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Enforcement of Disclosure Requirements: The Bulgarian Case
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Enforcement of Disclosure Requirements: The Bulgarian Case

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Abstract

The process of improving Corporate Governance in emerging markets touches on a number of different aspects of market organization. One essential area is the regulation, scope, timing and procedures for the mandatory disclosure of information. Disclosure is very important for investors, since they can not make informed decisions without reliable, accurate and easily accessible information.

Bulgaria has a relatively well developed legal framework for ensuring fair disclosure. Its regulatory bodies and judiciary have broad and various practices for gathering and publishing all classes of mandatory information, as well as penalizing cases of avoiding or providing misleading information.

However, it will be incorrect to think that the issue is resolved finally or completely. The proposed paper analyses the disclosure process in Bulgaria. It is based on primary documents, reports, and interviews with the Bulgarian State Commission for Securities and the Stock Exchange¹. Its goal is to reveal the existing legal basis and the practice of enforcement and to make some proposals for the enhancement of the disclosure process.

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List of Frequently Used Abbreviations

AL	Accountancy Law
BSE	Bulgarian Stock Exchange
CD	Central Depository
CG	Corporate Governance
LAOP	Law on Administrative Offenses and Penalties
LAP	Law on Administrative Proceedings
LALPOS	Law on Amendments of the Law on Public Offering of Securities
LPOS	Law on Public Offering of Securities
SCS	State Commission on Securities (The Commission)
ODPPCIS	Ordinance on Disclosure of Participation in Public Companies and Investment Societies (Ordinance on Disclosure)
ORSC	Ordinance on the Registers of the Securities Commission
LHD	Large Holding Directive (88/627 EEC Directive)
RRBSE	Rules and the Regulations of the Bulgarian Stock Exchange (SE Rules)
CC	Criminal Code

Introduction

The process of improving Corporate Governance in emerging markets touches on a number of different aspects of market organization. One essential area is the regulation, scope, timing and procedures for the mandatory disclosure of information. Disclosure is very important for investors, since they can not make informed decisions without reliable, accurate and easily accessible information.

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Main Disclosure Requirements

The Bulgarian legal framework identifies two target groups of companies and three classes of information subject to mandatory disclosure. The target groups are, roughly, the public companies and all the others and the information classes are:

- A periodically (annual and semiannual) issued reports;*
- B information about essential events happening to the company or its business;*
- C information about the control of the company.*

In their most general application to all non-public companies the disclosure requirements are very broad and consist of the internationally recognized standards for presenting financial data, the balance sheet, profit & loss account, cash flow and the capital account². The

² The needed information vary with the size and the type of activities of the investigated enterprises; the smaller and the simpler the non-public business is the less and the simpler is the disclosed information.

Commercial Code defines another piece of mandatory information for nonpublic businesses. The joint-stock companies have to disclose possession and trade in their own shares during the reported period. In fact the mandatory disclosure of information for those business entities is rather limited; the relevant section of the Commercial Code consists of just one paragraph, in addition to the financial information asked by the Accountancy Law.

The public companies are regulated much more stringently. They have to disclose all three classes of information mentioned above, each of which contains many sub-items of data. The disclosure is guided basically by the Law on Public Offerings of Securities and its various ordinances for application.

The focus of periodical information are the Annual Reports. In fact, they contain various types of mandatory information, but the main focus is financial. The last revision of the Accountancy Law defined the reports containing important accounting information as balance sheets, cash flow, P&L and capital accounts as *financial ones*. The change represents the more flexible model adopted for collecting the information rather than a formal renaming; companies now are given the freedom to prepare more or less customized reports, following just rough guides for the blocks of required information, in spite of filling up standard sheets, same for each and everyone.

In addition, financial information is collected also for shorter periods; currently, public companies present semiannual accounting reports, but with the recent amendments in the law they will shift to the quarterly ones (LPOS, Art. 94; §29 LALPOS). Although, the financial reports follow the general accounting regulation, the Commission on Securities obtains a more active role in determining their content, as discussed below.

The Annual Reports also contain data about the management of the company – the structure and names of the members of the managing and governing boards. An important point, the ongoing amendments of the LPOS propose among the other disclosed evidence about management the inclusion of **an obligatory program for application of the best corporate governance practices** together with a report on the implementation of the previous period program (§28a of LALPOS). If approved, this revolutionary point promises to push the process of enhancement of the Bulgarian CG standards strongly.

