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Final

Key messages regarding a European Strategy for Data

The **European Association of Co-operative Banks** ([EACB](http://www.eacb.coop)) represents, promotes and defends the common interests of its 27 member institutions and of cooperative banks, with regard to banking as well as to co-operative legislation. Founded in 1970, today the EACB is a leading professional lobbying association in the European banking industry. Co-operative banks play a major role in the financial and economic system. They contribute widely to stability thanks to their anti-cyclical behaviour, they are driver of local and social growth with 2.800 locally operating banks and 51,500 outlets, they serve 209 million customers, mainly consumers, SMEs and communities. Europe's co-operative banks represent 84 million members and 713,000 employees and have an average market share in Europe of about 20%.

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The voice of 2.800 local and retail banks, 84 million members, 209 million customers in EU

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Section 1 General Questions relating to the Data Strategy

Q1 Need an overarching EU data strategy to enable the digital transformation of the society

- We share the Commission view about the present problems (see "A European strategy for data") that are holding the EU back from realizing its potential in the data economy. We support the principle of a European approach to avoid national regulatory fragmentation and to benefit from an effect of scale. We are convinced that high data quality and data interoperability are a substantial success factor.
- However, it should be taken into account that there are already general regulations concerning data with the success story of the GDPR but also the Database Directive and sector-specific regulations such as the PSD2 for the financial services sector, which reveal the danger of overlapping, fragmented, inconsistent or redundant regulations. The Data Act 2021 provides the opportunity of an "umbrella function") to consolidate and facilitate all aforementioned initiatives.
- Such an initiative should be based on the European principles of a market economy with freedom of contract and a level playing field for all economic actors with a fair business model for all participants to avoid disadvantages for sustainable existing financial sectors business models as e.g. such of the co-operative banks in Europe.

Q2 More data should be available for the common good

- This approach seems entirely justified for Data created by society as elaborated in the box "Data for the public good" and concerns Data generated by the public sector and - aligned to GDPR - aggregated and anonymised personal data can for example be an effective way of complementing the reports of general practitioners in case of an epidemic. Furthermore, the current context of the Covid-19 crisis justifies this reflection to prevent the spread of epidemics, to anticipate the needs of different orders by region. However, the situation may be different for privately-held data of the private sector.

Q3 Make easier for individuals to give access to existing data held about them by companies

- This question cannot be answered by a single yes/no answer and an additional multiple choice as to the how. EACB members consider that this question generates a lot of other questions around the overall context in which data held and the definitions in the "A European strategy for data" chapter on availability of data is appreciated as a first step to a data taxonomy to make any data-sharing efficient and usable in practice (e.g. with "data for the public good" and "use of privately-held data"). Such approach should be aligned with the proposed sectoral European data spaces (e.g. with the example of efficient processing of "publicly accessible data" in financial services).
- In spite of the economic potential, data sharing between companies has not taken off at sufficient scale, which connected to a lack of clarity about economically sustainable business models. The example of Access-to-Account under PSD II revealed that data interoperability cannot not be a one-way street, in which banks have to give access without the need of a business model and without a fair compensation of the costs to third parties, but third parties can monetarize such access to data. We support the Commission's general principle of facilitating the sharing of data based on free decision about voluntary data sharing or data sharing on a contractual basis.



Q4 Difficulties in recruiting data professionals

- We could encounter difficulties in recruiting data professionals. There is in fact a tension on skills: scarcity and cost of profiles with the experience and the right mix of skills enabling a business approach. There is also the issue of the banking sector's attractiveness concerning some profiles like "data scientist". Important to notice that retention of talent is also a big challenge. Skilled digital and data employees demand not only high salaries but also meaningful projects, creative freedom, flexibility.

Q5 General data literacy across the EU population

- Although results of a special Eurobarometer survey on data protection on 13th June 2019 showed that Europeans are relatively well aware of the new data protection rules, their rights and the existence of national data protection authorities, to whom they can turn for help when their rights are violated, EACB agrees to the need for general data literacy.

Q6 Difficulties in using data from other companies

- There are a number of practical difficulties, but the main problems are cost of external data (to be compared with the "one way" model in PSD2 with free access-to-accounts for third parties without a fair compensation of the banks' costs) and different interpretations of GDPR in different countries.

Q7 Allocation of the rights to use data coming from smart machines or devices that are fair for all parties concerned

- n/a

Q8 EU investments in technologies and infrastructures that enhance data access and use, while giving individuals as well as public and private organisations full control over the data they generate.

While investment in public infrastructures are welcome, investments in market-based technologies and infrastructures should be market-driven.

