Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Strategic Plan 2019-2021

Public Engagement - Submissions Received

Table of Contents

Strategic Plan 2019-2021 Public Engagement – Submissions Received

Introduction

As part of the development of its Strategic Plan 2019 - 2021 (the Strategy), the Central Bank of Ireland (the Central Bank) invited submissions from the public and other stakeholders on a number of questions to inform its strategic priorities over the next three years. This public engagement was open for a period of six weeks from 27 April to 8 June 2018.

In response to this engagement, 22 submissions were received. The Central Bank would like to thank all parties who took time to make a submission to inform the development of the strategic priorities.

Section 1 of this document provides an overview of the development of the Strategy, including how the public engagement was taken into account.

Section 2 sets out the questions posed in the public engagement, along with a broad summary of the common themes in the submissions received.

These submissions are set out in the Appendix to this document.

This document is published to promote understanding of the development of the Strategy within the Central Bank and is for information purposes only.
It should be read in conjunction with the Strategy which can be found at the following link.

Section 1 – Overview of the Development of the Strategy

In total, 22 submissions were received in response to the public engagement. These submissions came from a wide range of stakeholders, including the public.

As part of the development of the Strategy, and to help inform the strategic priorities, all of the submissions were considered under each of the questions posed in relation to the financial system and economy, the regulatory environment and consumer protection. They were also considered by management across the Central Bank, both in the context of the development of strategic priorities within their own areas of responsibility and in the context of the broader work of the Central Bank.

The submissions also helped inform consideration of the environmental issues that had been identified. These included external dimensions, such as those around financial stability and the domestic and international economies, developments in regulation and issues for consumers of financial services.

Section 2 – Overview of Submissions Received

Set out below are the questions posed by the Central Bank as part of its public engagement process on the development of the Strategy along with a broad summary of common themes raised in the submissions.

Q1. What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?

In response to this question, the submissions broadly focused on:

- Concerns on the impact of Brexit on the Irish economy.
- The ongoing risks associated with non-performing loans.
- Macro-prudential risks such as the domestic housing market and the potential for overheating in the Irish economy.

Q2. What should the Central Bank focus on in terms of the regulation of firms and markets?

At a high level, the common themes identified in response to this question were:

- The approach to regulation, including greater consideration of the impact of new regulatory rules.
- Innovation in the financial services industry, particularly Fintech.
- Clearer communication and enhanced engagement with regulated firms.

Q3. What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?

Submissions to this question focused broadly on:

- Strengthening consumer protection, particularly for vulnerable customers.
- More communication with consumers by both the Central Bank and regulated firms.

All submissions are set out in the Appendix to this document.

Many of the issues outlined above and raised in the submissions have been captured in a broad context in the development of the Strategy.

The Strategy has been developed in two parts. Part 1 sets out the Central Bank's Mission and Vision, along with its five strategic themes. The second part outlines the strategic priorities under each of the Central Bank's statutory objectives as well as its key organisational objectives

Further information on the Strategic Plan 2019 – 2021 is available at the following link.

Appendix

Submission to the Central Bank Strategic Plan 2019-2021

June 2018

Age Action

10a Grattan Crescent

Inchicore

Dublin 8

01 4756989

www.ageaction.ie

The work of the Age Action policy team is supported by the Scheme to Support National Organisations, funded via the Department of Housing, Planning, Community and Local Government, and administered by Pobal.

1. Introduction

Age Action is the leading advocacy organisation on ageing and older people in Ireland. Our mission is to achieve fundamental change in the lives of all older people by eliminating age discrimination, promoting positive ageing and securing their right to comprehensive and high-quality services.

We want to make Ireland the best country in the world in which to grow old and we work with older people to build a society free of ageism where their rights are secured. A central feature of our work is raising awareness about the lived experience of growing old in Ireland.

We are grateful for the opportunity to make a submission to the Central Bank Strategic Plan 2019-21.

2. Context

For the purposes of this submission, we will focus on the Central Bank's response to current and emerging risks in the economy and wider financial system, specifically within the responsibility for protection of consumers of financial services.

Age Action wishes to highlight three key areas around older people's financial engagement, namely the ageing demographics of the Irish population, the numbers of older people who are financially excluded and financial elder abuse.

i. Ageing Demographics

According to the most recent Census figures, the number of people aged over 65 saw the largest increase of population since 2011. This age group has increased since 2011 by 19.1 per cent (to 637,567). The number of people aged over 85 increased by 15.6 per cent (to 67,555).[1]

At present, just over 13 per cent of the total population is over 65 years of age.[2] Each year in Ireland, the over 65 age group increases by 20,000 people. The number of people aged over 65 is projected to increase very significantly to close to 1.4 million by 2041,[3] from one-fifth to over one-third of the working population over the next two decades.

The number of people over 80 is set to rise even more dramatically, increasing by over 250 per cent to between 470,000 and 484,000 in 2046.[4] Regional projections for 2016-2031 show the number of older persons (over 65) will almost double in every region over that time period.[5]

---

[1] http://cso.ie/en/media/csoie/newsevents/documents/pressreleases/2017/prCensussummarypart1.pdf
[2] http://www.cso.ie/en/releasesandpublications/er/q-cv/qnhscrimeandvictimisationq32015
[3] http://rebuildingireland.ie/Rebuilding%20Ireland_Action%20Plan.pdf
[4] Based on 2011 base figures.
http://www.cso.ie/en/csolatestnews/pressreleases/2013pressreleases/pressreleasepopulationandlabourforceprojections2016-2046
[5] http://www.cso.ie/en/releasesandpublications/er/rpp/regionalpopulationprojections2016-2031

Older people may present with specific needs around access to financial information and institutions.

Callers to the Age Action Information service often express worry and frustration over bank branch and post office closures. We believe that the decision to close local branches has undermined the sense of social cohesion in communities that they provided for many older people.

Branch closures have also made it more difficult to access services. Older people may need to travel longer distances to undertake financial transactions such as collection of pensions (and other State income supports) or to pay bills. This may result in older people engaging in riskier behaviours such as withdrawing large amounts of cash at once and keeping it in their homes.

Safeguarding and protecting the financial needs of older people should be prioritised. An increasingly digitised society is affecting the lives of older people, with many effectively excluded from engagement with the banking system. Age Action estimates that almost 440,000 older people in Ireland have never been online, this represents over 70 per cent of the total population over 65.[6]

Many older people complain of feeling pressured by their bank to do business online.

A move to online services may make sense from a commercial point of view but it creates barriers for many older people who are unable to carry out their day-to-day business online or are wary of doing so. This may lead to a dependency on others to conduct their banking.

In addition, ATMs may not allow someone to withdraw the amount they wish and may specify the withdrawal of a minimum amount, set notes or a daily limit. This may lead to an older person being unable to access their full State pension amount or other payments.

Requirements to present to financial institutions at certain times[7] with specific forms of identification may disproportionately affect older people who may not hold a passport or current driving licence.

Age Action welcomes on-going efforts by the Central Bank to engage with stakeholder groups and to develop a positive consumer focused culture within regulated firms. We ask that this collaboration continues to ensure that the evolving needs of the ageing population are fully understood and that innovative responses to service provision and design of financial products reflects these needs.

---

[6] Combining best available figures from the Eurostat data, Census 2016 statistics and the National Digital Strategy's 2013 estimate that only 3 per cent of people aged 75 and over use the internet.
[7] E.g. opening an account or using after a period of inactivity.

We welcome initiatives by the Central Bank to raise awareness around specific consumer issues[8] and ask that consumer information continues to be provided in accessible language and formats.

ii. Financial Exclusion

Research shows that older people are a group vulnerable to financial exclusion.[9]

A report recently published by The Wheel shows that older people feature within the groups vulnerable to financial exclusion.[10] Statistics from the ESRI found that 26% of older people aged 65-74 and 36% of people over 70 experienced financial exclusion. The report noted that "people who don't have a bank account pay more to make transactions. In short, not having a bank account hampers people's access to economic opportunity and increases their risk of poverty".[11] Being without a bank or post office account means that people often cannot avail of preferential rates for payments made by direct debit as well as wider services.

Age Action is aware in 2008 Irish banks were asked to provide and promote the take up of a Standard Bank Account to financially excluded groups, including older people. We understand that all high street banks now offer standard bank accounts, however awareness and take up remains low.[12]

iii. Financial Abuse

Older people are particularly vulnerable to financial abuse. A 2016 Age Action report found that during the period 2010-2014 one-fifth of the substantiated elder abuse cases reported to the HSE related to this type of abuse. Almost half of all Ulster Bank officials surveyed for the report indicated that they had dealt with a suspected case of financial abuse in the previous 12 months.

As referenced above, an increasing move to online banking can intensify the vulnerability of older people to financial abuse by restricting their ability to engage with financial services on their own behalf. It may lead to an older person handing control of their personal finances over to an IT literate friend or relative.

---

[8] E.g. three Consumer Protection Bulletins were published during 2017 covering Motor Insurance, Social Media Monitoring and Current Accounts and Switching.

[9] Defined by the European Commission as "process whereby people encounter difficulties accessing and/or using financial services or products in the mainstream market that are appropriate to their needs and enable them to lead a normal social life in the society in which they belong". See European Commission Directorate-Generale for Employment, Social Affairs and Equal Opportunities. (2008). Financial Services Provision and Prevention of Financial Exclusion. Brussels: European Commission.

[10] The Wheel (2018) Money Matters - Addressing the unmet needs of people living with inadequate income and experiencing financial exclusion.
https://www.wheel.ie/sites/default/files/14499_TheWheel_money_matters_web.pdf

[11] Russel, H, Maítre, B, Donnelly, N. (2011). Financial Exclusion and Overindebtedness in Irish Households. ESRI. Available at:
https://www.esri.ie/news/financial-exclusion-andover-indebtedness-in-irish-households/SRI

[12] The Wheel (2018) Money Matters - Addressing the unmet needs of people living with inadequate income and experiencing financial exclusion.

This reliance on friends or family can also occur when the older person relies on an ATM to access their money. This can lead to older people asking a friend or relative to use their pass card as they may be unsure of how to use the machine or uncomfortable with using it themselves. Older people may also perceive ATM locations as being unsafe.

Clearer and greater guidance by the Central Bank on the issue of financial abuse of vulnerable persons would allow banks (and other institutions) to respond in a standardised manner, along a clear pathway and to take actions that are ‘regulatory sanctioned’.[13]

Guidance should outline the role of financial institutions in monitoring of legal arrangements such as Power of Attorney (or other forms of agency) as well as protection for institutions engaged in ‘good faith’ responses.

3. Recommendations

We would like to make several recommendations for consideration in the development of the Central Bank Strategic Plan 2019-2021.

1. We ask for the Central Bank’s continued engagement with stakeholders in order to understand and represent older people’s specific needs are being met around access to financial information and institutions, services, communication and affordable products. This may be best served by the creation of an age-specific advisory group.
2. To enhance consumer protections in place, we urge planning and research around the challenges that online banking and closure of branches can pose to older people.
3. We ask for clearer guidance from the Central Bank to institutions on the issue of financial abuse of vulnerable persons. Provisions for monitoring of financial legal arrangements for vulnerable customers and bank ‘good faith’ reporting protection should also be addressed.
4. We would like to encourage research on the take up of standard bank accounts within financial institutions by older people with a view to identifying barriers and enablers.

For further information please contact:

[redacted]

[13] Phelan et al. (2018) Experience of Bank Staff of the Financial Abuse of Vulnerable Adults.

ALLIANCE FOR
INSURANCE REFORM

Central Bank Insurance Supervision Mission Statement

"Protecting consumers through effective supervision that supports the sustainability of the insurance sector"

INTRODUCTION

The Alliance for Insurance Reform brings together representative bodies from the community, charity, sports and small and medium- sized business sectors across Ireland, representing over 35,000 organisations, over 645,000 employees, 41,300 volunteers and 150,000 cooperative members, seeking rapid action to end crippling insurance costs. Full details of our membership are attached at Appendix 1.

The creation of the Alliance is a response to countless stories from small organisations where services and jobs are being affected by excessive insurance premiums, both Liability and Motor.

We are at a turning point in our approach to insurance in Ireland. The current system is dysfunctional to the extent that what is supposed to be a service industry that facilitates the operation of society has become an extractive industry, taking over €2bn in motor and liability premiums annually, protected and made compulsory in many cases by the State and so expensive that it represents a major threat to the viability of many of the organisations that form the backbone of our nation.

A survey of 950 organisations within the Alliance, carried out by Amárach Research in January, found that since 2013, nearly half (47%) of respondents have seen their premiums rise by over 30%, while over one fifth have seen rises of over 70%. This is in the broader context of a CPI increase of 0.9% in the same period. Two thirds of respondents also reported having increased excesses or new exclusions added to their policies - an equally damaging trend that severely restricts the ability of organisations to develop and creates additional exposure to cost.

Critically, 45% of respondents cited insurance as a threat to the future of their organisation. A summary of the research is attached at Appendix 2.

And yet our members feel that it is the insurance industry and the legal profession that have the strongest voices in the corridors of power. Policyholders feel that we have no voice. This is amplified by the recent Collins Institute report for Fine Gael which concluded that the Central Bank, the state institution charged with protecting insurance policyholders, is too focused on the needs of the financial services industry. Ultimately, we believe the Central Bank is in an impossible position given its Insurance Supervision Mission Statement quoted at the top of this page because sometimes, protecting the consumer means making decisions that are not in the best interests of the industry.

Having said that, the Central Bank's potential role in addressing the current crisis is significant, but significant changes need to be implemented in order to facilitate that role.

The actions we are suggesting are in the areas of Industry Transparency and Fraudulent and Exaggerated Claims Prevention. We believe them to be just, proportionate, feasible, achievable within a limited timeframe and ultimately, effective and are practical ways of solving the insurance crisis which we trust the Bank will consider and implement in the context of the Bank's Strategic Plan 2019 to 2021.

INDUSTRY TRANSPARENCY

The insurance industry is of systemic importance to the proper functioning of Irish society and is enshrined as such in much legislation and regulation. And yet from our perspective as consumers, there is virtually no transparency in this market either at industry or individual policyholder level.

Control the data coming from the new National Claims Information Database

While we acknowledge that responsibility for the gathering and collation of data for the new ***National Claims Information Database*** will rest with the Central Bank, we request that responsibility for analysis and reporting of the data be given to the Personal Injuries Assessment Board as allowed for in Head 7 of the Bill. PIAB has the expertise and funding necessary and no additional legislation would be required as Section 54 and Section 55 of the PIAB Act of 2003 already allow for this function.

Reinstate the Blue Book

With the best will in the word, no useable, comparable industry data will be available from the National Claims Information Database before 2021. This in effect gives a 6-year data oversight holiday to this insurance industry. So we must insist that the a version of the Blue Book be immediately reinstated and enhanced to restore the only macro transparency there previously was in the market before the Central Bank discontinued it from 2015.

PREVENTION

To quote a member of the audience at a public meeting we held in Cork in February, "if I had a need for big money and I had a choice between robbing a bank and faking an injury, I'd pick the fake injury every day. More money and no consequences if I'm found out."

We absolutely acknowledge the right of genuine claimants to fair compensation. But people have accidents all over the world. It is the consequences for Irish policyholders that appear unique.

Regulate claims management companies (claims harvesters)

Our members tell us that claims harvesting websites are acting as the ambulance chasers of old, pursuing potential claimants with promises of money to be made with no costs or consequences, regardless of how dubious the claim is. They are adding fuel to the fire of fraudulent, exaggerated and misleading claims and must be regulated by the State in order to protect policyholders and society as a whole. In particular, any referral fees they might charge to refer live cases onto solicitors must be banned outright. Regulation, registration and a ban on referral fees would bring us in line with the regime the UK have operated since 2007.

We would ask the Central Bank to introduce controls on this industry immediately.

APPENDIX 1

MEMBERSHIP LIST

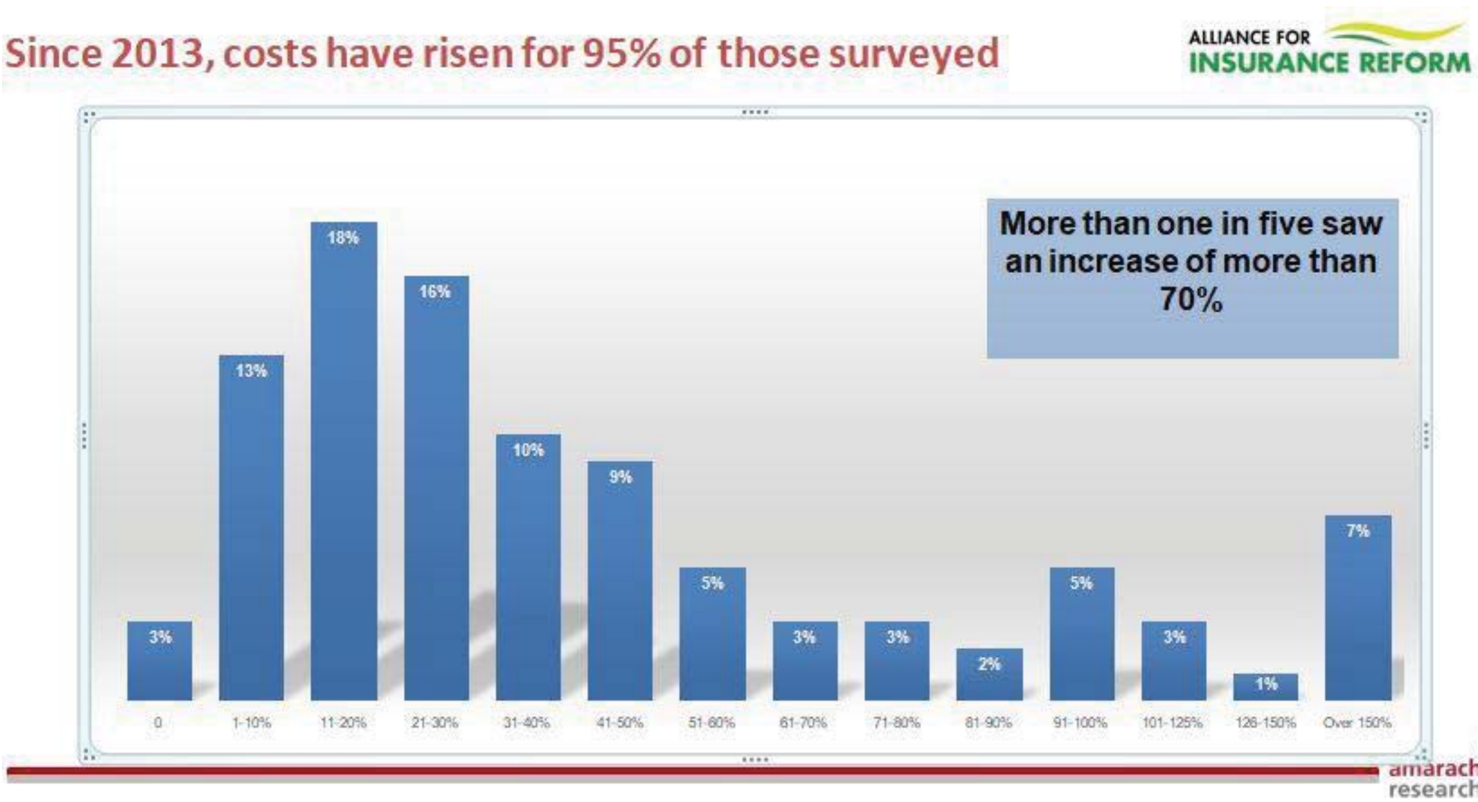
The Alliance for Insurance Reform brings together 21 civic and business organisations from across Ireland, representing over 35,000 members, over 645,000 employees, 41,300 volunteers and 150,000 cooperative members, highlighting the negative impact of persistently high premiums and calling for real action to tackle the issue. Its members include:

- AOIFE Ireland (Association of Irish Festival Events)
- Car Rental Council of Ireland
- Coach Tourism & Transport Council of Ireland
- Construction Industry Federation
- Convenience Stores and Newsagents Association
- Galway City Business Association
- Ireland Active
- Ireland's Association for Adventure Tourism
- Irish Cooperative Organisation Society
- Irish Hotels Federation
- Irish Road Haulage Association
- ISME
- Licensed Vintners Association
- Motorsport Ireland
- Playcentres Ireland
- Quick Service Food Alliance
- Restaurants Association of Ireland
- RGDATA
- Society of the Irish Motor Industry
- Vintners Federation of Ireland
- The Wheel (Ireland's national association for community, voluntary and charitable organisations)

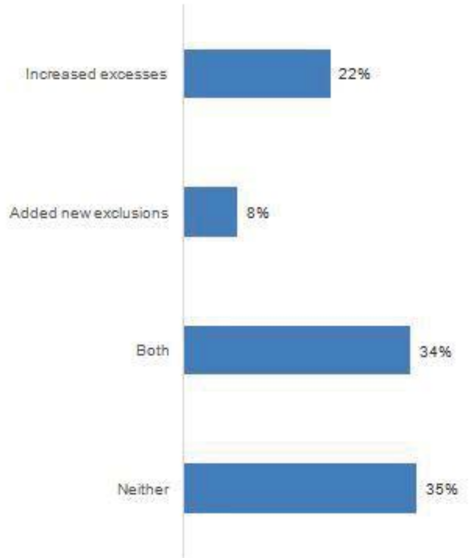
APPENDIX 2

RESEARCH SUMMARY

- **Email circulated to potential respondents, link to the survey attached**
- **Fieldwork dates were the to 9th to the 19th of January 2018**
- **The final sample size was 949**



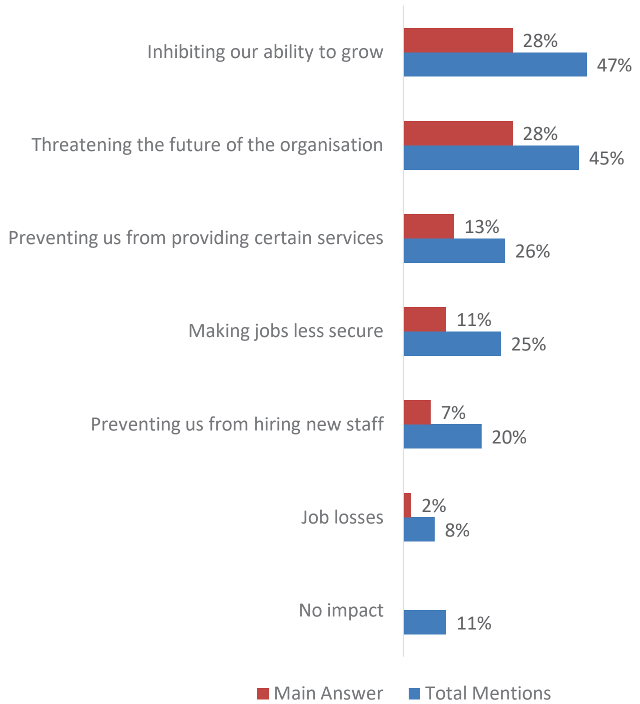
Over half of policy holders have been being subjected to increased excesses



65% have been subjected to increased excesses, new exclusions or both

amárach research

Rising insurance costs are impacting further growth and causing concern over the future of organisations



amárach research

Banking & Payments
Federation Ireland

Nassau House
Nassau Street
Dublin 2
Ireland

+353 (1) 671 5311
info@bpfi.ie

www.bpfi.ie

Mr. Bernard Sheridan
Director of Corporate Affairs
Central Bank of Ireland
New Wapping Street
North Wall Quay
Dublin 1

8 June 2018
[By email]

Re: Central Bank of Ireland's Strategic Plan 2019-2021

Dear Bernard,

I refer to your recent email seeking input to the Central Bank of Ireland's (CBI) Strategic Plan 2019-2021. In response to the three questions raised by the CBI, I have set out below some key concerns for the sector and some high-level questions for consideration by the CBI in forming its Strategic Plan for 2019-2021.

In the context of the Central Bank's responsibilities and its strategic priorities over the next three years, we would like to invite your comments on the following areas:

1. ***What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?***

   In the context of the domestic economy, the housing and mortgage markets are of particular significance currently, with particular emphasis on the ***domestic housing supply and residential house prices***. The recently published BPFI Housing Market Monitor for Q1 2018 points to a continuing lack of housing supply and rising rents, a delay in new build completions and the changing profile of first time buyers. These shortcomings in the market are having a significant impact on the wider economy and the reputation of Ireland as a place to do business.

   A major issue for the sector remains the need to resolve the issue of 720+ days ***mortgage arrears*** and to deal with the non-engagement of a cohort of borrowers and the country's elongated court processes. Furthermore, domestic political intervention on the topic is having an adverse impact on a number of areas within the financial system including an impact on (a) the resolution of NPLs; (b) deleveraging of loan (NPL) portfolios; (c) bank capital; and (d) the cost of credit. The challenges associated with resolving the NPL issue by Irish banks continues to have a detrimental impact on banks' ability to focus on their primary role - that of supporting the Irish economy.

   The risks of ***moral hazard*** (debt forgiveness) arising from the resolution of NPLs also needs careful consideration by all stakeholders.

Nassau House
Nassau Street
Dublin 2
Ireland

+353 (1) 671 5311
info@bpfi.ie

www.bpfi.ie

A more positive development in the domestic economy is the increase in presence of ***FinTechs*** and the opportunity presented to provide a broader and better range of services to customers by new actors. FinTechs are not only challengers to banks, but many of BPFI members are collaborating with FinTechs to enhance the offering to customers in the market. In this context, the CBI has an important role in understanding and working with FinTechs to advance this agenda, in understanding the role that will be played by the major "online platforms" but also in considering the impact of innovation on the banking sector in general.

