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The Risk of over regulation

Alastair Evans

Risk of Over-regulation

'If there are no rational grounds for regulation there should not be regulation. I am moved to wonder whether legislators, regulators and other policy makers derive their job satisfaction and meet their objectives by adding new regulations with insufficient incentives to remove unnecessary regulation. I do not know the genesis of the Insurance Mediation Directive but I wonder whether the legislators in Brussels at the time properly thought through the market issues it was seeking to address, the costs it would impose on business and consumers and its broader market impact.'

John Tiner, Chief Executive, FSA
Extract from speech at Rendez Vous de Septembre, Monte Carlo
12 September 2006

Risk of Over-regulation

1. The problem of definition.
2. The case for over-regulation.
3. The case against over-regulation.
4. Is this an academic debate?
5. Conclusions and the way forward.

Over-regulation: the problem of definition

- Perspective is everything: prudence or excess?
- Perspectives are not universally shared and can change over time.
- Possible examples of over-regulation:
  - too much detail in rules (not principles-based regulation);
  - excessive and disproportionate obligations on service providers;
  - failure to distinguish between differing needs of clients (consumers/B2B);
  - duplicative regulation;
  - trade barriers;
  - excessive capital requirements.

The case for over-regulation

- [Understandable] response to a crisis or political pressure (scandals, Sarbanes/Oxley, failure of an insurer etc).
- Wish of legislators/regulators to avoid appearances before Parliamentary Committees and inquiries.
- Development and application of regulatory rules involves judgments: its effects are not always apparent in advance and not usually intentional.
- When in doubt, err on the side of caution.
- Desire to provide 'legal clarity'

5 The risk of Over regulation © Lloyd's

The case against over-regulation

- It costs:
  - compliance costs for industry (cannot be internalised);
  - requirement for substantial regulatory and enforcement agencies.
- It diverts internal resources.
- It can be at variance with other regulatory trends (principles based regulation, responsibility of senior management etc).
- It can produce competitive distortions in the marketplace, i.e.
  - move to less regulated jurisdictions;
  - impact on sales and distribution methods;
  - market barriers, in some circumstances;
  - influence investment decisions between industries.

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Risk of over-regulation

- Is this an academic debate?
- The large number of bodies involved in national and international insurance law-making.
- The EU Financial Services Action Plan, 1999-2004 (and the other EU Directives).
- The swing of the pendulum: national and international regulatory reviews and 'better regulation' agendas.
- Convergence of international standards.

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Conclusions and the way forward

- Over-regulation is unsurprising but undesirable.
- 'Better Regulation' agendas are welcome.
- The Tiner tests for regulation:
    1. Is there failure in the particular market which needs to be addressed?
    2. If so, is regulatory intervention the most efficient and cost-effective form of correction?
    3. Regulators must not discourage creativity, innovation and competition.
- Hopefully, some alleviation too via convergence of international regulatory standards.

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