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ACCIS Comments on the Draft Regulation of the European Central Bank on the Collection of Granular Credit and Credit Risk Data

I. INTRODUCTION

The Association of Consumer Credit Information Suppliers (ACCIS) welcomes the opportunity to comment on the draft Regulation on the Collection of Granular Credit and Credit Risk Data (Draft Regulation), published by the European Central Bank (ECB) on 4 December 2015.

ACCIS recognises the need of the European Central Bank (ECB) to have a centralised source of harmonised statistical information on credit, in order to perform the European Central Bank's tasks such as its statistical function, systemic risk management, supervision, monetary policy analysis and research.

Therefore, ACCIS supports the creation of the Analytical Credit Datasets (AnaCredit) project as a pan-European system for collecting, and storing credit data, in order to assist the ECB in performing its functions. In addition to supporting the statistical, research, policy analysis and supervisory functions of the ECB, the AnaCredit project has the potential to improve the availability and quality of credit data across the EU, which could in turn play an important role in supporting sustainable growth and financial stability in Europe.

However, ACCIS has concerns regarding the proposed scope, and implementation mechanism of the project and its potential unintended consequences on the level playing field of the credit reporting infrastructure. Hereby ACCIS would like to share with the ECB and other interested stakeholders its observations and concerns regarding the Draft Regulation, which is intended as the legal instrument for the implementation of the AnaCredit project.

II. EXECUTIVE SUMMARY

ACCIS in principle welcomes the ECB's AnaCredit project, given its potential to support the ECB in performing its functions and to improve the availability and quality of credit data across the EU. However, ACCIS has the following concerns and comments the Draft Regulation providing the implementation details of the AnaCredit project.

- 1) ACCIS has strong doubts regarding the legal basis of chosen by the ECB for the draft Regulation. In particular, ACCIS believes that the contents of the Draft Regulation, and especially the provisions concerning collection of granular data on individual loans and borrowers and concerning the feedback loop, go beyond the scope of statistical data collection permitted by Council Regulation (EC) No 2533/98.
- 2) The ECB has not specified clear objectives of the Draft Regulation and has not justified the proportionality of the requirements of the Draft Regulation to its objectives.
- 3) The provisions on the feedback loop could have distortive effect on the credit reporting infrastructure and endanger the activities of private Credit Reporting Service Providers. Should the feedback loop provisions be maintained in the final regulation, they should be revised in order to ensure that the level playing field between public central credit registers and private Credit Reporting Service Providers, as well as in terms of sufficient harmonisation across the euro area, is preserved.
- 4) The Draft Regulation lacks provisions to ensure appropriate legal and technical safeguards to protect the data collected under the AnaCredit (including protection of bank secrecy) and sound governance of the AnaCredit database.
- 5) The Draft Regulation should require NCBs to use alternative sources of information and the existing credit reporting infrastructure (including private Credit Reporting Service Providers) where this would reduce the reporting burden for reporting agents.

III. SPECIFIC CONCERNS AND COMMENTS

1. Legal Basis and Process

In ACCIS' opinion, the proposed scope of the Draft Regulation goes beyond the subject of collection of statistical information and therefore does not correspond to the legal basis specified by the ECB for the draft Regulation. According to the preamble of the Draft Regulation, the legal basis of the ECB's proposal for the Draft Regulation is Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank. However Council Regulation (EC) 2533/98 only confers the right on the ECB **to collect statistical information**¹ necessary to carry out the tasks of the European System of Central Banks (ESCB) and to adopt Regulations for that purpose². The proposed provisions of the Draft Regulation go beyond the subject of collection of statistical information and address other topics not directly related with the collection of statistical information. In particular:

¹ Article 2(1) of Council Regulation (EC) 2533/98;

² Article 5(1) of Council Regulation (EC) 2533/98.

- 1) Article 11 of the draft Regulation containing the rules on the provision of a feedback loop by National Central Banks appears to go beyond the collection of statistical information and therefore to exceed the scope of ECB regulatory competence allowed by Council Regulation 2533/98.
- 2) The ECB seeks to request information on an individual loan and individual borrower basis (article 6 and Annex I of the Draft Regulation).
- 3) The Draft Regulation introduces the possibility of collecting credit data of natural persons in further stages of the project (Paragraph 11 of the preamble to the Draft Regulation). The Draft Regulation also includes a specific article (Article 13) related to Data Protection, thus recognising that under this regulation personal data will be collected.

