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OFFENCE OF INSIDER TRADING (UNLAWFUL USE OF CONFIDENTIAL/PRIVILEGED INFORMATION)

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Abstract
To guarantee transparency and equal treatment in dealings, the Algerian legislator requires companies issuing transferable securities to inform the public of any information relating to securities to be traded, pursuant to Article 16 of Law No. 03-04 on the Stock Exchange, amended and supplemented by Legislative Decree No. 93-10. The Algerian legislator also grants the Committee for the Organisation and Supervision of Stock Exchange Operations the power to verify that this information complies with legislative and regulatory provisions.
Given the importance of the obligation to disclose information in order to provide necessary protection to investors/savers, the Algerian legislator, like other legislators, provides penalties in the event of a breach. Failure to provide correct and accurate information or use of privileged information affecting the trading process of transferable securities is considered an offence punishable under Article 60 of Legislative Decree No. 93-10, as amended and supplemented.

Keywords: privileged information, obligation to disclose, transferable securities exchange, misdemeanour (insider trading).

Introduction

The Committee for the Organisation and Supervision of Stock Exchange Operations is responsible for regulating the transferable securities market and ensuring investor protection by maintaining the proper functioning of the financial market and ensuring transparency in dealings to safeguard savings.
Transparency in dealings refers to the following:
'The commitment of the issuers of securities to provide accurate and non-misleading information and data concerning their activities, and to make this information available to shareholders, investors and the bodies responsible for overseeing and monitoring the stock exchange, in a manner consistent with internationally recognised accounting standards. This information must not be withheld from these parties, unless its disclosure would prejudice the interests of the issuing entity, in which case it may be kept confidential.[1]'
Pursuant to Article 35 of Legislative Decree No. 93-10 relating to the stock exchange, the Algerian legislator requires respect for the principle of transparency in dealings[2]. Under this provision, the Committee must ensure that companies issuing transferable securities publish the necessary information in compliance with legislative and regulatory requirements. Moreover, where appropriate, the committee may request the publication of corrigenda/updates if it notes that the published documents are incomplete. The Algerian legislator has also granted issuers several means of fulfilling their obligation to inform the public, including the information memorandum, information statement, annual reports and semi-annual reports[3].

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[1]- djamel Abd al-Aziz Al-othman, Disclosure and Transparency in Information Related to Listed Securities on the Stock Exchange: A Comparative Study, Al-Nahda Al-Arabiya House, Cairo, 2010, p. 126.
[2]- Legislative Decree No. 93-10, dated 23 May 1993, relating to the stock exchange of transferablesecurities, as amended and supplemented. Official Gazette, Issue No. 34, issued on 23 May 1993, p. 4.
[3]- Kahalerras, Samah, 'The Legal System of Participants in the Stock Exchange of TransferableSecurities:BetweenRegulating and Promoting the Financial Market*, PhD thesis, specialisation: Business Law, Faculty of Law and Political Science, University 8 May 1945 – Guelma, academicyear 2022–2023, p. 214.

Given the importance of the obligation to disclose information in order to provide necessary protection for investors and ensure transparency in dealings by providing correct and accurate information to help them make investment decisions, we find that Algerian legislation, like other comparable legislation, considers non-compliance with this obligation to be a securities market offence affecting the information itself.

However, it permits the issuer of transferable securities to postpone the disclosure of significant information under its own responsibility, provided it can ensure confidentiality, if it deems that publishing it would cause serious harm to its interests. This postponement is permitted until the circumstances requiring such confidentiality cease. Pursuant to Article 3 of Regulation No. 2000-02[4], 'the issuer may defer the publication of significant information under its own responsibility if it deems that its disclosure would cause it serious harm; once the circumstances requiring such confidentiality have ceased, the issuer must publish the information'.

In such a case, the disclosure of this information is considered an offence punishable under the offence of "insider trading" (the exploitation of privileged or insider information). This offence is defined in Article 60 of Legislative Decree No. 93-10 relating to the stock exchange, as enacted by the Algerian legislator. The offence is defined as the disclosure of privileged information by any person while exercising their profession or duties, or carrying out operations in the market directly or indirectly on the basis of such information. This position was further confirmed by the 2003 amendment under Article 19 of Law No. 03-04, which added the offence of publishing false or misleading information alongside insider trading, as well as performing manoeuvres intended to obstruct the orderly functioning of the financial market by misleading others. Those guilty of such offences are subject to the same penalties prescribed for insider trading.

In contrast, French legislation classifies these acts as "insider trading misdemeanour".

