

EU Country Guide Data Location & Access Restriction

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Belgium	Verhaegen Walravens
Denmark	Gorrissen Federspiel
France	Linklaters
Germany	Hengeler Mueller
Italy	Trevisan & Cuonzo
The Netherlands	De Brauw Blackstone Westbroek
Spain	Uría Menéndez
Sweden	Hammarskiöld & Co
UK	Bristows

Introduction

Certain jurisdictions require that specific types of data, for example government data, employee data or telecommunications traffic data be stored within the relevant jurisdiction and in some cases may even not be accessed from another country. For customers active in the EU who want to outsource their data processing operations and for suppliers of cloud computing services (or other types of outsourcing of data processing), knowing which jurisdictions within the EU have location restrictions is important.

This brief survey on data storage and access restrictions provides an overview of the relevant provisions for Belgium, Denmark, Germany, France, Italy, Spain, Sweden, the Netherlands and the United Kingdom and is based on input from national legal experts in the field of privacy, IT and compliance.

Data transfer restrictions

This overview does not include potential data transfer restrictions that may follow from the EU data protection laws. E.g. the EU data protection laws provide for the principle of proportionality, which in specific cases may entail that certain data processing operations are performed within the EU, or a specific jurisdiction. One example is that the principle of proportionality requires, in the context of an e-discovery process, that the 'filtering' of the personal data be carried out locally in the country in which the personal data is found (see the Opinion WP159 on pre-trial discovery). Also, the EU data transfer provisions impose restrictions on the transfer of data outside the EU, which restrictions must be adhered to.

Finally, the EU data protection laws may entail that data must be stored in such a way that specific data subject's rights are honoured.

Outsourcing requirements

Certain industries, such as financial services companies, are subject to outsourcing requirements issued e.g. by the financial supervisory authorities of the EU member states (for example MiFID). Though these outsourcing requirements do not provide for specific location restrictions, these general requirements may vary or be more strictly applied in case data are moved outside the jurisdiction. Such general outsourcing requirements are not included in this overview.

Main findings

Data of interest to foreign powers

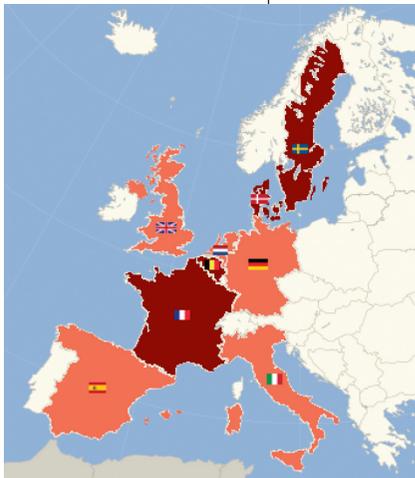
All jurisdictions have storage and access restrictions in respect of data which could be of interest to foreign powers. As governments will not outsource the processing of such data, we have not elaborated on these restrictions. In the below overview only for Denmark and France specific examples of such restrictions are listed.

Country with no restrictions

The jurisdiction of Spain in principle has no storage or access restrictions requiring data to be held within their jurisdiction.

Countries with restrictions

Restrictions that require data to be stored within the respective jurisdictions are limited and relate to specific types of data only. The Netherlands has the fewest restrictions and has only one restriction relating to public archiving. Sweden and Belgium have the most restrictions, which amongst others relate to tax and accounting records, corporate and social documents. The existing restrictions that require certain types of data to be stored within a jurisdiction do not prohibit (copies of) the data to be stored or accessed from outside the jurisdiction. Therefore, if a supplier of cloud computing services wishes to centralize the data of a company outside the latter's jurisdiction, ways to work around the restrictions may easily be found, for example by centralizing the processing, but at the same time also storing the data on a local server in the relevant jurisdiction. The exceptions mainly relate to the following categories of data:



- Broad restrictions
- Non or limited restrictions

Tax and accounting records

Restrictions apply in the following countries: Belgium, Denmark, Germany, Italy and Sweden. For example in Denmark and Germany, permission must be granted by the relevant authorities to store tax and accounting data outside their jurisdiction. In Sweden, the relevant authorities must be notified of storage abroad. In Italy it is only allowed to store such data outside the EU if Italy has a covenant with the receiving country governing the exchange of information in the field of taxation. This survey does not include the general rules on accessibility of tax and accounting records, but only lists specific location restrictions.

Corporate documents

Belgium, Germany and the UK have rules requiring that certain corporate documents be stored at specific locations, e.g. at the premises of the company. Similarly, in Sweden, it is mandatory that the paper share register of a company – if there is no accessible electronic share register – is held at the premises of the company. However, as indicated above, although these rules require that specific types of data are stored within the jurisdiction, these rules do not preclude that (copies of) the data are also stored outside the jurisdiction or are made accessible from outside the jurisdiction.

Social documents

Belgium also has rules requiring that certain social documents such as work regulations and employee health data be stored at specific locations (e.g. at the premises of the company or at the company's registered offices).

Public archives

Isolated exception for the Netherlands is that location requirements apply to the public archives, which have to be stored in archives in specific locations, which are all located in the Netherlands. Again, this does not prohibit that (copies of) the data be stored or accessed from outside the jurisdiction.

