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ACCIS Association of Consumer Credit Information Suppliers IVZW

THE LENDING JOURNEY

A case study on the potential impact of the GDPR on consumer's access to credit

Overview

The credit reference industry has been carefully following the progress of the Data Protection Regulation at EU level, evaluating how these changes will impact consumers seeking to attain and maintain credit in Member States.

As this matter can be highly complex, we as an industry would like to demonstrate a case study which is aimed at highlighting the potential impact on consumers if some of the proposed areas of concern in the draft versions of the text enter into final law.

It is important to note that as a result of the differing national legislative regimes there may be a slight variance in the impact, however there is likely to be an overall significant negative consequence for consumers, in terms of cost, burden and accessibility in the credit journey.

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The Lending Journey

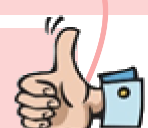
Meet Jo Smith. He is a thirty something, office worker who earns a modest salary of €30,000 per year.

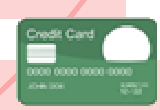
Jo has decided that he wants to buy a house and finds his ideal property for €120,000.

Jo thinks that he would be able to afford this on his current salary, he approaches his current lender Local Bank for a loan.

However Jo isn't sure that he is getting the best interest rate with Local Bank as they offer him a loan at 8% interest and thinks he might be better getting a loan with Mortgage Bank a new bank in town advertising home loans at 4%. Mortgage Bank doesn't have any information about Jo because he's not an existing client. Mortgage Bank says that they may lend to him but need more information.

So Mortgage Bank informs Jo that the bank will use a credit check about him from a major credit reference agency which is quick and easy and provides a non-bias view of Jo.





The Credit Reference Agency provides the lender with a credit report of Jo using a range of data[1] available to them under national law. This information gives Mortgage Bank a comprehensive picture of whether Jo would be able to afford the purchase of the house and whether he had any existing loans or commitments . Mortgage Bank deems that from the data they have, and the information Jo has provided on his application:

- He is who he says he is
- He can afford to repay and maintain the loan
- He has paid back of his previous loans and bills

Jo buys his dream house using his competitive loan from Mortgage Bank and moves in without delay. Mortgage Bank continues to monitor his repayments on the loan from the data provided by the Credit Reference Agency to make sure he's able to maintain his payments and isn't in financial distress.

[1] The range of data available is dependent on whether an EU Member State allows positive and negative data sharing. In the *General Principles for Credit Reporting*, published in September 2011, the World Bank highlights the benefits of sharing positive data.

What would the EU GDPR mean for Jo?

A key element for Jo to be able to borrow the loan to buy the house is the ability for the lender to identify Jo as the person he says he is. This would be easier for Local Bank as Jo has an existing relationship with this institution, however he has no existing connection to Mortgage Bank. Mortgage Bank would therefore use a powerful and trusted data source like a Credit Reference Agency to quickly, securely and comprehensively verify Jo.

Jo has a name which could be male or female and there are currently three Jo Smiths living on Green Street – so which one is our Jo Smith? A Credit Reference Agency would use **gender data** such as a Mr or Mrs prefix to segment the Jo Smiths to a household level and therefore identify our Jo Smith. Under the new Regulation, however, the use of **gender data** may be restricted, thus harming the process of quick and accurate ID verification.

Credit reference agencies use a wide range of data from a variety of sources, the **processing** this data using highly sophisticated and complex methods **automatically** and **objectively** gives an accurate and current view of Jo's financial obligations. The outcome of the automated process by the Credit Reference Agency is one factor in the decision taken by Mortgage Bank on whether or not to give Jo a mortgage. It is this decision, not the result of the automated processing performed by the Credit Reference Agency, that has **legal consequences for Jo**.

This method is quick and reliable. On the other hand, if under the Regulation a requirement for **manual intervention** was introduced every time automated processing was conducted, this may cause consumer detriment. The process would be **slowed** and the decision would no longer be objective. Humans introduce **bias** into the system, decisions could be made on factors which are not objective such as personal preferences or historical connections. As a result manual intervention **may restrict** the ability of Jo to get the best rate with any provider rather than relying on his existing lender Local Bank which holds his past information.

In his lending journey, Jo has a contractual relationship with the lender – as that is the provider of the credit. The lender uses the Credit Reference Agency, and therefore the Credit Reference Agency is a **third party**. In many EU countries Credit Reference Agencies process data under the grounds of the **legitimate interest** of the lender. With the new Regulation, however, Jo may be able to decide that he wishes data to be **erased** from his credit file if processed under legitimate interest. He could chose to delete past debts or arrears.

This would lead to Jo having an incomplete file, which the Credit Reference Agency would need to mark or flag in order to notify the amendment (without detailing what that amendment was). This would mean that when Mortgage Bank requests Jo's credit file they will see the marker (not knowing what it means) and be a lot less likely to lend. After all it would be unlikely that Jo would erase positive data!

Jo would then join a potential group of **financially excluded** consumers who would have amended files. It may make attaining credit extremely difficult in the future for Jo, and lenders would lack certainty on what has or hasn't been deleted.

When Jo applies to Mortgage Bank and they request a copy of the credit information about his activities and past debts, this information contains data about past **administrative judgements and sanctions.** This judgements and sanctions data includes information on whether Jo has been declared bankrupt or has a judgement for unpaid debt against him.

Under the Regulation administrative judgements and sanctions may be categorised as sensitive personal data and therefore processing by Credit Reference Agencies would be restricted. As such the Credit Reference Agency would not be able to tell Mortgage Bank about this information and this may lead to Jo being exposed to **unsuitable lending or additional debt** that he cannot manage, and the Bank being at risk of lending inappropriately to the consumer.

The lending journey/2 – purchase loan

Jo and his wife Joanna go to a shopping centre and she suddenly finds an amazing promotion: there's -25% discount offered on washing machines, and one model in particular can be repaid in 12 months!

Joanna needs a new washing machine: their existing machine isn't working besides consuming more energy than a newer model.

Paying the washing machine would mean a monthly instalment of EUR 50 if paid via a loan and Jo and Joanna can easily afford it.

An agent of the Purchase Loan Bank is at the point of sale, and she immediately processes the loan application for the washing machine. The agent provides Jo and Joanna with the **automated decision** to grant them the loan. In a couple of minutes Jo and his wife are out of the store, happy and excited they can use their brand new washing machine and reduce the energy bills!

What would the EU GDPR mean for Jo?

An automated decision on a loan is not possible at the point of sale following a change in the law, as a delay would occur during the process of reviewing the loan manually by the Bank, rather than the store inputting the information and a decision being made in real time. Only expert banking employees could be authorised to manually assess the creditworthiness of Jo, as competence would be needed in the evaluation and consideration of information provided.

For this reason, the washing machine can only be paid in a single lump-sum payment.

Joanna would pay for the offer with cash, but Jo reminds her that they have to pay the car insurance policy at the end of the month, and this could mean that they risk going into overdraft, adding an expense of EUR 600.

Conclusion

These case studies show the potential impact of various elements of the draft Data Protection Regulation on a consumer's lending journey. The impact may not only affect the speed of any decision-making for the consumer, but also entail serious harm deriving from consumers becoming financially excluded or only having access to limited credit products rather than a full market range.

For further information on ACCIS, the lending journey, or ACCIS' position on the General Data Protection Regulation currently under discussion, please visit our website www.accis.eu *or contact* secretariat@accis.eu