The importance of our research topic stems from our study of the legal provisions that criminalise the disclosure of privileged information on the stock exchange, affecting investors' decisions when trading transferable securities.

The objective of our research paper is to highlight how the Algerian legislator addresses insider trading (the exploitation of privileged information) and the penalties imposed for it. Accordingly, we raise the following research question:

To what extent have legal provisions governing transactions on the stock exchange been enacted by the Algerian legislator to sufficiently limit insider trading (the exploitation of privileged information)?

To answer this question, we have divided our study into two chapters:

Chapter One: The substantive framework of the offence of exploiting privileged (insider) information.

Chapter Two: The procedural framework of the offence of exploiting privileged (insider) information.

Chapter One: The Substantive Framework of the Offence of Insider Trading (Privileged-Information Exploitation)

Given the importance of information in the transferable securities market, the Algerian legislator requires that transferable securities issuing companies publish all necessary information that complies with legislative and regulatory provisions, in order to guarantee transparency in dealings and protect investors' savings. This requirement is enforced by the authority responsible for stock exchange regulations[5].

Most comparative legislation recognises the issuer's obligation to inform the public about the issuance process by providing all relevant data and information, provided that it is accurate, clear and complete[6]. This is reflected in Algerian law, specifically in Article 16 of Law No. 03-04[7] (as amended

[4]- Regulation No. 2000-02, issued by the Committee for the Regulation and Supervision of Stock Exchange Operations on 20 January 2000, relating to the information that must bepublished by institutions whosesecurities are listed on the stock exchange. Official Gazette, Issue No. 50, 16 August 2000, p. 16.

[5]- Article 35 of Legislative Decree No. 93-10 relating to the transferablesecurities stock exchange mentionedabove.

[6]- RazikaTeghribt, 'The Legal System of Transferable Securities', PhD dissertation in Law, specialisation: General Business Law, Faculty of Law and Political Science, University of Mouloud Mammeri – Tizi Ouzou, dated 6 February 2019, p. 109.

and supplemented by the relevant provisions of Legislative Decree No. 93-10), which obliges the issuing company to inform the public of any developments that could impact the company.

This obligation to disclose information is essential for achieving both the principle of transparency in dealings and the principle of equal treatment[8]. Dealing based on material information that has not been disclosed is therefore considered an unlawful practice on the stock exchange and an infringement of these two principles. Consequently, many comparative legal systems have sought to address this type of misconduct. French legal doctrine refers to it as the "insider trading misdemeanour" (délitd'initié)[9]. The Algerian legislator, in turn, provides for it in Article 60 of Legislative Decree No. 93-10 under the term 'the offence of exploiting privileged information'.

Based on the foregoing, it is necessary to define the conceptual framework of insider trading (Section/Chapter Requirement One) and identify the elements required for its occurrence (Section/Chapter Requirement Two).

Section/requirement one: definition of the offence of exploiting privileged (insider) information

Exploiting privileged information is one of the most common offences in the securities market. It has evolved significantly across various comparative legislations, particularly French legislation[10].

In an effort to combat this offence, comparative legislation — along with Algerian legislation — has sought to define the conditions for its commission (first subsection), as well as the status and character of the perpetrator (second subsection).

First Subsection: Determining the Concept of the Offence of Exploiting Privileged Information

Scholarly opinions and comparative legislation have differed in their attempts to provide a precise and clear definition of privileged (insider) information.

The French market authority, the Commission des Opérations de Bourse (COB), defined privileged information as:

'specific, non-public information concerning one or more issuers of securities which has been disseminated and which has an impact on the price of the security or the financial instrument obtained through it'[11].

Danish law also defines privileged information as:

'non-disclosed information that affects the prices of securities'[12].

Furthermore, the European Union defined it in Article 1 as:

'specific information which has not been made public and which relates directly or indirectly to one or more issuers of securities, and which, if made public, is likely to have a clear effect on the prices of the relevant securities or on the prices of related securities.[13]'

Privileged information has also been defined as:

'Information concerning the issuing company of a security that is not disclosed to everyone or the market, and which, if disclosed, would clearly or substantially affect the price of that company's security — or could reasonably be considered as such by an ordinary investor.[14]'

7- Law No. 03-04, dated 17 February 2003, amending and supplementingLegislative Decree No. 93-10 relating to the stock exchange of transferablesecurities. Official Gazette, Issue No. 11, issued on 13 February 2003, p. 20.

8- Kahalerras Samah, previousreference, p. 212.

