



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
D(2011)

Opinion

Title

DG MARKT - Impact Assessment on: the proposal to amend the Capital Requirement Directive as regards sanctions

(resubmitted version of 26 April 2011)

(A) Context

The Commission is engaged in a comprehensive reform of the regulatory framework for banks, which should ensure that appropriate rules are in place and enforced throughout the EU. This includes *inter alia* a revision of sanctioning regimes. In its Communication of 9 December 2010 'Reinforcing sanctioning regimes in the financial sector' (COM(2010)716, the '2010 Communication') the Commission has considered options for legislative action in this domain. This Impact Assessment analyses more specifically the options for sanctioning regimes in the context of the Capital Requirements Directive (CRD) and complements the impact assessment accompanying the proposal for the revision of the other rules contained in the CRD.

(B) Overall assessment.

Following revisions in line with the Board's previous opinion, the IA report now provides a clearer presentation of the context and content of the proposed initiative. However, certain aspects should be further improved. The report should, in particular, better justify the timing and rationale of the initiative. To highlight the importance of the specific issues addressed, the report should also assess more precisely the effectiveness of the existing sanctioning regimes and analyze more extensively all underlying factors. Finally, the report should further clarify the details of the suggested minimum harmonisation for administrative sanctions and better explain the assessment of its efficiency.

(C) Main recommendations for improvements

(1) Further justify the timing and rationale for the proposed intervention. The revised report has clarified the overall policy context and the link between the planned initiative and the parallel proposal to amend CRD provisions. While the report also makes clearer the role of the European Banking Authority (EBA), it should still better explain why regulatory intervention is needed now before observing whether EBA actions may induce Member States to strengthen national sanctioning frameworks and/or

their enforcement. The report should also better justify why convergence of sanctioning regimes would promote fair competition and respect of the CRD rules in those Member States where little or no changes would be required or in those Member States where enforcement would remain weak.

(2) Further deepen the analysis of all factors underlying the ineffectiveness of sanctioning regimes. The revised report presents a more factual assessment of the key issues, refers more explicitly to stakeholders' views and provides a more balanced discussion as regards potential regulatory arbitrage. Nevertheless, it should provide a more complete analysis of all factors underlying the ineffectiveness of sanctioning regimes in the Member States, including poor enforcement. This analysis would allow a better appreciation of the relative importance of the specific drivers tackled by the initiative. Given the fact that the limited number of breaches sanctioned over the last three years would seem to suggest either poor enforcement or few actual violations, the report should also further strengthen the argument that current sanctions are insufficiently dissuasive.

(3) Further clarify the detailed content of some policy options and improve the assessment of their relative efficiency. The revised report estimates the administrative costs linked to the "whistle blowing" option and provides greater details on the concrete elements of the suggested minimum harmonisation. Nevertheless, the explanation of the latter should still be further clarified, clearly indicating which decisions would be left to Member States (sanction types, level, and factors for their application) and which would be fixed by the forthcoming directive (or by any future proposals). Finally, in the comparison of options, greater explanations should be provided for the assessment of the efficiency of the different options concerning administrative sanctions.

(D) Procedure and presentation

Presentational recommendations have been taken on board, including those concerning stakeholders' consultations.

(E) IAB scrutiny process

Reference number	2011/MARKT/026
External expertise used	No
Date of Board Meeting	Written procedure The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 15 April 2011