sup>7</sup> Second Council Directive 77/91/EEC of 13 December 1976 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 58 of the Treaty, 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 26, 31.1.1977, p. 1].

<sup>8</sup> OJ L 26, 31.1.1977, p. 1.

	Article	COM text	Council text	EP text	Compromise text
55	Art 2, point 2 a (new)			<i>2a. "competent authority" means the competent authority designated in accordance with Article 16 of Regulation (EU) No .../2012 [MAR];</i>	[deletion]
56	Art 2, point 2 b (new)			<i>2b. "person" means any natural or legal person;</i>	[deletion]
57	Art 2, point 2 c /13 (new)		<u>13. "emission allowance" means a financial instrument as defined in point (11) of Section C of Annex I of Directive [new MiFID].</u>	<i>2c. "emission allowance" means a financial instrument within the meaning of point (11) of Section C of Annex I of Directive .../.../EU [new MiFID];</i>	2c/13. "emission allowance" means a financial instrument as defined in point (11) of Section C of Annex I of Directive [new MiFID].



	Article	COM text	Council text	EP text	Compromise text
58	Art 2, point 3	“3. 'Benchmark' means any commercial index or published figure calculated by the application of a formula to the value of one or more underlying assets or prices, including estimated prices, interest rates or other values, or surveys by reference to which the amount payable under a financial instrument is determined.”	4. "Benchmark" [...] has the same the meaning as in Article 5.27 of Regulation [MAR].	3. "benchmark" means <i>a published rate, index or figure, by reference to which the amount payable under a financial instrument is determined, including an interbank offer rate, calculated by the application of a formula to, or otherwise derived from:</i> <i>(a) the price or value of one or more underlying assets; or</i> <i>(b) the interest rate (whether actual or estimated) applied to the borrowing of funds;</i>	<b>3. "Benchmark" has the same the meaning as in Article 5(20) of Regulation [MAR].</b>
59	Art 2, point 3 a / 5 (new)		5. "Accepted market practice" means any activity which has been established by a competent authority in accordance with Article 8a of Regulation [MAR].	<i>3a. "accepted market practices" means practices that are reasonably expected in one or more financial markets and are accepted by the competent authority in accordance with Article 4a of Regulation (EU) No .../... [MAR];</i>	5. "Accepted market practice" means specific market practices that are accepted by the competent authority of a given Member State in accordance with Article 8a <b>of Regulation [MAR].</b>
60	Art 2, point 3 b/12 (new)		12. "stabilisation" means any purchase or offer to purchase relevant financial instruments, or any transaction in associated instruments equivalent thereto, by investment firms or credit institutions, which is undertaken in the context of a significant distribution of such relevant securities exclusively for supporting the market price of these relevant securities for a predetermined period of time, due to a selling pressure in such securities;	<i>3b. "stabilisation" means any purchase or offer to purchase relevant financial instruments, or any transaction in associated instruments equivalent thereto, by investment firms or credit institutions, which is undertaken in the context of a significant distribution of such relevant securities exclusively for supporting the market price of these relevant securities for a predetermined period of time, due to a selling pressure in such securities.</i>	<b>3b/12. "stabilisation" has the same meaning as in Article 5(4b) of Regulation [MAR].</b>

	Article	COM text	Council text	EP text	Compromise text
61	Art 2, point 6 (new)		<u>6. "Regulated market" means a multilateral system in the Union within the meaning of Article 2(1)(5) of Regulation[MiFIR].</u>		6. "Regulated market" means a multilateral system in the Union within the meaning of Article 2(1)(5) of Regulation [MiFIR].
62	Art 2, point 7 (new)		<u>7. "Multilateral Trading Facility (MTF)" means a multilateral system in the Union within the meaning of Article 2(1)(6) of Regulation[MiFIR].</u>		7. "Multilateral Trading Facility (MTF)" means a multilateral system in the Union within the meaning of Article 2(1)(6) of Regulation [MiFIR].
63	Art 2, point 8 (new)		<u>8. "Organised Trading Facility (OTF)" means a system or facility in the Union referred to in Article 2(1)(7) of Regulation[MiFIR].</u>		8. "Organised Trading Facility (OTF)" means a system or facility in the Union referred to in Article 2(1)(7) of Regulation [MiFIR].
64	Art 2, point 9 (new)		<u>9. "Trading venue" means a system or facility in the Union referred to in Article 2(1)(25) of Regulation[MiFIR].</u>		9. "Trading venue" means a system or facility in the Union referred to in Article 2(1)(25) of Regulation [MiFIR].
65	Art 2, point 10 (new)		<u>10. "Legal person" means any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.</u>		Depending on the outcome at political level.
66	Art 2, point 11 (new)		<u>moved up alongside EP 1b</u>		[Council text moved alongside EP text for ease of reference. The exact place to be considered at a later stage]

