

The EU Data Act and International Data Transfers: Recommendations for Trilogues

The Global Data Alliance (GDA) offers the following recommendations for the inter-institutional negotiations (“Trilogues”) in relation to the international data transfer provision (Article 27) of the Proposed Regulation on Harmonised Rules on Fair Access to and Use of Data (“Data Act”).

The GDA 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 create jobs. Based in countries including Denmark, Finland, France, Germany, Hungary, Ireland, Sweden, and Switzerland, as well as Australia, Brazil, Canada, Japan, Korea, South Africa, the United Kingdom, and the United States, GDA members are active across more than 15 sectors and 150 countries. Together, GDA member companies employ millions of citizens across the EU in digitally intensive industries.¹

Concerns pertaining to international non-personal data access and transfer (Article 27)

The GDA raises the following concerns regarding Article 27 of the EU Data Act, in the EU Commission’s initial proposal as well as in the EU Parliament and Council’s texts, namely:

- **Unexamined impacts of non-personal data transfer restrictions and localization requirements.** The respective texts include prohibitions on international transfers of non-personal data that could limit EU businesses’ ability to leverage state-of-the-art technologies that cannot be offered in localized environments.
- **Consistency with international EU commitments.** The proposed data transfer prohibitions and *de facto* localization requirements may raise questions from the perspective of the EU’s international legal obligations.
- **Lower risk profile and sensitivity of non-personal data.** The Act fails to justify treating “non-personal” data as sensitive in the same way as “personal data,” particularly given that “non-personal data” is not similarly protected under the EU Charter and given the low risk of government access requests for “non-personal data.”
- **Clarity.** The Data Act undermines legal predictability for EU businesses for several reasons, including because the technical, contractual, or organizational measures envisioned under Article 27 remains unclear.

Recommendations for The EU Data Act’s Trilogues:

- **Clarify ambiguity in Article 27.** Clarifying Article 27 is critical to achieving the Data Act’s goals of improved data sharing and use. For this reason, the Data Act should enable, rather than restrict, the free flow of data, in line with [Regulation \(EU\) 2018/1807 on a framework for the free flow of non-personal data in the European Union](#) and the EU’s international commitments. The Data Act should facilitate cross-border data sharing to facilitate its collaborative benefits. Failure to resolve the ambiguities in Article 27 could result in judicial or other authorities seeking to mandate non-personal data localization – an outcome that may not only impose unexamined costs on entire EU sectors, but that may also frustrate the stated objectives of the Data Act.
- **Minimize or eliminate data transfer restrictions that may breach EU legal obligations.** Article 27 could create impediments to the ability to transfer non-personal data. In contrast to the Chapter V of the General Data Protection Regulation, which benefits from express exemptions for personal data and privacy in the WTO General Agreement on Trade in Services (GATS) and other agreements, it is unclear how Article 27 (and its unprecedented restrictions on transfers of non-personal data) can be aligned with the EU’s relevant international commitments.

¹ GDA member companies operate across the EU in a broad array of sectors, including the aerospace, agriculture, automotive, energy, electronics, finance, health, media, logistics, retail, and telecommunications sectors, among others. The members of the GDA welcome a proactive approach to digital governance that accounts for the cross-border data interests of all EU industries and their employees, recognizing that digital networks lie at the heart of today’s interconnected global economy: they support jobs across the EU in every sector, and at every stage of the value chain in millions of transactions every day. More information to illustrate the cross border digital interests of different sectors can be found here: <https://globaldataalliance.org/sectors/>