The periodical reports duly approved by recognized auditors must be presented in the Commission within 90 days (30 for the semiannual ones) from the end of the reported financial year and that fact is subject to public notification within 7 days.

However, the order for publication of reports themselves is not clearly specified. While the LPOS itself does not contain an explicit clause for publication, the Ordinance on the Registers of the Securities Commission requires all the periodical reports to be entered in its registers, i.e. they have to be made public. In fact, the Commission gives access to them through its web site for the public at large, but this kind of publication depends heavily on the technical equipment, which, unfortunately, is far from perfect. That means that the public access to this important data is often questionable.

It is also unclear how soon it should be made public; the register entries depend on the order by the Chairman of the Commission, but there is no direct relation between the receiving of the reports and his order to entry.³ It seems that this problem has been recognized: an amendment of the LPOS proposes issuing a specific ordinance just for the matter of publication (LALPOS, §35).

The second class of mandatory disclosed information by public companies is oriented to a number of company's events. It includes any amendments to its Articles of Association, changes in its management and supervisory bodies, the instituting of bankruptcy proceedings, any decision to transform the company or generally any changes in the business which directly or indirectly affect or may affect the price of its securities. The procedure for announcement of those events is clear-cut, the Commission (and the Bulgarian Stock Exchange where relevant) has to be notified within 7 days from passing the decision or learning of the relevant fact; and the Commission (and BSE) must publish that information. The recent amendment proposes shortening the period for disclosure of important corporate events to the next day after taking the decision or passing the event, but again there is a trap, if the event needs to be recorded in the Commercial Register - 3 or 7 days after it, and as long as the vast majority of the important corporate events are such, the overall effect seems to be rather limited (LALPOS; §32). In addition the law requires the two above types of information to be sent to the BSE if the company involved is traded there.

The incompleteness of the disclosure process described above provokes a lot of efforts to make it more precise. One of the major changes proposed is targeted on procedure for publishing. The BSE must include all relevant information in its regular bulletin on the day following its receiving and before commencement of the normal trade; in case the information is received *during* the trade session BSE must produce an extra issue (LALPOS; §34). The other

radical point of change refers to the allocation of disclosing duties between the Commission and the Stock Exchange and it is discussed slightly below.

The third class of obligatory disclosed information concerns one of the crucial points for the investors shaping their trust in a public company. Who and how controls it? The law requires all physical or legal persons who possess more than 10% of the votes in the company's General Assembly to be disclosed in the IPO prospectuses and in the Annual Reports.

Although, the most important evidence of this class of information emerges within the process of trade and transfers of the company's stock. The Bulgarian LPOS (and its relevant Ordinance of Disclosure) follows the EC so-called Large Holding Directive and requires revealing all cases where someone's stock holding exceeds more or falls down the 5 (or multiple by 5) percent threshold for the companies listed on the Official Market⁴. This applies to:

1. votes and not to the direct capital holdings; so it is possible, to track the actual controlling entities and not just the persons which participated in the ownership structure of the company in question;
2. votes controlled directly and/or indirectly by a physical or legal person, as follow:
 - through shares held by spouse or minor successors;
 - through shares held by others in their own names, but on his behalf;
 - through shares held by an undertaking (or its subsidiary) controlled by the above person;
 - through shares held by a third party, which has an agreement with him for a common policy towards the management of the company in question
 - through shares lodged as security with him except when their holder reserves the rights for himself
 - through shares deposited with him and he can use their rights at his own discretion

The procedure of disclosure also follows the LH Directive. In fact, the Bulgarian rules are even more stringent, since not only the acquirer was obliged to make a notification to the Commission and to the issuer, but also the Central Depository, which is the only clearing and settlement institution for the trade with public companies stock. The notification is due within 7 days from the date of entry in the Commission register.

³ By analogy, some investors transpose terms and rules developed for the for publication of the next type of mandatory information over the periodical one, which is source for misunderstanding as we discuss below.

In addition to the above events there are two other moments in the corporate life of Bulgarian firms requiring mandatory disclosure of information - issuance of new stock and mandatory bids for buying or exchanging shares. Nonetheless the required information is not principally different.

Enforcement authorities

The Bulgarian legal framework in the field of the corporate governance is still incomplete. Most of the powers originated from the Law on Securities and thus most of the enforcement responsibilities for mandatory disclosure reside with the *Bulgarian State Commission for Securities*. The second institution is the Bulgarian Stock Exchange-Sofia, but it is under the control of the Commission and this seems the reason that the former has relatively restricted powers. The other possible enforcing institutions, like various investors associations are practically of no importance, which might be explained also with the tendency towards centralism in the continental legal system, which is adopted in Bulgaria and which does not rely heavily on the self-regulating bodies.