	Article	COM text	Council text	EP text	Compromise text
67	Art 2, point 12 (new)		<u>moved up alongside EP 3b</u>		[Council text moved alongside EP text for ease of reference. The exact place to be considered upon agreement on substance]
68	Art 2, point 13 (new)		<u>moved up alongside EP 2c</u>		[Council text moved alongside EP text for ease of reference. The exact place to be considered upon agreement on substance]
69	Art 2, point 15 (new)		<u>15. "systematic internaliser" means an investment firm trading on own account within the meaning of article 2(1)(3) of Regulation [MiFIR] ;</u>		<u>[this definition does not appear in the text any longer]</u>
69a					<b><u>"wholesale energy product" has the same meaning as in Article 2(4) of Regulation (EU) No 1227/2011 .</u></b>
69b					<b><u>"issuer" has the same meaning with the "issuer of a financial instrument" in Article 5(16) of Regulation (MAR)</u></b>
70	Art. 3, title	Insider dealing	Insider dealing, <u>recommending or inducing another person to engage in insider dealing</u>	Insider dealing <i>and improper disclosure of inside information</i>	Insider dealing, <u>recommending or inducing another person to engage in insider dealing</u> It is more coherent and more in line with the logic of MAR to separate Articles 3 and 3a. i.e. having a separate article for insider dealing and a separate article for improper disclosure.

	Article	COM text	Council text	EP text	Compromise text
71	Art 3, point a / aa	Member States shall take the necessary measures to ensure that the following conduct constitutes a criminal offence, when committed intentionally: (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	<u>1.</u> Member States shall take the necessary measures to ensure that [...] <u>insider dealing, recommending or inducing another person to engage in insider dealing as defined in this Article constitute criminal offences at least in serious cases and</u> when committed intentionally. [...]	Member States shall take the necessary measures to ensure that the following conduct constitutes a criminal offence, when committed intentionally: (a) <i>where a person possesses inside information and, while being aware of the nature of that information, uses that information by acquiring or disposing, directly or indirectly, of financial instruments to which that information relates,</i> for his/her own account or for the account of a third party; (aa) <i>where a person uses inside information to cancel or amend an order concerning a financial instrument to which the information relates and the order was placed before the person concerned possessed the inside information,</i>	Depending on the outcome at political level  See row 77 (i.e. the Presidency proposes maintaining the solution from the GA).
72	Art 3, point a b (new)			<i>(ab) where a person uses inside information to influence the value of interest rates, currencies, benchmarks, inter bank offer rates, indexes and types of financial instruments including any derivative contracts or derivative instruments, which derive their value from the value of interest rates, currencies, benchmarks, inter-bank offer rates, indexes and types of financial instruments;</i>	The issue of benchmarks is covered, in alignment with MAR in the market manipulation provisions. The Presidency proposes maintaining the solution from the GA.
73	Art 3, point a c (new)			<i>(ac) where a person possesses inside information and recommends, on the basis of that inside information, that another person, acquire or dispose of financial instruments to which that inside information relates or induces that person to make such an acquisition or disposal;</i>	moved to paragraph 6 and alignment with MAR

	Article	COM text	Council text	EP text	Compromise text
74	Art 3, point a d (new)			<i>(ad) where a person uses or onwardly discloses a recommendation referred to in point (ac);</i>	moved to paragraph 6 and alignment with MAR
75	Art 3, point a e (new)			<i>(ae) where a person possesses inside information and recommends, on the basis of that inside information, that another person cancel or amend an order concerning a financial instrument to which that information relates, without disclosing that inside information to that person, or induces that person to make such a cancellation or amendment;</i>	moved to paragraph 6 and alignment with MAR
76	Art 3, point b	(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.	[...]	(b) <i>where a person possesses</i> inside information <i>and discloses that inside information</i> to any other person, <i>except where the</i> disclosure is made in the <i>normal</i> course of the exercise of duties resulting from <i>an</i> employment or profession.	covered in article 3a(2)
77	Art 3, para 2 (new)		<u>2. For the purposes of this Directive, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates.</u>		2. For the purposes of this Directive, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for his own account or the account of a third party, either directly or indirectly, financial instruments to which that information relates.

