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EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

*“Data Free Flow with Trust and
international data spaces from an EU
perspective”*

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Keynote Speech

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Dear colleagues from the G7 countries, Dear friends,

Let me first thank warmly our host Ulrich and our dear German colleagues for the excellent organisation of this prestigious event and for inviting me.

It is a pleasure to be here today, to see many of you in person again and have the honour to address you on two related topics that I hold dear: “the free flow of data with trust and international data spaces”.

Let me start by stating that “Free flow of data” (I could also say the “Smooth Flow of Data”) is not only necessary to our digital economies and societies but even a sort of precondition for a world placed under the auspices of cooperation and multilateralism.

As all of you, I am alarmed and deeply worried by the current geopolitical situation worldwide. In these times of great uncertainty, I believe that we need more than ever to build trust and bridges among countries sharing common values around democracy, human rights and the rule of law.

This is why the [Japanese] initiative of Data Free Flow with Trust initiative is so valuable and important.

How can we progress toward this ambitious objective? I have two words in mind: trust and convergence. Trust because Data Free Flow cannot be simply a leap of faith. We need to genuinely trust each other if we want the data to flow freely. How could we reach this state of mutual trust? This is where convergence comes into play. Because trust requires convergence and convergence enables trust.

But how could we achieve more convergence? There, it is clear that Data Free Flow with Trust has to build upon existing constraints and different legal frameworks.



Here, I would like to refer to the importance of the adequacy mechanism. As you know, adequacy allows for a free flow of data between the EU and adequate third countries.

In other words, it is the gold standard for international transfers and international cooperation. There are of course other transfer tools that can frame transfers of data but they are less stable and protective than adequacy decisions. This is why, I consider that the priority should be to continue working on encouraging and reaching adequacy in as many third countries as possible in order to create a “network effect” that would create a virtuous circle of accessions and adequacy.

Here allow me to welcome in particular the reciprocal adequacy decision that was concluded in 2019 between the EU and Japan, in parallel to the EU/Japan free trade agreement. This constitutes an example to follow, as the protection of personal data being a fundamental right, it cannot be subject to negotiations in the context of trade agreements. Dialogues on data protection and trade negotiations with third countries can and should complement each other but must follow separate tracks.

Coming back to the network effect I was mentioning, and in addition to the new transatlantic framework that I see as the last missing “piece of the puzzle” for the G7 zone, we need to further boost convergence also outside the G7 zone. At a more global level, I am also very satisfied to see an excellent cooperation at the level of the Global Privacy Assembly. With the objective of increased convergence in mind, I would also like to welcome the excellent cooperation in the context of the OECD and the G7 / G20 initiative.

Actually, some of our biggest challenges to the flows of data - such as for instance mass surveillance by governments and increasingly by private actors - deserve a



political debate. Fora such as the OECD or meetings of G7 digital ministers may certainly greatly contribute to find political solutions to these challenges.

We also need to be more creative and innovative. Existing or available transfer tools do not always sufficiently cover all the needs to frame the transfers in a meaningful manner. We need collectively to invest more resources to develop new tools.

There is a potential in certification (as advocated by our Japanese colleagues) and codes of conduct as tools for transfers. This potential is not fully exploited yet. At the same time, the expectations around certifications might do not meet the reality of their legal nature. In the EU, EDPB is working on these questions but we need to build more on the experience and expertise from other regions of the world and from the private sector.

We need a wider variety of contractual clauses and templates for administrative arrangements. For instance, the question of the transfers from processors in the EU to controllers outside the EU needs to be considered further. We also need templates for transfers to international organisations. We need to develop further convergence between the SCCs developed in the EU, at the CoE, in Asia, in Latin-America, etc.

Now let me also add some caveat to these optimist messages. I actually believe that we will never reach uniformity and we will keep our differences. And this is to be welcomed.

So, convergence and trust do not mean that all types of data should freely flow in all types of circumstances. I believe actually that mutual trust also sometimes requires accepting from each other that, in certain very particular and duly justified cases, it is necessary that the data be stored in a specific location.



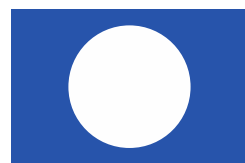
The European Union has already shown leadership regulating the digital world with the adoption of the GDPR. But a new wave of regulations and approaches is now emerging as part of the new EU Data Strategy. We see new notions emerging such as data for “public good”, Open Data, data intermediaries, data altruism, international data sharing and others. We also need to digest new acronyms such as DSA, DMA, DGA, etc.

I will not have time to develop each of these new initiatives but overall the aim of the EU Data Strategy is to create a common European data space and thus make it easier for businesses and public authorities to access high-quality data to boost growth and create value.

A key element of the Data Strategy is the development of common European data spaces in strategic economic sectors and domains of public interest, such as the common European health data space.

As EDPS, I applaud the intention of the EU legislator to ensure that European fundamental rights and values, including the right to the protection of personal data, underpin all aspects of the Data Strategy and its implementation.

I also believe that one of the objectives of the Data Strategy should be to prove the viability and sustainability of an alternative data economy model - open, fair and democratic. Unlike the current predominant business model, characterized by unprecedented concentration of data in a handful of powerful players, as well as pervasive tracking, the European data space should serve as an example of transparency, effective accountability and proper balance between the interests of the individual data subjects and the shared interest of the society as a whole.



eHealth is a key area of public interest where the Commission's Data Strategy envisages the creation of a common space, namely the European Health Data Space ('EHDS'). With the EDPB-EDPS Joint Opinion on the EHDS, the EDPB and the EDPS aimed to draw attention to a number of overarching concerns on the Proposal and urge the co-legislature to take decisive action.

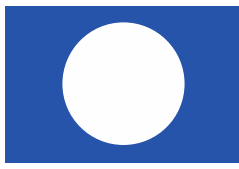
Due to the large quantity of data that would be processed, their highly sensitive nature, the risk of unlawful access and the necessity to fully ensure effective supervision over these data, the EDPB and the EDPS called for adding to this Proposal a provision that would require storing the personal electronic health data in the EU/EEA, without prejudice to further transfers in compliance with Chapter V of the GDPR.

So, we recommend in these specific situations to move towards storage requirements in the EU but still preserve the possibility to transfer data subject to appropriate safeguards.

Our objective is to ensure effective control over the data and effective protection of the data against the risks of misuse and unlawful access, be it only to comply with the precautionary principle. I firmly believe that this approach, by alleviating concerns on the most sensitive transfers, can lead to greater trust and facilitate the remaining data flows.

International data spaces with trust could at certain moment become an ultimate goal for all G7 countries. In such spaces, the data protection authorities would have to cooperate without significant obstacles of procedural nature to enable cooperation.

Any agreements should therefore also provide for clear operational steps for such cooperation; agreements could also non-exhaustively foresee clear operational



outcomes of the cooperation and circumstances in which such cooperation should take place (e.g. that DPAs carry out, upon request or on their own initiative, individual or joint investigations, audits and compliance assessments).

At the end of the day, I trust that we can collectively make the regulation of data flows - notably through new and innovative international data spaces - not a story of the impossible but a success story based on mutual trust. But for this, we need to build more additional bridges. I have no doubts that this group of G7 DPAs can play its fundamental role in this regard.

Thank you very much.

