

FINNIUS

Publication and entry into force implementation Act market abuse regulation and market abuse directive

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 2 MINUTES

Increase of maximum fines and amendments to the publication regime

On 10 August 2016 the Act ([link, in Dutch](#)) implementing the regulation market abuse (no. 596/2014) and the directive market abuse (no. 2014/57/EU) was officially published. The Act entered into force as of 11 August 2016. The regulation was already directly applicable as of 3 July 2016 in the Netherlands. The directive needed to be transposed by that same date into Dutch legislation. That transposition is completed with the entry into force of the implementation Act. The ministry of Finance is currently working on the implementation Decree market abuse regulation and market abuse directive. It is not known yet when the Decree will be published.

With the entry into force of the implementation Act the fine system of the entire Dutch Financial Supervision Act ('Wft') has also changed. Briefly summarized it concerns the following amendments as of 11 August 2016:

- The basic amount for serious violations (fine category 3) has increased from EUR 2 million to EUR 2.5 million with an increase of the maximum amount for these violations from EUR 4 million to EUR 5 million.
- If required for the execution of European rules, higher basic and maximum amounts for violations in the second and third fine category can be established, whereby the maximum amount for a violation in the second fine category is EUR 2.5 million and the maximum amount for a violation in the third category is 10, 15 or 20 million euros.
- For large enterprises, a maximum fine is introduced for serious violations (fine category 3) which is related to the turnover, i.e. a maximum fine of 10% of the net turnover of the offender if that is more than twice the maximum amount applicable to the violation.
- If required for the execution of European rules, the percentage for the turnover related fine that can be imposed for violation of provisions in the third fine category can be increased from 10% to 15%, and a turnover related fine of 5% of the net turnover at the highest can be imposed for violation of a provision in the second fine category if that is more than twice the maximum amount that applies to the violation.
- If the offender obtained benefit as a result of the violation, the supervisory authority may choose to impose a fine of three times the amount of that benefit at the highest.

Furthermore, the publication regime for administrative sanctions has been amended. As of 11 August 2016 irrevocable decisions imposing other administrative sanctions than decisions imposing fines or orders subject to a penalty must also be published by the AFM and DNB. This means for example that decisions issuing an instruction are published if a violation is established. Additionally, the supervisory authorities now have gotten the option to postpone publication instead of anonymizing the publication in cases where this is indicated.

There is a transitional regime. This means that for violations that took place before 11 August 2016 the old maximum fines still apply and for decisions imposing an administrative sanction that is taken before 11 August 2016 the old publication regime will still apply.