The New Market Abuse Directive

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eucrim
European Law Forum: Prevention • Investigation • Prosecution

Article

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CITATION SUGGESTION

M. Cerizza, "The New Market Abuse Directive", 2014, Vol. 9(3), eucrim, pp85–89. DOI: https://doi.org/10.30709/eucrim-2014-011

Published in
2014, Vol. 9(3) eucrim pp 85 – 89
ISSN: 1862-6947
https://eucrim.eu

I. Directive 57/2014 and Regulation 596/2014: The New Legal Framework Against Market Abuse in the European Union

Traditionally, the protection of market integrity and of investors' confidence has been mainly guaranteed through extra-penal measures, such as the infliction of administrative sanctions by independent regulators or the right for investors to raise civil lawsuits against intermediaries. In recent years, the strategic role assumed by financial markets in modern economic life, the frequent crises that originated from this system as well as their catastrophic effects on global economies have led to an increase in the use of criminal law. Criminal law is considered the only measure that can adequately prevent and punish the most serious and fraudulent behaviors on the market. I mainly refer to the so-called "market abuse" offenses, i.e., conduct based on an illegitimate exploitation of corporate information (insider dealing) or on a misleading manipulation of market information (market manipulation), which can seriously threaten free competition and "equality of arms" among investors.[1]

As far as the EU legislation is concerned, Directive 592/1989/EEC on insider dealing[2] required Member States (MS) to "*prohibit*" the most serious insider dealing offenses, without specifying the kind of punishment to be applied,[3] and Directive 6/2003/EU on market abuse[4] required them "*to ensure […] that the appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible*" of threatening the integrity of financial markets.[5] Only in very recent times has the EU enacted legislative provisions aimed at promoting the adoption of criminal measures against market abuse: Directive 57/2014/EU[6] – replacing, together with Regulation 596/2014/EU,[7] the old Market Abuse Directive (MAD) – provides that, by 3 July 2016, all MS shall ensure that insider dealing and market manipulation "*constitute criminal offences at least in serious cases and when committed intentionally.*"[8]

The new European market abuse framework is based on two different instruments: Regulation 596/2014/EU updates the old MAD to include new market developments, such as over-the-counter trading platforms and high-frequency trading, and new market abuse techniques, such as manipulation on derivatives markets and manipulation of benchmarks; it also reinforces the investigative and administrative sanctioning powers of regulators and their power to cooperate with EU institutions and with other national regulators. Directive 2014/57/EU complements such regulation, by requiring MS to complement their national legislations with criminal laws.

II. Article 83.2 TFEU: The Legal Basis of Directive 57/2014 on Criminal Sanctions for Market Abuse

Such a change of perspective in the fight against market abuse has been determined by the combination of both legal and economic factors. The legal ground is the entry into force of the Lisbon Treaty: the new TFEU not only extends the "third pillar" area, increasing and broadening the "*areas of particularly serious crime with a cross-border dimension*" to which "*minimum rules concerning the definition of criminal offences and sanctions*" may be applied (Article 83.1 TFEU), but also enables the EU to adopt similar rules concerning "first pillar" matters, on condition that "*the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures*" (Article 83.2 TFEU).[9] In its communication "*Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law*",[10] the EU Commission has clarified some is-

sues relating to the new TFEU provision, concluding that "*EU criminal law can be an important tool to better fight crime as a response to the concerns of citizens and to ensure the effective implementation of EU policies*" and identifying the financial market as a privileged area of intervention for the new EU criminal policy.

III. The Globalization of Financial Crime and the New European Criminal Policies

The economic ground for the adoption of the new MAD is the increased integration of financial markets and the transnational character of financial crime. Financial markets belong to the economic sector that has been most affected by the processes of globalization of the last decades, determined by the fall of many trade barriers and the development of new communication technologies:[11] as a consequence, financial crime has followed the paths of globalized economic life and has acquired a transnational dimension. Sovereign states often fail at orientating globalized financial markets towards their economic and social goals; moreover, their democratic processes are widely influenced and conditioned by internationalized global economies. The EU – as well as other international organizations – has been trying to regulate the markets, preventing informative asymmetries and negative externalities, removing obstacles to free competition, and fighting against financial misconduct. In comparison with sovereign states, international organizations have more adequate resources to cope with international financial crime; nevertheless, their action presents serious dangers: firstly, economic and social goals of the weaker states risk being systematically sacrificed to the (often conflicting) interests of the stronger ones; secondly (and particularly relevant as far as criminal matters are concerned), measures adopted risk a lack of democratic legitimation, especially if the international organization concerned applies the "majority rule" in its legislative process – as the EU now does, even in criminal matters.[12]

