



Submission to the
Central Bank's
Consultation Paper 90
on EMIR for Non-
Financial Counterparties

January 2015

General Comments

Ibec welcomes the opportunity to respond to the Central Bank's Consultation Paper 90 on EMIR supervision for Non-Financial Counterparties (NFCs). Our affected members have been highly engaged on this issue through working groups, individual meetings and specialised sessions with the Bank over the past two years, in particular. To this end, we would like to acknowledge the Bank's comprehensive public consultation process, its direct engagement with Ibec, and its invitation to industry for alternative suggestions to the current proposals.

We also welcome the Bank's statement in its industry presentation dated 27 January 2015 that in devising its supervisory regime for NFCs, it is mindful of the "material reputation of the Central Bank and of the IFSC". This is a crucial position on which industry and the Bank are aligned.

Given the fundamental global reforms of derivatives regulation over the past number of years, we appreciate in full that the Bank must, in its national discretion, apply rules that reflect this international trend and protect its own reputation. It follows that the Bank will be particularly cognisant of the risk profile of its supervised entities. Similarly, we have a high number of engaged NFCs that have over the past number of years prioritised the establishment of their internal systems and controls to ensure full alignment and compliance with international rules on transparency and risk. These controls reflect the individual risk posed by each company's principal activities. However, the Bank is currently proposing a regime that is costly, blunt and likely ineffective, because it is not calibrated to systemic relevance. This is out of step with the approaches of the Bank's peers, including in particular, the Dutch and UK regulatory authorities.

Ibec is very concerned that this approach will place excessive and unnecessary compliance and administration costs on Irish business and, in particular, it will place Irish firms at a competitive disadvantage vis-à-vis the approach taken by regulators in other jurisdictions.

The Bank has stated that in setting out its proposed supervisory approach for NFCs in Ireland under EMIR, it considers the following as being of particular significance:

1. Ireland has a disproportionately high volume of derivative activity per capita as compared to other Member States.
2. The Bank has neither data nor prior relationships/understanding of hundreds of NFC-s that now come within its supervisory remit
3. The limited resources of the Bank that are available to fund its supervisory mandate.

We would like to point out that Ireland's high volume of derivative activity has not been adequately analysed – and is being used to unjustifiably impose blanket supervisory rules. We do not know what proportion of the volume is specific to NFC-s. Activities are spread across banks, pension funds, Irish public companies, Special Purpose Vehicles, shared services centres, indigenous firms such as agri-food companies and other SMEs. According to a Central Bank Quarterly Bulletin (Derivatives Survey) in April 2014, "over 93% of trading is with foreign counterparties". This is reflective of Ireland's strong financial and economic

ties with international economies, and its reputation as an open, business-friendly, and credible country in which to do business. It is this reputation that Ibec strives to protect and develop at every opportunity. Unfortunately, the current regime proposed by the Bank exposes that reputation to considerable risk.

Following this consultation therefore, we are at the Bank's disposal to assist in addressing this issue to ensure that the supervisory regime is sensitive to the systemic relevance of NFCs. To proceed on a permanent basis with proposals that are unclear in their applicability and more costly, onerous and invasive than in any other European Member State, would mean that the Bank's supervisory approach would be unlikely to meet its own stated objectives.

Specific Responses

The Central Bank has limited the scope of its questions to 'medium sized companies', by reference to the minimum thresholds set out in Regulation 14(5)(a)-(c) of SI 443/2014. We refer simply to NFC-s in accordance with the Level 1 EMIR text. Also, we have not responded directly to all original questions in CP90, as to do so would in some cases be duplicitous or contradictory.

Question One: 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?

The categorisation is inappropriate, as it introduces new thresholds above and beyond the Level 1 Regulation, and bluntly groups companies according to size. The Bank's proposals impose a disproportionate burden of cost on NFCs that bears no direct relation to their risk profiles. Specific suggestions are:

- Move threshold (a) up to 500 outstanding OTC derivative contracts. Move threshold (b) upwards to €1bn gross notional value. The indicators chosen by the Bank are not risk-sensitive, and raising them to the suggested levels does not in and of itself, import systemic issues.
- The third threshold (delegation of reporting to a third party) makes no distinction between external trades and internal/inter-affiliate trades. There is no benefit (from a supervisory point of view) in delegating reporting of internal trades to a third party. Therefore the requirement to outsource should be limited to external trades.

