

Feedback on the review of the Consumer Credit Directive

Established in Dublin in 1990, ACCIS represents the largest group of credit reference agencies (CRAs) in the world. CRAs provide credit-related information and products and services derived from this information, including credit scores, to help credit institutions lend responsibly and borrowers access fair and affordable credit. ACCIS brings together 40 members across 28 European countries and 11 associate and affiliate members from all other continents.

ACCIS broadly welcomes the Commission's proposal to review the Consumer Credit Directive (CCD). We think that the revised rules increase the level of consumer protection, facilitate access to consumer credit across the EU and address the key, specific challenges brought on by the COVID-19 crisis.

In particular, we welcome:

1. The improvements in consumer protection that will come from extending the scope of the CCD to cover all credit agreement up until EUR 100 000 (increasing with inflation) and leasing agreements, credit agreements in the form of an overdraft facility and where the credit has to be repaid within one month, and credit agreements where the credit is granted free of interest and without any other charges, including Buy Now Pay Later scheme.
2. The clarification that the assessment of creditworthiness should be "thorough" and be based on "information on the consumer's income and expenses and other financial and economic circumstances" (Article 18(2)). Concerning the information that should be used to perform a creditworthiness assessment, we also welcome the alignment of the CCD with the text in the Mortgage Credit Directive (MCD) and the reference that Recital 47 makes to the European Banking Authority Guidelines on loan origination and monitoring (EBA/GL/2020/06).
3. The recommendation for creditors to consult credit databases to assess the credit status of a consumer in Recital 49.

At the same time, we believe that there is still some room for improvement. We have some detailed comments concerning the following aspects:

1. Performance of creditworthiness assessments
2. Access to, and content of credit databases

Performance of creditworthiness assessments

a) Article 18(1) and 18(2) and Recitals 46 and 47: conditions and data for creditworthiness assessments

We support the clarifications in Article 18 that (i) the creditworthiness assessment has to be "thorough"; and that (ii) it should "take into account the consumer's interest". If we are to protect consumers from over-indebtedness and support lenders on responsible lending, it is important that creditors assess the affordability of the loan for consumers and not only focus on their own credit risk.

Concerning the information that should be used to perform a creditworthiness assessment, we support the alignment of the CCD with the text in the Mortgage Credit Directive (MCD), in the sense that creditors should take into consideration "all necessary and relevant factors that could influence a

consumer’s ability to repay the credit” (Recital 46) and the “factors relevant to verifying the prospect of the consumer to meet his or her obligations under the credit agreement” (Article 18(1)). To enhance consumers’ protection and ensure more financial opportunities for consumers, it is important to evolve from “sufficiency” of information to “relevance” of information to reduce the inherent uncertainty in the decision-making process. As evidenced in Article 18(2), this evolution is compatible with existing GDPR requirements on data minimization and respect for the proportionality principle.

We also welcome the clarification that the assessment of creditworthiness should be based on “information on the consumer’s income and expenses and other financial and economic circumstances” (Article 18(2)) and the reference that Recital 47 makes to the European Banking Authority Guidelines on loan origination and monitoring (EBA/GL/2020/06) on the categories of data that may be used for creditworthiness purposes.

However, we believe that clarification is needed on the following aspects in relation to Recital 47:

- Given that information on the consumer’s income and expenses is personal data, it is unclear what this Recital means when stating that “personal data”, such as personal data found on social media platforms or health data, “should not be used for creditworthiness assessments”.
- In addition, the meaning of ‘personal data found on social media platforms’ is unclear, as are the circumstances under which certain relevant data posted by consumers on such platforms could be allowed for creditworthiness assessment purposes (e.g., under the GDPR principles and with consumer’s consent). In this regard, we note that a ‘ban’ on social media data is reflected in a Recital rather than in Article 18 itself.

b) Article 18(2): data verification

In the revised CCD – and in alignment with the MCD – creditors are under the obligation to appropriately verify the information used for creditworthiness assessments. Article 18(2) only refers to a verification with reference to independently verifiable documentation. In paragraph 89, the EBA guidelines refer to necessary checks and reasonable enquiries with the borrower “and third parties (e.g., employer, public authorities, relevant databases)”. To ensure an alignment between the revised Directive and the EBA Guidelines, we would like to recommend the following amendment to Article 18(2).

