

# Policy Issues for European Data Centres: What are they, why do they matter and what are we doing about them?



techUK has been working informally with a number of data centre specific organisations and broad based digital technology associations so that we can cooperate on topics of mutual concern at European level. Issues keeping European data centre operators awake at night include energy costs, access to technical skills and a wide range of regulatory developments in areas such as environmental performance, carbon taxation, data security, data protection and data sovereignty. Some issues impact the broader digital technology sector and some are data centre specific. The majority are already being dealt with effectively at EU level but some would benefit from cooperation between representative bodies in different member states and others may need more coordinated action. The table below summarises the current situation from a UK perspective. The policy issues are in no particular order. The table contains acronyms that are explained in full in the [glossary](#) at the end.



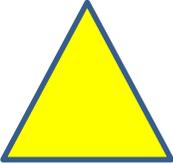
= scope for influence at EU level

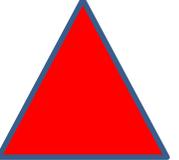


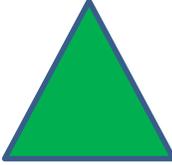
= limited scope for influence – eg MS level only



= no scope for influence, mitigation only

What is it and why does it matter?	What is the current status?	What are we doing/what needs doing?	Whom to contact
<p><b>GDPR:</b> General Data Protection Regulation: update of 1995 Data Protection Directive, harmonisation for data protection regimes. Where data centre operators are data processors GDPR will create cost and risk: joint and several liability potentially means that operators could be held liable for data breaches or other non compliance despite having no control or knowledge of the data concerned. All operators (processors or not) must understand tenant or customer requirements</p>	<p>Legislation has formally been passed (14<sup>th</sup> April 2016). Implementation date is 25<sup>th</sup> May 2018 by which time organisations in members states must be compliant.</p>	<p>Member states await guidance from their national data protection commissioners. techUK is liaising with the ICO in the UK. Other NTAs should be liaising with their data protection authorities. Update on cloud code of conduct work and likelihood of adoption needed.</p>	<p><a href="mailto:Shane.murphy@techuk.org">Shane.murphy@techuk.org</a> <a href="mailto:Alexander.whalen@digitaleurope.org">Alexander.whalen@digitaleurope.org</a></p> 
<p><b>Data flows: Safe Harbor / Privacy Shield.</b> This agreement between the EU and US allowing transatlantic data flows is based on three options – adequacy, binding corporate agreements or model contracts. The ECJ (Schrems) ruling against adequacy invalidated the agreement.</p>	<p>Safe Harbor replaced by EU US privacy Shield on 9<sup>th</sup> February. The Article 29 Working Party (a closed group of national data protection commissioners) recently raised points of concern regarding privacy shield. The Commission and the US Dept of Commerce are now working to resolve these concerns.</p>	<p>Getting transatlantic data flows on a secure and legal footing is a key priority. MS must be constructive in helping the Commission secure agreement on the issues. There are also concerns about model clause adequacy as regards protection of data, which could lead to further uncertainty that must not escalate.</p>	<p><a href="mailto:Shane.murphy@techuk.org">Shane.murphy@techuk.org</a></p> 

