

# ILLYRIUS



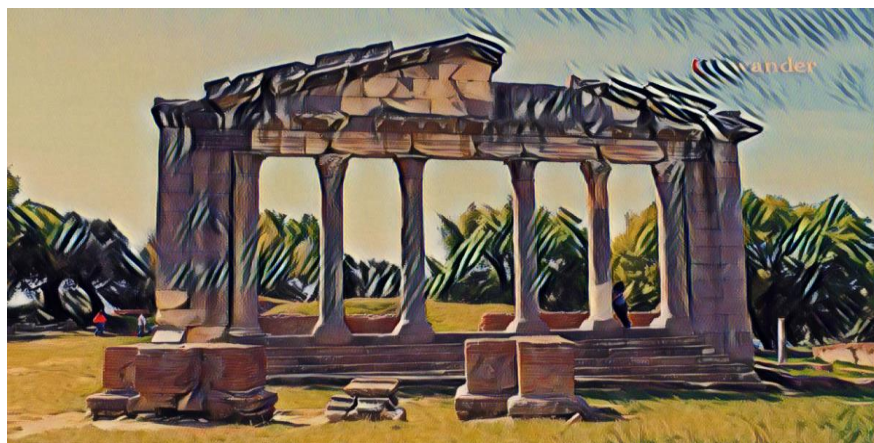
SAPIENZA  
UNIVERSITÀ DI ROMA

Centro di Ricerca e Cooperazione  
con l'Eurasia, il Mediterraneo  
e l'Africa Sub-sahariana



ISSN 2225-2894

International Scientific Review / n. 18 / (I-2022)



Scientific Directors:

*Ersi Bozheku – Giorgio Spangher*

SPECIAL EDITION  
“LEGAL CHALLENGES IN THE DIGITAL ERA”  
Essays

*edited by*  
*Dorina Hoxha, Jonida Milaj-Weishaar, Ersi Bozheku*

*In collaboration with*



Albanian National Group  
Collective Members of Kosovo

Roma – Tirana – Prishtina

Price: 7 euro







# Illyrius

## International Scientific Review

ISSN 2225-2894

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**ISSN 2225-2894**

*Review of CESIAL – Italo-Albanian Center of Studies, High Formation and Researches of CEMAS "Sapienza" Università di Roma*

*Reviste e CESIAL – Qendra e Studimeve, Formimit te Larte dhe Kerkimeve Italo-Shqiptare e CEMAS "Sapienza" Universiteti i Romes.*

*Rivista del CESIAL – Centro Studi, Alta Formazione e Ricerca Italo-Albanese del CEMAS "Sapienza" Univeristà di Roma.*

*This review is published twice-yearly and adopts a **double blind peer review** procedure for evaluation and acceptance.*

*Kjo revistë del në shtyp me një frekuencë semestrale dhe përdor procedurat e vlerësimit dhe të pranimit **double blind peer review***

*Rivista avente periodicità semestrale che si avvale della procedura di valutazione e accettazione **double blind peer review***



# Ethical code

## Illyrius International Scientific Review ISSN 2225 – 2894

### **Introduction**

Illyrius is a double blind peer reviewed international research journal aiming to publish qualitative research in the following fields. Its purpose is to act as a meeting place to encourage the sharing of experiences between scholars belonging to different geographical areas and who, thanks to their cultural peculiarities, can contribute to a productive and continuous exchange of scientific and didactic knowledge. In this perspective, the journal is open to welcome contributions from scholars from all over the world on topics such as law, economics, sociology, political sciences, security sciences, international cooperation, communication sciences.

The Illyrius is published by the Italo-Albanian Center of Studies, High Formation and Researches CESIAL of CEMAS “Sapienza” Università di Roma and edited by its components.

Illyrius follows all the standards and best practice guidelines established in the European Charter for Researchers applicable to researchers as well as all the ethical norms and rules established in The European Code of Conduct for Research Integrity. Thus, this Code shall be interpreted in correlation with these legal documents.

This Code aims to disseminate within the academic scholars the values of legality, solidarity, impartiality, as well as aims to apply the principle of equity by reviewing all the contributions through a fair review process based on – at least – two different binding evaluations. In the case of disagreement between them, a third reviewer will be asked.

### **Research Integrity**

Illyrius applies the same standards of integrity applied at the European Charter for Researchers, the European Code of Conduct for Research Integrity.

Authors submitting papers in Illyrius shall apply professional responsibility and the ethical practice. In other words, they shall be aware of the strategic goals of their particular fields. In addition, authors submitting their scientific contributions to Illyrius shall guarantee that their research is relevant for the members of the community by also advancing the current state of the art. Moreover, and more importantly, they shall not infringe the rules of plagiarism and shall not duplicate research carried out or published elsewhere by others or themselves (see Section Plagiarism and Duplication and Redundant Publication (Self-Plagiarism)). In the case of data processing, the data shall be original or explicitly quoted. Additionally, methods of collection and evaluations of the data shall be disclosed, and authors shall not modify them by being honest in reporting the data in a fair, full and unbiased way by also respecting their colleagues, without applying any type of discrimination. Additionally, their research shall be disseminated and exploited according to their personal contractual arrangements. Furthermore, if the work is delegated, authors of the contribution submitted ensure that the person working on them has the competence to carry it out. Last, but not least, the rules regarding intellectual property rights – especially in the case of joint work – shall be respected, also based on the individual agreement between the authors.

