



ICDP statement on “Building A European Data Economy” Communication & Consultation

Brussels, 26 April 2017: The Industry Coalition on Data Protection (ICDP) commends the European Commission for exploring ways forward on building a European Data Economy and appreciates the Commission’s efforts to consult stakeholders. The “data economy” has the potential to grow to EUR 643 billion – or more than 3% of EU GDP – by 2020¹. This value will flow to citizens, employees, Member States, and businesses across Europe. With the aim of fostering the needed investment and innovation, ICDP would like to provide recommendations on the key areas covered in the Communication and ongoing consultation.

Free flow of data in the EU

Today, digital protectionism is on the rise in Europe, with some EU Member States pursuing data localisation requirements or other restrictions on data transfers. The Commission’s Communication positively acknowledges the growing problem of such rules in EU Member States but falls short of prescribing a legislative proposal banning data localisation. If left unchecked, this trend is likely to undermine the EU’s data economy and its ability to fully leverage the great potential of data-driven innovation.

Data localisation is fundamentally incompatible with the objective of the Commission to establish a true Digital Single Market as it leads to market fragmentation, driving up costs and preventing businesses, especially SMEs, from scaling up and increasing efficiencies. If data localisation measures were allowed to proliferate, they would disproportionately affect cloud-driven services, which depend on the ability to transfer data across borders.

The new EU general data protection regulation (GDPR) provides a harmonised level of data protection throughout the EU hence Member States cannot justify forced data localisation based on the grounds of protection of personal data. According to recent estimates, removing existing data localisation laws would lead to an estimated gain of €8 billion in GDP annually. The burden of proof to justify intervention must be incumbent upon Member States in instances where they seek to enact data localisation measures. Consumers and companies -- not governments -- should be able to decide where to store their own data.

We would support the introduction of a EU notification procedure that would ensure that extra national requirements are always notified to the European Commission and can only be taken forward if proportionate and in line with EU legislation and single market principles.

¹ European Commission Communication “Building a European Data Economy” (2017)



***Recommendation:** We encourage the European Commission to present, without delay, an EU Regulation banning existing and future data localisation measures, both in national legislation and public procurement rules, and enshrining the general principle of the free movement of data in EU law.*

Additional regulation on “emerging issues” should only be contemplated in cases of demonstrable market failures

Contractual freedom allows for the necessary flexibility to ensure a smooth functioning of the data market, guaranteeing more choice for consumers and businesses and fostering competition. EU legislation, including EU competition rules as defined in Article 102 TFEU, already provides the necessary safeguards to prevent abuse of dominant market position. The EU’s data economy is still evolving, and setting additional rules at this stage would hamper innovation and affect the EU’s competitiveness.

***Recommendation:** The EU should allow the data market to grow and evolve and only consider regulatory intervention in case of demonstrable failures that would jeopardize the functioning of the Digital Single Market.*

Access to data, reuse of data and competition

The EU data market is functioning well with no discernible signs of market failures, and is also set to grow in the years to come. The Commission’s assessment shows², that the number of organisations seeking to sell their data or purchase new data sets from others to provide new business models and additional revenue streams is expected to grow exponentially. Data is in fact widely available in the marketplace which enables companies to acquire data and to unleash the benefits of the data driven economy, particularly for SMEs, in cross border situations.

There are a number of bottlenecks holding back a thriving European data economy such as more effective implementation of open standards to ensure seamless data interoperability as well as boosting the numbers of data scientists to make sense of this data. The EU must address this skills shortage which is expected to rise to 500,000 in 2020.³

***Recommendation:** To further boost the growth of the data market in Europe, we encourage the EU to focus on initiative that foster digital skills, incentives to take advantage of the data economy and better regulation, rather than erecting new barriers to European innovation.*

² [SWD\(2017\)0002](#), Building a European Data Economy

³ European Commission, Digital Skills and Jobs Coalition [website](#).



Liability

The Coalition believes any action pertaining to IoT liability to be premature at this stage. Liability is currently tackled on a case-by-case basis in contracts and may also be covered by the proposed Digital Content Directive, still under review by the EU co-legislators. Further, the Product Liability Directive, which has been in place for decades, also addresses liability in the context of the Internet of Things. The Internet of Things is characterised by complex supply and value chains and liability is assigned on a case-by-case basis through contracts, providing the necessary legal certainty for all parties involved in said supply chains. A one-size-fits-all approach would not capture the intricacies and specificities of all economic sectors using IoT solutions.

Recommendation: The European Commission should allow IoT products and services to materialise before evaluating whether or not genuine liability concerns arise and ascertaining the need for new rules.

Data portability

Open, market-driven collaboration sufficiently encourages data portability of non-personal data, through international, consensus based, voluntary and market driven standards. The extent of a service provider’s interoperability with other service providers should remain a decision driven by the marketplace (customer needs and demands), so as to preserve innovation and to ensure that its implementation remains within the limits of what is economically and technically feasible. There are a number of productive industry efforts already underway to foster interoperability, including and particularly in the context of international standards bodies. The new data economy is still forming, and it is far from clear that the market is failing to provide sufficient interoperability or data portability.

We are not convinced that creating data portability rights is necessary or even advisable in the business to business context. Imposing portability demands on such data would mean enforcing a regimentation of technical solutions and IT-systems that would stifle innovation and undermine competitiveness.

Recommendation: ICDP encourages the Commission to assess existing rules and to continue discussions around industry practices and open standardisation.”

List of signatories:

AmCham EU – The American Chamber of Commerce to the European Union

Application Developers Alliance

BSA – The Software Alliance

CCIA - Computers and Communications Industry Alliance

COCIR – The European Trade Association representing the medical imaging, radiotherapy, health ICT and electromedical industries

DIGITALEUROPE

Ecommerce Europe

EDiMA

EMOTA – the European eCommerce and Omni-Channel Trade Association

EuroISPA – European Internet Service Providers Association

FEDMA – the Federation of European Direct and Interactive Marketing

FENCA – the Federation of European National Collection Associations

iab Europe – the Interactive Advertising Bureau Europe

ISFE – the Interactive Software Association Europe

JBCE – the Japan Business Council in Europe

TABC – the Transatlantic Business Council