<p><b>DSM (Digital Single Market)</b> DSM strategy, published in May 2015 aims to generate jobs and economic growth (€114Bn) through 16 initiatives / three pillars: 1) Better access for consumers to digital goods and services, 2) Creating the right conditions for a level playing field for networks and innovation 3) Maximising growth potential of the digital economy. Pillar 3 includes the Cloud Computing and Free Flow of Data initiatives.</p>	<p>On 25<sup>th</sup> May the Commission published the next wave of DSM packages including platforms, e-commerce and AV services. Commission expected to release more details on free flow of data which is expected to address issues including data localisation, interoperability and portability, data ownership, liability, data access and reuse. Further research underway: questionnaires on existing data localisation needs, an impact assessment of the free flow of data initiative. Proposals expected this year.</p>	<p>Clarity on definitions around cloud providers and who is covered in platform review is essential</p>	<p><a href="mailto:Shane.murphy@techuk.org">Shane.murphy@techuk.org</a> <a href="mailto:Charlotte.holloway@techuk.org">Charlotte.holloway@techuk.org</a></p> 
<p><b>NIS - Network and Information Security Directive</b> Part of the EU's Cyber Security Strategy, this establishes a reporting mechanism for cyber incidents. It will impact cloud providers in particular as there are provisions in the Directive for cloud platforms to be regulated. The NIS is the first piece of EU wide legislation on cyber-security</p>	<p>The original proposal was made in 2013. Agreement was reached in December 2015. The text has been formally agreed and MS have two years to implement. Dialogue now with implementing authorities therefore.</p>	<p>techUK liaising with DCMS on implementation. Raising awareness, monitoring developments.</p>	<p><a href="mailto:Talal.rajab@techuk.org">Talal.rajab@techuk.org</a></p> 
<p><b>ETS Phase III</b> EU Emissions Trading Scheme: Cap and trade scheme to reduce scope 1 carbon emissions. We are currently in phase III and data centres are captured by the legislation due to their generating capacity. This affects operators with standby capacity above around 7MW. It is onerous and costly to comply and delivers no benefit.</p>	<p>ETS Phase III has been running since January 2013 so there is no scope for influence and the focus is on mitigating burdens and penalties and informing the industry. Awareness is patchy, so some operators are unwittingly in breach. Penalties are large.</p>	<p>Our focus is on mitigating the impacts. techUK has produced guidance to help operators establish whether they are obliged. techUK has conducted negotiations to reduce penalties. techUK has mitigated compliance costs by agreeing a simplified approach to accounting for fuel use.</p>	<p><a href="mailto:Emma.fryer@techuk.org">Emma.fryer@techuk.org</a></p> 
<p><b>ETS Phase IV</b> Phase IV of EU ETS will start in 2020 and is likely to continue to capture data centres due to their standby capacity. The scheme does not make adequate provision for very low emitters who are not the intended policy target. Some member states already have sensible provisions in place for low emitters.</p>	<p>Phase IV will start in 2020. First stakeholder consultation is closed. Negotiations currently at MS level. This is a time-critical policy issue specific to data centres and requires coordination between member state representative bodies.</p>	<p>NTAs in Holland, Ireland, France, UK have shared resources and lobbied individual MS govts using techUK policy position. techUK conducted low emitters meeting with DECC Other NTAs in major DC markets need to lobby their MS govts.</p>	<p><a href="mailto:Sylvie.feindt@digitaleurope.org">Sylvie.feindt@digitaleurope.org</a> <a href="mailto:Emma.fryer@techuk.org">Emma.fryer@techuk.org</a></p> 

<p><b>MCPD: Medium Combustion Plant Directive</b> This relates to air quality and imposes minimum emissions standards for generators &gt; 1MWth and &lt;50MWth. Fills the gap between IED (large combustion) and EcoDesign (small). New plant is differentiated from existing plant. If MS fail to apply optional exemptions for standby capacity this could prove very costly for operators with diesel backup.</p>	<p>MCPD was formalised on 18<sup>th</sup> December 2015 and must be transposed by MS by 19 December 2017. Implementation is now underway. Policy dialogue therefore at MS level. MS can apply exemptions to standby capacity under 500 hours. In the UK DEFRA is deciding whether to apply this exemption in full. Situation unknown in other MS.</p>	<p>techUK is engaged in dialogue with DEFRA to ensure exemptions apply to standby. Serious complications arise when operators are engaged in demand response initiatives. Other NTAs to establish what their MS propose.</p>	<p><a href="mailto:Emma.fryer@techuk.org">Emma.fryer@techuk.org</a></p> 
<p><b>IED – Industrial Emissions Directive</b> This provides an integrated approach to industrial emissions to air, water and land – so is pollution rather than carbon related. Awareness is patchy. Operators with generating capacity above around 15MW electrical may be captured. There are no exemption for standby. It is very expensive and burdensome, particularly if compliance is retrospective.</p>	<p>IED has been in place since 2010 but sites that have grown incrementally will not be aware that they may have breached the threshold.</p>	<p>techUK has produced briefing materials to alert operators to this obligation and help them assess whether they are obliged. Also a guide to the compliance process. techUK is negotiating with the UK Regulator to clarify obligations and streamline compliance and permitting for DC operators to reduce cost.</p>	<p><a href="mailto:Emma.fryer@techuk.org">Emma.fryer@techuk.org</a></p> 
<p><b>BEMP – Best Environmental Management Practices</b> The JRC is developing a series of Best Environmental Management Practices to complement EMAS (EcoManagement and Audit Scheme) which is a voluntary standard like ISO14001. Data centres are explicitly covered. There is concern that the BEMP is reinventing wheels and will lead to regulation in future.</p>	<p>Several “expert” workshops arranged in 2015. Participants found that the technical consultants had a poor understanding of the sector, were reluctant to include industry input or adopt existing tools. Since then we understand they plan to base the BEMP on EUCOC. This needs confirmation.</p>	<p>Clarity on situation needed. techUK has drafted a policy position on the shortcomings of the process. Next steps to be agreed.</p>	<p><a href="mailto:Sylvie.feindt@digitaleurope.org">Sylvie.feindt@digitaleurope.org</a> <a href="mailto:Emma.fryer@techuk.org">Emma.fryer@techuk.org</a> <a href="mailto:C.herzog@bitkom.org">C.herzog@bitkom.org</a></p> 
<p><b>EcoDesign Directive: LOT9 for Servers</b> This directive aims to improve the environmental performance of devices and equipment and ease of recycling by imposing requirements at the design stage. It is systematically working its way through sub sectors. The Commission is keen to regulate servers in some way, most likely by setting minimum efficiency standards for them.</p>	<p>The Commission is doing an impact assessment and want to know whether and how minimum standards for servers might adversely affect SME data centre operators.</p>	<p>techUK has provided a statement about the difficulty of applying standards to servers and the impacts on SME operators</p>	<p><a href="mailto:Sylvie.feindt@digitaleurope.org">Sylvie.feindt@digitaleurope.org</a> <a href="mailto:Susanne.baker@techuk.org">Susanne.baker@techuk.org</a> <a href="mailto:Emma.fryer@techuk.org">Emma.fryer@techuk.org</a></p> 

