



credit union development association

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## **CUDA Submission On Consultation Paper CP32 – Voluntary Consumer Protection Code For Credit Unions (In respect of their Core Services)**

### **Submission Context**

CUDA welcomes the opportunity to formally comment on CP 32 – the Voluntary Consumer Protection Code For Credit Unions ( In respect of their core services). We note that no legal basis exists to support the imposition of a Statutory Consumer Code for Credit Unions with respect to their core services. In addition, we also welcome the clear statement contained in the consultation document that “an appropriate code for Credit Unions..... will take into consideration the special structure and ethos of the Credit Union Movement ” and will only “.... come into effect on a date to be agreed between the Financial Regulator and the Credit Union Movement”

CUDA regards Credit Union specific, statutory regulation as a necessary precondition for the effective differentiation and sustainable development of Credit Unions in Ireland. In this context we argued strongly for the inclusion of Credit Unions under the remit of the Financial Regulator on the basis of assurances that the distinct structure, philosophy and ethos of Credit Unions would be protected in the Financial Regulator’s approach to regulating the sector. This commitment to adopt a suitably differentiated approach to the regulation of Credit Unions was given legislative effect in the Central Bank and Financial Services Authority of Ireland Act 2003 and was also stated as a high level goal in the Regulator’s initial Strategic Plan. The establishment of the Office of Registrar of Credit Unions within the Financial Regulator gave practical expression to the aforementioned commitments – particularly from a prudential supervision perspective. CUDA has engaged positively and proactively with the Registrar’s Office in the rolling out of the statutory regulatory framework for Credit Unions.

It is however quite clearly stated in numerous Financial Regulator communications and pronouncements that prudential regulation **and** consumer protection are interlinking elements in the same regulatory process. It follows therefore that legislative and other commitments to having a differentiated

regulatory process for Credit Unions must also apply to and include the introduction of any consumer protection measures.

Credit Unions operate under severe legislative constraints and it is a widely shared view that the Credit Union Act 1997 is totally outdated and is severely hindering the development of sector. The future growth and development of progressive Credit Unions is particularly dependant on an integrated and comprehensive overhaul of the current one size fits all legislative / regulatory frameworks governing Credit Union operations. The Financial Regulator and Department of Finance have clearly indicated that a piecemeal approach to the reform of the Credit Union Act 1997 is not desirable.

The one urgent Consumer Protection requirement that is generic across all sectors of the financial marketplace- a Statutory Savings Protection or guarantee arrangement, has not been introduced and remains the most important prudential and consumer protection gap on the Credit union regulatory landscape.

This proposed voluntary Consumer Protection code is the first piece of Consumer Protection Regulation that would apply to Credit Union Core Services and thus much of what follows needs to be viewed as being applicable in the context of the Financial Regulator's Consumer Protection agenda in general as well as referring to the specifics of this proposed voluntary Code.

## **Summary Overview**

While acknowledging the stated objective of the Financial Regulator as being to frame the proposed code in a way which takes into account the special structure and ethos of Credit Unions, nonetheless CUDA' Credit Unions have serious philosophical and operational difficulties with the current proposed code seeing it as a predominantly undifferentiated and unacceptable one size fits all approach to regulation.

In its current format and for reasons outlined below we do not feel that the proposed code meaningfully acknowledges and supports the unique relationship that exists between a Credit Union and its members and will only serve to constraint and dilute in particular the potential of Credit Unions to meet the borrowing needs of its Members – a potential already seriously limited by outdated legislation. As a precedent for the deployment of future consumer protection initiatives we regard the approach as having serious implications for the competitiveness and development of Credit Unions in the longer term.

In addition and purely from a regulatory best practice perspective we regard the introduction of a “voluntary code” as being problematic in itself in terms of its

potential for confusion both from a Credit Union / Member and Regulator perspective.

CUDA acknowledges the participative approach adopted by the Financial Regulator re this initiative and as mentioned welcomes the implicit commitment contained in the document that the provisions of the code will only come into effect following agreement between the financial Regulator and Credit Unions. In this context and based on the more detailed rationale set out below CUDA would respectfully suggest that the proposed code not be introduced in its current format and that its underlying objectives be dealt with as part of the forthcoming review of the Credit Union legislative framework.

### **Detailed High Level Observations / Comments**

We do not propose to go into detailed comment at this time regarding the appropriateness or otherwise of specific rules in the draft code but would put forward the following general observations in support of our high level request to defer the introduction of the voluntary code in its entirety.

