



Institut suisse de droit comparé
Schweizerisches Institut für Rechtsvergleichung
Istituto svizzero di diritto comparato
Swiss Institute of Comparative Law

E-Avis ISDC 2018-04

REGULATION OF CREDIT INFORMATION COMPANIES

**Belgium, Canada (Ontario), France, Germany,
Sweden, United Kingdom**

Current to: 27.02.2018

Please refer to as: J. Curran / K.T. Druckman / J. Fournier / S. Tscheulin / H. Westermark,
Regulation of Credit Information Companies, current to: 27.02.2018
E-Avis ISDC 2018-04, available on www.isdc.ch.

This text may be downloaded for personal research purposes only. The Swiss Institute of Comparative Law does not accept liability for any other use of the text. Any additional reproduction for other purposes, whether in hard copy or electronically, requires the consent of the Institute.

E-Avis ISDC

Série de publications électroniques d'avis de droit de l'ISDC / Elektronische Publikationsreihe von Gutachten des SIR / Serie di pubblicazioni elettroniche di pareri dell'Istituto svizzero di diritto comparato / Series of Electronic Publications of Legal Opinions of the SICL

INDEX

I. BACKGROUND AND QUESTIONS.....	4
1. Context and Mandate	4
2. Questions.....	4
II. COUNTRY REPORTS.....	5
A. BELGIUM	5
1. Contrôle réglementaire des entreprises de solvabilité	5
2. Mise à jour des règles applicables aux entreprises de solvabilité	6
2.1. Type de réglementation	6
2.2. Mécanisme de base concernant les entreprises de solvabilité.....	6
B. CANADA (ONTARIO).....	8
1. Regulatory control of credit information companies.....	8
1.1. General overview	8
1.2. Legal framework and scope	8
2. Update of rules applying to credit information companies	10
2.1. Type of regulation	10
2.2. Basic rules and features of the system.....	10
C. FRANCE	11
1. Contrôle réglementaire des entreprises de solvabilité	11
2. Mise à jour des règles applicables aux entreprises de solvabilité	12
2.1. Type de réglementation	12
2.2. Mécanisme de base concernant les entreprises de solvabilité.....	12
D. GERMANY.....	15
1. Gesetzliche Kontrolle von Bonitätsdatenbanken.....	15
1.1. Art der Regelung.....	15
1.2. System der Zulassung.....	15
2. Aktualisierung der Regelung von Bonitätsdatenbanken.....	17
2.1. Art der Regelung.....	17
2.2. System der Zulassung.....	17
E. SWEDEN	19
1. Regulatory control of credit information companies.....	19
1.1. General overview	19
1.2. Legal framework and the scope of the legislation	19
1.3. Supervision and sanctions.....	20
2. Update of rules applying to credit information companies	20
2.1. Type of regulation	20

2.2. Basic rules and features of the system.....	20
F. UNITED KINGDOM	23
1. Regulatory control of credit information companies.....	23
2. Update of rules applying to credit information companies	25
2.1. Type of regulation	25
2.2. Basic rules and features of the system.....	26
III. COMPARATIVE EXAMINATION	30
A. Comparative Tables.....	30
B. Comparative Summary.....	34
1. Form of regulatory control.....	34
2. Update of rules.....	34
2.1. Type of regulation	34
2.2. Basic rules and features of the system.....	34
ANNEX: The Fair Credit Reporting Act (United States of America)	37

I. BACKGROUND AND QUESTIONS

1. Context and Mandate

On July 1st 2015, the Swiss Institute of Comparative Law provided a comparative law report¹ to the Federal Office of Justice on the subject of the regulation of debt collection companies and credit information companies in view of potential regulation of the issues in Switzerland. This concerned the following jurisdictions: Belgium, Canada (Ontario), France, Germany, Sweden and the United Kingdom. On March 22nd 2017, the Swiss Federal Council adopted a report on the legal framework of debt collection companies, indicating that general regulation of that sector would be disproportionate.²

The Federal Office of Justice is currently dealing more in detail with the issue of credit information companies. In order to support the work in this area, the Federal Office of Justice has asked the Swiss Institute of comparative Law to provide an update of this report with regard to credit information companies. It is recognised that most states regulate such enterprises in accordance with data protection laws; the focus of the update is to examine whether the activities of credit information companies are regulated by way of authorisation, declaration or certification. The focus of this study is on the regulation of companies dealing with the credit information of natural persons, and not that of corporate entities.

In addition, a short commentary is provided on the US legislation known as the Fair Credit Reporting Act (see Annex).

2. Questions

The following questions are asked:

1. Describe whether credit reference/information agencies (*Entreprises de solvabilité*) are subject to regulatory control (*surveillance*), registration/certification, declaration, authorisation or other?
2. With regard to legal opinion 13-224/E-Avis 2017-010, including, where applicable, with reference to any changes to national law related to the forthcoming implementation of the EU General Data Protection Regulation, describe any developments since November 2014 in the regulation of such agencies:
 - 2.1. Type of regulation
 - 2.2. Basic rules and features of the system

Additional information was also sought by the Federal Office of Justice on the impact of the USA's Fair Credit Reporting Act on credit information agencies. This is referred to in the annex to the present study.

¹ L. Heckendorn Urscheler & A. Santos et al., *Regelung von Inkassobüros und Bonitätsdatenbanken*, Stand 01.07.2015, *E-Avis ISDC 2017-10*, available at www.isdc.ch.

² Press release of 22.03.2017, available at <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/communiqués-conseil-federal.msg-id-66077.html>; report available at <https://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2017/2017-03-22/ber-br-f.pdf>.

II. COUNTRY REPORTS

A. BELGIUM

1. Contrôle réglementaire des entreprises de solvabilité

La législation ne prévoit pas de **règles spécifiques** applicables aux entreprises de solvabilité les assujettissant à un régime d'autorisation, de certification ou d'approbation particulier. Ces entreprises sont donc à la fois appréhendées par le droit des contrats et par la législation générale en matière de traitement des données personnelles. Ainsi, le droit belge **n'interdit pas l'exploitation de banques de données** fournissant des informations concernant la solvabilité des particuliers, mais la réglemente.

De manière générale, l'activité de l'entreprise de solvabilité consiste à fournir à ses clients, contre rémunération, des données relatives à la solvabilité de particuliers. Le contrat qui lie l'entreprise de solvabilité et son client est un **contrat sui generis** auquel les règles du contrat d'entreprise sont applicables par analogie³.

Quant à l'aspect relatif à la protection des données, c'est la législation générale en matière de traitement des données personnelles qui est applicable ; à savoir la Loi du 8 décembre 1992 relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel (LPVP).

En vue de protéger les consommateurs d'un surendettement, le législateur a en outre mis en place un système selon lequel lors de la conclusion d'un contrat de crédit à la consommation, et dans une certaine mesure, un contrat de crédit hypothécaire, et en cas de défaut de paiement de ce consommateur du remboursement desdits crédits, certaines informations sont communiquées par le biais de leur inscription dans un registre, dénommé la **Centrale des crédits aux particuliers** (ci-après CCP), et mises à la disposition d'autres acteurs clairement défini du secteur⁴. La CCP ainsi que les mesures de protection des données personnelles dans le domaine des crédits à la consommation sont désormais régies par le Code de droit économique belge (la Loi du 10 août 2001 relative à la Centrale des Crédits aux Particuliers ayant été abrogée⁵, voir ci-dessous **2.2.2**) Ce dernier prévoit des dispositions concernant l'accès, la rectification et la communication des données personnelles contenues dans la CPP.

Outre le dispositif mis en place à l'égard des crédits à la consommation et, dans une certaine mesure, les crédits hypothécaires, il existe également un **fichier des avis de saisie, de délégation, de cession et de règlement collectif des dettes** (article 1389bis du Code judiciaire), pour lequel le responsable du traitement est la Chambre nationale des huissiers de justice (article 1389bis 2 du Code judiciaire)⁶.

³ B. KOHL ET AL., *Regards croisés sur le contrat de dépôt et le contrat d'entreprise*, in J.-F. Germain (éd.) Questions spéciales en droit des contrats, Bruxelles 2010, p. 113 ss, p. 124.

⁴ Il est d'ailleurs particulièrement intéressant de remarquer que le Conseil Constitutionnel français a censuré la création d'un fichier positif regroupant les crédits la consommation au motif qu'il est attentatoire à la vie privée. CConst, décision n° 2014-690 DC du 13 mars 2014, cons. 39 ss.

⁵ Abrogée par la Loi du 19 avril 2014 portant insertion du livre VII "Services de paiement et de crédit " dans le Code de droit économique, portant insertion des définitions propres au livre VII et des peines relatives aux infractions au livre VII, dans les livres I et XV du Code de droit économique, et portant diverses autres dispositions.

⁶ Ces deux dispositions demeurent inchangées depuis l'avis n° 13-224, *Gutachten zur Regelung von Inkassobüros und Bonitätsdatenbanken* établi en 2015 (droit pris en compte jusqu'en novembre 2014) par notre institut.

Ainsi, plusieurs législations particulières traitant de l'accès aux données contenues dans des registres publics complètent les règles générales relatives aux traitements de données à caractère personnel qui s'imposent aux entreprises de solvabilité⁷.

2. Mise à jour des règles applicables aux entreprises de solvabilité

2.1. Type de réglementation

Comme exposé ci-dessus, **le cadre légal relatif aux entreprises de solvabilité n'a pas subi de modifications structurelles majeures depuis 2014**. Les dispositions de la LPVP traitant des conditions du traitement ou de l'accès aux données, de la nécessité d'un consentement, des droits des personnes concernées ou encore de la suppression ou la rectification des données demeurent ainsi inchangées⁸.

Sur le plan du droit européen, le Règlement n° 2016/679 du Parlement européen et du conseil du 27 avril 2016 relatif à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données, et abrogeant la directive 95/46/CE (ci-après RGPD) sera applicable à compter du 25 mai 2018⁹. Afin de se mettre en conformité avec le RGPD et quand bien même le règlement ne nécessite pas *per se* de transposition en droit national, **le législateur belge réforme actuellement différents points de la législation topique**, sur lesquels il sera revenu ci-dessous.

2.2. Mécanisme de base concernant les entreprises de solvabilité

2.2.1. Projet de loi belge créant l'Autorité pour la protection des données

Il convient de présenter ici et de manière nécessairement générale, le **projet de loi portant création de l'Autorité de protection des données**, déposé par le Gouvernement belge le 23 août 2017 et adopté par la Chambre des représentants le 16 novembre 2017¹⁰. Destiné à mettre en conformité la Commission pour la protection de la vie privée avec le RGPD, la loi prévoit un changement de paradigme, en créant, à la place de l'organe actuel ayant un pouvoir d'avis et de recommandation, une véritable autorité de contrôle et de sanction¹¹.

Le projet de loi modifie en profondeur la structure de l'Autorité compétente, laquelle sera désormais composée des organes suivants¹²:

- Un **comité de direction** (art. 9 du projet de loi);

⁷ B. DOCQUIR, *Le droit de la vie privée*, Bruxelles 2008, n° 414.

⁸ En particulier, les art. 1, 3, 4, 5, 6, 7, 8, 10, 12, 15 LPVP.

⁹ Art. 99 RGPD.

¹⁰ Projet de loi disponible sous: <http://www.lachambre.be/FLWB/PDF/54/2648/54K2648001.pdf> (13.12.2017); voir également la fiche parlementaire complète relative au projet en question sous: <https://www.lachambre.be/kvvcr/showpage.cfm?section=flwb&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?legislist=legisnr&dossierID=2648> (13.12.2017); À noter enfin que l'art. 74 de la Constitution belge prévoit une procédure monocomérale dans ce domaine, de telle sorte que le Sénat n'aura pas à se prononcer.

¹¹ Voir le résumé accompagnant le projet de loi (voir note 8 ci-dessus); cf. ég. O. Guerguinov, T. Léonard et E. Wery, « Voici le projet de loi belge créant l'Autorité pour la Protection des Données », *Droit&Technologies*, disponible sous: <https://www.droit-technologie.org/actualites/voici-projet-de-loi-belge-creant-haute-autorite-protection-donnees/> (13.12.2017).

