



## **Global Data Alliance Comments on the Review of the EU's Trade and Investment Policy**

15 November 2020

The Global Data Alliance<sup>1</sup> welcomes the opportunity to provide comments on the EU's trade and investment policy review. 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 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.

Cross-border data flows enable the digital tools and insights that are critical to increasingly digitally-enabled trade. Companies of all sizes and across sectors rely on the ability to transfer data responsibly around the world to design, create, and export new products and services; to enhance business processes and increase productivity; to ensure seamless global customer experience and reach new customers; to access global supply chains; and to engage in research, development, and innovation consistent with global treaties protecting intellectual property. This movement of information also supports scientific advances and improved health and safety outcomes, and enable remote working and schooling.

Unfortunately, digital trade barriers and protectionism are growing at the very time that cross-border data transfers and digital connectivity are helping sustain economic activity and employment. Data transfers are instrumental to Europe's objectives of growth, innovation and competitiveness, to its recovery post-COVID-19 and to building resilience to face future challenges. Trade policy plays an important role in helping create a favorable environment. We welcome the speedy confirmation of Executive Vice-President Dombrovskis as responsible for the Trade portfolio and call on him to continue to build a forward-looking digital trade agenda. As the Commission is reviewing its Trade and Investment Policy, the Global Data Alliance would like to offer input on the consultation note, focusing on the role that international data transfers play in trade and investment policy. Our targeted approach to this consultation is consistent with the objectives of the Global Data Alliance, which focuses exclusively on issues related to cross-

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<sup>1</sup> Global Data Alliance ([globaldataalliance.org](http://globaldataalliance.org)) members include BSA members and American Express, Amgen, AT&T, ITB360, LEGO, Mastercard, Panasonic, Pfizer, Roche, 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. EU Register of Interest Representatives: 75039383277-48

border data flows. We have, therefore, only provided answers to those questions amenable to our coalition expertise and focus, and we are not, for this reason, addressing all the questions in the consultation.

**Question 1: How can trade policy help to improve the EU’s resilience and build a model of open strategic autonomy?**

The Global Data Alliance welcomes the leading role that the European Commission is taking on the global scene to support multilateralism and open trade. In her 2020 State of the Union address, President von der Leyen importantly put the free flow of data on equal footing with privacy, cybersecurity and connectivity as principles of Europe’s digital decade. The EU model of “open strategic autonomy” aims to strengthen the EU’s capacity to pursue its own interests independently and assertively, while continuing to work with partners around the world to deliver global solutions to global challenges. It also acknowledges that the EU would not be self-sufficient in facing a number of existing challenges, such as climate change or seamless access to medical supplies.

The Global Data Alliance strongly believes that openness should remain a cornerstone of EU trade policy and its wider policy agenda. First, this plays on the global scene where the EU should continue to strongly advocate for a fair, strong-ruled and value-based multilateral trading system. In this respect, the WTO Joint Statement Initiative on e-commerce is an important avenue to promote forward-looking international data flow disciplines and commitments which the EU should continue to advance. Secondly, data flows are equally relevant for Europe: the EU should continue to fully integrate the concept of free movement of data into future trade policies, and to ensure that open trade principles are part of future industrial and data-related policies, avoiding any measures that could negatively impact trade and investment.

**Question 10: How can digital trade rules benefit EU businesses, including SMEs? How could the digital transition, within the EU but also in developing country trade partners, be supported by trade policy, in particular when it comes to key digital technologies and major developments (e.g. blockchain, artificial intelligence, big data flows)?**

The Global Data Alliance welcomes the European Commission’s commitment and international approach to data flows, based on trust and openness – two key drivers of Europe’s global competitiveness. The EU’s ambition laid out in its Strategy for Data to “become a leading role model for a society empowered by data to make better decisions” should build on the existing EU legislative acquis, including the Free Flow of Data Regulation and the General Data Protection Regulation, to promote a legislative environment conducive to cross-border data flows. Upcoming EU data policies including “fit-for-purpose legislation and governance to ensure availability of data, with investments in standards, tools and infrastructures,” as mentioned in the Strategy, should be developed with this in mind and not be prescriptive or lead to measures at EU or national levels that may impose market access or other unjustified barriers, such as data localization measures.

