



Mr Jean-Luc Demarty
Director General
Directorate General for Trade
European Commission
Rue de la Loi 170
BE-1049 Brussels
BELGIUM

15 October 2014

Dear Director General,

I am writing to you with regards to the problem of forced localisation and to express our concerns over a number of legislative measures that are currently under consideration by some of our trading partners.

BUSINESSEUROPE acknowledges that the recent developments concerning governmental surveillance programmes have seriously damaged citizens' trust in cross-border data transfers and generally in the online world. This has a negative effect on the digital economy as a whole. However, we are convinced that blanket local data and server requirements on all companies and all services are not the right answer. Such measures could only be justified in specific instances, e.g. where data security or privacy requirements cannot be ensured otherwise.

We see with apprehension our trading partners increasingly resorting to the adoption of such measures. For instance, Vietnam and Russia intend to adopt forced localisation legislations in the IT sector imminently.

BUSINESSEUROPE is of the opinion that going forward the EU should make sure that all FTAs negotiated and concluded contain provisions to address all barriers to trade, including in the IT sector. The European IT sector is developing rapidly and there is significant potential to become a global leader in many areas, but this will only happen if our companies can actually export their technologies and know-how to third countries and compete in a level playing field.

Vietnam plans to adopt a Decree on IT Services which, among other provisions, requires the establishment of a local representative, introduces certification and licencing requirements for a wide range of IT services and limits the possibility of foreign companies engaging in public procurement. Besides creating additional burden and costs for companies, especially SMEs, questions are also raised on the compatibility of the particular part of the draft Decree with Vietnam's GATS obligations.

Furthermore, originally Article 19.1.c of the Decree provides requirements on local data storage. In a more recent version there is now a reference to 'special requirements' that would have to be met. Although the intent of that particular part of the Decree in question is not entirely clear, these requirements could lead to an additional forced localisation problem for the IT sector in Vietnam such as data localisation.

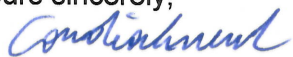
Russia – via the Federal Law 242-FZ – requires that all personal data of Russian individuals are stored and processed in Russia, while no exemptions are offered for commercial data. This may obstruct cross border data flows, which are crucial not only for the IT sector, but also for the smooth functioning of the economy as a whole. We ask the Commission to assess the compatibility of this legislation with the commitments made by Russia under the WTO.

Moreover, although the law was initially planned to enter into force in September 2016, a recent amendment currently being discussed in the Duma proposes that the implementation date moves earlier, to 1 January 2015. As currently there are not enough data centres in Russia, it would be extremely difficult for foreign investors to abide by the law requirements.

The examples above are typical of forced localisation problems that European companies face abroad. Unfortunately, this worrying trend is expanding at the detriment of European companies.

I sincerely hope that the European Commission will address these issues with our counterparts at the first possible opportunity. In the case of Vietnam in particular, we expect the issue to be addressed in the course of the bilateral negotiations for a Free Trade Agreement. In the long run, we believe it would be helpful to capture these types of barriers to trade in DG TRADE's annual Trade and Investment Barriers Report.

Yours sincerely,



Markus J. Beyrer

