Proposal for amendments to the proposed review of the EU's Data Protection Legal Framework

April 2012

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1. Executive Summary

Developments in the use of data since the last Data Protection Directive was enacted have led to significant changes that have the potential to result in risk and harm to EU data subjects. As a result, there is clearly a need to provide an updated framework to ensure that data subjects can confidently go about their normal activities. At the same time, the significant differences in application of the Data Protection Directive across member states have made it difficult for all data subjects to have access to the same services in the same way or with the same level of protection throughout the EU.

ACCIS' members provide data and solutions designed to support organisations that provide many of the most fundamental services to consumers and businesses and, as such play a critical part on a daily basis in all of our lives. Those services provide access to credit and savings products, communications services, energy and water. The services provided by the credit reference industry helps these providers make fast and reliable decisions based on accurate, consistent and verifiable data. In all cases, these services operate transparently with the clear knowledge and consent of the data subjects; who themselves derive benefit from the effective solutions that help organisations make accurate responsible and fair decisions about them.

Those data services have developed in response to a need and, in all cases are highly regulated and controlled – often by other legislation such as the Consumer Credit Directive.

ACCIS supports the effort to improve and update the protection for consumers and businesses but has concerns that in developing remedies designed to prevent the activities of, principally, the on line social networking industry, there is a real danger of significant harm to the provision of finance, at a time when governments are working hard to put strategies in place to create growth following the global credit crisis.

Of course there will be many industries that claim to be an exception to the proposed Regulation and necessary, but in the case of the credit bureau industry moves that might restrict the availability of information or indeed how that information might be used could result in not only a slowing of GDP growth in member states but even stall efforts to develop new industries and grow consumer confidence.

The World Bank has on many occasions stated that a robust and comprehensive credit reporting system has the capability to contribute significantly to a countries economic growth and previous analysis by lenders and academics has also confirmed the importance of such systems in reducing bad debt as well as increasing credit availability.

Good, comprehensive, accurate and reliable data may be threatened by proposals that call for only the minimum data to be collected and used and further undermined by suggestions that consumers should have the right to have data they do not like, such as information about previous bad debts, deleted. Equally, how that data is used is critical to the fairness and reliability of the decisions about whether to provide, or continue to provide credit.

Lenders and credit bureaus develop scorecards using linear regression models based on upwards of 100,000 previous cases, mirroring, but in a more controlled, fair and scientific way, the decisions of a sophisticated underwriter. This however could be deemed to be profiling as set out in these regulations.

There is a need to make provision for activities that are already well supported and controlled in a way that protects the consumer (or small business) but does not undo all the progress that has, and continues to be made under the aeagis of bodies such as the World Bank, the IMF, Central Banks, the IFC, and other banking regulators such as the FSB who recently published their report on the Principles of sound Mortgage Lending[1] which stated:

"Jurisdictions should ensure that lenders take into account all relevant factors that could influence the prospect for the loan to be repaid according to its terms and conditions over its lifetime. This should include an appropriate consideration of other servicing obligations, such as the level of other debt (secured and unsecured), the interest rate and outstanding principal on such debt, and evidence of delinquency."

Such checks can only realistically be reliably conducted by using credit bureau information gathered over time such as it collected and provided by the members of ACCIS.

In countries with a highly developed credit reporting market that service is managed by specific regulation either for this activity (Hungary, Belgium) or within local Data Protection and/or Credit legislation (UK). There are already well documented protections, many of which are similar (but often better) than those cited in the regulations and ACCIS calls for this industry to be allowed to operate in accordance with the rules and controls that have been developed already and which are proven to provide the right balance between the provision of information as required to enable robust and reliable decisions to be made and the right and proper protections for consumers.

The areas of particular concern for our industry which are detailed in section 4.1 are:

1. Data Minimisation and the right to be forgotten which as currently written could reduce the available data for decision making and lead to inappropriate decisions
2. Data Portability and access to data is already a fundamental part of the credit referencing system in member states. However, the proposals as written could be interpreted in a way that would lead to added fraud and abuse by non authorised parties.
3. Data processing /profiling where the provisions on profiling could adversely impact on credit and risk decisioning.
4. Lawfulness of processing and explicit consent are an issue and if not corrected could have significant consequences for the provision of credit referencing services.

The areas of concern to us and which are likely to be of concern to other industries which are detailed in section 4.2 are:

[1] http://www.financialstabilityboard.org/publications/r_120418.pdf see 2.1

1. Delegated Acts
2. The level of fines
3. Redress mechanisms
4. Joint and several liability
5. The administrative burden

It is the belief of ACCIS that it was not the intention of the proposed Regulation to adversely impact the credit bureau services and the provision of financial services. This document offers a number of suggestions as to how the Regulation could be amended to ensure the continued effective use of credit bureau services by organisations to improve growth within the European Union whilst at the same time ensuring the continued protection of consumers.

2. Overview

ACCIS has actively participated in all European Commission's (EC) activities and consultations on data protection as this legislation is core to the credit reporting industry.

ACCIS has always expressed the view that the European data protection legislative framework should be high level, principle-based and technology-neutral. We believe that the current legislation, if properly and consistently applied, already provides the framework for a high level of overall protection for data subjects in the context of the activities of credit reference bureaux. As a result, by proposing a complete new framework in response to inconsistencies of application and enforcement across the EU, in our area of business, there is potential for considerable detriment to consumers and small businesses alike.

On January 25th, the European Commission proposed a comprehensive reform of the EU's 1995[2] Data Protection Directive to strengthen online privacy rights and boost Europe's digital economy'. Since 1995, technological progress and globalization have profoundly changed the way data is collected, accessed and used. According to the Commission, the 27 EU Member States have implemented the 1995 rules differently, resulting in unhelpful divergences in application and enforcement. The Commission aims for a genuine single law which will remove the current fragmentation and costly administrative burdens, leading to claimed savings for businesses of around €2.3 billion a year. The initiative aims to help reinforce consumer confidence in online services, providing a much needed boost to growth, jobs and innovation in Europe.

In relation to those aims, ACCIS appreciates and supports the concerns that appear to have led to the proposals for a new Regulation. Unfortunately, the result appears to be mainly influenced by the aim to regulate the management of personal data in the "open environments" (e.g. the open web and the social networking industry); it would appear that the European Commission has not taken into consideration within its impact assessment the influence that the new framework has on certain other industries and, in particular, those that are already more tightly controlled such as the credit bureau industry which has applied the existing directive in a rigorous manner since its introduction.

As regards the credit bureau industry, ACCIS believes that the proposed Regulation would certainly have a negative impact on the coverage and availability of information that can be supplied to providers of credit and financial services and others that use credit bureaux.

[2] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data

Since this information is used to make important decisions about consumers and businesses such restrictions will almost certainly have adverse impacts on a number of well-established processing activities, most, if not all, of which operate with high levels of compliance and transparency already. Credit reporting systems operated by the credit bureaus are of increasing importance in today's financial system and are seen by many global organisations and governments as critical to the future health and development of economies. Not only do 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, but financial regulators are increasingly using this information to help monitor and control the stability of financial systems. This information flow supported by credit reporting systems enables credit markets to function more efficiently and at lower costs than would otherwise be possible. The outcome is that typically more consumers and businesses are able to evidence their creditworthiness and access credit than would otherwise be the case.

Impact of the proposed Regulation

From our assessment of the new Data Protection Regulation we believe it will have a negative impact for the following reasons:

A) *There will be a great risk of a reduction of credit availability*. The availability of reliable and properly managed personal credit information is crucial to enable the credit industry to confidently offer credit to individuals and small businesses. Properly organised and controlled data-sharing enables lenders to access accurate and holistic information on the financial position of applicants and make responsible lending decisions at the outset, and thereafter manage their ongoing relationships with customers in a responsible manner, even if their circumstances change.

B) *There will be a greater risk of fraud*. When organisations make decisions about the giving of credit or other financial services they also check that the applicant is who they say they are by performing checks for the prevention of fraud and money laundering. Those checks are performed with the full consent of the applicant and use a wide range of information to ensure that the depth and breadth of data provides the highest level of confidence that identity fraud is not taking place. For instance: a) according to the data published by the Polish Bank Association in 2011 the total number of potential frauds which were prevented (stopped) thanks to the data processed on stolen ID documents was 6.841 and the total value of potentially fraudulent credit from Banks was 28 million Euros. b) according to the data published by CRIF in the first semester 2011 the total amount of credit frauds in Italy was98 million Euros, up7% compared to the first semester 2010[3]

C) *There are conflicts with other existing and proposed EU legislation*:

[3] Please visit www.crif.com.

