

Central Bank of Ireland Review of Fitness and Probity Regime



Author: Gráinne O'Farrelly, Managing Director, Regulatory Consulting, Kroll Advisory (Ireland) Limited and Member of Compliance Institute's Prudential Regulation and Governance Working Group.

On 11 July 2024, the Central Bank of Ireland (CBI) published a [review](#)¹ of its Fitness and Probity (F&P) regime. The review, conducted by former European Central Bank Supervisory Board Chair, Andrea Enria, was prompted by a [February 2024 decision](#)² of the Irish Financial Services Appeals Tribunal (IFSAT) relating to the CBI's application of the F&P regime. The review includes twelve recommendations to enhance the fairness, efficiency and transparency of the process and to assist the CBI to exercise its significant powers with "professionalism, integrity and respect for fair process". The CBI Governor, Gabriel Makhlouf, has accepted the recommendations of the review in full.

The review is both timely and relevant. The CBI is currently implementing its new Individual Accountability Framework (IAF) and as such, the proposed enhancements to its operation of the F&P regime should support an overall improved governance framework that will promote a culture of greater accountability within regulated firms. Furthermore, the current F&P regime is over a decade old and it is appropriate to ensure it remains fit for purpose into the future.

Over the four-year period between 2020-2023 the CBI approved over 11,000 Pre-Approval Controlled Function (PCF) roles. During that same period, 1,187 applications were withdrawn from the process.

Summary of recommendations (recommendations can be reviewed in full at the link above)

1. Fostering gatekeeping role at firm level

The CBI should provide greater clarity to industry on the key role of regulated firms in the gatekeeper phase. Such guidance should clarify the expectations of the CBI of firms taking ownership of the F&P process in advance of making any application including: (i) background

checks; (ii) screening and due diligence; (iii) record-keeping; and (iv) mechanisms for monitoring individuals' ongoing fitness and probity.

2. Clear Fitness and Probity Standards

The report recommends that F&P Standards are consolidated in one location to promote ease of comprehension, thus creating a more efficient process. A number of enhancements are also recommended, including: (i) use of objective measures to reduce the current level of subjectivity; (ii) enhanced guidance on the role of executives, non-executives and independent directors; and (iii) clear expectations on the number of mandates a candidate can hold.

3. Governance

In order to enhance governance including independence within the CBI, organisational separation of the F&P function and the enforcement function is recommended. In addition, a senior panel should be created to aid decision making and/or if an assessment is moving towards a possible refusal. Enhanced use of a risk-based approach is suggested. Notably, as the funds sector contributed to the largest number of F&P applications, the report recommends that an increased number of interviews may be appropriate, particularly for candidates with a large number of mandates or those taking up roles in firms or particular industries with a large systemic footprint. As such, the CBI should tailor its approach to PCF applications to reflect the associated prudential risk of the application.

4. Decision making

Where an application progresses, and concerns persist, the report recommends that a "minded to refuse" letter is issued to the applicant firm setting out the supervisory concerns.



5. Communication and IT Platform

The report recommends that the CBI organise an annual information session for firms and prospective candidates to improve their understanding of the F&P process. Ad hoc training sessions should be held with stakeholders to obtain feedback on the operation of the CBI's online portal.

6. Interview Stage

When candidates are invited for interview, the report recommends that advance notice with an agenda is provided, a notetaker is permitted to be present and minutes and feedback should be provided both to the firm and the candidate.

7. Efficiency of Interview Process

To avoid unnecessary duplication, a single comprehensive interview should be conducted.

8. Withdrawals/Feedback

Feedback should be provided by the CBI to both the regulated entity and the individual after an interview, even in instances of withdrawal.

9. Management of information

The CBI's Service Standards should be clear, comprehensive and cover all relevant aspects of the F&P process. All F&P gatekeeping applications should be captured and subject to the same overarching timeframe for completion (approximately 90 days to reach a conclusion). The report recommends publication, on at least an annual basis, of the outcomes of the F&P process, with granular information on outcomes.

10. Quality assurance

The report recommends implementing robust quality assurance mechanisms, with the oversight of an externally appointed risk advisor.

11. Complaints procedure

The CBI should make available a formal complaints channel, with sufficient safeguards of independent assessment such as an independent third party tasked with reviewing the complaint and providing a formal response to the complainant.

12. Training

The report recommends that the CBI develop a training programme for the F&P gatekeeping process that includes training on the nature of the gatekeeping role and its significance. Specifically, interviewers should undergo comprehensive training to ensure a non-adversarial process.

What can firms expect next:

- In due course publication of collated F&P Standards and relevant guidance
- More cohesive and efficient process from the CBI in relation to applications.
- Greater statistical information on applications, withdrawals and rationale.
- Additional interviews to be held by the CBI for PCF roles.

Overall, the review and its recommendations are to be welcomed by regulated firms. Once the recommendations are implemented, greater clarity on the process and outcome will be available for candidates, particularly in cases where applicants are called to interview. Furthermore, the quality assurance, management information, and information sessions the CBI has committed to introducing are all positive developments for the industry.

REFERENCES

1. https://www.centralbank.ie/docs/default-source/regulation/how-we-regulate/fitness-probity/communications-publications/fitness-and-probity-review-by-andrea-enria.pdf?sfvrsn=ab7c611a_9
2. <https://www.centralbank.ie/news/article/press-release-irish-financial-services-appeals-tribunal-judgement-14-february-2024>