9- Ait Mouloud Fatenh (Fatih), 'Protecting the InvestedSavings in Transferable Securities under Algerian Law', PhD thesis in Science, specialisation: Law, Faculty of Law and Political Science, University of Mouloud Mammeri – Tizi Ouzou, July 2012, p. 432.

10- Slimani sabrina, Stock Exchange Crimes: A Comparative Study, PhD thesis in Science, specialization: Law, Faculty of Law and Political Science, University of Mouloud Mammeri – Tizi Ouzou, 2018, p. 13

11- Bourbaba Soraya, Boushita Khaled, Criminal Offenses as a Mechanism to Combat the Crime of Insider Trading UsingPrivileged Information (A Comparative Study between Algerian and French Legislation), Journal of Law and Political Science, Naama University Center, Volume 8, Issue 02, 2022, p. 618.

12- Hemlili Nouara, 'The Offence of Insider Trading between the Jurisdiction of the Judge and the Authority of the Financial Market Regulator', Critical Journal of Law and Political Science, University of Mouloud Mammeri – Tizi Ouzou, Vol. 2, Issue 2, 2007, p. 110.

13- Bourbaba, S. and Bouchita, K., 'Previousreference', p. 618.

According to French law, privileged information is defined in Article 465-1 of the Monetary and Financial Code, as amended in October 2024, as constituting the offence of insider trading (*délitd'initié*). This offence occurs when a person carries out transactions in the financial market, relying on and benefiting from confidential and privileged information[15]. In practice, insider trading takes the form of stock exchange transactions whose purpose is to make a profit and avoid a loss by exploiting confidential information before it becomes public knowledge. This conduct constitutes a criminal offence intended to cause disturbances in the market and is considered to fall within the scope of unlawful competition[16].
Regarding Algerian legislation, the Algerian legislator does not provide a precise definition of privileged information. Instead, it criminalises the disclosure of confidential information by any person during a period of prohibition or restriction, as an offence punishable under Article 60(2), as amended and supplemented by Legislative Decree No. 93-10.
Algerian law also permits the issuer to withhold such information when necessary, in accordance with Article 3 of Regulation No. 2000-02 regarding the publication of information by institutions whose securities are listed on the stock exchange. The regulation states:
'The issuer may defer the disclosure of significant information under its own responsibility if it is able to guarantee confidentiality and considers that its disclosure would cause it serious harm; once the circumstances requiring such confidentiality cease, the issuer must publish the information.'
The Algerian legislator also stipulated that, once the circumstances justifying confidentiality have ceased, the information retained by the issuer must be published through press releases and by any other means that ensures the widest possible dissemination. The regulation also stipulates that the statement must be sent to the relevant stock exchange authority (L.T.E.B.M./the competent authority) and the securities market management company within a timeframe that does not exceed the publication date[17].
Based on the foregoing, for information to be considered privileged (insider) information, several conditions must be met, primarily:

First: The condition of confidentiality: privileged information is non-disclosed confidential information that has not been published in a way that makes it available to the general public of investors for their review[18].
However, according to French case law, disclosing such information to a limited number of people does not necessarily remove its confidential nature. For example, the Paris Court of Appeal ruled that trading information published in periodicals and read by a limited audience does not affect its

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[14]- Ait Mouloud, Fatenh, 'Protecting the InvestedSavings in Transferable Securities under Algerian Law', previousreference, p. 439.
[15]- Article L465-1 of the French Monetary and Financial Code, as amended by Ordinance No. 2024-936 dated 15 October 2024.
'The managingdirector, the chairman, a member of the executiveboard, the manager, a member of the board of directors or a member of the supervisoryboard of an issuerconcerned by privileged information, or anypersonperforming an equivalentfunction; anypersonhavingprivileged information concerning an issuer in whichtheyhold a participation; anypersonhavingprivileged information in connectionwiththeir profession, functions, participation in the commission of a crime or offence; or anyotherpersonhavingprivileged information, whoknowingly uses suchprivileged information by carrying out, for themselves or others, directly or indirectly, one or more operations; or by cancelling or modifying one or more ordersplaced by thatperson, shallbepunished by five years' imprisonment and a fine of 100 million euros, whichmaybeincreased up to ten times the amount of the profit gainedfrom the offence, providedthat the fine is not lessthanthat profit.' samepersonbeforetheyheld the privileged information, with respect to the financial instruments or crypto-assets issued by thatissuer, or with respect to the financial instruments or crypto-assets concerned by thatprivileged information." This wasconsulted on 20/11/2025 at 11:00.
[16]- Léa Boluze. "InsiderTrading:Definition and Penalties", capital.fr, published 10/4/2025. consulted 19/11/2025 at 10:00.
[17]- Article 5 of Regulation No. 2000-02 relating to the information that must bepublished by institutions whosesecurities are listed on the stock exchange.
[18]- RazikaTeghribt, 'EnsuringEquality of Financial Information between Participants in the Securities Market', Academic Journal of Legal Research, University Abderrahmane Mira – Bejaia, Volume 8, Issue 2, 2017, p. 278.