¹² Art. 7 du projet de loi; Cf. O. Guerguinov, T. Léonard et E. Wery, « Voici le projet de loi belge créant l'Autorité pour la Protection des Données », *op. cit.*, p. 2; la structure suit le modèle d'autorités belges similaires, telles que l'Autorité belge de la concurrence.

- Un **secrétariat général** (art. 19 et 20 du projet de loi) lequel gère l'administration quotidienne de l'Autorité et assume également les tâches prévues à l'art. 57 RGPD;
- Un **service de première ligne** (art. 22 du projet de loi) chargé de recevoir les plaintes et requêtes et d'en examiner la recevabilité;
- Un **centre de connaissances** (art. 23 du projet de loi) ayant une compétence de conseil et de recommandation à l'adresse des autorités belges;
- Un **service d'inspection** (art. 28 du projet de loi) lequel est l'organe d'enquête de l'autorité au bénéfice de compétences étendues (voir art. 62 et suivants du projet de loi);
- Une **chambre contentieuse** (art. 32 du projet de loi) constituant « l'organe juridique administratif de l'Autorité de protection des données » et à qui sont confiés le pouvoir d'adopter les mesures correctrices (coercitives) décrites à l'art. 58 al. 2 RGPD. En particulier, la chambre contentieuse pourra prononcer des avertissements, procéder à différentes injonctions, décider de suspendre les flux transfrontières, de transmettre le dossier au Parquet ou de publier certaines décisions et aura également la compétence de prononcer des amendes¹³;
- Un **conseil de réflexion** (art. 35 du projet de loi).

Le projet de loi prévoit **l'abrogation de l'ensemble du chapitre VII de la LPVP (art. 23 à 36) consacré à l'ancienne Commission**, et entrera en vigueur, pour l'essentiel, à la même date que le RGPD, à savoir le 25 mai 2018¹⁴.

Un projet de loi-cadre (tendant à remplacer la LPVP) contenant les dispositions spécifiques faisant partie de la marge de manœuvre laissée aux Etats par le Règlement européen est également étudiée par le Gouvernement belge¹⁵.

2.2.2. Centrale de crédits aux particuliers

Comme déjà mentionné plus-haut, **la Loi du 10 août 2001 relative à la Centrale des Crédits aux Particuliers a été abrogée** et les dispositions qui la constituaient ont été reprises et codifiées dans le Code de droit économique (art. VII. 148 à VII. 157)¹⁶. Le contenu matériel n'ayant pas été modifié, il ne sera pas revenu en détails sur ces nouveaux articles du Code de droit économique. Pour le surplus, il pourra être renvoyé à ce qui a été présenté lors de notre étude de 2014¹⁷.

¹³ Art. 100 du projet de loi en lien avec l'art. 58 al. 2 RGPD.

¹⁴ Art. 109 et 110 du projet de loi.

¹⁵ O. Guerguinov, T. Léonard et E. Wery, « Voici le projet de loi belge créant l'Autorité pour la Protection des Données », op. cit., p. 5.

¹⁶ Voir note 3 plus-haut.

¹⁷ Cf. note 4.

B. CANADA (ONTARIO)

1. Regulatory control of credit information companies

1.1. General overview

In Ontario, consumer reporting agencies, as well as « personal information investigators » who collect data for such agencies, **are required to register** with the Registrar of Consumer Reporting Agencies (the “Registrar”), as designated by Ontario’s Ministry of Government and Consumer Services, **in accordance with the Consumer Reporting Act (“CRA”).**¹⁸ The Registrar is provided with various powers by the CRA to make orders against Consumer Reporting Agencies and to conduct investigations into their activities.

1.2. Legal framework and scope

Canada has two major credit rating agencies: Equifax Canada¹⁹ and TransUnion Canada²⁰. The applicable rules are, however, federal and provincial. Several federal and provincial sector-specific laws include provisions dealing with the protection of personal information. The federal Bank Act²¹, for example, contains provisions regulating the use and disclosure of personal financial information by federally regulated financial institutions. There are **two major pieces of federal privacy legislation**²² which apply to **consumer reporting agencies**. There is, however, **no legislation specific to reporting agencies on the federal level.**

Every province and territory has privacy legislation governing the collection, use and disclosure of **personal information held by government agencies**. These acts provide individuals with a general right to access and correct their personal information. Oversight is through either an independent commissioner or ombudsman authorized to receive and investigate complaints.²³

Most provinces also have legislation dealing with **consumer credit reporting**. These acts typically impose an obligation on credit reporting agencies to ensure the accuracy of the information, place limits on the disclosure of the information and give consumers the right to have access to, and challenge the accuracy of, the information. There are a large number of provincial acts that contain confidentiality provisions concerning personal information collected by professionals.

¹⁸ R.S.O. 1990, Chapter C.33, available at: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c33_e.htm (April 7, 2014), CRA § 3. The CRA § 1.1 defines consumer as follows: “consumer” means a natural person but does not include a person engaging in a transaction, other than relating to employment, in the course of carrying on a business, trade or profession; (“consommateur”).

¹⁹ Equifax Canada’s privacy policy is available on their website at: <https://www.equifaxcreditwatch.ca/gs/english/Privacy.asp> (Apr. 7, 2014).

²⁰ In provinces that do not have credit reporting legislation, TransUnion Canada “voluntarily applies the requirements specified by other neighbouring provinces”, website of TransUnion Canada, “governing legislation” available at: http://www.transunion.ca/ca/aboutus/whoweare/legislation_en.page, (Mar. 31, 2014).

²¹ S.C. 1991, c. 46, available at: <http://laws-lois.justice.gc.ca/eng/acts/B-1.01/> (May 12, 2014).

²² The Privacy Act, R.S.C., 1985, c. P-21 available at: <http://laws-lois.justice.gc.ca/PDF/P-21.pdf> (March 18, 2014), and the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5. available at: <http://laws-lois.justice.gc.ca/PDF/P-8.6.pdf> (March 18, 2014).

²³ At the federal level, oversight of both federal Acts rests with the Privacy Commissioner of Canada who is authorized to receive and investigate complaints.

One such province with legislation specific to consumer credit reporting is that of Ontario. Under the CRA,²⁴ one must **apply for registration with the Registrar of Consumer Reporting Agencies**, as designated by the Ministry of Government and Consumer Services. The present Registrar is the **Licensing, Inspections and Investigations Branch of the Ministry**.²⁵ Applications for registration may be made using the form publicly available online.²⁶

According to the CRA, applicants will be granted registration unless, on account of the applicant's financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of business; the past conduct of the applicant (or, in the case of a corporation, the past conduct of its officers or directors) affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty; or the applicant is or will be carrying on activities in violation of the law.²⁷

Applicants and registrants are entitled to notice and a hearing prior to refusal or revocation of registration.²⁸ The **Licence Appeal Tribunal**, described as an adjudicative tribunal with a mandate to provide fair, impartial and efficient ways to appeal decisions concerning licensing activities regulated by several ministries of the provincial government, is designated by the CRA as the body to whom an appeal against any registration decision may be made. The Tribunal has power to order the Registrar to take particular action, and may substitute its opinion for that of the Registrar.²⁹

Consumer reporting agencies collect information (including, name, age, address, employment, outstanding debts and debt payment history) from banks, credit card companies mortgage companies and other creditors. Although these reports are not available to the public, they **may be reported to lenders, creditors, insurance companies, landlords or potential employers**.³⁰

The Registrar has **no particular active supervisory role**, but is empowered by the CRA to order consumer reporting agencies to **amend or delete information** or to **restrict or prohibit the use of any information** that the Registrar considers to be inaccurate or incomplete or in breach of the provisions of the CRA,³¹ to **investigate complaints** against agencies,³² to **appoint investigators**³³ and, usually subject to a search warrant, to **conduct searches of business premises** in circumstances where there are reasonable grounds for believing that the CRA is being contravened.³⁴

²⁴ *Op. cit.*, § 3.

²⁵ Website of the Ontario Ministry of Government and Consumer Services, *Licensing, Inspections and Investigations Branch*, available at <https://www.consumerbeware.mgs.gov.on.ca/eseach/start.do?lang=en> (06.02.2018).

²⁶ Ministry of Small Business and Consumer Services, Consumer Protection Branch, *Application for Registration or Appointment – (Business) – New, Reinstatement or Renewal*, available at [http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetAttachDocs/007-06019E~2/\\$File/06019.pdf](http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/GetAttachDocs/007-06019E~2/$File/06019.pdf) (06.02.2018).

²⁷ CRA § 4.

²⁸ CRA § 6.

²⁹ CRA § 6(4).

³⁰ Website of the Ontario Government, Consumer Protection Ontario, available at: <https://www.ontario.ca/page/credit-reports> (06.02.2018).

³¹ CRA § 14.

³² CRA § 16.

³³ CRA § 17.

³⁴ CRA § 18.

2. Update of rules applying to credit information companies

2.1. Type of regulation

There have, since 2014, been no new developments with regard to the type of regulation of credit information companies in Ontario.

2.2. Basic rules and features of the system

Similarly, there have been no recent changes to the basic rules and features of the system applying to the regulation of credit information companies.

It should be noted, however, that **draft legislation**, in the form of a Private Members' Bill³⁵ known as the "Fairness in Consumer Reporting Act 2017",³⁶ is intended to make certain amendments to the CRA. The Bill, which is currently proceeding through the Legislative Assembly of Ontario, will, if passed, amend the CRA by requiring consumer reporting agencies:

- to respond to a consumer enquiry no later than two business days after receiving the enquiry;
- to provide a copy of a person's consumer report, on request by that person, free of charge; and
- to place, on request from a consumer and within two business days, a notice of security freeze on his or her file.

³⁵ A "Private Members' Bill" refers to a proposed law introduced into a legislature by a member of parliament who is not acting on behalf of the executive branch of the state.

³⁶ See Legislative Assembly of Ontario web page, *Fairness in Consumer Reporting Act, 2017, Bill 167*, available at http://ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=5195&detailPage=bills_detail_the_bill (07.02.2018). According to the published "status" of the Bill, the proposed text was approved by the Assembly on October 19th 2017, and is currently being considered by the Standing Committee on Justice Policy.

C. FRANCE

1. Contrôle réglementaire des entreprises de solvabilité

Nos recherches n'ont **pas relevé de nouvelle réglementation ou projets de révision** instaurant un système d'autorisation, de certification ou d'approbation spécifique applicable aux entreprises de solvabilité³⁷. Dès lors, le régime décrit en 2014 reste en vigueur³⁸ : l'activité des entreprises de solvabilité continue d'être appréhendée d'une part par le droit des contrats (en l'occurrence, par le biais d'un contrat de renseignement), et d'autre part par le droit de la protection des données, comme exposé ci-dessous.

L'avis de droit se concentre sur les sociétés « exploitant des registres de données ». À ce titre, semblent notamment exclues les agences privées de recherche régies par le titre II du livre VI du Code de la sécurité intérieure dont l'activité, selon l'article L. 621-1 est de « recueillir, même sans faire état de sa qualité ni révéler l'objet de sa mission, des informations ou renseignements destinés à des tiers, en vue de la défense de leurs intérêts »³⁹. Il y a en effet une différence entre les services d'un détective privé⁴⁰ et ceux d'une agence de renseignements. Sont également exclues les **agences de notation** dont l'activité est d'évaluer la solvabilité d'un emprunteur par l'attribution d'une note. Ces agences sont régies par les articles L. 544-3 à L. 544-5 du Code monétaire et financier et surveillées par l'Autorité des marchés financiers⁴¹.

L'activité de renseignement qui est donc prise en considération dans le cadre de la présente étude est en principe régie entre les parties par un **contrat de renseignement**. En droit français, il s'agit d'un **contrat d'entreprise particulier** mais qui ne tombe sous le coup d'aucun texte spécifique⁴².

Comme déjà évoqué, la protection des informations sur la solvabilité, en tant que données personnelles, est encadrée par les **textes législatifs sur la protection des données**, au premier rang desquels figure la Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés (ci-après LIFL). D'autres dispositions sont cependant susceptibles de s'appliquer telles que l'article 9 du Code civil relatif à la **protection de la vie privée**⁴³ et les dispositions correspondantes en droit européen (article 8 alinéa 1 de la Convention européenne des droits de l'homme, ci-après CEDH)⁴⁴ et

³⁷ D'ailleurs, sur leur site internet, les grandes entreprises françaises ne font pas non plus référence à une réglementation autre que la Loi n° 78-17 du 6 janvier 1978 (cf. plus bas) : voir entre autres, <http://www1.creditsafe.fr/cgv/> [avec référence à la Loi de 1978] (07.12.2017).