Table of Contents

Belgium (Verhaegen Walravens)	8
Denmark (Gorrissen Federspiel)	13
Germany (Hengeler Mueller)	16
France (Linklaters)	20
Italy (Trevisan & Cuonzo)	24
The Netherlands (De Brauw Blackstone Westbroek)	26
Spain (Uría Menéndez)	28
Sweden (Hammarskiöld & Co)	30
United Kingdom (Bristows)	34

BELGIUM (Verhaegen Walravens)

Question	Response
<p><i>Are there in your jurisdiction (pending) laws or regulations ('provisions') that require that data must be held within the jurisdiction?</i></p>	<p>Yes.</p> <p>The provisions identified in this questionnaire require certain data/documents to be kept in Belgium but do not impose restrictions on access from other countries. In addition, apart from one, the provisions identified do not specify that data/documents must be held within the Belgian territory as such but provide for specific storage premises which are located within Belgium (e.g. companies' registered offices or employers' premises). The provisions do not preclude (copies of the) data/documents from also being stored outside the jurisdiction.</p> <p>Although we are not aware of sector-specific legislation imposing data storage and access restrictions, given the numerous federal, regional and other potentially applicable legislations, this questionnaire only covers (not sector-specific) regulations as well as telecommunications datas.¹</p>
<p><i>(a) If yes, please state the names of these provisions and give a brief description.</i></p>	<p>1) Documents used in relation to taxation</p> <ul style="list-style-type: none"> - <i>Article 60, § 3 of the VAT Code</i> relating to the keeping of invoices and equivalent documents such as credit notes (collectively referred to 'invoices'); - <i>Article 315 of the Income Tax Code</i> relating to the keeping of books and documents enabling the determination of the amount of taxable income. <p>2) Corporate documents</p> <ul style="list-style-type: none"> - <i>Article 233 and 463 of the Companies Code</i> relating to the keeping of certain corporate documents.

Verhaegen Walravens SCRL/CVBA

Chaussée de Boondael 6
 Boondaalsesteenweg
 1050 Brussels
 Belgium
 T +32 2 640 96 97
 F +32 2 648 08 09
 www.verwal.net
 Contact: Emmanuel Szafran
 E-mail: eszafran@verwal.net

¹ Article 126 of the Law of 13 June 2005 on electronic communications applies to electronic communications services or networks providers and relates to the retention of users' traffic data and identification data. The resellers or providers of electronic communications services or networks must retain users' traffic data and identification data for purposes of, among others, investigation, detection and prosecution of crime. The conditions of such retention as well as the specific retention period are still to be determined by royal decree. Under Article 126, the users' traffic data and identification data must be made accessible from Belgium, without limitation. Pending the adoption of the implementing royal decree, there is thus currently no data storage or access restriction.

Question	Response
	<p>3) Social documents</p> <ul style="list-style-type: none"> - <i>Article 15 of the Law of 8 April 1965</i> establishing work regulations. - <i>Article 22 of the Royal Decree of 8 August 1980</i> on the keeping of social documents. - <i>Article 81 of the Royal Decree of 28 May 2003</i> on the health and surveillance of workers.
<p><i>(b) If yes, please briefly describe the jurisdictional reach of these provisions. For example, specify to which organizations these provisions apply (e.g. only to government or government related entities)? Only to certain types of entities (such as telecommunications providers, rail/post/energy)? And to which type of data do these provisions apply?</i></p>	<p>1) Documents used in relation to taxation</p> <ul style="list-style-type: none"> - <i>Article 60, § 1 and 2 of the VAT Code</i> applies to any taxpayer (individual and legal person) and concerns paper and electronic invoices. - <i>Article 315 of the Income Tax Code</i> applies to any taxpayer and concerns books and documents enabling the determination of the amount of taxable income (e.g. accounting books and support documents of accounting entries). <p>2) Corporate documents</p> <ul style="list-style-type: none"> - <i>Article 233 of the Companies Code</i> applies to commercial companies with registered office in Belgium. <p>3) Social documents</p> <ul style="list-style-type: none"> - <i>The Law of 8 April 1965</i> establishing work regulations applies to employers. - <i>The Royal Decree of 8 August 1980</i> on the keeping of social documents applies to employers and relates to the so-called social documents which include individual accounts of employees and their annexes but also certain types of agreement such as student employment agreements and homework agreements. - <i>The Royal Decree of 28 May 2003</i> on the health and surveillance of workers applies to employers.

Question	Response
<p><i>(c) If yes, please specify whether the data can still be accessed from other jurisdictions (i.e. remote access). Also, please specify whether the requirement applies to paper records, electronic records, or both.</i></p>	<p>1) Documents used in relation to taxation</p> <ul style="list-style-type: none"> - With respect to VAT, in principle, the taxpayer can determine the place of storage of invoices received and copies of invoices issued, provided that they are made available without any delay upon the tax administration's request. However, invoices received and copies of invoices issued by the taxpayer (itself or in its name and on its behalf) must be stored in Belgium if the storage is not performed in an electronic form guaranteeing complete and online access in Belgium to the relevant data. Invoices must be stored either in electronic or paper format (<i>Article 60, § 6 of the VAT Code</i>). The authenticity of the origin, integrity of the content and legibility of the invoice must be ensured during the entire retention period whatever its format (<i>Article 60, § 5 of the VAT Code</i>). - With respect to income tax, except in case of exception granted by the administration, the books and documents must be kept at the disposal of the tax administration in the office, agency, branch or other professional or private premises of the taxpayer where they have been kept, prepared or sent. Subject to an exception that may be granted by the competent senior controller, the books and records may be kept in another place and, among others, with an accountant or an independent consultant, provided that immediate access to the books and records can be granted or that such documents can be provided on short notice in case of unannounced control. <p>2) Corporate documents</p> <ul style="list-style-type: none"> - Company register of shareholders and register of bonds must be kept at the registered office of the company. <i>The Law of 14 December 2005</i> regarding the abolition of bearer securities (<i>the Act on bearer securities</i>) contains a number of provisions that modify the Belgian Companies Code to expressly allow the use of electronic shareholders' registers. These provisions entered

