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Subject: 3L3 Consultation Paper on "Impact Assessment Guidelines for EU Level 3 Committees"

Brussels, 24 August 2007

Dear Sirs,

Introduction

1. At the European insurance and reinsurance federation (CEA) we welcome the opportunity to submit our comments on the draft Impact Assessment Guidelines for EU Level 3 Committees ("Consultation Paper").
2. Through its 33 member bodies comprising of national insurance associations, CEA represents all types of insurance and reinsurance undertakings, be they pan-European companies, monoliners, mutuals or SMEs. CEA represents undertakings which account for approximately 94% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of €978bn, employ over one million people and invest more than €6,300bn in the economy.
3. We set out below our responses to the questions raised in the press release on the Consultation Paper.

A. Do you think that the proposed Impact Assessment (IA) guidelines cover all key aspects of an impact assessment exercise?

4. We broadly agree that the IA guidelines cover all key aspects of an IA. In particular, we welcome that the IA is based on market failure analysis and cost benefit analysis. This is because we support the view that regulatory intervention in the market should only take place where a market failure has been identified

and it can clearly be demonstrated that the costs and distortions imposed by the proposed intervention are exceeded by the benefits of the proposed change.

5. We also agree that regulatory policy and practice should be based on sound analysis, drawing upon economics and other social sciences to ensure that policy proposals are justified in terms of correcting for a market failure or addressing a valid consumer protection concern.
6. We agree that the scale of the IA should be proportionate to the significance, complexity and uncertainty of the issues under review. It should not place an undue burden upon regulators, or the industry that may be asked to provide data or support in developing the impact assessment. It should also take into account any systemic implications of the issue.
7. We also agree that both the 'status quo' and, if different, the 'market solution' (where no regulatory intervention is made) should be fully considered. We also agree that a sensible range of policy options and their respective advantages and disadvantages should be considered, as the test must be broader than assessing the preferred policy option against not taking any action.
8. However, we have a number of concerns in relation to quantitative analysis and the consultation process, which we set out below.
9. Our main concern is that the guidelines could lead to incorrect results of cost-benefits analyses. This is because the guidelines on assessing costs and benefits are frequently vague or fail to explain the limitations of certain techniques.
10. **Past failures:** When assessing the benefits, we acknowledge the merit of analysing whether any new regulation could have prevented past failures (page 57). The relatively new risk and principle-based approaches to regulation are likely to be more effective as they should enable regulators to better assess individual firms. A risk based approach together with transparency to the regulator and the market are powerful tools. Reviewing past failures needs to put these in this context. It should also be recognised that any new regulation do carry a risk in their introduction that both firms and regulators will not have the advantages of past experiences and that this is a new risk albeit, hopefully a time limited one.
11. **Opinion surveys:** Appendix 4 discusses the possible use of market research and consumer surveys. Whilst we support the use of these techniques, we would counsel caution. The answers obtained are likely to be heavily influenced by the framing of the questions and may leave significant room for subjective analysis of the results. Surveys are therefore helpful to supplement "harder" research but are unlikely to assist in an IA. Again, the guidelines should highlight this.
12. **De minimis exemption for CBA:** We believe the guidelines should make clear that a cost-benefit analysis will be undertaken as a general rule. The guidelines currently state that a cost-benefit analysis is only required "where regulatory policy proposals are expected to have significant effects upon market participants and consumers". The term "significant effect" is very wide and could potentially mean that cost-benefit analyses are not undertaken as consistently or as frequently as they should. Instead, the guidelines could state that a cost-benefit analysis should always be undertaken, unless the proposed regulation would be of minimal significance only. Should a new piece of regulation only affect small firms or mono line firms, a cost-benefit analysis should therefore still be required, unless it was of minimal significance.
13. **Cumulative costs:** Lastly, we believe an impact analysis should consider cumulative costs in addition to "direct costs", "compliance costs" and "indirect costs". Cumulative costs analyse the cumulative impact on firms of a variety of regulations, including the proposed regulation. This ensures that the cumulative impact on firms of a variety of regulations is not overlooked.

We would also like to make a general observation regarding the titles of the 3 proposed categories. As highlighted above, costs are currently categorized into “direct costs” (defined to be regulators’ costs of applying any new requirements), “compliance costs” (i.e. costs within regulated firms of complying with the requirements) and “indirect costs”. The categorization perhaps may not be helpful as it implies firms’ compliance costs are either direct or indirect. In reality they will be just as direct as the regulators costs. It may therefore be better to refer to the 3 categories as “regulators’ costs”, “regulated firms compliance costs” and “indirect costs”.

14. The guidelines should be reviewed and re-drafted to include these points.

B. Do you think that market failure analysis and regulatory/supervisory failure analysis are given due consideration in the IA guidelines?

15. We welcome that the market failure analysis and regulatory/supervisory failure are given due consideration in the IA.
16. However, we would welcome if the summary overview on page 9 were made clearer. The description of the first step seems convoluted (paragraph 1). It might help to slightly rephrase the eight steps, for example.