³⁸ Régime décrit dans l'avis 13-224 « Gutachten zur Regelung von Inkassobüros und Bonitätsdatenbanken » établi par notre Institut en 2015 (droit pris en compte jusqu'en novembre 2014)

³⁹ Cette activité est soumise à un agrément délivré par la commission régionale d'agrément et de contrôle (article L. 622-6 du Code de la sécurité intérieure). Ces dispositions demeurent inchangées depuis l'avis 13-224.

⁴⁰ La Cour de cassation (Cass. 2^e Civ. 30 juin 2004, n° 02-19758) a estimé à cet égard que le fait de mandater des détectives privés ne constitue pas un abus de droit et partant aucun comportement fautif, disponible sous <http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007049371&fastReqId=1900875009&fastPos=1> (13.06.2014).

⁴¹ Ces dispositions demeurent inchangées depuis 2014.

⁴² P. Delbecque, *Contrat de renseignement*, JurisClasseur n° 2210, 25 janvier 2005, § 4.

⁴³ Article 9 du Code civil (inchangé) : « Chacun a droit au respect de sa vie privée. Les juges peuvent, sans préjudice de la réparation du dommage subi, prescrire toutes mesures, telles que séquestre, saisie et autres, propres à empêcher ou faire cesser une atteinte à l'intimité de la vie privée : ces mesures peuvent, s'il y a urgence, être ordonnées en référé ».

⁴⁴ http://www.echr.coe.int/Documents/Convention_FRA.pdf (16-06.14).

en droit international (article 17 du Pacte international du 19 décembre 1966 relatif aux droits civils et politiques)⁴⁵.

Par ailleurs, il convient de relever l'existence d'un nombre de fichiers officiels tels que le **Fichier national des Incidents de remboursement des Crédits aux Particuliers (FICP)**, prévu par les articles L. 751-1 ss. du Code de la Consommation⁴⁶ et géré par la Banque de France. Des détails par rapport à ce fichier sont prévus dans une réglementation spéciale, notamment dans l'**Arrêté du 26 octobre 2010 relatif au fichier national des incidents de remboursement des crédits aux particuliers**. Le fichier doit impérativement être consulté par les banques lors de l'octroi d'un crédit de consommation, mais désormais également lors d'un crédit immobilier (voir ci-dessous, **2.2.2**)

2. Mise à jour des règles applicables aux entreprises de solvabilité

2.1. Type de réglementation

Comme déjà évoqué, le régime applicable aux entreprises de solvabilité **n'a pas subi de modifications matérielles majeures depuis le dernier avis**, de telle sorte que la structure reste inchangée. Néanmoins, les quelques changements législatifs intervenus durant cette période seront présentés ci-dessous.

2.2. Mécanisme de base concernant les entreprises de solvabilité

2.2.1. Contrôle exercé sur ses données personnelles

La Loi n° 2016-1321 du 7 octobre 2016, dite Loi « pour une République numérique » a inséré une sous-section 4 à la section 3 du chapitre IV du titre II du Code de la consommation⁴⁷. Selon le nouvel article L. 224-42-1, « **le consommateur dispose en toutes circonstances d'un droit de récupération de l'ensemble de ses données** ». En vertu de l'article L. 224-42-2, cette récupération « s'exerce conformément aux conditions prévues à l'article 20 du règlement UE n° 2016/679 du Parlement européen et du Conseil du 27 avril 2017 relatif à la protection des personnes physiques à l'égard du traitement des données à caractère personnel et à la libre circulation de ces données et abrogeant la directive 95/46/CE, pour les données ayant un caractère personnel ». L'entrée en vigueur de cette disposition est fixée au 25 mai 2018, à la même date que le règlement européen en question⁴⁸.

Par ailleurs, la Loi n° 2016-1321 du 7 octobre 2016 a également modifié la LIFL précitée, en introduisant un deuxième alinéa à son article 1^{er}, disposant que « **toute personne dispose du droit de décider et de contrôler les usages qui sont faits des données à caractère personnel** la concernant, dans les conditions fixées par la présente loi⁴⁹ ».

Enfin, la Loi n° 2016-1321 du 7 octobre 2016 a également modifié les dispositions applicables au sort des données à caractère personnel d'une personne décédée. Selon le nouvel article 40-1 LIFL, « **toute personne peut définir des directives relatives à la conservation, à l'effacement et à la communication de ses données à caractère personnel après son décès** ». En l'absence de telles directives et en vertu de l'art. 40-1 III LIFL, les héritiers se voient octroyer les mêmes droits, dans la mesure nécessaire à

⁴⁵ http://ec.europa.eu/justice/policies/privacy/docs/un-art17_fr.pdf (16.06.14).

⁴⁶ Les articles L. 333-4 à L. 333-6 du Code de la consommation ont été abrogés par l'ordonnance n° 2016-301 du 14 mars 2016.

⁴⁷ Art. 48 I de la Loi n° 2016-1321 du 7 octobre 2016 disponible sous : <https://www.legifrance.gouv.fr/eli/loi/2016/10/7/ECF11524250L/jo/texte> (11.12.17)

⁴⁸ Art. 48 II de la Loi n° 2016-1321 du 7 octobre 2016.

⁴⁹ Art. 54 de la Loi n° 2016-1321 du 7 octobre 2016.

organiser et à régler la succession du défunt et à permettre la prise en compte, par le responsable de traitement, du décès de la personne concernée (par ex. clôture de comptes d'utilisateur).

2.2.2. Fichier national des incidents de remboursement des Crédits aux Particuliers (FICP)

Hormis le remplacement des articles L. 333-4 à L. 333-6 par les articles L. 751-1 et suivants du Code de la consommation mentionné plus-haut, il convient également de citer l'introduction de l'article L. 313-16 de ce même code qui prévoit désormais une obligation d'évaluer la solvabilité du **candidat à un crédit immobilier**⁵⁰. Selon cette disposition, « [...] le prêteur procède à une évaluation rigoureuse de la solvabilité de l'emprunteur [...] » (al. 2). Pour ce faire, il consulte le Fichier national des incidents de remboursement des Crédits aux Particuliers (al. 7). Cette recherche obligatoire dans le FICP, non seulement pour les crédits à la consommation mais désormais également pour les crédits immobiliers ne constitue que la confirmation législative d'une pratique déjà courante⁵¹.

2.2.3. Devoir d'exactitude

L'article 1134 al. 3 du Code civil en vigueur en 2014 a été remplacé par l'art. 1104 du Code civil qui dispose désormais, à son alinéa 1^{er}, que « les contrats doivent être négociés, formés et exécutés de bonne foi »⁵². L'alinéa 2 indique que cette disposition est d'ordre public. **L'agence de renseignement demeure donc soumise à une obligation de bonne foi** dans la conduite de ses enquêtes et se doit de faire preuve de diligence. La jurisprudence développée sous l'empire de l'ancien droit vaut toujours. Cette dernière estime en particulier que si le fournisseur de renseignements connaît l'importance décisive des renseignements qu'il s'est engagé à fournir, il ne peut pas se contenter de transmettre à son client des informations recueillies sur simple communication téléphonique⁵³.

2.2.4. Sanctions

En addition des sanctions pénales qui demeurent inchangées (art. 226-16 à 226-24 du Code pénal)⁵⁴, il y a lieu de mentionner les articles 45 ss de la LIFL prévoyant des sanctions prononcées par la formation restreinte de la Commission nationale de l'informatique et des libertés (CNIL). Ces dispositions ont été largement modifiées par la Loi n° 2016-1321 du 7 octobre 2016. En vertu de l'article 45 I al. 3 et dans l'hypothèse où le responsable d'un traitement ne respecterait pas les obligations découlant de la loi et ne se serait pas conformé à une mise en demeure lui étant adressée, la formation restreinte de la commission peut prononcer des sanctions telles qu'un avertissement, une sanction pécuniaire⁵⁵, ou encore une injonction de cesser le traitement. Selon l'article 45 II LIFL et

⁵⁰ Introduit par l'Ordonnance n° 2016-351 du 25 mars 2016 sur les contrats de crédit aux consommateurs relatifs aux biens immobiliers à usage d'habitation, disponible sous : <https://www.legifrance.gouv.fr/eli/ordonnance/2016/3/25/FCPT1520257R/jo/texte> (11.12.2017) ; cette ordonnance transpose la directive européenne n° 2014/17/UE du 4 février 2014 relative aux contrats de crédit immobilier aux consommateurs sur les biens à usage résiduel.

⁵¹ H. Heugas-Darraspen, L'ordonnance du 25 mars 2016 relative au crédit immobilier, ultime volet de l'incidence européenne sur le crédit aux consommateurs, RDI 2016 p.508 ss., 39.

⁵² Tel que modifié par l'ordonnance n°2016-131 du 10 février 2016 - art. 2

⁵³ Cass. Com. 24 novembre 1983, Bull. Civ. 1983 n° 322 : « mais attendu qu'ayant relevé que la DBF connaissait l'incidence déterminante des renseignements qu'elle s'était engagée à fournir contre rémunération à la société Media sur la décision à prendre par cette dernière, la Cour d'Appel a pu retenir [...] que la DBF avait commis une imprudence caractérisée en se contentant de transmettre à sa cliente des éléments d'information qu'elle aurait, selon ses propres écritures, recueillis sur une simple communication téléphonique ».

⁵⁴ Voir les articles 50 ss de la LIFL.

⁵⁵ Celle-ci devant être proportionnée à la gravité du manquement commis et aux avantages tirés de ce manquement, mais ne peut pas excéder 3 millions d'euros (art. 47 LIFL).

lorsque la mise en œuvre d'un traitement ou de l'exploitation des données traitées entraîne une violation des droits et libertés mentionnées à l'article 1^{er}, la formation restreinte peut, après avoir été saisie par le président de la commission et dans le cadre d'une procédure d'urgence, prendre différentes décisions, telles que l'interruption de la mise en œuvre du traitement, le prononcé d'un avertissement ou le verrouillage de certaines données.

De plus, en vertu de l'article 45 III, lorsqu'il y a atteinte grave et immédiate aux droits et libertés mentionnées à l'article 1^{er}, le président de la commission peut saisir, par la voie du référé, la juridiction compétente afin qu'elle ordonne, si besoin sous astreinte, toute mesure destinée à la sauvegarde des droits et libertés.

Enfin, l'article 46 LIFL permet à la formation restreinte de rendre publique les sanctions qu'elle prononce et lui donne également la possibilité d'astreindre les personnes sanctionnées à informer individuellement de cette sanction, toute personne concernée.

D. GERMANY

1. Gesetzliche Kontrolle von Bonitätsdatenbanken⁵⁶

Auskunfteien unterliegen in Deutschland keiner Genehmigungspflicht, jedoch einer Gewerbeaufsicht. Gleichzeitig trifft sie in der Regel eine Meldepflicht sowie eine Vorabkontrolle, da und sofern sie zur Datenverarbeitung automatisierte Verfahren einsetzen.

Jedoch tritt gleichzeitig mit der europäischen Datenschutz-Grundverordnung am 25. Mai 2018 auch ein neues Bundesdatenschutzgesetz 2018 in Kraft. Änderungen, die sich dadurch ergeben, werden unter Punkt 2. in diesem Gutachten zum deutschen Recht behandelt.

1.1. Art der Regelung

In Deutschland gibt es **kein Sondergesetz** für Bonitätsdatenbanken. Die relevanten Vorschriften über Tätigkeiten einer Bonitätsdatenbank finden sich in erster Linie im **Bundesdatenschutzgesetz**. Insbesondere die **§§ 28a, 29 über Auskunfteien** sind hier von Bedeutung. Ein separates Verbraucherschutzgesetz gibt es in Deutschland nicht. Verbraucherschutzrechtliche Bestimmungen sind in die jeweiligen allgemeinen oder speziellen Gesetze eingearbeitet.

Anmeldung und Überwachung der Auskunfteien richten sich zudem nach der **Gewerbeordnung**.

