
URÍA MENÉNDEZ

News on market abuse introduced by Royal
Decree-Law 19/2018 of 23 November
(update)

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Royal Decree-Law 19/2018 of 23 November

Royal Decree-Law 19/2018 of 23 November on payment services and other urgent financial measures entered into force on 25 November 2018.

Apart from transposing various European directives, the ninth final provision of Royal Decree-Law 19/2018 amends the Spanish Securities Market Law to adapt it to, among others, Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the “MAR”), and complete the transposition of Commission Implementing Directive (EU) 2015/2392 of 17 December on the MAR as regards the reporting of potential or actual infringements. The main modifications are as follows:

- The distinction between inside information and relevant information is reintroduced. Relevant information is defined as any financial or corporate information relating to the issuer or its financial instruments that must be disclosed or that the issuer deems necessary to disclose given its special interest.
- The threshold above which persons discharging managerial responsibilities (“PDMRs”) and their closely associated persons must report their transactions is raised from EUR 5,000 to 20,000, without prejudice to directors’ transparency obligations.
- Issuers’ obligation to have an internal code of conduct in the securities markets is removed.
- The supervisory and inspection powers of the Spanish National Securities Market Commission (*Comisión Nacional del Mercado de Valores*) (the “CNMV”) are expanded, and the CNMV is now empowered to compel the production of telephone and data communication records.
- MAR infringements are categorised into “very serious” and “serious” and the corresponding sanctions are specified.

➤ <https://www.boe.es/boe/dias/2018/11/24/pdfs/BOE-A-2018-16036.pdf>

DISSEMINATION OF INSIDE AND RELEVANT INFORMATION

Articles 226 and 227 of the Spanish Securities Market Law are amended to distinguish between the dissemination of inside information –which is defined by reference to the MAR– and the dissemination of relevant information –which is defined as any other financial or corporate information relating to the issuer or its securities or financial instruments that the issuer must publish in Spain by virtue of a legal or regulatory provision or that it considers must be disseminated given its special interest.

As in the past, both inside and relevant information must be submitted to the CNMV for publication on its website and it must be simultaneously posted on the issuer's own website. The CNMV must submit that information separately (for which it will create a **new register of issuers' inside information**) and inside information must be expressly labelled as such.

In order to comply with these rules, **it would be necessary to split the current relevant facts template to have (i) a dissemination of inside information template**, indicating that the issuer reports inside information in accordance with articles 17 of the MAR and 226 of the Spanish Securities Market Law **and (ii) a separate dissemination of relevant information template**, indicating that the issuer reports relevant information in accordance with article 227 of the Spanish Securities Market Law (and any other applicable provisions where appropriate).

Moreover, the new drafting of article 229 of the Spanish Securities Market Law waives the obligation of issuers who decide to delay the dissemination of inside information to justify to the CNMV the existence of the conditions justifying the delay, unless the CNMV expressly requests it. The CNMV intends to enable issuers to indicate whether dissemination of inside information has been delayed or not directly through Cifradoc, when submitting the information.

REPORTING OF TRANSACTIONS BY PDMRS AND THEIR CLOSELY ASSOCIATED PERSONS

In accordance with article 19.9 of the MAR, the new drafting of article 230 of the **Spanish Securities Market Law raises the reporting threshold for transactions carried out by PDMRs and their closely associated persons from EUR 5,000 to 20,000**. This does not modify directors' transparency obligations. Accordingly, PDMRs other than directors and closely associated persons to all PDMRs must report any transaction by virtue of which the aggregate value of transactions with the issuer's

financial instruments performed during the current calendar year (without offsetting transactions of the opposite sign) reaches EUR 20,000 and any subsequent transaction.

Nevertheless, issuers must **review their internal rules of conduct in the securities markets** (if maintained) in order to verify if they include a numerical reference to the former EUR 5,000 threshold or if, on the contrary, they include a general provision (“the minimum threshold established by the CNMV from time to time”) that is automatically compliant with the new threshold and, in that event, inform PDMRs of the new threshold.

By virtue of Royal Decree-Law 19/2018, the CNMV is empowered to develop the technical means by virtue of which each issuer must disseminate information relating to such transactions in order to comply with its obligation to ensure their dissemination under article 19.3 of the MAR.