IV. Fighting Against Insider Dealing and Market Manipulation on a Transnational Level: The Story So Far

Insider dealing and market manipulation constitute a crime in many national legislations. Some countries, like the US, have a "*corporate-oriented*" perspective: market abuse is punished as far as it constitutes a misappropriation of corporate information and a breach of the duties of loyalty and confidentiality towards a company.[13] Some other countries, like EU countries, adopt a "*market-oriented*" approach: market abuse is punished, since it harms the integrity of financial markets and public confidence in financial investments.[14] Despite these differences, the fraudulent nature of market abuse has been clearly identified in many countries,[15] and therefore many national legislations have adopted criminal sanctions to prevent and punish it. In contrast, international organizations have followed a totally different path: no criminalization treaties have been signed so far in this field,[16] and economic organizations addressing this issue have only required their members to fight market abuse through "*adequate,*" "*effective,*" "*proportionate,*" and/or "*dissuasive*" measures: as long as the goal of market protection is achieved, the nature of the sanctions applied is left to the choice of any single state.[17] In this respect, Directive 57/2014/EU is a complete novelty in this scenario.

The EU choice to impose penal measures in the field of market abuse is based on the consideration that "criminal sanctions […] demonstrate a stronger form of social disapproval compared to administrative penalties. Establishing criminal offences for at least serious forms of market abuse sets clear boundaries for types of behavior that are considered to be particularly unacceptable and sends a message to the public and to potential offenders that competent authorities take such behavior very seriously".[18] As already pointed out

in the communication of the Commission "Strengthening sanctions for violations of EU financial services rules: the way forward,"[19] inadequate sanctioning regimes in the field of financial services can seriously harm market trust, consumer protection, and fair competition within the EU internal market; in creating a sanctioning system that proves to be proportionate, effective, and dissuasive, criminal measures must also be taken into account, since such "sanctions, in particular imprisonment, are generally considered to send a strong message of disapproval that could increase the dissuasiveness of sanctions, provided that they are appropriately applied by the criminal justice system."

Before Directive 2014/57/EU, MS had no obligation to punish market abuse with penal measures; nonetheless, in the last three decades, the EU has informally encouraged MS to adopt criminal laws in this field. First of all, only criminal sanctions have proved to be sufficiently effective, proportionate, and dissuasive in the sense of the old MAD;[20] Secondly, several national criminal courts have interpreted their market abuse criminal laws by referring to instructions provided by the ECJ.[21] As evidenced by two CESR reports published in 2007 and in 2008, almost all MS have their own market abuse legislation,[22] and the majority of them have adopted criminal sanctions against offenders.[23] Even if EU measures have only operated on an extra-penal level, in most cases they also had an indirect impact on national criminal provisions: for this reason, national legislations adopted in MS show several similarities, especially with regard to the description of illicit market conduct.[24] Nonetheless, such regulations still diverge with regard to other aspects, such as the mental element of crime, the type and level of applicable sanctions, and the regime of liability for legal persons. Notwithstanding the increasing interest in market abuse issues in the EU area, these laws, especially the criminal provisions, have been applied in very few cases.[25]

V. Criminal Law Issues Arising from the Entry into Force of Directive 57/2014

After the entry into force of Directive 2014/57/EU, MS shall ensure that the most important forms of insider dealing (trading, tipping, and *tuyautage*)[26] and market manipulation (information-based, action-based, and trade-based manipulations)[27] constitute a criminal offense, even in the form of inciting, aiding, abetting and attempt,[28] "*at least in the most serious cases and when committed intentionally;*" criminal sanctions shall be applied to both natural and legal persons,[29]and effective mechanisms of investigative and judicial cooperation shall be enforced.[30]

Being the first instrument adopted under Article 83.2 TFEU, Directive 2014/57/EU raises several issues concerning not only the role of criminal law in protecting financial markets but also the function of criminal legislations in the post-Lisbon scenario. I have chosen to briefly analyze the following subjects: the respect of proportionality and subsidiarity principles in the new MAD; market abuse offenses and the codification of European *Rechtsgüter*; the relationship between criminal and administrative measures and the *ne bis in idem* principle.

