



Information Commissioner's Office

The Information Commissioner's Office response to the Department for Business, Innovation and Skills' consultation on the transposition of the revised Mutual Recognition of Professional Qualifications Directive (2005/36/EC)

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000, the Environmental Information Regulations and the Privacy and Electronic Communications Regulations 2003. He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to respond to this consultation on the method of implementing the revised Directive on the Recognition of Professional Qualifications (PQD) ("the Directive").

We appreciate the purpose of the consultation is to seek the views of those affected by the implementation of the Directive, and we note the consultation questions largely relate to areas falling outside the ICO's remit. At this early stage we can therefore only offer general comments that focus on those areas where the method of implementation may give rise to data protection concerns. We take this opportunity to offer our advice and assistance to BIS in helping address any such issues.

The European Professional Card

We note that revision of the PQD involves the introduction of a European Professional Card (EPC), but that a professional is not obliged to use an EPC if they would prefer to use a traditional method of application.

Generally we support the development of innovative ways in which an individual's personal data may be used to benefit them, provided potential risks to privacy are identified and appropriately dealt with. We encourage data protection and privacy issues to be considered at the earliest possible opportunity in order that an effective 'privacy by design' approach may be taken.

Exchange of information - IMI

We understand that under the revisions to the PQD use of the Internal Market Information System (IMI) will become obligatory for Competent Authorities.

The ICO sits on the IMI Supervision Co-ordination Group, which comprises of national data protection authorities and the European Data Protection Supervisor (EDPS). We will coordinate our approach where appropriate to do so with both the EDPS which is designated chair of this group together with other national supervisory authorities. Our role with regards to the IMI supervision is to ensure the rights of data subjects within our jurisdiction are protected and such coordination will be important in certain matters. For example, we will be required to check that the specific exceptions or limitations laid down in national law regarding the obligation of transparency (e.g. exempting certain types of public authorities or procedures from the requirement to provide information) are properly implemented when communicating with individuals seeking access to their information. In the case of the UK, this refers to the exemptions under Part IV of the UK Data Protection Act 1998, which may have an impact on providing information¹. We therefore offer our support and assistance to BIS on data protection matters in respect of the IMI should it be required – and we are currently commencing a state of play of UK compliance compared with other countries.

We note it is referenced in the consultation that the IMI is compliant with the DPA - this is rather a sweeping statement implying general ongoing compliance in the footnote of the consultation; rather it would be more accurate to consider inclusion of a statement in future communications that the IMI has been designed with data protection safeguards in mind² from its inception and competent authorities under UK jurisdiction processing data for the purpose of the IMI and its related activities are required to comply with the DPA, subject to the regulatory oversight of the Information Commissioner's Office, as the UK's independent regulator and 'National Supervisory Authority' in accordance with Article 21 of the IMI Regulations. We would welcome to be involved in dialogue with BIS on future guidance on how IMI may be used effectively where data protection is concerned.

¹ See also European Commission's website for an overview of these exceptions across Europe: http://ec.europa.eu/internal_market/imi-net/docs/data_protection/chart_rules_exceptions_en.pdf

² See reference on European Commission's website to the data protection considerations at: Link: Title 'Summary of data protection guidelines for IMI users' http://ec.europa.eu/internal_market/imi-net/docs/data_protection/data_protection_guidelines_summary_en.pdf

The consultation also poses a question arising from the impact assessment, relating to whether affected Competent Authorities are able to provide more information on how many additional staff may need to use IMI and the potential on-going costs of using the system. As the responsible regulator, we would use this opportunity to point out that regard must be had to the sensitive nature of the information and therefore each competent authority needs to consider practical ways of limiting the number of individuals who actually need access to this data.

Alert mechanism

We understand the importance of an alert mechanism, but anticipate there will be a number of data protection considerations to take into account in order ensure it operates in accordance with the law effectively in practice. We note some of the data to be shared is likely to be 'sensitive personal data', for example where it relates to the commission of actual or alleged offences, and that under the DPA sensitive personal data should be afforded a higher level of protection.

Some data protection points to address would include ensuring, as per the Directive, that the appropriate retention period is followed; the information shared is not excessive and is limited to what is relevant and necessary in the circumstances; and that appropriate security/organisational measures are taken to protect the data such as limiting the number of individuals at each competent authority who are authorised to access the data.

We note the Government will consult again in 2015 on the text of the draft UK implementing regulations. We will engage with BIS and respond to any future consultations as necessary and would appreciate being kept informed of future developments and related consultations in relation to this matter.

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