There is also the threat of ***cyber-security risks*** to Ireland because of the increasing integration of technology and finance. BPFI supports an active engagement between members and relevant stakeholders in working to minimise the threat from cyber-security risks and is interested to understand the role that CBI sees for itself in this area into the future.

At a European level, ***Brexit*** represents an unprecedented challenge to the Member States and their institutions. In looking at the next three years, the CBI should give careful consideration to the wider impact of Brexit on the financial system, with examination of the potential risks arising from the UK leaving the EU.

2. What should the Central Bank focus on in terms of the regulation of firms and markets?

In the context of its supervisory role, it is important that the CBI maintains ***proportionality in its supervisory/regulatory approach***. Proportionality is a key principle and regulatory requirements and supervisory approach should be differentiated according to the size, nature, scope and complexity of a financial institution's business operations. There is insufficient clarity on how this proportionality can be achieved in a consistent manner. Given Ireland's diverse Less Significant Institution (LSI) population, this is highly relevant.
In recent years there has been ***duplication of reporting requirements*** and a significant increase in complexity arising from the number of bodies financial institutions must supply information to i.e., NCAs, ECB, EBA, SRB & ESMA. In some instances, financial institutions are reporting the same information at National and European level, thereby effectively fulfilling double reporting requirements. Whilst we agree many of the changes implemented in supervisory reporting since the financial crisis have improved the regulatory framework and data disclosed, it has proved difficult and costly for financial institutions to keep pace with the level of legislation published and changes to current requirements. Supervisory reporting requirements are perceived as too numerous and too complex. The complexity is due to duplications, overlap across different reporting frameworks and insufficient standardisation.

There also needs to be coherence in the approach to ***the resolution/provisioning of NPLs*** in the context of multiple EBA/ECB guidelines and EU Commission proposals, again to avoid duplication of approach and inconsistencies emerging as a result of different guidelines issuing from different institutions.

While the recent statement by the CBI on ***innovation*** was welcomed, there is a body of work required by the CBI to ensure a full view of market developments here - it is essential that the CBI engages proactively with newcomers and incumbents, and FPAI/BPFI would be willing to assist in facilitating any engagement in this regard. In addition, the development of an Innovation Hub by the CBI is supported by FPAI/BPFI and we are happy to assist with progressing this agenda with the CBI over the coming years.

Nassau House
Nassau Street
Dublin 2
Ireland

+353 (1) 671 5311
info@bpfi.ie

www.bpfi.ie

With regards to ***policy formation at EU and international level***, the absence of the CBI from the membership of the Basel Committee is noted and considered a missed opportunity. We would suggest that the CBI consider its position in this regard, with a view to positioning Ireland to influence the policy debate at a global level. In addition, it is important to continue to engage closely with the industry on the formation of policy as it develops at European level to ensure the Irish position is outlined and considered at the early stages.

3. ***What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?***

It is important that the CBI maintains a balance between fulfilling its financial conduct and consumer protection role and avoiding the risk of "***gold plating***" of regulation in the context of the introduction of new codes and the revision of existing codes. It is important for the domestic economy that Ireland is seen as an attractive/worthwhile place to do business and that national regulation does not become a deterrent to new market entrants.
It is also important to strike a balance between consumer protection, consumer convenience and encouraging new market entrants, with recognition of ***changing consumer behaviour/expectations,*** especially in the context of the transition from traditional banking channels to digital banking platforms. As BPFI highlighted in its response to the CBI Discussion Paper 7 on *Digitalisation and Consumer Protection Code,* customer research and feedback has informed that consumers want to be able to avail of financial services and communicate with their financial services provider at a time and place that is convenient to them. In order to meet customers' expectations, financial services providers need to be instant, accessible and proactive in their interactions with customers. The implementation of digital strategies underpinned by technological advances is a critical tool to being able to service customers in line with their expectations. Therefore, we believe that it is important that regulation takes cognisance of such technological developments to ensure that customers are not disadvantaged by engaging or likewise restricted from engaging through digital means.

The ***culture*** existing within domestic retail banks is under scrutiny by many stakeholders. The results of CBI's review of culture within those banks will be published shortly and it should be noted that the Irish Banking Standards Board (BSB) is in the process of being established as a response to those concerns. Engagement with the CBI by the BSB on culture and conduct issues will be an important part of its role.

Banks in Ireland are working to improve the experience of their ***customers who are vulnerable***; this is a key part of an enhanced banking culture that places customers centre stage. A recent report by the National Centre for the Protection of Older Persons, UCD, which BPFI member banks funded and participated in, outlines how frontline bank staff experience the financial abuse of customers. As BPFI and members consider the recommendations of the report, we would welcome engagement with the Central Bank on the matter of safeguarding customers. Relevant to this discussion is preparation for the *Assisted Decision-Making Act, 2015*, which will introduce a significantly different approach to customers who are vulnerable, once commenced. How will the CBI guide financial service providers regarding the requirement of this legislation that they fulfil the "*will and preferences*" of a customer in scope while abiding by the regulation of the *Consumer Protection Code*, which requires they "*ensure the best interest of consumers are protected*"? BPFI is an active member of the National Disability Authority's

Nassau House
Nassau Street
Dublin 2
Ireland

+353 (1) 671 5311
info@bpfi.ie

www.bpfi.ie

Technical Expert Group, which is working to prepare the 11 non-health codes of practice. BPFI is of the view that CBI input into preparation of the statutory *"Code of Practice for Financial Professionals"* is necessary. This will help to ensure a shared understanding of new process and training requirements.

I trust the above will be of assistance to the CBI in formulating its Strategic Plan for the coming 3 years. BPFI is available to discuss any of the points raised above with you if you wish.

Yours sincerely,

Maurice Crowley

Maurice Crowley
Director

Brokers Ireland submission on the Central Bank of Ireland Strategic Plan 2019 - 2021

June 2018

Brokers Ireland
87 Merrion Square, Dublin 2, D02 DR40.
t: 01 661 3067
e: info@brokersireland.ie
www.brokersireland.ie

BROKERS IRELAND

Brokers Ireland is the leading representative body for brokers with a membership of 1,300 firms representing both general insurance and financial brokers throughout Ireland. Brokers Ireland welcome the opportunity to contribute to the Central Bank of Ireland Strategic Plan 2019 – 2021 and outlined below is the response to the three questions posed by the Central Bank.

1. What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?

Good regulation is for the benefit of both the consumer and the industry. Consumers benefit from the existence of the Intermediary Sector at both an individual and market level, as competition between product providers to distribute through the Intermediary sector results in greater product innovation and price benefits which are to the benefit to consumers. The existence of the Intermediary sector also allows consumers access to financial advice. However, after a period of ten years of continuous enhanced regulatory requirements imposed on the industry, member feedback has indicated that much of the regulatory enhances have led to additional costs and more paperwork, with no tangible benefit to the consumer. Consumers are overwhelmed with paperwork and there is a real concern that important information about the product/service are being lost.

Brokers Ireland believe that there needs to be a cost benefits analysis of regulation – i.e. the cost this supplementary regulation to firm v the actual benefit to consumers.

Intermediaries do not hold client monies and all premiums received by Intermediaries are indemnified by the insurer so the risk of loss of client monies is minimal. Brokers are community-based entities facilitating choice and access to advice by consumers and enhancing competition between financial service providers. The risks associated with Intermediary Sector are limited – this should be reflected in the level of supervision that the sector undergoes by the Central Bank - a one size fits all approach is not appropriate.

2. What should the Central Bank focus on in terms of the regulation of firms and markets?

Brokers Ireland believe that the Central Bank should focus on unregulated products which are similar in structure and characteristics as regulated products but which fall outside the current regulatory regime. We believe measures should be taken to extend regulatory requirements to those products in order to protect consumers who invest in such products and are unaware that they do not fall under the protections of the Central Bank. This is important in order to create a level and fair playing field for all providers in market.

3. What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?

In other jurisdictions such as the UK, the FCA provide active programs/guidance documents to assist regulated entities in complying with regulatory requirements. Given the imminent move to 100% funding, Brokers Ireland believe that if the Central Bank were to introduce similar assistance it would be very beneficial to the industry and create a more positive interaction between the Central Bank and regulated entities.

A review needs to take place in respect of the authorisation application process for intermediaries. Since the introduction of an enhanced process in March 2016, it has had a significant impact on the number of new entrants seeking authorisations and also to existing authorised firms who wish to restructure or to add an additional authorisation. This authorisation process is not reflective of the nature and scale of the majority of intermediary firms and disproportionate to the process in other EU countries. A continued decline in intermediary numbers will have long term long term effects on competition and ultimately access to advice and value for clients.

The authorisation/reauthorisation process coupled with the recent alarming increases in intermediaries funding levies has already caused intermediary numbers to shrink significantly. We understand that a large proportion of regulatory costs are fixed overhead costs (IT, HR and other central services) and that the direct or marginal costs of regulating a particular sector may be substantially lower than the total assigned cost. Assurances are required that the cost of the regulation of the intermediary sector will be scaled to the numbers of Intermediaries in the industry as it is unfair for the remaining intermediaries to have to pay increased levies. The costs imposed on the industry inevitably have to passed on to the consumer which has implications for consumer service/competition in the market.

Given the move to 100% funding, we believe an independent examination should take place on the Central Bank to examine the effectiveness and efficiency of existing structures and costs of the regulatory system. We also believe that it is incumbent on the Central Bank to revive the Industry Panel made up of interested stakeholders to examine all the issues associated with the industry levy.

The Consumers' Association of Ireland
Denshaw House, 120-121 Baggot Street Lower Dublin 2. *Tel*: (01) 637 3961

www.thecai.ie

Consumers Association of Ireland

SUBMISSION

Central Bank of Ireland Strategic Plan 2019-2021

June 2018

The Consumers' Association of Ireland is a non-profit company limited by guarantee, registered in Ireland.
Registered Number:29112. Registered Office: 120-121 Baggot Street Lower, Dublin 2. Charity No. – CHY 8559

We are responding in the context of the questions posed as below within the request for comment.

1. ***What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?***

At the time of completing this submission we note how the OECD is reporting its concern at emerging sign of overheating in the Irish economy. Ireland is already deeply engaged in varied processes of resolution for loans and mortgages following the inappropriate financial approaches and culture of former years. It will be now imperative that the Central Bank maintain and, where necessary, step up its engagement with lenders to be guaranteed that lending restrictions are being rigidly adhered to.
The demands for reduction of non-performing loans (NPL's) continues to impact both on the understanding of the average consumer/borrower and the resulting level of reputational trust extended to the Central Bank. From the borrower perspective the requirement that the lending institution reduce its level of volatility by selling their loans - when compared with its responsibility to ensure the protection of consumers of financial services – is at odds. There is a significant deal of change to be considered in finding the means for direct interaction with consumers whether it is through public engagement or partnership agreements with trusted entities.

2. ***What should the Central Bank focus on in terms of the regulation of firms and markets?***

Brexit will, naturally, be a key factor. There have been significant concerns and losses suffered by consumers from the failure of firms who, despite being approved for terms of business, were nonetheless acting without either any, or any acceptable, level of dedicated compensatory fund. This was and remains to be entirely unacceptable. The fact that we have new entities focussing on entering our market, from a very varied number of countries and sources in the Brexit context, demands that we have the highest and most determined levels of restrictions as well as underwriting assurances, as a minimum standard requirement, to protect the consumer.

It has been quite some time since there was engagement at the EU level to harmonise the level of compensation provided by investor compensation schemes.
They vary significantly and the current level provided in Ireland (€20,000 maximum) should be considered inadequate and significantly of diminished value now in comparison to that of its original year of establishment.

3. ***What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?***

The comments above all refer to and answer this question.
In addition, we put forward the consideration for a quarterly or half-yearly joint update for consumers to issue from Central Bank and the bodies and organisations with which it engages with regularity e.g. Financial Services and Pensions Ombudsman, European Banking Authority etc.
We consider how this could better inform consumers as to the levels of engagement, sharing of concerns and informed joint initiatives achieved.
It will be from 2019 that the final management of tracker mortgage complaints will be placed under its most intense demand for resolution to completion. The level of scrutiny surrounding this will demand the most transparent of announcements and information – again, from trusted sources. We consider how it would be essential that the Central Bank does not seek to exit the process at any time in this period but rather continue in its dedicated engagement – in partnership – to transparently bring the cases to positive closure.
In this, and in all matters concerning financial conduct and consumer protection, timely and transparent communication must be a priority and delivered in understandable terms with realistic and dependable timelines.

ENDS.

www.thecai.ie

CUDA

credit union development association

SUBMISSION FROM

THE CREDIT UNION DEVELOPMENT ASSOCIATION

IN RESPONSE TO

The Central Bank of Ireland's Consultation on Strategic Plan 2019-2021

8th June 2018

CUDA (Credit Union Development Association) welcomes the chance to provide responses to the three questions presented by the Central Bank of Ireland as part of the development of its strategic plan for 2019 – 2021. This organisation and its Owner Member Credit Unions appreciate both this opportunity and the transparent approach being taken by the Bank in developing its work programme.

What is CUDA?

CUDA is a progressive representative and development association working on behalf of member-owned, member-directed and professionally managed Credit Unions in Ireland.

CUDA acts as a catalyst for the growth, development and expansion of its owner member Credit Unions. In summary, CUDA supports its owners achieve their strategic objectives.

Our Purpose

The main purpose of CUDA is to support Credit Unions, who are members of CUDA, in delivering their promise to their members; that promise is to be the most reliable, trustworthy financial partner who will deliver value to their members.

Our Principles

1. CUDA is an incorporated entity. Working with its members and acting in their best interests. CUDA has clearly defined democratic governance, a bottom up approach that reflects *we're all in this together*.

2. CUDA is financially strong achieved through providing value for money to its members. We are conscious of the need to be commercial, with two levels of membership based on rules reflecting the segmented audience, however, we will not allow commercial considerations to undermine our purpose.

3. CUDA is ethical and acts with integrity and honesty. We encourage our owner member Credit Unions to be a model of ethical compliance.

4. CUDA supports the further growth and development of the co-operative Credit Union model and forward-looking Credit Unions. We lead by example with clear direction, and take direction from Credit Unions' strategic objectives, delivering best practice standards, continually seeking to innovate, stretch and develop ourselves and member Credit Unions.

5. CUDA is accessible and responsive. Striving for constant strong two way communication with its members and other stakeholders.

Our Success

CUDA's growth is ongoing, with membership now consisting of 50 Credit Unions who collectively manage assets in excess of €6 billion. Our owner member Credit Unions are represented on CUDA's National Council, who meet every month to determine and make policy decisions. CUDA's Management Committee is comprised of directors and CEO's of CUDA owner credit unions. The Management Committee is responsible for strategic development within CUDA.

CUDA's success and growth is driven by the vision of forward–looking Credit Unions who see their Credit Union as recognised by the community as the main source of personal financial services. This business model will lead to Credit Unions broadening and deepening their commercial relationship and touch points with their members and communities. The broadening means that Credit Unions will attract new members by providing high performance, attractively priced and comprehensive range of financial offerings/products and services.

In effect the ultimate objective is to have locally owned and managed Credit Unions who will be able to provide almost the appropriate range of banking and bancassurance services to their local community.

In preparation for this submission CUDA has consulted with its owner Credit Unions. Our responses to the three questions posed in 'Strategy 2021 – We Want to Hear Your Views' are set out below and there are also some general points that we have been requested to raise:

Since our founding in 2003, CUDA has taken a leadership role in advocating higher standards for the prudential regulation of the credit union movement.

In our "Call to Action" paper, which we published nearly two years before the financial crisis, we pointed to the urgent need for "the Financial Regulator to have in place a robust system for credit union examination and supervision, to assure the public \ consumer that credit unions are operated in a safe and sound manner."[1]

We made specific recommendations for the substantive terms of an effective credit union regulatory regime in our contributions to the Commission on Credit Unions including topics such as stabilisation and rationalisation, standards for risk management, and sustainable future business models for the credit union

---

[1] CUDA, "A Call to Action: Re-Inventing Credit Unions for the 21st Century" (November 2006) p. 24 The full paper, and others, are available online at www.cuda.ie/cuda/news_desk.html

sector. We believe that the actual regulatory standards adopted for credit unions should, of course, depend on the specific business models they ultimately pursue, the scale of their operations, the particular products and services they offer, and so on.

In our view, however, the overall framework and guiding philosophy of their future prudential regulation should be designed in accordance with certain basic principles, which we believe are as follows:

Guiding Principles of Regulation

1. The Irish State is ultimately responsible for the prudential regulation and supervision of credit unions. It is the State's responsibility, through its designated officials and instrumentalities, to operate a strong system of oversight that maintains the safety and soundness of the sector and that protects the savings of credit union members.

2. Financial industry self-regulation is obsolete in the developed world, and it should have no future role in Ireland.

3. Credit union prudential regulation and supervision should be conducted by a specialist office of credit union supervision within the Central Bank of Ireland.

4. The Credit Union Regulator should operate in accordance with best international practices for the supervision of financial cooperatives, in accordance with three co-equal guiding principles:

- The Credit Union Regulator should strive, through regulation and supervision, to protect the financial safety of consumers in their dealings with credit unions,
- The Credit Union Regulator should strive to maintain the financial stability and credit union member confidence, while having regard for the well-being of credit unions generally and a regulatory environment that allows them grow and thrive.
- The Credit Union Regulator should respect the democratic ownership and control of credit unions by their consumer members, including the mission of credit unions to advance their members' financial welfare as determined by those members through their elected representatives.

Accordingly, regulation and supervision should properly balance prudent risk management with respect for the right of each credit union's elected officials to determine how its business should operate to best serve its member-owners. It is in this context we address the questions posed.

Question 1

What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?

a. *We believe that Ireland currently lacks competition in the banking and financial advice sectors. The Central Bank should identify the challenges that discourage new entrants, e.g. such as smaller competitors like credit unions encountering regulatory barriers, and consider challenging those barriers through its knowledge and expertise in order to help consumers.*

b. *The Central Bank should assess how it can stem the contracting pool of those offering affordable financial advice to consumers.*

c. *Consider and quantify the impact of ever increasing regulation on the net delivery of affordable advice to consumers*

d. *One of the emerging risks in today's economy, post financial crisis, is the assumption that not deciding to approve or move forward with a new consumer service or project that carries risk, is in itself a lower risk or even risk free for the end consumer. Sometimes, it's easier for decision-makers to keep asking for more information or detail rather than take any degree of personal or institutional risk and make a decision.*

   For example, after the financial crash, many investors moved their pension funds to cash or government bonds to avoid risk, but 10years later it is apparent that they failed to avoid the risk of not being invested. They safeguarded their capital but failed to safeguard the substantial growth that they could have enjoyed over the 10years.

   The same logic can be applied to decision-making at a regulatory level. Not taking some degree of risk in decision-making often results in an equal or greater risk for the end consumer.

Question 2

What should the Central Bank focus on in terms of the regulation of firms and markets?

a. *The Central Bank should make a practice of conducting a full consumer impact analysis before it introduces heightened regulatory rules. It is generally assumed that consumers only benefit from additional regulations placed on product providers and advisors, but as part of its mandate to protect consumers, the Central Bank should assess whether higher regulatory standards result in lower quantity of quality advice to consumers, or in the withdrawal of lower-cost products.*

Importantly, the purpose of consumer protection is to improve the financial wellbeing of the maximum amount of consumers, not to unintentionally limit protection to only those that can afford expensive advice.

b. *The Central bank should act as a buffer to protect firms and markets from the intensity of EU rules and regulations with the view of protecting consumers of all organisations and sectors - big and small, who can become a casualty as a result of EU regulatory progression or add to the cost of implementing ineffective provisions for a particular sector.*

Question 3

What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?

a. *The Central Bank should re-establish its consumer communication activity. Consumers need a greater band-width of independent advice on a range of consumer products, and it's simply inappropriate to rely on the consumer's ability to understand material on a consumer-supportive, State sponsored website, or indeed, to leave that duty solely to the product providers.*

b. *The Central Bank should engage in discussion with the CCPC on the division of consumer responsibility. Consumers should not be left unprotected, as with PCPs, from a regulatory standpoint, and such anomalies should be addressed and the two organs of the State come to a consumer focused agreement.*

c. *Although the credit union sector is experiencing growth, the regulation that has come into force over the last decade on Savings, Loans and Payment Systems, has resulted in a situation whereby credit unions are permitted to do less business now than they could ten years ago. If allowed to continue, this could potentially lead to the marginalisation of Credit Unions as an effective competitor to ensure that consumers have access to affordable lending. We would ask the Central Bank to consider whether this is in the best interests of consumers.*

d. *Since 2016 we have witnessed a rapidly increasing level of cooperation between credit unions, and this leadership has culminated with the establishment of the Solution Centre. With 50 of the more progressive credit unions, the level of collaboration has enabled the Solution Centre to evolve from initiatives such as digital marketing and a mortgage support framework to now undertake more significant and challenging projects, supported by full risk analysis. Respectfully we suggest that the Central*

Bank consider in its plans developing a more expedient regulatory approval process that works directly with, and enables, entities such as the Solution Centre to deliver much needed new products and services to consumers via credit unions.

e. *The Central Bank would enhance its Credit Union Handbook to provide definitive standards and guidance to support Credit Unions to understand how they can be both fully compliant and meet the expectations of their regulator.*

Many thanks to the Central Bank for allowing us the opportunity to comment on the three specific questions posed. We appreciate this opportunity to express our views as part of the development of the Bank's work plan for the years 2019 - 2021.

CUDA
credit union development association

Unit 3013, Citywest Business Campus, Dublin 24
[redacted]

Central Bank of Ireland Strategic Plan 2019-2021 Consultation

1. Introduction: Adapting strategy to a rapidly changing industry.

As Ireland's largest and only cross sector representative body for financial services, Financial Services Ireland (FSI) believes that the CBI's strategy for 2019 and 2021 needs to take full account of significant and dramatic changes occurring since the span of legislation – from 1942 to 2013 – that defines its current mandate. While the CBI's mandate must be respected, neither can its interpretation stand still in the face of several dramatic changes over the coming three years, particularly:

1. The likely unwinding of quantitative easing over the 2019-2021. As this happens, so must regulators assess the likely impact on industry and appropriateness of a proportionate counterbalancing response regulation.

2. Brexit, the trajectory of EU regulatory stance in the wake of Brexit – as evidenced by EU Commission proposals regarding ESAs - and the shift in regulatory stance in the US. These in turn raise issues relating to:

    a. delegation and outsourcing under potential equivalence arrangements
    b. proposals from the EU Commission to strengthen the role of ESAs
    c. engagement models for IFS firms locating in Ireland as a result of Brexit
    d. Ensuring consistency of treatment for "pre and post" Brexit regulated entities

3. The speed and impact of change in financial technology. From Blockchain to the advent of more advanced and integrated payments markets this poses challenges such as

    a. significant shifts in industry employment with threats to back and middle office jobs but opportunities in higher value-added areas
    b. Significant challenge to regulation in areas as diverse as peer to peer lending, online payments, blockchain and artificial intelligence
    c. Significant and possibly permanent shift in relative global financial services competitiveness. China's mobile payments market – valued at $16 and its rapidly developing advance payment and FinTech market and emerging high technology payments infrastructure are a strong illustration of this point.

4. The need for financial services in Ireland to serve a rapidly growth economy and demography. The importance of international financial services – as identified in a key government report[1] - as a strategic sector post Brexit given its ability to grow and hence offset regional job losses in more adversely affected sectors.

[1] Copenhagen Economics, March 2018 (Commissioned by Department of Business Enterprise and Innovation)

2. CBI Strategy to date: A summary

From 1942 to 2013, the period defining that mandate has understandably focused on responding to events between 2008 to 2013 inclusive, namely the need to

- Restore Ireland's financial stability and reputation
- Reform the regulatory and supervisory framework
- Enhance Consumer protection

In the 2016-2018 strategy more of an emphasis was laid on

- Consolidating levels of financial stability established in the prior period.
- A shift from reform of regulatory policy to ensuring it was effective
- That firms are financially sound and safely managed

At an early phase in this second strategy period CBI Governor Philip Lane also enunciated a subtle but important change in the CBI's thinking at the FSI 2016 Annual Lunch[2] when he both emphasised the growing importance of technological change and also the change in emphasis from a policy objective of preventing firm failure to one of preventing industry failure. These reflect, respectively, a capacity of the CBI to adapt to rapid change (technology) but also to adjust the emphasis in mandate as new realities supersede the immediacies of the 2008 and 2013 crisis period with the passage of time while staying within its mandate. The CBI should follow this trajectory of evolution that recognises key changes in political, economic and technological factors outlined above.

3. Proposed new emphases for CBI Strategy 2019-2021

With Ireland's reputation now restored and recovery more widely diffused the new factors outlined above require a different focus, namely on

- Improved open and two way dialogue with industry to enhance communication on rapid industry change and how regulatory policy should respond to them

- While consolidating the effectiveness of regulatory processes and mechanisms – as established under prior strategies – achieving a clear emphasis on making them efficient, reliability timely and consistent from an industry point of view. This is consistent with ensuring that welcome changes at management level engagement with industry are diffused throughout all levels of the CBI in a manner consistent with increase resourcing and the CBI's strategic change agenda.

- Enhancing the CBI's skill base to enable it to adapt quickly and without prompting to rapid changes in technology and global regulatory change.

Consequently, FSI believes that the focus of the 2019-2021 strategy should be on the following:

[2] 16th June 2016

1. A clear focus in its Human Resource strategies on maintaining a sustainable scalable skills base with expertise in the industry's application of new technologies and new regulatory challenges.
2. The need for the CBI to maintain abreast of and engaged with regulatory change at an EU and US level.
3. A more open and two-way dialogue with industry via industry representative bodies and CEO level engagement to monitor, understand and respond to ongoing change at an adequate pace.
4. Clearer consistency and greater time efficiency between managerial level engagement with industry and operational experience
5. An augmented level of responsiveness at both the managerial and operation level to industry change.
6. Enhanced consistency, efficiency and timeliness in the CBI's interactions with industry in relation to authorisation and supervision.