Recommended amendment to Article 18(2):

<p>2. The assessment of creditworthiness shall be carried out on the basis of relevant and accurate information on the consumer’s income and expenses and other financial and economic circumstances which is necessary and proportionate such as evidence of income or other sources of repayment, information on financial assets and liabilities, or information on other financial commitments. The information shall be obtained from relevant internal or external sources, including the consumer and, where necessary, on the basis of a consultation of a database referred to in Article 19.</p> <p><i>The information obtained in accordance with this paragraph shall be appropriately verified, where necessary</i></p>	<p>2. The assessment of creditworthiness shall be carried out on the basis of relevant and accurate information on the consumer’s income and expenses and other financial and economic circumstances which is necessary and proportionate such as evidence of income or other sources of repayment, information on financial assets and liabilities, or information on other financial commitments. The information shall be obtained from relevant internal or external sources, including the consumer and, where necessary, on the basis of a consultation of a database referred to in Article 19.</p> <p><i>If creditors have concerns regarding the accuracy and reliability of the information and data to be used for the assessment of creditworthiness they should make necessary checks and</i></p>
---	---

<i>through reference to independently verifiable documentation.</i>	<i>reasonable enquiries with the borrower and other independent third parties (e.g., employer, public authorities, relevant databases) and take reasonable steps to verify the information and data collected.</i>
---	--

c) Article 18(6) and Recital 48: automated processing, including profiling

The proposed revised Directive contains the following provisions:

- Concerning creditworthiness assessments involving the use of profiling or other automated processing of personal data, Article 18(6) sets out the same consumer rights as those provided for in Article 22 GDPR, that is, the consumer right to:
 - i. obtain human intervention on the part of the creditor to review the decision,
 - ii. obtain from the creditor a clear explanation of the assessment of creditworthiness, including on the logic and risks involved in the automated processing of personal data as well as its significance and effects on the decision, and
 - iii. express his or her point of view and to contest the assessment of the creditworthiness and the decision.
- Recital 48 then justifies the above consumer rights on the fact that creditworthiness assessments based on automated processing determine people's access to financial services and other essential services such as housing, electricity, and telecommunication services – referring to the proposed Artificial Intelligence Act.

We believe that the application of Article 22 GDPR rights to automated creditworthiness assessments is not appropriate for the following reasons:

- Article 22 GDPR applies to automated individual decision-making, including profiling, that is, to a decision solely made by automated means without any human involvement. A typical example is an automatic refusal of an online credit application. This is different from a creditworthiness assessment, which is only one factor of the final decision determining a person's access to credit. Indeed, a creditworthiness assessment and the decision to grant credit do not always coincide. Furthermore, CRAs do not interfere in that decision at all. What really matters to the consumer and has a significant effect on his or her life is the final decision, not the creditworthiness assessment. Subjecting the creditor to a manual review of every creditworthiness assessment, even when there has been already some human involvement, would be unnecessary and would create a disproportionate burden.
- Creditworthiness assessments and credit scores are already subject to the GDPR principles and consumer's rights, including the consumer right to be informed (for example to receive clear and simple explanations as how the profiling or the automated decision-making process work).

We would like therefore to recommend that Article 18(6) is **deleted**.

We also think that it is not appropriate that Recital 48 makes a reference to the proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) especially as the regulation is in draft form and the subject of ongoing consultation and so open to significant change. ACCIS is among the stakeholders who submitted feedback on the proposed AI Act challenging the definition of AI and the classification of AI systems used to evaluate the credit score or creditworthiness of natural persons as high-risk.

We would like therefore to recommend that Recital 48 is **deleted**.