Regulations on the broader range of subjects than collection of statistical information should be adopted by EU institutions under the ordinary Legislative Procedure (Article 294 TFEU), and a legislative proposal should be preceded by an open public consultation (Article 11 TEU). As a result of the use of an incorrect legal basis (i.e. the legal basis suitable only for regulations with the limited scope of collection of statistical data), the ECB has not followed a proper legislative process and has proposed an act going beyond its competence of collecting statistical information without a full consultation of the subjects affected by the Draft Regulation. In particular, the Merits and Costs analysis carried out by the ECB did not involve reporting agents directly. Private Credit Reporting Service Providers (CRSPs), including ACCIS members, who play an important role in the wider credit reporting infrastructure affected by the Draft Regulation, also were not consulted by the ECB.

Therefore, ACCIS believes that in order to be legally valid under Council Regulation 2533/98, the scope of the Draft Regulation should be significantly narrowed and strictly limited to collection of statistical information, excluding the provisions on a feedback loop to be established or enhanced by NCBs. Otherwise, the Draft Regulation in its current scope can only be adopted by the EU Institutions under ordinary legislative procedure following a proposal by the European Commission preceded by a public consultation.

2. Purpose and Proportionality of the Draft Regulation

In the preparation of the Draft Regulation, the ECB has not clearly specified the main objective of the granular data collection under AnaCredit. In particular, no clear and defined purpose of data collection is specified in the Draft Regulation. In its public communications, the ECB has mentioned a number of different objectives - improving the statistical information, financial stability, macro-prudential supervision, and analysis of the impact of the monetary policy. It should be noted that the European Commission in its Opinion on the Draft Regulation³, issued 7 August 2015, also stated that the goals of AnaCredit should be defined better and that currently the set of potential purposes is very broad (paragraph 3 of section 2.3 of the Commission Opinion).

The International Committee on Credit Reporting, of which the ECB is a member, has also stated in its draft Report on the Role of Credit Reporting in Supporting Financial Sector Regulation and Supervision⁴, "*financial sector authorities should disclose the relevant high-level policy objectives along*

³ European Commission Opinion 2015/C 261/01 of 7 August 2015.

⁴ The World Bank's Consultation on the Draft Report on the Role of Credit Reporting in Supporting Financial Sector Regulation and Supervision, 1 September 2015, available at: <https://consultations.worldbank.org/consultation/role-credit-reporting-supporting-financial-sector-regulation-and-supervision>.

*with the specific purposes for which they are collecting sensitive data. Ideally, the permissible uses of such data by financial sector authorities should be established in a regulation".*⁵

Given the lack of clear objectives of the Draft Regulation it is difficult to assess the rationale, the proportionality and the impact of the requirements imposed by the Draft Regulation, in particular:

- To what extent does each of the 94 data attributes required to be reported under the Draft Regulation contribute to the objectives of the Draft Regulation?
- Are the provisions in Article 11 concerning the feedback loop necessary and proportionate to achieve the objectives of the Draft Regulation?

The feedback loop regulated in Article 11 and the possibility for credit institutions to use the information for the purpose of creditworthiness assessment (Paragraph 18 of the preamble to the Draft Regulation) appear to go beyond the objectives of the Draft Regulation stated in Paragraph 1 of the preamble to the Draft Regulation.

3. Feedback loop and potential distortions of competition and level playing field. Role of Private CRSPs

Following the implementation of the Draft Regulation, in many EU Member States the scope of information collected by the National Central Banks (NCBs), will be significantly expanded in comparison to the current situation. For example the thresholds of data reported to NCBs will be lowered in a significant number of Member States⁶, information will be collected on a loan-by-loan-basis and more granular data on loans will be collected (e.g. information on the terms, purpose and conditions of individual loans). In many cases the types of data which NCBs will start collecting under the Draft Regulation is already collected by private CRSPs.

