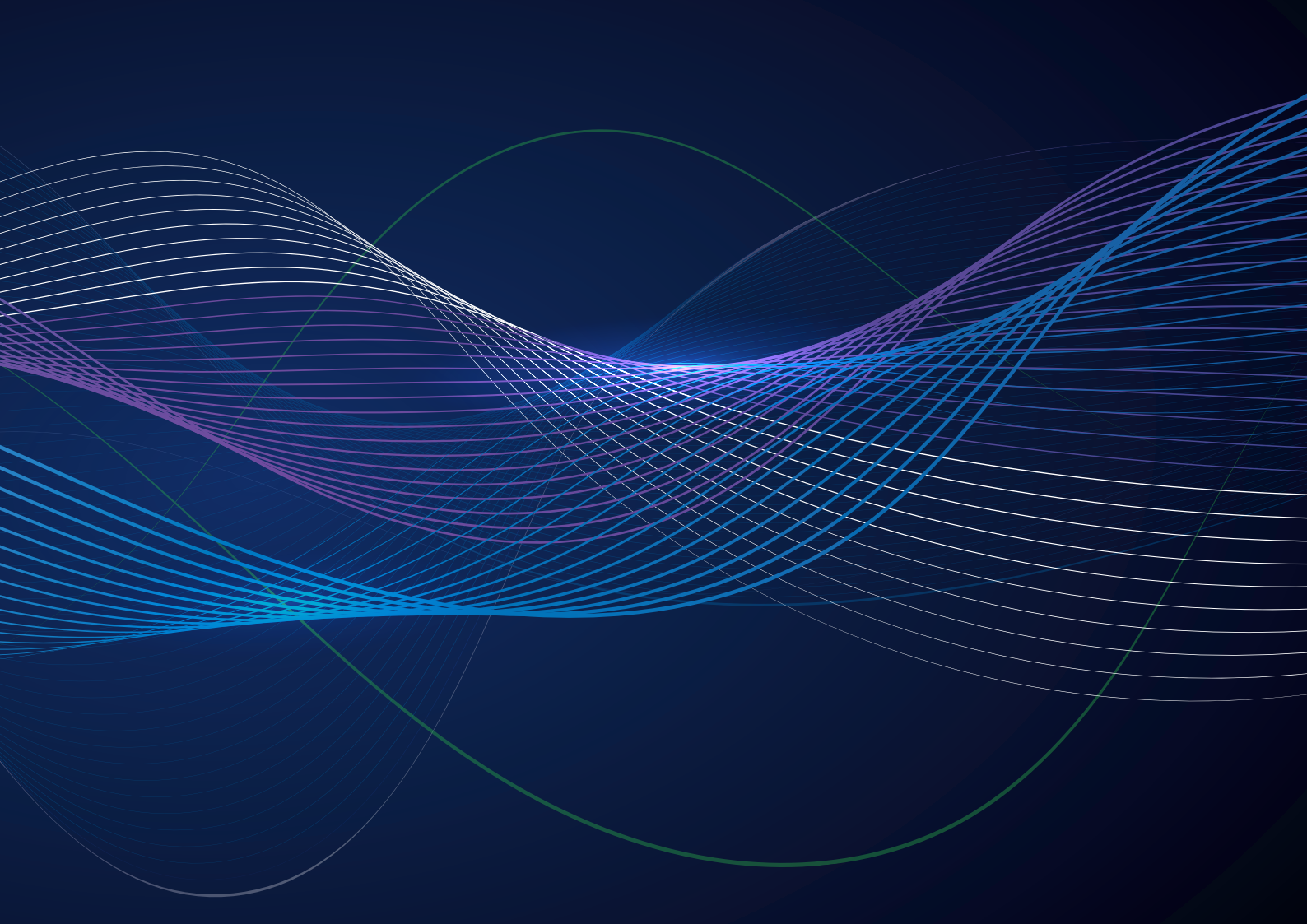




# ICC Policy Primer on Non-Personal Data



Please cite as:

ICC (2023), ICC Policy Primer on Non-Personal Data.

[iccwbo.org/news-publications/policies-reports/ICC-policy-primer-on-non-personal-data/](https://iccwbo.org/news-publications/policies-reports/ICC-policy-primer-on-non-personal-data/)

Copyright © 2023 International Chamber of Commerce

All rights reserved. ICC holds all copyright and other intellectual property rights in this work.

No part of this work may be reproduced, distributed, transmitted, translated or adapted in any form or by any means, except as permitted by law, without the written permission of ICC. Permission can be requested from ICC through [publications@iccwbo.org](mailto:publications@iccwbo.org)

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

# Table of contents

Executive Summary.....	4
Introduction .....	6
How business generates and uses non-personal data .....	7
Societal impact of non-personal data.....	9
Policy and regulatory approaches to data flows.....	13
Limitations on the flow of non-personal data.....	14
Data sharing.....	15
Conclusion .....	15
Bibliographical referencing.....	17

# Executive Summary

The complex, interdependent, global challenges the world is facing today require international collaboration and better information, where data plays a critical role.

