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| From:    | General Secretariat of the Council   |
| To:      | Permanent Representatives Committee/Council  |
| Subject: | Proposal for a Directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation ( <b>first reading</b> )<br>- Adoption of the legislative act ( <b>LA + S</b> )<br>= Statements |

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**Statement by Austria, Bulgaria, Hungary and Poland**

The delegations of Austria, Bulgaria, Hungary and Poland welcome the efforts taken to combat insider dealing and market manipulation. We believe that appropriate measures, including criminalization of market abuse acts would contribute to enhancement of market integrity and public confidence in financial instruments which are imperative conditions for economic growth. Therefore, we endorse the adoption of a directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation.

However, the harmonization of penalties introduced in this directive raises serious doubts as it ought to be preceded with analysis of its necessity for the effective implementation of a Union policy. Such analysis has not been conducted since the harmonization of penalties was proposed only at the stage of informal negotiations with the European Parliament. Moreover, the impact assessment initially carried out by the European Commission has not confirmed that such harmonization is deemed essential to ensure an effective implementation of Union's policy in this area.

The levels of penalties adopted in the directive may also raises concerns, since they diverge from the thresholds well established in practice, originating from the *Council conclusions of 2002 on the approach to apply regarding approximation of penalties* and confirmed by the *Council conclusions of 2009 on model provisions, guiding the Council's criminal law deliberations*. It is questionable, whether differences in legal systems and traditions of the Member States, which are protected by virtue of Article 67 of the Treaty on the Functioning of European Union, were sufficiently taken into account.

Furthermore, we are concerned that a threshold of 4 years of imprisonment, even for serious cases of insider dealing and market manipulation, is rather high compared to other serious offences harmonized at European level. For instance certain offences of sexual abuse of children are punishable by up to 3 or 5 years of imprisonment. Moreover, those Member States which do not foresee this threshold in their legal system will be obliged to increase the penalty to the closest threshold applied therein (to 5 years or more). It will have an adverse effect on harmonization and consequently unintended harshness in the treatment of offences concerned.

We express our belief that the levels of penalties previously agreed by the Council and the Parliament in other directives will be respected in future legal instruments. This directive should not constitute a precedence in that regard.

## **Statement by Luxembourg**

Luxembourg notes that the Directive will not be binding upon all Member States of the Union in accordance with Protocols 21 and 22. This situation might conflict with the requirement to "ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures" established by the legal basis of Article 83(2) TFEU. Luxembourg therefore recalls the provisions set out in Declaration No 26 on the Lisbon Treaty.

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