Question Three: 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.

All NFCs in Ireland, regardless of their resources, have incurred huge costs in setting up internal structures for new regulatory reporting requirements. They have secured the LEI, carried out trade repository registration, and are subject to the same six fundamental regulatory requirements for NFCs under the Level 1 text as NFC-s in every other Member State.

In considering the Bank's proposals therefore, we envisage high cost and operational difficulties for firms in complying with this approach. We also anticipate a competitive cost, because the Bank is proposing additional reporting requirements and third party assessments – requirements over and above those stipulated within EMIR. This approach cannot be said to be tailored to Ireland, because the Bank, by its own admission, has no accurate picture of NFCs in Ireland. Equally, having engaged with members of professional services firms, we believe that the estimated cost of completion of an individual ERR has been underestimated. Overall, we believe that the Bank should apply the same thresholds as those set out in EMIR, and any additional information should be sought on an individual risk needs basis.

In order to address the Bank's primary concern about a lack of information on the NFC population, we propose a one-off mapping exercise, with the submission of individual summary data to the Bank. This will give the Bank vital information about affected companies, points of contact, principal activities, etc. Again, we would like to work with the Bank to construct a sample document that covers prudential considerations. The Bank would have a more comprehensive database of NFCs and crucially, it would then be in a position to better estimate its costs, which is an appropriate point to finalise a supervisory (operational) approach. We believe that this approach is essential to develop a thorough assessment of the impact of EMIR on Irish business and it would be in keeping with both national and international efforts to improve the quality of *ex ante* regulatory impact assessments.

On a pro-forma basis, rather than imposing an anti-competitive and arbitrary costs of third party assessment on NFC-s, companies can declare their compliance through existing structures, such as an 'EMIR article' in the B1 annual return, or the Directors' annual compliance statement, which has now been reintroduced under the Companies Act 2014. This is in line with our earlier proposals to the Department of Finance in March 2014.

The combination of the above proposals, together with the very extensive investigative and enforcement powers given to the Central Bank under Statutory Instrument 443/2014 and its monitoring of trade repository activity/LEI traceability, would be an extremely effective yet lower-cost supervisory regime for NFC-s. As referred to by the Bank previously, this approach is also similar to the PRISM engagement model for regulated financial companies in the medium-low and low risk categories. The advantages of this proposal are:

- the Bank would have prior knowledge and better understanding of firms and their activities (unlike the current proposals but nonetheless akin to the Bank's own PRISM model);
- the Bank would not incur the cost of continuous direct engagement and;
- the Bank would rely on its onerous statutory powers against NFC-s and credible threat of enforcement to dissuade non-compliance.

Question Five: 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?

We believe the above proposals obviate the requirement for industry levies. In principle, Ibec is totally opposed to proposals to levy NFCs, as no other Member State has imposed any supervisory levy. In addition, NFCs have already incurred vast costs in adopting internal systems transformations as referred to above. To impose direct supervisory levies on NFC-s is also to deny the carve-out afforded to them under EMIR itself. It is contradictory therefore to the intentions of the Regulation. Ibec will continue to strenuously oppose any supervisory levy on NFC-s that might be proposed in the future.

Concluding Remarks

The Central Bank has been open and engaged with industry and has expressed a willingness to receive feedback on the issues where there is most uncertainty, namely cost and the NFC- population in Ireland. However, we do not feel that it is possible to assist the Bank in addressing these two fundamental issues within the bounds of CP90. We reiterate that industry would welcome the opportunity to work with the Bank in developing a breakdown of NFC- derivatives activity from Ireland and building its own contacts database so that it can seek assurance from companies where, using its trade repository information and other indicators, it has reason to require additional information in fulfilment of its role as National Competent Authority.

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