

Oliver Gilvarry
Assistant Secretary
Banking Division
Department of Finance
Dublin 2

17th October 2024

Dear Oliver

Thank you for the opportunity to respond to the consultation on the Consumer Credit Directive 2023/2225 Member State discretions.

As you will be aware, Credit unions have the largest share of personal lending in the Irish market so changes to the Consumer Credit Directive will disproportionately impact our sector.

In general, our view on Member States discretions in EU Directives is that they should be exercised, in order to keep flexibility in a single market and to allow individual business models that have developed across the European Union to be protected due to national market specificities.

By way of background, the Irish League of Credit Unions (ILCU) is the largest representative body for Credit Unions in Ireland with 90% of credit unions as members. Founded in 1960 with the aim of providing representation, leadership, co-operation, support and development for credit unions in both Republic of Ireland and Northern Ireland, the ILCU today has an affiliated membership of circa 250 Credit Unions. Membership of the ILCU is open to every credit union on the island of Ireland. The Credit union movement is built on an ethos of mutuality, volunteerism, self-help and not- for-profit philosophy.

Credit unions have a proven track record in providing superior customer service and consumer protection is a top priority for Credit Unions. The Credit Union movement is regarded by the public as the most reputable organisation in the country, according to the RepTrak report published on 15th May 2024¹ and we were recently topped the CXi 2024 league table which marks our tenth consecutive win in this competition. We want to continue to grow and develop and serve our members.

We have an ambitious vision for credit unions to grow and develop and provide competition in the retail banking market.

¹ [Credit Unions top the Ireland RepTrak® 2024 study](#)

Revised Consumer Credit Directive (CCD2) 2023/2225

The revised Consumer Credit Directive is long overdue. A gap of 15 years between the 2008 Directive 2008/48/EU and Directive 2023/2225 highlights the success and appropriateness of the 2008 Directive. It also highlights a range of other domestic consumer protection enhancements that have happened since the Financial Crisis.

The revised Directive attempts to legislate for technological advances made and the propensity to apply for credit online. We would urge caution that any changes do not impact on business model neutrality.

We have answered the questions posed in the consultation but would ask for further clarity on Article 2(6) which references the Registrar of Friendly Societies in the explanation to the question.

Credit Unions are supervised since 2003 by the Central Bank rather than the Registry of Friendly societies. SI 281 of 2010 referred to includes four credit unions who have since merged with other Credit Unions. We would welcome a follow up meeting to ascertain what the key policy issues is on this point. However, it would be appropriate in our view not to continue the exemption.

The other key elements to our response is to highlight the need for the caps on high cost credit providers to be reduced, for Recommendation 11.2 of the Retail banking review namely reducing the cost of loan inquiries to the CCR for small value loans to be implemented, and to show the need for taking the Credit Union Act as amended, the Consumer Protection code as revised, the Consumer Credit Act and the Credit Reporting Act into consideration during the transposition.

I'm happy to have a call to discuss these issues further.

Best wishes



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Annex 1 – Consultation responses

Question 1 - Should debit cards, which comply with the above conditions, be exempted from the transposition of CCD2 in Ireland, and if so why? (Article 2(5)).

This would appear to be a very specific business model and in general we would favour business model neutrality. However, without more information on whether this product or service is available in Ireland it is difficult to comment. From a level playing field perspective debit cards should be treated equally with the same rules applying to all debit cards.

Question 2 - Are there any other specific organisations that Ireland should apply the discretion provided by Article 2(6)?

No. The two credit unions outlined in the consultation no longer exist so we would query the need to exempt them. SI 281 of 2010 refers to four credit unions. I would ask for a meeting to discuss the policy intention on this Article because its important that the forthcoming changes on credit union exempt services don't impact on this discretion. It would be appropriate in our view not to continue the exemption.

Question 4 – Should Ireland exempt credit agreements for amounts under €200 or that are interest free or that are repayable within three months from the provisions of CCD2 relating to advertising, pre contractual information on credit agreements, and information to be included in credit agreements? (Article 2(8)).

No, all credit agreements should have the same protections for the consumer. Any credit agreement that has the potential for interest to be applied at some point should be subject to the same rules as credit that is interest bearing from the outset.

The report from the Central Bank of Ireland in November 2023 pointed to issues with lack of understanding:

The Central Bank released [research \(PDF 741.04KB\)](#) that shows many consumers are not aware of the risks of using Buy Now, Pay Later to pay for goods and services. 22% of consumers do not have a full understanding of how Buy Now, Pay Later works, and 36% think that Buy Now, Pay Later is a method of payment rather than a form of credit. The findings also show that when consumers make a purchase they tend to be focused more on the monthly payment amount rather than the total amount borrowed.

