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NAME, Chairperson

NAME, Credit Union Limited

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25 January 2024 – By email

**RE: Consultation Paper 148 - Consultation on Credit Union Exempt Services (CP148),
proposed inclusion of Current Account Services as a further exempt service and
consequential withdrawal of Member Personal Current Account Services**

Dear Chair,

We are writing to you with regard to the Central Bank of Ireland's (the Central Bank's) proposals to include current account services, as new exempt services, in Schedule 2 of the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 (the 2016 Regulations).

The Central Bank's proposals in relation to the inclusion of current account services in Schedule 2 of the 2016 Regulations (the Exempt Services Schedule) take particular account of feedback received from respondents¹ to CP148 and the overarching goal of the review of credit union exempt services, i.e. to ensure that the scope and parameters of the prescribed exempt services, and the applicable conditions, are clear, appropriate and reflect the current financial services landscape within which credit unions operate. As these proposals and proposed associated conditions were not contained in CP148 we are now engaging further on these.

The purpose of this letter is to give you the opportunity to provide your views in relation to the proposals, as your credit union was granted approval by the Central Bank to provide Member

¹ Two responses were received from individual credit unions, four responses were received from credit union bodies, one response was from a member-owned shared services organisation and one response was received from a statutory body.



Personal Current Account Services (including Member Business Current Account Services) (MPCAS) as an additional service under section 49 of the Credit Union Act, 1997 (the 1997 Act).

Background

The Central Bank published CP148 on 21 January 2022 following a mainly technical review of the credit union exempt services requirements, as set out in Regulation 48 and Schedule 2 of the 2016 Regulations. CP148 outlined the proposed changes to the 2016 Regulations in respect of credit union exempt services in the following areas:

- i. Technical drafting changes to the Exempt Services Schedule;
- ii. Technical drafting changes to Regulation 2 (Interpretation) and Regulation 48 (Performing Services);
- iii. Changes to the conditions which must be fulfilled in order that credit unions may provide certain services as exempt services;
- iv. Broadening the intermediation services that credit unions may provide as services exempt from the additional services provisions of the 1997 Act.

When a service is listed in the Exempt Services Schedule credit unions may provide that service to its members, without first obtaining an approval from the Central Bank under the additional services provisions of the 1997 Act. Services prescribed in the Exempt Services Schedule are therefore known as exempt services.

The Central Bank believes that the inclusion of current account services as exempt services, as proposed, will bring benefits to all credit unions however, we recognise that the proposals have particular significance to credit unions already providing MPCAS. Therefore, the Central Bank considers it appropriate to undertake a targeted engagement process with credit unions currently providing or approved to provide MPCAS. This targeted engagement brings to your attention specific proposals which the Central Bank is minded to implement and allows you an opportunity to view the proposed amendments to the 2016 Regulations (to include current account services as exempt services), before the Central Bank publishes the Feedback Statement to CP148 and implements the proposals. This targeted engagement will gather feedback from stakeholders with specific relevant knowledge. We welcome your views, in particular feedback that reflects your knowledge and working experience of credit union current accounts.



Having regard to Payac Services CLG's (Payac) particular knowledge and expertise of the provision by credit unions of MPCAS a template copy of this letter will also be sent to Payac seeking their views as part of this targeted engagement.

Current account services as an exempt service

The inclusion of current account services to the list of exempt services was identified as an appropriate and warranted change by the Central Bank in the course of its review of exempt services and in particular in the assessment of stakeholder submissions to CP148. The proposed prescription of current account services, in response to submissions to CP148, is seen as an appropriate regulatory development. This proposal recognises the experience of the many credit unions which are currently successfully providing MPCAS and facilitates the further evolution of MPCAS.

Furthermore, the Central Bank considers that the inclusion of current account services as exempt services is appropriate on the basis that the provision of current account services by credit unions, where they so decide to provide them, would be of mutual benefit to credit union members. The Central Bank is of the view that prescribing these further services as exempt services would not involve undue risk to members' savings, the financial stability of the credit union or credit unions' operations.

The proposed inclusion of current account services as exempt services would be effected through amendments to the 2016 Regulations. **Appendix 1** to this letter contains the relevant extracts, including relevant definitions, from the current proposed draft Amending Regulations which would give effect to those amendments (the Draft Amending Regulations).

Proposed withdrawal of MPCAS approvals

Should current account services be prescribed as exempt services, as proposed, current account services would then supersede and replace the existing MPCAS additional service. Furthermore, existing MPCAS additional services approvals will be withdrawn pursuant to section 50(3) of the 1997 Act and all credit unions who choose to provide such services would, going forward, provide them as the proposed exempt current account services under the 2016 Regulations, and be subject to the proposed associated conditions set out in the Exempt Services Schedule.



We highlight that the description of, and conditions applying to ‘MPCAS’ and ‘current account services’ will not be entirely the same – this is due not only to the technical drafting changes involved but also to the exclusion from ‘current account services’ of certain substantive components of the description of the services that currently come within scope of MPCAS. Further details of these differences are included below.

