

15 October 2021

Mr. Wojciech Wiewiórowski  
European Data Protection Supervisor  
Rue Wiertz, 60  
B-1047 Brussels

Copy to:

- *Nils Behrndt, Director for Consumers, DG JUST, European Commission*
- *Marcel Haag, Director for Horizontal Policies, DG FISMA, European Commission*

*[Letter sent by email]*

**Subject:** EDPS' opinion on the European Commission's proposed Directive on consumer credits

Dear Mr. Wiewiórowski,

ACCIS is the trade association that represents the credit reference industry in Europe, including credit reference agencies (CRAs). CRAs collect credit-related information - which they organise in databases - to provide products and services, such as credit reports and credit scores, that help credit institutions lend responsibly and borrowers to get access to fair and affordable credit.

We would like to share with you our views on three of the comments that you have made in your 26 August opinion<sup>1</sup> on the European Commission's proposed Directive on consumer credits.

a) Ex ante limitation of the types of personal data that can be used for creditworthiness assessments

In your view, *'the proposal should limit ex ante the types of personal data that can be used for creditworthiness assessment, and consumer lending more broadly, to what is necessary and proportionate'*. A few sentences above that comment, you also wrote that *'the absence of clear and specific rules, as to the amount and type of personal data that creditors may process in the context of creditworthiness assessments, entails significant risks of excessive and unfair data processing'* and that *'leaving it up to lenders to define which types of data are relevant for creditworthiness assessment might not only be contrary to the principle of data minimisation, but also leads to unfair commercial practices'*.

We would like to recall that under the new proposal for a Consumer Credit Directive (CCD) – which would repeal and replace the Consumer Credit Directive (2008/48/EC) - lenders are obligated to perform a thorough creditworthiness assessment of consumers before granting them credit (Article 18.1). This obligation exists not only to ensure sound credit risk management on the side of the lender but, mainly, to ensure responsible lending, i.e., that lenders only sell products that are affordable and suitable for the borrowers' circumstances.

---

<sup>1</sup> [https://edps.europa.eu/system/files/2021-08/opinion\\_consumercredit-final\\_en.pdf](https://edps.europa.eu/system/files/2021-08/opinion_consumercredit-final_en.pdf)

The creditworthiness assessment of borrowers can differ significantly from borrower to borrower. The creditworthiness assessment of a borrower who is just starting out and may never have taken out a loan or had a credit card will engage less data than the creditworthiness assessment of a borrower with ample previous exposure to the credit market.

Furthermore, it is not possible to predict today what data categories could be used tomorrow to improve consumers' access to affordable credit and make lending more responsible. The European Data Strategy and the Common European Data Spaces, for example, have the potential to increase the supply of data that promotes responsible lending. At the same time, the credit and data markets are innovating quickly now, making predictions more difficult. Limiting ex ante the types of data that can be used for creditworthiness assessments is, therefore, problematic.

The issue is compounded by the fact that such ex-ante limitation should be enshrined in the Directive itself. Introducing a single ex ante list of data categories in the revised CCD ignores the fact that certain information may be irrelevant for consumer credit in some EU countries<sup>2</sup> and that consumer lending is only a subset of the creditworthiness assessment done by creditors in member countries; thus, the CCD is not the right place for place to regulate the topic. Finally, codifying inflexible legislation on what data can be used in creditworthiness assessments based on current practices will prevent innovation in this area, limit competition over time, and stall progress on preventing over indebtedness and financial inclusion.

In Recital 47 of the proposal, the European Commission refers to EBA guidelines on loan origination and monitoring, which refer to what categories of data may be used in creditworthiness as way of example. This guidance can be updated more easily than the law, accommodating evolving trends (such as the use of open banking data) and encouraging data use that benefits consumers. The EBA guidance and the corresponding enforcement of that guidance by supervisory authorities are, therefore, sufficient.

