

Finance Watch response to CP158 - Consultation Paper on the Consumer Protection Code

2.2 Digitalisation

Do you have any comments on the proposed Code enhancements with regard to digitalisation?

Finance Watch fully supports and would like to express the importance of the proposal to require firms to ensure that the use of technology in the delivery of products and services are not designed in a way that seeks to unfairly exploit or take advantage of behaviours, habits, preferences or biases of customers, which might result in customer detriment.

Financial service providers are increasingly using techniques such as [dark patterns](#) that take advantage of behavioural biases of consumers. Dark patterns are deceptive online interface designs (e.g. colouring of decision buttons) that are used to trick people into making decisions that are in the interests of the online business, but at the expense of the user. According to [a mystery shopping exercise published by the European Commission in 2022](#), **97% of the most popular websites and apps used by EU consumers deploy at least one dark pattern.**

Therefore, it is important that these practices are banned. We are of the opinion that the code should ban at least the following practices explicitly:

- Giving more prominence to certain choices when asking the consumers who are recipients of their service for a decision;
- Repeatedly requesting that consumers who are recipients of the product/service make a choice where that choice has already been made, especially by presenting pop-ups that interfere with the user experience; and
- Making the procedure for terminating a product/service more difficult than subscribing to it.

2.4 Mortgage Credit and Switching

Do you have any comments on the proposed enhancements, or any further suggestions on the CCMA?

Finance Watch strongly supports the proposals with regards to introducing a requirement in the revised Code to ensure firms consider an appropriate and sustainable range of ARAs, which are broad enough to meet the needs of impacted borrowers.

We would further suggest though that the CCMA also introduce a requirement that ensures that creditworthiness assessments conducted prior to providing a borrower an ARA is used as a means to ensure that an ARA is offered that is suitable and sustainable rather than being a barrier to accessing an ARA.

When offering forbearance measures, using creditworthiness assessments to bar someone from accessing forbearance measures is often witnessed. Therefore, the CCMA should introduce a provision specifying that while a creditworthiness assessment needs to be carried out to ensure that any forbearance measure offered by the credit institution is in fact sustainable and affordable for the consumer, an alternative and more suitable forbearance measure should be sought if a borrower fails a CWA for a particular ARA.

2.7 Protecting Consumers in Vulnerable Circumstances

What are your views on the proposed amendments to the Consumer Protection Code in relation to consumers in vulnerable circumstances? Do you have any comments on the draft Guidance on Protecting Consumers in Vulnerable Circumstances?

Finance Watch strongly agrees that there is a need to introduce a requirement for all firms to train staff on vulnerability issues. [Recent research by Finance Watch](#) shows, however, that this training should also include training about basic products that are tailored/suitable to vulnerable consumers.

A recent report published by Finance Watch on barriers vulnerable consumers face to access basic payment accounts shows that one of these barriers is the fact that financial institution staff often do not know much about the characteristics, fees and access conditions of these products. As a result, many vulnerable consumers are not offered a basic payment account even if they explain to the financial institution that they are vulnerable. These consumers are offered standard accounts instead which are more expensive (and thus often not affordable for a vulnerable consumer) and which sometimes have characteristics such as an overdraft which are not suitable for many vulnerable consumers.

In addition, the training should explicitly include adequate training on support measures (forbearance measures) firms have available for vulnerable consumers who are in difficulty to meet their repayment obligations on consumer credit and mortgage credit and what an appropriate exploration of a customer's specific circumstances looks like to determine what kind of forbearance measures are appropriate for different circumstances.

The recent COVID 19 and cost-of-living crises have increased the number of vulnerable consumers in difficulty of meeting their outstanding consumer credit and mortgage credits. Data shows that the number of EU citizens at risk of poverty or social exclusion in the EU has increased due the recent crises. [In 2022, 21.6% of the EU population](#), accounting for 95.3 million people, fell into this category. In Ireland, the figure was at 20.7%. Moreover, the increase in interest rates has exacerbated the difficulties of vulnerable citizens that have variable mortgages to service their debts. At the same time, however, [data shows](#) that credit institutions do not always offer affordable and sustainable forbearance measures to struggling consumers.

2.8 Climate Risk

Do you agree with our approach to including sustainability preferences with existing suitability criteria? Have you any suggestions on how we can ensure all suitability criteria, including those

relating to financial circumstances and sustainability preferences, are given an appropriate level of consideration?

Finance Watch welcomes the recognition by the Central Bank of the importance to consider clients' sustainability-related preferences to prevent greenwashing. Finance Watch also points the importance to adopt an approach that is consistent at European level. The proposed rules should therefore remain consistent with the existing delegated regulations 2021/1253 and 2021/1257 that require investment firms, insurers and insurance intermediaries to consider clients' sustainability-related preferences when providing investment advice and portfolio management services.

Finance Watch agrees that considering sustainability preferences after the consideration of the other suitability criteria may lead to situations where the clients are asked to revise their sustainability preferences while other suitable products or services could have allowed meeting their sustainability preferences. However, Finance Watch warns that this combined consideration deviates from the ESMA guidelines and that implementation clarifications would be necessary to ensure legal certainty in the suitability process.

Finance Watch also highlights that the current rules, including the ESMA guidelines and EIOPA guidance on the implementation of the consideration of the sustainability preferences, are too flexible and that priority loopholes should be solved (Finance Watch, [A guide to the next sustainable finance agenda](#), pp.34-36). In particular, several "quick fixes" should be made to:

- Adapt the definition of sustainability preferences in the ESG MiFID and ESG IDD delegated acts to allow clients to express a combination of preferences that would not be considered as alternatives;
- Develop a mandatory questionnaire template to ensure that the way sustainability preferences are collected is not misleading for clients;
- Introduce minimum requirements for the 'standard sustainability criteria' that may be proposed by investment firms when clients prefer not expressing detailed preferences but still wish to invest sustainably.

However, Finance Watch also notes fundamental weaknesses in the current European transparency framework for retail investor that require a combined revision of SFDR (Sustainable Finance Disclosure Regulation), the ESMA funds' naming guidelines for the use of sustainability-related terms, PRIIPs (Packaged Retail and Insurance-based Investment Products Regulation) and the consideration of sustainability preferences. In particular, Finance Watch highlights the difficulty for retail investors to understand the existing sustainability-related concept, the confusion between the concept of sustainable investment and transition finance and the misleading classification introduced to determine the reporting requirements (the so-called SFDR Article 8 and Article 9 classifications). In particular, Finance Watch encourages:

1. the creation of new product categories – based on minimum criteria - that would be used for the consideration of sustainability preferences, and
2. the introduction of a Summary Sustainability Indicator (SSI) relying on the concepts of Taxonomy alignment and Sustainable Investment, but allowing a more intuitive understand of the relative level of sustainability of the financial product.

Finance Watch further elaborates on its recommendations in its position papers published on 14 May 2024 [Rethinking SFDR: Finance Watch's proposal in 10 questions](#) and [Sustainable investing: Tailoring the transparency framework for retail investors](#).