- The Consumer Credit Directive (2008/46/EC), which requires creditors to assess a consumer's creditworthiness on the basis of "sufficient information" before the conclusion of a credit agreement (Article 8);
- The proposed Directive of the European Parliament and the Council on credit agreements relating to residential property (2011/0062 (COD)), which requires creditors to conduct a "thorough" assessment of a consumer's creditworthiness, using information from "relevant" sources.
- Directive 2008/23/EC of the European Parliament and of the council of 11 March 2008 amending Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, as regards the implementing powers conferred on the Commission

These examples suggest that legislation relating to the use of data in sectors such as financial services is moving in an opposite direction to that proposed in the draft Regulation. We believe the draft Regulation should be amended to clarify that the right to be forgotten and erasure does not apply to personal data held and processed by credit reference agencies as the data is required for the purposes described above and the processing is permissible on the basis of legitimate interests.

D) *It will reduce consumer protection.* Credit reporting is widely recognised as being the best way of producing fair and effective decisions in relation to a modern economy. By ensuring that individuals do not take on credit obligations which they are unable to manage, credit reporting systems help to ensure that individuals are less likely to be exposed to the potentially very serious consequences which can result from over-indebtedness[4]. Moreover credit reporting has a direct influence on safety and stability of deposit accounts. Information on credit history is one of main tool to measure the creditworthiness of potential borrower. When banks have no access to credit history or have limited access or the information on credit history is incomplete (because it depends only on data subject's consent) – then the situation may occur in which credit is granted to a person who is unable to repay it. Bad debts mean less secured and less attractive deposits (if we take into account that loans are financed from deposits).

E) *It will affect innovation*. We are concerned about the potential loss of security, quality and innovation that may result from having to operate under a prescriptive framework, with the potential for very large fines for non-compliance. . For instance, it seems unduly onerous to introduce a new obligation to request a prior authorisation of the supervisory authority if personal data is to be processed (cf. art. 34). The current notification procedure, introduced by Article 18 of the existing Data Protection Directive, has proven to be practical and non-bureaucratic.

[4] See *General Principles for Credit Reporting*, the report by the Task Force coordinated by the World Bank, with support from the Bank for International Settlements (World Bank, Washington, D.C., May 2011, http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTFINANCIALSECTOR/0,,contentMDK:22912648~pagePK:148956~piPK:216618~theSitePK:282885,00.html).

F) *It will have a negative impact on economic growth* (contrary to the statements in the impact assessment). For instance, if we look at the concept of data minimisation and we apply this principle in the most restrictive way to credit reporting systems, it could have a tremendous negative impact on credit availability and consequentially on growth of GDP in member states at a time when such growth is critical. According to the research made by Nomisma in Italy, if we exclude from credit reporting systems information about settled credit (historical information) GDP will drop by 0,73% , if we exclude all positive data from credit reporting systems , GDP will drop by 1,59%[5].

One size doesn't fit all

The new law will be one which has, in the language of the EU, direct effect, meaning that unlike the current Data Protection legislation all EU countries must adopt the specifics of the proposed rules with no variation. The resulting business certainty will no doubt be clearer for all concerned: 27 different sets of data privacy rules will become one, with obvious benefits. However, what is also clear is that those rules will potentially put a much greater burden, and in some cases, unwarranted restriction, on organisations handling personal data. It is also worth noting that, attitudes to credit and the availability of credit vary across Member States, for cultural and social reasons.

We believe that the proposed Regulation cannot be applied in the same way within all industries, and that therefore there is a need for exemptions for credit reference bureau activities in certain areas. The processing of data by credit bureaus already takes place in an open and transparent way. Consumers are very well informed by banks that the information on their credit history is one of the major components of credit decision (required by law). The purpose of processing is clearly defined from the outset of the relationship between the customer, bank and credit bureau.

Whilst we recognise and support the aim to achieve a common interpretation of data protection regulation across all member states, we are not convinced that simply passing harmonising regulations will achieve the objective of better data protection but will result in ensuring all data controllers concentrate on following common rules by implementing prescriptive processes. . ACCIS believes that more flexibility to make rules for specific needs and industries and less bureaucracy and legal requirements may in fact achieve a better result. Data controllers must be able to see that the regulations that they have to follow achieve better protection of privacy.

[5] The Nomisma's research is available at the ACCIS Secretariat. Please write to gen@accis.eu.

An overall comment: "Internal Market viewpoint"

The proposed Regulation is based on Article 16 TFEU (right to the protection of personal data), which is the new legal basis for the adoption of data protection rules introduced by the Lisbon Treaty. This provision allows the adoption of rules relating to the protection of individuals with regard to the processing of personal data by Member States when carrying out activities which fall within the scope of Union law. It also allows the adoption of rules relating to the free movement of personal data, including personal data processed by Member States or private parties.

This proposal Regulation repeals Directive 95/46/EC which was adopted in the legal context of the internal market and took properly into consideration (e.g. right from the Recitals 3, 5 and 7) the internal market and the impact on the internal market of the free flow and the cross border flows of personal data.

Any evaluation of the proposed Regulation should include a careful consideration of the impact of new Regulation on the internal market and the free movement of personal data in the Union.

The new Regulation should not create an obstacle to the pursuit of a number of economic activities at Union level or distort competition for EU operators against those from outside the EU (East, Far-East or US operators worldwide). There is a danger that the welcome intention of ensuring that the fundamental right to personal data protection is consistently applied in the context of all EU policies may in practice result in a disproportionate and therefore unjustified burden for the market.

The necessary levels of protection of the rights and freedoms of individuals should not prevent the free movement of personal data in the Union, or the functioning of the internal market (Article 26 TFEU) and we strongly recommend the appropriate involvement of economic stakeholders and/or Member State representatives in the consultation or discussion at Council and Parliament level.

3. About ACCIS

Established in 1990, the Association of Consumer Credit Information Suppliers (ACCIS) is an international non-profit trade association under Belgian law bringing together 37 consumer credit reference agencies in 27 European countries and associate members from all other continents and provides the largest representative group of credit reference agencies in the World. 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.

Credit reference agencies sit at the heart of financial systems in the countries in which they operate, 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 too. This information may vary depending on the local rules and regulations. All will cover the worst stages of debt (known generally as default) for traditional credit products from the banking sector. Many will also hold more information such as early stage difficulties such as missed payments and forbearance agreements as well as data on open and performing accounts such as limits and balances. A few also hold information about telephony, energy, water and other non traditional products too. What they all do is to hold the information according to strict rules and controls and make that information available for clearly agreed legitimate purposes associated with the giving of credit. Many credit reference agencies also provide other complementary services associated with the provision of credit such as identity verification, fraud and money laundering prevention and detection, risk and economic monitoring.

ACCIS' engages on its members' behalf with regulators and also other interested parties such as the World Bank's International Financial Corporation (IFC), which has a responsibility for promoting financial development in global markets; a key requirement for which is a properly functioning credit register. An example of recent activity is the involvement in the World Bank report on the General Principles for Credit Reporting[6] and engagement with the EU Commission on relevant legislation such as the Consumer Credit Directive and the current work on the Directive on consumer credit secured on a residential property (often referred to as the Mortgage Directive) and the recently published proposed Data Protection Regulations.

There is more information about ACCIS and its membership at www.accis.eu

[6] Cf. http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Credit_Reporting_text.pdf .

4. General comments

The Association of Consumer Credit Information Suppliers, ACCIS, welcomes the initiative of the European Commission to modernise the European Union's data protection legal framework. Rapid technological change over the past two decades have raised new issues some of which are no longer covered by the existing legal framework, the 95/46/EC Data Protection Directive, and consequently may put individuals' fundamental rights at risk.

