



Markets Infrastructure Team  
Markets Policy Division  
Central Bank of Ireland  
Block D  
Iveagh Court  
Harcourt Road  
Dublin 2

30 January 2015

**RE: Consultation on Supervision of Non-Financial Counterparties under EMIR**

Dear Sir, Madam,

The Electricity Association of Ireland (EAI) welcomes the opportunity to respond to this consultation on the supervision of medium NFCs under EMIR. EAI is the trade association for the electricity industry on the island of Ireland, including generation, supply and distribution system operators.

In light of significant ongoing developments in the energy industry, industry participants are and will have to undertake significant investment from a resource and systems perspective in meeting separate reporting requirements under the Regulation on Energy Market Integrity and Transparency (REMIT) in October 2015 and in the transition to a new wholesale electricity market design that comes into force in October 2017. EAI believes that the proposed ERR in its current format will exacerbate resource and cost requirements and urges the CBOI to consider the suggestions outlined below in this response. In summary, EAI believes that the application of the third criterion in the exemption noted in the S.I. is superfluous and of no added value to the monitoring regime. EAI believes that the ERR could be replaced with a simpler ERR report, submitted perhaps on a six-monthly basis with no third party assessor requirement. This approach we believe will enable NFCs- to provide the comfort and confirmation to the CBOI that they are complying with EMIR obligations while at the same time minimising resource and cost burdens on NFCs-. EAI does however support the CBOI's right to request such ad hoc assessed reports as are reasonably necessary and would welcome discussion on any points raised in the following answers at your convenience.

**Question 1: Do you think that this is the optimal categorisation which the Central Bank should use to underpin our supervisory framework? If not what other categorisation would you propose?**

Please see the answer to question 2 below.

**Question 2: Should the minimum threshold be set at a level above the criteria specified in the S.I. and if so, what would be the appropriate level?**

With regard to the three threshold criteria outlined in the S.I. EAI believes that the first two criteria in terms of contract numbers and gross notional value of contracts are sufficient to determine the systemic relevance of an entity in the market. EAI does not believe that the third criterion is necessary and questions the value of potentially differentiating between small and medium sized NFCs-, by virtue of whether they choose to report EMIR derivatives either directly or via a third party. In many circumstances the choice of reporting directly, as opposed to through a third party, is for either operational simplicity or monetary reasons. Indeed direct reporting is often the easiest option for companies that wish to keep administration and the costs of compliance to a minimum.

Furthermore, implementing the third criterion for the exemption could lead to NFCs- ceasing to report directly to avoid the cost of the EMIR Regulatory Return (ERR) for such entities, which would undermine the value of the criterion in the first instance.

On the basis of the above, EAI suggests the removal of the third criterion, at least for an interim period (e.g. for 12 months). Notwithstanding that this may temporarily raise the number of NFCs- falling within the small NFC- category, depending on those numbers it may be the case that their monitoring is manageable through the CBOI's proposed small NFC- monitoring regime, without enforcing the third criterion long term. A review could be undertaken either throughout or at the end of the 12 month period to ascertain if it is necessary to enforce the third criterion at all, taking into account whether significant numbers of companies are in fact affected and the burden of cost and time an ERR of the format proposed would impose on both the CBOI and NFCs- in question. In such a review, which might occur for example through the CBOI's proposed small NFC- tailored ERR approach, the small NFCs- could be asked how they undertake their reporting (i.e. via a third party or directly) thereby providing the Bank with the information it needs in determining whether a larger base of companies of systemic risk should rightly be exposed to a third party assessed ERR.

**Question 3: Do you envisage any operational or other difficulties with the Central Bank adopting this approach? If so please provide commentary as to how these difficulties could be resolved?**

EAI accepts and supports the CBOI's need to discharge its supervisory responsibility as the National Competent Authority (NCA) under EMIR. The proposed adoption of an ERR is considered an important information gathering exercise and a key step in the development of an enduring supervisory framework. EAI however encourages the CBOI to re-evaluate the purpose of their monitoring of NFCs- and the consequences of imposing the administrative and cost burden of ERRs on certain types of NFCs- (such as those discussed in answer 2 above, i.e. those that would be exempt save for their choice of reporting process). The submission of an annual independent assessment will increase the regulatory compliance costs on medium NFCs- to supply information that is generally static. The proposed approach does not in EAI's view complement the Central

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Bank's objectives to avoid being excessively intrusive and to develop a supervisory framework that is both fit for purpose and cost effective.

With regard to the intention in the ERR to reconcile the derivatives data that companies are legally obliged to report as against the data that the CBOI through its internal systems believe should be reported, in place of the proposed annual submission of such, EAI believes that a six-monthly submission of a simpler ERR would be a more timely way for the CBOI and indeed NFCs- to obtain confirmation of EMIR compliance. Otherwise, it may be up to one year before an error is discovered. A simpler ERR, without third party assessment, submitted twice a year by NFCs-would in EAI's view be the optimal approach for the CBOI to be comfortable with this NFC-category's level of compliance. From the NFCs-perspective such an ERR could be completed in a more timely manner with the least cost and administrative interruption as necessary. Further detail on the potential contents of such an ERR is outlined in answer 6 below. EAI does however support the need for the CBOI to request ad hoc third party assessed reports as are reasonably deemed necessary by CBOI.