Question	Response
	<p>into force on 23 December 2005. A royal decree, which has not yet been adopted, may provide further conditions that an electronic shareholders' register will have to satisfy. Until such royal decree is adopted, electronic shareholders' registers will only be valid if they fulfill similar functions to paper shareholders' registers. Accordingly, the electronic shareholders' register should be accessible by the company at its registered office.</p> <p>3) Social documents</p> <ul style="list-style-type: none"> - With respect to the work regulations, a copy of these regulations must be kept at every site where the employer has workers, in a place that is easily accessible. - Social documents must be kept at the address under which the employer is registered with the Belgian National Office for Social Security or at the registered offices in Belgium (or, as the case may be, at the Belgian domicile of the individual that keeps these documents as a representative of the employer). - With respect to workers' health files, these must be (i) stored in the section or department responsible for medical surveillance or at the external service's regional center for examination and (ii) retained by the prevention counselor. - In addition, with respect to work accidents having caused at least four days of occupational disability, the occupational accident index cards, copies or printouts of the forms on which the occupational accidents were reported must be kept at the employer's place of business concerned (<i>Article 28 of the Royal Decree of 27 March 1998 on the policy of wellbeing of workers at work</i>).

Question	Response
<p><i>Are there any additional specific restrictions for the sectors financial services, telecommunications, post, rail and health?</i></p>	<p>Please see our answer to question 1 (although we are not aware of any sector-specific legislation imposing data storage and access restrictions, this questionnaire does not cover sector specific regulations).</p>

DENMARK (Gorrissen Federspiel)

Question	Response
<p><i>Are there in your jurisdiction (pending) laws or regulations ('provisions') that require that data must be held within the jurisdiction?</i></p>	<p>Yes.</p> <p>Please see further information below.</p>
<p><i>(a) If yes, please state the names of these provisions and give a brief description.</i></p>	<p>1) The Danish Act on Processing of Personal Data no. 429 of 31 May 2000 (Section 41 (4)):</p> <ul style="list-style-type: none"> - This act includes a provision requiring measures be taken to ensure that certain data can be disposed of or destroyed in the event of war or similar conditions. The provision relates to data which are processed for the public administration, and which are of special interest to foreign powers. Transfer of such personal data outside Denmark (including within EU), may prevent a decision to dispose of or destroy the effected data and hence the data should be held within the jurisdiction. An example of a data processing system that must be held within the jurisdiction is the CPR (register containing social security numbers): although a single social security number may be transferred outside the jurisdiction, any material part of the CPR may not, for the reasons outlined above. <p>2) The Danish Bookkeeping Act no. 648 of 15 June 2006 (Section 12):</p> <ul style="list-style-type: none"> - This act includes a provision that any accounting records must be kept in Denmark for a period of five years. Accounting records may only be preserved abroad for a 1-2 month period, provided that the enterprise complies with certain requirements (e.g. the accounting records are preserved in accordance with the Danish Bookkeeping Act, it is possible

Gorrissen Federspiel

H. C. Andersens Boulevard 12
1553 Copenhagen V
Denmark

T +45 33 41 41 41

F +45 33 41 41 33

www.gorrissenfederspiel.com

Contact: Janne Glaesel

E-mail: jgl@gorrissenfederspiel.com

Question	Response
	<p>at any time to retrieve the records and any description of systems. and passwords etc. is preserved in Denmark, which enables public authorities' access to the accounting records at any time). Under special circumstances, the Danish Commerce and Companies Agency may grant companies permission to preserve accounting records abroad. However, practice has proven quite restrictive and permission is seldom granted. This is mainly due to the Danish Police Authority not being able to access the accounting records in other jurisdictions than the Nordic countries.</p> <ul style="list-style-type: none"> - As an exception to the above, accounting records may be stored in the Nordic countries Finland, Iceland, Norway and Sweden, provided that the above mentioned requirements are met.
<p><i>(b) If yes, please briefly describe the jurisdictional reach of these provisions. For example, specify to which organizations these provisions apply (e.g. only to government or government related entities)? Only to certain types of entities (such as telecommunications providers, rail/post/energy)? And to which type of data do these provisions apply?</i></p>	<p>1) The Danish Act on Processing of Personal Data no. 429 of 31 May 2000 (Section 41 (4)):</p> <ul style="list-style-type: none"> - Applies to all. <p>2) The Danish Bookkeeping Act no. 648 of 15 June 2006 (Section 12):</p> <ul style="list-style-type: none"> - Applies to all Danish and foreign enterprises carrying on business for profit in Denmark. Also any kind of organization which is subject to duties or liable to full or limited taxation in Denmark or receiving subsidies from Denmark or the EU.

