



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
D(2011)

Opinion

Title

DG MARKT - Impact Assessment on a Directive amending Directive 2004/109/EC on the harmonisation of transparency requirements

(draft version of 6 May 2011)

(A) Context

Transparency Directive 2004/109/EC of December 2004 regulates the flow of information required from issuers of securities traded on EU regulated markets. The Commission is now considering a set of amendments following a review of the Directive's operations.

(B) Overall assessment

While the report provides a sufficient amount of analysis to support decision making, it should be further improved in some respects, starting from a clarification of the initiative's role within the overall Commission efforts to simplify legislation, support smaller and medium enterprises and ensure sound and stable financial markets. The report should also provide greater evidence of the problems caused by quarterly information obligations and strengthen the justification for their proposed elimination in all Member States. The report should also discuss at greater length proposed measures concerning sanctions and exemptions in the notification of major holdings of voting rights. Finally, the report should strengthen the analysis of the impact on costs and the international attractiveness of EU regulated markets.

(C) Main recommendations for improvements

(1) Better explain the context and scope of the initiative. The report should better explain the role of the proposal within the overall Commission policies to simplify legislation, improve capital market access for small and medium enterprises and make financial markets sounder and more stable. This would put into context the proposed reduction in information requirements as well as the relatively narrow focus of the initiative compared to the wide range of causes for high listing costs and poor access to capital for small and medium issuers.

(2) Strengthen the analysis of the problems arising from quarterly information requirements. Relying more directly on the evaluation of the results of the introduction of quarterly information requirements in 2004 and on the experience of third countries such as Switzerland and the USA, the report should provide a more detailed analysis of the reasons why quarterly requirements are viewed as problematic. The report should, in particular, provide greater evidence of excessive burden arising from these obligations' for small and medium issuers and of their actual role in fostering harmful market "short-termism". In order to explain why only quarterly information requirements are considered problematic, the report should also more clearly illustrate the differences between their objectives and content and those of semi-annual and yearly information obligations. It should also more clearly illustrate links and overlaps with other EU legislative provisions. Finally, the report should provide a more nuanced discussion of stakeholders' views on this issue.

(3) Clearly describe and strengthen the justification for some of the policy options. Given that various Member States are applying stricter disclosure requirements than currently mandated by the Transparency Directive, the report should better justify the proposed shift from minimum to maximum harmonisation prohibiting Member States from requiring higher transparency standards. In addition, the main text of the report should also discuss at greater length the planned changes in the area of sanctions and their impacts (including on fundamental rights).

(4) Improve the assessment of the efficiency of the options. The report should more explicitly assess the extent to which the preferred options contribute to reaching the policy objectives given the identified risks of decreased transparency in the case of quarterly reporting and excessive compliance costs in the case of the disclosure regime. In order to do so, the report should provide an indication of cost changes for all policy options and a more comprehensive analysis of cost changes for the preferred options. The report should explain why the standard cost model could not be used to estimate administrative burdens, present costs estimates for the various options in comparative tables and give a broad indication of the overall cost change implied by the preferred options. Making use in the main text of all available evidence and stakeholders' indications, the report should also discuss more extensively the envisaged exemptions to the requirement to notify major holdings of voting rights since these are crucial for the effectiveness and proportionality of the preferred option. Finally, the report should discuss more explicitly the impact that the preferred set of options would have on the international attractiveness of EU markets from the point of view of both issuers and investors.

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

While the report is of an appropriate length, the presentation of some of the options and their impacts is rather succinct, and exceedingly so in the case of the transparency regime for disclosure of major holdings of voting rights. Accordingly, the options section should be extended drawing upon the material in Annex I while the presentation of the problems in the main text should be further focussed. Stakeholders' views should be more directly integrated in the main text, especially when these differ significantly among different

stakeholders groups and/or with the preferred policy options. An annex summarizing the result of the review of the Transparency Directive should be added.

(E) IAB scrutiny process	
Reference number	2011/MARKT/029
External expertise used	No
Date of Board Meeting	8 June 2011