

Terms of Reference for the Expert Group on Credit Histories

1. Background

1.1. Description

Credit registers collect financial information on individuals to provide credit data to credit providers in order to address information asymmetries and set prices for potential borrowers. Credit registers operate in most EU Member States.

European credit register markets are structured along three main lines: public¹, private² and markets where both public and private credit registers exist³. This variety of structures reflects several factors including different policy objectives (such as financial stability or combating over-indebtedness), different attitudes towards personal data, the development of the credit market, and the existing legal and regulatory framework. In general, public credit registers are operated by national central banks on a non-profit basis. Reporting to public credit registers is a legal obligation. Private credit registers have varied membership structures and are mainly for-profit.

The data collected by credit registers is diverse. In some countries, such as Belgium, Spain and the UK, both positive and negative information is collected whereas in other countries, such as France, only negative data is collected⁴. For public credit registers, the reporting threshold (the value above which credits must be declared) can also vary considerably being, for example, EUR 50 in Portugal, EUR 25 000 in Belgium and EUR 76 000 in France.

1.2. Cross-border activity

Credit registers remain nationally based with only a few credit registers engaging in cross-border activity. One large credit register estimated that cross-border requests amounted to only 0.05 % of the total number of requests for information received. The Association of Consumer Credit Information Suppliers (ACCIS) developed a model contract for cross-border data exchange to assist its members in the cross-border provision of information. Credit registers from a few countries, such as Germany and the Netherlands, have signed such agreements. Under the auspices of the European System of Central Banks, in 2003, seven Member States⁵ signed a Memorandum of Understanding on the cross-border exchange of data through the network of public registers. The Memorandum of Understanding currently covers data relating to lending to corporate customers where the value of the credit exceeds EUR 25 000.

¹ For example, Belgium and France.

² For example, Denmark, Estonia, Finland, Greece, Cyprus, Hungary, Ireland, Malta, Netherlands, Poland, Sweden and the UK.

³ For example, Austria, Bulgaria, Czech Republic, Germany, Italy, Latvia, Lithuania, Portugal, Romania, Slovakia, Slovenia and Spain.

⁴ Positive information describes total amounts and types of loans, accounts currently open and active, balances and credit limits. Negative information refers to defaults (late payments, arrears and bankruptcies).

⁵ Austria, Belgium, France, Germany, Italy, Portugal and Spain.

1.3. Data protection

The protection of personal data is a fundamental right in the EU set out in Article 8 of the European Convention of Human Rights and Article 8 of the Charter of Fundamental Right of the European Union⁶. The processing of natural persons' data in the EU is regulated by the Data Protection Directive⁷, which sets the minimum requirements for access to and the circulation of credit data in the EU.

The Directive lays down the conditions for the processing of personal data in the EU as well as for transfers of those personal data to third countries. It defines the notion of 'personal data' as any information relating to an identified or identifiable natural person⁸. 'Processing' of data means the collection, recording, organization, storage or the disclosure by transmission, dissemination or otherwise making available⁹. Processing of personal data is allowed under certain conditions, enumerated in the Directive¹⁰, such as, the unambiguous consent of the data subject.

In addition, the Data Protection Directive sets out that personal data must only be collected for a specified, explicit and legitimate purpose, it must also be adequate, relevant and not excessive in relation to the purposes for which it is collected and must be not further processed in a way incompatible with those purposes. It cannot be processed for a period longer than is necessary for the purposes for which the data was collected¹¹. The Directive also provides for the right of the data subject to information, access, rectification and deletion or blocking of personal data as well as the right to lodge a complaint before the data protection authority and to a judicial remedy for a breach of the rights afforded to him by the Directive¹². The Directive also requires Member States to establish public independent authorities which appropriate intervention and investigative powers to monitor and enforce compliance with national data protection law.

1.4. Some drawbacks of the current situation

1.4.1. Data accessibility

Both public and private credit registers require their members and/or clients to meet certain conditions. Membership and/or client criteria include, for example, undertaking credit granting activity, holding a banking license, having a physical presence in the Member State, compliance with reciprocity agreements, and compliance with data protection laws.

