

## **ACT ON APPLICATION OF THE MEASURES AGAINST MARKET ABUSE WITH FINANCIAL INSTRUMENTS**

*In force from 30.09.2016.*

*Prom. SG. 76/30 Sep 2016, amend. SG. 105/30 Dec 2016*

### **Chapter one. GENERAL PROVISIONS**

Art. 1. (1) This act shall provide for the measures for implementation of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/E (OJ, L 173/1 of 12 June 2014), called hereinafter Regulation (EU) N 596/2014", and the acts of its implementation.

(2) Market abuse shall be the abuse with internal information, illegal disclosure of internal information and manipulation of the financial instruments market.

Art. 2. The purpose of this act shall be prevention and disclosure of market abuse with financial instruments.

Art. 3. In relation to the market abuse with financial instruments apart from this act, Regulation (EU) N 596/2014 and the acts on its implementation shall apply.

Art. 4. (1) The commission on Financial Supervision, called hereinafter "the Commission" and the deputy chairperson of the commission, directing direction "Supervision of the Investment Activity", called hereinafter "the deputy chairperson" shall carry out supervision on the observation of this act, Regulation (EU) N 596/2014 and the acts its implementation and shall be competent bodies in the meaning of Art. 22 of Regulation (EU) N 596/2014.

(2) The commission shall exercise the powers of a competent body under Art. 13, 24, 26, 29, 30, Para. 2, letters "d", "e" and "f" and Art. 33 of Regulation (EU) N 596/2014 upon proposal of the deputy chairperson.

(3) The deputy chairperson shall exercise all the powers of a competent body under Regulation (EU) N 596/2014 with the exception of the ones, which are provided in the explicit competence of the commission.

(4) All notifications and provision of information to the competent body, provided by Regulation (EU) N 596/2014 shall be performed to the deputy chairperson.

Art. 5. Signing deals in contradiction with the prohibitions under Art. 14 and 15 of Regulation (EU) N 596/2014 shall not lead to their invalidity.

### **Chapter two. REPORTS FOR INFRINGEMENTS OF THIS ACT AND OF REGULATION (EU) N 596/2014 AND THE ACTS OF ITS IMPLEMENTATION**

#### **Section I. Provision of Information to the Persons, who Report Violations**

Art. 6. The chairperson of the commission shall assign by an order officials of the direction "Supervision of Investment Activity", who shall be responsible for:

1. provision to every interested person information about the procedures for reporting infringements of this act and of Regulation (EU) N 596/2014 and the acts of its implementation

and undertaking measures on them

2. accepting reports for infringements and undertaking follow up measures'

3. maintaining contact with the person, who has sent the report, where they have disclosed their identity.

Art. 7. (1) The commission shall publish on its internet site in a separate and easily accessible section the information about the procedure for accepting reports for violations.

(2) The information under Para. 1 shall include:

1. communication channels for accepting reports about infringements and for realization of connection with the officials under Art. 6, including data about:

a) telephone numbers for contact, indicating explicitly if the conversations are recorded;

b) electronic and post addresses, which are secure and guaranty confidentiality for contact with the officials under Art. 6;

2. the procedures under Art. 15 and the regime of confidentiality, applicable to reports for infringement s in compliance with Art. 10;

3. procedures for protection of persons, submitted reports about violations, who work under employment legal relations;

4. explanation about the protection of the persons in the meaning of Art. 9, Para. 1.

Art. 8. Every person shall have the right to submit a report about infringements of this act, of Regulation (EU) N 596/2014 and of the acts on its implementation, as well as in case of a present violation, also in presence of reasonable doubts for perpetrated or forthcoming violation.

Art. 9. (1) A person, who has sent a report or other information about infringement of this act, of Regulation (EU) N 596/2014 and of the acts on its implementation in infringement of the restrictions for disclosure of information, comprising from legal, legislative or administrative provisions, or of a contract, shall not bear responsibility of any nature in relation to the information, provided under this Chapter.

(2) Persons, who carry out an activity in the area of the financial services must provide with rules, adopted by their managing bodies, suitable procedures for reporting infringement s of this act and of Regulation (EU) N 596/2014 and of the acts on its implementation by their employees.

## **Section II. Accepting Reports**

Art. 10. (1) Accepting reports about infringement s and undertaking follow up measures on them shall be carried out through special communication channels, which meet the following requirements:

1. they are separated from the general channels for communication of the commission, including the ones, which the commission usually uses for internal communication and for communication with third persons;

2. they have been designed, created and are managed in a way, which guarantees completeness, thoroughness and confidentiality of the information, and stop the access of non-authorized official and employees of the commission administration to this information;

3. they give possibility for storage of a recorded information on a permanent media in view to conducting further investigations;

4. the provide possibility for:

a) a written report about infringement in electronic format or on paper media;

b) verbal report about infringement through telephone lines, notwithstanding whether

they are recorded or not;

c) holding meetings with the officials under Art. 6.

