EUROPEAN ASSOCIATION OF CO-OPERATIVE BANKS

CCD Trilogue negotiators
European Parliament
Council of the EU
European Commission

Brussels, 29 November 2022

Re: EU Review of the Consumer Credit Directive

Dear Ambassador Zajíček,

As the trilogues for the Review of the Directive on Consumer Credits are coming to a close, we understand that some topics remain to be negotiated. Some of these, including the equal treatment between consumer credit players, the creditworthiness assessment and the caps on interest rates, are causing significant concern for the European community of savings-and retail banks, cooperative banks and credit unions that are united in this letter and we would like to share some thoughts with you, as you have been involved in the trilogue negotiations or preparation of these meetings.

- Equal treatment between different providers of credit

Regarding the equal treatment between consumer credit players, two Articles are problematic: Article 2 on the CCD scope and Article 37 on the admission/supervision process of non-credit institutions.

Article 2 fb (Council) excludes from the CCD scope deferred payments up to 90 days granted by suppliers of goods and services to their buyers. This provision would lead to an unequal treatment between Bigtech and other regulated credit providers who would have to apply the full CCD, especially for Buy Now Pay Later credit. Even the last draft compromise (dated 15 November 2022), providing for an exemption for deferred payments to be executed within 60 days from the delivery of the goods or services, would not limit this risk sufficiently. Only the Parliament Version (Article 2 ja), which limits the exemption to deferred payments up to 45 days, would provide for a more level playing field between different kinds of lenders.

The Council version of Article 37 exempts payments institutions and e-money institutions from the proposed admission, registration and supervision process and allows Member States to exonerate providers of goods and services acting as creditors on a supplementary basis from this process. This provision also creates an unjustified differentiation between the different market participants active in the credit market in favour of technology companies. We would therefore be in favour of the Parliament's stance which provides for a more level playing field and a better consumer protection.

With regard to Recital 15b, we support the definition of the Council as it is very important that market participants can clearly distinguish between Buy Now Pay Later (BNPL) schemes and deferred payments.

- Credit worthiness assessment

Regarding Article 18 on the creditworthiness assessment, the European community of savings- and retail banks, cooperative banks and credit unions supports, in general, the Council position, but, as local providers of credits being close to our customers, we strongly believe that 1) it should remain possible to provide, in specific and well justified circumstances, loans even when the creditworthiness assessment is negative, and that 2) a positive outcome of the creditworthiness assessment should not oblige creditors to grant a credit, in order to preserve the principle of contractual freedom. Doing so would allow taking better into consideration individual situations of individual customers. We are keen to take credit decisions based on the accumulated knowledge of our clients and be able to support them in difficult times. Therefore, with regard to Article 18(4) second subparagraph, we would ask you to support the Commission proposal as well as the introduction of the sentence that a positive outcome of the creditworthiness assessment shall not oblige the creditor to provide the credit, as suggested by the Parliament in the first sentence of Article 18(4) second subparagraph. For the remaining parts of Article 18, we would ask you to support the Council position.

The European Parliament position calls on the EBA to develop guidelines for the creditworthiness assessment, which we are not in favour of. Such guidelines are likely to be too detailed and leave no room for Member States to give discretion in granting credit. In some cases, credit can be granted with a guarantee from a third party, oftentimes to low-income individuals who need a little extra support to access regulated lending products. This flexibility is vital for financial inclusion of low-income consumers and, not at least due to regulatory and civil reasons, lenders are already obliged to do everything possible to avoid the negative effects of an improper creditworthiness check. Besides there are already the general EBA guidelines on loan origination and monitoring.

- Caps on interest rates

The third point we would like to draw your attention to are the caps on interest rates, APRC and total cost of credit, as set out in Article 31. On this topic the European community of savings- and retail banks, cooperative banks and credit unions would like to ask the negotiating parties to support the Council position.

We are against the mandatory introduction of caps in general as this is a form of direct price intervention in the market and goes too far. Member States already have the tools to intervene in their respective markets where abusive practices are being observed. The Council proposition builds on this nuance and strengthens the capacity of Member States to do so.

- Short-term overdraft facilities

Short-term overdraft facilities are excluded from the scope of the current CCD and this current special treatment has proven its worth. However, according to the proposal of the Commission and the text version of the Parliament short-term overdraft facilities would fall in the full scope of the future CCD. Applying the rules of the future CCD to short-term overdraft facilities, which have to be flexible by nature, would significantly increase the administrative burden for creditors and consumers and thereby impede the flexibility inherent to short-term overdraft facilities. This could deprive consumers from a flexibility making it easier to manage their budget especially in an economically difficult context as currently given. The Directive should therefore apply only partially to short-term overdraft facilities as foreseen in the Council text in Article 2 Para 6a.

We hope that, as the trilogues come to a close, you would be willing to take these points into consideration with your prep work and remain at your disposal in case you would have any questions.

Best regards,

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ESBG

Nina Schindler
Chief Executive Officer
EACB

Andrew T. Price
Sr. Vice President Advocacy
European Network of Credit Unions

About the ESBG (European Savings and Retail Banking Group)

ESBG represents the locally focused European banking sector, helping savings and retail banks in 21 European countries strengthen their unique approach that focuses on providing service to local communities and boosting SMEs. An advocate for a proportionate approach to banking rules, ESBG unites at EU level some 885 banks, which together employ more than 656,000 people driven to innovate at roughly 48,900 outlets. ESBG members have total assets of €5.3 trillion, provide €1 trillion in corporate loans (including to SMEs), and serve 150 million Europeans seeking retail banking services. ESBG members are committed to further unleash the promise of sustainable, responsible 21st century banking. Our transparency ID is 8765978796-80.

About the EACB (European Association of Co-operative Banks)

The EACB represents, promotes and defends the common interests of its 27 member institutions and of cooperative banks, with regard to banking as well as to co-operative legislation. Founded in 1970, today the EACB is a leading professional lobbying association in the European banking industry. Co-operative banks play a major role in the financial and economic system. They contribute widely to stability thanks to their anti-cyclical behaviour, they are driver of local and social growth with 2.700 locally operating banks and 42,00 outlets, they serve 223 million customers, mainly consumers, SMEs and communities. Europe's co-operative banks represent 87 million members and 702,000 employees and have an average market share in Europe of about 20%. Our transparency ID is 4172526951-19.

About the European Network of Credit Unions

The European Network of Credit Unions (ENCU) represents credit unions (and credit cooperatives or savings and loan associations) that are consumer-owned, not-for-profit financial cooperative depository institutions that promote financial inclusion in underserved European communities by offering their members affordable and easily understandable financial products. There are approximately 2,000 credit unions in the European Union (EU) with more than EUR 34 billion in total assets and 9 million physical person members. ENCU represents members from Estonia, Ireland, Poland, Netherlands, Republic of North Macedonia, Romania, Croatia, and Ukraine. ENCU is also affiliated with the World Council of Credit Unions which is the leading trade association and development organization for the international credit union movement. Worldwide, there are over 87,900 credit unions in 118 countries with USD 3.4 trillion in total assets serving 393 million physical person members.