Charges for accessing credit data vary considerably across Europe. Joining fees can range from EUR 0 for public and some private credit registers to in excess of EUR 1 000 for some private credit registers – as much as EUR 75 000 in one instance. Transaction fees range from EUR 0 to around EUR 2. The cost of consultation may however vary according to usage (volume based pricing).

⁶ Charter of Fundamental Rights of the European Union (2000/C 364/01), 18.12.2000.

⁷ Directive 95/46/EC, 24.10.1995.

⁸ Article 2(a).

⁹ Article 2(b).

¹⁰ Article 7.

¹¹ Purpose limitation and proportionality principles (Article 6).

¹² Articles 10–12.

While some of the conditions set may be justifiable, unfair or discriminatory access conditions may prevent financial institutions from other Member States from offering their products/services across Europe in several ways¹³. First, the need to have a physical presence in the Member State¹⁴ could place foreign firms at a competitive disadvantage vis-à-vis domestic ones. Secondly, the need to hold a banking license may also act as a barrier, in particular to non-banks seeking to enter the market. Finally, excessively high joining or transaction fees may deter from joining the credit register those foreign lenders that lack the critical mass of loans.

1.4.2. Data quality

High quality credit information reduces information asymmetries between financial institutions and consumers, thus enabling the development of more accurate risk scoring and pricing models. It limits the information advantage of incumbent firms with large market shares who have access to a wide range of information on their clients. It also informs investment decisions by investors in asset (loans) backed securities.

For credit information to be of high quality it needs to be complete, comparable and correct. Poor credit information quality can arise for five main reasons¹⁵:

- (a) The information available in credit registers may not contain all necessary data. For some private credit registers, reporting is voluntary. Where full disclosure is a legal obligation incomplete reporting by lenders should not arise. However, research by the Commission has shown that there are instances where credit registers do not closely scrutinise the information provided by their members or where members fail to provide complete information on their clients¹⁶.
- (b) Some credit registers collect only negative data whereas others collect both positive and negative data. The availability of only negative information may place competitors at a disadvantage by obscuring consumer's real credit risk and raising the prices for consumers.
- (c) The information stored about a consumer in a credit register may be incorrect or outdated. Wrong data can impose a serious problem for lenders and consumers because it does not allow for an accurate risk scoring and therefore leads to wrong pricing or, in the worst case, to the rejection of a financially sound consumer.

¹³ It should be noted that the Consumer Credit Directive, in the case of cross-border credit, compels Member States to ensure a non-discriminatory access for creditors from other Member States to databases used in their territory (Article 9 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC).

¹⁴ For example, the credit registers of the Austrian Central Bank, Bank of Spain, Bank of Portugal and the Bank of Latvia.

¹⁵ In some instances, they can result from a lack of compliance with data protection law.

¹⁶ Report on the retail banking sector inquiry, SEC(2007) 106.

- (d) Reporting thresholds vary considerably between credit registers. This means that the credits reported differ between registers.
- (e) The definitions used by credit registers are different, for example, payment defaults and delinquencies. As such, a consumer classified as in default in one Member State may not necessarily be classified – under the same circumstances – as in default in another Member State.

1.5. Consequences

The access to and the availability of credit data is an important factor in a competitive banking market. It also has a strong influence on the price of the loan. A limited access or availability of data has important consequences for market participants both at the *primary market* and the *secondary market* levels.

Primary market

Lenders who are unable to access complete credit data may therefore price the product incorrectly by under- or overestimating the consumer's credit risk¹⁷. Lenders that overestimate a client's credit risk, and thus charge a higher interest rate, are at a competitive disadvantage vis-à-vis lenders who have more complete information. Lenders that underestimate such risk may face unexpected losses. The existence of these information asymmetries may deter market entrants. Credit data sharing can also act as a borrower discipline device by reducing a consumer's incentive to default.