Therefore, between others, some of the most important ethical principles that the authors submitting contributions at Illyrius are:

Professional responsibility

Accountability

Professional attitude

Reliability in ensuring the quality of research through the application of design, methodology and analysis and use of resources approved by academia

Honesty in research through the application of the principle of transparency and impartiality

Respect of colleagues as well as research environment and cultural heritage

Application of the principle of equity between all members of the academic community without any type of direct or indirect discrimination based on religion, sex, gender, political or sexual orientation, personal convictions, ethnicity, citizenship, look, language or other types of discriminations since these are only few of the cases and do not exhaustive all of them.

Application of the rules of intellectual property rights

### **Composition of the board of the journal: their activities and responsibilities.**

**The scientific directors:** take care of the organizational aspects of the journal and its scientific profile. Together with the scientific committee they draw up its guidelines. They decide on editorial activities, identify the peer reviewers, maintain relationships with the chief editors and administrative managers. They take the decisions on the articles in the terms which will be discussed below.

**The scientific committee:** is made up of important figures from the world of science and is the body that carries out the journal's scientific addressing activity. The same indicates to the scientific directors the scientific criteria to be adopted and shares with them the guidelines that the journal will have to follow. The scientific committee evaluates the quality of the journal's activities, offering its own suggestions. Its members may at any time ask the scientific directors for information on the progress of the journal as well as any other useful information and offer their suggestions to the scientific directors. They propose scientific articles for publication. The members of the scientific committee are ex officio peer reviewers, that the scientific directors must contact for the anonymous control of the quality of the manuscripts, taking into account the professional profile of the individual member. They take the decisions on the articles in the terms which will be discussed below.

**Editors in chief:** In agreement with the scientific directors, they follow the editorial activities of the journal. They take the decisions on the articles in the terms which will be discussed below.

**Editorial and Administrative Responsibilities:** take care of the management of the site and of the practical and administrative aspects of the magazine. They manage the email and other communication channels, following the instructions of the scientific directors and editors in chief.

### **Editorial Process**

All authors are guaranteed that the Illyrius applies editorial independence. The journal aims to prevent any type of conflicting interests, fear, or any type of influence coming from corporates, businesses or political parties or other actors. Illyrius is committed to increase diversity, promote inclusion and quality at every state of the publishing process. We support submission from scholars of diverse socio-economic backgrounds and especially woman scholars. The application of the equity principle means that the editorial board does not discriminate, between others, based on race, ethnicity, citizenship, gender, sex, sexual orientation, religion, disability, look, or personal convictions or other reasons.

The decision is based on pure merits of the scholars. The Scientific Directors, the Scientific Committee and the Editors in Chief decide if the manuscript applies all the ethical standards as well as potentially include academic results that enhances the state of the art of that particular field of research.

The Scientific Directors, the Scientific Committee and the Editors in Chief do not discriminate authors on their personal characteristics as well as on the content of the work, if the scientific work applies all the academic ethical principles.

In particular, the editorial decisions on the scientific contribution submitted to our journal are done based on the anonymous peer review reports, which have a unified format. Before sending to the peer reviewers, previous steps are followed. First, **Editorial and Administrative Responsibilities** checks if the contribution submitted follows all the formal criterias for the submission established by the Journal. Second, one of the Editors in Chief reviews if the contribution follows the scope of the journal. Third, the Editor in Chief communicates with a Scientific Directors in order to promote a quick review of the quality. The Scientific Directors make an assessment of the perceived level of qualitative research work, a check on the presence of plagiarism or self-plagiarism parts with technological tools in thier equipment (compilatio system), and suggest either rejection of the manuscript or decide for the review process. If the final decision is that the manuscript does not follow the style of the journal, or does not analyze one of the topics within the scope of the Journal, or the contribution does not pass the plagiarism or self-plagiarism test, or the manuscript is not with a good quality, a quick decision is done and the corresponding author is informed by the editorial and administrative responsables using the mail contact [editor@illyrius.eu](mailto:editor@illyrius.eu). The Scientific Directors can also delegate this activity to a member of the scientific committee. The delegate communicates whitin 3 (three) days the result to the Scientific Directors and can not assume the quality of peer reviewer.

During the pre-review phase, which shall be done within two week, the Scientific Directors, or their delegate, will consider the following questions:

Does the contribution fit within the scope of the journal and also applies the same style and formatting and policy requirements of the journal?

Is the contribution without plagiarism or self-plagiarism?

At first reading, the manuscript offers an adequate scientific and methodological level?

If the pre-assessment is positive, the manuscript will be reviewed anonymously by two peer reviewers, experts on the topic.

