

## OECD-WTO Business Consultation on Cross-Border Data Flows and Trade

Data, and its flow across borders, support global economic and social interactions. However, regulation conditioning its movement across borders or mandating local storage has been on the rise. The Organisation for Economic Cooperation and Development (OECD) and the World Trade Organization (WTO) have joined forces to study some of the economic implications of this evolving landscape.

By providing information about your business activities, how you rely on cross-border data flows and what costs might be associated with different regulation, **you will be helping policy-makers better understand the emerging challenges that firms such as yours face.** The (aggregate) results of your answers will be useful for shaping and designing policies that can enable data to flow across borders with “trust”.

**This questionnaire will take you about 15 minutes to fill in.** All responses will be kept strictly confidential and will only be presented in an aggregate format. No enterprise-specific or personal or sensitive information will be disclosed and results will, under no circumstances, be shared outside the organisations. The OECD and the WTO appreciate the value of business input and take the confidentiality of responses seriously.

The questionnaire, which you can also access in PDF format here, asks for information on three topics (1) characteristics of your company (2) How your company uses data; and (3) how regulation might affect your business, with a focus on a) regulation affecting data flows; and b) data localisation regulation. Staff with knowledge of how business manages its information flows and privacy responsibilities may have easiest access to the information to answer the questions in sections (2) and (3).

For any enquiries related to this questionnaire, please contact:

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## CHARACTERISTICS OF YOUR COMPANY

### 1. What is the main sector your business operates in?

Respondents select (from a drop-down box) a sector description, based on ISIC rev 4 2 digit codes

### 2. Company location (of responding firm)

Respondents select (from a drop-down box) the country where the company is located (where you are operating from).

### 3. Number of employees

- Just me
- 1 - 49
- 50 - 249
- 250 - 499
- Greater than 500

### 4. Gross Revenue (turnover) – in million USD

- less than 0.1
- 0.1 - 0.5
- 0.6-1
- 1.1- 10
- 10.1 – 50
- 50.1 -200
- >200

### 5. What is the approximate share of Data Management Cost (including ICT tasks, equipment and legal compliance costs) in your firm's total costs (total gross expenses)?

*(Data management costs refer to activities such as data management and storage, database upkeep, purchases of market research data, and (big) data analytics, purchases and maintenance of ICT equipment and data storage as well as legal compliance costs related to data protection, including when these are outsourced)*

- Less than 1%
- 1% to 5%
- 6% to 10%
- 11%-20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%

## HOW DOES YOUR COMPANY USE DATA?

### 6. How costly would it be for your business to identify/separate your data by type and geographical origin?

Respondents rate the costliness for a business to identify/separate data for both type and geographic region on a scale of Very Costly (1) to Not at all costly (5):

- By data type (i.e. personal or non-personal)
- By geographic region

### 7. How much of the volume of data that your business sends or receives across international jurisdictions is likely to be personal data?

*(The OECD defines personal data as "any information relating to an identified or identifiable individual (data subject)")*

Respondents select from:

- None
- Very little
- Minority
- Significant amount
- Majority

- Nearly all
- Difficult to tell

**8. In terms of increased sales owing to greater trust in your products or services, what positive contributions would you attribute to stronger legal frameworks for privacy and data protection regulation?**

*(relative to a situation where there is not a strong privacy and data protection regulation)*

- None
- Less than 1%
- 1% - 5%
- 6% - 10%
- 11%-20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%
- Greater than 100% increase
- Do not know

## **HOW DO REGULATIONS AFFECT HOW YOUR BUSINESS?**

### **Cross-border transfers**

**9. Amidst the rising number of regulations imposing conditions for cross-border data transfers, have you taken any of the following actions?**

Respondents choose **one** option that best describes the main action taken

- We have not heard about these regulations
- We have not deemed it necessary to take specific action to comply with the emerging regulation.
- We had to strengthen our compliance efforts: we have taken specific actions internally
- We had to strengthen our compliance efforts: we have outsourced our compliance
- We have had to significantly change the way our business operates
- We have had to limit the services we offer
- We have had to pull out of some markets

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Recent OECD work has identified three categories of cross-border data flow regulation (see [here](#)):

- Those that give data transferors discretion and responsibility for safeguarding data transfers (**open safeguards**).
- Those that condition international transfers on public sector approval before transfer (**pre-authorised safeguards**).
- Those that prohibit transfers but provide for **ad-hoc and case by case exceptions** for transfer.

The following questions are key to our analysis and aim to get a sense of the costs associated with international transfers under these different types of approaches. Firms are invited to provide estimates of how much they think each approach might increase their data management costs, relative to a scenario where no regulation on international transfers exists. Where the firm does not currently face one of the types of regulations, firms are encouraged to provide hypothetical estimates.

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**10. Legal frameworks that give data transferors the discretion and responsibility to safeguard data transfers (i.e. via open safeguards) could increase your total Data Management costs by approximately:**

*(Open safeguards refer to transfer mechanisms where the decision on how to safeguard international transfers is left to the data transferor sometimes with guidance from the public sector (e.g. broad privacy principles). This includes approaches such as:*

- *ex-post* accountability where businesses can transfer data internationally but remain liable if data is misused; or - the adoption of corporate internal controls pursuant to which the transferor makes its own assessment of appropriate safeguards

*For example: existing mechanisms in the US or Australia)*

Respondents select from the following:

- 0%
- Less than 1%
- 1% - 5%
- 6% - 10%
- 11%-20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%
- Greater than 100%
- Do not know
- It stops our ability to operate internationally

**11. Legal frameworks that condition international transfers on the use of *pre-authorised safeguards* which require public sector approval or ex-ante legal safeguards before transfer (e.g. public adequacy decisions and contractual clauses could increase your total Data Management costs by approximately:**

*(Pre-authorised safeguards includes approaches such as:*

- *Public adequacy decisions which are unilateral recognitions certifying that the personal data protection regime of another jurisdiction meets a certain level of privacy requirement thereby permitting transfer of personal data.*

- *Ex-ante legal safeguards which are instruments that create legal guarantees with regard to the transferred data such as binding corporate rules (BCRs) or Standard Contractual Clauses (SCCs) but these need to follow standards provided by public authorities or be approved by them to be valid.*

*For Example: existing mechanisms in the EU (GDPR) or in Brazil)*

Respondents select from the following:

- 0%
- Less than 1%
- 1% - 5%
- 6% - 10%
- 11%-20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%
- Greater than 100%
- Do not know
- It stops our ability to operate internationally

**12. Legal frameworks that prohibit international transfers except in the case of *ad-hoc authorisation*, usually on a case-by-case basis and subject to review and approval by relevant authorities could increase your total Data Management costs by approximately:**

*(Ad-hoc authorisation refers to international transfers that are only permitted on a case-by-case basis subject to review and approval by relevant authorities. These approaches can be less transparent and often apply to broader data categories.*

*For example: existing mechanisms in China or in Kenya)*

Respondents select from the following:

- 0%
- Less than 1%
- 1% - 5%
- 6% - 10%

- 11%-20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%
- Greater than 100%
- Do not know
- It stops our ability to operate internationally

**16. Do you think that regulations that require safeguarded transfers of data across borders can have a positive impact on trust and therefore sales?**

- No
- Yes

**16a. (if safeguard increases sales) By how much do you think regulations that enable the transfer of data via the use of *open safeguards* can increase sales through greater trust** (Question only appears if respondents have said yes to the relevant question above)

- Less than 1%
- 1% - 5%
- 6% - 10%
- 11% - 20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%
- Greater than 100%
- Do not know

**16b. (if safeguard increases sales) By how much do you think regulations that enable the transfer of data via the use of *pre-authorised safeguards* can increase sales through greater trust.**

- Less than 1%
- 1% - 5%
- 6% - 10%
- 11% - 20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%
- Greater than 100%
- Do not know

**13. Where are the costs most important? (rank)**

- Legal compliance (including understanding of regulation and designing contracts, and hiring internal or external experts)
- Management of data (including costs related to hiring additional personnel or hardware and infrastructure)
- Supply chain activities, managing and coordinating production and/or suppliers, including affiliates.
- Client related activities
- Research and development
- Other business operations (including need to change business models).

**14. What type of cost do these measures generally generate?**

*(select the cost that is highest)*

- Variable costs (costs which vary with the amount of sales or transfers, e.g. having to undertake specific action each time data is transferred)
- Fixed costs (costs which are fixed and do not vary with sales or transfers, e.g. costs associated with keeping up with regulation in a particular country)
- Sunk costs (costs that are incurred only one time e.g. to set up a system of compliance)

**15. Can you rank the following transfer mechanisms according to which you would find most useful in enabling data free flows with trust (even if these might not apply in the jurisdiction where you are currently operating)?**

- Contractual safeguards defined by companies without an approval or review from a public authority (consent, Transmission of privacy notice)
- Pre-defined safeguards defined by a public authority (e.g. Standard contractual clauses and/or Binding Corporate Rules)
- Public adequacy decisions
- Certification schemes and codes of conduct approved by public authority.
- Cross-border data flow provisions in trade agreements

**Data Localisation**

**17. Regulations that require that a copy of data be located domestically (such as financial information, or personal information), but do not prohibit its transfer or location abroad, could increase your TOTAL Data Management Cost (including ICT equipment and legal costs) by approximately:**

respondents select from the following:

- 0%
- Less than 1%
- 1% - 5%
- 6% - 10%
- 11% - 20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%
- Greater than 100%
- Do not know
- It stops our ability to operate internationally

**18. By how much more would TOTAL data management costs increase if the above local storage requirement were to be combined with a prohibition to transfer data for storage or processing abroad?**

respondents select from the following:

- 0%
- Less than 1%
- 1% - 5%
- 6% - 10%
- 11% - 20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%
- Greater than 100%

- Do not know
- It stops our ability to operate internationally

**19. Do you think that regulations that require local storage**

- **Increase data security (yes or no)**
- **Increase privacy protection (yes or no)**
- **Enable greater domestic innovation (yes or no)**
- **Are necessary to meet regulatory objectives (yes or no)**
- **Increase sales through greater trust in your products (yes or no)**

**19a. (if regulation increases sales) By how much could sales increase because of data localisation requiring that a copy of data be located domestically (such as financial information, or personal information), but do not prohibit its transfer or location abroad, can increase domestic sales?**

(Question only appears if respondents have said yes to the relevant question above)

- Less than 1%
- 1% - 5%
- 6% - 10%
- 11% - 20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%
- Greater than 100%
- Do not know

**19b. (if regulation increases sales) By how much could sales increase because of data localisation if a local storage requirement were to be combined with a prohibition to transfer data for storage or processing abroad?**

- Less than 1%
- 1% - 5%
- 6% - 10%
- 11% - 20%
- 21% - 40%
- 41% - 60%
- 61% - 80%
- 81% - 100%
- Greater than 100%
- Do not know

### **Optional Questions**

**20. Please use the space available to provide input concerning how cross border data flows restrictions impact your business operations, including by providing examples of specific countries' regulation that is particularly relevant.**

This is an open-ended question for respondents to provide comments.

**21. Please use this space if you want to share views and examples about what data transfer instruments are useful in the context of your data transfers.**

This is an open-ended question for respondents to provide comments.



Thank you for taking the time to complete this questionnaire!

If you have any questions or if you would like to share with us some additional information related to digital trade, please do not hesitate to contact us at:

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