



# Looking at the future of Market Abuse Enforcement

Carlos Tavares, Vice Chairman of CESR  
Brussels, 12<sup>th</sup> November, 2008.



## CESR'S REVIEW PANEL

- The Review Panel is CESR's peer pressure group
- It works on the basis of comply or explain - now embedded into the CESR Charter
- 3 main types of work:
  - Peer reviews
  - Mapping exercises
  - Deregulation exercises



# Powers of CESR Members in Relation to the Market Abuse Directive

## CESR Members' powers in relation to the Market Abuse Directive

Q	CESR Members have the power to ...	% Convergence
1	... accept market practices in accordance with EC Guidelines	96
7	... establish whether or not an individual has access to inside information	93
8	... ascertain whether or not relevant persons do not misuse that information as described in Art.2.1	93
9	... ensure that the prohibition in Art. 2.1 applies to the person(s) described in Art. 2.2	93
13	... monitor and prevent market manipulation	100
14	... monitor whether or not an issuer informs the public according to Art. 6.1	96
15	... supervise whether the provisions reg. public disclosure provided for in Dir. 2003/124/EC are followed	100
16	... be informed by issuers without delay should they decide to delay public disclosure of inside information	59
17	... issue regulations with respect to the list of insiders referred to in Art. 6.3	63
20	... issue regulations with respect to the notification of transactions referred to in Art. 6.4	89
24	... monitor whether or not the provisions of Art. 6.5 are adhered to	100
26	... regulate structural provisions adopted by regulated markets to prevent market manipulation	96
31	...ensure that public institutions that disseminate statistics do so in a fair and transparent way	63
38	... supervise the exemptions of Art. 7	52



# Powers of CESR Members in Relation to the Market Abuse Directive

Supervisory and Investigatory powers (Art.12);  
 admin. Measures and sanctions (Art.14)

Q	CESR Members have the power to ...	% Convergence
43a	... have access to any document in any form whatsoever, and to receive a copy of it	100
43b	... demand information from any person	100
43c	... carry out on-site inspections	100
43d	... require existing telephone and data traffic records	89
43e	... require the cessation of any practice that is contrary to the provisions adopted in the Directive	100
43f	... suspend trading of the financial instruments concerned	100
43g	... request the freezing and/or sequestration of assets	78
43h	... request temporary prohibition of professional activity	85
44	... take appropriate admin. measures or impose admin. sanctions according to Art. 14	100
46	... determine the measures and sanctions that could be imposed	100
47	... impose sanctions for failure to cooperate in an investigation under article 12	100
49	... disclose to the public every measure or sanction to be imposed due to infringement of provisions	63



# Powers of CESR Members in Relation to the Market Abuse Directive

## CESR Members' cooperation and assistance powers

Q	CESR Members have the power to ...	% Convergence
50a	... render assistance to other CESR member as regards the documents	100
50b	... render assistance to other CESR member as regards information from any person	100
50d	... render assistance to other CESR member as regards the telephone and data traffic records	89
50e	... render assistance to other CESR member as regards on-site inspections	100
50f	... render assistance to other CESR member as regards the cessation of practice	96
50g	... render assistance to other CESR member as regards the suspension of trading	96
50h	... render assistance to other CESR member as regards the freezing and/or sequestration of assets	85
50i	... render assistance to other CESR member as regards the temporary prohibition of professional activity	93
51	... open an investigation solely on a request of a foreign authority	96
53	... on request, immediately supply any information required	100



## **MAIN FINDINGS - Sanctions – ARTICLE 2 – Insider trading**

### Article 2-Insider Trading

Out of 29 states:

- Non pecuniary administrative measures and sanctions: 24
- Fines: 21
- Criminal pecuniary sanctions : 28
- Imprisonment: 27



## **MAIN FINDINGS – Sanctions - Article 2 continued**

### Article 2-Insider Trading

#### **Non pecuniary administrative measures and sanctions**

- Suspension of the authorisation
- Withdrawal of the authorisation
- Suspension or prohibition of professional activity
- Suspension of the trading of the relevant financial instruments
- Reprimand
- Publication of warning or statements
- Cease of the illegal activity



## **MAIN FINDINGS – Sanctions - Article 2 continued**

### Article 2 MAD-Insider Trading

#### **Level of the fines**

- Max 1.200 € for individuals or 125.000 € for legal entities on Slovenia to max 45.000.000 € in Italy or unlimited in the U.K.

#### **Level of criminal pecuniary sanction**

- Max 10.000 € in Belgium to max 10.000.000 € in Ireland or unlimited in Germany and in the U.K.

#### **Duration of imprisonment**

- Max 1 year in Belgium to 15 years in Latvia



## **MAIN FINDINGS - Sanctions – Article 5 Market Manipulation**

### Article 5 MAD- Market Manipulation

Out of 29 states:

- Non pecuniary administrative measures and sanctions: 24
- Fines: 25
- Criminal pecuniary sanctions: 25
- Imprisonment: 25



## **MAIN FINDINGS – Sanctions - Article 5 continued**

### Article 5 MAD- Market manipulation

#### **Level of fines**

- Max 1.200 € for individuals or 125.000 € for legal entities in Slovenia to max 75.000.000 € in Italy or unlimited in the U.K.

#### **Level of pecuniary criminal sanctions**

- Max 10.000 € in Belgium to max 15.000.000 € in Italy or unlimited in Germany and the U.K.

#### **Duration of imprisonment**

- Max 1 year in Luxembourg to 15 years in Latvia



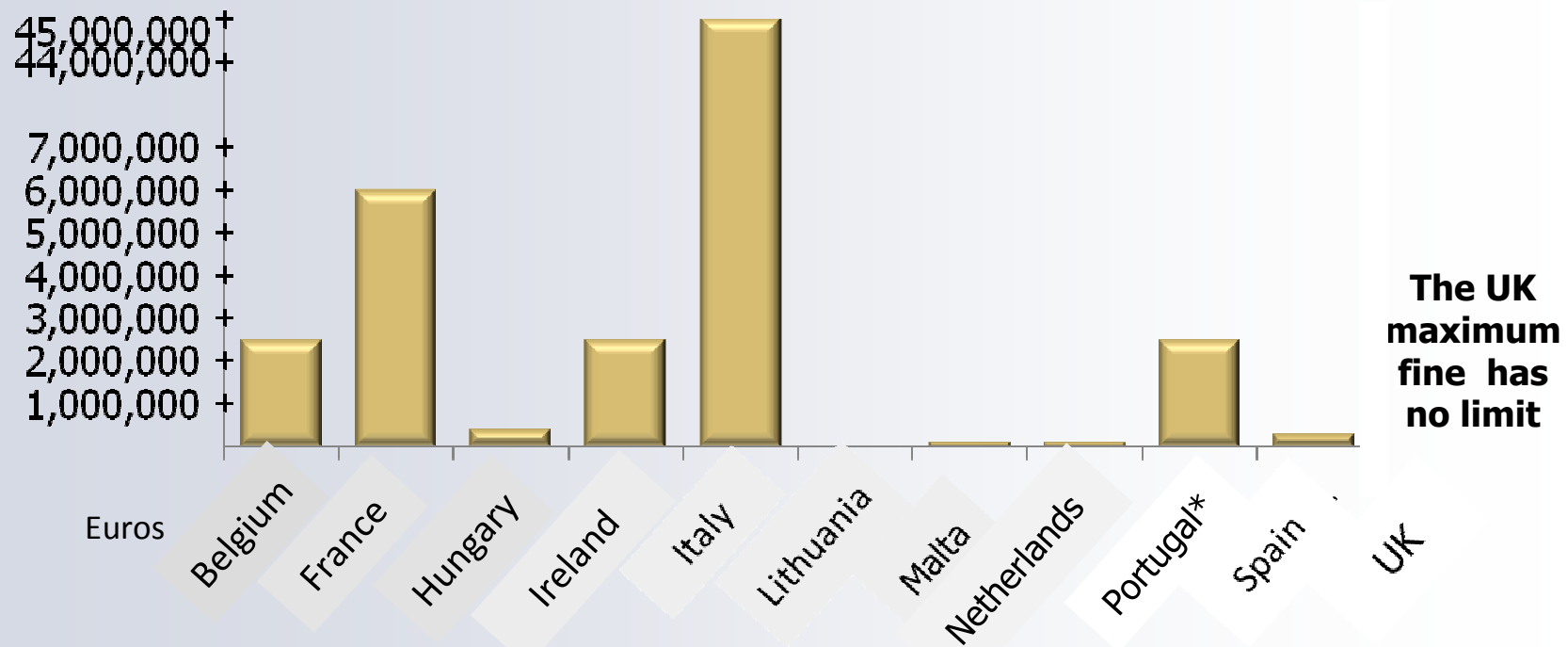
# Inprisonment Sanctions

- 15 years in Latvia
- 12 years in the Czech Republic and Italy
- 10 years in Greece and Ireland
- 8 years in Poland and Slovakia
- 7 years in the United Kingdom
- 6 years in Norway and Spain
- 5 years in Austria, Germany and Romania
- 3 years in Portugal (will increase to five years after draft legislation approval)



# Disparities – An Example

Maximum Fine in Administrative Infraction Proceedings for Infringing the duty of disclosing Inside Information



\* The maximum fine will pass to five million euros when a draft legislation is approved. The fine can be higher if the double of the economic benefit exceeds five million euros.



## **MAIN CONCLUSIONS in relation to Mapping exercise of Market Abuse Directive**

- In most cases, both administrative measures and sanctions and criminal sanctions are provided. Criminal sanctions are mostly provided for infringement of provisions arising out of the Market Abuse Directive.
- The power to impose administrative measures lies with the administrative competent authorities.
- Convergence with regard to the specific non pecuniary measures to be imposed.
- Divergence with regard to the level of the fines and criminal pecuniary sanctions and the duration of imprisonment.
- Convergence with regard to the criteria used to determine the level of the fine.



## Effective Enforcement

### CESR Statistics – 2007

- **1.501 investigations started:**
  - 493 alleged insider trading;
  - 245 alleged market manipulation;
  - 57 alleged insider trading and/or market manipulation (no distinction possible);
  - 67 alleged principle-based actions against market misconduct;
  - 696 alleged breaches of disclosure requirements.
  
- **1.176 investigations concluded:**
  - 592 ceased proceedings;
  - 385 administrative measures;
  - 199 for referral to criminal authorities or taking criminal proceedings.
  
- **693 sanctions applied:**
  - 484 administrative fines;
  - 71 administrative warnings;
  - 99 criminal fines;
  - 39 imprisonments.



## **Effective Enforcement**

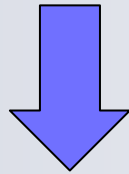
### **CESR statistics – 2007**

- **Highest administrative fine applied inside CESR members jurisdiction: between 5.000 € and 10.000.000 €.**
- **Highest criminal fine imposed: 666€ to 2.200.000€.**
- **Maximum duration of imprisonment sanction: from 21 days to 5 years.**



## Looking at the future

- Is divergence in sanctions (also relevant in MiFID) a problem?
  - Dissuasion and effectiveness
  - Risk of regulatory arbitrage



Convergence is an essential condition of a further integrated European market.



## Looking at the future

- **Question: the non-binding application of MAD to MTF**
- **MAD applies to all financial instruments admitted to trading on regulated markets and all the transactions on those instruments.**
- **MiFID states (Art<sup>o</sup> 26) that member States should require MTFs to develop mechanisms and procedures in order to identify disorderly trading conditions or conduct that may involve market abuse.**
- **There are 120 active MTF markets.**



## Looking at the future

- The option for Criminal Vs. Administrative sanctions

	<b>Criminal</b>	<b>Administrative</b>
<b>Dissuasion</b>	<b>+</b>	<b>-</b>
<b>Speed</b>	<b>-</b>	<b>+</b>
<b>Evidence requirements</b>	<b>+</b>	<b>-</b>
<b>Effectiveness</b>	<b>?</b>	<b>?</b>



## Looking at the future

### ■ Options for the future


– Doing nothing  not an option

– Harmonize supervisory powers



– Reduction of options/discretions

– Level 3 work (CESR)

– Harmonize sanctions  conciliation of different legal systems