

## **EBF OBSERVATIONS ON THE PROPOSED IMPACT ASSESSMENT GUIDELINES FOR EU LEVEL 3 COMMITTEES**

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*Set up in 1960, the **European Banking Federation (EBF)** is the voice of the European banking sector. It represents the interests of over 5000 European banks, large and small, from 30 national Banking Associations, with assets of more than EUR 20 000 billion and over 2.35 million employees.*

### **I- General comments**

The EBF is pleased to have the opportunity to comment on the Impact assessment guidelines for EU level 3 committees.

While the consultation paper is good in parts, the Guidelines make for heavy reading. The reader needs to be very dedicated to work through the whole document, in order to discover what IA is all about.

Regarding the described eight steps for IA, we think that the guidelines set-out well the different stages of an IA, although step 4, entitled “*analysis of impacts*” should be expanded to show that impacts embrace both “*costs*” and “*benefits*”.

In addition, the introduction to a two-phase approach to IA does not make clear that it is the scale of the regulation that will determine whether there is a Screening IA or a Full IA carried out. The following wording could address this issue:

*“Regulations of relatively low impact should undergo a Screening IA, which is a preliminary and not a very detailed analysis. More significant regulations would be subject to a Full IA consisting of a more extensive and rigorous analysis. Using this distinction, a Full IA would be triggered where regulations imposed costs over a particular threshold (a threshold monetary figure should be provided here by the Three Level 3 Committees) or if the regulations have implications for particular policy areas identified by the European Commission, as being of particular importance. The intention behind this distinction is to ensure that IA is applied proportionately and does not become overly burdensome”.*

In some summary tables, distinction is not made as between benefits and costs for the different areas affected by regulation, namely consumers/investors and/or market participants.

The issue of reviewing policies is fundamental. The Three Level 3 Committees are to be commended for including this section on keeping policies under review. So often the ‘back-check’ is not done, although there are often so many lessons (good and bad) to be learned from previous work.

Finally, the EBF believes that the testing of IA through pilot studies is a very practical course of action that is to be pursued. That will be the real test as to whether the guidelines do indeed strike the right balance between ease of use and understanding on the one hand and analytical rigour on the other.

## II. Specific Comments

*(1) Do you think the proposed IA guidelines cover all key aspect of an impact assessment exercise?*

The IA methodology developed by the three Level 3 Committees is very consistent with the aim of implementing the principles of Better Regulation for their legislative practice. It will help in identifying problems and solutions relating to their institutional objectives.

The focus of L3 Committees, and any policy initiative, is on the single market and the IA process needs to consider the effect that a proposed initiative may have on the competitiveness of the EU as a whole vis-à-vis non-EU jurisdictions.

The Guidelines focus on EU-wide as well as national competitiveness only when analysing macroeconomic consequences. They also consider whether a regulatory solution envisaged will be implemented into national law with broad discretion or if bureaucratic issues can block the function of the single market.

IA should always be aware of the possibility that gold-plating practices within the EU place some states' businesses at a competitive disadvantage in relation to others EU-states. To this end, the evaluation of the impact of a proposal should always be based on information gleaned at the national level. It is important to note that the Guidelines indicate that such specificities will be brought to the attention of the Committees by, among others, national lobby groups.

*(2) Do you think market failure analysis and regulatory/supervisory failure analysis are given due consideration in IA guidelines?*

Market Failure Analysis (MFA) and/or Regulatory/Supervisory Failure Analysis (RFA) are the first key analytical steps of the proposed IA methodology. They allow a determination to be made as to whether a regulatory intervention is required.

Regard should also be given to the use of ranking when assessing, in a qualitative manner, both market failure and regulatory/supervisory failure. It will be recalled that such scaling can take the following form:

- Highly positive impact;
- Moderately positive impact;
- Neutral impact;
- Moderately negative impact; and
- Highly negative impact.

The IA exercise starts with the identification of significant market failure and/or regulatory failure but there are no instructions determining how great their "significant" level is, i.e. the threshold at which to begin a given policy. This is often possible when an IA is based on objective economic evidence.

When judgment rather than evidence inevitably guides parts of IAs, further questions have to be answered. More in general, the use of qualitative analysis requires a well-defined framework in order to make a proper comparison of policy options (ex-ante) and to evaluate the benefits of the policies enacted (ex-post).

Indeed, quantitative analysis is required in order to establish whether or not the overall effect of a policy proposal will be significantly positive.

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

The consultation process in IA Guidelines covers all key aspects of consultation. Nonetheless, a brief definition of the consultation process could also be added as follows:

*“Consultation means a structured engagement which involves seeking, receiving, analysing and responding to feedback from stakeholders. The stakeholders range from consumers/investors to market participants. Such a structured consultation process entails defining the purpose and subject of the consultation (such as a policy initiative or a regulatory change). It also entails identifying the key audience whose views are to be sought, framing the questions to be asked, providing information and receiving and analysing the responses”.*

*(4) Do you think that the proposed IA guidelines are sufficiently practical to enable policy makers to conduct IA effectively?*

Ex-ante IA requires an evaluation of the cost and benefit associated to policy proposal in quantitative terms. IA Guidelines introduce different types of costs (implementation costs, set-up and on-going, opportunity costs) and illustrate techniques for assessing benefits.

When possible, Cost-Benefit Analysis (CBA) is employed in performing such quantitative analysis. Costs and benefits are expressed in monetary terms.

To keep policies under review, an ex-post IA could be included in the policy proposal. Causality between the policy measure and the change in behaviour is to be demonstrated at this stage. In verifying regulatory impact post-implementation, IA guidelines suggest some instruments that have proved useful (anecdotal evidence, performance indicators, regression analysis) but do not recommend an ex-post CBA.

In conducting IA effectively, it might be appropriate to use the same instruments at both the ex-ante and the ex-post stages. However, in order to undertake full-blown cost benefit analysis and discounting of costs and benefits, it is necessary to engage technical assistance. These techniques are not quite as simple as the text suggests.