4. Conclusion

The CBI's mandate is respected by industry. The recovery of Ireland's financial reputation in the last decade is rightly regarded as a key asset for Ireland and its financial services sector. Respecting the CBI's mandate does not prevent the CBI and industry, in dialogue, from exploring how, within that mandate it can become more engaged, interactive, proportionate and efficient in both its communication with industry and in the consistency of its authorisation, supervision and enforcement activities.

The development of its strategic "Enablers" –increased staffing, knowledge and information technology resources – should be transparently linked to this shift in strategy. In tandem its strategic enabler "Communications and Accountability" should be expanded to include more regular and in depth dialogue and discussion with leading stakeholders.

The CBI's changing operational environment – a new headquarters, rising staff numbers and restructuring undertaken in 2017 – provide a unique opportunity to create a new constructive approach to strategy formulation, policy making and interaction with stakeholders. Given the unprecedented challenges presented in the five years since the CBI's current mandate was set in 2013, that opportunity should be maximised.

Marc Coleman,
Financial Services Ireland
Ibec.

Bernard,

My apologies for the short notice because of a staff shortage and illness I have not had the opportunity to draw together our submission.

Obviously for Focus Ireland the critical area is the housing markets in Ireland and their impact on homelessness.

In particular:-

- We would draw the attention of the central bank to the impact of the sale of buy to let mortgaged properties on family homelessness.

- We would also highlight that while it is a given that the supply of homes is of critical importance, the methods of supply have a direct impact on the cost of living, homelessness and the sustainability of economic growth in the urban centers into the long-term.

Would it be possible to get a short extension of the deadline to Monday the 11th this would give me the opportunity to provide more substantive information and analysis for your consideration.

Kind Regards,

Wayne

Submission on Central Bank of Ireland – Strategic Plan 2019-2021

Free Legal Advice Centres, June 2018

FLAC welcomes the opportunity to contribute to the Central Bank's consultation on its Strategic Plan 2019-2021. In this submission, FLAC seeks to identify the issues which we believe are most important to address over the next three years.

1. **Public Sector Duty and international human rights norms.**

Economic policy is an exercise of state power and as such is subject to domestic and international human rights norms. It is recognised that public bodies play a key role in enhancing social cohesion and in recognition of this role the Irish Human Rights and Equality Act 2014 requires public bodies take a proactive approach to addressing equality and human rights concerns. FLAC notes that the previous Strategy covered the period 2016–2018 and did not refer to the Public Sector Duty which had been introduced pursuant to section 42 of the Irish Human Rights and Equality Act 2014 in November 2014. The Public Sector Duty provides one of the most important national mechanisms for mainstreaming equality and promoting human rights. The Central Bank constitutes a public body for the purposes of the public sector duty and the Strategic Plan 2019- 2012 is a key instance to which the Public Sector Duty applies.

Pursuant to section 42, public bodies are required to consider how they will advance equality for the groups protected under equality legislation and how they will protect the human rights of all citizens in regard to the human rights obligations in the Constitution and in domestic legislation.

The Public Sector duty requires public bodies to consider the human rights and equality impact of their policies, services, procedures and practice and to ensure that the promotion of equality and human rights becomes a core part of the way in which the organisation operates and conducts its business. The Public Sector Duty specifically requires public bodies such as the Central Bank to carry out an assessment of the human rights and equality issues relevant to its functions and the policies, plans and actions in place or proposed to be put in place to address those issues. The strategy should show how the duty has influenced the process for developing the strategy and be reflected in the outcome. Compliance with the Public Sector Duty must therefore be evident from the published strategy and should articulate how the requirements of the Public Sector Duty are to be met on an ongoing basis. FLAC urges the Central Bank to make the Public Sector Duty a core consideration in the process of developing, implementing and monitoring the Bank's strategy for the next three years.

The Central Bank must consider the promotion of equality for, and prevention of discrimination against, groups protected under equality legislation (the Employment Equality Acts 1998-2012; and the Equal Status Acts 2000-2011).

The public sector duty is applicable to those human rights treaties and conventions that have the force of law in the State. Within this parameter, there are a number of human rights standards that have significant relevance for the operation of a range of public bodies such as the Central Bank, including the rights protected by the

Constitution, the European Convention on Human Rights and the EU Charter of Fundamental Rights. All of these instruments also contain guarantees against discrimination, and so the equality rights to be considered in the context of the public sector duty interweave with the human rights standards also applicable. This is most remarkable in the context of the European Equality Directives that fall to be interpreted in light of the Charter of Fundamental Rights. It is also recalled that the Irish Courts and the European Court of Human Rights will also call in aid international human rights treaties to assist with the interpretation of the rights protected under the Constitution and the ECHR.[1]

While the Irish Courts and the European Court of Human Rights are not traditionally associated with the vindication of what are characterised as socio–economic rights, nonetheless, both the Constitution and the ECHR have a role in protecting individuals from instances of extreme deprivation. The Supreme Court accepted that the constitutional values of autonomy, bodily integrity and privacy were engaged in relation to the provision of appropriate accommodation by a local authority to a young girl with disabilities.[2] In a similar vein the European Court of Human Rights found that the very poor living conditions of a Roma community and the neglect of the State in that regard were an instance of degrading treatment within the meaning of Article 3 of the Convention, and also a breach of their right to respect for their private and family life under Article 8.[3] While these cases were extreme instances of deprivation, they are illustrative of the duty on the State to ensure that economic policies and fiscal decision making do not expose individuals to acute deprivation, such as homelessness or extreme poverty. The Charter of Fundamental Rights, which applies where EU law is being implemented by the State, also provides protection for what are titled solidarity rights, related to protection of workers, family and professional life, social security and assistance and a high level of consumer protection.

International human rights standards

Beyond the immediate obligations that arise under the public sector duty, the international human rights obligations of the State are also relevant to the strategic planning of the Central Bank, insofar as it intersects with the obligations of the State in relation to the protection of socio-economic rights.

A key example in this regard, is the obligation in Article 2(1) of the UN International Covenant on Economic Social and Cultural Rights (ICESCR) whereby the State is obliged to use the “maximum of its available resources” to progressively achieve the full realisation of economic, social and cultural rights set out in the Covenant. Such rights pertain to key areas of public service provision: education, housing, water, health and decent working conditions. The UN ICESCR, therefore, places an obligation on the State to ensure that resources spent by the State, in particular via the provision of social protection, are allocated in such a manner to maximise the protection of, respect for and fulfillment of economic, social and cultural rights. Useful

[1] See for example judgment of MacMenamin J in *M.X v HSE & Anor* [2012] IEHC 491, see also *Stanev v Bulgaria,* Grand Chamber, 17 January 2012.
[2] *O'Donnell & Ors v South Dublin County Council & Ors* [2015] IESC 28.
[3] *Moldovan & Ors v Romania*, Judgment of 12 July 2005

guidance was given by the UN Committee on Economic, Social and Cultural Rights in relation to the protection of socio economic rights in the context of the international crisis that pertained in many States from 2008 onwards. While the context has changed part of that guidance is set out here as it remains relevant and provides a template against which any economic policy may be tested to ensure that it does not undermine socially protective measures that underpin the realisation of human rights, and goes towards preserving the core dignity of each individual in the State:

"……..

b. the policy is necessary and proportionate, in the sense that the adoption of any other policy, or a failure to act, would be more detrimental to economic, social and cultural rights;

c. the policy is not discriminatory and comprises all possible measures, including tax measures, to support social transfers and mitigate inequalities that can grow in times of crisis and to ensure that the rights of disadvantaged and marginalised individuals and groups are not disproportionately affected; and

d. the policy identifies the minimum core content of rights, or a social protection floor, as defined by the International Labour Organization, and ensures the protection of this core content at all times."[4]

Other significant instruments to which the Central Bank should have regard in its strategic planning and performance of its functions, and to which the State has acceded, are the Revised European Social Charter, the UN Convention on the Rights of Persons with Disabilities and the Convention on the Rights of the Child all of which establish standards for the material and social welfare of the individuals protected.

In Flac's view the public sector duty and International human rights standards are relevant in relation to the Bank's primary objectives as set out in legislation.[5] These include:-

1)The mandate of the Central Bank to contribute to financial stability in Ireland:

In this regard it is noted that the Bank develops a suite of indicators to assess systemic risks, develops macro- prudential tools to address emerging risks, and conducts analytical research to inform of the calibration of these tools and evaluates the effectiveness of these tools in limiting systemic risk. The suite of indicators should include indicators in respect of the grounds of discrimination under the equality legislation and these grounds should inform the macro- prudential tools, the research and evaluation.

It is noted that the Bank is mandated to establish and operate a Central Credit Register, which will document loans to individual and businesses. This will enhance the Central Bank's insight into credit information. Again this insight should be informed by and equality perspective including the prohibition on discrimination on

[4] CESCR, "Open letter to State Parties regarding the protection of rights in the context of economic crisis", 16 May 2012.
[5] Strategic Role of the Central Bank

any of discriminatory grounds under the Equal Status legislation, and the EU Gender Equal Treatment, Goods and Services Directive and the Race Directive and the relevant provision of the EU Charter of Fundamental Rights.

2) Protection of Consumer of Financial Services:

It is noted that "*As the regulator of financial service providers and markets in Ireland, the Central Bank has to ensure the best interests of consumers are protected. The Central Bank works to develop a positive consumer focused culture within regulated firms, ensuring the consumer protection framework remains effective*."

In this regard the concept of consumer should be informed by the discriminatory grounds of the equality legislation. The positive consumer focused culture should be guided by the prohibition on discrimination in the Equal Status legislation, and the EU Gender Equal Treatment, Goods and Services Directive and the Race Directive and the relevant provision of the EU Charter of Fundamental Rights.

3)Regulation of Financial Institutions and Enforcement Actions and Regulatory Policy development.

It is noted that '*A high quality and effective regulatory framework is essential in requiring financial firms to operate to high standards as it provides the basis for supervising and enforcing the key principles of organisational and financial soundness , consumer protection , and effectively functioning markets.*'

The prohibition on discrimination in the Equal Status legislation, and the EU Gender Equal Treatment, Goods and Services Directive and the Race Directive and the relevant provision of the EU Charter of Fundamental Rights should be factored into the regulation of financial institutions.

Human rights standards oblige governments to protect individuals against human rights abuses involving third parties, including banks, credit rating agencies, or financial players. Financial abuse may be of an individual nature, such as through predatory lending practices. They may also be systemic, such as when the irresponsible, risky behaviour of financial institutions puts national economies at the brink of meltdown, forcing governments to use public funds to restore their operations.

In addition a central concern of human rights is to regulate the exercise of power by providing guarantees that those in positions of authority are answerable and ultimately accountable to those affected by their conduct. Transparent financial regulations should be adopted to provide accountability mechanisms that penalise harmful practices and prosecute perpetrators. States are duty bound to be accountable and to guarantee effective remedies and reparations for human rights violations   via accessible and effective mechanisms.

Accountability is not only backward and should involve dialogue with rights holders to avoid harmful policies. Systemic dialogue consultation and co-operations should be promoted between the central bank and civil society to ensure that financial regulation and economic advice are more effective and tailored to existing needs

4) Independent Economic Advice and High Quality Financial Statistics

It is noted that the *'Central Bank aims to ensure that its economic advice is forward looking and independent and that statistics are robust and relevant. To achieve this, the Central Bank undertakes data collection, statistical analysis and research to inform economic policy making domestically, and at the euro area level'*

Independent robust and relevant statistical analysis and research should be informed by the discriminatory grounds and the prohibition on discrimination in the Equal Status legislation, and the EU Gender Equal Treatment, Goods and Services Directive and the Race Directive and the and the relevant provision of the EU Charter of Fundamental Rights.

Recommendation 1

- **Make the Public Sector Duty a core consideration in the process of developing, implementing and monitoring the Department's strategy for the next three years.**
- **The discriminatory grounds and the prohibition on discrimination in the Equal Status legislation, and the relevant EU anti-discrimination directives and the relevant provision of the EU Charter of Fundamental Rights and International Human Rights standards should inform and guide the implementation of the primary objectives of the Central Bank, including the response of the central bank to the current and emerging risks in the economy and the wider financial system, the regulation of firms and markets and the exercise of the Bank's role in respect of its financial conduct and consumer protection role**

- **The Central Bank in relation to the regulation of Financial Institution should also be informed by the need to protect individuals against human rights abuses involving third parties, including banks. It should also be informed by the right to an effective remedy as required under domestic law, Articles 6 and 13 the ECHR the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights.**

- **Systemic dialogue consultation and co-operations should be promoted between the Central Bank and civil society. The Central Bank should engage with rights holders in a proactive way to avoid harmful policies.**

2. The Bank's Consumer Protection role

In its 'We want to hear your views' document, following a short explanation of its functions, the Bank invites comments on three areas as follows:

1. What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?
2. What should the Central Bank focus on in terms of the regulation of firms and markets?
3. What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?

The principal focus for Free Legal Advice Centres here is the Bank's consumer protection role and, by extension, its impact on how the Bank regulates firms, particularly in terms of enforcement action when a consumer rights have been or may have been breached.

Monitoring compliance with consumer credit legislation

In FLAC's 2014 Report 'Redressing the Imbalance' a study which examined the legal protections available for consumers of credit and other financial services in Ireland, we briefly considered the approach of the Central Bank to supervising consumer credit legislation. We suggested that the *'ad hoc disjoined nature of legislative development in the financial services area'* had *'undoubtedly contributed to a decision by the Central Bank to focus its regulatory attentions in the area of consumer credit less on adherence with primary and secondary legislation and more on its own codes of Conduct'*[6]. The then Director of Consumer Protection, did not disagree with this analysis and broadly commented that although the Bank was responsible for enforcing consumer credit law, it preferred to rely on its own Consumer Protection Code (CPC) as an instrument of enforcement. There is little evidence that this situation has improved.

The Central Bank's website does not disclose significant activity in terms of monitoring compliance in the consumer credit area. The settlement agreements under the administrative sanctions heading and the current list of Prohibition Notices, contain very little mention of consumer credit, except in the context of settlements made in connection with the tracker mortgage scandal. The significant majority of settlements seem to relate to the activities of insurance and investment intermediaries and companies. There are no details of inspection activity, the number of visits, the subject matter of inspections, in the area of consumer credit.

The significant exception in this regard is moneylending. The Central Bank has a track record of monitoring of moneylenders, both in terms of prescribing Codes of Conduct and in terms of a tight licensing system. A recent Consultation Paper published on 27th March 2018, for example, proposes to introduce *'targeted*

[6] See Section 1.3.4, Page 18-19

measures to enhance protections for customers of moneylenders'. However, other sectors of the lending industry do not seem to be the focus of the same attention.

The Central Bank is largely responsible for the supervision and enforcement of the legislation that protects consumers borrowing money. A major deficit on the Central Bank's website is the lack of an explanation/guide in plain English on the obligations imposed on lenders and the rights of consumers under consumer credit legislation. Similarly, neither is there is a specific consumer credit section on the website of Competition and Consumer Protection Commission (CCPC).

Recommendation – As part of it forthcoming strategic plan, the Bank needs to be far more transparent in terms of how it handles its consumer credit remit. As well as providing detail on supervision and inspection activity, Flac recommends that the Central Bank publishes an explanation/guide in plain English on the obligations imposed on lenders and the rights of consumers under the full range of consumer credit legislation

More specifically in the area of consumer credit, the Bank has functions under a number of legislative instruments and we propose to look at these in sequence and outline some areas of concern arising under each of them.

1. Consumer Credit Act 1995

Broadly speaking, the CCA 1995 regulates Hire Purchase agreements and mortgage lending (this in tandem with the 2014 Mortgage Credit Agreements Regulations, see below) as well as licensed moneylenders, credit intermediaries and mortgage intermediaries. Credit agreements are no longer regulated by the 1995 Act and it was superseded in this by the European Communities (Consumer Credit Agreements) Regulations 2010 (see also below).

1.1 - Supervision and enforcement

A short cross section of issues of concern here includes:

- **Section 8H functions**

The Bank has responsibility for a wide range of supervision, inspection and complaints handling activities under Section 8H of the Act. The Central Bank should clarify in its strategy how these functions are being exercised currently and how is it proposed to exercise them from 2019 to 2021.

- **Section 12 functions**

The Bank pursuant to section 12 is responsible for summarily prosecuting a wide range of potential offences under different parts of the Act. The Bank should identify whether there has been any prosecutions during the course of the current strategic plan and any monitoring of standards that led to inspections and warnings short of prosecution and the approach that will be taken to enforcement from 2019 to 2021.

- **Section 149 functions**

Under Section 149 of the Act, customer charges levied by credit institutions generally are subject to regulation by the Bank. A credit institution proposing to increase any charge that has been previously notified to the Bank or to impose any charge in relation to the provision of a service to a customer or to a group of customers, that has not been previously notified to the Bank, must apply to the Bank to have that charge or increase in charge approved.

In previous discussions and meetings with the Bank, FLAC has stated that there seems to be little information that emerges from this process, not even a listing of the charges that are ultimately approved, let alone any opportunity for consumers or those working on behalf of consumers to make submissions on proposed charges. The repeated view of the Bank (reiterated at a meeting with the Director of Consumer Protection this year) has been that this entire process is subject to the Bank's duty under Section 33AK of the Central Bank Act 1942 (as amended) not to disclose confidential information concerning:

> *'the business of any person or body whether corporate or incorporate that has come to the person's knowledge through the person's office or employment with the Bank, or any matter arising in connection with the performance of the functions of the Bank or the exercise of its powers, if such disclosure is prohibited by the Rome Treaty, the ESCB Statute or the supervisory EU legal acts'.*

Interest rates charged by lenders under loan agreements are not notifiable under this section but penalty charges and other charges for the provision of financial services to customers are included. Thus, for example, fees for maintaining current accounts and transaction charges come under this section. Given that the review and approval of such charges is an express Central Bank function, it is quite extraordinary that there is no accessible list of the charges that have been approved under S.149 in respect of all regulated credit institutions.

The Bank suggested to us that this information should be provided by the Competition and Consumer Protection Commission (CCPC). On checking its website, however, there is a limited amount of comparative information provided. For example, while you can compare the current account charges of the principal banks and credit card rates of providers in Ireland, there does not appear to be any information on the default interest rates charged by lenders when borrowers fail to meet the required payments under loan agreements or the ancillary charges that are levied under loan agreements such as charges for unmet direct debits.

The process that led to the approval of a charge may be considered to be confidential; the outcome of the process certainly should not and the transparency of charges is a fundamental consumer protection issue. Potential borrowers are entitled to know what charges potential lenders are entitled to levy both for the purpose of deciding whether to enter into agreements and to understand their position once they have.

It has been suggested that the Bank cannot publish this information for confidentiality reasons. We do not understand what is the legal basis for such a contention and we would ask that it would it set out which exact provisions of the Rome Treaty, the ESCB Statute or the supervisory EU legal acts prohibit such disclosure.

Recommendations

- **The Central Bank should set out how it proposes to carry out its supervision, inspection and complaints handling functions under the Consumer Credit Act 1995 in its forthcoming strategic plan.**
- **Similarly, the Bank should commit to providing information on how it carries out its enforcement functions under the Act.**
- **The Bank should make publicly available a list of the charges that have been approved under S.149 in respect of all regulated credit institutions.**

1.2 - Hire Purchase agreements/ Personal Contract Plans (PCP's)

The Irish Examiner reported in 2017 that the sale of vehicles via car finance agreements had increased by 139% from 30,943 in 2014 to 73,979 in 2016. In 2014, 32% of all new vehicles sold were financed. By 2016, that figure had increased to 51% of all new vehicles.

It is commonly accepted that Hire Purchase agreements as a means of financing the purchase of cars has made something of a comeback in recent years after the recession. In addition, however, Personal Contract Plans (PCP's) have also become increasingly common. PCP's are now an established form of car finance that often serve as an alternative to traditional HP agreements and personal loans. The figures quoted above are not broken down into the different types of agreements, but it probably safe to say that a fair amount of this increase is down to PCP's, particularly as they are more likely to be used to finance the purchase of new cars, whereas HP is probably more likely to be used for older vehicles.

PCP's are not specifically regulated by the CCA 1995 by name. However, in the CCA a hire-purchase agreement means '*an agreement for the bailment of goods under which the hirer may buy the goods or under which the property in the goods will, if the terms of the agreement are complied with, pass to the hirer in return for periodical payments'.*

Thus, as PCP's feature the essential characteristics of a HP agreement :- basically a rental with a right to buy for the Hirer if the terms of the agreement are complied with - they are considered to be Hire Purchase agreements and the Competition and

Consumer Protection Commission (CCPC) has confirmed this on its website in the information notes that they now carry on PCP's.

However, it is our view that the CCA 1995 is in need of some considerable updating in light of developments in car finance. We can expand on these points as required but, in summary, we submit that the following is needed:

- PCP's should be specifically regulated by law. There are specific features to PCP's that do not generally apply to HP including a substantial residue or 'bubble' payment due at the end of the agreement in the form of what is called a 'Guaranteed Minimum Future Value' (GMFV) for the vehicle. Equally, there are often conditions around deposits, maximum mileage use per annum, requirements to service vehicles with the intermediary garage and eventual purchase. Such conditions should be provided for in legislative form so that the borrower receives a statutory agreement, as with other forms of credit.

- The existing provisions on Hire Purchase agreements need to be updated. Specifically, the CCA 1995 does not legislate for the 'rolling over' of an existing HP agreement into a new subsequent HP agreement. In our experience, this is sometimes a point at which consumer Hirers are vulnerable and may not receive the appropriate credit in the form of a suitable ongoing deposit for previous deposits and instalment payments made under a previous agreement (or agreements). We have seen cases where consumers seem to be in a perpetual sequence of HP agreements, never managing to acquire ownership of anything. This area at the very least needs to be investigated and included in the strategic plan.

- The long standing situation where the lenders that provide Hire Purchase finance are not regulated as a form of 'regulated entity' by the Central Bank continues and the Bank has continued to maintain over a number of years that a hire purchase agreement is not a credit agreement, despite the fact that high rates of interest are charged to consumers under these agreements. FLAC has over time lobbied both the Bank and the Department of Finance to redress this situation but, despite no specific objection, nothing has changed.

- Under Section 52 of the CCA 1995, *'a consumer is entitled to discharge his or her obligations under an agreement at any time before the time fixed by the agreement for its termination'.* Under Section 53 *'a consumer is entitled to a reduction in the total cost of credit under an agreement if for any reason the amount owed by the consumer becomes payable before the time fixed by the agreement, or any money becomes payable by the consumer before the time so fixed.* In either case, the applicable reduction is to be calculated in accordance with a method or formula approved for that purpose by the Bank or the Minister for Finance. These provisions are still relevant to Hire Purchase agreements but, since May 1996, these powers have never been exercised.

Recommendations:

- **As part of the strategic plan, the Central Bank should investigate the area of Personal Contract Plan agreements with a view to examining whether they should be regulated under the Consumer Credit Act 1995**
- **The Bank should commit to reviewing the CCA in terms of how effectively it regulates Hire Purchase agreements. For example, specific rights should be provided for Hirers in the event of an existing Hire Purchase agreement being subsumed into a new HP agreement**
- **Entities providing Hire Purchase (or PCP) finance should be regulated by the Central Bank as with any other lender charging interest for a financial accommodation**
- **The Bank should without any further delay introduce a consumer friendly formula to calculate interest rate rebates in the event of the early termination of Hire Purchase (or PCP) agreements**

2. **European Communities (Consumer Credit Agreements) Regulations 2010**

These regulations transpose the revised 2008 ‘Credit for Consumers Directive’, an update on the 1987 equivalent (itself amended in 1990). These regulations deal exclusively with new unsecured lending from June 11th 2010 and provided a number of new entitlements to consumers of credit. These include a right to ‘pre-contractual information’, enhanced information in credit agreements including credit cards, strict limitations on the interest that a lender can charge when an agreement is terminated early and an obligation to on lenders to carry out a creditworthiness assessment prior to advancing new credit.

A cross section of issues of concern here include:

- **Pre-contractual information**

Regulation 8 (1) (transposing Article 5 of the Directive) states that:

> *Subject to Regulation 10, in good time before a consumer is bound by a credit agreement or an offer of credit, the creditor concerned and any credit intermediary involved shall provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement.*

Regulation 8 (10) states that:

> *A creditor or credit intermediary shall provide adequate explanation to a consumer to enable the consumer to assess whether a proposed credit*

> *agreement is appropriate to his or her needs and financial situation, where appropriate by explaining*
>
> *(a) the Standard European Consumer Credit Information,*
> *(b) the essential characteristics of the products proposed, and*
> *(c) the specific effects they may have on the consumer, including the consequences of default in payment by the consumer.*

The intention of these provisions is very clear. They are intended to allow consumers to compare different offers of credit in terms of rates charged and other terms and conditions prior to entering into legally binding contracts. Note that the pre-contractual information must be provided in 'good time' before concluding an agreement and that the creditor or intermediary is also obliged to provide adequate explanations to the consumer.

In *CA Consumer Finance SA v Bakkaus, Bonato and Bonato*[7], the national court had raised the issue of possible non-compliance by the lender with the terms of the 2010 Directive as it had failed to supply evidence that it had complied with the obligation to provide the borrower with a 'Pre-Contractual Information Form' setting out the terms of the loan in advance of any drawdown of funds.

