



**Comments on the Draft Executive Regulation of the Personal Data Protection Law  
March 2022**

The Global Data Alliance<sup>1</sup> (“Alliance” or “GDA”) welcomes the announcement by the Kingdom of Saudi Arabia<sup>2</sup> that the implementation of the *Draft Executive Regulation of the Personal Data Protection Law* (Draft Personal Data Regulation)<sup>3</sup> is postponed until March 17, 2023, providing additional time for input and preparation from affected stakeholders. The GDA respectfully offers this submission of additional views focused on cross-border data policy issues.<sup>4</sup>

The GDA supports Saudi Arabia’s efforts to improve standards of personal data protection to improve digital trust, but recommends that Saudi Arabia – in implementing the draft Regulation – explore approaches to: (1) avoid unintended consequences that would result from the imposition of undue cross-border data restrictions, and to (2) ensure that data transfer mechanisms are usable and interoperable with other global frameworks, including those under the EU General Data Protection Regulation and the APEC Cross-Border Privacy Rules.

**I. Introduction**

The Global Data Alliance supports policies that help instill trust in the digital economy without imposing undue cross-border data restrictions or localization requirements that undermine data security, innovation economic development, and international trade. Alliance member companies are significant investors in Saudi Arabia, collectively investing millions of dollars and employing thousands of Saudi Arabian citizens to advance growth, innovation, and cross-sectoral diversification in Saudi Arabia. GDA member companies are active in Saudi Arabia in the aerospace, automotive, consumer goods, electronics, energy, financial services, health, media, supply chain, and telecommunications sectors. Among other things, Alliance members help provide to Saudi Arabia financial services, enterprise software technologies, and health, scientific and educational resources. Alliance members also provide tools to help make local enterprises more competitive globally, delivering telecommunications and cloud-based technology solutions across the Kingdom.<sup>5</sup>

The ability to transfer data securely across transnational digital networks is of central importance to the national policy objectives of many countries, including Saudi Arabia. Data transfers support COVID-19 recovery, digital connectivity, cybersecurity, fraud prevention, anti-money laundering, and other activities relating to the protection of health, privacy, security, and regulatory compliance.

This ability also supports shared economic prosperity. Cross-border access to marketplaces, purchasers, suppliers, and other commercial partners allow Saudi enterprises in all sectors to engage in mutually beneficial international transactions with foreign enterprises. Data transfers, which are critical at every stage of the value chain for companies of all sizes, support global supply chains and promote productivity, safety, and environmental responsibility.

This ability also supports innovation and transnational research and development (R&D), as well as intellectual property protection and enforcement. Scientific and technological progress require the exchange of information and ideas across borders: As the WTO has stated, “for data to flourish as an input to innovation, it benefits from flowing as freely as possible, given necessary privacy protection policies.”<sup>6</sup>

The Alliance is concerned that the draft Regulation’s data localization mandates, data transfer restrictions, and related provisions outlined in Chapter VII will impede Saudi Arabia’s stated goals and will produce significant unintended consequences. We respectfully suggest that the final Regulation be

revised and/or implemented in a manner that does not impose greater restrictions on data transfers than necessary; that promotes privacy and security; and that allows enterprises in Saudi Arabia to benefit from cross-border access to best-in-class technology from across the globe.

## II. Summary and Recommendations

Chapter VII of the Draft Personal Data Regulation deals with the “Transfer or Disclosure of Personal Data to Parties outside the Kingdom.” We summarize key provisions and recommendations below.

### Summary of Key Data Transfer Provisions

- Article 28 – Transfer of Personal Data to Outside the Kingdom. Article 28.1 requires data localization within Saudi Arabia, and prohibits storage or processing outside of Saudi Arabia "before conducting an impact assessment and obtaining the written approval of the Regulatory Authority after the Regulatory Authority has liaised with the Competent Authority on a base-by-case basis". Article 28.2 permits data transfers on the basis of consent or for purposes relating to the public interest.
- Article 29 - Criteria and Guarantees for Personal Data Transfer to a Country not on the Approval List. This Article addresses risk and impact assessments for countries not on the "approved" list. This Article outlines several governmentally approved transfer mechanisms, including standard contractual clauses (Art. 29.b.2.a), binding corporate rules (Art. 29.b.2.b), codes of conduct (Art. 29.b.2.c), certification (Art. 29.b.2.d), or other government-approved mechanisms.
- Article 30 - Adequacy List. This Article requires the Competent Authority to prepare a list of the countries that provide adequate level of protection for Personal Data and the rights of Data Subjects.