1.2. System der Zulassung

1.2.1. Gewerbeaufsicht

Grundsätzlich ist es nach deutschem Recht möglich, ein Gewerbe ohne Genehmigung auszuüben,⁵⁷ sofern sich im Gesetz nicht ausdrücklich eine Genehmigungspflicht findet. Für Auskunfteien gibt es keine solche Norm, insbesondere sind Auskunfteien oder andere für Bonitätsdatenbanken relevante Gewerbe nicht in den §§ 30 bis 34j Gewerbeordnung (GewO) aufgeführt. Wie jedes Gewerbe in Deutschland müssen Auskunfteien allerdings bei der zuständigen Behörde **angemeldet** werden.⁵⁸ Welche Behörde hierfür zuständig ist, richtet sich nach dem Recht des jeweiligen Bundeslandes, in der Regel handelt es sich um die örtlichen Gemeinden, Bezirksämter oder Ordnungsämter.⁵⁹

Jedoch gehören Auskunfteien zu den sogenannten **überwachungspflichtigen Gewerben**.⁶⁰ Demnach muss der Betreiber der Auskunftei bei Anmeldung des Gewerbes ein polizeiliches Führungszeugnis⁶¹ sowie eine Auskunft aus dem Gewerbezentralregister⁶² einreichen. Die Behörde ist ihrerseits verpflichtet, unverzüglich, also ohne schuldhaftes Zögern, nach Anmeldung anhand der Dokumente zu überprüfen, ob der Betreiber zuverlässig ist. Reicht dieser kein polizeiliches Führungszeugnis oder keine Auskunft aus dem Gewerbezentralregister ein, so holt die Behörde diese von Amts wegen ein.⁶³

⁵⁶ Die Rechtslage zur Regelung und zum System der Zulassung von Bonitätsdatenbanken hat sich in Deutschland seit Erstellen des SIR-Gutachtens 13-224 nicht geändert. Daher werden im Folgenden Auszüge aus dem damaligen Gutachten mit aktualisierten Nachweisen wiedergegeben.

⁵⁷ § 1 Abs. 1 Gewerbeordnung (GewO).

⁵⁸ § 14 Abs. 1 S. 1 Gewerbeordnung (GewO).

⁵⁹ § 155 Abs. 2 Gewerbeordnung (GewO); W. G. Leisner in Pielow (Hrsg.), Beck'scher Online-Kommentar Gewerberecht, München 2017, § 14, Rn. 91.

⁶⁰ § 38 Abs. 1 S. 1 Nr. 2 Gewerbeordnung (GewO).

⁶¹ § 30 Abs. 5 Bundeszentralregistergesetz (BZRG).

⁶² § 150 Abs. 5 Gewerbeordnung (GewO).

⁶³ § 38 Abs. 1 S. 1, 2, 3 Gewerbeordnung (GewO).

Erweist sich der Betreiber der Auskunftstei nach dieser Prüfung als unzuverlässig, so **verbietet** ihm die Behörde, die Auskunftstei ganz oder teilweise zu betreiben, sofern dies zum Schutze der Allgemeinheit notwendig ist.⁶⁴ Die Behörde trifft hierbei eine Prognoseentscheidung aufgrund aktueller Tatsachen, ob der Betreiber in Zukunft sein Gewerbe ordnungsgemäss und damit entsprechend der gesetzlichen Vorschriften und unter Beachtung der guten Sitten ausüben wird.⁶⁵

1.2.2. Meldepflicht und Vorabkontrolle bei automatisierten Verfahren

Unabhängig von der Gewerbeaufsicht trifft Auskunftsteien ausserdem eine **Meldepflicht**, sofern sie automatisierte Verfahren zur Verarbeitung von Daten verwenden.⁶⁶ Das Bundesdatenschutzgesetz definiert automatisierte Verfahren als „die Erhebung, Verarbeitung oder Nutzung personenbezogener Daten unter Einsatz von Datenverarbeitungsanlagen.“⁶⁷ Da Auskunftsteien geschäftsmässig personenbezogene Daten zum Zwecke der Übermittlung speichern,⁶⁸ unterliegen sie der Meldepflicht.⁶⁹ Sie müssen vor Inbetriebnahme des automatisierten Verfahrens der/dem **Bundesdatenschutzbeauftragten** insbesondere Angaben zu Firma und Adresse des Unternehmens sowie des Geschäftsführers machen, zum Zweck der Datenverarbeitung, zu den betroffenen Personen, Datenkategorien und Empfänger/innen der Daten sowie zu Regelfristen für das Löschen der Daten.⁷⁰

Die automatisierten Verfahren einer Auskunftstei unterliegen ausserdem einer **Vorabkontrolle** durch den Datenschutzbeauftragten der Auskunftstei, ob besondere Risiken für die Rechte und Freiheiten der Personen bestehen, deren Daten verarbeitet werden.⁷¹ Die Vorabkontrolle ist vorgeschrieben, da Auskunftsteien personenbezogene Daten verarbeiten mit dem Ziel, die Persönlichkeit und hierbei insbesondere die Leistung und das Verhalten einer Person zu beurteilen,⁷² worunter auch die Kreditwürdigkeit einer Person fällt.⁷³ Auskunftsteien, die automatisierte Verfahren verwenden, müssen in ihrem Unternehmen innerhalb eines Monats nach Aufnahme der Tätigkeit eine/n **Datenschutzbeauftragten ernennen**, welche/r dann die Vorabkontrolle des automatisierten Verfahrens ausführt.⁷⁴ Mangels gesetzlicher Regelung ist es jedoch unklar, welche Konsequenz es auf die Rechtmässigkeit der automatisierten Datenverarbeitung hat, wenn keine ordnungsgemässe Vorabkontrolle durchgeführt wird oder wenn das Ergebnis dieser Kontrolle negativ ausfällt. Auch die Literatur ist hier geteilter Meinung.⁷⁵

⁶⁴ § 35 Abs. 1 S. 1 Gewerbeordnung (GewO).

⁶⁵ C. Brüning, in J.-C. Pielow (Hrsg.), Beck'scher Online-Kommentar Gewerberecht, München 2016, § 35, Rn. 19; P. J. Tettinger *et al.*, Gewerbeordnung: Kommentar, 8. Aufl., München 2011, § 35, Rn. 27; P. Marcks, Makler- und Bauträgerverordnung: Kommentar, 9. Aufl., München 2014, § 35 GewO, Rn. 3.

⁶⁶ § 4d Abs. 1 in Verbindung mit Abs. 4 Nr. 1 Bundesdatenschutzgesetz (BDSG).

⁶⁷ § 3 Abs. 2 S. 1 Bundesdatenschutzgesetz (BDSG).

⁶⁸ A. Peilert, Das Recht des Auskunftstei- und Detektivgewerbes: Empirische Untersuchung, verfassungsrechtlicher Rahmen, rechtliche Befugnisse und gewerberechtlicher Novellierungsvorschlag, Berlin 1996, S. 262 ff.

⁶⁹ G. Spindler, in G. Spindler & F. Schuster (Hrsg.), Recht der elektronischen Medien, 3. Aufl., München 2015, § 4d BDSG, Rn. 8; Th. B. Petri, in S. Simitis, Bundesdatenschutzgesetz, 8. Aufl., Baden-Baden 2014, § 4d, Rn. 17.

⁷⁰ § 4e S. 1 Nr. 1-9 Bundesdatenschutzgesetz (BDSG).

⁷¹ § 4d Abs. 5 S. 1, 2 Nr. 2, Abs. 6 S. 1 Bundesdatenschutzgesetz (BDSG).

⁷² § 4d Abs. 5 S. 2 Nr. 2 Bundesdatenschutzgesetz (BDSG).

⁷³ Th. B. Petri, in S. Simitis, Bundesdatenschutzgesetz, 8. Aufl., Baden-Baden 2014, § 4d, Rn. 33; P. Gola *et al.*, Bundesdatenschutzgesetz: Kommentar, 11. Aufl., München 2012, § 4d, Rn. 13.

⁷⁴ § 4f Abs. 1 S. 1, 2, 5 Bundesdatenschutzgesetz (BDSG).

⁷⁵ Automatisierte Verarbeitung dennoch rechtmässig: P. Gola *et al.*, Bundesdatenschutzgesetz: Kommentar, 12. Aufl., München 2015, § 4d, Rn. 15; automatisierte Verarbeitung rechtswidrig: G. Spindler, in G. Spindler & F. Schuster (Hrsg.), Recht der elektronischen Medien, 3. Aufl., München 2015, § 4d BDSG, Rn. 16; Vornahme der Vorabkontrolle als Rechtmässigkeitsvoraussetzung, Ergebnis der

2. Aktualisierung der Regelung von Bonitätsdatenbanken

2.1. Art der Regelung

Am 25. Mai 2018 wird die **Datenschutz-Grundverordnung (DSGVO)**⁷⁶ unmittelbar geltendes Recht in allen Mitgliedstaaten der Europäischen Union sein. Ziel der Verordnung ist ein gleichwertiges Schutzniveau für die Rechte und Freiheiten von natürlichen Personen bei der Verarbeitung von Daten in allen Mitgliedstaaten. Diese Verordnung enthält konkrete, an die Mitgliedstaaten gerichtete Regelungsaufträge. Daraus ergibt sich in Deutschland gesetzlicher Anpassungsbedarf, wobei das bisherige Bundesdatenschutzgesetz (BDSG) durch ein neues Bundesdatenschutzgesetz 2018 (BDSG 2018) abgelöst wird. Dieses tritt am gleichen Tag wie die Datenschutz-Grundverordnung in Kraft.

In Deutschland gibt es also auch nach dem Inkrafttreten der Datenschutz-Grundverordnung **kein Sondergesetz** für Bonitätsdatenbanken. Die relevanten Vorschriften über Tätigkeiten einer Bonitätsdatenbank finden sich dann in erster Linie in **§ 31 Bundesdatenschutzgesetz 2018**. Diese Vorschrift **enthält den materiellen Schutzstandard der §§ 28a und 28b Bundesdatenschutzgesetz**.⁷⁷ Die Tätigkeit von Auskunfteien sowie die Ermittlung von Score-Werten werden somit auch unter dem neuen Bundesdatenschutzgesetz 2018 ermöglicht. Wie bisher wird die Zulässigkeit der Ermittlung von Score-Werten in bestimmten Fällen beispielsweise dadurch begrenzt, dass offene Forderungen nur dann an Auskunfteien gemeldet werden und dort verarbeitet werden dürfen, wenn die Forderungen unbestritten oder titulierte sind.

Anmeldung und Überwachung der Auskunfteien richten sich auch nach Inkrafttreten des neuen Bundesdatenschutzgesetzes 2018 nach der **Gewerbeordnung**.

2.2. System der Zulassung

In diesem Bericht kann nicht abschliessend geklärt werden, welche Auswirkungen die Datenschutz-Grundverordnung auf Bonitätsdatenbanken in Deutschland haben wird. Dies ergibt sich insbesondere aus dem Mangel an Kommentarliteratur, Rechtsprechung und Praxiserfahrungen zu der noch nicht anwendbaren neuen Rechtslage. Nach den uns derzeit zur Verfügung stehenden Informationen dürfte sich die Regelung betreffend Bonitätsdatenbanken mit Inkrafttreten der Datenschutz-Grundverordnung sowie des neuen Bundesdatenschutzgesetzes 2018 **nicht grundlegend ändern**.⁷⁸

Lediglich die derzeitige Vorabkontrolle wird durch eine **Datenschutz-Folgeabschätzung** ersetzt. Ergibt diese Datenschutz-Folgeabschätzung ein hohes Risiko für personenbezogene Daten, so muss sodann die Aufsichtsbehörde konsultiert werden (siehe unter Punkt 2.2.2.).

Kontrolle jedoch nicht: Th. B. Petri, in S. Simitis, Bundesdatenschutzgesetz, 8. Aufl., Baden-Baden 2014, § 4d, Rn. 40 ff.

⁷⁶ Verordnung (EU) 2016/679 des Europäischen Parlaments und des Rates vom 27. April 2016 zum Schutz natürlicher Personen bei der Verarbeitung personenbezogener Daten, zum freien Datenverkehr und zur Aufhebung der Richtlinie 95/46/EG, verfügbar unter <http://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A32016R0679> (10.11.2017).

