Spotlight 7.2
The role of regional and international cooperation in addressing data governance challenges

Closer international cooperation across a wide range of areas is needed to settle many of the fundamental issues in the new social contract on data.

Many data governance challenges either cannot be fully resolved at the national level or could be addressed more efficiently or equitably through international cooperation. Specifically, international cooperation is needed at multiple levels, beginning with bilateral regulatory and administrative collaboration between individual countries and progressing to regional collaboration and wider international cooperation and global agreements as well as donor support.

Bilateral cooperation

Managing the data economy calls for increasing bilateral cooperation between governments, especially with regard to accessing critical data domestically and internationally. For example, having access to corporate financial data from corresponding third-country tax authorities would facilitate the capture of fiscal revenues from indirect taxes (value added taxes) levied on third-country companies trading across digital platforms. Tax administrations in low- and middle-income countries need to have secure access to aggregate data on the global allocation of income and profit taxes paid by the largest multinational enterprises. Such data are available from home-country tax administrations. Another critical area for bilateral cooperation across borders is in matters of law enforcement related to cybercrime (see chapter 6).

With the market for data-driven platforms dominated by a handful of global players, decisions taken by antitrust authorities in one jurisdiction have spillover effects in many others (see spotlight 7.1).[1] Going forward, there is scope for closer cooperation among antitrust authorities, particularly on anticompetitive practices that affect several countries simultaneously or where the practice has a cross-border dimension. A regional competition regime is already in place in the European Union. Competition authorities from the BRICS countries (Brazil, the Russian Federation, India, China, South Africa) have begun to work together on platform businesses, looking to exchange experiences and achieve a more harmonized approach.[2]

Regional collaboration

Regional collaboration is one way to amplify the voice of smaller low- and middle-income countries, while making progress on the challenging goal of reaching global agreements on data governance. For example, regional coordination of ad hoc digital taxation measures, as considered by the African Tax Administration Forum,[3] could help to minimize administrative and compliance costs as well as to manage competitive dynamics among countries (such as tax and regulatory arbitrage or a race to the bottom).

Regional collaboration can also play a valuable role in the development of data infrastructure, such as internet exchange points and colocation data centers, which may lie beyond the reach of smaller or lower-income economies (see chapter 5). Countries with well-developed international gateways and competitive information and communication technology sectors can aggregate regional demand to support shared facilities, as long as there are strong fiber-optic links between neighboring countries and the regulatory framework for cross-border data flows is harmonized.

International cooperation and global agreements

Certain policy issues, particularly international rules governing cross-border trade in data-enabled services and associated tax rights, need to be tackled through multilateral cooperation and preferably at the global scale.

The current Joint Statement talks on e-commerce and digital trade warrant serious attention from World Trade Organization (WTO) members. In addition, although the WTO's General Agreement on Trade in Services (GATS) does not prohibit restrictions on cross-border data flows per se, limitations on cross-border data flows could be considered in violation of the GATS rules on nondiscrimination in those sectors where WTO members have undertaken specific commitments.[4] In addition to rules on cross-border services, WTO members have provisionally agreed not to impose customs duties on digital products.

Tackling the loss of direct tax revenue that results from cross-border profit shifting by multinational platform businesses calls for replacing the current rules on the allocation of taxation rights across countries. The de facto standard setting body for international tax issues, the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), is in the process of finalizing policy proposals aimed at addressing these challenges.[5] If no global consensus is reached, low- and middle-income economies aiming to capture direct tax revenue from the sector will have few palatable short-term choices.

The limited participation of low-income countries in such international negotiations on taxation and trade is a cause for concern. For example, among the 85 countries involved in negotiating the data governance framework for cross-border data flows at the WTO, there is only one low-income country—Burkina Faso.[6] Similarly, only G-24 nations are participating in current negotiations for overhauling the international tax rules regarding rights to levy corporate tax on data-driven businesses that participate in a market without a physical presence. This lack of representation hampers the inclusiveness of the potential rules under discussion and risks leading to a "one-size-fits-all approach" on global rules that is driven by more advanced players.

Furthermore, cross-border data sharing requires cooperation on standard setting and regulatory harmonization. International treaties and model laws provide valuable frameworks for voluntary cooperation in these spheres. For example, in the case of cybersecurity, the Budapest Convention on Cybercrime and the modernized Convention 108 of the Council of Europe on data protection have played a pivotal role in achieving international convergence of standards. Another critical area for harmonization is interoperability of data and data systems, which is a technical prerequisite for the smooth flow of data across borders. Open standards can be determined by sectoral or international standard setting organizations at the level of specific sectors (such as banking), with strong leadership from leading industry participants.[7]

Donor support

Finally, the donor community can help to redress the underlying causes of inequity in the data-driven economy and society by supporting investments to fill gaps in physical and institutional systems as well as by helping governments to build the necessary human capital. A key role for donors is

to provide technical assistance and support for policy reforms to improve the enabling environment for data, especially in critical areas such as statistical capacity building (see spotlight 2.2), data protection, cybersecurity, cross-border data flows, and the sharing of public intent and private intent data. Equally important is support for improving the investment climate for private actors, including efforts to strengthen the legal and regulatory framework for private investment in broadband networks and data infrastructure. Such indirect support is generally preferable to donors' direct investment in infrastructure (see chapter 5).

Notes

1. Bundeskartellamt (2019).
2. BRICS Competition Centre (2019).
3. ATAF (2020).
4. Under the GATS, the obligation on nondiscrimination applies only to those services sectors where each WTO member has explicitly recognized the obligation in its country-specific "schedule of specific commitments," subject to any conditions set out therein. See World Trade Organization, GATS (General Agreement on Trade in Services) (dashboard), https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm.
5. The Inclusive Framework on BEPS has 130 country members (including all Organisation for Economic Co-operation and Development [OECD] members) and is housed at the OECD. International organizations such as the World Bank Group have an observer role. For a summary of the development of the Inclusive Framework proposals and a discussion of an alternative that departs from the arm's-length standard by embracing the apportionment of the taxable income of a multinational enterprise based on its sales to unrelated customers in each country, see Avi-Yonah and Clausing (2019).
6. Hufbauer and Lu (2019).
7. Ragavan, Murphy, and Davé (2016).

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