

Consultation Paper 154
Central Bank of Ireland
North Wall Quay
Dublin 1
By email to ASPconsultation2023@centralbank.ie

21 September 2023

Re: Response to Consultation Paper 154 – draft ASP Guidelines under the Individual Accountability Framework.

Dear Sir/Madam

Thank you for the opportunity to engage with you in relation to the Central Bank's proposals for the Administrative Sanctions Procedure (ASP) Guidelines under the new Individual Accountability Regime.

FSI is the Ibec trade association representing the full financial services industry in Ireland. Our 160 members are engaged in domestic and international banking, (re)insurance, funds and asset management, payments, fintech, aircraft leasing, and others. Our objective is to continuously improve Ireland's position as a top global financial centre.

The introduction of the penalties contained within the ASP Guidance represents a major change in the landscape for those working in the financial services industry in Ireland. Given their potential impact on an individual's reputation, livelihood and wellbeing, these very significant powers must be wielded with the utmost caution, and over wilful acts of wrongdoing. It remains the case that the application of the civil standard of proof is a concern. As said in our response to CP153, we will work on behalf of our members to ensure this framework enhances Ireland's global reputation as a financial services centre, for an industry that continues to appeal to talent of all disciplines.

I set out hereunder our observations and recommendations in relation to the draft Guidance. I would ask that the Central Bank consider these proposals in tandem with those related recommendations in our response to CP153, particularly on extraterritoriality and reasonable timelines.

1. Review. We propose a review after three operational years of the sanctions. This review should capture the efficacy of the regime as relative to its objectives, how it relates to a sample of other regimes within the EU27, and a cost-benefit analysis of its application from a supervisory, employer and Senior Executive perspective.
2. Legal Professional Privilege. The step to enshrine a waiving of LPP presents risks to the quality of legal advice from Day 1. While this may occur in practice in some cases, we believe that actively incentivising it is not advisable. It could stifle the full exchange of information and advice that is given from the beginning and could also raise the risk of self-incrimination.
3. Investigation.
 - a. It is not clear what triggers an investigation and how far a firm must go in their fact finding before they hand same over to the Central Bank.

- b. It is also not clear what is the overlap/boundary between a local HR investigation, leading to an ASP investigation.
 - c. Regarding the Notice of Investigation, as currently drafted we believe this can change over the course of the investigation, which is problematic from a fair procedures/changing 'goal posts' perspective. What will trigger re-constitution and a new investigation?
 - d. We consider the timeframe proposed to deal with investigation reports to be too short, as well as noting something of an imbalance in the process overall in terms of timing, input and consideration given to any inputs. Paragraphs 85 and 92 are one such example, showing a marked difference in approach.
 - e. We believe that similar regimes in other jurisdictions provide fuller disclosure. We would ask the Central Bank whether this could be revised accordingly so as not to leave the onus on the individual to ask for the material supporting it, in order to be able to respond.
 - f. It is not clear to us at what point the individual can introduce context (in mitigation) in the process, whereas the previous regime allowed a specific time in which to do so. It would be helpful if the Guidance could address this.
 - g. Regarding investigation report settlement, it is unclear to us when this can be used in non-admissions settlements and would welcome clarity on this in the Guidance.
 - h. The new statutory role of Responsible Authorised Officer (RAO) is not defined in terms of the competency of the role nor the type of decisions the RAO can make. Given that this role strays into a quasi-judicial function, we would request more clarity.
4. Confidentiality. The Guidance as drafted assumes two unrelated parties, i.e. a firm and an individual under SEAR, whereas the firm will need the individual to be involved in its internal investigation and vice versa. While the motivation behind the requirement of confidentiality is understandable in many respects, we believe it overlooks the practical reality and will have unintended consequences. We request inclusion of some circumstances in which the sharing of materials is allowed.
5. Inquiry. Regarding publications of inquiry outcomes, it is unclear why publication would take place before the High Court has confirmed the decision. This does not constitute an enforcement control. We request an amendment such that publication cannot take place before the High Court's decision.
6. Methodology and proportionality in assessing sanctions. While we appreciate that the Central Bank has proposed new details on how this is to be assessed, we think it remains too high level, unlike for example in the UK, where the Financial Conduct Authority provides further breakdown/factors.

Please do not hesitate to contact us if you require further detail on any of the points raised above.

Yours faithfully,



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