confidential nature. The court also ruled that company bulletins published on the company's website are valid and accurate as long as publication conforms to the committee's regulations[19]. Furthermore, the Paris court overturned the conviction of insiders in a case where the information had been published in a specific edition of a particular magazine because it had not been published in the official gazette for legal advertisements, yet this did not affect the confidential nature of the information[20].

The French legislator clarified the meaning of 'privileged information' in Article 465 by defining it as follows:

'For the purposes of this section, the term "privileged information" refers to privileged information as defined in paragraphs 1 to 4 of Article 7 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014, or as defined in Article 87 of Regulation (EU) 2023/114 of the European Parliament and of the Council of 31 May 2023 on crypto-assets.'

From this provision, we can see that the French legislator refers us to several texts from the European Union and the European Parliament. Indeed, Regulation No. 2023/1114 of the European Union and the Council of 31 May 2023 on markets in crypto-assets establishes that insider trading is also an offence in the digital/crypto-asset market. This offence consists of using privileged, non-public information to make a profit, in a manner similar to that in the traditional financial market[21].

Secondly, the information must be accurate and precise: This means that it must relate to a specific and clear matter from which a result can be inferred once it is disclosed or known. In other words, a decision to buy or sell transferable securities by the insider/holder of the information relies on such information existing[22].

Accordingly, information that is vague, such as that indicating merely that the company's circumstances are expanding or contracting, cannot be considered privileged. Instead, it must concern the amount of profits already achieved or to be distributed to shareholders, or indicate that a company's sales have increased by a specific percentage, for example[23].

Furthermore, pursuant to Article 4 of Regulation No. 2000-02 mentioned above, the Algerian legislator has required that the information be accurate.

Thirdly, the information must be material/impactful on the prices of transferable securitie: It must be clear that disclosure of a given piece of information would have a substantial effect on the price of transferable securities on the stock exchange[24]. The impact is considered substantial when an investor believes that the disclosed confidential information is likely to influence their decision to sell or buy[25].

This constitutes interference with the stability of transactions in the securities market and a violation of the principle of freedom of competition.

Second branch: Determining the character/status of the offender

Firstly, it should be noted that the Algerian legislator did not specify the nature of the individual who commits the crime of exploiting inside/privileged information in the course of carrying out their profession or duties. Article 60 of Legislative Decree No. 93-10, as amended and supplemented by Article 19 of Law No. 03-04, states the following:

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[19]- Bourbaba, S. and Boushita, K., 'Previousreference', p. 619.

[20]- Hocine Buaraki, 'Incrimination and Prosecution of the Offence of Insider Trading in Kuwait' (spelling as in yourtext), PhD thesis, François-Rabelais University of Tours, Doctoral School 'Sciences de l'Homme et de la Société' (Sciences of Man and Society), Private Law Research Centre, 18 December 2014, p. 126.

[21]- Official Journal of the European Union (website: eur-lex.europa.eu), consulted 20/11/2025 at 18:00.

[22]- Slimani Sabrina, previousreference, p. 33.

[23]- Ait Mouloud, Fatenh, 'UsingPrivileged Information in Algerian Stock Exchange Law', Critical Journal of Law and Political Science, University of Mouloud Mammeri – Tizi Ouzou, Vol. 4, Issue 1, 2009, p. 212.

[24]- Ait Mouloud, Fatenh, 'Protecting the InvestedSavings in Transferable Securities under Algerian Law', previousreference, p. 441.

[25]- Kahalerras Samah, 'Previousreference', p. 224.

'... any person who, in the course of carrying out their profession or duties, has access to inside/privileged information regarding the outlook of the issuer's sources of securities or their situation, or the outlook on the development of the value of a transferable security, and who, as a result, carries out such an operation or several operations in the market, or deliberately allows such operations to be carried out, either directly or through a person used for that purpose, before the public becomes aware of that information...'

It follows from the foregoing that the legislator considers the offender to be the person who obtains the information through the exercise of their function. Consequently, if the information is available to a person outside stock exchange employees and they are not enlisted to disclose it, its disclosure does not amount to a crime.

