Impact-based levies a key concern in 2013

It has been a very busy year at the Central Bank of Ireland writes Kevin O'Doherty. He looks at the programmes rolled out in 2012, the prospect of increased levies and the Irish and European regulatory logjam being faced in 2013.

It may be a product of how much has actually happened so far without our fully realising it, but when writing an article on the Central Bank's recently unveiled 2013-2015 Strategic Plan, I was struck by how little were actually new initiatives rather than continuations of the admittedly seismic changes of recent years. This is not to belittle the Central Bank's efforts, as the phased roll-out of the Fit & Proper Requirements, the revised Minimum Competency Code, the revised Consumer Protection Code and the PRISM regulatory assessment framework each in isolation were major milestones in 2012. These programmes embody the Central Bank's philosophical strategy of getting the right sort of people in financial services doing the right sort of things, so that it can then concentrate its supervisory efforts on areas that matter most in terms of likely impact.

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Continuing this theme, the Central Bank reminded board directors of the central importance of their role by cracking down on the use of liability-limiting management service companies by directors. To show that corporate governance requirements weren't just for banks, insurers and funds, the Central Bank issued a detailed series of recommendations to investment firms in May and the Fit & Proper Requirements were extended to credit unions in September.

Having demonstrated its commitment to accountability with the publication of Inspection and Enforcement Priorities in February and an Annual Performance Report in May, November's 2013-2015 strategic plan revealed that the Central Bank expected the stalled Central Bank (Supervision and Enforcement) Bill 2011 to be re-activated giving it long-sought additional powers including broadened capabilities to issue statutory instruments and a common regulatory tool-kit. Tempering elements are to be introduced with the Central Bank offering to establish an implementation advisory committee to consult on detailed implementation of the Bill. Separately, the Government is considering measures to take the Central Bank within the scope of freedom of information legislation.

In contrast to the predecessor Financial Regulator, the Central Bank is much more aware of public impatience with regulatory failings. Following the collapse of Custom House Capital and later Bloxham Stockbrokers, the Central Bank published a Client Assets Safeguarding Review Report in March 2012 and involved a number of industry elements in the working parties set up to comprehensively redesign the client assets requirements.

Likely to be far more contentious is Consultation Paper 61 in which the Central Bank proposes a move to impact-based levies, so the more attention you attract from the Central Bank the more you will pay for the privilege of such close supervision. While conceptually sound, the significantly higher sums payable by closely targeted firms can be guaranteed to cause significant outcry from them. In the midst of continuing poor economic circumstances, it is only natural that there should be public questioning of the value for money provided by the significantly enlarged Central Bank. Sensitive to this the Central Bank has recently publicly signalled that its period of breakneck headcount expansion is over and that it expects to head into a period of consolidation in 2013.

In marked contrast to consolidation at home, we can expect a continued onslaught of new regulatory proposals from Europe. Most significant of this is the Single Supervisory Mechanism, or European Banking Union which politicians initially decreed would come into force in January 2013. While this overly optimistic target has since been amended, the current political imperative is to have the concept firmly launched by 30 June 2013. In a recent speech, Matthew Elderfield pointed out the obvious fact that this was not just a simple matter of saying that the ECB would be in charge of European banking supervision - the ten EU member states which weren't euro participants would have legitimate sovereignty concerns to be discussed first.

While pan-European regulation already exists in the form of EBA oversight of credit rating agencies, the move to a single, non-national banking regulator represents a major change away from existing certainties and could signal a very different regulatory landscape in the future.

In addition to the opportunity/threat of centralised regulation there are new European legislative proposals for just about every sector in 2013: the MiFID2 Directive and MiFIR Regulation will overhaul investment services; the fourth Capital Requirements Directive will be joined by a second Market Abuse Directive and Market Abuse Regulation; the transparency directive will be revised; and regulations are promised for central securities depositaries, venture capital and social entrepreneurship funds.
This is all on top of existing programs coming into force or those promised for publication by the end of the year: the Alternative Investment Fund Managers Directive, the UCITS V Directive, the second Insurance Mediation Directive, the fourth Anti Money Laundering Directive, the Close-Out Netting Directive and the Securities Law Directive.

All of these new initiatives promised for year-end will be placing very heavy demands on Santa's legal drafting elves. Already there have been delays and cracks have started to show: the chairman of EIOPA wrote publicly in October to the EU Commissioner for the Internal Market raising strong concerns regarding the twice-delayed Solvency II directive and questioning industry's ability to properly implement complex large-scale changes within foreshortened timescales where Level two implementing directives or Level three regulatory technical standards fail to issue on a timely basis. Given the logjam of future directives, we can probably expect to see many more such letters issuing in 2013.

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