

Journal of legal and social studies

Issn: 2507-7333

Eissn: 2676-1742

Stock Exchange Crimes Between Legislative Inadequacies and Deterrent Effectiveness in Algerian Legislation

Djillali Mohamed*,

Lecturer A – University Center of Aflou, Algeria, m.djillali@cu-aflou.edu.dz

Date of send: 2026/06/01	date of acceptance: 2026/07/01	Date of Publication: 2026/09/01
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***Corresponding author**

Abstract :

This research addresses stock exchange crimes in Algerian legislation through analyzing the adequacy of legal provisions in combating unlawful practices within the securities market. It aims to highlight legislative shortcomings and their impact on the effectiveness of deterrence and investor protection. It also seeks to assess the criminal policy adopted in this field regarding the balance between punishment and prevention. It concludes with recommendations for strengthening the legal framework and reinforcing confidence in the financial market.

Keywords: legal deterrence ; securities market ; Algerian legislation; criminal protection ;Stock exchange crimes.

Introduction

The industrial development phase witnessed the emergence of large-scale projects that individual investors could not undertake alone due to the financial burden. The increase in income and economic growth on one hand, coupled with the growing trading of securities on the other, necessitated the establishment of independent financial markets with their own regulations to accommodate these transactions. These markets are variously referred to as stock and bond markets, capital markets, or securities exchanges.

The term "stock exchange" is not of Arabic origin; its etymology dates back to 1549, during the reign of Henry VIII, when this term was used for a stock exchange established in Toulouse. It is also attributed to a merchant named VANDE BURSE who owned a hotel in Bruges, Belgium, which served as a meeting place for merchants in the fifteenth century.

Most countries have accorded paramount importance to stock exchanges due to their role in stimulating the economy, mobilizing savings and capital, and converting them into investments. The Algerian legislator, like other legislatures, has assigned great importance to stock exchanges through the establishment of securities exchange, which followed the economic reforms of 1988. This led to the enactment of several laws. The period from 1990 to 1992 witnessed the establishment of a securities company whose functions largely resembled those of a stock exchange. In 1993, by Legislative Decree No. 93-10 dated May 23, 1993, concerning the securities exchange, Algeria's securities exchange was established, which was subsequently amended by Law No. 03-04 dated February 17, 2003.

Based on the foregoing, the following research question arises: **What are the forms of crimes committed against the stock exchange under Algerian legislation?**

To answer this question, this study examines the topic as follows:

Section One: Nature of the Securities Exchange

The stock exchange is considered a market like any other market in which commercial exchange operations involving buying and selling take place. However, what distinguishes it is the nature of the systems and laws that govern and organize its operations. On this basis, the Algerian legislator has established a legal framework regulating the securities exchange.

First Requirement: Definition of the Securities Exchange

Before proceeding to define the securities exchange, it is necessary to first examine the definition of securities.

Section One: Securities

The Algerian legislator defined securities in Article 715 (bis) 30 of the Commercial Code as tradable securities issued by joint-stock companies that are quoted on the stock exchange or can be quoted, which grant rights equivalent according to class and allow direct or indirect entry into a specific share of the issuing company's capital or a general claim on its assets. Thus, securities consist of:¹

- Securities representing debt obligations of the state (branch, municipality, etc.), called "income securities";
- Securities representing debt obligations of private companies, called "bonds" or "obligations";
- Shares in a commercial, industrial, or financial enterprise, called "stocks";
- Securities therefore comprise both stocks and bonds

A stock is a right of ownership in a portion of the capital of the issuing company, in addition to the right to a share of the company's profits. Stockholders can vote at shareholders' meetings and participate in the decision-making process and the company's affairs. A bond, by contrast, represents ownership of a portion of debt issued by a company, the state, or local authorities for a predetermined

period, bringing the holder interest income and enabling the investor to recover the debt upon maturity.

Section Two: The Securities Exchange

The stock exchange is a market similar to other markets but differs in the nature of transactions, as it involves trading financial securities or assets in the form of bonds and stocks, with prices determined based on supply and demand. The securities exchange is defined as a system through which buyers and sellers of specific securities are brought together, or in other words, as one of the markets in which money is offered and traded.

The legal definition of the securities exchange is provided in Legislative Decree No. 93-10 concerning the securities exchange, as amended by Ordinance No. 96-10 and Law No. 03-04, in its first article, which states: "A securities exchange is established. The securities exchange serves as a framework for organizing and conducting operations regarding securities issued by the state and other legal entities of public law and joint-stock companies." ²

Second Requirement: Functions of the Securities Exchange

Financial securities markets perform several functions for individual investors, business enterprises, and the national economy:

Section One: Trading in Securities

The primary function of a securities market is the buying and selling of stocks and bonds of private and government companies. This market achieves the true price of securities through transparency in executing transactions and recording prices at a visible location and publishing them in daily publications after review by the competent committee. All of this strengthens the market and ensures the integrity of its operations.

