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What does business need from the EU data protection rules?

Data are a fundamental resource for the digital economy

Data are the backbone of the digital economy. Data-based innovation is a key driver for creating jobs and growth in Europe: it is expected to leverage €330 billion a year in the EU by 2020. The use of data will heavily affect industrial efficiency. Cloud computing, machine to machine and big data will transform both manufacturing processes and services, increasing efficiency of European businesses in all sectors.

Europe is now facing a crucial opportunity and must make the right choice. To reposition the EU as a world leader in this field, the digital economy must be at the heart of the EU growth strategy.

Any reform must help Europe to grasp the opportunities of the digital economy

Europe must refrain from holding back on risks rather than seizing new opportunities. Data protection rules impact business of all sectors and sizes and must reflect the current challenges. Any framework must enable innovation to take place and support European competitiveness. It should be adaptable to technological development. It must allow businesses to collect, analyse and transfer data. It must also provide appropriate safeguards to **enhance consumers' trust**, which is absolutely key for business growth.

BUSINESSEUROPE supports the aim to achieve **greater harmonisation** in the digital single market and level playing field for all players at global level. Given the borderless nature of the digital economy, companies should be able to apply coherent rules throughout Europe.

Business strongly welcomes the **one-stop shop mechanism**, which, if properly implemented, will make the application of data protection rules more consistent throughout the single market. This will create a level playing field for companies, increase legal certainty and reduce administrative burdens.

But must not hamper European competitiveness

Some of the currently discussed proposals risk undermining European competitiveness and hinder innovation. For instance, the following elements risk stifling the European economy:



- **Heavy administrative burdens**

Requiring detailed documentation for every processing operation, even the ordinary ones which do not present specific risks, is not proportionate. It does not respond to the need of protecting European citizens and is unnecessarily prescriptive. BUSINESSEUROPE also urges the introduction of more flexibility around the provisions for data protection impact assessments and prior authorisation and consultation.

The obligation of appointing a data protection officer, without allowing a degree of flexibility to each organisation, is excessively prescriptive. Effective data protection can be achieved with different concrete solutions. This requirement should be based on more relevant criteria than the size of a company or the number of data subjects processed per year. It should also take into account other elements, such as the nature of the activity and type of processing.

- **Extremely broad definition of personal data**

A clear definition of what is personal data is crucial. An excessively broad definition could have unintended negative consequences for the digital economy, undermining legal certainty. For instance, it can restrict the possibility of using data relating to websites visited to be linked back to an identifiable person for security purposes.

- **Restricted international data flows**

Business models in the digital economy increasingly rely on international transfers of data, not only for multinational companies, but also for European SMEs. Increased and disproportionate requirements for international data transfers will disrupt emerging digital business with a negative impact on EU innovation and growth.

- **Disproportionate sanctions**

As currently discussed, potential sanctions may vary from 1 million to 100 million euro, or 2 to 5% of a company's worldwide turnover. Such fines, based on a competition law approach, are not appropriate for data protection, where the type of conduct and the impact of violations on the market are not comparable to anticompetitive behaviours.

- **Negative perception of profiling**

Profiling is often a basis for a good customer service (for instance in case of services that remember consumers' preferences) and is even necessary in certain businesses. Disproportionate limitations on profiling will harm the functioning of entire sectors and will ultimately have a negative impact for consumers.

In this context, BUSINESSEUROPE calls on the EU Institutions to truly deliver on a set of rules that will strike the right balance between protecting personal data and enabling their free movement in the digital single market. Data protection rules should help Europe reap the benefits of the digital economy, and not hamper its future competitiveness and growth.

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