



28 March 2012

Our ref: ICAEW Rep 45/12

Ollie Simpson
Ministry of Justice
102 Petty France
London SW1H 9AJ

By email: informationrights@justice.gsi.gov.uk

Dear Mr Simpson

EU Data Protection Proposals

ICAEW welcomes the opportunity to comment on the call for evidence *EU Data Protection Proposals* published by the Ministry of Justice on 7 February 2012, a copy of which is available from this [link](#). Thank you for allowing us to submit these after the end of the comment period identified in the Call for Evidence, which arose due to our late awareness of its existence.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

This response reflects consultation with the ICAEW Business Law and Anti-Money Laundering Committees which include representatives from public practice and the business community. The Business Law Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

Points of Concern

We welcome the proposals, which in general provide positive and helpful updating and strengthening of the current EU provisions. However, we are concerned over the onerous and inflexible nature of some of the proposals, which if enforced consistently could unnecessarily damage the competitiveness of the EU on a global basis, and if enforced inconsistently could damage the single market, introducing adverse competitive pressures for entities to site their main establishment in a Member State with perceived weaker enforcement practices. Concerns in these areas have already been raised by the Information Commissioner and by TheCityUK LOTIS (Liberalisation of Trade in Services) Committee, with which we concur.

We are also fear that certain aspects of the proposals could weaken the effective implementation of the Money Laundering Directive (which also covers terrorist financing and the proliferation of weapons of mass destruction) and could in consequence weaken the safety and security of EU citizens. There is a

lack of consistency of language and approach, between these proposals and the EU Anti-Money Laundering (AML) requirements, which could make them less effective and add to the burdens placed on those entities (including almost all financial services institutions and professional firms for lawyers and accountants) which are within the scope of both sets of legislation.

Examples of this are:

- Chapter 3 of the Regulation does not allow a carve out from the subject access rights equivalent to that in the Data Protection Act which currently allows reporters not to disclose information relation to the prevention and investigation of crime. Unless reporters can keep their money laundering reporting records confidential these may become visible to the criminal suspects, thus representing a serious impediment to the investigation and prevention of crime and to the security of reporters.
- The effectiveness of the AML regime depends on the ability of those entities within the scope of the AML regime to obtain and retain sufficient information to enable them to carry out their obligations in relation to continuing due diligence and understanding of the client relationship. While the data minimisation which is a key feature of these proposals is understandable, it is important that the ability of professional advisers to obtain and retain the necessary information is not restricted in a way that would damage their ability to form the necessary judgements. In particular, individual data subjects should not be able to demand the restriction of the data held on them for this purpose.
- Money Laundering and terrorist financing are by their nature not limited to Europe. Whilst the concerns of the Art.29 Working Party in relation to processing carried out to comply with non-EU obligations are understandable, many organisations including international accountancy firms need to adopt wider standards (such as applying US OFAC rules). Given the fact that many serious crimes arise outside the EU (eg, drugs in Afghanistan or South America, corruption in Africa) the cross border nature of such crime and the currencies used (frequently US\$), entities must be able to share information internationally in a way which promotes cross border investigation and prevention of cross border crime.

Please let us know if there is any further way in which we can assist you in developing the UK position on these proposals, now or as negotiations progress.

Yours sincerely

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