As explained above, the availability of credit data may influence the price the **consumer** will need to pay for the product. When dealing with risk adverse lenders, consumers may find themselves having to pay an unnecessarily high interest rate. The extent of credit data sharing also impacts on consumer mobility. Consumers seeking to take out a loan cross-border may face higher prices or be turned down due to the fact that the foreign lenders are unable to access sufficient information on the consumer's credit history. Since credit histories are not portable between Member States, this is also an issue for the more than 15 million EU citizens have used their right to work and live in another Member State than theirs.

Secondary market

Investors in asset backed securities need information on the quality of the underlying assets. When those refer to a portfolio of (e.g. mortgage) loans, complete and accurate information about the loans included is required in order for s/he to determine whether to invest and at what price. Without that information, the investor may either decide not to invest or to demand a risk premium in order to compensate the lack of information¹⁸. This risk premium will result in higher refinancing costs for the lender that will, in turn, translate into higher borrowing costs for the consumer (or potentially to the exclusion of certain categories of borrowers).

¹⁷ Insufficient information can also render their task difficult when assessing the creditworthiness of the customer as provided for by the Credit Directive (Article 8).

¹⁸ Investors may also decide to invest (with possible risks for the stability of the market) in portfolios they would have not chosen if they had had complete information.

Information about a loan portfolio might also be required by arrangers¹⁹ that carry out a due diligence to assess the quality of a portfolio, by a rating agency asked to assign a rating to the asset-backed securities collateralised by a portfolio or by third party servicers²⁰ which are used by mortgage lenders to drive down administrative and processing costs.

1.6. Stakeholders: some views

A number of consumer organisations support the idea of cross-border access to credit registers on a non-discriminatory basis²¹. However, they are concerned about the security, access and use of data. In their view, it is important to ensure that information is only used to facilitate credit assessment and not for marketing or commercial prospecting. They argue that any system would have to provide customers with the opportunity, free of charge, to correct the information held on them in any register. In addition, when a database is accessed, the user should be permitted to get details of who accessed it and the purpose of the request.

A large majority of (mortgage) lenders are in favour of cross-border access to credit registers on a non-discriminatory basis²². Mortgage lenders argue that access to credit registers can facilitate cross border activity because it allows them to enter markets with greater confidence and to price their products or services more accurately. Some mortgage lenders believe that a memorandum of understanding would be the most appropriate means of granting cross-border access to credit information.

A majority of Member States also support the idea of cross-border access to credit registers on a non-discriminatory basis²³. Member States are of the opinion that data protection issues need to be taken into account when discussing the access to and the use of credit data.

¹⁹ An arranger is responsible for co-ordinating a transaction, such as a securitisation transaction, with respect to the originator/client, the law firms, the rating agencies and other third parties.

²⁰ Mortgage servicing comprises the 'day-to-day' administration and management of mortgage loans from their inception to final payment. Administration includes calculation and collection of monthly principal and interest payments, maintaining bank accounts in securitisation transactions, paying taxes and insurance premiums and taking steps to collect overdue payments including foreclosure.

²¹ See *Feedback on the Consultation on the Green Paper on Mortgage Credit*, 23.5.2006, http://ec.europa.eu/internal_market/finservices-retail/docs/home-loans/feedback_gp-en.pdf.

²² Cf. footnote 16.

²³ Cf. footnote 16 and comments provided by members of the Government Expert Group on Mortgage Credit: http://ec.europa.eu/internal_market/finservices-retail/home-loans/gegmc_comments_en.htm.

2. Mandate for the expert group

2.1. Objective

The expert group's objective is to advise the Commission on ways to enhance the access to and the exchange of credit data within the EU single market. In particular, the group will:

- identify all legal, regulatory, administrative and other obstacles to the access to and the exchange of credit data. In particular, the group shall analyse the possible impacts of the coexistence of different approaches to the organisation and working of credit registers in the Community and identify the consequences thereof from an economic point of view. It will also analyse the existing situation from the consumer protection (including data protection) point of view.
- present proposals as to how the identified obstacles could be addressed. To this end, the group shall aim at identifying solutions which maximise credit data circulation whilst ensuring a high level of consumer protection.