Q9 Development of common European data spaces in strategic industry sectors and domains of public interest

- We support in principle an initiative aimed at ensuring the secure sharing data, but like to comment that there are crucial differences between public data/data generated by public authorities versus data generated by economic acting companies. While for the first, there is a clear rationale to "share" data (e.g. for health care or public traffic management), the latter should be treaded based on bi-/multilateral contracts, freedom of contract and market economy. Especially when non-personal data moves "to the edge", centralized structures are not optimal and contractual agreements usually provide better results. This also holds true for technologies and infrastructures, which should be provided by the market and/or by market-driven initiatives.
- Regarding the green deal data base, such database should include relevant ESG information already collected by European and national institutions such as governments, central banks, statistical bodies, etc. Member States are already reporting environmental expenditures both at private and public level and applying the classification for monitoring



trade and environmental reporting under the System of Environmental Economic Accounting - SEEA 2012. The EU should open up its databases that collect environmental reporting data and make those re-usable for finance providers and other users alike via the central register. This data is critical for financing, and to track the economic performance of sustainable activities. This would ensure that data is widely accessible across Member States in an open source format. In order to facilitate the collection of ESG data, a certain level of standardization would be necessary.



Section 2.1 - Specific questions on future actions: Data governance

Q10 Data governance mechanisms to capture the enormous potential of data in particular for cross-sector data use

- Before adding any additional EU framework for data access and use it would be essential to map and assess the current legal and regulatory framework, at national, European and international levels, taking into account the different areas of law impacting the global data economy.
- When defining the legislative framework for the governance of common European data spaces the following points should be considered:
 - The governance structure of each common European data space, once set up, should include decision-making mechanisms that are representative of the members of the data space, covering both the activity of the data space and the functioning of the governance structure.
 - When defining rules, tools and processes that determine the use of data (governance) the benefits of sharing should be considered. We therefore believe that data sharing frameworks should take into account business models and offer economic benefits to the organisations contributing data.
 - Given the great variety of data involved in the digital economy, it is essential to define a sectorial data taxonomy to make any data-sharing framework efficient and usable in practice (see details on answer above).
 - When defining rules, tools and processes that determine the use of data (governance) in sector data spaces the general principle of facilitating the voluntary sharing of data should be adopted.

Q11 Q12 Q13 Q14 Standardisation?

- Yes we agree that data governance mechanisms in particular for standardisation activities, but we would have some reservations. The technical and financial implications related to the standardisation activities may, depending on their scope, be counterproductive (significant extension of data availability deadlines, reduction in the volume of available data) and/or consumers or users could ultimately be penalised by passing on the costs to the price of products and services.
- We advocates the establishment of a sufficiently flexible and broad framework whose requirements would be limited to elements that are useful in the perspective of "productive" standardisation: APIs, data exchange protocols and metadata schema. In this context, the provision of funding by EU bodies or national public authorities to ensure open standards and for testing draft standards in practice and developing tools to implement them at an early stage should be preferred

Q15 Q16 Secondary use of data

- In line with the commission's certainty that Europe could become a global leader in innovation in the data economy and its applications we support the fact that public authorities should do more to make available a broader range of data for R&I purposes for the public interest (aligned to GDPR).



Q17 Q18 Q19 Q20 Q21 Data altruism

- This issue of data altruism as presented in the consultation concerns citizens as individuals, who alone can identify the reasons why they would be willing to allow the use of the data they generate for the public good.
- However, the corona crisis revealed a general uncertainty about rules and mechanisms together with missing consultation with the stakeholders as major issues for “tracking apps” et cetera to “share” data.

Q22 Data intermediaries

- Whether intermediaries are useful enablers of the data economy depends on the business model. In a market economy, such relations should be governed by contractual relations (incl. “negative” freedom of contract not to enter into a relationship).
- We support the idea that rules for providers of personal data apps or novel data intermediaries such as providers of personal data spaces could be considered, guaranteeing their role as a neutral broker.

Section 2.2 - Specific questions on future actions: identification of high-value datasets

Q23 Q24 Q25 Q26 Q27 High-value datasets

- As pointed out by the Commission in its Communication the data held by public authorities has been produced with tax payers money and should therefore benefit society under the same conditions throughout the EU. Beyond being free of charge, this sharing should be done in open formats to facilitate the re-use of data. It can take the form of a right of access to administrative documents (excluding personal information, information relating to national security or covered by legal secrets). The use of an API interface, allowing secure real time data transfer across different firms, is also recommended for data exchange with the public sector.

Section 2.3 - Specific questions on future actions: the (self-/co-) regulatory context of cloud computing

Q28 Q29 Q30 The cloud market ...

- Many co-operative banks use “cloud-like” services provided by central data centers belonging to those local banks. There is a risk that this – de-facto – “internal” cloud services could be regulated together with general cloud services, which would be not appropriate given the co-operative model of subsidiary.

Q31 The cloud market currently offers the technological solutions that you need to grow and innovate your business

- We have no difficulty in finding technological solutions that meet our needs to grow and innovate.

