

## **Industry Seminar – 20 October 2011**

### **Director General Speech**

**Nik van Leuven**

Ladies and Gentlemen

Welcome to you all to this, the Commission's second Annual Presentations. I hope you find them valuable.

Time available to me this morning is limited. So, besides some brief comments at the close, I want to focus on the thorny topic of consultation.

The Locrians of Ancient Greece benefited from a practice which might well be useful today. The proposer of a new law was made to stand in the Locrian legislature with a noose around his neck, to be instantly tightened if the assembly, after hearing the arguments for the new law, then and there rejected his proposal. Such a practice today would almost certainly discourage unnecessary or burdensome regulation, and the zealotry with which the Commission is unfairly characterised might be somewhat moderated.

But, of course, regulation is now a fact of commercial life, particularly so for financial services, and this – it is argued – for the protection of all, not just the depositor or the investor or the customer, but also financial systems and markets, and I suppose governments, who shouldn't and couldn't do it.

The Locrian practice is instructive. To avoid rejection of a proposal and so the tightening of the noose, the precaution of consultation would seem sensible. After all, consultation is as much about informing the proposer as those affected by the proposal.

In my presentation last year I acknowledged that the Commission's consultation processes required improvement. The distractions of the financial crisis and the concurrent imminence of the forthcoming IMF assessments had caused resources to be stretched. The Commission, to ensure the delivery of IMF proposals, was tied to deadlines set beyond its control. Thus industry was faced with little time to consider and respond to emerging issues. Dialogue between the Commission and industry became, inevitably and unfortunately, somewhat curtailed and stilted.

However, two singular facts from that time have stuck in my mind. Firstly, it appeared that the shorter the consultation period, the better the quality of responses. Secondly, whatever the period, responses were invariably received on the closing day or shortly afterwards. This empirical evidence might argue for keeping consultation periods as brief as possible!

Another feature of our consultations has been a tendency to engender negative, or at least unhelpful, responses. Many of these have been unreasoned, by which I mean unsupported by evidence – facts and figures. Fewer respondents have been supportive. Constructive comment, let alone praise, features less readily than criticism in dialogue between industry and regulator, which, I suspect, stems from some belief that whatever is said will be ignored, because the Commission has, more or less, made up its mind.

I want to stress that this is far from the truth. The Commission regards the consultation process as crucial in the delivery of its objectives and functions. Believe it or not, we do carefully consider what is said – even the hostile, but we need reasoned constructive comment supported by evidence. Not infrequently, the principal result of my reading industry's responses has been to enhance my armoury of vituperative epithets.

A good example of the Commission's listening was the first draft of our Code of Corporate Governance. Following the initial consultation, the Commission and its working party – comprised of representatives of financial services businesses – sat down to substantially recast the Code. That ought to be sufficient to suggest that any prejudice against constructive contribution, or some perception of Commission indifference, is misplaced.

I also want to stress that the recurring theme of these Annual Presentations – Inform and Engage – enjoins bilateral contribution. The Commission has much to learn from industry, and without compromising our regulatory independence and impartiality, the Commission can only, and will always, benefit from appropriate and timely comment, and will gain much more from constructive input rather than negative criticism or studied indifference.

The Commission has long been alert to industry's complaints about the enveloping extent, and so burden, of regulation. The necessity – for that is what it is – of securing good IMF assessments, and broader international acceptance, has meant that any proposal premised on implementing and achieving international standards has effectively trumped any complaint of a particular regulation's effect. The next IMF assessment is a few years away, and so there will be more time for the Commission to prepare, research, consult, reflect and decide. I can assure you that the Commission fully recognises the need to make industry, and our body politic, be and feel more involved as the nature and extent of regulation increases.

The Commission is therefore presently devising a better methodology, appropriate to Guernsey, for assessing the impact of any proposed regulatory measure. This is not new. For many years regulators almost everywhere have subjected proposed measures to impact analysis and assessment, with a view to determining:

- Whether the proposal is necessary or expedient;
- Whether the benefit to be derived outweighs the burden;
- Whether the intended outcome could be achieved by other means.

This process will involve a number of procedural changes, including the way in which proposals internally are developed for consideration, but also the way in which the

Commission and Guernsey's government interacts. But absolutely vital in all this is some more thoughtful and rigorous assessment of the effect of any proposal on the finance sector as a whole, or those businesses particularly affected by it. What is clear, if any such regulatory impact assessment is to be effective, is that the consultation process with industry must be informative and effective.

The Commission, in proceeding with this work, is not suggesting that it should undertake impact assessments as extensive and rigorous as those undertaken by, for example, the FSA, for to do so would be greatly distracting and require resources not readily available to the Commission. For example, the FSA maintains economists for just such purposes. Any assessment methodology must be capable of being delivered by the Commission within its existing resources. A significant amount of work has already gone into this proposal, and the Commission will soon be consulting with industry on it. I would ask all of you who have sensible and constructive contributions to respond positively. Thereafter the new process will be trialled, and both industry and government engaged in making the process effective and beneficial for Guernsey.

Finally, before I hand over to Richard Walker I would like to mention our Presentations last year. I then referred in particular to four work streams; personal questionnaires, enforcement, electronic communication and retail consumer issues. Each of these will feature in the presentations later today, and I mention them now merely to say that I am pleased to report significant progress has been made in each. I stress that, as respects retail consumer issues, whilst the Commission may conduct research into particular aspects of retail financial services, this is a matter primarily for government and not the regulator. In particular, whether, and if so to what extent and how, the benefits and burdens of retail distribution regulation – RDR - are introduced in Guernsey have not yet been fully considered by the Commerce and Employment Department, let alone the Commission, and our present work on this is primarily of enquiry, research and informal consultation.