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All eyes on market: abuse, misuse and insider dealing

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Abstract:

The meeting point between criminal law and economics gives rise to a number of challenging issues that the following study aims to explore. One of such issues is represented by the offenses related to ***market abuse****.*

Under the EU law definition (Directive 2003/6/CE on insider dealing and market manipulation[1], or market abuse) market abuse may arise in circumstances where financial investors have been unreasonably disadvantaged, directly or indirectly, by others who: (a) have used information which is not publicly available (insider dealing); (b) have distorted the price-setting mechanism of financial instruments; (c) have disseminated false or misleading information. Market abuse can thus be divided into two main aspects: (1) ***insider dealing****, where a person who has information not available to other investors makes use of that information for personal gain; (2)* ***market manipulation****, where a person knowingly gives out false or misleading information in order to influence the price of a share for personal gain.*

The present study aims at analyzing the offences related to capital markets, first from the perspective of the European law, subsequently from the point of view of national legislation (still imprecise), which is quite a mimetic transcript of the former. The analysis will be assorted with examples and comments of the most relevant case-law of the European and national courts. Fortunately, the former have come up with solutions that the Romanian judicial practice lacks or completely ignores.

Keywords: *capital market; market abuse; insider dealing; market manipulation (misuse); the Directive 2003/6/EC on insider dealing and market manipulation (market abuse), abbreviated as MAD; the Romanian Market Abuse Act no. 297/2004, abbreviated as MAA; the Romanian Authority of Financial Supervision (the AFS).*

1. Market abuse in EU law. General references

According to art. 12 of the Preamble to the Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation amounting to market abuse (hereinafter MAD), market abuse consists of two main components, namely *insider dealing* and *market manipulation.*

Both illegal market operations mentioned above prevent the full and proper market transparency, which is a trading prerequisite for all economic actors in integrated financial markets.

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[1] Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), is available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l24035. It has been amended by Directive 2008/26/EC of the European Parliament and of the Council of 11 March 2008 and by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010.

Insider dealing is committed when a person who has information not available to other investors (i.e. *inside or privileged/confidential information*) makes use of that information for personal gain.

At this point, it is recommendable to define the concept of "inside information", in order to understand the *modus operandi* of the economic offender. Thus, inside information is any information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments (art. 16 of the MAD Preamble). Information which could have a significant effect on the evolution and forming of the prices of a regulated market as such could be considered as information which indirectly relates to one or more issuers of financial instruments or to one or more related derivative financial instruments. Also, in the case of persons charged with the execution of orders concerning financial instruments, "inside information" refers to information conveyed by a client and related to the client's pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments [art. 1 para. (2) of the MAD].

More clearly, use of inside information can consist, for example, in the acquisition or disposal of financial instruments by a person who knows, or should have known, that the information possessed is inside information. In this respect, the competent national authorities that supervise the market transactions should assess what an average and reasonable person would know or should have known in the circumstances.

It is to be noticed that the mere fact that market-makers, institutions authorized to act as counterparties or persons authorized to execute orders on behalf of third parties with inside information confine themselves to pursuing their legitimate business of buying or selling financial instruments or, to carrying out an order dutifully, should not in itself be deemed to constitute unlawful use of inside information.

The difference between what constitutes *legitimate* or *illegitimate use of inside information* is very sensitive, therefore it is difficult to prove that an offense of market abuse (under the form of insider dealing) was committed.

This is due to the fact that a person (usually a professional, experienced trader) who concludes transactions or issues orders to trade which are constitutive of market manipulation may sustain that his reasons for concluding such transactions or issuing orders to trade were legitimate and that the transactions and orders to trade were in conformity with accepted practice on the regulated market concerned. A sanction could still be imposed if the competent authority established that there was another, illegitimate, reason behind these transactions or orders to trade.

EU law provides that having access to inside information relating to another company and using it in the context of a public take-over bid for the purpose of gaining control of that company or proposing a merger with that company should not in itself be deemed to constitute insider dealing (art. 29 of the MAD Preamble). Since the acquisition or disposal of financial instruments necessarily involves a prior decision to acquire or dispose taken by the person who undertakes one or other of these operations, the carrying out of this acquisition or disposal should not be deemed in itself to constitute the use of inside information.