The next stage of economic growth and societal development needs innovative data-led solutions based on a governance approach fit to unlock their full potential. ICC encourages policymakers, businesses, and all stakeholders to co-create policy environments that capitalise on the possibilities presented by data in general, and the benefits of non-personal data specifically.

## Key takeaways on the nature of data

### **Non-personal data is a central element of the modern economy**

Data fuels international trade, innovation, and economic growth. It enables businesses to optimise operations, develop products, and improve supply chains. It facilitates informed decision-making and fosters collaboration. It also helps them to deliver on their sustainability and security responsibilities. Cross-border data flows benefit small and medium-sized enterprises in particular, facilitating market entry and cost reduction. An estimated 65% of global gross domestic product is enabled by cross-border data flows, underpinning the functioning of the modern economy.

### **Non-personal data can help address global challenges**

The importance of data isn't limited to business. Data can also help to address some of the biggest challenges facing the world today. Data flows can be used to enhance public services, social welfare, and scientific research. In healthcare, data aids drug development and disease tracking. In science, it fosters discoveries and international collaboration. Addressing climate change depends on sharing data for accurate models. Agriculture, policymaking, security, and education also benefit from data flows. When data is restricted, it can harm our ability to accomplish global goals.

### **Non-personal data isn't a monolith**

Non-personal data is highly diverse and encompasses a wide variety of commercial and industrial data that does not relate to people or cannot be used to identify someone. The term non-personal data is a catch-all which designates anything which is not personal data and which does not, by definition, represent the same kind of risks as personal data. Generic policy approaches that lack nuance may risk treating non-personal data as a monolith.

### **Non-personal data is only valuable when it is usable**

The immense potential of data can only be unlocked when it is accessible, able to be used, and can be transferred across borders. However, we see an increasing number of restrictions on non-personal data which potentially limit its usefulness. This includes requirements for companies to keep certain non-personal data within a particular geographic location, to ask permission from regulators to move data across borders, or to trace data through value or innovation chains. This increases the complexity and cost of doing business for companies.

# Key considerations for policymakers

## Keep data flowing

Given the diversity of non-personal data, its immense economic and societal benefits, and its inherently low risk of an adverse impact on fundamental rights, the default position should be to foster the transfer of non-personal data across borders and to facilitate voluntary data sharing.

## Take a balanced approach

Policymakers should be cognizant of the benefits of non-personal data, and keep in mind that any restrictions to access, usability, or transfer must be risk-based and balanced against the economic and societal cost. Policies and regulations must be grounded in evidence and technical expertise so that any measures taken are sufficiently targeted.

## Prioritise interoperability

A multilateral and interoperable approach to governance can help to unlock the value of non-personal data. Avoiding the fragmentation of data governance rules should be a priority for policymakers. In a world where digital technologies and globalization have extended business across borders, industry relies on policymakers to cooperate to create globally interoperable rules.

# Introduction

Companies rely on data to enable their business operations with customers, partners, and suppliers; innovate in their business; and compete more effectively – in sectors as diverse as agriculture, healthcare, manufacturing, banking, and shipping. Micro-, small-, and medium-sized enterprises leverage data-driven cloud services to reduce barriers of entry to markets, enabling them to be on equal footing with much larger or better resourced organisations. Cloud services allow businesses to eliminate the capital expenditure on hardware for individual corporate data centres, thereby reducing operating costs. The free flow of data can also lead to significant savings for consumers by increasing competition and consumer choice.

At the same time, the importance of the free flow of data extends beyond business. Data can help address shared global goals to tackle cybersecurity risks, climate change and nature loss, food security, public health and safety, organised crime, illicit finance, and many other cross-border challenges. It also has potential to be used by the courts as a reliable source of evidence when properly evaluated by an expert. In view of the rapid developments in artificial intelligence (AI) and other emerging technologies, and the need for broad access to varied data sets to be able to realise the opportunities presented by these technologies, the importance of access to data is even more pressing today. The volume of data is likely to increase with the adoption of the Internet of Things, new research techniques, and the deployment of low-earth-orbit satellites. Without a shared commitment to enable better access to data and permit the cross-border exchange of data, our collective ability to protect ourselves from a wide array of environmental, economic, health, safety, and security threats will be greatly diminished.

An estimated 65% of global gross domestic product will be enabled by the free flow of data across borders by the end of this year (Zurich, 2022). This figure indicates just how central data is to the functioning of the real economy. Much of this data is generated by and used in industrial activity and does not relate to people or cannot be used to identify someone. This type of non-personal data is extremely varied. Boundaries between non-personal and personal data can be blurred by mixed data sets.