Section Two: Capital Investment

Investment in the securities market is characterized by flexibility in trading and ease of buying and selling compared to the difficulty of investing in agricultural land or real estate. Investment in securities does not require a large amount or specific expertise; any individual can invest funds in shares of any agricultural or real estate company and benefit from the increase in stock prices resulting from the company's business advancement.

Furthermore, investment in securities offers the opportunity for portfolio diversification. Capital can be distributed among government bonds and shares of

industrial or real estate companies. This advantage ensures that all capital is not lost if the single project in which the investor concentrates capital fails.³

Section Three: Encouragement of Savings and Capital Accumulation

A saver does not exchange money for goods or services to satisfy an immediate need but rather to meet future needs. There are various means of encouraging savings, including tax exemptions, encouraging the establishment of savings institutions, insurance companies, and savings funds. This includes promoting financial awareness among the population and directing it toward the securities market through broadcasting and publishing securities prices. All of this aims to direct attention to buying stocks and bonds and attract national savings, enabling the state to implement many productive projects whose benefits extend to all, in addition to the benefits enjoyed by subscribers.

Third Requirement: Operating System of the Securities Exchange

According to Article 3 of Legislative Decree No. 93-10 as amended, the operating system of the securities exchange comprises two bodies: the Commission for Stock Exchange Regulation and Oversight (COSOB) and the Securities Exchange Management Company (SGBV), in addition to stock exchange intermediaries. Law No. 03-04 added a new body: the Central Depository of Securities.⁴

Section One: Commission for Stock Exchange Regulation and Oversight (COSOB)

This section addresses the Commission for Stock Exchange Regulation and Oversight in detail, through examination of its structural and functional framework.

First: The Legal Nature of the Regulation and Oversight Commission:

It is an independent regulatory authority enjoying legal personality and financial independence. It was established by Legislative Decree No. 93-10 dated May 23, 1993, as amended, concerning the securities exchange.⁵

However, the aforementioned Legislative Decree did not clarify its legal nature, and the legislator provided no definition, limiting itself to determining its composition and administration in Chapter One and its functions and powers in Chapter Two of Legislative Decree No. 93-10 dated May 23, 1993, as amended and supplemented, concerning the securities exchange.

Second: The Functional Framework of the Regulation and Oversight Commission:

This commission has been entrusted with several functions designed to strengthen and materialize protection of the securities exchange, including legal functions, supervisory functions, and disciplinary-arbitral functions.

1. Legal Function:

The commission, within the legislative framework governing the securities market, prepares regulations subject to approval by the minister responsible for finance (Articles 31, as amended by Article 16 of Law No. 03-04, and Article 32 of Legislative Decree No. 93-10 as amended by Law No. 03-04).⁶

2. Supervisory and Monitoring Function:

This function allows the commission to ensure in particular:

- That market participants comply with legal and regulatory provisions governing the market
- That companies resorting to public offers for securities comply with their disclosure obligations
- That necessary corrections are made if violations occur
- That the market functions properly

To execute its monitoring and oversight function, the commission is authorized to conduct investigations with companies or financial institutions involved in specific securities transactions.⁷

3. Disciplinary and Arbitral Function:

A disciplinary and arbitral chamber is established within the Commission for Stock Exchange Regulation and Oversight, composed of a president and two members elected from among the commission's members, as well as two judges appointed by the Minister of Justice. The president acts as secretary of the chamber.

Section Two: Securities Exchange Management Administration

Legislative Decree No. 93-10, as amended and supplemented, provides for the Securities Exchange Management Company to perform specific duties, including:

- Practical organization of the admission of securities to the exchange
- Physical organization of stock exchange transactions and meetings
- Recording of intermediary negotiations in stock exchange operations
- Organization of clearing operations for securities transactions
- Management of the price negotiation system and its determination
- Publication of information relating to stock exchange transactions
- Publication of an official bulletin of pricing tables under the supervision of the Commission for Stock Exchange Regulation and Oversight ⁸

Section Three: The Central Depository of Securities

The Central Depository is a body added by the Algerian legislator in the 2003 amendment to the securities exchange law through Law No. 03-04, taking the form of a joint-stock company called "Algeria for Settlement." It is presumed to be subject to private law, particularly commercial law. However, in this joint-stock company, the legislator has departed from the general rules relating to its establishment and administration. The Central Depository exercises its functions under the supervision of the Commission for Stock Exchange Regulation and Oversight. These functions consist essentially of:

