



Brussels, 09.09.2014

1. Lawfulness of processing- Legal obligation

Lawfulness of processing- "Legal obligation"- Article 6(1)(c)

COM proposal	EP Report	Council position	EACB suggestion
processing is necessary for compliance with a legal obligation to which the controller is subject	processing is necessary for compliance with a legal obligation to which the controller is subject	processing is necessary for compliance with a legal obligation to which the controller is subject	Processing is necessary for compliance with a task or obligation to which the controller is subject bound by virtue of a legislative act or secondary regulation
<i>Justification</i> <i>It is important that secondary regulation such as orders or recommendations from supervisory authorities on the basis of EU or national legislation be recognised as "legal obligation" as well.</i> <i>This is key to ensure legal certainty for banks operating in an environment where decisions taken on a risk-based basis play an ever important role.</i> <i>We also note for example the increased influence of European Supervisory Authorities in the financial services industry¹ who, by publishing guidelines, recommendations and other type of instruments, introduce a new and additional stream of requirements to comply with.</i> <i>Also at the national level, supervisory authorities interpret and assess risk in a dynamic way -with matching recommendations, orders - for example in the context of national and tailored follow-up given to (EU) Anti-Money Laundering legislation.</i>			

Lawfulness of processing- "Legal obligation"- Recital 36a (new)

COM proposal	EP Report	Council position	EACB suggestion
-	-	-	"secondary legislation" in the context of legal obligations as per Article 6 (1) (c) is meant to be understood as to include orders, guidelines, opinions or recommendations issued on the basis of EU and national legislation to which the controller is subject
<i>Justification</i> <i>For the reasons as mentioned under the justification to our amendment regarding Article 6 (1) (c),</i>			

¹ The European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) as established by Regulation 1092/2010



it is important that the concept of "secondary legislation" is clarified. In the context of financial services, this is in particular meant to apply to the performance of a task carried out for assessing creditworthiness or for purposes of fraud prevention and detection.

Lawfulness of processing- "Legal obligation"- Recital 36

COM proposal	EP Report	Council position	EACB suggestion
Where processing is carried out in compliance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority, the processing should have a legal basis in Union law, or in a Member State law which meets the requirements of the Charter of Fundamental Rights of the European Union for any limitation of the rights and freedoms. It is also for Union or national law to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public administration or another natural or legal person governed by public law, or by private law such as a professional association.	Where processing is carried out in compliance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority, the processing should have a legal basis in Union law, or in a Member State law which meets the requirements of the Charter of Fundamental Rights of the European Union for any limitation of the rights and freedoms. This should include also collective agreements that could be recognised under national law as having general validity. It is also for Union or national law to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public administration or another natural or legal person governed by public law, or by private law such as a professional association.	Where processing is carried out in compliance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority, the processing should have a (...) basis in Union law or in the national law of a Member State. (...). It should be also for Union or national law to determine the purpose of the processing . Furthermore, this (...) basis could, within the limits of this Regulation, determine specifications for determining the controller, the type of data which are subject to the processing, the data subjects concerned, the entities to which the data may be disclosed, the purpose limitations, the storage period and other measures to ensure lawful and fair processing. It should also be for Union or national law to determine whether the controller performing a task	Where processing is carried out in compliance with a legal obligation to which the controller is subject bound by virtue of a legislative act or secondary regulation or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority, the processing should have a legal basis in Union law, or in a Member State law which meets the requirements of the Charter of Fundamental Rights of the European Union for any limitation of the rights and freedoms It is also for Union or national law to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public administration or another natural or legal person governed by public law, or by private law such as a professional association.



		carried out in the public interest or in the exercise of official authority should be a public authority or another natural or legal person governed by public law, or by private law such as a professional association, where grounds of public interest so justify including for health purposes, such as public health and social protection and the management of health care services.	
<i>Justification</i> See justification used in the context of the amendment to Article 6 (1) (c). In addition: the last part of the recital has been deleted as current formulation could lead to too much uncertainty on the side of the controller who – not necessarily governed by public law- is at all times supposed to fulfil the legal obligation he is under.			

