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FINAL

EACB Response to DG CNECT's Consultation on the Draft Guidelines on Reasonable Compensation under the Data Act

The **European Association of Co-operative Banks** ([EACB](https://www.eacb.coop)) is the voice of the cooperative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of cooperative banks in general. Cooperative banks form decentralised networks which are subject to banking as well as cooperative legislation. Democracy, transparency and proximity are the three key characteristics of the cooperative banks' business model. With 2,400 locally operating banks and 35,150 outlets cooperative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 227 million customers, mainly consumers, retailers and communities. The cooperative banks in Europe represent 90 million members and 747,000 employees and have a total average market share of about 20%.

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The voice of 2.400 local and retail banks, 90 million members, 227 million customers in Europe

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Introduction

The EACB appreciates the opportunity to contribute to the public consultation on the draft Guidelines on Reasonable Compensation under the Data Act. Clarifying the principles for determining reasonable compensation is essential to ensure legal certainty, proportionality and a balanced allocation of costs and risks between data holders and data recipients.

While we support the objective of facilitating data sharing under the Data Act, our members have identified several areas where the draft Guidelines would benefit from further clarification.

Our comments below focus on specific sections and provisions of the draft Guidelines where further guidance is necessary to ensure proportionality, consistency with existing EU legislation (including the GDPR) and practical workability. Notably, this paper focuses on Sections 3, 4, 5 and 6.

Section 3 – General compensation regime

- **Paragraph 13** makes a reference to intercompany and affiliated/partner data sharing. We believe that the current formulation could be interpreted broadly, potentially capturing routine intra-group data exchanges or contractual arrangements with affiliated service providers or exchanges necessary to provide services or fulfil obligations of a service provider. For example, it is common for an insurance intermediary or a mortgage intermediary to exchange information with the insurer or the party offering the loan. Applying the Guidelines to such exchanges would create significant administrative and operational burdens, including the need to figure out exactly what data is shared between different parts of the group, the conclusion of agreements and the establishment of money flow. **If intercompany or affiliated/partner data sharing is addressed in the Guidelines, it should be explicitly clarified that the Guidelines apply only where data must be made available pursuant to the Data Act and not to:**
 - **voluntary data sharing arrangements;**
 - **exchanges required to comply with other legal or supervisory obligations** (e.g., AML requirements or supervisory expectations);
 - **routine exchanges between companies for the provision of services or to fulfil contractual obligations to clients.**
- **Paragraph 16** currently describes the ‘reasonable’ element only from the perspective of the data recipient. We recommend that the **Guidelines also explicitly recognise the legitimate interests of the data holder**. Considering both perspectives would ensure a more balanced and fair approach to setting reasonable compensation.
- **Paragraph 17:** We welcome the recognition that data holders should have flexibility to offer data in bundles, as this can reduce unnecessary implementation and contracting costs. However, we ask the Commission to **clarify how such data bundling should be reconciled with the GDPR’s data minimisation principle**. In particular, it would be helpful to know whether and under which conditions bundled datasets are compatible with the requirement that personal data shared must be limited to what is strictly necessary for the intended and lawful purpose of the data recipient.

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Section 4 – Determining the compensation

4.1.1. Cost of preparing and formatting the dataset

- **Paragraphs 25 and 26:** The draft Guidelines recognise compensation for costs related to the protection of personal data and trade secrets. However, they **do not address situations where data is neither personal data nor a trade secret but is nonetheless sensitive and requires protection**. In practice, many datasets (e.g. financial or operational data) may expose organisations to risks such as fraud, misuse or the disclosure of commercially or strategically sensitive information, even if they do not meet the legal definition of a trade secret. We therefore **recommend clarifying that reasonable compensation may also reflect proportionate costs incurred to protect such sensitive data**, where these costs are attributable to a specific data access request.

4.2 . ‘Necessity’ of the cost items under Article 9(2)(a)

- **Paragraph 34:** We were surprised by the reference to data quality warranties. In our view, where data is shared on the basis of a legal obligation under the Data Act, it should be provided on an ‘as is’ basis, and data recipients should not be able to request warranties. If data recipients require warranties, these should be pursued voluntarily, outside the mandatory data-sharing regime.

4.3.2. Assessing the extent to which investment under Art. 9(2)(b) should be taken into account when calculating the margin

- **Paragraph 40:** We suggest clarifying that the margin may legitimately reflect certain overhead or structural costs borne by data holders in enabling and maintaining data access.

Section 5 – Compensation form and information

5.1. Determining the pro-rata share for each data recipient

- **Paragraph 48c:** While we understand that the Guidelines should prevent a ‘first-mover disadvantage’ and ensure non-discriminatory pricing over time, they should also take into account the opposite risk, namely that only a limited number of data recipients may ultimately request access to the data. In such cases, data holders may not be able to amortise their upfront investments. The **Guidelines should recognise that demand uncertainty is inherent and clarify that the risk of low uptake should not be borne solely by data holders**.

5.3. Transparency of the calculation and Article 9(7)

- **Paragraph 53:** The Guidelines state that ‘*data holders should be able to refuse to provide information in clearly abusive cases*’. We consider this too restrictive. We believe that also where a request is **potentially abusive**, data holders should have **the right not only to refuse disclosure, but also to apply proportionate safeguards**, such as using non-disclosure agreements or disclosing information through a trusted third party.

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Section 6 – Enforcement

We are concerned that the proposed multiple avenues for dispute resolution, courts, certified dispute settlement bodies and national competent authorities, may lead to legal uncertainty and operational complexity. In practice, data recipients may challenge compensation decisions frequently, resulting in a high number of disputes across different bodies, with no clear indication of which authority has ultimate responsibility.

Contact:

The EACB trusts that its comments will be taken into account.

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