The Scientific Directos find the peer reviewers, whitin two months. The Scientific Directors look for peer reviewers among the members of the scientific committee, taking into account their academic aptitudes in relation to the topic of the article proposed for publication. In case that the members of the scientific committee do not have an adequate academic profile in relation to the topic of the manuscript, the scientific directors can contact academics who are experts in the area even if they are not members of the scientific committee.

The average time for the first review shall be at most 8 (eight) weeks.

Once the review process is completed, the reviewers shall suggest:

Rejection

Acceptance with major revisions

Acceptance with minor revisions

Full acceptance

Based on the review process, the Scientific Directors and the Editors in Chief will take a decision and inform the corresponding author by also sending the anonymous reports of the reviews. If there is a rejection, authors have the right to re-submit it again by also underlying the fact that the manuscript is re-submitted, after - at least - four weeks from the notification. If there is an acceptance with minor/major revisions, a deadline of four weeks is given. If the manuscript is not re-submitted with the revisions within four weeks, it is presume that the manuscript has been withdrawn by the corresponding author. However, one day before the deadline, a reminder will be sent. If the corresponding author does not respond, or does not submit a justified request for extension, then the manuscript will be rejected.

### **Peer Review**

The peer review process is fundamental to maintain and always increase the standards of our publications. All authors are clearly informed with the rate of acceptance, which will be updated every year. As a result:

The journal uses a unified standard format for the evaluation process, divided in:

Uncovering of the state of the art

Methodology

Content and Innovation

Language standard and Style

Eventual comments

The journal will send to all reviewers is sent the code of ethics as well as the link of the journal with the information regarding scope, quality, and other policies. More importantly, a link with the information regarding the Guidelines for Reviewers, based on Ethical Guidelines for Peer Reviewers, which is also published in the website, is also included. All reviewers are asked and encourage to take knowledge and to familiarise themselves with them. In order to promote quality, they shall sign that they are been familiarized with these documents.

The reviewers are scholars with academic experience and are – in general – members of the Scientific Committee. Only if the members do not experience in this field, other scholars will be contacted.

The journal supports the investigation of cases of manipulation or fraudulent peer reviews.

The journal supports the confidentiality of the authors and of the peer reviewers by guaranteeing their anonymity. Thus, the manuscript is sent to the reviewers without the names of the authors and the comments are sent to the authors without the name of the reviewers.

Only manuscript with potential high level of advance will be sent to for the review process. In order to speed up the review process, the journal applies different policies.

The corresponding author can suggest independent reviewers without conflict of interest; i.e. no current collaboration; no same institute/university; no co-authorship in the last five years; no working on the same institute in the last five years. When there is more than one author, the corresponding author shall take the liability for the absence of interest for all the co-authors. Although all recommendations are considered, the final decision is taken by the Editor in Chief. Third, co-reviewing process is allowed, under the condition that the editorial board is informed. Thus, reviewers can include in the review process other scholars. However, the Scientific Directors shall be informed and the co-reviewer shall declare any relevant competing interests. This will allow the journal to include them in pool of reviewers and ask their evaluations for the following submissions.

At the end of the review process, the Scientific Directors and Editors in Chief took a decision based on the reviewers' evaluations:  
Full Acceptance

Acceptance with minor/major revisions. When the scientific contribution is perceived as a good manuscript and the reviewers as well as the editorial board believes that the author can address the concerns, a deadline – of a maximum four weeks – is given to the authors to revise the manuscript. In this case, the authors shall send, within the deadline, two documents: a document with the track changes and another document without the track changes.

### **Authorship**

In the case of submission of a contribution with more than one author, an internal agreement between parties will decide the order as well as the parts that they have written individually or jointly.

However, the corresponding author takes the responsibilities for:

Manuscript corrections and proofreading.

Handing the revisions

Agreeing to and signing the Author Publishing Agreement

Sending the Change of authorship request form

Arranging for the payment of the article processing charge.

All co-authors are responding to the queries – such as publishing ethics, availability of data etc.

### **Affiliations**

Each article shall include an affiliation of the author, that represent the institution or institutions where the research was conducted, supported or approved. For the non-research content, any affiliation should also represent the institution or institutions with which each author is currently affiliated.

### **Plagiarism**

The journal applies the same definition of plagiarism included in The European Code of Conduct for Research Integrity. Therefore, "Plagiarism is using other people's work and ideas without giving proper credit to the original source, thus violating the rights of the original author(s) to their intellectual outputs." It is also called as plagiarism the case of applying the same paragraphs in a different language, without duly acknowledging or citing the original author(s) to their intellectual outputs.

Plagiarism can include not only published or unpublished papers but also lessons, presentation and working materials used by others. In addition, plagiarism can occur in text, pictures, illustrations, as well as in the data, in their elaboration as well as in other parts.

All members – editorial team as well as reviewers and co-reviewers – as well as readers are encourage to raise any suspicion of plagiarism by contacting the editorial in the email: [editor@illyrius.eu](mailto:editor@illyrius.eu).