### Recommendations:

- Recommendation 1: Revise and/or implement Art. 28.1 so as to eliminate or relax its localization requirements and restrictions on cross-border storage, transfers, and other processing. Such requirements and restrictions undermine data security and various policy and economic goals (as discussed below). We respectfully recommend that Saudi Arabia eliminate these elements, or develop approaches to mitigate their impact to the greatest possible extent.
- Recommendation 2: The requirements in Art. 28.1 and 28.3 for advance, case-by-case government approvals for all personal data transfers represents the most onerous personal data transfer requirement anywhere in the world, including China. We recommend that this advance government approval requirement be revised and/or implemented as follows:
  - Clarify that advance written government approval of transfers is not required in cases in which conditions of consent / public interest are satisfied.
  - Clarify that advance written government approval of transfers is not required in cases in which governmentally-approved transfer mechanisms (Arts. 29.b.2.a – d) are employed.
  - Clarify that advance government approvals are required only in relation to data transfers that may be subject to export-controlled transactions (e.g., those that implicate military or national security-related imperatives).
- Recommendation 3: Ensure that the governmentally-approved data transfer mechanisms identified in Article 29.b.2 are designed to be interoperable with other global frameworks, including the APEC Cross-Border Privacy Rules and the transfer mechanisms outlined in GDPR Article 46.
- Recommendation 4: Ensure that adequacy determinations under Article 30 provide a standalone basis for data transfers – without requiring use of the transfer mechanisms under Article 29.b.2

or the advance governmental approval requirements of Articles 28.1 and 28.3. Additionally, we recommend that Saudi Arabia clarify that “appropriate international agreements and obligations” include the OECD Privacy Guidelines and the APEC Privacy Framework.<sup>7</sup>

### **III. Discussion**

We urge the Saudi Data and AI Authority to ensure that the draft Personal Data Regulation will promote robust personal information protection through a flexible, pro-innovation legal framework that allows companies to responsibly transfer data both internally and externally to other entities, within and outside Saudi Arabia.

#### **A. Accountability Model and International Data Transfers**

The GDA strongly supports the accountability model for international data transfers. This model was, first established by the OECD and subsequently endorsed and integrated in many legal systems and privacy principles. The accountability model provides an approach to cross-border data governance that effectively protects the privacy and consumer rights of individuals and fosters streamlined, robust data flows by requiring entities that collect personal information (often defined as personal data controllers) to be responsible for its protection no matter where or by whom it is processed.

While governments are rightfully concerned with risks to privacy and data security, these risks are not dependent on the physical location of where data is stored or processed, or the location of the infrastructure supporting it. In fact, the effectiveness of data security and personal information protection is a function of the technologies, systems, and procedures put in place by the companies handling the personal information to protect the data.

To benefit from cross-border data transfers while simultaneously ensuring the responsible processing and protection of data, the focus of privacy policy and regulation needs to be on the quality and effectiveness of the mechanisms and the controls maintained to protect the data in question. The accountability model, therefore, continues to be an important tool in increasing privacy and security by requiring entities to ensure that data will continue to be properly protected, regardless of where the data is located.