	Article	COM text	Council text	EP text	Compromise text
78	Art 3, para 3 (new)		<p><u>3. This Article applies to any person who possesses inside information as a result of any of the following situations:</u></p> <p><u>(a) being a member of the administrative, management or supervisory bodies of the issuer,</u></p> <p><u>(b) having a holding in the capital of the issuer,</u></p> <p><u>(c) having access to the information through the exercise of duties resulting from his employment, profession or duties;</u></p> <p><u>(d) being involved in criminal activities;</u></p> <p><u>(e) obtaining inside information under circumstances other than those in points (a) to (d) and which the person knows is inside information.</u></p>		<p>3. This Article applies to any legal or natural person who possesses inside information as a result of any of the following situations:</p> <p>(a) being a member of the administrative, management or supervisory bodies of the issuer,</p> <p>(b) having a holding in the capital of the issuer,</p> <p>(c) his having access to the information through the exercise of an employment, profession or duties;</p> <p>(d) being involved in criminal activities.</p> <p>This Article also applies to any legal or natural person who has obtained inside information under circumstances other than those referred to in the first subparagraph where that person knows <del>or ought to know</del> that it is inside information.</p>

	Article	COM text	Council text	EP text	Compromise text
79	Art 3,para 4 (new)		4. <u>The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered as insider dealing.</u>		4. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered as insider dealing.
80	Art 3,para 5 (new)		5. <u>In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010, the use of inside information referred to in paragraph 4 shall also comprise modifying or withdrawing a bid by a person for its own account or for the account of a third party.</u>		5. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (No) 1031/2010, the use of inside information referred to in paragraph 4 shall also comprise, <b>submitting</b> , modifying or withdrawing a bid by a person for its own account or for the account of a third party.

	Article	COM text	Council text	EP text	Compromise text
81	Art 3, para 6 (new)		<p><u>6. For the purposes of this Directive, recommending or inducing another person to engage in insider dealing arises where a person who possesses inside information in accordance with paragraph 3 of this Article, recommends or induces on the basis of that information, another person who does not possess this information in accordance with paragraph 3 of this Article to acquire or dispose of financial instruments to which that information relates.</u></p>		<p>6. For the purposes of this Directive, recommending that another person engages in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:</p> <p>(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</p> <p>(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.</p>
82	Art 3, para 7 (new)		<p><u>7. The use of recommendations or inducements referred to in paragraph 6 amounts to insider dealing when the person using the recommendation or inducement knows it is based on inside information.</u></p>		<p>7. The use of the recommendations or inducements referred to in paragraph 6 amounts to insider dealing when the person using the recommendation or inducement knows <del>or ought to know</del>, that it is based upon inside information.</p>



	Article	COM text	Council text	EP text	Compromise text
83	Art 3, para 8 (new)		<u>8. In relation to the offences defined in this Article, a person in possession of inside information shall not be deemed to have used that information or consequently to have engaged in insider dealing if his behaviour qualifies as legitimate behaviour under Article 7a(1),(2),(3), (3a) and (3b) of Regulation [MAR].</u>		<b><u>8. For the purposes of this Article a person in possession of inside information shall not, in itself, be deemed to have used that information or consequently to have engaged in insider dealing on the basis of an acquisition or disposal, where its behaviour qualifies as legitimate behaviour under Article 7a of Regulation [MAR].</u></b>
84	Art 3a (new)		Article 3a <u>Unlawful disclosure of inside information</u>		Article 3a <b><u>Improper</u></b> disclosure of inside information

	Article	COM text	Council text	EP text	Compromise text
85	Art 3a, para 1 (new)		<u>1. Member States shall take the necessary measures to ensure that unlawful disclosure of inside information as defined in this Article constitute criminal offences at least in serious cases and when committed intentionally.</u>		1. Member States shall take the necessary measures to ensure that <b>improper</b> disclosure of inside information as defined in <b>paragraph 2</b> constitute criminal offences [at least in serious cases] and when committed intentionally.  <u>Comment: "at least in serious cases" is still subject to discussion between co-legislators, therefore this issue is still depending on the outcome at political level.</u>
86	Art 3a, para 2 (new)		<u>2. For the purposes of this Directive, unlawful disclosure of inside information arises when a person who possesses inside information as a result of any of the conditions set out in Article 3 (3) discloses that information to others, except where the disclosure is made in the normal course of the exercise of his employment, profession or duties or where the disclosure qualifies as a market sounding made in compliance with Article 7c (1) to (5) of Regulation [MAR].</u>		2. For the purposes of this Directive, <b>improper</b> disclosure of inside information arises where a person that possesses inside information discloses that information to any other person, except where the disclosure is made in the normal course of the exercise of an employment, profession or duties, <b>including where the disclosure qualifies as a market sounding made in compliance with Article 7c (1) to (9) of Regulation [MAR].</b>