Policymakers are also turning their attention to defining regulation for non-personal data, both in relation to international data flows and mandatory data sharing obligations (Data Act, 2023). While some of these restrictions come as a result of legitimate policy goals, geographic or sector-specific constraints on data transfers may also limit its usefulness and have a serious impact on the economy (Digital Europe, 2021), science and innovation. Mandatory data sharing requirements may impact companies trade secrets and intellectual property (IP). Therefore, any regulations need to be responsive to the level of risk and cognisant of benefits.

The OECD has calculated an 800% increase in policies that undermine the ability to transfer data across transnational digital networks (Global Data Alliance, 2023). This includes legislation-based obligations to:

- store and manage data only locally;
- prohibit international data transfers; or
- store data in the original jurisdiction but allow copies of the data to be transferred if certain requirements are met.

Aside from restrictions placed by an increase in policies regulating data flows, there are other challenges that organisations face when wanting to unlock the value of data. A large data divide exists between organisations and countries that can access and use data and those that cannot. If we are to close the data divide, it is important that policymakers recognise current challenges and support and encourage efforts to make data more available and usable for the benefit of society, so that inequalities between countries and organisations can be reduced.

The availability, usability and free flow of data are essential to innovation, trade, and technology development. Policies which treat non-personal data as a monolith risk causing harm by limiting the usefulness of data. While non-personal data is a useful descriptor because the concept of personal data is well understood, it covers hugely diverse types of data. Treating the term non-personal data as a definition might lead to one-size-fits-all policy approaches that are not sufficiently nuanced, and which limit the usefulness of data. In this policy primer, ICC illustrates the economic and societal value of non-personal data and explores the challenges presented in realising these benefits, before discussing how learnings and good practices could be used to address those challenges.

## How business generates and uses non-personal data

Data is essential for businesses in numerous ways, ranging from optimising operations to uncovering new market opportunities. For example, a manufacturing company might use data from its machines to optimise production processes and reduce costs, while a logistics company might use data from its vehicles to optimise delivery routes and reduce fuel consumption. Today, some distribution chains and transportation methods essentially function as systems for transmitting non-personal data, leveraging advanced terrestrial or satellite transmission networks. This analysis of non-personal data can lead to broader societal benefits such as cyber resilience and sustainability. Through access to and use of data, including non-personal data flows, companies can stay connected to projects across the globe, gain efficiencies through the sharing of data and best practices, unlock innovation opportunities, and minimise potential silo effects of global operations. Restrictions impacting non-personal data flows can hinder these activities, reduce competition, and limit the potential benefits of digital technologies for businesses and consumers.

In this section, examples of how business generates and uses non-personal data illustrate its importance to the functioning of the real economy and how it contributes to broader global goals.

- 1. Market research and analysis:** Businesses use non-personal data to analyse market trends, consumer preferences, and the competitive landscape. This information helps them identify gaps, anticipate shifts, and adapt to evolving market demands.
- 2. Product development:** By collecting and analysing non-personal data on user behaviour and feedback, businesses can improve their products and services. This iterative process of refinement allows them to create more effective, user-friendly offerings.
- 3. Supply chain optimisation:** Non-personal data related to logistics, transportation, and inventory levels can help businesses optimise their supply chains. This information allows them to streamline operations, minimise costs and energy consumption, and respond to changes in demand.
- 4. Manufacturing optimisation:** Non-personal data related to sensors and machinery can help manufacturers to monitor their processes in real-time to identify bottlenecks and optimise workflows. This information helps to increase efficiency, minimise downtime, and reduce waste. The manufacturing industry relies heavily on global supply chains. International data transfers can help manufacturers optimise their supply chains by providing information on shipping routes, inventory levels, and market demand. Manufacturers can improve processes for maintaining factory equipment by providing information on equipment performance, maintenance schedules, and repair history. This data can help manufacturers predict equipment failures and schedule maintenance before a breakdown occurs. Manufacturers can also improve energy efficiency by providing information on energy consumption, energy costs, and energy-saving technologies. This data can help manufacturers identify opportunities to reduce energy consumption and save costs.

- 5. Warehousing and logistics:** Enterprises can classify and store goods quickly, accurately, and with low margins for error based on non-personal data. Meanwhile, goods can be transported more efficiently via integrated logistics hubs combining highways, ports, railways, airports, and logistics parks. Through improving transportation efficiency, higher economic benefits can be obtained.
- 6. Financial analysis:** Businesses analyse non-personal financial data to understand their performance, identify trends, and make informed decisions. This data can include sales figures, revenue, costs, and other financial metrics.
- 7. Predictive analytics:** By leveraging non-personal data, businesses can create predictive models that help them to forecast demand, identify potential risks, and make data-driven decisions.
- 8. Geospatial data:** Geospatial data, such as maps and satellite imagery, is a form of non-personal data used to analyse location-based trends and patterns. This information can help businesses identify potential markets and optimise their physical presence.
- 9. Environmental data:** Businesses use non-personal environmental data to monitor and analyse factors like climate, pollution levels, and natural resources. This information is crucial for businesses to assess potential risks and opportunities and develop sustainable practices.