With the goal to eliminate plagiarism, all the tools related to plagiarism will be applied. In the case of plagiarism, the paper is directly rejected.

### **Duplication and Redundant Publication (Self-Plagiarism)**

The journal applies the same definition of self-plagiarism included in The European Code of Conduct for Research Integrity. Therefore, "Re-publishing substantive parts of one's own earlier publications, including translations, without duly acknowledging or citing the original." It is also called as self-plagiarism the case of applying the same paragraphs in a different language, without duly acknowledging or citing the original.

It shall be underlined that self-plagiarism is not tolerated, unless it is essential to prove the same theories or concepts by using the same ideas and by correctly citing the original source.

All members – editorial team as well as reviewers and co-reviewers – as well as readers are encourage to raise any suspicion of self-plagiarism by contacting the editorial in the email: [editor@illyrius.eu](mailto:editor@illyrius.eu).

With the goal to eliminate self-plagiarism, all the tools related to plagiarism will be applied. In the case of plagiarism, the paper is directly rejected.

At the moment of submission, the manuscript should not be under consideration, accepted for publication or in press within a different journal, although the other journal has explicitly written that it does not have an exclusive submission policy. However, it shall be noted that the publication of the work on the personal or institutional website, or presented in the working seminars organized within the various institutions is not viewed as prior or duplicate publication. However, in the acknowledgment, this shall be mentioned.

Furthermore, it is not considered as prior or duplicate publication, the submission of part of the thesis, although this is published in the institutional or personal website, if it is published under embargo until the moment of publication by the journal. In

addition, the publication of the thesis by a publisher, can be submitted to the journal, if permission is given by the thesis publisher and/or the thesis does not have an ISBN.

#### **Research with Humans or Animals**

As stated in [The European Code of Conduct for Research Integrity](#), “researchers handle research subjects, be they human, animal, cultural, biological, environmental or physical, with respect and care, and in accordance with legal and ethical provisions.” Moreover, their right to privacy as well as the ethical and legal standards for research shall be respected by also adapting the good practice in that particular field.

#### **Competing Interests and Funding**

At the moment of submission, all authors disclose any conflicts of interest and financial or other types of support for the research or for the publication of its results. It is considered as conflict of interest any type of influence that can interfere on the objectivity and impartiality of the work by also impacting on the ethical principles of research. However, it does not constitute a conflict of interest, the funds or grants in the academic research, unless this has influenced the design, the methods, the analysis, and the publication of the results. However, funds or grants shall be declared in the acknowledgment. In addition, the journal is free from undue influence. Thus, also reviewers or editors with a conflict of interest shall withdraw from involvement in decisions on publication or reviewing.

All members – editorial team as well as reviewers and co-reviewers – as well as readers are encourage to raise any suspicion of conflict of interest by contacting the editorial in the email: editor@illyrius.eu.

#### **Libel, Defamation and Freedom of Expression**

All authors shall not held any type of behaviour or submit false statements that can harm the reputation of colleagues, students or collaborators. In addition, the reputation of various groups, associations, organizations or individuals is protected.

#### **Retractions, Corrections and Expressions of Concern**

As stated in [The European Code of Conduct for Research Integrity](#), the journal will accept corrections made by the authors (corrigendum) or by the publisher (erratum). However, this is limited only to cases where the errors are serious, contain plagiarism or the content is considered as life-endangering. Both authors and publisher are given credit for the corrections post publication.

However, only in extrema ratio, when the content is violating personal rights or confidentiality laws, or it encourages behavior against the public order or health, the journal might decide to remove a published manuscript. It shall be noted that this are only explanatory cases and other cases that are carefully considered by the editorial team might be a reason for this drastic decision. In all these cases, the corresponding author will be informed. Moreover, the records will be maintained by the journal (see Section Integrity of Records).

#### **Manipulation, Falsification and Fabrication**

As stated in [The European Code of Conduct for Research Integrity](#), manipulation, falsification and fabrication are not allowed. In concrete, “fabrication is making up results and recording them as if they were real.” In addition, “falsification is manipulating research materials, equipment or processes or changing, omitting or suppressing data or results without justification.”

These principles are applied not only in data or contribution but also in imagine. In these cases, correction of the manuscript or its removal could be applied (see Section Retractions, Corrections and Expressions of Concern).

#### **Fraudulent Research and Research Misconduct**

The Journal applies all the measures to avoid the fraudulent research and research misconduct. However, if this has not been possible during the pre-review process or review process, as stated in [The European Code of Conduct for Research Integrity](#), fraudulent research and research misconduct are sanctionable. This includes not only the case of corrections, but also the case of removal of the published manuscript (Section: Retractions, Corrections and Expressions of Concern).

#### **Versions and Adaptations**

This journal accepts the possibility of adaptation, including also translation in a different language, under two conditions:

Explicit consent by the Journal

Application of the ethical principle in research; in particular regarding self-plagiarism (see Section Duplication and Redundant Publication (Self-Plagiarism)).

