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Response to Central Bank Consultation Paper 158: Consumer Protection Code

Dear Central Bank,

We are writing in response to Consultation Paper 158 on the Consumer Protection Code.

We welcome this opportunity to provide feedback on the changes to the proposed Consumer Protection Code (**CPC**) and are generally supportive of the proposals.

Notwithstanding, we believe that there are a number of points which would benefit from further clarification. In particular, these relate to:

- i) The amended definition of consumers;
- ii) The consumer notification on merger, transfer, or cessation of regulated activities;
- iii) The application of certain elements of the CPC to consumer hire agreements;
- iv) Evidencing CPC compliance; and
- v) Error notification to the Central Bank.

We have set out our observations below.

Scope of the definition of “Consumer”

Under the existing CPC, in essence, a consumer will include any incorporated or unincorporated bodies with a turnover of less than €3 million. We note that the threshold is due to be increased to €5 million (which we are generally supportive of).

However, we note that unlike under the existing CPC, under the new definition only incorporated customers are subject to an annual turnover threshold. Unincorporated bodies, including partnerships, clubs, charities, trusts, and other groups of persons without separate legal personality, would not appear to be subject to a similar threshold. This would give rise to the application of all consumer rights under the revised CPC to potentially significant undertakings, irrespective of their size, and the commercial nature of the relationship.

As the aim of consumer protection is to address potential imbalances between consumers and financial service providers, we believe that the extension of these protections to large unincorporated bodies / undertakings with an annual turnover exceeding €5 million is unnecessary and potentially disproportionate. This would lead to a need for financial service providers to comply with the CPC when dealing with significant undertakings in what are otherwise commercial / non-consumer engagements.

Accordingly, in our view, as is currently the case under the existing CPC, the same threshold (€5 million annual turnover) should be applied to unincorporated customers and incorporated customers.

Consumer Notification on Merger, Transfer or Cessation

We note that there is a new requirement for 6 months' notice to customers when ceasing, transferring or merging regulated activities. As currently drafted, this would appear to be in addition to a 2 month notice for transfers or mergers that would include the details of the other regulated entity to which services / activities are being transferred or merged into, and the specific terms and conditions in the consumer's contract that provide for transfer or merger of the regulated activities.

Whilst we do not express any preference, and are supportive of the overall approach to customer notification and transparency, it would be useful to obtain clarification as to whether these notifications could be provided simultaneously where it is possible to provide the details required (*i.e.* a single notification 6 months prior to the proposed transfer or merger), or if two separate notifications are required (*i.e.* one notification 6 months prior to transfer or merger, with an additional notification 2 months prior).

Consumer Hire

The CPC does not differentiate between the provisions applicable to consumer hire agreements and consumer hire-purchase agreements.

Unlike hire-purchase agreements, consumer hire agreements do not involve the transfer of ownership or title to goods, and do not constitute a form of "credit", as ordinarily understood. Consumer hire-agreements are purely operational leases, with no ability for consumers to purchase the relevant goods being leased, which at all times remain the property of the hirer. Consumer-hire agreements are also already subject to specific requirements in terms of content and operation under the Consumer Credit Act 1995.

Consumer hire agreements are often very small in value, and unlike hire-purchase agreements, or other forms of financial accommodation or credit, do not specifically create a credit exposure or risk for the customer. Accordingly, in our view, some level of differentiation or clarification as to the application of the requirements to consumer hire agreements, distinct from credit agreements, would be helpful and appropriate.

For example, the requirement to undertake a formal affordability assessment (regulation 132 of the draft S.I.) refers to the need for a "*lender*" to carry out an affordability assessment on the customer's ability to "*repay debt*". Whilst consumer hire agreements are expressly referred to, there is no lender or debt to be repaid under a consumer hire agreement. Similar concerns arise in respect of assessments of suitability (regulations 15-18).

In our view, the application of the requirements to consumer hire agreements (without differentiation) creates potential ambiguity as to these provisions' application to consumer hire agreements, where there is no "*lender*" or "*credit*" in the ordinary sense.

Further, given the nature of consumer hire agreements, the general application of these requirements would, in our view, be disproportionate.

To reflect the substantive differences between consumer hire agreements and credit agreements (including hire-purchase agreements), in our view it would be helpful to further specify the scope of the requirements under the draft S.I. as applicable to consumer hire agreements, through one or more of the following:

- Expressly disapplying and/or clarifying the intended scope of the requirements to consumer hire agreements;
- Clarifying or confirming that the general exemption from knowing the customer and suitability requirements under regulation 18 of the draft S.I. could be availed by regulated entities where a consumer seeks to enter into a consumer hire agreement in respect of a specific product; or

- Including a *de minimis* threshold to the application of the requirements referable, for example, to the amount of monthly or annual repayments to be paid under the agreement (we do not express any opinion on the precise threshold).

We believe that these clarifications in scope would be helpful to ensure the clear application or dis-application of the relevant requirements under the CPC to consumer hire agreements.

Evidencing CPC Compliance

The revised CPC will introduce broad requirements for regulated entities to give autonomy to consumers whilst protecting consumers' best interests. These range from improving firms' digital user interface, mitigating risks to consumers that are / are not in vulnerable circumstances, the training of staff, and addressing climate risks.

Whilst these requirements are welcomed, further clarification and detail as to how firms will report on and evidence their compliance with the CPC, and ultimately ensure consumers' best interests are being met, would be of assistance.

Error Notification to the Central Bank

We note that the existing requirement under paragraph 10.3 of the CPC to notify the Central Bank of any unresolved error affecting consumers within 40 days has not been expressly replicated in the draft S.I.

It is noted that all errors must be resolved within 6 months of the discovery of the error under regulation 99 of the draft S.I. Failure to do so would therefore constitute a breach of the draft S.I. and would be disclosable to the Central Bank (irrespective of the impact on the regulated entity or consumers).

Nevertheless, it would be helpful to confirm that the Central Bank no longer expects unresolved errors (not otherwise disclosable under regulation 13 of the draft Standards for Business) to be notified to the Central Bank where they remain unresolved for a period of less than 6 months.

Conclusion

As noted, save for the above clarifications, we are generally supportive of the proposed changes to the CPC, which otherwise provide a timely update to the CPC to reflect the changing legal and regulatory landscape in which both consumers and regulated entities operate. We commend the Central Bank's efforts in this regard.

We trust that this response is of assistance and would be happy to discuss or provide further input if required.

Yours sincerely,

Sent by e-mail, no signatures

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