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Subject: Proposal for a Regulation of the European Parliament and of the Council
on a framework for the free flow of non-personal data in the European
Union
- Policy debate

Unleashing the full potential of a European data economy

With a view to completing the Digital Single Market and harnessing the growth potential of the European Data Economy, on 13 September 2017 the Commission published a legislative proposal on a framework for the free flow of non-personal data (hereinafter “Proposal”) ¹.

¹ The Proposal exclusively covers non-personal data to avoid overlap with the General Data Protection Regulation (2016/679/EC), which already provides for the free flow of personal data in the EU. This implies that in the case of mixed data sets, the General Data Protection Regulation will apply to the personal data part of the set, and the Proposal will apply to the non-personal data part of the set.

New digital technologies, such as cloud computing, big data analytics, artificial intelligence, and the Internet of Things, are transforming our society and economy and are opening up new opportunities for European citizens, businesses and public administrations. Data is at the heart of all these technologies, which are designed to gather, manage, distribute and analyse data. These data-driven technologies can maximise efficiency, enable economies of scale and stimulate the development of new services. But in order to scale these services across the EU and ensure that the Single Market continues to work in the digital age, data must be able to move freely through the Union.

Member States have identified a number of issues that need to be addressed in order to unleash the full potential of a European data economy, ranging from open access to public sector data and B2B data-sharing and (re)use. They have also emphasized the need for a high level of cybersecurity, trust and data protection. At an informal meeting on 18 July in Tallinn, ministers of telecommunications and competitiveness examined the full range of these questions. The starting point of these efforts, which is tackled in this Proposal, is ensuring the free flow of data, as effective and efficient functioning of data storage and processing is at the fundament of any data economy. The European Council has also repeatedly emphasized the need for action on the free flow of data and, in its conclusions of 19 October, called for reaching a political agreement on the Proposal by June 2018.

Barriers to data mobility in Europe and how the Proposal tackles these

The Commission, together with Member States over the course of three Structured Dialogues, has identified four key barriers to data mobility in the EU. These barriers come in two dimensions:

- 1) barriers to data mobility across geographical borders (legislative and administrative restrictions that force storage/processing of data to a specific location, legal uncertainty and lack of trust), and

2) barriers to data mobility across IT-systems (movement of data across IT-systems).

Such barriers result in a loss of growth and innovation potential, loss of operational efficiency, inefficiencies in the data centres sector, and create market distortions.

Regarding geographical barriers, some Member States have adopted requirements in their national laws that require the localisation of data in a specific geographical area or territory for the purpose of storage or other processing. These requirements make it more costly for companies (especially SMEs) to operate across borders, as they require storage of electronic data in several jurisdictions. Furthermore, such restrictions limit enterprises' freedom of choice and undermine competition for cloud services.

Barriers to data mobility across IT-systems express themselves particularly as high switching costs, the time it takes to transport the data, the formats in which the data are delivered back or the possible cost of down-time during the switching process.

To tackle these barriers, the Proposal prohibits restrictions to the location of data for storage or other processing within the Union to the territory of a specific Member State, unless justified on grounds of public security. At the same time, the Proposal aims at ensuring access to data by Member States for regulatory control purposes and contributes to the overall compatibility of the legitimate powers of competent authorities. As part of the completion of the Digital Single Market, this Proposal aims to contribute to a more open and competitive Single Market for data storage and processing services. This would be achieved by ensuring that data storage and processing can be done legally anywhere in the EU, and by ensuring that business data is not 'locked-in' on servers of a certain service provider. This should result in lower prices, more innovation and therefore growth, to the benefit of EU businesses, but also public administrations.

The Presidency invites Ministers to steer deliberations on this file.

Questions for discussion:

1. Keeping in mind the current data revolution and the need to boost trust in data storage and processing across the Single Market, how could it best be assured that your public administration benefits as much as possible from the Proposal (through a more competitive and open market for data storage and processing services)?
 2. How would you propose to build on existing cooperation mechanisms at European and national level to facilitate prompt and efficient data exchange for regulatory control?
 3. Would you agree that the Proposal is proportionate and appropriate regarding definitions and exemptions (public security) to achieve the desired level of impact? Do you foresee specific situations in which data localisation restrictions are necessary and proportionate, but not possible under the Proposal at the moment?
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