The Group's work will also provide qualitative and, where possible, quantitative input to guide reflections on:

- How the proposed solution(s) would enhance the functioning of the European mortgage market;
- Form and focus of such actions;
- Potential benefits and/or costs associated with these actions.
- Potential consequences from the consumer protection point of view.

2.2. Output

The expert group shall produce, by 1 May 2009, a report advising the European Commission on how identified problems could be best overcome. The report shall reflect the consensus view of members of the group. When consensus could not be reached, the report will explain/describe experts' divergent/majority-minority positions. The report shall not be considered as reflecting the views of the Commission services nor be binding on those. The report will be made public on the DG Internal Market's internet site.

2.3. Indicative analytical framework

a) Problem description

The Group will identify those barriers that render difficult the access to and the exchange of credit data within the EU. (These may include or differ from the examples provided above.) Experts will also focus on the origin (legal, regulatory, administrative and other) of those barriers and describe their consequences. In particular, the Group shall explore the extent to which those obstacles translate into higher costs for market participants, including consumers. It should also identify discriminatory practices regarding data accessibility and data quality problems. Descriptions of the problems shall be as comprehensive as possible. The Group shall provide both qualitative and quantitative information to support their arguments.

b) Identification of possible solutions

The experts will identify possible solutions to overcome those barriers (e.g. facilitating non-discriminatory access to credit data, developing memorandums of understanding, creation of a portable credit history...). Solutions put forward will take into account the need to ensure high levels of consumer protection. The Group will then agree on which of those identified solutions it will concentrate and on how the work needs to be organised (e.g. via the formation of sub-groups focussing on certain aspects or solutions).

c) In-depth analysis of each identified solution

At this stage, experts will:

- Further refine or specify the envisaged solution in clear commercial, legal and/or technical terms;
- Identify the main hurdles preventing the identified solution to be successfully implemented. This will include specifying the type of obstacles (tax, legal, organisational...) and giving an indication of the relative importance of each of those;
- Identify options for addressing the identified hurdles and the actors who are best placed to give effect to them (national/EU authorities; industry), taking account the impacts on the relevant stakeholders. (When industry-led or self-regulatory options are considered, incentives should be identified. Attention should also be given to the need to align incentives and responsibilities)
- Exploring the merits and demerits (for each stakeholder's category) of various solutions and options (where options have been identified). Does it effectively solve the problems identified? How it will do so? What are the expected cost and benefits? A key consideration will be to assess the cost-effectiveness of envisaged solutions and to examine whether it represents a superior outcome to the 'do nothing' option.

d) Solution prioritisation and recommendations

Further to the above analysis, the Group will prioritise the (refined) solutions on the basis of a pre-agreed set of criteria. (These will need to contain criteria such as feasibility, cost-effectiveness, cross-border impact and high level of consumer protection). In line with its conclusions, the Group will put forward its recommendations to the Commission. These will be reflected in the Group's report.

3. Practical modalities for composition and operation

3.1. Composition

The Group will comprise a maximum of 20 experts. These will be appointed by the Commission on the basis of applications responding to a call for expressions of interest. Applicants deemed suitable for membership but not appointed may be placed on a reserve list, which the Commission may use for the appointment of replacements.

Upon publication of the call for expressions of interest, prospective group members shall have until 14 July 2008 to notify in writing their interest to the Commission, either via direct applications or by proposals on their behalf from their employer or representative body, e.g. association. The submission must include relevant information to allow the Commission to assess the suitability/expertise of the proposed individual expert having reference to the criteria set out below:

- relevant demonstrable knowledge or competence in relation to the area covered by the mandate of the group;
- recent practical expertise or experience;
- proficiency in a language which is customary in the sphere of finance, at a level which allows the expert to participate in discussions and draft reports in that language.

In making the final selection of group members on the basis of the submitted proposals, the Commission shall be guided by the need to ensure that the Group represents the interests of all relevant stakeholders and has, to the greatest extent possible, a balanced geographical and gender composition.

Once the Commission services have finalised the selection of group members, they shall advise all individuals of their decision. The list of expert group members shall be made public on DG Internal Market and Services website prior to the commencement of its work.

