THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

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PRESS RELEASE

MiFID: CESR reviews supervisory powers and practices, as well as administrative and criminal sanctioning regimes across Europe

CESR publishes today a review (Ref. CESR/08-220) of supervisory powers and practices, as well as administrative and criminal sanctioning regimes across Europe in relation to MiFID, the Markets in Financial Instruments Directive. The report published today gives a factual overview of the implementation of MiFID by mapping the supervisory powers, practices and sanctioning regimes of CESR Members. In 2007, CESR undertook a similar exercise to evaluate the equivalence of supervisory powers in the EU under the Market Abuse and Prospectuses Directive (Ref. CESR/07-334b). This work was followed by a formal request by the ECOFIN Council in December 2007 to extend this work, and display the differences in the implementation of MiFID as well. The review covers powers, practices and sanctioning regimes but not the actual use of sanctioning powers and the enforcement of measures and sanctions. A similar exercise is now being undertaken regarding the sanctioning powers under the Transparency Directive.

Carlos Tavares, Vice-Chair of CESR and Chairman of the CESR Review Panel, CESR's peer pressure group that undertook the exercise, underlined:

> *"The work published today should be seen in the context of a series of studies we have undertaken to map the implementation in practice of the key pillars of the Financial Services Directives. As such, we have undertaken a similar study of how the Prospectus Directive and the Market Abuse Directive (MAD) have been implemented. These results serve to help us identify those areas we might wish to prioritise for further convergence. For example, in relation to MiFID, lack of convergence on the procedures in approving platforms or regulated markets is perhaps a less significant issue,, whilst differences on measures and procedures to authorise and supervise investment firms are more critical to the single market. And more crucially, the streamlining of these processes is within the competencies of our Members. The report also serves the EU institutions and Member State Finance Ministries to establish the degree to which they want to converge further. For example, sanctioning powers now exist in all the Member States, but the differences between these give serious food for thought in an integrated market, and we consider this a critical element that the findings in the report should help address."*

Mapping of supervisory powers and practices

Looking at *supervisory powers* of CESR Members, the report shows that all supervisory powers concerning MiFID have been assigned throughout the CESR membership. However, certain powers have been left with national ministries, central banks or other competent authorities and have not been assigned directly to a CESR Member.

With regard to *supervisory practices* in authorising and supervising investment firms, some convergence can be noted on procedures and methods used by CESR Members to regularly monitor that investment firms comply with legal obligations. The MiFID review shows that a great majority of authorities do not impose additional authorisation requirements to the ones set out in MiFID on investment firms and credit institutions. The timeframe within which authorities check the documentation for granting authorisation is more or less convergent: 16 authorities check within a 6 month period, while 14 authorities indicated shorter timeframes, in most cases 3 months. Nevertheless, no convergence can be seen with regard to the practices used by the competent authority to assess the application; e.g. whether on site-inspections or hearings are performed.

The findings also identify that the documents that authorities gather for ongoing supervision present more similarities than the documents required for the authorisation itself. This is to a certain extent due to the fact that some of the documents (e.g. constituting documents, extracts from the national companies' registrars) are linked to the company law of each Member State, a legal area being less harmonised than securities' law.

Supervisory powers and practices for regulated markets

The findings suggest that harmonisation with regard to the supervisory framework for authorities and ongoing supervision of regulated markets and multilateral trading facilities, is far greater than the convergence of supervision by competent authorities of other entities, such as investment firms and credit institutions,. Nevertheless, the findings found some differences in the information collected for authorising regulated markets. However, all CESR Members have similar requirements to ensure that those who direct a regulated market, are experienced and meet the requirements of being of sufficiently good repute, and also to ensure that the persons, who are in a position to directly exercise significant influence over the management, are suitable given the need to ensure the sound and prudent management of the regulated market. There is some level of convergence regarding the required documents used to verify the above requirements, such as questionnaires on qualifications and professional experience, fit and proper test, criminal records or sanctions, information on the financial conditions.

Mapping of administrative measures and criminal sanctions

Overall, the exercise undertaken by CESR's Review Panel shows that there are significant differences in respect to administrative measures and criminal sanctions among CESR Members that can be imposed in cases of infringements of MiFID. These differences are partly due to the fact that Members States' legal systems differ across Europe. Administrative measures are more common throughout the CESR Membership than criminal sanctions. All jurisdictions may impose administrative measures for violations of any of the provisions in MiFID (see Notes for Editors, Table 1). Nevertheless, the report shows a huge variance in range of administrative and criminal fines throughout the Membership which may be due to the fact that according to the provisions of MiFID, Member States have the discretion to decide on the amount of fines applicable in cases of infringement of MiFID.

