

Luxembourg: a new law on market abuse

On 13 December 2016, the Grand Duchy's Parliament adopted the new Market Abuse Law. By enacting this legislation, Luxembourg has effectively implemented Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse ('Market Abuse Criminal Sanctions Directive'), 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, as well as the new market abuse regime based on Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse ('Market Abuse Regulation'). Under the new regime, both administrative and criminal sanctions increase considerably to ensure compliance with the rules on market abuse. In addition, the law spells out the powers on the part of the Commission de Surveillance du Secteur Financier (CSSF), conferring on it specific competencies with regard to market abuse. It details procedures for investigations, supervision, and cooperation with foreign competent authorities.

Higher administrative and criminal sanctions

Both natural and legal persons are subject to sanctions. Serious forms of market abuse, especially offences committed intentionally, can give rise to criminal sanctions. The term of imprisonment applicable to a natural person committing, or having attempted to commit, market manipulation or insider dealing ranges from 3 months to 4 years. Unlawful disclosure of insider information can entail prison terms from 8 days to 2 years. Criminal or administrative fines range from EUR 500,000 to EUR 5,000,000 for a natural person and from 1,000,000 to 15,000,000 or 15 per cent of the annual turnover for a legal person. Moreover, legal and natural persons committing market abuse may be subjected to the following administrative measures:

- an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;
- withdrawal or suspension of the authorisation of an investment firm; and
- a temporary or permanent ban of a person discharging managerial responsibilities within an investment firm or any other natural person, who is held responsible for the infringement, from exercising management functions in investment firms.

Given that administrative and criminal sanctions coexist, the Market Abuse Law provides for a detailed consultation procedure between the CSSF on the one hand and the state prosecutor on the other hand, so as to allow the application of the principle *non bis in idem*.

Enlarged supervisory powers

The Market Abuse Law bestows enlarged supervisory and investigatory powers on the administrative authorities responsible for pursuing market abuse, especially the CSSF. In particular, the act authorises the CSSF to resort to external experts if specific questions are raised during an inquiry for an infringement of the provisions of the Market Abuse Regulation.

Reporting of suspicious orders and transactions

The Market Abuse Law translates into domestic law the rules and technical arrangements to fully implement Article 32 (Reporting of infringements) of the Market Abuse Regulation provided for in Directive (EU) 2015/2392, especially the arrangements for reporting and for following up reports, and measures for the protection of persons working under a contract of employment and measures for the protection of personal data.

Amendment of the Law of 11 January 2008 on transparency requirements for issuers of securities

The new law also has an effect on issuers for which the Grand Duchy is the home Member State for the purposes of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC ('Transparency Directive'), as amended. The Market Abuse Law extends the definition of the expression 'regulated information' within the meaning of the directive by including therein the notifications which a relevant issuer (or any other person who has applied for the admission of securities to trading on a regulated market without the issuer's consent) is required to disclose for purposes of Article 19 of the Market Abuse Regulation (i.e. transactions conducted by persons discharging managerial responsibilities and persons closely associated with them).

Entry into effect

The law will enter into force on 3 January 2018.