Access to and content of credit databases

We agree with the statement in Recital 49 recommending creditors to consult credit databases to assess the credit status of a consumer. This prescription has to do with the relevance and quality of the different data inputs into CWAs and recognizes widespread and accepted market practice. International organisations such as the World Bank indeed recognise credit databases' vital role in contributing to expanding responsible access to credit and financial stability

In addition, Article 19.3 establishes, for the first time, the minimum content of both public and private credit databases (= information on consumers' arrears in payment). While recognising the importance of credit databases' role in the credit decision making process, however, it should be noted that all such databases already contain information on consumers' arrears in payment. So-called "negative information" is, in fact, not the issue. Therefore, this change in the CCD would have no effect in terms of improving consumer's protection or fostering the single market.

As mentioned in previous submissions and as recognised in the Commission impact assessment, the issue is that some databases do not contain positive information i.e., information that covers facts of an individuals' contractually compliant behaviour, the value of an individual's credit commitments and the cost of meeting those credit obligations. Positive data provides more detailed information about a consumer's loans and credit availability and a more comprehensive picture of consumer's financial behaviour. For those reasons, lenders who carry out creditworthiness assessments that do consider the consumer's interest use positive data to assess whether someone applying for credit can afford the additional payments. Examples of positive data include the total amount of outstanding credit and type of loans; accounts currently open and active; balances; number of inquiries; credit limits; details relating to credit card commitments, such as how much is spent on the card and monthly repayments; how much cash has been taken out; and recent changes to borrowing limits. Positive information - one of the main factors to estimate consumer's over-indebtedness but also a major factor in powering financial inclusion and access to affordable credit across the EU - is already included in the Mortgage Credit Directive (Article 20) and in the EBA Guidelines on loan origination as relevant factors for verifying the prospect and ability of the consumer to meet his credit obligations.

While we understand that in some Member States for historical reasons, positive data cannot be used for creditworthiness assessments, this should not prevent EU law from promoting the use of such data.

Considering the above, we would like to recommend an amendment to Article 19.3.

Recommended amendment to Article 19(3):

<p>3. The databases referred to in paragraph 1 shall hold at least information on consumers' arrears in payment.</p>	<p>3. The databases referred to in paragraph 1 should hold at least information on consumers' repayment behaviour on their existing financial agreements, including any arrears - where permitted under national legal frameworks.</p>
--	--

A significant number of EU consumers are so-called thin-file consumers. A "thin file" refers to the credit report of someone with little or no credit history. Consumers who are just starting out and may never have taken out a loan or had a credit card are said to have thin files. Examples are young borrowers or migrants. These consumers make however steady payments (such as rent, utilities, and cell phone bills). This information can be used to determine creditworthiness. So, to support the creditworthiness assessments of "thin file" consumers databases should be able to collect non-traditional data from non-banking sources, such as utilities and telecommunications companies.

In that regard, we would like to recommend an amendment to Recital 49.

Recommended amendment to Recital 49:

To assess the credit status of a consumer, the creditor or the provider of crowdfunding credit services should also consult credit databases. The legal and actual circumstances may require that such consultations vary in scope. To prevent any distortion of competition among creditors or providers of crowdfunding credit services, they should have access to private or public credit databases concerning consumers in a Member State where they are not established under non-discriminatory conditions compared with creditors or providers of crowdfunding credit services established in that Member State. Member States should facilitate the cross-border access to private or public databases, in compliance with the Regulation (EU) 2016/679 of the European Parliament and of the Council³³. To enhance reciprocity, credit databases should as a minimum hold information on consumers' arrears in payment, in accordance with Union and national law.

To assess the credit status of a consumer, the creditor or the provider of crowdfunding credit services should also consult credit databases. The legal and actual circumstances may require that such consultations vary in scope. To prevent any distortion of competition among creditors or providers of crowdfunding credit services, they should have access to private or public credit databases concerning consumers in a Member State where they are not established under non-discriminatory conditions compared with creditors or providers of crowdfunding credit services established in that Member State. Member States should facilitate the cross-border access to private or public databases, in compliance with the Regulation (EU) 2016/679 of the European Parliament and of the Council³³. To enhance reciprocity, credit databases should as a minimum hold information on consumers' arrears in payment, in accordance with Union and national law. **To assess the creditworthiness of consumers with little or no credit history, databases should include information from different sectors of the economy beyond the traditional credit sector, for example, from non-banking lenders, telecommunication providers and utilities.**