In relation to specific queries that arise from time to time, EAI considers that, as compared to larger more sophisticated NFCs/ FCs, medium and small NFCs- do not have the resources and capabilities to react to CBOI queries on as timely or regular a basis. EAI therefore requests the CBOI to consider that where cross-sector or cross-business questions of general relevance (i.e. not company specific) arise, that these questions might be addressed on a forum (e.g. round table) basis to ease the potential burden arising from regular queries that might be best addressed on an industry basis. This would also assist the CBOI in minimising duplication of effort and resources as these forums should greatly facilitate the deciphering of any sector or firm specific differences.

EAI does however support the CBOI's need to address any company specific issues directly to the company at any stage in the monitoring process.

**Question 4: Should the Central Bank accommodate tailored submission periods from NFCs, or should it determine a fixed date for the submission of all ERRs?**

EAI supports the adoption of tailored submission periods from NFCs- at least at the outset to enable NFCs- compile the data and use internal resources in line with internal schedules and business needs. Such an approach is preferred at least until NFCs- become familiar with the new regulatory reporting regime. Should the need arise for a more streamlined submission in terms of timelines by the CBOI, at a minimum a phased approach should be used. Sufficient notice and consultation with NFCs- about a change in such an approach is considered best practice.

**Question 5: If the ERR was not adopted, how should the Central Bank charge supervisory costs to all categories of NFCs? Should we for example have a sliding scale for NFCs, which is dependent on the level of derivative activity?**

Supervisory costs should be allocated on a basis that is reflective of the activity and the risk posed by an NFC. EAI supports the CBOI's suggested model of a sliding scale of charges linked to the level of derivative activity as evidenced by derivatives reporting. The cost could be charged simultaneously with the request for the submission of an ERR, e.g. twice a year if the simpler non-third party assessed ERR submitted on a semi-annual basis as outlined in answers 3 and 6 respectively is

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adopted. Charging in tandem with the submission of ERRs will drive NFCs- to ensure their derivatives reporting requirements are wholly in line with internal data systems- confirmation of accuracy provides reassurance of the accuracy of the charge. If the simpler ERR report and charges are submitted and paid for at six-month intervals, any errors will be amended more quickly than would result with an annual more complex and costly ERR. EAI believes that this simpler six-monthly ERR report could replace the need for the CBOI's proposed annual ERR for medium NFCs-.

**Question 6: If you are of the view that the ERR should be adopted, as broadly outlined, are we asking the right questions in the ERR? If there are questions which can be improved upon, please let us have this feedback.**

In light of the significant amount of change ongoing in the Irish energy market and consistent with the level of systemic risk and monitoring required of NFCs- EAI believes that the use of the data currently reported by NFCs- is sufficient to meet the CBOI's monitoring obligations. However, if the CBOI believes that an ERR is necessary for NFCs-, EAI suggests that the approach being taken by the British Financial Conduct Authority in this area is appropriate. Such an ERR would merely require confirmation by counterparties as regards their EMIR obligations relating to trade reporting and their establishment of direct or third party connections for reporting; internal data systems to check accuracy of reports; ongoing compliance with LEI ownership requirements; and that ongoing assessment and monitoring of financial status as against clearing thresholds is being undertaken.

**Question 7: If there is specific feedback re any professional disclosures, please submit details to the Central Bank.**

While the use of a third party assessor is meant to provide a level of oversight and assurance for the CBOI, it could in fact result in increased risk from the perspective of NFC- businesses. This is from the perspective of increasing regulatory compliance costs including the considerable resource costs that businesses will incur not least from a systems perspective, and security around commercially sensitive data. Professional disclosures go some way in alleviating such concerns but the provision of oversight and assessment by non-experts in a sector may bring with it a residual doubt as to the weight of their views. In a small sector, the availability of an assessor willing to carry out this EMIR requirement may be limited which in itself may also drive the cost up.

EAI supports the role the CBOI has in monitoring compliance with EMIR requirements but urges the CBOI to holistically consider the cost/ benefit of involving these third parties in providing such confirmations that carry little or no weight. The burden should be on the company to convey its compliance in as true and accurate a manner as it can and we consider that the approach to small/ medium NFCs- monitoring outlined above in answer 2 and 3 would meet the obligations of the CBOI and medium NFCs- of systemic concern under EMIR.

**Question 8: What is your view on the proposed role of a Third Party Assessor?**

Please see the response above in answer 7.

The EAI is available to meet and discuss the contents of this submission at a convenient time. In the meantime, please do not hesitate to contact me for any further information.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Stephen Douglas".

Stephen Douglas  
Senior Advisor  
Electricity Association of Ireland (EAI)