18 July 2025

CNIL “Octroi de credit: projet de référentiel”

OUR RESPONSE THE PUBLIC CONSULTATION

ACCIS
DATA FOR CREDIT

1. Do you have any comments on the draft standards?

General comments:

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 50 members from countries all over Europe as well as associates and affiliates across the globe. While ACCIS has no Member in France, we recognise the influence of CNIL in the EU (and beyond) and therefore appreciate firstly the clear documentation provided and secondly the opportunity to provide our input on behalf of our Members.

Responsible lending is vital to prevent consumers from becoming over-indebted. Credit information is central to this process, enabling access to affordable finance and reducing over-indebtedness. Credit information suppliers—i.e. ACCIS Members—provide crucial data to lenders, including credit repayment records, financial data, and publicly available information. Further, credit information suppliers validate, aggregate, and sell comprehensive credit reports to creditors. They also offer services to individual consumers and businesses.

The GDPR recently celebrated its seventh birthday. During this time, credit information suppliers have realised that, although the design of the GDPR is sound, the very general regulations do not always do justice to the different sector-specific requirements. It is therefore in this spirit that ACCIS highly appreciates CNIL's specific reflections on GDPR and credit.

Below some more targeted commentary.

Section 4 – legal basis:

ACCIS notes the context of the Reference Framework proposed by the CNIL, which is to be relevant for the French market. With this in mind, ACCIS understands that CNIL has decided to go with contractual necessity as *the* legal basis for any processing meant to assess the data subject's credit worthiness, including those that fall within Article 22 of the GDPR. This legal basis is appropriate for lenders with a direct relationship with the customer.

However, in other models that exist in other markets, where banks, credit institutions or other lenders work with credit information suppliers and contract a credit score as part of their creditworthiness assessment, this legal basis may not be regarded as appropriate for credit information suppliers, which do not have a *direct* relationship with the consumer. For example, a bank would usually evaluate creditworthiness based on information provided by a credit information supplier, information the bank itself holds and information it has collected from the consumer who applies for credit. The bank decides on this basis whether to grant a loan and has to comply with the Article 22 GDPR obligations if it makes the decision automatically. However, credit information suppliers, because they do not provide loans and do not decide whether they should be provided.

More broadly and as ACCIS has remarked in the past, across the EU there has been (and still is) a lack of consistent guidance regarding the use of legitimate interest as a lawful ground for data processing for credit information suppliers. Many ACCIS Members have traditionally relied on legitimate interest for processing personal data, especially for purposes like responsible lending, fraud prevention, and assessing creditworthiness. Some European data protection bodies and authorities (see for example the DPA approved code of conduct in Italy) have recognised the rightfulness of using legitimate interest for these purposes and others.

To avoid confusion in other credit markets across the EU, ACCIS recommends that CNIL make clear that these standards only apply in France and are required because of the unique nature of the French market.

Lastly, it would be useful if the CNIL were to provide more information and specificity regarding what would constitute the justification for the legal basis of legitimate interest.

Section 8 on automated decisions

ACCIS appreciates the efforts of CNIL to implement an analysis of the implications of the so-called SCHUFA ruling on granting credit within this document. Further, ACCIS does see the merit of linking this to contractual

necessity as legal basis. Yet, we would also underline here the need for CNIL to provide guidance on what steps would be sufficient to demonstrate contractual necessity so as to guide market participants. We also repeat the point that outside of France, the relationships between lenders and credit information suppliers are different.

Box on AI

ACCIS adds a comment here that, per the Guidelines on definition of AI systems and the text of the EU AI Act that Logistic Regression, which is the technique used in most credit scoring models in use, is **not** an AI system. This distinction is an important one to make so as to provide clarity around the fact that credit scoring models are not by default AI models, and therefore most credit scoring models would not be classified as high-risk AI systems.

4. *Do you consider that analysing financial movements 'over the last three months' is a relevant period?*

The first comment ACCIS makes here is that there is some scope for different interpretations of "financial movements" since we also made efforts to translate from the original French into English, for ease of facilitating feedback from ACCIS Members. However, we take this the term "financial movements" over the last three months, considering it is banking data, broadly, to mean the inflows/outflows from the current account.

On industry practice, we can only provide a small contribution and, in any event, the period of time may also depend on specific national legislation, or provisions of the different EU Supervisory Authorities. According to data collected, approximately 32% of CRAs in ACCIS Membership collect data on income but ACCIS does not have data on the length of time this income is tracked. We make the assessment no less that this is indeed a relevant period, but would also add that over a longer period of time would inevitably lead to a better overall picture of the borrower. Furthermore, data on income and expenditures is especially beneficial in the pursuit of adding customers with so-called "thin files", i.e. consumers with non-extensive financial histories.

5: With regard to the retention periods listed in point 7, please tell us whether you consider these to be sufficient for the purposes of the processing operation:

The general period of five years, applicable to processing for the purposes of assessing the applicant's solvency of data relating to past contractual defaults

The reduced period of six months, applicable to this processing if the contractual default has been fully remedied.

Please indicate precisely the arguments that support your answer and, if necessary, specify and justify the period that you consider essential in view of the purposes of the processing.

Again with the caveat that ACCIS appreciates this is specific for the French market, we nonetheless contribute the perspective we have of being a Membership organization with perspectives from other markets.

Regarding data retention periods, the most common practice among credit information suppliers is to retain data on 'missed payments' specifically for a minimum period of three years, but generally more (generally for a period of 3 to 6 years). However, certain Supervisory Authorities in the EU have defined specific retention periods in Codes of Conduct enacted pursuant to Article 40 in the GDPR (such is the case in Italy). In general, the retention periods for defaults that have been remedied is shorter than those that are never repaid.

Credit information suppliers generally only use a limited range of inputs to produce their credit score. The information on repaid defaults is statistically highly relevant for assessing the future probability of repayment. With regards to the revised Consumer Credit Directive (i.e. CCD2), a robust creditworthiness assessment is mandated and must be performed by lenders in order to ensure that it is likely the consumer will repay the the loan (referring specifically to Article 18.6 of CCD2). A credit score is part of the creditworthiness assessment.

6. Concerning the use of fully automated decision-making referred to in points 8 and 10, please indicate whether you can identify the elements that may be documented by the data controller in order to demonstrate that the use of fully automated decision-making within the meaning of Article 22 of the RGPD is necessary to conclude the credit agreement, particularly in view of the pre-contractual obligations imposed by Articles L. 312-16 and L. 313-16 of the French Consumer Code

Please indicate precisely the arguments that support your answer and, where appropriate, specify the elements identified.

Repeating an important point we have made before, ACCIS does make this comment with a broader scope than France in mind. We understand that the CJEU ruling maintains that a credit information suppliers engages in automated individual decision-making when generating credit repayment probability scores through automated processes, and when lenders definitively and exclusively (i.e. the score was decisive) rely on these scores. Presumably in the case of lending in France, the 'score' is always going to be heavily relied upon since the score is generated by the lender. Nevertheless, it would be helpful for the CNIL to come up with some degrees of "reliance" (or "decisiveness") of the credit score, or even degrees of automation to help guide market participants.

Regarding the necessity to fully automate, Article 18(11) of the revised Consumer Credit Directive states that "Member States may require creditors to assess the creditworthiness of consumers on the basis of a consultation of the relevant database. However, the assessment of creditworthiness shall not be based exclusively on the consumer's credit history". This would imply there is room to *need* a broader analysis than just consulting a database.

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