Companies of all sizes rely on the ability to transfer data responsibly around the world, including Europe. The ability of MSMEs to access global markets and to offer and sell their services and products abroad depends upon cross-border access to the data and cloud-enabled

technologies. Cross-border access to e-commerce platforms, purchasers, suppliers, and other commercial partners allow local MSMEs to engage in international transactions and create jobs at home.

In sectors from automotive and agriculture to advanced manufacturing and chemical products, cross-border data transfers provide benefits across functionalities through the use of digital technologies<sup>2</sup>: they enable companies to innovate, create jobs, and promote productivity, safety, and environmental responsibility; innovative companies leverage cross-border data flows to mitigate fraud and identify the sources of counterfeit and infringing products and services, thereby better protecting their brands, customers and intellectual property; powerful software-driven technologies help expand a manufacturer's strategic options, enabling companies to create new kinds of jobs, drive quality, and improve output. We provide some examples below:

- **Aeronautic:** European giant Airbus' global cloud-based platform is used by airline companies to store, manage, and analyze data more effectively. By analyzing real-time flight data and other performance indicators across thousands daily flights, this data-driven platform helps airlines to enhance predictive maintenance while also decreasing costs.<sup>3</sup> Airbus also rolled out a real time monitoring platform for both IT and cyber security operations. As a result, Airbus is able to optimize supply chain and its ability to deliver a million spare parts a year within a few hours; have a real time view and management of nine critical warehouses around the world; build and onboard a new warehouse every nine months; maximize data value to build and deliver a minimum of two aircraft each day.<sup>4</sup>
- **Manufacturing:** Italian group Biesse is a global leader in wood, glass, stone, plastic, and metal processing technology. The company relies on Siemens software to reduce errors and make product information available to all stakeholders across different business areas and roles. Centralizing company data means Biesse can share product information with 1,000 employees in China, India, and Italy. The free movement of information also facilitates collaboration with external partners, design offices, and material suppliers and subcontractors.<sup>5</sup>
- **Consumer goods:** The LEGO group headquartered in Denmark restructured its enterprise IT systems in 2004 to increase the efficiency of its business processes and improve data management in the supply chain across offices in 15 countries. The digital transformation expanded to complement the physical play experience. At the design phase, Lego is leveraging digital technologies to crowdsource product design through online fan communities around the world. Digital technologies have also help Lego to diversify its marketing channels and enhance customer experience. The group is globalizing its digital assets to build economies of scale across 130 countries. LEGO's digitalization coincided with a double-digit growth.<sup>6</sup>

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<sup>2</sup> <https://www.globaldataalliance.org/downloads/GDAeverysector.pdf>

<sup>3</sup> Airbus partners with United Airlines to manage aircraft data and enhance predictive maintenance capabilities,

<https://www.airbus.com/newsroom/press-releases/en/2019/06/airbus-partners-with-united-airlines-to-manage-aircraft-data-and-enhancepredictive-maintenance-capabilities.html>.

<sup>4</sup> 800 aircraft a year, over 2 a day and delivering one million spare parts, [https://www.splunk.com/en\\_us/blog/customers/turning-data-into-doing-at-airbus.html](https://www.splunk.com/en_us/blog/customers/turning-data-into-doing-at-airbus.html)

<sup>5</sup> Italian manufacturer of processing machinery implements digital transformation with Teamcenter,

<https://www.plm.automation.siemens.com/global/en/our-story/customers/biesse/34858/>.