When it comes to *market manipulation*, it may consist of the following illegal activities performed on the market (art. 2 of the MAD):

(a) transactions or orders to trade:

- which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or

- which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level, unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned;

(b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance;

(c) dissemination of information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

In respect of journalists when they act in their professional capacity such dissemination of information is to be assessed by taking into account the rules governing their profession, unless those persons derive, directly or indirectly, a personal advantage or profit from the dissemination of the information referred to above.

More precisely, the following examples are derived from the core definition given in points (a), (b) and (c) above:

- conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions,

- the buying or selling of financial instruments at the close of the market with the effect of misleading investors acting on the basis of closing prices,

- taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument (or indirectly about its issuer) while having previously taken positions on that financial instrument and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

2. The European case-law on market abuse

Case of *Soros vs. France*[2]

Although the object of market abuse can be represented by complex financial instruments, an analysis of both European and national case-law leads to the conclusion that securities (shares) are most frequently used to commit market abuse offenses.

In what follows, the article will focus on probably the most renowned case of market abuse that was referred to the European Court of Human Rights, in which the claimant alleged the violation of article 7 of the European Convention on Human Rights, due to the lack of clarity and the unpredictability of the French legislation in defining the so-called *délit d'initié* (insider dealing).

[2] ECHR, *Soros vs. France*, application no. 50.425/2006, a judgment delivered on 06.10.2011, which became final on 08.03.2012. It is available in French at http://hudoc.echr.coe.int/eng?i=001-106659#{%22itemid%22:[%22001-106659%22]}.

As part of its program to shed state-owned companies, the French government sold the Société Générale S.A. France in June 1987 at 407 French francs (then 63 dollars) a share.

After a stock market crash a year later, the shares had fallen to the value of 260 francs[3]. In September 1988, the French financier Georges Pebereau sounded out investors including an adviser to George Soros about joining him in building a stake in Société Générale.

While Soros declined to take part in that operation, that month his Quantum Endowment Fund spent 50 million dollars to buy 160,000 shares of Société Générale as well as shares in three other companies that the French government had sold and whose stocks had tumbled.

Pebereau's takeover effort failed when Société Générale management refused and shares surged. Soros had sold off the stake, after he became convinced that the attempt was driven by the desire of a newly elected French government to place allies on the boards of companies that the previous government had sold.

Soros, best known for making 1 billion dollars in 1992 by betting that the Bank of England would be forced to devalue the pound, turned to the European Court of Human Rights in December 2006, after his appeal was dismissed by the Cour de Cassation, France's highest court, which quashed the fine while upholding the conviction pronounced by French inferior courts.

The claimant underlined the unpredictability of French legal dispositions at the moment when he committed the alleged insider dealing, insisting that he did not have a professional connection with the company in question (the French bank) and did not fall within the category of administrators, auditors, or other persons in the management of banking entities, and that, moreover, the inside information that was used had not been obtained in the course of professional duties. In other words, the inside information did not derive from the target company itself (or its employees, administrators, etc.) but from an "aggressor", a third party who intended to "attack" the company at the stock exchange, without the company even being aware of this.

Consequently, despite the requirements imposed by the French Ordinance no. 67-833 of 28th September 1967, there was no contractual or professional relationship between Soros and the company in question. However, the French courts considered that the insider dealing offense did not imply that the "secondary insiders" (initiés secondaires) may have some contractual connection with the issuer of valuable stocks, and that it was enough for the claimant to come across inside information in the exercise of his duties, in order to be considered a secondary insider.

The Strasbourg, France-based court stated that France didn't violate Soros's rights in punishing him criminally for trading inside information about Société Générale S.A., in spite of the market regulator's[4] conclusion that its rules were unclear. Therefore, there was no violation of article 7 of the European Convention on Human Rights.

The European Court argued that "Soros was a famous institutional investor, well-known to the business community and a participant in major financial projects" also noting that "As a result of his status and experience, he could not have been unaware that his decision to invest" risked violating insider-trading laws, and given "there had been no comparable precedent, he should have been particularly prudent" (paragraph 59 of the judgment).

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[3] Information available at www.bloomberg.com.