Question	Response
<p><i>(c) If yes, please specify whether the data can still be accessed from other jurisdictions (i.e. remote access). Also, please specify whether the requirement applies to paper records, electronic records, or both.</i></p>	<p>1) The Danish Act on Processing of Personal Data no. 429 of 31 May 2000 (Section 41 (4)):</p> <ul style="list-style-type: none"> - No. According to the Danish Data Protection Agency any data covered by <i>Section 41 of the Act on Processing of Personal Data</i> may only be accessed from the jurisdiction. <p>2) The Danish Bookkeeping Act no. 648 of 15 June 2006 (Section 12):</p> <ul style="list-style-type: none"> - Only applies to the accounting records and does not hinder access to these records from other jurisdiction, e.g. in connection with actual bookkeeping.
<p><i>Are there any additional specific restrictions for the sectors financial services, telecommunications, post, rail and health?</i></p>	<p>No, there are no additional location restrictions. The answers provided also apply to these sectors.</p>

GERMANY (Hengeler Mueller)

Question	Response
<p><i>Are there in your jurisdiction (pending) laws or regulations ('provisions') that require that data must be held within the jurisdiction?</i></p>	<p>Yes.</p>
<p><i>(a) If yes, please state the names of these provisions and give a brief description.</i></p>	<p>1) § 146 II Tax Code (Abgabenordnung, AO):</p> <ul style="list-style-type: none"> - All persons and companies liable to pay taxes that are obliged to keep books and records must keep those records in Germany. There are some exceptions for multinational companies. Under § 146 IIa AO, there is the possibility to apply to the local tax authority for an exception to keep electronic books and records abroad (both within and outside the EU). This is subject to a number of requirements, in particular the location must be specified to the tax authority, the tax authority must remain able to access the data, and taxation must not be impeded. Non-compliance with these provisions may be subject to a fine of up to EUR 250,000. <p>2) § 14 b II Act on Value Added Tax (Umsatzsteuergesetz, UStG)</p> <ul style="list-style-type: none"> - A company or an entrepreneur that is located in Germany has to store its invoices (invoices received/copies of the invoices created) in Germany. If invoices are stored electronically, they may be stored within the territory of the EU if full online access and the possibility of download are guaranteed. In this case, the entity is obliged to notify the competent tax authority in writing of the location of the electronically stored invoices, and the tax authority may access and download the data. The invoices may also be stored outside the EU under the requirements set out in § 146 IIa AO.

Hengeler Mueller

Benrather Str. 18-20

D-40213 Düsseldorf

Germany

T +49 211 8304-0

F +49 211 8304-170

www.hengeler.com

Contact: Dirk Uwer

E-mail: dirk.uwer@hengeler.com

Question	Response
	<p>3) § 41 I Income Tax Act (Einkommensteuergesetz, EStG)</p> <ul style="list-style-type: none"> - All employers have to keep their employees' payroll accounts (Lohnkonto) at the location of their place of business (Betriebsstätte). Keeping payroll accounts also includes a certain record keeping. If there is no place of business in Germany, it will be assumed that there is a fictitious place of business in Germany at the location where the employer manages its business, and payroll accounts must be kept there (§ 41 II EStG). <p>4) Data of public bodies</p> <ul style="list-style-type: none"> - With respect to data processed by public bodies, there does not seem to be a provision which expressly requires data to be held in Germany. However, such data processing outside the German territory would have to be carefully checked. For example, German authorities may not issue formal administrative acts outside their area of competence, such acts being void (<i>nichtig</i>, § 44 VwVfG). Data processing outside Germany involving (electronically) issuing formal administrative acts would not be permissible.
<p><i>(b) If yes, please briefly describe the jurisdictional reach of these provisions. For example, specify to which organizations these provisions apply (e.g. only to government or government related entities)? Only to certain types of entities (such as telecommunications providers, rail/post/energy)?</i></p>	<p>1) § 146 II AO</p> <ul style="list-style-type: none"> - § 146 II AO applies to all persons (individuals and companies) that are required to keep books and records under commercial and company laws. Further, it applies to the books and records which these persons must keep (books, inventory, annual statement of accounts, business letters, other documents relevant for taxation), whether in paper or electronic format, but the exception under § 146 IIa AO only applies to electronic books and records.

Question	Response
<p><i>And to which type of data do these provisions apply?</i></p>	<p>2) § 14 b II UStG</p> <ul style="list-style-type: none"> - The provision applies to all self-employed entities (<i>Unternehmer</i>), pursuant to § 2 UStG, which can be natural persons, private and public entities. The obligation to keep invoices in Germany applies to all invoices, whether in paper or electronic format, but the exception to store them abroad only applies to invoices stored electronically. <p>3) § 41 I EStG</p> <ul style="list-style-type: none"> - The provision applies to all employers that are obligated to withhold and pay income taxes pursuant to § 38 I EStG. This concerns domestic employers as well as foreign employers supplying temporary workers to domestic companies.
<p><i>(c) If yes, please specify whether the data can still be accessed from other jurisdictions (i.e. remote access). Also, please specify whether the requirement applies to paper records, electronic records, or both.</i></p>	<p>1) § 146 II AO</p> <ul style="list-style-type: none"> - The rationale of § 146 II AO is that books and records are to be available to the tax authority at all times. Remote access from other jurisdictions to books and records is therefore not excluded. <p>2) § 14 b II UStG</p> <ul style="list-style-type: none"> - The rationale of § 14b II UStG is that invoices are to be available to the tax authority at all times. Remote access from other jurisdictions to invoices should therefore not be excluded. <p>3) 1)§ 41 I EStG</p> <ul style="list-style-type: none"> - The rationale of § 41 I EStG is that payroll accounts must be available to the tax authority at all times. Remote access from other jurisdictions to payroll accounts is therefore not excluded.

