New EU Regulation on free flow of data

Public Policy Session
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Anti-trust caution

• GS1 operates under the GS1 anti-trust caution. Strict compliance with anti-trust laws is and always has been the policy of GS1.

• The best way to avoid problems is to remember that the purpose of the group is to enhance the ability of all industry members to compete more efficiently.

• This means:
  - **There shall be no discussion of prices, allocation of customers, or products, boycotts, refusals to deal, or market share.**
  - If any participant believes the group is drifting toward impermissible discussion, the topic shall be tabled until the opinion of counsel can be obtained.

• The full anti-trust caution is available via the link below, if you would like to read it in its entirety: [http://www.gs1.org/gs1-anti-trust-caution](http://www.gs1.org/gs1-anti-trust-caution).
Statement & reminder for seeking intellectual property information

• Relevant to the features of the specification that are being developed in this work group, if anyone has knowledge or information about intellectual property rights, such as, patents or patent applications; please promptly convey this information to the work group facilitator.

• The intellectual property rights can either be in development or owned by persons, companies or third parties within this work group or outside this work group.

• We do this under the guidance of the GS1 Intellectual Property Policy, so that GS1 can seek to avoid the uncertainty regarding intellectual property claims against the Specification.
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Essential elements of the European strategy

Ensuring that Europe's economy, industry and employment take full advantage of what digitalization offers.

- Digitising industry ✓
- Cloud ✓
- Inclusive digital economy and society ✓
- e-government ✓
- Standardisation & interoperability ✓
- Digital skills ✓
- **Data economy ✓**
Towards a data driven economy in Europe

- Key actions announced in the mid-term review of the Digital Single Market strategy
- The Regulation complements the measures for building a European Data Economy to foster the potential of digital data and to assess the barriers to the free movement of data and other emerging challenges to the European data economy
- The Regulation builds upon the Digitising European Industry package, the European Cloud Initiative and the European Interoperability Framework for public administrations in Europe
New EU Regulation on free flow of data

• **Adopted** by the Commission on 13 September 2017
• **Reached** political agreement on 19 June 2018
• **Core problem**: Obstacles to data mobility in the EU
• **Essence**: Member States may no longer require businesses and citizens to store or process data within their territory
• **Scale**: the new rules will remove barriers hindering the free flow of data, and boost Europe's economy by generating an estimated growth of up to 4% GDP by 2020
"Data localisation restrictions are signs of protectionism for which there is no place in a single market. After free movement of people, goods, services and capital, we have made the next step with this agreement for a free flow of non-personal data to drive technological innovations and new business models and create a European data space for all types of data."

Vice-President for the Digital Single Market A. Ansip
Evidence gathering process by the EC

- 2 public consultations: platforms, online intermediaries, data, cloud computing and the collaborative economy in 2015; building a European data economy in 2017 and GS1 submitted comments;
- 4 dedicated studies and study workshops;
- 3 structured dialogue meetings with MSs and bilateral discussions;
- Stakeholder engagement / workshops;
- 2 impact assessments.
Obstacles to data mobility in the EU

- **Data localisation requirements** by Member States' public authorities;
- **Vendor lock-in** practices by cloud service providers;
- **Legal uncertainty** leading to caution on the market regarding cross-border data storage and processing;
- **Lack of trust** due to security risks and concerns about the cross-border availability of data for regulatory purposes.
Single EU Data Space

**GDPR**
- Personal data
- Protection of citizens
- Privacy

**FFD**
- Non personal data
- Enable digitalisation
- Portability
The recent EU Regulation on free flow of data

- The Regulation on free flow of non-personal data has no impact on the application of the General Data Protection Regulation (GDPR), as it does not cover personal data.
- The two Regulations will function together to enable the free flow of any data – personal and non-personal – thus creating a single European space for data.
- In the case of a mixed dataset, the GDPR provision guaranteeing free flow of personal data will apply to the personal data part of the set, and the free flow of non-personal data principle will apply to the non-personal part.
Unlocking cross-border data storage and processing

• Creating legal certainty for cross-border storing and processing of data within the EU;

• Less multiplication of IT systems for EU companies (SMEs) active in different countries;

• Enabling innovative cross-border data ecosystems in Europe;

• A competitive EU single market for secure, reliable and affordable cloud services (avoiding vendor lock-in).
The recent EU Regulation on free flow of data

**Principles-based**, not detailed legislation (Better Regulation):

- **The free flow of non-personal data** principle
- **The principle of data availability** for regulatory control purposes
- Actions to make sure cloud service providers and users develop **self-regulatory codes of conduct for easier switching of provider and/or porting data** back to in-house servers
- Governance by **single points of contact** per Member State, forming an expert group
Scope of the proposed Regulation