The Commission

When analyzing the role of the Commission, one should note, that currently its powers with respect to enforcement of disclosure are not explicitly stated among the functions entrusted it by the Law. The legal emphasis is on regulation and control exercised over the trade in securities and the persons involved in it (art. 8, LPOS).

However, the goal of the Commission "to protect the investors and to ensure *transparent and effective market*" and the maintenance of its public registers clearly determine its primary role in the process of disclosure of information. The ongoing amendments of the legislation go even further. According to them, the Commission "participates in setting the accounting standards for the public companies" and other participants of the securities market and "*controls the relevance of the financial reports to the requirements of the law*" (§9, LALPOS).

In the process of its functioning, the Commission has rights of full access to the relevant information, of visits and checks on the spot, of attending the General Assemblies of the legal persons under its jurisdiction, of appeal in the courts, granting and revoking licenses etc. It has

⁴ The thresholds for the companies traded on the unofficial market of the BSE are slightly more relaxed – disclosure is enforced when someone's holding exceeds (or falls down) 1/10, 1/4, 1/3, 1/2, 2/3 or 3/4 from the voting stock of a company.

two major options in cases of an offense to the law, to its ordinances of application, to the rules of the stock market or to the Commission's own decisions. The first opportunity is imposing a set of various coercive administrative measures to stop and correct the transgressive acts or to prevent their damaging consequences and eventually to protect the interests of the investors.

The set of measures include:

- ◆ to convene, with an agenda determined by the Commission, a general assembly and/or schedule a meeting of the governing or supervisory bodies of the persons supervised by the Commission in view of passing resolutions on the measures to be taken;
- ◆ to inform the public of the unlawful activities;
- ◆ to suspend, for a period of six months or definitively, the sale or the carrying out of transactions in certain securities;
- ◆ to refuse to give a confirmation for the prospectus of a new issue of securities;
- ◆ to order in writing suspension and removal of one or more persons authorized to manage and represent a company under the Commission's jurisdiction⁵;
- ◆ to appoint "qu(a)estors" to oversee the company in case of suspension and removal of managers or revoked licenses;
- ◆ appoint a chartered accountant who should conduct a financial or other audit of a person under the Commission's jurisdiction⁶.

The procedure of application of those measures follows closely the Bulgarian Law on Administrative Proceedings; the measures are imposed by a Commission's Decision, which is announced to the concerned persons within 7 days. The latter have the right to appeal to the Supreme Administrative Court, but, and this is an important point, the decision is subject to immediate enforcement, regardless of whether it has been appealed against. The arrangement of that legal matter is considered relatively well defined and the single most important proposal for amendment concerns just the formal inclusion of the license's withdrawal among the above measures.

The other option to act against the violation of the rules, which the Commission may undertake solely or in addition to the coercive measures is to impose a fine to the offensive party. The penalties are extremely standardized. For almost all the possible offenses of the law,

⁵ This measure is not applicable to the public companies or other issuers of securities.

⁶ In cases of involved banks, those measures are applied by the Central Bank upon Commission's suggestion.

the envisaged fines are between 2000 and 10 000 BGN⁷ for physical persons and between 10 000 and 50 000 BGN for legal persons.

The procedure for penalizing is that of the Law on Administrative Offenses and Penalties. It requires drawing up protocols when offenses are discovered and then issuance of penalty warrants by the Chairman of the Commission. The warrants might be appealed in the two instance court procedure before being enforced.

This part of the legal framework seems to be very controversial, since there are envisaged many and serious changes in it. **First**, the offenses are categorized in four different classes and fines are appropriately divided. The lower limit of the first (lightest) offense falls ten times down to 200 BGN and the higher limit for the last class of offenses remains unchanged – 10 000 BGN. This way, there is a decrease in the average burden, and absolute decrease for many of the offenses; in our case, the offenses of the rules for disclosure of the periodical information as well as those for the disclosure of important corporate events are penalized much lighter – from 500 to 2000 BGN. The information, which concerns the distribution of the control in the company is classified as more essential and the fines are between 2 000 and 5 000 BGN, which is still lighter than the penalty under current law. **Second** point is that, fines are introduced for perpetuating offenses and the principle is that they are much heavier. **Third** and very important point is that, the enforcement of the coercive administrative measures are now backed by heavy penalties – 5 000 to 20 000 BGN in case of incompliance with the measures imposed by the Commission. And **the fourth** new point is that, the assisting persons are now introduced under responsibility.

