



**European
Cloud Alliance**

Data Flows Expert Briefing

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Overview

- **EU law restricts flows of personal data from Union to third countries**
 - Data Protection Directive / GDPR
 - Privacy Shield
 - Standard Clauses
- **These limits impact cloud services providers and customers**
- **But cloud services rely on free flow of data *within* the EU too**

Overview

- **Commission plan to tackle these *intra*-EU restrictions**
- **Original plan: ambitious horizontal regulation**
- **But Commission has changed course for now**
 - Communication on Building the European Data Economy (January 2017)
- **Opportunity for further dialogue**



The problem?

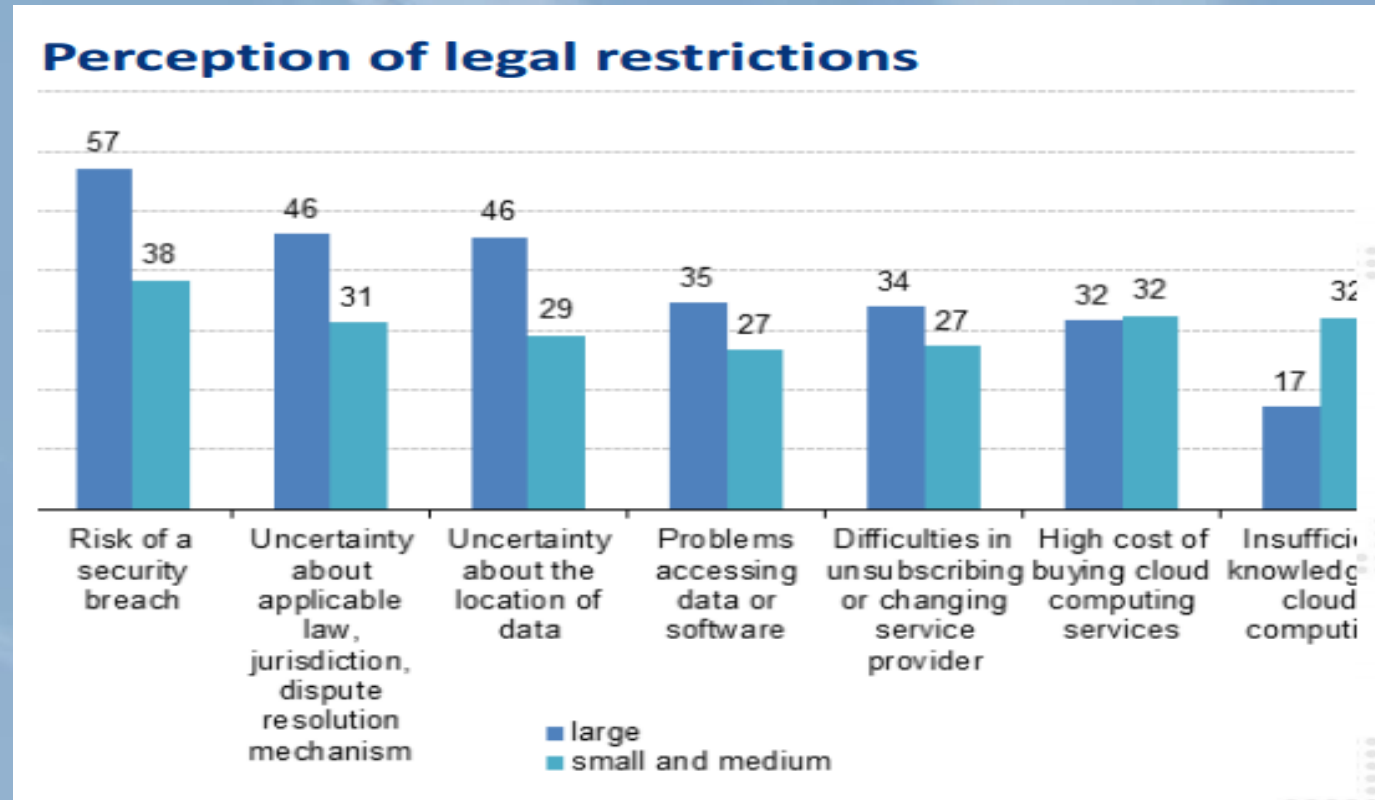
Limits on the Flow of Data *Within* EU

- **National data localization laws, guidance, secondary rules, e.g.,**
 - Health data
 - Company records
 - Tax / Accounting data
 - Banking
 - Gambling
 - Government information

