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**BRE-JBZ**

519-151

**From:** Kaai, Geran  
**Sent:** dinsdag 5 mei 2015 10:36  
**To:** BRE-JBZ  
**Subject:** FW: status dataprotection regulation?  
**Attachments:** NL\_Final\_Data Protection\_Letter MS delegations December 2014.pdf

[Redacted]

**From:** [Redacted] [mailto:[Redacted]]  
**Sent:** donderdag 5 februari 2015 09:33  
**To:** Kaai, Geran  
**Subject:** FW: status dataprotection regulation?

Hoi Geran,

Sorry dat ik je hier nog een keer over aanspreek maar je collega is nog niet bij me terug gekomen. Kan ik je anders even bellen/koffie komen doen een dezer dagen voor een algemene update?

Groet,

[Redacted]

**From:** [Redacted]  
**Sent:** 23 January 2015 11:09  
**To:** geran.kaai@minbuza.nl  
**Subject:** status dataprotection regulation?

He Geran,

[Redacted]

Ik wilde eens even polsen hoe de zaken er voor staan. In December hebben we een actie (zie bijgesloten brief) ondernomen naar verschillende lidstaten over :

- De definitie van group
- En ons probleem met de richtlijnen van de bank toezichthouder

Ik had je de brief in kwestie zelf willen sturen maar onze assistent was sneller dan ik en heeft je meegenomen in de lijst met andere attachés.

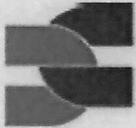
Concreet stellen we in de brief voor een amendement van Finland over groepen te steunen en een toevoeging te doen v.w.b. de richtlijnen van toezichthouders aan een ander amendement wat op tafel zou liggen.

We hebben dit overigens ook met Latvia besproken op 5 januari maar het voorzitterschap hield zich nog erg op de vlakte.

Ik wilde vragen of je weet of deze voorstellen nog op tafel liggen en of onze verzoeken voor Nederland acceptabel zouden zijn.

[Redacted]

Groet,



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**Cc:** [BRE@minbuza.nl](mailto:BRE@minbuza.nl)

Brussels, 10 December 2014  
HG/MvB/EGB/B4/B3/14-231

**E-MAIL**

**Subject : Co-operative Banks' Concerns with proposed Data Protection Regulation (Chapter II) – comments on recital 38 and 39**

Dear Mr KAAI,

The European Association of Co-operative Banks (EACB) is closely following the discussions in Council on the proposed General Data Protection Regulation and has taken a particular interest in two recent developments on recital 38 and 39 to which it would like to contribute with the following;

- the definition of a "group of undertakings" as it stands at the moment, does not cover co-operative groups and would only create the benefits of the processing of personal data within a group for non-cooperative banks / businesses. The amendment to recital 38 from the Finnish delegation (dated 27/10/14, see [here](#)) solves this issue by referring, next to a group of undertakings, to "another similar grouping" and by considering processing of data within a group to constitute a controller's legitimate interest. We would like to express our strong support for this proposed amendment;
- it is important that there is recognition for the fact that guidelines, recommendations or requirements from supervisory authorities can influence the way controllers handle data and constitute ground for "legitimate interest". In this context, we refer to our proposal in annex to explicitly define further grounds for data processing on the basis of "legitimate interest" as per recital 39.

You will find attached in annex a comprehensive explanation of these views and proposals. We would kindly ask you to consider the elements we described to you above in your further considerations of the Regulation.

Of course, we are at your disposal for any questions you may have with the below and we stand ready to provide supplementary explanations if required.

Yours sincerely,

Contact : 

*The voice of 3,700 local and retail banks, 56 million members, 215 million customers*

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10 December 2014

**Co-operative Banks' Concerns with proposed Data Protection Regulation (Chapter II) – comments on recital 38 and 39**

**I. Data Processing within the co-operative group – Support for Finnish amendment to recital 38**

**Lawful ground for processing- Article 6 (1) & related recital 38 of the proposed Data Protection Regulation**

Owing to its specific "inverse-pyramid" structure whereby multiple local co-operative organisations –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, the co-operative (banking) group constitutes a special category of "group of undertakings". The definition of a "group of undertakings" as it stands at the moment, does not cover co-operative groups and would only create the benefits of the processing of personal data within a group for non-cooperative banks / businesses.

Indeed, to offer services to clients, sometimes data has to be processed and transferred within a co-operative group (e.g. between a local co-operative bank and the central institution which develops the mortgage products), and such processing should not be classified as transferring data to third parties.

This being the case, the EACB would like to express strong support for the amendment to recital 38 (from the Finnish delegation, dated 27/10/14, see [here](#)) where data processing within a group of undertakings "**or in another similar grouping**" is considered to constitute a controller's legitimate interest . Indeed, this amendment puts cooperative groups at an equal footing with other groups and provides co-operative banking groups with a legal certainty for processing that they are lacking in the current context.

38) The legitimate interests of a controller including of a controller to which the data may be disclosed may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding. Legitimate interest could exist for example when there is a relevant and appropriate connection between the data subject and the controller, such as the data subject being a client or in the service of the controller. Furthermore, processing of clients' or employees' personal data in a group of undertaking or in another similar grouping can be considered to constitute controller's legitimate interest. In general the presence of a legitimate interest would need careful assessment including whether a data subject can expect at the time and in the context of the



collection of the data that processing for this purpose may take place. In particular such assessment must take into account whether the data subject is a child, given that children deserve specific protection. The data subject should have the right to object to the processing, on grounds relating to their particular situation and free of charge. To ensure transparency, the controller should be obliged to explicitly inform the data subject on the legitimate interests pursued and on the right to object, and also be obliged to document these legitimate interests. Given that it is for Union or national law to provide (...) the (...) basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the exercise of their public duties.

## II. Data Processing for compliance with supervisory recommendations, guidelines or - requirements

### ***Lawful ground for processing- Article 6 (1) & related recital 39 of the proposed Data Protection Regulation***

Banks are increasingly subject to recommendations and guidelines from supervisory authorities (e.g. European Banking Authority, national supervisory authorities) as well as to guidelines from international standard setters (e.g. the Financial Action Task Force in the context of Anti-Money Laundering requirements) that do not constitute a "hard" legal obligation and thus cannot classify for the "legal obligation" ground for lawful processing (Article 6(1)(c)) as such.

At the same time, banks are supposed to comply with the above mentioned supervisory instruments and face serious consequences in case of non-compliance. This being the case, it is important that there is recognition for the fact that guidelines, recommendations or requirements from supervisory authorities can influence the way controllers handle data and constitute ground for "legitimate interest".

In this context, we would like to build further on to what we have seen in most recent Presidency proposal with regard to recital 39 (parts underlined and in bold and italics stemming from our side):

39) The processing of data to the extent strictly necessary for the purposes of ensuring network and information security, i.e. the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted data, and the security of the related services offered by, or accessible via, these networks and systems, by public authorities, Computer Emergency Response Teams – CERTs, Computer Security Incident Response Teams – CSIRTs, providers of electronic communications networks and services and by providers of security technologies and services, constitutes a legitimate interest of the data controller *concerned*. This could, for example, include preventing unauthorised access to electronic communications networks and malicious code distribution and stopping 'denial of service' attacks and damage to computer and electronic communication systems. The processing of personal data ***strictly*** necessary for the purposes of preventing fraud, ***as well as for compliance with guidelines, recommendations or requirements of supervisory authorities to which the controller is subject,*** also constitutes a legitimate interest of the data controller concerned. The processing of personal data for direct marketing purposes can be regarded as carried out for a legitimate interest.