



Position Paper
on the Draft Report of the European Parliament's
ECON Committee on the Commission's Proposal for a
Directive on Credit Agreements Relating to
Residential Property
September 2011



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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 37 consumer credit reference agencies in 27 European countries and associate members from all other continents. Our members issued over 850 million credit reports to credit granting organisations in 2009

ACCIS' main role consists of 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 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 information between European credit reference 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 and consumers acting at a trans-national level.

Association's answers

Overview on the ECON Report

The Rapporteur of the European Parliament's ECON Committee, MEP Antolin Sanchez Presedo, published his draft Report ("draft Report") on the 29th of July 2011.

In the following pages you can find our position on the most relevant amendments for our industry, tabled in the Mr Sanchez Presedo's draft Report.

Our major concerns as an Association relate to the contents of Chapter 6, article 16, which deals with "Database Access".

In particular, we have already stated in previous responses on this proposed Directive that Article 16, paragraph 2 of the Commission proposal should be removed. Due to the critical role of the CBs we do not believe it is appropriate for such definitions to be set by delegated acts and welcome the proposed removal of this section from the Directive agreed by the last report of the European Council.

In the area of credit referencing ACCIS generally supports all the European Commission proposals but in the following sections has concerns on the wording and its potential for misunderstanding.

Amendment 18

Proposal for a directive

Recital 14 c (new)

<i>Text proposed by ECON Report</i>	<i>Proposed amendment</i>
<p><i>(14c) In order to ensure traceability and allow appropriate supervision of loans related to residential immovable property, information is needed to understand the concentrations of risk across the market. Registers should therefore be designated across the Union to act as repositories of information about such loans and also about the use of such loans as collateral in financial instruments. A system of identifiers for loans secured on residential immovable property, to be known as the European Mortgage Key Identifier (EMKI), should also be established to assist market participants and supervisors in understanding and where necessary enforcing rights in relation to residential immovable property.</i></p>	<p>Deletion</p>
<p style="text-align: center;">Justification</p> <p>This would create yet another register. Surely this is only necessary if there is no system now.</p> <p>All credit bureau across Europe can deliver the information suggested (although currently regulators do not have permission to access it) but it is unclear as to the purpose of creating the EMKI? What additional benefit would that bring? It would certainly cost a lot to do.</p>	

Amendment 36

Proposal for a directive

Recital 32 c (new)

<i>Text proposed by ECON Report</i>	<i>Proposed amendment</i>
<p>(32c) Experience has shown that standards are needed to enable the effective identification and management of financial risk arising from loans related to residential immovable property. Those standards need to provide parameters to identify where lending is high risk and ensure that measures are in place, including those arising from special risk credit agreements, to reduce or manage those risks on a market wide or firm-specific basis. Such standards need to take account of the wider economic context, including the structure of the market for residential immovable property, and so it is appropriate that they are determined by the local competent authorities and applied consistently regardless of the location where the creditor provides its services. EBA should therefore have a role in resolving any dispute between competent authorities in different Member States about the action needed to resolve problems that arise. Competent authorities also need to understand the policy and procedures in place in firms to determine whether creditors and credit intermediaries have the necessary processes in place to comply with this Directive. Given the potentially important role played by credit registers in building an internal market and in ensuring adequate assessment of creditworthiness it is also appropriate that EBA should contribute to the supervision of such registers where they operate cross-border.</p>	<p>(32c) Experience has shown that standards are needed to enable the effective identification and management of financial risk arising from loans related to residential immovable property. Those standards need to provide parameters to identify where lending is high risk and ensure that measures are in place, including those arising from special risk credit agreements, to reduce or manage those risks on a market wide or firm-specific basis. Such standards need to take account of the wider economic context, including the structure of the market for residential immovable property, and so it is appropriate that they are determined by the local competent authorities and applied consistently regardless of the location where the creditor provides its services. EBA should therefore have a role in resolving any dispute between competent authorities in different Member States about the action needed to resolve problems that arise. Competent authorities also need to understand the policy and procedures in place in firms to determine whether creditors and credit intermediaries have the necessary processes in place to comply with this Directive. Given the potentially important role played by credit registers in building an internal market and in ensuring adequate assessment of creditworthiness it is also appropriate that EBA should contribute to the supervision of such registers where they operate cross-border.</p>
<p style="text-align: center;">Justification</p> <p>It is important to clarify that the creation of the EU internal market is not driven by credit registers this has also been stated several times by the EU Expert Group on Credit Histories. You should also know, that there are several agreements in place among credit registers of different countries but the exchange of information is lacking in consistency.</p> <p>A far bigger and more problematical issue is the lack of data in many member states and the restrictive rules as to how that data might be used.</p> <p>Of concern in this text is to what extent the EBA might be tasked with opening up data or creating a common standard, in relation to that we suggest to delete the last part of the amendment.</p>	

Amendment 120

Proposal for a directive

Article 14 – paragraph 1

<i>Text proposed by ECON Report</i>	<i>Proposed amendment</i>
<p>1. Member States shall ensure that, before the conclusion of the credit agreement, a thorough assessment of the consumer's creditworthiness is conducted <i>and appropriately verified</i> by the creditor <i>in order to ensure a reasonable capacity to service debt following the conclusion of the credit agreement</i>. That assessment shall be carried out on the basis of the necessary information, obtained by the creditor or, where applicable, credit intermediary from the consumer and from relevant internal or external sources and shall respect the requirements with regard to necessity and proportionality set out in Article 6 of Directive 95/46/EC. <i>Expert risk assessment shall not be replaced by quantitative parameters in automatic underwriting processes nor rely only on externally provided credit scores or on scores based only on credit history.</i></p>	<p>Deletion and keep the EU Commission Text</p>
<p style="text-align: center;">Justification</p> <p>We recommend to keep to EU Commission text since is more coherent with the all structure of the Commission proposal.</p> <p>Even thought it is reasonable that the consumer do not rely only on automated credit scores in underwriting processes.</p>	