The Stock Exchange

According to the current legal framework the disclosure of all information should be made through the Commission on the Securities and if the companies are traded on the regulated capital markets, the information should be sent to them within the same periods of time. Thus, the Rules and the Regulations of the Bulgarian Stock Exchange essentially repeat the disclosing requirements, slightly emphasizing the information directly connected to the trade. The Stock Exchange also maintains registers with important information about the securities issues traded on the market, though it is not clear if that register is public and what is the regime for its use.

The BSE specific disclosure role is connected with the information disclosed by itself. In its Bourse Bulletin, the BSE must reveal trade (market) information as fully as possible, information

⁷ 1 BGN is fixed at 0.51 €

for new issuers and/or new issues. According to the LPOS and its application ordinances the BSE must publish also other information, including all the mandatory disclosures pointed out above. This is very important point, since the procedure is well defined and the timing of the bulletin is more regular and precise than the timing of Commission's publications. This seems to be the reason, that in the ongoing amendments of the LPOS an interesting proposal says that for the securities traded on the BSE, the mandatory disclosed reports and corporate events (information classes 1 and 2) should not be disclosed by the Commission *before* its publishing in the SE Bulletin.

The determination of enforcement powers of the BSE seems also more operational. According to SE Rules, in case of violation of the LPOS and the statutory instruments regulating its implementation, disclosure rules included, the Board may impose one or more sanctions, after consideration of the Director of Surveillance's report. The Board's decision is **final** though the interested party may object the sanction imposed within 14 days and the Board must decide on the objection reaffirming, decreasing or canceling it. The sanctions include warning, coercive administrative measures, temporary or permanent suspension of a broker or bourse member from trade or fining up to 5000 BGN.

Moreover, it should be emphasized, that the SE Rules include clearly *fraud* among the other violations of the law, which was not the case with the Commission authorities. Thus, the whole process of establishing an offense, its charging, eventual appealing and final decision is much shorter and cheaper than that under the Commission's jurisdiction, and hence more effective. The only serious limit of the powers of SE is that they are applicable just for its members and the brokers trading on it and as one may guess they are concerned mainly with trade on the SE.

The judiciary

The judiciary is the third very important player in the enforcement of disclosure rules. As was mentioned, the judiciary decides on the measures applied by the Commission, which can be appealed by the sanctioned party. The proceedings are the normal court proceedings, which include listening to the both parties, invitation and surveying of the witnesses, gathering of evidence etc. They are held by general, not specialized courts and as a general principle are very lengthy.

The appeals against coercive administrative measures imposed by the Commission, might be raised by the concerned party or by the prosecutor. The hearings are held by three judge courts in the Supreme Administrative Court. The appeals against the imposed administrative fines are held in the Bulgarian district courts by a single-judge courts. In their own turn, the court decisions can be cassationally appealed against, respectively in the Supreme Administrative Court by five judges and in the relevant regional court

Another, more important function, of the judiciary concerns the enforcement of all the criminal violations of the law. That means all of the offenses against the rules, including those regarding the disclosure of information, being withdrawn from the jurisdiction of the Commission and placed under the jurisdiction of the judiciary, if they are considered crimes.

Within the criminal process, there is a great number of cases, which might be relevant to one or another case of disclosure practices non-complying with the law. First, those are the cases known as *fraud*, which are treated by no means in the above legal framework. Fraud is clearly defined in the Criminal Code and the envisaged punishment for it is up to six years imprisonment, three for the cases of abuse with someone's lack of information or up to one year for minor cases. The punishment is more severe (from one to eight years) when the fraud is done by an authorized person within his/her duties, when the damage is considered essential or the crime is perpetuating.

Close to the latter regime (up to eight years imprisonment) are the cases of documentary crimes. Although, their simple arrangement in the CC does not seem easily applicable to such complex crimes as those connected with abusive management of a business. A more thorough monitoring of such a general legal regime as the criminal law might help to identify even more cases of incriminated misbehavior; just for example to add, the clause which incriminate the abuse of entrusted property, a case I find very relevant to those of our interest here, though one may find its norms slightly peculiar – up to 3 years imprisonment **or** a fine between 2 and 6 BGN (CC; art. 217).