## Cyber resilience

Businesses generate non-personal data through their cybersecurity systems, including firewalls, intrusion detection systems, and security event logs. These data sources provide valuable insights into potential threats and vulnerabilities. Analysis of this data helps businesses try and stay one step ahead of cybercriminals, enhancing their ability to detect, prevent, and respond to security incidents.

Additionally, sharing non-personal data with industry-specific or government-led cybersecurity information-sharing platforms can contribute to collective threat intelligence. Collaborative analysis of such data enables the identification of broader attack patterns and trends, leading to the development of more effective industry and nationwide cybersecurity solutions and strategies.

## Sustainability

Businesses can generate and utilise non-personal data in supply chain management practices to reduce environmental impact and promote sustainability throughout their operations. By gathering data from suppliers and focusing on key sustainability metrics such as carbon emissions, water usage, and waste generation they can ensure compliance with sustainability standards, encouraging the adoption of environmentally friendly production methods. Non-personal data can also be used to optimise transportation methods and logistics operations such as shipping routes, fuel consumption, and vehicle efficiency.

By using non-personal data, businesses can help limit damaging environmental impact, improve efficiency, and enhance consumer trust.



## Commerce and innovation

Non-personal data serves as a key enabler for **commerce and innovation** by providing businesses with valuable insights, driving decision-making, and promoting collaboration across sectors. Some of the benefits of non-personal data for business operations are outlined below:

- 1. Informed decision-making:** Access to non-personal data enables businesses to make data-driven decisions, leading to better outcomes and higher efficiency.
- 2. Innovation:** Non-personal data fuels innovation by providing valuable insights and allowing businesses to identify new opportunities, anticipate challenges, and develop groundbreaking solutions.
- 3. Collaboration:** Sharing non-personal data encourages collaboration between businesses, researchers, and governments, promoting the development of new technologies, standards, and policies.
- 4. Economic growth:** The use of non-personal data in business processes and decision-making drives economic growth by improving productivity, enabling the creation of new industries, and fostering competitive advantage.
- 5. Social impact:** As outlined below, access to non-personal data enables businesses to innovate and work to address societal challenges by providing insights into areas like healthcare, education, transportation, and environmental management, improving the quality of life for all.

## Importance of cross-border data flows for the economy

The ability to move data across borders is vital to conducting international trade and commerce for global companies and is a key driver for innovation and technology development. Cross-border data flows enable businesses to access and analyse vast amounts of data from different markets, enabling valuable insights and the expansion of customer base and revenue potential. By allowing cross-border data flows, countries can enhance their participation in global value chains and strengthen their export capabilities, leading to increased trade and economic integration.

It is not just larger businesses with extensive international operations which benefit from the free cross-border flow of non-personal data. Non-personal data is also extremely valuable to micro-, small-, and medium-sized enterprises, allowing them to enter new markets and reduce operating costs. The flow of non-personal data not only allows businesses to access valuable insights and information that can improve their decision-making processes and enhance productivity, but it can also enable data sharing amongst companies, which can help further drive innovation.

## Societal impact of non-personal data

The growth of the digital economy and the increasing use of data-driven technologies has led to the creation of vast amounts of data. Using this data with massive compute power and sophisticated algorithms, we have an opportunity to solve some of society's most pressing social and economic challenges. Data has the potential to drive economic growth and innovation across all sectors, including healthcare, agriculture, transportation, and energy. The collection and analysis of data can help companies and organizations to identify patterns, optimise processes, and make better decisions based on real-time information, particularly when employing artificial intelligence. To unlock the potential of data, the data that is generated needs to be accessible and usable.

However, the OECD has calculated an 800% increase in policies that restrict the ability to transfer data across transnational digital networks (Global Data Alliance, 2023) – covering both personal and non-personal data. This increase in cross-border data restrictiveness, where it cannot be justified by legitimate policy goals, is not simply unsustainable; it may hinder the achievement of shared global goals to address cybersecurity risk, climate change, public health and safety, organised crime, illicit finance, and many other cross-border challenges. More generally, restrictions undermine globalisation and digitalisation and are incompatible with the borderless nature of the Internet. In some, well-defined cases, restrictions might be deemed necessary to safeguard against extraterritorial legislation and unlawful data access. However, our ability to address environmental, economic, health, safety, and security challenges relies on international cooperation to enable the cross-border flow of data.