However, credit bureaus across the EU have identified a number of concerns in relation to the current proposal for a Regulation:

4.1 Industry concerns

4.1.1 Data Minimisation

Credit bureaus are organisations that, under existing detailed controls, collect credit or debt information from various sources. On request, they provide credit information on individuals' borrowing and bill-paying habits for a variety of approved and controlled uses. . This helps lenders assess credit worthiness and the ability to pay back a loan or a debt. They also help to identify potential fraud.

Credit reporting systems operated by credit bureau depend on, and are made more effective by, access to relevant data, from which the most predictive will be extracted and used according to the profile of the individual or business and the purpose for which a decision is being made. It is also necessary to hold data for significant periods of time, and in relation to an individual's previous addresses and/or identities[7]. To establish statistical models to measure capital adequacy and credit risk, credit bureaux and banks must also have access to the credit applications and process such data.

Credit bureaux accept that there need to be limits on the types and ages of data which can be used in the context of credit reporting. However, the data minimisation principle (art. 5, 1c) according to which data controllers must limit the processed personal data to the minimum necessary and be able to demonstrate that the purpose of the processing cannot be fulfilled by other less restrictive means could, if applied seriously affect the functioning of credit markets. Furthermore, this requirement (art. 23, 2) restricts organizations from conducting analysis to develop new types of products and services based on what they learn from the data, even if these organizations use this data in a way that protects individual privacy.

[7] The first General Principle set out in the World Bank's Consultative Report "General Principles for Credit Reporting" (March 2011) states: *"Credit reporting systems should have accurate, timely and sufficient data – including positive – collected on a systematic basis from all relevant and available sources, and should retain this information for a sufficient amount of time."*

In relation to this, we believe that the draft Regulation goes much further than the "not excessive" requirement in the 1995 Directive (despite the wording of Recital 30 which seems to suggest that "limited to the minimum necessary" and "not excessive" are the same thing). This directly contradicts regulatory requirements, for example via the Consumer Credit Directive, and the Mortgage Directive now in discussion within the Council and Parliament. In our opinion, the article should be worded in such a way as to allow access to data, the type and breadth of which is proportionate to the nature of processing in different industries and circumstances.

Please see amendments n.2 and n.3

4.1.2 Data Portability

The proposed Regulation states that individuals will be given the right to obtain their data from the data controller in an electronic, structured format which is commonly used and which allows for further use by the data subject, and in some circumstances to transfer any or all information held about them to a third party (art. 18).

The portability of credit reports is something already debated within the EU Expert Group on Credit Histories[8], in 2009. Direct, indirect and consumer credit data portability all have advantages and disadvantages as set out in the report of the Expert Group. ACCIS supports the concept of individuals having easy and convenient access to their credit files, and indeed its members already offer individuals access to copies of their credit file via instant on-line means. In connection with this, the matter of data security is an essential element for careful consideration. Identity theft and other types of fraud are a growing concern. It is therefore vital that the requirement for organisations to support this principle does not put the security of the personal data at increased risk.

From our point of view the Article seems to be motivated by the development of social networks. In this area the consumer can use an online framework by entering personal data. The suggestion of the Commission can be understood that if the consumer has the wish to take these social network data to another provider, this shall be enabled ("Right to data portability").

This idea, which may be appropriate for the social network industry, is not suitable in our opinion for the credit bureau industry. This is due to the fact that credit data which is gathered over months or years through complex and costly processes involves different stakeholders and not only the consumer and is gathered by organisations for a clear purpose on the basis of consent.

[8] Please read Chapter 4 – Access to credit data: http://ec.europa.eu/internal_market/finservices-retail/credit/history_en.htm

Additionally, the Commission should take into account that credit bureaux do not only reduce the financial losses for credit providers but they also contribute significant information to responsible lending and the prevention of over-indebtedness of consumers. Taking all these points into account we believe that the Commission should not look to adopt the same data portability provisions for the credit bureau industry.

Please see amendments n. 20 and n. 21.

4.1.3 Data processing/Profiling

Scoring models are widely used by businesses and public authorities to determine credit-worthiness[9], to identify fraud and money-laundering, to provide reassurance with regard to an individual's ability to afford repayments, to manage credit accounts, and in a range of other permissible and notified purposes associated with the provision of financial services – by a wide range of organisation types. Credit and other scoring systems are widely recognised to be the most effective and fair way of assimilating large amount of (often conflicting) data in order to make decisions. Processing based on scoring models has operated in many territories for many years, with appropriate safeguards in place to protect the rights and freedoms of individuals (relating primarily to the collection, processing and supply of data, accuracy, security and the provision of information about automated decision-making)

The scope of Article 20(1) is potentially very wide and could be regarded as covering scoring models as described above. On the other hand, the allowances of Article 20.2 are very restricted and do not cover all the well established and legal use cases of scoring. The circumstances in which profiling is permitted under Article 20.2 are unclear. It also appears that every instance of such processing will require a data protection impact assessment under Article 33 and prior consultation with the supervisory authority under Article 34. Furthermore, the Commission can, through delegated acts, specify further conditions and criteria.

These provisions could materially restrict, or even prohibit, the long-established activities referred to above. We believe the draft Regulation should be amended to clarify that profiling does not cover this type of activity such that scoring is permissible on the basis of legitimate interests. Therefore, it would be appropriate to regard scoring / profiling as permissible in the cases of the criteria laid down in Article 6.

[9] On a wide range of account types from traditional credit, through retail, leasing and utilities and communications

Additionally it should be clearly stated that profiling by credit bureaus and organisations providing credit is allowed not only when the request of the entering into, or performance of the contract lodged by the data subject has been satisfied but also in the situation when the contract has not been concluded (i.e. in case of lack of credit capacity).

Please see amendments n. 4, n.9, n.22 and n.23.

4.1.4 Right to be forgotten

The "right to be forgotten and to erasure" (art. 17) is basically a re-affirmation and strengthening of the already existing right to deletion of personal data after the purpose for which they were processed has been fulfilled (art.12 of Directive 95/46/EC). The current draft proposal goes further than the 1995 Directive by proposing the right to erasure if the data is no longer necessary, if the data subject withdraws his/her consent *or* if the data subject objects to the processing under Article. 19 and by including rules aimed at the erasure of any public Internet link.

This is potentially one of the most problematic provisions for the credit industry. It would have widespread ramifications for consumers' ability to access credit and put many in danger of getting credit they cannot support if consumers could demand the erasure of their credit data at will, particularly data they perceive to be unhelpful.

Historic data on financial behaviour is statistically proven to be predictive of future financial management and access to it is therefore core to responsible lending. When assessing a credit application, lenders rely on a wide range of data sets showing past performance to assess the borrower's creditworthiness. Access to this data is essential whether lenders underwrite manually or use a scoring system such as is outlined in 4.1.3. Indeed, the building of scoring systems requires access to large amounts of historical data.

If the consumer has requested erasure of all past data, then they will not qualify for a loan as the lender has nothing on which to base a credit decision. If they have used the right to be forgotten to conceal adverse but accurate data, then they may obtain credit which they are unable to support. It is essential that Article. 17 should not allow erasure of data collected and processed for creditworthiness purposes.

The outcome of credit being made available to unsuitable applicants is that not only will those applicants go on to having difficulties but lenders will experience greater levels of loss. When that happens, they typically reduce their willingness to lend to consumers and credit becomes more expensive and less available with the inevitable knock on effect on economic growth.

Furthermore, there is a direct conflict with other regulations. Less sharing of credit performance data conflicts with the requirement for organisations to lend responsibly under the Consumer Credit Directive, the future Directive on credit agreements relating to residential property and the Capital Requirement Directive. Less shared credit data would also impact all regulated organisations when they attempt to comply with the customer due diligence requirements under the Money Laundering Regulations as well as impact other fraud prevention activities.

Where data is erased, the Regulation requires that the data controller inform all third parties who are processing such data, that the data subject requests them to also erase the data from their database. For a credit bureau, whose core business is to supply such data to third party clients, the task of tracking and notifying all such third parties is a significant one. Article 17 also changes the way disputes concerning the accuracy of the data are handled.

