

# Yes to data protection, No to data protectionism

Brussels, 8 March 2017

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Data privacy is a fundamental right in the European Union (EU). DIGITALEUROPE fully agrees that this should be respected in trade agreements of the EU and that those should not undermine or circumvent the European General Data Protection Regulation (GDPR).

At the same time, today's reality is that businesses are facing a significant threat of increasing digital protectionism around the world.

In a digital society and economy, this is not about the ICT industry but about the industry as a whole. It is estimated that if a solid policy and legal framework for the data economy is put in place in due time, including enabling access to third-country markets, the data economy could add EUR 643 billion to the European economy by 2020, representing an increase of 3,17% to the overall EU GDP<sup>1</sup>. Hence it is crucial that any new trade agreement clearly recognise the free flow of data and should not oblige companies to locate their data centers within the country. The exemptions to these principles should be non-discriminatory and limited to what is genuinely necessary for purposes of data protection. The free flow of data is and should continue to be a market access commitment, but certainly not an exception to the exception.

DIGITALEUROPE had warmly welcomed the central role of promoting digital trade as an offensive interest of the EU in its 'Trade for all' Strategy. The objective was clear: the Commission will seek to use EU trade agreements to set rules for e-commerce and cross-border data flows and tackle new forms of digital protectionism, in full compliance with and without prejudice to the EU's data protection rules.

While the intentions are good, it seems that the current thinking of the European Commission on how to address free cross-border data flows would do the exact opposite: making it easier for third countries to introduce protectionist measures, forced data localisation and restrictions to market access by misusing the privacy exception.

The approach currently under discussion between the Commission and Member States risks leading to an outcome opposite to the primary objective, and even potentially allowing protectionist measures on one of the EU most offensive interests, digital trade. It is crucial that the exceptions are clearly scoped and do not render the notion of the free flow of data ineffective. This approach would not only prevent the Commission from taking any serious action on the global scene to defend the values and interests of the EU, but it would also potentially result in forced data localisation becoming the new norm and the European industry losing more and more competitiveness and market share.

The European Industry needs rules that are clear and enforceable. DIGITALEUROPE would not support a proposal that would leave few tools to the Commission and industry alike to counter new digital market access barriers and would call for the Member States to consider rejecting it in its entirety unless it is significantly rewritten. We strongly believe that ensuring free cross border data flows in EU trade agreements can be done in a way that will not undermine the GDPR, while such agreements being an efficient tool against protectionism.

DIGITALEUROPE members are committed to comply with the GDPR, but we should not give any open mandate to our trade partners to misuse the privacy and data protection related exceptions for the purposes of protectionism.

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<sup>1</sup> European Data Market Study, SMART 2013-0063, IDC, 2016.

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## ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 61 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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