	Article	COM text	Council text	EP text	Compromise text
86a					[Points added in alignment with article 7b (1) last point and 7b(2) of MAR]  <b>2a. This Article applies to any person in the situations or circumstances referred to in Article 3(3) of the Directive.</b>  <b>2b. For the purposes of this Directive the onward disclosure of recommendations or inducements referred to in Article 3(6) amounts to improper disclosure of inside information under this Article when the person disclosing the recommendation or inducement knows that it was based on inside information.</b>
87	Art 3a, para 3 (new)		<u>3. This Article shall be applied in accordance with the need to protect the freedom of the press and the freedom of expression.</u>		Depending on the outcome at political level.
88	Article 4 – title	Market manipulation	Market manipulation	Market manipulation	Market manipulation
89	Art 4, point a	Member States shall take the necessary measures to ensure that the following conduct constitutes a criminal offence, when committed intentionally: (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;	<u>1. Member States shall take the necessary measures to ensure that [...] market manipulation as defined in this Article constitutes [...] criminal [...] offences at least in serious cases and when committed intentionally.</u> <u>2. For the purposes of this Directive, market manipulation arises in the following cases:</u> (a) entering into a transaction.	Member States shall take the necessary measures to ensure that the following conduct constitutes a criminal offence, when committed <b>recklessly or</b> intentionally: (a) <b>entering into a transaction, placing an order to trade or any other behaviour which has the following consequences:</b> <b>(i) it gives, or is likely to give,</b> false or misleading signals as to the supply	<u>1. Member States shall take the necessary measures to ensure that market manipulation as defined in this Article constitutes criminal offences at least in serious cases and</u> when committed intentionally.  <u>Comment: "at least in serious cases" is still subject to discussion</u>

	Article	COM text	Council text	EP text	Compromise text
			<u>placing an order to trade or any other behaviour which:</u> – [...] gives false or misleading	of, demand for, or price of, a financial instrument, <i>including the value of interest rates, currencies, benchmarks, inter bank</i>	<u>between co-legislators, therefore this issue is still depending on the outcome at political level.</u>

	Article	COM text	Council text	EP text	Compromise text
90	Art 4, point b	(b) securing the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level;			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: – gives <del>or is likely to give</del> , 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 <del>or is likely to secure</del> the price of one or several financial instruments, or a related spot commodity contract at an abnormal or artificial level; unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate, and that these transactions or orders to trade are in conformity with accepted market practices; or

	Article	COM text	Council text	EP text	Compromise text
91	Art 4, point b/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;	[...] (b) entering into a transaction, placing an order to trade or any other [...] <u>behaviour which affects</u> 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; <u>or</u>	(c) entering into a transaction, placing an order to trade or any other activity <b>or behaviour</b> affecting, <b>or likely to affect</b> , 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;	[...] (b) entering into a transaction, placing an order to trade or any other <b>activity or behaviour</b> which affects <del>or is likely to affect</del> 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;
92	Art 4, point c/d	(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.	[...] (c) dissemination of information which gives false or misleading signals as to <u>the supply of, demand for, or price of</u> financial instruments or related spot commodity contracts, <u>or secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level</u> , where those persons derive, for themselves or another person, an advantage or profit from the dissemination of the information in question <u>or</u>	(d) <b>disseminating</b> information <b>through the media, including the internet, or by any other means</b> , which, <b>directly or indirectly, has the consequences referred to in point (a), where the person who made the dissemination knew, or ought to have known, that the information was</b> false or misleading <b>or which brings about a concealment</b> ;	(c) <b>disseminating</b> information <b>through the media, including the internet, or by any other means</b> , which gives, <del>or is likely to give,</del> 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, <del>or is likely to secure,</del> the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level <u>where those persons derive for themselves or another person an advantage or profit from the dissemination of the information in questions.</u>