The real problem is the differentiation between the civil and criminal classification of violations. It is not possible to identify sharp and clear definition when an administrative offence becomes a criminal one. True, the LAOP states that, if one establish that an administratively investigated deed is in fact a criminal act, the administrative proceedings should be ceased and the gathered evidence should be sent to the prosecutor, but it is doubtful, whether this could easily be done by the civil servants in the Commission.

The Enforcement Practice

The enforcement analysis is based on the annual report of the Commission for 2001, purposely requested information from the Commission, interviews and the internet-based registers of the Commission. For a correct interpretation of the figures, one should keep in mind, that there is a process of steady decline in the number of public companies, which being withdrawn from the register and 'closed for public'; at the beginning of the 2001, the registered *public companies* were 508, and in the end – 407; the *investment intermediaries* – 99, respectively 97; the *investment companies* - 3, and registered *management company* - just one.

General Enforcement Activity of the Commission

During 2001, the Bulgarian Securities Commission initiated 90 administrative proceedings and 95 offense protocols were drawn up; apparently some proceedings are initiated in the preceding year (Annual Report, 2002).

At the top of the list are offenses committed by the investment intermediaries – 58 protocols; most often (27 cases) those are violations connected to the unequal treatment of the investors or disregarding some rules, including the obligation for notification of the Commission for important *ad hoc* events (Annual Report, 2002). The public companies occupy second place in the list (37 protocols); their offenses mainly consist of non-compliance with the requirements for the disclosure of information.

On the basis of those protocols, 63 penalty warrants were issued and 30 resolutions for ceasing the procedures in cases of insufficient evidence, wrongly classified behavior or else. The imposed fines total to 231 400 BGN. This might be seen as a rather high rate of successfully ended proceedings identifying the offensive practices of the companies, which activity concerns the large public and the small investors. Although, a number of 40 penalty warrants were appealed against and just 24 were brought into force, with a fine burden imposed of 81 450 BGN. This is slightly more than one third of the issued warrants and just one quarter of the offense protocols drawn up. The proceedings of appealed decisions are usually longer than a year, and very rarely at only one court. Thus, one may conclude that the decisions brought in force are almost completely among the not-appealed against or originating from preceding years.

An interesting, though indirect, index of the share of successfully concluded offense proceedings is the ratio of the actually collected over imposed fines; the collected amount for

2001 is 39 240 BGN. Related to the above figure of 231 400 BGN it is just 17%. Of course, some of the fines imposed during the 2001 will be paid during the following periods, but it is also true that some of the previous period fines were paid in the investigated period. And if one consider, that the number of offenses and issued warrants declines as the time passes, a fact recognized in the Commission report (Annual Report, 2002:12), due to both improved discipline and delisted public companies, the above ratio does not seem too distant approximation.

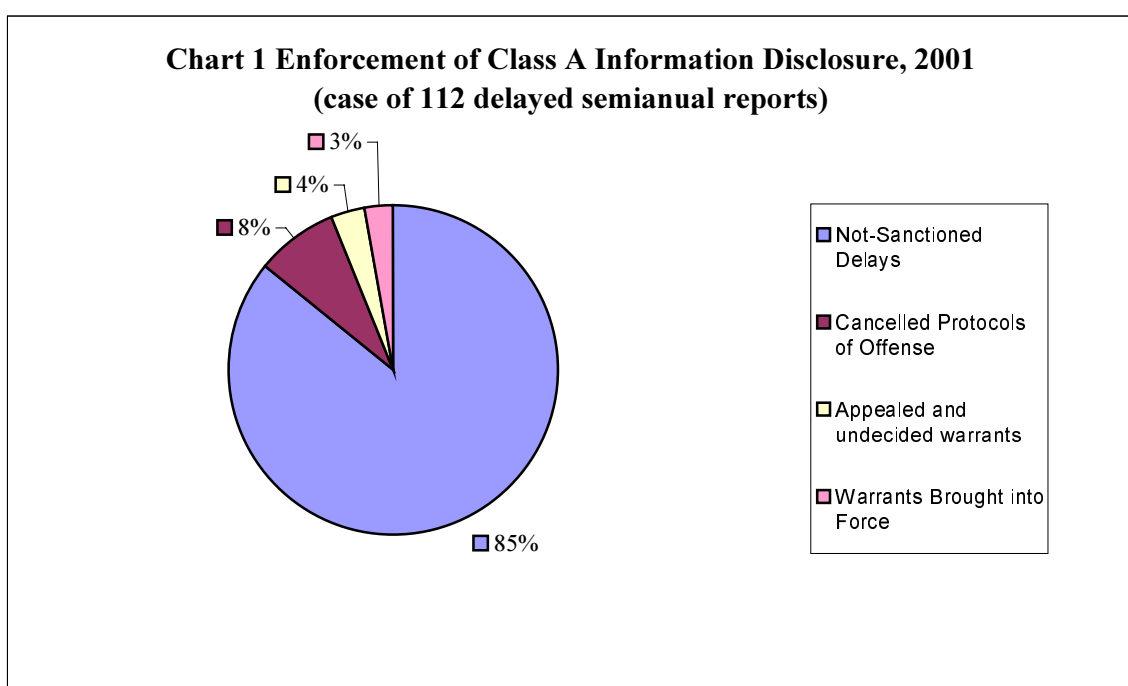
Enforcement of the Disclosure Requirements ***Class A Information (Art. 94, 95 of LPOS)***