Question	Response
<p><i>Are there any additional specific restrictions for the sectors financial services, telecommunications, post, rail and health?</i></p>	<p>No, there are no additional location restrictions. The answers provided also apply to these sectors.</p>

FRANCE (Linklaters)

Question	Response
<p><i>Are there in your jurisdiction (pending) laws or regulations ('provisions') that require that data must be held within the jurisdiction?</i></p>	<p>Yes.</p>
<p><i>(a) If yes, please state the names of these provisions and give a brief description.</i></p>	<p>1) Law n°80-538 dated 16 July 1980 ('French Blocking Statute')</p> <ul style="list-style-type: none"> - The French Blocking Statute was enacted to justify a refusal to communicate whether orally, by written form or 'any other form' (which may include transmission by way of electronic communications), in any place whatsoever, as required by foreign legal or administrative authorities, certain information (especially business-related information) which may adversely affect the sovereignty, the security, the public order or essential economic interests of France. <p>2) Ministerial decree dated 30 November 2011 on the protection of the secrecy of national defense ('Defense Decree')</p> <ul style="list-style-type: none"> - <i>Article 65 of the Defense Decree</i> provides that documents be marked as 'Spécial France' which the issuing authority regards that they should be disclosed only to French citizens and under no circumstance, in whole or in part, to a foreign state or one of its citizens, to an international organization or a foreign company.

Linklaters

25 rue de Marignan
75008 Paris

France

T +33 156 43 56 43

F +33 143 59 41 96

www.linklaters.com

Contact: Thibault Soyer

E-mail: thibault.soyer@linklater.com

Question	Response
<p><i>(b) If yes, please briefly describe the jurisdictional reach of these provisions. For example, specify to which organizations these provisions apply (e.g. only to government or government related entities)? Only to certain types of entities (such as telecommunications providers, rail/post/energy)? And to which type of data do these provisions apply?</i></p>	<p>1) French Blocking Statute</p> <ul style="list-style-type: none"> - <i>Persons and entities concerned:</i> a slight difference is established between Article 1 (communication with foreign public authorities) and 1 Bis (in connection with foreign legal and administrative proceedings). For the former, the ban applies to any French citizen or natural person habitually residing in France as well as any officer, agent or representative of an entity domestically located in France; for the latter, the ban applies to any person. - <i>Data concerned:</i> any document or information in relation to the economic, commercial, industrial, financial and technical order. <p>Note: <i>A legislative bill on business secrecy of 22 November 2011 is still under discussion and was adopted by the National Assembly on 22 January 2012. If it enters into force in its current state, it would notably amend Article 1 Bis of the French Blocking Statute in order to include the possibility for private companies not to communicate documents or information of an economic, commercial, industrial, financial, scientific, technical or strategic nature which would severely undermine its interests in connection with foreign legal and administrative proceedings.</i></p> <p>2) Defense Decree</p> <ul style="list-style-type: none"> - <i>Persons and entities concerned:</i> the ban on communicating any information or media marked as ‘<i>Spécial France</i>’ applies to any foreign State or any of its citizens, international organizations and foreign companies, even if a specific security agreement exists between France and this State or international organization. - <i>Data concerned:</i> any document or information, on any media, whether in tangible or electronic format marked as ‘<i>Spécial France</i>’ and identified as such pursuant to <i>Article 43</i> (information on paper) and <i>44</i> (information not on paper) of <i>the Defense Decree</i>.

Question	Response
<p><i>(c) If yes, please specify whether the data can still be accessed from other jurisdictions (i.e. remote access). Also, please specify whether the requirement applies to paper records, electronic records, or both.</i></p>	<p>1) French Blocking Statute</p> <ul style="list-style-type: none"> - A reserve is maintained in <i>Article 1 and Article 1 Bis</i>, pursuant to which the data can still be accessed through specific channels (existence of international treaties, international agreements and specific laws or regulations in force). For instance, mechanisms such as the ‘Letter of Request’ (<i>Commission Rogatoire</i>) implemented on the basis of <i>Article 23 of the Convention of 18 March 1970</i> on the Taking of Evidence Abroad in Civil or Cooperation Agreements concluded between French and foreign administrative authorities pursuant to <i>Article L.621-15 and L.632-16 of the Monetary and Financial Code</i> constitute such reserves. - The requirement applies to all forms of records. <p>2) Defense Decree</p> <ul style="list-style-type: none"> - Information or documents marked as ‘<i>Spécial France</i>’ can be accessed from outside France by a French citizen if they are communicated by way of a diplomatic pouch or by military specialized mail. For electronic files, they could be accessed from outside France if they are transmitted through a specific encoded transmission channel as specified in <i>the Defense Decree</i>.
<p><i>Are there any additional specific restrictions for the sectors financial services, telecommunications, post, rail and health?</i></p>	<p>No additional location restrictions apply to the financial services, telecommunications, post and rail sectors. The answers provided also apply to these sectors. With regard to the health sector, there are additional preliminary requirements to be complied with by any provider intending to host health data (although it should not be interpreted as restrictions on data location per se), please see the below:</p>

