

# LEGAL FRAMEWORK AND MECHANISMS TO COUNTER ABUSE IN THE SECURITIES MARKET IN IN THE CASE OF EUROPEAN UNION

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## Abstract

The article discusses the legal support, legal framework and mechanisms to counter abuse in the securities market in in the case of European Union. In order to protect the freedom and rights of parties of securities market, Government should regulate effectively by law. In article, the legal basis and mechanisms of the European Union in this field are analyzed.

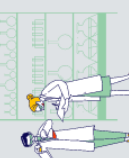
## Introduction

The legal regulation of the international financial system in general and the securities market in particular is an important and modern problem due to their decisive influence on the world economy, which was clearly demonstrated by the financial crises.

The emergence of legal norms at the level of the European Union (hereinafter referred to as the "EU") in the field of countering abuses in the securities market is associated with the development and deepening of economic and financial integration. The history of legal regulation of this issue in the EU relative to other legal systems (for example, the United States) is short-lived. From the 1970s to the present, the European legislator has progressively formed a regulatory framework. In order for the regulation of countering abuses in the securities market to be effective, the European Union has developed legal mechanisms aimed at filling gaps and effective enforcement.

In the theory of law, the term "abuses in the securities market" ("market abuses") is used as a general category that includes two forms of economic behavior that are recognized as an offense or a crime in most developed legal systems: insider transactions and market manipulation.

These actions have several common characteristics. Insider trading and manipulation in the securities market have the same goal - to obtain maximum financial benefits. They involve the same subjects - insiders, brokers, analysts, and other professional participants in the securities market. Insider transactions and market manipulation lead to approximately the same consequences - invalid market prices, weak information efficiency of the market and resource allocation, destructive impact on the economic security of the state, violation of the mechanism of market pricing, reduction of investment attractiveness of the market, reduced liquidity,



causing damage to individuals and legal entities, the state, restriction of competition, in general, violation of market stability. Market manipulation often involves the use of insider information. The differences include the fact that due to insider transactions, the market price of shares changes, while this does not necessarily happen when manipulating the market.

Questions of the expediency of a legal ban on the use of insider information and market manipulation are very often debatable and find ambiguous answers in scientific circles. Some researchers believe that in a market economy, it is necessary to provide all participants in the financial markets with complete unrestricted freedom. In some foreign studies devoted to the study of the nature of the use of insider information and market manipulation, the authors argue that these actions are a natural and inevitable process in the development of any form of organized trading, especially trading on stock exchanges . Representatives of the opposite position believe that it is necessary to restrict such freedom at the legislative level in the form of a ban on the misuse of insider information and market manipulation . This is the path that most developed countries have taken.

The legislation of modern developed countries regulates the issues of insider activity. Due to the lack of a unified legislative and doctrinal definition of "insider information" and related terms, a lot of author's definitions are offered in the scientific literature.

The word "insider" translated from English means "informed person", and "insider information" - "inside information". From the translation of these terms, the true meaning that legislators could lay is not visible. The translation proposed by the authors of the dictionaries does not allow revealing the legal meaning of these terms, and therefore, there is a need for a scientific analysis of the acts of the European Union, the legislation of the EU member states, the legislation and the doctrinal sources of foreign authors.

In accordance with Article 181 of the Consolidated Italian Law on Finance, insider information is information that is accurate in nature, which is not publicly available, directly or indirectly relates to one or more issuers of financial instruments or to one or more financial instruments, and which, if disclosed, may have a significant impact on the price of such financial instruments According to Article 13 of the German Securities Trading Law, insider information is special information about circumstances that is not publicly available, relates to one or more issuers of securities or concerns the securities themselves, and which, if disclosed, may have a significant impact on the securities market or on the market value of securities .

Until 2003, French legislation defined insider information as privileged information, unknown to the public, about the prospects or position of an issuer whose securities are traded on an organized market, or about the prospects for a change in the position of a financial instrument admitted to circulation on an organized market. Currently, French legislation contains a reference rule provided for in Article L465-1 of the French Monetary and Financial Code, according to which "insider information is recognized as insider information in the sense of paragraphs 1-4 of Article 7 Regulation No. 596/2014 of the EU Parliament and Council of April 16, 2014" .

Terms close to "insider information" should include "insider", "insider transaction/insider trading" as related categories . In the sense of EU law, insider trading is a situation in which a

person owns insider information and directly or indirectly uses it to acquire, at his own expense or at the expense of third parties, financial instruments or dispose of them. The current EU Securities Market Abuse Regulation specifically highlights the essential characteristic of insider trading, which is the unfair advantage derived from the possession of insider information to the detriment of third parties who do not possess such information, which consequently undermines the integrity of financial markets and investor confidence.