[4] In French it is called Commission des Opérations de Bourse (COB).

Defending his client before the European court, Ron Soffer, Soros's lawyer sustained that "It is inconceivable to expect that the citizen has a better understanding of the law than the authority in charge" of market regulation". He also stated that "The opinion of the regulatory authority is an irrebuttable presumption as to the lack of clarity of the law."[5]

The case is assorted by a famous dissenting opinion of judges Villiger, Yudkivska and Nussberger, who, by opposition to the majority opinion (the non-violation of article 7 was ruled by four votes to three) concluded that "In our opinion, the French regulations in force at that moment (i.e. when Soros committed the so-called *délit d'initié*) were unusefully imprecise and vague: they did not distinguish clearly between legal and illegal activities and did not adequately protect individuals from arbitrary interferences. Therefore, the criminal conviction of the claimant must be regarded as a violation of Article 7 of the Convention".

The case of Soros still raises several questions as to the clear and predictable character of the law, especially of the criminal law.

3. Market abuse in the Romanian legislation

Until quite recently, market abuse used to be a truly exotic topic in the area of business criminal law, due to several reasons. A first reason is that in Romania capital market (commonly known as the stock exchange) can still be qualified as an "emerging market" leaving many issues connected to it in the deep shadows of the law. Another reason is that even to legal experts an area such as capital market is quite untouchable, being considered that it belongs exclusively to economists.

All offences related to capital market, mainly market abuse, fall into the category of *white-collar crimes*, therefore they display the same features, namely the same *modus operandi*, the same type of specialized authors (financial experts, including legal entities), the same *mens rea* (criminal intent), with perhaps one notable exception, namely that, unlike other white-collar crimes, market abuse offenses usually generate huge profit to the offender.

When it comes to the subject-matter (object) of the offence of market abuse, it can be any financial instrument, but the case-law has shown that in practice abusive behaviors make more use of securities[6] (equity securities, e.g. common stocks/shares) and less use of complex financial instruments.

In national law, market abuse is sanctioned by the representative special law, namely *Act no. 297/2004 on capital market*[7] (the market abuse act, hereinafter the MAA), and may entail a dual liability, both criminal and contravention-based (in the Romanian legal system, contraventions are petty violations of the law, usually punishable by a fine).

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[5] Information available at www.bloomberg.com.

[6] In the fourth trimester of the year 2014, equities were the financial instruments to be mostly subject to transactions on national markets, amounting to 94,27% of the total of financial instruments subject to transactions on the Bucharest Stock Exchange (BVB), a report available at http://wwwasfromania.ro/informatii-publice/media/arhiva/3542-evolutia-pietei-de-capital-din-romania-la-31-12-2014.

[7] The act in question was published in the Official Journal no. 571 of 29.06.2004. Said Act was recently amended, on the 12th of January, 2015.

Perhaps much more than in the case of other offences, which are deeply anchored into the tradition of Romanian criminal law, market abuse has shaped out its content by mimetically transposing the substance of the European directives in the matter.

Thus, according to article 279 letter b) in alliance with article 244-245 of the MAA, market abuse refers to the following criminally sanctioned offences:

(a) insider dealing (buying or selling of securities by a person who has access to privileged, non-public information about securities), consisting in the act of a person who detains privileged information to use that information in order to acquire or dispose, on his/her behalf or on behalf of a third person, directly or indirectly, of financial instruments to which that information relates.

- *other frauds connected to insider dealing*, namely the revealing of privileged information to other persons (except for the case when the revealing was made in the normal scope of the exercise of their employment) or the recommendation made to a person, on the basis of privileged information, to acquire or dispose of financial instruments to which that information relates.

(b) capital market manipulation, which may consist of any of the following:

- *transactions or orders to trade* which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level;

- *transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance*;

- *dissemination of information through the media*, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumors and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

The provisions of the MAA were sharply criticized, especially from the perspective of the lack of predictability of its criminal norms. Thus, a plea of unconstitutionality was raised against the dispositions of several articles, but especially against article 279 para. (1), which was deemed to generate confusion as to both the offense that is provided by the law, and to the sanction that is imposed for its commission. Article 279 was considered to be vague and imprecise when it comes to its use of the expression "inside information", which may refer to two similar modes of committing insider dealing: on the one hand the *use* of inside information (art. 245), on the other hand the *revealing* of inside information (art. 246).

