



CJ/SJ – n° 2294/Div.

Mr Fabrice Demarigny
Secretary General
Committee of European Securities
Regulators (CESR)
11-13, Avenue de Friedland
75008 Paris

Paris, 31 August 2007

AFG RESPONSE TO THE JOINT CESR/CEBS/CEIOPS CONSULTATION PAPER ON IMPACT ASSESSMENT GUIDELINES FOR EU LEVEL 3 COMMITTEES

Dear Mr Demarigny,

The Association Française de la Gestion financière (AFG)¹ welcomes the joint CESR/CEBS/CEIOPS Consultation Paper on the Proposed Impact Assessment Guidelines for EU Level 3 Committees.

For several years now, AFG has been actively contributing to European regulatory discussions and consultations relating to several Directives, either directly or through the European Fund and Asset Management Association (EFAMA) in particular.

¹ The Association Française de la Gestion financière (AFG)¹ represents the France-based investment management industry, both for collective and discretionary individual portfolio managements.

Our members include 365 management companies and 772 investment companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.

AFG members are managing more than 2500 billion euros in the field of investment management, making in particular the French industry *the leader in Europe in terms of financial management location* for collective investments (with more than 1500 billion euros managed, i.e. 22% of all EU investment funds assets under management, wherever the relevant funds are domiciled in the EU) *and the second at worldwide level after the US*. In the field of collective investment, our industry includes – besides UCITS – the employee savings schemes funds and products such as regulated hedge funds/funds of hedge funds as well as a significant part of private equity funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA).

From a general perspective, we certainly consider impact assessments as crucial both for elaborating new regulations and for reviewing existing ones. These assessments must in particular contribute to avoiding any unintended consequences of regulations.

However, the guidelines (following our remarks below) still require some amendments before being considered as operational in practice.

1. Do you think the proposed IA guidelines cover all key aspects of an impact assessment exercise?

As currently proposed by the three Level 3 Committees, the IA would be essentially an economic IA. However, for many topics, a **legal** assessment should also be conducted. It might be useful to get a full picture of the existing laws/regulations already existing and the impacts/inconsistencies the proposed policy would introduce from a legal point of view within this general regulatory framework.

It is true that Appendix 1 of the Guidelines refers to the impacts of the planned policy on the regulators. However, the impacts described are still very economic.

Let us recall that many market participants stressed already to the European Commission that very often new/amended pieces of European legislation did not taken enough into account the other pieces of European existing legislation (e.g. the MiFID and the UCITS Directive) – leading therefore to *legal* inconsistencies, which at the end of the day harm the organisation and functioning of European investment firms in particular. Similarly, the same risk of legal inconsistencies has to be seriously anticipated in their work by Level 3 Committees; otherwise they will lead to increased costs for European firms and ultimately will prejudice their competitiveness at worldwide level.

In addition of assessing the legal impacts of a proposed policy, we consider useful to get in the IA a summary of the background of the situation under scrutiny.

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

Yes.

The identification of the main market failures arising in the financial area is very useful. Appendix 2 properly describes the economic information on market failures.

We have however one comment on the 3 Level Committees objectives (see page 23 of the proposed guidelines). When assessing the regulatory objectives, the objective of ‘investor protection’ should be balanced with the objective of facilitating innovation. Facilitating innovation is crucial for the European financial industry in order to remain competitive at worldwide level. The objective of facilitating the development of the European financial industry should be taken into account in the regulatory objectives of the Committees.

3. 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?

Whenever necessary, we consider as crucial that a **public debate (or “open hearing”) is organised before the publication of the impact assessment**. Otherwise, by limiting the consultation to written comments, the impact assessment policy might lack the positive benefit of open hearings – which is to allow for direct and public *debates* between regulators and market participants.

More widely, the involvement of market participants within the whole process of impact assessment should be reinforced by the Level 3 Committees, in order to ensure that initial routes taken by Level 3 Committees are not wrong and can be corrected early in the regulatory process of Level 3 Committees. The later market participants are involved, the more difficult it is to amend the initial route taken by the relevant Committee.

In practice, **the role of consultative Panels of Level 3 Committees should be reinforced**, in particular for impact assessments.

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

Appendix 1 containing a questionnaire to help policy-makers to determine the issues they want to investigate is very clear and useful.

Overall, we congratulate the three Level 3 Committees for delivering such a document explaining the impact assessment methodology. The report is well informed and documented. **However, concerning the practicability of the guidelines, we strongly think that one or several study cases should illustrate the envisaged use of the Guidelines in all their dimensions, in order to illustrate in practice the way the Level 3 Committees would apply them. Without providing such comprehensive study cases to illustrate the way the draft Guidelines would work, the whole IA methodology proposed by the three Level 3 Committees cannot be tested and therefore fully judged by market participants yet.**

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If you wish to discuss the contents of this letter with us, please contact myself at 01 44 94 94 14 (e-mail: p.bollon@afg.asso.fr), Stéphane Janin, Head of International Affairs Division at 01 44 94 94 04 (e-mail: s.janin@afg.asso.fr) or his deputy Catherine Jasserand at 01 44 94 96 58 (e-mail: c.jasserand@afg.asso.fr).

Yours sincerely,

(signed)

Pierre Bollon