



03 AVR. 2009

Brussels,  
D(2009) 2740

## Opinion

**Title**                      **Revised recommendation on directors' remuneration and new recommendation on remuneration in financial services (draft version of 27 March 2009)**

**Lead DG**                    **DG MARKT**

### 1) Impact Assessment Board Opinion

#### **(A) Context**

The widespread opinion that inappropriate remuneration policies contributed to a short-term management focus, excessive risk-taking and, ultimately, the current financial crisis has renewed concerns about corporate governance and management incentives in the financial sector and beyond. Past Commission actions in this area notably include a Recommendation on directors' remuneration in listed companies - 2004/913/EC - and a Recommendation on the role of non-executive/supervisory directors and supervisory board committees - 2005/162/EC. However, the limited scope of these recommendations and their limited transposition by Member States raise serious doubts about their capacity to answer effectively current concerns. Accordingly, the Commission announced a new initiative on executive pay in October 2008 receiving the backing of the December 2008 ECOFIN Council. In March 2009, the Communication on Driving European Recovery (2009/114/EC) indicated that the Commission would strengthen Recommendation 2004/913/EC and table a new one specifically on remuneration in financial services.

#### **(B) Positive aspects**

The report is written in a clear language and contains a significant amount of relevant background information in its annexes.

#### **(C) Main recommendations for improvements**

*The recommendations below are listed in order of descending importance. 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.*

**General recommendation: The Board acknowledges that the preparation of the report has been affected by the tight schedule for adoption of the related proposal as part of the Commission's response to the financial crisis. Further work is needed on a number of important issues: the report should analyse more precisely the**

**different dimensions of the problem and the underpinning evidence to substantiate better the choice of the individual measures included in the preferred option. In view of the non-binding nature of the proposals and their legal base, the report should also expand and clarify the analysis of single market aspects (risk of regulatory distortion). The scope of the new recommendation for financial services should be better justified and the role it may play in future supervisory legislation more clearly explained. Finally, the analysis of international aspects should be strengthened, including potential implications for the supply of managers in the EU.**

**During the IAB meeting, DG MARKT stated its intention to take on board these recommendations, and present a revised draft of the impact assessment for the inter-service consultation meeting on 6 March. Given the nature of these recommendations, the Board would like to examine a revised version of the text before the completion of the decision-making process and issue a new opinion**

**(1) Analyse more precisely the different dimensions of the problem and the evidence which underpins them.** The report should distinguish more clearly the various dimensions of the problem (affecting listed or non-listed companies, the financial or the non-financial sector, the banking industry, the insurance one or other financial sub-sectors, regarding pay or severance payments, the fixed or the variable components of pay, the short term or the long term nature of performance indicators, concerning different levels of implementation etc.), analyze them against a consistent analytical framework and clearly identify the underlying factors trying to provide as much specific evidence as possible. The level of detail in the problem analysis should more closely match that of the preferred options. The report should clearly indicate when the supporting evidence is considered sufficient to inform action and when instead further research is required and planned.

**(2) Better substantiate the choice of individual sub-components in the preferred options.** In order to justify better the inclusion of each individual measure adopted under the preferred option, e.g. the proposed claw back provision, the report should more clearly link proposed actions/principles to an evidence-based analysis of the specific problem(s) being addressed. This should also lead to a more informed analysis of the proportionality of the proposed measures, individually and as a group.

**(3) Expand the analysis of single market aspects.** The report should clarify the exact nature of its concerns with regard to distortion of competition (page 23). In view of the non-binding nature of the proposals and their suggested legal base, the report should also more clearly discuss single market issues including in the analysis of the impacts of individual measures, whenever relevant (such as when Member States application or not of the proposals could affect the supply of directors in countries).

**(4) Better explain and justify the scope of the new recommendation for financial services and its potential role in future supervisory legislation.** The report should better clarify and justify the scope of the recommendation for the financial sector (in terms of sub-sectors, firm types and staff covered) and explain whether it would have different implications under private or (temporary) public ownership of financial institutions. It should more clearly illustrate how the proposed recommendation would form the basis for stronger financial supervision, more extensively explaining which actors would be responsible for implementation and oversight and how this would be

tailored to specific circumstances at the level of the firm and financial sub-sector.

**(5) Strengthen the analysis of international aspects.** The interplay between the Commission proposal and other initiatives outside the EU should be better elaborated. Against this background, the implications of the proposed measures for the supply of directors in the EU should be more consistently assessed.

**(D) Procedure and presentation**

Given the urgency of the initiative and the commitments undertaken in the Commission Communication on Driving European Recovery, the report was submitted to the Board less than a week before examination. However, an Inter-Service Steering Group was created and stakeholders were consulted through a number of meetings. An executive summary should be added to the report as a separate staff working document. While the current draft of the report could still be shortened (for instance, tightening text on the origins of the financial crisis and the background of past Commission action), the Board recognizes that exceeding the standard 30-pages limit to respond to the above recommendations would be justified since the report covers two separate initiatives. Footnotes should be shifted to an annex and a bibliography added.

**2) IAB scrutiny process**

Reference number	2009/MARKT/059 and 2009/MARKT/062
Author DG	MARKT
External expertise used	No
Date of Board Meeting	1 April 2009
Date of adoption of Opinion	03 AVR. 2009