	Article	COM text	Council text	EP text	Compromise text
93	Art 4, point d/e	“(e) transmitting false or misleading information, providing false or misleading inputs, or any other equivalent activity which intentionally manipulates the calculation of a benchmark.”	[...] (d) transmitting false or misleading information, providing false or misleading inputs, or any [...] action which [...] manipulates the calculation of a benchmark.	(e) transmitting false or misleading information, providing false or misleading inputs, or any other equivalent activity which <i>is also intended to manipulate</i> the calculation of a benchmark.	(e) transmitting false or misleading information or providing false or misleading inputs or any <b>other behaviour</b> which manipulates the calculation of a benchmark.
94	Article 5 – title	Inciting, aiding and abetting, and attempt	Inciting, aiding and abetting, and attempt	Inciting, aiding and abetting, and attempt	Inciting, aiding and abetting, and attempt
95	Art. 5, para 1	1. Member States shall take the necessary measures to ensure that inciting, aiding and abetting the criminal offences referred to in Articles 3 and 4 are punishable as criminal offences.	1. Member States shall take the necessary measures to ensure that inciting, aiding and abetting the offences referred to in Articles 3, <u>3a</u> and 4 <u>with the exception of the conduct referred to in paragraphs 6 and 7 of Article 3, [...]</u> is punishable as a criminal [...] offence.	1. Member States shall take the necessary measures to ensure that inciting, aiding and abetting <i>and attempting to commit</i> the criminal offences referred to in Articles 3 and 4 are punishable as criminal offences.	Depending on the outcome at political level

	Article	COM text	Council text	EP text	Compromise text
96	Art 5, para 2	“2. Member States shall take the necessary measures to ensure that the attempt to commit any of the offences referred to in Article 3(a) and Article 4(a), (b) <b>and</b> , (c) <b>and</b> (e) 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 Articles 3 [...] and 4, with <u>the exception of the conduct referred to in paragraph 6 of Article 3</u> , 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 Articles 3(a), <i>(aa) to (ae)</i> and 4(a), (c), and (e) is punishable as a criminal offence.	Depending on the outcome at political level
97	Art. 6 – title	Criminal sanctions	Criminal <u>penalties for natural persons</u>	Criminal sanctions	Criminal <u>penalties for natural persons</u>
98	Art 6	Member States shall take the necessary measures to ensure that criminal offences referred to in Articles 3 to 5 are punishable by criminal sanctions which are effective, proportionate and dissuasive.	Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3 to 5 are punishable by [...] <u>effective, proportionate and dissuasive criminal penalties as regards natural persons.</u>	<i>1.</i> Member States shall take the necessary measures to ensure that criminal offences referred to in Articles 3 to 5 are punishable by criminal sanctions which are effective, proportionate and dissuasive.	Depending on the outcome at political level.
99	Art. 6, para 1, subpara 1 a (new)			<i>To ensure that sanctions have a dissuasive effect on the public at large, they shall, where appropriate, be published, without undue delay, including at least information on the type and nature of the crime and the identity of persons responsible for it, unless such publication would seriously jeopardise the stability of financial markets. Where publication would cause disproportionate damage to the parties involved, competent authorities shall publish the measures and sanctions on an anonymous basis.</i>	Depending on the outcome at political level
100	Art. 6, para 1 a (new)			<i>1a. Member States shall take the necessary measures to ensure that the criminal offences referred to in points (a) to (ac) of Article 3 and points (a), (c) and (e) of Article 4 are punishable by a maximum term of imprisonment of at least five years.</i>	Depending on the outcome at political level.



	Article	COM text	Council text	EP text	Compromise text
101	Art. 6, para 1 b (new)			<i>1b. Member States shall take the necessary measures to ensure that the criminal offences referred to in points (ad), (ae) and (b) of Article 3 and in point (d) of Article 4 are punishable by a maximum term of imprisonment of at least two years.</i>	Depending on the outcome at political level
102	Art. 6, para 1 c(new)			<i>1c. 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.</i>	Depending on the outcome at political level
103	Art 7 - title	Liability of legal persons	Liability of legal persons	Liability of legal persons	Liability of legal persons
104	Art 7, para 1	1. Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 5 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of 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.	1. Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 5 [...] committed for their benefit by any person [...], <u>acting either individually or as part of an organ of the legal person, and having a leading position within the legal person</u> 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.	1. Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 5 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of 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.	1. Member States shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 3 to 5 [...] committed for their benefit by any person [...], <u>acting either individually or as part of an organ of the legal person, and having a leading position within the legal person</u> 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.