(2) The deputy chairperson shall provide provision of the information under Art. 7, Para. 2 to the person, before the report is accepted, which he intends to send or latest at the moment of its acceptance. Where the report for infringements is sent via e-mail or the post, it shall be accepted that the obligations under sentence one is fulfilled with the publication of the information under Art. 7 on the commission internet site.

Art. 11. (1) every received report about infringement shall be entered in a register, which shall be kept by the officials under Art. 6.

(2) The deputy chairperson shall submit immediately a confirmation, that he has received a written report about a infringement to the post or e mail address, indicated by the person, submitted the report, unless the person has explicitly required otherwise, or if the deputy chairperson has grounds to consider that this confirmation would lead to danger of disclosure of the identity of the person, submitted the report.

Art. 12. (1) Where for reporting infringement a telephone line is used, the conversations on which are recorded, the verbal report shall be documented in one of the following ways:

1. audio-recording of the conversation on a permanent and allowing excerpt;
2. complete and exact record of the conversation, drawn up by the official under Para.

6.

(2) In the cases under Para. 1, p. 2, where the person, having submitted the report has disclosed his identity, the official under Art. 6 shall provide possibility for the person to check, correct and agree with the record of the conversation, by signing it.

Art. 13. Where for reporting infringements a telephone line is used, the conversations on which are recorded, the verbal report shall be documented in complete and exact record of the conversation, drawn up by an official under Art. 6. In the cases where a person, having submitted a report has disclosed his identity, the official under Art. 6 shall provide possibility for the person to check, correct and agree with the record of the conversation, by signing it.

Art. 14. (1) Where a person requests a meeting personally with an official under Art. 6, in order to announce for a violation, a complete and exact record of the meeting shall be drawn up, which shall be stored on a permanent media and a media, allowing excerpt.

(2) In the cases under Para. 1, where the person, having submitted the report has disclosed his identity, the official under Art. 6 shall provide opportunity form the person to check, correct and agree with the record of the meeting, by signing it.

Art. 15. The rules of the commission under Art. 13, Para. 1 , p. 1 of the Act on the Financial Supervision Commission, procedures for operation with reports for violations, shall be defined, which shall include:

1. the possibility for anonymous submission of reports about violations;
2. the procedure for consideration of the reports for violations;
3. the type, contents and terms for realization of feed back about the results from the report for violation, which a person, sent a report may expect after the report;
4. the confidentiality regime, applicable to reports for violations, including detailed, description of the circumstances, in which the confidential data of a person, submitted a report may be disclosed in compliance with Art. 27, 28 and 29 of Regulation (EU) N 596/2014.

### **Section III. Additional Protection Measures**

Art. 16. (1) The commission shall undertake the needed measures to guaranty, that

every report about a violation, accepted through means, different from the communication channels under Art. 10, shall be submitted without change to the officials under Art. 6 by the communication channels under Art. 10.

(2) The commission shall undertake the relevant measures for protection of the information, related to submitted reports for infringements and for protection of the identity of the persons, having submitted reports for violations, by providing access to the information only to the officials, for whom the access to these data is needed, in order to fulfill their official duties.

(3) The information, entered in the register under Art. 11 shall be stored in a way, which shall guaranty its confidentiality and security.

Art. 17. (amend. - SG 105/16, in force from 30.12.2016) (1) Persons, working under employment legal relations, having submitted reports for violations, are entitled to protection against dismissal under the Art. 187, Para 2 of the Labour Code.

(2) The procedures for exchange of information and cooperation among the state authorities participating in the protection of the persons under Para. 1, having submitted reports for violations, shall be determined by an ordinance, adopted by the Council of Ministers.

Art. 18. (1) Submission of data, related to reports for violations, in, or out of the frames of the commission shall not disclose directly or indirectly the identity of a person, who has submitted a report and/or of a person, for whom a report has been submitted, or other references of circumstances, which would allow suggesting the person's identity, who has submitted a report, and/or of the person, about whom the report has been submitted, unless such a submission is in compliance with the confidentiality regime, indicated in Art. 15, p. 4.

(2) Where the person's identity, about whom the report has been submitted is not known to the public, the commission shall undertake measures to provide protection of his identity at least in the same way as the one, provided for persons, who are checked under this act.

(3) Art. 16, Para. 2 and 3 shall apply also to protection of the identity of the persons, against whom a report for an infringement has been submitted.

Art. 19. The commission shall regularly and at least once every 2 years shall carry out a review and update the procedures under Art. 15 and the measures under Art. 16 by accounting the practice on the application of this act, the Regulation (EU) N 596/2014 and of the acts on its implementation, the practice of the other competent bodies in this area, as well as the development of the market and technologies.

