



EUROPEAN COMMISSION

Brussels, 8. 5. 2013  
C(2013) 2670 final

Ms Miroslava NĚMCOVÁ  
President of the  
Poslanecká sněmovna  
Sněmovní 4  
CZ – 118 26 PRAGUE 1

*Dear President,*

*The Commission would like to thank the Poslanecká sněmovna for its Opinion on the proposals for a Regulation on insider dealing and market manipulation {COM(2011) 651 final} and for a Directive on criminal sanctions for insider dealing and market manipulation {COM(2011) 654 final} and apologises for the long delay in replying.*

*As regards the choice of presenting new legislation rather than adapting the existing Directive 2003/6/EC, the Commission believes that a Regulation is the most appropriate legal instrument to define the market abuse framework in the Union and to achieve the objective of a single rulebook in the Union. The direct applicability of a Regulation should reduce regulatory complexity and offer greater legal certainty for those subject to the legislation across the Union, introduce a harmonised set of core rules and contribute to a better functioning of the Single Market.*

*This being said, the provisions on the powers of the competent authorities and on the administrative measures and sanctions simply set a harmonised minimum framework at the Union level which would still need to be implemented by national law before the entry into application of the Regulation.*

*The Commission would also like to assure the Poslanecká sněmovna that, prior to presenting the Directive proposal, and following the methodology set out in its Communication "Towards an EU Criminal Policy – Ensuring the Effective Implementation of EU policies through criminal law",<sup>1</sup> the Commission has conducted a thorough analysis of the legal and factual situation in the policy area of financial market regulation.*

*The results of this analysis are set out in the Impact Assessment accompanying the proposal for a Directive,<sup>2</sup> which was preceded by a public consultation. The analysis of the current situation in Member States shows that the sanctions applicable in the Member States to fight market abuse offences are lacking impact and are insufficiently dissuasive, which results in ineffective enforcement of the current Directive 2003/6/EC against market abuse.*

*Evidence from studies and from competent national authorities suggests that criminal sanctions contribute strongly to the objective of increased deterrence. They have a deterrent*

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<sup>1</sup> *Ibid.*, pp. 7 and 8.

<sup>2</sup> SEC (2011) 1217 final of 20 October 2011.

*effect due to the stigma attached to criminal conduct; criminalisation and in particular imprisonment are considered by companies to be the strongest possible deterrent<sup>3</sup>.*

*The main difficulties in enforcement result from diverging national definitions of which insider dealing or market manipulation offences constitute criminal offences. Market abuse is an offence often committed across borders. It can particularly easily be directed from one Member State to another with more lenient sanction provisions as it does not require more than normal communication channels. The existing divergence clearly undermines the internal market. It also creates difficulties in cooperation between law enforcement authorities in different Member States which can only be addressed by creating some common minimum rules at EU level on what is to be considered a criminal offence in this area.*

*The Commission hopes that these explanations serve to clarify the concerns raised in your Opinion and looks forward to continuing the political dialogue with the Poslanecká sněmovna in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

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<sup>3</sup> *Ibid*, p. 52 with further references.