In the case of one of the borrowers, CA could only produce a standard term in the contract that stated – 'I, the undersigned, acknowledge that I have received and taken note of the Standard European Information Form'. No copy of the form was provided and no evidence was produced that any explanation of the content of the form had been given to the borrower. The national court therefore expressed its concern that the clause outlined above, if allowed, might have the effect of reversing the onus of proof to the detriment of the consumer and may even make it impossible to challenge whether the creditor had complied with its obligation. It noted that in France, neither Law No 2010-737 which transposed the directive nor the Directive itself '*lays down rules relating to the burden of, or the detailed rules for, proving that the creditor's obligations have been fulfilled'*.[8]

The Court observed that the standard acknowledgement clause that the borrower signed did not infringe the rights of consumers under the Directive, as long as it only amounted to an indication that the creditor is required to substantiate with evidence and as long as the borrower had the right to state that she did not in fact receive the form or if she did receive it, it did not provide an adequate explanation of the proposed contractual terms. Otherwise, such a standard term would result in the reversal of the burden of proving compliance with obligations and undermine the effectiveness of the rights conferred by the Directive.

- **Assessing creditworthiness**

[7] 18 December 2014 – a reference from a French court for preliminary ruling under Article 267 of the Treaty of the Functioning of the European Union (TFEU).
[8] Similarly, the Irish regulations are silent on the onus of proof.

Regulation 11 (1) (transposing Article 8 of the Directive) provides that:

> *Before concluding a credit agreement with a consumer, a creditor shall assess the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.*

11 (2) goes on to provide that where any significant increase in the amount of total amount of credit is envisaged, the creditor must carry out a fresh creditworthiness assessment.

The use of the words 'where necessary' appears to have substantially diluted the usefulness of this provision. Neither the regulations nor the Directive explicitly say who is to determine when it is or is not necessary to conduct the assessment. However, it is certainly arguable that Recital Number 26 of the Directive provides a much more explicit rationale for a comprehensive assessment of creditworthiness. For example, this recital includes the following passage:

> *'In the expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness, and the Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so'.*

In *CA Consumer Finance SA v Bakkaus, Bonato and Bonato* (referred to above), the CJEU was also asked to rule on the creditworthiness assessment provisions and their interaction with the requirement to provided pre-contractual information.

Here, the national court noted that in the case of one of the borrowers, CA Consumer Finance produced an income and expenses form and documentary evidence of income that had been sent to them. In the case of the other loan, no such documentation was available. As with the obligation to provide pre-contractual information, the Court found that the onus is on the creditor to show compliance and supporting documentation is required.

The Court stated that the obligation under Article 8 aims to make creditors accountable and to avoid loans being made to consumers who are not creditworthy, though it also affords the creditor a margin of discretion to decide whether the information supplied by the consumer is adequate, depending on the circumstances of the individual case. However, it stated that '*mere unsupported declarations made by the consumer may not, in themselves, be sufficient if they are not accompanied by supporting evidence'* even if the Directive does not require creditors to scrutinise systematically the information supplied by the consumer. Article 8 must be interpreted, first, as not precluding the creditworthiness check from being carried out solely on the basis of information supplied by the consumer, provided that the information is sufficient and that mere declarations are also accompanied by supporting evidence and, second, that it does not require creditors systematic checks to be carried out of the veracity of the information supplied by the consumer.

The Court also stated that it is apparent from a reading of Article 5 (6) and Recital 27 that, notwithstanding the pre-contractual information required to be provided under Article 5 (1), a consumer may need additional assistance prior to entering into an agreement to decide whether that agreement is appropriate for his needs and financial situation. The creditor must therefore provide the consumer with adequate personalised explanations to enable the consumer to make a fully informed decision with regard to a type of loan agreement. However, the Court ruled that Article 5 (6) does not preclude a creditor from providing the required 'adequate explanations' before assessing the consumer's creditworthiness. However, the result of the assessment of the borrower's creditworthiness may require that such 'adequate explanations' might need to be subsequently adapted. Those explanations do not have to be provided in writing (although Member States may provide for this) but they do have to be provided to the borrower in good time before the credit agreement is signed.

Recommendation:

Flac recommends that the Central Bank sets out how the requirements to provide pre-contractual information to a consumer borrower, to explain that information, and the requirement to assess creditworthiness have been interpreted by the Central Bank since June 2010, in terms of the practical steps that staff in banks must take when interacting with consumers. It should also clarify the work that has been undertaken to monitor compliance with these provisions during the course of the current plan.

The Central Bank should set out in detail how it proposes to monitor these obligations during the course of the new plan.

- **Assignment of rights**

Regulation 20 (transposing Article 17 of the Directive) provides that:

> *20. (1) If a creditor's rights under a credit agreement or the agreement itself are assigned to a third party, the consumer concerned is entitled to plead against the assignee any defence available to him or her against the original creditor, including set-off.*
> *(2) The consumer shall be informed of an assignment referred to in paragraph (1) except where the original creditor, by agreement with the assignee, continues to service the credit vis--vis the consumer.*

The sale of credit agreements from regulated to unregulated entities began when boom turned to bust and has become an increasing phenomenon which continues to this day. In our experience, particularly insofar as it concerns the sale of unsecured loans (regulated by the 2010 Directive), consumers have not always been provided with clear and transparent information as to who now owns their loan and who is responsible for collecting payments under it.

Recommendation:

As part of its 2019-2021 Strategic Plan, the Central Bank should ensure that the obligation to notify the sale of agreements is properly and effectively communicated to consumer borrowers.

- **Enforcement/Penalties**

Article 23 of the Directive provides that:

> *'Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be* ***effective, proportionate and dissuasive'*** (emphasis added).

In terms of potential penalties, Regulation 25 of the 2010 regulations provides that:

> (1) A person who is guilty of an offence under these Regulations is liable—
> (*a*) on summary conviction, to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both, or
> (*b*) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 3 years or both.
>
> (5) Summary proceedings in relation to an offence under these Regulations may be prosecuted by the Central Bank and Financial Services Authority of Ireland.

It is notable that the transposition of this article of the Directive in Ireland provides only for potential criminal law sanctions against an offending creditor. In this regard, it is worth noting the observations of the Court of Justice of the European Union (CJEU) in the case of *LCL Le Credit Lyonnais v Kalhan* (27 March 2014) which again concerned the creditor obligation to assess creditworthiness under Article 8 of the Directive.

LCL accepted in this particular case that it could not produce evidence of compliance with the obligation to assess creditworthiness. The National Court therefore questioned whether the French legislation transposing the Directive provided an effective and dissuasive deterrent against breaches of this obligation by lenders in terms of the penalties it provided for in this event.

In its deliberations, the CJEU referred to Recital 26 of the Directive to provide context to the requirement to assess creditworthiness. This states '*that, in an expanding credit market, in particular, it is important that creditors should not engage in irresponsible lending or give out credit without prior assessment of creditworthiness, and that Member States should carry out the necessary supervision to avoid such behaviour and should determine the necessary means to sanction creditors in the event of their doing so'.*

The Court observed that its own previous case law suggested that '*the severity of penalties must be commensurate with the seriousness of the infringements for which they are imposed, in particular by ensuring a genuinely dissuasive effect, while respecting the general principle of proportionality'.*
It questioned whether the applicable rules in France achieve this. It observed that it is for the national court to compare the amounts which the creditor would have received in terms of repayment of the loan if it had complied with the obligation to assess, with the amounts which it would receive if the penalty for breach of that obligation were applied. However, if in fact, the rules could even benefit rather than penalise a creditor who had failed to carry out the creditworthiness assessment, it was clear that this could not be considered genuinely dissuasive. Neither, it suggested, in light of the consumer protection objective inherent in this measure, would it be genuinely dissuasive if *'the amounts which the creditor is likely to receive following the application of that penalty are not <u>significantly less</u> than those which that creditor could have received had it complied with that obligation'.*

The CJEU found that what the national court must compare in this case is the amounts which the creditor would have received in terms of repayment of the loan if it had complied with the obligation to assess creditworthiness, with the amounts which it would receive if the penalty for breach of that obligation were applied. This would appear to strongly suggest that in the view of the CJEU, the penalty against the creditor must involve a civil sanction that would in some manner reduce the liability of the borrower to the lender.

This seriously calls into question the transposition of the Directive in Ireland, insofar as it concerns enforcement of a range of consumer rights. It is clear that the only sanction against the creditor is a potential criminal prosecution by the State and there is no provision for a remedy for the borrower whose consumer protection entitlements have been infringed. We would argue that this does not have a genuinely dissuasive effect and does not properly vindicate the rights of borrowers under the Directive.

Recommendation

Flac recommends that the Bank provide evidence of its supervision of the range of consumer rights under the regulations since 2010 and of any enforcement action it has taken, up to and including any prosecution by itself or the State.

The Central Bank should also outline in its 2019-2021 Plan exactly how it proposes to supervise the exercise of the wide range of obligations that creditors must comply with under the 2010 regulations.

European Union (Consumer Mortgage Credit Agreements) Regulations 2016

These regulations, transposing the 2014 EU Directive on 'Credit Agreements for Consumers on Mortgages relating to Residential Immovable Property' (or Mortgage Credit Directive) were quietly passed into Irish law on March 21st 2016 (and apply to mortgages entered into after that date), even thought it was the first ever attempt by the institutions of the EU to regulate housing loans/mortgages. It was transposed by statutory instrument as was its 2008 equivalent on unsecured lending (see in detail above), thus depriving the Houses of the Oireachtas of the opportunity to discuss, debate and amend it.

In the course of preparing this submission, we conducted a detailed search of both the Central Bank and the Competition and Consumer Protection Commission websites and we can find no specific reference to these regulations therein, except the very occasional oblique reference buried under other headings. This is in our view a very serious omission given that the largest and most important purchase that a person will make in their lifetime is to buy a house (should financial circumstances and access to the necessary credit permit). Yet there is no guide whatsoever produced by the State that provides information to borrowers on their rights under the Regulations/Directive and on the obligations imposed on mortgage lenders and mortgage intermediaries.

Key provisions of the regulations include the necessity for lenders to carry out an assessment of creditworthiness (a more extensive one than under the 2010 consumer credit regulations) and an obligation to provide pre-contractual information in good time before a consumer is bound by any offer of a housing loan. There are also important provisions on the regulation of intermediaries and on financial education for consumers. Prior to bringing proceedings for possession in a situation of arrears, a creditor is obliged to exercise reasonable forbearance before possession proceedings are initiated and shall, at a minimum comply with the Bank's Code of Conduct on Mortgage Arrears (CCMA) or any similar Central Bank measure.

Regulation 6 provides that *'the Central Bank is designated as the competent authority in the State that performs the functions provided for in the Directive'.* Regulation 39 dealing with 'Penalties and Sanctions' repeats the approach taken in the 2010 regulations by providing for criminal sanctions only and, again, *'summary proceedings in relation to an offence under these Regulations may be prosecuted by the Central Bank'.* Paragraph 6 of Regulation 39 provides that '*The Central Bank may publically disclose any administrative sanction that it imposes under the Central Bank Act 1942 for any contravention of the provisions of these Regulations, unless it* *considers that such a disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved'.*

Recommendation

Flac recommends that the Bank provides evidence of its supervision of the range of consumer rights under the Directive since 2016 and of any enforcement action it has taken, up to and including any prosecution by itself or the State.

The Bank should outline in its 2019-2021 Plan exactly how it proposes to supervise the exercise of the wide range of obligations that creditors must comply with under the 2016 regulations.

The Credit Reporting Act 2013

The Central Credit Register set up under the Credit Reporting Act 2013 is stated by the Central Bank to be '*a new secure system for collecting personal and credit information on loans'*. The passing of this Act resulted from a Government agreement to establish the Register as part of the EU/IMF Programme of Financial Support for Ireland and this reflects a concern that more diligent standards will apply to the provision of consumer credit than applied prior to the bailout.
In a press release to accompany the passing of the wide range of regulations on September 22nd 2016 to build upon the Act, the Bank stated that:

> *'The development of the Central Credit Register is an important financial sector reform, contributing to financial stability and consumer protection. The Register will match the personal and credit information received from lenders to create a complete credit report, containing all the loans relating to an individual borrower, facilitating enhanced creditworthiness assessments and responsible lending. The establishment of the Register will also support Central Bank functions such as prudential supervision and statistical analysis and will provide the Central Bank with better insights into financial markets'.*

Given its general objective to try to ensure a more responsible credit market, it comes as a considerable surprise that there is no effective deterrent in the legislation to guard against the reckless provision of credit by lenders, who, having accessed a credit information subject's credit report as required by Section 14 or as allowed by Section 15 of the Act, proceed to ignore the information that it discloses. Neither does there appear to be any sanction envisaged where a creditor does not carry out the required assessment at all.

Thus, Section 29 of the Act which sets out the range of offences that may be prosecuted under the Act merely provides that *'a credit information provider who provides information required by this Act knowing it to be false or misleading commits an offence'* and *'a credit information provider who knowingly uses*

information to which access has been given under this Act for a purpose other than one permitted by this Act commits an offence'. Continuing the trend under the 2010 consumer credit regulations and the 2014 mortgage credit regulations, no civil sanction is envisaged either for lenders who disregard their obligations under the Act.
A cogent explanation is required to justify this approach. The Credit Reporting Act became law in 2013. Thus, it has taken the State some considerable time (and no doubt some considerable expense for the taxpayer) to set up this infrastructure.

Recommendation
The Bank should outline in its 2019-2021 Plan exactly how it proposes to enforce the range of obligations imposed on credit information providers/lenders under the Act in what appears to be the absence of specific powers of enforcement. It should also outline how (in tandem with the Data Protection Commissioner perhaps) it proposes to protect credit information subjects against the misuse of information accessed by lenders.

Payment Protection Insurance (PPI)

It is no exaggeration to say that in common with our neighbours in the UK, this country suffered a Payment Protection Insurance mis-selling scandal over the past two decades. Although the Central Bank eventually ordered six named lenders to conduct a look back review in 2012/2013 which resulted in many customers being compensated to a degree, it was too late for many whose complaint predated the introduction of the Bank's Consumer Protection Code in July 2007 and for whom a complaint to the Financial Services Ombudsman was effectively statute-barred.

The gist of most complaints was that the borrower was sold PPI to accompany a lending facility (whether a mortgage, personal loan or credit card) which was not appropriate for his or her needs and which would not cover the notionally insured person in the event of a claim. For example, self- employed persons being sold insurance that only covered employees, temporary employees buying insurance that would only cover permanent employees or policies that covered redundancy but not dismissal for any other reason.

In many of these cases, not only did the borrower not receive a separate contract, he or she did not even receive a booklet setting out the salient terms and conditions, such was the urgency to sell on the part of the insurance intermediary to pick up the relevant commission. The Bank's Consumer Protection Code 2012 (as amended) currently provides at Rule 3.24 that:

> *'Where a regulated entity offers payment protection insurance in conjunction with a loan, the regulated entity must:*

a) exclude the payment protection premium from the initial repayment estimate of the loan advised to the consumer and advise the consumer of the amount of the premium separately; and
b) use separate application forms for the payment protection insurance and for the loan'.

To our knowledge, however, despite the extent of this scandal, there is still no legal requirement for comprehensive documentation on the product to be provided to the insured person in advance of availing of the product nor is there any legal obligation for the parties – the insurer and the insured – to sign a separate contract which sets out the key terms and conditions of the policy, in particular what is and what is not covered by the insurance.

Recommendation

The Bank should outline in its 2019-2021 Plan what action it proposes to take to ensure that there is no repetition of the recent PPI scandal. In particular, it should look at ensuring that consumers of such insurance products are protected by transparent information in advance of availing of a product and are provided with a proper written insurance contract separately from the loan contract.

The Code of Conduct on Mortgage Arrears (CCMA) 2013

- **The effect of sales of portfolios of loans on borrower rights under the Code**

The announcement by Permanent TSB in mid-February 2018 that it proposed to sell €4 billion of 'non-performing' loans (some 28% of its loan book) including up to 18,000 mortgages, of which 14,000 were said to be mortgages on principal dwelling houses (PDH) caused huge concern for many borrowers who had entered into long-term payment arrangements under the CCMA following a period of mortgage arrears. It does not appear that this sale has as yet taken place, and since the original announcement was made, PTSB has subsequently announced that the 4,300 split mortgages contained within the 14,000 PDH loans in that portfolio have been apparently been removed from it and are not currently for sale.

However, it is far from clear that this is the end of the matter, with PTSB Chief Executive, Jeremy Masding, stating that *"Since the launch of Project Glas there have been some developments including engagement with the Regulatory Authorities on the treatment of Split Mortgages and the emergence of solutions which could enable us to maintain the day-to-day relationship with the account holders. Therefore, we have decided to withdraw mortgages linked to about 4,300 homes (par value of approximately €0.9 billion) from the Project Glas sale process. We will continue our engagement on the regulatory classification of these mortgages and, at the same* *time, we will explore different options including ones that enable us to maintain the day-to-day relationship with the account holders."*[9]

This raises a number of issues that are fundamentally important to consumer protection, which require clarification. Mr Masding's suggests in his somewhat ambiguous statement that 'different options' may need to be explored. Might this mean that split mortgages may need to be adjusted for regulatory classification purposes and that the relevant borrowers may need to pay more money to continue to have their loans classified as performing and that, if not, these loan may still ultimately be offered for sale to funds?

Which regulatory authorities did PTSB engage with? For example, does this include both the European Central Bank (ECB) and the Central Bank of Ireland? Does the ECB classify such arrangements as non- performing? Are the ECB and the CBI in agreement as to what is a performing or non-performing loan?

The answer to these questions has an impact on the standing of the CCMA, bearing in mind that the Bank actively encouraged borrowers to enter into long term alternative repayment arrangement such as a split mortgages.

The most recent figures available from the Central Bank place the extent of the potential problem with the sale of restructured accounts in context. As of the end of Q.4 2017, the profile of restructured loans on PDH mortgages under the main categories of long-term repayment arrangements is as follows:

Restructures	Arrears	No arrears	Split mortgages	Capitalisation	Term Extension
118,477	25,478 (22%)	92,999 (78%)	27,475 (23.2%)	39,203 (33.1%)	14,784 (12.4%)

From this, it can be seen that 81,426 (69%) of existing restructures are what we would classify as long-term alternative repayment arrangements, i.e. they are the subject of either a split mortgage, a capitalisation of arrears arrangement or a term extension. To these might be added the 19,555 mortgage classified as 'Other' under the Central Bank's figures. The 'Other' category, according to the Bank, *'mainly comprises accounts that have been offered a long-term solution, pending the completion of six months of successful payments. When these accounts transition into their permanent arrangement, the figures will be updated accordingly. The 'Other' category also includes a small number of simultaneously-agreed term extensions and arrears capitalisation arrangements'.*

Of the existing 118,477 PDH restructures therefore, it appears that 101,017 (81,462 + 19,555), a total of 85%, are long term in nature. There has been widespread

[9] Permanent TSB Trading Update 16 May 2018.

speculation, much of it in the absence of proper evidence (of which more below), about the extent of non-engagement and potential strategic default amongst borrowers in arrears on their PDH mortgage. It is likely however that few, if any, of this cohort of 100,000 plus borrowers can be accused of this. On the contrary their engagement – primarily through the mechanism of filling out of a Standard Financial Statement (SFS) and subsequent negotiations on payment capacity – resulted in a long term arrangement being put in place.

The Central Bank has promoted these arrangements so as to avoid the kind of debt write-down that many, including FLAC, believed and believe may be necessary to resolve the more difficult arrears cases. For example, then Governor of the Central Bank, Patrick Honohan, suggested in 2013 that split mortgages would be key in resolving the mortgage arrears crisis[10].

In Flac's view, it would be then be manifestly unfair and contrary to natural justice if a long term alternative repayment arrangement that had been negotiated in good faith by the borrower under the terms of a Central Bank Code could potentially be overturned by a vulture fund as a result of the sale of the loan in question. With the significant majority of long term alternative repayment arrangements, the borrower and his or her dependants have made and continue to make considerable financial sacrifices to adhere to the deal. The lender made the decision to offer the arrangement following a financial assessment, not the borrower, and in many instances borrowers reluctantly entered into these arrangements knowing the financial pressure that would result.

Recommendations

- **The Central Bank should clarify its definition of a non- performing loan and whether it is in agreement with the ECB as to what constitutes a non- performing loan.**
- **The Central Bank should clarify its view as to whether alternative repayment arrangements agreed in good faith by borrowers with lenders under the CCMA/MARP framework should be binding on purchasers of these debts, subject to the appropriate review clauses**
- **The Central Bank should set out in its forthcoming Strategic Plan how it proposes to ensure that the rights of borrowers under the CCMA are maintained when their loan is sold to an unregulated entity**

- **Reviewing and amending the CCMA**

The key problem for existing cases still in the MARP or any future new cases that may enter into that process (bear in mind that interest rates are likely to increase in the coming years) is the subtle but nonetheless clear wording in Rule 39 of the

[10] See, for example, Ciaran Hancock, 'Divisions emerge over split mortgages', Irish Times, September 10th 2013

CCMA that effectively allows a lender to choose at their sole discretion the ARA's that it may in principle offer to borrowers in arrears. Thus, this rule states that *'In order to determine which options for alternative repayment arrangements are viable for each particular case, a lender must explore all of the options for alternative repayment arrangements* ***offered by that lender'****.(emphasis added).*

The net effect of this amendment made in 2013, whether it was expressly intentional or not, was to allow a lender to choose from the expanded suite of potential ARA's it would examine and to entirely decline to look at those it did not consider suitable to its operations. In Flac's view, this rule should be amended to oblige all mortgage lenders to look at all ARA options under Rule 39.

Similarly, Rules 37 and 40 requires amendment in our opinion.

Rule 37 currently states that *'A lender's ASU must base its assessment of the borrower's case on the full circumstances of the borrower including: a) the personal circumstances of the borrower; b) the overall indebtedness of the borrower; c) the information provided in the standard financial statement; d) the borrower's current repayment capacity; and e) the borrower's previous repayment history'.*

Rule 40 states *'that a lender must document its considerations of each option examined under Provision 39 including the reasons why the option(s) offered to the borrower is/are appropriate and sustainable for his/her individual circumstances and why the option(s) considered and not offered to the borrower is/are not appropriate and not sustainable for the borrower's individual circumstances'.*

In theory, this looks like a comprehensive process. However, in many instances, the nature of the lender's assessment under Rule 37 has, in practice, been quite cursory, despite the apparent broad scope of the criteria that the lender is supposed to examine. Compounding this is the absence of an express obligation under Rule 40 that a lender must provide the borrower in arrears with the written details of its documented considerations. Some lenders have steadfastly refused to do so, arguing that this information need only be provided on request to the Central Bank, its regulator. In early correspondence with FLAC on this issue the Central Bank did not disagree with this interpretation.

The effect of this is to render the borrower's potential appeal under Rule 49, where no ARA is offered by the lender or the ARA offered to the borrower is deemed unsuitable by him or her, to be a nonsense from a fair procedures viewpoint. How can your right to appeal be properly vindicated if you have not been provided with the detail of the substance of and the rationale for the lender's decision? In our view, this process offends the core fair procedures principle of '*audi alteram partem',* the right to a fair hearing, and the requirements of natural or constitutional justice. Equally, the fact that the appeal, such as it is, is to an Appeals Board set up by the lender would seem to us to offend the second fair procedures principle of *'nemo iudex in causa sua,* that no one should be the judge of their own case.

The Supreme Court considered the status of the code in repossession proceedings in the *Dunne and Dunphy* case in May 2015 and stated that if the Executive and the

Legislature wanted to protect borrowers, this would have to be clearly provided for through legislation stating:

> *'If it is to be regarded , as a matter of policy, that the law governing the circumstances in which financial institutions may be entitled to possession is too heavily weighted in favour of those financial institutions then it is, in accordance with the separation of powers, a matter for the Oireachtas to recalibrate those laws. No such formal calibration has yet taken place'.*
>
> and
>
> *'In the absence of there being some legal basis on which it can be said that the right to possession has not been established or does not arise, then the only role which the Court may have is, occasionally, to adjourn a case to afford an opportunity for some accommodation to be reached'*

However there has been no such legislation to date and the challenge for the legislature remains. Chapter One of the CCMA 2013 states 'Lenders are reminded that they are required to comply with this Code as a matter of law'. This apparently clear statement is in fact misleading. What has become evident is that this obligation as a matter of law is confined to the relationship between the Central Bank as regulator and mortgage lenders as regulated entities, and does not extend to the rights of borrowers. As far back as 2010, the Mortgage Arrears and Personal Debt Group recommended that the CCMA should be admissible in legal proceedings.[11] This recommendation has never been acted upon and perhaps reflects a prevailing view that the right of mortgage lenders to enforce their security should not be compromised.

Recommendations

Flac recommends that as part of its forthcoming plan, the Central Bank commits to reviewing the CCMA with a view to providing more effective rights for borrowers in arrears.
The Bank should also commit to ensuring that lender compliance with the CCMA is vigorously monitored and that sanctions are imposed for lenders who do not comply with its terms.

[11] Mortgage Arrears and Personal Debt Group, Final Report 16th November 2010, Page 6

Bernard Sheridan
Director of Corporate Affairs
12/06/2018

STRONGER TOGETHER
CONGRESS
Irish Congress of Trade Unions

11th June 2018

Mr. Bernard Sheridan
Director of Corporate Affairs
Central Bank of Ireland
PO Box 559
Dublin 1

[redacted]

Re: Central Bank [redacted]trategic Plan 2019-2021

Dear Brendan [redacted]

I wish to acknowledge with thanks receipt of your correspondence of 10th May re the above. Please now find below the Congress response.

1. **What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?**

Congress would see the risk Brexit poses to tens of thousands of jobs in the Republic as one of the main risks to the economy, and in particular to specific sectors and regions.