The Regulation requires data to be restricted in processing (bar storage) where the accuracy of the data is contested, for a period enabling the data controller to verify the accuracy of the data. Hence should a credit default record be disputed, it will have to be removed from the credit file, accessed by lenders and others, for up to one month whilst the verification process occurs. During this time any credit decisions made by lenders will not take into consideration the record in question – which could be material to the outcome. Whilst this may seem reasonable and further protects the interests of the individual, the process is open to abuse should unfounded claims of inaccurate data be made to deliberately remove detrimental records from the credit file in order to favour an application for credit. It is better that the record is still available but flagged as being "under dispute" and investigated within an agreed period as happens in some members states already. Otherwise, there is a danger that the provision could encourage the development of services designed to mislead consumers and small business owners into believing that they can pay to have their credit files "repaired".

For all these reasons, we believe that the "right to be forgotten" should not apply to data held by credit bureau where there are already tried and tested rights of correction and dispute and agreed retention policies.

Please see amendment n. 19

4.1.5 Concept of explicit consent

The draft Data Protection Regulation introduces some new concepts in relation to consent:

(a) Consent cannot be used as the basis of processing where there is a significant imbalance between the position of the data subject and the controller (art 7.4). This is a new and potentially very wide-ranging provision, which could restrict much of the

processing which currently takes place within the business world. It could cause particular difficulty for credit reference and anti-fraud services, or in relation to types of processing, where consent is the basis of lawfulness. If it were considered that there was a significant imbalance between a borrower and a lender, the basis on which credit reference data is collected and shared in many cases could be threatened. We would suggest that the Article is unnecessary given that consent would now have to be freely given and explicit. This seems to offer a high level of protection to individuals without the need for the additional provisions of Article 7.4.

(b) The controller now bears the burden of proof that consent has been given by the data subject. Again this is new, and will present significant problems for credit reference services, as credit bureau do not obtain the consent from data subjects – it is lenders who have the interface with the data subject and so it the lenders who obtain the consent. If consumers (or organisations acting on the consumer's behalf) were to challenge credit searches being carried out, or credit data being shared, the credit bureau would have to produce a copy of each original consent obtained by lenders. This could prove very costly, highly bureaucratic and time consuming for both credit bureaux and their clients should organisations such as claim management companies target such activity. We would suggest that the burden of proof should be with the controller to whom the consent was given.

The draft Regulation requires that all consent is "explicit". This was a requirement in the Data Protection Directive 95/46 only for sensitive personal data, such as data related to health or religion. The draft makes "explicit" consent a general requirement, and thereby removes an important distinction between personal data and "sensitive data" under the current Data Protection Directive 95/46. As a consequence, opt-in methods (requiring active action by data subject, such as the ticking of a box or the signing of a declaration) seem to be the only possible way to give consent. This approach will add significant cost to the data controller who collects data and it may also reduce the level of data shared with credit bureau.

Please see amendments n. 1, n.6, n.7 and n.8.

4.1.6 Lawfulness of processing

According to Article 5(a) personal data must not only be processed lawfully and fairly but also in a transparent manner in relation to the data subject. This addition reflects the introduction of stricter obligations on the controller to inform data subjects (see in particular Article 14). The requirement to process lawfully under Article 5 is satisfied only if one of the conditions in Article 6 is satisfied.

At present, the similar requirement to process lawfully under Directive 95/46 is satisfied in different ways in different countries with regard to credit bureau activities.

As a result of the proposed Regulation placing the burden of proof with the data controller where consent is the basis for processing, this condition, which credit bureaux in some countries rely on greatly, particularly for the receipt of account performance data from creditors, may in the future be frequently challenged by the data subject. This, when coupled with the "right to be forgotten", and the uncertainty of the "significant imbalance" provisions in Article 7,4 may have a fundamental impact on the way credit account performance data is shared and recorded on the credit referencing system.

Whilst the supply of credit data may be provided to the credit bureaux by lenders under the condition of processing relating to the performance of a contract, once the contract has ended (for example when the customer repays all monies owed, they terminate their mobile phone contract, or the account is written off) this condition can no longer be relied upon. In order for the account to continue to be retained on the credit file for the agreed retention period post settlement, the legitimate interest condition is relied upon. Credit reference agencies agree with their local Data Protection Authorities suitable retention periods for data on closed accounts – whether they are closed good or bad. This may be made more difficult by the omission from the proposed Regulation (when compared to Directive 95/46) of the wording which allow processing where it is in the legitimate interests of the controller or a third party/parties to whom the data are disclosed.

The importance of this data should not be underestimated. Information on closed accounts that were conducted properly and settled in accordance with the terms provide valuable information of previous payment behaviour and evidence shows that this information is statistically significant for some period after the account is closed.

The case is even more important for accounts that were closed and remain on file as an unsettled default, a write off or were defaulted and then settled at a later date – whether in full or in part. Statistical evidence in the UK shows that such information is important for up to 6 years after settlement of an account and should be taken into account in conjunction with other information about account performance. Failure to have access to such information could lead to individuals obtaining credit that they are unable to support and, in the very worst cases going on to end up in bankruptcy or even worse. In the absence of such data the prospects of unsuitable credit being granted will rise significantly as can be shown in the very few countries that do not permit such data to be used.

Therefore, we believe the Regulation should make clear that processing for the purpose of supporting responsible lending, and processing for the prevention and detection of fraud, be explicitly recognised as a legitimate purposes for data processing.

Please see amendments n. 5, n.14, n.15 and n.23.

4.1.7 Access to data

Credit bureaus work in line with Article 12 of the Data Protection Directive 95/46, allowing people to access their data and rectify it if it is found to be inaccurate. The new proposed Regulation says that the access to data shall be free of charge, but it also says that where requests are manifestly excessive, the controller may charge a fee for providing the information.

Credit bureaus, as a result of the nature of their business, currently receive vastly greater numbers of access requests than most other types of controllers (millions per year in most European countries). For instance BIK in Poland in 2011 received 37252 requests for statutory information. In the first two months of 2012 BIK received 6290 requests. In Spain, Equifax received during 2011, 85.817 requests from the consumers, and in the first three months of 2012 there was 31918 . CRIF in Italy in 2011 received 373469 requests[10].

Based on these unique circumstances for credit bureau , ACCIS believes that an appropriate fee by the consumer should be payable for credit bureau access. The *EU Expert Group on Credit Histories*[11] analysed these issues and most of the experts agreed with the payment of a minimum fee by the consumers, which incidentally can be a useful identity check to ensure that data is provided to the correct individual. They believed, it is appropriate for the consumer to contribute towards the cost of their access and credit bureaus can use that payment to develop and invest in better services and support for consumers. A fee can also hinder inappropriate behaviour; creditors may use consumers' 'free' copy to gain access to the consumers' information void legitimate commercial access costs. .

Please see amendments n. 10, n.11, n.12, n.13, n.16, n.17, n.18 and n.31.

4.2 General concerns

4.2.1 Delegated acts

The draft Regulation contains provisions allowing the Commission to adopt delegated acts. Many of these are in areas fundamental to the basis of the Regulation (e.g. in areas of the lawfulness of processing, in the right to be forgotten and in relation to profiling). This could allow measures to come into force with significant and/or unforeseen or unintended consequences, without those measures having been subject to consultation, expert input or the full scrutiny by the Council and the Parliament.

[10] For further information about consumer access to data, please see "The European Credit Information Landscape" at www.accis.eu.

[11] http://ec.europa.eu/internal_market/consultations/docs/2009/credit_histories/egch_report_en.pdf

ACCIS' understanding is that delegated acts are, under Article 290 TFEU, for use only in supplementing or amending certain non-essential elements of a legislative act. We are of the opinion that the use of delegated acts should be significantly reduced as they go beyond the criteria agreed in the Common Understanding adopted at COREPER I on 15 April 2011.

ACCIS has serious concerns regarding the extensive power for the Commission to adopt delegated acts. This could mean that the provisions of the Regulation would be liable to substantial changes over time, likely resulting in substantial business as well as legal uncertainty. The limited involvement of stakeholders in this process is also a concern.

Please see amendment n. 32

4.2.2 Level of Fines

The proposed Regulation introduces significant sanctions for violation of the law. Organizations would be exposed to penalties of up to 1 million Euros or up to 2% of the global annual turnover of an enterprise. This is much more than the penalties currently in place throughout the European Union. Apart from a few cases, the level of fines that have been assessed against companies that have breached a country's data protection laws has been low. For instance, Spain was the EU member with highest fines for breaches of the data protection law. In 2011, the Law 2/2011 reduced the fines in order to modulate and adjust the imposition of economic sanctions to the magnitude of the infringement.

