



NOTE

21. april 2017

Response from the Danish Government to the Consultation on building the European data economy.

The Danish Government is grateful for the opportunity to provide input to the public consultation on building the European data economy. This position paper supports and particularise the response to the questionnaire provided by the Danish Government.

The Danish Government supports the Commission's objective to improve the general framework providing for an efficient European data economy and promote data-driven business models. It is also important to ensure that societies, consumers and traditional businesses make use of new digital technologies and services. This can contribute significantly to growth and the creation of new jobs in Europe.

To achieve a European data economy, we need a Digital Single Market that is open to competition, innovation and new business models. We should strive to make the regulatory framework better by reducing unjustified barriers, removing unnecessary burdens and making all our legislation fit for the digital age. However, we are not convinced that new legislation is the right way forward. We believe that the need for new regulation should be based on a thorough analysis and that it should be applying the principles of better regulation.

It is with this perspective that the Danish Government replies to the consultation.

1. Localisation of data

The Danish Government places great emphasis on ensuring responsible treatment of data and considers data protection to be a fundamental right. At the same time, in order to fully realise free flows of data in the digital single market there is a need for removing all restrictions on the location of data that cannot be justified on the overriding reasons of national security.

The free flow of data is an essential element in a well-functioning digital economy, and tackling national restrictions on the localisation of data is necessary to allow European businesses to realise the potential of the data economy both within the EU as well as internationally.

Firstly, the Danish Government notes as documented in the Commission Staff Working Document that data localisation requirements are on the rise both within the EU as well as globally. There is a need to curb this development with effective measures.

Secondly, it is also noted that it is not only the number of restrictions in itself that compose a problem, but the aggregate negative effect of restrictions on business and competitiveness which is relevant.

Thirdly, the Danish government recognises the Commission's efforts to address localisation restriction used as a proxy for assurances in terms of privacy and security of data. Specifying a need to justify data localisation requirements would encourage member states to adequately perform risk assessments and minimise situations where localisation requirements are based on a perceived sense of security.

And finally, removing obsolete data localisation restrictions would have a positive environmental effect if businesses could move data storage from local servers to the cloud and benefitting from more energy efficient data centres.

For these reasons, strict methods to separate justified from unjustified localisation requirements are needed.

Geographic restrictions should be replaced with functional requirements that provide access to data for relevant authorities and is supplemented by better cybersecurity. Justified localisation requirements will still be warranted, but should be limited and substantiated on grounds of national security.

2. Access to and re-use of data, liability of data and portability of data

The Danish Government places great emphasis on the need to ensure future-proof regulation of the emerging issues in the data economy: access to data, liability of data and portability of data. Regulation in these areas should support digitalisation and not hinder the use of new, innovative data driven business models.

It is in this respect essential that any new legislation is based on a thorough analysis in order to avoid that legislation leads to unintended consequences for innovation, investment and competition. Unnecessary burdens for companies should be avoided, and the principles of better regulation, including the once-only principle and the use of alternative forms of regulation, should be applied.

When it comes to access and reuse of data, it is the experience in Denmark that the legislative framework is complex. One possible way forward is to explore the possibilities of providing further guidance to companies on e.g. contract rules and standard contractual terms on rights to data. Furthermore, the Danish Government welcomes an analysis and mapping of relevant regulation in relation to data already publicly available. In this context, it is an objective that the potential to analyse and reuse non-personal data on the open internet for new innovative business models should not be unreasonable restricted. Moreover, the Danish Government sees great economic potential in giving consumers easy access to their own data (including consumption data) in a format that

makes it easy for them to release such data to a third party (e.g. a broker). The limited ability of consumers to understand and to act rational in complex markets is a significant barrier to competition and growth. Thus, if it is made easy and cheap for the consumer to get independent third parties (e.g. digital services) to analyse their consumption data and find the product that best fits their needs, it could have a significant effect on these markets that often lack competition.

As a general remark regarding competitive effects of imposing restrictions or new legislation on access to data, it is important to stress two important effects. Increased access to data will most likely lead to more competition between market players and possibly lower prices. However, increased access to data may also limit the incentives to innovate and invest in new technology since the investors' competitors may benefit from these investments.

In relation to portability of data, the Danish Government supports the development of standards which aims to promote interoperability and portability. Interoperability, i.e. ensuring effective communication between digital components such as devices, networks or data repositories, is an essential prerequisite for a competitive well-functioning digital economy.

Furthermore, it is important that the need for developing new standards is assessed in close dialogue with stakeholders. Standardisation only adds value if stakeholders participate in the development and if there is a specific demand from market players.

In conclusion, the Danish Government is still not convinced that new legislation is the right way forward. We are committed to entering into a dialogue on solving possible issues, but believe the need for any possible legislative proposals should be further analysed (e.g. behaviourally tested) and documented before proceeding.