

16 February 2022

# CONSUMER CREDIT

POLICY RECOMMENDATIONS



## EXECUTIVE SUMMARY

This paper offers an overview of the functioning of creditworthiness assessments (**CWAs**) and credit scores in consumer lending decisions, an analysis of the role credit databases play, and targeted **policy recommendations** for the revision of the EU Consumer Credit Directive (**CCD**).

## CREDIT REFERENCE AGENCIES

Credit Reference Agencies (**CRAs**) are businesses which provide borrowers' credit-related information as well as products and services derived from this information (e.g., credit scores) to lenders and other organisations. CRAs' mission is to help creditors lend responsibly and borrowers to get access to fair and affordable credit, including consumer credit.

The most common users of CRAs are banks, leasing companies, credit card and retail credit suppliers as well as mortgage providers and credit unions, telecommunications providers, insurance companies, mail order and / or utility companies. Consumers also use CRAs services directly.

**About ACCIS**

ACCIS is the voice of companies responsibly managing data to assess the financial credibility of consumers and businesses. Established as an association in 1990, ACCIS brings together more than 40 members from countries all over Europe as well as associates and affiliates across the globe.

The information held by CRAs is **shared by the lenders/users themselves** and relates to the borrowers' past credit and current repayment behaviour. CRAs also collect information from public sources. CRAs add value by merging and analysing the information, which is then redistributed to lenders and other organisations who use it to assess the creditworthiness of people or businesses.

It is important to underline that **CRAs do not conduct CWAs or take the final decision to grant consumer credit or not**. The CWA, as well as the final decision to grant credit, resides entirely with the lender. In meeting the obligation to assess creditworthiness, a lender typically considers its own data and processes, the data supplied by the borrower in the credit application, as well as the information (and services) provided by CRAs.

## BENEFITS OF CREDIT REFERENCE AGENCIES

International institutions such as the World Bank have shown that data sharing on borrowers via credit reporting systems contributes to improving the risk profile of borrowers and increases access for more consumers to credit markets<sup>1</sup>.

For consumers	For creditors	For society
<ul style="list-style-type: none"> <li>▪ Increased access to credit markets</li> <li>▪ Increased choice</li> <li>▪ Stronger protection from over-indebtedness</li> <li>▪ Safer and fairer borrowing conditions</li> </ul>	<ul style="list-style-type: none"> <li>▪ Access to high quality, relevant information to make responsible lending decisions</li> <li>▪ Allows smaller creditors that do not have much data to compete</li> <li>▪ Reduces financial risk</li> </ul>	<ul style="list-style-type: none"> <li>▪ Increased financial inclusion</li> <li>▪ Increased supply of affordable credit</li> <li>▪ Reduces non-performing loans</li> </ul>

<sup>1</sup> See, for example the World Bank's General Principles on Credit Reporting ([here](#)) and the European Credit Research Institute's paper "Data sharing in credit markets: Does comprehensiveness matter?" ([here](#))

## ADJUSTMENTS TO THE CCD THAT ACCIS SUPPORTS

ACCIS welcomes the Commission’s revision of the CCD, and in particular the improvements in consumer protection that will come from:

- **extending the scope of the CCD** (Article 2) to cover all credit agreement up to EUR 100 000 (increasing with inflation) and leasing agreements, credit agreements in the form of an overdraft facility and where the credit must 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 schemes;
- **introducing a strong consumer-focus to the CWA** by indicating that these assessments should be “*thorough*” and be done “*in the interest of the consumer*” (all necessary and relevant factors that could influence the consumers “*ability*” to repay the credit should be considered) (Article 18.1 and recital 46);
- **clarifying the type of information that should be used to perform a CWA** by referring to “*information on the consumer’s income and expenses and other financial and economic circumstances which are necessary and proportionate*” (Article 18.2) in line with the MCD. Also, by referring to the European Banking Authority Guidelines on loan origination and monitoring (EBA/GL/2020/06) which includes categories of personal data that may be used for CWAs (recital 47); and
- **maintaining the reference to external databases** in the text of the Directive as a key source of information for CWAs (Article 18.2, recital 49 and Article 18.9).