- Applicable to **outsourced and on premise data storage & different types of processing:**
  - *Cloud Services*
  - *Innovative data services such as big data analytics*
- Applicable to **data not related to an identified or identifiable natural person & anonymised data.**
- Territorial scope: **exclusively the territory of the European Union** (no implications for EU foreign policies regarding data flows).
Goals of the proposed Regulation

- **Ensure data availability for regulatory control**: Public authorities will access data for scrutiny and supervisory control wherever it is stored or processed in the EU. Member States may sanction users that do not provide access to data stored in another Member State

- **Encourage creation of codes of conduct for cloud services** to facilitate switching between cloud service providers under clear deadlines. This will make the market for cloud services more flexible

- The agreed measures are in line with existing rules for the free movement and portability of personal data in the EU
Next steps

- The Commission published additional proposals to boost the European data economy:
  - the review of the Public Sector Information Directive,
  - new rules for the online platforms,
  - guidance on
    - business-to-business data sharing,
    - artificial Intelligence,
    - liability of data-based services, and the dissemination of scientific information
Next steps – new rules for the online platform

- **Increasing transparency:** Providers of online intermediation services must ensure that their terms and conditions for professional users are easily understandable and easily available.

- **Resolving disputes more effectively:** Providers of online intermediation services are required to set up an internal complaint-handling system.

- **Setting up an EU Observatory to monitor the impact of the new rules:** The Observatory would monitor current as well as emerging issues and opportunities in the digital economy.
CENTER FOR DATA INNOVATION

• NON-PROFIT PUBLIC POLICY THINK TANK
• WASHINGTON AND BRUSSELS
• PART OF THE INFORMATION TECHNOLOGY AND INNOVATION FOUNDATION
• INFO@DATAINNOVATION.ORG
• @DATAINNOVATION
• WWW.DATAINNOVATION.ORG
THE FREE FLOW OF DATA

• THE “FIFTH” FREEDOM TO STORE DATA ANYWHERE IN THE EU

• DEALT WITH IN TWO REGULATIONS:
  • **NON-PERSONAL DATA**: THE FREE FLOW OF DATA REGULATION (PROPOSED)
  • **PERSONAL DATA**: THE GENERAL DATA PROTECTION REGULATION (IN FORCE)

• POSITIVE IMPACT FOR BUSINESSES OF ALL SIZES THAT WANT TO **PROCESS LARGE DATASETS**

• BUT SUCCESS WILL REQUIRE INTEROPERABILITY

• EU IS REMOVING LEGAL OBSTACLES, INDUSTRY STILL HAS TO REMOVE PRACTICAL OBSTACLES
THE FREE FLOW OF DATA REGULATION

• SHORT AND SIMPLE
• NOT YET IN FORCE
• SAYS NON-PERSONAL DATA CAN BE STORED ANYWHERE IN THE EU
• NO COMMON RULES FOR TRANSFERS OUTSIDE THE EU
• ONLY DEALS WITH NON-PERSONAL DATA BECAUSE PERSONAL DATA IS SUBJECT TO GDPR…
THE GDPR

• **GENERAL DATA PROTECTION REGULATION**
• **IN FORCE: MAY 25, 2018**
• **BIG AND COMPLICATED**
• **SAYS PERSONAL DATA CAN BE STORED ANYWHERE IN THE EU**
• **TRANSFERS OUTSIDE THE EU SUBJECT TO COMMON SET OF RULES**
BENEFITS OF FREE DATA FLOWS FOR DATA-DRIVEN BUSINESSES

• **MORE COMPETITION:** SINGLE EUROPEAN MARKET FOR CLOUD SERVICES

• **LOWER COSTS:** CUT UNNECESSARY DUPLICATION

• **LESS COMPLEXITY:** CONSOLIDATE DATA PROCESSING

• **EASIER DATA SHARING** WITHIN COMPANIES AND BETWEEN PARTNERS

→ **MORE GOOD STUFF** GETS DONE WITH DATA
REMAINING CHALLENGE: INTEROPERABILITY

• **ENCOURAGED, BUT NOT REQUIRED** by the Free Flow of Data Regulation

• BUT ALL THE KEY BENEFITS OF FREE DATA FLOWS **REQUIRE** INTEROPERABILITY

• INTEROPERABILITY IS NECESSARY FOR:
  
  • **EASY DIRECT PORTING** of data between cloud services
  
  • **REDUCING CLOUD SWITCHING COSTS** to prevent vendor lock-in
  
  • **CONSOLIDATION** and **SHARING** of data from different sources

• **LAW ALONE IS NOT ENOUGH** to establish free data flows
WHAT THIS MEANS FOR STANDARDS