It is also noteworthy that, unlike the French legislator, who established three categories (or levels) that fall within the status of persons having access to inside information under Article 1-465 of the Monetary and Financial Code, the legislator provided a broad definition of 'persons informed of secrets' without a precise determination of them[26].

First category:

This category consists of primary insiders (les initiésditsprimaires) who have access to inside/privileged information due to their work, position or status. This includes company managers (such as the Chief Executive Officer), members of the board of directors, members of the supervisory board and natural persons who manage the legal entity, as well as directors and representatives of legal entities[27].

The French legislator further amended Monetary and Financial Law No. 2016-819 to include a category of shareholders, as provided for in Article L465-1-, and added them to the list of primary insiders[28].

Second category:

This category covers secondary persons who obtain information from primary persons, whether indirectly or directly[29]. This includes individuals such as the Secretary General, the Chief Financial Officer or an ordinary employee. It also includes individuals outside the company who may indirectly gain access to inside/privileged information by virtue of their professional relationships. These individuals may include statutory auditors (commissaires aux comptes)[30], contractors/agents (préposés), financial analysts, financial lawyers, and financial journalists[31].

Third category:

Under Article L465-1-3, as amended by Law No. 2001-1062 on day-to-day security (sécuritéquotidienne), the French legislator broadened the scope of 'insiders' to include any person other than those referred to in the previous two categories who obtains inside/privileged information about the status of a security traded on the stock exchange.

Accordingly, this category includes any person who obtains inside/privileged information outside of their job or profession but who nevertheless knows that it is inside/privileged information. In this regard, Professor STASIAK F states: 'Potentiellement, nous sommestous des initiés' — meaning that we could all be insiders; therefore, we must not exploit that inside information on the stock exchange, otherwise we will be held liable and punished[32].

Second Topic: Elements Required for the Offence of Exploiting Inside/Privileged Information

[26]- S.A., 'Insider Trading (Délit d'initié)' (Dalloz website), published June 2023, accessed 21/11/2025 at 18:00.
[27]- ATIAS et ROUSSEAU Avocats, 'Focus on Insider Trading', published 15/02/2024, accessed 19/11/2025 at 13:00.
[28]- Slimani, Sabreina, previousreference, p. 18.
[29]- Hemlil Nouara, previousreference, p. 121.
[30]- ATIAS and ROUSSEAU, op. cit.
[31]- Bourbaba Soraya, Boushita Khaled, previousreference, p. 617.
[32]- Slimani Sabrina, previousreference, pp. 20–21.

In addition to the above conditions relating to the existence of an offence and the general theory of criminal law, two essential elements must be present for us to be faced with a punishable misdemeanour under the law:
1. the material element (*the first branch*); and
2) the mental element (the second branch).

First branch: The Material Element of the Offence
The material element of insider trading exists whenever a trading transaction is carried out based on the disclosure or communication of inside/privileged information[33], regardless of the type of market in which the transaction took place. Therefore, if an offender sells or buys transferable securities based on inside/privileged information that has not been made public, either directly or through another person arranged for that purpose, the material element is satisfied.
Furthermore, the French legislator, by Law No. 2016-819, added two cases of cancellation or amendment of an order — or several orders — issued by the same person before they obtained inside/privileged information relating to the securities subject to the order or their issuer[34].
Application to Algerian law (Article 60 of Legislative Decree No. 93-10)
Pursuant to Article 60 of the aforementioned Algerian Legislative Decree, the Algerian legislator defined three forms of criminal conduct. The material element of the offence is deemed to exist whenever one of these forms is fulfilled, which we summarise as follows:

The first form: Carrying out a transaction on the market directly.
This refers to the situation where an insider who has become aware of information uses it directly by carrying out a sale or purchase of securities according to the nature of the information obtained[35]. Accordingly, the offence is committed when the offender exploits inside/privileged information acquired by virtue of their profession or position, and executes one or more transactions by themselves[36].

The Second Form: Carrying out a transaction on the market through a person assigned/used for that purpose
Here, another person carries out the sale and purchase of transferable securities on behalf of the insider with the inside information. In other words, the insider exploits the information indirectly. The person assigned to execute the transaction is considered the direct perpetrator (material offender) of the offence.

However, if that person acted in good faith and was unaware that their actions were unlawful, they cannot be held criminally liable[37].

The third form: Allowing another person to execute a transaction on the market
This form occurs when an insider provides inside/privileged information to another person. This constitutes a breach of the principles of disclosure and transparency[38]. However, merely passing the information is not enough; the other person must also execute one or more transactions on their own account[39].

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[33]- Ait Mouloud, Fatenh, 'Protecting the InvestedSavings in Transferable Securities under Algerian Law', previousreference, p. 435.
[34]- Slimani Sabrina, previousreference, p. 38.
[35]- Djemal Abd al-Aziz al-Othman, previousreference, p. 358.
[36]- Chafiya Djellab, 'Crimes affecting the transparency of information in the stock exchange under Algerian legislation', Academic Journal for Legal and PoliticalResearch, University Ammar Thélidji – Laghouat, Volume 01, Issue 3, 2018, p. 321.
[37]- Slimani Sabrina, previousreference, p. 39.
[38]- Djemal Abd al-Aziz al-Othman, previousreference, p. 358.
[39]- ShafiyaJallab, previousreference, p. 321.

If the transactions are instead executed on behalf of the insider, this falls within the second form because, in that case, the 'other person' is treated as having been assigned/used to carry out the transaction.

Comparative Remark on the Requirement of Benefit

It is noteworthy that various comparative legal systems, particularly French law, do not require any benefit to be obtained from exploiting inside information. The Algerian legislator adopted this approach too: insider trading is deemed to have occurred as soon as the conditions relating to the information are met and the material element — namely the exploitation of that information by any person — is established, without requiring any material or moral gain.

In contrast, under the provisions of the Capital Market Law No. 95 of 1992, the Egyptian legislator requires that the offender obtain a personal benefit, or a benefit for one of their relatives, whether that benefit is material or moral[40].

Second branch: The Mental Element (Mens Rea) of the Offence

The mental element of insider trading is presumed in principle. Rather than requiring proof of criminal intent, the judge presumes the offender's bad faith once they carry out a sale or purchase transaction based on inside/privileged information of which they became aware. This approach is adopted by French doctrine and jurisprudence[41].

By contrast, Article 60 of Legislative Decree No. 93-10, cited above, sets out two cases:

Case One: If, in the course of carrying out their profession or duties, a person gains access to inside/privileged information regarding the outlook of the securities' issuer, the issuer's situation, or the outlook on the development of the value of a transferable security, the legislator does not require proof of intent. Therefore, it is not an intentional offence in the strict sense. Instead, the offence is established on the basis of the person's knowledge of the inside information by virtue of their position or profession, and their exploitation of it for their own benefit.

Case Two

If the person with the inside/privileged information deliberately allows another person to exploit it, the legislator requires proof of intentional will to constitute the offence. If the insider did not deliberately allow the other person to exploit the inside/privileged information, then the offence does not exist and the insider bears no criminal liability.

Chapter Two: Procedural Framework for the Offence of Exploiting Inside/Privileged Information

Given the particular nature of stock exchange offences, including that of exploiting inside/privileged information, the Algerian legislator, like other legislatures, provides special procedures for investigating and prosecuting them (first requirement/topic). It also imposes penalties on those who commit them, as set out in the provisions of the Stock Exchange Law (second requirement/topic).

First requirement: Follow-up/Procedures for Prosecution

Due to the specific nature of offences relating to the stock exchange, particularly those involving the exploitation of inside/privileged information, and the challenges associated with investigating and punishing offenders, various comparative legislations have placed significant emphasis on monitoring and enforcement by specialised bodies within the stock exchange.

French law established the Autorité des Marchés Financiers (AMF)—the Financial Markets Authority—commonly referred to as the 'gendarme de la bourse' (the 'cop of the stock exchange'). Its primary role is to ensure compliance with regulations applicable to financial transactions,

[40]- Slimani Sabrina, previousreference, pp. 41–42.
[41]- Hemlili Nouara, previousreference, p. 130.

particularly by ensuring they are carried out transparently[42]. It also aims to protect investors' savings. For example, in 2016, the Disciplinary Committee of the AMF issued 13 decisions comprising 32 sanctions against professionals and agents subject to its supervision, as a result of their commission—or attempted commission—of acts that undermine the order and functioning of the financial market. It was reported that 21% of these acts were related to insiders[43].

Similarly, pursuant to Article 20 of Legislative Decree No. 93-10, as amended and supplemented by Article 12 of Law No. 03-04, the Algerian legislator created the Committee for the Regulation of Stock Exchange Operations and Their Supervision.

'An independent authority shall be established to organise and supervise stock exchange operations. It shall have legal personality and financial independence.'

