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Amendments to the Administrative Violations and Penalties Act

At the end of 2020 the Bulgarian Parliament adopted some amendments to the Administrative Violations and Penalties Act (AVPA), which came into force as from **23.12.2021**.

The present note does not represent a comprehensive and all-encompassing analysis of all the adopted changes to the AVPA but aims to focus on the **main changes concerning the liability of legal entities**.

Amendments as regards to the procedure of imposing administrative penalties to legal entities:

The major amendments of the AVPA regarding the administrative sanction liability of the legal entities have been adopted in 2015. The newly adopted amendments of AVPA have several main objectives:

- improving the regulation of some traditionally existing institutes in the field of administrative sanction, such as minor case of violation, resumption of proceedings;
- creating new possibilities for the conclusion of administrative sanction proceedings in a short term by introducing the institute of agreement;
- facilitating the collection of public state debts through discounts for sanctioned persons in case they pay voluntarily within the appeal period;
- establishing effective legal guarantees for protection in the out-of-court phase of the proceedings - appealability of all acts that may affect the rights and interests of the offenders, ensuring the possibility for owners of property who are not offenders to appeal against the acts of the sanctioning authority by which the property was disposed of or confiscated for the benefit of the state;
- optimizing the legislative framework and case law on controversial issues, such as succession liability, regulating the powers of the district court in ASPA proceedings, the summary court proceedings, the explicit powers of the sanctioning authority in the event of non-compliance with the obligations of legal entities towards the state or the municipality.

i. General grounds for imposing administrative penalties to legal entities:

Based on Art. 83 of AVPA a pecuniary penalty may be imposed on legal entities for any non-fulfillment of their obligations towards the state or municipality stemming from and in regards with the performance of their activities.

According to Art. 83 a) of AVPA a legal entity, which has benefited itself or would benefit itself from a certain explicitly listed crimes, such as **terrorism, crimes against the state, crimes against the monetary and credit system** (e.g. *avoiding the establishment or payment of tax liabilities, misuse of funds received from European Union funds or granted by the European Union to the Bulgarian State*), **crimes against the intellectual properties rights** (e.g. *using activity a trademark or industrial design without the consent of the holder of the exclusive right*), **fraud**, etc. shall be imposed with a pecuniary penalty of up to approx. BGN 1,000,000 but not less than the equivalent of the benefit, where the latter is of a financial nature. A pecuniary penalty of up to approx. BGN

1,000,000 shall also be imposed where the benefit is not of a financial nature or its amount cannot be established.

This is applicable also to all crimes, committed under orders of or for implementation of a decision of an organized criminal group, when they have been committed by:

1. an individual, authorized to act on the behalf of the legal entity;
2. an individual, representing the legal entity;
3. an individual, appointed to a control or supervisory body of the legal entity, or
4. an employee to whom the legal entity has assigned a certain task, when the crime was committed during or in connection with the performance of such task.

Such financial penalty shall also be imposed to legal entities that are not established in the territory of the Republic of Bulgaria where the crime has been committed in the territory of the Republic of Bulgaria.

ii. Merger/ Acquisition of legal entities against which an administrative sanction procedure is opened

Problems have arisen in the practice if a legal entity against which an administrative sanction procedure is opened is being acquired by or merged in another legal entity as until now there was not any specific regulation on that matter.

According to the newly adopted amendment of the AVPA, if a legal entity is acquired by another entity after the statement of establishment of an administrative violation has been issued, the administrative sanction procedure shall continue with respect to the acquirer. The statement of establishment of an administrative violation shall be presented and served to the latter.

In case of acquisition of a legal entity after a penal decree has been issued the administrative sanction procedure shall continue with respect to the acquirer. The issued penal decree shall be served to the latter.

iii. Criteria for assessment of the imposed penalties

One of the most significant weaknesses in the legal framework on administrative sanction procedure was the lack of regulations on the individualization of the penalty imposed on legal entities who have benefited or would have benefited by committing a criminal offence. This legal incompleteness was overcome based on the newly adopted amendments. The courts could now apply clear criteria when assessing the imposed penalties, respectively the appeal body could exercise control over the will of the court on first instance in respect of the amount of the penalty imposed. The criteria are stipulated in Art. 83 a), Par. (5) of the AVPA and include the seriousness of the offence committed, the financial situation of the legal entity, the assistance in detecting the offence and recovering the harmful consequences of the violation, the amount of the benefit, etc.

iv. Timeframe for imposing penalties

The recent amendments provide that the liability of a legal entity shall become time barred upon the expiration of a time limit between **3 and 20 years** depending on the type of the violation (the more serious the violation, the longer the limitation period), considered as of the date of commission of the offence, from which the legal entity benefited or would have benefited.

v. Procedure for imposing a pecuniary sanction on a legal entity

Proceedings for imposing a pecuniary sanction on legal entity shall be initiated upon a motivated proposal of the prosecutor who is competent to examine the case or the case file for the respective violation to the district court of the seat of the legal entity. The prosecutor may request the court to take measures for securing the pecuniary sanction of the legal entity, such as **attachment of bank accounts** of the legal entity and/or foreclosures on property owned by the legal entity.

The court shall render a decision by which it will either impose a pecuniary sanction or will refuse to impose a pecuniary sanction. The direct or indirect benefit acquired by the legal person from the offence shall be **awarded to the State**, if it is not subject to return or restitution or to forfeiture under the Criminal Code. Where the object or property subject of the offence is missing or has been alienated, its **monetary equivalent** shall be awarded. The proposed addition aims to substantially increase the preventive role of imposing a sanction, as well as to prevent the possibility the sanctioned legal entity to derive any benefits from the criminal activity and to provide additional revenue for the State budget at the expense of the unjustly enriched legal entities.

Territorial competency

Usually, the administrative sanction procedure shall be examined by the administrative authority in whose district the offence was committed. The new amendments introduce new rules on the **territorial competency** of the administrative sanctioning authorities, covering the specific cases where the violation relates to the submission of information by electronic means and processing of information on a computer network or violation committed in cyberspace.

Minor case of administrative violation and evidently minor case

The minor case of administrative violation and the evidently minor case have also been specifically defined in the Additional provisions of the AVPA.

If such violations are committed, the administrative sanctioning authority should issue a written statement of the minor administrative violation and a warning, stating that if another minor violation of the same type is committed within one year as of entry into force of the warning, an administrative penalty will be imposed for the second violation.

In contrast to the former regulation, the offender shall have the right to appeal not only the penalty, but the warning itself, although it essentially does not impose an administrative penalty.

Settlement

Another significant amendment is the possibility to conclude a settlement with the administrative sanctioning authority. The legal entity shall be informed in writing than within 14 days it could make a proposal to the sanctioning authority to enter a settlement for closing the procedure. The administrative sanctioning authority also has the right to initiate the conclusion of a settlement.

A settlement could not be concluded in some explicitly mentioned cases, such as: repeated violation; or if the act committed constitutes a crime; or where the confession of the offender is not supported by the evidence collected in the procedure.

When the settlement imposes an administrative penalty, the administrative sanctioning authority shall determine the fine/ pecuniary penalty in the amount of **70 percent** of the minimum or of the specified amount provided for the violation, and when the law does not provide a minimum, the sanctioning authority shall determine the amount of the fine in the amount of not more than 70 percent of half of the maximum. The offender shall pay the amount of the fine/ pecuniary penalty within 14 days as of the day of conclusion. In case the latter does not fulfill its obligation, the sanctioning authority declares that settlement has not been reached with a motivated decree and issues a penal decree.

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

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