The MiFID mapping also shows that 23 out of 28 jurisdictions may impose *administrative fines* for infringement of any of the provisions in MIFID, while four jurisdictions do not impose administrative fines for violation of all provisions of the Directive, but only impose administrative fines for violation of some provisions (see Notes for Editors, Table 2). Only one jurisdiction does not impose administrative fines at all.

In terms of the range of *administrative fines* that can be imposed, there is no convergence between the jurisdictions with fines on the administrative side varying from €12,500 (as the lowest maximum amount of administrative fines in Luxembourg) to about €5 million (as the highest maximum amount in Sweden) and even up to unlimited fines in Denmark and the United Kingdom. On the *criminal side* fines range from €5.000 (as the lowest maximum amount of in Bulgaria) to about €16 million (as the highest maximum amount in Estonia) and can extend to unlimited criminal fines in the Czech Republic, Germany, Denmark, Finland, Island, Norway and the United Kingdom.

Criminal sanctions may include imprisonment which generally range from a maximum of four months in Denmark to a maximum of 10 years in Ireland and Bulgaria, depending on the infringement (see Notes for editors, Table 3). The ability to imprison individuals for the infringement of MiFID provisions is more prolific with regards to unauthorised provision of investment services and activities than for the infringement of any other MiFID provision.

For the unauthorised provision of investment services by investment firms the majority of CESR Members provide administrative measures, administrative fines and criminal sanctions. However, for infringements of the other provisions of MiFID, the majority of CESR Members can only impose administrative measures and administrative fines, but no criminal sanctions. As only half of the jurisdictions or less may impose criminal sanctions for violation of the other provisions of the Directive, we note more divergence (see Notes for Editors, Table 3 to 7).

The MiFID mapping report published today will be sent to the European Commission, the ECOFIN Council and the ECON Committee of the European Parliament, for them to consider the extent of coherence, equivalence and actual use of powers among Member States and to ascertain whether the sanctioning powers have sufficiently equivalent effect. The Council will also look at the variance of sanctioning regimes across the EU. CESR itself will use the findings to assess where next to focus efforts to increase convergence.

CESR

Notes for editors:

1. CESR's peer pressure group the 'Review Panel' is a key group in facilitating supervisory convergence and is chaired by CESR Vice-Chair Mr Carlos Tavares, Chairman of the Portuguese Securities Commission (Comissao do Mercado de Valores Mobiliarios – CMVM);

2. The Review Panel of CESR conducted the mapping of MiFID during the course of 2008. The results of the mapping are based on the contributions of 28 CESR Members representing those Members who at the time of publication have fully implemented MiFID and all its implementing measures. Once Poland has fully implemented MiFID, an attachment to this report will be published showing the situation in Poland.

3. MiFID does not contain any definition with regard to an administrative measure and a criminal sanction as this depends on the national law of each Member State. In order to facilitate the understanding of the use of these terms in the report, CESR adopted a pragmatic approach by distinguishing between on the one hand administrative measures and administrative fines, and on the other hand criminal sanctions such as imprisonment and criminal fines in preparing the MiFID review. The power to impose administrative measures lies with the administrative competent bodies. Administrative measures can be restorative or punitive in nature. Only the punitive administrative fines will for the purpose of this report be referred to as administrative fines.

4. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
   - Improve co-ordination among securities regulators;
   - Act as an advisory group to assist the EU Commission, in particular in its preparation of
   - draft implementing measures in the field of securities;
   - Work to ensure more consistent and timely day to day implementation of community legislation in the Member States.
   - The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). It is one of the two committees envisaged in the Final Report of the Group of Wise Men on the regulation of European securities markets. Baron Alexandre Lamfalussy chaired this group. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.

5. Each Member State of the European Union has one member in the Committee. The members are nominated by the Member States and are the heads of the national public authorities competent in the field of securities. The European Commission has nominated as its representative the Director General of the DG Market. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.