Consequently, such provisions were interpreted to be contrary to art. 1 para. (5) of the Romanian Constitution which consecrates the principle of the binding force of the law.

The Romanian Constitutional Court dismissed these arguments and eventually stated that the MAA is constitutional, because the conduct to be criminally sanctioned is clearly set out in the law, it leads to no confusion or misinterpretation and is thus in conformity with both the constitutional provisions of art. 23 para. (12) of the Romanian Constitution – no punishment without the law – and the counterpart conventional provisions of art. 7 in the European Convention[8].

[8] Romanian Constitutional Court, Decision no. 53/2012 published in the Official Journal no. 234 of 06.04.2012.

3.1. Criminal vs. civil liability for market abuse. The powers of the Romanian Authority of Financial Supervision (AFS)

The coexistence of criminal and contravention-based (civil) liability in case of market abuse is not an invention of national law, but such duality of sanctions actually exists in most of the EU Member-States legislation.

This amounts to the fact that within the same legal act, market abuse can be interpreted either as a civil contravention or as a criminal offence and sanctioned accordingly.

The first text referring to liability incurred for a civil contravention is article 272 para. (2) letter c) of the MAA, stating that 'there shall constitute a civil contravention the breach of the provisions set out in articles 245-248 on market abuse'. The second text concerning liability incurred for a criminal offence is article 279 letter b) of the MAA, which incriminates the two components of market abuse, namely 'the commission of acts provided under articles 245-248 shall constitute an offence'.

The only criterion identified by national legislation in order to distinguish between the situations when a certain act may be considered a civil contravention or a criminal offense has been the *mens rea* with which the act in question was committed.

Therefore, if market abuse is committed with *intent,* judicial authorities will probably establish that *an offence* was committed and the author will incur criminal liability. On the contrary, if market abuse is committed *by recklessness or negligence*, the author is deemed to have committed a *civil contravention*.

This criterion has been contradicted precisely by the Romanian Authority of Financial Supervision (hereinafter the AFS), which was not at all reluctant about inflicting civil (contravention-related) penalties for the intentional commission of market abuse, based on art. 272 of the MAA.

Effectively, the role of the AFS is overwhelming, since it is authorized to report a case of market abuse to the investigation authorities immediately after it discovered its commission. The AFS has taken over and re-organized all the prerogatives of the Romanian Commission of Securities.

The AFS has a power of *de facto* incrimination of market abuse offenses[9]. This means that, at least from the perspective of the factual situation, it has powers of discovering and reporting acts of market abuse in the initial stage of a criminal trial. Such power of *de facto* incrimination is recognized to this authority under art. 17 of the Status of the National Commission of Securities, according to which "in case of breach of the laws governing capital markets, the AFS may order the reporting to criminal investigation authorities when the act committed constitutes an offense, pursuant to specific regulations, or the infliction of civil sanctions". This provision must be completed with art. 1 para. (3) in the MAA, in accordance to which "the AFS is the authority competent to apply the provisions of the present act", and, respectively, with art. 254 para. (1), which states that the only authority competent to assure application of the dispositions of the present section (namely, the market abuse section), is the AFS".

The chronology of events could thus be the following: the AFS detects a dubious conduct on the capital market, considering that it could amount to market abuse. It then starts its own investigation to conclude whether the market abuse act was committed by recklessness or negligence – a case in which the AFS itself can impose a civil sanction

[9] Doris Alina Serban, *Market Abuse Offenses*, PhD thesis defended at the Faculty of Law, Babes-Bolyai University of Cluj-Napoca, p. 483. The PhD thesis is about to be published.

upon the offender – or if the act constitutes an intentional market abuse, when the AFS will refer the case to criminal investigation authorities.

The sensitive issue in this context is the situation where the AFS transfers its own investigation file and collected evidence to the criminal investigation authorities, since its findings could be used in a criminal trial against the accused. In practice, the AFS can extend its own administrative inquiry until it obtains all the relevant information about the alleged offense.

Then it can convey its administrative file to judicial authorities (prosecutor and judicial police), who can use it to initiate criminal proceedings.