2. Definition of "Group"

Definition of "Group"- Article 4(16)

COM proposal	EP Report	Council position	EACB suggestion
'group of undertakings' means a controlling undertaking and its controlled undertakings	'group of undertakings' means a controlling undertaking and its controlled undertakings	'group of undertakings' means a controlling undertaking and its controlled undertakings	'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 10(1) and Article 113(6) and (7) of EU Regulation No 575/2013
<i>Justification</i> The concept of a group as currently defined would not apply to co-operative banking groups. The EACB proposes to amend the definition of group using definitions already used in existing			



legislation such as the Capital Requirements Directive and the EMIR regulation.

Definition of "Controller"- Article 4(5)

COM proposal	EP Report	Council position	EACB suggestion
(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes, conditions and means of the processing of personal data; where the purposes, conditions and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;	(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes conditions and means of the processing of personal data; where the purposes- conditions and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;	(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes (...) and means of the processing of personal data; where the purposes (...) and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;	(5) "controller" means the natural or legal person, public authority, agency, a group as defined in Article 4 Paragraph 16 , or any other body which alone or jointly with others determines the purposes, conditions and means of the processing of personal data; where the purposes, conditions and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

Justification

In order to make the "group" definition then truly useful, a cross-reference to the concept should be made in the definition of "controller" (Article 4 (5)).

Data transfers within a group as a lawful ground for processing- Article 6 – paragraph 1 – point (g) (new)

COM proposal	EP Report	Council position	EACB suggestion
-	-	-	(g) (new) When at least one of the above mentioned grounds for lawful processing is applied, transferring and processing of personal data is carried out within a group, as defined in Article 4 point 16 of this regulation shall be considered as equally lawful.

Justification

There needs to be a more general provision ensuring that the processing and transferring of data amongst the entities under the same control forming a co-operative group is lawful and does not require data subject's consent each time the data is transferred within a group. Therefore, we propose the above amendment to Article 6(1) on lawful processing where data transfers within a group is indeed considered lawful, provided that one of the preceding grounds for processing (e.g. consent, legitimate interest, legal obligation) as mentioned in Article 6(1) is fulfilled.



3. Right to be forgotten/ erasure

Right to be forgotten/ erasure- Article 17(1a)-new- and 17 (3)(d)

COM proposal	EP Report	Council position	EACB suggestion
-	-	-	1 a. The right to erasure shall not apply when the retention of personal data is necessary for the performance of a contract between an organisation and the data subject, or when there is a regulatory requirement to retain this data, or for fraud prevention purposes;
(3) (d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the right to the protection of personal data and be proportionate to the legitimate aim pursued;	(3) (d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject; Member State laws shall meet an objective of public interest, respect the right to the protection of personal data and be proportionate to the legitimate aim pursued;	Correspondent content covered by point (b) of subparagraph (3): (3) (b) for compliance with a legal obligation to process the personal data by Union or Member State law to which the controller is subject; or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;	(3) (d) for compliance with a legal obligation to retain the personal data by Union or Member State law to which the controller is subject, Member State laws shall meet an objective of public interest, respect the essence of the right to the protection of personal data and be proportionate to the legitimate aim pursued; including secondary regulations such as orders, guidelines, opinions or recommendations issued on the basis of Union or Member State law;
<i>Justification</i> As mentioned with reference to the legal obligation as the basis for processing (see our comments on Article 6(1)(c)), banks must be able to fulfil their legal and contractual obligations. This holds in particular for, for example, creditworthiness assessments exercised in the course of entering into a credit agreement, but also for the storage of data for a minimum period of time in the context of fraud prevention. Therefore, and while recognizing that the "right to be forgotten" is an important one- especially in the context of social networks, the exemptions to the right shall be targeted and clear.			