Limits on the Flow of Data *Within* EU

- **Examples of data localization measures**
 - **Germany** (Commercial Code) – Accounting documents and letters must be stored in Germany
 - **UK** (IG Offshore Support Requirements) – Patient data connected to NHS digital “should not be recorded outside of the England boundary”
 - **Sweden** (financial services legislation) – Financial Services Authority requires immediate access to data held by providers under its jurisdiction; it interprets this to mean maintenance of financial records in Sweden
 - **Luxembourg** (Circular CSFF 12/552) – Financial institutions must process data inside Luxembourg; processing abroad is permitted only under specific conditions
 - **Poland** (Polish Gambling Act) – Gambling providers must archive dealings in real-time on archive device located in Poland

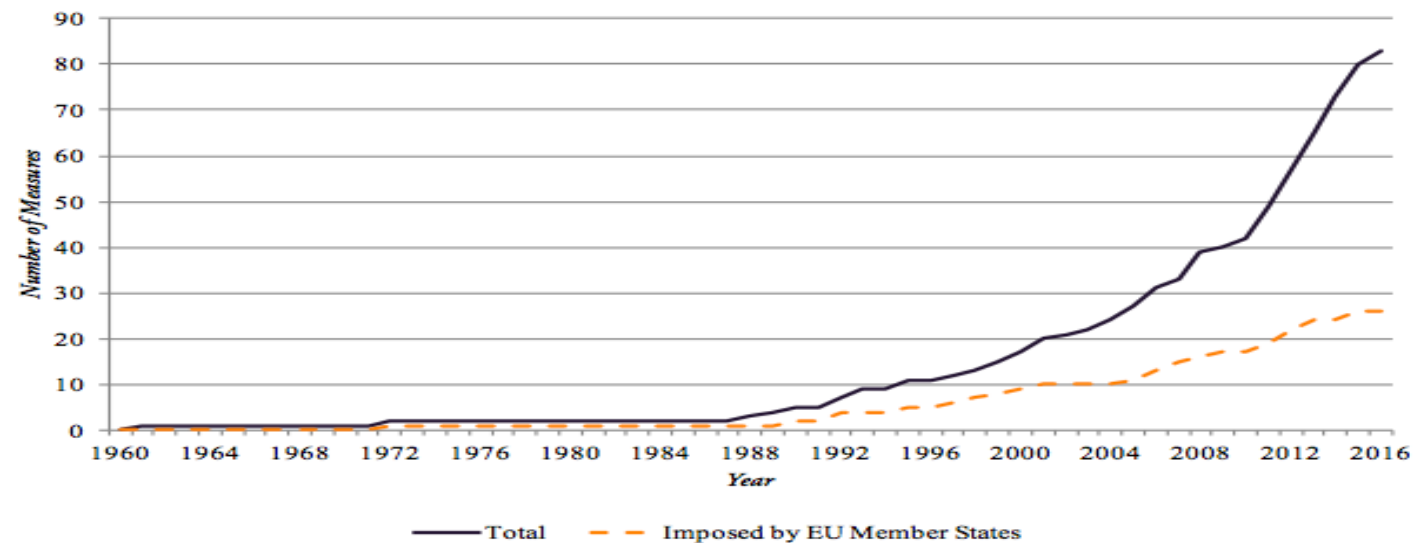
Knock-on Effect on Perceptions



- LE Europe May 2016

Increasing Concern for Cloud Globally

Figure 1: Number of data localisation measures implemented globally and intra-European Union



Source: ECIPE Digital Trade Estimates, 2016.