The proposed Regulation signals an intent to pursue more aggressively the infringers and to equip the enforcement agencies with substantial tools to ensure compliance with the law. If this is to be the case, then the Regulation needs to be modified in the ways set out in this paper if credit bureaux are not to be exposed to potentially very large fines for carrying out activities which are currently regarded as completely legitimate.

In our opinion the penalties are incommensurate with the profitability of the companies in the individual member states. It is therefore necessary we believe to introduce an interim phase between the notification of the controllers and data processing entities of the violation and the actual sanction being imposed. In our opinion introduction of the interim stage could take place by extending the procedure laid down in Art. 79.3 – a warning procedure should be applied with respect to all data controllers. Additionally in our opinion a clear appeals procedure for data controllers shall be introduced. The data controller shall have a right to appeal the decision of a supervisory authority directly to the court (administrative or civil) as a first instance.

4.2.3 Mechanism for redress

The right to lodge a complaint for anybody, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly constituted according to the law of a Member State would represent a conflict with the principle of individual legal remedy existing under some Member States. In particular and, *a fortiori,* the right of such organisations when acting not on behalf of any data subject will result in unjustified and against the common principle of the legal interest to act for the compliant.

Please see amendments n. 24, n.25, n.26, n.27 and n.28.

4.2.4 Joint and several liability

The joint and several liability of controller and processor is disproportionate considering the other existing remedies and contradicts the different roles assigned to controller on one side and processor on the other. Controller and processor both must be liable but each of them for the respective duties and obligations clearly identified by the legislation.

Please see amendments n.29 and n.30.

4.2.5 Administrative burden

There is a danger that the following administrative requirements may (together and/or individually) produce increased costs and delays for businesses, whilst not making any material difference to the way in which organisations behave:

- Data protection impact assessments (Article 33)
- Prior authorisation and prior consultation (Article 34)
- Role and responsibilities of the data protection officer (Chapter IV, Section 4).
- Documentation (Article 28)

ACCIS would propose that this level of prescriptive detail is not necessarily legally required, in order to protect consumer rights. Most European countries have strong processes in place outside of prescriptive data protection legislation for ensuring that matters of consumer interest are reviewed as appropriate.

5. Proposed amendments

Amendments to the Proposal for a Regulation on the protection of individuals with regard to the processing of personal data and the free movement of such data

Amendment n.1

Recital 53

Text proposed by EC	**Proposed amendment**
... In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. …	… In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary to the processor in relation to the purposes for which the data are collected ~~or otherwise processed where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them~~ or where the processing of their personal data otherwise does not comply with this Regulation. **In case of data subject's objection or withdrawal of the consent an appropriate indication should be added to the item's record in dispute. Especially for children no indication should be required and all information related to the child should be permanently erased.** This right is particularly relevant, when the data subject has given their consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. …
Justification	
The deletion rule in cases of objection could lead to fraudulent actions i.e. allowing data subjects to hide crucial information for a period of time and benefit from the data absence. An indication could be added next to the item in dispute in order to inform the recipient of the data of the existence of the dispute or the withdrawal of the consent. In addition, if the data subject provides his/her consent after a previous withdrawal again, the data controller should have the right to fill the period of the withdrawal with all the missing information.	

Amendment n.2

Article 4 - paragraph1 – Definitions

Text	*Proposed amendment*
"(1) data subject means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifier to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person"	**Deletion**
Justification In our opinion introduction of new definition of "data subject" is unnecessary and creates additional problems with proper understanding what exactly means the term "personal data". The new definition of "data subject" constitutes actually, by its context, the further (not limited) explanation what exactly the personal data are while the legal definition of "personal data" is already incorporated in point (2) of art.4 of the Regulation. Moreover some of the data (identifiers) used in the definition of "data subject" like: location data, online identifier not always enable unequivocal identification of the persons. The definition of "personal data" has been developed in practise by almost 17 years of current legislation and is widely understandable.	

Amendment n.3

Article 4 – paragraph 2 - Definitions

Text proposed by the Commission	**Amendment**
(2) 'personal data' means any information relating to a data subject	'personal data' **shall** mean~~s~~ any information relating to ~~a data subject~~ **an identified or identifiable natural person**
Justification The definition of "personal data" within the 95´ Directive has proven itself. There is no indication, why the definition should be altered.	

Amendment n.4

Article 5 – Principles relating to personal data processing

Text	*Proposed amendment*
(c) adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data;	(c) adequate**,** relevant~~, and limited to the minimum necessary~~ **and proportionate** in relation to the purposes for which they are processed; they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data;
Justification Article 5 introduces the principle of "data minimization" and the processing of personal data must be limited to the minimum necessary. Credit bureaus need to use a certain amount of personal data in order to provide clients with many different types of data necessary to satisfy regulatory requirements and assess objectively the creditworthiness of the credit applicants and to prevent fraud. Without further clarification, the introduction of this principle would present an obstacle to credit bureaus in carrying out the supply of the services to clients. This principle may also contradict existing EU legislation and proposals, such as the existing Consumer Credit Directive and the proposal for a Directive on credit agreements relating to residential property, which both aim to ensure best lending practices.	

Amendment n.5

Article 6 – paragraph 1 – Lawfulness of processing

Text	*Proposed amendment*
1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:	1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:
…	…
(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;	(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller **or for the performance of a task carried out for assessing creditworthiness or for fraud prevention and detection purposes**;
(f) processing is necessary for the purposes of the	(f) processing is necessary for the purposes of the legitimate interests pursued by a

legitimate interests pursued by a controller, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.	controller **or by the third party or parties to whom the data are disclosed**, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks**;** **(g) processing concerns data taken from public registers, lists, documents or records that are publicly available, without prejudice to the limitations and modalities laid down by Union law or Member States law, with regard to their disclosure and publicity;** **(h) processing concerns data relating to economic activities that are processed in compliance with Union law or Member States law as applying to business and industrial secrecy.**

Justification

Detecting and preventing fraud in consumer lending is of significant importance, not only to financial institutions, but can help to protect consumers from identity theft. Therefore, fraud prevention and detection should be explicitly recognised as a legitimate purpose for data processing.

The lawfulness of processing based on the legitimate interest must be extended to legitimate interests pursued by third parties to whom the data are disclosed by a controller. To exclude this provision might compromise an essential principle of legitimacy that is very important in the market. It would be contradictory to admit this principle with reference to the controller itself but not with reference to another party (the second controller) receiving data from the former. The result would be to exclude the possibility for data suppliers to supply on a legitimate basis data to final users of such data even if the legitimate interest is recognized and justified. The limitation is not reasonable and only has the effect to limit the market without providing greater protection for data subjects.

Data concerning economic activities are essential to the market. At the same time, this type of personal data generates less intrusion in the private life of the data subject and it is clear that a data subject when active on the market has a relevant interest for the circulation of such information. An explicit provision for the lawfulness of the processing of economic data with the only limitation of the existing Union or Member States legislation applying to business and industrial secrecy is necessary and seems to be a fair balance between different interests without unjustified limitation of the free movement of data.

Amendment n.6

Article 7 – paragraph 1 – Conditions for consent

Text proposed by the Commission	Amendment
1. The controller shall bear the burden of proof for the data subject's consent to the processing of their personal data for specified purposes.	**Deletion**
Justification	
There is no justification for a burden of proof for the controller only, especially in cases, where the data subject has the consent in his personal documents.	

Amendment n.7

Article 7 – paragraph 2 – Conditions for consent

Text proposed by the Commission	Amendment
2. If the data subject's consent is to be given in the context of a written declaration which also concerns another matter, the requirement to give consent must be presented distinguishable in its appearance from this other matter.	2. If the data subject's consent is to be given in the context of a ~~written~~ ***textual*** declaration which also concerns another matter, the requirement to give consent must be presented distinguishable in its appearance from this other matter.
Justification	
It would add an additional layer of bureaucracy to the economy, if the declaration of consent had to be in written form. A textual form is sufficient.	

