ACCIS' RESPONSE
TO
PUBLIC CONSULTATION ON THE EVALUATION OF DIRECTIVE 2008/48/EC (CONSUMER CREDIT DIRECTIVE – CCD)

APRIL 2019

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Part II. Questionnaire for other stakeholders

QUESTION 1 - Do you consider that the following developments have changed the provision of consumer credit since 2008?

	ACCIS
Digitalisation (integration of technology in financial services leading to an increased use of smartphones, internet and on-line tools)	Totally agree
Profiling of consumers based on personal data	Somewhat disagree
New market players (such as crowdfunding platforms or SMS-loans providers)	Totally agree

Justification

We totally agree that digitalisation has changed the provision of consumer credit since 2008 as a result of the following reasons:

1. Impact on consumers' behaviour and expectations. In today´s increasingly connected world, consumers demand wider and quicker access to products and services, including more personalised credit offers. They are also becoming less tolerant to delays and sluggish processes. At the same time, while face-to-face contacts are decreasing, consumers expect more transparency and security in the systems and data used for the provision of consumer credit. This is requiring EU companies to prepare themselves to meet these challenges and cater for these needs, also in order to remain competitive in the global arena. On the other hand, this also urges regulators to adapt legislation and shape a favourable environment to promote both innovation and consumer protection.

2. Impact on the data that can or could be used for creditworthiness assessments. These include:

   - Datasets made available as a result of new regulatory developments (e.g. PSD2, which has made it possible to open up bank transaction data).

   - New data that is generated and becomes accessible as a result of connected technologies. The expansion of data that could be used for decision making means that new or simply more accurate insights into consumer's needs, motivations and creditworthiness are possible on the basis of both "traditional" methods and new technologies, such as artificial intelligence or machine learning.

   - Open data environment. Digitalization of and accessibility to data held across the public sector is creating new possibilities for improving outcomes of credit decision-making processes for consumers.

By using an improved combination of available data and new technologies, lenders can (i) increase credit score accuracy for improved risk control; (ii) offer more competitive and fairer pricing to consumers; and (iii) offer credit to groups who can afford credit but were previously excluded from accessing it due to the lack of information available. Consumer credit can be provided, therefore, in a more consistent and affordable manner to preventing over-indebtedness and promote financial inclusion. Other consumer benefits include more personalized products and services, better advice, and better fraud protection.

Digital technologies thus offer significant opportunities and benefits for consumers, lenders and the economy. At the same time, they raise issues that need to be addressed through an appropriate regulatory and ethical framework that protects consumers' privacy, security and integrity.

We somewhat disagree with the idea that profiling of consumers based on personal data has changed the provision of consumer credit since 2018. Profiling or, rather, the relatable concept of 'credit scoring' is not a new concept.

Credit scoring is a statistical method which, based on certain information about a borrower, estimates the likelihood of such borrower repaying his/her loan on time. Whilst credit decisions belong to the lender, credit scoring can, however, provide useful support to the decision making. Against that background, the increased availability of data types and data sources, coupled with new methods and technologies, is allowing to:

- generate faster scoring, thus improving the customer experience and lowering costs whilst reducing over-indebtedness - not only before the signature of the credit agreement but also during the repayment period, with more accurate, up to date and objective scores.
- increase model accuracy achieving higher statistical relevance.
- raise financial inclusion, in particular, for thin files.

Finally, we totally agree that the emergence of new market players in the credit sector has changed the provision of consumer credit in the past decade. In this respect, it should be recalled that traditional players bear much higher reputational risks and are often subject to stricter regulation-supervision than newcomers in unregulated sectors and based on untested methodologies (new models and the data behind them must be tested through a complete economic cycle). This situation has led to newcomers enjoying more freedom to develop new technologies and services. This has the potential to create distortions in the marketplace and to hinder effective consumer protection. In order to address this risk, a level playing field between market participants needs to be ensured, by means of recognition and implementation of the principle 'same services, same risks, same rules'. Consumers should enjoy the same level of protection no matter whether a given service is provided by different entities.

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QUESTION 2 - How relevant do you consider the following provisions of the Directive in light of its objectives?