Question	Response
	<p>Within the framework of prevention, diagnosis or care activities, health professionals, health establishments or the concerned person (health data managers) may collect personal health data in order to transmit them to hosting providers. In France, hosting providers of health data have to go through an accreditation procedure pursuant to Article L-1111-8 of the French Public Health Code ('PHC'). Once accredited, the hosting provider and the health data manager should enter into an agreement organizing the terms of access to and storage conditions of such health data, in order to ensure their sustainability and confidentiality. In this agreement, it should be specified that the personal health data should only be processed with the express consent of the person concerned by such data.</p> <p>The authorities involved in the accreditation procedure are:</p> <ul style="list-style-type: none"> - the Accreditation committee for healthcare data hosting (CAH – Comité d'Agrément des Hébergeurs de données de santé), recipient of the hosting providers' applications; - the French data protection authority, i.e the Commission Nationale de l'Informatique et des Libertés (the 'CNIL'), which issues an opinion in relation with the above mentioned applications; - the Health Minister, who grants the accreditation for a 3-years period, on the basis of the opinions provided both by the CNIL and the CAH. <p>The decision granting accreditation is notably grounded upon the applicant's economic and financial capacity, its ethical and legal framework and its security policies. This accreditation procedure takes between five up to eight months.</p>

ITALY (Trevisan & Cuonzo)

Question	Response
<p><i>Are there in your jurisdiction (pending) laws or regulations ('provisions') that require that data must be held within the jurisdiction?</i></p>	<p>To the best of our knowledge, Italian law does not contain provisions specifically addressing that any type of data be strictly retained within Italy's national borders, nor does any process aimed at introducing similar rules that is currently pending before Italian legislative bodies.</p> <p>However, under Italian law some limitations are set forth with reference to the foreign country within which data might be retained (see below).</p>
<p><i>(a) If yes, please state the names of these provisions and give a brief description.</i></p>	<p>1) Article 39 of Presidential Decree no. 633 of 1972</p> <ul style="list-style-type: none"> - Provides limitations as to the retention of accounting documents within foreign countries.
<p><i>(b) If yes, please briefly describe the jurisdictional reach of these provisions. For example, specify to which organizations these provisions apply (e.g. only to government or government related entities)? Only to certain types of entities (such as telecommunications providers, rail/post/energy)? And to which type of data do these provisions apply?</i></p>	<p>1) Article 39 of Presidential Decree no. 633 of 1972.</p> <ul style="list-style-type: none"> - Presidential Decree no. 633 of 1972 governs the compliance obligations related to the application of the regime of Value Added Tax to the sale and supply of goods and services. - In particular, Article 39, while providing that invoices and other accounting documents may be retained by means of electronic archives, states that said electronic archives might be physically kept in a foreign country, provided that some kind of convention or treaty has been concluded between Italy and the receiving country governing the exchange of information in the field of direct taxation. This means, for instance, that no limitations apply to the retention of electronic accounting archives in other EU Member States (which must all comply to <i>EC Directive 77/799/EC</i> concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation).

Trevisan & Cuonzo

Borgo Antini 4
43121 Parma
Italy
T +39 02 86463313
F +39 02 86463892
www.trevisancuonzo.com
Contact: Daniela Ampollini
E-mail: info@trevisancuonzo.com

Question	Response
	<ul style="list-style-type: none"> - Limitations might instead apply with reference to countries outside the EU, depending on the existence of bilateral agreements concerning assistance on direct taxation entered into between Italy and the receiving non-EU country.
<p><i>(c) If yes, please specify whether the data can still be accessed from other jurisdictions (i.e. remote access). Also, please specify whether the requirement applies to paper records, electronic records, or both.</i></p>	<p>To the best of our knowledge there is no absolute limitation on the access to data physically retained within the Italian territory from other jurisdictions. In the case of personal data, such access would be admitted based on the general provisions on information and consent.</p>
<p><i>Are there any additional specific restrictions for the sectors financial services, telecommunications, post, rail and health?</i></p>	<p>No, there are no additional location restrictions. The answers provided also apply to these sectors.</p>

THE NETHERLANDS (De Brauw Blackstone Westbroek)

Question	Response
<p><i>Are there in your jurisdiction (pending) laws or regulations ('provisions') that require that data must be held within the jurisdiction?</i></p>	<p>Yes.</p> <p>Location requirements apply to public records that have to be stored in archives in specific locations which are all located in the Netherlands. This does not prohibit (copies of) the data from being stored or accessed from outside the jurisdiction. To the best of our knowledge, Dutch law does not contain other provisions specifically addressing that any type of data must be strictly retained within the Netherlands, nor does any process aimed at introducing similar rules that is currently pending before Dutch legislative bodies.</p>
<p><i>(a) If yes, please state the names of these provisions and give a brief description.</i></p>	<p><i>The Public Records Act 1995 (Archiefwet 1995), Public Records Decree 1995 (Archiefbesluit 1995) and the Public Records Regulation 2009 (Archiefregeling 2009)</i> include requirements for the management and retention of archives by governmental institutions.</p>

De Brauw Blackstone Westbroek
 Claude Debussylaan 82
 1070 AB Amsterdam
 The Netherlands
 T +31 20 577 1771
 F +31 20 577 1775
 www.debrauw.com
 Contact: Lokke Moerel
 E-mail: lokke.moerel@debrauw.com

Question	Response
<p><i>(b) If yes, please briefly describe the jurisdictional reach of these provisions. For example, specify to which organizations these provisions apply (e.g. only to government or government related entities)? Only to certain types of entities (such as telecommunications providers, rail/post/energy)? And to which type of data do these provisions apply?</i></p>	<p>These provisions apply to government institutions and mainly concern public records, e.g. records which are by their nature public and which are received or prepared by public authorities (or by institutions whose rights and functions have passed on to public authorities).</p>
<p><i>(c) If yes, please specify whether the data can still be accessed from other jurisdictions (i.e. remote access). Also, please specify whether the requirement applies to paper records, electronic records, or both.</i></p>	<p>Applies to both paper and electronic records.</p>
<p><i>Are there any additional specific restrictions for the sectors financial services, telecommunications, post, rail and health?</i></p>	<p>No, there are no additional location restrictions. The answers provided also apply to these sectors.</p>