Amendment 129

Proposal for a directive

Article 16 – paragraph 1 a (new)

<i>Text proposed by ECON Report</i>	<i>Proposed amendment</i>
<p><i>1a. Member States shall ensure that consumers have the right to access the information obtained by the lender from databases.</i></p> <p><i>Where a consumer disputes the completeness or accuracy of any item of information contained in a database file on him and notifies the database to that effect, the database shall, free of charge, conduct a reasonable re-investigation to determine whether the disputed information is inaccurate</i></p> <p><i>It shall record the status of the information as disputed or delete the item from the credit report until the re-investigation is concluded and shall then make any necessary adjustments.</i></p>	<p>Deletion</p>
<p style="text-align: center;">Justification</p> <p>Consumers already have the right to access the database, (article 12 of the Data Protection Directive) as well as the right to object (article 14 of the Data Protection Directive). In relation to that, we believe that there is not need to regulate these issues, since they are already set out in Data Protection legislation.</p> <p><i>Third sentence:</i> It would be very dangerous to suggest the data be removed whilst in dispute – what that does is create a dispute industry and that can have huge unintended consequences. Recording the status ‘information disputed’ will probably not help the consumer. It will at least cause a delay and obstruct the credit acceptance process.</p>	

Amendment 130

Proposal for a directive

Article 16 – paragraph 1 b (new)

<i>Text proposed by ECON Report</i>	<i>Proposed amendment</i>
<p><i>1b. Member States shall ensure that adequate compensation mechanisms are in place if an adverse decision not to grant a loan was taken by a credit institution on the basis of an inaccurate credit report provided by a credit register..</i></p>	<p>Deletion</p>
<p style="text-align: center;">Justification</p> <p>Amendment 130 is also already covered by the Data Protection Directive which does provide for compensation if it can be proven that the data was incorrect and had a detrimental and proven financial impact on the consumer.</p> <p>This an issue for Data Protection regulation and not mortgage regulation.</p> <p>Furthermore Credit Bureaus are not always responsible for data accuracy or missing data, since their data is provided by lenders.</p>	



Amendment 131

Proposal for a directive

Article 16 – paragraph 2 – subparagraph 1

<i>Text proposed by ECON Report</i>	<i>Proposed amendment</i>
<p><i>In order to ensure consistent harmonisation of paragraph 1, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 , to define basic credit registration criteria and data processing conditions to be applied to the databases referred to in paragraph 1.</i></p>	<p style="text-align: center;">Deletion</p>
<p style="text-align: center;">Justification</p> <p>This amendment is not in line with the Recommendations of the EU Expert Group on Credit Histories.</p> <p>Attempts to harmonise the data , without sufficient knowledge could lead to conflicts between existing and delegated operations which may be difficult or even impossible to implement. In general the delegation to the Commission should be minimized, if not eliminated, unless the credit bureaus would have the opportunity to check the feasibility of any future proposals or innervations by the Commission.</p>	



Amendment 147

Proposal for a directive

Article 18 h (new)

<i>Text proposed by ECON Report</i>	<i>Proposed amendment</i>
<p><i>European Mortgage Key Identifier</i></p> <p><i>1. Member States shall ensure that a European Mortgage Key Identifier (EMKI) shall be assigned to every new credit agreement.</i></p> <p><i>2. The EMKI shall be a standard code expressed in alphanumeric characters that contains at least the following information:</i></p> <p><i>(a) the Member State where the property that serves as collateral is located;</i></p> <p><i>(b) the creditor who granted the credit;</i></p> <p><i>(c) the data to identify the property in a Register that offers public information on rights in residential immovable property;</i></p> <p><i>3. The Commission shall be empowered to adopt delegated acts in accordance with Article 26 , to further specify the characteristics of the EMKI and the procedures for the assignment of the EMKI.</i></p> <p><i>4. Member States shall ensure that the EMKI is noted in any designated Register that provides information on credit agreements. Such information shall be accessible for users.</i></p>	<p>Deletion</p>
<p style="text-align: center;">Justification</p> <p>This provides that all Credit Bureaus databases should have to hold the EMKI going forward.</p> <p>It is still not clear what the purpose or benefit is but the change would impact on every lender system and every Credit Bureaus system at a significant cost.</p>	

Amendment 156

Proposal for a directive

Article 19 d (new)

<i>Text proposed by ECON Report</i>	<i>Proposed amendment</i>
<p><i>Supervision of credit registers</i> <i>Member States shall ensure that credit registers operating on their territories are adequately supervised by the competent authorities and by data protection supervisors. Without prejudice to the powers conferred by Regulation No 1093/2010, EBA shall contribute to the supervision of credit registers that operate cross-border within the Union.</i></p>	<p>Deletion</p>
<p style="text-align: center;">Justification</p> <p>This is superfluous since each credit register is already subject to the Data Protection Directive and national data protection supervisors/authroties. In some countries other authorities have specific responsibilities for specific parts of the registers or data contained therein.</p> <p>Of concern is the suggestion that the EBA might contribute to that supervision for reasons outlined above.</p>	

For any queries please contact

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