

Brokers Ireland Response to the Consultation Paper for Cross-Industry Guidance on Outsourcing

Consultation Paper 138

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Introduction

Brokers Ireland welcomes the opportunity to contribute to the consultation process on Consultation Paper for Cross-Industry Guidance on Outsourcing.

Brokers Ireland (BI) is the sole representative body for insurance, investment, mortgage, and financial intermediaries in Ireland. With more than 1225 members spread throughout Ireland, BI members are by far the largest distributors of insurance, investment and financial products and services in Ireland. The vast majority (95%) of insurance intermediaries in Ireland have fewer than 20 employees and though they may sell many of the same products as large firms, e.g., insurance, investments, pensions; their size and scale and therefore systemic impact of their operations are negligible compared to say a direct insurer. We believe that the principle of proportionality is key to future development of legislative and regulatory requirements and to how these are administered.

Brokers Ireland welcomes that it is outlined that *“Certain aspects of this Guidance may not be appropriate to all regulated firms, due to their nature, scale and complexity and that the Central Bank acknowledges that it may not be appropriate for certain smaller, less complex regulated firms to adopt, in full, all measures set out in the Guidance”*. Given that the Guidance is relevant for all regulated entities, it is important that the role of the intermediary in the financial services industry be acknowledged and there be a recognition of how it differs from other regulated entities such as banks or insurance companies.

The vast majority of brokers cannot afford to employ full time compliance, data protection, risk management, HR or IT staff, so outsourcing is fundamental to the functioning of their firms. Outsourcing improves efficiency and promotes innovation throughout the industry. This ultimately improves the relationship between the regulated entity and its clients. It is important that the Central Bank’s Guidance does not disproportionately impact brokers in their day-to-day work, requiring changing work practices, which will mean that ever-increasing resources (time and money) must be spent on compliance, rather than on their clients.

Below are Brokers Ireland’s responses to questions as set out on page 15 of the Consultation Paper.

Q1	Are there are any aspects of the Guidance that are unclear? If so, please advise what these are and provide suggestions on the additional clarity required.
A1	<p>We believe it would be helpful if reference were made specifically to sole trader/one person/partnership firms and that sections that are not appropriate to these types of firms are highlighted as such. For example:</p> <ul style="list-style-type: none"> - Section 8.2 Internal Audit & Independent Third-Party Review: Is this relevant for a small broker using a CRM system?

	<ul style="list-style-type: none"> - Section 4.1 The role of the board and senior management, and - Section 5 Outsourcing Risk Assessment and Management: <p>These areas highlight guidance that is directed at firms which have a board structure. The Guidance should be amended throughout to incorporate expectations where there is no board in relation to what it expects from the sole trader in respect of oversight – i.e., what documentary evidence is expected, e.g., self-certification?</p>
Q2	What, if any, are the other areas/topics that should be covered in the Guidance (specify sections) or in future versions of the Guidance?
A2	<p>Clear parameters of the expectations the Central Bank has relevant to the nature and scale of the firm should be outlined - this could be done by using examples to help illustrate the Guidance for firms.</p> <p>It should be recognised that Brokers generally do not develop or use their own ICT systems. They use, for their clients and their policies, either the providers’ system or a market interface. There is a limited number of Customer Relationship Management (CRM) providers in the Irish market. Indeed, for general insurance personal lines products are traded electronically, using ICT systems that integrate full-cycle e-trading as well as facilitating client and policy management. Consequently, it should be acknowledged that the communication and ICT transactions between an intermediary and an insurer are generally carried out via a system in which the level of protection is guaranteed by either the insurer or the interface. The shutdown of an intermediaries ICT system would have no knock-on effects on an insurance provider’s ability to provide services, or for the integrity of the “main-ICT system” of the insurer.</p>
Q3	What, if any, are the significant issues /or concerns or unintended consequences that might arise due to the provisions of the Guidance?
A3	<p>Outsourcing greatly improves the speed and efficiency s for firms, which is ultimately to the benefit of the consumer. It enhances customer experience, which will ultimately benefit the industry. If used correctly, outsourcing is a great tool for both the firm and their clients.</p> <p>However, the Guidance as it stands will greatly impact the smaller broker. It is important that the Guidance does not disproportionately impact brokers in their day-to-day work, requiring changing work practices, which will mean that ever increasing resources (time and money) must be spent on compliance, rather than on clients.</p> <p>The Central Bank must take cognisance of the new Standard Contractual Clauses that have been adopted by the European Commission (4 June 2021) for data transfers between data controller and processor within the EEA, and transfers to outside the</p>

	<p>EEA, along with the European Data Protection Board’s (EDPB) new recommendations on supplementary measures transfer tools adopted 18 June 2021, which will ensure the security and confidentiality of the data that are transferred, as well as compliance with the EU level of protection. The Central Bank must ensure that its Guidance on outsourcing does not conflict with the new data protection Clauses and recommendations. The Central Bank Guidance should work hand in hand with these new data protection requirements and ensure that there is no duplication of requirements. For example, see Section 5.2 Sensitive Data Risk, and Section 7 Contractual Arrangements and Service Level Agreements (SLAs), e.g., Brokers cannot be expected to have in place Standard Contractual Clauses which will take on board the new EDPB recommendations, as well as the outsourcing SLA which will have to encapsulate requirements as listed in 7.1.</p>
<p>Q4</p>	<p>The Central Bank has considered existing sector specific legislation and guidance as they pertain to outsourcing and is of the view that this Guidance serves to provide additional clarity on the Central Bank’s expectations and best practice when firms utilise outsourcing. Are there any particular aspects of the Guidance that appear to be at odds with existing sectoral requirements and could give rise to confusion/misinterpretation? If so, please provide details on any aspects which you believe may cause confusion and suggest how best to address such issues.</p>
<p>A4</p>	<p>No comment.</p>

Conclusion

As stated above, Brokers Ireland welcomes the approach taken by the Central Bank in respect of proportionality, and that *"it may not be appropriate for certain smaller, less complex regulated firms to adopt, in full, all measures set out in the Guidance"*. We would appreciate the Central Bank advising within the Guidance of which sections will not be applicable to the smaller regulated entity. It is simply not acceptable to state that *"Certain aspects of this Guidance may not be appropriate to all regulated firms, due to their nature, scale and complexity..."* and not provide further clarification of which sections would not apply, and which would. Without this clarification, there is an implication that all sections apply, which would not be practical for the smaller broker.

We wish to reiterate that the more demands that are placed on regulated entities, particularly the smaller brokers, the more the cost to consumer will rise to keep up with the pace. It must be remembered that brokers/intermediaries are the only financial service provider to offer choice to the consumer. The over-regulation and extra administrative burden being placed on brokers is constricting the market as more brokers sell up or enter a merger. This does not benefit the consumer.

The 2020 Irish Programme for Government outlined that the government would seek to cut bureaucracy for SMEs and support the SME Test across Government to assess the potential for less-stringent requirements and simplification of regulatory adherence. Brokers Ireland also supports the aims of the SME Task Force and the recommendations and actions outlined in its January 2021 Report, particularly the "think small first principle", the recommendation that regulations should be both created and administered in a way that minimises obstacles for SMEs and requires their interests to be considered at each stage of policymaking.

It is for this reason, that we firmly believe that the principle of proportionality should be enshrined and referenced in the final guidance.