<sup>6</sup> Transforming the LEGO Group for the Digital Economy,

[https://ctl.mit.edu/sites/ctl.mit.edu/files/attachments/MIT\\_CISRwp407\\_TheLEGOGroup\\_AndersenRoss\\_0.pdf](https://ctl.mit.edu/sites/ctl.mit.edu/files/attachments/MIT_CISRwp407_TheLEGOGroup_AndersenRoss_0.pdf)

- **Industry:** Finish company KONE is a global leader in the elevator industry and operates in more than 60 countries. It uses IBM and Salesforce solutions to identify products and parts, check them against current inventory stocks, and evaluate next steps for replacement or repair — all within a single integrated system.<sup>78</sup>
- **Automotive:** French automotive technology company Faurecia integrates digital technologies into its processes to create the inside of the cockpit of the future. Combining expertise in edge-computing, artificial intelligence, cloud-based services, cockpit systems integration and consumer insights, Faurecia develops digital services to reinvent the on-board experience for all occupants. Faurecia also digitalized its operations and deployed a single, integrated enterprise resource planning system used by all 330 Faurecia sites across the world. The initiative has reduced per-user IT costs by more than 40% on a like-for-like basis.<sup>9</sup>
- **Pharmaceuticals:** French company Sanofi deployed a comprehensive data tracking system developed by Italian firm AntaresVision for its production lines and distribution center in Turkey, allowing the French pharma company to trace any pharmaceutical product in real-time to meet local traceability requirements. Sanofi is able to retrieve data from every single pharmaceutical product on the production line and during the distribution process until it reaches the reseller.<sup>10</sup>

According to the McKinsey Global Institute, 75% of the value of data transfers globally accrues to traditional industries like agriculture, logistics, and manufacturing.<sup>11</sup> Some of these sectors are also among top 5 EU export products in 2019.<sup>12</sup> Enabling companies to leverage the benefit of digital technologies through seamless cross-border data flows should be an essential pillar of the future EU trade strategy.

**Question 11: What are the biggest barriers and opportunities for European businesses engaging in digital trade in third countries or for consumers when engaging in e-commerce? How important are the international transfers of data for EU business activity?**

Restrictions on the ability to transfer data can create meaningful barriers for European businesses engaging in digital trade – and those transfers are important for a range of EU business activities.

Within the EU legal framework, both the General Data Protection Regulation (GDPR) and the Regulation for the Free Flow of Data enshrine free movement of personal and non-personal data as an important pillar of the EU acquis. In this regard, the Global Data Alliance welcomes the leading role that the European Commission is taking on the global scene to support the emergence of “modern data protection regimes [...] designed to afford individuals a high level of

<sup>7</sup> Salesforce helps KONE strengthen customer service, <https://www.kone.com/en/news-and-insights/stories/Salesforce-helps-KONE-strengthen-customer-service.aspx>

<sup>8</sup> KONE joins forces with IBM for IoT cloud services and advanced analytics technologies, <https://www.kone.com/en/news-and-insights/releases/kone-joins-forces-with-ibm-for-iot-cloud-services-and-advanced-analytics-technologies-2016-02-19-3.aspx>

<sup>9</sup> Faurecia to collaborate with Microsoft for digital services inside the cockpit of the future, <https://www.faurecia.com/en/newsroom/faurecia-and-microsoft-collaborate-digital-services-inside-cockpit-future>. Faurecia pursues its digital transformation with SAP, <https://www.faurecia.com/en/newsroom/faurecia-pursues-its-digital-transformation-sap>

<sup>10</sup> Sanofi ensures 100% traceability with vision systems from Cognex, <https://www.cognex.com/applications/customer-stories/pharmaceuticals/tracking-pharmaceuticals-in-real-time>

<sup>11</sup> McKinsey Global Institute, 2011, [Internet matters: The Net's sweeping impact on growth, jobs, and prosperity](#)

<sup>12</sup> Eurostat, Main goods in extra-EU exports: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Main\\_goods\\_in\\_extra-EU\\_exports#:~:text=In%202019%2C%20the%20top%205,optical%20products%20\(8.1%20%25\).](https://ec.europa.eu/eurostat/statistics-explained/index.php/Main_goods_in_extra-EU_exports#:~:text=In%202019%2C%20the%20top%205,optical%20products%20(8.1%20%25).)

protection while facilitating data flows in a way that maximizes economic opportunity and consumer interests.”<sup>13</sup> As protectionism rises globally, the EU must continue to actively push back against unjustified privacy or security exemptions used to justify protectionist measures by some third countries.