SPAIN (Uría Menéndez)

Question	Response
<p><i>Are there in your jurisdiction (pending) laws or regulations ('provisions') that require that data must be held within the jurisdiction?</i></p>	<p>As a general rule, there are no prohibitions on locating specific categories of data outside Spain. However, the transfer of data to a third party or outside Spain may be subject to specific requirements (e.g. data protection rules on international transfers).</p>
<p><i>(a) If yes, please state the names of these provisions and give a brief description.</i></p>	<p>N/A</p>
<p><i>(b) If yes, please briefly describe the jurisdictional reach of these provisions. For example, specify to which organizations these provisions apply (e.g. only to government or government related entities)? Only to certain types of entities (such as telecommunications providers, rail/post/energy)? And to which type of data do these provisions apply?</i></p>	<p>N/A</p>

Uría Menéndez

Príncipe de Vergara 187
 Plaza de Rodrigo Uría
 28002 Madrid
 Spain
 T +34 915 860 400
 F +34 915 860 403/4
 www.uria.com
 Contact: Cecillia Álvarez Rigaudias
 E-mail: cecillia.alvarez@uria.com

Question	Response
<i>(c) If yes, please specify whether the data can still be accessed from other jurisdictions (i.e. remote access). Also, please specify whether the requirement applies to paper records, electronic records, or both.</i>	N/A
<i>Are there any additional specific restrictions for the sectors financial services, telecommunications, post, rail and health?</i>	No, there are no additional location restrictions. The answers provided also apply to these sectors.

SWEDEN (Hammariskiöld & Co)

Question	Response
<p><i>Are there in your jurisdiction (pending) laws or regulations ('provisions') that require that data must be held within the jurisdiction?</i></p>	<p>As far as we are aware, such laws or regulations are very uncommon in Sweden. However, regulations (e.g. register regulations or authority regulations, there are more than 200 such regulations in Sweden) may exist in relation to specific Swedish government authorities, which potentially could include provisions that require that the data processed by the authority be held within Sweden or within the authority. Therefore, if cloud computing services were to be provided to a Swedish authority, it is important to carefully review any specific regulations that govern the specific authority.</p> <p>Further, based on our investigation, we have identified the categories of 'data' below in relation to which laws or regulations exist with specific requirements regarding the retention of data:</p> <p>1) Share registers (Sw. aktiebok) 2) Accounting information</p>
<p><i>(a) If yes, please state the names of these provisions and give a brief description.</i></p>	<p>1) Share registers</p> <ul style="list-style-type: none"> - Chapter 5, Section 10 of the Swedish Companies Act (<u>aktiebolagslag 2005:551</u>). The provision stipulates that a Swedish limited liability company (which is not a CSD company²) must keep the share register available at the offices of the company for all persons who wish to review it. Where the share register is maintained using automated processing (e.g. a digital share register), the company must afford every person who so requests an opportunity to review a current printout or other current presentation from the share register at the company's offices.

Advokatfirman Hammariskiöld & Co

Skeppsbron 42
P.O. Box 2278
103 17 Stockholm
Sweden
T +46-(0)8-578 450 00
F +46-(0)8-578 450 99
www.hammariskiold.se
Contact: Thomas Lindqvist
E-mail:
thomas.lindqvist@hammariskiold.se

² A CSD company is a company the articles of association of which contain a clause stating that the company's shares must be registered in a CSD (central securities depository) register pursuant to the Financial Instruments (Accounts) Act (SFS 1998:1479).

Question	Response
	<ul style="list-style-type: none"> - Share registers for CSD companies must be kept by the central securities depository. There are no explicit regulations governing the jurisdictional reach of such keeping, however, a printout or other presentation from the share register shall be available at the offices at the company and at the central securities depository for all persons who wish to review it. <p>2) Accounting information</p> <ul style="list-style-type: none"> - <u>Chapter 7 of the Swedish Accounting Act (<i>bokföringslag</i> (1999:1078)).</u> Entities and natural persons that are required to maintain accounts pursuant to the Swedish Accounting Act must, as a main rule, store documents, microfiche, and mechanically readable media containing accounting information in Sweden. There are certain exemptions to the main rule (see below).
<p><i>(b) If yes, please briefly describe the jurisdictional reach of these provisions. For example, specify to which organizations these provisions apply (e.g. only to government or government related entities)? Only to certain types of entities (such as telecommunications providers, rail/post/energy)? And to which type of data do these provisions apply?</i></p>	<p>1) Share registers</p> <ul style="list-style-type: none"> - The provisions apply to Swedish limited liability companies. <p>2) Accounting information</p> <ul style="list-style-type: none"> - The provisions apply to all entities and natural persons that are required to maintain accounts pursuant to <i>the Swedish Accounting Act</i>.

