

THE BULGARIAN TRADERS OF ENERGY PRODUCTS ARE FACING THE MARKET ABUSE REGULATION

Effective as of the end of September 2016, Bulgarian traders of energy products must comply with market abuse prevention requirements.

Some background

The high level of risk exposure in energy trading along with the substantial value of deals in this sector have necessitated new rules on transparency and stability for the European energy markets similar to those of financial markets.

For the first time, energy traders in Bulgaria confronted the challenge of complying with regulation of their activity by prohibiting energy market manipulation rules and introducing **REMIT**¹ and requirements that they register with the Bulgarian Energy and Water Regulatory Commission (EWRC) and provide a record of their wholesale energy market transactions,² including the energy derivatives.

Prior to REMIT, only the transactions with energy derivatives carried out by investment firms as part of their main activities were governed by the rules of the financial markets, provided in the Law on financial instruments markets³, transposing MiFID I⁴ into Bulgarian national legislation.

The road map to regulatory compliance for energy traders continued with **EMIR**⁵ - a typical financial regulation which, however, directly affected energy traders and brought their activities closer to those of investment firms. In Bulgaria, the practical application of EMIR led mainly to LEI code identification of all energy traders because of their classification as non-financial counterparties (NFC)⁶ under EMIR.

With the adoption of **MiFID II**⁷, it became clear that the tendency to rely on financial regulation to ensure transparency in energy markets will further continue. This directive extended the scope of application of the financial rules by covering (i) new energy products contracts, (ii) new trading venues and (iii) new parties trading such products. The fundamental change introduced by this Directive is that it determines the scope of financial regulation to all energy physically-settled derivatives traded on organised trading facilities (except for those already regulated under REMIT).

¹ Regulation (EU) No.1227/2011 on wholesale energy market integrity and transparency.

² These include not only bilateral contracts, but also energy derivatives.

³ Law on financial instruments markets, issued in State Gazette No 30/2006 as amended from time to time.

⁴ Directive 2004/39/EC on markets in financial instruments.

⁵ Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.

⁶ EMIR provides for further requirements, which also apply to energy traders, in case the provided in the regulation conditions have been fulfilled (e.g. in case of reaching a threshold of a requirement for reporting or clearing)

⁷ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments

Last, but not least - conceived as a package of measures to be implemented together with MiFID II were also the relevant safeguard clauses on market abuse prevention, incorporated into the Regulation with an identical title (Regulation on Market Abuse or **MAR**⁸).

The new financial regulation concerning energy traders

Although the entry into force of the MiFID II provisions was postponed until January 2018, parts of its requirements were already applied to energy traders in Bulgaria. The first step in this respect was the latest amendments to the Public Offering of Securities Act on June 3, 2016⁹, which introduced the requirement that those entities publicly disclose their financial status on a regular basis, should energy traders fall under the scope of applicability of the Energy Act (not only the licensees). This procedure is very similar to the one already applied to public companies and the remaining securities issuers.

As of September 30, 2016, an entirely new law, known as the Law on the Measures against Market Abuse in Financial Instruments (LMAMAFI)¹⁰ repealing the current law, entered into force. The bill aims to transpose the measures implementing MAR into national legislation. It defines the Bulgarian Financial Supervision Commission (FSC) supervising powers and determines, among others, the administrative sanctions and other measures in case of violations of MAR by Bulgarian entities¹¹. The LMAMAFI is to be applied together with the provisions of MAR, having direct effect in Bulgaria since July, 3 2016.

The new bill directly affects: (i) the regulated markets and energy derivatives issuers traded, admitted to trading on a regulated market or for which a request for admission to trade on a regulated market or multilateral trading facility has been made (as of 2018 the organized trading facilities will be also included), and (ii) large installations, regulated by the Emission Trading System and participating in the emission allowances market. In addition, its rules are also applicable to entities trading with spot commodity contracts which may have an effect on the price or value of a financial instrument traded on a regulated market due to the tight interrelation between the spot markets and their similar market of derivatives. The wholesale energy products already regulated by REMIT are explicitly excluded from the scope of MAR¹².

⁸ Regulation (EU) No 596/2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the Regulation European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC

⁹ §14 and Chapter 6a of Public Offering of Securities Act (issued in State Gazette, No42/03.06.2016 .).

¹⁰ Law on implementation of the measures against market abuse with financial instruments, issued in State Gazette 76/30.09.2016 r.

¹¹ The sanctions for violations of the law will be imposed by the FSC, whereas they can reach: (i) for natural persons (including on managing positions) up to 2 million BGN; and (ii) for legal persons and sole traders – up to 30 million BGN. So far in the national legislation there are no criminal provisions in case of failure to comply with the regulation, but the Ministry of Justice has proposed a bill amending the Criminal Code, which provides for criminal liability for insider dealing by members of the governing bodies of companies involved in financial markets.

¹² This would include the supply of electricity or natural gas (including supply to end-users with a consumption capacity greater than 600 GWh p.a.) and contracts relating to the transportation of electricity or natural gas

The implications for the energy traders

The new law obliges energy traders, as it does financial corporations, to develop and implement specific procedures for market manipulation prohibition and unlawful disclosure of inside information and financial instruments market manipulation. Their governing bodies need to adopt those new procedures no later than December 30, 2016.

The LMAMAFI provides for new rules on the development of special communication channels for the reporting of violations, including reporting on improper behaviour by persons considered to be capable of actions related to market abuse (whistle blowing).

The energy traders, in their capacity as employers, will be required to ensure the protection of the rights and personal data of the personnel who would be willing to report on infringements. Further elaboration of specific provisions for (i) the protection of the employees and the cooperation between the authorities engaged with the protection of those employees and (ii) the procedures for the establishment of secure communication channels for the reporting of infringements will likely be introduced via an ordinance of the Council of Ministers to be adopted in near future.

We will keep you informed about further expected legislative amendments.

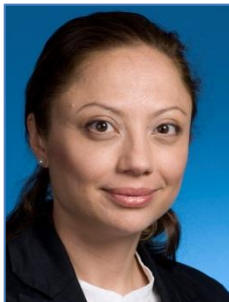
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