	Article	COM text	Council text	EP text	Compromise text
105	Art 7, para 2	2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in Articles 3 to 5 for the benefit of the legal person by a person under its authority.	2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in Articles 3 to 5 for the benefit of the legal person by a person under its authority.	2. Member States shall also take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in Articles 3 to 5 for the benefit of the legal person by a person under its authority.	Identical
106	Art 7, para 3	3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in the offences referred to in Articles 3 to 5.	3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in the offences referred to in Articles 3 to 5.	3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are involved as perpetrators, inciters or accessories in the offences referred to in Articles 3 to 5.	Identical
107	Art 8 – title	Sanctions for legal persons	Sanctions <u>on</u> legal persons	Sanctions for legal persons	Sanctions for legal persons
108	Art 8	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.	Member States shall take the necessary measures to ensure that <u>a legal person</u> held liable pursuant to Article 7 <u>is</u> punishable by effective, proportionate and dissuasive <u>criminal or non-criminal</u> sanctions.	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.	Depending on the outcome at political level

	Article	COM text	Council text	EP text	Compromise text
109	Art. 8 a (new)			<p><i>Article 8a Jurisdiction</i></p> <p><i>Member States shall take the necessary measures to establish their jurisdiction over an offence referred to in Articles 3 to 5, where:</i></p> <p><i>(a) the offence has been committed in whole or in part within their territory; or</i></p> <p><i>(b) the offence has been committed for the benefit of a natural or a legal person residing or established in their territory.</i></p>	Depending on the outcome at political level
110	Art. 8 b (new)			<p><i>Article 8b Disclosure or dissemination of information in the media</i></p> <p><i>Where information is disclosed or disseminated and where recommendations are produced or disseminated for the purpose of journalism, such disclosure or dissemination of information shall be assessed taking into account the rules governing the freedom of expression, the freedom and pluralism of the media and the rules or codes governing the journalist profession, unless:</i></p> <p><i>(a) the persons disclosing or disseminating the information or persons closely associated with them derive, directly or indirectly, an advantage or profits from the disclosure or the dissemination of the information in question; or</i></p> <p><i>(b) the disclosure or the dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of financial instruments.</i></p>	Depending on the outcome at political level.

	Article	COM text	Council text	EP text	Compromise text
111	Art. 8 c (new)			<p><b>Article 8c</b> <b>Training and investigative tools</b></p> <p><b>1. Member States shall take the necessary measures to ensure that law enforcement and judicial authorities and other services responsible for investigating or prosecuting the offences referred to in Articles 3 to 5 have sufficient resources and are appropriately trained.</b></p> <p><b>2. Member States shall take the necessary measures to ensure that effective investigative tools are available for law enforcement and judicial authorities and other services responsible for investigating or prosecuting the offences referred to in Articles 3 to 5.</b></p>	Depending on the outcome at political level
112	Art 9 - title	Report	Report	Report	
113	Art 9	<p>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.</p> <p>The Commission shall submit its report accompanied, if appropriate, by a legislative proposal.</p>	<p>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, [...] <b>including</b> with regard to the appropriateness of introducing common minimum rules on types and levels of criminal sanctions.</p> <p>The Commission shall submit its report accompanied, if appropriate, by a legislative proposal.</p>	<p>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.</p> <p>The Commission shall submit its report accompanied, if appropriate, by a legislative proposal.</p>	Depending on the outcome at political level

	Article	COM text	Council text	EP text	Compromise text
114	Art 10 - title	Transposition	Transposition	Transposition	Transposition
115	Art 10, para 1, first subpara	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.	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 [...].	Member States shall adopt and publish, by ...*, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.	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 [...].
116	Art 10, para 1, second subpara	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.	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 [...] [MAR].	They shall apply those measures from ...* or on the date of the entry into force of Regulation (EU) No.../... [MAR], whichever the later.	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 [...] [MAR].
117	Art 10, para 1, third subpara	When Member States adopt those provisions, 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.	When Member States adopt those provisions, 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.	When Member States adopt those <i>measures</i> , they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. <b><i>The methods of making such reference shall be laid down by Member States.</i></b>	When Member States adopt those provisions, 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.

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

	Article	COM text	Council text	EP text	Compromise text
118	Art 10, para 2	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.	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 [...]	2. Member States shall communicate to the Commission the text of the main measures 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.	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 [...]
119	Art 11/12 - title	Entry into force	Entry into force	Entry into force	Identical
120	Art 11/12	This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	
121	Art 12/13 - title	Addressees	Addressees	Addressees	Identical
122	Art. 12/13	This Directive is addressed to the Member States in accordance with the Treaties.	This Directive is addressed to the Member States in accordance with the Treaties.	This Directive is addressed to the Member States in accordance with the Treaties.	