The GDA appreciates the proposed inclusion of several data transfer mechanisms under Article 29.b.2 as they provide a range of international data transfer mechanisms that personal information controllers can choose from. However, we are concerned that the requirements for advance written governmental approval for all data transfers undermines the utility of these data transfer mechanisms. These requirements represent an unnecessary cross-border data restriction, particularly in light the government’s existing authority to set transfer conditions under the aforementioned five transfer mechanisms and in light of the impact assessments that private parties also undertake. Such requirements also conflict with international best practices and norms regarding cross-border data transfers, including under the GDPR. Indeed, if all transfers must receive 30-day advance approval from two different governmental ministries, it is unclear what purpose the five officially approved transfer mechanisms serve

We respectfully suggest that Saudi Arabia consider the recommendations outlined above, so that it may make more effectively realize the privacy-protective benefits of these proposed data transfer mechanisms without producing significant unintended consequences.

#### **B. Flexibility and Interoperability**

Personal data protection and privacy frameworks that are based on a common set of international consensus-based principles facilitate cross border data transfers and drive innovation and business investment in local markets by promoting international interoperable legal frameworks upon which businesses of all sizes can rely. These coordination mechanisms also help to bridge current gaps in international privacy norms while facilitating the safe and secure international transfer of personal information. Such mechanisms may include private codes of conduct, contractual arrangements such as standard contractual clauses, certifications such as the APEC Cross Border Privacy Rules (CBPR), seals

or marks, and mutual recognition arrangements such as the adequacy with the European Union General Data Protection Regulation (GDPR).

As noted above, the GDA welcomes the proposed inclusion of several international data transfer mechanisms under Article 29.b.2 but urges this provision be expanded to recognize additional transfer mechanisms and create more flexibility in supporting cross-border data transfers. This approach will enable personal information controllers to use different mechanisms to transfer personal information across international borders and afford businesses the flexibility to determine the mechanisms that will be most optimal and relevant for them.

#### **IV. Conclusion**

In conclusion, we respectfully recommend that Saudi Arabia remove the draft Regulation's data localization mandates and cross-border data transfer restrictions. We appreciate the opportunity to share these views and hope that they will be helpful as Saudi Arabia considers its next steps on the draft Regulation. Policy makers around the world appreciate the GDA sharing best practices on data flows and we would welcome further engagement with the Saudi Data and Artificial Intelligence Authority (SDAIA) to address any questions regarding this submission.

## Appendix

### Economic Impacts of Data Localization Mandates and Cross-Border Data Restrictions

International organizations from the World Bank to the World Trade Organization have underscore the harms and risks that data localization mandates and cross-border data restrictions raise. We summarize some of that evidence below.

- Impact on Saudi Arabia’s Position as an Emerging Regional Center of Technology Services:** Saudi Arabia is an emerging regional leader in offering cloud computing and other technology services to neighboring economies. Saudi Arabia’s policy positions also have broad regional influence. Saudi Arabia risks losing this position if technology providers are prohibited from providing those services to neighboring countries. Saudi Arabia’s position will also be jeopardized if its neighboring economies emulate the cross-border data restrictions found in the draft Regulation – imposing their own requirements for localization of data storage and processing, and restricting cross-border data transfers to or from Saudi Arabia.
- Impact on Saudi Arabia’s Broader Economic Goals:** The World Bank’s 2020 *World Development Report* found that, “restrictions on data flows have large negative consequences on the productivity of local companies using digital technologies... Countries would gain on average about 4.5 percent in productivity if they removed their restrictive data policies, whereas the benefits of reducing data restrictions on trade in services would on average be about 5 percent.”<sup>8</sup> Cross-border data restrictions are sometimes justified as benefiting economic development. In fact, development benefits from an increase — not a decrease — in connectivity.<sup>9</sup> Self-isolating cross-border data restrictions hinder economic development, reduce productivity, deprive local enterprises of commercial opportunities, and depress export competitiveness. It is estimated that such measures reduce GDP by up to 1.7 percent in implementing countries.<sup>10</sup>
- Impact on Saudi Arabian Goods Exports:** Cross-border data restrictions are particularly damaging to advanced and connected industries, including in natural resources and agriculture. It has been estimated that 75% of the value of data transfers accrues to such industries.<sup>11</sup> Saudi Arabia exported nearly \$15 billion in goods in 2019, and exports to the EU, Asia, and other regions were even larger.<sup>12</sup> Data transfers are also critical to reducing the costs of reaching markets outside of Saudi Arabia. Data transfers not only enable local firms to find prospective customers in export markets; they also [reduce supply chain-related transaction costs](#).<sup>13</sup> One recent study estimates that digital tools helped MSMEs across Asia reduce export costs by 82% and transaction times by 29%.<sup>14</sup>
- Impact on Saudi Arabian Services Exports:** In 2019, Saudi Arabia exported \$1.5 billion in services to the United States, in travel, financial services, and transportation services – all areas that are heavily dependent on cross-border access to technology and data transfers.<sup>15</sup> The World Bank 2021 *World Development Report* has noted that measures that “restrict cross-border data flows ... [may] materially affect a country’s competitive edge in the burgeoning trade of data-enabled services.”<sup>16</sup> A 2020 World Economic Forum study found that, “approximately half of cross-border [services] trade is enabled by digital connectivity[, which] ... has allowed developing countries and micro, small and medium-sized enterprises (MSMEs) to export through greater visibility, easier market access and less costly distribution.”<sup>17</sup>
- Impact on Saudi Arabian Enterprise Productivity, including in Natural Resources:** In all sectors, including natural resources, enterprises rely on data transfers to increase productivity and improve operations.<sup>18</sup> Cloud-enabled software technologies (including IoT technologies) offer significant promise in making natural resource exploration and extraction more productive and carbon-efficient.<sup>19</sup> Restrictions that impair the ability to deploy such technologies can undermine

