

Central Bank of Ireland
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By email to: IAFconsultation@centralbank.ie

CP 153 - Enhanced Governance, Performance and Accountability in Financial Services

13 June 2023

Dear Sir or Madam,

We refer to Consultation Paper CP153 on *Enhanced Governance, Performance and Accountability in Financial Services*. This is a submission on behalf of members of the FinTech & Payments Association of Ireland (**FPAI**), Ireland's largest industry association for the fintech and payments sector.

Our members, including many regulated fintechs such as payment institutions and electronic money institutions, welcome this opportunity to provide their views on the forthcoming individual accountability framework.

Our members welcome the introduction of an individual accountability framework in Ireland in line with best international practice. Our members also welcome the emphasis placed by the Central Bank on the following principles in its approach to implementation of the individual accountability framework as being central to ensuring effective implementation of the framework, namely:

- balancing the need to maintain momentum by introducing the individual accountability framework while allowing time for firms to ensure a high quality and consistent implementation; and
- proportionality, predictability and reasonable expectations,

and rather than responding to specific questions in the consultation, the FPAI's submission is focussed on ensuring that adequate attention is given to these guiding principles in practice in the Central Bank's approach to implementing the new framework in order to ensure that the framework is in fact implemented effectively.

1. The proposed implementation date of 31 December 2023 for key components of the individual accountability framework does not allow sufficient time for firms to ensure a high quality and consistent implementation of these components of the framework

We note that the Central Bank is proposing an implementation date of 31 December 2023 for several key components of the individual accountability framework which will apply to all regulated firms including:

- conduct standards (including business conduct standards for firms, common conduct standards for all holders of controlled functions (**CFs**) including holders of pre-approval controlled functions (**PCFs**) and additional conduct standards for PCFs and CF1s); and
- enhancements to the fitness and probity regime (including obliging regulated firms to certify fitness and probity of all CFs (including PCFs) and extension of the fitness and probity regime to holding companies in the State).

Our members are concerned that this proposed implementation date would leave insufficient time for regulated firms to take all the steps necessary to prepare to implement these significant reforms in a way which meets the Central Bank's stated objective of "*allowing appropriate time for...firms to ensure high quality and consistent implementation*" particularly given the additional regulatory requirements which the Central Bank is requiring regulated fintechs to prioritise over the coming months. In particular:

- *The need for additional time in the absence of finalised regulatory guidance upon which effective implementation projects must be based*
 - In order to achieve the stated objective of "*high quality and consistent implementation*", implementation projects need to be based on *finalised* regulatory guidance.
 - The draft regulatory guidance in CP 153 is unlikely to be finalised for some time given that the CP 153 consultation period remains open until mid-June 2023 and further time will then be required by the Central Bank to prepare a feedback statement and to finalise its draft regulatory guidance.
 - The draft regulatory guidance published as part of CP 153 does not cover several important themes which are central to these implementation projects including:
 - regulatory guidance on business conduct standards (which are being reviewed and consulted upon as part of the Central Bank's Consumer Protection Code review); and
 - regulatory guidance on administrative sanctions procedures reforms (which are being reviewed and consulted upon in a separate Central Bank consultation later in 2023).
- *The need to allow firms sufficient time to complete the significant preparatory work required to ensure high quality and consistent implementation of the conduct standards*
 - In order to achieve *high quality and consistent implementation* of the conduct standards pillar, firms will need to carry out significant preparatory work which takes time to complete effectively and to a high quality including:
 - develop and implement internal notification to ensure that staff are notified of the conduct standards;
 - establish and maintain policies for integrating the conduct standards into the conduct and culture of the firm;
 - adopt a framework to identify, monitor and action potential breaches of the conduct standards and report to the Central Bank on formal disciplinary actions (e.g. formal warning, suspension, dismissal, pay reduction) for breaches of these standards;
 - devise, develop and deploy mandatory training on the three categories of conduct standards and regulatory expectations of behaviours required to meet those standards;
 - in the absence of more detailed guidance from the Central Bank on its expectations regarding behaviours required to meet the requirement to take any "*reasonable steps*", potentially development of reasonable steps frameworks for particular roles/themes.
- *The need to allow firms sufficient time to complete the significant preparatory work required to ensure high quality and consistent implementation of the enhancements to the fitness and probity regime*
 - In order to achieve "*high quality and consistent implementation*" of the fitness and probity enhancements pillar, firms will need to carry out significant preparatory work which takes time to complete effectively and to a high quality including:
 - reviewing and updating fitness and probity policies, handbooks, processes and record-keeping systems;
 - reviewing and updating performance appraisal principles;
 - reviewing and updating all documents making up the employment contractual framework including employment contracts, letters of appointment and job descriptions; and
 - reviewing and updating written workplace policies and codes of conduct.

Conclusion - On this basis, we consider that the implementation date for conduct standards and for enhancement to the fitness and probity regime (including certification and extension of the fitness and probity regime to holding companies) should be 1 July 2024 and that the implementation of the reforms to the administrative sanctions procedure should be not before 1 July 2024.

2. Request for clarification regarding the Central Bank's proposed timeline for extension of SEAR to regulated firms not falling within scope of the initial phase of SEAR

Our members welcome:

- the confirmation provided by the Central Bank in CP 153 that the regulated firms which will be included in the first phase of SEAR is the same as the Central Bank had previously proposed; and
- the fact that the Central Bank proposes to adopt a proportionate approach to the implementation of SEAR to certain types of regulated firms which fall within the first phase of SEAR based on their PRISM rating and/or the nature, scale and complexity of these firms (e.g. low PRISM impact rated in-scope MiFID investment firms and incoming third country branches) including , for example, reducing the number of prescribed responsibilities applicable to such firms.

However, our members would welcome clarification regarding the Central Bank's proposed timeline for extension of SEAR to regulated firms which do not fall within the initial phase of SEAR. In this regard, we note that:

- the Central Bank has indicated that it intends to widen the scope of application of SEAR over time with lessons from the initial phase to be incorporated as the scope is extended;
- the Central Bank proposes to carry out a review of the operation of the individual accountability framework after an initial period of operation;
- the Central Bank has stated that it believes that *"three years is an appropriate period of time for the framework to bed down and for experiences of, and insights into, its operation to mature"* and that the Central Bank *"will consider the functioning of the framework, how the benefits and costs are being realized in practice and whether any changes should be introduced"*.

We consider that it is essential that this three-year review takes place before SEAR is extended to any other types of regulated firms so that:

- in line with the Central Bank's stated objective of ensuring *"high quality and consistent implementation"* of the individual accountability framework, the Central Bank and regulated firms have an opportunity to consider and learn from insights gained from implementation of SEAR by firms falling within the initial phase of SEAR including best/worst practices and teething problems;
- the Central Bank has the opportunity to consider any necessary adjustments to SEAR arising from the three year review before extending its scope to any other types of regulated entity;
- in line with the Central Bank's stated objective of ensuring proportionality, the Central Bank has an opportunity to give due consideration to adopting a proportionate approach to the application of SEAR to firms which fall outside the initial phase of SEAR (many of which will have a lower PRISM rating and/or a lower headcount and will be lower on the spectrum of nature, scale and complexity than firms which fall within the initial phase of SEAR).

Conclusion - Our members would welcome clarification from the Central Bank that it does not propose to extend SEAR to any regulated firms which are not within the initial phase of SEAR until after it has completed and considered the findings of its planned three-year review of the implementation of SEAR/the individual accountability framework.

Yours faithfully

Michael Concannon _____

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