REMOVAL OF THE OBLIGATION TO HAVE AN INTERNAL CODE OF CONDUCT

Issuers’ obligation to draft and submit to the CNMV an internal code of conduct in the securities markets is removed, although it is **advisable to maintain it** as part of the internal system of prevention, compliance and control and to ensure that persons subject to market abuse regulations are aware and comply with such regulations. The CNMV recommends that issuers maintain internal regulations, measures and proceedings that promote compliance with the applicable laws, either drafted as a code or otherwise.¹

THE CNMV’S SUPERVISORY AND INSPECTION POWERS

The CNMV’s new supervisory and inspection powers are introduced in order to supervise compliance with market-abuse rules. These include the powers to (i) **require telephone and data traffic records** available to natural and legal persons subject to the MAR and, alternatively and in accordance with applicable data-protection regulations, to collect essential data for the exercise of the CNMV’s duties from providers of electronic communications services and/or from the information society; and (ii) **require the PDMRs and their closely associated persons to immediately publish the**

¹ Communication addressed by the CNMV to issuers of listed securities on 22 January 2019 regarding the new European framework of market abuse (http://www.cnmv.es/loultimo/ISMAR_ok.pdf).

information that the CNMV deems pertinent **regarding their activities related to the securities market** or that may influence it (or to directly publish that information if the requirement is not complied with).

INFRINGEMENT CATEGORISATION AND ESTABLISHMENT OF SANCTIONS

MAR infringements are categorised as “very serious” or “serious” and the corresponding sanctions are specified. The following are examples of infringements that are classified as “very serious”:

- (i) **Engaging in, or attempting to engage in, transactions that involve inside information**, recommending or inducing a third party to engage in such transactions or **unlawfully disclosing inside information** when (a) the amount of funds used or the volume or value of financial instruments used is significant; (b) the actual or potential profits or losses avoided are significant or (c) the offender has had knowledge of the inside information due to his/her status as a director or due to the exercise of his/her profession, work or duties or is or should be included in an insiders list.
- (ii) **Failure to comply with the duty to keep insiders lists or keeping lists that are essentially defective or inadequate which** prevents the identity of persons with access to inside information from being known or the exact date and time when the information was accessed.
- (iii) **Infringement of the duty of reporting transactions** carried out by PDMRs or their closely associated persons when there is a **concealment interest or gross negligence**, considering the relevance of the communication not carried out as well as the resultant delay.
- (iv) The lack of dissemination of inside information where market transparency and integrity have been seriously compromised.

These “very serious” infringements may be sanctioned by **fines ranging from EUR 2,000,000 to 30,000,000 or 30% of the total annual turnover** according to the latest available accounts approved, if the offender is a **legal person**, and **fines ranging from EUR 1,000,000 to 10,000,000** if a **natural person**.

The following are examples of infringements classified as “serious”:

- (i) The infringements indicated above, but where the conditions to be classified as “very serious” are not met.
- (ii) Failure to comply with the PDMRs prohibition against operating in closed periods.

Such infringements may be sanctioned by **finer ranging from EUR 1,000,000 to 15,000,000 or 15% of the total annual turnover** according to the latest available accounts approved, if the offender is a **legal person**, and **finer from EUR 500,000 to 5,000,000** if a **natural person**.

In addition, the described infringements may be sanctioned by other measures such as the disgorgement of profits obtained or losses avoided, or public admonishment published in the Spain’s Official Gazette (*Boletín Oficial del Estado*). Likewise, when the offender is a legal person and those responsible for the offence hold executive or managerial positions, those individuals may be sanctioned by, among others, **permanent disqualification from holding managerial or executive positions** if, in a ten-year period, they had already been sanctioned for committing two or more breaches of the prohibitions against acting upon inside information; recommending or inducing a third party to engage in such transactions; unlawfully communicating inside information or manipulating, or attempting to manipulate, the market.

ENTRY INTO FORCE

The amendments to the Spanish Securities Market Law introduced by Royal Decree-Law 19/2018 have been **in force since 25 November 2018**, although some issues are pending development by the CNMV and some technical changes still have to be implemented (e.g., matters to the CNMV’s website or Cifradoc).

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