1. Proportionality and subsidiarity in the new MAD

The notions of proportionality and subsidiarity are employed both in EU law and in criminal law but with slightly different meanings. As for proportionality, EU law mainly insists on the idea that the legal response must be adequate for the issue it aims at dealing with;[31] criminal law also stresses the fact that such a response must not be excessive.[32] As for subsidiarity, under EU law, it must be intended in a "vertical" sense (i.e., EU law intervenes only when national laws are not sufficient);[33] under criminal law, it must be intended in a "horizontal" sense (i.e., criminal sanctions intervene only when civil or administrative measures are not sufficient). These two principles have a stronger meaning under criminal law, since the *extrema ratio* ex-

presses not only a need for more efficiency but also a fundamental guarantee for the accused person. Article 83.2 TFEU only provides that minimum rules must ensure the effective implementation of a Union policy, but it does not require that such rules address only the most serious conducts referring to the policy concerned. These rules protect harmonization directives against the risk of undercriminalization but not against the risk of overcriminalization. It must be said that the new MAD respects the proportionality and subsidiarity principles, not only because many less serious offenses constituting an administrative offense under Regulation 596/2014/EU are not included in Directive 2014/57/EU but also because even insider dealing and market abuse constitute a criminal offense only in the most serious cases. Nevertheless, the new MAD is a "minimum rule:" therefore, the respect for these principles will mainly depend on the criminalization policies of each single MS.

2. Market abuse offenses and European *Rechtsgüter*

A related issue is that of the codification of European *Rechtsgüter.* Criminal sanctions should apply only to such conduct that constitutes a threat or an offense to a specific good, such as market integrity, public confidence, and investor's wealth, while a market abuse directive established on the basis of Article 83.2 TFEU creates the hazard of an indiscriminate criminalization of all conduct being detrimental to the implementation of the internal market policy.[34] Such a hazard is increased by the fact that the European policies set out in EU treaties seem to be the only guideline for enforcing a European criminal policy in the former first pillar area. Several "criminal" directives enforced before the Lisbon Treaty did not distinguish between harmful, dangerous, and risky behavior, and precautionary rules also carried criminal sanctions.[35] As mentioned before, the new MAD operates using a selection among market conduct, and only conducts that are harmful or specifically dangerous are sanctioned – even if some illogicality is registered.[36] In any case, since the development of EU criminal law is at its early stages, criminal offenses of Directive 2014/57/EU cannot be classified within a general framework establishing a hierarchy among goods. Developing such a framework could help in establishing the correct measure of sanctions against market abuse, the determination of which is still approximate and not sufficiently motivated in the directive.[37]

3. Criminal sanctions, administrative sanctions, and *ne bis idem*

The old MAD only required MS to adopt administrative measures and sanctions, while the imposition of criminal sanctions was left to the choice of any single country.[38] Since the adoption of administrative measures was, at any rate indefectible, this provision raised a *ne bis in idem* issue for all those countries that decided to exercise their right to impose criminal sanctions against the same conduct.

The *ne bis in idem* principle should apply only to criminal matters, but the ECHR[39] has clarified that even a non-criminal sanction in the formal sense can be treated as criminal if it proves to be very afflictive and/or aimed at punishing and intimidating: as a consequence, all European criminal law principles apply to such "criminal" rules, including the *ne bis in idem* principle, set out under Article 4 of VII Protocol to the ECHR,[40] and Article 50 of the Charter.[41]

As recently acknowledged in the *Grande Stevens* decision, market abuse administrative sanctions can be qualified as substantially criminal, and therefore the *ne bis in idem* principle applies to them.[42]

In the majority of MS, the most serious cases of insider dealing and market manipulation constitute both a criminal and an administrative offense. This phenomenon is particularly evident in the German system, in which the violation of the same rule[43] gives rise to both a criminal and a non-criminal sanction:[44] the same offense to the market generates two different penal responses.