1. The Code is not consistent with Legislative and Regulatory commitments to have a differentiated approach to the Regulation of Credit Unions

Despite some minor differences in scope, the language used in the proposed code for Credit Unions is practically word for word the same as the existing Statutory CPC introduced for other financial institutions. Such a one size fits all approach is clearly inconsistent with the previously referred to commitments re taking a differentiated approach to the regulation of Credit Unions as set out in the introduction to this submission and referred to in the introduction of CP32 itself. Aside from issues re the proposed code itself Credit Unions would view its introduction as a dangerous precedent re further elements of the Consumer protection agenda

2. A one size fits all approach to Consumer Protection is detrimental to the competitiveness of Credit Unions and can serve to dilute Member Benefits

From a wider consumer protection perspective the one size fits all approach to regulation is not only contrary to previous commitments regarding the need for a differentiated approach for Credit Unions but is based on a fundamental misconception that there is an strict

equivalence between the Credit Union / Member relationship when it comes to saving and borrowing and the increasingly sales driven customer / provider model reflective of the approach adopted by many sectors of the wider marketplace. Putting the member first is at the heart of what Credit Union is all about. It's what makes Credit Unions different from other financial service providers and significantly explains why Credit Unions are so successful and respected by their members who are not customers or consumers but owners of their Credit Union.

It follows therefore that a code that is aimed at protecting consumers from mis-selling and other malpractice that have been evident from time to time in the wider financial sector cannot be simply extended to Credit Unions. In actual fact, and particularly with regard to lending, the imposition of certain requirements contained in the proposed code could damage the mutually trusting relationship that exists between a Credit Union and its borrowing Members and could render much small ticket lending completely uneconomic.

In general the wholesale adoption of a "one size fits all" approach in the deployment of consumer protection regulation runs the considerable risk of creating a market sameness or convergence to the detriment of genuine consumer choice, competition and access – all critically important components of consumer protection.

3. Members / Consumers already enjoy a high degree of "protection" via the existing Credit Union structure / approach

Credit Unions are community based, not for profit financial cooperatives. Their member owned / governed structure and operating principles embody a Member or consumer protection focus which is at variance with much of the profit driven financial services market in general and is underpinned by something ultimately more meaningful than generic codes of conduct – the Credit Union "Member First" culture.

This philosophical Member or consumer protection focus is underpinned by a comprehensive legislative framework which clearly defines the level, extent and manner in which Credit Unions can operate and engage with their members in the savings and loans area. No other financial services provider has such an existing set of "business rules" governing their operations. Any discussion of level playing pitches etc would do well to reflect on the following Credit Union "Constraints":

- a. Significant legislative constraints exist regarding who can join a particular Credit Union and the type and scale of services a Credit Union can provide
- b. There are legislative limits on the level and type of savings a Member may have with a Credit Union as well as limits as to the term, type and size of loan a Credit Union may grant a member
- c. There is a legislative requirement on Credit Unions only to lend funds for productive purposes and on the basis of a Member's established ability to repay
- d. There is a legislative cap on the interest rate a Credit Union may charge on its loans

Long before consumers in the wider financial marketplace had a Statutory right of redress in the event of their being unhappy with how they were treated by their financial institution, Credit Union Members enjoyed and continue to enjoy a statutory based system of appeal and redress in the event of dissatisfaction with their Credit Union which goes further than the avenues currently available via the Financial Ombudsman scheme.

The 1997 Credit Union Act also confers comprehensive statutory powers on the Registrar of Credit Unions regarding the approval of and manner in which additional services may be provided by a Credit Union (including advertising practices etc). It should also be noted that the provision of all non core services by Credit Unions is covered by the Statutory CPC.

However, the Credit Union approach to accepting savings and granting loans to Members is considerably different to the standard marketplace model and does not lend itself to a standardized or generic approach to applying consumer protection rules / regulations which as we have seen are predominantly aimed at addressing shortcomings perceived or otherwise in the wider financial marketplace.

#### 4. Competitive Dynamics of The Marketplace

The marketplace for personal financial services has become extremely competitive. However, Credit Union members are increasingly recognising and valuing the Credit difference – a difference based on a

not for profit member first structure and built on a foundation of fairness, inclusivity and equality of access /treatment. This is a significant competitive advantage which our competitors have difficulty in replicating or imitating – a fact continually reflected in various attitudinal surveys.