We are aware that the Central Bank has estimated that a 'hard Brexit' WTO scenario could lead to 40,000 fewer jobs after 10 years compared to a no-Brexit scenario.

The Copenhagen Economics report published in February urged the government to adjust skills policies to help minimise the cost to individuals from Brexit while the OECD March 2018 report urged it to deploy or reorient targeted social policies to assist regions most at risk from Brexit.

While the measures that have been put in place to date do have the potential to minimise the negative impact of Brexit, it is the case that they are primarily designed to help firms prepare and find new markets rather than to help workers adjust.

Congress has therefore proposed the establishment of a specific retraining and income protection fund, a Brexit Adjustment Assistance Fund (BAAF), to support workers most at risk now, i.e. before the full effects of Brexit are felt, rather than after the UK leaves the EU.

This could be modelled on existing instruments such as the European Globalisation Adjustment Fund (EGAF), which funded support to almost 11,000 workers in Ireland between 2007 and 2016 at a cost of around €75 million, and the US Trade Adjustment Assistance programme, which is similar to the EGAF but which has a stronger emphasis on income protection.

We would therefore urge the Central Bank to give specific consideration to the development of instruments to assist the workers who are most at risk from Brexit over the coming years.

2. **What should the Central Bank focus on in terms of the regulation of firms and markets?**

Congress would urge the Central Bank to give greater consideration to the control predatory or irresponsible lending through payday loans.

32 Parnell Square
Dublin 1
T +353 1 8897777
F +353 1 8872012
congress@ictu.ie
www.ictu.ie

Affiliated to the European Trade Union Confederation

General Secretary Patricia King

While the information on which it was based is now some years old and may now be out of date, you will be aware that the 2009 report 'Understanding and Combating Financial Exclusion and Overindebtedness in Ireland: a European Perspective'[1], prepared in association with the Department of Social Protection, stated that consumer credit in Ireland (and the UK) can be acquired through 'mainstream providers, home credit companies, payday loan companies or unlicensed moneylenders'.

This finding would appear to run counter with the December 2017 statement of the Minister for Finance that while a number of firms have approached the Central Bank in relation to offering payday loans in the Irish market, no such business model has been licensed by Central Bank.[2]

Congress would urge the Central Bank to give close consideration to the possibility that such loans are being offered in Ireland and, should such evidence emerge, to take swift action accordingly.

3. What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?

Congress would urge the Central Bank to ensure the correct application of the Payments Accounts Directive (Directive 2014/92/EU), which was transposed into Irish law by means of Statutory Instrument No. 482 of 2016 – the European Union (Payments Accounts) Regulation 2016, on 18 September 2016. As you are aware, this legislation among other things requires all banks offering payments accounts to offer an account with basic features, such as an ATM card, direct debits and the ability to pay for goods and services online

Some 6% of consumers in Ireland do not have a payment account according to the World Bank.[3] While most of these said that they did not want or need one, 4% did say that they had tried to open one but it was refused because they didn't have sufficient income. While this was a low percentage, it was twice the EU average and the third highest level of such refusals of the EU-28. You will also be aware that the European Commission's 2013 Staff Working Document (SWD(2013) 164 final) that accompanied the proposal that resulted in the Payments Accounts Directive concluded that Ireland's 'self-regulatory rules', 'hardly compl[ied]' with its 2011 Recommendation on access to a basic payment account (Recommendation 2011/442/EU).[4]

As the Government is to provide the Commission with information on compliance with the Payments Accounts Directive by 18 September 2018 and as the Commission is to submit a report by 18 September 2019 on its application across the EU, accompanied, if appropriate, by a proposal to revise the legislation, we would urge the Central Bank as the designated competent authority for this legislation in Ireland to closely monitor the application of this legislation and to consider in the context of a possible review, how it could be improved.

Yours sincerely

Patricia King
General Secretary

---

[1] Gloukoviezoff, G, The Policy Institute at Trinity College 'Understanding and Combating Financial Exclusion and Overindebtedness in Ireland: A European Perspective (2009).
[2] Answer to Dail written question no.53762/17, 14 December 2017.
[3] Measuring Financial Inclusion, The Global Findex Database, World Bank, April 2012.
[4] SWD(2013) 164 final, 8.5.2013.

Irish Funds
Ashford House,
Tara St, Dublin 2

t: +353 (0) 1 675 3200
f: +353 (0) 1 675 3210

e: info@irishfunds.ie
w: irishfunds.ie

Delivery by Email to: [redacted]

General Secretariat Division
Central Bank of Ireland
PO Box 559
Dublin 1

8 June 2018

Re: Strategic Plan 2019-2021 – invitation to comment

Dear Sir/Madam,

Thank you for the invitation to provide comment in advance of the development of the Central Bank of Ireland's (CBI) forthcoming Strategic Plan for 2019-2021. This plan, as well as being key to the CBI, is of broader importance given central role the CBI performs within the financial ecosystem in Ireland and the inevitable linkages between the operation of the regulator in pursuit of its strategic plan and Ireland's broader financial services and economic policy.

The recent publication of the CBI's Annual Report for 2017 and associated Annual Performance Statement 2017 provide useful insights into the evolution of the organisational structure and the CBI's own identification of emerging issues and challenges which should be incorporated into the next Strategic Plan.

In addition to addressing the specific questions posed in the consultation we also add below several other comments/observations which are germane to the development of a clear, ambitious and clearly measurable strategic plan.

- We share the CBI's goal of a "financial system that is well-managed, well-regulated and serves the needs of the economy and consumers over the long term[1]". The funds industry is a sector which is truly international in orientation, has been operating successfully in Ireland for over 25 years and one which has made a long-term contribution to the economy. The work of industry and the independent role of the CBI as a knowledgeable and reputable international securities regulator have enhanced Ireland's overseas reputation. We believe that the manner in which the CBI engages in international policy and regulatory debates and that it is also acknowledged as rigorous and efficient to deal with by market participants are both important elements to include in the forward-looking plan.

- As well as being a policy maker, regulator, supervisor and enforcement body the CBI is also a provider of a series of regulatory services which market participants pay for either via levies or specific transaction fees. We acknowledge the independence of decision

[1] Central Bank of Ireland Annual Performance Statement 2017, page 6

making which the CBI has (and should have) regarding applications or other supervisory matters. Equally we believe that the clarity, speed and efficiency with which these services are provided (in the eyes of market participants) is key to the perception and success (or otherwise) of Ireland's international financial services offering. Aligned to the investment in people, training and technology which the CBI will continue to make we also suggest a clear link in the new plan to the achievement of process enhancements and provision of greater qualitative and quantitative service metrics.

- Both industry and the CBI have noted the evolution, growth and increasing complexity of Ireland's financial services offering. In our own sector we see this in response to changing global demands from investors which are reflected in fund, fund service provider and investment management entities. The dual domestic facing and international facing nature of the CBI's work is not specifically reflected in current organisation of the CBI's resources. In general, domestic consumers of financial services are more likely to be retail in nature requiring considerable time and overhead. In those segments of industry here which are internationally focused, the entities and end clients are more predominantly institutions with commensurate levels of sophistication. We therefore see the need to create within the new Strategic plan specific contact management, engagement and communication strategies for the internationally focused segments of industry as their needs and orientation are different than those of domestic market segments. This suggestion is supported by the increasing number of investment funds and investment firms regulated by the CBI relative to other forms of authorised entities where there has been little or no growth in the numbers of authorised entities over the last three years[2].

- We, in common with the CBI, note that the existence of Brexit has "led to a material increase in new applications and changes to business models of existing firms[3]". This will change what is required of the regulator. Given the appropriate focus by the CBI on the quality, expertise and approach of its own staff as being critical to achieve its objectives we would like to see some aspect of the new strategy plan focus on knowledge & skill acquisition which supplements/complements the recruitment of permanent staff by the regulator. Industry, in many cases, is a driver of innovation and the medium through which new variants of regulated activity seek to occur which then result in interactions with the regulator (authorisations etc..). Our suggestion therefore is that there should be ways for industry to partially support this knowledge transfer to enable the CBI to best execute its strategic plans.

- The funds industry is a mature and developed element of Irish based, internationally focused financial services and is recognised as such around the world. Therefore, the CBI has a strategic stake in the direction and development of the funds sector. This is not a promotional interest or responsibility, but the CBI should (from a strategy standpoint) have a perspective on the development of the industry here over the next 3-5 years and this should also be incorporated as a deliverable within the Strategic Plan.

- Data / Analytics: The CBI receives significant amounts of data from investment funds and funds industry companies. From an output perspective notable progress has been made by the CBI in recent times with the publication of geographic sales/redemption

[2] Central Bank of Ireland Annual Performance Statement 2017, section1.7 pages 16-17
[3] Central Bank of Ireland Annual Performance Statement 2017, page 9

irish funds

data and there is more which should be done over the life of the next plan. A detailed, segmented data set which provides the current information on investment funds (classified by investment strategy as well as fund type) which is web-based and can be queried/downloaded from the CBI website would be valuable to industry participants and reflective of the significant data provided to the CBI.

- With the European Commission's Capital Markets Union Plan, Sustainability Action Plan and Fintech Action Plan we see clear moves to support innovation and enhance market-based financing as a macro-prudential and policy initiative. It would therefore be important to see these elements reflected in the Strategic Plan whose lifespan will cross over from the end of the current European Parliament and Commission term into the next one.

Comments on Specific Questions

1. What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?

- Given the dynamic nature of markets we believe the CBI should continuously review and critically assess their ability to identify and respond to current and emerging risks. As part of the plan this should include structured and formal engagement with industry, who themselves will be monitoring and assessing current and emerging risks to their clients as well as their business/sector. We believe such engagement supports the safeguarding of investors and the ability to assess industry impacts based on those risks which are most significant. This should be augmented by the continuing work the CBI does by collaborating with peer regulators and policy makers and a deliberate focus on conducting scenario analysis and stress testing to validate prospective risks.
- Given the continuing importance of the UK to the Irish financial services sector and asset management/investment funds industry, we would expect this to be a central focus of the next strategic plan both during but also after Brexit. Industry have some ideas as to what pertinent items and communication channels in this regard might be, including;
    - the development, with industry, of a set of materials, talking points, FAQ's, seminars, webinars etc that assist in the management and communication of how the UK's exit from the European Union will impact the funds industry.
    - A Memoranda of Understanding (MOU) and amendments to regulatory positions such as CP86, all with a view to recognising the importance of the UK.
- The following points don't reflect current risks but may represent areas which should be considered under the plan:
    - "Real economy" investing is likely to be an area of growth (Real Estate/Private Equity/Infrastructure/Loans and Private Credit) in the next 3-5 years) – we believe that many of the existing fund regulations were not originally designed with these asset classes in mind, and we would welcome a particular initiative by the CBI to review those areas where updating/additional clarity makes the regulatory environment/expectations clear as well as ensuring appropriately credentialed providers have the option

to use Ireland.

  - As part of the Strategic Plan we suggest that, together with industry, you identify countries where significant potential for greater flows of capital exist and whose regulatory regimes have yet to be assessed/recognised as MiFID equivalent by the CBI e.g. China, Korea. Proactive review of such jurisdictions would support the CBI's objectives and status as a globally recognised funds regulator.

2. What should the Central Bank focus on in terms of the regulation of firms and markets?

- The role of national competent authorities, like the CBI, is essential in providing direct accountability to national parliaments and citizens in the exercise of financial regulation and supervision and as a link to broader government policy. At the same time, Ireland benefits from being part of a single EU market/system of financial supervision and there are increasing moves towards both supervisory convergence and centralisation of powers. The way the CBI considers and navigates this, in conjunction with the State, is a key question over the life of this plan and has a bearing on its focus in terms of the regulation of firms and markets. Additionally, given the momentum towards greater regulatory convergence, of which we are supportive, and the existence of national discretions in regulatory transposition, we believe there is merit in the strategic plan including an ongoing consideration of those areas where there are differing approaches/practices among Member States/National Competent Authorities. It is understood that the CBI does not have a promotional mandate, nor should it be seen as having anything other than high regulatory standards. Equally, it should not be the case that local interpretation of rules here are significantly harsher or more penal than experienced elsewhere in the EU.

- Linking to the point made earlier in relation to data and recognising that automation/ digitisation continues to evolve rapidly, we would like an element of the plan to devote time and energy to understanding and assessing how data might be managed in the next decade and how new mechanisms for managing and distributing data (e.g. distributed ledgers) might be leveraged. The effective transmission and reporting of data along the chain of activities that fall under regulation will be important to consumers, industry and regulators alike.

- Given the global nature of our sector and the different scale, scope and operating models which exist in it as compared to domestically focused segments (which have their own complexities) we see a need for a delineation in approach and prioritisation on certain issues. For example, there has been several exchanges with respect to the CBIs review of Outsourcing and the CBIs Annual Outsourcing return where we see clear downside to both regulator, consumers and market participants in trying to aggregate workplans across both domestic and international sectors.

- Communication: Given the pace of market, legislative and regulatory change there is an ongoing need for the CBI to outline their interpretation of regulations and provide transparency to all stakeholders. Increasingly the CBI is using a variety of different regulatory tools to achieve this, such as “Dear CEO” letters and newsletters. To support a clearer understanding of the CBIs expectations, where such “softer” regulatory tools are anticipated, industry would welcome prior discussion/engagement to better understand the intended outcome of such communication.

3. What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?

- The Funds industry is an international industry servicing a global client base and as such must interact with different consumer protection regimes. We support a strong and robust consumer protection regime and absolutely acknowledge the CBIs fundamental role in respect of domestic consumers. In a global/international context we believe it also appropriate to have regard for the role and competencies of local (foreign) regulators in safeguarding consumers.

We remain at your disposal to discuss any of the points raised in this letter.

Yours sincerely,

Patrick J Lardner

Pat Lardner
Chief Executive

33 - 41 Lower Mount Street, Dublin 2, D02Y489 | Tel: + 353 | 614 6700 | Fax: + 353 | 614 6701 | E-mail: info@creditunion.ie | www.creditunion.ie

General Secretariat Division
Central Bank of Ireland
PO Box 559
Dublin 1

By email: [redacted]

07 June 2018

Re: Strategic Plan 2019 – 2021

Dear Sirs

We welcome the opportunity to provide the views of the Irish League of Credit Unions ("the ILCU") in relation to the development of the Central Bank of Ireland's Strategic Plan 2019 -2021.

The ILCU is the largest trade and representative body in Ireland with 263 affiliated credit unions. We wish to make some general observations on the development of the Central Bank's Strategic Plan specifically as it relates to credit unions.

The ILCU provides representation, leadership, co-operation, support and development for credit unions in both the Republic of Ireland and Northern Ireland and responds directly to the needs of affiliated credit unions. The ILCU on behalf of member credit unions seeks to promote and protect the credit union ethos of mutuality, volunteerism, self-help and not for profit philosophy.

All stakeholders within the sector recognise the important role that credit unions play in local communities and in the provision of financial services to members. Equally all stakeholders would like to see credit unions have an enhanced ability to operate within an increasingly complex and competitive environment. In order to achieve this, proportionate and appropriate regulation is required.

We welcome the Central Bank's view, set out in its public engagement paper, that it aims to take a proportionate approach to its actions. The ILCU is of the view that appropriate and proportionate regulation is key to the continued development of the credit union movement and that regulation which recognises the uniqueness of credit unions is vital. We would advocate that the Central Bank's Strategic Plan would expressly recognise the value that the credit union movement, as not-for-profit financial cooperatives, brings in diversifying the market in financial services to the benefit of consumers.

We are also of the view that the Central Bank needs to maintain dialogue and engage fully with all representatives of the credit union movement particularly those responsible for approving the strategy in credit unions. Furthermore, it is not simply enough to seek views, it is vital that the Central Bank take on board the considered views of those representing the movement. It is the ILCU's opinion that it is a fundamental principle that all regulatory authorities must act with transparency and an openness in explaining its decision making process and we look forward to continuing enhancements in this area.

It is vital that the Central Bank continues to focus on consumer protection and to direct that focus to protect the most vulnerable in society. To this end we note the Central Bank's *Consultation Paper 118 on Moneylending (Review of the Consumer Protection Code for Licensed Moneylenders)* and we welcome this initiative by the CBI to protect consumers against such high cost lenders. We will separately be making a submission to this consultation paper.

We look forward to the finalisation of the Central Bank Strategic Plan 2019-2021 in which we hope due recognition is given to the views of the credit union movement.

Yours faithfully,

Ed Farrell

Ed Farrell
CEO

Submission on the Central Bank of Ireland's Strategic Plan 2019-2021 from the Irish MiFID Industry Association

The Irish MiFID Industry Association (IMIA) welcomes the opportunity to provide feedback to the Central Bank of Ireland on its Strategic Plan 2019 – 2021.

2. What should the Central Bank focus on in terms of the regulation of firms and markets?

The IMIA is concerned with the extent of regulation imposed on regulated MiFID Firms and its ultimate impact on consumers. Whilst the intention of regulation is to strengthen consumer protection, a direct consequence is an increase in cost which is ultimately paid for by consumers of investment products thereby reducing investment returns. Whilst the principle of proportionality may be applied, in practice member firms are often required to comply with regulations designed for the largest European based market participants which have balance sheets running into billions of euro.

The need to comply with regulations and to evidence such compliance can involve a significant cost for firms. For example it may involve implementation of expensive technologies. As a consequence smaller firms may not be able to compete in certain market segments and or new entrants are discouraged. This will lead to a diminution of consumer choice and ultimately lead to only a small number of product producers. The IMIA does not believe this is in the long term interests of consumers of financial products.

There is a large disparity between the overhead for MiFID firms and Investment Intermediary Act ("IIA") firms who are only or primarily providing the services of "receipt and transmission of orders" and "investment advice" only. We believe this needs to be examined.

Additionally, the life industry which in many cases distributes investment based products in life wrappers, should be subject to full 'functional equivalency'. Having a two speed system which allows for investment products to be wrapped as life assurance investments could lead to consumer disadvantage, if functionally equivalent investment based products are seen to be easier to sell or manage in life wrappers vs. via MiFID firms.

The IMIA therefore considers that the Central Bank should focus on the long term consequence for consumers and market participants when considering changes to legislation. This applies both when considering localisation of EU requirements and when assessing potential legislation and Guidance emanating from Europe, and includes the Consumer Protection Code which defines how MiFID products are distributed via non-MiFID intermediaries. Focus should be on balancing, in a long term consumer oriented manner, the perceived consumer protection advantage of any proposed legislation with the impact both on product charges and the financial viability of market participants consequent on the full cost of implementing it. The IMIA agrees with the Central Bank in that it does not believe it is possible to ensure a 'zero-failure' system of regulation and supervision but to safeguard that any firms that fail, do so in a way that avoids significant disruption to financial services or consumers.

The direct cost of regulation in Ireland has risen significantly over the past number of years and this trend is set to continue as the financial services industry moves to pay 100% for its regulatory cost. The MiFID sector is having to pay a significantly disproportionate amount of levy due to the low number of participants in this space. Should funding move to 100%, this will mean more firms will consider moving out from MiFID regulation, and into IIA based regulation due to the lower levies and operating costs.

Irish MiFID Industry Association Limited (IMIA)
87 Merrion Square, Dublin 2, D02 DR40 | T 01 661 3067 | E contact@imia.ie | www.imia.ie

Registered in Ireland. Company Registration No. 614869 | Directors: Ronan Gahan, Elaine Staveley, Tim Pollen, Lynn Feeley, Brendan McWeeney, Maeve Kelly

This will further increase the cost on remaining participants. The Central Bank determines the amount firms' pay in regulatory costs. The IMIA believes that in setting its policy and strategic focus and reviewing the effectiveness of its actions, the Bank should request the Department of Finance to implement an independent Budgetary Oversight Committee and Operations Oversight Committee. These committees would operate to ensure that the Central Bank's budget to meet its mandate is appropriately allocated and effectively monitored.

A number of unintended consequences have arisen under MiFID II (Transaction reporting for funds subject to subscription/redemption, US ETFs being unable to be distributed due to PRIIPS/MiFID conflict). Whilst these are awaiting determination or clarity from ESMA, Central Bank engagement on practical solutions where firms require additional time to plan around these issues is required.

Finally, the IMIA believes that member firms would benefit greatly from more active communication by the Central Bank with regard to questionnaires it issues to and themed inspections it conducts on regulated entities. Currently following a themed inspection the Central Bank issues a "Dear CEO letter" highlighting key findings. The IMIA is of the view that the content of all standard questionnaires issued by the Central Bank together with a list of the documentation requested of firms prior to a themed inspection should be made available to all firms. This would highlight to Directors the extent of the Central Bank's requirements in a practical manner.

3**. What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?**

As referred to in question 2, following the introduction of MiFID II, significant differences have arisen between the regulatory requirements applying to investment products which are available from MiFID firms and investment products available through a life assurance wrapper. The IMIA is aware that changes in the soon to be implemented Insurance Distribution Directive will address some of these issues. The IMIA is concerned however that these will not fully address the consumer protection issues and requests the Central Bank to ensure, when implementing regulations it does not promote an uneven playing pitch between life assurance linked investment products and direct MiFID investments; this may result in a 'gold-plating' of certain requirements where legislative standards or Guidance differs between sectors. The IMIA is firmly of the opinion that the regulatory status of different product producers should not be a factor in a consumer's journey in making an investment. Given the vast range of life assurance funds available particularly at the higher and speculative risk end of the risk range, the IMIA has concerns that the distribution of consumer products will be distorted over time by encouraging the wrapping of investments into life funds. Not only does this decrease transparency available via MiFID, but typically increases the cost of the product and also potentially the quality of the advice provided to the client.

The IMIA is also concerned that the volume of prescribed documentation to evidence a compliant sales process is detrimental to the consumer protection agenda. Member firms have advised the IMIA that clients suffer from information overload and do not get any much value from the volume of documentation and disclosures.

On a similar theme, the IMIA is concerned that the cost of compliance, both direct and indirect, will lead to firms not being in a position to offer advice to clients with smaller investments, but will instead only offer an execution only service to such clients.

Irish MiFID Industry Association Limited (IMIA)
87 Merrion Square, Dublin 2, D02 DR40 | T 01 661 3067 | E contact@imia.ie | www.imia.ie

Registered in Ireland. Company Registration No. 614869 | Directors: Ronan Gahan, Elaine Staveley, Tim Pollen, Lynn Feeley, Brendan McWeeney, Maeve Kelly

Irish Rural Link
Nasc Tuaithe na hÉireann

Irish Rural Link Submission to the Central Bank Strategic Plan 2019-2021

June 2018

Contact Seamus Boland/Louise Lennon

pobal
government supporting communities

Department of Rural and Community Development
An Roinn Forbartha Tuaithe agus Pobail

Overview

Irish Rural Link (IRL) is the national network of rural community groups, representing over 600 community groups and over 25,000 individuals committed to socially, environmentally and economically sustainable rural communities.

While it may be argued that the country is in a better position economically than it was two or three years ago there continues to be disparity in the level of growth across the country and the economic upturn is not felt by everyone or every part of the country, especially in rural areas.

While employment has increased, the quality of jobs available especially in rural areas tends to be lower than in urban areas, with a higher number of people employed in lower paid sectors. Many jobs in retail/wholesale, hotel and catering, tourism are precarious and zero hour contracts. In rural areas, these are the jobs many people work in as there is very little alternative unless they commute long distances to work, which is not always an option for people.

Micro, Small & Medium Enterprises are the backbone to rural economies and are key to creating jobs in rural areas. While there continues to be a push for foreign multinationals to locate to Ireland, the reality is that they are attracted to the cities and larger towns. In 2016, almost half of the IDA jobs created were located in the Dublin and Eastern region, with just over 10,000 and 4,000 jobs created in the Border and Midlands regions[1]. More focus must be placed on micro and SME's and how they are and can contribute to rural development and be supported more to create employment in these areas.

Micro enterprises accounted for 92.2% of all enterprises in 2015 (CSO, 2017) and this figure is reflected across the 28 EU countries. Research for MICRO project found that under 23 million SME's generated €3.9 trillion in value added and employed 90 million people across the EU in 2015. This accounted for 67% of EU28 employment[2].

Overall IRL feel the financial system, particularly the pillar banks, have yet to fully recover from the financial crisis. Our focus would be on the lack of choice for indigenous SMEs when it comes to their banking requirements. Funding is available for SMEs but, as pointed out repeatedly by the Credit Review Office, what is not available is any financial institution offering on-going supportive relationship banking. Micro and SME's are therefore unable to reach their full potential. They are also vulnerable to the possible adverse effects that economic shocks could have on the Irish economy e.g. Brexit or another financial crisis.

---

[1] IDA (2017) Annual Report 2016 https://www.idaireland.com/IDAIreland/media/docs/About-IDA/IDA_Annual_Report_2016.pdf

[2] MICRO (2017) "*Rural Micro and Craft Entrepreneurs: Sustaining Rural Europe A MICRO Project Composite Report*" http://www.microsmetraining.eu/index.php

Recommendations

1. **What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?**

As mentioned above, Micro enterprises and SMEs create the majority of employment particularly in the rural economy, but are still finding it difficult to access sufficient credit to expand their businesses. As witnessed after the financial crash, many SME's did not survive and many are still trying to recover. This proved that credit supply by pillar banks is not sustainable during troughs in the economy.

As a result of the closure of small businesses in rural areas following the crisis, IRL began to explore alternative, more sustainable banking models to the main stream financial institutes that were in difficulty and were not lending to SME's.