International data flows can have a significant impact on society by improving public services, enhancing social welfare, and promoting scientific research. The use of non-personal data in public services can help governments to better understand and address societal challenges, such as urbanisation, climate change, and public health. For instance, the use of non-personal data in smart cities can help to improve transportation, energy efficiency, and public safety.

The transfer of non-personal data across borders, if reciprocal, can deliver immense societal value at the same time as creating economic benefits. The examples below illustrate why a nuanced approach to policymaking, where regulations are underpinned by evidence and real on-the-ground experience, and responsive to the context and risk level in which data is used and the purpose it is used for, is so important.

## Healthcare

The use of non-personal data in the healthcare sector can lead to the development of new drugs and therapies, improved patient outcomes, and better resource allocation.

Healthcare researchers can collaborate with international colleagues to share non-personal data, such as information on disease outbreaks, drug efficacy, or clinical trials. This can lead to a better understanding of diseases and more effective treatments.

International transfer of non-personal data can help in tracking disease outbreaks, identifying patterns and any pathogens, and responding to epidemics quickly. For instance, if a new disease outbreak occurs in a country, sharing data on the disease, including symptoms and transmission patterns, can help other countries prepare and respond accordingly.

Data on healthcare outcomes can be shared across countries to identify best practices, learn from each other's experiences, and develop more effective treatments. For instance, if a particular treatment is showing success in one country, this information can be shared with other countries to improve patient outcomes. Clinical trials often happen across several countries, and ensuring a sufficiently large sample size for research may require the cross-border transfer and aggregation of data.

Information relating to the production and distribution of medical supplies and equipment can be shared internationally to ensure the timely and effective delivery of healthcare products. This is particularly important during times of crisis, such as pandemics or natural disasters.

The use of non-personal data in healthcare illustrates why definitions of non-personal data should be expansive enough to allow for valuable societal benefits. While the data on an outbreak of disease may relate, initially, to the people with that disease, it is possible to aggregate or clean the data so that it does not identify any one person. This example illustrates why data can be most

valuable when it is allowed to flow across borders, so that it can be aggregated and analysed to improve healthcare globally. The benefit of this data in understanding and controlling an outbreak makes a compelling case for regulating in a way which balances the value of data with risks to data security.

## **Scientific research**

The use of non-personal data in scientific research can lead to discoveries and new insights in various fields, including astronomy, biology, and physics. The exchange of non-personal data across borders can also facilitate international scientific cooperation and collaboration, leading to more impactful research outcomes. For instance, the European Open Science Cloud, which aims to create a pan-European infrastructure for scientific data sharing and collaboration, enables researchers to access and share non-personal data from different countries and disciplines, leading to more impactful research outcomes and scientific discoveries. Open access to scientific knowledge, including non-personal data, is a key principle in UNESCO's Recommendation on Open Science (2021).

International collaboration is critical to scientific research, and sharing non-personal data across borders is essential to this collaboration. This allows researchers to gain access to broader and more diverse information from multiple countries. This information can help in discovering new findings or patterns in scientific research. Cross-border scientific collaboration is also an important factor in building capacity in scientific and technological skills and knowledge across different countries.

Scientific research relies on the ability to replicate results. By sharing data internationally, researchers can more easily replicate studies, verify results, and build upon previous research.

## **Addressing climate change and nature loss**

Climate modelling is essential to understanding climate change and its impact on different regions. Transferring data across borders is necessary to enable understanding of climate-related trends such as weather patterns, sea level changes, and temperature variations. By sharing this data, researchers can develop more accurate climate models that can help predict future climate change patterns. This information can be used to identify areas most acutely affected by climate change, or where renewable energy resources are best located.

Satellite data that shows information about forest cover, land use, and biodiversity can help identify areas where deforestation is taking place. This information can help countries take action to preserve forests and reduce emissions. Similarly, data on geological formations or soil characteristics can help identify areas suitable for carbon capture and storage.

In the built environment, smart building sensors can optimise energy consumption, reduce waste and lower costs. By sharing data across supply chains, companies can understand and reduce their scope three emissions, which is crucial in tackling climate change.

Techniques for measuring the carbon impact of industrial activities can make it possible to assess the efforts made towards decarbonisation. As shareholders, employees, potential recruits, and organisations offering finance are increasingly asking for information on climate impact, carbon measurement data can offer value to businesses as well as reduce environmental impact.

## **Agriculture and food security**

The use of non-personal data can enhance the efficiency of traditional industries in agriculture and farming. For instance, the agriculture industry can leverage big data, the Internet of Things, and edge computing to improve crop yields. Meteorological data can play a vital role in maximising the functionality of these technologies. For instance, the use of data in precision agriculture can help farmers to optimise crop yields, reduce waste, and save resources. The need to feed a rapidly increasing global population while dealing with the unpredictability of climate change is a global challenge (World Resource Institute, 2017).