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Scope (loans between 200 and 75K Euros)	Somewhat relevant
Creditworthiness assessments	Totally relevant

Please specify:

a) Scope

The provisions with regard scope are somewhat relevant.

Whilst the Directive contains definitions that determine the scope of harmonisation i.e. consumer credit agreements between EUR 200-75K, according to recital 10 the Directive is also intended to be without prejudice to the application by Member States of its provisions to areas not covered by its scope. i.e. consumer credit agreements outside EUR 200-75K.

It could be argued, for example, that, based on the Directive, it is unclear what rules apply to agreements above EUR 75K when not concluded for housing purposes. In addition - as highlighted by the 2018 European Parliament's study on 'Consumer Credit - Mis-selling of Financial Products' - small loans can escalate to become large debts when the loan terms include high interest rates and high penalties for missing payments.

Against that background, a number of Member States have extended the range of credits for which creditworthiness assessments are to be carried out. Some Member States have extended the minimum limit with respect to the total amount of the credit. Others have extended the maximum. Others have extended both the minimum and maximum. A number of Member States that have extended creditworthiness assessments to credits of a value of less than EUR 200 have also foreseen a certain degree of proportionality for small-value credits.

From a creditworthiness assessments point of view, and taking consumers protection into account, that variety of chosen approaches and the reasons that justify them merits a reflection.

b) Creditworthiness Assessments

The provisions with regard creditworthiness assessments are very relevant.

It is clear that access to finance plays a vital role in a consumer's economic and social life. Affordable credit enables people to pay for white goods, technology, vehicles, homes, education and weddings and to invest in their small business or start up and to deal with unexpected events, like a washing machine or car breaking down. It also contributes to economic growth within the European Union.

Through the performance of creditworthiness assessments:

- Consumers / borrowers are prevented from the negative impacts on their wider financial situation that may arise from a debt that they cannot afford to repay.
- Lenders can better predict future repayment prospects based on what a consumer's past and current payment behaviour is, as well as the present levels of indebtedness, income and expenditure are. Lenders, therefore, can better assess the credit and affordability risk associated with lending money or providing goods and services on credit.

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By protecting both the consumers and the lenders, creditworthiness assessments also reinforce financial stability and support access to finance.

As third parties between the interest of lenders and borrowers, credit reference agencies (CRAs) provide information to support the lenders' evaluation of the borrowers' ability and propensity to repay, thereby contributing to reducing information asymmetries between those parties and to supporting sound lending processes.

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QUESTION 3 - Are there any issues which the Directive currently does not address but you consider should be addressed?

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Yes

Please specify:

Data is key to any creditworthiness assessment. If data that would be relevant to this purpose cannot be used or if data used is not accurate, then the picture of the borrower's creditworthiness will not be comprehensive, bringing negative consequences in terms of possible inaccuracies, inconsistencies, financial exclusion, over-indebtedness, financial instability, etc.

It is crucial to have comprehensive credit data pools available for creditworthiness assessment purposes across the EU. However, depending on the Member States, there are regulatory limitations in place preventing this. In some Member States, for example, CRAs are not allowed to collect and process positive credit data. This means that only evidence of poor repayment behaviour is made available to lenders for their decision-making process. Other limitations concern the collection of non-credit/non-traditional data. These exclusions have an impact in terms of protecting consumers.

On this matter, ACCIS recalls that the World Bank Principles on Credit Reporting (2011) state (page 23) that "*credit reporting systems should have relevant, accurate, timely and sufficient data - including positive - collected on a systematic basis from all reliable, appropriate and available sources, and should retain this information for a sufficient amount of time*".

In a system where banks and other creditors do not have access through credit reference agencies to both positive and negative information about potential borrowers, those creditors are limited in their ability to assess the credit and affordability risk associated with lending money or providing goods and services on credit. As a result, and in the absence of comprehensive (negative and positive) information, creditors would only lend a fraction of the money that consumers can steadily repay. Alternatively, they would request additional (and expensive) guarantees for the same amount.