The administrative proceedings do not imply respect of all procedural guarantees which are required in the case of criminal proceedings therefore an administrative/civil "accusation" could easily turn into a criminal accusation, without the accused benefitting from minimal procedural safeguards. Thus, the right of the accused to a future fair criminal trial could be substantially affected[10].

The activity and prerogatives of the AFS must be accordingly amended for the future by the Romanian lawmaker, in order to compel the AFS to guarantee all procedural rights that criminal law has provided for the accused.

This is all the more necessary as the AFS enjoys very wide powers in carrying out its own investigative procedure against a person suspected of committing an act of market abuse, such as (art. 255 of the MAA): a) access to any type of documents or the possibility to receive copies of the former; b) request of information from any person, including persons who are successively involved in issuing orders to trade or conclude transactions on the market, as well as their superiors; in such a case, the AFS representative is entitled to interrogate the person in question; c) conduct investigations at the place where the offense is deemed to have occurred; d) request for the transcripts of telephone tapping of the issuing of orders to trade or other information; e) suspend transactions involving financial instruments etc.

When confronted to all these endless prerogatives of investigation recognized in favor of the AFS, the accused person has no counterbalancing guarantees.

The Romanian lawmaker should perhaps adopt the British system solution, by which the authority that supervises the capital market has also criminal investigation powers, expressly provided by the law, which, of course, respect all the rights of the accused. Since a clear division of powers between the Romanian AFS and criminal investigation authorities has not been provided yet, the British idea seems one that is worth considering.

In addition to this tricky problem there should be mentioned another issue that needs to be solved, namely the fact that the Romanian MAA still provides for the possibility of a parallel application of the two types of sanctions, both civil and criminal, which may lead to a violation of the *ne bis in idem* principle.

3.2. National case-law on market abuse

The *Rompetrol* case

In 1998 the Romanian businessman Dinu Patriciu bought from the Romanian state the oil company Rompetrol, in exchange of the huge amount of 85 million dollars. He

[10] For further details as to the breach of procedural guarantees by reports drawn up by administrative authorities, such as the AFS, see Gheorghiță Mateuț, Diana Ionescu: *Inadmissibility of Using as Evidence in a Criminal Trial the Reports and Info Notes Obtained during Proceedings of Administrative Control,* Criminal Law Writings no. 1/2005.

contributed to the transformation of the formerly state-owned company into a prosperous oil services company, ranked in the top positions among the 25 oil companies in the European Union. In 2007, Patriciu sold 75% of the 80% shares he owned in the Rompetrol Holding to a Kazakhstan based, state-owned company, KazMunaiGaz.

On the 22nd March 2005 criminal investigations started against Patriciu and on the 8th of September 2006 he was charged on indictment, alongside with 11 other defendants, for several counts of offenses among which money laundering, embezzlement, capital market manipulation and insider dealing.

The prosecutor charged Patriciu on indictment mainly for *capital market abuse* under the form of *market manipulation* consisting of transactions or orders to trade which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level (art. 244 para. 5 letter a of Act. no. 297/2004 cited above).

Patriciu was also indicted on the count of capital market abuse under the form of *insider dealing*, due to his revealing to a friend, the liberal senator Sorin Roşca Stănescu, privileged information as to his intention to dispose of the shares of the Rompetrol Rafinare (refinery) or RRC (art. 245 para. 1 of Act no. 297/2004), whose value had increased a lot. A former minister of communications, Sorin Pantea was also charged on indictment for conspiracy to market abuse.

According to the prosecutor's indictment, "in the period between 07.04.2004 – 20.04.2004, the defendants D.P., S.P. and S.R.S. have conceived, coordinated and applied common strategies and methods of trading on behalf of the RRC symbol (a.n. a refinery belonging to the Rompetrol holding), taking concerted action in order to establish and maintain the trading price of shares at a level previously determined and to control the evolution of such price as to respond to the financial and commercial interests of the Rompetrol Holding and the persons connected to this company. During this period, with the aid of the broker S.C., by using the bank accounts of natural and legal persons related to this group of interests, there took place coordinated and manipulative operations on the price of RRC shares, consisting of transactions and orders to trade on a large amount of RRC shares that the members of the group disposed of"[11].

One of the conditions that entail applicability of the incriminating norm is that the financial instruments which are the object of the abusive conduct should be allowed to be used in transactions on a regulated market, or there should exist a demand (application) to allow such instruments to be used in transactions.

Allowing a financial instrument to be used in transactions means, in more accessible terms, the listing of that instrument at the stock exchange, i.e. that instrument will go public (in the British slang).

The procedure of allowing a financial instrument to be used in transactions, i.e. to go public, implies several stages that need to be strictly observed, pursuant to the law.

In practice, this staging may create controversial situations – for instance during the period of time elapsed between the filing of an application to go public and the effective moment when the financial instrument goes public (is actually listed at the stock exchange) any person may commit the offense of market manipulation under the

[11] The indictment was drawn up by the DIICOT on the 7th of September 2006 and is available at www.diicot.ro.

form of disseminating misleading information (in order to ensure the success of the initial offer) as to the financial instrument that is about to be listed.

That is why in the Rompetrol case the prosecution considered that the inside information was used prior to the effective moment when the value of shares went public, thus breaching the compulsory stages provided by the law, in other words "the information related to the terms and conditions under which the conclusion of transactions would take place in the accounts controlled by the Rompetrol group, on the very first day the shares are subject to trading, represents use of inside (privileged) information, that could influence the price or other aspects of the transactions with securities of the issuer or the affiliated persons".

On the 28th of August 2012, the Bucharest county court (tribunal) acquitted the businessman for the offense of market abuse, under its both forms, namely market manipulation and insider dealing. When it comes to the first modality of committing the offense, the court essentially stated that "The court considers that the act of the defendant, who, acting as a representative of the Rompetrol group, organized and coordinated the trading of shares issued by the RRC with the aim of securing an abnormal level of the starting price of transactions (on April 7th, 2004) and then ordered and organized the posting into the electronic system of the Bucharest Stock Exchange of some sale and purchase orders, thus giving misleading signals to the other participants to transactions as regards the demand for, supply of and value of shares, does not constitute the offense of market manipulation in a continued form, since it lacks the constituents of the offense".

The county court also acquitted Patriciu for the commission of insider dealing. The reason asserted by the court this time was that the premise situation of the offense was missing, as well as the *actus reus* under the form of insider dealing.

The former senator Sorin Roşca Stănescu was also acquitted by the first instance court, alongside with all the other participants to the alleged offense.

The decision of the Bucharest county court was appealed by the prosecutor.

The Bucharest Court of Appeal, on re-trying the case, sentenced the ex-senator Sorin Roşca Stănescu to the penalty of imprisonment of two years and four months for the offense of market abuse under the form of insider dealing. The former minister of communications, Sorin Pantea was also sentenced to a penalty of imprisonment of two years and eight months for conspiracy to insider dealing. In the case of Dinu Patriciu, the court ruled termination of criminal proceedings, due to the death of the businessman.

The decision of the Bucharest Court of Appeal is now definitive.

However, the case still raises questions as to the ongoing defense arguments, namely that the criminal liability for the market abuse offenses that were allegedly committed is now subject to the statute of limitations in criminal matters.

4. Closing remarks

Dealing with a topic such as capital market offenses is in itself a great challenge.

The challenge derives from a double difficulty, on the one hand the comprehension of the real nature and contents of such offenses requires substantial economic knowledge background, on the other hand, the legal analysis of these criminal acts must be done in a comparative manner, the only approach which allows for the best solutions at the level of national legislation and case-law.

The present study has made an attempt at identifying and discussing a few sensitive issues related to market abuse, under its two forms, insider dealing and market manipulation (misuse). Such issues consist of the lack of predictability of the legal provisions on market abuse, both at the level of the EU law and the domestic legislation, which leads to controversial practice; the duality of criminal and civil liability that may be incurred for very similar acts of market abuse; the breach of the *ne bis in idem* principle; the too wide powers of the national authorities of financial supervision which can carry out their own investigations, while the evidence of such inquiries may be used in a criminal trial, and so on.

The topic still remains open to further legal and economic debate, since capital market offenses continue to raise endless questions to experts, due to the fast evolution of other forms of contemporary white-collar crime.