Data can help farmers manage crops more efficiently by providing information on weather patterns, soil characteristics, and pest and disease outbreaks. This data can help farmers make more informed decisions about planting and pest control.

Agriculture requires a significant amount of water, and water scarcity is a growing concern worldwide. International data transfers can help farmers monitor water use, identify areas of water stress, and develop strategies for more efficient water use.

International data transfers can help plant breeders develop new crops that are more resistant to disease, pests, and environmental stress. Data on genetic diversity, plant traits, and climate can help breeders identify and breed the most promising traits and crops for different regions.

Data transfers are also essential to managing food safety. Data can help improve food safety by providing information on foodborne illness outbreaks and food contamination. This data can help countries identify and respond to food safety risks more quickly.

The agriculture sector relies on a complex global supply chain. Transfers of non-personal data can help manage this supply chain more efficiently by providing information on crop yields, logistics, and market demand.

## **Evidence-based policymaking**

Governments, regulatory bodies, and courts can gain immense value by employing data analysis for policy. This reflects higher administrative efficiency, which benefits society at large.

International data transfers can help policymakers to compare different policies and their impact in different regions or countries. This data can help identify successful policy strategies that can be adapted to other contexts. Data can help policymakers monitor the effectiveness of policies in real time. This data can help policymakers identify issues and respond to emerging challenges quickly.

Policymakers can set benchmarks and targets for policy outcomes. This data can help policymakers identify areas where progress is needed and track progress over time. Governments willing to share non-personal data relating to policy decisions with the public can enhance public trust in the government. This results in better interaction between the government and society.

## **Security**

Non-personal data can be used to improve security, especially in cases where advanced technologies are used to commit new types of crimes. Cross-border data flows can promote international cooperation and experience sharing, thereby improving governance capabilities in the fight against crime.

In addition, when a new type of organised crime emerges in one country, other nations can learn from the cross-border transfer of data, thus strengthening national security.

## Education

Non-personal data is used in education and can help to improve educational outcomes. For instance, schools might collect data on course management and completion, and governments might collect data to review investments in different aspects of the educational system. Non-personal data can drive better decision-making, collaboration, and innovation in education.

## Policy and regulatory approaches to data flows

At the moment, there is no single approach to enabling trusted access, use, and flow of data. Governments currently pursue different or even multiple and complementary approaches. Some prefer to approach the issue using unilateral mechanisms. Others pursue intergovernmental arrangements through organisations such as the OECD and the World Trade Organisation. In addition, some approach this through trade agreements, including binding provisions that enable data (both personal and non-personal) to flow while maintaining exceptions for meeting legitimate objectives such as national security. In the interest of business, multilateral agreements are preferable as they involve several countries.

Under the legal framework of most jurisdictions, non-personal data is defined by negation, as data which are not personal data. Personal data is generally afforded a certain level of protection because it relates to fundamental rights such as privacy, and important values such as data autonomy. Therefore, personal data must be clearly defined for ease of regulatory compliance.

Non-personal data is generally deemed to be information which is not related to natural persons, or which cannot be used to identify a person directly or indirectly. This may either be data which has never related to a natural person, or data which has been sufficiently treated so that there is a reasonable (European Union, 2014) expectation that it cannot be used to identify someone.

For example, data which has never been related to natural persons might include meteorological data. A variety of agricultural technologies adopted by farmers have used meteorological data to enhance the efficiency of yield gain, and it is vitally important to addressing food security. Data which has been treated to no longer enable the identification of individuals includes, for example, traffic data such as congestion level, or travel speeds on specific road segments. Such data has been used to reduce transport emissions (GSMA, 2022). This data, when aggregated and anonymised, is unlikely to be used to identify someone, while being immensely valuable for addressing an important environmental challenge.

Personal data comes with a clear expectation that it must be protected in accordance with fundamental rights. Non-personal data does not carry a similar cohesive set of expectations. It is important, therefore, that policymakers recognise that non-personal data is a term which is used to describe everything which is not personal data, rather than denoting a specific type of data which presents specific legal or ethical expectations.

Given the diversity of data which is non-personal, and the immense economic and societal benefits that this data can provide and inherently low risk of an adverse impact on fundamental rights, **the default position should be to foster the transfer of non-personal data across borders and**

**to facilitate voluntary data sharing.** Appropriate efforts should be taken to protect data when it is transferred or shared, responsive to the level of risk and cognisant of benefits.

Placing unduly onerous requirements on organisations to assess the level of risk presented by a cross-border transfer using compliance mechanisms, and without the possibility to ask for an opinion of a court or competent authority, could create a serious impediment to innovation.