Commission Plan

Current Framework

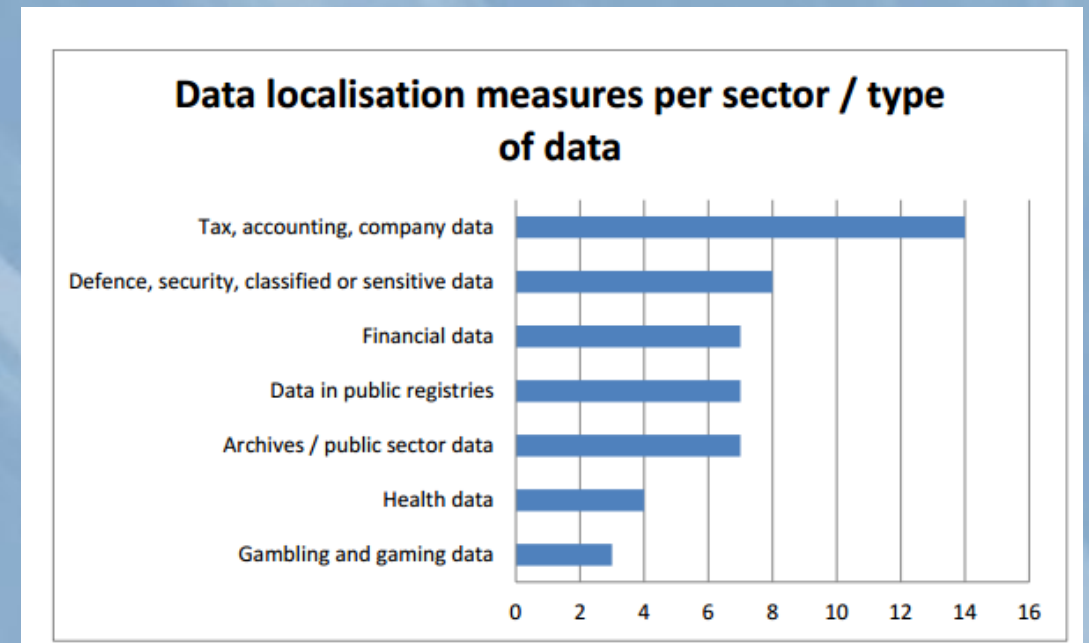
- **Prohibitions on localisation requirements are based in different pieces of EU law**
 - Treaty obligations
 - Services Directive
 - E-Commerce Directive
 - Data Protection Directive / GDPR
 - Transparency Directive

Commission Plan to Target *Intra-EU* Restrictions on Flows of *Non-personal Data*

- **“Free flow of data” initiative included in Digital Single Market (DSM) Strategy – May 2015**
 - Promise to tackle “unjustified restrictions” on location of non-personal data
 - Studies projected gain of up to 8 billion Euros per year GDP growth if existing barriers removed
 - Further gain from preventing emergence of new localization measures
 - Strengthens narrative of “single market”

Commission Investigation Stage

- **Initial consultation in September 2015 to January 2016**
- **Staff Working Document**
 - Chronicles some data localization laws
 - Outcome of workshops & studies
 - Estimated up to USD 193 billion damages from EU localization measures



Interim Conclusions

- **“It seems it is more complicated than I thought...”**
 - Andrus Ansip, Commissioner for Digital Economy, 27 November 2016



Member States Are Split

- **December 2016 Member State non-paper in support of free flow initiative**
 - *“The EU Single Market cannot flourish without the free movement of data.”*
 - Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovenia, Sweden, UK
- **But other Member States less enthusiastic?**

Data Economy Package: Commission Changes Tack

- **December 2016 Leaked Draft**
 - Leaked drafts in December 2016 indicated plan for “horizontal reform,” e.g., legislation to ban such measures or restrict them
- **January 2017 Communication**
 - Recognizes problem, but
 - No “horizontal regulation”
 - Promise to launch infringement proceedings to address unjustified / disproportionate data localization measures
- **Not over yet**
 - Promise to enter into “structured dialogue” with Member States and stakeholders
 - Formal consultation
 - “If necessary,” Commission to take further initiatives

Other Elements of Data Economy Package

- **Communication includes other elements**
 - Data producer right
 - Model contracts
 - Access on FRAND terms
- **Separate Communication on data transfers outside EU**
 - Released simultaneously in January 2017
 - Priority for new adequacy decisions (Japan, Korea, India?)
 - Plan for Commission engagement in international fora
 - New Commission team (privacy + trade) established to promote export of EU data protection framework established



How to get involved

Next Steps

- **Commission consultation process now open**
 - Closing date: 26 April 2017
 - Commission seeking to identify more data localization barriers
 - Also asking
 - whether to take more action against data localization barriers in the EU
 - what type of action to take (horizontal legislation?)
 - scenarios when data localization should be permitted
 - <https://ec.europa.eu/eusurvey/runner/European-Data-Economy-Consultation#>