



AUTORITÉ  
DES MARCHÉS FINANCIERS

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## The Autorité des Marchés Financiers (AMF) publishes reform proposals for the market abuse enforcement system

Recent developments in European and Constitutional Council case law have called into question France's dual system of administrative and criminal enforcement for market abuse. A working group set up by the AMF is today publishing the results of its deliberations and proposes a solution that should make it possible to preserve the achievements of an administrative system that has shown itself to be highly effective and well suited to the financial sector, while improving criminal enforcement for cases that warrant such treatment.

In its report, the AMF working group reviewed market abuse cases, i.e. involving insider dealing, price manipulation and false information, handled in France over the last ten years. The group looked at 182 cases that were sent by the AMF to the public prosecutor between the AMF's inception date and August 2014.

The review revealed that:

Of the 182 cases forwarded, 150 were the subject of AMF Enforcement Committee decisions (82% of the investigation reports sent to the prosecutor's office).

- Only 22 cases (12%) led to criminal fines and/or suspended prison sentences, and 109 (60%) did not give rise to a criminal conviction.
- In practice, it is extremely rare for market abuse to be the subject of combined administrative and criminal proceedings and sanctions: just 17 cases saw sanctions

handed down by a criminal judge and the AMF – slightly more than one case a year.

- The administrative enforcement procedure is quick: in the ten largest cases since 2004 , the average time for AMF proceedings was 39 months, compared with 78 months for criminal proceedings. Since out of these ten cases, six are still under judicial investigation and one is the subject of a preliminary investigation, just three cases have actually resulted in criminal convictions.
- The AMF Enforcement Committee has imposed substantial fines, totalling €117 million since 2004, while criminal sanctions amounted to €2.9 million over the same period.
- Market abuse rarely leads to imprisonment. In the last ten years, no offender has been sentenced to immediate custody, while suspended sentences were handed down in 13 cases.

Based on these findings, the working group felt it would be appropriate to follow the route suggested by European legislation and reserve criminal sanctions for the most serious cases of market abuse, i.e. those that disrupt the social order and thus require imprisonment. Administrative treatment should be preferred when punishing interference with orderly market functioning.

With this in mind, the AMF proposes reforms in four areas:

- 1 •** Write into law the principle that criminal and administrative proceedings and sanctions may not be combined, to reflect developments in European and Constitutional Council case law.
- 2 •** Introduce objective criteria into the law to draw a clear distinction in the definitions used for administrative breaches and securities violations. Use the definition of a general offence set down in European market abuse legislation and give the AMF statutory responsibility for enforcement. Write into law the definition of a serious offence, characterised by criteria covering intention, repeated action and severity (amount of illegal profit, organised crime). Only this type of offence would be liable for criminal sanctions.
- 3 •** Require the national financial prosecutor and the AMF to coordinate their work before instituting legal proceedings. Require the national financial prosecutor and the AMF to coordinate their work for a mandatory two-month period to ensure that cases are appropriately directed either to the criminal authorities or the AMF.
- 4 •** Set up a framework for civil action prior to coordinated action by the financial prosecutor and the AMF and find ways to improve criminal proceedings to reduce lead times.

Pursuant to the Constitutional Council's decision, the enforcement system reforms are required to be made before 1 September 2016.

The AMF stands ready to help the legislature by providing technical support to establish a solution that will ensure the current system's continued effectiveness.

### **Composition of the working group:**

- Gérard Rameix, AMF Chairman
- Michel Pinault, AMF Enforcement Committee Chairman
- Jean-Claude Hassan, AMF Board Member
- Martine Ract-Madoux, AMF Board Member
- Christian Schricke, AMF Board Member
- Marie-Hélène Tric, Chair of the Second Division of the AMF Enforcement Committee
- Bernard Field, AMF Enforcement Committee Member
- Guillaume Goulard, AMF Enforcement Committee Member
- Christophe Soulard, AMF Enforcement Committee Member
- Benoît de Juvigny, AMF Secretary General

### *About the AMF:*

*The AMF is an independent public authority responsible for ensuring that savings invested in financial products are protected, providing investors with adequate information and supervising the orderly operation of markets. Visit our website [www.amf-france.org](http://www.amf-france.org)*


### **Press contact:**

AMF Communication Directorate - Florence Gaubert - Tel: +33 (0)1 5345 6034 or +33 (0)1 5345 6028

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Head of publications: The Executive Director of AMF Communication Directorate. Contact: Communication Directorate – Autorité des marchés financiers 17 place de la Bourse – 75082 Paris cedex 02