



Brussels, 16 January 2019
FINAL

EACB comments on Guidelines 4/2019 on Article 25 Data Protection by Design and by Default adopted on 13 November 2019

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%.

For further details, please visit www.eacb.coop

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

EACB AISBL – Secretariat • Rue de l'Industrie 26-38 • B-1040 Brussels

Tel: (+32 2) 230 11 24 • Fax (+32 2) 230 06 49 • Enterprise 0896.081.149 • lobbying register 4172526951-19
www.eacb.coop • e-mail : secretariat@eacb.coop



Comment on the Guidelines

The European Association of Co-operative Banks (EACB) welcomes the opportunity to provide the European Data Protection Board (EDPB) with its comments on the draft Guidelines 4/2019 on Art. 25 Data Protection by Design and by Default adopted on 13 November 2019.

With this document we would like to highlight some aspects of the draft Guidelines that are not suitable for co-operative banks.

In particular, we would like to highlight two examples in the draft Guidelines concerning the implementation of data protection principles:

- Lawfulness, example under paragraph 63, pages 15-16: This example doesn't take into account that several Member states have country-specific legislation in relation to banks' right to obtain credit data in connection with loan applications. Therefore, the notion that consent is always required to obtain third-party data for loan applications is not accurate. Moreover, as we have observed in our response to the Guidelines on the provision of online services to data subjects, we believe the EDPB applies an overly restrictive interpretation of what is covered by Art. 6(1)(b) GDPR.
- Accuracy, example under paragraph 74, pages 21-22: This example states that banks should never rely solely on AI to decide whether to grant loans. We believe this statement is too draconian and ignores the complexity of the assessment required by Art. 22 GDPR. For example, the relevant Article 29 Working Party Guidelines¹ stressed how the exception contained in Art. 22(2)(a) can be used to reject job applications. By analogy, this interpretation could be invoked in the case of loan applications. The example also requires that the AI should provide "non-discriminatory results". Considering a very simple case of (1) a loan decision only based on monthly household income (to be able to repay the loan) and (2) the fact that in Germany women get lower salaries in average, then a question arises as to whether this would be "discrimination" or simply the economic rationale of the bank based on objective criteria.

Finally, the section on "cost of implementation" (page 8, paragraph 24) seems to imply, in stating that controllers should "plan for and expend the costs necessary", that cost is not an element among others to be considered in the correct implementation of the data protection principles but rather an objective, almost absolute fact. We invite the EDPB to delete this sentence in the final version of the Guidelines as the rest of the paragraph is much clearer on the nature of this element of Art. 25.

Contact:

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

For further information or questions on this paper, please contact:

- Ms Marieke van Berkel, Head of Department Retail Banking, Payments, Financial Markets (marieke.vanberkel@eacb.coop)
- Ms Chiara Dell'Oro, Senior Adviser, Retail Banking and Consumer Policy (chiara.delloro@eacb.coop)

¹ Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, WP251rev.01, page 23.