

Brussels, 30 November 2016

Transport, Telecommunications and Energy (TTE) Council
Council of the European Union
175 Rue de la Loi
B-1048 Brussels

RE: Industry supports an ambitious legislative proposal on the free flow of data in the EU

Dear Ministers,

We, the undersigned associations, urge you to express strong **support for an ambitious EU legislative proposal** to prohibit unjustified data localisation measures within the Union at the occasion of the upcoming Transport, Telecommunications and Energy (TTE) Council on 1-2 December.

The EU's most praised economic achievement is its Single Market where goods, people, capital and services flow freely across Member State borders. While more needs to be done to achieve its full potential, the **Single Market must be future-proofed and its principles extended to the digital economy.**

Europe's economy is undergoing a transformation to a data-driven economy. As such, the existence of unjustified data localisation requirements within the EU are increasingly threatening to fragment the Single Market and Europe's integration into the global economy. These barriers also run counter to the objectives of the Digital Single Market initiative which aims at bringing down cross-border market barriers and allow businesses, including startups, to scale up across Europe.

Removing existing data localisation rules would bring the EU's economy an estimated EUR 8 billion of additional economic activity annually.¹ **Preventing unjustified data localisation would save the EU economy EUR 52 billion per year.**² Data localisation restrictions would have far-reaching negative consequences that would reverberate throughout economic value chains and across sectors. More importantly, they would severely **impede the flow of services, goods and capital** between Member States, which forms the core of the EU's Single Market. The ensuing market fragmentation could in turn be detrimental to the EU's capacity to attract foreign investments.

Member States should be allowed to localise data only in **very exceptional and pre-determined cases**. By way of principle, localisation measures should only be envisaged as a matter of last resort. The effects on data services and the free movement of services, goods or capital dependent on data processing should be proportionate to the legitimate public interest pursued. Consistent with the case-law of the Court of Justice on free movement, restrictions should also be (a) non-discriminatory and (b) necessary to achieve the said public policy objective. Wherever Member States are lacking jurisdictions, we strongly encourage them to make use of existing EU administrative and judicial cooperation mechanisms, and in particular of the Budapest Convention on Cybercrime's legal tools, to achieve their public goals and avoid mandating the localisation of data. Lastly, any data

¹ European Commission Inception Impact Assessment (3 October 2016)

² ECIPE report "Unleashing the internal data flows in the EU: An Economic Assessment of Data Localisation Measures in the EU Member States" (30 November 2016)

localisation measures should be notified to the European Commission prior to enactment to ensure compatibility with EU law, including in the area of national public procurement, as well as the EU's obligations under international agreements and treaties.

We encourage all Member States to carry forward to the European Commission the common message expressed in May 2016 by 14 Member States³ urging that “data can move freely across borders...by removing all unjustified barriers to the free flow of data”. We call for this principle to be established in a **Regulation** that reinforces the Single Market and provides all entities, both large and small, with the necessary legal certainty to conduct business across the EU.

Sincerely,

ACT | The App Association

Allied for Startups

American Chamber of Commerce to the EU (AmCham EU)

Application Developers Alliance

BSA | The Software Alliance (BSA)

Computer and Communications Industry Association (CCIA Europe)

DIGITALEUROPE

E-Commerce Europe

European Association of Communications Agencies (EACA)

European Coordination Committee of the Radiological, Electromedical and Healthcare IT Industry (COCIR)

European Digital Media Association (EDiMA)

European Multi-Channel and Online Trade Association (EMOTA)

European Publishers Council (EPC)

European Internet Service Providers Association (EuroISPA)

Federation of European Direct and Interactive Marketing (FEDMA)

Federation of European National Collection Associations (FENCA)

IAB Europe

Interactive Software Federation of Europe (ISFE)

International Telecommunications Users Group (INTUG)

Japan Business Council in Europe (JBCE)

Trans Atlantic Business Council (TABC)

World Federation of Advertisers (WFA)

³ Joint letter from Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Luxembourg, Poland, Slovenia, Sweden and United Kingdom in preparation of the Transport, Telecommunications and Energy and Competitiveness Council meetings (26 May 2016).