that potential. For example, a 2021 GSMA study indicates that data localization measures on IoT applications and M2M data could result in:

- Loss of 59-68% of their productivity and revenue gains;
  - Investment losses ranging from \$4-5 billion;
  - Job losses ranging from 182,000-372,000 jobs.<sup>20</sup>
- **Impact on Innovation:** Some claim that cross-border data restrictions promote innovation. On the contrary, [data localization mandates and data transfer restrictions undermine beneficial innovation processes](#)—from accessing global scientific and technical research databases, to engaging in cross-border research and development (R&D), to securing intellectual property rights for new inventions, and regulatory product approvals for new products and services.<sup>21</sup>
  - **Impact on COVID-19 Recovery:** As governments seek to limit the spread of COVID-19, cross-border access to technology and data transfers have become essential for countries seeking to sustain jobs, health, and education. This is particularly true for the [remote work](#), [remote health](#), [supply chain management](#), and [innovation](#)-related technologies that depend on cross-border access to cloud computing resources.<sup>22</sup>

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<sup>1</sup> The Global Data Alliance is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. Alliance members are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, energy, financial services, health, media and entertainment, natural resources, supply chain, and telecommunications sectors, among others. For more information on the Global Data Alliance, please see: <https://www.globaldataalliance.org/downloads/aboutgda.pdf>

<sup>2</sup> Saudi Data and AI Authority, Notification of Postponement of Draft Implementing Regulation on Data Protection (March 22, 2022), at: <https://www.spa.gov.sa/viewfullstory.php?lang=en&newsid=2339791>

<sup>3</sup> Draft Executive Regulation on Data Protection (March 2022), <https://istitlaa.ncc.gov.sa/en/transportation/ndmo/pdpl/Documents/Draft%20of%20the%20Executive%20Regulation%20of%20Personal%20Data%20Protection%20Law%20-%20MARCH%209.pdf>

<sup>4</sup> Consistent with the GDA's cross-border data policy focus, the GDA's submission focuses on the data localization and data transfer aspects of the Policy alone. GDA members hold a variety of views on other aspects of the draft Personal Data Regulation, which they have addressed through submissions via other organizations. We commend those other submissions to your attention. Concerns raised in other contexts relate to *inter alia*: Articles Article 14 and 34 (anonymization), 15 (privacy impact assessments), 18(4) (on-site audits), 20 (health data processing), 22 (copy IDs), 24 (data breach), 32 (DPO obligations), and 38 (trigger date for complaints against data processors).