Amendment n.8

Article 7 – paragraph 4 – Conditions for consent

Text proposed by the Commission	Amendment
4. Consent shall not provide a legal basis for the processing, where there is a significant imbalance between the position of the data subject and the controller.	**Deletion**

Justification
The wording 'significant imbalance between the position of the data subject and the controller' is too broad and leaves room for diverging interpretations. . It could be assumed, that in cases of credit granting there is regularly a "significant imbalance". In this case, consent would be no longer a possibility to lay the basis for legal processing of data in credit granting processes. To avoid legal uncertainty, paragraph 4 should be deleted or at least amended in a way that further clarification on what constitutes 'significant imbalance' is provided. Furthermore, consent has to be explicit and freely given, and the data subject may remove his/her consent anytime (as provided in art. 7 paragraph 3) – therefore there is no reason to limit by law the data subject in his/her free decision by assuming imbalance in the law. Moreover in each EU Member State there are consumer protection and antitrust offices which are authorized to oversee and ensure the enforcement of consumer rights.

Amendment n.9

Article 11 – paragraph 2 – Transparent information and communication

Text proposed by the Commission	Amendment
2. The controller shall provide any information and any communication relating to the processing of personal data to the data subject in an intelligible form, using clear and plain language, adapted to the data subject, in particular for any information addressed specifically to a child.	2. The controller shall provide ~~any~~ ***relevant*** information and ~~any~~ ***relevant*** communication relating to the processing of personal data to the data subject in an intelligible form, using clear ~~and plain~~ language, **and shall** adapte~~d~~ **the language** ~~to the data subject, in particular~~ for any information addressed specifically to a child.
Justification	
The obligation to disclose information and communication should be limited to relevant items only.	

Amendment n.10

Article 12 – paragraph 1 – Procedures and mechanisms for exercising the right of the data subject

Text proposed by the Commission	Amendment
1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically.	1. The controller shall establish procedures for providing the information referred to in Article 14 and for the exercise of the rights of data subjects referred to in Article 13 and Articles 15 to 19. The controller shall provide in particular mechanisms for facilitating the request for the actions referred to in Article 13 and Articles 15 to 19. ~~Where personal data are processed by automated means, the controller shall also provide means for requests to be made electronically.~~
Justification	
The German Federal Data Protection Law does not permit data controllers to send information to a non validated email address. There is in fact no possibility for the data controller to verify a person's identity, if a request is submitted by email, and consequently, data subjects might receive information they are not entitled to. Hence, there should be no explicit right for data subjects to receive communication of personal data undergoing processing in an electronic format.	

Amendment n.11

Article 12 – paragraph 2 – Procedures and mechanisms for exercising the right of the data subject

Text proposed by the Commission	Amendment
2. The controller shall inform the data subject without delay and, at the latest within one month of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for a further month, if several data subjects exercise their rights and their cooperation is necessary to a	2. The controller shall inform the data subject without delay and, at the latest within one month of receipt of the request, whether or not any action has been taken pursuant to Article 13 and Articles 15 to 19 and shall provide the requested information. This period may be prolonged for ~~a further month~~ ***another eight weeks***, if several data subjects

reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller. The information shall be given in writing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.	exercise their rights and their cooperation is necessary to a reasonable extent to prevent an unnecessary and disproportionate effort on the part of the controller ***or if the controller needs to verify the validity of data with a third party.*** The information shall be given in writing. ~~Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.~~
Justification It is very common that credit bureaus have to verify the validity of contested data with a third party (such as banks, insurance companies, telecommunication providers etc.). Against this background, it seems appropriate to extend the suggested period to another eight weeks in cases where the validity of the contested data has to be verified by a third party. As regards the deletion of the last sentence of paragraph 2, the German Federal Data Protection Law does not permit data controllers to send information to a non validated email address. There is in fact no possibility for the data controller to verify a person's identity, if a request is submitted by email, and consequently data subjects might receive information they are not entitled to. Hence, there should be no explicit right for data subjects to receive communication of personal data undergoing processing in an electronic format.	

Amendment n.12

Article 12 – paragraph 4 – Procedures and mechanism for exercising the rights of the data subject

Text	*Proposed amendment*
4. The information and the actions taken on requests referred to in paragraph 1 shall be free of charge. Where requests are manifestly excessive, in particular because of their repetitive character, the controller may charge a fee for providing the information or taking the action requested, or the controller may not take the action requested. In that case, the controller shall bear the burden of proving the manifestly excessive character of the request.	4. The information and the actions taken on requests referred to in paragraph 1 shall be free of charge. Where requests are manifestly excessive, ~~in particular~~ because of their repetitive character, **the complexity and/or the total amount of the requests,** the controller may charge a**n appropriate** fee for providing the information ~~or taking the action requested, or the controller may not take the action requested. In that case, the controller shall bear the burden of proving~~

	~~the manifestly excessive character of the request.~~
Justification In the case of credit bureaus, customers' request to access their data entail complexities that are peculiar to the sector. This is true because credit bureaus do not have direct contact with borrowers in the process of selling or proposing credit products and credit bureau companies often do not have branches. This requires a postal exchange of information with the borrower, including the need for the credit bureau to remotely identify the borrower who is exerting the access right. Moreover, the customer base exerting the access right is potentially huge. It covers the entire credit active population. Handling all requests free of charge would result in significant costs for credit bureaus. These costs would be passed on to lenders, who would consequently increase the cost of the credit product. A small reimbursement of the costs charged for each access request would therefore increase the transparency of fees for borrowers.	

Amendment n.13

Article 13 – Right in relation to recipients

Text proposed by EC	*Proposed amendment*
The controller shall communicate any rectification or erasure carried out in accordance with Articles 16 and 17 to each recipient to whom the data have been disclosed, unless this proves impossible or involves a disproportionate effort.	**Deletion**
Justification It is impossible to fulfil this duty, especially for public operators, internet service providers and for credit bureaus. A deeper evaluation of any possible reduction of the impact on procedures for credit bureaus would be strongly recommended. It is absolutely excessive; it does not offer any additional values to the data subject and may cause serious additional costs for the controllers, incommensurate with the intended purpose of the regulation and the potential benefits of the data subject.	

Amendment n.14

Article 14 – paragraph 1 – Information to the data subject

Text proposed by EC	*Proposed amendment*
Where personal data relating to a data subject are	Where personal data relating to a data

collected, the controller shall provide the data subject with at least the following information:	subject are collected, the controller shall provide the data subject with ~~at least~~ the following information:
(a) the identity and the contact details of the controller and, if any, of the controller's representative and of the data protection officer;	(a) the identity and the contact details of the controller and, if any, of the controller's representative ~~and of the data protection officer;~~
(b) the purposes of the processing for which the personal data are intended, including the contract terms and general conditions where the processing is based on point (b) of Article 6(1) and the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);	(b) the purposes of the processing for which the personal data are intended~~, including the contract terms and general conditions where the processing is based on point (b) of Article 6(1) and the legitimate interests pursued by the controller where the processing is based on point (f) of Article 6(1);~~
(c) the period for which the personal data will be stored;	~~(c) the period for which the personal data will be stored;~~
(d) the existence of the right to request from the controller access to and rectification or erasure of the personal data concerning the data subject or to object to the processing of such personal data;	~~(d) the existence of the right to request from the controller access to and rectification or erasure of the personal data concerning the data subject or to object to the processing of such personal data;~~
(e) the right to lodge a complaint to the supervisory authority and the contact details of the supervisory authority;	~~(e) the right to lodge a complaint to the supervisory authority and the contact details of the supervisory authority;~~
(f) the recipients or categories of recipients of the personal data;	~~(f)~~ **(c)** the recipients or categories of recipients of the personal data;
(g) where applicable, that the controller intends to transfer to a third country or international organisation and on the level of protection afforded by that third country or international organisation by reference to an adequacy decision by the Commission;	~~(g) where applicable, that the controller intends to transfer to a third country or international organisation and on the level of protection afforded by that third country or international organisation by reference to an adequacy decision by the Commission;~~
(h) Any further information necessary to guarantee fair processing in respect of the data subject, having regard to the specific	

circumstances in which the personal data are collected.	~~(h) any further information necessary to guarantee fair processing in respect of the data subject, having regard to the specific circumstances in which the personal data are collected.~~
Justification The information to be provided by the controller to the data subject shall consist of an exhaustive list (*numerous clauses*), "at least" should therefore be eliminated. Article 14 enlarges the notification duties in an inappropriate way. The information according to Article 14 consists just of initial information. The Articles with the rights of the data subject should be designed with different levels, Article 14 as the basic level. That´s why the information should be limited to the essential information: the identity of the controller, the purpose of the processing and the recipients or categories of recipients. In case the data subject wants to gather more detailed information, he/she can exercise his/her right according to Article 15 / Right of access for the data subjects. With these different levels of transparency, the informational need of the data subject can be satisfied without confronting the economy with unnecessary expenditures.	

Amendment n.15

Article 14 – paragraph 5 – new letter (e) – Information to the data subject

Text proposed by EC	*Proposed amendment*
	(e) the data was taken from generally accessible sources
Justification Paragraph 5 of this standard contains some exceptional dispositions of this obligation. A very important special arrangement for example for the address marketing is missing however, the exception in case the data concerned are taken from generally accessible sources.	

Amendment n.16

Article 15 – paragraph 1 – letter (d) – Right of access for the data subject

Text proposed by the Commission	Amendment
(d) the period for which the personal data will be stored;	**Deletion**
Justification Article 14 paragraph 1 c provides for sufficient assurance that data subjects will be informed about data storing periods. An additional requirement for controllers to disclose the information at any time upon the data subjects' request, would be costly and of little value to the data subject. Furthermore, information about storing periods can be given in a general form. It would be almost impossible, to add the specific retention period to each data item.	

Amendment n.17

Article 15 – paragraph 1 – letter (h)

Text proposed by the Commission	Amendment
Where such personal data are being processed, the controller shall provide the following information *(f) the significance and envisaged consequences of such processing, at least in the case of measures referred to in Article 20;*	Where such personal data are being processed, the controller shall provide the following information *(f)* the significance and envisaged consequences of such processing, at least in the case of measures referred to in Article 20; **this right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software.**
Justification According to the text of the proposal, the information to the consumer has to incorporate information about scoring, but it leaves open, what is specifically meant with "consequences". As stated in recital 51, this right should not adversely affect the rights and freedoms of	

others, including trade secrets or intellectual property and in particular the copyright protecting the software. This idea should be placed on the level of the Article itself.

Amendment n.18

Article 15 – paragraph 2 – Right of access for the data subject

Text proposed by the Commission	Amendment
2. The data subject shall have the right to obtain from the controller communication of the personal data undergoing processing. Where the data subject makes the request in electronic form, the information shall be provided in electronic form, unless otherwise requested by the data subject.	**Deletion**
Justification	
The German Federal Data Protection Law does not permit data controllers to send information to a non validated email address. There is in fact no possibility for the data controller to verify a person's identity, if a request is submitted by email, and consequently data subjects might receive information they are not entitled to. Hence, there should be no explicit right for data subjects to receive communication of personal data undergoing processing in an electronic format.	

Amendment n.19

Article 17 – paragraph 1 – Right to be forgotten and erasure

Text proposed by the Commission	Amendment
1 The data subject shall have the right to obtain from the controller the erasure of personal data relating to them…	*1 The data subject shall have the right to obtain from the controller,* ***other than in relation to personal data held by a credit reference agency in compliance with this Regulation,*** *the erasure of personal data relating to them…*
Justification	
As identified in the main body of this paper, there are many reasons why the "right to be forgotten and erasure" should not apply to data held by credit reference bureaux. This is really a public interest (responsible lending, stability of deposit accounts, stability of banking sector) to exclude credit data from the obligation of erasure.	

Amendment n. 20

Article 18 – paragraph 1 – Right to data portability

Text proposed by EC	*Proposed amendment*
1. The data subject shall have the right, where personal data are processed by electronic means and in a structured and commonly used format, to obtain from the controller a copy of data undergoing processing in an electronic and structured format which is commonly used and allows for further use by data subject.	**Deletion**
Justification The scope of Article 18 is not clear from the perspective of the credit bureau industry. The Article seems to be motivated by the more and more popular phenomenon of the social networks. If the consumer has the wish to take his social network data to another provider, this shall be enabled (Right to data portability). This idea, which seems to be appropriate for the social network industry, absolutely does not fit for the credit bureau sector. Credit data is a valuable good, which is gathered through complex and costly processes, which involve different stakeholders. Credit bureaus do not only reduce the financial losses for credit providers, they also contribute to responsible lending and the prevention of over-indebtedness of consumers.	

Amendment n.21

Article 18 – paragraph 2 – Right to data portability

Text proposed by EC	*Proposed amendment*
2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have a right to transmit those personal data and any other information provided by the data subject and retained by an automated processing system, into another one, in electronic format which is commonly used, without hindrance from controller from whom the personal data are withdrawn.	2. Where the data subject has provided the personal data and the processing is based on consent or on a contract, the data subject shall have a right to transmit those personal data and any other information provided by the data subject and retained by an automated processing system, into another one, in electronic format which is commonly used**,** ~~without hindrance from controller from whom the personal data are withdrawn.~~ **if this is technically possible and does not create an excessive costs for**

	controller. The controller is entitled to charge a not excessive fee for fulfilling the request of the data subject.
Justification The reasonable fee (at least reimbursement of costs) must be charge for fulfilling the request.	

Amendment n.22

Article 20 – Measures based on profiling

Text proposed by the Commission	Amendment
1. Every natural person shall have the right not to be subject to a measure which produces legal effects concerning this natural person or significantly affects this natural person, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.	Re-naming of the Article into „Measures based on automated processing“
2. Subject to the other provisions of this Regulation, a person may be subjected to a measure of the kind referred to in paragraph 1 only if the processing:	
(a) is carried out in the course of the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or where suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the right to obtain human intervention; or	
(b) is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data	(b) is expressly authorized by a Union or Member State ~~law which also lays down suitable measures to safeguard the data subject's legitimate interests~~; or

subject's legitimate interests; or (c) is based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards. 3. Automated processing of personal data intended to evaluate certain personal aspects relating to a natural person shall not be based solely on the special categories of personal data referred to in Article 9. 4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject. 5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2.	(c) is based on the **conditions and safeguards** ~~data subject's consent, subject to the conditions~~ laid down in Article **6** ~~7 and to suitable safeguards~~**;** 4. In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 ~~and the envisaged effects of such processing on the data subject.~~ ~~5. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2.~~

Justification

Re-naming of the Article into „Measures based on automated processing“

Article 20 obviously concerns automated processing. The naming of this article should reflect this and therefore the Article should be re re-named into “Measures based on automated processing”.

(b) It cannot be the task of firms to check, whether the Member State law “lays down suitable measures to safeguard the data subject's legitimate interests”. On the contrary, firms have to be able to rely on the law.

Subject to further evaluations, we deem important to provide for a different wording in letter c) for the lawful automated processing. We think important to include not only the

consent of the data subject but also the other lawfulness conditions provided in article 6 as a legitimate basis for this processing. Otherwise, we think problems could arise in connection, for instance, with rating or scoring systems processing "public data" or other data available for legitimate interests and not "covered" since the beginning by the explicit consent of the data subject. The regulation does not fit however in the legitimate activity of credit information agencies within the range of credit examination. In this area it is usual and indispensable to represent the creditworthiness of a person or a company e.g. in a numerical value in order to give to the information user a first and fast to seize overview of the creditworthiness classification. To allow this procedure also in future, however, the permission regulation in paragraph 2 a) applying only for the conclusion or the fulfilment of a contract is perceived to be too narrow, because the customers of credit reporting agencies perform credit ratings also outside of existing or intended contractual relations. This regulation must be extended so that the function of the credit reporting agencies remains possible to the past extent.

Amendment n.23

Article 33 – paragraph 1 – Data protection impact assessment

Text proposed by the Commission	Amendment
1. Where processing operations present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes, the controller or the processor acting on the controller's behalf shall carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.	**Deletion**
Justification Data protection impact assessments constitute a significant bureaucratic burden for most businesses in the EU, and specifically for small and medium sized businesses. While not representing any concrete benefit to data subjects, impact assessments would result in a substantial increase of costs which would have to be passed on to data subjects.	