Question	Response
<p><i>(c) If yes, please specify whether the data can still be accessed from other jurisdictions (i.e. remote access). Also, please specify whether the requirement applies to paper records, electronic records, or both.</i></p>	<p>1) Share registers</p> <ul style="list-style-type: none"> - See above, there are no explicit provisions stipulating that a digital share register may not be stored in or accessed from other jurisdictions. ‘Paper records’ of a share register must be kept ‘at the offices’ meaning that they may not be stored outside Sweden. <p>2) Accounting information</p> <ul style="list-style-type: none"> - There are certain exemptions to the main rule above. One exemption is <i>Chapter 7, Section 3</i> of the <i>Swedish Accounting Act</i> which stipulates that where special cause exists and such is compatible with generally accepted accounting principles, a document containing a voucher may be stored abroad temporarily. - Another exemption is <i>Chapter 7, Section 3a</i> of the <i>Swedish Accounting Act</i> which stipulates that a company may store mechanically readable media and maintain machinery and systems available in another country within the European Union where: <ul style="list-style-type: none"> (i) the storage location and each change of such location is notified to the Swedish Tax Agency or, with respect to companies which are subject to the supervision of the Swedish Financial Supervisory Authority, to the Swedish Financial Supervisory Authority, (ii) The company, at the request of the Swedish Tax Agency or the Customs Board, grants immediate electronic access to the accounting information for review purposes during the period of archiving, and (iii) The company, through immediate printout, can produce the accounting information in Sweden in such form as referred to in <i>Chapter 7, Section 1, subsection 1</i> or <i>2</i> of the <i>Swedish Accounting Act</i>.

Question	Response
	<ul style="list-style-type: none"> - The same exemption also applies in respect of the storage in a country outside the European Union with which there is a legal instrument governing mutual assistance which is sufficiently encompassing as to be comparable with the provisions prescribed in certain EU regulations.³ - Furthermore, and where special cause exist, the Swedish Tax Agency may permit an undertaking to store mechanically readable media abroad. Such permit may be issued subject to terms and conditions and limited to specific period of time.
<p><i>Are there any additional specific restrictions for the sectors financial services, telecommunications, post, rail and health?</i></p>	<p>No, there are no additional location restrictions. The answers provided also apply to these sectors (but please see our general comment in the introduction).</p>

⁻³ Council Directive no. 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties, and in respect of value added tax,

- Council Directive no. 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, and

- Council Regulation (EEC) no. 218/92 on administrative cooperation in the field of indirect taxation (value added tax). (SFS 2003:1135).

UNITED KINGDOM (Bristows)

Question	Response
<p><i>Are there in your jurisdiction (pending) laws or regulations ('provisions') that require that data must be held within the jurisdiction?</i></p>	<p>Yes.</p> <p>Please note the provisions identified in this questionnaire require certain corporate documents to be kept in United Kingdom, but do not impose restrictions on access from other countries. In addition, the requirements do not specify that documents must be held within the UK as such, but provide that the documents must be available for inspection in a specific premises which will necessarily be in the UK. The provisions do not preclude (copies of the) documents from also being stored outside the jurisdiction.</p> <p>As in many jurisdictions, the UK has export control laws. These might apply to certain technology that controls the handling of data. However, it is not clear to us that these apply to the underlying data itself.</p>

Bristows

100 Victoria Embankment
London EC4Y 0DH
United Kingdom
T +44 20 7400 8000
F +44 20 7400 8050
www.bristows.com
Contact: Mark Watts
E-mail: mark.watts@bristows.com

Question	Response
<p><i>(a) If yes, please state the names of these provisions and give a brief description.</i></p>	<p>Corporate documents</p> <p>Under the Companies Act 2006, a company registered in England or Wales must keep the following records available for inspection, either at its registered office or a single alternative location in the same part of the UK as its registered office:</p> <ul style="list-style-type: none"> - Register of members (section 114). - Register of directors (section 162). - Directors' service contracts (section 228). - Directors' indemnities (section 237). - Register of secretaries (section 275). - Records of resolutions and meetings (section 358). - Accounting records (section 386 to 389). - Contracts relating to purchase of own shares (section 702). - Documents relating to redemption or purchase of own shares out of capital by private company (section 720). - Register of debenture holders (section 743). - Report to members of outcome of investigation by public company into interests in its shares (section 805). - Register of interests in shares disclosed to public company (section 809). - Instruments creating charges and register of charges (section 877).

Question	Response
<p><i>(b) If yes, please briefly describe the jurisdictional reach of these provisions. For example, specify to which organizations these provisions apply (e.g. only to government or government related entities)? Only to certain types of entities (such as telecommunications providers, rail/post/energy)? And to which type of data do these provisions apply?</i></p>	<p>Subject to the specific statutory provisions, these requirements apply to companies registered in England and Wales. The requirements will vary depending on whether the entity is a public or a private company.</p>
<p><i>(c) If yes, please specify whether the data can still be accessed from other jurisdictions (i.e. remote access). Also, please specify whether the requirement applies to paper records, electronic records, or both.</i></p>	<p>The provisions do not prohibit access from other jurisdictions.</p> <p>The provisions do not specify whether the documents must be kept in paper or electronic form.</p>

Question	Response
<p><i>Are there any additional specific restrictions for the sectors financial services, telecommunications, post, rail and health?</i></p>	<p>We are not aware of any sector-specific legislation imposing data storage and access restrictions, beyond the answers above. However, this questionnaire does not cover all sector-specific regulations and companies operating in these sectors may wish to seek additional legal advice. One issue which may arise in this context is the requirement in certain financial services for the financial regulator to have access to any service providers' premises – consequently limiting the ability of certain firms to rely on storage outside the jurisdiction.</p>

This publication is designed to provide general guidance with regard to the subject matter covered. It is made available with the understanding that regulation is subject to change. The information contained herein should not be relied or acted upon without first seeking the advice of a competent legal adviser. De Brauw Blackstone Westbroek N.V. and the other contributors shall not be liable for any damages resulting from the use of this publication.