



Mr. Paul NEMITZ
Director Fundamental Rights and Citizenship
DG Just
European Commission
Rue de la Loi, 200
1049 Brussels

Brussels, 28 March 2013
HG/MvB/EB/B4/13-036

e-mail: paul.nemitz@ec.europa.eu

E-MAIL

**Subject: General Data Protection Regulation:
Data processing within a group and group definition**

Dear Mr. NEMITZ,

On behalf of the European Association of Co-operative Banks (EACB) we would like to put forward for your consideration a specific comment concerning the *Commission proposal for the General Regulation on Data Protection (GDPR)*. It concerns the issue of **processing data within a group** and a **group definition**, which - in our view - so far has not received sufficient attention in the debate.

The reason why we ask for your attention to this matter is twofold. The first one is the way in which the provision of bank services is organised in a co-operative bank which warrants the need to be able to exchange data within a group. The second one is the specific definition of what a group is and the need to ensure that co-operative groups can enjoy the same benefits as non-cooperative groups.

As to the first issue, we would like to explain how the provision of services in co-operative banking institutions are organised. Co-operative banks are characterised by the so-called inverse pyramid model whereby multiple local co-operative banks – which are not able to fulfil all their legal obligations on their own because of their size – own a central institution that provides services to them. Examples of this are central institutions doing payments processing on behalf of local banks, specialised mortgage or insurance institutions, etc. This means that in order for a local bank to present a client with, for example, a mortgage offer, data may have to be exchanged between a local bank and the central institution. The text put forward in the Commission's proposal for the Data Protection Regulation would make this kind of inter-group exchange more cumbersome and put the business model of co-operative banks at a disadvantage vis-à-vis other business models. To allow the co-operative bank model to continue to operate smoothly, a clear provision **allowing lawful processing of personal data within a group would need to be introduced in the GDPR**. This could be done by inserting an **additional subparagraph in Paragraph 1 of Article 6, stating that processing of personal data will be lawful where "transferring and processing of personal data is carried out within a group, as defined in Article 4 point 16 of this regulation"**.



But the proposed addition would not address the problem of co-operative banks completely, which brings us to the second point of our letter. Indeed, the definition of a 'group of undertakings' as it stands at the moment, does not cover co-operative groups. This is because the concepts of the 'controlling' and 'controlled' undertakings do not apply to the inverse pyramid structure that characterises co-operative groups and would only create the benefits of the processing of personal data within a group for non-cooperative banks / businesses. In order to ensure a level playing field between cooperative and non-cooperative banks in this context, the EACB would propose to use a more encompassing definition, such as the one which can be already found in Article 2(16) of the EU Regulation 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories¹: **'group' means the group of undertakings consisting of a parent undertaking and its subsidiaries within the meaning of Articles 1 and 2 of the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts or the group of undertakings referred to in Article 3(1) and Article 80(7) and (8) of Directive 2006/48/EC.** An additional advantage of this definition would be that it would ensure consistency of the EU legislation.

We would like to thank you for taking the time to consider the above and stand ready to provide supplementary explanations if required.

Yours sincerely,

Hervé Guider
General Manager

c.c.: Ms. Marie-Helene BOULANGER, Head of Unit - Data protection, DG Just

Contact:

Marieke van Berkel, Tel: +32 (2)286 9847, Email: m.vanberkel@eurocoopbanks.coop

Katarzyna Kobylińska-Hilliard, Tel: +32 (2)289 6855, Email: k.kobylińska-hilliard@eurocoopbanks.coop

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF>