

Committed to Europe



Free Flow of Non-Personal Data Regulation

Executive Summary

Within the Digital Single Market (DSM) strategy, the free flow of non-personal data (FFoND) has been considered as a pre-requisite for a competitive data economy¹. According to studies supported by the European Commission (EC), it is estimated that over the next five years, cloud computing could add a cumulative total revenue of EUR 449 billion to the EU28 GDP (including in the public sector)².

Cloud services are being provided by the Orange Group for business customers, and for these services, it is important to remove unjustified restrictions on the free movement of data, to help European companies to compete worldwide. In addition, IoT and big data analytics services could benefit from this regulatory measure.

Studies commissioned by the EC had identified at least 50 different national regulatory barriers across the EU. Such regulatory barriers impose restrictions regarding data localisation to service providers and restrict the free movement of non-personal data within the EU³. The Commission considers that these restrictions are functioning as barriers for cloud companies that cannot benefit from having a single place to store all data, being obliged to duplicate their infrastructures, increasing costs and complexity for their business. Moreover, data location requirements limit the choice of available offers for users that may be prevented from adopting cloud computing services due to their cost, as the most efficient offers won't be available.

The data economy should be improved thanks to FFoND regulation removing local barriers and relying on industry self-regulation

Orange welcomes the FFoND's goal to help streamline the free movement of non-personal data, and also supports the choice of a regulation as legislative instrument, in order to guarantee legal certainty throughout the whole of the EU.

Orange supports the proposal's general consistency with respect to other relevant legislation in this field and, as the proposal is clearly limited to non-personal data. The regulation should not override or interfere with the provisions of the General Data Protection Regulation (GDPR) related to the principle of the free flow of personal data, which is treated separately. In this sense, obligations under the GDPR and any self-regulatory approach under this proposal, should follow separate tracks, to avoid a de facto extension of obligations for cloud providers that come from the GDPR.

¹ Commission, COM (2017)495.

² Measuring the economic impact of cloud computing in Europe, EC report by Deloitte, 2016

³ Company records are restricted in several MS.

However, certain issues have to be considered, in order to achieve the main goals of this regulation and not to introduce additional burdensome conditions to service providers.

In this sense, Orange would like to highlight the following:

- Member States are entitled to approve an act that could have new localisation requirements and also to modify an existing requirement, but always justified on the grounds of public security. Transparency obligations on Member States should be imposed regarding any exemption for reasons of public security and within the notification procedure foreseen in article 4.

Nonetheless, Member States need to be sure that their public authorities will have access to the data they need, regardless of the location of that data within the EU.

- The FFoND regulation should not introduce any burdensome condition on current cloud services. In this sense, data availability for regulatory control has to be granted, promoting the cooperation of Member States through the point of contacts, and, making it clear that cloud service providers should not be obliged to directly answer requests from competent authorities from other Member States of the EU. Furthermore, a cloud service provider should not be obliged to respond to any regulatory requirement coming from another Member State.
- The FFoND proposal also encourages providers to implement data portability procedures through self-regulation, based on Codes of Conducts. Orange stresses that nowadays there is no evidence of market failure due to non-personal data lock-in effects in the B2B market. In Orange's experience, the switching of cloud service providers is being carried out without any difficulty today.
- Data portability can be effectively ensured by industry led initiatives; therefore any Code of Conduct developed by industry players should ease these procedures, based more on a best practices basis, defining the best solutions for facilitating non-personal data portability for businesses, and, avoiding additional burdens in the EU market.

For more information: www.orange.com/committedtoeurope, or follow us on Twitter: @Orange_Brussels