



Position Paper on the Green Paper on Retail Financial Services with particular Focus on the Issue of Database Access

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About ACCIS

Established in Dublin in 1990, the Association of Consumer Credit Information Suppliers (ACCIS) is an international non-profit association under Belgian law bringing together 30 consumer credit reference agencies in 22 European countries and associate members from all other continents.

ACCIS' main role consists in representing, promoting, protecting and preserving the common interests of its members. This includes in particular the representation and advocacy of members' interests vis-à-vis government agencies, the public and all other third parties and to inform its members about matters of concern to them. It also tries to coordinate their mutual interests and to represent them in the world committee. ACCIS aims to create a legal climate in which its members can continue to offer and further develop their services both at home and in Europe.

The Association works in cooperation with other European trade organizations active in the sector such as Eurofinas active at EU level, US-based sister organization CDIA and the engaged Global Consumer Credit Reporting Network.

Since its creation ACCIS has actively supported, as one of its main - and statutory – aims, the development of the common European market by promoting cross-border exchange of credit-relevant information between European credit agencies. In 1996 ACCIS developed a model contract on the basis of which credit agencies operating in the EU are able to collaborate to the benefit of creditors functioning at a trans-national level.

ACCIS would be delighted to share with the European legislator its experience gained in the course of the past years beyond the questions posed in the Green Paper. Given the current regulatory situation in Europe we are convinced that the existing system of cross-border access to databases could be improved. However, some doubts remain as to the question whether a horizontal regulation would be able to solve the current practical problems.

General Remarks

On 30 April 2007, the European Commission published a “Green Paper on Retail Financial Services in the Single Market” in which it outlines its objectives in moving forward to create a real Single Market for retail financial services.

With respect to the issue of credit information and data access, the Commission explains that horizontal initiatives could be envisaged to improve lenders' access to credit information and the transferability of consumers' credit histories. Under point 12 in its conclusions, the Commission raises questions as to

- who should be able to access consumer credit data,
- how could the cross-border transferability of consumer credit data be improved, and
- whether a memorandum of understanding between credit bureaus could be a workable solution.

This position paper provides comments and feedback on the above described points and answers to the respective questions. It intends to provide the Commission with ACCIS' view as to the best solution to achieve the objectives outlined in the Commission's Green Paper with regards to the issue of cross-border credit data accessibility and transferability.

Specific Remarks

In its Sector Inquiry into Retail Banking¹, the Commission identifies credit registers as important players in retail banking market infrastructure and sees open and non-discriminatory access to credit data provided by credit registers as prerequisite for healthy competition conditions on the credit market. The report notes that the credit data markets are still fragmented along national lines with limited cross-border data sharing and low coverage of credit information markets. Regulatory obstacles to cross-border data sharing, diverging practices and the structures of credit registers are the main reasons why the principle of non-discriminatory reciprocal access to credit registers is not fully operational in the EU.

Database access is also dealt with in the draft Consumer Credit Directive, more concretely in its Article 8, which in its current drafting obliges Member States to ensure the non-discriminatory access of databases to lenders across Member States.

The forthcoming White Paper on Mortgage Credit will also deal with the issue of database access, outlining initiatives to facilitate the transferability of consumers' credit histories and improve lenders' access to credit information.

¹ European Commission, DG COMP, Communication on the Sector Inquiry under Art 17 of Regulation 1/2003 on retail banking (Final Report), COM(2007) 33 final, 31 January 2007.

With its Green Paper on Retail Financial Services, the Commission intends to propose a more horizontal approach going beyond the White Paper on Mortgage Credit to solve the issue of database access. The Commission notes that lenders who are unable to access accurate credit information may charge higher prices or even refuse to provide credit to consumers making it difficult for them to shop around for better offers. The Commission therefore believes that an ongoing access to credit registers could solve this problem.

With the above background information in mind, ACCIS would like to provide the following answers to question 12 of the Green Paper on Retail Financial Services relating to database access:

Who should be able to access the consumer credit data?

In line with the provisions of the current draft proposal for a Consumer Credit Directive, ACCIS believes that consumer credit data should be accessible to all European lenders from any Member State.

How could the cross-border transferability of consumer credit data be improved?

ACCIS believes that the best solution for the improvement of cross-border transferability of consumer credit data is to provide for a system that enables mutual access to existing private and public – positive and negative – databases on a non-discriminatory and reciprocal basis.