This authority was entrusted with ensuring the protection of investors' savings and supervising the proper functioning and transparency of transactions in the financial market through its legal, regulatory, disciplinary and arbitral functions. To exercise its supervisory power fully, the legislator granted the authority the power to investigate any breach affecting the transparency principle in stock exchange transactions, in accordance with Article 37 of Legislative Decree No. 93-10, which states that:

'The Committee shall conduct investigations with companies that publicly raise funds, with banks and financial institutions and intermediaries in stock exchange operations, and with persons who, by virtue of their professional activity, contribute to special operations involving transferable securities or marketed financial products, or who manage documentation relating to financial instruments, in order to ensure the performance of its mission in the field of monitoring and supervision.' Qualified staff may request any documents from them, whatever their medium, obtain copies thereof, and access all premises used for professional purposes.'

It was also granted the authority to issue direct orders pursuant to Article 35 of Legislative Decree No. 93-10. Specifically, the Committee must ensure that companies whose securities are traded comply with applicable legislation and regulations. Where necessary, it may order such companies to publish addenda or corrections if it notices omissions in published or submitted documents.

Additionally, it has the right to request that the judge issue orders concerning observed breaches. This is known as the 'indirect order authority'. Thus, pursuant to Article 40 of Legislative Decree No. 93-10:

'In the event of an act contrary to legislative or regulatory provisions that may harm the rights of investors in transferable securities, the President of the Committee may request the Court to issue an order against those responsible, requiring compliance with these provisions and putting an end to the breaches or nullifying their effects.' A copy of this request shall be forwarded to the Court of Appeal in accordance with the law." Without prejudice to criminal proceedings, the competent judicial authority shall decide on the request in urgent proceedings and may also take any protective measures of its own accord. For the purposes of enforcing its order, it shall issue a daily coercive fine to be paid to the public treasury. The President of the Committee may also join the proceedings as a civil party in the event of criminal offences.'

From the text of the provision, it is clear that the Algerian legislator granted the Committee the power to request an urgent order from the courts against any person who has carried out a practice in breach of legislative or regulatory provisions that is likely to affect the interests of investors. The provision also authorises the competent judicial authority to automatically adopt any protective measure without specifying the type of measure, thereby leaving the judge with broad discretion.

Furthermore, the legislator permitted the President of the Committee to act as a civil party in the event of criminal offences committed on the stock exchange[44].

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[42]- Kahal eras Samah and Chouaidia Mounia, 'The Legal System of the Committee for Regulating and Supervising Stock Exchange Operations', Journal of Rights and Liberties, Mohamed Khidher University, Biskra, Volume 9, Issue 2, 2021, p. 1659.

[43]- Marie Obidzinski, 'The Effectiveness of the Deterrence of Insider Trading Operations' (Cairn website), accessed 21/11/2025 at 12:30.

[44]- Kahaleras Samah, previousreference, p. 247.

This is consistent with the approach adopted by the French legislator through amending Law No. 2016-819 on Money and Finance, whereby the Financial Markets Authority informs the competent judicial authorities of any offence discovered during stock exchange operations through the Authority's Secretary-General[45].

Second requirement: Penalties applicable to those who commit the offence of exploiting inside/privileged information

According to Article 60 of Legislative Decree No. 93-10, cited above, the Algerian legislator prescribes the following penalty for those who commit the offence of insider trading ('the offence of exploiting inside/privileged information'), as set out in the provision:

'A term of imprisonment of six months to five years and a fine of 30,000 dinars. The fine may be increased up to four times the amount of potential profit, provided it is not less than the profit itself. Alternatively, either of these penalties may be imposed.'

From the text of the provision, it is evident that the Algerian legislator has decided on a custodial penalty involving imprisonment for a period ranging from six months to five years, in addition to a monetary fine of 30,000 Algerian dinars. This fine may be increased up to four times the amount of the profit gained. Thus, the legislator has granted the judge discretionary power to determine the amount of the fine and to decide whether to impose both penalties or only one of them. This clearly indicates the broad scope of the judge's discretion.

By contrast, under French law — specifically Article L465-1 of the French Monetary and Financial Code, as amended by Article 1 of Law No. 2016-819 relating to the repression of market abuse — if imprisonment for five years is provided and a monetary fine of 100 million euros is imposed, the fine may be increased up to ten times the amount obtained[46]. However, the French legislator has imposed both penalties together and has not left the judge free to apply only one of the penalties, as the Algerian legislator did. Moreover, this penalty applies to every person who knowingly commits the offence, regardless of their status, as well as to every person who attempts to disclose privileged information. In other words, the law also punishes attempts to commit the crime, treating an attempt to commit the offence in the same way as the offence itself[47].

As previously clarified, it is not necessary for the person committing the offence to be a company representative or manager, or to be involved in company activities. Indeed, in France in 2023, a former employee of a company was fined 700,000 euros. The financial market regulator considered that the employee's profits were based on information acquired before the company's results were published[48].

