

## **Call for Evidence: Review of the Balance of Competence: Information Rights - Comments from the Department for Economy, Science and Transport**

Comments are provided to address specific questions in the Call for Evidence.

**Q1. 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?**

- Regard the ability of the single market to provide a balance between protection of information rights / access to information and the promotion of economic growth to be entirely dependent upon balanced, harmonised action across Member States.

**Q2. 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? Q3. 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?**

- Recognise that there is a need to update the EU data protection legislation to ensure it remains effective for both individuals and business.
- Effective harmonisation of laws across Member States is important, but there must be sufficient flexibility to allow businesses to innovate and grow.
- The protection of individuals' privacy and the pursuit of economic growth should not be attained at the expense of one or the other. For example, there could be a real restriction to R&D in the field of health technology innovation if universities and the healthcare profession experienced greater restrictions in the 'free' movement of data.
- Note that compliance with these new rules will impose a number of costs on SMEs including the need to hire additional personnel, purchase new IT software, and consult with data protection authorities in advance of certain new projects.
- Agree that rules limiting the use of personal information, particularly in advertising, will impact all businesses engaged in targeted consumer marketing. Given that SMEs increasingly rely on online advertising to drive revenue growth, there is a potential adverse impact.
- A more harmonised level of 'protection' across the 28 member states could be a good thing for economic growth if consistently applied by all member states; through for example any reduction in legal fragmentation and or other regulatory burdens that occur across borders.

- Clear evidence from past ‘improvements’, such as the Data Protection Act of 1998 and the FOI Act 2000, that they can also impose a financial burden that is particularly felt by SMEs. It is arguable that these two Acts already provide a high level of individual and business protection.

**Q9. 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? Q10. What future challenges or opportunities in respect of Information Rights might be relevant at a UK, EU or international level; for example cloud computing?**

- There is a clear risk to our SMEs through the proposed EU Data Protection Regulation - in regard to potential compliance costs associated to the direct application of the new regulation and to the indirect effects on job growth and business creation.
- Compliance with the proposed regulation could present a number of barriers to our SMEs and even the larger companies, such as the legal and other implications for data protection / information access, storing of said data, and the design of systems and procedures for data protection.
- Another challenge is the designation of a data protection officer (DPO). This obligation will apply to all public sector bodies and enterprises with 250 or more employees, if regularly processing personal data.
- Note that the UK Government published its own impact assessment of the proposed Regulation in 2012, in response to the European Commission's impact assessment. Although the UK Government concluded that there are benefits to be gained from the reduction in legal fragmentation, there would also be a high cost to business of implementing the proposed administrative and compliance measures.

## **Overall**

- Recognised that the regulation would provide individuals with important and usable rights but presents challenges to technology in business. The importance of striking the right balance needs to be recognised.
- Regulation of the privacy and integrity of personal information evidenced through greater emphasis of trust, confidence, transparency, governance and accountability should be a good thing.
- Privacy and safeguarding information have become major reputational issues for businesses and governments, and where other policy areas have improved ‘harmonisation’, this has been shown to help.

- The main potential weaknesses of the proposed regulation are from it being too prescriptive for SMEs in terms of technology and regulatory compliance approach. It will potentially be seen as bureaucratic and burdensome with a greater focus on “how” business organisations should do things, rather than on “what” they should be achieving.
- Not easy to determine on how much effort and time will need to be devoted to the regulation for processing personal data and maintaining oversight of information rights, as evidenced by the 2012 UK impact assessment.