The flow of non-personal data is a key enabler for commerce, it is essential to innovation, protection, trade, technology development and achieving broader societal benefits. Therefore, instead of restricting access to, use of, or the flow of data, **policies and regulations which govern data should be grounded in evidence and technical expertise**, be risk-based, flexible, interoperable, and technologically neutral to effectively achieve their desired scope, without unintended consequences on the rights of individuals, or limiting innovation.

## Limitations on the flow of non-personal data

The past several years have seen a sharp uptick in data flow restrictions and localisation measures, with regulations becoming increasingly more restrictive. While many of these restrictions are primarily aimed at protecting personal data, the lack of a global consensus on how approaches to govern data flows might present barriers to the many benefits of sharing non-personal data.

In addition, as digital technologies are increasingly underpinning economic activity, governments around the world are turning their attention to cross-border data flows. The risk of foreign governments, and other companies, obtaining access to sensitive industrial and commercial data can also compel governments to require additional protection on the flow of data across its borders. While in certain well-defined cases, such measures to facilitate transparency, security, and trust regarding data sharing and usage might be necessary, they need to be balanced against the benefits of cross-border data flows. Therefore, a targeted and risk-based approach to regulation is recommended.

The patchwork of regulations around the globe is increasing the complexity of legal requirements for companies to meet and thus the costs of compliance. Furthermore, several jurisdictions require companies to keep certain non-personal data within a particular geographic location. They require permission from regulators or additional reporting obligations to move data outside of the jurisdiction, or the tracing of data through value or innovation chains.

When such restrictions are not targeted and risk-based, their impact on non-personal data flows can take a heavy toll on business including preventing companies from aggregating and analysing global data, or from gaining economies of scale; hindering global supply chains relying on non-personal data flows to track products; limiting the use of tech like AI that rely on large data sets and disincentivising data sharing amongst companies. In addition, our collective ability to address global challenges is impeded by restrictions on the transfer of such data. For example, limiting the transfer of satellite or drone imaging data across borders could damage our understanding of global patterns of environmental degradation.

There may be well-defined cases where non-personal data requires protection, for example preventing unlawful access to sensitive industrial and commercial data. However, in other cases, when the flow of data is restricted arbitrarily, it limits the usefulness of that data for developing solutions to societal challenges. It drives up costs as companies need to comply with regional or national policies or invest in further infrastructure. Further, this constrains the participation of people, businesses and even governments in the digital economy. Non-personal data can provide

immense benefits if it is governed in the right way. Therefore, it is of utmost importance to foster global standards and interoperability between regulatory frameworks to ensure the flow of non-personal data across borders. Interoperable regulatory frameworks across jurisdictions can help to build an open and secure digital world.

## Data sharing

Policymakers have also recognised the benefits of data sharing and are developing ways to support increased data sharing to unlock many of the benefits outlined above. Given that few organisations generate sufficiently large data on their own to unlock such societal and economic opportunities, mechanisms that support voluntary data sharing should be encouraged by policymakers. To instil trust in a data sharing ecosystem it is important that companies are able to protect commercially sensitive information when sharing data. The value of non-personal data is often highly contextual, meaning that raw data may not be interpretable without a range of metadata and a sufficient understanding of the context. In some cases, these circumstances may already offer a considerable safeguard for sharing or transferring non-personal data. For regulations that require specific types of non-personal data to be shared, a clear and precise definition is of utmost importance. For example, a data-sharing obligation that applies to raw non-personal data will have a different impact on businesses than an obligation which also extends to the relevant metadata and inferred non-personal data. The latter is often the result of a substantial investment of a company.

Restrictions on the transfer of data need to achieve a balance between contractual freedom and protecting trade secrets and IP. Companies are often best placed to determine and decide whether to assume the level of risk presented with sharing data and decide on contractual or technical measures to ensure protection of commercially sensitive information. On the other hand, measures that seek to force companies to make certain non-personal data available may have a detrimental impact on innovation and must be sufficiently targeted to avoid unwanted side effects of regulation.

## Conclusion

Non-personal data can deliver immense economic and societal benefits. For it to deliver those benefits, it needs to be accessible and usable, adequately protected where necessary, and able to be transferred across borders. Given the opportunities for economic and social development it carries, the default position should be to enable the secure flow of non-personal data. Some types or uses of data might present certain risks. In those cases, any policies should balance the benefits that cross-border data transfers can provide with the level of risk they might present.

We discuss below a short list of considerations which policymakers could use to think about non-personal data.

- **Skilling:** Ensuring data is usable by everyone will help close the data divide and ensure that data can benefit society broadly. Policymakers should look to develop policies that provide more people with the skills needed to make use of data.
- **Access:** Policymakers should develop policies that encourage voluntary data sharing and ensure that publicly available data can be used by businesses to innovate by ensuring that their IP frameworks include robust exceptions that allow legally accessed data to be used for data analysis and AI innovations, whilst at the same time preserving the central role of IP in promoting human creativity and innovation.