## ACCIS POLICY RECOMMENDATIONS

ACCIS believes, however, that there is still some room for improvement in the proposal. We provide below some policy recommendations concerning four aspects:

1. Data types for CWAs (recital 47, related to Article 18.2)
2. Data verification (Article 18.2)
3. Complementary rights for CWAs in a digital word (Article 18.6, recital 48)
4. Databases minimum content (Article 19.3, recital 49)

### 1. Data types for CWAs: maintaining a principle-based approach and removing blacklists

#### Recital 47 (related to Article 18.2)

Commission’s Proposal	ACCIS proposed amendments
<p>The assessment of creditworthiness should be based on information on the financial and economic situation, including income and expenses, of the consumer. The European Banking Authority Guidelines on loan origination and monitoring (EBA/GL/2020/06) provide guidelines on what categories of data may be used for the processing of personal data for creditworthiness purposes, which include evidence of income or other sources of repayment, information on financial assets and liabilities, or information on other financial commitments. <b>Personal data, such as personal data found on social media platforms or health data, including cancer data, should not be used when conducting a creditworthiness assessment. [...]</b></p>	<p>The assessment of creditworthiness should be based on information on the financial and economic situation, including income and expenses, of the consumer. The European Banking Authority Guidelines on loan origination and monitoring (EBA/GL/2020/06) provide guidelines on what categories of data may be used for the processing of personal data for creditworthiness purposes, which include evidence of income or other sources of repayment, information on financial assets and liabilities, or information on other financial commitments. <del>Personal data, such as personal data found on social media platforms or health data, including cancer data, should not be used when conducting a creditworthiness assessment. [...]</del></p>

## Justification

### Maintaining a principle-based approach

ACCIS welcomes the Commission's general approach regarding the type of data to be used for CWAs, that is, "information on the consumer's income and expenses and other financial and economic circumstances which is necessary and proportionate" (Article 18.2 and recital 47).

However, some stakeholders are calling for further specifying the categories of personal data for CWAs<sup>2</sup> or the content of credit databases<sup>3</sup>. ACCIS believes this would not bring the expected objectives of increasing consumer protection but rather the contrary:

- CWA is not an exact science. Assessing a person's creditworthiness and affordability is not an exact science. Credit may be affordable for one but unaffordable for another in a similar situation, purely because of how different people manage their finances. Clearly, the most comprehensive picture of any borrower's creditworthiness is underpinned by the most relevant, accurate and complete dataset available. Making such a comprehensive picture available to lenders reduces inaccuracy, inconsistency, irresponsible lending while promoting financial inclusion and helping prevent fraud. However, this does not mean that lenders should use every single piece of available information in every credit application. Different data is required depending on the type of credit being applied for (for example, data required to reach a decision on buying a washing machine will be different to that of a mortgage application). But without being able to access a comprehensive picture of a consumer's financial position, it is not possible to establish which pieces of information are the most appropriate and insightful. Establishing an ex-ante limitation for data types would inevitably restrict access to credit for some, in particular consumers with no or thin credit history.
- Future data categories in an open data world. It is not possible to predict today what data categories will be available in the future which could improve consumers' access to affordable credit and make lending more responsible. For example, with PSD2, bank account data has only recently become available for CWAs. And the Commission's plan is to continue opening up data to foster data-driven innovation and data flows within the EU. Open finance and the European digital wallets are important initiatives in the financial service sector which will allow the consumer to share personal data for better/new products and services.
- Do not limit innovation. Credit databases are constantly looking for ways to financially include consumers with limited credit histories. These people are often "unscorable" using the most traditional of credit data and face therefore significant challenges in accessing credit markets. Limiting ex ante the data that databases can process means that the potential of various types of "alternative data" to supplement the information contained in credit records and allow credit scores to be generated for those consumers would disappear<sup>4</sup>.
- Differences across the EU Single Market. Introducing a single ex ante list of data categories in the revised CCD ignores the fact that certain information may be irrelevant or unavailable for consumer credit in some EU countries<sup>5</sup>.
- Absence of a legal basis. The CCD regulates consumer credit. The data held in credit databases serves many other purposes, beyond the CWA of borrowers accessing consumer credit. For example, that data is used for assessing the creditworthiness or other loan products (mortgage loans), for identity verification, technological tools for fraud prevention, for rating and tools for credit products' securitization, etc. Governments have also started to make use of credit databases to overcome

<sup>2</sup> See, for example, amendment 69 in the IMCO draft report.

