



**Mrs. Ekaterina Zaharieva**

Deputy Prime Minister for Judicial Reform and  
Minister of Foreign Affairs  
The Republic of Bulgaria  
2 Aleksandar Zhendov Str.  
Sofia 1113,  
BULGARIA

8 March 2018

Dear Deputy Prime Minister,

Following the European Commission's proposal on horizontal provisions for cross-border data flows and for personal data protection in EU trade and investment agreements that has now reached the Council, I am addressing this letter to you to share the views and concerns of BusinessEurope on this important matter.

BusinessEurope has been an active proponent of the inclusion of provisions enabling cross-border data flows in the trade and investment agreements negotiated by the EU that are fully in line with the EU General Data Protection Regulation. We therefore welcome the Commission presenting its proposal, which aims at preventing restrictions to the free flow of data, while reiterating that the legitimate protection of personal data and privacy shall not be affected by respective provisions in EU trade agreements.

Cross-border data flows are essential to global trade and contribute significantly in growth and job creation by enabling business operations for companies of all sizes across industry and services sectors. At the same time, they allow access to a wider variety of goods and services, often of higher quality and at better prices. Therefore, the benefits of enabling and facilitating cross-border data flows are global and across the board.

While we welcome the commitment that high standards for the protection of personal data and privacy shall be preserved, we experience at the same time that digital protectionism by some of our trading partners is on the rise. This leads to barriers that prevent the flow of data and force data localisation, often under a false pretence of data protection. It would be important to ensure that legitimate concerns on privacy and data protection are not misused to legalise protectionism. The European Commission should therefore pay specific attention to this challenge in future negotiations, in order not to undermine the mutual recognition of the protection of personal data and privacy as a fundamental right. Looking at the proposal that was put on the table by the European Commission, we consider that this objective might not be fully achieved. From the perspective of European business, we are in favour of concrete, workable and enforceable solutions, respecting the principles of fair competition, smart regulation and transparency.

In principle, the provisions in Article A of the proposal constitute an appropriate approach for ensuring cross-border data traffic and facilitating trade in the digital economy. It is also important to ensure a framework that fosters consumers' trust on online services,



setting up a high standard on the protection of personal data and privacy. However, we are concerned that the provisions of Article A could be undermined on the basis of Article B, unless effective safeguards are put in place. Therefore, we ask for appropriate enforcement mechanisms for the horizontal provisions for cross border data flows. In this regard, we find problematic the fact that the provisions will not be subject to a proper dispute settlement system.

The international dimension of the current debate is also important and should not be forgotten. As a leader in global exports of IT enabled services, the EU has an interest in having a strong voice, promoting regional and global rules in the area of cross-border flows that are able to effectively address measures that have a protectionist objective. We need to maintain an open dialogue and cooperation with our partners who, through their bilateral and regional trade and investment agreements, support a more proactive policy on cross-border data flows.

The position of BusinessEurope on this matter is clear. Enabling cross-border data flows is a strategic issue for the EU and should be addressed in a manner of urgency through a well-balanced and enforceable proposal. We hope that our concerns will be taken into consideration in your deliberations in the Council. In the meantime, we stand ready to further discussing this issue with you.

Yours sincerely,

Markus J. Beyrer