The journal retains the right to withhold the approval for publication, if this impacts on professional responsibility, accountability, professional attitude, or intellectual property rights (see Section Research Integrity).

#### **Transparency and Honesty**

Researchers apply the principle of transparency and honesty during their research, also in the acknowledgment. Their violation is sanctionable (see Section: Retractions, Corrections and Expressions of Concern).

#### **Data and Supporting Evidence**

This Journal applies the policy of open access. This is also included for the data, which can be part of the manuscript or submitted in a different document. These supplementary materials are important for understanding the data uncovered and examined in the manuscript. Depending on the type of manuscript, the supplementary data are only part of the editorial pre-review process or they can also be part of the evaluation process by the reviewers, if the editorial board believes that it is needed for the evaluation process.

#### **Integrity of Record**

The journal maintains a record of everything that is published. However, the metadata shall comply with the EU and Italian laws and the Journal will make any effort to make them accessible under the Italian jurisdiction. In the case of modification – i.e. cases

of misconduct of research, such as defamation or retraction (see Section Retractions, Corrections and Expressions of Concern) – a record is kept by the journal.

Moreover, when the manuscript is download, the customer shall respect intellectual property rights as well as copyrights.

### **Ethical Business Practices**

#### **Fair Access**

The Journal applies open access system. This guarantees fair access to all contributions. Moreover, in exceptional cases, under justified reasons, the editorial team may reduce or eliminate the payments of Article Processing Charge.

#### **Censorship**

The journal respects and protects personal dignity and freedom. The journal encourages and promotes freedom of research. Thus, the Journal does not complicit in any kind of censorship. However, the rules regarding libel, defamation and freedom of expression shall be considered (see Section Libel, Defamation and Freedom of Expression).

#### **Marketing Communication**

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# Illyrius

## International Scientific Review

ISSN 2225-2894

n. 18/ (I-2022)

SPECIAL EDITION  
“LEGAL CHALLENGES IN THE DIGITAL ERA”  
Essays

*edited by*  
Dorina Hoxha, Jonida Milaj-Weishaar, Ersi Bozheku

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# The European Union's evolution of Market Manipulation offence

Marina Poggi d'Angelo Ph.D. <sup>1</sup>

## 1. Introduction

The purpose of this paper is to outline the importance, nowadays, to regulate the European financial market in an effective way, not only providing administrative sanctions but especially implementing criminal sanctions. The reasons for this are twofold: firstly, to allow economic resources to circulate efficiently and safely; secondly, to protect investors' savings.

The most important function of financial markets is the efficient allocation of resources to produce goods and services in the future. There is a strong link between the development of the financial system and economic growth and indeed when savings, as an unspent income, are made available to investors, they fuel the growth process of an economic system.

When adopting this point of view, it may happen that providing only administrative sanctions in serious cases of market abuse is not effective to achieve the integrity of the financial markets as a whole. As stated in Recital 6 of the Market Abuse Directive (MAD II): *«it is essential that compliance with the rules on market abuse be strengthened by the availability of criminal sanctions which demonstrate a stronger form of social disapproval compared to administrative penalties. Establishing criminal offences for at least serious forms of market abuse sets clear boundaries for types of behaviour that are considered to be particularly unacceptable and sends a message to the public and to potential offenders that competent authorities take such behaviour very seriously»*.

On 6<sup>th</sup> of August 2021, the European Securities and Markets Authority (ESMA), the securities and markets regulator of the European Union (EU), published a Report of the Market Abuse Regulation (MAR), which is the first in-depth review of the functioning of MAR since its implementation in 2016<sup>2</sup>. Accordingly, ESMA carried out the mapping exercise of the application of the administrative and criminal sanctions, collating the data provided by National Competent Authorities in relation to a given period (2017-2019).

The responses regarding the criminal sanctions imposed over the reporting period show a certain dispersion: whereas three authorities (Finland, Ireland and Poland's authorities) do not report any criminal sanction over the reporting period, Norway and

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<sup>2</sup> The report is available at: <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-outcomes-mar-review>.

Germany's authorities report the existence of a significant number of MAR criminal sanctions.

The responses provided by National Competent Authorities in relation to the administrative sanctions imposed on insider dealing and market manipulation over the reporting period are similarly dispersed. Overall, it can be concluded that a relatively low number of administrative sanctions were imposed in the timespan under examination.

The ineffectiveness of administrative sanctions is the reason why providing a specific offence for market manipulations in serious cases is considered as an effective way to regulate financial markets and protect investors.

The punishment of market manipulation has become one of the main objectives of the European Union as the public opinion equate excessive speculation with outright fraud, due to its destabilising effects on stock markets and the triggering role it plays in major financial shocks, such as the LIBOR scandal (*London Interbank Offered Rate*).<sup>3</sup>

With the aim to delve deeper into this subject and analyse the structure and the evolution of the Market manipulation offence in the European Union, as a first step we will retrace the origin and the definition of one of the two market abuse crimes: market manipulation. Then, we will investigate specifically the general history of Market Abuse in the European Union. And finally, we will see the latest transformation of the Market manipulation offence and the issues related to the recent digitalisation of manipulative behaviour.

## 2. The Market Manipulation's Origin and Definition.

One of the two market abuse crimes is Market Manipulation offence, with Market Manipulation being the oldest form of "market abuse". While Insider Trading, the other Market Abuse crime, is considered a recent phenomenon, having developed only in the twentieth century, Market Manipulation has been present for a long time in every market where prices are determined by supply and demand. Traditionally, there have been many famous cases in history, such as the collapse of the "*South Sea Company*"<sup>4</sup> (which is likely the first "stock market" boom), the illegitimate manipulation of the stock price in the "*Guinness affair*" in 1980, until *Citigroup Global Markets* manipulated the price of individual shares in 2005<sup>5</sup>.

It has been observed that there is a long-established tradition of market control and the adoption of specific rules to prevent market abuse, which can perhaps be traced even from the Roman Empire and the institute of "*fair price*".<sup>6</sup>

Market manipulation amounts to an "unwarranted" interference in the operation of ordinary market forces of supply and demand which undermines the "integrity" and efficiency of the market.<sup>7</sup> In general terms, to manipulate the market refers to disseminating information that is false and negative about an issuer in an effort to drive down the price of

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<sup>3</sup> About Libor Scandal cf. L. VAUGHAN – G. FINCH, *The long read Libor scandal: the bankers who fixed the world's most important number*, in [www.theguardian.com](http://www.theguardian.com), 18 January 2017.

<sup>4</sup> See N. FERGUSON, *The Ascent of Money: A Financial History of the World*, Allen Lane, 2008, ch. 3.

<sup>5</sup> Financial Services Authority Final Notice, *CitiGroup Global Markets Ltd*, 28 June 2008.

<sup>6</sup> Cf. B. M. MITNICK, *The Political Economy of Regulation*, Columbia University Press, 1980, 243.

<sup>7</sup> IOSCO, *Investigating and Prosecuting Market Manipulation*, 2000, 8.

its securities or, alternatively, disseminating false information in order to drive a company's share price higher.<sup>8</sup>

The Market Manipulation offence's *ratio* is to make stock market more efficient thanks to quick and free transmission of information. Indeed, since the birth of stock markets, the need to avoid information asymmetries or behaviours, which cause information distortions and "speculative bubbles", has become particularly important. Already in the 17th century, in the Netherlands, the price of tulip bulbs, after an exponential growth, collapsed so quickly that it led to an actual financial crash.<sup>9</sup>

Market Manipulation, as an offence, presents a preliminary problem of definition. Some of the most important jurisdictions do not define the term "*manipulation*" altogether. The classic definition of market manipulation was given in famous US cases in "*General Foods Corporation v Brannon*" 1948<sup>10</sup>, where "manipulation" was defined as "*the creation of an artificial price by planned action*", and in "*Cargil Inc. v. Hardin*" 1971<sup>11</sup>, where it was marked as "*an activity, scheme, or artifice that deliberately influences the price of a financial asset, resulting in a price other than the one that would have resulted in the absence of such intervention*".

Subsequently, the United Kingdom defined market manipulation firstly in the Financial Services Authorities (FSA 1986) and later in the Financial Services and Markets Act (FSMA 2000).

In the EU, a general definition of market manipulation was envisaged in 2003 in the Market Abuse Directive (MAD I), following the traditional distinction between "*transaction-based*" and "*information-based*" market manipulation.

It is important to highlight that all attempts to define market manipulation in legislative provisions follow three different approaches, which are reflected in three distinct jurisdictions: the "*effects-based approach*", the "*intent-based approach*" and a combination of these two:

1. The artificial price, or "*effects-based approach*"<sup>12</sup>, requires a proof of the creation of artificial prices or of false or misleading impressions. A modified version of this approach is adopted by the EU Market Abuse Directive.

2. The "*intent based approach*" requires the alleged manipulator's intent to induce other market participants to trade. It is an approach adopted by UK Regulation<sup>13</sup>.

3. A combination of two, which also requires proof of inducement. This is the approach adopted by US Courts<sup>14</sup>.

However, most definitions of price manipulation have as a common, inextricable component the element of "*price artificiality*", which can be defined as the divergence of price from the legitimate forces of supply and demand. The determination of the right price in relation to the artificial price can be very difficult and sometimes even impossible to

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<sup>8</sup> See B. RIDER – K. ALEXANDER – S. BAZLEY – J. BRYANT, *Market Abuse and Insider Dealing*, Bloomsbury Professional, 2016, 120-121; S. HORAN, *Corporate Crime*, Bloomsbury Professional, 2011, 1099.

<sup>9</sup> C.P. KINDLEBERGER – R.Z. ALIBER, *Manias, Panics and Crashes. A History of Financial Crises*, Palgrave, 2005, 99.

<sup>10</sup> United States Court of Appeal, *General Foods Corporation v Brannon*, 170 F.2d 220 (19 October 1948).

<sup>11</sup> United States Court of Appeal, *Cargil Inc. v. Hardin*, 452 F.2d 1154 (7 December 1971).

<sup>12</sup> Cf. J.D. COX – R.W. HILLMAN- D.C. LANGEVOORT, *Securities Regulation: Cases and Materials*, Wolters Kluwer, 2017, 771.

<sup>13</sup> S. BAZLEY, *Market Abuse Enforcement: Practice and Procedure*, Bloomsbury Professional, 2013, 247-248; K. ANDERSON -A, PROCTER – J. GOODLIFFE, *A practitioner's guide to the law and regulation of market abuse*, Thomson Reuters, 2017.

<sup>14</sup> See E. AVGOULEAS, *The Mechanics and Regulation of Market Abuse*, Oxford University Press, 2005, 107.

establish. But ultimately, it is irrelevant whether the artificial price was created through the dissemination of false information, the conduct of artificial transactions, or through trades structures to achieve this result. What matters is the effect of those devices on market prices and the harm they inflict on the market's information efficiency.

### 3. The History of Market Abuse Regulation in Europe.

The regulation of Market Abuse has a long history in the European Union<sup>15</sup>. Abuse in the financial markets has been historically regulated through a combination of criminal law, applied to all users of the financial markets, and the regulation of market professionals.

The first Market Abuse regulation in the European Union was implemented in 1979 with the "*Stock Exchange Listing Directive*" (79/279/EEC), which introduced the obligation to disclose in relation to specific and important events. The next step was the "*Insider Dealing Directive*" (1989/592/EEC) of 1989, which however was focused only on the definition and prohibition of Insider Dealing.

The European Union adopted its first Market Abuse Directive in 2003, which built a broad and comprehensive framework for the regulation of market abuse - both Insider Trading and Market Manipulation - modelled partly on the UK Market Abuse regime. However, during the financial crisis of 2008, it was realised that the practical impact of the Directive was rather limited. For this reason, in 2014 the first Directive was replaced by a Regulation (MAR) and a new Directive (MAD II).

The aim of the new Regulation is to establish a more uniform interpretation of the Union framework for market abuse by defining more clearly the rules applicable in each Member State.

More specifically, the Regulation covers the different forms of market manipulation developed by the "*capital market*" discipline: the "*information-based manipulation*", the "*transaction-based manipulation*" and the "*short selling*"<sup>16</sup>.

Although the European legislator has regulated the market abuse through a Regulation, many crucial aspects of the new regime are governed by the "*Market Abuse Directive on Criminal Sanctions*" or MAD II (2014/57/EU).

Even if this approach is often considered insufficient because the European Union has only an indirect authority in criminal law<sup>17</sup>, the Directive obliges each Member State to align their legislation with European Law and if they do not comply with it, they will be subject to the Infringement Procedure (articles 258 and 259 of TFEU).

Hence, this directive is in addition to the numerous acts of EU law affecting the substantive criminal law of the Member States, by requiring Member States to criminalise certain conduct and to penalise it by effective, proportionate and dissuasive criminal sanctions.

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<sup>15</sup> For an in-depth historical reconstruction, cf. S. MOCK, *History, Application, Interpretation, and Legal Sources*, in M. VENTORUZZO – S. MOCK, *Market Abuse Regulation. Commentary and Annotated Guide*, Oxford University Press, 2017, 9.

<sup>16</sup> Cf. N. MOLONEY, *EU Securities and Financial Markets Regulation*, Oxford University Press, 2014, 740; S. MOCK, *The Concept of Market Manipulation*, in M. VENTORUZZO – S. MOCK, *Market Abuse Regulation. Commentary and Annotated Guide*, Oxford University Press, 2017, 37-38.

<sup>17</sup> A. KLIP, *European Criminal Law. An Integrative Approach*, Intersentia, 2016, 182.



#### 4. The European Market Manipulation Offence's Latest Modification.

In 2014, EU redefined the Market Manipulation offence to limit further criminal liability. The Directive MAD II, under art. 5, par. 1, recommends Member States to take the necessary measures to ensure that market manipulation is referred to as a criminal offence at least in serious cases, and when committed intentionally<sup>18</sup>.

According to the MAD II, market manipulation shall comprise the following activities:

(a) Entering into a transaction, placing an order to trade or any other behaviour which:

(i) gives false or misleading signals; or

(ii) secures the price of one or several financial instruments an abnormal or artificial level;

(b) Entering into a transaction, placing an order to trade or any other activity or behaviour which affects the price of one or several financial instruments which employs a form of deception;

(c) Disseminating information through the media which gives false or misleading signals, where the persons who made the dissemination derive for themselves or for another person an advantage or profit from the dissemination of the information in question; or

(d) Transmitting false or misleading information or providing false or misleading inputs or any other behaviour which manipulates the calculation of a benchmark.

Although market manipulation is defined by art. 12 of the Regulation and prohibited by art. 5, par. 1 of the 2014 Directive, a different definition of manipulation as an element of the offence was provided. This difference lies in the fact that, for the objectives of criminal law, a more stringent approach is necessary to respect the general principle of culpability. The seriousness of market manipulation is defined by Recital 12 of the Directive whereby: *"in cases such as those where the impact on the integrity of the market, the actual or potential profit derived or loss avoided, the level of damage caused to the market, the level of alteration of the value of the financial instrument or spot commodity contract, or the amount of funds originally used is high or where the manipulation is committed by a person employed or working in the financial sector or in a supervisory or regulatory authority"*.

#### 5. The Recent Digitalisation of the Manipulative Behaviours.

The redefinition of the Market Manipulation offence may, however, also be ineffective in providing a real investor protection due to the recent digitalisation of transmission of false or misleading information.

The digitalisation of the manipulative behaviours takes two different shapes: on the one hand, stock exchange transactions now use automated systems; on the other hand, some investment decisions are made on the internet under the influence of social media.

In the first case, MAR regulated the use of automated trading techniques (Algorithmic Trading and High frequency trading), deeming them not abusive (under

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<sup>18</sup> However, Italy has just adopted the EU Regulation. The deadline for transposition of the Directive expired on 3 July 2016 in the belief that Italy's market abuse discipline was already in compliance with the European provisions. Cf. M. GAMBARDELLA, *Condotta economiche e responsabilità penale*, Giappichelli, 2020, 364.

penalty of contravention of Directive 2014/65/EU, the so-called MiFID II)<sup>19</sup> but explicitly including them among the possible ways of market manipulation. These automated trading techniques pose some problems regarding market transparency and efficiency as a 'human' trader is not able to operate investment strategies at the same speed as machines<sup>20</sup>.

In relation to the second form of manipulative conduct, today, market manipulation occurs across national borders through a variety of ways, including the use of the internet. Indeed, while the digital revolution has enabled the development of a globalised and interconnected world, it has also led to the emergence of new forms of crime committed by means of digital systems. The recent market operations that have taken place as a result of decisions taken on internet made it indeed very problematic to understand whether they are “normal” market fluctuation or real manipulations.

A number of key issues regarding the stability and security of financial markets have arisen, as the simplification with which it is possible to sell or buy shares and bonds through online portals or apps, and the extraordinary resonance offered by social networking platforms (e.g., Twitter, YouTube, Reddit, etc.) to share one's investment ideas.

An example of that are the GameStop and Elon Musk's tweet cases: in January 2021, the GameStop case broke out, as the video game shop chain recorded strong rises thanks to the coordinated action of small and micro shareholders organised on a digital forum<sup>21</sup>; in November 2021, Tesla shares closed down nearly 5% Monday after CEO Elon Musk asked his Twitter followers if he should sell 10% of his stock in the electric vehicle company<sup>22</sup>.

## 6. Conclusion

In conclusion, Market manipulation is considered as old as capitalism. As mentioned earlier, the most important function of financial markets is efficient allocation of resources. Since this is a fragile mechanism and may easily be disturbed by exogenous and endogenous shocks or distortions, the need for extensive regulations has arisen.

One of the main justifications of financial regulation is that the multitude of externalities and failures have such a large impact on the real economy, that financial sector institutions should be tightly regulated to make them more resilient.

In addition, alongside administrative sanctions - which have shown little dissuasive force - provision of criminal penalty for serious and harmful cases of intentional market manipulation is deemed to be useful to regulate the market and to protect people's savings in an integrated market such the European financial market.

Today, especially when it is possible to manipulate the price of shares digitally at the click of a button and to influence millions of people on social media to buy or to sell a share, it has become more urgent to define a specific crime that can effectively protect investors.

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<sup>19</sup> Cf. D. BUSCH – G. FERRARINI, *Regulation of the EU financial markets: MiFID II and MiFIR*, Oxford University Press, 2017.

<sup>20</sup> Cf. M. PALMISANO, *L'abuso di mercato nell'era delle nuove tecnologie. Trading algoritmico e principio di personalità dell'illecito penale*, in *Dir. pen. cont.*, 2019, 129.

<sup>21</sup> On the subject, L. GOODMAN et al., *Robinhood and GameStop: Essential issues and next steps for regulators and investors*, in [www.centreforfinancialstability.org](http://www.centreforfinancialstability.org), 4 February 2021; B. BRUMBERG, *Investigations Into GameStop Trading and Reddit: Former SEC Enforcement Chief Provides Insights*, in [www.forbes.com](http://www.forbes.com), 9 February 2021. In Italy, see the comment of F. D'ALESSANDRO, *Il caso GameStop: una tempesta perfetta mette in crisi lo statuto della manipolazione del mercato*, in *Dir. pen. e proc.*, 2021, 1234.

<sup>22</sup> M. DELLATTO, *Elon Musk's Twitter Followers Vote for Him To Sell 10% Of Tesla Stock*, in [www.forbes.com](http://www.forbes.com), 7 November 2021.