#### b) Consumer rights regarding creditworthiness assessments

You welcome the extension of the application of Article 22 GDPR rights - which apply to automated decision making, including profiling - to automated creditworthiness assessments. In addition, you recommend that the right to request and obtain '*human intervention*' should be replaced by the right to request and obtain a '*human assessment*', implying a '*thorough human review at the point the automated decision is delivered*'.

We believe that the application of Article 22 GDPR to automated creditworthiness assessments with the requirement of human intervention, let alone a human assessment, would be unnecessary and disproportionate for the following reasons:

- Article 22 GDPR applies to automated individual decision-making, including profiling, 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 significantly affects their 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 right to be informed. For example, receiving clear and simple explanations on how the profiling or automated decision-making process works.

---

<sup>2</sup> For instance, bounced cheques could be considered critical info in some markets. In others, cheques are used so rarely that a bounced cheque may be just as likely a misunderstanding as relevant information.

- c) Requirements, roles and responsibilities of credit databases or third parties providing 'credit scores'

In your view, the proposal should explicitly regulate *'the requirements, role and responsibilities of credit databases or third parties providing 'credit scores''*. This recommendation is made *'taking into account the possible adverse consequences to the persons concerned'*.

We would like to recall that CRAs have pioneered the development and operationalisation of credit databases and credit scoring models and their underlying techniques for decades. In doing so, they have introduced and implemented robust governance arrangements, which they have honed over many years, based on their market experience; they are also in full compliance with all existing applicable regulations, not the least GDPR, which sets a fully harmonized legal framework for the supervision of CRAs. Consequently, CRAs comply with the general principles relating to the processing of personal data (Art. 5), the provisions of Art. 6 and 9 concerning the lawfulness of processing, provisions concerning information and access to personal data (Art. 13, 14, 15) and rectification and erasure (Art. 16 - 19). CRAs make sure data are securely processed (Art. 32), and data breaches are reported to the supervisory authority and data subject (Art. 33, 34). CRAs carry out a data protection impact assessment for certain types of data processing and consult their supervisory authorities prior to the processing (Art. 35, 36).

Furthermore, we are of the view that your recommendation would not be in line with the Better Regulation agenda<sup>3</sup> of the European Commission. As you have noted in your comments, the proposal follows a REFIT evaluation<sup>4</sup>. That evaluation was performed to assess the effectiveness, efficiency, coherence, relevance, and EU added value of the existing CCD and did not cover the requirements, roles, and responsibilities that credit databases could be subject to in support of creditworthiness assessments. Neither a public consultation nor an impact assessment was performed in that regard. Before introducing a new regulation for credit bureaus or any other new aspect in the Directive, a proper impact assessment and consultation process should be carried out.

It is also worth recalling that in May 2021 - one month before the adoption of the proposal to amend the CCD - the European Commission, in the context of the evaluation of the Mortgage Credit Directive (2014/17/EU), concluded that a revision of the current supervisory system of credit reference agencies was not necessary. In particular, the Commission stated that *'the activity of those [credit] databases or credit reference agencies must comply with (multiple) national legal requirements. Given that the processing of personal data is part of their core activity and the core risk involved, all credit databases are subject to supervision by the national data protection authorities (DPAs) for all matters related to compliance with GDPR and the national legislation further specifying it'*. It also stated that *'credit reference agencies are already supervised in all Member States and at EU level by DPAs and the European Data Protection Board regarding the conduct of their activity in processing personal data under the MCD. Currently there does not appear to be the need to extend this supervision'*<sup>5</sup>.

We stand ready to provide any additional information on the credit reference industry and look forward to continued dialogue with you and other important stakeholders on the issue of consumer financial protection.

Yours faithfully,

[E-signed]

Enrique Velazquez  
ACCIS Director General

<sup>3</sup> [https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how\\_en](https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en)

<sup>4</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1844-Evaluation-of-the-Consumer-Credit-Directive\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1844-Evaluation-of-the-Consumer-Credit-Directive_en)

<sup>5</sup> See the European Commission's [report](#) to the European Parliament and the Council on the Evaluation of the Mortgage Credit Directive (May 2021).