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Table 1 – Administrative measures of CESR Members

Administrative measures for infringements of	Number of jurisdictions	CESR Members
MiFID Article 5: Requirement for authorisation	28	All Members
MiFID Articles 9 to 14 and Article 16: Conditions for authorisation	28	All Members
MiFID Articles 16 to 24: (General) Operating conditions for investment firms	28	All Members
MiFID Articles 25 to 30: Operating conditions for investment firms (Market transparency and integrity)	28	All Members
MiFID Articles 36 to 40: Regulated markets	26	All Members except FI and FR

Table 2 – Administrative fines of CESR Members

Administrative fines for infringements of	Number of jurisdictions	CESR Members
MiFID Article 5: Requirement for authorisation	23	All Members except BE, FI, FR, NO and UK
MiFID Articles 9 to 14 and Article 16: Conditions for authorisation	26	All Members except FI and NO
MiFID Articles 16 to 24: (General) Operating conditions for investment firms	26	All Members except FI and NO
MiFID Articles 25 to 30: Operating conditions for investment firms (Market transparency and integrity)	27	All Members except NO
MiFID Articles 36 to 40: Regulated markets	24	All Members except FI, FR, NO and UK

Table 3 – Criminal sanctions throughout CESR Members

Criminal fines and / or imprisonment for infringements of	Number of jurisdictions	CESR Members
MiFID Article 5: Requirement for authorisation	22	All Members except AT, ES, PT, RO, SI and SE
MiFID Articles 9 to 14 and Article 16: Conditions for authorisation	13	BE, CY, DK, FI (no imprisonment), FR, IS, IT, LU, MT, NL, NO, SK and UK
MiFID Articles 16 to 24: (General) Operating conditions for investment firms	10	CY, DK (no imprisonment), FI (no imprisonment), FR, IT, MT, NL, NO, SK and UK
MiFID Articles 25 to 30: Operating conditions for investment firms (Market transparency and integrity)	9	CY, DK (no imprisonment), FI (no imprisonment), FR, IT, MT, NL, NO and SK
MiFID Articles 36 to 40: Regulated markets	15	BE, CY, DK (no imprisonment), FI, FR (no imprisonment), IS, IT, LT, LU, LV, MT, NL, NO, SK and UK

Table 4 - Types of administrative measures most commonly available for MiFID as a whole

Type of administrative measures most commonly available	Number of jurisdictions	Member States
Orders to cease unauthorised activities (by competent authority or injunction by judicial authority)	21	AT, BE, BG, CZ, DK, DE, EE, EL, ES, HU, IE, IT, LV, LU, MT, NO, PT, RO, SK, SE and UK
Revocation of license or withdrawal of authorisation	25	AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IT, LV, LT, LU, MT, NL, NO, PT, RO, SK, SI and UK
Issuance of public warnings or statements	20	AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, HU, LV, LT, LU, MT, NO, NL, PT, RO and UK

Table 5 - Administrative measures most commonly available for the unauthorised provision of investment services and activities (Article 5 of MiFID)

Type of administrative measures most commonly available	Number of jurisdictions	Member States
Withdrawal of the licence in case the unauthorised service is carried out by a licensed entity	20	BE, CY, DE, DK, FI, EE, EL, HU, IS, IT, LV, LT, LU, MT, NL, NO, PT, RO, SK and UK
Issue of orders or injunctions to cease illegal activity	21	AT, BE, BG, CZ, DE, DK, EE, EL, ES, HU, IE, IT, LU, LV, MT, NO, PT, RO, SE, SK and UK
Issuance of a public warning, statement or reprimands	19	AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, IE, LT, LU, MT, NL, NO, PT, RO and UK

Table 6 – Other widespread measures contemplated by the large majority of CESR Members
The range of administrative measures most commonly available across the Members in connection with violations of **Articles 9 to 14** and **Articles 16 to 24 of MiFID** is wider.

Type of administrative measures	Number of jurisdictions	Member States
Prohibition to directors of managing firms and/ or the appointment of provisional administrators, government supervisors, special auditors, conservators	18	AT, BE, BG, DE, EE, EL, ES, FR, HU, IE, IT, LT, LU, LV, NO, PT, SE and UK
Suspension/ prohibition of exercising voting rights in case managers or qualifying shareholders do not fulfil good repute requirements or fail to comply with notification duties	21	AT, BE, BG, CY, CZ, DE, DK, EL, FI, IS, IT, LU, LV, MT, NO, PT, RO, SE, SI, SK and UK

Table 7 - More specific administrative measures are applied by a large number of jurisdictions in case of violations of Articles 25 to 30 and Articles 36 to 40 to ensure market transparency and integrity, such as:

Type of administrative measures	Number of jurisdictions	Member States
Orders prohibiting/ suspending market trading or banning transactions	8	BG, CZ, ES, IS, IT, LU, SK and UK
Suspension or removal of financial instruments from trading	13	BG, CZ, EE, EL, ES, FR, HU, IS, IT, LU, SI, SK and UK