<p><b>EII: Energy Intensive Industries</b> EIIs are eligible for compensation for some non-commodity energy costs but getting on the list of EIIs is tricky. It has to be negotiated at MS level, though EU level negotiation might also be feasible. Different MS apply different criteria.</p>	<p>This appears to be an ongoing process. In the UK an attempt has already been made but the criteria were set such that most of the sector fell below the threshold for inclusion. Other countries apply different criteria.</p>	<p>techUK has held a long dialogue with UK govt and the door is still open. We now need to compare approaches in different MS, especially those with high energy costs.</p>	<p><a href="mailto:emma.fryer@techuk.org">emma.fryer@techuk.org</a></p> 
<p><b>EED Art8 Energy Efficiency Directive Article 8</b> This required large organisations to implement an energy audit. Its objective is to drive energy use awareness and energy efficiency. For energy aware companies it will add no benefit. Implementation has been varied.</p>	<p>EED Art 8 should have been implemented now. In the UK it is transposed as ESOS. There will be a review process. Focus on mitigation and improving harmonisation.</p>	<p>techUK is conducting a study on differential implementation and highlighting the issues for multinational operators.</p>	<p><a href="mailto:Emma.fryer@techuk.org">Emma.fryer@techuk.org</a></p> 
<p><b>Non-policy issues</b></p>			
<p><b>EU Code of Conduct for Data Centres:</b> is a set of highly respected best practices intended to drive good energy management in the data centre sector. It was adopted by the Joint Research Council (JRC) of the European Commission. While the best practices are widely and successfully adopted by the industry, formal participation via JRC is low. This exposes the sector to accusations that it is not self policing adequately.</p>	<p>The Code technical content has been adopted as a CENELEC Technical Report within the EN 50600 series of standards for data centres. This is likely to make the JRC administrative function redundant.</p>	<p>techUK has always supported adoption of the code and supports the move to CENELEC. techUK and DE organised a Code Review meeting in 2014. techUK is engaged in standards development via BSI. techUK has published a position on the Code and written to the JRC Board of Governors about the dysfunctional administration.</p>	<p><a href="mailto:Mark.acton@cbre.com">Mark.acton@cbre.com</a> <a href="mailto:Emma.fryer@techUK.org">Emma.fryer@techUK.org</a> CENELEC: <a href="mailto:mike.gilmore@e-readybuilding.com">mike.gilmore@e-readybuilding.com</a></p>
<p><b>Reputation and awareness</b> The sector is poorly understood by policy makers. Greater recognition will inevitably be accompanied by greater scrutiny so raising the profile of the sector is a double edged sword – “Be careful what you wish for”.</p>	<p>The Commission is increasingly aware of the role of data centres but the energy impacts of existing and emerging business models are poorly understood. Attitudes vary in MS.</p>	<p>techUK has focused on the infrastructural role of data centres. DE and techUK organised a workshop on energy impacts of digital living. techUK has produced a range of explanatory materials in laymans’ terms. techUK produced notes for the Commission on whom to consult on data centre issues. DDA has produced several externally facing sector reports</p>	<p><a href="mailto:Emma.fryer@techuk.org">Emma.fryer@techuk.org</a> <a href="mailto:Sylvie.feindt@Digitaleurope.org">Sylvie.feindt@Digitaleurope.org</a></p>

## **Glossary / Acronym buster**

CENELEC – European Committee for Electrotechnical Standardisation

DC – Data Centre

DCMS – Department of Culture, Media and Sport

DDA – Dutch DataCenter Association

DE – DIGITALEUROPE

DECC – Department of Energy and Climate Change

DEFRA – Department for Environment, Food and Rural Affairs

ECJ – European Court of Justice

ICO – Information Commissioners Officers

JRC – Joint Research Council (part of the European Commission)

MS – Member State

Mitigation – by this we mean that the window to influence the legislation has closed and activity is limited to softening negative impacts, for instance by negotiating simplified compliance processes

NTA – National Trade Associations