EU legal and regulatory developments

Market Abuse Directive — Status of implementation in various EU Member States (as at 29th July, 2005)

Compiled and written by Clifford Chance LLP

The Market Abuse Directive (MAD) was due to be implemented in all the EU member states by mid-October 2004. The table set out below shows the position in relation to 12 EU member states (out of 25). Germany has probably been the furthest forward with implementation (and has been for the longest time). This was

certainly the case until the UK completed its implementation on 1st July, 2005. It is also fair to say that a more comprehensive revision of the existing regime has taken place in the UK. Other countries have been more parsimonious in deciding how much change to effect.

<i>Member State</i>	<i>Current regime</i>	<i>Status of MAD implementation</i>	<i>Actual/expected implementation date</i>
Belgium	Criminal and administrative offences, based on anticipated form of Level 1 of MAD in 2002, in place for insider dealing and market manipulation.	The law of 2nd August, 2002, which introduced offences based on the then-current form of Level 1, introduced an express delegation by Parliament to Government to amend the law by way of Royal Decree (after having obtained advice from the regulator) for the purpose of bringing it in line with European Directives. Therefore, minor amendments necessary to comply with final form of Level 1 will be introduced shortly into Belgian law by a Royal Decree. This Royal Decree will also contain certain Level 2 implementation provisions. The	Relevant provisions of law of 2nd August, 2002, came into force in June 2003. Amendments to take account of the final version of Level 1 and some Level 2 implementation provisions are expected shortly. No expected implementation date for the remaining Level 2 provisions as yet.

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		remaining Level 2 provisions will also be implemented by Royal Decree.	
Czech Republic	Administrative offences, based on MAD, in place for insider dealing and market manipulation, as well as pre-existing criminal offences of insider dealing and market manipulation.	The Act on Conduct of Business on Capital Markets (No. 256/2004 Coll.), effective as of 1st May, 2004, aimed, amongst other things, at full implementation of Level 1. Currently, the Ministry of Finance is preparing an amendment to the Act on Conduct of Business on Capital Markets to correct some inaccuracies in Level 1 implementation and to implement Level 2. The draft amendment has been approved by the Government and will now be sent to the Parliament for adoption.	Level 1 implemented on 1st May, 2004. Draft amendment correcting Level 1 implementation and implementing Level 2 currently envisaged to become effective before the end of 2005.
France	Pre-existing criminal and administrative offences, adjusted to take account of MAD, in place for insider dealing and market manipulation.	The majority of Level 1 has been implemented by virtue of statutory provisions in the Loi de sécurité financière and adoption of the General Regulations of the Autorité des marchés financiers (AMF). Level 2 has been partially implemented by the AMF General Regulations. A law adopted on 20th July, 2005, and published in the official gazette on 21st July, 2005, has implemented MAD provisions relating to whistle-blowing duties, insider lists and disclosure duties with respect to own-trading by insiders. Another law dated 26th July, 2005, not only includes implementing provisions on investment recommendations made to the public and the AMF extra-territorial powers, but also	Level 1 and Level 2 measures are almost fully implemented. Full implementation is expected later in 2005.

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		brings the administrative and criminal definitions of insider dealing, market manipulation and dissemination of false or misleading information in line with MAD. The AMF has also accepted two market practices regarding liquidity contracts (<i>contrats de liquidité</i>) and dealings in shares in the context of external growth transactions (<i>acquisitions d'actions propres aux fins de conservation et de remise ultérieure en paiement ou en échange dans le cadre d'opérations de croissance externe</i>). Further implementing measures should be adopted in the near future.	
Germany	Pre-existing criminal and administrative offences, adjusted to take account of MAD, in place for insider dealing and market manipulation.	Legislation has been enacted (Act for the Improvement of Investor Protection) and entered into force on 30th October, 2004. Three regulations further detailing the changes made by the new Act on insider dealing, financial analysis and market manipulation have been enacted and entered into force on 14th December, 2004, 18th December, 2004 and 11th March, 2005. The Federal Financial Supervisory Authority (<i>Bundesanstalt für Finanzdienstleistungsaufsicht</i>) has issued a draft version of a circular on financial analysis and, on 20th July, 2005, issued a guidance paper for issuers (<i>Emittentenleitfaden</i>) detailing its interpretation of the legislative changes to implement MAD.	Act for the Improvement of Investor Protection came into force on 30th October, 2004. Further regulations on insider dealing, financial analysis and market manipulation came into force on 14th and 18th December, 2004, and 11th March, 2005.