The Central Bank considers it appropriate to withdraw approvals granted for the provision of MPCAS as an additional service. While current account services are grounded on MPCAS they differ from one another, in particular in the conditions attaching to them. It is appropriate to avoid unnecessary complexity in the provision of services by credit unions to their members and the proposed exempt current account services will have less conditions attaching than attach to MPCAS. Furthermore, current account services, as an exempt service, with the conditions attaching as proposed, will have a statutory basis in regulations made by the Central Bank, as set out in the Draft Amending Regulations. It is crucial in order to avoid fragmentation of the market and fragmentation of regulatory requirements, that existing approvals of MPCAS, as an additional service, are withdrawn.

The Central Bank intends to implement the changeover from MPCAS to current account services by the withdrawal of all and any approvals to provide MPCAS in accordance with section 50(3)(a) of the Credit Union Act, 1997. This proposed withdrawal of approvals in favour of the proposed exempt current account services would happen in the context of a legislative change, i.e. amendments to the 2016 Regulations, and would apply universally to all approvals previously granted. In this regard the powers afforded to the Central Bank under section 50(3)(a) of the 1997 Act would not be used on a discretionary basis in relation to any one credit union.

Technical drafting

The design of current account services as an exempt service builds upon the experience gained from credit unions providing MPCAS and represents an enhancement of MPCAS as approved as an additional service, for example, some changes take account of issues raised by credit unions with the Central Bank. A comprehensive description of the differences between MPCAS and current account services is set out below.

Description of the proposed exempt current account services



In particular, we emphasise that the proposed exempt current account services will not include the following:

- that the credit union may only provide payment account servicing payment services to licensed / regulated third party payment service providers; and
- that the credit union may act as agent in the provision of member personal current account payment services.

This is on the basis that:

- credit unions are exempt from the requirements under Directive (EU) 2015/2366 (PSD2) to provide confirmation of the availability of funds and access to members' accounts to third party providers (i.e. open banking); and
- it is not clear that MPCAS-approved credit unions are acting as agents in the provision of MPCAS.

Refinements to the description of services included in the proposed exempt current account services

We draw your attention to refinements to the description (to better align it with definitions in payment services legislation) and to the conditions attaching to the proposed exempt current account services. The main refinements proposed are summarised below:

- Current account services as proposed include personal, SME, club and charity accounts;
- The term “payment transactions” will be better aligned with the definition of that term under PSD2; and
- Certain conditions (and aspects of conditions) which attached to the provision of MPCAS are not included in the proposed conditions attaching to current account services as proposed.

Notice requirement in proposed conditions

Your attention is drawn to the proposed condition attaching to the proposed exempt current account services which would require credit unions to submit a notification to the Central Bank of their intention to make current account services available to their members at least 30 days in advance of so doing. This condition will apply to all credit unions, including, for the avoidance of doubt, credit unions which previously held an approval to provide MPCAS as an additional service.



Your views

We invite you to make a written submission to us, outlining any observations you have on:

1. the Central Bank's proposals to prescribe current account services as exempt services and the consequential intention to withdraw pursuant to section 50(3) of the 1997 Act, all and any MPCAS approvals;
2. the proposed associated conditions attaching to the provision of current account services as exempt services; and
3. the technical drafting as set out in Appendix 1.

How to respond

We ask that you provide any observations you have to us by email by no later than 22 February 2024. Following consideration of any submissions received, the Central Bank will make a final decision on whether to prescribe the proposed current account services, the description of these services and the associated conditions. Please note that any feedback provided to us in response to this letter may be reflected in the Feedback Statement on CP148.

Next Steps

Following conclusion of this targeted engagement process, the Central Bank intends to undertake statutory consultation, as required under Section 84A of the 1997 Act, on draft amending regulations which will give effect to the full suite of proposed changes to the 2016 Regulations resulting from CP148, after which we will publish the Feedback Statement on CP148 and final amending regulations.

Please do not hesitate to contact the Central Bank by email to rcu@centralbank.ie should you have any queries,

Yours sincerely,

Eamon Clarke
Deputy Registrar of Credit Unions



Appendix 1

Relevant extracts from the current proposed Draft Amending Exempt Services Regulations

S.I. No. of 202[X]

CREDIT UNION ACT 1997 (REGULATORY REQUIREMENTS) (AMENDMENT) REGULATIONS 202[X]

In exercise of the powers conferred on the Central Bank of Ireland (the “Bank”) by section 182A of the Credit Union Act, 1997 (No. 15 of 1997) (the “Act”), the Bank, having consulted the Minister for Finance, the Credit Union Advisory Committee and other bodies that appear to the Bank to have expertise or knowledge of credit unions generally and that the Bank considers appropriate to consult in the circumstances, hereby makes the following regulations:

1. These Regulations may be cited as the Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 202[X].
2. In these Regulations “Principal Regulations” means the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016 (S.I. No. 1 of 2016).
3. Regulation 2 of the Principal Regulations is amended by-
 - (a)
 - (b) inserting the following definitions:

