SUBMISSION FROM

THE CREDIT UNION DEVELOPMENT ASSOCIATION

IN RESPONSE TO

The Central Bank of Ireland's Consultation on Review of the Minimum Competency Code 2011 CP106

14th February 2017

Introduction

CUDA (Credit Union Development Association) is a progressive representative & development association that was formed in 2003 by Ireland's most progressive and leading Credit Unions, in recognition of the real need for progressive credit union leadership and development in an increasingly complex financial environment.

CUDA is the only legally incorporated representative association for Credit Unions in the Republic of Ireland. Member Credit Unions have over 5.2 billion in assets and serve a membership of over 1 million.

We would be happy to elaborate further on any points made in this submission, if required. Please do not hesitate to contact us in this regard. Contact details are listed at the end of this submission.

We have corresponded with our member Credit Unions. Responses are set out in two parts. General commentary is provided in Part 1. In Part 2 we have addressed some of the questions, in particular those pertinent to the Credit Union sector.

1. General Commentary

CUDA supports the principle of minimum competency standards for the financial service sector and acknowledges the requirements set out in the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 and other regulatory provisions as highlighted in the Consultation Paper.

The requirements in the Consultation Paper are far more wide ranging than set out in applicable Regulations and associated guidelines. We are not satisfied that the additional requirements and the highly prescriptive nature of the proposed approach are for the benefit of the consumer. We will address these concerns in Part 2 of our response.

For the purpose of this Part it is worth noting that our commentary on Part 2 is aimed at obtaining a level playing field for financial service providers in specific industries.

The regulatory framework is not proportionate to the nature scale and complexity of the credit union sector as is put forward in the Consultation Paper. The 2016 Regulations incorporate considerable regulatory boundaries on credit unions ability to lend and invest – this impacts on their ability to provide long term lending, including mortgage lending, as well as core lending products, savings and investment options. The current credit union regulatory regime encapsulates a one size fits all approach. This we would ask the Central Bank to consider in the application of MCC and not to be misguided by the notion that a strengthened regulatory framework means a proportionate framework or that it is in the best interest of the consumer. If the Central Bank was asked to devise minimum competency standards specific to the credit union sector, is the current document what would be produced? In particular we would ask the Central Bank to consider the minimum competencies proposed for savings and investment products and compare this with the limitations within which credit unions operate and the very limited range of products and services they are permitted to offer. The Paper is correct in its assertion that a Fitness and Probity Regime has been introduced for credit unions. However, the credit union fitness and probity regime has many modifications, differentiating it from the regime applicable to the banking sector. The fitness and probity regime applicable to the credit union sector is fit for purpose. The regime has focussed attention on the competence and capability of individuals taking up key roles in credit unions, together with introducing considerable changes to Section 20 and 22 of the Central Bank Reform Act 2010.

Irrespective of prudential restraints, credit unions are subject to, and their members can avail of, the requirements sets out in the Mortgage Credit Directive and other provisions that operate to protect the consumer. Many credit unions, where there is no conflict with specific credit union legislation, adopt by way of best practice provisions in the Consumer Protection Code and the Conduct of

Code on Mortgage Arrears. However, it is essential to protect the uniqueness of the credit union model. This is done by devising bespoke requirements for the sector that are fit for purpose. It should be noted that in 2015, credit unions ranked No. 1 in the Customer Experience Ireland Survey (CEXI). None of the main stream banking institutions featured in the top 100. The survey highlighted that “since the economic tsunami of 2008, Credit Unions’ doors remained open to people in need, a stark contrast to the approach taken by high street banks and other financial institutions. This organisation has strong links with the local community”. Throughout the Report credit unions are noted for their excellence in integrity and personalisation.

2. Replies to Questions

Question 1:
Do you agree that persons carrying out a relevant function in respect of *any* retail financial product that falls within the scope of the MCC should obtain a minimum level of experience prior to working without supervision? Please outline the reasons for your view.

Question 2:
If you agree with 1) above, do you consider a minimum six-month period to be sufficient? Or should the length of experience depend on the role(s) being carried out, the complexity of the product or a qualification already held by a person? Please outline the reasons for your view.

CUDA would have some reservations in relation to this requirement. Appropriate experience is already addressed throughout the MCC through grandfathering and new entrant requirements. The Consultation Paper asserts that the Central Bank “intends to amend the MCC to reflect the requirements set out in the Mortgage Credit Regulations and ESMA Guidelines in respect of qualifications and experience. The Mortgage Credit Regulations does not impose a requirement to have experience specific to mortgage credit agreements. The Regulations require that the level of knowledge and competence can be on the basis of qualifications or experience, but that following March 2019 a qualification is mandatory. We agree that the length of experience depends on the role(s) being carried out and the complexity of the product or a qualification already held by a person, but this, we believe, is a matter for each credit institution depending on the individual’s qualifications, experience and other capabilities. The ESMA Guidelines were introduced to ensure harmonisation across all EU Member States for a particular product.