Could a memorandum of understanding be a workable solution?

ACCIS would like to emphasise that it fully supports the Commission's efforts in striving to deliver a Single Market for retail financial services, by enhancing the market's integration and improving competition in this sector. Our previous work and contributions, in particular our efforts to ensure a smooth implementation of the Data Protection Directive in Member States, our model contract to support members in the provision of pan-European credit information services and our contribution to the ongoing discussion on the Consumer Credit Directive demonstrate that the Association and its members are clearly subscribed to the Single Market concept.

However, we fear that additional binding rules and regulations are not the appropriate tool to achieve the objective of forging a Single Market in financial services. In light of the Commission's "better regulation"-initiative and the ongoing discussions on the usefulness of EU legislation versus industry-led self-regulatory initiatives, as well as the risk of additional burdens through a likely increase of costs for the industry, ACCIS is concerned about the effectiveness of additional binding rules in the area of credit data access.

In addition, it has to be noted that information on the creditworthiness of borrowers provided by credit agencies to lenders will gain in importance due to the progressive distance between creditors and borrowers. In the range of the automation of creditors' processes, such information has - already today - become part of integrated IT-processes. Interferences in these processes by new regulations could lead to significant changes burdening creditors and thus cause enormous costs, which could outweigh the supposed advantages.



In this context it is also important to bear in mind the findings of the European Parliament's impact assessment of the proposed Consumer Credit Directive², which do not speak in favour of binding legislation. These indicate that the demand for the provision of consumer credit across borders is to date very low and that the main distribution channel for consumer credit products consists in lenders' establishment in other Member States. This and the existence of a multitude of barriers to the establishment of a Single Market lead the authors of the impact assessment to conclude that the Single Market will not be achieved by harmonisation of legislation alone.

Finally, ACCIS is of the opinion that the EC already disposes of effective tools such as the EC competition rules set out in Article 81 and 82 of the EC Treaty that, if better applied, would make new legislation redundant.

In light of the above, ACCIS in principle agrees with the idea of a Memorandum of Understanding (MoU) put to discussion by the Commission insofar as for an improvement of cross-border accessibility and transferability of consumer data it would at this point in time be a better solution than EU legislation, and this for the following reasons:

- An industry-led approach such as a Memorandum of Understanding would provide a flexible framework whereas legislation is very static and does not take into account future industry and business developments.
- A Memorandum of Understanding would be the Commission's proof for the industry's buy-in into and long-term support for the idea of improved accessibility and transferability of credit data.
- An industry-led approach based on self-regulation would also be advantageous from a timeframe perspective, since its realisation could be achieved much quicker than the passing of EU legislation. A memorandum of understanding as an agreement between stakeholders would engage all relevant stakeholders concerned by this improvement process of the retail financial services market. They would commit themselves to implement the decision they would have negotiated. The implementation process would thus be much easier and faster.

We are, however, aware that a Memorandum of Understanding is not an appropriate tool to overcome legal issues within the Member States relating to data sharing. For example, in several Member States such as the UK, legal standards do not allow credit bureaus to agree themselves on how data may be used or who can access the data. The credit bureau data is owned by the contributing organisations and not the credit bureaus.

Hence, in the long term, in order for the Commission to achieve the designated aims for the single market and to overcome existing legal differences among European countries, we believe that a stricter realisation of EU Competition Rules as well as use of data protection guidelines applicable throughout the EU, which take into account all the different interests at stake, will be required – in addition to a Memorandum of Understanding as Outlined above. ACCIS would like to support the Commission in developing such guidelines establishing

² European Parliament, Broad Economic Analysis of the Impact of the proposed Directive on Consumer Credit, (IP/A/IMCO/FWC/2005-58/LOT 4/SC1), drafted by CIVIC Consulting and published on 26 April 2007.



common rules on data protection, data access and the credit register industry throughout the EU, which we believe could help harmonizing the system and facilitating cross-border data exchange.

ACCIS would be delighted to discuss with the European Commission the idea of a MoU and explain existing barriers to the provision of cross-border database access in further detail. Due to its members' expertise and experience in the field, ACCIS is convinced that it can provide a valuable contribution to the Commission's understanding of the problems faced by consumers and industry in the field of retail financial services in order to assess whether further initiatives in this area are necessary.

Yours sincerely,

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