There is evidence from the UK that interest free credit agreements are not fully understood leading to issues with borrowers

June 2023: <https://maps.org.uk/en/publications/research/2023/buy-now-pay-later-a-review-of-the-market-risks-and-trends-consumer-understanding-impact-and-outcomes#>

Key finding: Lack of understanding of BNPL products and limited transparency in individuals' credit profiles could pose a risk to individuals' financial wellbeing and the wider economy.

We have considered the cost savings and administrative savings that would accrue to exempt these amounts as there is a cost to extend the scope below €200. However, we would see it more holistically that the Department should quickly implement recommendation 11.2 of the Retail Banking Review from November 2022,

“11.2 The operation of the Central Credit Register should be amended, following engagement with relevant stakeholders, to:

- *Reduce the reporting threshold for credit agreements from €500 to €200 and the consultation obligation threshold from €2,000 to €1,000; and*
- *Introduce a new lower fee for Central Credit Register consultations for low value loans (i.e., loans of less than €1,000, in line with the proposed changes to the obligatory consultation threshold) to facilitate smaller loans, particularly by credit unions.*

The Department of Finance should draft legislation, if the proposed amendments require it.”

The Personal Micro Credit (PMC) initiative and It Makes Sense (IMS) have operated in Credit Unions since a pilot in 2015 and a national rollout in 2016. It is a small loan product (€100 - €2,000) offered through credit unions to social welfare recipients who cannot avail of a standard loan. To note in 2023, 46% of the number of loans written by credit unions were for less than €2,000. Credit unions have a valuable role to play in providing small loans which allow people to avoid high-cost credit.

Question 5 – Should Ireland prohibit advertising of credit that accentuates the ease or speed which the credit can be obtained, that provides for a discount conditional on accepting credit, or which offers payment breaks of more than three months for the repayment of instalments? Article 8(8).

No. The *“ease and speed”* which the credit is obtained can be at the request and benefit of the borrower and Credit Unions provide a quick turnaround for credit applications. It should be noted that willingness and capacity of a borrower to repay the loan is the primary factor. This is set down in Section 35 (2A) of the Credit Union Act 1997 (as amended) (*“CUA”*)

“The ability of the loan applicant to repay a loan shall be the primary consideration in the underwriting process of the credit union making the loan or participating in the loan, as the case may be.”

Advertising on credit products in Ireland is covered in detail in Chapter 9 of the Consumer Protection Code and is enforced by the Central Bank of Ireland and the Competition and Consumer Protection Commission. We would view these protections as sufficient and further restrictions are unnecessary at this time as the Code review is ongoing and may lead to changes.

Question 6 – Should Ireland adapt any such requirements regarding the manner in which explanations are to be given? (Article 12(2)).

No. The Consumer Protection Code is currently being reviewed and has provisions relating to safeguarding customers in vulnerable circumstances. We think it would be beneficial and prudent to wait under the outcome of the Central Bank led process rather than front run it. The European Accessibility Act enters into force in June 2025 which may lead to further changes. A holistic approach should be taken across the CCD2, CPC and Accessibility Act 2025 to ensure consistency and efficiency in implementation by firms.

Question 7 – Should creditors be allowed to require borrowers to open or maintain accounts as part of the credit agreement for the above purposes? (Article 14(2)).

Yes. Credit Unions have members who must join before accessing credit or using the credit union. This is set out in Section 17 of the CUA. It could be read in such a way that for the abundance of caution, maintaining this exemption allows credit unions to operate in line with the CUA.

The Credit Union and Co-operation with Overseas Regulators Act 2012 introduced the concept of “attached savings” in Section 32 of the CUA. This is effectively a form of security where the credit union can specify that members’ shares are “attached” to the loan.

This highlights the need to take account of the interaction between domestic legislation namely the Consumer Credit Act 1995 as amended, the Consumer Protection Code, the CAU and this Directive when transposing this Directive.

Question 8 - Should creditors be allowed to require borrowers to have an appropriate insurance policy as part of the credit agreement for the above purposes? (Article 14(3)).

Yes. Currently borrowers drawing down a mortgage must have mortgage protection insurance as required under Section 126 of the Consumer Credit Act 1997 as amended. Credit Union loans (excluding mortgages) for credit unions affiliated to the Irish League of Credit Unions come with loan protection insurance where in the event of the death of the borrower these loans are repaid. This reduces the risk to the credit union.

Question 9 – Should the use of the terms “independent advice” and “independent advisor” or other similar terms be prohibited where these services are provided by the credit provider or credit intermediary? (Article 16(4)).

No. It is prudent for consumers to be afforded the opportunity to seek independent advice, but it should be at their discretion, for a number of reasons. Credit Unions are permitted under schedule 2 of SI 1 of 2016 to provide “Financial Counselling” free of charge as mandated for by Section 48 of Credit Union Act 1997 as amended.

The Minimum Competency Code 2017 and associated regulations came into effect on 3 January 2018. With effect from 1 October 2024, the MCC 2017 and MCR 2017 will apply to all in-scope activities for credit unions. The MCC 2017 applies to persons in credit unions when undertaking specific activities relating to retail financial product(s), rather than to the titles or roles held by these persons.