Amendment n.24

Article 73 – paragraph 2 – Right to lodge a complaint with a supervisory authority

Text proposed by the Commission	Amendment
2. Anybody, organisation or association which aims to protect data subjects' rights and interests concerning the protection of their personal data and has been properly constituted according to the law of a Member State shall have the right to lodge a complaint with a supervisory authority in any Member State on behalf of one or more data subjects if it considers that a data subject's rights under this Regulation have been infringed as a result of the processing of personal data.	**Deletion**
Justification	
There is no need to provide associations with a right to lodge a complaint with a supervisory authority on behalf of the consumer. This would represent a fundamental conflict with the principle of individual legal remedy which exists under German law and most likely in other Member States of the EU. As long as data subjects are well informed about their right to lodge a complaint with the supervisory authority, there is no reason to provide associations with such a right. Additionally, it would be undue to strengthen the data protection authorities and introduce such a right for consumer associations.	

Amendment n.25

Article 73 – paragraph 3 – Right to lodge a complaint with a supervisory authority

Text proposed by the Commission	Amendment
3. Independently of a data subject's complaint, anybody, organisation or association referred to in paragraph 2 shall have the right to lodge a complaint with a supervisory authority in any Member State, if it considers that a personal data breach has occurred.	**Deletion**
Justification	

There is no need to provide associations with a right to lodge a complaint with a supervisory authority on behalf of the consumer. This would represent a fundamental conflict with the principle of individual legal remedy which exists under German law and most likely in other Member States of the EU. As long as data subjects are well informed about their right to lodge a complaint with the supervisory authority, there is no reason to provide associations with such a right. Additionally, it would be undue to strengthen the data protection authorities and introduce such a right for consumer associations. To provide for the right of any body, organisation or association to lodge a complaint on behalf of one or more data subjects is not justified. We don't see any justification for the itself action of this type of organizations not acting on behalf of any data subject. This would open the door to a more "political" and arguable usage of the interest to complaint for exponential bodies.

Amendment n.26

Article 74 – Right to a judicial remedy against a supervisory authority

Text	*Proposed amendment*
2. Each data subject shall have the right to a judicial remedy obliging the supervisory authority to act on a complaint in the absence of a decision necessary to protect their rights, or where the supervisory authority does not inform the data subject within three months on the progress or outcome of the complaint pursuant to point (b) of Article 52(1).	2. Each **natural or legal person** ~~data subject~~ shall have the right to a judicial remedy obliging the supervisory authority **and/or the European Data Protection Board and/or the Commission** to act on a complaint **and/or request** in the absence of a decision necessary to protect their rights, or where the**y** ~~supervisory authority~~ do~~es~~ not inform the ~~data subject~~ **natural or legal person** within three months on the progress or outcome of the complaint **and/or request** ~~pursuant to point (b) of Article 52(1)~~.
4. A data subject which is concerned by a decision of a supervisory authority in another Member State than where the data subject has its habitual residence, may request the supervisory authority of the Member State where it has its habitual residence to bring proceedings on its behalf against the competent supervisory authority in the other Member State.	4. A **natural or legal person** ~~data subject~~ which is concerned by a decision of a supervisory authority in another Member State than where the **natural or legal person** ~~data subject~~ has its habitual residence **or establishment**, may request the supervisory authority of the Member State where it has its habitual residence to bring proceedings on its behalf against the competent supervisory authority in the other Member

	State.
Justification	
Taking into consideration the enormous amount of "powers" delegated to supervisory authorities in Member States and the relevant impact to controllers of any decision (or absence of decision) by the supervisory authority, we deem essential that not only the data subject but also controller or processor, when interested by a decision of a supervisory authority, must have the right to a judicial remedy obliging the supervisory authority to act. The same should apply to the "support" of the supervisory authority of its establishment for a controller or a processor.	

Amendment n.27

Article 76 – paragraph 1 – Right to a judicial remedy against a supervisory authority

Text proposed by the Commission	Amendment
1. Anybody, organisation or association referred to in Article 73(2) shall have the right to exercise the rights referred to in Articles 74 and 75 on behalf of one or more data subjects.	**Deletion**
Justification	
There is no need to provide associations with a right to a judicial remedy against a supervisory authority or against a controller or processor on behalf of the consumer. This would represent a fundamental conflict with the principle of individual legal remedy which exists under German law and most likely in other Member States of the EU. As long as data subjects are well informed about their right to lodge a complaint with the supervisory authority, there is no reason to provide associations with such a right. . Additionally, it would be undue to strengthen the data protection authorities and introduce such a right for consumer associations.	

Amendment n.28

Article 76 – paragraph 2 – Right to a judicial remedy against a supervisory authority

Text proposed by the Commission	Amendment
2. Each supervisory authority shall have the right to engage in legal proceedings and bring an action to court, in order to enforce the provisions of this Regulation or to ensure consistency of the protection of personal data within the Union.	**Deletion**

Justification	
It is inappropriate to give supervisory authorities the right to act on behalf of the data subject in court proceedings. Supervisory authorities have certain sovereign competences which enable them to carry out their duties as a public authority. It is disproportionate to extend these powers according to the proposed Article 76 paragraph 2. This could lead to considerable conflicts of interests, for instance, where a supervisory authority on behalf of the state would have to sue a public controller.	

Amendment n.29

Article 77 – paragraph 1 – Right to compensation and liability

Text proposed by the Commission	**Amendment**
1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the damage suffered.	1. Any person who has suffered damage as a result of an unlawful processing operation or of an action incompatible with this Regulation shall have the right to receive compensation from the controller or the processor for the ***material*** damage suffered.
Justification	
The Article is redundant as most national legal frameworks already contain legal rules that deal with the issue of compensation for damages suffered. If not deleted, the word 'material' should be added to paragraph 1. This would ensure that only measureable material damages will be compensated for.	

Amendment n.30

Article 77 – Right to compensation and liability

Text	***Proposed amendment***
2. Where more than one controller or processor is involved in the processing, each controller or processor shall be jointly and severally liable for the entire amount of the damage.	**Deletion**
Justification	

The joint and several liability of controller and processor seems to be disproportionate and redundant in respect to the other in itself heavy remedies available on the basis of the penalty system provided for in the Proposal.

Amendment n.31

Article 84 – Obligation of secrecy

Text	*Proposed amendment*
1.Within the limits of this Regulation, Member States may adopt specific rules to set out the investigative powers by the supervisory authorities laid down in Article 53 (2) in relation to controllers or processors that are subjects under national law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy, where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. This obligation shall apply with regard to personal data which controller or processor has received from or has obtained in an activity covered by this obligation of secrecy. *2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by the date specified in Article 91 (2) at the latest and, without delay, any subsequent amendment affecting them.*	**Deletion**
Justification We propose to delete paragraph 1 and 2 of this article. The provisions of this article may give rise to the intervention of supervisory authorities with the competences of some of the administrators with respect to justifiability of data collection, e.g. during the assessment of credit worthiness. We perceive here the danger of some entities being discriminated with respect to the duties imposed on them. Instead, we propose to introduce new text which contains an unequivocal regulation stipulating that if the regulations concerning the processing of special information, e.g. with respect to bank secrets provide for a broader protection than the one provided for in the regulation, then these provisions shall be applicable.	

Amendment n.32

Article 86 – paragraph 2 – Exercise of the delegation

Text proposed by the Commission	Amendment
2. The delegation of power referred to in Article 6(5), Article 8(3), Article 9(3), Article 12(5), Article 14(7), Article 15(3), Article 17(9), Article 20(6), Article 22(4), Article 23(3), Article 26(5), Article 28(5), Article 30(3), Article 31(5), Article 32(5), Article 336), Article 34(8), Article 35(11), Article 37(2), Article 39(2), Article 43(3), Article 44(7), Article 79(6), Article 81(3), Article 82(3) and Article 83(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.	**Deletion**
Justification The delegation of powers to the European Commission via the instrument of delegated acts should be minimized as delegated acts will have a fundamental impact upon businesses. Their content must instead be subject to democratic debate by the European Parliament and the Council. Additionally, delegated acts pose the risk that the provisions of the Regulation are subject to constant change which would result in considerable legal uncertainty. In accordance with the provisions of the Treaty, delegated acts can only be applied to "non-essential" parts of the Regulation, rather than, as foreseen by the proposed review, on almost all essential parts of the Regulation.	