FEDMA’s comments to the 2014 revision of the European Commission’s Impact Assessment Guidelines

Comments
FEDMA – the Federation of European Direct and Interactive Marketing - welcomes the opportunity to comment as part of the consultation on the 2014 revision of the European Commission’s Impact assessment guidelines. FEDMA is a member of EASA – the European Advertising Standards Alliance, and supports EASA’s response to this consultation, emphasizing the importance self and co-regulation should play in impact assessment.

We are pleased to see the priority given by President-elect Jean Claude Juncker to pursuing the better regulation agenda, in particular via the nomination of First Vice-President-elect Frans Timmermans to lead the Commission’s work in this area.

We support the use of SMART and better regulation objectives in EU policy in ensuring that the appropriate and proportionate use of legislation is made. In this respect it is important that proper impact assessments are carried out on all legislative and non-legislative initiatives to ensure that the most appropriate policy option is chosen, in particular in light of the Commission’s Better Regulation Agenda. Furthermore, it is key that any amendments introduced by the European Parliament and/or Council introduce that substantially change the impact of draft legislation, should also be subject to an impact assessment.

We are pleased that the revised guidelines confirm the inclusion of non-legislative initiatives and delegated acts and implementing measures, but the guidelines seem no longer to specifically mention the different non-legislative initiatives which propose major policy directions and use of policy instruments (such as white papers, action plans, communications, and recommendations) whilst providing detailed guidance on how to carry out an assessment for those different types of initiatives.

FEDMA strongly support the approach for the better use of effective self and co-regulation as part of the alternative regulatory options in EU policymaking. FEDMA has developed codes of conduct for the processing of personal data for direct marketing purposes, and is part of the Pan European self-regulatory programme on online Behavioural Advertising. FEDMA is a members of the EU Community of Best Practice (CoP), established by DG Connect.

We appreciate that the impact assessment does mention the appreciation of alternative regulatory options such as self and co-regulatory initiatives however we would recommend that these are considered early on in any assessment. When self-regulation is carried out effectively it can be more cost-effective, ensure the buy in of the key stakeholders and
quicker to implement and enforce than any type of detailed legislation. The issue of policy alternatives should thus be addressed early in the assessment itself, under the question of possible policy options, and better guidance needs to be provided with reference to how to assess such options with regards to positive or negative effects and their quantification.

We support a stronger reference being made in Section III of the Revised Guidelines to the EC Community of Practice (CoP) initiative and its related Principles for Better Self- and Co-regulation as a way of understanding what other regulatory alternatives exist and their effective functioning. At present the reference in Question 4 (What are the various ways to achieve the objectives?) of the revised Guidelines seems to be just a footnote mentioning the initiative. A clearer reference to the Principles and their use in assessing self and co-regulatory initiatives as alternative policy options may be more helpful to the reader. We would suggest inserting “see the participants of the EC Community of Practice (CoP) as a source for identifying self and co-regulatory initiatives and the CoP principles as a means to undertake the consideration of effective alternative policy instruments”.

As the revised guidelines introduce new conditions for deciding whether an impact assessment will be required, namely that the Commission has to decide whether EU action is needed and that there are choices among noticeably different policy alternatives, it is important that the criteria and procedures are clear and transparent.

Criteria
In the Criteria, the consideration of alternative regulatory options seems to be heavily focused on the assessment of achieving legal objectives rather than assessing whether the instrument ensures the desired economic, social or environmental impact.

We would also suggest that the criteria of political feasibility, does not belong to the main part of an impact assessment.

Procedures and Impact Assessment Board
Any decisions to carry out a limited assessment should be transparently documented with the motivations behind the decision explained, so that they can be reviewed by stakeholders; stakeholders should be consulted before the final decision is made. Impact assessment requirements should not be waived for initiatives because Commission departments believe that there are no noticeably different policy alternatives.

The revised guidelines appear to lack details in terms of the role and composition of the Impact Assessment Board. We believe its role should be to ensure that the guidelines are being properly followed. It should be made clear how and why the Board will check whether the guidelines are properly followed and whether the findings of the assessment are supported by the evidence. We feel it is essential that the Board clarifies and prevents any potential bias of impact assessments. In particular, it should ensure that Impact Assessment’s do not select an option on the basis of overstatements of the scale and scope of the problem at hand, and/or that they do not rely on subjective evidence or assumptions that do not take into account the full spectrum of arguments.

Consultation
All stakeholders affected by the possible EU action should have the opportunity to participate in consultations. In this respect, we are pleased that the revised Impact Assessment and Stakeholder Consultation guidelines strongly emphasise that stakeholder consultations in the impact assessment process must be carried out in accordance with the Commission’s general principles and minimum standards for consultation.
GENERAL PUBLIC 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, subject to comments above.

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

On the whole yes, subject to clearer focus on Self-Regulation and Co-Regulation.

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 underline the importance of self- and co-regulation being included as viable policy alternatives from the start of the assessment and not at a later stage. Please see our detailed comments above in this respect.

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?

Yes see above comments particularly with reference to alternative policy instruments, assessment criteria and the Impact Assessment Board.