Q32 Your organisation’s sensitive data is adequately protected and secured by the cloud services you use

- Of course, in financial services data protection and security are strictly applied.



- However, when negotiating with Cloud Service Providers (CSPs), one can encounter difficulties in the negotiation of certain outsourcing clauses and in particular data protection clauses:
 - Data location: We may encounter some difficulties in obtaining the location of data storage and processing. We usually get vague information related to the geographical area but not precise information about the country.
 - Data backup: Difficult to obtain from the CSP the guarantee of a correct backup of the data during the whole duration of the contract without interruption, and the deletion of the customer's data at the end of the service period.
 - Subcontracting clause: Difficult to obtain notifications from the CSP to inform the bank of all planned or substantially modified subcontracting. Uncertainty of the subcontractor's commitment to meet EBA guidelines obligations.

Q33 The current functioning and constitution of the market for cloud services in Europe

- See answer to Q32, especially due to oligopolistic market structures with market asymmetry and limitation for switching.
- From the point of EACB we want remark that many co-operative banks use "cloud-like" services provided by central data centers belonging to those local banks. There is a risk that this – de-facto – "internal" cloud services could be regulated together with general cloud services, which would be not proportional.

Q34 Risks emerging from the current functioning and constitution of the market for cloud services in Europe

- We encounter difficulties ensuring that our regulatory compliance is achieved in contractual negotiations with Cloud Service Providers (CSPs). That is why we support the European Commission to encourage and facilitate the development of standard contractual clauses for cloud outsourcing by financial institutions. The list in the consultation is a collection of examples across many members without requiring completeness.
- Our recommendations focus on the following priorities:
 - It is partly unclear in which cases 'Cloud Services' are Outsourcing Services, as many CSPs (especially when using cloud services as subcontractors) are claiming that their services are not outsourcing.
 - Sub-contracting/sub-processing of critical or important functions
 - Termination rights especially in the context of exit strategies
 - Service continuity and termination (right to termination, resolution clauses, business continuity and contingency clauses, post termination period for exit
 - Information security
 - Access and audit rights
 - Unilateral change of terms and conditions

Q35 Flexibility to procure/adopt new and innovative cloud solutions if they emerge on the market

- We think that banks in the EACB have the necessary flexibility to adopt new solutions that may appear on the market.



Q36 Q37 Self-regulatory schemes for cloud/edge services

- We know the following self-regulatory schemes for cloud/edge services:
 - Codes of Conduct on cloud switching and data portability: SWIPO IaaS and SaaS Codes of Conduct, two dedicated Codes of Conduct, respectively on Infrastructure-as-a-Service (IaaS) cloud services and on Software-as-a-Service (SaaS) cloud services to reduce the risk of vendor lock-in by cloud service providers.
 - Security Code of Conduct: The recommendations of the Self-regulatory working group on cloud security certification (CSP CERT) address security requirements, conformity assessment methodologies and assurance levels basic, substantial and high in line with the European Cybersecurity Act.
 - EU Data Protection Code of Conduct: currently pending the official endorsement and approval by supervisory authorities.

Q38 How market awareness of these schemes could be raised

- In our view, the European Commission's project of a 'cloud rulebook' to offer a compendium of existing cloud codes of conduct and certification on security, energy efficiency, quality of service, data protection and data portability is a good option to raise awareness and compliance of cloud service providers.

Q39 Self-regulatory approach is appropriate to identify best practices to apply EU legislation or self-regulation

- Question is somehow unclear – please specify what a “self-regulatory approach is appropriate to identify best practices to apply EU legislation or self-regulation relating to:” should mean.
- We strongly support the work to encourage and facilitate the development of standard contractual clauses for cloud outsourcing by financial institutions.
- However, we think that self-regulation might be not sufficient to impose these contractual clauses. Even if we understand that the European Commission will not have the power to make the use of the finalized standard contractual clauses mandatory, we believe that any incentive to use them should be considered. For example, in Communication, the Commission mentions the intention facilitate the set-up of a cloud services marketplace for EU users from the private and public sector and that the participation in the marketplace for service providers will be made conditional on the use of transparent and fair contract condition. We would see here an opportunity to make clear reference to the use of standard contractual clauses (for the financial sector).
- We support a certification system for regulatory compliance in the financial sector: in order to facilitate negotiations between banks and CSPs, we also see the need to establish a certification system for CSPs that facilitates regulatory compliance.
- Finally, activity planning and synchronizing between the EU member states (“Cloud Rulebook”) shall be started immediately and closed by end-Q2 2021 latest, with consequent significant and fast investments in European Cloud Services and Infrastructure enabling the underlying Data Strategy by end-Q2 2022 latest. Otherwise, we would deem the planned EU positioning in the global perspective endangered

Q40 Beneficial for your organisation if applicable rules for cloud and edge would be bundled and corresponding information made available by the European Commission

- We would find beneficial to bundle those rules.



Contact:

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

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