- Safekeeping of securities enabling the opening of accounts in the name of authorized participants
- Monitoring the movement of securities, facilitating their transfer between financial intermediaries through account-to-account transfers
- Management of securities enabling authorized participants to exercise their rights
- Legal numbering of securities
- Publication of information relating to the financial market

Section Two: Stock Exchange Crimes in Algerian Legislation

The Algerian legislator has sought to protect the securities exchange by defining and describing crimes affecting it and by punishing perpetrators with criminal sanctions, eliminating disruptions that hamper normal stock exchange operations. This section examines the three forms of stock exchange crimes as follows:⁹

First Requirement: Crime of Trading on Privileged Information

The Algerian legislator addressed the crime of trading on privileged information in Article 60 of Legislative Decree No. 93-10. This crime concerns a person who exploits accurate information unknown to the public to execute stock market transactions, such as a company director aware of an upcoming successful transaction that will increase the value of its securities on the exchange, who then purchases stocks or bonds or persuades others to do so before the value increases. Similarly, this includes those who persuade others to sell their shares before a decrease in value, following the imminent disclosure of unfavorable financial statements.

The trading of securities in the securities exchange is governed by the laws of supply and demand. However, stock prices are also affected by the good or poor economic results achieved by companies listed on the exchange. Therefore, a person with knowledge of business secrets can predict the rise or fall of securities prices and, accordingly, without risk, engage in buying or selling transactions.¹⁰

Section One: Elements of the Crime

This crime requires the existence of the following elements:

First: The Legal Element

The Algerian legislator has prescribed penalties applicable to anyone committing this crime, as provided in Article 60 of Legislative Decree No. 93-10 dated May 23, 1993, concerning the securities exchange, as amended by Ordinance No. 96-10 dated January 14, 1996, and by Law No. 03-04 dated February 17, 2003. Additionally, the Algerian legislator has provided in Articles 301 and 302 of the Algerian Penal Code that all persons holding information by virtue of circumstance, profession, or permanent or temporary office must preserve the confidentiality of information disclosed to them and not disclose it unless authorized, otherwise they are subject to criminal and financial penalties.

Second: The Material Element: The material element consists of the following:¹¹

1. The Subject Matter of the Crime:

This consists of the privileged information available to the perpetrator by virtue of exercising a profession or function in the securities market.

Nature of the Information:

The information must be privileged. Privileged information is defined as information relating to the issuing company that is not disclosed to the public or market and which, if disclosed, would materially affect the price of the company's securities or could reasonably be expected to do so by an average investor. The Algerian legislator has not defined privileged information; French courts have defined it as "information having the character of precision, certainty, specificity, and confidentiality." ¹²

2. Criminal Conduct or Breach:

This consists of executing a transaction in the market through deception or allowing a third party to execute a transaction in the market.

a. Executing a Transaction in the Market:

French courts have held that issuing an order to a bank to buy or sell shares is sufficient to establish the crime, and the date of issuance of the order, not its execution, is relevant. Courts have further held that issuing an order and failing to cancel it when the holder of the secret becomes aware that the information is not public constitutes the crime. This has led legal commentators and courts to discuss a duty of abstention binding upon those with privileged information—an absolute duty that admits no excuse for lack of care. ¹³

b. Allowing a Third Party to Execute a Transaction in the Market:

While the law has established a genuine duty of abstention, it has also imposed a duty of secrecy. The legislator has thus criminalized the person trading on privileged information who allows another to execute a transaction in the market.

Third: The Presumed Element

Upon examination of Article 60, paragraph one, of Legislative Decree No. 93-10 as amended, the legislator has not specified the persons subject to punishment, using the general term "everyone," without specification, and merely referring to the phrase "by occasion of the practice of his profession or office."¹⁴

Therefore, the perpetrator is primarily the person with knowledge of company secrets, whom the legislator has forbidden from exploiting retained information or breaching it by disclosing it in the securities market and conducting transactions for his benefit or that of a third party without risk.

Fourth: The Mental Element:

This consists of knowledge and intention.

1. Knowledge:

The perpetrator must be aware that he possesses very important privileged information that would affect the securities market if publicly disclosed, constituting the crime of trading on privileged information, punishable by law.

2. Intention:

The legislator does not require either the benefit derived or the perpetrator's malice; all that is required is that the perpetrator be aware that he possesses privileged information.

Section Two: Penalties for the Crime

The perpetrator is subject to two types of sanctions: criminal penalties and administrative penalties.