Hence calls by other sections of the industry for the extension of one size fits all regulatory rules to Credit Unions on the basis of “levelling playing fields” or “ensuring equality of access” or “protecting the vulnerable in society” should be seen for what they are – attempts to blunt the competitive edge of Credit Unions.

5. The Credit Union Legislative and Regulatory Framework needs to be overhauled in an integrated and not piecemeal fashion

The predominantly one size fits all rules based nature of the current legislative / regulatory framework governing the operation of Credit Unions is undoubtedly acting as a constraint on the growth and competitiveness of larger Credit Unions in particular. It is stated on page one of the consultation document that the proposed code would become part of the Credit Union legislative framework in the event of a general review of the Credit Union Act taking place in future.

That a comprehensive overhaul of Credit Union legislation is the crucial ingredient for the further growth and development of the sector is generally accepted by all key stakeholders. Both the Department of Finance and the Financial Regulator have indicated that a piecemeal approach to reviewing Credit Union legislation is not their desired approach but rather their preference is for an integrated or holistic approach to be adopted. We therefore don't think it suitable to pre-empt such an integrated and all encompassing review of the Credit Union regulatory environment by introducing this code in isolation.

Furthermore, as set out above CUDA believes that Credit Union Members currently enjoy a greater and more meaningful level of “protection” vis-à-vis their core service interaction with Credit Unions than would be delivered via this proposed code. If some formalisation or enhancement of this process is required then it should only be considered as part of an overall review of Credit Union legislation.

However one key Consumer Protection area where Credit Union members are not as well protected as their equivalent Bank customers is the area of a Statutory system of savings protection or deposit guarantee. The introduction of an equivalent level of Statutory

protection for the savings of Members in Credit Unions as exists in the banking sector is a long stated objective of the financial regulator. There are no justifications for the continued failure to introduce such an arrangement and Credit Unions would be extremely reluctant to embrace any voluntary consumer protection code while a far more urgent and critical consumer protection mechanism is not addressed.

## 6 The Better Regulation Perspective

Notwithstanding the issues outlined above we also feel that it is not consistent with Regulatory Best practice to introduce a “voluntary” code which could serve to be confusing both from a Credit Union and Member perspective and could give rise to regulatory uncertainty with respect to existing legislative requirements / protections

### **Summary & Conclusion**

CUDA is fully committed to the development of an enhanced Statutory Regulatory framework for Credit Unions covering both Prudential and Consumer Protection sides of the Regulatory coin. However we do not support the introduction of the currently proposed voluntary consumer protection code as we feel:

1. It is not consistent with the existing commitments regarding the need to have a differentiated Regulatory system for Credit Unions
2. The one size fits all language/approach adopted in the proposed code does not reflect the essential differences in approach, structure and ethos of Credit Unions over other financial service providers and therefore its deployment could have serious competitive implications for Credit Unions and serve to dilute key “consumer protection” benefits of the current Credit Union approach in the area of loans in particular
3. Any changes or enhancements to the way Credit Unions currently interact with their members with respect to the core areas of savings and loans should only be considered as part of a wider review of the current legislative / regulatory frameworks governing Credit Union operations
4. Credit Union members currently receive a greater degree of protection than is envisaged in the code via the proven Credit Union member first approach and the legislative protections contained in the Credit Union Act. The regulatory objective should be to cement and protect these unique

Credit Union member benefits rather than unintentionally dilute them via the application of a generic code designed to address shortcomings in the wider marketplace

5. It is premature to consider low level changes to rules governing Credit Union activities in their core service areas while the most urgent Regulatory requirement for Credit Union members – namely, the introduction of a Statutory Savings Protection scheme, remains outstanding.
6. The introduction of a voluntary code is not in keeping with best regulatory practice.

CUDA would therefore respectfully suggest that the proposed code not be introduced in its current format and that its underlying objectives be dealt with as part of the forthcoming review of the Credit Union legislative framework.

CUDA is grateful for the opportunity to make a formal submission on this issue and also welcomes the commitment of the Financial Regulator to seeking the agreement of the Credit Union movement in bringing this matter forward. We therefore strongly request that due cognizance be given to the concerns and views of Credit Unions regarding the proposed voluntary Code and the wider issue of Consumer Protection regulation for Credit Unions as set out in this submission.

We look forward to engaging directly and constructively with the Financial Regulator in the coming months in order to further discuss the issues raised and to bring this matter forward.

**CUDA**

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