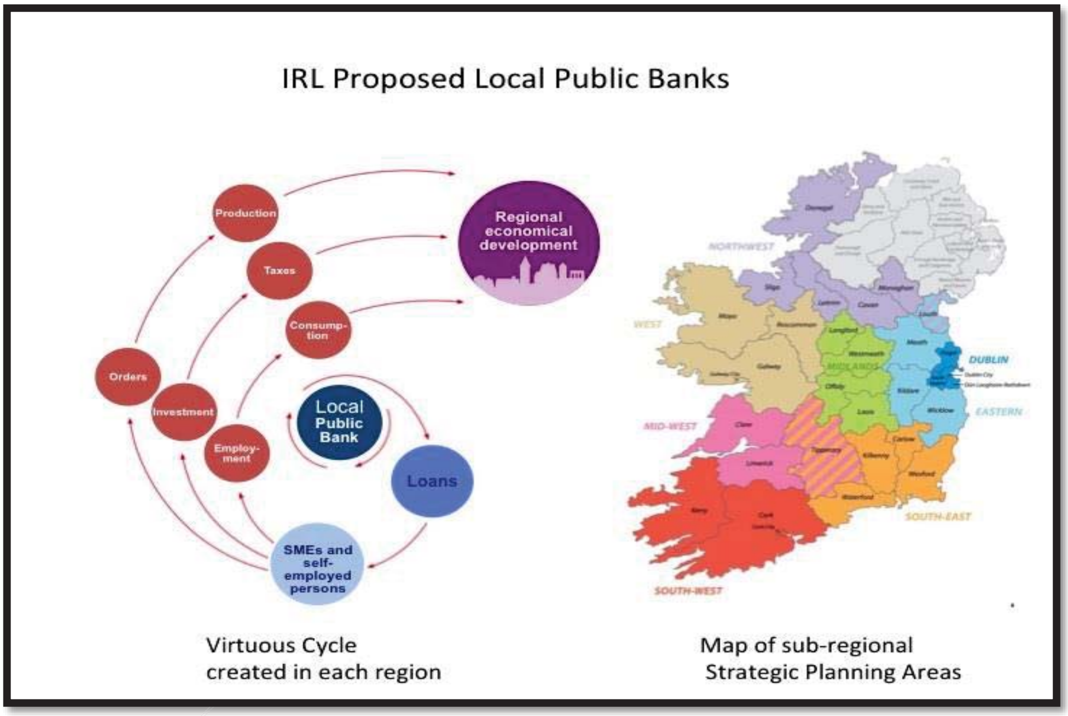
We support the idea of small regionally based banks, based on the German Sparkassen model and have been working with SBFIC over the past two years on how such a model of banking could work in Ireland and be a sustainable credit source for Micro and SME's.

We welcome that the Government are in the process of publishing a report on Local Public Banking and investigation the German Sparkassen model and we recommend the Central Bank would be responsive to efforts to set up such a model in Ireland. The creation of such a model we believe would increase the overall stability of the Irish financial system as it has been shown to do in the German economy as well as contributing positively to a more inclusive banking environment.

This model of banking covers the 26 counties nationally and works on a regional basis following key principles of the "Framework for the Development of Regional Enterprise Strategies." The model is not based on a theory but on an existing regional working banking model bringing prosperity by creating a virtuous cycle of money circulating in the local economy. The concept proposal makes provision for inclusion of post offices and credit unions as part of invigorating local communities particularly in the area of SME's and the Agri sectors that allow commerce to thrive.

- The IRL proposal suggests a nationwide network of 8 to 10 Local Public Banks which are managed independently but with an identical business model working under identical management principles. Initially 2 or 4 pilot banks are envisaged with a rollout of the entire network developed over the next 5 years.
- In addition a centralised service unit will provide internal services, including risk management and internal audit and will house a self-supervision unit for the new public banking system.

- The new Local Public Banks will follow a specific business model that is different from traditional commercial banking. The new public banks will have to be economically viable but they will not pursue profit maximisation. At the same time they will be enabled to fulfil a public mandate because they will not be under pressure to make dividend payments.
- Earnings will partly be retained to strengthen their capital base and partly distributed to social projects, also surpluses will be partly distributed to social funds to benefit the local community.



2. **What should the Central Bank focus on in terms of the regulation of firms and markets?**

During the financial crisis and thereafter, many SME's have turned to alternative sources of lending to access capital as a result of the pillar banks not lending or reducing the amount they would lend to Micro & SME's. These peer to peer or crowdfunding lenders are not currently regulated making SME's and Micro enterprises extremely vulnerable but can also hold hidden risks for those investing in the company if a company goes bankrupt. One recent example of what can go wrong was the "Sugru" experience where investors lost up to 90% of their money when the company was sold[3].

[3] Journal.ie *'It's been difficult - professionally and personally'*: Sugru's Irish founder on a 'disappointing' sale http://jrnl.ie/4048927

We welcome the outcome of the Department of Finance's Feedback Paper on the Regulation of Crowdfunding in Ireland[4] and note that the European Commission is currently looking at EU wide regulation of the sector[5]. We recommend Ireland will be quick to implement any regulatory changes on foot of this.

Regulation of Credit Unions:
Credit Unions play an important role in the community with many now introducing extra services such as bill paying facilities. IRL recommend that the central role of Credit Unions be preserved i.e. providing small personal loans to consumers. It is important to ensure a vibrant thriving Credit Union movement is maintained and developed on but must be careful not to over-regulate. IRL understands the role of the Central Bank is to ensure the sector is safer and stronger and that consumers are protected. However, we also believe the Credit Unions do have the potential to provide communities with more services that may previously have been provided by the commercial banks but are no longer available at local level. We recognise that this entails that the overall professional standard of the Credit Union personnel must be increased.

3. **What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?**

Consumer protection must be an important element in the Central Bank's Strategic Plan. With more banking services going online and a push towards a cashless society, people continue to be vulnerable to hackers and skimming of cards. Older people and other vulnerable groups are more at risk of being targeted.

With the closure of many bank branches especially in rural areas, consumers are feeling lost that the face to face element is gone; again this is particularly true for older people and the transition to online services is more difficult to grasp for many of them.

IRL are concerned over the continuing popularity of PCPs in relation to car sales. At the point of sale the consumer is not being sold the product by a regulated entity (usually a car salesman doing the sale). No affordability testing, not always clear that it is in effect a rental agreement and the implications of that not necessarily made clear to consumer. Almost all new car advertisement now done on basis of monthly payments not overall price/cost of vehicle.

People living in rural areas are dependent on a car. Majority of people now drive diesel cars because they are more economical to run. Many of new cars bought under PCP by people in rural areas are diesel cars. With car manufacturers ending the production of diesel cars in the coming years, there is a risk people will not get the value of the car

[4] https://www.finance.gov.ie/wp-content/uploads/2018/01/180123-Crowdfunding-Feedback-Statement.pdf
[5] https://ec.europa.eu/info/publications/180308-proposal-crowdfunding_en

when they enter into a new contract or will have to pay more when current contract is up.

Concern at the lack of consumer protection as mentioned in 2 above with regard to crowd-funding websites. In the current low interest environment these can look attractive places to put savings to achieve higher returns than are available with commercial banks.

Irish Rural Link the Organisation

Irish Rural Link (IRL), formed in 1991, is a national network of organisations and individuals campaigning for sustainable rural development in Ireland and Europe. IRL, a non-profit organisation, has grown significantly since its inception and now directly represents over 600 community groups with a combined membership of 25,000.

The network provides a structure through which rural groups and individuals, representing disadvantaged rural communities, can articulate their common needs and priorities, share their experiences and present their case to policy-makers at local, national and European Level.

Irish Rural Link is the only group represented at the national social partnership talks solely representing rural communities' interests.

'Our vision is of vibrant, inclusive and sustainable rural communities that contribute to an equitable and just society'

Irish Rural Link's aims are:

- To articulate and facilitate the voices of rural communities in local, regional, national and European policy arenas, especially those experiencing poverty, social exclusion and the challenge of change in the 21st century.
- To promote local and community development in rural communities in order to strengthen and build the capacity of rural community groups to act as primary movers through practical assistance and advice.
- To research, critique and disseminate policies relating to rural communities including issues such as sustainability, social exclusion, equality and poverty
- To facilitate cross-border networking between rural communities

'Our mission is to influence and inform local, regional, national and European development policies and programmes in favour of rural communities especially those who are marginalised as a result of poverty and social exclusion in rural areas.'

[redacted]

Protection of Consumer of Financial Services
As the regulator of financial service providers and markets.
Regulation of Financial Institutions and Enforcement Actions.

The Ombudsman, Pensions Authority, Garda, Garda Síochána Ombudsman Commission, Financial Services Ombudsman, courts and Revenue Commissioners question the validity of law Pension Act 1990, Trustee Act 1893 and other acts, the laws of Ireland are not valid. The courts would not give judgement or comment on the matter.

The pension company has stated the Employer was always Trustee.
The pension company has stated the Employer is Registered Administrator since June 2009.
Garda investigation began in October 2009.

The Pensions Authority has stated the Employer is Trustee and Registered Administrator.
Pensions Authority has stated Trustee can transfer the pension however the employer cannot receive pension so transfer is impossible.

Terms state employer is Trustee and Administrator. Terms state employer can move pension and employer can transfer pension.

Central Bank of Ireland has to date made no comment on the matter.

Nothing has changed since the financial crash the Irish public sector believes financial issues are frivolous.

The Irish public sector believes the theft of pension funds is not important.

Enforcement actions are necessary in strategy plan.

[redacted]

This submission focuses solely on insurance where there is currently a cost crisis in Ireland. Priority should be assigned by CB to motor Third Party Liability as it is the only compulsory class under EU and National law. Usual market forces do not operate effectively when purchase is compulsory. It is necessary to unbundle optional cover from the compulsory element to increase market competition and also to ensure that policyholders do not lose their entire No Claims Discount for a small 'own damage' claim as the 5th Directive entitles policyholders to a statement of their Third Party Liability accident free experience.

CB should take over responsibility for Motor Insurance Directives from Department of Transport. Ireland has been found liable in a number of cases before the ECJ for Francovich damages because of non compliance and insurance meant to be expertise of CB. This has pricing and prudential implications.

Amendments are required to Code of Conduct from two perspectives. The current text at chapter 7 does not correctly reflect the redress entitlements of injured Third Parties per Directives as interpreted by ECJ in a range of cases. This is causing excessive and avoidable litigation costs in motor claims. CB need to add something in the Code to protect premium paying policyholders other than merely telling them how much a TP claimant has been paid after a case is settled.

Rather than forcing the current Working Group to rely solely on data analyses provided by II, CB should provide all the longitudinal data which it has on gross accounts from former Form 8's to include provision differential analysis which will demonstrate how estimates of claims costs incurred have run off over the longer term as against premium income since 2005, plus all the other drilled down data available to CB.

Gender and age discrimination in motor premium rates should be reviewed by CB relative to the cost profile of each cohort with any non-compliance pursued with the assistance of the Equality Authority who have the power to impose sanctions in addition to the sanctions available to CB.

The reinstatement of the annual Blue Book is within statutory power of CB who have the right to require these statistics from insurers in respect of Irish policyholders. There is a priority to provide transparency on income and outlay of insurers both for public trust in regulation and to underpin sound public policy decisions.

In its 2005 Report The Competition Authority highlighted a number of its concerns about the existing MIB structure that operates as a barrier to market entry. CB should take over responsibility for calculating the correct annual MIB levy payable by a motor insurer operating here to ensure there is no selection against new entrants. This also comes within the CB responsibility for pricing and prudential provisioning.

CB should become the gatekeeper of the Penalty Points database run by Department of Transport to which that department allows cost free access only to Members of II. This should be freely available to all underwriters operating in Ireland without the requirement to become members of II as that attendant cost and delay represent barriers to entry contrary to EU law.

All other databases operated by II should also be taken away from their gatekeeper role so that online access is freely available to all market players, whether II members or not, and is open to potential new entrants. CB has responsibility to support a single EU market in Financial Services.

CB should correct misleading statements by insurers, on matters such as the trends in Court awards and on claims frequency volumes, which can falsely influence consumer expectations and could also facilitate unlawful price signaling.

Ultimately, Ireland needs a separate Financial Conduct Authority, as in the UK, as opposed to solely prudential supervision of insurers but that issue seems to go beyond the scope of this consultation and will no doubt be pursued in another forum.

Regards
[redacted]

The Regulator,
Central Bank of Ireland.

[redacted]

Communications Division
RECEIVED
12 JUN 2018

Setting the context.

If a person reads "Thinking fast and slow" by Daniel Kahnemann that person will discover how it is possible, using appropriate words in the correct order and context, to get a pre-determined answer or response to a question or series of questions.

I state this because I wonder why you chose three specific questions and if these questions are structured to give the right answers.

For much of my life I have wondered why states fail so disastrously again and again throughout recorded history. Then I became aware of and read "Why nations fail", a brilliantly reasoned book of outstanding scholarship.

Could it be that banks and the global financial systems fail for the same reasons; non-inclusivity in the broadest societal sense and an extractive "modus operandi"? Extractive in the sense of sucking the life-blood (life-force?) out of a social economy.

At this juncture you might like to refresh your mind by reviewing the extractive, exclusive systems starting with colonisations in the 1400's and the beneficial effects these had on societies such as India and China. You might like to consider banking empires such as the Medici as well.

According to the authors of "Why Nations Fail" Great Britain was the only country in the then known world in which the Industrial Revolution could have happened because despite the amoral, corrupt, obscene nature of the governmental structures there was sufficient inclusivity and non-extractive fiscal policy to make it happen. (Justification of this statement requires a long, detailed analysis of the history of Great Britain which is inappropriate here).

The collapse of the worldwide fiscal system in Sept. 2008 was triggered by a cynical, malicious, obscene manipulation of the LIBOR by the world's banking systems. The Irish banking system may have had a miniscule part to play in this greed-engineered fiscal catastrophe. We did however have our own depraved "pass the 5-billion or 7.2-billion parcel" game and many other such games, probably, of which I am not aware. (There is a quotation of Henry David Thoreau which goes something like "Every individual has the right to march to the beat of his own Drum.) You might like to review Thoreau's essay "On Wealth".

It is interesting that you asked "the great unwashed" for its input to this strategic plan. The great unwashed will not have seen this invitation and will not be sufficiently interested to deal with such a topic. Isolated fact. Recently I read it stated that say 35 of the leading companies in Ireland derived all the directors from a pool of about 50 people. Approx figures. How is that for an example of moral and intellectual incest?

The three questions posed on your website are huge questions. To expect any reasoned response to questions in seven to ten days is ridiculous. Thomas Pickettys book on "Capital" required 20 years. Kahnemans book represents perhaps 30-40 years work. I have just started to read Pikettys book, timing purely accidental. I will get back to you when I have read it.

(1) Interfere in the "free" market read "manipulated market" to control land availability and cost. Prevent building on flood planes → wrong places. Cap the profit on houses.
(b) Put money into rainy-day fund and do not raid it

(2) Revise corporate law. Make it viciously punitive e.g. Bernie Madoff? 200 years. If markets cannot self-regulate to ensure a fair distribution of wealth and earnings (I need to read more of Kuznets work) over a reasonable time period, the institution responsible for the financial well-being of a society must make it happen. How?

This is ridiculous! These are huge moral, philosophical socioeconomic questions. Fellows such as Adam Smith, Jeremy Bentham, Wilberforce etc. (choose your own) have been debating these issues for centuries! What can any person do in a couple of pages

So I'm a crazy guy. So I'm tilting at windmills. I have always tilted at windmills.

I wanted to contribute to the ~~greatest~~ greater good of the greater number so I tried to do this but then I realised the enormity involved in doing this seriously.

"We are all in the gutter but some of us are looking at the stars" Oscar Wilde.

Please acknowledge receipt of this communication to show that I have not completely wasted my time.

[redacted]

The P

Social Finance Foundation
CELEBRATING A DECADE

13 Richview Office Park, Clonskeagh Road, Dublin 14. D14 Y867
tel: 01 2602008 email: info@sff.ie web www.sff.ie

The Social Finance Foundation is working with the Central Bank of Ireland and other stakeholders on a project Personal Microcredit (PMC) to provide access to affordable credit to those most vulnerable in Irish society. Providing access to affordable credit is part of the broader agenda of financial exclusion in Ireland. PMC is in the Program for Government, under the auspices of the Minister and Department of Employment Affairs and Social Protection.

PMC has regulatory and consumer protection implications.

The Registry of Credit Unions has worked very closely with the project to date, ensuring that PMC proposals are consistent with prudential guidelines for credit unions. This support has been very important and has contributed significantly to the availability of PMC loans in over 260 credit union sites. RCU has expressed its support for the next stage of PMC. Endorsing this support by its inclusion in the CBI Strategy would be appropriate and helpful.

The Consumer Protection Division has jointly and generously funded with the Social Finance Foundation two research exercises in recent years. The first was in respect of PMC-type schemes in other countries and recommending one for Ireland. The second was in respect of interest rate restrictions on credit for low-income borrowers in the EU and the appropriateness of these in Ireland. These were important exercises and have been, and will be, influential in addressing the issue of affordable credit for all. In looking at consumer protection, the two areas the Foundation would view as most critical are a) the existence of extremely high interest rates in absolute terms for moneylending organisations, and b) the enforcement of codes of practice for these organisations. The strategy input document states *"As the regulator of financial service providers and markets in Ireland, the Central Bank has to ensure that the best interests of consumers are protected"*. In light of this, the following questions should be considered in strategy deliberations by CBI on consumer protection:

1. Which organisation has primary responsibility for tackling financial exclusion in Ireland?
2. If not the CBI, then what role, if any, does the CBI play?
3. What data needs to be gathered so that the level and nature of financial exclusion in Ireland is fully understood?
4. Which organisation has primary responsibility for ensuring access to affordable credit to those most vulnerable in Irish society?
5. If not the CBI, then what role, if any, does the CBI play? The Financial Conduct Authority appear to carry out this role in the U.K.
6. Should the CBI take a more pro-active role in addressing the issue of massively high interest rates charged by licensed money lending organisations?
7. Are there sufficient resources and mechanisms in place to ensure enforcement of codes of practice on licensed money lending organisations?

Central Bank of Ireland's Strategic Plan 2019-2021

Social Justice Ireland

June 2018

Contents

Introduction

Social Justice Ireland is an independent think tank and justice advocacy organisation that advances the lives of people and communities through providing independent social analysis and effective policy development to create a sustainable future for every member of society and for societies as a whole. We welcome the opportunity to respond to the Central Bank of Ireland's call for submissions in respect of the development of its Strategic Plan for 2019-2021.

This submission follows the format of the submission questions contained in the consultation document. *Social Justice Ireland* is available to the Central Bank to expand or elaborate on any area within.

Submission Questions

1. What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?

Ireland is emerging from a financial crisis, brought about by systemic failures in the regulatory and financial sectors. This crisis resulted in unprecedented levels of poverty and deprivation, unemployment and personal debt arrears. Record Government debt levels, and the implementation of the European System of Accounts at European level and the Stability and Growth Pact in Ireland constricted Ireland's capacity to develop infrastructure projects and provide essential services such as housing, healthcare, education and broadband. Many households and consumers generally who did not benefit from the boom, were disproportionately adversely affected by the measures taken during the bust. It is important, at a time when the Central Bank is reporting higher levels of household wealth now than before the crash, that a measured approach is taken to regulation in the financial sector which balances the necessity of prudence with the practicalities of a functioning system which caters for all income deciles. Those who cannot access mainstream credit because of excessively-stringent regulation will be driven to high-cost alternatives.

At a macro level, globalisation, while creating investment opportunities on an international scale, risks destabilising the domestic economy at a time when we need to secure investment in essential infrastructure. In a speech delivered by Ms Sirkka Hämäläinen, Member of the Executive Board of the European Central Bank, at the Symposium on Risk Management in the Global Economy: Measurement, Management and Macroeconomic Implications, Chicago, in 2000, she argued against domestic monetary policies being co-ordinated at international level and instead called for ensuring domestic stability.

The most recent Brexit Task Force report published by the Central Bank indicates that Brexit effects for the banking sector have been benign with 'no material impact reported on funding/liquidity or credit quality'[1]. However, while this may be the case, there will be an obvious impact for those whose livelihoods are largely dependent on trade with our nearest neighbour, and the challenge for the Central Bank and those institutions under its remit to balance prudential regulation with the flexibility required to sustain enterprises within this economy.

[1] https://centralbank.ie/docs/default-source/publications/brexit-working-group-reports/brexit-task-force-report-march-2018.pdf?sfvrsn=4

2. What should the Central Bank focus on in terms of the regulation of firms and markets?

Regulation in Ireland has been lacking for decades, primarily because of this lack of independence, where 'regulators' were used as an instrument of the State to effect Government policies at the time, rather than to regulate their respective sectors and ensure accountability from participant entities. The area most associated with 'light touch' regulatory policy in Ireland is the financial sector, with thousands of families continuing to feel the effects of the economic crash, but this issue is not confined to that sector alone.

Reactionary regulation, introduced after a crisis, can also serve to further exclude those who it should serve to protect, by placing barriers to goods and services in the way of those without the resources to engage with increasing bureaucracy. *Social Justice Ireland* believes that regulation has a place in protecting the rights of vulnerable people by addressing the balance of power when engaging with corporations, but not be so involved as to create a barrier rather than a safety net. Financial regulation, particularly in the mortgage arena, plays a key part in our economy – the availability of credit impacts on housing price inflation, which in turn impacts our ability to attract investment and build industry. As stated by Deputy Governor Ed Sibley in his remarks to the Institute of Banking[2], "A functioning market should deliver a sufficient supply of appropriately priced mortgages to support house prices that are in line with the fundamentals of the economy, without driving credit fuelled house price bubbles".

Social Justice Ireland believes that regulation should have consumer protection at its centre rather than the aim of increasing market participation. Before engaging in any new regulatory processes, the Central Bank should consider not only competitiveness from an economic standpoint, but also the impact of regulatory policies on the consumer and small and medium enterprises.

3. What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?

Mortgage Arrears - Non-Performing Loans

Late stage mortgage arrears remain a problem in Ireland. In Q4 2017 the number of private dwelling house (PDH) loans in arrears was 70,488, a reduction of just over 50 per cent from the peak of 142,892 in Q2 2013. However, while the number of mortgages in arrears has almost halved, the monetary value of those arrears **increased by 36.5 per cent**, from just over €2 billion to €2.76 billion between Q2 2013 and Q3 2017, before reducing slightly to €2.5 billion. Research published in April by the Central Bank indicated that 44 per cent of mortgages in late stage mortgage arrears, some 13,000 households, are now more than five years in arrears. This equates to approximately 35,000 people[3]. It is likely that possession proceedings will have issued in respect of most of these cases; however there is no defined point at which both borrower and lender are assured of a resolution.

Non-Performing Loans (NPLs) have a significant impact on Ireland's economic stability, creating uncertainty in the housing market and difficulties for those households living under threat of repossession or eviction, or the possibility of having their mortgage sold to an unregulated fund. In her speech at the Peterson Institute for International Economics, Deputy Governor Sharon Donnery

---

[2] https://www.centralbank.ie/news/article/irish-mortgage-market-2018-and-beyond-ed-sibley

[3] Based on Census 2016 household formation data

spoke of how NPLs can constrain both credit growth and economic activity[4]. According to a letter from the Central Bank to Deputy Michael McGrath[5] in March 2018, NPLs can affect the credit supply chain by raising the funding costs of banks and calling into question their underlying capital positions.

In its Country Specific Recommendations for Ireland, published in May 2018, the European Commission included a recommendation to 'promote faster and durable reductions in long-term arrears, building on initiatives for vulnerable households and encouraging write-offs of non-recoverable processes'[6]. The issue of non-performing loans (NPLs) has received a considerable amount of media and political attention in recent months with the announcement by two pillar banks of their intention to sell more than 20,000 mortgages to unregulated 'vulture' funds in order to reduce the number of NPLs in line with EU targets. These sales were opposed by numerous groups on the basis that families in late stage mortgage arrears, or who are tenants of landlords in late stage mortgage arrears, will be evicted by funds looking for a short-term gain on their original investment. While some protections are afforded to these households pursuant to the contractual obligations of the original lenders and the provisions of the Consumer Protection (Regulation of Credit Servicing Firms) Act 2015, these policy instruments do not go far enough in terms of consumer protection and a more comprehensive consumer protection strategy is required under the auspices of the Central Bank, in partnership with Government to address the two significant issues, namely:

i) funds that do not engage credit servicing firms regulated in Ireland to manage their loan portfolios will not be compelled to engage with any consumer protection processes; and
ii) the current Code of Conduct on Mortgage Arrears is not fit for purpose, being as it is a set of guidelines to be complied with at the discretion of individual lenders. This is particularly evident in provision 39, the 'Resolution' provision, which provides that lenders must 'explore all of the options for alternative repayment arrangements **offered by that lender**' (emphasis added). Accordingly, if the fund, via the credit servicing firm, offers no more than lump sum settlements, out of reach of most borrowers in late stage mortgage arrears who cannot access alternative sources of affordable finance, they have complied with that provision of the Code.

Pressure from European regulators to reduce the rate of NPLs by 2021 by over half its current rate has been cited by one lender who proposed selling over 18,000 loans, 14,000 of which were home loans. While the European Central Bank has stated that this was not the only way NPLs could be reduced, it is the quickest way to reduce a lender's NPL ratio rather than working with individual borrowers, in voluntary or statutory processes, to come to an affordable, sustainable arrangement.

Social Justice Ireland believes that the Central Bank should incentivise lenders who reduce their NPLs in a sustainable way that is not only good for the balance sheet, but benefits society as a whole, making use of write-down provisions to 'right-size' loans in circumstances where a sustainable payment by the borrower resulting in a higher return for the lender, albeit within a longer period.