“1. Identify the problem and the threat it poses to regulatory objectives. Market and regulatory failure analysis provide a coherent framework for analysing problems and the risks they pose to regulatory objectives. Decide whether any form of intervention in the market is justified.”

It would also help if the summary made clear that a market failure analysis may be undertaken together with a regulatory failure analysis, but that it is also possible for one or the other to be undertaken, depending on the individual situation.

17. As a minor point, it would also assist if the fourth bullet point on page 24 were clarified. This states “...note that when no market failure has been identified and regulation is in place, there is likely to be a regulatory failure.” The current drafting seems to imply that no market failure automatically means a regulatory failure. Further explanations are needed.

C. Does the consultation process in the IA guidelines (publication of the draft policy accompanied by the IA analysis, publication of responses received and feedback statement) cover all key aspects of consultation?

18. Whilst we agree that many of the main points are covered, we would welcome further clarification on timing and input:
19. **Consultation Process for Full IA:** We would welcome more detailed provisions on the consultation process for the Full IA. In particular, if more emphasis were put on industry’s and trade associations’ contribution. The Annex provides some suggested wording.
20. **Consultation Process for Screening IA:** The guidelines state that “subject to the materiality of timing constraints, it may be useful to conduct an informal consultation of interested parties”. We believe the guidelines should clarify that industry and trade association consultation should be the norm rather than the exception. Please see the Annex for suggestions on how this could be expressed.

21. **Data:** The guidelines do not provide detailed guidance on how, when and from whom data should be collected. As data will be key for the cost-benefit analysis, we would welcome further guidance. Trade Associations could play an important role in the data collection process – please see the Annex for our suggestions.
22. **Qualitative and quantitative analysis:** We would welcome more specific guidance on timings in relation to quantitative and qualitative analysis.

D. Do you think that the proposed IA guidelines are sufficiently practical to enable policy makers to conduct IA effectively?

23. We consider the guidelines to be helpful to the EU Level 3 Committees to conduct an IA effectively. We would, however, welcome the inclusion of the following points.
24. It is important that the IA procedures are firmly embedded in the policy making process of the Level 3 Committees. We would therefore recommend that the guidelines contain high-level provisions in relation to the following areas:
 - *Sponsorship:* IA enjoys full top management sponsorship, including endorsement and monitoring of its routine use.
 - *Areas of responsibility:* there will be clear lines of responsibility for the IA to ensure that there is no doubt as to when and what should be done by whom.

More detailed provisions could be contained in the internal procedure manuals of Level 3 Committees.

25. **Costs:** We challenge the statement in the report that, "...by using electronic transmission in a standard format, compliance with data requirements can be made relatively costless" (page 53). Quality control and data validation requirements will remain, whether the data is provided in a physical or virtual manner. In addition, implementing new electronic data requirements inevitably imposes costs and the ongoing costs of maintaining and upgrading systems should not be underestimated.
26. **Cross-references:** There is an eight-step summary of the IA on pages 9 and 10, which we welcome. However, it would assist if this summary was made clearer and in particular if the titles used in the guidelines were listed in the eight-step summary. Currently, the eight-step summary does not generally refer to the actual headings used later on in the guidelines.
27. **Insurance examples:** We would welcome if the guidelines could include examples from the insurance industry. Currently, the examples deal primarily with the banking sector.
28. **Data:** To optimize data collection by policy-makers it would help if the following could be highlighted in the IA guidelines:
 - Sensitive/confidential information will be handled appropriately.
 - Reporting of data will be presented in such a way so that it will not raise any confidentiality concerns (this could happen if the IA presented data reports by geography where there are few foreign players in local markets).

It would also assist if the IA guidelines highlight that firms can provide close estimates where data is not readily available. (Data collected should ideally be readily available as per usual business reporting but where it is not, then close estimates should suffice).

It would also be useful if an indicative timeframe to respond to the survey could be given as it would be helpful to firms in terms of time and resource planning.

Faithfully yours,

Signed

Peter Skjødt
Acting Director – Economics & Finance
CEA

Enc.: 1 annex

ANNEX

1. We would welcome if the guidelines set out clearly that the industry will be engaged in the impact assessment (IA) from the earliest stage onwards. Early involvement should involve in-depth dialogue with industry associations and a small number of firms. The objectives at this stage should be to:
 - 1.1 gather qualitative information on how firms and consumers might react to the policy proposal, including what firms will need to comply with, and
 - 1.2 identify data needs for the full IA.
2. Later in the full IA, a simple survey could be used. This would gather quantitative information in comparable form from a large, representative sample of firms.
3. The Level 3 Committee should undertake the task of identifying firms and individuals within firms to participate in these exercises jointly with the industry associations. The industry associations would be responsible for:
 - 3.1 advising on representative samples; and
 - 3.2 spreading requests for participation in the exercises across their member firms.
4. To ensure that the Level 3 Committee receives a balanced view, it will be similarly important to engage consumer representatives.
5. The above recommendations are based on a 2004 report prepared by Nera Economic Consulting¹.

¹ The report was undertaken for the FSA