In order to avoid the most unfair consequences of such a system – i.e., the accused person being punished twice –, some MS reduce the criminal sanction by an amount equivalent to the administrative sanction that has eventually been already imposed: the French legal system was the first to adopt this rule.[45] However, such a mechanism not only ends up weakening the intimidating force of criminal law but also does not even prevent the individual and the state from bearing the costs of a double proceedings.

The obligation to impose criminal sanctions against the most serious market abuse offenses exacerbated the *ne bis in idem* issue. Following on the recent *Grande Stevens* case, the European law-maker had to deal with the following problem: according to the 23rd "whereas" of the new MAD, "*in the application of national law transposing this Directive, Member States should ensure that the imposition of criminal sanctions for offences in accordance with this Directive and of administrative sanctions in accordance with the Regulation (EU) No 596/2014 does not lead to a breach of the principle of ne bis in idem.*" The directive does not offer solutions to the problem and passes onto MS the responsibility to comply with the VII Protocol of ECHR and the Charter of Fundamental Rights. Since the "whereas" only refers to the concrete application of the law, and not to its abstract formulation, the "French solution" seems consistent with the directive, even if it does not appear satisfactory for the reasons mentioned above.[46]

A more rational solution is suggested by the case law of the European courts: according to the *Gradinger* decision,[47] the fact that the same conduct violates two different laws does not constitute *per se* a breach of the *ne bis in idem* principle, unless these two laws describe an offense to the same good – as market abuse criminal and administrative provisions do: in order to comply with the *ne bis in idem* principle, it would therefore be necessary to differentiate the two regulations. More specifically, the criminal offense should detach itself from a "regulatory offense model," and address only the most serious and fraudulent conduct. Moreover, the penal sanction should not be fungible with the administrative one, and it should express its punitive and intimidating potential to the highest degree – i.e., imprisonment would be preferable to pecuniary sanctions. Only the enforcement of the new MAD in MS' legislations will show whether or not it will be possible to avoid a breach of the *ne bis in idem* principle.

* The opinions expressed are those of the author and not necessarily those of the institution at which she is employed.

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1. E. Avgouleas, The Mechanics and Regulation of Market Abuse. A Legal and Economic Analysis, (New York, Oxford University Press, 2005).↩
2. Directive 89/592/EEC of the Council coordinating regulations on insider dealing.↩
3. See Article 2 and Article 3.↩
4. Directive 03/6/EC of the European Parliament and of the Council on insider dealing and market manipulation (market abuse), O.J. L 96, 12 April 2003.↩
5. See Article 14.↩
6. Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive), O.J. L 173, 12 June 2014.↩
7. Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation), O.J. L 173, 12 June 2014.↩
8. See Article 3, Article 4, and Article 5.↩
9. The legal basis for the new MAD is Article 83.2 TFEU. See G. Giudicelli-Delage – C. Lazerges (eds.), Le droit pénal de l'Union Européenne au lendemain du Traité de Lisbonne, (Paris, Société de Législation Comparée, 2012); J. Öberg, 'Union Regulatory Criminal Law Competence after Lisbon Treaty', in H.-J. Albrecht, A. Klip (eds.), Crime, Criminal Law and Criminal Justice in Europe, (Leiden – Boston, Martinus Nijhoff, 2013), p. 301; E. Herlin-Karnell, 'EU Competence in Criminal Law after Lisbon', in A. Biondi, P. Eeckhout, S. Ripley (eds.), EU law after Lisbon, (Oxford, Oxford University Press, 2012), pp. 331-346.↩
10. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law, COM/2011/0573, 22 September 2011.↩
11. See M. Bagheri, M.J.G. Jahromi, Globalization and extraterritorial application of economic regulation: crisis in international law and balancing interests, in Eur J Law Econ, published online on 11 October 2012; N. Ryder, Financial crime in the 21st century, (Cheltenham, EE, 2011).↩
12. On similar issues, see L. Besselink, F. Pennings, S. Prechal (eds.), The Eclipse of the Legality Principle in the European Union, (Alphen aan den Rijn, Kluwer, 2011); M. Donini, L'armonizzazione del diritto penale nel contesto globale, in Rivista trimestrale di diritto penale dell'economia, 2002, p. 482.↩