---

[4] https://centralbank.ie/news/article/address-by-deputy-governor-sharon-donnery-at-the-peterson-institute-for-international-economics

[5] https://www.centralbank.ie/docs/default-source/publications/correspondence/oireachtas-correspondence/correspondence-with-deputy-michael-mcgrath-re-non-performing-loans-published-12-march-2018.pdf?sfvrsn=4

[6] https://ec.europa.eu/info/sites/info/files/file_import/2018-european-semester-country-specific-recommendation-commission-recommendation-ireland-en.pdf

Mortgage Arrears - Enhance the Code of Conduct on Mortgage Arrears

The latest iteration of the Code of Conduct on Mortgage Arrears (CCMA) was published in 2013. This version stripped out many of the consumer protections contained in its predecessor, including a reduction in the protection of tracker mortgages, a narrowing of the definition of "not co-operating" and a reduction in the moratorium on legal action to 8 months from the date the arrears first arose or 2 months from the date the borrower was deemed by the lender to be "not co-operating". Provision 36 mentioned earlier in this submission, which allows for lenders to choose which forbearance measures to offer, limits the ability of mortgage holders in distress to address their mortgage arrears issues in line with their resources.

A review of the CCMA is urgently required, which extends the range of consumer protections, compels lenders to offer a suite of long-term, sustainable solutions, and applies not only to main lenders, but explicitly includes their agents, credit servicing firms and funds, which while owning only 2 per cent of mortgages, account for 12 per cent of mortgages in arrears over 90 days and 15 per cent of those in arrears more than 520 days. Placing the CCMA on a statutory footing would also greatly enhance the protections for borrowers facing repossession proceedings as it would act as a 'pre-legal protocol, ensuring all mortgage lenders comply with each stage of the Mortgage Arrears Resolution Process, that the definition of 'not co-operating' was universally applied in a standardised way, and ensuring that repossession proceedings are only brought as a last resort, which would also reduce the length of court proceedings and give assurance to lenders that they could effectively enforce their security in genuine 'won't pay' cases[7]. In addition, *Social Justice Ireland* urges the Central Bank to introduce a licensing system for currently unregulated funds purchasing mortgage loan books to develop a domestic regulatory regime and safeguard consumer protection.

Financial Services and Unsecured Debt – Enhancing the Consumer Protection Code

Improvements made to the Consumer Protection Code (CPC), and in particular the expansion of the definition of 'vulnerable consumer', however in recognition of the psycho-social causes and effects of financial difficulties, *Social Justice Ireland* proposes to the Central Bank to review the CPC to include financial vulnerability within this definition.

While the CPC regulates the provision of information to consumers by financial institutions, it is clear from research conducted by the Central Bank that there is a lack of understanding in areas such as the payment of commission[8] and certain types of insurance[9].

In line with our proposals above that the CCMA be placed on a statutory footing, we further propose that the provisions of the CPC be included in a statutory instrument, with sanctions imposed for non-compliance and an adequate right of recourse to the courts for borrowers who can prove damage as a result of negligent lending practices. This is particularly important in the context of arrears on non-mortgage consumer debt, which places additional strain on households struggling to provide for essentials such as food and utilities and accommodation costs. In this regard, *Social Justice Ireland* proposes the adoption of the principles contained in the BPFI / MABS Operational Protocol[10] into any

[7] In 2017, the Central Bank published research which suggested that 9,680 mortgages associated with over 8,000 unique properties were in the deepest state of arrears and had no engagement with their lender. https://www.centralbank.ie/docs/default-source/publications/research-technical-papers/10rt17---resolving-a-non-performing-loan-crisis-the-ongoing-case-of-the-irish-mortgage-market.pdf

[8] https://centralbank.ie/docs/default-source/publications/consumer-protection-research/consumer-understanding-of-commission-payments---november-2017.pdf?sfvrsn=4

[9] https://centralbank.ie/docs/default-source/publications/consumer-protection-research/consumer-experience-of-purchasing-gadget-insurance---december-2017.pdf?sfvrsn=6

[10] https://www.mabs.ie/downloads/news_press/BPFI_MABS_protocol_2014.pdf

revision of the CPC to ensure the protection of an adequate standard of living for those experiencing repayment difficulties in respect of unsecured debts.

Financial Exclusion

Gloukoviezoff defines the process of financial exclusion as "the process whereby people face such financial difficulties of access or use that they cannot lead a normal life in the society to which they belong"[11]. In their 2011 study, the ESRI[12] found that Ireland had the highest instance of banking exclusion among the EU15 States and that those who are economically and socially disadvantaged, and those on low incomes, are at most risk of financial exclusion.

Access to financial services, particularly in today's increasingly cashless society, is key to inclusion in society generally. Kempson and Collard[13] found that those on low incomes are often restricted from accessing mainstream credit, turning instead to subprime and high-cost credit alternatives. The report found that there was a significantly higher instance of over-indebtedness among households with gross annual incomes of under £10,000 (23 per cent) than among households of more than £35,000 (5 per cent). The result of this financial exclusion[14] is that over-indebted and low-income consumers are excluded from banking services on the basis of charges and conditions attaching; affordable credit on the basis of conditions attaching and difficulty of the application process; and insurance costs, as low-income consumers are more likely to live in disadvantaged areas, incurring a higher premium.

In 2015, 6.3 per cent of households (107,244) did not have a current account, 8.2 per cent of households (139,588) did not have an ATM card and 45.5 per cent of households (774,541) did not have a credit card[15]. With financial services becoming increasingly digitised and a move towards online and automated telephone banking, cash has become an outdated method of payment. Many essential services now require consumers to set up direct debits, or offer discounted rates to those who do, amounting to a 'poverty tax' for the financially excluded, paying premium rates and surcharges for use of other payment mechanisms for essential utilities[16].

In 2016, the EU Payment Accounts Directive was transcribed into Irish law, requiring banks to offer a basic payment account to financially excluded consumers who met basic criteria. While, in principle, this has happened and banks are ostensibly offering products in line with the requirements of the directive, in practice, internal lender policies on what constitutes identification documentation has meant that those without 'standard' identification (for example, a passport or driving licence, utility bills, Revenue statement) are unable to access this account contrary to the Guidelines on the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010 under which those policies are purportedly enacted. These Guidelines state:

> People who cannot reasonably be expected to produce conventional evidence should not be unreasonably denied access to Services – where people are not in a position to provide 'standard documentation' banks should refer to the list of documents and information

---

[11] Gloukoviezoff, G, (2011) Understanding and Combating Financial Exclusion in Ireland: A European Perspective. What could Ireland learn from Belgium, France and the United Kingdom? Dublin: The Policy Institute, TCD.

[12] Russell, H., Maître, B. and Donnelly, N. (2011) Financial Exclusion and Over-indebtedness in Irish Households. Dublin: ESRI.

[13] Kempson, E. and Collard, S. (2012) Developing a vision for financial inclusion. Bristol: University of Bristol

[14] Corr, C. (2006) Financial Exclusion in Ireland: An exploratory study and policy review. Dublin: Combat Poverty Agency

[15] Central Statistics Office,

[16] Stamp,S., McMahon, A. and McLoughlin C: Left Behind in the Cold? Fuel Poverty, Money Management & Financial Difficulty Among Dublin 10 & 20 MABS Clients 2013 and 2017

requirements in AML Appendix 2, and not cite the requirements of the Act as an excuse for not providing services without giving proper consideration to the evidence available.

Financial exclusion is not just about access to bank accounts, but access to reasonable, affordable credit that takes account of the financial position of the consumer while cognisant of the need for people on low incomes to meet contingency expenditures without resorting to high cost credit or 'pay day loans'. The 'It Makes Sense' loan scheme introduced in 2016 and operated through participating credit unions is therefore a welcome addition to the financial products market. This allows a member of a participating credit union to access a moderate loan, of between €100 and €2,000, with payments deducted at source from their social welfare payments via the Household Budget Scheme. Not all credit unions provide this loan, with some citing regulatory and macroprudential lending issues and others providing a similar product to existing customers. The It Makes Sense loan is an inter-Departmental initiative and, as such, should be subject to monitoring and review, focused on consumer protection and financial inclusion. We suggest that the Central Bank, in its role as regulator of credit unions and within its consumer protection remit, would be best place to conduct this monitoring and review function.

There is a dearth of up to date data on the extent of financial exclusion in Ireland. For those experiencing it, it means more than lack of an ATM card, it can mean exclusion from essential services such as utilities and a 'poverty tax' for use of alternative methods of payment. Cashless transactions are becoming the norm and those who cannot engage are and will continue to be left behind. In light of the severity of its impact, *Social Justice Ireland* calls on the Central Bank to track levels of financial exclusion and to build and monitor policies and practices aimed at eliminating it in its entirety by 2020.

Financial Inclusion - Expanding the Central Credit Register

In 2017 the Central Bank began collecting personal and financial data for inclusion in its Central Credit Register (CCR). The implementation of this register, intended to replace the Irish Credit Bureau register, was phased between 2017-2019 to collect data on personal loans from mainstream lenders, business loans and moneylender loans. The parameters for data gathering are such that those who access small amounts (less than €500) will not be recorded. It is therefore possible that credit providers can make a series of smaller loans which would not be registered.

Another anomaly within the CCR is the lack of any reporting in respect of insolvency arrangements. While the Insolvency Service of Ireland (ISI) holds registers of all protective certificates and insolvency arrangements in place, this would provide ease for creditors in making determinations on credit applications.

Finally, *Social Justice Ireland* proposes the expansion of the CCR to include all household debt, in line with practice in the UK, which records both a positive and negative payment history, including utility payments, rents to local authorities and non-bank debts, would allow consumers to build a credit history, enabling them to move from high-cost credit to mainstream and low-cost alternatives, while at the same time providing all the detail needed by prospective lenders to make informed underwriting decisions.

Conclusion and Recommendations

Social Justice Ireland urges the Central Bank to balance fiscal probity with consumer protection in the context of its next strategic plan. To this end we make a series of recommendations:

1. Balance prudential regulation with the flexibility required to sustain enterprises within this economy in the context of Brexit.

2. Keep consumer protection at the core of new regulation. Before engaging in any new regulatory processes, the Central Bank should consider not only competitiveness from an economic standpoint, but also the impact of regulatory policies on the consumer and small and medium enterprises.
3. Provide incentives to lenders who reduce their NPLs in a sustainable way that is not only good for the balance sheet, but benefits society as a whole, making use of write-down provisions to 'right-size' loans in circumstances where a sustainable payment by the borrower resulting in a higher return for the lender, albeit within a longer period.
4. Review the CCMA to increase the consumer protections to at least 2011 levels and place it on a statutory footing.
5. Introduce a licensing system for currently unregulated funds purchasing mortgage loan books to develop a domestic regulatory regime and safeguard consumer protection.
6. Review the CPC to include financial vulnerability within the definition of 'vulnerable consumer'.
7. Place the CPC on a statutory footing, with sanctions imposed for non-compliance and an adequate right of recourse to the courts for borrowers who can prove damage as a result of negligent lending practices.
8. Adopt the principles contained in the BPFI / MABS Operational Protocol into any revision of the CPC to ensure the protection of an adequate standard of living for those experiencing repayment difficulties in respect of unsecured debts.
9. Track levels of financial exclusion and build and monitor policies and practices aimed at eliminating it in its entirety by 2020.
10. Expand the Central Credit Register to include all household debt, in line with practice in the UK, which records both a positive and negative payment history; including utility payments, rents to local authorities and non-bank debts, would allow consumers to build a credit history, enabling them to move from high-cost credit to mainstream and low-cost alternatives, while at the same time providing all the detail needed by prospective lenders to make informed underwriting decisions.

Social Justice Ireland is an independent think-tank and justice advocacy organisation of individuals and groups throughout Ireland who are committed to working to build a just society where human rights are respected, human dignity is protected, human development is facilitated and the environment is respected and protected.

Social Justice Ireland,
Arena House,
Arena Road,
Sandyford,
Dublin 18
Phone: 01 213 0724
Email: secretary@socialjustice.ie
Charity Number: CHY 19486
Registered Charity Number: 20076481
www.socialjustice.ie

the wheel Stronger Charities. Stronger Communities.
48 Fleet Street, Dublin 2
D02 T883
T: +353 (0) 1 454 8727
E: info@wheel.ie
www.wheel.ie

Submission by The Wheel to the Central Bank Strategic Plan 2019 – 2021

June 2018

Contact: Ivan Cooper, Director of Public Policy

The Wheel's input is structured around the three questions posed in the consultation, and all of the recommendations are numbers sequentially across the three main questions.

1. What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?

There is a gap in the Irish micro- and SME market for community based lending organisations, which should be addressed to facilitate the needs of social enterprise and business in communities. In that regard we support the proposal and work of Irish Rural Link in seeking a dialogue about what the most appropriate model for Ireland might be. We welcome that the Government are in the process of publishing a report on Local Public Banking and investigating the German Sparkassen model in that regard.

Recommendations

1. We recommend the Central Bank would be responsive to efforts to set up community-based lending organisations in Ireland, such as the process proposed by Irish Rural Link. We believe that this would increase the overall stability of the Irish financial system as well as contribute positively to a more inclusive banking environment.

2. What should the Central Bank focus on in terms of the regulation of firms and markets?

Regulation of insurance market

The current system and approach to insurance in Ireland is dysfunctional to the extent that what is supposed to be a service industry that facilitates the operation of society has become an extractive industry, taking over €2bn in motor and liability premiums annually, protected and made compulsory in many cases by the State and so expensive that it represents a major threat to the viability of many of the organisations that form the backbone of our nation, including the 25,000+ community and non-profit entities official recorded, which in turn employ more than 150,000 people between them..
A survey of 950 enterprises (for- and non-profit) within the 'Alliance for Insurance Reform' (on whose board The Wheel sits), carried out by Amárach Research in January 2018, found that since

2013, nearly half (47%) of respondents have seen their premiums rise by over 30%, while over one fifth have seen rises of over 70%. This is in the broader context of a CPI increase of 0.9% in the same period. Two thirds of respondents also reported having increased excesses or new exclusions added to their policies - an equally damaging trend that severely restricts the ability of organisations to develop and creates additional exposure to cost. Critically, 45% of respondents cited insurance as a threat to the future of their organisation.

Our members feel that it is the insurance industry and the legal profession that have the strongest voices in the corridors of power. Policyholders feel that we have no voice. This is amplified by the recent Collins Institute report for Fine Gael which concluded that the Central Bank, the state institution charged with protecting insurance policyholders, is too focused on the needs of the financial services industry.

Recommendations:

2. The insurance industry is of systemic importance to the proper functioning of Irish society and is enshrined as such in much legislation and regulation. And yet there is virtually no transparency in this market either at industry or individual policyholder level.
    a. While we acknowledge that responsibility for the gathering and collation of data for the new *National Claims Information Database* will rest with the Central Bank, we request that responsibility for analysis and reporting of the data be given to the Personal Injuries Assessment Board as allowed for in Head 7 of the Bill. PIAB has the expertise and funding necessary and no additional legislation would be required as Section 54 and Section 55 of the PIAB Act of 2003 already allow for this function.
    b. With the best will in the word, no useable, comparable industry data will be available from the National Claims Information Database before 2021. This in effect gives a 6-year data oversight holiday to this insurance industry. So we must insist that the a version of the Blue Book be immediately reinstated and enhanced to restore the only macro transparency there previously was in the market before the Central Bank discontinued it from 2015.
3. We absolutely acknowledge the right of genuine claimants to fair compensation. But people have accidents all over the world. It is the consequences for Irish policyholders that appear unique. We desperately need to see regulation of *claims management companies (claims harvesters).* Our members tell us that claims harvesting websites are acting as the 'ambulance chasers' of old, pursuing potential claimants with promises of money to be made with no costs or consequences, regardless of how dubious the claim is. They are adding fuel to the fire of fraudulent, exaggerated and misleading claims and must be regulated by the State in order to protect policyholders and society as a whole. In particular, any referral fees they might charge to refer live cases onto solicitors must be banned outright. Regulation, registration and a ban on referral fees would bring us in line with the regime the UK have operated since 2007. We would ask the Central Bank to introduce controls on this industry immediately.
4. We recommend that the Central Bank engages with proactively with the Alliance for Insurance Reform as a matter of urgency to discuss how these issues might be advanced. The Alliance for Insurance Reform brings together representative bodies from the

community, charity, sports and small and medium- sized business sectors across Ireland, representing over 35,000 organisations, over 645,000 employees, 41,300 volunteers and 150,000 cooperative members, seeking rapid action to end crippling insurance costs. The Wheel is a member of the Alliance and sits on its board.

Regulation of Credit Unions:

Credit Unions play an important role in the community with many now having bill paying facilities.

Recommendations:

5. We recommend that the central role of Credit Unions be preserved i.e. providing small personal loans to consumers. It is important to ensure a vibrant thriving Credit Union movement is maintained and developed on but must be careful not to over-regulate. Also, the overall professional standard of the Credit Union personnel must be increased.

3. What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?

Central Bank policy can be argued to focus excessively on ensuring stability of the financial system and its institutions and not sufficiently on protection of the many consumers of banking services and promotion of community good.

As the country comes out of recession and enters a more expansive economic phase, consumers and communities are finding it difficult to access credit. Community & voluntary sector organisations, which are also micro enterprises and SMEs face continued difficulty in accessing credit for relatively small scale investment. The relationship between many small borrowers and the banking community continues to be poor at the moment to the extent that many do not seek, or are unable to obtain loans. The Central Bank cannot currently be said to adequately fulfil its stated obligation *to develop a positive consumer focused culture within regulated firms.*

The impact of Central Bank policy of failing to prioritise sufficient action on consumer and hence community wellbeing can be illustrated in the following examples:

- There has been no reduction in the maximum APR being charged by moneylenders since 2003. This is a significant failing in the context of a very low interest economy generally during that period.
- The Central Bank failed for an undue length of time to take action on pressure from mainstream banks on tracker mortgages. The result is that over 33,000 customers have had to receive redress payments, but only after long pressure on the banks.
- In an update to the Oireachtas Committee on Finance earlier this year, it also emerged that the main banks have made provision for €300m in costs related to the tracker scandal. This will inevitably be charged to consumer and communities.
- The Central bank adopts an excessively administrative role in licensing moneylending, without due attention to the impact on borrowers of usurious rates of interest changed by official moneylenders. This diminishes the impact of the Bank's obligations regarding consumer

protection. It also contrasts poorly with the approach of the Financial Conduct Authority in the UK which, for example, places strict caps on so-called pay-day lending practices there.

Recommendations:

6. The Central Bank should base its policy development on a greater acknowledgement of the Societal Value from ensuring a vibrant community / voluntary / social enterprise sector and strong SME sector.
7. It should seek to facilitate expansion of the number of banking options open to the public to create a Financial Enabling system for people.
8. The main Irish banks should be pressed to bring interest rates more in line with those in other EU states, especially for mortgages.
9. This should be accompanied by a graduated reduction in maximum rates permissible for moneylenders, to encourage a transfer of customers to mainstream banking and interest rates.
10. Proposals from community based lending organisations, such as Sparkassen, should be facilitated to establish here to facilitate the needs of small business in communities.
11. The Central Bank should promptly address the impact of moneylending and usurious interest rates and its impact on vulnerable individuals and families and introduce measuers to progressively reduce the maximun permissable moneylending interest rates and moneylanding generally.

About The Wheel

The Wheel is Ireland's national association of community, voluntary organisations, charities and social enterprises. We are a representative voice and a supportive resource that offers advice, training, influence and advocacy for the sector. We have 1,400 member organisations in all sub-sectors and in all countries, urban and rural. Our member organisations employ 33,000 people and involve a further 40,000 volunteers. They reach almost 2 million people with their social impact. Our network provides a structure through which community and voluntary groups, charities and social enterprises in communities large and small, can articulate their common needs and priorities, share their experiences and present their case to policy-makers at local, national and European Level.

Our vision is:

A thriving community and voluntary sector at the heart of a fair and just Ireland.

Our Mission is:

To increase the voluntary, charity and social enterprise sector's capacity and capability to play its part in achieving a fair and just society in Ireland by:

- representing the shared interests of community & voluntary groups, charities and social enterprises,
- supporting these organisations to do their work
- promoting the importance of active citizenship.

Visit www.wheel.ie for more.

If you require further information on the content of this submission – please email Director of Public Policy, Ivan Cooper [redacted]

The Central Bank is developing its new Strategic Plan. This plan will shape and guide the work of the Central Bank over the next three years. The following questions are raised by Central Bank Ireland in a request for public engagement[1] posted on 9/5/2018 for input to the Strategic Plan 2019-21:

1. *What should be considered by the Central Bank in responding to the current and emerging risks in the economy and the wider financial system?*
2. *What should the Central Bank focus on in terms of the regulation of firms and markets?*
3. *What should be considered by the Central Bank in respect of its financial conduct and consumer protection role?*

The Financial Services Innovation Centre in UCC monitors the rapidly changing ecosystem for financial services in the EU, analysing and interpreting changes from a regulatory, business model and digital transformation perspective.

This document is a perspective on the questions posed above, drawing on our recent research on the interdependence of policy makers and innovators in promoting sustainable growth, while safeguarding consumers, in the rapidly evolving market for financial services in the EU.

1. The Role of Innovation Hubs, Accelerators and Regulatory Sandboxes

1.1 Background

The deployment of **technology-enabled financial innovation (FinTech[2])** disrupts **traditional financial businesses and operational models** and provides an array of new financial services to business, retail and institutional customers. Rather than being perceived as a set of technological capabilities, it is more useful, for the purposes of policy makers, to consider FinTech as the reduction of friction in the financial systems, where friction represents costs for the households and businesses which the systems support. This FinTech impetus is enabling the financial sector to leverage digital connectivity to increase customer **transparency and trust, increase real-time access to resources and to improve security of financial services**. Where traditional providers have achieved economies of scale by specialising different economic functions (eg. risk assessment, fund aggregation, collective trade execution, insurance product design, …), a more connected customer base is creating demand for the democratisation of such specialised functions to new platforms with different business models, and, crucially, very different requirements with respect to prudential oversight.

The European **FinTech market** is **growing rapidly** with many startups disrupting existing service provision, but it is **comparatively small[3],** with VC-investment levels in North America takings up nearly half of the global market, followed by Asia. In 2017 only **4 FinTech** unicorns (Transferwise, EE, UK; Funding Cyrcle, UK; Adyen, NL; Klarna, SWE) were registered in the EU, while the US had 16.[4] Furthermore, there are huge disparities within Europe, with UK taking up around two-thirds of all FinTech investment made.

[1] https://www.centralbank.ie/publication/corporate-reports/strategic-plan

[2] FinTech is defined by the Financial Stability Board (FSB) as "technology enabled innovation in financial services that could result in new business models,, applications,, processes or products with an associated material effect on the provision of financial services." (http://www.fsb.org/wp-content/uploads/R270617.pdf).

[3] Demertzis, M., Merler, S. and Wolff, G.B. (2018), Capital Markets Union and the FinTech Opportunity, *Journal of Financial Regulation*, 4(1), pp. 157–165

[4] CB Insights (2018) *FinTech trends to watch*. https://www.cbinsights.com/research/report/FinTech-trends-2018/

The financial sector is **heavily regulated** to protect the stability and security of financial markets, dominated by national rules. The evolution of disruptive FinTech technologies and business models **requires significant changes in the regulatory environment** to allow innovation and cross-border operations. Although financial regulation is increasingly defined at a European or international level, areas remain where Member States (MS) can choose to apply individualised or less strict rules at national level**. Regulatory fragmentation at EU level** and the **existence of different regulatory regimes** amongst different countries[5] hampers cross-border operations.

However, many European countries **are tuning their regulatory and authorisation processes to support FinTech innovation** (eg. alternative finance regimes in the UK, Italy, Portugal, Germany, Austria, France, Spain and most recently Finland and Lithuania). A number of i**nnovation hubs, accelerators and regulatory sandboxes**[6] (so-called called FinTech 'facilitators') are established to improve interactions between regulatory/supervisory bodies and innovative financial players. **UK** (Bank of England's FinTech Accelerator, Financial Conduct Authority sandbox, the **Netherlands** (Authority for the Financial Market and De Nederlandsche Bank sandbox), **Italy** (Bank of Italy hub), **Switzerland** (Swiss Financial Market Supervisory Authority hub) are considered to be the **leading ecosystems** and new Central Banks and other facilitators being established or are already in existence across Europe (i.e. CEE FinTech in Hungary, Associação FinTech e InsurTech Portugal, Asociación Española de FinTech e InsurTech etc). Further associations are coordinating the efforts on international level (i.e. The Global FinTech Hubs Federation).

In order to improve the regulatory environment to reinforce the position of Europe amongst leaders in FinTech, further European and international level collaboration is needed between the existing regulatory and supervisory structures, FinTech business facilitators, experts and innovators themselves. The EU institutions, European Commission (EC) and European Banking Authority (EBA), have acknowledged the regulatory barriers and initiated a thorough set of activities via the **EU FinTech Action Plan**[7], outlining the steps for Europe's financial markets to be more integrated, safer and easier to access for startups, while helping the financial industry make use of rapid advances in technology and emerging business models. The CBI strategy should consider how it can incorporate the following objectives within its plan:

<u>Long term strategic objective</u>: to build the infrastructure, processes and systems within the CBI to be able to position Ireland as a leading location for FinTech.

<u>Direct objective</u>: to boost the growth and scaling up of existing and new Irish based FinTech firms across Europe and at a global level.

<u>Operational objective</u>: to establish FinTech regulatory expertise via a collaboration hub **aimed at facilitating cross-border efforts of innovators, supervisors, regulators and domain experts** in creating favourable conditions for FinTech experimentation and corresponding compliance by design. This can be supplemented further by an **Accelerator(s) programme** in conjunction with industry and academic partners as needed. **Sandbox** arrangements should be considered for existing and start-up companies where the CBI can learn about the nuances, risks and benefits of new FinTech approaches.