By contrast, within the provisions of Law No. 95 of 1992, the Egyptian legislator provided for a custodial penalty of no less than two years with regard to the offence of exploiting and disclosing inside information to others, while allowing the imposition of a more severe penalty under any other law that provides for such a penalty by using the phrase: '... without prejudice to any more severe penalty prescribed in any other law...[49]'. This differs from Algerian legislation. Indeed, the Algerian legislator prescribed penalties within the specific provisions governing stock exchange laws without referring to any other penalties relating to stock exchange offences in general, nor — in particular — to the Penal Code provisions regarding the offence of knowing disclosure. This is due to the particular nature of this category of crimes.

The Tunisian legislator did not provide for custodial penalties, but limited itself to imposing financial penalties and increasing their severity. Thus, a monetary fine was imposed even if the offender did not benefit from carrying out the transaction in the financial market[50].

[45]- Slimani Sabrina, previousreference, p. 255.
[46]- (Website: legifrance.gouv.fr), 'Codes / Article' (as in yourtext), accessed 20/11/2025 at 13:00.
[47]- Bourbaba, S. and Boushita, K., Previousreference, p. 324.
[48]- Figaro with AFP, 'Insider Trading (Le délit d'initié)', published 12/09/2024 (GESICA website), consulted 22/11/2025 at 14:00.
[49]- Slimani Sabrina, previousreference, p. 285.
[50]- Ait Mouloud, Fatenh, 'Protecting the InvestedSavings in Transferable Securities in Algeria', previousreference, p. 445.

Finally, the Algerian legislator imposed a monetary fine and imprisonment on perpetrators of the offence of 'knowing disclosure', and considered all transactions carried out on that basis to be void. This is stated in Article 60 of Legislative Decree No. 93-10: '... the transactions carried out on that basis are deemed, in practice, void.'

Conclusion:

In the context of protecting investors on the stock exchange and ensuring equality and transparency in transactions, various comparative legislations have focused on combatting financial transactions based on the disclosure of privileged information not yet in the public domain.

Thus, like other legislators, the Algerian legislator addressed this offence within the provisions of the stock exchange law pursuant to Article 60 of Legislative Decree No. 93-10, as amended and supplemented. However, according to our research, there appears to be no judicial decision against anyone who has committed this offence, owing to the limited activity of the stock exchange. Nevertheless, the purpose of including this provision is to establish a legal framework intended to curb such transactions that undermine the transparency of trading whenever any securities transaction is carried out on the stock exchange.

From our study of this topic, we reached a set of findings, including:

- Unlike other legislators, the Algerian legislator did not expressly define the conditions for committing this offence as being based on the information element. Moreover, it did not provide a precise definition of 'privileged information'.
- For the offence of exploiting privileged information, the Algerian legislator required both the material and intentional elements to be present if privileged information is provided to others and they are allowed to exploit it. However, in cases where a 'knowing person' exploits the information themselves in connection with the exercise of their function or profession, intent is not required; committing the material act is sufficient.
- The Algerian legislator imposed both a custodial penalty and a monetary fine on perpetrators of the offence of knowing disclosure/exploitation, and granted the judge discretionary power to apply both penalties or only one of them, unlike the French legislator.
- The Algerian legislator entrusted the task of monitoring stock exchange crimes, including the offence of exploiting privileged information, to the Commission for the Regulation and Oversight of Stock Exchange Operations. The commission was granted the authority to conduct investigations to identify any violations undermining the principle of transparency in transactions and to notify the judicial authorities so that penalties may be imposed on perpetrators.

Based on these findings, we have developed a set of recommendations and proposals, primarily:

1. There is a need to establish a precise and clear definition of the privileged information that is the subject of this offence and to explicitly specify the conditions for its commission by amending the provisions of Article 60 of Legislative Decree No. 93-10 relating to the stock exchange.
2. The Algerian legislator should specify the individuals to whom this type of crime applies, rather than using the phrase "every person", which is overly broad and includes all participants in the securities market.
3. Regarding the issue of discretionary power being left to the judge to choose between the two penalties, stricter punishments should be imposed for such offences, and the judge should be required to impose both penalties together, as the French legislator does.
4. Upon examining the wording of Article 60, it appears that the Algerian legislator has equated the offence of exploiting privileged information with the offence of publishing false or misleading information, imposing the same penalty on the basis that both offences relate to 'information'. However, as each offence has its own constituent elements and conditions for its commission, they should be distinguished, and the law should address each offence separately.

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