⁷⁷ Gesetzentwurf der Bundesregierung, Bundestags-Drucksache 18/11325, S. 101 ff., verfügbar unter <http://dipbt.bundestag.de/doc/btd/18/113/1811325.pdf> (10.11.2017).

⁷⁸ Der Bundesrat sagte in seiner Stellungnahme zum Gesetzesentwurf der Bundesregierung, dass „bei der Anpassung des nationalen Rechts an die Vorgaben der Verordnung (EU) 2016/679 die bestehenden Regelungen zu Scoring-Verfahren von Auskunfteien nicht nur erhalten, sondern auch die bekannten Missstände durch eine verbraucherfreundliche Weiterentwicklung des Rechts beseitigt werden sollten“ (Bundestag-Beschlussdrucksache 110/17 (B), S. 31, verfügbar unter https://www.bundesrat.de/Shared_Docs/beratungsvorgaenge/2017/0101-0200/0110-17.html (10.11.2017)).

2.2.1. Gewerbeaufsicht

Im Hinblick auf die Gewerbeaufsicht ergeben sich keine Neuerungen.

2.2.2. Meldepflicht und Vorabkontrolle bei automatisierten Verfahren

Die derzeitige **Vorabkontrolle**⁷⁹ der automatisierten Verfahren einer Auskunftsei wird durch die **Datenschutz-Folgeabschätzung** ersetzt.⁸⁰ Nach Artikel 35 Absatz 3 Buchstabe a Datenschutz-Grundverordnung ist eine Datenschutz-Folgeabschätzung insbesondere erforderlich bei einer „systematischen und umfassenden Bewertung persönlicher Aspekte natürlicher Personen, die sich auf automatisierte Verarbeitung einschliesslich Profiling gründet und die ihrerseits als Grundlage für Entscheidungen dient, die Rechtswirkung gegenüber natürlichen Personen entfalten oder diese in ähnlich erheblicher Weise beeinträchtigen“.⁸¹ Da Auskunftseien zum Zwecke des Profiling Daten bearbeiten und/oder mit Scoring-Verfahren arbeiten, wird die verantwortliche Person eine Datenschutz-Folgeabschätzung vornehmen müssen.

Auch die unter aktuellem Recht bestehende **Meldepflicht**⁸² für Auskunftseien, sofern die Auskunftseien automatisierte Verfahren zur Verarbeitung von Daten verwenden, findet ab dem Inkrafttreten der Datenschutz-Grundverordnung nicht mehr generell Anwendung, sondern nur noch, wenn die Datenschutz-Folgeabschätzung ein **hohes Risiko für personenbezogene Daten** ergibt.⁸³ Ist dies der Fall, so wird die verantwortliche Person vor der Verarbeitung solcher personenbezogener Daten die **Aufsichtsbehörde konsultieren** müssen.

⁷⁹ § 4d Abs. 5 S. 1, 2 Nr. 2, Abs. 6 S. 1 Bundesdatenschutzgesetz (BDSG).

⁸⁰ Art. 35 Datenschutz-Grundverordnung (DSGVO).

⁸¹ Art. 35 Abs. 3 Buchst. a Datenschutz-Grundverordnung (DSGVO).

⁸² § 4d Abs. 1 in Verbindung mit Abs. 4 Nr. 1 Bundesdatenschutzgesetz (BDSG).

⁸³ Art. 36 Datenschutz-Grundverordnung (DSGVO).

E. SWEDEN

1. Regulatory control of credit information companies

1.1. General overview

The activity of credit information companies is subject to authorization from a government agency (the Data Protection Authority). This authority is also tasked with the supervision of credit information companies' compliance with the rules. The supervision and the competences of the Data Protection Authority is described below in section 1.3.

1.2. Legal framework and the scope of the legislation

Credit information activity (*kreditupplysningsverksamhet*) is regulated in the **Credit Information Act** (*Kreditupplysningslag* (1973:1173))⁸⁴ and in the **Credit Information Ordinance** (*Kreditupplysningsförordning* (1981:955)).⁸⁵

Section 1 of the Credit Information Act defines the scope of the Act. It provides that the **Act applies to credit rating and credit information activity** (*kreditupplysningsverksamhet*) carried out in exchange of a charge and pursued as a commercial activity. It also applies to non-commercial credit rating activities if they are extensive, e.g. credit rating activities that trade associations offer their members. Occasional provision of credit rating such as those made by law firms and audit companies does not fall under the Act.⁸⁶

The **Swedish Data Protection Authority** (*Datainspektionen*) is the supervisory authority. **Credit information companies must have an authorization** from the Data Protection Authority in order to pursue their activities. However, an authorization is not necessary for a Swedish credit institution or a foreign credit institution operating in Sweden under the Banking and Financing Business Act (*lagen* (2004:297) *om bank- och finansieringsrörelse*), if they have a basic licence/authorization that include credit information activity.⁸⁷ Rules on the application procedure and on the information required in order to be granted an authorization are laid down in the Credit Information Ordinance.

The Credit Information Act and the Credit Information Ordinance apply to credit information that concern both private individuals and companies. However, there are specific provisions, providing **greater protection for private individuals** compared to the protection granted to companies. These provisions concern mainly **protection of personal data** and aim to protect the personal integrity of private individuals.

In addition to the specific rules in the Credit Information Act, the general requirements on the processing of personal data laid down in the **Personal Data Act** (*Personuppgiftslagen* (1998:204)) also apply.⁸⁸ On 25 May 2018, this Act will be abolished and replaced by the new EU General Data

⁸⁴ http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Kreditupplysningslag-1973117_sfs-1973-1173/?bet=1973:1173 (08.11.2017).

⁸⁵ http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Kreditupplysningsforordning-1_sfs-1981-955/?bet=1981:955 (08.11.2017).

⁸⁶ T. Ericsson, Karnov Online Commentary to Kreditupplysningslag (1973:1173), Karnov 2017, section 1 note 2.

⁸⁷ Credit Information Act (kreditupplysningslag (1973:1173), section 3.

⁸⁸ http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Personuppgiftslag-1998204_sfs-1998-204/?bet=1998:204 (08.11.2017).

Protection Regulation⁸⁹ (GDPR). The relationship between the Personal Data Act and the Credit Information Act and the impact of the GDPR on the Credit Information Act will be discussed below in section 2.2.

1.3. Supervision and sanctions

The supervisory authority – **the Data Protection Authority - carries out inspections** to ensure that operations of credit information companies are being conducted in a correct manner. The authority may order a company pursuing credit information activity to rectify any unlawful operations and decide to change or impose a new condition for pursuing the activities. If correction cannot be achieved, the Data Protection Authority may revoke an authorization (section 17 of the Credit Information Act). The same applies if the company in any other aspect does no longer fulfil the requirements to pursue credit information activities.

If a credit information company does not duly inform the individual concerned, the Data Protection Authority may **order correction subject to a fine**.⁹⁰ The same measure may be taken if the company does not provide information requested by the Data Protection Authority for its investigation and supervision (section 22 of the Credit Information Act).

A person that deliberately or by negligence, pursues credit rating activities without permission, or violates certain key provisions in the Credit Information Act, is punished with a **fine or imprisonment for maximum one year** (section 19 of the Act). Those key provisions stipulate, in essence, that a credit information company shall; (a) comply with the Data Protection Authority's specific instructions on how the activity shall be pursued; (b) notify if any of the conditions essential for granting the permission were to be changed; (c) respect the rules on personal integrity and protection of personal data and; (d) provide accurate information about its activities to the Data Protection Authority.

According to section 18 of the Credit Information Act, the government may decide by ordinance that companies pursuing credit information activities shall pay a fee to the Data Protection Authority for the costs related to the authority's supervision.

2. Update of rules applying to credit information companies

2.1. Type of regulation

The legal framework governing credit information companies has not been subject to any significant amendments since 2014. Certain terminology has been changed in the Credit Information Act in accordance with amendments made to other laws, but this has not brought about any material changes.⁹¹

2.2. Basic rules and features of the system

As held above (2.1), the rules governing credit information companies **have not been subject to any significant amendments since 2014**. In this part, we will discuss the proposed future amendments to the Credit Information Act following the entering into force of the EU GDPR.

⁸⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

⁹⁰ Credit Information Act (kreditupplysningslag (1973:1173), sections 9 to 12.

⁹¹ SFS 2016:679 Lag om ändring i kreditupplysningslagen (1973 :1173).

Until the entering into force of the GDPR, credit information companies must observe the general requirements for the processing of personal data laid down in the **Personal Data Act** (*Personuppgiftslagen* (1998:204)).⁹² According to these general requirements the controller of the personal data (*personuppgiftsansvarige*) shall observe, among other things, that personal data are processed in a correct manner and in accordance with good practice, that the personal data are not processed for any purpose incompatible with the original purpose at the time of collection, that no more personal data are processed than necessary for the purposes of the processing, that all reasonable measures are taken to correct, block or erase incorrect or incomplete personal data considering the purposes of the processing, and that personal data are not kept for a longer period than that as is necessary for the purpose of the processing.

On 25 May 2018, the Personal Data Act will be abolished and replaced by the GDPR. This means that the Credit Information Act's **current reference to the Personal Data Act must be replaced by a reference to the GDPR**. Although many of the concepts and principles in the GDPR are already laid down in the Personal Data Act, **the GDPR will introduce a number of new rules on the processing of personal data**. These rules will **strengthen certain rights of the individual and new requirements will be imposed** on public authorities, companies and other organisations that process personal data (for example an information duty on how the personal data is processed).

Against this background, the Data Protection Authority has called for an examination of the effects of the GDPR on the rules in the Credit Information Act.⁹³ This question has to some extent been subject to examination in a study from 2017 in the Ministry Publication Series.⁹⁴ The study proposes a number of amendments to the Credit Information Act, often by simply replacing current references to the Data Protection Act with references to the GDPR. The effects of these proposed changes are in essence the following:

- Information about a **person's gender and genetic and biometric data will be added to the current list of "sensitive data"** that are prohibited to process. This amendment will be made through a reference in the Credit Information Act (section 6) to Article 9.1 in the GDPR.⁹⁵
- The **current rules on the rights of individuals to receive information of data recorded** (*registerbesked*) as a result of credit information activity (section 10) will be **replaced by the rules in Article 12 to 15 in the GDPR**. Through this amendment individuals will, in addition to current rights, have the right to the following information: contact details of the data protection officer, the legal basis for the processing, the categories of personal data concerned, from which source the personal data originate and the period for which the personal data will be stored, the possibility to request access to his or her personal data, the recipients or categories of recipients of the personal data and on the possibility to lodge a complaint with the Data Protection Authority.⁹⁶ The amendment is made by a reference in the Credit Information Act (section 10) to the GDPR. The current rules on rights to receive information on data recorded (*registerbesked*) laid down in section 10 will continue to apply to juridical persons.⁹⁷

⁹² A reference to the relevant rules in the Personal Data Act is laid down in section 5 in the Credit Information Act.

⁹³ <http://www.datainspektionen.se/lagar-och-regler/kreditupplysningslagen/> (09.11.2017).

⁹⁴ DS 2017:26 En anpassning till dataskyddsförordningen – kreditupplysningslagen och några andra författningar, available at <http://www.regeringen.se/49f233/contentassets/be6e0c0f75f74db3a06f8dd26a535a93/en-anpassning-till-dataskyddsförordningen-ds-201726> (09.11.2017).

⁹⁵ Ibid, p. 45.

⁹⁶ Ibid, p. 48 ff.

⁹⁷ Ibid, p. 77.

- Section 12 of the Credit Information Act that regulates the rights to have an incorrect information rectified will be amended so that an individual will have the **right to be informed about the third parties to whom the corrected or amended personal data have been sent**.⁹⁸
- As regards **supervision**, a new section 17 a will be introduced in the Credit Information Act. This provision informs that, in addition to the rules laid down in the Act, the GDPR's rules on supervision apply to the processing of data for credit information purposes.⁹⁹
- The rules on **right to compensation and liability in Article 82 in the GDPR** will apply to all processing of personal data falling under that regulation. This amendment will be made through a reference to Article 82 GDPR in section 21 in the Credit Information Act. The current rules on compensation and liability will continue to apply to processing of data that is outside the scope of the GDPR.¹⁰⁰

⁹⁸ Ibid, p. 81.