<sup>5</sup> The seamless transfer of data across international borders enables the deployment of modern and emerging technologies and services that underpin the economy, across all sectors and at the local, national, and international level. This includes technologies and services enabled by data transfers, such as AI-related data analytics and machine learning technologies, as well as cloud computing, blockchain, and new privacy-enhancing technologies. These technologies and services, which are often accessed across borders or rely on data transferred across borders (or both), support many important economic activities and priorities, including remote work and virtual collaboration, distance education, telemedicine, cybersecurity, fraud monitoring and prevention, anti-money laundering, investigation of dangerous counterfeit products, and a broad range of other activities relating to the protection of health, privacy, security, and intellectual property.

<sup>6</sup> WTO, Government Policies to Promote Innovation in the Digital Age, 2020 World Trade Report (2020), at: [https://www.wto.org/english/res\\_e/booksp\\_e/wtr20\\_e/wtr20-0\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/wtr20_e/wtr20-0_e.pdf)

<sup>7</sup> OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (visited March 2022) at: <https://www.oecd.org/sti/ieconomy/oecdguidelinesontheProtectionofprivacyandtransborderflowsofpersonaldata.htm>; APEC Privacy Framework (visited March 2022), at: [https://www.apec.org/docs/default-source/Publications/2005/12/APEC-Privacy-Framework/05\\_ecsg\\_privacyframewk.pdf#:~:text=The%20APEC%20Privacy%20Framework%20applies%20to%20pe](https://www.apec.org/docs/default-source/Publications/2005/12/APEC-Privacy-Framework/05_ecsg_privacyframewk.pdf#:~:text=The%20APEC%20Privacy%20Framework%20applies%20to%20pe)

[rsons%20or,economies%E2%80%99%20definitions%20of%20personal%20information%20controller%20may%20vary](#)

<sup>8</sup> World Bank, [World Development Report](#) (2020), at: <https://www.worldbank.org/en/publication/wdr2020>

<sup>9</sup> See e.g., Ferracane et al., [The Costs of Data Protectionism](#), VOX (2018); Ferracane et al., [Do Data Policy Restrictions Impact the Productivity Performance of Firms and Industries?](#) ECIPE Digital Trade Estimates Working Paper No. 1 (2019); Lund et al., [Defending Digital Globalization](#), McKinsey Global Institute (2017). Access to foreign markets, innovation, education, and economic growth are all jeopardized by governmental measures that: (1) block cross-border access to information; (2) interfere with the circulation of technology, knowledge, and commercial data; (3) restrict connectivity to the Internet; (4) deny MSMEs and other local enterprises or citizens opportunities to engage with the technologies they need to engage with the economy. See <https://hbr.org/2017/07/60-countries-digital-competitiveness-indexed>

<sup>10</sup> See Lee-Makiyama et al., [The Costs of Data Localization](#), ECIPE Occasional Paper (2014), at: [https://ecipe.org/wp-content/uploads/2014/12/OCC32014\\_1.pdf](https://ecipe.org/wp-content/uploads/2014/12/OCC32014_1.pdf)

<sup>11</sup> See Global Data Alliance, [The Cross-Border Movement of Data: Creating Jobs and Trust Across Borders in Every Sector](#) (2020), at <https://www.globaldataalliance.org/downloads/GDAeverysector.pdf> ; See Global Data Alliance, [Jobs in All Sectors Depend Upon Data Flows](#) (2020), at <https://www.globaldataalliance.org/downloads/infographicqda.pdf>; Global Data Alliance, [Cross-Border Data Transfers Facts and Figures](#) (2020), at <https://www.globaldataalliance.org/downloads/qdafactsandfigures.pdf>

<sup>12</sup> USTR website, US-Saudi Arabia Bilateral Trade (2022), at: <https://ustr.gov/countries-regions/europe-middle-east/middle-eastnorth-africa/saudi-arabia>

<sup>13</sup> Global Data Alliance, [Cross-Border Data Transfers and Supply Chain Management](#) (2021), at <https://globaldataalliance.org/downloads/03182021gdaprimersupplychain.pdf>