In a system where credit reference agencies only store information on consumers' defaults, creditors lack a useful tool to differentiate consumers with a long history of repaying of multiple debts on time from consumers who have no credit experience whatsoever. Credit reference agencies that only operate based on negative information struggle, therefore, to help creditors fully identify low risk consumers. As a consequence, those consumers may be unnecessarily penalised.

From consumers' point of view, a system that legitimately collects both positive as well as negative information improves access to credit and is able to generate more competitive offers by creditors that are more favourable to consumers. Such a system can also be an important tool to reduce over-indebtedness as creditors have more information to help consumers prevent the accumulation of debts. If consumers pay less for credit, that also helps them avoid over-indebtedness as they are better able to make their repayments.

With regards non-credit/non-traditional data, it should be noted that there sometimes is an absence of credit / financial information concerning a borrower (thin file). This means that creditworthiness may prove hard to assess properly and therefore credit may not be granted. How could those situations be addressed, so as to support access to credit and thereby promote better financial inclusion? By means of ensuring that also other relevant information can be collected and taken into account in the creditworthiness assessment (not only any previous credit agreement but also, for example, payment of energy bills and telephone bills, rentals).

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Ensuring the availability of a comprehensive data pool could benefit any creditworthiness assessment, enabling it to be more accurate. It would be particularly beneficial for assessments relating to consumers that lack or have a limited credit history and that, as a result, find themselves financially excluded or limited from having access to credit in better conditions.

So, in our view, the **Directive should support that all necessary relevant data is made available to lenders for creditworthiness assessment purposes**, which depending on the circumstances of the individual and the credit applied for can include credit data, non-credit data or other relevant data sources.

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QUESTION 4 - How do you rate the effectiveness for consumer protection of the following elements/ features of the Directive?

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Creditworthiness assessments	Somewhat effective

Please specify:

The CCD **recognizes that creditworthiness assessments are an important regulatory requirement to protect consumers from over-indebtedness** – see Recital 9 and 26.

As firms that provide support to creditworthiness assessments, we think that the current provisions with regards creditworthiness assessments are only somewhat effective and that there is, therefore, room for further improvement. Comprehensiveness in the data pools that can be used for creditworthiness assessments needs to be promoted, so that a more accurate picture of a borrower's financial background can be drawn. If data is "artificially" limited, even the most complete assessment will possibly not capture some relevant aspects of a consumer's situation, thereby increasing the risk that the consumer will be granted a credit that he/she is not able to repay or that the consumer is not granted credit in spite of him/her being able to repay it.

The Eurostat's Statistics on Income and Living Conditions (SILC) has revealed that around 10% of European households are over-indebted. Supporting comprehensiveness in the data pools used for creditworthiness assessments would be an important contribution towards reducing that figure.

In particular, we recommend the following five ways to improve consumer outcomes:

(i) Bring the CCD data requirements in line with the MCD – "all necessary and relevant factors"

- Article 8 of the CCD requires that creditworthiness assessment should be based on **sufficient information** obtained from the consumer and/or the relevant database. The concept of 'sufficient information' could be interpreted as suggesting the idea of a fixed, possibly a *de facto* maximum, amount of information that would be considered 'right' to assess the likelihood of loan affordability and repayment.

- It is notable that the Mortgage Credit Directive – adopted post-crisis – includes a more detailed test for creditworthiness assessments (see Recital 55 and Article 18), stating that lenders should take into account **all necessary and relevant factors** that could influence a consumer's ability to repay the credit over its lifetime.

- In our view, the creditworthiness assessments in the **CCD should evolve from an approach based on 'sufficiency of information' as the only criteria to an approach focused on 'relevance of information'**, more closely mirroring the test set out in the MCD. This echoes the conclusions reached by the European Parliaments' Policy Department for Economic, Scientific and Quality of Life Policies in their study on Mis-selling of Financial Products. The report correctly questioned "*to what extent the fundamental differences in the level of consumer protection between the two Directives are justified*".

(ii) Recognise that a creditworthiness assessment covers the **affordability risk** for the borrower

- In order to offer a high level of protection to consumers, creditworthiness assessments should be interpreted as covering both the **credit risk** for the lender and the **affordability risk** for the borrower. Article 8 of the CCD only refers to creditworthiness assessments and a clarification that this includes the above two risks should be introduced.

