

**Economic Crime and Globalisation –
New Challenges for the Police**

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Possibilities and Limits of Monitoring of Capital Markets

Summarised presentation

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The supervision of increasingly global capital markets takes place in a dynamic environment. The instruments dealt in and the markets on which these deals are carried out are constantly changing. Market players participate in this trade, irrespective of their geographical location. With increasing frequency offences are committed from abroad or through foreign banks. However, the adjustment of the rules keeps pace with the internationalisation of the markets only partially, the regulatory authorities are still established at national level.

The losses resulting from market abuse, including insider trading and market manipulation, have assumed economically relevant dimensions. Regarding insider trading, the primary groups of offenders can usually be found among the executives and the members of those company bodies by which the relevant information was created, whereas manipulations are mainly caused by bankers, property managers and brokers.

In 2007, BaFin carried out round about 750 analyses on possible cases of insider trading and market manipulation, initiated 103 new inquiries and filed complaints against 113 persons in 42 cases. Thus, intensive screening is applied in order to avoid inconveniencing the law enforcement authorities with dubious cases.

When prosecuting market abuse, one of the major difficulties consists in proving that the person concerned knew about an insider information at the time in question. In the field of market manipulation it is often difficult to examine the economic background, which means to bring to light the motive for a manipulation. BaFin may and actually does collect circumstantial evidence, but often it will not succeed in furnishing final proof with the means at its command. In these cases measures on the part of police or public prosecution are usually required in order to progress the issue.

For this reason BaFin considers it unsatisfactory when a public prosecutor's office discontinues proceedings without having interviewed the suspects and without having applied for house searches, giving as reason for the discontinuation that the report filed by BaFin does indeed contain clear circumstantial evidence but no proof. According to the experiences made by BaFin, speedy searches, separate and, as far as possible, simultaneous interviews of the suspects and, where appropriate constellations are given, covert investigative measures are most promising since on some recent occasions there have come to light structures that remind us very much of organised crime. In addition, one should consider the arrest of profits at an early stage.

Although cooperation between all parties involved has clearly increased during the past years, it still has to be strengthened further, whether by means of consultation in individual cases, especially in view of the specific details to be observed within the context of stock exchange transactions and the financial instruments used, or by means of practical training courses for police officers hosted by BaFin or by means of joint training courses.

We will, admittedly, not be able to prosecute each minor case. But we will have to succeed in showing our colours in those cases that pose a special threat to the integrity of the capital markets and that influence the investors' opinion about these markets. In this context we all, public prosecutor's offices, police authorities and BaFin, will have to act quickly and with determination. Then there will be a realistic chance for successful action within a highly dynamic environment.