## GDA Submission on the Revised Report by the Committee of Experts on Non-Personal Data Governance Framework

**Kris Gopalakrishnan,**
Hon'ble Chairperson,
Committee of Experts on the Non-Personal Data Governance Framework,
The Ministry of Electronics and Information Technology,
Government of India

January 29, 2021

Dear Sir,

**Subject: GDA Submission on the Revised Report by the Committee of Experts on Non-Personal Data Governance Framework**

The Global Data Alliance[1] (GDA) welcomes this opportunity to provide inputs on the revised Report prepared by the Committee of Experts (**Committee**) on a non-personal data (**NPD**) governance framework (**Revised Framework**).[2] At the outset, we commend the Committee for considering industry feedback, and consequently, narrowing the scope of its data sharing recommendations.

However, the Committee has failed to address any of the concerns raised by the Global Data Alliance in its submission on the previous iteration of the Framework. The Revised Framework still retains wide-ranging requirements that are of concern to Global Data Alliance member

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[1] The Global Data Alliance (globaldataalliance.org) 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. The Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. Alliance members include BSA members and American Express, Amgen, AT&T, Citi, ITB360, LEGO, Mastercard, Medtronic, Panasonic, Pfizer, RELX, Roche, UDS Technology, United Airlines, Verizon, Visa, and WD-40 Company. These companies are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, energy, financial services, health, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance.

[2] Revised Report by the Committee of Experts on Non-Personal Data Governance Framework, accessible at: https://static.mygov.in/rest/s3fs-public/mygov_160922880751553221.pdf.

companies. For this reason, we are restating the detailed concerns and recommendations set out in our earlier submission on September 11, 2020 (refer Annexure I).[3]

Members of the Global Data Alliance share a deep and long-standing commitment to protecting data across technologies and business models, as they recognize that today's cross-border economy depends on the trust of consumers, governments, and the general public. We, therefore, support policies that protect data while enabling data to move across borders. Our recommendations remain targeted on matters relating to the Revised Framework's requirements that would limit cross-border data flows, in light of the Global Data Alliance's focus on data transfer and localization issues.

Here are our key recommendations, specific to data transfer and localization:

1. Remove local storage or processing requirements from the proposed NPD Framework;
2. Remove mandatory data sharing obligations and instead, encourage voluntary arrangements through a framework that incentivizes and facilitates data sharing among entities; and
3. Avoid importing personal data protection and privacy obligations within the Framework for non-personal data.

This submission does not address Global Data Alliance members' other concerns with the Revised Framework, and thus, we urge the Committee to consider all industry feedback received in respect of the Revised Framework.

We appreciate the opportunity to share these recommendations and we hope they will be helpful as the Committee considers amendments to the Revised Framework that would help create a robust data governance environment in India, while allowing responsible stewardship of data to continue benefiting the citizens of India and the Indian economy.

**Annexures:**

Annexure I: Global Data Alliance submission on the Report by the Committee of Experts on Non-Personal Data Governance Framework

Annexure II: About the Global Data Alliance (GDA)

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[3] Global Data Alliance (GDA) Comments on Non-Personal Data Governance Framework, dated September 11, 2020, accessible at: https://www.globaldataalliance.org/downloads/09112020GDACommentsonNPDFramework.pdf

The Global Data Alliance[1] welcomes the opportunity to share its views on the Report prepared by the Committee of Experts (Committee) on a proposed non-personal data (NPD) governance framework (Framework). For the reasons explained stated below, we strongly suggest that the Committee remove local storage or processing requirements from the proposed NPD Framework.

The Global Data Alliance is a cross-industry coalition of companies, headquartered in different regions of the world, that are committed to high standards of data privacy and security. Alliance companies rely on the ability to transfer data responsibly around the world to create jobs and make local industries more competitive. Cross-border data transfers power innovation and growth across the globe and all sectors of the economy — from manufacturing and farming to local start-ups and service providers. Data transfers enable the digital tools and insights that are critical to enabling entrepreneurs and companies of all sizes, in every country, to create new kinds of jobs, boost efficiency, drive quality, and improve output.

Members of the Global Data Alliance share a deep and long-standing commitment to protecting data across technologies and business models, as they recognize that today's cross-border economy depends on the trust of consumers, governments, and the general public. The Alliance, therefore, supports policies that protect data while enabling data to move across borders.