‘credit transfer’ means a payment service for crediting a payee’s payment account with a payment transaction or a series of payment transactions from a member’s share account, deposit account, budget account or current account by the credit union which holds the member’s account, based on an instruction given by the member;

‘current account’ means an account held by a member or members with the credit union that is used primarily for the execution of day-to-day payment transactions and in respect of which members holding the account may use an ATM card, payment card or similar device and payment card or similar device having ATM functionality;

‘direct debit’ means a payment service for debiting a member’s share account, deposit account, budget account, or current account, where a payment transaction is initiated by the payee on the basis of the consent given by the member to the payee, to the payee’s payment service provider or to the member’s own payment service provider;



‘money remittance’ means a service where funds are received by the credit union from a member, for the sole purpose of transferring a corresponding amount to a third party or to another payment service provider acting on behalf of the payee, and/or where such funds are received on behalf of and made available to the payee;

‘payment services provider’ means a person referred to in Regulation 6(1) of the European Union (Payment Services) Regulations 2018 (S.I. No. 6 of 2018);

‘payment transaction’ means an act, initiated by a member or on the member’s behalf, as the payer, or by the *payee*, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee including transactions which may take place in respect of, but not limited to, the following payment services-

- (a) services enabling cash to be placed on a current account as well as all the operations required for operating a current account;
- (b) services enabling cash withdrawals from a current account as well as all the operations required for operating a current account;
- (c) execution of transactions comprising transfers of funds on a current account with the member’s credit union or with another payment services provider, including-
 - (i) execution of direct debits, including one-off direct debits;
 - (ii) execution of transactions through a payment card or a similar device;
 - (iii) execution of credit transfers, including standing orders;
- (d) execution of transactions where the funds are covered by a credit line for the credit union member, including-
 - (i) execution of direct debits, including one-off direct debits;
 - (ii) execution of transactions through a payment card or a similar device;
 - (iii) execution of credit transfers, including standing orders;
- (e) issuing of payment instruments in the form of payment cards and similar devices.”

4. Regulation 48 of the Principal Regulations is amended by inserting the following paragraphs after paragraph (2):

“(3)

(4)

(5) The provision of any of the services specified in Schedule 2 to these Regulations is without prejudice to the application of any other legal or regulatory requirements that a credit union must comply with when providing the service in question, including any requirements relating to authorisation or license from, or registration with, the Bank or other authority.



(6) Where a credit union refers, or introduces, a member to another regulated financial service provider, acts in the capacity of agent for another regulated financial service provider or provides intermediation services in accordance with relevant services specified in Schedule 2 to these Regulations, it shall ensure that the relevant third party financial services provider has any necessary authorisation or license from, or registration with, the Bank or other authority to provide the relevant services.”

5. The Principal Regulations are amended by substituting for paragraphs 1 to 22 of Schedule 2 the following:

“1.

2. Current account services, that is to say services which a credit union may provide to its members whereby a credit union member avails of a euro-denominated current account provided by the credit union subject to the following conditions-

- (i) at least 30 days before it intends to make current account services available to members, the credit union submits a notification to the Bank in a form to be published by the Bank on its website from time to time;
- (ii) services are provided to-
 - (a) members in their personal capacity as personal current accounts only;
 - (b) members in their capacity as a charity, club or society for purposes relating to the activities of the charity, club, or society only; and
 - (c) members in their capacity as a micro, small or medium-sized enterprise within the meaning of Commission Recommendation 2003/361/EC for purposes related to the business activities of the enterprise only;
- (iii) interest, including surcharge interest, on an overdraft facility does not at any time exceed the maximum interest rate that may be charged by a credit union on loans made to its members under section 38 of the Act;
- (iv) the credit union accounts separately in its books for all such transactions;
- (v) the credit union safeguards any transaction funds not yet credited to a member’s account or transferred to another payment services provider from any claim, right or recourse of a liquidator, administrator or examiner of the credit union;
- (vi) the credit union holds a separate operational risk reserve in respect of its current account services which –



- (a) is distinct and in addition to the reserves that the credit union is required to hold under regulation 4 of these Regulations and other operational risk reserves held by the credit union; and
 - (b) has the characteristics set out in Regulation 3 of these Regulations;
- (vii) the credit union ensures, by means of putting in place and maintaining adequate insurance cover, that adequate compensation is available to members in respect of negligence, fraud or other dishonesty on the part of officers of the credit union in connection with the provision of current account services;
- (viii) other than in respect of a major operational or security incident as defined by the European Banking Authority Revised Guidelines on major incident reporting under Directive (EU) 2015/2366 (PSD2), in the event of any major difficulty, failure or delay affecting the service or the provision of the services (or any part thereof), the credit union shall, as soon as it becomes aware thereof, notify the Bank immediately, advising it of such difficulty, failure or delay and the nature, extent, effect and likely duration of the circumstances, and shall use its best endeavours to minimise the effect of such circumstances including the making of any alternative arrangements which may be practicable and shall after the cessation of any such circumstances, notify the Bank.

3.cont'd