



Electronic Money Association

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20 October 2021

Dear Gabriel

Re: EMA submission to the Central Bank of Ireland Notice of Intention – Amendments to the list of Pre-Approval Controlled Functions (PCFs)

Thank you for the opportunity to submit our views on the Central Bank of Ireland's Notice of Intention on Amendments to the list of Pre-Approval Controlled Functions (PCFs). We are grateful for the opportunity to contribute the views of the EMA and our members on this important aspect of governance and proper role fulfilment within firms authorised and supervised by the CBI.

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, cryptocurrencies, open banking, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis, and a large number (around 25% of our 87 members) have obtained – or are applying for - licences to operate from the Central Bank of Ireland. A list of current EMA members is provided at the end of this document.

I would be grateful for your consideration of our suggestions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jean Sabin', with a long horizontal flourish extending to the right.

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA Response

The EMA welcome the CBI's Notice of Intention - Amendments to the List of Pre-Approval Controlled Functions (PCFs) of 22 September 2021, and in general we support the proposed updates to PCF roles. However we seek clarity around the timing of the proposed changes, and also suggest the CBI reviews the ability of the IQ submission system to continue to support the CBI's PCF application requirements.

In terms of the Notice, we would welcome a clear reference to the applicability of the principle of proportionality, and highlight the continued need for flexibility in relation to the recruiting of skilled PCF role holders, particularly in the Fintech sector, where there can be delays in properly filling/replacing key roles.

General comments on the PCF Fitness and Probity approval process

Please find below EMA comments submitted in response to the CBI's consultation on the future Strategy in May 2021 on the PCF Fitness and Probity approval process. Common challenges faced by firms include:

- The hiring of new staff for some (though not all) EMA member firms, who have to wait for a lengthy F&P process to complete before they can take on their responsibilities. This can result in a great deal of uncertainty for both the role-holder and the firm. A new methodology for F&P pre-approval of PCF roles could potentially improve this situation.
- The challenge of identifying individuals with the appropriate skill-set based in Ireland: firms seek recognition from the CBI that some individuals will build their experience in the role over time, whilst acknowledging that any individual proposed must be deemed to be "fit and proper" and that the experience gap must therefore remain appropriately narrow. Alternatively, we again request that the CBI allow some PCF roles to be based – on a temporary basis - in EEA branches of the Irish entity.
- An inconsistent approach towards the expected competencies and capabilities of role-holders from firm to firm.
- the technical capability of the IQ submission system, which 'crashes' unexpectedly at times resulting in large losses of input data.
- The PCF submission and review taking place during the latter stages of the authorisation application process: this results in multiple submissions of Curriculum Vitae and Organisational Charts throughout the application process, with the IQ submission of the formalised PCFs at a late stage. If there are any issues or problems with a PCF submission, firms will be unaware until late in the application process, which can result in further delays to finalising the process of CBI authorisation.

This is particularly important as the electronic money and payment industry develops and evolves rapidly, and firms compete on their ability to provide new products and services; this requires them to be able to ensure that adequate and appropriate governance positions are filled and approved in a timely manner.

EMA comments on the proposed Amendments to the list of PCFs

Timing:

As mentioned above, whilst in general we support the proposed changes, we have concerns around the timing of the proposed changes; the European Banking Authority's Consultation on Draft Guidelines on the role, tasks and responsibilities of anti-money laundering and countering the financing of terrorism (AML/CFT) compliance officers, and the new draft European Commission AML Regulation both include requirements related to AML compliance and governance. We suggest therefore that the CBI should first wait until the conclusion of the EBA consultation before setting out the requirements for the PCF role 12 and 52.

We also note the impending introduction of the Senior Executive Accountability Regime (SEAR) in Ireland, and would welcome alignment between the new PCF roles and SEAR, in particular the new conduct standards that will go beyond SEAR and apply to all regulated financial institutions.

Application of PCF-16 to branches of Irish RFSPs in non-EEA jurisdictions

We agree with the proposed amendment that branches of Irish Regulated Financial Service Providers (RFSPs) in non-EEA countries should also have a PCF-16 branch manager. However, as these branch managers are likely subject to the fit and proper approval requirements of the host regulator, the EMA requests confirmation from the CBI that the PCF-16 process will not delay the carrying out of business by such branches where they are already/close to approval by the host member state. As mentioned earlier, EMA members have already commented on the technical difficulties they experience using the online IQ submission process for PCF roles, and the frequent crashing of the site mid-submission, both of which can cause delays in the process.

Splitting PCF-15 role into PCF-12 role and new PCF-52 role

We understand the rationale of the CBI's proposal to split PCF-15 Head of Compliance With responsibility for Anti Money Laundering and Counter Terrorist Financing Legislation into two separate roles: PCF-12 Head of Compliance (as it currently stands) and the new PCF-52 Head of Anti-Money Laundering and Counter Terrorist Financing. We broadly agree with the proposal, but suggest that the CBI reconsider appointing a single PCF role with responsibility for all compliance matters, including AML, as is currently the case with the PCF 15. The most senior person responsible for AML matters in a firm should not be solely focused on AML; AML experts within their team(s) could meet the requirements of the PCF-52 role.

We also seek clarity regarding the expectations associated with this additional role in relation to smaller firms, and request that the CBI applies this requirement in a proportionate manner. Smaller firms whose Head of Compliance currently also manages AML/CTF risk, and has the appropriate skills as a PCF-15 role holder, may struggle to appoint a separate PCF-52, and

indeed may not need to do so based on the level of AML risk. As mentioned above, the challenge of recruiting individuals with the necessary skills within Ireland are particularly acute for smaller firms. This is likely to be exacerbated by the fact that the changes will apply to all firms at the same time, meaning that a large number of firms may be recruiting and/or submitting PCF approvals for the same roles. We would welcome confirmation from the CBI that one skilled person could fulfil both the roles of PCF-12 and PCF-52, and that this person can be the same person that was previously approved for the PCF-15 role. The firm's business-wide risk assessment (BWRA) should determine whether both roles are required.

We also highlight that current Heads of Financial Crime/AML/CFT are often strategically placed in the first line of defense, with the current PCF-15 in second line. The separation of roles will result in the PCF-15 in some firms reporting into a PCF-52, and vice-versa, depending on experience. We would welcome clarity from the CBI that the PCF-52 role can continue to sit within a first line Operations role if necessary for the business/governance model.

Implementation

Finally, we note that the in-situ process is intended to commence after the amended regulations come into effect, with up to 6 weeks provided to submit the in-situ confirmation. In order to allow firms sufficient time to prepare, we would welcome regular updates from the CBI on the status of the consultation, and likely commencement date. We would also welcome further detail from the CBI regarding the proper manner/process in which it should occur. This will be particularly important as it may result in a large number of firms submitting PCF documentation at the same time.

Members of the EMA, as of October 2021

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