

**BCS, The Chartered Institute for IT
Consultation Response to:**

**Call for Evidence on the Review of the Balance of Competences between
the United Kingdom and the European Union
Dated: 1 July 2014**

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BCS, The Chartered Institute for IT

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Review of the Balance of Competences between the United Kingdom and the European Union
Dated: 1 July 2014

Consultation Document:

https://consult.justice.gov.uk/digital-communications/balance-of-competency-review-information-rights/consult_view

Call for Evidence on the Review of the Balance of Competences between the United Kingdom and the European Union

Consultation Questions:

- 1. What evidence is there that the EU's competence and the way it has used it (principally the Data Protection Directive) has been advantageous or disadvantageous to individuals, business, the public sector or any other groups in the UK?**

The 1995 EU Data Protection Directive attempted to establish uniform data protection principles and rights across EU member states. This has provided a degree of predictability for companies and individuals. However, some companies and organisations note that the differences in application and enforcement of the law across the EU, causes them to incur additional business and compliance costs as they seek to navigate these differences.

- 2. What evidence is there that the EU's competence and the way it has used it (principally the Data Protection Directive) strikes the right balance between individuals' data protection rights and the pursuit of economic growth?**

We do not have any evidence for this question.

- 3. What evidence is there that the EU's competence and the way it has used it (principally the Data Protection Directive) is meeting the challenges posed by the increasing international flow of data, technological developments, and the growth of online commerce and social networks?**

While acknowledging that the 1995 EU Data Protection Directive is written in a technology neutral way, technology companies say that the legislation is now out of date because it has not kept pace with changing technology. As a result, the concepts of data controller, data processor and consent do not always fit neatly with new realities of cloud computing, online marketing and user generated social media.

- 4. What evidence is there that proposals for a new EU Data Protection Regulation will be advantageous or disadvantageous to individuals, business, the public sector or any other groups in the UK?**

The proposed EU Data Protection Regulation aims to allow the law to better reflect current and emerging technology, extend key definitions, add new concepts, increase enforcement powers and ensure that the same legal text applies uniformly to all member states. This has numerous advantages to businesses because with these changes comes increased clarity, precision in the law and the hope of more uniform compliance. Individuals will benefit from greater rights and more robust enforcement mechanisms.

However, concerns have arisen about the increased cost to businesses and organisations seeking to comply with the new requirements. The most notable costs include the introduction of Data Protection Officers (for smaller companies), increased cost of internal record keeping, new costs to data processors for their increased duties, the cost of data breach notification and the costs and financial risks of substantially higher fines.

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5. What evidence is there that the right to access documents of the EU institutions has been advantageous or disadvantageous to individuals, business, the public sector or any other groups in the UK?

We do not have any evidence for this question.

6. How would UK citizens' ability to access official information benefit from more or less EU action?

The UK's competence to legislate for greater access to official and public information is currently adequate. The ongoing need to actively balance between these rights and data protection rights is done by the Information Commissioner's Office, the Information Tribunal and the UK Courts. We cannot see the additional need for the EU to develop further competences in this area. The UK position shows that this can be adequately dealt with by each member state.

7. How could action, in respect of information rights, be taken differently at national, regional or international level and what would be the advantages and disadvantages to the UK?

We do not have any evidence for this question.

8. Is there any evidence of information rights being used indirectly to expand the competence of the EU? If so, is this advantageous or disadvantageous to individuals, business, the public sector or any other groups in the UK?

Over the last few years, there has been a growth in EU data protection-related information rights laws affecting the information technology sectors. For example, laws governing cookies, telecommunications data and personal data breach notification. As legislative gaps arise, the enlargement of the borders of an EU competence can occur incidentally and incrementally. However, over time, this can extend the reach and effects of the original competence.

On a whole, these new laws intend to offer individuals greater rights. However, evidence of a greater public awareness of these rights and increased use of these has not been forthcoming. Businesses have reported that these new rules have been burdensome and costly in terms of implementation and compliance.

9. What is the impact on EU competence of creating an entirely new legal base for making data protection legislation that is not expressly linked to the EU's single market objectives?

We do not have any evidence for this question.

10. What future challenges or opportunities in respect of Information Rights might be relevant at a UK, EU or international level; for example cloud computing?

BCS has identified a number of emerging technologies, namely cloud computing, social networking and identity management systems that track users, which require special consideration, now and in the future. They pose challenges for law makers and for governance. As these technologies further evolve, it is important that those exercising competence to regulate seek to understand these

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technologies, enact proportionate legislation that does not impede information technology innovation and keep legislation and guidance up to date and relevant to foster industry and individual buy-in.

11. Is there any other evidence in the field of EU Information Rights that is relevant to this review?

While all member states have implemented the 1995 EU Data Protection Directive, a far fewer number have enacted comprehensive freedom of information laws allowing access to information held by public bodies (the EU wide Environmental Information Regulations, is a notable exception). Freedom of Information laws flow from member states' competence, but these laws also uniquely interface with data protection law. This interface is developing a line of jurisprudence and application that will over time create gaps between how publically held data and personal data are understood to relate to each other across the EU. This gap should be noted and monitored.

End

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