Civil & Legal Sciences

Rosa, J Civil Legal Sci 2015, 4:1
http://dx.doi.org/10.4172/2169-0170.1000137

Review Article Open Access

Insider Trading in European Private International Law

Gloria Esteban de la Rosa*

Professor of Private International Law, University of Jaén, Spain

Introduction

The Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse directive) is part of the process of preparing new rules in financial matters for the European stock market. However, the MAD is hereby repealed after the entry into force of the Regulation (EU) nº 596/2014 of the European Parliament and of the Council, of 16 April 2014, on market abuse Te new Regulation tray to create an uniform set of rules about market abuse in Europe. Notwithstanding, European Private international Law has to give the solution to the cases that take place inside the European Union.

The stock market allows the allocation of savings to the investment by carrying out businesses on marketable securities, which take place in the primary market (or issue market) and secondary market (or aftermarket). Specially, between the investor (saver) and the issuers (i.e., the individuals who appeal to savings from the public by the public request of savings). In order to adjust a reasonable (fair) price to the financial instruments, most laws prohibit from carrying out financial operations with privileged (and sensitive) information which has not been made public (Material Non Public Information).

This is because the behavior of the insider alters the informational efficiency, i.e., the correct allocation of savings to the investment. Insider trading is the negotiation in stock market misusing privileged information by people who are in exclusive position to access to such information, should be informed the market as a "relevant fact", except in an ongoing operation, on which a legitimate interest to keep reserved is held. They are called corporate insiders. The determination of the legal system of the international financial operations with privileged information presents certain difficulties, due the absence of a common regulation, also in the European Union.

Stock markets in the European Union have seen significant changes, fundamentally arising out of the strong competition from foreign markets and, in particular, from New York and Tokyo stock exchanges [1,2]. This has created interest in carrying out a process of deregulation and neo-regulation, at a moment when a competition between markets has been created to attract the negotiation of the same values [3].

As it has been said before, the Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse directive) is part of the process of preparing new rules in financial matters for the stock market, proposed by the Committee of Wise Men which is chaired by Alexander Lamfalussy, also assumed for banking and insurance sectors [4]. Regarding its scope of application, this includes operations about financial instruments that are quoted in at least a regulated market of a member State of the European Union [5].

However, the MAD is hereby repealed after the entry into force of the Regulation (EU) nº 596/2014 of the European Parliament and of the Council, of 16 April 2014, on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC [6]. The Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) has also been approved.

Market protected from the behavior of the insider

It is crucial to avoid carrying operations with informative advantage for the correct operation of the stock market that, moreover, will be able to keep the confidence of investors. And for that, in principle, the insider have to conform his/her conduct to the existing rules in the market in which makes the acquisition or sale of securities, i.e., the market where such securities are quoted, regardless of location where operation is carried out [7].

The anti-insider trading legislation seeks to avoid that the insider operates with (informative) advantage [8]. If the execution of financial operations with advantage is avoided, it has an –indirect- impact in the achievement of information symmetry. What it is achieved through the "rules of conduct", which should not be confused with codes of ethics, by making (the first ones) authentic duties whose non-compliance implies a set of sanctions (administrative and criminal).

The anti-insider trading legislation aims to safeguard the stock market integrity and therefore the damage occurs on the market (and not to a particular investor who operates in such market). Therefore, anti-insider trading rules are applied territorially in accordance with a unilateral criterion of stock market regulation, but they are modified with the concrete and specific (material) objective that fulfill [8].

In this sense, article 10 of the MAD uses two criteria to indicate the jurisdiction of the administrative authorities [5]. Under the activity criterion, Spanish authorities monitor behaviors that are against the market integrity which take place in the Spanish territory, despite the fact that the securities are not quoted in a Spanish market. According to the effect criterion, Spanish authorities have jurisdiction to monitor behaviors that are against the market integrity which take place in the Spanish territory, in the case of financial instruments which are admitted to quotation in a Spanish market [7].

This same pattern is followed by the art. 22 of the Regulation 596/2014, but it is also applied when the action of the insider takes place in the territory of a member State of the EU, leaving open the possibility that judicial authorities take part.

References

1. Baltic CV (1991) The next step in insider trading regulation: International

***Corresponding author:** Gloria Esteban de la Rosa, Professor of Private International Law, University of Jaén, Spain, Tel: 34 953 212 118; E-mail: gesteban@ujaen.es

Received January 15, 2015; **Accepted** January 17, 2015; **Published** January 30, 2015

Citation: Rosa GE (2015) Insider Trading in European Private International Law. J Civil Legal Sci 4: 137. doi:10.4172/2169-0170.1000137

Cooperative Efforts in the Global Securities market, Law and Policy in International Business 23: 167-171.

2. Arner DN (2001) Globalisation of Financial Markets: An international Passport for Securities Offerings, Int. L., 35: 1543-1588.
3. AAVV (2000) C*orporations, Capital Markets and Business in the Law. Liber Amicorum Richard M. Buxbaum*, Kluwer Law International, Londres.
4. Final Report on the Committee of wise men on the regulation of European securities Markets (Chairman A. Lamfalussy), Bruselas, 15th February 2001.
5. Warren MG (1991), The Regulation on Insider Trading in the European Community, Washington and Lee Law Review 48: 1037-1051.
6. Report of the High-Level Group on Financial Supervision in the EU, Brussels, 25th February 2009 p. 23.
7. Garcimartín Alférez FJ (2007) Cross-border listed companies Recueil des Cours 328: 74.
8. Becht TM (2003) European Disclosure for the New Millennium, in J. Hopt & E. Wymeersch (eds.), *Capital Markets and Company Law*, Oxford: Oxford University Press 87.