

Review and Critique for Industry Panel
on
Proposed Impact Assessment Guidelines
from
Three Level 3 Committees¹

This review and critique is in three parts:-

- 1. Prelude to Guidelines***
- 2. Critique of Guidelines***
- 3. Response to 4 Questions***

Part 1: Prelude to Guidelines

1.1 This piece of work has been undertaken to brief the Panel as a response to a request for feedback on the Three Level 3 Committees' joint consultation paper on draft Impact Assessment (IA). The Financial Regulator (FR) has indicated that the approach adopted by the Level 3 Committees will significantly influence its own approach to IA. This short paper cross references the consultation paper.

1.2 On 24 May 2007, the Three Level 3 Committees published a joint consultation paper, on draft Impact Assessment (IA) Guidelines to be used by the EU Level 3 Committees. The guidelines are to provide the Committees' Expert Groups with a practical tool to assist them, when using IA as part of their policy analysis and in the course of formulating recommendations.

1.3 These draft guidelines follow-on from the guidelines produced by the European Commission. Accordingly, they incorporate distinct and definite stages, such as, identifying problems relating to institutional objectives, identifying possible solutions (including leaving it to the market to solve), analysing their potential impacts, consulting with stakeholders on preferred policy options, and taking their feedback in to account.

1.4 It is expected that IA will apply to the work of the Level 3 Committees where the policy issues under consideration are likely to have significant structural and cost implications to consumers/investors and/or market participants. The scope of the Committees' IA work is expected to take account of IA work to be conducted by the

¹ Recall that the '3 Level 3 Committees', consist of the Committee of European Securities Regulators (CESR), the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS).

Commission or others. This is so as to avoid unnecessary duplication of effort and to ensure that the exercise adds value.

1.5 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*”.

PART 2: Critique of Guidelines

2.1 Overview: 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.

2.2 Analysis: Some brief comments on the different parts of the consultation paper:

Pages 6 –8, Background (“A”): Page 6 could be much punchier, so as to grab the attention of the reader. A crisp definition of IA should be included, in an indented form. An example of such a definition is as follows:-

“In essence, IA is a way of assessing the likely effects of a proposed new regulation or regulatory change. It involves a structure analysis to ascertain whether or not a new regulation would have the desired impact. It helps to identify the side effects and any hidden costs associated with regulation. It clarifies the desired outcomes of the proposed regulatory change. It also provides for consultation with stakeholders to ensure that their views and interests are understood during the regulatory process”.

Page 7 and Page 8 read well.

Pages 9 – 10, Eight Steps for IA (“B”): sets-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*”.

Pages 11 – 14, Two-phase approach to IA (“C”): 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 text might be added –

*“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 RIA 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”.

Page 15, Findings (“D”): useful summary on form of presentation.

Pages 16 – 17, Summary tables (“E”): no comment on Tables 1 and 2 (Page 16). As regards Table 3 (Page 17) a distinction is not made as between benefits and costs for the different areas affected by regulation, namely consumers/investors and/or market participants.

Pages 18 – 36, Preparation for IA (“Part 1”): The sections headings are clear – the who, the why, the what, etc. The accompanying text for each of the sub-sections, from 1.1 through 1.12, has some dense text, e.g. 1.3, 1.4, 1.6 and 1.8. The text could be shortened without loss of message.

As regards 1.10, (Pages 28/29), it might be helpful to illustrate qualitative analysis by the following text:-

“The impact of a particular regulation might be ranked qualitatively under a scale, such as the following one:--

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

As regards 1.11, (Pages 29/35), the reader should be re-assured that often technical assistance is required to undertake full-blown cost-benefit analysis and discounting of costs and benefits. It is not quite as simple as the text suggests.

Pages 37 – 39, Consultation for IA (“Part 2”): See suggestion in reply to **Question 3** below.

Pages 40 – 42, Review of Policies (“Part 3”): 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.

Pages 43 – 44, IA Preparation (“Part 4”): No comments.

Appendices: No comments.

PART 3: Response to 4 Questions

Question 1: Please refer to foregoing comments in Part 2 – otherwise, it is fair to say that these IA guidelines broadly cover key aspects of an impact assessment exercise.

Question 2: Regard should be had 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”.

Question 3: It would help if extra text were included, 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”.

Question 4: Some suggestions have been made in Part 2 above, which should help to make these IA guidelines more practical. Also, as was pointed out in relation to Section1.11 (Pages 29/35), it will often be necessary to engage technical assistance to undertake full-blown cost-benefit analysis and discounting of costs and benefits. These are techniques that are not quite as simple to undertake as the text suggests.

P Farrell
6 June 2007