

Legal Alert

NEW CRIMINAL SANCTIONS FOR MARKET ABUSE IN BULGARIA

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New legislation

Regulation (EU) 596/2014 (the Market Abuse Regulation or MAR) entered into force on July 3, 2016. It comes to make a major step towards tightening of the regime first set by Directive 2003/6/EC (the first Market Abuse Directive) and its national transposition measures (in Bulgaria, the Measures against Market Abuse in Financial Instruments Act), which were replaced by the new regulation.

As its predecessors, the Market Abuse Regulation is aimed at improving market integrity and investor protection and preventing market abuse on the capital markets throughout the European Union. It seeks to achieve that aim through a variety of measures, such as the prohibition of market abuse (i.e. insider offences and market manipulation), an *ad-hoc*-disclosure requirement for new inside information, rules of conduct for market analysts as well as various organizational requirements for issuers of financial instruments. These provisions are accompanied by further organizational requirements for issuers as well as different coercive measures, administrative offences and administrative sanctions set out in the Implementation of the Measures against Market Abuse with Financial Instruments Act.

Following these developments, in December 2017 the Bulgarian National Assembly enacted an amendment to the Penal Code and introduced the new art. 260a – 260c. The new provisions criminalize certain forms of market abuse, when committed intentionally by individuals, and thus implement the requirements of Directive 2014/57/EU (the second Market Abuse Directive) into Bulgarian law (delayed by nearly 18 months). In particular, the provisions sanction cases of insider trading (art. 8, para.1 and 3 of MAR), the unlawful disclosure of inside information (art. 10 of MAR) and market manipulation (art.12 of MAR), when the offense resulted in considerable harmful consequences for the market integrity, the confidence of investors therein and/or the property of investors. The

recommendation or inducement to engage in insider trading (art. 8, para. 2 of MAR) is also subject to criminal sanctions. Finally, the attempted market abuse as well as the incitement, aiding and abetting market abuse are punishable by the law.

Sanctions

The criminal sanctions vary according to the type of market abuse committed.

Art. 260a, para. 1-4 of the Penal Code states that insider trading is punishable by up to four years of imprisonment, a fine from BGN 1,000 to BGN 3,000, and possible deprivation of the right to hold certain state or public offices, and/or the right to exercise a certain vocation or activity.

Under art. 260a, para. 5 and 6 of the PC, the inducement of another person to engage in insider trading as well as acting in accordance with an inducement, where the person knows that the inducement is based on inside information, is punishable by up to four years of imprisonment.

The new art. 260a, para. 7 of the PC provides for qualifications of the offences mentioned above punishable by imprisonment from two to five years and a fine from BGN 1,000 to BGN 3,000, when the crime was committed by two or more people who have conspired in advance; by a person acting at the orders or implementing a decision of an organized criminal group; or when the offence is repeated.

According to art. 260b of the Penal Code, the unlawful disclosure of inside information is punishable by imprisonment of up to two years.

The new art. 260c of the Penal Code sets out sanctions for behavior related to the capital market, that can be defined as market manipulation. Defining market manipulation may be a task that is progressively harder after entering into force of the Market Abuse Regulation with its broader and less clear definition of market manipulation in comparison with the previous regime. The sanctions vary depending on the type of behavior involved.

Under art. 260c, para. 1 of the Penal Code, any person entering into a transaction or placing an order to trade, which gives false or misleading signals as to the supply of, demand for, or price of, a financial instrument or a related spot commodity contract is punishable by up to four years of imprisonment and a fine from BGN 1,000 to BGN 3,000.

According to art. 260c, para. 2 of the Penal Code, any person who enters into a transaction, places an order to trade or performs any other activity or behavior, which affects the price of one or several financial instruments or a related spot commodity contract, by employing a fictitious device or deception is punishable by imprisonment from two to four years.

According to art. 260c, para. 3 of the Penal Code, any person who acts to gain personal benefit or profit and disseminates information through the media or by any other means, which gives false or misleading signals as to the supply of, demand for, or price of a financial instrument, or a related spot commodity contract, or secures the price of one or several financial instruments or a related spot commodity contract at an abnormal or artificial level is punishable by up to four years of imprisonment and a fine from BGN 3,000 to BGN 5,000.

Finally, art. 260c, para. 4 of the Penal Code states that the dissemination of false or misleading information that relates to the calculation of a benchmark, or any other type of influencing of that process is punishable by imprisonment from one to four years.

In addition to the personal sanctions mentioned above, in case of an offense under art. 260a and 260c of the Penal Code the object of the crime or, where that is not possible, its value is to be confiscated in favor of the state.

Outlook

These new criminal sanctions complete the harmonization of Bulgarian law with that of the other member states of the European Union in the field of market abuse prevention. Although they don't provide for any additional regulatory burden for issuers and other market participants, members of the administrative, management and supervisory bodies of issuers, shareholders and persons that may have access to inside information by virtue of the exercise of their profession or duties should be wary of the possible criminal consequences, as they all are the key addressees of the new criminal provisions. Through their involvement in or their close ties to the operations of issuers these categories run certain risk of violating the provisions related to the unlawful disclosure of inside information and of engaging in activities that may be classified as market manipulation or an insider offence. These risks would require from members of issuers' bodies, shareholders and other professionals more diligence and vigilance when performing their day-to-day activities.

Entry into Force

Amendment and Supplement to the Penal Code enter into force on 23 December 2017, i.e. 3 days following the promulgation of the Amendment in the State Gazette.

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