SUMMARY

The recent financial crisis triggered an increasing demand for financial regulation to counteract the potential negative economic effects of the evermore complex operations and instruments available on financial markets. As a result, insider trading regulation counts amongst the relatively recent but particularly active regulation battles in Europe and overseas. Claims for more transparency and equitable securities markets proliferate, ranging from concerns about investor protection to global market stability. The internationalization of the world's securities market has challenged traditional notions of regulation and enforcement. In order to ensure operational and informational efficiency of their market, domestic regulators have to deal with cross border cases. This means that they must be capable of assessing the nature of activities within markets and legal regimes that differ from their own environments. Regulators have to ensure they have sufficient capacity and a relevant structure to adapt their measures to a dynamic environment.

Considering that insider trading is currently forbidden all over Europe, this study follows a law and economics approach in identifying how this prohibition should be enforced. More precisely, the study investigates first whether criminal law is necessary under all circumstances to enforce insider trading; second, if it should be introduced at EU level.

This study provides evidence of law and economics theoretical logic underlying the legal mechanisms that guide sanctioning and public enforcement of the insider trading prohibition by identifying optimal forms, natures and types of sanctions that effectively induce insider trading deterrence. The analysis further aims to reveal the economic rationality that drives the potential need for harmonization of criminal enforcement of insider trading laws within the European environment by proceeding to a comparative analysis of the current legislations of height selected Member States. This work also assesses the European Union's most recent initiative through a critical analysis of the proposal for a Directive on criminal sanctions for Market Abuse. Based on the conclusions drawn from its close analysis, the study takes on the challenge of analyzing whether or not the actual European public enforcement of the laws prohibiting insider trading is coherent with the theoretical law and economics recommendations, and how these enforcement practices could be improved.

Firstly, this study holds that criminal law play a specific role and should in all circumstances be considered as a remedy of last resort and should therefore only be employed when other remedies (private law or administrative enforcement) cannot reach the same goal. In that respect the study stresses the possibility of using administrative fines for cases where the harm and the gain are not too high and the probability of detection not too reduced. Moreover, economic incapacitating administrative sanctions (such as the revocation of a licence or a prohibition to exercise a particular profession) should be developed.

Secondly, even though there is a specific and last resort role to play for criminal law in enforcing insider trading, there is also a doubt whether at this stage there is a large practical need of imposing criminal sanctions at the EU level from an economics of federalization point of view. There is currently little evidence that the enforcement of insider trading laws at Member State level would be ineffective, nor can it be expected that the mere introduction of criminal sanctions via the EU level would remedy those enforcement problems. In that respect, the study suggests that the Commission should better focus first on possibilities to improve the functioning of administrative or private enforcement. Finally, the study stresses that the specific provisions proposed at EU level may be problematic from a qualitative point of view. Indeed, the proposal contains a tendency to criminalize vague notions, which is at odds with fundamental principles of criminal law, more particularly the *lex certa* principle derived from the legality principle.

All in all the analysis contained in this study encourages the construction of a legally and economically consistent and responsive apparatus of public enforcement of insider trading laws.