As outlined by the Central Bank, *“These regulatory changes are being introduced with a view to ensuring that credit union members are afforded the same level of protection as consumers availing of similar products and services from other regulated entities.”*

Question 11 – Should Ireland continue to require creditors to consult with appropriate databases (The Central Credit Register) as part of the creditworthiness assessment? (Article 18(11)).

Yes. The Central Credit Register (CCR) was established under the Credit Reporting Act 2013 (as amended). We would see the need for constant upgrading of the CCR to ensure accuracy.

As part of our General Election manifesto we would see the need for urgent enhancements to prevent fraud such as introducing a Personal Public Service Number (PPSN) check on loan enquiries on the Central Credit Register.

As outlined above, there is a need to move to quickly to implement Recommendation 11.2 of the Retail Banking Review,

“The operation of the Central Credit Register should be amended, following engagement with relevant stakeholders, to:

- *Reduce the reporting threshold for credit agreements from €500 to €200 and the consultation obligation threshold from €2,000 to €1,000; and*
- *Introduce a new lower fee for Central Credit Register consultations for low value loans (i.e., loans of less than €1,000, in line with the proposed changes to the obligatory consultation threshold) to facilitate smaller loans, particularly by credit unions.*

The Department of Finance should draft legislation, if the proposed amendments require it.”

Question 12 – Should Ireland introduce any further such national rules on the validity of the conclusion of credit agreements? (Article 20(2)).

No. We have sufficient rules in place in the CUA, the Consumer Protection Code and the Consumer Credit Act.

Question 13 – Should there be more stringent consumer protection provisions above those provided for in Article 24 of CCD2? (Article 24(5)).

No. Under the section 48 of the CUA, credit unions providing overdraft facilities must comply with the Member Personal Current Account Service (MPCAS) and these coupled with the provisions in this revised Consumer Credit Directive appear sufficient protections.

Question 17 – Should creditors have a right to compensation for early repayment and, if so, what should the threshold for early repayment be that triggers the right to compensation? (Article 29(4)).

Yes. While not directly applicable to credit unions as all credit union loans can be repaid at any time without any extra costs or fees, there is a need to provide a right for compensate where a fixed term contract has been ended. There are costs involved in providing a fixed term loan and any changes here could impact the attractiveness and pricing of fixed term rates.

Question 18 – Should Ireland provide for any further prohibitions or limitations regarding specific charges or fees applied by creditors? (Article 31.2).

No, not for credit unions. As set out in the explanatory memo credit unions are subject to an interest rate cap of 2% per month as part of Credit Union (Amendment) Act 2023. The Act also made changes to Section 38(b) of the CUA to remove the requirement that the interest on a loan included all the charges made by the credit union in making the loan. Bringing in further limitations at this stage via this Directive would run counter to consistent and predictable legislative outcomes.

We would argue that the maximum interest rate for High-Cost Credit Providers as provided for in the Consumer Credit (Amendment) Act 2022 and SI 576 of 2022, should be reduced from 48% per annum to 36% per annum. The Central Bank is mandated in the Consumer Credit (Amendment) Act 2022 to prepare a report within three years of the commencement of the Act. This is critically important that this work is completed urgently.

Question 19 – Should Ireland impose a ban on commissions paid by a creditor to a credit intermediary? (Article 32(4)).

No. We do not favour a ban on commission as parts of the Credit Union (Amendment) Act 2023 as commenced by SI 475 of 2024 relating to referral of members may involve a fee or commission. Adding additional requirements via this Directive to a sectoral area with recent legislation would be inconsistent and a poor policy outcome.

There are requirements set down in the Consumer Protection Code relating to avoiding conflicts of interest and inducements and these were added in September 2019 following Consultation Paper CP116, which we would see as more than adequate at this stage.

Question 20 – Should Ireland prohibit or impose restrictions on the payments from a consumer to a creditor or a credit intermediary prior to the conclusion of a credit agreement? (Article 32(5)).

No. We are not fully sure what payments are referred to in this article.

Question 22 – Should Ireland exempt qualifying enterprises from registration and supervision arrangements? (Article 37(3)).

No. The provision of credit and other services is subject to domestic legislation, codes, regulations as well as a suite of EU Directives and regulations in order to protect the consumer and to provide a level playing field. There are limited if any justification for exemptions in an area as important as the provision of credit.

Question 23 - Should the Central Bank of Ireland have product intervention powers to direct that products which are contrary to consumer interests are withdrawn?

Yes. We would view the provisions of the CUA as giving the Central Bank product intervention powers specifically Section 87 of the CUA in certain circumstances. The pace of new innovation and the speed of digitalisation strengthens the case for product intervention powers. However, this should be done in a controlled and clearly defined manner as was the case in the Central Bank's intervention in the Contracts for Difference retail market in 2019.