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Hungary	Administrative offences, based on MAD, in place for insider dealing and market manipulation, as well as pre-existing criminal offences of insider dealing and market manipulation.	Amendments to the Hungarian capital markets legislation implementing Level 1 and Level 2 of MAD are now in place. Minor parts of Level 2 remain to be implemented by decrees of the Minister of Finance.	1st July, 2005.
Ireland ^a	Criminal and administrative offences, based on MAD, in place for insider dealing and market manipulation.	The Market Abuse Regulations 2005, which implement Level 1 and Level 2 became effective on 6th July, 2005. Commencement of certain key provisions will be deferred until 1st October, 2005 (keeping of insider lists, disclosure of managers' transactions and fair presentation of research recommendations and disclosure of conflicts). The Financial Regulator has published additional rules which became effective on 6th July. The pre-existing criminal offence of insider dealing and stabilisation safe harbour have been repealed.	6th July, 2005, for Levels 1 and 2. Certain provisions deferred until 1st October, 2005.
Italy	Administrative offences, based on MAD, in place for insider dealing and market manipulation, as well as pre-existing criminal offences of insider dealing and market manipulation.	Italy has implemented Level 1 and Level 2 of MAD by means of Law n. 62 of 18th April, 2005, which was published in the Official Gazette on 27th April, 2005, and came into force on 12th May, 2005. Article 9 of Law 62/2005 contains directly enforceable provisions which make amendments to Legislative Decree n. 58 of 28th February, 1998 (the Italian Single Financial Act). Further details	12th May, 2005.

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		on specific matters shall be included in the relevant regulations to be issued by the Commissione Nazionale per le Società e la Borsa (CONSOB), in accordance with the regulatory mandate conferred upon it by the Parliament. On 15th May, CONSOB closed its consultation, launched one month before, on the new regulations. Results are still to be released.	
Luxembourg	Criminal offences in place for insider dealing and certain behaviour in relation to dealings in securities (fraud), not based on MAD.	Draft Legislation implementing Level 1 and Level 2 was submitted to Parliament in December 2004 and is expected to be adopted in mid-July 2005, although this date could slip to September/October 2005.	Mid to late 2005.
The Netherlands	Criminal offences in place for insider dealing and market manipulation, not based on MAD.	The implementing Act has been approved by the Parliament and was published in the State Gazette on 12th July, 2005. However, the date on which it will enter into force has not yet been announced. This will depend on the discussions in the Parliament about the draft Royal Decree, expanding upon the general draft market abuse provisions included in the Act, which was submitted to the Parliament on 29th June, 2005. The final Decree would include exemptions from the prohibitions on insider dealing and market manipulation, as well as from the tipping offence, and would also set out rules regarding: (i) notification duties for insiders; (ii) insider lists maintained	August/September 2005.

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		by issuers; (iii) internal insider dealing codes established by issuers; (iv) disclosure of insider information; and (v) disclosure of research recommendations.	
Poland	Criminal offences in place for insider dealing and market manipulation, based on MAD. Administrative offences only for insider dealing.	The Law on Public Trading in Securities was amended with effect from 1st May, 2004 so as to implement Level 1 and Level 2. There remain certain minor inconsistencies in Level 2 implementation, however. The draft of the new legislation removing the inconsistencies was adopted by the Polish Parliament on 29th July, 2005, and awaits signature by the president and publication in the <i>Official Journal of Laws</i> . Provided that it is signed by the president, the new legislation is expected to enter into force in mid-September 2005.	Level 1 fully implemented and Level 2 substantially implemented on 1st May, 2004. Full Level 2 implementation is expected in September 2005.
Spain	Administrative offences, based on anticipated form of Level 1 of MAD in 2002, in place for insider dealing and market manipulation, as well as pre-existing criminal offences of insider dealing and market manipulation.	It is not anticipated that any further significant implementing legislation is required to achieve compliance with final form of Level 1. Level 2 is expected to be implemented later in 2005. The Ministry of Economy and Finance has published a draft Royal Decree that sets out: (i) new definitions relating to inside information and market abuse; (ii) new disclosure obligations regarding the information which issuers of listed securities must submit to the CNMV (Spanish securities regulator); (iii) new disclosure requirements for directors	Level 1 implemented substantially in 2002. Level 2 expected to be implemented in mid to late 2005.

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		and executives; and (iv) new rules regarding impartial recommendations to clients.	
UK	Administrative offences, based on MAD, in place for insider dealing and market manipulation, as well as pre-existing criminal offences of insider dealing and market manipulation and bespoke market abuse regime implemented independently of MAD in 2001.	The statutory instruments implementing Level 1 and Level 2 came into effect on 17th March, 2005, and 1st July, 2005. The necessary changes to the Financial Services Authority (FSA) Handbook came into effect on 1st July, 2005.	17th March and 1st July, 2005, for legislative changes to implement Level 1 and Level 2. 1st July, 2005, for changes to the FSA Handbook.

^aInformation supplied by McCann FitzGerald, Dublin.

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advice. For more information, contact Tim Plews at Clifford Chance in London (+44 20 7006 1000; tim.plews@cliffordchance.com).