Finance Watch

Making finance serve society

Finance Watch response to the public consultation on impact assessment guidelines

Brussels, 30 September 2014

Finance Watch is an independent, non-profit public interest association dedicated to making finance work for society. It was created in June 2011 to be a citizen's counterweight to the lobbying of the financial industry and conducts technical and policy advocacy in favour of financial regulations that will make finance serve society.

Its 70+ civil society members from around Europe include consumer groups, trade unions, housing associations, financial experts, foundations, think tanks, environmental and other NGOs. To see a full list of members, please visit www.finance-watch.org.

Finance Watch was founded on the following principles: finance is essential for society and should serve the economy, it should not be conducted to the detriment of society, capital should be brought to productive use, the transfer of credit risk to society is unacceptable, and markets should be fair and transparent.

Finance Watch is independently funded by grants from charitable foundations and the EU, public donations and membership fees. Finance Watch has received funding from the European Union to implement its work programmes. There is no implied endorsement by the EU or the European Commission of Finance Watch's work, which remains the sole responsibility of Finance Watch. Finance Watch does not accept funding from the financial industry or from political parties. All funding is unconditional, vetted for conflicts of interest and disclosed online and in our annual reports. Finance Watch AISBL is registered in the EU Joint Transparency Register under registration no. 37943526882-24.

Preliminary remarks

Role of the impact assessment in policymaking

In our view, the guidelines for conducting impact assessments should make it easier to measure policy outcomes and to compare them with the needs and expectations of citizens, economic agents and stakeholders in a legitimate, proportionate and cost effective manner. In particular, impact assessments should cross-reference policy outcomes with the objectives of Europe 2020 which include smart, inclusive and sustainable growth.

We support the Commission's goal of achieving smart regulation; however in the area of financial services we are concerned that placing too much focus on cost reduction will make it easier for stakeholders affected by a regulatory proposal to limit or block it, subverting the intended policy objectives. We believe that *low quality and overly complex regulation* undermines the competitiveness of companies, restricts economic growth and has a negative effect on the society, not regulation itself.

Cost / benefit analyses

The Commission Impact Assessment Guidelines of 2009 require that all significant costs and benefits be quantified where feasible, while applying the principle of proportionate analysis to avoid committing excessive resources to assess relatively minor impacts. We understand the need for proportionate analysis but we are concerned that the cost / benefit analysis could be turned into a tool for regulatory capture or adversarial delay and used to frustrate regulation.

The US impact assessment process, while different from the EU's, illustrates the potential danger for the EU. Evidence from Better Markets is that the US cost / benefits analyses"…generally assumes that all or most of the material costs and benefits of a regulation are quantifiable and comparable. In reality, costs are much easier to identify and calculate than benefits, which are often as much qualitative as quantitative."[1] This finding is also supported in a report prepared for the Commission which states that "…it must be observed that monetizing some of the impacts listed in the IA guidelines, such as respect for fundamental rights, would be a meaningless exercise, and as such should not be undertaken. Rather, multi-criteria analysis should be used in order to provide policymakers with a basis for informed decisions."[2] Meanwhile, a completely different approach has been presented by the financial industry, asking the Commission for "a full-fledged impact assessment of financial regulation that also takes into view the quantitative aspects, notably on the financing of the economy and on growth…"[3] In our view, public benefits should not be undervalued simply because they are hard

[1] Better Markets is a US public interest advocacy group. See "Setting the record straight on cost benefit analysis and financial reforms at the SEC", 30 July 2012 http://www.bettermarkets.com/sites/default/files/Setting%20The%20Record%20Straight.pdf
[2] CEPS study Assessment of cost and benefits http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf
[3] EBF press release from 16.05.2014

to measure in economic terms. Arguments that the industry should be exempted from the costs of regulation may really be arguments that the public should continue to bear the risk instead.

Institutional changes - new organization of the EC

Recent changes in the structure of the College of Commissioners aim to improve consistency in policymaking in various policy fields. The new position of Commission Vice President for Better Regulation, Inter Institutional Relations, Rule of Law and the Charter of Fundamental Rights should add momentum to the EC's strategy for smart regulation by improving consistency and coordination between various policy areas, as well as improving efficiency and cutting red tape. We hope that an update to the impact assessment guidelines will further support this strategy, as improved procedures reduce the potential for inconsistencies between regulations.

In the past, impact assessments have struggled to address inconsistencies. The length of the legislative process and the possibility for amendments at later stages mean that impact assessments may have little relevance to the final proposal. We believe that better use of roadmaps at the planning stage and coordination with other DGs during the programing part of the EC annual work program could help in this area, allowing the new VP to verify that planned impact assessments cover all relevant impacts during the policy coordination work.

For the same reason, we would support impact assessments being "live" documents that aim to support policymaking through the whole legislative cycle, including at later stages when amendments and compromises can be significant. We also favour the possibility of using impact assessments as a tool for *ex post* examination in order to strengthen the accountability of decision-making.

Democratic Deficit

A major problem that faces Europe is its democratic deficit. Even with good preparation and many positive legislative outcomes, policymakers often have difficulty convincing European citizens of the benefits of regulation.

Impact assessments could be an appropriate tool to help address this issue by improving stakeholder consultation, using credible data and setting clear objectives for each policy option. Stakeholder involvement is a pillar of smart regulation. A wide and equal access to stakeholders representing all interests is crucial to achieving genuinely democratic and legitimate policymaking.[4] As stakeholders ourselves, we would welcome this approach provided a balanced representation of interests is guaranteed.