<sup>3</sup> See, for example, amendment 70 in the IMCO draft report.

<sup>4</sup> The UK's Rental Exchange Initiative is a good example. Rental tenants often face financial, digital and even social exclusion challenges compared to homeowners. Providers of credit databases discovered that, by creating an online history of tenants' rental payments in compliance with all applicable data protection provisions, it would be possible to enhance the tenant's credit report without taking on new credit agreements and to prove to companies (e.g., lenders) that the tenant was reliable potential customer.

<sup>5</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

contingent situations, such as measures directed to tackle terrorism or other forms of organised crime, etc.

Removing blacklists

We believe the above principle-based approach should also continue to apply to determine which data cannot be used for CWAs. For example, health (cancer) data or any other information provided for in Article 9 GDPR (special protected characteristics, such as race, sexual orientation) cannot today be used for CWAs as this would infringe the principle of data minimisation and purpose limitation, and be subject to fines.<sup>6</sup> As such, CRAs never collect this type of data. A prohibition in this regard would be redundant.

As regards personal data found on social media platforms, these may cover many different types and its use is evolving at rapid pace in all sectors. Provided that certain social media data could be relevant for CWAs purposes and complies with the CCD and GDPR principles (plus with the consumer’s consent), banning the entire category would be over-restrictive. In this regard, we note that the European Commission has recently launched a [consultation](#) to assess whether, in clearly defined cases (e.g. consumers with thin credit files who may be thus invisible to the traditional world), it should be possible to take other specific information/factors into account for CWAs. This includes a request to the European Banking Authority (EBA) for [technical advice](#) on this area. We also note that the recent 2020 EBA guidelines on loan origination did not introduce any ban but referred to the general obligations of the CCD, MCD and the GDPR (see Annex 2 of that document).

**2. Data verification: aligning with the EBA guidelines on loan origination**

**Article 18.2**

Commission’s Proposal	ACCIS proposed amendments
<p>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><b><i>The information obtained in accordance with this paragraph shall be appropriately verified, where necessary through reference to independently verifiable documentation.</i></b></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><b><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 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></b></p>

<sup>6</sup> Some Member States have prohibited the use of such sensitive characteristics for any purpose even with consent (e.g. Spanish data protection law, Ley Orgánica 3/2018, Article 9).

Justification

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 on loan origination](#) refer to necessary checks and reasonable enquiries with the borrower “and third parties (e.g., employer, public authorities, relevant databases)”.

### 3. Removing complementary obligations for CWAs in a digital world

#### Recital 48

Commission's Proposal	ACCIS proposed amendments
<p><b><i>The Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), establishes that AI systems used to evaluate the credit score or creditworthiness of natural persons should be classified as high-risk AI systems, since they determine those persons' access to financial resources or essential services such as housing, electricity, and telecommunication services. In view of those high stakes, whenever the creditworthiness assessment involves automated processing, the consumer should have a right to obtain human intervention on the part of the creditor or providers of crowdfunding credit services. The consumer should also have the right to obtain a meaningful explanation of the assessment made and of the functioning of the automated processing used, including among others the main variables, the logic and risks involved, as well as a right to express his or her point of view and to contest the assessment of the creditworthiness and the decision.</i></b></p>	<p>[Delete]</p>

#### Article 18(6)

Commission's Proposal	ACCIS proposed amendments
<p><b><i>Where the creditworthiness assessment involves the use of profiling or other automated processing of personal data, Member States shall ensure that the consumer has the right to:</i></b></p> <ul style="list-style-type: none"> <li><b><i>(a) request and obtain human intervention on the part of the creditor or the provider of crowdfunding credit services to review the decision;</i></b></li> <li><b><i>(b) request and obtain from the creditor or the provider of crowdfunding credit services a clear explanation of the assessment of creditworthiness,</i></b></li> </ul>	<p>[Delete]</p>