### **Chapter three.**

#### **COMPULSORY ADMINISTRATIVE MEASURES**

Art. 20. (1) For prevention and termination of the administrative infringements of this act, of Regulation (EU) N 596/2014 and of the acts on its implementation, for prevention and removal of harmful consequences from them, as well as in preventing exercising the supervision activity by the commission or by the deputy chairperson or in threatening the interests of investors, the measures under Para. 2 and 3 shall apply.

(2) In the cases under Para. 1, the deputy chairperson may:

1. issue compulsory recommendations for undertaking within a term, set by him concrete measures, needed for removal of the violations, of the harmful consequences from them or of the danger for the investors' interests;
2. stop the trade with certain financial instruments;
3. request imposing an attachment of movable items and receivables and/or

prohibition over immovable properties;

4. keep the issuer to disclose information in compliance with Regulation (EU) N 596/2014 within a term, set by the deputy chairperson.

(3) In the cases under Para. 1, the commission may issue:

1. temporary prohibition for each person, who fulfills managing functions in an investment intermediary, or for every other natural person, who bears responsibility for the violation, for fulfill managing functions in investment intermediaries and/or trade for own account;

2. in case of repeated or permanent infringement s of Art. 14 or 15 of Regulation (EU) N 596/2014, permanent prohibition for every person, who fulfills managing functions in an investment intermediary, or every other natural person, who bears responsibility for the violation, to fulfill managing functions in investment intermediaries.

(4) The commission may withdraw the license of an investment intermediary for performing activity, if the investment intermediary and/or persons – members of the managing or control body or manage his activity, have perpetrated and/or admitted perpetration of a infringement s under Art. 14 and 15 of Regulation (EU) N 596/2014 and of the acts on its implementation, or other rude or repeated infringement of this act and of Regulation (EU) N 596/2014.

(5) While determining the type of the compulsory measure, the deputy chairperson, or the commission shall take in consideration the circumstances under Art. 31 of Regulation (EU) N 596/2014.

(6) The deputy chairperson may publish on the internet site of the commission public warnings about termination of violations, in which the persons, responsible for the infringement are indicated and the type of violation, while observing the Act on Personal Data Protection.

(7) The commission may propose to the Bulgarian National Bank to withdraw the license for an activity of investment intermediary of a bank, if the relevant person permanently violates the provision of this act, of Regulation (EU) N 596/2014, or the acts of its implementation.

Art. 21. (1) The procedure of application of compulsory administrative measures under Art. 20, Para. 2 shall begin upon initiative if the deputy chairperson, and in the cases under Art. 20, Para. 3 – upon initiative of the commission.

(2) The notifications and communications in the procedure under Para. 1 shall be performed under Art. 61, Para. 2 of the Administrative – procedure Code.

(3) If the notifications and communications in the procedure under Para. 1 are not accepted under Para. 2, they shall be considered performed with their placement at a special place in the commission building or through their publication on the commission internet site. The last two circumstances shall be certified by a protocol, drawn up by official, determined by an order of the deputy chairperson.

(4) Compulsory administrative measures under Art. 20, Para. 2 shall apply with a written grounded decision of the deputy chairperson, and upon Art. 20, Para. 3 – of the commission. The decision shall be communicated to the interested person within 7 day term from its decreeing.

(5) The decision for application of a compulsory administrative measure shall be subject to an immediate fulfillment, notwithstanding whether it is appealed.

Art. 22. Unless this Chapter provides otherwise, the relevant provisions of the Administrative – procedure Code shall apply.

#### **Chapter four.** **ADMINISTRATIVE PENAL PROVISIONS**

Art. 23. (1) Anyone, who perpetrates or admits perpetration of infringement of:

1. Art. 18, 19 or 20 of Regulation (EU) N 596/2014, shall be punished by a fine in the amount of BGN 500 to 500 000, and in a repeated infringement – from BGN 1000 to 1 000 000, if the deed is not a crime;

2. Art. 16 or 17 of Regulation (EU) N 596/2014 shall be punished by a fine of BGN 2000 to 1 000 000, and in a repeated infringement – from 4000 to 2 000 000, if the deed is not a crime;

3. Art. 14 or 15 of Regulation (EU) N 596/2014 shall be punished by a fine of BGN 20 000 to 5 000 000, and in a repeated infringement – from BGN 40 000 to 10 000 000, if the deed is not a crime

(2) For infringement s under Para. 1, the legal persons and sole traders shall be imposed by a property sanction in the amounts as follows:

1. for infringement s under Para. 1, p. 1 - from BGN 1000 to 1 000 000, and in a repeated infringement - from BGN 2000 to 2 000 000;

2. for violations under Para. 1, p. 2 – from BGN 5000 to 2 500 000, and in repeated infringement - from BGN 10 000 to 5 000 000;

3. for infringement s under Para. 1, p. 3 – from BGN 50 000 to 15 000 000, and in repeated infringement – from BGN 100 000 to 30 000 000.