If this extension of scope of collected data is coupled with a feedback loop, as envisaged under Article 11 of the Draft Regulation, this will mean that **NCBs will step (with no clear objective or clear purpose) into the sphere of activity traditionally performed by well-established private CRSPs**. This could potentially lead to significant competitive distortions as NCBs would be in a position to practically impose themselves instead of private CRSPs on financial institutions and crowd the latter out of business.

In addition, the competitive position and legitimate interests of private CRSPs will be further damaged in cases where NCBs will be granted access to credit data which is not available to private CRSPs due to regulatory restrictions applicable to private CRSPs. The European Commission in its Opinion on the Draft Regulation also recognised the risk of discrimination of private CRSPs and stressed that *"If information feedback loops are created, public and private credit providers should be treated on an equal footing. Such treatment will prevent potential market distorting effects e.g. from empowering a public central register with data that is not available to private competing credit reporting service providers"*.⁷ **Should the final version of the Draft Regulation, to be adopted by the ECB, maintain the provisions on a feedback loop, the purpose for such a feedback loop needs to be defined beforehand and, in order**

⁵ Ibid, p. 46;

⁶ Germany, Italy, Poland, Hungary, Spain;

⁷ European Commission Opinion 2015/C 261/01 of 7 August 2015, paragraph 2 of Section 2.3.

to avoid market distorting effects, such provisions should at least include the possibility for private CRSPs to access the AnaCredit data shared via the feedback loop..

Furthermore, in ACCIS' opinion, possible diverging approaches by NCBs to the provision of a feedback loop (as allowed by Article 11 of the Draft Regulation) could lead to distortions of the single market where some NCBs would provide a feedback loop to credit and financial institutions in respective Member State, whereas NCBs in other Member States would not provide such a feedback loop. Such an outcome would appear in contrast with the objectives of harmonisation of EU financial regulation and improving cross-border data sharing, promoted by the EU Institutions. The European Commission in its Opinion on the Draft Regulation noted *that "too much national freedom [granted to NCBs regarding the provision of a feedback loop], may result in competitive distortions across the EU and thus harm the existing credit information ecosystem"*⁸

Credit reporting infrastructures, comprising both public credit registers and private credit bureaus, play an important role in supporting sustainable growth and efficient functioning of credit markets. This role of credit reporting infrastructures is widely recognised and is expressly acknowledged by the World Bank in its General Principles for Credit Reporting (September 2011), which state that *"Credit Reporting Systems are very important in today's financial system. Creditors consider information held by these systems a primary factor when they evaluate the creditworthiness of data subjects and monitor the credit circumstances of consumers. This information flow enables credit markets to function more efficiently and at a lower cost than would otherwise be possible"*.

Within credit reporting infrastructures, public credit registers and private CRSPs play two complementary but distinct roles, both of which are crucial for a good functioning of credit markets. While the primary focus of public credit register (which are the focus of the ECB's AnaCredit initiative) is (and should be) improving the supervisory infrastructure for a safe and sound European financial market, credit bureaus - members of ACCIS - work on another side of credit reporting infrastructure by serving banks, other lenders and financial institutions, as well as non-financial services providers (e.g. telecoms and utilities companies) with added value services aimed at supporting their creditworthiness assessment and credit decisions at the individual level..

Private credit bureaus make the creditworthiness information about individual clients available to private banks, other lenders and non-financial service providers (e.g. telecoms and utilities companies) to assist the latter in their credit decisions. The scope of data covered by private credit bureaus is usually broader than the data held by public credit registers - in addition to banking credit data, they typically collect other information, relevant for creditworthiness assessment, such as information from business and VAT registers, information from telecoms and utilities companies, public data. In addition, private credit bureaus develop tailored analytical methods and tools to analyse the collected data and satisfy the need of banks and financial institutions in their lending decision processes

The World Bank's General Principles of Credit Reporting also clearly distinguish between the primary objectives of public credit registers and private CRSPs: while the primary role of public credit registers is to support financial supervision, the primary role of private CRSPs is to support financial and non-financial creditors in credit decisions⁹.

⁸ European Commission Opinion 2015/C 261/01 of 7 August 2015, paragraph 3 of Section 2.3;

⁹ The World Bank, "General Principles for Credit Reporting" (2011), p. 10.