1. Criminal Penalties:

Article 60 of Legislative Decree No. 93-10 provides for imprisonment of six months to five years and a fine of 30,000 dinars, or either penalty alone. The fine can be increased to more than the stated amount, reaching up to four times the amount of potential profit without falling below the amount of such profit itself.

2. Administrative Sanctions:

In addition to the foregoing judicial penalties, the perpetrator is subject to administrative sanctions issued by the Disciplinary Chamber of the Commission for Stock Exchange Regulation and Oversight as provided in Article 51 of the aforementioned Legislative Decree, consisting of warnings, reprimands, temporary or permanent prohibition of activity in whole or in part, and withdrawal of authorization.

Such sanctions may also include fines set at ten million dinars or an amount equal to the potential profit achievable through the error committed, with such amounts paid to the guarantee fund specified in Article 64. The commission president may intervene as a civil party in the event of criminal offenses as provided in Article 40 of Legislative Decree No. 93-10 as amended.¹⁵

Second Requirement: Crime of Publishing False or Misleading Information

The Algerian legislator addressed this crime in paragraph two of Article 60 of Law No. 03-04, amending and supplementing Legislative Decree No. 93-10 concerning the securities exchange. The crime of publishing false or misleading information is defined as "promoting false rumors about securities, trading in falsified information about them, and manipulating them to unlawfully affect prices." ¹⁶

False or incorrect information includes, for example, publishing an inaccurate increase in the revenue figure of a listed company or deceptive information intended to achieve inflated prices. Misleading information refers to all fraudulent information that, while not necessarily false, is presented in a manner designed to deceive and mislead others into error.

Section One: Elements of the Crime of Publishing False or Misleading Information

The crime of publishing false or misleading information, like other crimes, is based on three elements:

The Legal Element:

The legal element of the crime of publishing false or misleading information consists of Article 60(2) of Law No. 03-04 concerning the securities exchange, amending and supplementing Legislative Decree No. 93-10.

The Material Element:

According to Article 60(2) of the aforementioned law, the material element of this crime requires that the information published be false and be published by any means.

1. False Information:

The information must be false or deceptive, implying fraud. The scope of such information is broad, encompassing all securities traded on the exchange, such as stocks, bonds, and other financial instruments. Publication of such information must be capable of affecting prices; it follows from this that the crime does not necessarily require a tangible result.

Mere publication of rumors of a general nature or an opinion expressed by a financial intermediary or financial analysts cannot constitute the material element of the crime, as information must constitute news having meaning, which is only the case if it concerns something specific (i.e., the information has a degree of precision). ¹⁷

The material element is not established if false information at one point in time becomes accurate. Therefore, the relevant consideration for determining whether information is false is the date of its publication. If it is established that it was capable of affecting the price of the security, the material element of the crime is established even if it subsequently becomes factual, provided it affected the price.

2. Means of Publishing Information:

For the material element of the crime of publishing false or misleading information to be established, it is not sufficient that the information be false; it must be published to the public by any means. This is clarified in Article 60(2), which does not require a specific means or method; what matters is spreading the information among the public.

The Mental Element:

The crime of publishing false, deceptive information requires the existence of a mental element for the perpetrator to bear criminal responsibility in stock exchange transactions. Reviewing Article 60(2), the legislator has required the existence of general intent manifested in willfulness to publish, promote, or disclose false or misleading information regardless of whether the perpetrator achieves his objective. It suffices that the nature of the information is capable of affecting the price of securities.¹⁸

Section Two: Penalties

The perpetrator of the crime of publishing false and misleading information is subject to criminal and administrative penalties.

1. Criminal Penalties:

As provided in Article 60(2) of Law No. 03-04 amending and supplementing Ordinance No. 93-10 concerning the securities exchange, these consist of imprisonment of six months to five years and a fine of 30,000 dinars.

2. Administrative Penalties:

In addition to the aforementioned criminal penalties, the perpetrator is subject to administrative penalties issued by the Disciplinary Chamber of the Commission for Stock Exchange Regulation and Oversight as provided in Article 51 of the aforementioned decree, consisting of warnings, reprimands, temporary or permanent prohibition of activity in whole or in part, withdrawal of authorization, and/or imposition of fines set at ten million dinars or an amount

equal to the potential profit achievable through the error committed, with such amounts paid to the guarantee fund.¹⁹

Third Requirement: Crime of Engaging in Unlawful Stock Exchange Operations

This conduct is addressed in Article 60, paragraph three, following amendment by Law No. 03-04 dated February 17, 2003, concerning securities.