The names of the members shall also be published in the Register of Expert Groups of the European Commission²⁴ and on the internet site of the DG Internal Market and Services. The names of members are collected, processed and published in accordance with the provisions of Regulation (EC) No 45/2001 on the protection of individuals with regards to the processing of personal data. More information on the type of data to be collected is provided in annex 1.

3.2. Duration and location

The mandate of the members of the group shall start with the first meeting of the group and end with the completion of the report, no later than 1 May 2009.

Six to seven plenary meetings will take place in Brussels on the Commission premises in accordance with the procedures and schedule established by it. Tentative dates for meetings in 2008 are 26 September, 28 October and 2 December.

Informal sub-groups' meetings/discussions may be held at other locations or via other communication means such as conference calls and/or e-mail exchanges. (Related expenses will not be reimbursed by the Commission.)

²⁴ http://ec.europa.eu/secretariat_general/regexp/.

3.3. Operation

The Commission shall chair the group. The Commission provides secretarial services. The group shall adopt its rules of procedure on the basis of the standard rules of procedure adopted by the Commission. (A draft is provided in Annex 2.)

In agreement with the Commission, sub-groups may be set up to examine specific questions under these terms of reference; they shall be disbanded as soon as these have been fulfilled. Sub-groups will appoint a 'facilitator' that will, in collaboration with the Commission representative(s), chair the sub-group's debates.

The Commission may ask experts or observers with specific competence on a subject on the agenda to participate in the group's or sub-group's deliberations if this is useful and/or necessary. Other Commission officials with an interest in the proceedings may attend these meetings.

Members of the Group will remain in office until such time as they are replaced or their mandate is renewed. Members who are or are deemed to be no longer able to contribute effectively to the Group's deliberations may be replaced for the remaining period of their mandate.

Information obtained by participating in the group's or sub-group's deliberations may not be divulged where the Commission lays down that this relates to confidential matters.

The Commission may publish on the DG Internal Market and Services website, after consultation with the group, in the original language of the document concerned, any resume, conclusion, or partial conclusion or working document of the group.

3.4. Expenses of group members

The Commission shall reimburse travel and subsistence expenses for its members in connection with the group's activities in accordance with the provisions in force at the Commission. The members shall not be paid for their services.

Privacy Statement for individuals to be appointed as 'members, alternate members, observers, invited expert or interested party'* of a European Commission consultative entity listed in its Register of Expert Groups (publicly available on the EUROPA server)

The following data will be collected by DG Internal Market and Services, Unit 'Retail Financial Services, consumer policy and payment systems' under the responsibility of the Secretariat-General of the European Commission, in accordance with the provisions of Regulation (EC) No 45/2001²⁵:

- **Name, professional title/expertise, gender, country**
- **Status (membership category)***
- **Participating in a personal capacity (yes/no indicator)**
- **Where applicable: name of represented body, name of interested party**
- **Reimbursement of travel and subsistence expenses (yes/no indicator)**

In view of the transparency policy of the European Institutions²⁶ and the need to inform the public of the identity and qualifications of the experts advising the Institution, the personal data listed above will be made publicly available in the Register of Expert Groups for as long as the membership upholds and/or until removal from the public site is requested.

You have the right to object to the publication of your personal data, or to ask for removal from the public site at any time. For this purpose, please inform the relevant Commission department. However, as the Commission wishes to enhance the transparency in the area of expertise provided to it, the membership of an expert having objected to the disclosure of his or her personal data may be subject to evaluation by the relevant Commission department.

Your data will be published in the Register of Expert Groups:

http://ec.europa.eu/secretariat_general/regexp/

You have the right to ask for modification of your data if inaccurate. For this purpose, please contact the relevant Commission department.

The data removed from the public site will be stored in the internal interface of the registry for historical reasons, and may be disclosed to the public under specific request.

You have the right to have recourse at any time to the European Data Protection Supervisor.

²⁵ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regards to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8 of 12.1.2001, p. 1).

²⁶ See also COM(2007) 127 final and http://ec.europa.eu/transparency/eti/index_en.htm.