Thus, an insider means a natural or legal person who has access to insider information prior to its public disclosure. And insider trading is the actions of persons having access to insider information aimed at making transactions with securities using such insider information in order to obtain financial benefits.

Unlike insider trading, market manipulation involves a much wider range of actions. This fact significantly complicates the definition of the term "market manipulation".

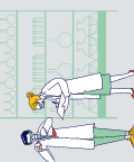
Despite the rather long history of the institution of manipulation in global financial markets, there is no single approach to the definition of the term "market manipulation". According to EU law, "market manipulation should be understood as transactions or trading operations that give or may give false or misleading signals regarding the supply, demand or price of financial instruments, or that set [...] the price of one or more financial instruments at an artificial level, or a level deviating from norms".

Consequently, the task of determining the forms of "market manipulation" is assigned to the courts and the doctrine.

The practice of the EU Court of Justice has developed the basic elements of the concept of "market manipulation". For example, in case No. C-445/09 of *IMS Securities*, the Court of Justice of the European Union determined that in order for the price of a financial instrument to be considered artificially fixed within the meaning of the Market Abuse Directive, it is not intended that it be held at such a level by some a certain period, it is enough just to fix the price at this level. In another judgment in Case No. C-248/11, the Court of Justice held that the Market Abuse Directive 2003 applied to all financial instruments admitted to trading on a regulated market in at least one EU Member State, or to an instrument in respect of who is requested to be admitted to trading on that market, whether or not the transaction is actually taking place on that market.

Thus, the practice of market manipulation is very diverse and extensive. It should be taken into account that only cases of recorded or proven market manipulation can be investigated, which only partially reflects the real situation in the global financial markets.

The legal regulation of combating abuses in the securities market in the European Union was formed gradually. This is due to the continuous growth and development of financial markets within the EU, globalization and integration of the financial sector as a whole, which at each stage showed the imperfection of the current legal regulation. We propose to divide the history of legal regulation of combating abuses in the securities market in the EU into three conditional stages: 1) the period 1977-1999; 2) the period 1999-2007; 3) the period of 2007 - to the present. Legal mechanisms for countering abuses in the securities market in EU



In the theory of EU law, the term "legal framework" is widely used and usually implies the Constituent Treaties of the EU. As a rule, the legal framework is the specific provisions of the Treaty on European Union (hereinafter "TEU") or the Treaty on the Functioning of the European Union (hereinafter "TFEU").

In the context of the topic under study, the legal foundations are article 114 TFEU and paragraph 2 article 83 TFEU. However, taking into account the fact that the TFEU norms are of a general nature and can be widely interpreted, we offer a more progressive approach, previously known to the science of European law. We consider it appropriate to include in the legal framework for countering abuses in the securities market special framework acts: Regulation 596/2014 on market abuses and Directive 2014/57 / EU on criminal liability for market abuses, without which the legal regulation of countering abuses in the securities market in the EU seems possible.

Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse. Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse.

In accordance with Article 1 of Regulation 596/2014, abuses in the securities market include three illegal practices: insider trading, illegal disclosure of insider information and market manipulation. Unlawful disclosure of insider information was defined as a separate type of market abuse due to the significance of the consequences of such practices, however, this does not mean that before Regulation 596/2014 this type of economic behavior was not regulated at the EU level. The European legislator, represented by its institutions, thus emphasizes that the disclosure of insider information may not be related to insider transactions, however, in itself it may be unlawful due to the violation of the interests of third parties.

As part of countering abuses in the securities market in the EU, the European Commission plays an important role, which has adopted a fairly large number of delegated and implementing acts in this area.

Art. 35 of Regulation 596/2014 contains a provision on the delegation of powers to the European Commission to adopt acts on certain individual issues contained in the text of the Regulations.

Delegated Regulation 2016/522 establishes that the actions of EU law in the field of combating abuses in the securities market do not apply to transactions, applications, operations of state bodies and central banks of third countries in accordance with their monetary management policies, exchange rates or public debt to the extent that they are carried out in the public interest. The list of third countries is closed: Australia, Brazil, Canada, China, Hong Kong, India, Japan, Mexico, Singapore, South Korea, Turkey, USA, and Switzerland.

The European Securities and Markets Authority is a key body involved in the implementation of legal mechanisms to combat abuses in the securities market. The ESMA is an independent body of the EU. The prerequisites for the establishment of the ESMA were the recommendations contained in the 2009 Larosiere Report, which called for the establishment of a European financial supervision system, which later also included the European Banking



Supervisory Authority and the European Insurance Supervisory Authority and non-state pension provision.