- Ensuring that a debt is affordable to the borrower is also mentioned in the 2019 EBA report on Consumer Trends (page 21) as an obligation for lenders. This important aspect of the creditworthiness assessment is already reflected in some national regulatory frameworks such as the UK's and Denmark's.

(iii) Emphasise the importance of consulting external databases, aligning the CCD with the relevant provisions in the MCD.

- Article 8 of the CCD requires that creditworthiness assessment should be based on sufficient information obtained from the consumer and/or the relevant database. The ECJ (see case C-449/13) has clarified that this assessment can be done on information provided solely by the consumer, and that there is no need to systematically verify the information supplied by the customer. While we support the idea that lenders should enjoy the flexibility to choose the most appropriate data sources (consumers and/or internal and/or external databases) for each case, we believe that the Directive should better acknowledge the usefulness of external databases than it currently does.

- Lessons learnt from the crisis are again reflected in how this is addressed in the MCD. This Directive requires creditors to obtain the information from **relevant internal or external sources, including the consumer**, and including information provided to the credit intermediary or appointed representative during the application process (Art 20). The usefulness of consulting a credit database is explicitly recognized in Recital 59. Furthermore, the creditor needs **to appropriately verify the information used**, including through reference to independently verifiable documentation when necessary (Art 20).

- The World Bank Principles on Credit Reporting of 2011 drafted by a Task Force (including the European Commission) recognized that "*credit reporting systems are **very important** in today´s financial systems. Creditors consider information held by these systems as a **primary factor** when they evaluate the creditworthiness of data subjects and monitor the credit circumstances of consumers. This information flow enables credit markets to function **more efficiently and at lower cost** that would otherwise be possible*".

- In a digitally transformed world, external databases are becoming more and more important as borrowers today have multi-entity relationships. Lenders also use external sources to help keep the application process as smooth and efficient as possible avoiding manual steps, such as requesting and validating information provided by the borrower, which reduce operational overheads and fraud risks.

- CCD refers to access to (external) databases (recital 28 and Article 9). In our view, the CCD – following the MCD – should expressly mention **the importance of external databases as a primary and impartial source** to support lenders to predict the ability of the consumer to repay the loan.

(iv) Emphasise the value of consulting positive credit data

- Positive information is included in the MCD (Article 20) and EBA MCD Guidelines on Creditworthiness as a relevant factor for verifying the prospect of the consumer to meet his credit obligations (see EBA Guidelines 4.1).

- As recommended by the World Bank General Principles, credit reporting systems should have relevant data - including positive data - as its use is empirically associated with lower incidences of extension of credit to bad debtors and, at the same time, the successful extension of credit to debtors with little previous credit experience. In the 2015 FISMA Study on digitalization and innovation in the retail financial service sector, the case of Spain is explicitly mentioned as a

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country whether there is "*absence of an institutional framework to collect reliable and relevant credit data*" (p-129-130).

- So, in our view, **the CCD should be amended to state that positive information is a relevant factor for verifying the prospect and ability of the consumer to meet his credit obligations and that, consequently, such information should be collected by all external databases**.

(v) Recognise the value of consulting non-credit data and other relevant data

- In addition to traditional credit data (payment history data from regulated lenders), there are other sources of data to help factor in for better risks evaluations (e.g. data from non-regulated providers such as insurers, utility companies, landlords, automotive financers). These datasets are relevant, especially for consumers who have no, or so-called thin credit profiles (for example young people who have not yet applied for a credit). These sources of non-credit data thus offer an important addition to traditional credit data.

- Another important source of non-credit but relevant data for creditworthiness assessments is **public data**. As mentioned in our response to Question 1 above, digitalization of data held or produced by Government and the 'open data' environment are creating new possibilities for more data to be released and used to help improve an individual's credit profile, in particular to help with financial inclusion for the EU´s thin or non-existent credit profiles. Relevant public data which have been made publicly available explicitly by law, could be, for example, social security data, pension databases, tax data.