⁹⁹ Ibid, p. 81

¹⁰⁰ Ibid, p. 66 ff.

F. UNITED KINGDOM

1. Regulatory control of credit information companies

The activities of credit information companies, known in the UK as **credit reference agencies (or “CRAs”)**, are regulated by way of government regulator-issued authorisation, accompanied by ongoing supervision of the CRA by the regulator.¹⁰¹ As processors of personal information, CRAs must also register with the *Information Commissioner’s Office* and respect data protection laws. CRAs which provide information on small and medium sized businesses, rather than on individuals, are known as commercial CRAs and are subjected to a different regulatory regime. They must be designated by central government to carry out such activities.¹⁰²

The authorisation and supervision of CRAs, like the rest of the consumer credit¹⁰³ market, has, **since 1st April 2014, been carried out by the government regulator, the *Financial Conduct Authority (“FCA”)***.¹⁰⁴ The *Office of Fair Trading*, an independent competition and consumer protection authority, was disbanded at the end of March 2014, and its powers in relation to consumer credit regulation were taken over by the newly created FCA, established as part of wider reforms of the financial services regulatory regime and the operating as the sole government regulator with responsibility for overseeing the conduct of business of all retail financial services.

Consumer credit businesses, such as CRAs, **must be “authorised” and regulated** under the framework prescribed by the *Financial Services and Markets Act 2000 (“FSMA 2000”)*.¹⁰⁵ According to section 19 of the FSMA 2000, all firms carrying on credit-related activity need to be authorised by the FCA unless they are exempt or are covered by a separate specialist regime.

¹⁰¹ CRAs providing consumer credit information, as referred to in the present report, are businesses which comprise the furnishing of persons with information relevant to the financial standing of individuals and being information collected by the agency for that purpose (see *Consumer Credit Act 1974*, section 145(8)) – see following footnote. There are three limbs to the activity of credit referencing: collecting information, furnishing information to others and that the information must relate to the financial standing of individuals (i.e., their creditworthiness).

¹⁰² See section 2 of this country report, below. In 2015, three CRAs were designated as commercial CRAs: *Experian*, *Equifax* and *Creditsafe*.

¹⁰³ The term “consumer credit” specifically refers to the provision of credit under consumer-credit agreements regulated by the *Consumer Credit Act 1974* (“CCA 1974”) (available at <http://www.legislation.gov.uk/ukpga/1974/39/contents> (07.12.2017)). Consumer-credit agreements are personal credit agreements by which an individual is provided with credit. The definition of what constitutes a “credit agreement” for the purposes of the CCA 1974 is broad and it includes loan agreements, overdrafts, higher purchase agreements, conditional sale agreements, pawn agreements, credit card agreements and other agreements where goods or services are supplied, but payment for which is deferred or credit provided. The CCA 1974 was established to give a new statutory framework to consumer credit, and introduced a licensing system to protect the interests of consumers.

¹⁰⁴ By virtue of the *Financial Services Act 2012* inserting into the *Financial Services and Markets Act 2000* (section 22(1A)(a)) the provision of credit reference services as a new regulated activity. Note that the provision of commercial credit references (i.e., information on businesses) is not subject to the same regulation regime: see section 2 of this country report, below.

¹⁰⁵ FSMA 2000 (original version only), available at <http://www.legislation.gov.uk/ukpga/2000/8/contents> (07.12.2017).

Secondary legislation¹⁰⁶ provides the FCA with the power to make rules and issue guidance as it sees fit. These rules and guidance are principally set out in the **FCA Handbook**.¹⁰⁷ This contains a series of standards and guides, containing modules (known as sourcebooks and manuals). Most of these rules, applied by the FCA from April 2014, are based on existing standards. High level standards (with some exceptions) apply to all firms, with other modules containing special rules for particular types of firm, known as specialist sourcebooks.¹⁰⁸ One such sourcebook is the Consumer Credit Sourcebook (CONC), applicable to consumer credit firms. Another, is the Threshold Conditions (COND), establishing the minimum **threshold conditions** which firms must meet if they wish to be authorised.¹⁰⁹

Insofar as CRAs are concerned, UK law does not prohibit the collection and furnishing of information relevant to the financial standing of individuals, but instead classifies it as a “regulated activity” for which authority is needed from the FCA.¹¹⁰ The, “*furnishing of persons with information that (a) is relevant to the financial standing of persons other than bodies corporate, and (b) is collected for that person by the person furnishing it,*”¹¹¹ is treated as a specified **higher risk regulated activity**.¹¹² Businesses engaged in such activity will need to apply for full, rather than limited, permission and will broadly be subject to more checks and have more conditions to meet at authorisation and when carrying out consumer-related activities. These include that the business has a certain legal status, that it is a body corporate constituted under UK law, that it is capable of being effectively supervised by the FCA, that it has appropriate financial resources, demonstration of the **competence and ability of management** and that the firm’s business model is suitable for its regulated activities.¹¹³

Specific legislative rules designed to protect consumers against the activities of CRAs are principally to be found in sections 157-159 of the *Consumer Credit Act 1974* (“CCA 1974”)¹¹⁴ and supporting statutory instruments (such as the *Consumer Credit (Credit Reference Agency) Regulations 2000*, as amended, which relate to the disclosure to consumers of information about their financial standing held by credit reference agencies and the correction of such information where it is found to be incomplete or wrong).¹¹⁵

¹⁰⁶ *Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013* (SI 2013/161), available at <https://www.legislation.gov.uk/uksi/2013/161/contents/made> (11.12.2017).

¹⁰⁷ FCA website, *FCA Handbook*, available at <https://www.handbook.fca.org.uk/handbook> (11.12.2017).

¹⁰⁸ For an overview of the rules and guidance concerning FCA authorization and supervision of consumer credit firms in general, see the Guide published by the FCA: *Being regulated by the Financial Conduct Authority – Guide for consumer credit firms*, updated February 2016, available at <https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-being-regulated-guide.pdf> (11.12.2017).

¹⁰⁹ *FCA Handbook*, High Level Standards, Threshold Conditions, “COND 2”. See below.

¹¹⁰ *Financial Services and Markets Act 2000*, *op. cit.*, section 22(1A) and Schedule 2.

¹¹¹ *Financial Services and Markets Act 2000*, *op. cit.*, Schedule 2, Part 2A, section 24B.

¹¹² “Providing credit references” is identified as a “specified kind of activity” according to section 89B of the *Financial Services and Markets Act 2000 (Regulated Activities) Order 2001* (original version available only) as amended by the *FSMA 2000 (Regulated Activities) (Amendment) (No.2) Order 2013/1881* Part 2, art.8.

¹¹³ The activity of providing credit references only applies to a firm if its business primarily consists of providing others with information relevant to someone’s financial standing and collecting such information for that purpose. As such, only firms whose main business activity is being a credit reference agency meet the criteria to hold permission for this activity. While there are numerous operations which conduct ancillary credit businesses and a vast number which carry on credit brokerage businesses, there are four main authorised consumer CRAs in the UK: *Experian*, *Equifax*, *Callcredit* and the niche CRA, *CoreLogic Teletrack*.

¹¹⁴ *Op. cit.*

¹¹⁵ Other non-legislative rules regarding the correction of entries in CRA files had been set out in chapter 9 of the Consumer Credit sourcebook of the FCA’s Handbook (available at <https://www.handbook.fca.org.uk/handbook>).

Moreover, CRAs must more generally adhere to the principles and provisions contained in the **Data Protection Act 1998 (“DPA 1998”)**¹¹⁶ which concern all organisations and individuals involved in the processing of personal data.¹¹⁷ Data privacy is safeguarded by the **Information Commissioner’s Office (“ICO”)**,¹¹⁸ an independent regulator which has responsibility for enforcing and overseeing the operation of the DPA 1998. In the field of data protection, the ICO has more of an advisory, audit and complaint-handling role, rather than active supervision of organisations handling personal data. All **organisations which process personal information**,¹¹⁹ such as CRAs, are nevertheless **required to register with the ICO**. The ICO furthermore has a number of enforcement tools available to it for taking action to change the behaviour of organisations which process personal data, including CRAs. These include the issue of monetary penalty notices of up to £500,000 for serious breaches of the DPA 1998 and prosecuting those who commit criminal offences under the Act.¹²⁰

At the same time as respecting the DPA 1998, CRAs, in collaboration with the UK finance industry, have developed a system of **self-regulation** for determining how data is shared. Together, they have established a user group, known as the **Steering Committee on Reciprocity (“SCOR”)** to produce a set of guidelines entitled, **“The Principles of Reciprocity”**.¹²¹ These regulate **how credit performance data on consumers is shared** through the closed user group databases operated by the UK’s three CRAs (Experian’s CAIS database, Equifax’s Insight database and the Callcredit SHARE database). The intention is to ensure that all companies which use and/or subscribe shared data undertake to abide by the Principles of Reciprocity on the basis that, *“subscribers receive the same credit performance level data that they contribute, and should contribute all such available data.”*¹²² Credit reference agencies include the Principles of Reciprocity in their client contracts and internal audit procedures.¹²³

2. Update of rules applying to credit information companies

2.1. Type of regulation

The framework of authorisation and ongoing supervision, which governs the regulation of credit reference agencies, has **not changed since the reforms introduced in April 2014**. It should be noted, however, that legislation was introduced in 2015 to designate certain organisations as *commercial*

fca.org.uk/handbook/CONC/ (07.12.2017)). The latter has, however, since been removed: see section 2.1. of this country report, below.

¹¹⁶ *Data Protection Act 1998*, available at <http://www.legislation.gov.uk/ukpga/1998/29> (07.12.2017). The DPA 1998 implemented in the UK the EU’s *Data Protection Directive* (95/46/EC).

¹¹⁷ “Processing of personal data” is broadly defined by the DPA 1998 as the obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, where that data relates to a living individual who can be identified from those data or other information in the possession of the data controller.

¹¹⁸ *Information Commissioner’s Office*, website available at http://ico.org.uk/about_us (07.12.2017).

¹¹⁹ According to the ICO, there are more than 400,000 data controllers: see ICO, *Register of data controllers*, available at <https://ico.org.uk/about-the-ico/what-we-do/register-of-data-controllers/> (07.12.2017).

¹²⁰ See ICO, *Taking Action – Data Protection*, available at <https://ico.org.uk/about-the-ico/what-we-do/taking-action-data-protection/> (07.12.2017).

¹²¹ Steering Committee on Reciprocity, *Information Sharing – Principles of Reciprocity*, Principles Version 38 (Final), September 2016, available at <http://www.scoronline.co.uk/sites/default/files/PoR%20Version%2038.pdf> (11.12.2017).

¹²² Steering Committee on Reciprocity, website available at <http://www.scoronline.co.uk/principles/> (11.12.2017).

¹²³ *Ibid.*

CRA, enabling them to receive Small and Medium Enterprise credit information from designated banks and to provide equal access to this information to all financial providers. This is not treated as a “regulated activity” under the FSMA 2000 in the same way as the receipt and provision of consumer credit information.¹²⁴

The transfer of consumer credit market regulation to the FCA in April 2014 was accompanied by new rules (detailed above) replacing the previous need to obtain a licence for operating a credit reference agency with the **need for authorisation to perform the activity of providing credit references**. This new activity only applies to a firm if its business primarily consists of providing others with information relevant to someone’s financial standing and collecting such information for that purpose.

Consequently, it was anticipated that only firms whose main business activity is being a credit reference agency would be likely to meet the criteria to hold permission for this activity. Indeed, following a transitional period during which interim permissions were granted to CRAs, it is reported that the **UK’s three main CRAs were, earlier this year, granted full authority** to continue their activities.¹²⁵

Notwithstanding the forthcoming implementation of the EU’s *General Data Protection Regulation* (the “GDPR”) on 25th May 2018, it is understood that the ICO will continue to regulate CRAs, as data controllers, in much the same way. As will be discussed below, the **UK Government has introduced new draft legislation before the UK Parliament, known as the *Data Protection Bill***. This is intended to replace the existing DPA 1998. It will incorporate the new GDPR framework while preserving existing tailored exemptions that were contained in the DPA 1998 and, at the same time, introduce new domestic exemptions from certain provisions of the GDPR.

