

Mr. Andrus Ansip  
Vice President for the Digital Single Market  
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1040 Brussels, Belgium

Mr. Günther H. Oettinger  
European Commissioner for Digital Economy and Society  
European Commission  
Rue de la Loi / Wetstraat 200  
1040 Brussels, Belgium

Brussels, 15th November 2016

**RE: Future-proofing the EU Single Market by enabling the free flow of data**

Dear Vice-President Ansip,  
Dear Commissioner Oettinger,

The EU's most praised economic achievement is its Single Market where goods, services, people and capital can flow freely. The EU Single Market has attracted investment, boosted economic growth and allowed for European companies to scale-up freely. While more needs to be done to achieve its full benefits, the Single Market also needs to be future-proof and its principles need to be extended to the digital economy.

Unfortunately, unjustified data localisation requirements in some Member States are increasingly threatening to fragment the Single Market. These barriers undermine the competitiveness of a true Digital Single Market which could provide an estimated EUR 415 billion to the EU's GDP.<sup>1</sup>

**The economic benefits of free flow of data in the EU**

As Europe's economy is undergoing a transformation to a data-driven economy, unjustified barriers to free flow of data need to be removed within the EU (and globally). This is in line with the recently adopted EU General Data Protection Regulation which clearly states that: "The proper functioning of the internal market requires that the free movement of personal data within the Union is not restricted or prohibited." Economically, the EU would gain an estimated EUR 8 billion annually if existing data localisation measures were removed.<sup>2</sup> Preventing EU Member States from imposing unjustified data localisation requirements would lead to a EUR 52 billion per

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<sup>1</sup> Mapping the Cost of Non-Europe 2014-2019 – European Parliamentary Research Service (April 2015).

<sup>2</sup> European Commission's Inception Impact Assessment (October 2016).

year increase in economic activity in Europe or 0.37% of EU GDP.<sup>3</sup> These gains will increase with the further digitisation of Europe's economy.

### **Unjustified data localisation puts a chill on innovation in Europe**

The vast majority of today's national data localisation requirements relate to company data, tax data, book-keeping data, financial data, gambling data, and health data. Many data localisation requirements are also imposed in the area of public procurement at national and local level. Today all European companies are faced with a patchwork of national rules for the handling of their company data, such as invoices.<sup>4</sup> These requirements constitute a significant barrier for small firms trying to do business in other EU Member States. Businesses operating in Europe, including SMEs, should be able to easily store, access and process their data in the Single Market without facing unnecessarily burdensome localisation requirements. The EU institutions must work to create a Single Market where SMEs can seamlessly scale-up and not be forced to store data in various Member State jurisdictions.

### **Where data is stored should be a matter of customer choice**

Localisation mandates rarely find any valid public policy justification and prevent consumers and businesses from accessing new services and technology, drive up costs and stifle innovation. Importantly, data localisation measures actually weaken security protections as they make centralised data more vulnerable to attacks. While we respect the request of customers to store data in a certain jurisdiction, we believe that any data storage requirements should be based on customer choice, not government mandate.

### **Wide support for an EU ban on unjustified data localisation**

Forced data localisation rules will not lead to better protection but to fragmentation, to the detriment of citizens, consumers, SMEs and society. Our views echo those of the European Parliament, which has openly called for a curb on forced data localisation.<sup>5</sup> Furthermore, 14 EU Member States have urged that "data can move freely across borders ... by removing all unjustified barriers to the free flow of data."<sup>6</sup> We support this call for the European Commission to confirm, through a Regulation, the general principle of the free flow of data and remove unjustified data location rules across the EU. Member States should be allowed to localise data only in very exceptional and pre-determined cases. The burden should then be on the relevant EU Member States to notify and allow for European Commission scrutiny prior to any decision in order to

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<sup>3</sup> Forthcoming study by the think tank ECIPE.

<sup>4</sup> [New research: Conflicting company rules inhibit intra-EU business](#) (February 2016).

<sup>5</sup> [The European Parliament Recommendations](#) (June 2016) "recognise that data flows are a crucial driver of the services economy, an essential element of the global value chain of traditional manufacturing companies and critical for the development of the Digital Single Market; to seek, therefore, a comprehensive prohibition of forced data localisation requirements ... to the extent possible within and outside Europe."

<sup>6</sup> 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).

allow for verification of their 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 thank you for your important efforts to future-proof the EU Single Market. We remain at your disposal to discuss and support this proposal further.

Kind regards,

ACT, Application Developers Alliance, AmCham EU, BSA, CCIA Europe, COCIR, DIGITALEUROPE, EACA, eCommerce Europe, EDiMA, EMOTA, EPC, EuroISPA, FEDMA, FENCA, IAB Europe, ISFE, JBCE, TABC, and WFA.



cc.

Commissioner Elżbieta Bieńkowska  
Commissioner Věra Jourová  
Director-General Roberto Viola  
Director-General Tiina Astola  
Head of Cabinet Juhan Lepassaar  
Head of Cabinet Michael Hager  
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