

BRUSSELS, 25 October 2016

European Commission
Vice-President Andrus Ansip
Commissioner Günther Oettinger
Commissioner Elżbieta Bieńkowska

Subject: EU Free Flow of Data Initiative

Dear Vice-President Ansip,
Dear Commissioner Oettinger,
Dear Commissioner Bieńkowska,

The European economy is undergoing a transformation to a data driven economy, which heavily relies on cross-border data flows. The success of this transformation directly depends on companies' ability to transfer data across borders in order to develop their business models, provide services to consumers and create cross-industry partnerships. However, existing direct and indirect restrictions to the free flow of data across the EU's Member States, including in the area of national public procurement, undermine the competitiveness and growth of companies in Europe.

The European Commission rightfully noted in its recent inception impact assessment for a European free flow of data initiative within the Digital Single Market that, *"the free flow of data has become limited by technical and legal barriers at national level. This comes at a cost for businesses that have to set up data centres in each Member State, or pay higher costs for data storage and processing"*.

We agree with the European Commission's view that these restrictions should be regarded as an exception rather than the rule, and we strongly oppose data localisation requirements at national, European or global level. Not only do localisation mandates rarely find any valid justification, they also prevent customers from accessing new services and state of the art technology. Importantly, data localisation measures actually weaken security protections as they make centralised data more vulnerable to attacks. **Where data is stored should be a matter of customer choice, not government mandate.**

As the free movement of data is fundamental to an open, competitive and innovative Digital Single Market, we strongly hope that the forthcoming "Free Flow of Data Initiative" will **eliminate** unjustified data localisation requirements in Europe.

We would like to highlight the work made by think-tank ECIPE regarding barriers to digital trade. The project includes a database of measures in 13 different policy areas, including IPR, investment, online transactions and data flows, which have been identified for 65 economies, including all 28 EU Member States. In the area of data localisation the database shows a very worrying trend over the last few years.

We call upon the European Commission to **put forward legislation** to establish the general principle of the free flow of data, and remove data location restrictions across the EU. The exceptional introduction of data localisation requirements by Member States should be pre-determined by a narrow range of acceptable justifications and subject to prior notification to allow for verification of their compatibility with EU law, including in the area of national public procurement. Even in the exceptional cases of "justified" data localisation the objective should be, as much as possible, to allow for the free flow of data within Europe and not force storage within a specific country.

We very much support the view that **forced data localisation rules will not lead to better protection** but to fragmentation, to the detriment of citizens, consumers, SMEs and society. The EU needs to act forcefully before it is too late; only an ambitious legislative proposal can help remove this threat to Europe's growth.