Section One: Elements of the Crime

The purpose of engaging in stock exchange transactions is profit; however, stock prices in the capital market are unstable, rendering gains uncertain. In pursuit of rapid gain, some parties may engage in unlawful stock exchange operations, resulting in criminal responsibility and requiring the existence of legal, material, and mental elements.

First: The Legal Element:

The crime of engaging in unlawful operations in the stock exchange is addressed in Article 60, paragraph three, as aforementioned.

Second: The Material Element:

This consists of three components:²⁰

1. Manipulations Designed to Disrupt the Orderly Functioning of the Securities Market:

These manipulations can be embodied in four types of transactions:

a. Transactions consisting of creating significant decreases in a company's stock price unjustified by the company's condition through short selling, followed by repurchasing a larger quantity of securities at a very low price. Profit is realized when prices rise to their normal level.

b. Transactions involving engaging in the same operation through disseminating rumors or news or offers to sell at levels very close to transaction levels that experience decreases, in order to accelerate the decline.

c. Transactions consisting of executing the same type of operations in a manner permitting exploitation of positions previously held in a market open to multiple options.

d. Transactions consisting of driving the price of a security upward before issuing capital securities through repurchase or any equivalent method.²¹

2. Manipulations Designed to Mislead Others:

This condition serves to exclude from the scope of the crime practices necessary for price stabilization. When preparing for an important transaction such as disposing of shares in bulk in a single operation, prices must be stabilized during the days and weeks preceding the transaction to enable small savers to benefit from the same conditions enjoyed by the main dealer.

3. The Market:

Transactions concerning securities benefit from a specialized market—the stock exchange. The Algerian legislator has specifically mentioned the securities market, following the approach previously adopted by Article 10-3 of the French Ordinance of 1967, before its amendment in 1988.

Third: The Mental Element

The legislator does not require malice or the perpetrator's bad faith. Nevertheless, the crime requires that the manipulation be designed to disrupt the orderly functioning of the market—an objective that cannot be conceived or achieved without the perpetrator's knowledge. The sole burden on the public prosecutor is to prove its existence.

Section Two: Penalties for the Crime

The perpetrator of the crime of engaging in unlawful stock exchange operations is subject to both criminal and administrative sanctions.

1. Administrative Sanctions

The perpetrator is subject to administrative sanctions issued by the Disciplinary Chamber of the Commission for Stock Exchange Regulation and Oversight as provided in Legislative Decree No. 93-10, consisting of warnings, reprimands, temporary or permanent prohibition of activity in whole or in part, withdrawal of authorization, and/or imposition of fines set at ten million dinars or an amount equal to the profit likely to be achieved through the error committed, with such amounts paid to the guarantee fund.²²

2. Criminal Sanctions

The crime of engaging in unlawful stock exchange operations is punished with the same penalties as the aforementioned crimes—trading on privileged information and publishing false or incorrect information—as provided in Article 60 of Legislative Decree No. 93-10 as amended.

Conclusion:

From the foregoing, it is evident that the securities exchange is a market through which financial securities issued by legal entities (companies, public or private organizations, etc.) are traded in order to obtain financing directed toward implementing investment projects. The Algerian legislator has defined it in Article 1 of Law No. 93-10 concerning the securities exchange, as amended by Law No. 03-04.

Through this research, we have reached the following conclusions:

- The securities exchange performs several functions for investors, listed companies, and the national economy. Through it, capital investments are made, investment is directed, and the operation of the securities market is organized and regulated, in addition to other functions.
- Stock exchange crimes consist of three crimes provided in Article 60 of the aforementioned law: the crime of trading on privileged information as provided in paragraph one, the crime of publishing false or misleading information as provided in paragraph two, and the crime of engaging in unlawful stock exchange operations as provided in paragraph three.
- A notable observation regarding stock exchange crimes is that the legislator has equated error and intent in the mental element, punishing the perpetrator merely upon commission of the act whether or not the result is achieved and regardless of whether it was intentional or resulted from negligence.

Based on these conclusions, we propose the following recommendations:

- The necessity of strengthening the legislative framework governing the securities exchange through reviewing the provisions of Law No. 93-10 as amended to align with developments in the global economy and finance, particularly in the field of digitalization and electronic markets.
- Working to intensify monitoring of operations within the financial market through strengthening the authority of regulatory bodies such as the Commission for Stock Exchange Regulation and Oversight (COSOB) and providing them with the necessary technical and human resources.
- The necessity of reconsidering criminal policy by more clearly distinguishing between intentional and unintentional conduct in stock exchange crimes to achieve greater justice in the application of penalties.
- Strengthening international cooperation in combating stock exchange crimes, particularly with foreign regulatory bodies, to address transnational crimes.

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