<sup>14</sup> Micro-Revolution: The New Stakeholders of Trade in APAC, Alphabet, 2019. Likewise, the Asia Development Bank Institute estimates that electronic commerce platforms, which operate on the basis of cross-border data transfers, have helped some local firms reduce the cost of distance in trade by 60%. Asia Development Bank Institute, [The Development Dimension of E-Commerce in Asia: Opportunities and Challenges](#) (2016), at: <https://www.adb.org/sites/default/files/publication/185050/adbipb2016-2.pdf>

<sup>15</sup> USTR website, US-Saudi Arabia Bilateral Trade (2022), at: <https://ustr.gov/countries-regions/europe-middle-east/middle-eastnorth-africa/saudi-arabia>

<sup>16</sup> World Bank, [World Development Report – Data For Better Lives](#) (2021), at: <https://openknowledge.worldbank.org/bitstream/handle/10986/35218/9781464816000.pdf>

<sup>17</sup> World Economic Forum, [Paths Towards Free and Trusted Data Flows](#) (2020).

<sup>18</sup> Data localization mandates and unnecessary data transfer restrictions hurt local innovation because a country that limits cross-border data transfers limits its own industries' access to technologies and data sources that are critical to growth and innovation, business operations, and the transfer of technology. These include: (a) productivity-enhancing software solutions; (b) scientific, research, and other publications; and (c) manufacturing data, blueprints, and other operational information. Faced with higher software costs and an unpredictable environment for R&D investments, local industries face challenges keeping technological pace with foreign competitors — threatening both domestic and export market sales. Furthermore, as data restrictions place an undue burden on industries operating in countries imposing them, they also undermine those countries' attractiveness as a destination for investment and R&D.

<sup>19</sup> See e.g., World Economic Forum, [Digital Transformation Initiative: Oil and Gas Industry](#) (January 2017), available at <http://reports.weforum.org/digital-transformation/wp-content/blogs.dir/94/mp/files/pages/files/dti-oil-and-gas-industry-white-paper.pdf>; IBM, [Tapping the Power of Big Data for the Oil and Gas Industry](#), White Paper, available at [https://www-935.ibm.com/services/multimedia/Tapping\\_the\\_power\\_for\\_the\\_big\\_data\\_for\\_the\\_oil\\_and\\_gas\\_industry.pdf](https://www-935.ibm.com/services/multimedia/Tapping_the_power_for_the_big_data_for_the_oil_and_gas_industry.pdf) ; Tom DiChristopher, [Oil Firms Are Swimming in Data They Don't Use](#), CNBC (March 5, 2015), available at <https://www.cnbc.com/2015/03/05/us-energy-industry-collects-a-lot-of-operational-data-but-doesnt-use-it.html>; Ed Crooks, ["Drillers Turn to Big Data in the Hunt for More, Cheaper Oil,"](#) Financial Times (February 12, 2018), available at <https://www.ft.com/content/19234982-0cbb-11e8-8eb7-42f857ea9f09>; Chevron Partners With Microsoft to Fuel Digital Transformation From the Reservoir to the Retail Pump (October 30, 2017), available at <https://www.chevron.com/stories/chevron-partners-with-microsoft>

<sup>20</sup> GSMA, [Cross-border Data Flows – The Impact of Localization on IOT](#) (2021).

<sup>21</sup> See Global Data Alliance, *Cross-Border Data Transfers and Innovation* (2021), at <https://globaldataalliance.org/downloads/04012021cbdtinnovation.pdf>

<sup>22</sup> See *id.*, Global Data Alliance, *Cross-Border Data Transfers and Remote Work* (2020), at <https://globaldataalliance.org/downloads/10052020cbdtremotework.pdf>; See Global Data Alliance, *Cross-Border Data Transfers and Remote Health Services* (2020), at <https://globaldataalliance.org/downloads/09152020cbdtremotehealth.pdf>  
Global Data Alliance, *Cross-Border Data Transfers and Supply Chain Management* (2021), at <https://globaldataalliance.org/downloads/03182021gdaprimersupplychain.pdf>