

Ministry of Justice
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Government
Finland

TO THE MINISTRY OF JUSTICE

This letter is submitted by American Express Services Europe Limited ("**American Express**") in respect of certain matters of the Government Bill (HE 24/2010 vp) (the "**Bill**") regarding the proposed amendments to the Finnish Consumer Protection Act (Kuluttajansuojalaki 38/1978) for the implementation of the Consumer Credit Directive ("**CCD**") in Finland. We also refer to the letter regarding treatment of charge cards under the CCD dated 29th December 2009 and submitted to the Ministry of Justice by Hannes Snellman Attorneys Ltd on behalf of American Express.

In Finland, American Express issues charge cards (also known as deferred debit cards), not credit cards. Charge cards are different from credit cards in that:

- The amount spent on a charge card is due for payment in full at the end of each month. No credit is extended to enable charge cardholders to 'revolve' their balances;
- Charge cards do not levy interest on card balances. Instead, an annual fee is applied, which does not vary according to whether or how much the card is used. Annual fees do vary according to the level of *non*-credit-related benefits associated with the card, such as insurance, concierge and travel services. There is a direct correlation between the level of annual fee on a charge card and the level of such benefits associated with the card; and
- Charge cards do not establish a credit limit. American Express charge cards are promoted as 'no pre-set spending limit' payment cards and transactions are approved on a case-by-case basis according to cardholders previous spend and repayment history.

In short, charge cards are payment instruments with accompanying lifestyle benefits. They are not used by cardholders as a means of obtaining credit. For this reason, Commissioner Kuneva clarified that the exemptions in Article 2(2)(f) of the CCD were intended to bring charge cards out of scope of the CCD:

"Article 2 (2) f) and recital 13 of the text of the future revised Directive on Consumer Credit, as voted by the Parliament, *does not cover normal deferred debit cards, where the consumer is required, usually at the end of each month, to repay the credit in full, and where only very limited charges are applied (usually an annual fee)*. Such agreements are closer to means of payment than to genuine credit agreements. Article 2 (2) f) of the Directive, therefore, excludes all credit agreements with only insignificant charges, where the credit has to be repaid in full within three months. If the charges are not insignificant, the credit function becomes more important than the payment function, consequently the exemption does not apply any more and the relevant product would fall into the scope of the Directive. The exact definition of what "insignificant" means is left to

the Member States, so that national practices can be taken into account.” (Emphasis added.)

While the aim is to exclude deferred debit cards (charge cards) with annual fees from the scope of the CCD under the “insignificant charges” exemption, there remains potential for the CCD to apply to charge cards if the interpretation of “insignificant charges” is not carefully considered at the member state level.

The potential application of the CCD to charge cards raises a number of concerns because the CCD is ill suited to charge cards. In particular, the prescribed methodology for calculating Annual Percentage Rates (“**APR**”) was not designed to take account of the unique characteristics of charge cards as set out above. Even American Express’ lowest priced charge card in Finland would, if APR requirements were applicable, be deemed to have an APR of 48.2%. This is inconsistent with an APR of 29.2% for a comparable credit card with the same annual fee and 8% interest. This leads to consumer confusion and sends the wrong signal regarding which product is the more financially responsible consumer choice.

The primary reason for the anomalous APR results for charge cards is that the APR methodology in the CCD does not allow for repeated monthly drawdowns and repayments in full throughout the annual period over which the charge card agreement is in force and the APR must be calculated. Yet, in practice, charge card arrangements actually do consist of repeated monthly drawdowns and repayments. As a result of this incongruity, the annual fee (which, incidentally, does not relate to any deferred payment or credit aspects of a charge card arrangement) must be annualized on the basis of a single drawdown and repayment in the first month only. In addition, no provision is made in the APR methodology for a monthly allocation of annual fees that reflects the ability of the cardholder to terminate at any time during the year and obtain a pro rata refund of the annual fee.

Charge cards have historically been exempt from consumer credit laws, including APR disclosures, and American Express is examining ways to ensure that its products meet the exemptions set out in Article 2(2)(f) of the CCD, including the “insignificant charges” exemption. This would ensure, in turn, that the anomalies and customer confusion caused by application of the APR methodology to charge cards can be avoided.

Having reviewed the draft Finnish implementing legislation, American Express is concerned that the approach prescribed for assessing the “insignificance” of charges will undermine any exemption for charge cards. This is due to the adoption in the Finnish legislation of a “bright line” threshold for “insignificant charges” that is tied to the CCD APR methodology which, as set out above, does not work for charge cards. (Please refer to section 3 of the proposed amendment to Chapter 7 of the Finnish Consumer Protection Act, i.e. insignificant charges are charges which, when converted into APR, do not exceed the amount set out in section 4, sub-section 1 of the Interest Act (Korkolaki 633/1982).) Under this “bright line” test, even a charge card with an annual fee of €12 – or, put another way, €1 per month – would result in an APR of 10%, thereby breaching the threshold for “insignificant charges” (which, pursuant to the reference to section 4, sub-section 1 of the Interest Act in the proposed amendment to the Finnish Consumer Protection Act, is equivalent to seven percentage points higher than the reference rate referred to in section 12 of the Interest Act and in force at the relevant time).

American Express therefore recommends, in so far as there is still room to comment on the draft legislation, that such provisions of the proposed amendment to the Finnish Consumer Protection Act linking the “insignificance” of charges to the CCD APR methodology be deleted and that the definition of ‘insignificant charges’ be principles-based rather than tied to a “bright line” APR formula that does not suit all products. American Express would be happy to discuss with the Ministry of Justice its proposals for official interpretational guidance on the meaning of “insignificant charges”.

Alternatively, American Express would suggest that the provisions of the draft Decree for calculating the APR (Oikeusministeriön asetus todellisen vuosikoron laskemistavasta ja laskennassa käytettävistä oletuksista) be amended so that an alternative approach may be adopted that is more suitable to charge cards. Specifically, the following assumption would be permitted to apply:

for credit agreements that are repayable within three months under a fixed timetable for repayment, the drawdown and repayment cycle will repeat to span the 12 month period, on each occasion the drawdown will take place immediately and in full and any fee is spread proportionately over the 12 month period.

(The rationale for this approach has been verified by a leading actuarial firm).

My colleagues and I would welcome the opportunity to discuss these proposals with you. We will contact your office in the coming days to see if we can arrange a mutually convenient time to meet.

Thank you for giving this matter consideration.

With kind regards

American Express

Tommi Lassila
Vice President, Country Manager