1.2 The Promise of FinTech

As with other sectors of the economy, the internet and digitisation are transforming finance. FinTech, **technology-enabled financial innovation**, disrupts traditional financial businesses and operational models and provides an array of new financial services to business, retail and institutional customers. The technology-based solutions **transform the traditional structures and processes across all areas of the financial sector**, including financing, payment solutions, insurance and asset management. The industry is exceptionally dynamic and fast moving with a multitude of business models rendering any restrictive definition inadequate. However, the shared value proposition by FinTech companies is **internet-based and application-oriented products and services that are user-friendly, efficient, transparent and automated**.

[5] https://ec.europa.eu/info/system/files/study-digitalisation-01072016_en.pdf

[6] A regulatory sandbox is defined by the FCA in the UK as a "safe space in which businesses can test innovative products, services, business models and delivery mechanisms without immediately incurring all the normal regulatory consequences of engaging in the activity in question" (http://www.ifashops.com/wp-content/uploads/2015/11/regulatory-sandbox.pdf)

[7] https://ec.europa.eu/info/publications/180308-action-plan-fintech_en

Indeed a key innovation of FinTech culture is the co-design of products and services by start-ups around the notion of a community members, where service design features and product enhancements are solicited and validated by the community[8] in advance of their development. Such an open innovation culture is centered around a state of the art user experience, including the potential to integrate services across other FinTech platforms[9].

FinTech activities can be divided into four main categories, and platforms may provide combinations of these:[10]

1. Credit, deposit, and capital raising services (e.g. crowdfunding, peer to peer lending, online saving)
2. Payments, clearing and settlement services (e.g. payment gateways, mobile banking, digital currencies)
3. Investment management services (e.g. e-trading, robo-advice, …)
4. Market support services (e.g. data analytics, API development, cloud computing, AI, IoT)

FinTech is growing rapidly, spurred by technological advances, changing customer expectations, availability of funding and increasing support from governments and regulators.

FinTech is becoming **integral to the evolution of financial services** and holds great potential for **expanding the reach of the industry**, creating opportunities for co-design and delivery of **better, more accessible business and consumer services**, and supporting the **development of capital markets**.

The rewards of FinTech are substantial, bolstering the financial services industry by increasing trust, access and security. Trust is central to the emerging FinTech propositions. The financial crisis eroded the public's trust in traditional financial institutions, in 2016 **consumers' trust in traditional banks in Europe was only 33%**.[11] Consumers do not trust financial services companies to protect their interests (e.g. products and their terms and conditions are overly complex, and difficult to compare with competitor offerings). Furthermore, the shifting demographics are changing confidence and trust. The global average **adoption rate of FinTech is 33%** with the 25-34 age bracket has the highest adoption rate of 48%, showing increasing trust.[12]

Traditional retail banking business models are built on transaction fees, overdraft charges and interest on loans and overdrafts. In such models, the more a customer avails of the services, the more they are charged. FinTech philosophy turns this logic on its head, rewarding frequent usage with low or non-existent transaction fees. The frequent usage in turn creates a data asset in terms of customer profile, and, as with most platform companies, the return on investment is in the richness of this data set. Customers may not trust how platforms exploit their data, however.

FinTech enables the financial sector to **rebuild consumer confidence and trust** by increasing **clarity of services and products**, and providing **transparency** on fees and charges. Transparency of data usage is a pre-requisite.

The business models of traditional financial services providers still limit access to some segments of the population and the business community. For example, **58 million consumers over the age of 15 in the EU do not have a payment account**.[13] FinTech has significantly **reduced the costs and increased access** to consumer finance (e.g. broadening data scope and utilising analytics to build alternative credit profiles). **Business customers, specifically startups and SMEs, struggle to access low cost financing from traditional banks**.[14] FinTech can help **reduce the funding gaps of European SMEs** by offering **flexible alternative financial solutions** for SMEs.

---

[8] Blogs and member forums for virtual banks like Monzo, Starling or N26 encourage engagement between customers and platform developers, whereby financial planning tips are shared on blog threads alongside innovative technology ideas, SME growth mentoring and customer experiences with competitor platforms

[9] N26 and Monzo with other mobile payment platforms such as Apple Pay

[10] EBA (2017) *Discussion Paper on the EBA's approach to financial technology*. https://www.eba.europa.eu/documents/10180/1919160/EBA+Discussion+Paper+on+FinTech+%28EBA-DP-2017-02%29.pdf)

[11] EY (2017) *Global Consumer Banking Survey 2016*. http://www.ey.com/gl/en/industries/financial-services/banking---capital-markets/ey-trust-without-it-youre-just-another-bank

[12] EY (2017) *FinTech Adoption Index 2017*. http://www.ey.com/Publication/vwLUAssets/ey-FinTech-key-findings-2017/$FILE/ey-FinTech-key-findings-2017.pdf

[13] EC (2012) *Eurobarometer on Retail Financial Services*. https://ec.europa.eu/info/system/files/factsheet-3-06052013_en.pdf

[14] EC (2016) Small and medium sized enterprises' access to finance. https://ec.europa.eu/info/sites/info/files/file_import/european-semester_thematic-factsheet_small-medium-enterprises-access-finance_en.pdf

FinTechs enable **provision of new and alternative financial products and services to previously excluded customer groups**, retail and business, with innovative business models and technology solutions.

To ensure security and stability of the financial sector, financial institutions must meet strict regulatory and compliance requirements. With the proliferation of digital financial products and services, effective and efficient solutions to **managing operational and cyber risks** and **meeting compliance requirements** becomes ever more taxing. RegTech offers possible solutions to improve security and streamline compliance processes.

FinTech **simplifies compliance** and provides innovative tools to **mitigate risks** by use of innovative technology and data analytics improving the **security of financial institutions** and the **stability of financial sector**.

Besides helping reduce income inequality and accelerate economic growth through increased access to finance,[15] FinTech has significant commercial opportunities in global markets. The future may see **more jobs created in financial services and associated sectors**, while cloud computing may lead to falling IT costs, leading to **increased productivity** and **rising GDP**. FinTech can also make a substantial contribution to overcoming barriers that hinder the full integration of EU markets that **support the Capital Markets Union and a Digital Single Market**.[16]

To **strengthen financial integration** in the EU, it is imperative that all stakeholders – incumbent financial institutions, new entrants, regulatory/supervisory bodies and policymakers – **collaborate to support the emergence and scale-up of FinTech solutions across Europe.**

1.3. Unmet potential of FinTech

The value that FinTech delivers to the financial sector can be gauged in the **upward trajectory of volume of financing in the sector**, globally and in Europe. The global aggregate deal value across general M&A, venture financing and private equity reached its highest point in 2015 and came out in 2017 at around $31 billion, a growth of roughly three times since 2010. It indicates that the FinTech market is still robust and spurred on by innovation and consolidation. **Europe FinTech scene demonstrates growing maturity and potential** with respect to innovation and evolution of hubs. **The final quarter of 2017 observed a higher total of VC invested than ever before**, nearing $1 billion. Particularly noticeable is the strength of late-stage financing, showing that more mature FinTech enterprises can secure substantial commitments from investors with their potential and metrics (Figure 1).[17]

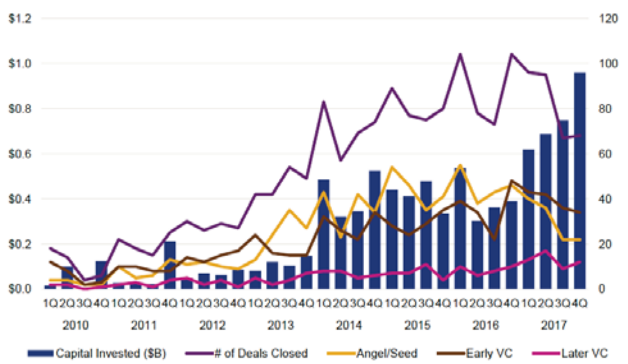


Figure 1 Venture investment in FinTech companies in Europe, 2010 – 2017

Even though the European FinTech market is growing at a fast pace, **the market is small** compared to the VC-investment levels in North America and Asia. North America takes up nearly half of the global market, followed by Asia.[18] Looking at FinTech unicorns, in 2017 Europe registered only four companies that have private market valuation of over $1 billion, while the US has 16.[19] Furthermore, there are huge disparities within Europe. The UK

[15] World Bank (2015), Global Findex Database, 2014. http://www.worldbank.org/en/programs/globalfindex
[16] Capital Markets Mid-term Review (2017). https://ec.europa.eu/info/sites/info/files/factsheet-cmu-mid-term-review-june2017_en.pdf
[17] KPMG (2018), Pulse of FinTech Q4'17. https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2018/02/pulse_of_FinTech_q4_2017.pdf
[18] CB Insights (2018)
[19] Ibid

is by far the largest recipient of FinTech investment in Europe, in 2017, the UK took up around two-thirds of all European investment.[20]

The competitiveness of the European FinTech markets vis-à-vis major economies in North America and Asia is **hampered by regulatory barriers**. EU is well-positioned to take advantage of the evolution of financial services, it has a large competitive market, many innovative startups, availability of capital and necessary skills. To fight the dominance of US and Asia, the EU needs to take ambitious action to support countries in leveraging the potential of FinTech. Brexit renders the need for clear, safe and effective regulation supporting innovation even more pressing as the EU can no longer rely on London as the FinTech flagship in Europe. On the other hand, it is an opportunity for other EU cities to attract FinTech capital and talent to the single market.

1.4. Regulatory environment and innovation in Europe and beyond

There is **no dedicated legal framework for FinTech companies** at the EU level or at the EU member state level. This situation divides up the EU single market in ways that hinders cross-border activity, leads to disparities between countries, and thus limits overall investment and growth. There are two key regulatory issues that FinTechs encounter.

→ Inadequate regulatory innovation thwarts the uptake of new FinTech solutions

The financial sector remains heavily regulated to protect the stability and security of financial markets. As FinTech drives opportunities for economic growth and consumers increasingly adopt them, governments and regulators are required to keep pace with technology and provide a regulatory environment which encourages innovation and ensures consumers are protected. In principal, EU rules are technology neutral, however, in practice they fall short. **Some new business models do not fit within the licensing regulations and ordinary supervisory procedures**. The complex regulatory environment devised for traditional financial institutions does not accommodate the digital developments resulting in the **uneven playing field vis-à-vis incumbent actors**, unfair competition and potential risks. For example, the old regulation hinders the leveraging of digital opportunities related to big data, blockchain technology and cryptocurrencies. Regulatory compliance for some financial services is required whether the service is provided by a traditional financial institution or not. Meanwhile, other FinTechs can operate outside the regulatory framework without any supervisory oversight. **31 percent of EU FinTech companies are not subject to any regulatory regime under EU or member state law** (Figure 2).[21] This can encourage companies to exploit the differences in regulatory regimes that apply to different financial services. A level playing field has also the role of ensuring consumers are not put at risk and that financial stability is maintained.

Regulatory innovation efforts are required to create a level playing field for all market participants and to address the risks and guarantee fair competition.

→ Regulatory fragmentation across national jurisdictions thwarts cross-border scaling

It is not sufficient that innovation happens in Ireland or in Europe, it is imperative to support the scale-up. **Harvesting the full potential of FinTech requires scale as innovative business models rely on cross-border reach**. EU FinTech companies that conduct certain specified activities, or a combination of them, have **access to the EU passporting framework**, which allows them to **provide financial services or branch in other EU member states under the regulatory supervision of their home country** (e.g. retail banking, payment services and financial market services). According to a recent FinTech industry mapping conducted by the European Banking Authority, **nearly half of the FinTech companies in the EBA's sample benefit from passporting rights**.[22]

[20] Innovate Finance (2018) 2017 VC Investment Landscape. https://new.innovatefinance.com/wp-content/uploads/2018/02/final-2017-vc-investment-landscape_9feb.compressed.pdf
[21] Ibid
[22] EBA (2017)

However, FinTechs that conduct activities that are not regulated at the EU level, therefore, not eligible for passporting, are potentially **subject to different member state licensing requirements and regulation at both the parent and subsidiary levels** throughout the EU. (e.g. crowdfunding and virtual currencies). To avoid regulatory gaps, **member states have created licensing frameworks to address FinTech activities that do not currently fall within the scope of EU law** to encourage the uptake of FinTech solutions (Austria, Spain, France, UK, Italy, Germany, Portugal, and most recently Finland and Lithuania). Today, **14 percent of EU FinTech companies are subject to member state registration or licensing regimes**.[23] Member state licensing requirements impact the ease with which the companies can conduct cross-border business making it **more complicated for them to exploit economies of scale**. They have to cope with slow, piecemeal market entry, getting regulated per country of operation. The fragmented business environment can also lead to regulatory arbitrage opportunities, incentivising companies to obtain permits in less restrictive jurisdictions in order to minimise regulatory burdens while operating internationally.

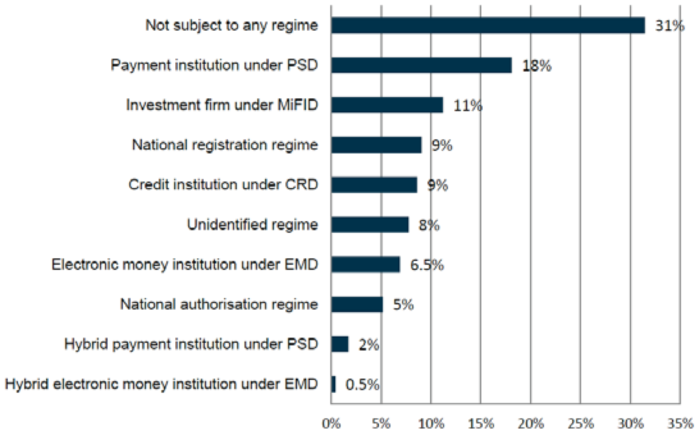


Figure 2 Breakdown of FinTech firms by regulatory status

The FinTech Action Plan will support EU-wide regulatory convergence to encourage cross-border scaleup of innovative business models and address regulatory arbitrage.

1.5. Facilitating innovation and regulatory compliance

FinTech ecosystems have different **support structures available to help companies navigate the complex regulatory landscape**. The simplified process of the engagement of FinTechs with different of support structures is depicted in Figure 3. The path is a simple way of showing the possible ways of acquiring regulatory knowledge and support.

Figure 3 FinTech engagement and value add continuum

Illustratively, **FinTechs follow a consultation path** that progresses from peer-to-peer discussions with friends and colleagues and start-up groups to more professional level services of industry associations, lawyers/consultants up to regulators at institutional level. The journey of a FinTech start-up might not include all these steps and the sequence can vary. All these steps are not available in every country and all are not mandatory. Specialised FinTech groups or associations do not exist in every country.

Supervisors in some countries have launched so-called FinTech "facilitators": **innovation hubs, accelerators and regulatory sandboxes.** According to EBA, **in the EU, 13 countries have** established FinTech facilitators to provide general guidance to firms during the authorisation process,[24] (this number did not include the recent announcement by the CBI).While the level of support offered by each initiative varies, they all **seek to provide regulatory guidance to innovative start-ups and incumbent firms**. While the CBI might be concerned about these services turning into an "advisory" type offering and becoming too close to the operational running of start-ups and other firms, there is balance to be had as there is a peril in not offering these services that are readily available in other EU countries.

[23] Ibid

[24] EBA (2018), *FinTech Roadmap*. https://www.eba.europa.eu/documents/10180/1919160/EBA+FinTech+Roadmap.pdf

These initiatives help build dialogue between FinTech firms, regulators and supervisors and lead to fruitful insights into risks and opportunities that emerge from the new technologies, products and services. In turn, this would help facilitate consistency of, and promote technological neutrality in, regulatory and supervisory approaches. Importantly, **the countries that have innovation hubs, accelerators or sandboxes are adapting their regulatory and authorisation processes to support FinTechs and financial services**.

The Basel Committee on Banking Supervision (BCBS) and Financial Stability Board (FSB) conducted a joint survey on FinTech supervisory approaches.[25] Figure 4 below summarises the high-level findings with examples of the supervisory initiatives in more mature FinTech Hubs in Europe and beyond.

	Innovation facilitators		
	Innovation hub	Accelerator	Regulatory sandbox
	A place to meet and exchange ideas	"Boot-camp" for start-ups, culminating in a pitch presentation	Testing in a controlled environment, with tailored policy options
Australia	ASIC	ASIC	ASIC
Belgium	NBB/FSMA		
ECB	SSM[33]		
France	ACPR/AMF	BDF	
Germany	BaFin		
Italy	BOI		
Hong Kong SAR	HKMA	HKMA	HKMA/SFC/IA
Japan	BoJ/FSA		
Korea	FSC		FSC
Luxembourg	CSSF		
Netherlands	DNB/AFM		DNB/AFM
Poland	FSA		
Singapore	MAS	MAS	MAS
Switzerland	Finma		Finma
United Kingdom	BoE/FCA	BOE	FCA[34]

Figure 4 Jurisdictions' initiatives to facilitate innovation, BIS

The EU has acknowledged the regulatory barriers and taken note of the member state level innovative initiatives to address them. The EU is supporting the emergence and integration of innovative technologies in the financial industry through both legislative and executive measures.

In terms of legislative measures, the EC introduced several directives to support FinTech. In the payment services market, **PSD2** (January 2018) will force banks to open their systems to FinTech businesses and the launch of APIs will allow startups to function as intermediaries between banks and customers. Its aim is to make payments and money transfers more secure and less expensive. The directive **GDPR** (May 2018) concerns the protection of natural persona with regard to the processing of personal data and on the free movement of such data. It aims to make it easier and more cost effective for cloud providers to offer pan-EU solutions, as well as making customers feel safer in entrusting valuable data to third-parties.

In terms of executive measures, the EU has been conducting a thorough examination of FinTech and its impact on the financial sector. From 2016 discussions about FinTech have been gaining momentum with internal and public consultations, culminating in FinTech Action Plan by EC and FinTech Roadmap by EBA, both published in March 2018 (Figure 5).[26]

[25] BIS (2018), *Sound Practices: implications of FinTech developments for banks and bank supervisors*. https://www.bis.org/bcbs/publ/d431.htm

[26] EC (2018) *FinTech Action Plan*. https://ec.europa.eu/info/publications/180308-action-plan-FinTech_en; EBA (2018)

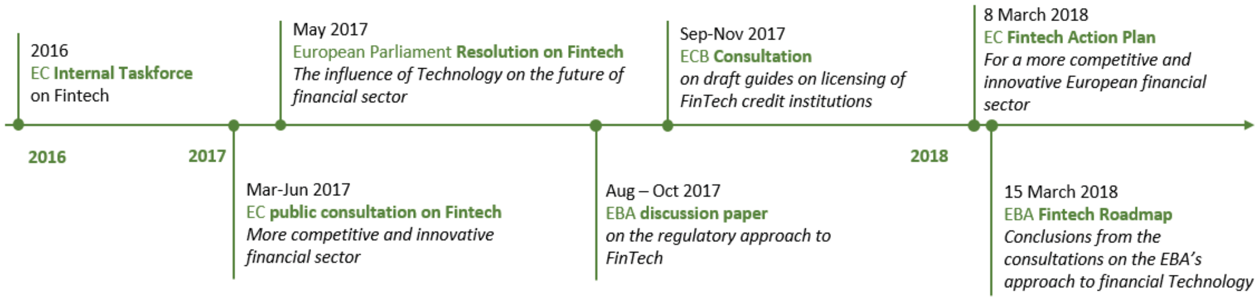


Figure 5 Timeline of EU-level consultation on FinTech

The European Commission has set out a **'FinTech Action Plan'** to promote FinTech, including the establishment of an EU FinTech Laboratory, the creation of a best-practices blueprint for regulatory sandboxes and substantial crowdfunding reforms. The plan looks to build on the advantages of the Single Market with a set of bloc-wide reforms. In an EU 'FinTech Laboratory' European and national authorities can engage with tech providers in a neutral, non-commercial space. It also includes presentation of a blueprint with best practices on regulatory sandboxes, based on guidance from European Supervisory Authorities (Figure 6).

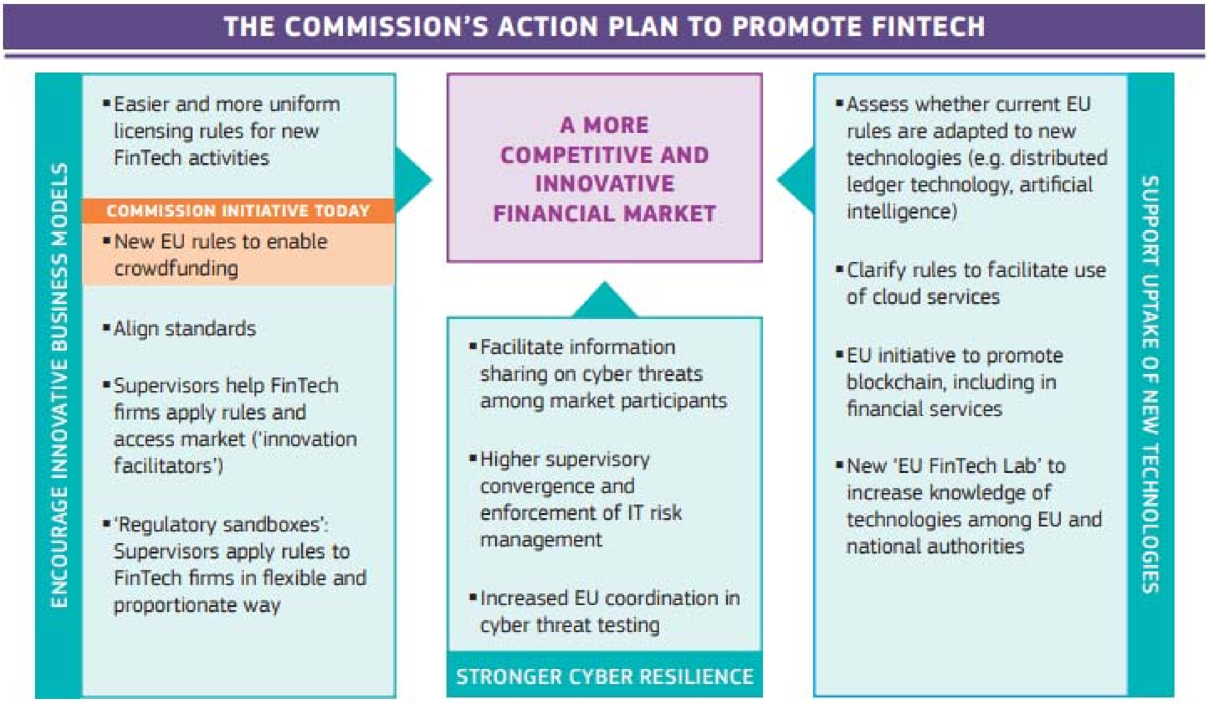


Figure 6 EU FinTech Action Plan

EBA published a report on its **'FinTech Roadmap'** outlining its next steps and priorities for 2018/19 **in alignment with the Commission's FinTech Action Plan**. It will establish a **FinTech Knowledge Hub** for getting to grips with new tech-led developments in financial services. The Roadmap sketches out the EBA's priorities for monitoring emerging trends and analysing the impact on incumbent institutions' business models. Key to this will be an **assessment of current authorisation and licencing approaches** to FinTech firms and a **best practice guide for regulatory sandboxes and innovation hubs**.

1.6. Strategic Priorities for the CBI

The CBI should consider **building on the pillars of the FinTech Action Plan and FinTech Roadmap.** Major initiatives defined in these 2 Action plans are:

- **EU FinTech Lab -** Demonstrations and expert discussion in a non-commercial, neutral financial technology Laboratory to raise the level of regulatory and supervisory capacity and knowledge about new technologies. The Lab will bring together multiple vendors, in particular from the EU, with regulators and supervisors so they can raise and discuss regulatory and supervisory concerns
- **EBA's 'FinTech Knowledge Hub' -** a forum bringing together competent authorities enabling knowledge sharing on FinTech and to enhance engagement with incumbent and new entrant institutions and other FinTech firms, technology providers and other relevant parties. The Hub will contribute to the monitoring of the impact of FinTech, including on business models and interconnectedness in the financial system, and fostering technological neutrality in regulatory and supervisory approaches.
- **Variety of mapping and analyses on best practices and development of common approaches -** best practices and guidelines for innovation facilitators, licencing approaches, best practices and blueprint for regulatory sandboxes, framework for cryptocurrencies & ICOs etc.

It would be advisable that the CBI responds to the following invitation of the FinTech Action plan:

- The Commission invites competent authorities at Member State and EU level to take initiatives to **facilitate innovation on the basis of these best practices** and invites the ESAs to facilitate supervisory cooperation, including coordination and dissemination of information regarding the innovative technologies, establishment and operation of innovation hubs and regulatory sandboxes, and consistency of supervisory practices.
- The Commission would welcome further efforts to identify best practices across the EU and set up common principles and criteria for **innovation hubs** and **regulatory sandboxes**

Dear Mr. Sheridan,

Thank you for your recent email. The work of the Vincentian Partnership for Social Justice which is a small organisation focuses primarily on research into the cost of a Minimum Essential Standard of Living (expenditure and income). For this reason we are not in a position at this point in time to make a response to your 3 Questions However, we believe that the Central Bank could play a significant role in making financial services accessible to people on a low income. At present many low income households experience economic disadvantage because of an inadequate income and experience a second disadvantage when they need to access financial services. We believe that the Central Bank could play a much needed leadership role in making financial services accessible to all citizens.

With best wishes and appreciation.

Bernadette Mac Mahon DC

Director

The Vincentian Partnership for Social Justice, Ozanam House, 53 Mountjoy Square, Gardiner Street, Dublin 1 Telephone: 01 8780425

Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem