

Translation of Liechtenstein Law

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Law
of 5 March 2020
implementing Regulation (EU) No 596/2014
on market abuse
(EEA Market Abuse Regulation
Implementation Act; EWR-MDG)

I hereby grant My consent to the following resolution adopted by Parliament:¹

I. General provisions

Article 1

Purpose

1) This Act serves to implement 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/EC (OJ L 173, 12.6.2014, 1).

2) The version currently in force of the EEA legislation referred to in paragraph 1 is referenced in the promulgation of the decisions of the EEA Joint Committee in the Liechtenstein Law Gazette pursuant to Article 3(k) of the Promulgation Act.

¹ Report and Motion of the Government No. 7/2017, Statement of the Government No. 1/2020

Article 2

Definitions and designations

1) For the purposes of this Act, the following definitions apply:

- a) "insider" means a person as referred to in Article 8(4) of Regulation (EU) No 596/2014;
- b) "inside information" means information as referred to in Article 7(1) to (4) of Regulation (EU) No 596/2014.

2) The designations of persons and functions contained in this Act shall apply to persons of female and of male gender.

II. Supervision

Article 3

Competent authority

The FMA is the competent authority for Liechtenstein as referred to in Article 22 of Regulation (EU) No 596/2014 and shall exercise the functions and powers assigned to a competent authority under Regulation (EU) No 596/2014 and this Act.

Article 4

Powers of the FMA

1) The FMA shall monitor compliance with the provisions of Regulation (EU) No 596/2014 and of this Act. It shall take the measures necessary for enforcement directly, in collaboration with other supervisory bodies, or by filing charges with the Office of the Public Prosecutor.

2) The FMA shall have the following powers in particular:

- a) to access any document and data in any form necessary for the performance of its activities, and to receive or take a copy thereof;

- b) to require or demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and question any such person with a view to obtain information;
- c) in relation to commodity derivatives, to request information from market participants on related spot markets according to standardised formats, obtain reports on transactions, and have direct access to traders' systems;
- d) to carry out on-site inspections and investigations at sites other than at the private residences of natural persons that are necessary for the performance of its duties;
- e) to refer matters for criminal investigation;
- f) to require existing recordings of telephone conversations, electronic communications or data traffic records held by investment firms, banks or financial institutions that are necessary for the performance of its duties;
- g) to request the Office of the Public Prosecutor to apply for measures to secure the forfeiture of assets in accordance with the Code of Criminal Procedure;
- h) to suspend trading of the financial instrument concerned;
- i) to require the temporary cessation of any practice that the FMA considers contrary to Regulation (EU) No 596/2014 or this Act;
- k) to impose a temporary prohibition on the exercise of professional activity;
- l) to take all necessary measures to ensure that the public is correctly informed, inter alia, by correcting false or misleading disclosed information, including by requiring an issuer or other person who has published or disseminated false or misleading information to publish a corrective statement;
- m) to require that an issuer or emission allowance market participant provide a written explanation of a delay of disclosure in accordance with Article 17(4) of Regulation (EU) No 596/2014.

III. Legal remedies

Article 5

Appeal

1) Decisions of the FMA may be appealed within 14 days of service by way of complaint to the FMA Complaints Commission.

2) Decisions of the FMA Complaints Commission may be appealed within 14 days of service by way of complaint to the Administrative Court.

IV. Penal provisions

Article 6

Insider dealing and unlawful disclosure of inside information

1) The Court of Justice shall punish with a custodial sentence of up to three years for committing a misdemeanour anyone who as an insider, even if only grossly negligently, using inside information for their own account or for the account of a third party, directly or indirectly:

- a) acquires or disposes of financial instruments, or auctioned products based on emission allowances, to which that information relates;
- b) cancels or amends orders to acquire or dispose of financial instruments, or auctioned products based on emission allowances, to which the information relates, where the order was placed before the person concerned possessed the inside information;
- c) submits, withdraws, or modifies bids relating to the auctioning of emission allowances or other auctioned products based thereon to which that information relates.

2) Anyone shall be punished likewise who as an insider, even if only grossly negligently, recommends that another person:

- a) acquire or dispose of financial instruments, or auctioned products based on emission allowances, to which that information relates;
- b) cancel or amend orders to acquire or dispose of financial instruments, or auctioned products based on emission allowances, to which the information relates.

3) Anyone shall be punished likewise who, even if only grossly negligently, makes use of a recommendation as referred to in paragraph 2 and, even if only grossly negligently, fails to recognise that the recommendation is based on inside information.

4) Anyone shall be punished likewise who:

- a) as an insider, even if only grossly negligently, unlawfully discloses inside information to another person;
- b) even if only grossly negligently, passes on a recommendation as referred to in paragraph 2 and, even if only grossly negligently, fails to recognise that the recommendation is based on inside information.

5) In the cases under paragraphs 2 and 4, attempt shall not be punishable.

6) The Court of Justice shall punish with a custodial sentence of six months to five years for a crime anyone who commits the offence as referred to in paragraphs 1 to 4 intentionally and thereby procures a pecuniary advantage exceeding 75 000 Swiss francs.

7) Paragraphs 1, 2, 3 and 6 shall not apply to:

- a) trading in own shares in buy-back programmes or stabilisation transactions in accordance with Article 5 of Regulation (EU) No 596/2014;
- b) legitimate behaviour in accordance with Article 9 of Regulation (EU) No 596/2014.

8) Paragraphs 4 and 6 shall not apply where the disclosure:

- a) is made in the normal exercise or an employment, a profession, or duties;
- b) is made within a buy-back programme or stabilisation transaction in accordance with paragraph 5 of Regulation (EU) No 596/2014;
- c) is considered market sounding in accordance with Article 11 of Regulation (EU) No 596/2014.

Article 7

Market manipulation

1) The Court of Justice shall punish with a custodial sentence of up to three years for committing a misdemeanour anyone who, even if only grossly negligently:

- a) enters into a transaction, places an order to trade, or engages in any other behaviour and thereby:

1. gives false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances;
 2. secures the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level;
 3. affects or is likely to affect the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances, which employs a fictitious device or any other form of deception or contrivance;
- b) disseminates information, including rumours, through the media, including the internet, or by any other means, which:
1. gives false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances;
 2. secures the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level;
- c) transmits false or misleading information or provides false or misleading inputs in relation to a benchmark or engages in any other behaviour which manipulates the calculation of a benchmark;
- d) acting alone or in collaboration, secures a dominant position over the supply of or demand for a financial instrument, related spot commodity contracts or auctioned products based on emission allowances which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;
- e) buys or sells financial instruments, at the opening or closing of the market, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed, including the opening or closing prices;
- f) places orders to a trading venue, including any cancellation or modification thereof, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies, and which has one of the effects referred to in paragraph 1(a), by:
1. disrupting or delaying the functioning of the trading system of the trading venue or being likely to do so;
 2. making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or being likely to

do so, including by entering orders which result in the overloading or destabilisation of the order book; or

3. creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend;
- g) takes advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, related spot commodity contract or an auctioned product based on emission allowances (or indirectly about its issuer) while having previously taken positions on that financial instrument, a related spot commodity contract or an auctioned product based on emission allowances and profiting subsequently from the impact of the opinions voiced on the price of that instrument, related spot commodity contract or an auctioned product based on emission allowances, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way;
 - h) buys or sells on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation (EU) No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.

2) The Court of Justice shall punish with a custodial sentence of six months to five years for a crime anyone who commits the offence as referred to in paragraph 1 intentionally and thereby procures a pecuniary advantage exceeding 75 000 Swiss francs.

3) Paragraphs 1 and 2 shall not apply:

- a) to trading in own shares in buy-back programmes or stabilisation transactions in accordance with Article 5 of Regulation (EU) No 596/2014;
- b) in the case of points 1 and 2 of paragraph 1(a), where the person entering into a transaction, placing an order to trade, or engaging in any other behaviour establishes that such transaction, order to trade, or behaviour has been carried out for a legitimate reason and conforms with an accepted market practice in accordance with Article 13 of Regulation (EU) No 596/2014.

Article 8

Legal persons

The responsibility of legal persons for misdemeanours and crimes set out in Article 6 or 7 shall be governed by §§ 74a et seq. of the Criminal Code.

Article 9

Coincidence of several offences

1) Provided the Court of Justice has jurisdiction in the same matter on the basis of an offence set out in the Criminal Code or in Article 6 and 7, the Court of Justice instead of the FMA shall also be responsible for the punishment of contraventions under Article 10. If the proceedings are terminated by the Court of Justice, jurisdiction shall revert to the FMA.

2) Where several offences coincide, Article V(5) of the Criminal Law Adjustment Act shall apply, with the proviso that:

- a) the special sentencing grounds set out in Article 12 for crimes, misdemeanours, and contraventions under Articles 6, 7 and 10 as well as the criteria for fines set out in Article 10 shall be applied; and
- b) the custodial sentence imposed in the event a fine cannot be collected may not exceed two years in the case of Article 10(1)(a) to (f), one year in the case of Article 10(1)(g) to (o), and six months in the case of Article 10(2).

3) A guilty verdict under Article 6 and 7 shall not be binding on a civil court's determination of guilt or unlawfulness and the determination of damages.

4) Forfeiture in the case of misdemeanours and crimes set out in Articles 6 and 7 shall be governed by §§ 20 et seq. of the Criminal Code.

Article 10

Administrative contraventions

1) Unless the act constitutes an offence falling within the jurisdiction of the courts, the FMA shall punish with a fine in accordance with paragraph 3 for committing a contravention anyone who, even if only grossly negligently (§ 6(3) StGB):

- a) as an operator of a market or trading venue, infringes the provisions to prevent and detect market abuse as set out in Article 16(1) of Regulation (EU) No 596/2014;
- b) professionally arranges or executes transactions and thereby infringes the provisions to prevent and detect market abuse as set out in Article 16(2) of Regulation (EU) No 596/2014;
- c) as an issuer, infringes the provisions to publicly disclose inside information as set out in Article 17(1) of Regulation (EU) No 596/2014;
- d) as an emission allowance market participant, infringes the provisions to publicly disclose inside information as set out in Article 17(2) of Regulation (EU) No 596/2014;
- e) as an issuer or emission allowance market participant, infringes the provisions on notification of a delay of disclosure as set out in Article 17(4) and (6) of Regulation (EU) No 596/2014;
- f) as an issuer, emission allowance market participant, or person acting on their behalf or for their account, infringes the public disclosure obligation as set out in Article 17(8) of Regulation (EU) No 596/2014;
- g) as an issuer as referred to in Article 18(7) of Regulation (EU) No 596/2014 or as a person acting on the issuer's behalf or for the issuer's account, infringes the provisions to draw up and maintain insider lists or other obligations set out in Article 18(1) to (5) of Regulation (EU) No 596/2014;
- h) as an emission allowance market participant in relation to inside information concerning emission allowances that arises in relation to the physical operations of that emission allowance market participant, infringes the provisions to draw up and maintain insider lists or other obligations set out in Article 18(1) to (5) of Regulation (EU) No 596/2014;
- i) as an auction platform, auctioneer or auction monitor in relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010, infringes the provisions to draw up and maintain insider lists or other obligations set out in Article 18(1) to (5) of Regulation (EU) No 596/2014;
- k) as a person discharging managerial responsibilities, or as a closely associated person, infringes the provisions to notify transactions conducted on their own account or transactions deemed to be such in as set out in Article 19(1), (2), (6) and (7) of Regulation (EU) No 596/2014;

- l) as an issuer or emission allowance market participant, infringes the public disclosure obligation as set out in Article 19(3) of Regulation (EU) No 596/2014;
- m) as an issuer or emission allowance market participant or as a person discharging managerial responsibilities, infringes the information and documentation obligations as set out in Article 19(5) of Regulation (EU) No 596/2014;
- n) as a person discharging managerial responsibilities within an issuer, conducts transactions on the person's own account or for the account of a third party, directly or indirectly, as referred to in Article 19(11) of Regulation (EU) No 596/2014;
- o) as a person who produces or disseminates investment recommendations or other information recommending or suggesting an investment strategy, thereby infringes their obligations as set out in Article 20(1) of Regulation (EU) No 596/2014.

2) The FMA shall punish with a fine of up to 200 000 Swiss francs anyone who, even if only grossly negligently (§ 6 (3) StGB):

- a) violates a measure imposed by the FMA under the powers set out in Article 4 or fails to comply with such a measure;
- b) infringes the notification obligation as set out in Article 4 of Regulation (EU) No 596/2014;
- c) fails to present the records referred to in Article 11(3) and (6) of Regulation (EU) No 596/2014 to the FMA at the FMA's request;
- d) fails to keep the records for a period of at least five years as referred to in Article 11(8) of Regulation (EU) No 596/2014.

3) The fine shall be:

- a) in the cases set out in paragraph 1(a) to (f):
 - 1. for legal persons up to 3 million Swiss francs or 2% of the total annual turnover according to the last available accounts approved by the management body or up to three times the benefit obtained from the infringement including any loss avoided, where the benefit can be determined;
 - 2. for natural persons up to 1.2 million Swiss francs or up to three times the benefit obtained from the infringement including any loss avoided, where the benefit can be determined;
- b) in the cases set out in paragraph 1(g) to (o):
 - 1. for legal persons up to 1.2 million Swiss francs or up to three times the benefit obtained from the infringement including any loss avoided, where the benefit can be determined;

2. for natural persons up to 600 000 Swiss francs or up to three times the benefit obtained from the infringement including any loss avoided, where the benefit can be determined.

4) If the legal person referred to in paragraph 3(a)(1) and (b)(1) is a parent undertaking or a subsidiary undertaking of a parent undertaking which is required to present consolidated financial accounts, the relevant total turnover shall be the total annual turnover or the corresponding type of income reported in the latest available consolidated financial accounts approved by the management body of the ultimate parent undertaking.

5) The FMA shall impose fines against legal persons if the contraventions are committed in the exercise of the business activities of the legal person (underlying offences) by persons, either acting alone or as a member of the board of directors, the general management, the management board or supervisory board of the legal person or on the basis of another leadership position within the legal person, on the basis of which they:

- a) are authorised to represent the legal person externally;
- b) exercise powers of control in a leading position; or
- c) otherwise exercise material influence over the management of the legal person.

6) For contraventions committed by employees of the legal person, even though not culpably, the legal person shall be responsible also if the contravention was made possible or significantly facilitated by the fact that the persons referred to in paragraph 5 failed to take necessary and reasonable measures to prevent such underlying offences.

7) The responsibility of the legal person for the underlying offence and the punishability of the persons referred to in paragraph 5 or of employees referred to in paragraph 6 for the same offence are not mutually exclusive. The FMA may refrain from punishing a natural person if a fine has already been imposed on the legal person for the same infringement and there are no special circumstances preventing a waiver of the punishment.

8) Where the offences are committed with gross negligence, the maximum penalties set out in paragraphs 2 and 3 shall be reduced by half.

9) Paragraph 1 shall not apply if:

- a) in the cases set out in subparagraphs c and d, disclosure is delayed taking into account Article 17(4) and (5) of Regulation (EU) No 596/2014;
- b) in the case of subparagraph d, an exemption set out in subparagraphs 2 and 3 Article 17(2) of Regulation (EU) No 596/2014 applies;

- c) in the case of subparagraph g, an exemption set out in Article 18(6) of Regulation (EU) No 596/2014 applies;
- d) in the case of subparagraph n, an exemption set out in Article 19(12) of Regulation (EU) No 596/2014 applies.

10) The Government may, after consulting the FMA, increase the threshold set out in Article 19(8) of Regulation (EU) No 596/2014 to 20 000 euros or the equivalent in Swiss francs by means of an ordinance on the basis of the authorisation in Article 19(9) of Regulation (EU) No 596/2014, if doing so serves the purpose of administrative simplification and is useful in meeting the investors' need for information.

Article 11

Administrative measures

1) In the case of infringements as referred to in Articles 6, 7 and 10, the FMA may take the following measures, without prejudice to other powers pursuant to Article 4:

- a) an order requiring the person responsible for the infringement to cease the conduct and to desist from a repetition of that conduct;
- b) an order of disgorgement of benefits combined with the obligation of the beneficiary to pay a corresponding sum of money if a contravention under Article 10 is committed and profits are made or losses avoided as a result, insofar as they can be determined;
- c) a public warning which indicates the person responsible for the infringement and the nature of the infringement;
- d) withdrawal or suspension of the authorisation of an investment firm;
- e) a temporary 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;
- f) in the event of repeated infringements of Article 6 or 7, a permanent ban of any 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;
- g) a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from dealing on own account.