- **Context:** Policymakers should consider a fine-grained approach to data. Non-personal data is highly varied and does not present the same kind of risks as personal data. For this reason, the default position should be to enable its secure flow across borders.
- **Data sharing:** For regulations that target obligations to share specific types of non-personal data, a clear and precise definition is of utmost importance. For example, a data sharing obligation that applies to raw non-personal data has a totally different impact on businesses than an obligation that also extends to the relevant metadata and inferred non-personal data.
- **Evidence-based:** We recommend an approach to policymaking which reflects on the ground realities. Policies and regulations must be grounded in evidence and technical expertise so that any measures taken fit actual business use cases.
- **Risk-based:** The catch-all nature of definitions of non-personal data reflects that these types of data present a low level of risk to individuals, while often offering immense economic and societal benefits. Policies and regulations should aim to maximise the benefits while minimising the risks, thereby enabling businesses to generate and use non-personal data in ways that deliver economic and societal benefits.
- **Build a data standard system:** A unified data standard, including unified rules and benchmarks for naming, definition, structure, and value range of data, can improve the interoperability between different data systems and is the basis for the open sharing of data.
- **Unity and cooperation:** When formulating relevant policies, countries should aim for unity rather than division, cooperation rather than confrontation, inclusiveness rather than exclusion while respecting legitimate policy goals, for example, when it comes to addressing issues around unlawful access to data. Formulating globally interoperable common rules for governance on the basis of mutual respect and broad consensus can prevent the fragmentation of data governance rules. Establishing globally interoperable rules for the governance of data is conducive to promoting the effective use of non-personal data and empowering the development of new technologies and applications worldwide, as well as increasing the ease of compliance for business. For example, the development of AI may benefit from integrated governance rules.
- **Development:** Digitalisation has offered significant opportunities to all countries, in particular developing nations. Non-personal data is an important component of economic digitalisation. Countries should ensure data governance rules do not inhibit concepts of expanding digital cooperation, promoting digital trade, bridging the digital divide, and building a global digital economic paradigm featuring benefits for all, balance, coordination, inclusiveness, mutually beneficial cooperation, and common prosperity.

Policymakers recognise the value of non-personal data, which is why many bilateral trade deals or regional legislation include provisions to allow this type of data to be transferred between specific countries without restrictions. There is an opportunity to broaden local policy approaches to encompass further countries and regions. Globally interoperable approaches to data governance will help to unlock the potential value of non-personal data.



# Bibliographical referencing

Data Act (2023), European Union (political agreement), [www.eu-data-act.com/](http://www.eu-data-act.com/)

Digital Europe (2021), *The Value of Cross Border Data Flows*,  
[www.digitaleurope.org/resources/the-value-of-cross-border-data-flows-to-europe-risks-and-opportunities/](http://www.digitaleurope.org/resources/the-value-of-cross-border-data-flows-to-europe-risks-and-opportunities/)

European Union (2014), *Article 29 Data Protection Working Party, Opinion 05/2014 on Anonymisation Techniques, 2.2.2. Potential Identifiability of Anonymised Data, Adopted April 2014*

Global Data Alliance (2023), *Global Industry Statement on An Institutional Arrangement for Partnership on Data Free Flow with Trust*,  
[globaldataalliance.org/wp-content/uploads/2023/04/04182023g7dfftglindustry.pdf](http://globaldataalliance.org/wp-content/uploads/2023/04/04182023g7dfftglindustry.pdf)

GSMA (2022), *AI for Impact: Using the power of data to respond to climate change*

UNESCO (2021), *UNESCO Recommendation on Open Science*,  
<https://unesdoc.unesco.org/ark:/48223/pf0000379949.locale=en>

World Resources Institute (2013), *The Global Food Challenge Explained in 18 Graphics*,  
[www.wri.org/insights/global-food-challenge-explained-18-graphics](http://www.wri.org/insights/global-food-challenge-explained-18-graphics)

Zurich (2022), *Cross-border data flows: Designing a global architecture for growth and innovation*,  
[www.zurich.com/en/knowledge/topics/digital-data-and-cyber/cross-border-data-flows-designing-global-architecture-for-growth-and-innovation](http://www.zurich.com/en/knowledge/topics/digital-data-and-cyber/cross-border-data-flows-designing-global-architecture-for-growth-and-innovation)

## About the International Chamber of Commerce

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 170 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.



33-43 avenue du Président Wilson, 75116 Paris, France  
T +33 (0)1 49 53 28 28 E [icc@iccwbo.org](mailto:icc@iccwbo.org)  
[www.iccwbo.org](http://www.iccwbo.org) @iccwbo