

ROADMAP

Title of the initiative: **Communication on sanctions**
Type of initiative (CWP/Catalogue/Comitology): CWP (Non-strategic)
Lead DG: DG MARKT/G1
Expected date of adoption of the initiative (month/year): December 2010
Date of modification:
Version No: 1

Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

In its Communication "Driving European Recovery" of March 2009, the Commission announced that it would make proposals on how sanctions could be strengthened in a harmonised manner and better enforced. After a report to analyze the sanctioning powers that the national authorities have at their disposal, the Commission Communication will serve to suggest possible improvements.

What are the main problems identified?

The main problems are an insufficient convergence and potentially a lack of effectiveness of sanctions applied by national authorities for violations of EU financial services legislation. If EU law is not adequately enforced, negative consequences may arise for financial stability, consumer protection and the level playing field in the internal market.

Who is affected?

It will depend on exact improvements that will be suggested. The Communication itself will likely not involve any immediate policy action, but the implementation of the recommendations made in the Communication may necessitate that Member States make changes to national legislation in order to strengthen their sanctions regimes. This may in turn affect financial institutions subject to obligations under EU financial services legislation, while benefiting investors, deposit-takers, policy-holders and financial integrity and stability in general.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

To be assessed on the basis of report to be published in June.
A greater level of convergence may be necessary to ensure a level playing field, a uniform application of EU financial services legislation, and full cooperation and mutual trust between national supervisors across the EU.
Convergence of national legislation is by definition an objective which is better achieved through EU action rather than by different national initiatives.

B. Objectives of EU initiative

What are the main policy objectives?

The aim is to make proposals on how sanctions for violations of EU financial services legislation could be strengthened in a convergent manner and better enforced.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

Objectives relate to a strengthening of existing EU financial services policies in a strategic area, not to developing EU policy in new areas.

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered?

(iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

Policy options not yet clear, will be presented in the Communication on the basis of the report. Policy options could include recommendations on how convergence in sanctioning powers could be strengthened in upcoming updates of existing legislation and when developing new legislation in the area of financial services.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

Action proposed is limited to financial services policy. Notably, it does not cover criminal sanctions and does therefore not interact with action taken/planned by JLS

Explain how the options respect the proportionality principle

Policy options will only recommend what is necessary to ensure a level playing field, a uniform application of EU financial services legislation, and full cooperation and mutual trust between national supervisors across the EU.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

Depending on the policy options presented, stronger, more harmonised and better enforced sanctions for violations of EU financial services legislation. This could have the following positive impacts: reduction in the number and gravity of infringements by market operators of community law obligations, greater trust between national supervisors, better protection for consumers of financial services, contribution to a more stable financial system.

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

No impacts expected

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

No impact on (i) and (iii).

Impact on (ii) is difficult to assess at this stage but unlikely to be very significant in terms of costs for companies. In any event, adequate respect of legislation through enhanced sanctions regimes (including through more investigations) is an objective which should take precedence over the reduction of costs for the industry.

E. Planning of further impact assessment work

When will the impact assessment work start?

In April.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when? (v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

(i) Extensive information and data from financial supervisors is available. (ii) IA could build to some extent on this information. (iii) Information on application of sanctions in the banking and insurance sectors essentially. (iv) Internally. (v) General analysis. Detailed analysis to be carried out, if need be, subsequently in Impact Assessments accompanying legislation.

Which stakeholders & experts have been/will be consulted, how and at what stage?

So far consultations have mainly taken place with national supervisors. They should remain the main stakeholders, with possible input also from finance ministries and academics.