

Market abuse directive

Law



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Topic: Market Abuse Directive (2003/6/EC) Affiliation: Financial markets are an important component of any given economy. For the European financial markets, the fundamental role that the financial markets play cannot be ignored. However, operational and performance challenges have been evident over the years as a result of market abuse. Market abuse is an activity or an action that aims at making some stakeholders in the financial markets worse off and other better off by manipulating the functions of the financial markets. In most cases, investors have been directly or indirectly disadvantaged through market abuse (Ferran, 2004, pg. 127). There are various ways in which market abuse results. The first form of an activity that results in market abuse is insider trading. Information unavailable to the public is used by few individuals in financial markets dealings, taking advantage of the larger public investors. In some other instances, the financial instruments price setting mechanism has been distorted or false and misleading information released to the public, the motive being to benefit just a few in these markets (Mantysaari, 2009, pg. 122). The Market Abuse Directive (MAD) was formulated and implemented to counter such activities and promote fairness and integrity in the European financial markets. When integrity is upheld, investors are confident in carrying out their business. The directive therefore is purposed to combat market abuse (Seredydska, 2011, pg. 227). However, MAD has been termed to be ineffective and inefficient in meeting its primary objective, necessitating a need for dire reforms. The need to urgently reform the MAD springs from a number of observed activities that the directive has failed to address. Reforming the directive would require that the directive becomes more effective in meeting its primary objective, combating market abuse. The <https://assignbuster.com/market-abuse-directive/>

MAD is not integrated into the micro and macroeconomic sector of the European member states. It is not applicable to the determinants of money demand and supply, including but not limited to public debt management, monetary policy and the exchange rates (Mantysaari, 2009, pg. 380). The micro macroeconomic components are crucial in the light of financial markets business. In order to determine the economic direction of a given union, Central Banks of all member states should actively be involved in order to direct and control activities in the markets that are likely to affect the economy positively or negatively. The MAD however, ignores the role of the European system of Central Banks (Katharina, 2004, pg. 141). As a result, the primary decisions made by these Central Banks are not integral to the activities that the directive seeks to address. It is important that the directive integrates important components of the entire economy in order to achieve the desired results effectively. Lack of an all-round treatment of constituent controlling units of the financial markets hinders the achievement of the directive due to conflict of interest between the Central Banks and the MAD directors. Individual member country Central Banks have also been left out in the monitoring undertaken by the directive. In order to incorporate all necessary aspects into the MAD, dire reforms are necessary and urgent. Critical analysis of the MAD has found further deficiencies, mounting on more pressure for reforms to the MAD. The directive has failed to achieve its stated objectives due to the directive's limited scope. It is necessary to create an extensive scope of the directive. Specifically, prohibitions that concern insider dealing and market manipulation are not adequate (Seredydska, 2011, pg. 227). Loopholes to these prohibitions have been evident, making it possible for market abuse to occur, with failure of <https://assignbuster.com/market-abuse-directive/>

administrative law to justify such prohibitions due to the evident loopholes. Market abuse practitioners have in several instances justified their activities under the provisions of the directive. This shows that the directive at some instances fails to meet its purpose. On the same note, the extent to which one financial instrument affects the value of another financial instrument has not been fully met. The regulatory role of the MAD in the market therefore fails, thus the need for reforms. MAD and the use of e-technology are not fully matched. Relevant authorities that monitor market abuse are limited by e-privacy rules when seeking access to telephone and data traffic records for supervisory purposes (Katharina, 2004, pg. 97). This has been a major source of the directive's failure. It is therefore necessary to amend and reform the MAD statute provisions in such a way that the MAD provides a clear outline of how authorities access the required data and information in regulating and controlling market abuse in the financial markets. Disclosure of inside information is another concern when it comes to the ineffectiveness and failure of the MAD. Such information should not be released to the public without prior consideration of its effects. The delay of disclosure provided by the MAD currently is ambiguous. It lacks clarity, making it prone to manipulation and further being used to the public's disadvantage. Disclosure delay, criteria for the delay and applicable laws should be clear and integrated into the entire justice system (Ferran, 2004, pg. 134). The idea is to safeguard the public from misleading information that ends up benefiting a few at the expense of investors in the financial markets. Evidence of failure, ineffectiveness and inefficiency of MAD cannot be disputed. The European Commission (EC) should be on the fore front in addressing the concern of urgently reforming the MAD as a result of failure to achieve its

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stated objectives. Coordinated measures that account for the present failures and deficiencies need to be put in place. This can be done at EU level prior to the EC's decision, especially in the light of short selling (Mantysaari, 2009, pg. 171). References Ferran, E, (2004), Building an EU securities market, London: Cambridge University Press. Seredydska, I, (2011), Insider Dealing and Criminal Law: Dangerous Liaisons, California: Springer. Katharina, P, (2004), Law and governance in an enlarged European Union, London: Hart Publishing. Mantysaari, P, (2009), The Law of Corporate Finance: General Principles and EU Law: Volume II: Contracts in General, California: Springer.