

## Feedback on the free flow of non-personal data

European Digital Rights (EDRi) is an umbrella organisation with 35 NGO members with representation in 19 countries and beyond. We promote and defend fundamental rights in the digital environment.

We welcome the opportunity of giving feedback to the European Commission on its legislative proposal on the Free flow of non-personal data.<sup>1</sup>

### Definitions

As a first remark, we would like to warn the Commission about the possible overlap of personal and non-personal data and its implications for the protection of personal data under the General Data Protection Regulation (GDPR). We support the approach of a negative definition of non-personal data, meaning all data that is not covered by the GDPR. Such an approach, if diligently respected, would ensure coherence and prevent overlaps with the GDPR.

However, in light of many studies, including the one carried out for the European Parliamentary Research Service, we would like to highlight that complete anonymisation of data has been found to be, if not impossible, at least extremely difficult to achieve, considering the constant progress of data analysis<sup>2</sup>. As a result, it is worth considering that data that could logically be entirely non-personal could be ported to a controller who could merge the data with either non-personal data or personal data to generate new personal data or single out individuals. The outcome of this process must, therefore ensure that any such further processing must have appropriate safeguards and continue to fall entirely within the scope of the GDPR.

This new Regulation should not open the way for a possible undermining of the GDPR and the level of protection it provides for personal data. It is crucial, therefore, that the proposed single points of contact have formal institutional links with national data protection authorities and the European Data Protection Board (EDPB). The EDPB should be tasked with providing regular guidance to the single points of contact.

Furthermore, we strongly favour a clear definition of “public security” in order to ensure that this goal and the steps to achieve it are harmonised across the EU, which

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- 1 [https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-495/feedback/F8343\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-495/feedback/F8343_en) (last accessed 19 January 2018)
  - 2 See the in-depth analysis realised for the European Parliamentary Research Service by Colin Blackman and Simon Forge, (2017) “Data Flows - Future scenarios”, available at <[http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/607362/IPOL\\_IDA\(2017\)607362\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/607362/IPOL_IDA(2017)607362_EN.pdf)> [last accessed 5 January 2018], p. 22; or Ohm, Paul, Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization (August 13, 2009). UCLA Law Review, Vol. 57, p. 1701, 2010; U of Colorado Law Legal Studies Research Paper No. 9-12. Available at SSRN: <https://ssrn.com/abstract=1450006> [last accessed 5 January 2018]

currently is not the case.

### **Mixed data sets**

As regards mixed datasets, we would like to stress that the GDPR must continue to apply to the entire set of data if it contains personal and non-personal data, especially if it is impossible to unbundle the set.

### **Objection to extend the free flow of data principle to trade agreements**

The free flow of data within the European Union in principle does not pose specific issues as personal data will be covered by a unified regime of protection through the application of the GDPR from May 2018. However, this high level of standards regarding personal data is not the same in all countries with which the European Union has or is negotiating trade agreements.

In line with the European Data Protection Supervisor's Opinion<sup>3</sup>, EDRi opposes the inclusion of data flows in trade agreements, because of the risks<sup>4</sup> this creates for the protection of personal data and security. Indeed, it is difficult to assess whether data can be personal or not with the proper analysis tools or processing techniques, as well as mixed datasets that can not be unbundled.<sup>5</sup>

It is of crucial importance that this Regulation does not pave the way towards the undermining of the protection of personal data through the inclusion of data flows in trade agreements with third countries.

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3 [https://edps.europa.eu/press-publications/press-news/blog/less-sometimes-more\\_en](https://edps.europa.eu/press-publications/press-news/blog/less-sometimes-more_en) (last accessed 19 January 2018)

4 K. Irion, S. Yakovleva and M. Bartl, "Trade and Privacy: Complicated Bedfellows? How to achieve a data protection-proof free trade agreements", independent study commissioned by BEUC, EDRi, TACD and CDD, published 13 July 2016, Amsterdam, Institute for Information Law (IvIR), available at: <https://www.ivir.nl/publicaties/download/1807> (last accessed 19 January 2018)

5 EDRi-BEUC letter "Data flows in trade" to the European Commission, available at: [https://edri.org/files/trade/edri-beuc\\_letter\\_malmstrom-dataflowsintrade\\_20171215.pdf](https://edri.org/files/trade/edri-beuc_letter_malmstrom-dataflowsintrade_20171215.pdf) (last accessed 19 January 2018)