The credit union sector as mortgage lender or other specialised product offering would not require full time staff dedicated to a specific role; the length of time to acquire the equivalent of 6 months experience would prove difficult to certify in house. We would have no difficulty with a qualification and a broader interpretation of credit products in the Mortgage Credit Regulations. The Regulations provide that the Central Bank shall determine the appropriate level of knowledge and competence on the basis of “professional qualifications or professional experience, which may be defined as…working in areas related to the origination, distribution or intermediation of credit products”. This would have a less disproportionate impact on smaller credit institutions, including credit unions, whilst ensuring qualified persons also have expertise in related areas.

Question 3:
Do you agree with the proposal on how the experience requirement should be evidenced, i.e., that a regulated firm should sign a 'certificate of experience' and retain supporting documentation to support the certificate? Please outline your views.

As the regulated firm is obliged to complete a certificate of competency, as and when requested, the regulated entity must as all times ensure that the person is meeting the minimum competency standards as set out in the MCC. Regulated entities are also obliged under the proposed Regulations to maintain a detailed and comprehensive register of accredited persons. The register captures information beyond qualifications attributed to individuals. The requirement to maintain an additional certificate of experience is duplication of work and unnecessary.

Question 4:
Do you agree with the proposal set out above (that regulated firms, at a minimum, ensure that one person with material influence on the final decision regarding product design have a relevant qualification)? Please set out the reasons for your view.

Question 5:
What alternative ways could persons demonstrate meeting the competencies and standards set out in the Mortgage Credit Regulations and the requirements of the ESA Guidelines and MiFID II Delegated Directive?

We are of the view that this should remain a policy matter for the regulated entity and should remain outside the scope of MCC. The obligations set out in the Mortgage Credit Regulations are specifically addressed to creditors and mortgage credit intermediaries. There is no direct obligation on a Competent Authority in this regard. The EBA Guidelines also provide that compliance and risk should be an integral part of the design; these are all matters that should be addressed by the regulated entity as part of their compliance with the relevant and applicable requirements for their industry. Taking requirements set out in ESA Guidelines and the MiFID II Delegated Directive and applying them across the range of regulated entities is excessive, and smaller regulated entities may struggle to meet; this is not always in the best interest of the consumer.

That said, we have no difficulty in principle with the inclusion of the new specified function for those directly involved in the design of retail financial products. Credit unions due to size, resources or business model may be required to bring in suitability qualified persons and expertise to assist and advice on the design of retail financial products. The designing of products can be achieved in conjunction with third parties. The wording of the new specified function does not prevent a key person holding a recognised qualification in the product design acting in an advising capacity.

Question 6:
Do you agree that the MCC should apply to credit unions in respect of *any* retail financial product offered by credit unions that falls within the scope of MCC? Please set out the reasons for your views.

Following consultation with our owner member credit unions on this proposal, in principle, they have no difficulty with the application of MCC to other retail financial products. However, the minimum competencies would far exceed the business model and the regulatory framework in which credit unions operate.

A considerable number of individuals in our owner member credit unions have already achieved a CUA qualification (Credit Union Advisor), which is recognised by the Central Bank for credit unions acting as insurance intermediaries, and many others have attained an ACCUP qualification (Advanced Certificate on Credit Union Practice). We trust that such qualifications will be considered as a recognised qualification for the purposes of other retail financial products such as savings and core lending. We note in the Paper, the Central Bank is open to the development of new qualifications or the modification of existing qualifications by professional educational bodies, however we would expect that this will not be to the exclusion of those who have already attained a CUA level 7 qualification.

Question 7:
If you agree, what do you consider to be an appropriate timeline for its application? Please set out the reasons for your views.

We are satisfied a 2 year timeline from the application of the new Code is appropriate, This is not the same as the requirement in relation to mortgage lending which was flagged for some time as having a timeline for March 2019, the requirements being imposed under the MCD and the Mortgage Credit Regulations. A 2 year timeline from the application of the new Code will also allow for those with existing qualifications such as CUA to be recognised.

We look forward to any additional queries the Central Bank may have in relation to our Response. We are happy to provide any additional information that the Central Bank may require. Again, thank you for the opportunity to respond to the Consultation on Review of the Minimum Competency Code 2011.

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