



Brussels,  
D(2015)

## Opinion

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

**(draft version of 18 August 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: NEGATIVE**

**The Board gives a negative opinion given the lack of evidence as to why the 2010 revision did not achieve its objectives and why the new initiative is expected to do so. In addition, as this is a REFIT initiative, the report should provide quantitative estimates of foreseen cost reductions.**

**While the IA report covers many relevant aspects, it should clarify the following key aspects:**

**1) The report should elaborate on why the lighter regime for SMEs did not meet its objectives and explain better why the new approach is more likely to succeed. These**

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

explanations should be supported by relevant evidence and data, drawing inter alia on the stakeholder consultation and evaluation.

2) As part of REFIT, the report should estimate the possible cost savings for SMEs introduced by lighter reporting requirements. In addition, it should substantiate the overall regulatory and administrative burdens for prospectus issuers, including for bond, secondary or frequent issuers.

3) The report should present the package of preferred options in a clearer manner, specifying its separate elements, how they interrelate and their overall coherence.

Once revised, the IA must be resubmitted to the Board which will issue a new opinion on the revised draft.

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

(1) The report should substantiate why the lighter regime for SMEs introduced in 2010 did not meet its objectives and explain better why the new approach is more likely to be successful. The specific information requirements to be removed from the SME prospectus should be analysed and it should be elaborated what impact this will have on the costs of SMEs. It should also better explain why this would not impede on investor protection.

(2) As a REFIT item, the report needs to substantiate the regulatory and administrative burden relief for prospectus issuers. This should include a typology of the costs involved and an assessment of how each category will be affected. This should take proper account of the liability shield argument and the risk of excessive and inflated costs charged by lawyers and auditors in the process of approving a prospectus.

(3) Options should as far as possible be streamlined to cover the most essential policy choices and the report should better draw on evidence from the evaluation and stakeholder consultation for the discussion of options and impacts. The option on electronic publication should include considerations on potential market effects, including on competition. The report should more precisely address consequences of replacing a directive with a regulation and how this is likely to affect transposition, legal and other costs as well as flexibility for national and local markets. Finally, the report should present in a clearer manner the full package of preferred options, clarifying the elements therein and their impacts, considering their overall consistency and coherence.

*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 general presentation and readability of the report should be improved. This would include having overview tables presenting the main features of the prospectus markets, of regulated markets, multilateral trading facilities (MTFs) and of Member States. A summary table should be included on the preferred package and its impacts.

### **(E) RSB scrutiny process**

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