The World Bank General Principles of Credit Reporting are widely recognised and supported all over the world. G20 leaders, at their summit in Anatolya Turkey on 15-16 November 2015, adopted a provision within the communique issued following the summit, that places special focus on promoting long-term financing for SMEs, including a private-sector led World SME Forum (www.SMEfinanceform.org) to serve as a global body to facilitate the contributions of SMEs to growth and employment. One of the goals of the SME Finance Forum is to further promote the World Bank's General Principles for Credit Reporting within G-20 economies

The feedback loop envisaged in the Draft Regulation (Article 11), and the possibility for credit institution to use the extensive AnaCredit data obtain via the feedback loop for creditworthiness assessment (as envisaged in paragraph 18 of the preamble to the Draft Regulation), could distort the balance between the functions of public credit registers and CRSPs and hamper the function of the latter in supporting credit decisions of their users.

4. Lack of Data Protection Safeguards

The significant extent and granularity of data collected under AnaCredit will result in creation of an extensive database, processing data on a major part of loans in the EU. The Draft Regulation does not ensure appropriate data protection safeguards for protection of these data. Although the Draft Regulation (Article 13) contains general references to the current EU data protection legislation (Directive 95/46/EC) and national data protection legislation, it does not clearly specify how and what provisions will be applied to protect the fundamental rights of the data subjects and how the collected data will be protected.

As underlined by European Data Protection Supervisor (EDPS) in its informal comments on the ECB Proposal of regulation¹⁰, the anonymisation of the collected data is an important aspect to be taken into account in ensuring appropriate data protection safeguards. Where the collection of data by reporting agents allows the identification of natural persons, it has to be anonymised prior to being reported by NCBs to the ECB, and any processing has to be compliant with relevant provisions of Directive 95/46/EC (or respective provisions of the new EU General Data Protection Regulation, when it is adopted and comes into force). The EDPS stressed that the initial collection of non-anonymised data from natural persons by NCBs entails the processing of personal data within the meaning of Directive 95/46/EC, which must be carried out in accordance with the provisions of the Directive and national laws implementing it. This requires that there is an appropriate legal basis for the collection and processing of personal data providing for adequate safeguards for the protection of the personal data being processed.

Furthermore, the EDPS noted that the collection of credit risk data for the purpose of providing feedback loops appears to be a separate purpose from that of collecting aggregate credit data for statistical purposes as it may have commercial applications. Therefore the EDPS recommended the ECB to justify in the Draft Regulation the compatibility of such purpose with the original purpose of the Draft Regulation. However, no such clear justification has been provided by the ECB in the Draft Regulation

In addition, managing such a high-value database will require robust and modern technical solutions to provide appropriate safeguards for collection, sharing and access to these data as well as a robust governance system for managing and oversight of the database. The Regulation does not contain any

¹⁰ EDPS Informal Comments on the Draft Regulation of the European Central Bank on the Collection of Granular Credit and Credit Risk Data, 24 June 2015, available at:
<http://www.asktheeu.org/en/request/2400/response/8387/attach/7/EDPS%20Informal%20Comments%20on%20ECB%20regulation.pdf>.

specific provisions on the governance of the database and technical solutions to protect the collected data.

Furthermore, the Draft Regulation does not provide any safeguards for the protection of information covered by legitimate bank secrecy rules. In some EU Member States, bank secrecy is a subject to very specific regulations which limit the disposal of certain information covered by bank secrecy rules.

The Draft Regulation should contain appropriate measures for legal, technical, and organisational protection of the database of this magnitude to avoid disastrous consequences in case of data breaches, bank secrecy violations or misuses of data for purposes other than allowed by the Draft Regulation.

5. Reporting Burden and Collecting Information from Other Sources

Article 15 (3) of the Draft Regulation allows NCBs to use information obtained from any other sources if they can ensure the same quality standard that is used for data collected from reporting agents.

ACCIS would like to underline the implementation of the AnaCredit project, as envisaged under the Draft Regulation is expected to lead to result in significant costs and burden for reporting agents.

At the same time, Council Regulation No 2533/98 requires the ECB to ensure that in the collection of statistical data performed by the ECB, the reporting burden involved should be minimised and as far as possible existing data should be used¹¹.

