



Brussels,
D(2015)

Opinion

Title: DG FISMA - Impact Assessment on Commission proposal for a Directive/Regulation amending Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading

(Resubmitted version of 24 September 2015)*

(A) Context

Since 2005, the prospectus directive has regulated the information the issuer has to publish (the prospectus) when offering securities to the public or admitting them to trading on a regulated market. The prospectus allows for listings and offerings cross border when approved by the competent authority in a Member State. It ensures a minimum protection for investors by providing comprehensive and standardised information of relevance to the investment decision.

A review of the directive in 2009 showed that - while generally meeting its objectives – there were unjustified burdensome requirements, which increased costs and created inefficiencies for European securities markets. As a result, the Commission amended the directive in 2010, introduced a lighter regime for SMEs (proportionate disclosure), and simplified the format of the prospectus summary. An evaluation of the directive subsequently concluded that the amendments were insufficient to reduce the costs of a prospectus.

The current review of the directive is part of the Capital Markets Union initiative designed to revitalise the European capital markets. The securities markets remain a crucial funding channel and is important for companies to fund investments in innovation, research and development and therefore for competitiveness, growth and jobs.

(B) Overall opinion: POSITIVE

The Board gives a positive opinion to the resubmitted version of the impact assessment report on the amendment of the prospectus directive.

Overall, the revised report has improved in line with Board's recommendations. Notably, the relevant prospectus problems are better described, the package of preferred options and its impacts has been clarified, cost savings estimates have been added and the report draws better on the evaluation and the stakeholder consultation.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

Moreover, the revised version explains better how the preferred options interact to generate synergies for issuers, which seem more comprehensive and substantial than the amendments from 2010. The report is therefore now clearer and supports better the claim that the proposed changes can lead to costs savings and improve the function of the capital markets.

In spite of the above improvements, it is recommended to further clarify the following elements:

What is the evidence and assumptions underlying the costs estimates, and which exact information alleviations are expected to generate the envisaged costs reductions of 20-30 % under option 2, when taking into account the proposed removal of lighter regimes from regulated markets? Furthermore, what is the likelihood that market reactions will deny issuers some of the envisaged burden relief?

The Board notes that the revised version of the report has not been subject to an interservice meeting before resubmission to the Board and that DG FISMA intends to hold an interservice meeting following the resubmission.

(C) Main recommendations for improvements

(1) The revised report explains that the proportionate disclosure regime was not a success, because costs reductions for the issuer were too small to outweigh the risk of 'stigma' from using a less strict information regime and being seen as 'second class' equity. Further evidence should be presented for this claim, since there may still be doubts whether further information relief will work appropriately given the delicate balance between costs reduction and investors' trust in 'lighter' regimes. The possibility that market reactions will continue to deny issuers some of the cost savings originating from the regulatory regime should also be addressed. Finally, it should be clarified why option 2 of the proportionate disclose regime (alleviating information requirements) would be positive for investor protection as recorded in Table 12.

(2) In accordance with the REFIT requirements, the revised report now includes a number of estimates for cost savings, including for SMEs. However, it is recommended to include a typology of cost savings in the report and to further develop the assessment of likely market reactions (i.e. the liability shield aspects and the risk of excessive demands by lawyers and auditors).

While the revised report includes a table depicting differences between normal disclosure requirements and that of the existing lighter proportionate disclosure regime, it still needs to be clarified which exact further information relief will lead to the assumed 20-30 % reduction in costs of issuing a prospectus under the proportionate disclosure regime at a multilateral trading facility (option 2). Annex 8 contains a proposal for specific alleviations but the role of this is unclear since it is not referred to in the report itself. In addition, the report will also need to address the consequences of removing the current proportionate disclosure regimes applicable at regulated markets as mentioned in option 2.

(3) While streamlining of the options have only taken place for the electronic publication issue, options are generally better presented with clearer and more concise explanations. New tables give a better overview of impacts, including on stakeholders, drawing better on the evaluation and stakeholder consultations. A new section (3.6) includes an

overview table describes the overall package of measures and their expected outcomes and impacts including some quantification of expected impacts on cost savings including for SMEs. In addition, a new section describes how the change in the legal instrument from directive to regulation will play out. However, further consideration should be given to the market impact of electronic publication options and their funding.

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

(D) Procedure and presentation

The overall clarity has improved. Presentation of the problem logic (i.e. figure 2), the report structure and the options, including their impacts on stakeholders are better. The problem description introduces better the prospectus directive making the intervention logic more understandable. Tables and charts (some in the annexes) have improved the overview.

(E) RSB scrutiny process

Reference number	2015/FISMA/043
External expertise used	No
Date of RSB meeting	16 September 2015