Council of Mortgage Lenders

Call for views on the General Data Protection Regulation derogations

Response by the Council of Mortgage Lenders to the Department for Culture Media and Sport

Introduction

1. The CML is the representative trade body for the residential mortgage lending industry which includes banks, building societies and specialist lenders. Our 136 members currently hold around 97% of the assets of the UK mortgage market. In addition to lending for home-ownership, the CML members also lend to support the social housing and private rental markets.

2. We welcome the opportunity to respond to the Department of Culture Media and Sport's (DCMS) call for evidence on the General Data Protection Regulation (GDPR) derogations. Our response focuses on the main points of relevance to the residential mortgage lending industry. Any queries can be directed to

Theme 7 – sensitive personal data and exceptions

3. We favour the retention of the provisions of paragraph 1 of Statutory Instrument 2000 No. 417: The Data Protection (Processing of Sensitive Personal Data) Order 2000 (SI 417). This paragraph allows the processing of sensitive personal data when it is in the substantial public interest; is necessary for the purposes of the prevention or detection of any unlawful act; and must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice those purposes. It allows for the processing of fraud data for detection as well as prevention.

Theme 8 – criminal convictions

4. Under Article 10 of the GDPR, firms will need to have a clear legal basis for processing data in order to prevent and detect criminal offences from May 2018. Using the general derogation under Article 23, DCMS needs to explicitly authorise data processing for the prevention and detection of fraud. Therefore, DCMS will need to provide a legislative basis for processing criminal conviction data, which includes appropriate safeguards. This should accommodate implementing legislation under the Fourth Money Laundering Directive as appropriate.

5. Article 10 also requires the appointment of an official authority in order for firms to process information on criminal convictions and offences, and meet other regulatory obligations. We understand that the Home Office will be designated as the official authority. Firms need certainty that they will be able to continue to process criminal conviction data, and so we need swift clarity on how the Home Office will carry out this function.

Theme 9 – rights and remedies

6. As set out above, under theme 8, DCMS will need to set out in legislation, restrictions on new data subject rights where this is required for reasons of prevention and detection of financial crime and on public interest grounds.

7. Under Article 22, DCMS will also need to set out the exact parameters of how firms can use automated decision making, including data profiling. Appropriate derogations should be created to support the use of automated decision making and profiling, to assess creditworthiness, and to protect against fraud.

Theme 13 – Restrictions

8. We favour retention of the restrictions that currently exist under article 29(3) of the Data Protection Act, for example the prevention or detection of crime.

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