

Introduction

The fast expansion of digital services, such as artificial intelligence, Internet of Things, and 5G-enabled ICT systems, is expected to create large volumes of non-personal data. The free flow of such data will play an important role in achieving data-driven growth and innovation within the EEA. For this reason, a new regulation on a framework for the free flow of non-personal data in the European Union (the Regulation) prohibits the maintenance and adoption of all national laws requiring the storage or processing of such data locally, unless justified on public security grounds.

The Regulation is directly applicable in all EEA member states.

Processing of Non-personal Data

The new Regulation applies to the processing of non-personal data in the broadest sense, including the use of all types of IT systems, whether located on the premises of the user or outsourced to a service provider.

Processing includes the following, for example:

- Data storage (Infrastructure as a Service)
- Processing of data on platforms (Platform as a Service)
- Applications (Software as a Service)

Non-personal data means any information that is not related to an identified or identifiable natural person. The scope of the Regulation covers all data that does not fall within the scope of the General Data Protection Regulation (GDPR). Examples of non-personal data include aggregate and anonymised datasets used for big data analytics, data on precision farming that can help to monitor and optimise the use of pesticides and water, or data on maintenance needs for industrial machines.

Free Flow Within the EEA

The Regulation prohibits any form of national data localisation requirements within the EEA, unless justified on grounds of public security. In particular:

- **Free movement of data** – Member states must repeal, and are banned from enacting new, national laws requiring data processing within a specific territory or hindering the processing in another.
- **Porting of data** – The Regulation envisages “self-regulatory codes of conduct” setting out best practices for switching service providers and for porting data across the EEA.
- **Services comparison** – The Regulation also introduces the requirement to set out certification schemes to allow users to compare processing services.
- **Enforcement cooperation** – Competent authorities of the member states will have to cooperate with each other to obtain access to data processed or stored within the EEA, for the purpose of law enforcement (e.g. lawful access and intercept orders).

- **Exception** – Any national data localisation requirements justified on public security grounds will need to be communicated to the European Commission (Commission) before they can be put into effect.

What to Expect

- Implementation legislation across member states in the months leading up to the Regulation coming into effect. Consequently, a “one size fits all” approach to deal with the regulatory issues will not work.
- Abolition of data localisation requirements within two years after the application of the Regulation, unless justified on public security grounds.
- Operators may freely decide where to locate their data storage, process and applications, within the EEA, based on a number of factors, including a regulatory risk assessment.
- A list of the justified exceptions to the general ban to national data localisation requirements is to be published on the local authorities’ and the Commission’s website. Operators may wish to assess whether surviving national data localisation requirements in their jurisdiction are compatible with the Regulation.
- Publication of transparent codes of conduct, aimed at setting up a “competitive data economy” by 29 November 2019 and implementation by 29 May 2020. Public consultations especially inviting modern small businesses, such as start-ups and SMEs, to participate in their development.
- Continued work on novel legal issues, such as liability, access and re-use of data, of the data economy and emerging technologies (e.g. artificial intelligence).
- Report by the Commission to the European Parliament, Council, and the European Economic and Social Committee, on the implementation of the Regulation, within four years after its publication (by 29 November 2022).
- Guidance by the Commission on the interaction between this Regulation and the GDPR, particularly on processing data sets involving both personal and non-personal data, by 29 May 2019.

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