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EUROPEAN COMMISSION
Impact Assessment Board

Brussels, 11 MARS 2011
D(2011)

Opinion

Title **Impact Assessment amending Directive 2006/48/EC as regards risk governance of credit institutions**

(draft of 9 February 2011)

(A) Context

According to the 2009 "De Larosière Report", one of the key factors leading to the 2008 financial crisis was the excessive accumulation of risk by financial firms resulting from methodological failures in the assessment of risk by financial firms and by supervisors, unsound remuneration practices and weak risk governance, particularly in credit institutions. To tackle these problems, the Commission has since developed a comprehensive set of initiatives, including changes in the Capital Requirement Directives (CRD) and measures addressed at remuneration policies. Following up on the June 2010 Green Paper on corporate governance in financial institutions, the Commission is now envisaging specific measures aimed at strengthening risk governance in credit institutions. These would complement parallel work, notably the revised Basel principles approved by the Basel Committee on Banking Supervision in October 2010 and the guidelines on internal governance being prepared by the European Banking Authority (EBA). Related measures to strengthen aspects related to external audit and shareholders involvement will be the object of future Commission initiatives and are not therefore covered by this impact assessment.

(B) Overall assessment

The IA report presents the relevant information and analyses it in a clear fashion. It can nevertheless be further improved in various respects. The report should provide greater evidence on the relative importance of different problem drivers and should strengthen the case for EU action by explaining its added value relative to the on-going responses by national authorities and by the European Banking Authority. Against this background, the proportionality of proposed measures should be more extensively assessed. The report should also improve the assessment of specific impacts, such as on the costs for supervisors and impacts on EU banks' competitiveness, and should assess the cumulative effect of all the proposed measures. Finally, the report should present the different stakeholders' views on key issues more precisely.

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(C) Main recommendations for improvements

(1) The report should provide greater evidence of the problem drivers and strengthen the argument for EU action. Firstly, the report should provide greater evidence, or illustrative examples, on the problem drivers, better assess their relative importance and more extensively discuss the failure to sanction inadequate risk oversight. Secondly, the report should be more specific about the measures taken by both the public and private sector since the financial crisis and should incorporate them more explicitly into the baseline scenario. Against this background, the report should strengthen the arguments for EU action, clearly illustrating how the proposed action at EU level would add value to, and relate to, on-going and planned work by national authorities and by the European Banking Authority.

(2) Clarify the content of the options and better demonstrate their proportionality. The report should be clearer about the degree of discretion and flexibility that individual options would leave to national supervisors and/or to credit institutions of different sizes. The report should demonstrate more clearly that all preferred sub-options are necessary and proportionate to achieve the objectives. In so doing, the analysis should take greater account of issues concerning the enforceability of the proposed measures.

(3) Improve the assessment of impacts. The report should improve the assessments of specific impacts like those on the available pool of suitable Board members, the implementing costs for supervisors, impacts on EU banks' competitiveness and the risk of regulatory arbitrage. When addressing the need for greater diversity in Boards, the report should discuss the pros and cons of increasing employees' representation. The report should also assess the cumulative impacts of the (retained) sub-options, providing quantitative estimates (and the underlying assumptions) whenever possible. Finally, the report should provide indications of how costs would be distributed across different Member States and/or types of credit institution.

(4) Present stakeholders' views in a more transparent manner. The report should be more precise with regard to the different views stakeholders expressed on issues such as the prohibition to combine chairman and chief executive officer mandates, the need for gender balance or the enforceability of some of the proposed measures. More generally, stakeholders' views should be presented more extensively whenever available evidence is limited or when there is significant disagreement with one of the preferred measures. An annex summarizing the results of consultations should also be added.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report is written in a clear and concise manner. However, some of the most relevant information on policy impacts and comparisons should be usefully moved from annex I into the main text.

(E) IAB scrutiny process	
Reference number	2011/MARKT/014
External expertise used	No
Date of IAB meeting	9 March 2011