• COMPANIES’ DEMAND FOR INTEROPERABILITY WILL GROW AS THEY TRY TO CONSOLIDATE AND SHARE MORE DATA FROM DIFFERENT SOURCES

• CAPTURE STANDARDS MAY REMAIN INCONSISTENT ACROSS THE EU

• LONG-TERM NEED FOR STANDARDS IN CAPTURE, GOVERNANCE, AND PORTABILITY
IN SUMMARY

• FREE DATA FLOWS MAKE DATA PROCESSING CHEAPER AND EASIER TO DO

• THAT’S GOOD FOR DATA-INTENSIVE PROCESSES LIKE ARTIFICIAL INTELLIGENCE

• BUT FREE DATA FLOWS CAN’T WORK PROPERLY WITHOUT INTEROPERABILITY

• INTEROPERABILITY WILL BE AN ISSUE ON BOTH CLIENT AND PROVIDER SIDES
THANK YOU
Data of general interest
A French regulatory perspective

GSMP 2018, September 12th

Sophie LE PALLEC, GS1 France, Head of public policy
Open Data Original Foundations

- EU Directive 2003/98/EC on the re-use of public sector information
  This Directive establishes a minimum set of rules governing the re-use and the practical means of facilitating reuse of existing documents held by public sector bodies of the Member States.

- 2013 G8 Open Data Charter [https://opendatacharter.net/g8-open-data-charter/](https://opendatacharter.net/g8-open-data-charter/)
  Open Data Charter sets out 5 strategic principles. These include an expectation that all government data will be published openly by default, alongside principles to increase the quality, quantity and re-use of the data that is released.

- France joined in April 2014 the Open Government Partnership (created in 2011).
  Countries joining the OGP are committed to the broad principles of the Open Government Declaration:
  - Transparency of public action, in particular via the opening of public data
  - Citizen participation in the development and evaluation of public policies
  - Integrity of public action and public officials
  - Use of new technologies for openness and accountability
2015 : Emergence of a debate

- 2015, March, Jutand report on the opening of transportation data
  http://www.modernisation.gouv.fr/home/ouverture-des-donnees-de-transport-rencontre-avec-francis-jutand-et-henri-verdier

- 2015, September, report on Data of general interest

- 2015, December, proposal for a law on the digital Republic (also called « Loi Lemaire ») - section on Data of general interest
  - https://www.economie.gouv.fr/republique-numerique
  - https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033202746&dateTexte=&categorieLien=id
Terms of the French debate

- “to impose the opening of certain data held by private persons could contribute to the general interest by (i) enabling a more efficient conduct of sectoral public policies, (ii) by providing better information to citizens, (iii) by contributing to scientific research, (iv) or by benefiting development economic”.

- Given the wide variety of sectors and data involved, the mission considers that a single legal regime for general interest data is neither desirable nor legally possible, and that a sectoral approach should be adopted in the approach for the opening of these data.
Proposals (extract) : For an offensive data policy

1. Encourage companies to pool and share their data
   Public authorities must encourage the creation of data commons and bring another model of production and data governance, which emphasizes reciprocity, collaboration and sharing. The goal is to promote data sharing between players in the same sector. Moreover, it must support the sharing of data between private actors and support companies in this opening. The State must also organize the opening of certain data held by private entities on a case-by-case basis, and immediately promote the search of text and data.

2. Create data of general interest
   Most of the actors interviewed by the mission favored the gradual opening, on a case-by-case basis and according to sectors, of certain datasets for reasons of general interest. This opening could take two forms: either access to this data for the public authorities alone or a wider opening, including for other economic actors.

3. Citizen portability of data
   The right to portability of data is one of the major innovations of recent French and European texts. Concretely, any citizen will be able to exercise this right to migrate from one ecosystem of services to another without abandoning his digital history. The exercise of this right could be declined for applications of artificial intelligence of general interests: it would then be possible for citizens to make his personal data available to a public actor or scientific research.

Source: https://www.aiforhumanity.fr/
Events to come

- 2028, November 12 to 14th: IGF (Internet Governance Forum) in Paris
- 2019, June: European elections (June)
- 2019, August (end of the summer?): G7 45th meeting in Biarritz (France)
Next steps

• National debate on New economic regulations, launched last July (4 topics: Plateforms, Data, Work, Taxes).
• The private sector and civil society should be included in the debate in November, at the same time of the Internet Governance Forum in Paris.
  - What will be the political agenda of the French government about General Interest Data?
• For GS1 France:
  - Position paper to convince politics that GS1 is in charge regarding Product Information.
  - 2 tools to demonstrate our capacity: declination of Code On Line in Wine and spirits and Food.
THANKS TO ALL!

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