A large number of information required under the Draft Regulation is already available in existing databases, including private CRSPs and public databases. Imposing new reporting requirements to collect the same data would lead to unnecessary costs and duplication of efforts. NCB should be required to collect data from existing sources where possible, rather than imposing new reporting requirements on reporting agents.

Using information from existing CRSPs, for the AnaCredit purposes would result in the following benefits:

- 1) Private CRSPs have a long lasting experience in collecting and sharing data, which would could prove beneficial for establishing the AnaCredit database smoothly;
- 2) CRSPs have developed advanced infrastructures and technologies which could be easily adapted for the AnaCredit purposes;
- 3) The data collection and sharing infrastructures of credit institutions in most cases have been developed in cooperation with private CRSPs, therefore using the existing CRSPs' infrastructures would not create additional major costs for credit institutions;
- 4) CRSPs have vast experience in ensuring the data protection compliance of credit data collection and sharing, as their activities have been for many years strictly regulated and supervised under EU and national data protection rules.

¹¹ Article 3(1)(a) of Council Regulation (EC) 2533/98.

Importantly, these benefits are not only theoretical and are already recognised and being tested by some central banks. For example the Bank of England, following extensive consultations with stakeholders in 2014, has decided to rely on the UK's existing credit reporting infrastructures, largely based on private CRSPs, rather than establish a public central credit register.

The ICCR also recognises the role of private CRSPs in the financial sector regulatory and supervisory objectives. In its aforementioned draft Report on the Role of Credit Reporting in Supporting Financial Sector Regulation and Supervision, the ICCR states that structured data sources of CRSPs (including private) are especially useful for financial sector authorities in fulfilling their duties, and that overall usage potential of data from CRSPs is very often higher than if such data were obtained directly from each reporting institution. The ICCR thus encourages financial sector authorities to take advantage of specific strengths of existing credit reporting infrastructures for regulatory and supervisory purposes¹².

Therefore, **ACCIS is of the opinion that the provision of Article 15(3) should be reformulated as an obligation for NCBs to use alternative sources of information and the existing credit reporting infrastructure (including private CRSPs) where this is possible and would reduce the reporting burden, rather than as a mere right of the NCBs to do so.** It must be underlined that the existing credit reporting infrastructure is practically ready to use for the purposes of AnaCredit. In collecting information from other sources, NCBs would need to cover the costs of such alternative sources providing required information, but in case of private CRSPs such costs would usually be lower than the cumulative costs of imposing the new system on hundreds or thousands of individual reporting agents.

In this regard, ACCIS and its members are ready to discuss with the ECB and NCBs the ways in which ACCIS members could contribute assist NCBs in collecting data needed for the AnaCredit Project in order to reduce the reporting burden and costs resulting from the project.

ABOUT ACCIS

ACCIS is an international non-profit trade association bringing together 50 Credit Reporting Service Providers (credit reference agencies) in 34 countries worldwide, including credit reference agencies in 20 EU Member States.

Credit Reporting Service Providers are at the heart of financial systems, their core activity being to act as a third-party holder and provider of information about the credit behaviour of consumers and (in some cases) businesses.

ACCIS members provide data and solutions designed to support financial organisations, enabling access to credit for consumers and businesses, and as such, play a critical role in the lives of European citizens. The services provided by credit information suppliers support finance providers in making lending decisions based on accurate, consistent and verifiable data.

ACCIS would like to thank the ECB for this opportunity to comment on the Draft Regulation and hopes that its contribution will be helpful for the ECB in drafting the final version of the draft Regulation.

¹² The World Bank's Consultation on the Draft Report on the Role of Credit Reporting in Supporting Financial Sector Regulation and Supervision, 1 September 2015, pp. 47-48.

We would be grateful for receiving any feedback the from the ECB on our contribution and would very much appreciate if the ECB could provide us with updates regarding further developments of the AnaCredit project and the expected timeline of the publication of the final regulation.

For any questions or for discussing any specific issue, please contact the secretariat of ACCIS at: secretariat@accis.eu / tel: + 32 (0)2 500 1527.

Yours sincerely,

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