The GDPR provides a list of mechanisms that can be used by organizations to comply with the Regulation’s general principles and specific requirements when transferring personal data outside the EU and EEA. Different organization types and business models require the use of different transfer mechanisms that are not interchangeable. It is therefore important that businesses be able to rely on a range of GDPR-compliant transfer mechanisms. The main mechanisms available in practice are: adequacy decisions (currently used for 12 countries globally<sup>14</sup>) and Standard Contractual Clauses (SCCs). The GDPR does provide other mechanisms that can be used in specific situations (Binding Corporate Rules) but many are not available to companies in practice (consent; certifications; codes of conduct).

A decision of the European Court of Justice<sup>15</sup> on 16 July 2020 has added complexity to this landscape and is expected to impact the way companies are able to move personal data outside the EU for the foreseeable future. First, the Court has invalidated the Commission’s adequacy decision regarding a framework for transferring personal data to the United States, the ‘EU-US Privacy Shield.’ As a result, companies that need to transfer personal data from the EU to the US must rely on another transfer mechanism, most likely SCCs which are used in Europe by 90 percent of companies that transfer data internationally. Second, the Court requires that companies that rely on SCCs for transfers to a third country that does not have an adequacy decision verify, on a case-by-case basis, whether the law of the third country where the recipient is based ensures an “essentially equivalent” level of protection of the personal data transferred in light of the circumstances of the transfer. This results in companies having to conduct a pre-transfer assessment akin to a mini-adequacy decision on a case-by-case basis, in any of the 180 countries globally where they do business, possibly because they have subsidiaries, plants and other facilities. This applies to EU’s most important trading partners such as China, Singapore, Brazil, Mexico, and the United States absent an EU-US resolution in response to the Court’s decision invalidating Privacy Shield.

As the EU reviews its trade policy, it is important to consider the impact of the recent Schrems II decision on European exporters and importers, including their competitiveness in the global economy. We commend the European Commission for working with the US government to respond to the Court’s decision and look forward to a swift resolution to address the Court’s underlying issues with Privacy Shield. Personal data transfer mechanisms must be practical and reliable to create trust. They must also be robust to withstand ongoing and potential future legal challenges as they impact both domestic and international trade. Trade agreements can also be an important instrument to promote regulatory cooperation between EU and third countries’ data protection authorities to further compatibility of privacy regimes.

In addition to data privacy, other digital domestic policy issues that impact the digital economy include cybersecurity, emerging technologies (e.g., artificial intelligence), encryption and protection of intellectual property. Digital trade chapters are becoming an important feature of

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<sup>13</sup> [https://eeas.europa.eu/delegations/india/53963/node/53963\\_zh-hans?Consumers to the Ministry of Electronics and Information Technology %28MeitY%29=](https://eeas.europa.eu/delegations/india/53963/node/53963_zh-hans?Consumers%20to%20the%20Ministry%20of%20Electronics%20and%20Information%20Technology%20MeitY%29=)

<sup>14</sup> The current list of countries with a total or partial adequacy decision is as follows: Andorra, Argentina, Canada, Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Switzerland and Uruguay. Adequacy talks are ongoing with South Korea and the United Kingdom.

<sup>15</sup> Case C-311/18, Data Protection Commissioner v. Facebook Ireland Ltd, Maximilian Schrems,

forward-looking trade agreements and the EU is advocating for a number of important commitments. The EU provisions on data flows commit the parties to ensuring cross-border data flows to facilitate trade in the digital economy, and to not restrict cross-border data flows on the basis of a list of four specific restrictions.

The Global Data Alliance supports the continuing EU engagement, in bilateral and multilateral fora, in favor of seamless movement of data and against unjustified restrictions. We believe that the EU position should be further strengthened in order to clarify textual qualifications and limit self-judging exceptions, in order to on par with some of the most advanced digital trade agreements achieved to date, in particular the US-Mexico-Canada Agreement (USMCA), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the Australia-Singapore Digital Economy Agreement (DEA).<sup>16</sup>

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<sup>16</sup> Trends in International Negotiations on Cross-Border Data Transfer and Data Localization:  
<https://www.globaldataalliance.org/downloads/06022020GDAInternationalNegotiations.pdf>