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## **ACCIS feedback to European Commission's proposal for a Directive of European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral**

*Established in Dublin in 1990, the Association of Consumer Credit Information Suppliers (ACCIS) is an international non-profit association under Belgian law bringing together 48 member organisations active in the area of consumer credit information. ACCIS aims to create a legal and regulatory climate in which its members can continue to develop their services contributing to the better functioning of the credit market in Europe and internationally.*

### **Introduction**

Credit Bureaus or Credit Reference Agencies (CRAs) are organisations which collect information on individuals and/or legal entities to help a creditor **decide if they should grant credit** to a customer. Information covers identification data and those parties' credit history.

The most common clients of CRA services are banks, but also telecommunication, insurance, mail order and/or utility companies.

CRAs offer a number of advantages to companies looking to grant credit. The key advantage is that they reduce the companies' financial risks as they allow a company to check whether the client is solvent or not before they grant them credit, reducing the likelihood of bad debts and therefore enabling companies to offer the products at a competitive price and reducing the cost to the customer.

### **Background to the proposal**

The Commission's proposal on credit servicers, credit purchasers and the recovery of collateral helps create the appropriate environment for banks to deal with non-performing loans (NPLs) on their balance sheets, and to reduce the risk of future NPL accumulation. In particular, the proposal will encourage the development of secondary markets for NPLs, namely by removing undue impediments to **credit servicing** by third parties and to the transfer of credits in order to further develop secondary markets for NPLs. The proposal creates a common set of rules that third-party credit servicers need to abide by in order to operate within the Union.

### **Definition of 'credit servicers' and 'credit servicing activities'**

Article 3.8 of the proposed Directive states that 'credit servicers' means "*any natural or legal person, other than a credit institution or its subsidiaries, which carries out one or more of the following activities on behalf of a creditor:*



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**(a) monitors the performance of the credit agreement;**

**(b) collects and manages information about the status of the credit agreement, of the borrower and of any collateral used to secure the credit agreement;**

*(c) informs the borrower of any changes in interest rates, charges or of payments due under the credit agreement;*

*(d) enforces the rights and obligations under the credit agreement on behalf of the creditor, including administering repayments;*

*(e) renegotiates the terms and conditions of the credit agreement with borrowers, where they are not a 'credit intermediary' as defined in Article 4(5) of Directive 2014/17/EU or Article 3(f) of Directive 2008/48/EC;*

*(f) handles borrowers' complaints.*

### **Impact on CRAs**

In order to help creditors reduce their risk of default and optimize the decision-making process of credit granting, **CRAs collect and manage information about existing credit agreements and, by extension, monitor their performance through the relevant updates**. This information can be in connection with an individual's defaults (negative information) or can relate to an individual's past repayments and existing contracts (positive information). In general, the more information a CRA can obtain about a consumer, the better the service purchasers' credit assessment of that consumer, the lower the chances of non-payment which reduces costs and therefore allows creditors to offer competitive interest rates.

Letters a) and b) under Article 3.8 refer to 'credit servicing activities' that are, however, typical (even quintessential) of credit referencing agencies i.e. credit reference activities.

### **Unintended effects**

To avoid any unintended effects on CRAs or their activities, we would like to ask you to clarify that **CRAs and their activities are not included in the scope of this Directive**.

While credit servicers' work serves the fulfilment of the "existing" credit agreement, the CRAs' provision of monitoring of existing contracts and the collection of information is aiming to help the risk assessment of possible "future" creditors. Given this nature of CRA activities - which relate to information about a person's or entity's financial standing - and the objectives of the Directive on credit servicers, credit purchasers and the recovery of collateral, we believe this clarification should be made.

This position is supported by the following:

1. Credit servicing activities and credit referencing activities are regulated differently across Member States. Although it may be true that Member States that regulate credit servicing define very differently the activities covered (page 8 of the Directive),



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the core of credit servicing is in our view the management or administration of a credit agreement – and not the data information activities in connection to it.

2. Neither the proposed Directive nor the accompanying impact assessment refer to credit reference agencies or their activities. So, it is clear that neither CRAs nor their activities are targeted by this proposal.
3. CRAs and their activities are targeted in other pieces of European legislation / European initiatives. For example:
  - Article 8 (1) of Directive 2008/48/EC on consumer credit agreements provides that, Member States shall ensure that, before the conclusion of the credit agreement, the creditor assesses the consumer's creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the **relevant database**.
  - Article 20(1) of Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property provides that the assessment of creditworthiness shall be carried out on the basis of information on the consumer's income and expenses and other financial and economic circumstances which is necessary, sufficient and proportionate. The information shall be obtained by the creditor from relevant internal or **external sources**.
  - Action 9 of the Consumer Financial Services Action Plan, which followed the European Commission Green Paper Consultation on Retail Financial Services, states that the Commission will: (i) seek to introduce common creditworthiness assessment standards and principles for lending to consumers; and (ii) work to develop a minimum set of data to be exchanged between **credit registers** in cross-border creditworthiness assessments.

Overlapping regulations (Directive of European Parliament and of the Council on credit servicers, credit purchasers and the recovery of collateral AND Mortgage and Consumer Credit Directives) should, therefore, be avoided, to prevent inconsistencies in implementation.

### **Drafting suggestion**

A possible way to clarify that CRAs and their activities remain outside the scope of this Directive could be via an amendment to existing **Recital 16** in the following way:

*“Therefore, action at Union level is necessary in order to address the position of credit purchasers and credit servicers in relation to credit originally granted by credit institutions. It is not proposed to cover credit originally issued by non-credit institutions or debt collection in general at this stage, as there is no evidence of macroeconomic relevance, misaligned incentives or ill-functioning markets for such an extended scope. **It is not proposed either to cover credit databases and credit reference activities, including the collection and management of information about existing credit agreements and the monitoring of***

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President: Neil Munroe ☒ e-mail: [president@accis.eu](mailto:president@accis.eu)

Director General: Enrique Velazquez ☒ e-mail: [e.velazquez@accis.eu](mailto:e.velazquez@accis.eu)

Registered office: ACCIS IVZW ☒ p/a Interel ☒ Rue du Luxembourg 22-24 ☒ 1000 Brussels ☒ Belgium



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***their performance when those activities are done for creditworthiness assessment purposes”***

Contact: Enrique Velázquez  
Director General  
[e.velazquez@accis.eu](mailto:e.velazquez@accis.eu)