On January 1, 2011, the ESMA began its activities in accordance with the Regulation of the European Parliament and of the Council of November 24, 2010 1095/2010 on the establishment of the European Securities and Markets Authority, amending Decision 716/2009/EC and Commission Decision 2009 /77/EC.

This body replaced the Committee of European Securities Regulators, made up of EU bodies that exercised supervisory functions in the EU and provided advice to the European Commission.

The structure of the ESMA includes the Supervisory Board, which makes all political decisions and is responsible for approving the work of the ESMA, and the Board, which ensures the correct performance of the ESMA's duties. The Supervisory Board consists of the heads of 28 national authorized bodies responsible for the securities markets, non-voting members represented by representatives of the European Commission, the European Banking Supervisory Authority, the European Insurance and Private Pensions Supervisory Authority, the European Systemic Risk Board, and also observers from Iceland, Liechtenstein, Norway. The Board consists of the Head of the ESMA, representatives of national supervisory authorities and delegates of the European Commission.

### III. Legal mechanisms for countering abuses

in the securities market in EU

The mechanism of judicial protection for countering abuses in the securities market in the EU is implemented in three planes: at the level of the Court of Justice of the European Union (hereinafter referred to as the "EU Court"), at the level of the European Court of Human Rights (hereinafter referred to as the "ECtHR"), at the level of national courts EU member states.

The Court of Justice of the European Union has traditionally played an important role in interpreting and clarifying rules related to combating insider misuse and market manipulation. Within its competence, the EU Court considers the legality of the actions of the EU institutions, ensures that the EU Member States comply with the obligations arising from the founding treaties, interprets the EU legislation at the request of the national courts of the EU. In accordance with article 267 TFEU, the Court of Justice of the EU interprets and interprets the norms of EU law in the order of prejudicial requests received from national courts. The Court of Justice also considers complaints against EU Member States, EU institutions, agencies and bodies that have not fulfilled their obligations under EU law.

### Conclusion

The result of the relatively short history of legal regulation of countering abuses in the securities market in the EU was the formation of a well-developed EU legal framework in the field of combating the misuse of insider information and market manipulation.

The main objective of the European Union in the field of financial services is the effective functioning and integration of the EU single internal market. This goal dictated the need for a



large-scale reform of legal regulation in the field of countering abuses in the securities market, which took place in the period 2007-2018.

Based on the conducted research, it is necessary to draw the following conclusions.

Effective counteraction to abuses in the securities market in the EU is possible only with the functioning of special legal mechanisms. They are understood as a system of interrelated elements aimed at streamlining relations in the field of countering the misuse of insider information and market manipulation and guaranteeing the protection of the rights of securities market participants, which includes the level of legislative measures taken by EU institutions (the European Parliament, the Council of the EU, the European Commission), control and enforcement levels, within the framework of which are represented by judicial bodies (the EU Court of Justice, the European Court of Human Rights, national judicial authorities of the EU Member States) and bodies of special competence in the financial field (the European Securities and Markets Authority, financial regulatory authorities of the EU Member States). The legal mechanisms for countering abuses in the securities market used in the EU are closely interrelated, and effective counteraction to market abuses is possible only through the functioning of the entire system of legal mechanisms.

An important role in countering market abuse is played by the European Commission, which is authorized to adopt implementing and delegated EU acts, through which the EU legislator supplements, interprets and interprets the provisions of Regulation 596/2014. The European Commission, carrying out normative activities, fills the existing gaps in legal regulation. The significance of delegated and implementing acts of the European Commission lies in the fact that they contain detailed rules for all subjects of relations that develop in the process of countering market abuse: EU member states, financial platforms, securities market participants, issuers, third parties.

The above-mentioned features of the legal framework, legal regulation and legal mechanisms for countering abuses in the securities market in the EU indicate the construction of a fundamental functional system at the EU level, the purpose of which is still to deepen further integration of the EU financial sector and the effective operation of the EU single internal market.

#### **LIST OF ABBREVIATIONS**

TEU: - Treaty on European Union

TFEU: - Treaty on the Functioning of the European Union

EU: - European Union

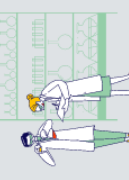
EC: - European Commission

EEC: - European Economic Community

ECHR: - European Convention on Human Rights

ESMA: - European Securities and Markets Authority

ECtHR: - European Court of Human Rights



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