The proposed NPD Framework's wide-ranging requirements are of concern to Alliance member companies. In light of the Global Data Alliance's focus on data transfer and localization issues, the comments in this submission are targeted on matters relating to the proposed NPD Framework's requirements that would limit cross-border data flows, and  would not address other Alliance members' concerns with the proposed Framework.

One of the objectives of the Committee is to support innovation based on data. However, requirements set forth in the Framework that would restrict data flows would not advance this goal. On the contrary, it would pose substantial challenges to companies that rely on cross-border data flows to provide innovative products and services. Those challenges fall not only on global companies like Global Data Alliance members, but also on enterprises based in India - including small and medium-sized organizations.

Restrictions on the cross-border transfer of data in the form of data localization requirements do not advance innovation goals and trigger unintended consequences. They disrupt companies' operations and make it costlier to provide services in India, even if that was not the intent, effectively depriving end-users in India from the benefits of an outward-looking data governance framework and putting them at an economic disadvantage vis-à-vis end-users located in other countries. At the same time, policies that

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mandate that private companies license or disclose proprietary data to other enterprises may have the unintended impact of discouraging companies from transferring data and know-how into India and otherwise discouraging innovation.

The Global Data Alliance supports efforts to enhance the collective benefits of data by advancing responsible policies that facilitate voluntary collaboration with data resources, while protecting data security, privacy and supporting cross-border data flows. Among other things, we support efforts to promote effective government data sharing, which can serve as a powerful engine for innovation and economic growth.

The proposed Framework also creates a new concept of 'sensitivity of non-personal data' and determines that non-personal data should be classified as sensitive or critical based on the nature of the personal data it may have been derived from[2] due to data privacy and data security concerns. The proposed Framework also establishes a parallel between the data flows restrictions that article 33 of the Personal Data Protection Bill, 2019 (PDP Bill, 2019) seeks to create regarding sensitive and critical personal data and the rules that should apply to sensitive and critical non-personal data. According to the Committee, sensitive non-personal data should be allowed to be transferred outside India, but a copy of it should continue to be stored within India, and critical non-personal data should only be stored and processed in India. This establishes a new classification for data and appears to broaden the scope of data localization beyond that of the PDP Bill, 2019.

As the Global Data Alliance explained in its recent comments on the PDP Bill, 2019, restricting or limiting data flows does not enhance personal data privacy or security[3]. Privacy issues should more appropriately be considered in the context of personal data and the PDP Bill, 2019, and the Committee should defer to the discussions on those issues that are already taking place in that context. Furthermore, data localization requirements and limits on data transfers undermine data security, rather than enhance it[4].

Importing obligations similar to those in the PDP Bill, 2019 to the proposed NPD Framework to impose local storage requirements and restrictions on cross border flows of non-personal data is inconsistent with global norms and practice, and does not advance data privacy and security. The Committee should, therefore, remove the concept of 'sensitive non-personal data' and remove local storage or processing requirements from the proposed NPD Framework.

We also urge the Committee to consider industry feedback received in respect of other elements of the Framework.

We appreciate the opportunity to share these recommendations and we hope they will be helpful as the Committee considers amendments to the Framework that would help create a robust data governance environment in India, while allowing responsible stewardship of data to continue benefiting the citizens of India and the Indian economy.

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[2] Proposed Framework Section 4.5, V
[3] Global Data Alliance comments on the PDP Bill, 2019 available at
https://www.globaldataalliance.org/downloads/02252020IndiaGDAcmtsPDP2019.pdf
[4] Cross-border data transfers are important for cybersecurity for several reasons. Companies may choose to store data at geographically diverse locations to obscure the location of data and reduce risk of physical attacks, to enable companies to reduce network latency, and to maintain redundancy and resilience for critical data in the wake of physical damage to a storage location. In addition, cross-border data transfers allow for cybersecurity tools to monitor traffic patterns, identify anomalies, and divert potential threats in ways that depend on global access to real-time data. When governments mandate localization or restrict the ability to transfer and analyze data in real-time, they create unintended vulnerabilities.