2) The procedure for disgorgement of benefits as referred to in paragraph 1(b) shall be governed by the provisions of the National Administration Act. The disgorgement of benefits shall be statute-barred after a period of five years has passed from the time when the infringement ceased.

3) The measures set out in paragraph 1(b) shall not apply if the financial benefit is offset by compensation or other payments. If the beneficiary does not make such payments until after the disgorgement of benefits, the amount paid is to be refunded up to the amount of payments for which there is supporting evidence of payment. The amount of the financial benefit may be estimated.

Article 12

Proportionality and efficiency requirement

1) When imposing penalties as referred to in Article 6, 7 and 10 and administrative measures as referred to in Article 11, the Court of Justice and the FMA shall take the following into account:

- a) with reference to the infringement, in particular:
 1. its gravity and duration;
 2. the importance of profits gained or losses avoided, insofar as they can be determined;
 3. the losses sustained by third parties, insofar as they can be determined;
 4. possible systemically important impact;
- b) with reference to the natural or legal persons responsible for the infringement, in particular:
 1. the degree of responsibility;
 2. the financial strength;
 3. the willingness to cooperate with the competent authorities;
 4. the reporting of infringements to the internal reporting system or the reporting system of the FMA pursuant to Article 15;
 5. previous infringements;
 6. measures taken to prevent infringements from recurring.

2) The General Part of the Criminal Code shall apply *mutatis mutandis*.

Article 13

Responsibility

Where violations are committed in the business operations of a legal person or a general or limited partnership or a sole proprietorship, then the penal provisions shall apply to the persons who acted or should have acted on its behalf; the legal person, partnership, or sole proprietorship shall, however, be jointly and severally liable for monetary penalties and fines.

Article 14

Publication of penalties and administrative measures

1) The FMA shall publish legally binding decisions concerning penalties and administrative measures imposed for infringements pursuant to Articles 6, 7, 10 and 11 on its website immediately after the person subject to that decision has been informed of that decision. The FMA may defer publication of decisions, publish these decisions on an anonymous basis or, where a deferral or anonymity measures are insufficient, refrain from publication if, on the basis of a case-by-case proportionality assessment, the publication of the personal data:

- a) would jeopardise an ongoing investigation or the stability of the financial markets; or
- b) would be disproportionate in the event of measures deemed to be of a minor nature.

2) The FMA shall make the publication referred to in paragraph 1 available on its website for at least five years. Personal data included in the publication shall be displayed on the website only for as long as this is permitted under the provisions of the Data Protection Act.

Article 15

Reporting of infringements

1) Employers operating in areas governed by the laws referred to in Article 5(1) FMAG or legal entities providing investment services or ancillary services or performing investment activities or providing data reporting services shall, pursuant to Article 32 of Regulation (EU) No 596/2014, establish appropriate procedures for their employees to report internal infringements of Regulation (EU) No 596/2014 or implementing acts adopted on the basis thereof.

2) Pursuant to Article 32(1) and (2) of Regulation (EU) No 596/2014, the FMA shall have an effective reporting system in place to enable the reporting of actual or potential infringements of Regulation (EU) No 596/2014 or implementing acts adopted on the basis thereof.

3) The Government may provide further details by ordinance.

Article 16

Exemption from publication and liability

Persons who submit reports to the FMA in accordance with Regulation (EU) No 596/2014 shall be released from any liability under civil and criminal law if it turns out that the reports were unjustified and they did not act intentionally.

V. Transitional and final provisions

Article 17

Transitional provision

The law hitherto in force shall apply to proceedings pending at the time of entry into force of this Act.

Article 18

Repeal of law hitherto in force

The Law of 24 November 2006 against Market Abuse in the Trading of Financial Instruments (Market Abuse Act; MG), LGBI. 2007 No. 18, as amended, is hereby repealed.

Article 19

Entry into force

This Act shall enter into force at the same time as the Decision of the EEA Joint Committee incorporating Regulation (EU) No 596/2014² into the EEA Agreement.

Representing the Reigning Prince:
signed *Alois*
Hereditary Prince

signed *Adrian Hasler*
Prime Minister

² Entry into force: 1 January 2021 (LGBL 2020 No. 339).