



FLA SUBMISSION TO MINISTRY OF JUSTICE CALL FOR EVIDENCE ON THE REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION

INTRODUCTION

1. The FLA is the leading trade association for the asset, consumer and motor finance sectors in the UK. Our members include banks, subsidiaries of banks and building societies, the finance arms of leading retailers and manufacturing companies, and a range of specialist lenders.
2. FLA members provided £88.9 billion of credit to UK businesses and households in 2013. Of this, £66.5 billion was in the form of consumer credit, representing almost one-third of UK consumer lending. £22.4 billion financed business equipment investment in the private and public sectors, representing almost 30% of all UK fixed capital investment. FLA members provided £20.8 billion of motor finance in 2011 and financed three-quarters of all new car registrations.

Data and the credit industry

3. As the Call for Evidence recognises, the processing of personal information is crucial to the credit industry. Properly organised and controlled data-sharing enables lenders to make responsible lending decisions. It is clearly very important that the personal data involved is properly protected and handled so as to minimise the opportunity for fraud.
4. Like most lenders, FLA members collect and store personal information relating to their customers. This is done to the extent necessary to process an application for credit, to provide credit to the customer, and to service the credit agreement during its lifetime. The procedures are robust and kept under constant review.
5. Certain elements of this information are shared between lenders via the credit reference agencies (CRAs). These include name, address, date of birth, and payment profile. Sharing this information enables other lenders to gauge an individual's level of indebtedness and thus take responsible lending decisions. For this reason, consumer advocacy organisations support the sharing of information for such purposes. The shared information is also important in verifying an individual's identity, managing risk and minimising potential bad debt.

6. FLA members may also share information on an individual with CIFAS (the UK's Fraud Prevention Service) if that individual has undertaken a proven fraud. This is important in enabling other lenders to identify potential fraudulent applications.
7. Our submission focuses solely on the data protection questions.

QUESTIONS

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?

The FLA regards the 1998 Data Protection Act, which implements the 1995 Data Protection Directive (DPD), as a sound piece of legislation that protects consumers' fundamental human right to respect for their private and family life, their home and their correspondence.

One concern we have is that because responsibility for data protection lies with DG Justice and national justice ministries, insufficient attention is given to business' perspective. This is not the case here in the UK but in other EU Member States where privacy concerns prevail. This could be addressed by formalizing collaboration with economically-minded DGs and national ministries.

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?

The flexibility given to Member States is important because it reflects different cultural and historical attitudes to data protection. We welcome the approach taken by the UK Information Commissioner's Office which strikes the correct balance between protecting individuals' data and allowing legitimate businesses to flourish. When the Act is clearly breached, the legislative framework provides for robust enforcement action.

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?

We acknowledge that the legislative framework needs updating to reflect technological developments. However, care needs to be taken to ensure that reforms do not inadvertently damage economic sectors for they are not primarily targeted.

Q4 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 European Commission has proposed a regulation as the most appropriate legislative instrument for the new data protection framework to create a single regime. However, such a prescriptive outcome leaves no flexibility to interpret legal terms (e.g. “legitimate interests”) or to reflect the nuances of national markets.

The new data protection framework should be outcomes-based rather than the one-size-fits-all approach set out in both the draft proposal and the European Parliament’s First Reading. This would ensure a pragmatic approach which supported innovation and growth. Unfortunately MEPs voted to ban automated processing, which is a core feature of a dynamic credit market. This will result in increased timescales (which inconvenience the consumer and do not result in better credit decisions) and costs of credit applications.

The ‘right to be forgotten’ will be disadvantageous to both lenders and borrowers if they are unable to get a loan because vital information has been withheld.

The emphasis on data minimisation conflicts directly with the credit industry’s need to gather data in order to lend responsibly and prevent fraud.

The future data protection regime should be pitched at a level that reflects the diversity of uses for data and is able to adapt to sectoral circumstances rather than a blanket approach.

Q5 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?

No comment.

Q6 How would UK citizens’ ability to access official information benefit from more or less EU action?

No comment.

Q7 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?

No comment.

Q8 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?

No comment.

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?

Whilst article 16 of the Lisbon Treaty establishes a clear basis for Council of Ministers and European Parliament to regulate the processing of personal data by Member State authorities when carrying out activities which fall within the scope of EU law, the full scope of article 16(2) is not clear. It would appear to primarily target personal data processed by and between public authorities rather than private sector data. Furthermore, it does not preclude the EU continuing to regulate data protection in the private sector on the basis of internal market provisions.

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?

No comment.

Q11 Is there any other evidence in the field of EU Information Rights that is relevant to this review?

No comment.

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