Free flow of non-personal data in the European Union

2017/0228(COD) - 13/09/2017 - Legislative proposal

PURPOSE: to create a framework for the free flow of non-personal data in the European Union and the foundation for developing the data economy and enhancing the competitiveness of European industry.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: currently, data localisation restrictions by Member States' public authorities and obstacles to the movement of data across IT systems prevent business and organisations in the EU from capturing economic, social and business opportunities. Legal uncertainty and lack of trust cause additional barriers to the free flow of non-personal data.

In practice, this means a business may not be or feel free to make full use of cloud services, choose the most cost-effective locations for IT resources, switch between service providers or port its data back to their own IT systems.

With the principle of free flow of non-personal data, businesses can avoid duplication of data at several locations, may feel more confident to enter new markets, and scale up their activities more easily.

The Mid-Term Review on the implementation of the Digital Single Market Strategy (DSM Strategy) announced a legislative proposal on an EU free flow of data cooperation framework.

IMPACT ASSESSMENT: the preferred option chosen allows for the assessment of a combination of legislation establishing the free flow of data framework and the single points of contact and an expert group as well as self-regulatory measures addressing data porting. This option would ensure the **effective removal of existing unjustified localisation restrictions** and would effectively prevent the future ones, as a result of a clear legal principle combined with the review, notification and transparency, while at the same time enhancing legal certainty and trust in the market. The burden on Member States' public authorities would be modest, leading to approximately EUR 33 000 annually in terms of human resources cost to sustain the single points of contact as well as a yearly cost of between EUR 385 and EUR 1925 for the preparation of notifications

CONTENT: the proposed Regulation seeks to ensure the free movement of data other than personal data within the Union by laying down rules relating to data localisation requirements, the availability of data to competent authorities and data porting for professional users.

It shall apply to the **storage or other processing of electronic data** other than personal data in the Union, which is (a) provided as a service to users residing or having an establishment in the Union, regardless of whether the provider is established or not in the Union or (b) carried out by a natural or legal person residing or having an establishment in the Union for its own needs.

The proposal:

- establishes the principle of free movement of **non-personal data** in the Union. This principle **prohibits any data localisation requirement**, unless it is justified on grounds of public security. Furthermore, it provides for the review of existing requirements, notification of remaining or new requirements to the Commission and transparency measures;
- ensures **data availability** for regulatory control by competent authorities. To this effect, users may not refuse to provide access to data to competent authorities on the basis that data is stored or otherwise processed in another Member State. Where a competent authority has exhausted all applicable means to obtain access to the data, that **competent authority may request the assistance** of an authority in another Member State, if no specific cooperation mechanism exists;
- states that the Commission shall encourage service providers and professional users to develop and implement **codes of conduct** detailing the information on data porting conditions (including technical and operational requirements) that providers should make available to their professional users in a sufficiently detailed, clear and transparent manner before a contract is concluded. The Commission will review the development and effective implementation of such codes within two years after the start of application of this Regulation;
- stipulates that each Member State shall designate a **single point of contact** who shall liaise with the points of contact of other Member States and the Commission regarding the application of this Regulation;
- provides for **procedural conditions** applicable to the assistance between competent authorities;
- states that the Commission shall be assisted by the **Free Flow of Data Committee** within the meaning of Regulation (EU) No 182/2011;
- calls for a **review** within five years after the start of application of the Regulation and that the Regulation will start to apply six months after the day of its publication.

BUDGETARY IMPLICATIONS: a moderate administrative burden for Member States' public authorities will emerge, caused by the allocation of human resources for the cooperation between Member States through the 'single points of contact', and for complying with the notification, review and transparency provisions.