The credibility of impact assessments depends on results that are based on reliable data and robust analysis which are transparent and understandable for non-specialists. We feel that confidence in the data used would be improved if all expert evidence submitted for use in impact assessments included a declaration on possible conflicts of interest, for example

[4] We would distinguish categories of stakeholder from interest groups, as they do not always overlap. Please see our response to the public consultation on stakeholder consultation guidelines, at Question 1.

covering shareholdings, private consulting arrangements or revenue dependency on the relevant industry sector, which could be disclosed in an annex to the impact assessment.

Also, a bigger involvement of national parliaments in defining policy choices and scrutinising the Commission right to action granted by the Lisbon Treaty could help to address democratic deficit concerns.

Response to the consultation questions

1. In line with international best practice, the Commission's Impact Assessment system is an integrated one, covering costs and benefits; using qualitative and quantitative analysis; and examining impacts across the economic, environmental and social areas. Do you agree that this is the right approach?

Yes. In our opinion it is crucial that the impact assessment include not only the assessment of costs but also the benefits of the options being considered, including the status quo (i.e. the cost) of non-intervention. Also it should be made clear that the goal of impact assessment is to help develop better law and improve policy coherence by providing scientific evidence and not to replace the political process or to determine the final decision.

2. Do you agree with the scope of coverage of proposals requiring an impact assessment? If not, why not?

Impact assessments should be produced for all initiatives with significant impacts, from policy defining proposals to implementing measures. In our view, there could be more transparency about which initiatives are considered to have significant impact and which not. A section explaining and clarifying the procedure for this assessment would strengthen the objectives of smart regulation by linking resources to clear priorities and should be added to the guidelines.

We generally support the integrated approach in defining the scope of coverage of the proposal. We agree that impact assessments should be produced for the most important initiatives that will have the most far reaching social, environmental and economic impact however we feel it would be beneficial if more attention were given to such effects over the long term.

Also the use of roadmaps and green papers assessing the cross-sector dimension in policy planning should help to achieve better coordination across different policy areas. Assessing the impact of longer term policy interventions involves looking beyond single policy measures to the broader policy mix.

3. Are the appropriate questions being asked in the Impact Assessment guidelines? Are there other issues that the impact assessment should examine? How would this help to improve the quality of Commission policy proposals?

We would prefer to see greater attention to the social dimension in impact assessments based on the development of more sophisticated methodologies and upgraded statistical information. This is especially important with assessing the fitness of regulation to achieve goals in the Europe 2020 programme. It should be stressed that economic growth alone is not enough therefore the policy proposal should take into consideration multi-dimensional factors i.e. stability, integration, health, consumer rights.

Further specification of direct and indirect impacts may be beneficial. The guidelines are vague in this area. We see that sometimes policy choices may bring indirect impacts that could jeopardize societal benefit or financial stability.

4. Do you have any other suggestion on how to improve the guidance provided to Commission services carrying out an impact assessment and drafting an impact assessment report?

5. Problem analysis: do you think the draft text in annex II.B provides a clear description of the issues to be taken into account when analysing a problem? If not, how should it be improved?

This section of the guidelines tries to provide a comprehensive approach to assess problems that are difficult to measure. We consider that the impact assessment guidelines lack clear indicators on how to assess the potential problems but also the potential benefits. There is wide discretion for how the problem “drivers” or causes can be interpreted by the policy officer while preparing the impact assessment.

6. Subsidiarity: do you think the draft text in annex II.C provides a clear description of the issues to be taken into account when verifying compliance with the subsidiarity principle? If not, how should it be improved?

We agree with the objectives stated in Annex II C.

7. Objectives: do you think the draft text in annex II.D provides a clear description of the issues to be taken into account when setting out objectives? If not, how should it be improved?

We agree with the objectives stated in Annex II D.

8. Option identification: do you think the draft text in annex II.E provides a clear description of the steps to be followed when identifying alternative policy options? If not, how should it be improved?

We support the objective from the guidelines that policy options must be closely linked to the drivers of the problem and the identified objectives. From our perspective it is rational to examine a number of different policy alternatives in order to help decision makers achieve the goals of smart regulation. We would like to underscore that importance of consulting stakeholders on all policy options. Certain groups, however, may favour outcomes that limit the benefits of policy solutions and only benefit this particular group. Therefore special attention should be given to balancing the interests that the stakeholders represent.

Before the financial crisis, regulators had mostly relied on the financial industry to apply self-regulation and market based governance that presented a minimal cost approach for business. But the belief that, in financial markets, private sector participants would effectively monitor each other turned out not to be valid in practice. Market based governance showed a failure of logic in holding that self-regulation would not only benefit private interests but also collective public interests. Self-regulation did not address the possibilities of failure or financial instability. The standardisation of behaviours developed by market leaders in dominant positions resulted in systemic risk. The challenge of financial sector regulation is to reconcile private incentives with the public interest and this should be included in the consideration of all different policy options.

Better regulation involves the principles of proportionality, accessibility and simplicity, rather than self-regulation or deregulation. Legal certainty and minimizing the possibility for regulatory arbitrage should also be taken into consideration in the impact assessment guidelines.

9. Identification of impacts: Is the list of questions included in the 2009 guidelines (see annex II.F) considered complete and up-to-date? Are there any impacts that should be added or taken out?

In general we agree with the list of questions included in the guideline.

We would welcome inclusion of the financial stability impacts in the economic section of the guideline. We find that assessing financial stability is indispensable when considering financial sector regulation. Financial stability analysis could involve questions about channels of contagion between the financial and non-financial sectors, the ability of the financial sector to cope when risks materialize, incentives, and the question of the long term impact on society.