- Further to the above data (today collected by some CRAs depending on the jurisdictions), complementary data types and sources are emerging, including open banking data. When PSD2 is fully implemented, it will be possible to access a high granular level of an individual current account data which will add significant insight to the lenders´ affordability calculations. The World Bank Principles indeed recommend that credit reporting systems should have relevant, accurate, timely, sufficient data – including positive – **collected on a systematic basis from all reliable, appropriate and available sources.**" This is because, **"**comprehensive credit reporting" increases the ability of creditors to assess and monitor credit risks, creditworthiness and credit capacity.

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QUESTION 7 - Overall, do the benefits of the Directive outweigh its costs?

ACCIS
Yes

Please specify:

We are commenting with regards to creditworthiness assessments exclusively.

The obligation to conduct a creditworthiness assessment, and the corresponding costs (including the possible costs of consulting a database), rest with the lender.

From a CRA perspective, we note the following:

- The CCD does not require lenders to report credit agreements or other data to external databases nor to consult them when assessing the creditworthiness of a consumer, unless deemed necessary. However, these obligations exist in some national legislations in the EU (e.g. the Netherlands).

- Regardless of whether these obligations exist at national level, evidence shows that many lenders still choose to consult them (and bear the costs) as lenders have a shared incentive to use and reciprocate information. The World Bank Principles on Credit Reporting of 2011 drafted by a Task Force (including the European Commission) recognized that *'creditors consider information held by these systems as a* ***primary factor*** *when they evaluate the creditworthiness of data subjects and monitor the credit circumstances of consumers.* Indeed, CRA data improve their ability to take informed and cost-effective decisions and minimize their risks.

- Creditworthiness assessments are a key tool to promote / comply with responsible lending and could help to create a better level playing field across the EU. Increasing the availability of data to lenders (for example, with access to positive data) is likely to promote competition. Increased competition will encourage consumers to shop around for better value credit products more suitable to their needs, increasing competition further at both national and international levels.

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QUESTION 9 - To what extent is the Directive coherent with other EU legislation:

	ACCIS
Mortgage Credit Directive (MCD)	Somewhat coherent

Please specify and/or mention other pieces of EU legislation interacting with the Directive:

We think that the CCD is only somewhat coherent with the Mortgage Credit Directive.

It should be recalled that the CCD was adopted before the outbreak of the financial crisis and is, compared to the MCD, less equipped to help prevent irresponsible behaviour by a market participant. Unsurprisingly, in its recital 22, the MCD states that '*in order to take into consideration the lessons learnt from the financial crisis and in order to ensure that credit origination takes place in a sound manner, a different approach [to that of the CCD] is justified. In this respect, the provisions on the creditworthiness assessment should be **strengthened** in comparison to consumer credit'.*

As highlighted by the 2018 European Parliament's study on 'Consumer Credit - Mis-selling of Financial Products', the CCD 'd*oes not contain a clear duty of responsible lending*' and that, *as* a result of the compromise among Member States, Article 8 of the CCD imposes only a *'modest obligation'* on the creditor to assess the consumers creditworthiness prior to the conclusion of the credit agreement.

Compared to the creditworthiness assessment regime in the MCD (Articles 18 and 20), the regime in the CCD provides hardly any guidance and could benefit from more EU-level indications as to how these assessments should be carried out.

Therefore, in our view, the **CCD should be brought at least to a similar level of consumer protection as the MCD in terms of creditworthiness assessment**.

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QUESTION 12 - Should the following different aspects remain regulated at EU level?

	ACCIS
Creditworthiness assessments	Fully agree

Please specify:

To ensure that consumers are protected against over-indebtedness and that markets operate efficiently, lenders are obliged to assess a borrower´s creditworthiness before concluding a credit agreement. The obligation to assess the creditworthiness of individuals is one of the regulatory tools usually considered a duty of 'responsible lending' and is included in both the CCD and the MCD. Consumers should be able to enjoy the same degree of protection in all the Member States as regards consumer credit. Hence, provisions on creditworthiness assessments should remain regulated at EU level.

Having said that, the way in which creditworthiness assessments should be conducted in practice is subject to a largely minimum harmonisation approach, particularly in the CCD. ACCIS calls for the **CCD to be brought at least to a similar level of consumer protection as the MCD in terms of creditworthiness assessment**.

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