<p><b><i>including on the logic and risks involved in the automated processing of personal data as well as its significance and effects on the decision;</i></b></p> <p><b><i>(c) express his or her point of view and contest the assessment of the creditworthiness and the decision.</i></b></p>	
<p>Justification</p> <p>Article 18(6) CCD creates complementary consumer rights regarding CWAs involving the use of automated processing of personal data, including the right to ask for human involvement. This high level of protection is provided in the GDPR <u>but only</u> for automated decisions, including profiling (that is, decisions exclusively made by automated means, for example, an automatic refusal of an online application (Article 22 and Art 13.2.f - 14.2.f GDPR)).</p> <p>The introduction of Article 18(6) CCD would mean that the high level of protection provided for in the GDPR would not only apply to decisions having an effect on an individual and solely made by automated means, but also to “intermediate steps” in the decision-making process (i.e., the CWA) and regardless of whether they are fully automated or not. Clearly, such complementary rights would be unnecessary, inefficient and disproportionate, and therefore article 18.6 should be deleted or at least rephrased in line with the EECS <a href="#">opinion</a> (i.e. the consumer would have the rights granted by the GDPR when the CWA is performed exclusively automatically and produces effects concerning a private individual (the CWA = final decision)).</p> <p>Subjecting the creditor to a manual review of every CWAs or credit score, even when there has been some human involvement already, would not be beneficial for the lender or the consumer. As with any other sector, digital automation is bringing significant benefits to credit granting. This includes allowing lenders to focus only on a limited number of applications needing revision by a person. This avoids having to evaluate every single application by hand, which is what used to happen in the past, even where they were clearly acceptable or unacceptable. Automated processing allows much faster and efficient decision-making which improves the customer experience. Importantly, this also allows lenders to consider each credit application in the same manner thus making the process more objective and fairer.</p> <p>It is important to recall that the consumer enjoys important rights under the GDPR and consumer law as regards the intermediate steps (CWAs and credit scores), including right to be informed, right to access their personal data, which is used for profiling, right to correct/remove the data.</p>	

#### 4. Databases minimum content: promoting the sharing of positive data

##### Article 19(3)

Commission’s Proposal	ACCIS proposed amendments
<p>The databases referred to in paragraph 1 shall hold at least information on consumers’ arrears <b><i>in payment.</i></b></p>	<p>The databases referred to in paragraph 1 should hold at least information on consumers’ <b>repayment behaviour on their existing financial agreements, including any arrears - where permitted under national legal frameworks.</b></p>
<p>Justification</p> <p>All credit databases already contain information on consumers’ arrears in payment. Therefore, the suggested change in the CCD would have no effect in improving consumer protection or fostering the single market.</p>	

As recognized in the Commission's impact assessment, the key issue is that some Member States databases do not contain "positive" information i.e., information relating to an individual's contractually compliant behaviour, the value of their credit commitments and the cost of meeting those credit commitments<sup>7</sup>. Indeed, the [World Bank](#) expressly recommends that credit reporting systems should collect positive data as its use is empirically associated with lower incidents of non-performing loans, and at the same time, the successful credit granting to debtors with little previous credit experience.

In line with the Mortgage Credit Directive (Article 20) and the EBA Guidelines on loan origination which include positive data as a relevant factor for verifying the prospect and ability of consumers to meet their credit obligations, ACCIS recommends including this data type also as minimum content of databases. While we understand that in some Member States for historical reasons, positive data cannot be used for CWAs, this should not prevent EU law from promoting the use of such data. Both the draft ECON [opinion](#) (AM 42) and the EESC [opinion](#) (point 4.5) are in line with ACCIS's proposed amendment.

---

<sup>7</sup> In the 2015 FISMA [Study on digitalisation and innovation in the retail financial service sector](#), the case of Spain is explicitly mentioned as a country where there is "absence of an institutional framework to collect reliable and relevant credit data", pp. 129-130.





## ACCIS

ACCIS is the voice of organisations responsibly managing data to assess the financial credibility of consumers and businesses. Established as an association in 1990, ACCIS brings together more than 40 members from countries all over Europe as well as associates and affiliates across the globe.

## Contact

ACCIS Secretariat  
Rue du Luxembourg 22-24  
1000 Brussels  
Belgium  
Tel: +32 2 761 66 93  
[secretariat@accis.eu](mailto:secretariat@accis.eu)

## Follow us !

[Twitter](#)  
[Linkedin](#)  
[Youtube](#)