



RECOMMENDATIONS TO THE OECD ON DATA FREE FLOW WITH TRUST

COMMENTS RE DFFT EXPERT COMMUNITY AGENDA

The Global Data Alliance (GDA)¹ applauds G7 economies, particularly the Government of Japan, as well as the Organization for Economic Cooperation and Development (OECD), for their successful efforts in advancing Data Free Flow with Trust (DFFT) through the DFFT Expert Community. Building on our prior filings on the same subject,² we submit the following recommendations to the OECD Secretariat in response to your request for experts within the DFFT Community to send their feedback, suggestions and expressions of interest in specific work themes and working groups by May 3, 2024.

Background

The Global Data Alliance is a cross-industry coalition of nearly 50 companies from around the world 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. GDA member companies are active in the accounting, agriculture, automotive, aerospace and aviation, biopharmaceutical, consumer goods, energy, film and television, finance, healthcare, hospitality, insurance, manufacturing, medical device, natural resources, publishing, semiconductor, software, supply chain, telecommunications, and transportation sectors. GDA member companies have operations and support tens of millions of jobs across the globe.

At a time when harmful cross-border data restrictions are rapidly increasing, the OECD's DFFT mission is more important than ever – as reflected in the warnings from the United Nations, World Trade Organization, the World Bank, and the OECD itself that digital fragmentation (particularly data localization mandates and data transfer barriers) are harmful to economic development and digital trust.

The GDA shares this view. As reflected in the GDA's Cross-Border Data Policy Index,³ the ability to access technology and transfer data securely across digital networks is critical to both **economic** and other **policy** objectives: Not only do restrictive cross-border policies fail to protect **privacy**,⁴ but they also hurt **developing countries**⁵ and **small businesses**;⁶ impede **financial inclusion**;⁷ undermine **cybersecurity**;⁸ slow **innovation**;⁹ and impair various **health and safety**,¹⁰ **environmental**,¹¹ and other **regulatory compliance** goals.¹² Data transfers are critical to economies **across all sectors**¹³ and at **every stage of the value chain**.¹⁴ Unfortunately, policies that undermine the ability to transfer data across digital networks continue to increase.

This increase in cross-border data restrictiveness is unsustainable. It is also irreconcilable with efforts to meet the 2030 Sustainable Development Goals and other challenges. Without the cross-border exchange of knowledge, information, R&D and technology, our collective ability to protect ourselves from a wide array of environmental, economic, health, safety, and security threats will be greatly diminished.

Recommendation for DFFT Project 3

To build digital trust, it is important to improve transparency and build evidence of regarding the impacts of cross-border data policy restrictions. For that reason, the GDA's designated expert in the DFFT Community looks forward to supporting the work of Project 3 – Transparency of Data Transfer Laws and Regulations in Rapidly Evolving Regional Landscapes.

We would also like to offer the following recommendations regarding the implementation of Project 3. These recommendations build on the G7's DFFT December 1, 2023 Annex, particularly its focus on the OECD Government Access Principles and enhancing transparency of policies and regulations on cross-border data transfers.

To promote “Data Free Flow with Trust,” we identify several challenges to digital trust and offer recommendations re how to advance data transfers with trust.

First, it undermines digital trust when economies adopt cross-border data restrictions in the name of cybersecurity, data security, or privacy, yet these policies do not advance these goals. The widespread perception that some measures may be intended to serve industrial policy goals – rather than effectively promoting stated objectives relating to cybersecurity, data security, or data protection – has undermined public trust and international trust.

To address this challenge to digital trust, we strongly support Project 3 efforts to catalogue various measures that limit cross-border data, and then to assess the extent to which such measures:

1. Are necessary or proportionate to achieve a legitimate public policy objective;
2. Are non-discriminatory;
3. Do not constitute a disguised restriction;
4. Do not impose restrictions on transfers greater than necessary to achieve the objective; and
5. Are designed to be interoperable with other countries' legal frameworks.

We observe that these principles of governmental accountability and good governance are reflected agreements subscribed by almost all OECD members in (variously) the [Digital Economy Partnership Agreement \(DEPA\)](#), [Australia-Singapore Digital Economy Agreement \(DEA\)](#), [Australia-UK Free Trade Agreement \(FTA\)](#), [Japan-EU Economic Partnership Agreement \(EPA\)](#), [Japan-UK EPA](#), [Japan-US Digital Trade Agreement \(DTA\)](#), [Korea-Singapore DPA](#), [UK-NZ FTA](#), [UK-Singapore DEA](#), the [UK-Ukraine DTA](#), as well as the [US-Mexico-Canada Agreement](#), the [CPTPP](#), and the [GDA's model digital trade provisions](#).

Second, it undermines digital trust when governments do not adhere to democratic norms of procedural fairness and accountability in connection with their access to personal data held by the private sector. To address this challenge, we recommend that the IAP serve as a repository for each country's national legal frameworks that broadly implement the OECD Declaration on Government Access to Personal Data Held by Private Sector Entities (“TGA Declaration”).