2.2. Basic rules and features of the system

The basic rules and features of the legal framework governing consumer CRAs, which existed in 2014,¹²⁶ **have not changed significantly**, nor are there any particular changes specifically aimed at CRAs anticipated in the new data protection legislation. There has however been **a minor change to existing**

¹²⁴ The *Small Business, Enterprise and Employment Act 2015*, available at <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted> (22.12.2017), section 4, and accompanying regulations (The *Small and Medium Sized Business (Credit Information) Regulations 2015* (Statutory Instrument no. 1945 of 2015), available at <https://www.legislation.gov.uk/uksi/2015/1945/contents/made> (28.12.2017)) set out the conditions for the provision of information and designation as a commercial CRA. Under the associated regulations, a CRA must be formally designated by Her Majesty’s Treasury, the UK Government’s finance department, as a CRA with authority to have access to financial information about small and medium sized businesses. It is thereafter subject to ongoing oversight by the FCA, separate from the FSMA 2000 regime applicable to consumer CRAs. Guidance from the FCA was published in October 2016: FCA, *Finalised guidance, Guidance on Small and Medium Sized Business (Credit Information) Regulations, and Small and Medium Sized Business (Finance Platform) Regulations*, October 2016, available at <https://www.fca.org.uk/publication/finalised-guidance/fg16-4.pdf> (22.12.2017).

¹²⁵ With regard to *Experian*, see Finovate, *Experian receives green light from the FCA in the UK*, March 1st 2017, available at <http://finovate.com/experian-receives-green-light-fca-u-k/> (11.12.2017); with regard to *Equifax*, see Equifax, *Equifax gains full FCA authorization*, March 1st 2017, available at https://www.equifax.co.uk/about-equifax/press-releases/en_gb/-/blogs/equifax-gains-full-fca-authorisation/ (11.12.2017); with regard to *Callcredit*, see Callcredit, *Callcredit receives FCA authorization*, February 22nd 2017, available at <http://www.callcredit.co.uk/press-office/news/2017/02/callcredit-receives-fca-authorisation> (11.12.2017).

¹²⁶ At the time of Swiss Institute of Comparative Law legal opinion 13-224, *Gutachten zur Regelung von Inkassoburos und Bonitätsdatenbanken in Deutschland, Frankreich, Belgien, Schweden, Kanada (Ontario) und im Vereinigten Konigreich*, November 2014.

rules concerning CRAs, as well as other amendments of particular relevance to the processing of data by CRAs brought about by reform of data protection laws and the introduction of the GDPR. These are outlined below.

2.2.1. Consumer Credit Sourcebook – Credit Reference Agencies

The Consumer Credit Sourcebook, which was contained in the FCA’s Handbook, featured a **section (CONC 9) specifically aimed at CRAs**. This included rules carried across to the FCA Handbook in 2014 from regulations made in 1977 on the conduct of business of CRAs, including in relation to the correction of entries in CRA files.¹²⁷ The regulations required CRAs, following removal or amendment of an entry in an individual’s CRA file, or receipt of a notice of correction from the individual, to notify any person to whom the CRA furnished information relevant to the financial standing of that individual within the previous six months. This was reduced to one month as part of transposition to the rule of the FCA’s Handbook.

In 2015, following consultation, the **FCA decided to remove CONC 9 from the FCA Handbook**, citing the fact that there are no equivalent requirements in the DPA 1998, and that the requirement no longer served any useful purpose.¹²⁸

2.2.2. Automated decision-taking

As mentioned above, the *Data Protection Bill* will be aligned with the GDPR, and will also set out key areas where the UK will derogate from it. One significant exemption to the GDPR which is of **importance to CRAs** is that preserved by the UK in relation to **automated decision-taking**.

Article 22 of the GDPR provides data subjects with the right not to be subject to a decision based solely on automated processing, **now to also include profiling**, which produces legal effects concerning them or similarly significantly affects them. One freedom granted by the GDPR to Member States to implement **exemptions** to this (in addition to the existing exceptions of decisions made which are necessary to entering into a contract or decisions based on the data subject’s consent)¹²⁹ is where the, “*decision is authorised by...Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject’s rights and freedoms and legitimate interests.*”¹³⁰

On 7th August 2017, the UK Government published a Statement of Intent,¹³¹ as part of which it confirmed that it would be **taking advantage this exemption** but only in circumstances where there are legitimate grounds for processing personal data by automated means, such as a bank checking the creditworthiness of an applicant via an automated credit reference prior to agreeing to provide a loan.

¹²⁷ The *Consumer Credit (Conduct of Business)(Credit References) Regulations 1977*, SI 1977/330, available at <http://www.legislation.gov.uk/uksi/1977/330/made> (12.12.2017).

¹²⁸ In the consultation paper the FCA stated: “*It is unlikely that a lender in receipt of such information would contact the individual and offer them credit for which they were previously turned down. It is more likely that the individual will re-apply for credit, in which case the lender is likely to carry out a fresh CRA check and this will be based on the new data.*” See FCA, *Consumer credit – proposed changes to our rules and guidance*, CP15/6, February 2015, available at <https://www.fca.org.uk/publication/consultation/cp-15-06.pdf> (12.12.2017), section 3.16.

¹²⁹ GDPR, Articles 22(2)(a) and (c).

¹³⁰ *Ibid*, Article 22(2)(b).

¹³¹ Department for Digital, Culture, Media & Sport, *A New Data Protection Bill: Our Planned Reforms*, 7 August 2017, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635900/2017-08-07_DP_Bill_-_Statement_of_Intent.pdf (12.12.2017), p. 18.

The proposed section 13 of the *Data Protection Bill* sets out the safeguards, broadly mirroring those contained in the DPA 1998.¹³² These include an obligation on data controllers who make such decisions based on automated processing to **notify the data subject of the decision** and to provide an opportunity for the data subject to ask for the decision to be reconsidered or to take a decision not based solely on automated processing. This is said to respect the requirement of the GDPR to ensure that **individuals will have the right not to be subject to a decision made by automated means** while at the same time allowing for automated decision-making on which legitimate functions are dependent to be authorised by law.

2.2.3. Right of access requests where data controller is a CRA

Despite the forthcoming repeal of the DPA 1998, certain provisions will be preserved in the replacement legislation. One provision unique to CRAs is that contained at section 9 of the DPA 1998. This concerns the **treatment of right of access requests by data subjects under Article 15 of the GDPR when the data controller is a CRA**. A new section 12 proposed for the *Data Protection Bill* retains the effect of section 9(2) of the DPA 1998 (which deems a data controller's obligations under Article 15 of the GDPR as limited to information concerning the data subject's financial standing unless the data subject has indicated a contrary intention), as well as continuing the position under section 9(3) of the DPA 1998 (which requires the disclosure of personal data in accordance with Article 15 of the GDPR to be accompanied by a statement informing the data subject of their rights under section 159 of the *Consumer Credit Act 1974*).¹³³

2.2.4. Credit Reference Agency Information Notice

Finally, it should be noted that CRAs have already taken action to comply with the GDPR's requirement for data controllers to **demonstrate transparency** with regard to the processing of data.¹³⁴ On 23rd October 2017, the UK's three main CRAs, *Callcredit*, *Equifax* and *Experian*, released what is labelled a "**Credit Reference Agency Information Notice (CRAIN)**",¹³⁵ describing how the CRAs use and share personal data they receive about individuals and/or businesses. It is hosted on each of the three CRAs' websites with the aim of allowing lenders and other financial providers to direct their customers and prospective customers to the information that it provides.

The document is split into 14 sections, providing **answers to 14 questions about CRAs and their use of personal data**. Although the information provided in the responses to the questions has already been published, it is explained that the information contained in **three of the sections will only come into effect from 25th May 2018** (on the implementation date of the GDPR) as these address **new rights**. The three sections are as follows:

¹³² DPA 1998, section 12.

¹³³ *Op. cit.* See Swiss Institute of Comparative Law legal opinion 13-224, *Gutachten zur Regelung von Inkassoburos und Bonitätsdatenbanken in Deutschland, Frankreich, Belgien, Schweden, Kanada (Ontario) und im Vereinigten Konigreich*, *op. cit.*, section 2.7.1.

¹³⁴ In particular, see GDPR, Article 5(1)(a) ("*Personal data shall be (a) processed lawfully, fairly in a transparent manner in relation to the data subject...*"), Article 12 (*Transparent information, communication and modalities for the exercise of the rights of the data subject*) and Article 5(2), which requires that, "*the controller shall be responsible for, and be able to demonstrate, compliance with the principles.*"

¹³⁵ See, for example, Callcredit, *Credit Reference Agency Information Notice (CRAIN)*, Version 1, adopted 23rd October 2017, available at <http://www.callcredit.co.uk/crain> (13.12.2017).

- **Section 9 (data portability right):** this explains that the right to data portability will not apply to personal data processed by CRAs, because this data is processed on the grounds of legitimate interests;¹³⁶
- **Section 11 (right of data subject to object to the use of personal data and have it deleted):** this explains a data subject's right to object to the processing of personal data to a CRA, but clarifies that under the GDPR, this right does not automatically lead to a requirement for processing to stop or for personal data to be deleted in all cases. It states that in light of the importance of the credit referencing industry to the UK's financial system, and the purposes for which the personal data is needed, it will be rare that CRAs do not have compelling, overriding grounds to carry on using the personal data following an objection.
- **Section 12 (right of a data subject to restrict what a CRA does with his or her personal data):** although, pursuant to Article 18 of the GDPR, a data subject can, in some circumstances, ask CRAs to restrict how they use his or her personal data, this, explains the information provided, is not an absolute right and personal data may still be processed where at least one of the four grounds (set out at Article 18(1) of the GDPR) exist. The information highlights that, given the importance of complete and accurate credit records, it will usually be appropriate to continue processing credit report data.

¹³⁶ The "legitimate interests" relied on by CRAs are explained in detail at section 3 of the CRAIN. This reflects the concept of legitimate interests currently recognised under the DPA 1998 (schedule 2, section 6). See Swiss Institute of Comparative Law legal opinion 13-224, *Gutachten zur Regelung von Inkassoburos und Bonitatsdatenbanken in Deutschland, Frankreich, Belgien, Schweden, Kanada (Ontario) und im Vereinigten Konigreich, op. cit.*, section 2.4

III. COMPARATIVE EXAMINATION

A. Comparative Tables

Country	Form of regulatory control	Changes to regulatory framework since 2014	Changes to basic rules and features of system
Belgium	<ul style="list-style-type: none"> • Regulated by terms of contracts as between Credit Information Agency and client; and • General data protection rules under legislation (<i>Loi du 8 decembre 1992: LPVP</i>). • Complemented by rules of the <i>Centrale des crédits aux particuliers</i> regulated by the <i>Code de droit économique belge</i> and the <i>fichier des avis de saisie, de délégation, de cession et de règlement collectif des dettes</i>, pursuant to the <i>Code judiciaire</i>. 	No substantive changes to the regulatory framework.	<ul style="list-style-type: none"> • No changes since 2014. • Draft legislation proposes the creation of a data protection authority (with powers of oversight and enforcement), set to be implemented on 25.05.2018.
Canada (Ontario)	<ul style="list-style-type: none"> • Compulsory registration of the credit information agency with Government-run Registrar of Consumer Reporting Agencies (currently the function of the <i>Licensing, Inspections and Investigations Branch</i>) • No active regulatory control, but Registrar has powers under the <i>Consumer Reporting Act</i> to make orders to credit information 	No known changes to the regulatory framework	<ul style="list-style-type: none"> • No changes since 2014. • Amendments proposed (currently being considered in parliament) for the <i>Consumer Reporting Act</i> to provide further protections to consumers by requiring credit information agencies to respond in a prescribed way to requests from consumers in relation to their credit reports.

	agencies and to conduct investigations and searches		
France	<ul style="list-style-type: none"> • Regulated by contract law (in particular, <i>contrats de renseignement</i>); and • General data protection laws (<i>Loi 78-17 du 6 janvier 1978 : LIFL</i>), Article 9 du <i>Code civil (protection de la vie privée)</i>). • Complemented by the <i>Fichier national des incidents de remboursement des Crédits aux Particuliers (FICP)</i>, pursuant to <i>Code de la Consommation</i> and regulated by <i>Banque de France</i>. 	No major substantive changes to the regulatory framework.	<ul style="list-style-type: none"> • No major changes since 2014; other general changes and those not specific to credit information agencies (see below). • New legislation (<i>Loi no. 2016-1321 du 7 octobre 2016</i>) provides for: <ul style="list-style-type: none"> - a right to retrieve data, in line with EU GDPR's right to data portability provisions (amending the <i>Code de la consommation</i>); - a right to decide and to control the use of personal data; - a modification to existing provisions on the treatment of personal data after death. • A new obligation on lenders to evaluate the creditworthiness (in the FICP) of an applicant for a mortgage. • An amendment to the Civil Code requiring that contracts must be negotiated, formed and executed in good faith. • New sanctions available to the <i>Commission nationale de l'informatique et des libertés</i> such as warnings, fines and injunctions.
Germany	<ul style="list-style-type: none"> • No special law aimed at credit information agencies. • General obligation as a trade organization to register with 	<ul style="list-style-type: none"> • No substantive changes aimed at credit information agencies. 	<ul style="list-style-type: none"> • No changes since 2014. • BDSG to continue recognition of activities of credit information agencies.