During the 2001, 441 semi-annual reports have been provided to the Commission and were published through its Register; 25 per cent of them were delayed. The annual reports published in 2001 were 519, and it is not possible to find out now how many of them were correctly sent. Although, one may judge for the share of correct disclosures by the results of his year disclosing campaign of the Annual Reports. It has just finished by the time of writing this paper and the information is now available – out of 412 registered public companies 288 have sent their 2001 reports on time, 52 with the delay and 72 have not sent it at all by 16 of April. Thus, we obtain a figure close to that for the semiannual reports - about 30 percents incorrect responses to the regulative framework.

In order to sanction these offenses and their consequences for the investment process, the Commission responded and imposed administrative measures. There were drawn up 17 protocols of offenses for the delay of both annual and semiannual reports. Seven of them led to issuing of penalty warrants, and 3 of them are brought to force; the remaining four warrants were appealed in the court and there are still no decisions on them. A rough estimation of the process would give the figure of about 15 percents of initiated administrative proceedings from all inexact cases of disclosure, less than half of which finish with a penalty and even less come into force.

An alternative verification of the above statement produces a close figure; according to a query based on the Commission's web page, 112 semiannual reports were delayed during the 2001 and just three cases are effectively fined by 16 April 2002 (Chart 1).

As mentioned above, the process of appealing is lengthy and complicated. There are 31 issued warrants during the 2000 and 16 of them were appealed against. Just 8 of them were decided – 3 cancelled and 5 reaffirmed and brought into force by 16 of April. All the other are still not decided, some even on the first instance. If one considers, that almost all cases pass the whole two-instance procedure (four out of the five reaffirmed decisions were taken by the second-instance courts), it becomes clear that the full procedure may take two years. And what is the arguable matter in those endless proceedings is nothing else, but sending *on time* some standard information, very often it is about when the information file should be sent if the CEO is absent or on leave or else.



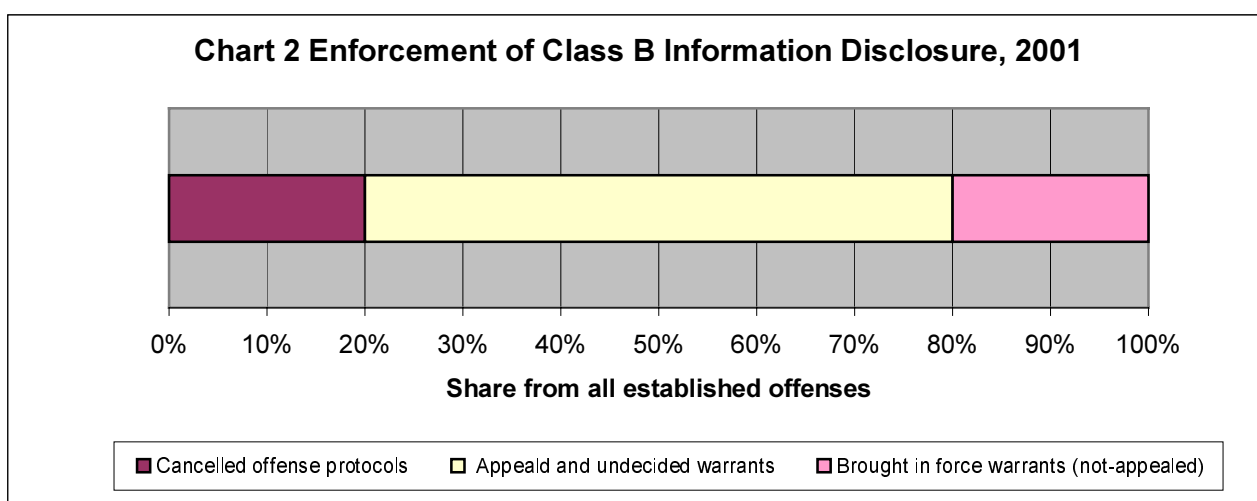
In a more detailed survey we found just one case finally decided within four months – December 2000/April 2001. Thus, about 50 percents of the penalties take effect within a year of imposition, and if we consider the ratio of imposed penalties against all incorrect disclosures we get a very low figure of about 3 percents of effectively charged cases of imperfect disclosure behavior.