To begin, while we understand that some economies have concerns with a specific “mapping” exercise that could be used to “grade” their adhere to the TGA Declaration. Nevertheless, we believe efforts to increase transparency and understanding of various countries measures relevant to the TGA Declaration

can build digital trust amongst economies – with a view to supporting the core principle of “Data Free Flow with Trust.”

We also observe that public and private sector stakeholders have already undertaken extensive surveys of laws and practices around the world, given GDPR requirements to undertake Transfer Impact Assessments of third country laws in connection with their data transfers. To assess GDPR compliance obligations, numerous companies and governments around the world have undertaken extensive surveys of the measures that many governments have put in place in relation to government access to personal information held by the private sector. This existing work may be leveraged to help build out a repository of information on different country practices – beginning with all OECD member states and then extending beyond. Building such a repository would allow governments to learn from one another regarding best practices in safeguarding human rights (including rights or reasonable expectations of privacy) in connection with necessary governmental access to data.

Third, we suggest that Project 3 could also assess case studies of restrictive data transfer policies in particular sectors. Such an approach may allow for more precise comparisons of the cross-border data policies in different sectors across economies. Project 3 could map recent experiences with restrictive data transfer policies in particular sectors. For example, the IAP could examine restrictions imposed on automotive data transfers. (Such measures have been imposed in several countries. This mapping exercise could include: (1) an inventory of cross-border data restrictions in a particular sector; (2) a substantive description of those restrictions; and (3) a qualitative analysis of the: (a) nexus between those restrictions and their stated policy bases (e.g., cybersecurity); (b) degree of interoperability with international standards or other countries’ laws; (c) potential impacts of the restrictions on the interests of other economies; and (d) due process and regulatory transparency practices adopted in the development of these restrictions. Such sectoral review should have a neutral, impartial, and global remit. They could cover any sectors in which data transfers have been heavily restricted, including automotive data, health data, and financial services data.

Finally, we also note that – given the OECD’s strong background in economic impact analysis for cross-border data policy measures – Project 3 could also build on an economic literature review regarding restrictive data transfer policies. The DFFT expert community would benefit from a better understanding of the relevant literature (including OECD studies) of the incidence of cross-border data restrictions and their impacts. This could include an examination of recent studies published by the OECD, universities, think tanks, private economists, or other international organizations (such as the WTO, World Bank, Asian Development Bank, etc.). This work could also summarize regional, sectoral, and substantive trends, and might also include a discussion of how to slow or reverse the threat of increasing cross-border data restrictiveness.

Conclusion

We thank the OECD Secretariat for its support for the DFFT Expert Community Agenda. Should you have any questions regarding this submission, please feel free to contact the GDA at gdainfo@bsa.org.

¹ For more information, see <https://www.globaldataalliance.org>

² Global Data Alliance Recommendations To Japan's Digital Agency on Data Free Flow with Trust (Oct. 10, 2023), at: <https://globaldataalliance.org/wp-content/uploads/2023/10/10122023gdafreeflowtrust.pdf>; Global Industry Statement on An Institutional Arrangement for Partnership on Data Free Flow with Trust (2023), at: <https://globaldataalliance.org/wp-content/uploads/2023/04/04182023g7dfftgindustry.pdf>; Global Data Alliance, *GDA Comments on an Institutional Arrangement for Partnership on "Data Free Flow with Trust"* (2023), at: <https://globaldataalliance.org/wp-content/uploads/2023/04/04212023gdacmtsg7dfft.pdf>; Global Data Alliance, *GDA Comments on Japan's 2023 Cross-Border Data Policy Agenda* (2023), at: <https://globaldataalliance.org/wp-content/uploads/2023/02/02012023gdajpmeti.pdf>; World Economic Forum, *The Case for An Institutional Mechanism for Data Flows* (2023), at: https://www3.weforum.org/docs/WEF_From_Fragmentation_to_Coordination_2023.pdf

³ <https://globaldataalliance.org/resource/cross-border-data-policy-index/>

⁴ <https://globaldataalliance.org/issues/privacy/>

⁵ <https://globaldataalliance.org/issues/economic-development/>

⁶ <https://globaldataalliance.org/issues/small-businesses/>

⁷ <https://globaldataalliance.org/sectors/finance/>

⁸ <https://globaldataalliance.org/issues/cybersecurity/>

⁹ <https://globaldataalliance.org/issues/innovation/>

¹⁰ <https://globaldataalliance.org/sectors/biopharmaceutical-rd/>; <https://globaldataalliance.org/sectors/medical-technology/>; <https://globaldataalliance.org/sectors/healthcare/>

¹¹ <https://globaldataalliance.org/issues/environmental-sustainability/>

¹² <https://globaldataalliance.org/issues/regulatory-compliance/>

¹³ <https://globaldataalliance.org/wp-content/uploads/2021/07/GDAeverysector.pdf>

¹⁴ <https://globaldataalliance.org/wp-content/uploads/2021/07/infographicgda.pdf>