(3) In case of non-compliance with the applied compulsory administrative measure under Art. 20, the perpetrators and those, who have allowed this, shall be punished by a fine of BGN 5 000 to 50 000.

(4) For infringement s under Para. 3, the legal persons and sole traders shall be imposed by a property sanction in the amount of BGN 10 000 to 100 000.

(5) In the cases under Para. 1, p. 3, with the punishments of Para. 1, p. 3 shall also be punished the instigators, helpers and concealers, by taking in consideration the nature and rate of their participation.

(6) Revenues, acquired as a result of the infringement s shall be confiscated in favor of the state at the rate, in which they cannot be recovered to the harmed persons.

(7) With determining the punishment under Para. 1 – 5 the deputy chairperson shall take in consideration the provision of Art. 30, Para. 2, letter "h" and the circumstances under Art. 31 of Regulation (EU) N 596/2014.

(8) A person, who within 1 month term from the enforcement of a penal decree fails to pay his imposed property sanction, shall be due interest within the amount of the penal interest for the period form the date, following the date of expiry of the one-months term till the date of payment.

Art. 24. (1) The acts for establishing the infringement s shall be drawn up by officials, authorized by the deputy chairperson, and the penal decrees shall be issued by the deputy chairperson.

(2) Establishing violations, issuance, appeal and fulfillment of penal decrees shall be performed under the Act on Administrative Infringement s and Punishments.

### **Additional provisions**

§ 1. In the meaning of this act:

1. "Issuer" shall be a notion in the meaning of Art. 3, Para.1, p. 21 of Regulation (EU) N 596/2014.

2. "A person, about whom report has been sent" is the person, about whom information has been received by the person, having sent the report, that he has perpetrated or intends to perpetrate infringement of this act, of Regulation (EU) N 596/2014, or of the acts

on its implementation.

3. "A person, who has sent report" is the person, who communicates to the competent body about a real or possible infringement of this act, of Regulation (EU) N 596/2014, or of the acts on its implementation.

4. "Repeated violation" is the violation, perpetrated within 1 year term from the enforcement of the penal decree, which imposes punishment for the same type of violation.

5. "Permanent violations" are 3 or more administrative infringements of this act, of Regulation (EU) N 596/2014, or of the acts on its implementation, perpetrated within 1 year.

6. "Report about violation" is the report on behalf of the person, having sent the report to the competent body about a real or possible infringement of this act, of Regulation (EU) N 596/2014, or of the acts on its implementation.

7. "Financial instrument" is a notion in the meaning of Art. 3, Para. 1, p. 1 of Regulation (EU) N 596/2014.

§ 2. The act shall introduce the requirements of Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation (OJ, L 332/126 of 18 December 2015) and provides measures on implementation of Regulation (EU) N 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Regulation on market abuse) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC

### **Transitional and concluding provisions**

§ 3. This act shall repeal the Act against Market Abuse with Financial Instruments (publ., SG, N. 84/2006; amend., . 52/2007 and 21/2012).

§ 4. The administrative and administrative penal procedures, formed under the Act against Market Abuse and Financial Instruments by the enforcement of this act shall be finished under the current procedure.

§ 5. Persons, who perform activity in the area of financial services shall adopt the rules under Art. 9, Para. 2 within the term of up to 3 months from the enforcement of this act.

§ 12. (1) The managing companies and collective investment schemes shall comply their activity with the requirements of § 6 within 3 month term from the enforcement of this act.

(2) A managing company, which by the enforcement of this act has determined a depository of a collective investment scheme, who does not meet the requirements, provided in § 6, p. 13, shall determine a new depository in compliance with the requirements of the act within the term by 18 March 2018.

§ 13. The deputy chairperson may confirm standard forms of notifications and other documents in relation to the application of this act, regulation (EU) N 596/2014 and the acts of its implementation.

§ 14. The commission shall give instruction on the implementation of the act.

§ 15. The act shall come into force from the day of its publication in the State Gazette with the exception of § 11, which shall come into force from 9 August 2016.

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The act has been adopted by the 43th National Assembly on 29 September 2016 and has been sealed by the official stamp of the National Assembly.

### **Transitional and concluding provisions TO THE ACT AMENDING AND SUPPLEMENTING THE LABOUR CODE**

(PROM. - SG 105/16, IN FORCE FROM 30.12.2016)

§ 22. The Act shall enter into force from the day of its promulgation in the State Gazette, except for § 5, 6, 17, 18, 19 and 20, which shall enter into force from 1 of January 2017.