13. See, inter alia, I. Seredyńska, Insider dealing and criminal law, (Berlin-Heidelberg, Springer, 2012); F. Consulich, La giustizia e il mercato. Miti e realtà di una tutela penale dell'investimento mobiliare, (Milan, Giuffrè, 2010); B. Rider, A. Kern, L. Linklater, S. Bazel, Market abuse and insider dealing, (Haywards Heath, Tottel, 2009); S. M. Bainbridge, Regulating Insider Trading in the Post-Fiduciary Duty Era: Equal Access or Property Rights?, 2012, in UCLA School of Law, Law-Econ Research Paper No. 12-08, available at SSRN: http://ssrn.com/abstract=2054814.↩
14. The U.S. were the first legal system to criminalize insider dealing and market manipulation, and are the jurisdiction that has been more active in seeking international cooperation in investigating and prosecuting these crimes; nonetheless, today, the European "market-oriented" approach prevails. A. Nieto Martin, Américanisation ou européanisation du droit penal économique?, in Revue de science criminelle et de droit pénal comparé, 2006, pp. 767-786; K. Hopt, E. Wymeersch (eds.), European Insider Dealing, (London, Butterworths, 1991); R.C.H. Alexander, Insider dealing and money laundering in the EU: Law and Regulation, (Farnham-Burlington, Ahsgate, 2007, p. 126); M. Siems, M. Nelemans, The Reform of the EU Market Abuse Law: Revolution or Evolution, in Maastricht Journal of European and Comparative Law, 2012, Vol. 19, Issue 1, p. 205.↩
15. N. Ryder, Financial crime in the 21st century, (Cheltenham, EE, 2011). See also European Commission Staff, Working Paper, Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) and the Proposal for a directive of the European Parliament and of the Council on criminal sanctions for insider dealing and market manipulation, 25 October 2011. K. Hopt – E. Wymeersch (eds.), European Insider Dealing, (London, Butterworths, 1991); R. C. H. Alexander, Insider dealing and money laundering in the EU: Law and Regulation, (Farnham-Burlington, Ahsgate, 2007, p. 126); M. Siems, M. Nelemans, The Reform of the EU Market Abuse Law: Revolution or Evolution, in Maastricht Journal of European and Comparative Law, 2012, Vol. 19, Issue 1, p. 205.↩
16. The Council of Europe Convention on insider dealing, Strasbourg, 20 May 1989, http://conventions.coe.int/Treaty/EN/Treaties/Html/130.htm only provides for a definition of "insider dealing" and asks signatory states to enforce judicial cooperation mechanisms but does not oblige them to implement criminal measures and does not introduce exceptions to the double jeopardy principle.↩
17. Beyond the above-mentioned ECHR Convention, see also IOSCO, Objectives and Principles of Securities Regulation, 2000, Article 36, § 2, FATF/GAFI, Money Laundering and Terrorist Financing in the Security Sector, 2009 p. 48 and OECD, Principles of corporate governance, 2004, p. 33.↩
18. See 6th 'whereas' of the new MAD.↩
19. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Reinforcing sanctioning regimes in the financial services sector, COM(2010) 716, 8 December 2010.↩
20. In this respect, see ECJ, C-68/1988, Commission v. Greece, 21 September 1989; ECJ, C-77/1997, Österreichische Unilever GmbH and SmithKline Beecham Markenartikel GmbH, 28 January 1999; ECJ, C-176/03, Commission v. Council, 13 September 2005, §§ 47-48.↩
21. See ECJ decisions C-28/99, Verdonck, 3 May 2001, C-384/02, Grøngard, 22 November 2005 and C-248/11, Nilaş, 22 March 2012; all these cases were referred to criminal law trials. See J. HUPKA, Das Insiderrecht im Lichte der Rechtssprechung des EuGH, in EuZW, 2011, 22, p. 860 for quite an exhaustive overview of ECJ case law on market abuse.↩
22. CESR, Report on Administrative Measures and Sanctions as well as the Criminal Sanctions available in Member States under the Market Abuse Directive, CESR/ 07-693, 17 October 2007, available at http://www.esma.europa.eu/system/files/07_693__2_.pdf.↩
