

## **EFAMA'S COMMENTS ON THE IMPACT ASSESSMENT GUIDELINES FOR EU LEVEL 3 COMMITTEES**

EFAMA<sup>1</sup> welcomes the Call for Comments on the Impact Assessment Guidelines for EU Level 3 Committees, and congratulates CESR, CEBS and CEIOPS for starting this long-overdue discussion.

EFAMA believes that Impact Assessment analysis is one of the most important elements of the Better Regulation policy, and that it should become a standard feature of EU regulatory work at all levels, not just at Level 3.

We agree in principle that the proposed IA Guidelines cover the key aspects of an IA exercise, including the identification of market and regulatory failures. However, the proposed Guidelines at this stage cannot be sufficiently detailed and we will be able to judge their effectiveness only after implementation.

We fully appreciate the delicate balancing required by the choice between a Screening IA and a Full IA. In spite of the presumption on page 12 that “completion of the full IA will be the norm”, time constraints might lead to the use of Screening IAs or – even worse – to the decision that no IA at all is needed. We therefore encourage the Level 3 Committees to seek input from market participants at a very early stage, before a decision is made regarding the need for an IA, or regarding the type of IA needed.

We are not convinced that the Level 3 Committees can correctly estimate compliance and indirect costs without market input, also because market players would be affected differently, depending on their business models and size. The impact of high fixed one-off costs would for example be different for firms of varying sizes, possibly resulting in an unacceptably high regulatory burden for small and medium-size companies.

EFAMA therefore suggests an increased use of consultative Working Groups/Panels, (as well as open hearings and workshops with market participants), in order to gather as early as possible information for IA preparation, and to avoid choosing the wrong policy option. Especially in the case of a single-round public consultation, there would not be much time for market participants to give input to the Committees, and in any case a major reassessment by the Committees would be unlikely at such a late stage in the process.

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<sup>1</sup> EFAMA is the representative association for the European investment management industry. Through its 23 national member associations and over 40 corporate members, EFAMA represents about EUR 15 trillion in assets under management, of which EUR 7.5 trillion managed by around 46,000 investment funds. For more information, please visit [www.efama.org](http://www.efama.org).

With regard to working methods, for the same reason it is important to publish the quantitative part of the IA at the beginning of any public consultation, even if two rounds of consultation are planned. The Committees should also describe in the working methods what fact-finding should take place before the IA is drafted, and IA experts should not arrive at conclusions in a theoretical vacuum.

EFAMA wishes to underline the importance of factoring into any IA exercise the possible competitive disadvantages arising from regulation affecting only one product, in a market where substitute products exist. Should a broader view of financial markets continue to be ignored, unexpected negative consequences will continue to arise from new regulatory initiatives.

EFAMA also has the following detailed comments:

- With regard to implementation costs, we disagree with the Committee's statement on p. 31 that "it will be sometimes appropriate to consider as compliance costs only costs which are above what corresponds to best (or existing) practice in the market". Any IA should take into consideration compliance costs above current legal requirements, unless all market players already are at a higher compliance level. Furthermore, the concept of "best practice" is too broad and might even correspond with the desired result of proposed regulatory changes, so that any IA conducted on this basis would show no costs at all.
- We agree that "in general, all costs will ultimately be borne by consumers or investors" (p. 31), but such transfer takes time, and it ultimately depends on market conditions, specifically on the firm's competitive position and pricing power, on the availability of substitutes, etc.
- Although it is correct that "in the long run all costs can be considered variable" (p. 32), EFAMA believes it still is very relevant to determine whether any sunk costs derive from policy decisions. After all, businesses are not only run for the very long term, and regulatory decisions are not always made for the long term, but are rather revised regularly.
- Among the Opportunity Costs mentioned on page 32, to the "costs that the firm would have incurred had it proceeded with its own alternative investment projects" the Committees should add the profits that will not materialize as a result of the adoption of new regulation.
- Page 34: the discount rate to be used in the calculation of costs and benefits should be the average internal rate of return for the industry, which must be higher than the "long-run average of the real or nominal yield on long-term government debt" (why would firms be in business if it is more profitable to invest in government debt?).

We remain at your disposal should you have any questions regarding our comments.

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