

Non-paper on the Free Flow of Data initiative

Joint support from:

Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovenia, Sweden, United Kingdom

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Modern economies and societies thrive on the basis of free movement of data. The explicit purpose of the Single Market is to create a competitive environment by removing barriers between EU Member States. Europe still struggles with market fragmentation in many sectors; paradoxically, this is particularly the case in the digital arena.

The EU Single Market cannot flourish without the free movement of data. Companies of all sizes and in all sectors are increasingly dependent on data flows; innovation is only possible where data can flow safely and freely across borders. Unjustified data localisation requirements within the Single Market undermine the development of innovative new areas of the European economy and pose a costly and unnecessary obstacle to the smooth functioning of the Single Market.

National legislation should not be an artificial barrier to market access for enterprises from other Member States. Data localisation requirements imposed by Member States have already forced cloud service providers and European start-ups to establish themselves in specific or several parts of the EU, with costly and unnecessary redundancy, and has impeded the move to cloud by governments. Such restrictions prevent economies of scale and in particular thwart the growth of EU-based companies that can compete globally. Data localisation also has a negative impact on energy efficiency as companies are forced to locate data centres in a number of Member States. According to preliminary assessment if existing data location measures are removed, EU GDP gains of up to €8 billion p.a. (up to 0.06% of GDP)"¹.

The EU has recently adopted legislation confirming the free flow of personal data within the EU (GDPR). We now call on the Commission to deliver a legislative proposal that addresses other unjustified barriers to free flow of data such as localisation requirements. As a general principle, it should not matter where data are stored, but rather how data are stored. It is important that adequate safeguards in regard to confidentiality, availability and integrity are in place, but there are now alternatives to localisation requirements that allow for equal or greater data security.

Several amongst us have taken concrete steps to reduce or eliminate requirements for localisation in domestic law and practice. Proposed legislation should expand this principle to the entire Single Market and incorporate the following elements:

- Member States should as a general rule not impose direct or indirect data localisation requirements on their territories. The scope of this rule should be broad, and should, where appropriate, also include public procurement;
- Exceptions should be applied when absolutely necessary and justified by a narrow range of public interests (e.g. public safety), and with a transparent procedure for enabling them;
- These rules should be defined and interpreted in a harmonised way across the EU;
- At the same time, Member States should at all times be able to restrict the flow of data due to national security

Addressing data localisation is a first step toward further discussions on emerging issues for the data economy, such as ownership, portability, liability, MyData, and the open data principle. We look forward to vigorous consultation and debate, and will actively present our own proposals on these issues.

European rules should not be barriers in the global market. The EU needs to keep a close eye on global data flows and developments in other countries. Any data localisation in trade agreements if applied, must be consistent with a free and open approach to EU trade policy and the expectations we set for our trading partners.

¹ http://ec.europa.eu/smart-regulation/roadmaps/docs/2016_cnect_001_free_flow_data_en.pdf