RULES OF PROCEDURE
OF THE
EXPERT GROUP ON CREDIT HISTORIES

THE GROUP ON CREDIT HISTORIES,

Having regard to the Commission Decision setting up an Expert Group on Credit Histories²⁷, and in particular Article 1,

Having regard to the standard rules of procedure published by the Commission²⁸,

HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE:

Article 1
Convening a meeting

1. Meetings of the group are convened by the Chair after the Commission has given its consent.
2. Joint meetings of the group with other groups may be convened to discuss matters falling within their respective areas of responsibility.

Article 2
Agenda

1. The secretariat shall draw up the agenda under the responsibility of the Chair and send it to the members of the group.
2. The agenda shall be adopted by the group at the start of the meeting.

Article 3
Forwarding of documents to group members

1. The secretariat shall send the invitation to the meeting and the draft agenda to the group members no later than two calendar weeks before the date of the meeting.
2. The secretariat shall send drafts on which the group is consulted and all other working documents to the group members no later than ten calendar days before the date of the meeting.
3. In urgent or exceptional cases, the time limits for sending the documentation mentioned in 1 and 2 may be reduced to five calendar days before the date of the meeting.

²⁷ Commission Decision of 13 June 2008.

²⁸ Annex III of document SEC(2005) 1004.

Article 4
Opinions of the group

1. As far as possible, the group shall adopt its opinions or reports by a consensus.
2. In the event of a vote, the consensus is obtained by a simple majority of the members.

Article 5
Sub-groups

1. With the consent of the Commission, the group may set up sub-groups to examine specific questions on the basis of terms of reference defined by the group; they shall be disbanded as soon as they have fulfilled those terms of reference.
2. The sub-groups shall report to the group.

Article 6
Admission of third parties

1. The Commission may invite experts or observers with special expertise on a matter on the draft agenda to participate in the group's or sub-groups' work where appropriate and/or necessary.

Article 7
Written procedure

1. If necessary, the group's opinion on a specific question may be delivered via a written procedure. To this end, the secretariat sends the group members the drafts on which the group is being consulted and any other working documents.
2. However, if a simple majority of group members asks for the question to be examined at a meeting of the group, the written procedure shall be terminated without result and the Chair shall convene a meeting of the group as soon as possible.

Article 8
Secretariat

The Commission shall provide secretarial support for the group and any sub-groups created under Article 5(1) above.

Article 9
Summary minutes of the meetings

Summary minutes on the discussion on each point on the agenda and the opinions delivered by the group are drafted by the secretariat under the responsibility of the Chair. The minutes do not mention the individual position of the members during the group's deliberations. Previous meeting's minutes are adopted by the group at the start of each meeting.

Article 10
Attendance list

At each meeting, the secretariat shall draw up, under the responsibility of the Chair, an attendance list specifying, where appropriate, the authorities, organisations or bodies to which the participants belong.

Article 11
Prevention of conflicts of interest

1. At the start of each meeting, any member whose participation in the group's deliberations would raise a conflict of interest on a specific item on the agenda shall inform the Chair.
2. Members shall sign a declaration certifying that their participation will not result in conflicts of interest.
3. In the event of such a conflict of interest, the member shall abstain from discussing the items on the agenda concerned and from any vote on these items.

Article 12
Correspondence

1. Correspondence relating to the group shall be addressed to the Commission, for the attention of the Chair.
2. Correspondence for group members shall be sent to the [e-mail] address which they provide for that purpose.

Article 13
Transparency

1. The principles and conditions concerning public access to the group's documents are the same as laid down in Regulation (EC) No 1049/2001²⁹. It is for the Commission to take a decision on requests for access to those documents.
2. Information obtained by participating in the group's or sub-group's deliberations may not be divulged where the Commission lays down that this relates to confidential matters.
3. If the Group decides so, the Commission may publish [on the Internet], in the original language of the document concerned, any resume, conclusion, or partial conclusion or working document of the group.

Article 14
Protection of personal data

All processing of personal data for the purposes of these rules of procedure shall be in accordance with Regulation (EC) No 45/2001³⁰.

²⁹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2002, p. 43).

³⁰ Cf. footnote 25.