# GLOBAL DATA ALLIANCE
## TRUST ACROSS BORDERS

## ABOUT THE GLOBAL DATA ALLIANCE

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 transfer of data around the world to innovate and create jobs. At a time of rising digital protectionism, a multi-sector voice is needed to support sensible and responsible cross-border data policies in capitals around the world. The Global Data Alliance provides that voice.

## WHO WE ARE

The Global Data Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. Alliance member companies are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, energy, financial services, health, supply chain, and telecommunications sectors, among others. The Alliance is open to companies in all sectors that transfer data across borders for business purposes and that support data responsibility. It is administered by BSA | The Software Alliance.

## WHY WAS THE ALLIANCE CREATED?

No business with an international operation can function without the ability to transfer data across borders. Yet, there is a trend to impose data localization requirements and restrict cross-border transfers, including in India, China, Russia, Indonesia, and Vietnam. These measures are a serious threat to many companies, in sectors including:

- Advanced manufacturing
- Aerospace
- Agriculture
- Automotive
- Energy
- Finance
- Hospitality

- ICT services, including analytics, cloud computing and cybersecurity
- Healthcare
- Retail
- Supply chain logistics
- Transportation

## WHAT WE BELIEVE

The Global Data Alliance subscribes to the following principles:

- Countries should allow for the seamless movement of data across borders for business purposes. This movement is critical to innovation, investment, and competitiveness in all sectors.

- Data localization mandates and cross-border data transfer restrictions are neither necessary nor efficient means to advance objectives relating to cybersecurity, supply chain security, privacy, or law enforcement access.

- Any rules relating to the movement of information across borders should be:
    - necessary to achieve a legitimate objective;
    - narrowly tailored and not impose greater restrictions than necessary;
    - non-discriminatory and technology neutral; and
    - developed and maintained in a transparent manner and subject to reasonable limits on government discretion.

- Countries should work together to:
    - create trust-based frameworks that are interoperable and support the seamless movement of information across borders; and
    - support the use of accountability models for personal data protection and cybersecurity to foster responsible data transfer practices.

The Global Data Alliance is working to advance these principles through in-country advocacy in the markets in which it is active, and through engagement in international fora around the world.

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**The Global Data Alliance** is administered by
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# GLOBAL DATA ALLIANCE
## TRUST ACROSS BORDERS

# JOBS IN ALL SECTORS DEPEND UPON DATA FLOWS

In sectors from agriculture to advanced manufacturing, cross-border data transfers provide benefits—enabling innovation, creating jobs, and promoting productivity, safety, and environmental responsibility—through 21st century technologies like cloud computing, blockchain, data analytics, and artificial intelligence (AI).

### R&D

Multinational R&D teams collaborate across borders to develop new products, cures, and other advances using cloud-based software solutions and research data produced globally.

### Market Forecasting

AI tools analyze data from around the world to identify patterns that can help predict market demand, customer design preferences, and risk factors relevant to global investment decisions.

### Safety and Productivity

Real-time analytics of data gathered from sensors embedded in global production facilities, machinery, and other assets can alert operators before hazards or breakdowns can occur—allowing for predictive maintenance and safe, productive working conditions.

**APPROVED:**

### Sales

From order fulfillment, to invoicing, to responding to customer feedbacks—businesses can meet global customer needs only if they can receive and respond to customer queries transmitted across borders.
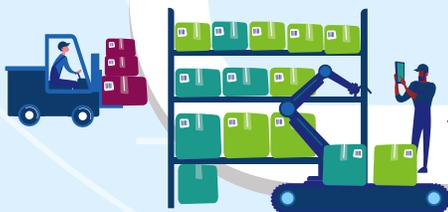
### Regulatory Compliance

Legal compliance teams gather data from global operations to demonstrate that products and services meet regulatory requirements for transparency, safety, and effectiveness.

### Inventory Control

Data analytics and AI can be used to adjust global inventories—avoiding shortages and freeing up resources for more productive uses.

### Supply Chain

Real-time electronic data exchange allows companies to authenticate documents seamlessly, optimize shipping routes, and manage transportation assets for purposes of time, cost, and energy efficiency.

### Post-Sale Service

Cross-border data transfer allow manufacturers to trace and recall products, and address service requests, transparently, safely, and quickly.

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