	<p>competent trade inspectorate of federal state.</p> <ul style="list-style-type: none"> • As a supervised industry, credit information agencies must comply with additional reliability requirements on registration. • Additional reporting and risk assessment requirements under federal data protection laws if automated procedures are used to process data. 	<ul style="list-style-type: none"> • New Federal Data Protection Act (<i>Bundesdatenschutzgesetz 2018</i> - BDSG) to accompany the EU GDPR on 25.05.2018 but no changes to the regulatory framework are anticipated. 	<ul style="list-style-type: none"> • General changes under BDSG expected to have impact on credit information agencies: <ul style="list-style-type: none"> - Current advance checks to be replaced by data protection impact assessments (<i>Datenschutz-Folgeabschätzung</i>) - Current reporting obligations where automated procedures for processing data are used will no longer be generally applicable; instead, only where the data protection impact assessment reveals a high risk must supervisory authority first be consulted
Sweden	<ul style="list-style-type: none"> • Subject to authorization from the Swedish Data Protection Authority, accompanied by supervision in the form of inspections. • Credit Information Act and Ordinance regulate credit information activity, including rules on authorisation. • General data protection requirements also apply under the Personal Data Act 	<ul style="list-style-type: none"> • No material changes reported. • Personal Data Act to be replaced by the EU GDPR on 25.05.2018, but no corresponding changes to domestic legislation will result in amendment to the regulatory framework. 	<ul style="list-style-type: none"> • No significant changes since 2014. • EU GDPR will replace Personal Data Act and corresponding amendments to particular data protection rules are proposed for the Credit Information Act, including on definition of sensitive data, rights of access to data and other information, supervision and compensation
United Kingdom	<ul style="list-style-type: none"> • Authorisation and supervision of credit information agencies (as consumer credit businesses (under <i>Financial Services and Markets Act 2000</i>)). • Additionally, as a processor of personal information, registration 	<ul style="list-style-type: none"> • No change to regulatory framework (save for new regulations requiring the designation of commercial credit reference agencies) • Data Protection Act 1998 to be repealed and 	<ul style="list-style-type: none"> • No significant changes since 2014 • Relevant minor changes/developments include: <ul style="list-style-type: none"> - Removal of chapter of Consumer Credit Sourcebook regarding correction of entries in Credit Information Agency files;

	<p>with the Information Commissioner's Office.</p> <ul style="list-style-type: none"> • Form of self-regulation with regard to sharing of credit performance data of consumers. 	<p>replaced by new Data Protection Act as from 25.05.2018, incorporating the EU GDPR but no changes to regulatory framework anticipated.</p>	<ul style="list-style-type: none"> - Preservation under UK law of exemption from GDPR regarding automatic decision making; - Preservation under GDPR of right of access requests rules for Credit Information Agencies; - Publication by the three UK Credit Information Agencies of <i>Credit Reference Agency Information Notice</i> ("CRAIN") to comply with GDPR's transparency requirements.
--	--	--	--

B. Comparative Summary

The following sets out a brief summary of the type of regulatory control applying to the activities of Credit Information Agencies (“CIAs”) in the countries examined, as well as an indication of the principal changes to basic rules and features of respective systems since 2014.

1. Form of regulatory control

The form of regulatory control applied to CIAs and their activities in the jurisdictions studied varies considerably.

Two countries in which a similar framework can be identified are **Belgium and France**, where no particular regime of authorisation, certification or registration exists. Like other EU member states, the activities of CIAs in France and Belgium are subject to **common data protection rules**, but regulation of CIAs themselves does not extend beyond general rules of contract law – in this case, applying to the contract between the CIA and the party seeking access to the credit information. This absence of specific control over CIAs may nevertheless reflect the fact that, unlike other jurisdictions, a **number of registers of personal credit information are centrally-regulated** by the state itself.

Both **Germany and Ontario**, on the other hand, require the **registration of CIAs with the relevant public authority**. In Ontario, legislation specific to CIAs requires their registration with the Registrar of Consumer Reporting Agencies; in Germany, such requirement is part of a more general obligation on businesses to register with the relevant trade inspectorate. **Sweden and the UK** both require the activities of a CIA to be **authorised** – in Sweden, by the data protection authority, and in the UK, by the Financial Conduct Authority (on account of a CIA’s status as a consumer credit business) and with the data protection authority (as a data processor). In both jurisdictions, CIAs are then subject to ongoing supervision.

2. Update of rules

2.1. Type of regulation

In **none** of the countries examined have there been any **substantive changes** to the regulatory control of CIAs since 2014. It is, moreover, anticipated that the implementation of the EU General Data Protection Regulation (“GDPR”) in May 2018 will not have any significant impact on the form of regulatory control currently in force in the EU jurisdictions concerned.

One possible exception to this is **Belgium**, where it is proposed that a **new data protection authority** will be created under amendments to national legislation, set to coincide with the entry into force of the GDPR. Unlike the current authority, this authority will have powers of control and enforcement with regard to the protection of data in general. There are, however, no particular changes aimed specifically at CIAs.

2.2. Basic rules and features of the system

In none of the jurisdictions examined have there been any significant changes since 2014 to the rules and features of the legal framework governing CIAs. Outside of developments associated with the GDPR, no other particular changes to rules of the legal framework are reported in Belgium, Germany or Sweden.

There have, however, been some **general changes** which impact on the activities of CIAs. In **France**, the existing legal obligation on lenders to evaluate the credit worthiness of an applicant for a loan has now been extended to applicants for mortgages; a change to the civil code means that CIAs must act in good faith and with diligence with regard to information provided; and new far-reaching sanctions will be made available to the *Commission nationale de l'informatique et des libertés* to punish organisations which breach data protection rules.

In the **UK**, major changes to the finance regulation framework in 2014 have meant that CIAs have had to **re-apply for authorisation** to conduct credit reference activities, now falling under the supervision of the newly-created *Financial Conduct Authority*. It may also be noted that a new separate regime has been introduced for organisations providing credit information on small and medium enterprises.

In **Ontario**, **new rules are anticipated** which will affect the way CIAs deal with consumers and consumer requests for their credit information. The proposed legislation is currently passing through the legislative assembly.

Each of the jurisdictions of the **EU member states** examined intend to either replace or amend existing national data protection legislation with provisions which incorporate and complement the forthcoming GDPR. Those changes to data protection rules which are likely to have an impact on CIAs are not unique to the activities of CIAs but rather concern **data processors more generally**. The significance of these changes for CIAs will not fully be known until after the implementation of the GDPR in May 2018.

Of particular significance to CIAs, however, are provisions which address safeguards surrounding the **automatic processing of data**. Particularities of both the German and UK systems are highlighted in this regard in the respective reports. Other changes of particular relevance to CIAs include new provisions on data portability and rights of access to data, as well as the right to restrict what a CIA does with an individual's personal data. Another core provision of the GDPR is the need for data controllers to demonstrate transparency with regard to the processing of data and in the UK, the main CIAs have already published a public information notice as an expression of their intention to comply with this central principle.

SWISS INSTITUTE OF COMPARATIVE LAW

Dr. Lukas Heckendorn Urscheler
Co-Head of the Legal Division

Project Leader	John Curran, LLM <i>Legal Adviser</i>
Belgium	Sylvain Tscheulin <i>Trainee</i>
Canada	John Curran, LLM <i>Legal adviser</i> Karen Topaz Druckman, LLM <i>Legal Adviser</i>
Germany	Dr. Johanna Fournier, LLM <i>Legal Adviser</i>
France	Sylvain Tscheulin <i>Trainee</i>
Sweden	Henrik Westermark, LLM <i>Legal Adviser</i>
United Kingdom	John Curran, LLM <i>Legal Adviser</i>

ANNEX: The Fair Credit Reporting Act (United States of America)

The Fair Credit Reporting Act (FCRA) is a piece of U.S. federal legislation stemming from 1970 (and amended several times since then) setting out the rules and conditions under which consumer reporting agencies may **release information they have collected** about individuals.¹³⁷ The main purpose of the FCRA is the protection of the privacy interests of individuals about whom the reports are made. Section 602 sets forth the purpose, noting the need to prioritize privacy of the individual even though there is a commercial need for ensuring information about credit-worthiness and other personal characteristics is available.

§ 602. Congressional findings and statement of purpose [15 U.S.C. § 1681]

(a) Accuracy and fairness of credit reporting. The Congress makes the following findings:

- (1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.*
- (2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.*
- (3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.*
- (4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.*

(b) Reasonable procedures. It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title.

In 1996, Congress amended the FCRA by adding a number of additional rules that require particular protections if **employers want to use credit reports** to check the background of employees or potential employees.¹³⁸ Further changes to the practice of regulating credit reporting agencies were added with the passage of the Dodd-Frank Act, which created a prohibition on unfair, deceptive, or abusive practices by credit reporting agencies.

¹³⁷ FCRA §603(f) defines **credit reporting agency** as “any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports”. **This would include any individual, group, or company that uses the postal service or internet to collect information or to send reports.**

¹³⁸ See generally, Amanda Fuchs, The Absurdity of the FTC’s Interpretation of the Fair Credit Reporting Act’s Application to Workplace Investigations: Why Courts Should Look Instead to the Legislative History, 96 NW Univ. L. Rev. 339, 343-345 (2017).

The FCRA places the main oversight of credit reporting agencies' information-giving activities under the supervision of the Federal Trade Commission's (FTC) **Bureau of Consumer Financial Protection**, itself a creation of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The FTC has the power to create regulations to enforce the Act's provisions¹³⁹, but it does not have rulemaking powers¹⁴⁰. It does have enforcement authority¹⁴¹ (as do State agencies¹⁴²), though, and lawsuits by consumers may be brought as well¹⁴³. Criminal fines or imprisonment are available in particularly egregious cases.¹⁴⁴

State regulations providing for consumer protection will continue to apply unless the State law would directly conflict with the federal law.¹⁴⁵ Arguably more significantly, State attorney generals are empowered by the Frank-Dodd Act to enforce the ban on unfair, deceptive, or abusive practices.¹⁴⁶ Critics of the effectiveness of FCRA, therefore, argue that the credit reporting industry could be better controlled through CFPB or State-level application of the prohibition on unfair practices.

Some areas of regulation and enforcement reside with specialized branches of the government, for example with the Federal Deposit Insurance Agency and other banking regulators.

Finally, there are a number of conditional exceptions to the protections on privacy when the information is requested for purposes of counterterrorism. The Act sets forth procedures as well as the considerations to be taken into account before such information is transferred.

¹³⁹ FCRA 621(e)

¹⁴⁰ Amanda Fuchs, *The Absurdity of the FTC's Interpretation of the Fair Credit Reporting Act's Application to Workplace Investigations: Why Courts Should Look Instead to the Legislative History*, 96 *NW Univ. L. Rev.* 339, 350 (2017)

¹⁴¹ FCRA §621

¹⁴² FCRA §621(c)

¹⁴³ FCRA §§616-617.

¹⁴⁴ FCRA §619 (for knowing or willful requests for reports made under false pretences)

¹⁴⁵ FCRA §625

¹⁴⁶ Austin H. Krist, *Large-Scale Enforcement of the Fair Credit Reporting Act and the Role of State Attorneys General*, 115 *Colum. L. Rev.* 2311, 2312 (2015).