Another problem connected with the disclosure of Class A information was caused by the incomplete or insufficient data in a number of annual reports. Since, the reports were sent in the last possible moment, the Commission faced the difficult trade-off to publish them as they are or to break the terms if request revision of the reports. Apparently the timing and the procedure for publishing the reports needs further enhancement.

The enforcement measures undertaken by the Commission on disclosure of class A information are not just penalizing. It very often instruct the disclosing companies and clarifies the requested information in the reports; for that purpose, 164 letters are sent to the public companies in 2001.

Class B Information (Art 98 of LPOS)

The Bulgarian stock market suffers generally from a lack of liquidity. The BSE index SOFIX monitor just 9 companies and even their traded volumes are low. Hence, the *ad hoc* company information does not play the important role it is supposed to. This is the reason that the enforcement practice for disclosure of that class of information is relatively scarce; most of the controlling actions are done in response to signals coming usually from the interested investors. During 2001, 108 such actions were undertaken in response to all kinds of signals. Five Protocols of Offenses were drawn up on cases particularly connected to the disclosure of *ad hoc* information; most of them concerning violation of the rules for notification of the changes in the companies statutes, boards composition etc. Contrary to the class A disclosures, a much larger fraction of the proceedings finished with penalty – 4 warrants were issued, three of them were appealed against, but all they are still undecided by judiciary (Chart 2).



Class C Information (Art. 145, LPOS)

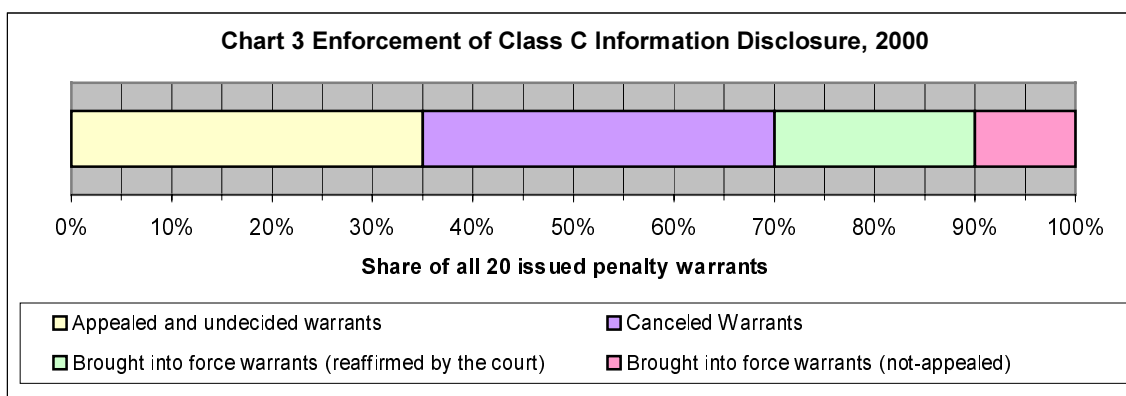
The disclosure of information on the structure of the ownership and votes is of primary importance for the investors. Thus, a lot of effort was made in 2000-2001 to make the process more transparent and reliable. This included a better legal framework and opportunities to monitor changes in the GA votes of 5 and more percents up and down. Given that effort, it seems surprising that very few records on accumulated votes could be found in the electronic registers of the Bulgarian Securities Commission. The register contains all the information for the public companies and it is supposed to be the only freely accessible place with more or less

systematic information about the voting blocks. The registries provide a lot of opportunities and are internet accessible. However, the needed information is scarce, not complete and inconsistent.

One may speculate what is the reason for this. The available information might be affected by the unprecedented decision of the previous government to delay the appointment of new Commission members almost half a year. And all the entries in the registers are made upon official decision. And certainly, another part of the problem is the complicated and not well-organized web page of the Commission based on an overloaded computer server.

