



Brussels, 29 MAI 2009  
D(2009) 4171

## Opinion

**Title**                      **Proposal for a Directive amending the Prospectus Directive  
(draft version of 5 May 2009)**

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

### 1) Impact Assessment Board Opinion

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

Directive 2003/71/EC on the prospectus, to be published when securities are offered to the public or admitted to trading, entered into force at end-2003 with a review foreseen after five years of implementation. This has been carried out and has revealed a set of problems for which the Commission intends to propose solutions. These aim at increasing the efficiency of the directive and reducing its administrative burdens, as foreseen in the 2007 action programme for the reduction of administrative burdens.

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

The report is written in clear language and analyzes a wide range of policy options.

#### **(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 report should place the analysis in a broader context, notably with regard to the reflections following the financial crisis and the parallel work by the Commission on product disclosure for packaged retail products. The report should also better substantiate the case for additional EU legislative action by analysing possible improvements in the implementation of the current framework and clarifying the roles currently played by Member States and by the Committee of European Securities Regulators. Finally, the report should strengthen the analysis of the problems affecting small quoted companies and credit entities and the solutions it proposes.

**During the IAB meeting, DG MARKT stated its intention to take on board these recommendations.**

**(1) Place the analysis in a broader context.** The report should analyse whether there are any lessons emerging from the current financial situation that are of relevance for the evaluation of the Prospectus Directive. Against this background, it should also clarify whether the Prospectus Directive has met its objectives in terms of investor protection or whether this aspect needs to be enhanced, for example, by changing requirements on the information to be disclosed and/or the way it is disclosed. In this context, the report should explain the relationship between this initiative and the parallel work on product disclosure for packaged retail products – COM(2009) 204 of April 30, 2009.

**(2) Better substantiate the case for additional EU legal action.** The report should strengthen the argument that the problems detected stem from EU legislation and can only be addressed through changes in EU legislation. In order to do this, the report should provide a more extensive presentation of the role that Member States and lower-level Lamfalussy bodies play in the implementation of the Prospectus Directive. In particular, a more thorough assessment of the present and potential role of the CESR and of the guidance it provides would be welcome. Similarly, "improved policy implementation" should be one of the options considered.

**(3) Strengthen the analysis of the problems for small quoted companies and credit entities (small issuers) and clarify the content and impact of the solutions proposed.** The report should clarify whether the key problems for small issuers are either inappropriately low exemption thresholds (relative to financing needs and prospectus costs) or excessive information requirements for the needs of the typical investor in such issues (or a combination of the two). While analysing the possible solutions to this problem, the report could consider an increase in the level of the current threshold as an additional option. When assessing the merits of the preferred option, the report should also explain why the existing possibility for national authorities to tailor the amount of information required for small issuers (p. 34 and 35) does not already provide an acceptable solution to the problem. Finally, given that further work is needed on the exact content of a "proportionate" prospectus, the report should indicate clearly when this information will be available so that a final estimate can be made of the resulting reduction in administrative burden for small quoted issuers. In the meantime, a provisional estimate for small credit entities should be added to the one already provided for small quoted companies (see § 8.3 and annex VI).

#### **(D) Procedure and presentation**

While the length of the report is justified by the large number of problems and policy options analyzed, the current draft of the main text could be shortened, for instance, by shifting § 8.5 to an annex and shortening § 6 (since annex VII already spells out the policy options). Section 5 in the executive summary of the impact assessment should also list and justify the cases for which no policy action is deemed necessary. Given that this initiative is part of the 2007 action programme for the reduction of administrative burdens, the introduction should indicate clearly that this issue is dealt with in detail in Annex VI of the report.

## 2) IAB scrutiny process

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