BRUSSELS, 25 February 2015

H.E. Federica Mogherini
High Representative of the Union for Foreign Affairs and Security Policy
Vice President
European Commission

H.E. Andrus Ansip
Vice-President
Commissioner Digital Single Market
European Commission

H.E. Jyrki Katainen
Vice-President
Commissioner Jobs, Growth, Investment and Competitiveness
European Commission

H.E. Günter Oettinger
Commission Digital Economy & Society
European Commission

H.E. Cecilia Malmström
Trade Commissioner
European Commission

H.E. Jonathan Hill
Commission Financial Stability, Financial Services and Capital Markets Union
European Commission

Dear Vice-President Mogherini, Vice-President Ansip, Vice-President Katainen, Commissioner Oettinger, Commissioner Malmström, and Commissioner Hill,

Re. Chinese regulation regarding the deployment of ICT technology in the banking sector

The undersigned associations – representing a wide range of businesses in Europe including Financial services and Information and Communication Technologies (ICT) - would like to draw your attention to a new worrisome regulatory framework in China. We would like to request your help in suspending the implementation of this regulatory framework to ensure its compliance with China's international obligations.

The Chinese Government released in September 2014 the "Guiding Opinions on the Application of Secure and Controllable Information Technology to Strengthen Banking Industry Network Security and Informatisation", a regulation that could close the door for many foreign IT companies to the Chinese banking IT market by requiring that banks procure "secure and controllable ICT goods and services" for up to 75% of their networks and systems by 2019.

To implement the above regulation, in December 2014 the Chinese Government further released the Promotion Guidelines for the Application of Secure and Controllable Information Technology in the Banking Industry (2014-2015), which defines different "secure and controllable" requirements for various ICT products and services. All implementing requirements have not, however, been published or shared with foreign ICT providers which in itself may be a breach of WTO rules. However, it is our understanding that they will come into force in March 2015.

While in principle these measures are represented as enhancing cyber security, these policies, if fully implemented, will not only undermine the ability of European companies to participate in the IT market in China and to serve banks in general – and EU banks in particular, but also hurt the development and integration of Chinese banking sector in the global market. In order to qualify as "secure and controllable," ICT products and services must – among other requirements – undergo intrusive security testing, make use of indigenous Chinese intellectual property (IP) (e.g local encryption algorithms), and comply with country-specific (Chinese) security standards. Foreign technology vendors should also file source code and other sensitive and proprietary information with the Chinese government. Furthermore, products must be engineered to restrict the flow of cross-border data. The implementing measures for these policies indicate also that to continue operating in China, vendors must have R&D operations in China.

The potential impact not only on European IT companies and banks could be substantial. China is one the world's largest banking IT markets. According to IDC statistics, China's retail banking revenues have grown 30% annually since 2009 and could exceed RMB 2.6 trillion (EUR 340 billion) by 2020, making the country the largest retail banking market in Asia. China's banking IT market will be worth more than EUR18 billion by 2017. The European banks have very limited market access to the Chinese market and they expect the on-going EU-China Bilateral Investment Agreement (BIT) negotiations to open up the market for them. But, these new technical barriers will potentially be a strong disincentive to enter the Chinese market. These policies go in the opposite direction of the signals given by the Chinese leadership inviting financial services institutions to invest in China through the recently opened free trade zones. Moreover, it would be very costly and very challenging if not to say impossible, for the EU headquartered banks already present in China to comply with the implementation deadline envisaged by the guidelines.

Combined with China's recent other actions to tighten content filters and limit Internet-based services, these new policies will create an even more unwelcoming digital trade and investment environment for foreign companies.

More generally the rise of such forced localisation policies, notably in important sectors such as banking and ICT, mark a troubling shift in global trade and economic policies. Many governments appear to abandon their established trade obligations that have led to decades of economic growth and the improvement in the quality of life, liberalisation, openness, and economic integration in favour of discriminatory market access barriers.

Further, there are indications that the Chinese Government also intends to expand similar requirements to a broad array of sectors in the near future. These policies could severely impact R&D investment, growth and jobs of various companies in Europe that operate in China. If fully implemented throughout additional industry sectors, these policies would threaten the ability of European IT companies to participate in the overall ICT market worth EUR411 billion in China.

These new banking regulations can be interpreted as a disguise to support local industry in China and represent a strong barrier to trade. They also raise serious questions regarding China's international trade commitments.

The European Commission is now negotiating the EU-China BIT, China's accession to the Government Procurement Agreement (GPA), the expansion of the ITA (ITA II) and China will participate to the next WTO NTB Workshop in May. China also recalled many times its wish to join TiSA negotiations. These new policies in China do not, however, reflect a free trade spirit needed in these processes.

We, undersigned associations, ask you to address this issue with your counterparts in China as soon as possible given the upcoming implementation deadline (including at the forthcoming EU-China Summit) and ask the Government of China to postpone the implementation of the banking regulations (which we understand will be implemented on March 15th this year). We also hope it will be possible to create a process for a dialogue and public consultation on China's "national cyber security review regime" which may be formally established this year.

The China-EU ICT Working Group later this year could also be a right forum to have a constructive discussion on innovation, cybersecurity, and national engagement in cyberspace, and to provide for the best practices in this field.

We are of course discussing this issue with DG Trade and DG Connect which are engaging with us closely on this. Also your personal attention and support on this very alarming situation would be highly appreciated.

Yours sincerely,