Although, the public companies are also responsible for the available information, since they are not very exact in sending the due notifications as confirmed by the enforcement practice of the Commission on this matter. During the year 2000, a total of 20 penalty warrants were issued, 18 of them were appealed against and 7 were cancelled, 4 - reaffirmed and brought into force together with those, which were not attacked in the court. Unfortunately, by 16 April 2002, there is yet no final decision on 7 cases (Chart 3).

This class of disclosure shows extremely high ratio of appealed against warrants – 90 percents and also very high level of cancelled decisions by the court 35 percents of all issued warrants. Apparently, the companies are very sensitive to revealing this type of information, but also the courts seem to be more tolerant to their apprehensions. This is not surprising keeping in mind the key role of this information. What is really surprising is that there is no activity in that field during 2001, we were unable to identify enforcement actions on this type of information disclosure in all of ours accessible sources. One of the explanations seems to be the decreased transfers of large (controlling) packages of shares between the investors, which is due to the already highly-concentrated ownership, but they are definitely enough cases of passed holdings thresholds, which are subject for mandatory disclosure.



Concluding analysis

The Bulgarian legal framework provides a well defined and comprehensive basis for all classes of mandatory disclosed information. The few bottle-necks concerning timing and order of publication of the periodical reports are to be erased with the recently proposed amendments in the Law on Public Offering of Securities. Thus, the focus point for disclosed information will become the Bulletin of the Stock Exchange and the way information is published is supposed not to affect the ongoing trade on the market. In this aspect, it is still possible to consider the proposal of some members of investor's society in Bulgaria, opting publication of the periodic reports (on the Internet) to be an exclusive responsibility of the issuers, with an obligatory and *preliminary* notification of the time and site of the release.

Much more complicated is the question with respect to the responsibility for the information contained in those reports. On the one hand, the amendments of LPOS go further in making clear and comprehensive the responsibility of managers, financial directors and the auditors for the contents of the reports. On the other hand, the Commission reserves the right (and active practice) of correcting, advising, and requesting additional information, which makes the process of releasing that information long and uncertain, and gives grounds for blaming of imperfect behavior.

It is difficult to offer an easy solution of this here, since its resolution depends on the efficiency of the system for penalizing the cases of misleading and insufficient information. The one existing now is far from being perfect. As we saw, the process is lengthy and there are opportunities to escape the fines (or at least to postpone them into the remote future). The reasons for that are many, including the inflexible and relatively high level of current financial penalties, which creates incentives for avoiding them.

The Phare case. *Perhaps, in its most famous recent proceedings, the Commission imposed for a series of serious offenses (not including disclosures) a total of 22000 BGN through 15 warrants of an investment intermediary before revoking broker's license and ordering removal of the CEO. Apparently, given the low level of the current trade on the bourse, will force the interested party to take every possible chance to avoid paying such a huge fine, and this case will keep busy at least one court for years. And perhaps, this complication would be avoided should the Commission use its powers to impose the coercive measures earlier.*

The expectations are that, the proposed amendments of LPOS will help improve the matter, since they differentiate and lower the penalties, which will make them more just and appropriate to the committed offenses.

Another reason for prolonged trials is, that the judges are not enough and not always well-prepared, especially in the countryside, to deal with such complex and new matters. This leads to opposite decisions pronounced by successive courts, as we saw from the practice, and/or to sending the cases back for additional investigation etc. This combined with low cost court trials (there are not charges for administrative proceedings in Bulgaria) make the appeals against most of the cases *almost obligatory*.

The Commission tries to overcome this by organizing seminars for judges, asking for certain specialization of courts handling those type of cases etc, but it is not feasible to expect a quick change.

However, the overall practice and the cases like that cited above raise the principle question of how the regulations concerning financial activity should be enforced. The experience of the Bulgarian Stock Exchange provided above is very important in this aspect. They have accepted the principles of developed economies of self-regulation in the financial business, which includes procedures that are simpler, shorter and targeted on prevention of the offensive behavior and not on penalizing it. Of course, those principles include charging the wrong party, but again the fines are smaller, easier to impose and provide much less chance to be avoided.

It is understandable, that resolving this issue is much more complicated and depends strongly on the development of the self-regulated principles and organization, which are still in rudimentary stage now. It also touches the philosophy of the role of the Commission, which is now seen more or less as a day-to-day controller of the process and less as a general monitor of a self-controlled mechanism.

Overall, we believe that a certain debate on those problems should start and the earlier the better.

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