23. CESR, Report on Administrative Measures and Sanctions as well as the Criminal Sanctions available in Member States under the Market Abuse Directive, CESR/ 08-099, 28 February 2008, available at http://www.esma.europa.eu/system/files/08_099.pdf.↩
24. F. Consulich, La giustizia e il mercato. Miti e realtà di una tutela penale dell'investimento mobiliare, (Milan, Giuffrè, 2010).↩
25. See, for example, Autorité des Marchés Financiers, Rapport annuel, Paris, 13 June 2013, www.amf-france.org, Annexe 3, Consob, Relazione per l'anno 2012, Milan, 6 May 2013, pp. 195ss., www.consob.it or Bundesanstalt für Finanzdienstleistungsaufsicht, Annual report 2012, 18 June 2013, www.bafin.de.↩
26. See Article 3 and Article 4.↩
27. See Article 5.↩
28. See Article 6.↩
29. See Article 7, Article 8, Article 9.↩
30. See Article 10.↩
31. See Article 5.4 TEU.↩
32. See Article 49.3 of the Charter.↩
33. See Article 5.3 TEU and Protocol 2. X. PIN, 'Subsidiarité versus efficacité', in G. Giudicelli-Delage – C. Lazerges (eds.), Le droit pénal de l'Union Européenne au lendemain du Traité de Lisbonne, (Paris, Societé de Législation Comparée, 2012), p. 51; M. Donini, Sussidiarietà penale e sussidiarietà comunitaria, in RIDPP, 2003, 1-2, p. 141.↩
34. L. Foffani, 'Verso un'armonizzazione europea del diritto penale dell'economia: la genesi di nuovi beni giuridici economici di rango comunitario, il ravvicinamento dei precetti e delle sanzioni', in AAVV, Scritti in onore di Franco Coppi, vol. II, (Torino, Giappichelli, 2011), p. 999; M. Poelemans, La sanction dans l'ordre juridique communautaire, (Paris-Bruxelles, 2004).↩
35. For example, Directive 2008/99/EC on the protection of the environment through criminal law, 19 November 2008.↩
36. The most evident example of such a lack of rationality is Article 5 on market manipulation: some behavior is sanctioned with criminal measures only if it provokes harm, other behavior also if it just creates a risk for the market.↩
37. C. Sotis, 'Les principes de nécessité et de proportionalité', in G. Giudicelli-Delage, C. Lazerges (eds.), Le droit pénal de l'Union Européenne au lendemain du Traité de Lisbonne, (Paris, Societé de Législation Comparée, 2012), p. 59.↩
38. See Article 14.1.↩
39. See, among many others, ECHR, Engel and others v. Netherlands, series A, No. 22, § 81 and Ozturk v. Germany, series A, 21 February 1984, No. 73.↩
40. See ECHR, Gradinger v. Austria, 23 October 1995, §§ 49-51 or ECHR, Serguei Zolotoukhine v. Russia, 10 February 2009.↩
41. See ECJ, C-436/04, Leopold Henri van Esbroeck, 9 March 2006, §§ 30-35.↩
42. See ECHR Grande Stevens and others v. Italia, 4 March 2014. Also, the ECJ had hypothesized that market abuse national laws enforcing the new MAD could constitute a violation of the ne bis in idem principle; see ECJ C-45/08, Spector, Van Raemdock, 23 December 2009, § 100. See F. Stasiak, '„Non bis in idem" et droit pénal boursier', in B. Deffains (eds.), L'analyse économique du droit dans les pays de droit civil, (Paris, Dalloz, 2002), p. 342.↩

43. See §§ 14-15 and §20 WpHG.↩
44. See §§ 38-39 WpHG. P. Pananis, sub WpHG, in W. Joecks, K. Miebach, Münchener Kommentar zum Strafgesetzbuch, Band 6/1, Nebenstrafrecht II, p. 1202.↩
45. See Article L 621-16 CMF, introduced in compliance with Cons. const., 28 July 1989, No. 260, in JO, 1 August 1989., M. Didier, E. Dezeuze, F. Bouaziz, Les abus de marché. Manquements administratifs et infractions pénales, (Paris, Dalloz, 2012).↩
46. Nevertheless, it must be remembered that the Italian system, whose Article 187terdecies TUF is identical to Article L 621-16 CMF, has been severely criticized by the ECHR in the Grande Stevens decision.↩
47. ECHR, Gradinger v. Austria, 23rd October 1995, §§ 49-51.↩

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).

Co-funded by the European Union