European Commission

DSM Free Flow of Data Initiative and emerging issues of data ownership, access and usability

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The Digital Single Market Strategy

- Announced in President Juncker's policy guidelines:

  "The Digital Single Market means an area where the free movement of goods, persons, services and capital is ensured and where citizens and businesses can therefore seamlessly access and exercise online activities under conditions of fair competition, irrespective of their nationality or place of residence."

- One of the **priorities** for this Commission

- Three policy areas (pillars)

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3 Third pillar: Creating a European Digital Economy and society with growth potential

Building a data economy

Digital data stored in cloud:
2013: 20% - 2020: 40%

Data economy to reach **EUR 566 billion by 2020**

Free flow of Data initiative:

- Tackling **data location restrictions**
- Clarifying **emerging issues of data ownership, access and liability**
- Launching a European Cloud initiative
- Encouraging access to public data

Free Flow of Data (I)

Problems:

- Existence of rules that specify where data has to be collected, processed or stored **(Data location restrictions)**
- Prevention of barriers to free flow of personal data effective **only for reasons connected with the protection** of personal data
- **Insufficient legal certainty** with regard to the rules on data access and usability along the value chains (data "ownership")

Free Flow of Data (II)

Consequences:

- Inhibition of the growth of cloud service providers
- Regulatory fragmentation of the Single Market
- Lack of incentives for the development of HPC centres on a European scale
- Restricted choice for consumers
- Deterrent for the emerging business models (e.g. data brokers)
- Dominance of large actors with sufficient legal expertise and control over large datasets

Free Flow of Data (III)

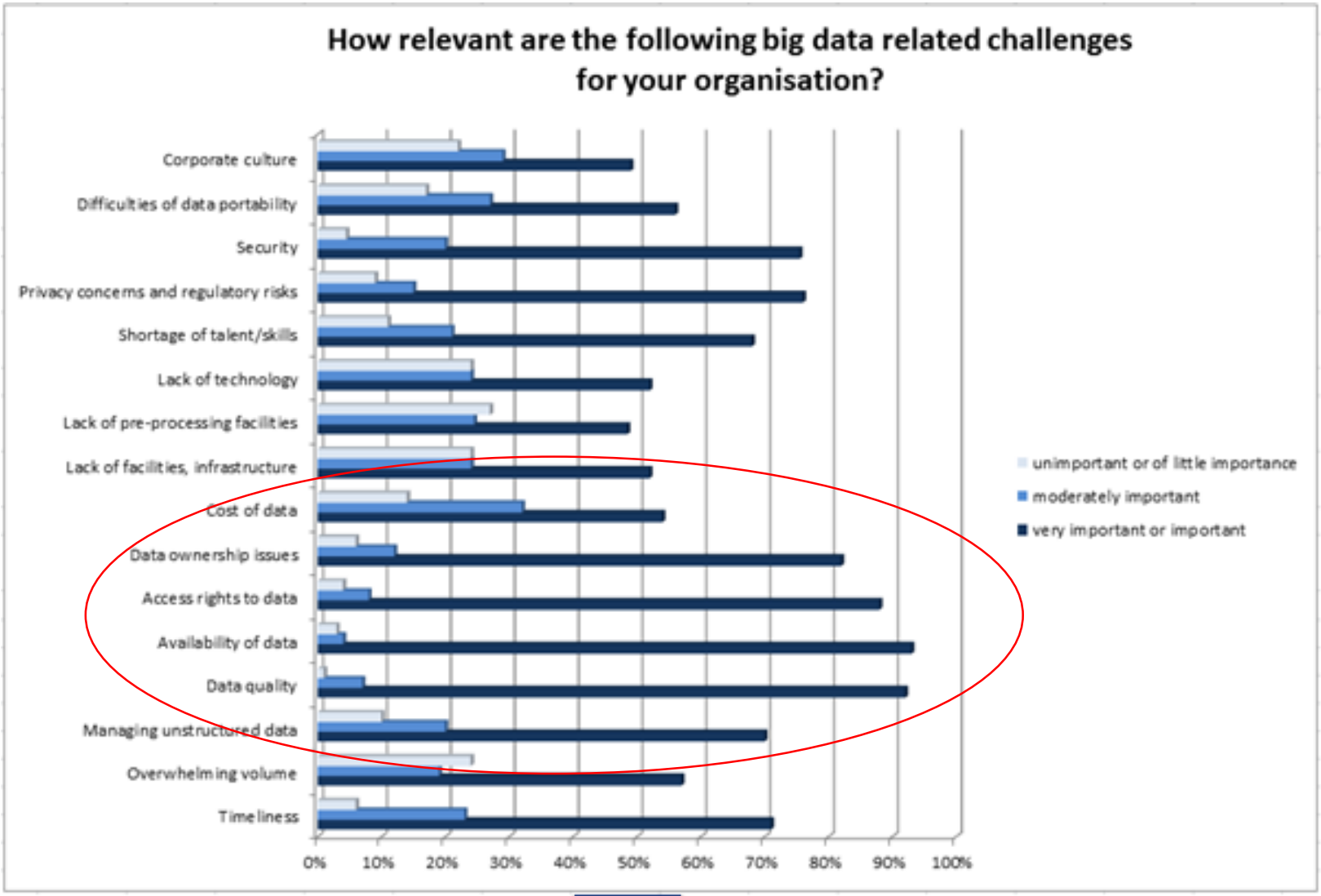
Possible solutions:

- Putting in place legislative measures banning data location restrictions
- Harmonising possible exceptions to the principle of the free flow of data
- Clarifying the concepts of data 'ownership', access and liability (legal instruments or soft law or a mix of both)
- Support the development of solutions allowing for an easier assignment of value to data (data pricing) and exchange/trade of data (data brokerage)

Free Flow of Data (IV)

- **Launch of public DSM consultation** on 'platforms, online intermediaries, data and cloud computing and the collaborative economy'
  - https://ec.europa.eu/eusurvey/runner/Platforms/
  - Includes questions on data ownership and access, emerging data markets, data location restrictions, PSI
- **Closes end 2015**
- **Results available in February-March 2016**
- **Policy choices decided in late 2016**

Big data challenges (targeted CNECT consultation)



Data ownership, access, usability (I)

- IPR refers to creations of intellect, not raw data
- Database directive covers 'databases'
- Some actors along data value chains ask for a clearer legal framework on who, under which conditions can access and use which data
- Currently, rights assigned are based on contracts which can become very complex
- Further impact of Internet of Things, Industry 4.0

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Data ownership, access, usability (II)

- Data ownership issues now particularly important for manufacturing sector and sensor-based data
- Impact on evolution of new business models (e.g. data brokers)
- How can value of (access to) data be determined?
- How to avoid information asymmetry in the market?
- Can concentration of data ownership lead to market distortions?

Real life case: Social media (I)

- Social media platforms opening access to their data by third parties to build services on top (e.g. promotional campaigns/analytics)
- There is no shift in data ownership: data always remains with the platform
- Data value for the platform generated by growth of user base
- Data access essential for intermediaries between platform and user (value of data resides in the insights that can be derived from it)

Real life case – open API in financial sector (II)

- Spanish bank tracking data on credit card use by its customers and creating an open API to let other companies build value on it
- Personal data initially 'owned' by individuals but after anonymisation and aggregation, owned by the bank (this mechanism agreed in a contract)
- Value of data: both for the bank (optimisation) and for 3rd parties (new services)
- Premium access to aggregated datasets also charged for

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THANK YOU FOR YOUR ATTENTION!