March 2023

Submission of the Irish League of Credit Unions in respect of the Corporate Sustainability Reporting Directive (EU) 2022/2464

The Irish League of Credit Unions (hereinafter "ILCU") wishes to make a submission in relation to Ireland's option to require undertakings such as credit unions to report on sustainability under the Corporate Sustainability Reporting Directive (EU) 2022/2464 (hereinafter "CSRD"), ahead of this transposition into Irish law.

The Credit Union movement in Ireland is regulated by the Central Bank of Ireland as Credit Unions pursuant to the Credit Union Act 1997 as amended and provides a range of financial services to approximately 3 million members. Credit Unions in Northern Ireland are authorised by the Prudential Regulation Authority, and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

Credit unions provide a range of financial services to their members and every credit union is owned by its members — the people who save with it and borrow from it. Credit unions exist only to serve members — not to profit from their needs. Surplus income generated is returned to the members by way of a dividend and/or is directed to improved or additional services for members. Members' savings are used to fund loans to other credit-worthy members of the credit union. So, the money in a credit union always remains in the local community or 'common bond' that the credit union serves.

The ILCU notes that there are a number of questions within the Department of Enterprise Trade and Employment's Consultation Paper on CSRD, but since the first question is the most pertinent to credit unions, this submission will focus on whether Ireland should exercise its discretion in respect of Article 1 (Scope).

It must be highlighted that under the CSRD, Member States may choose not to apply the coordination measures referred to in the first subparagraph of this paragraph to the undertakings listed in points (2) to (23) of Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council. The new requirements for sustainability reporting under the directive apply to large companies and large public-interest entities and listed SMEs. This option allows Member States to exclude certain undertakings on a case-by-case basis, and the ILCU will outline below the reasons that **Ireland should exercise** its discretion in this regard.

Our submission is as follows:

1. The directive allows discretion for Irish State to exempt those credit unions with (CRD IV exemption). The language is as follows "*Member States may choose not to apply the coordination measures referred to in the first subparagraph of this*

paragraph to the undertakings listed in points (2) to (23) of Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council".

It is the strong view of the ILCU that Ireland should exercise this option. This is the basis for which Ireland has consistently applied proportionality measures for credit unions in many areas, including capital requirements, the mortgage credit directive, PSD2, and others, now including the option under DORA. The rationale for this is that the Central Bank of Ireland regulates Credit Unions under domestic legislation. The EU credit union exemptions list is included in the Appendix below.

It is noted that Irish credit unions are neither large nor public interest entities and to require credit unions to report under this Directive would be disproportionate. The Irish League of Credit Unions would urge the Department of Enterprise, Trade and Employment to maintain the proportionality stance and the consistent regulatory approach that has already been embraced by the EU (by allowing for national-level discretion for credit unions) and by Ireland evidenced by where they have exercised this discretion in the past.

2. In addition, it is imperative to note that to be brought within scope of this, credit unions would also need to meet two (2) of the following three criteria: either as a single entity or on a consolidated group basis): a. Balance sheet total of EUR 20 million; b. Net turnover of EUR 40 million; and/or An average of 250 employees during the financial year. Since staffing levels and assets size in Irish credit unions would not bring them within scope, for the Department to include them in this reporting requirement would be patently unfair, would present an undue regulatory burden, and would possibly defeat the underlying purpose of the directive.

It should be noted that Credit unions will be indirectly impacted by this Directive as credit unions are required to invest surplus funds under strict criteria as laid down in Section 43 of the Credit Union Act 1997 as amended. In essence credit unions surplus funds are invested in credit institutions which would be in scope of this Directive.

Second, the directive is designed to make entities accountable that are of public interest entities and are giving these disclosures for consumer protection. Credit unions should not fall in the "publicly accountable" category. Our credit unions are not speculative investment vehicles for investors and shouldn't be considered public interest entities for purposes of the directive. Credit unions are not-for-profit financial institutions, whose members are their member owners. Members are not depending on the reporting for purposes of obtaining disclosures in a securities investment context and they are not without power to obtain the information for themselves (as they have that right as a member). Therefore, credit unions are not publicly accountable entities for which the directive was designed.

The ILCU calls on the Department of Enterprise, Trade and Employment to exercise the Member State option available in Article 1 in respect of the Corporate Sustainability Reporting Directive, and to exclude credit unions from reporting requirements within same.

The ILCU is available to discuss this issue in more detail if you require.

March 2023

APPENDIX

Credit Union Regulatory Exemptions in the European Union

The European Union (EU) has authorised EU Member States to exempt credit unions and other similar institutions from several EU directives and regulations, including:

- **Basel III Capital Requirements Directive (CRD IV) Exemption:** Article 2(5) of the EU's directive on Basel III (Directive 2013/36/EU, called "CRD IV") exempts credit unions in most EU Member States—as well as some types of savings banks, postal banks, and development banks—from application of the EU's Basel III rules. *See* CRD IV, Art. 2(5), *available at* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0036.

- **Mortgage Credit Directive (MCD) Exemption:** Article 3(3)(e) of the EU's Mortgage Credit Directive (MCD) allows Member States to "waive the provisions of this Directive for credit agreements where the creditor is an organisation within the scope of Article 2(5) of Directive 2008/48/EC." *See* MCD, Art. 3(3)(e), *available at* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0017. Article 2(5) of Directive 2008/48 refers to the Consumer Credit Directive, where the exemption is made in Article 2(5) to credit agreements "concluded by organizations that do not make profits for any other purpose than its members." *See* Directive 2008/48, Art. 2(5), *available at* https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32008L0048.

- **Revised Payments Services Directive (PSD2) Exemption:** Article 2(5) of the PSD2 allows Member States to waive the application of all or parts of the provisions of the revised Payments Services Directive (PSD2) to credit unions and other institutions, such as savings banks, that are exempt from Basel III/CRD IV. *See* PSD2, Art. 2(5), *available at* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L2366.

- **Payments Account Directive (PAD) Exemption:** Article 1(5) of the Payment Accounts Directive (PAD) allows Members States to "decide not to apply all or part of this Directive to the entities referred to in Article 2(5) of Directive 2013/36/EU of the European Parliament and of the Council." *See* PAD, Art. 1(5), *available at* https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32014L0092.

- **Single Supervisory Mechanism (SSM) and Single Resolution Mechanism (SRM) Exemptions:** Credit unions are exempt from the European Central Bank's prudential banking regulatory function (the Single Supervisory Mechanism (SSM)) and Single Resolution Mechanism (SRM) as a result of their exemption from the EU's Basel III rules (CRD IV). *See* SSM Regulation, Art. 1, *available at* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1024.

- **Digital Operational Resilience Act (DORA):** National level supervisors have the ability to exclude from the scope of DORA entities referred to in Article 2(5), points (4) to (23) of Directive 2013/36/EU (CRD IV exempted financial institutions including credit union) from the application of DORA. Further DORA directs implementation in accordance with the principle of proportionality, taking into account their size and overall risk profile, and the nature, scale and complexity of their services, activities and operations. (Note: law is set to go into effect in 2025). For credit unions cybersecurity protocols will be set at the national level for those states that exercise their discretion (anticipated to be consistent with CRD IV exemptions)

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  - DORA Regulation (on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011);
  - Digital Resilience Directive (2022/2556) (amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards digital operational resilience for the financial sector);