



Global Services Coalition Recommendations to the Member States of the European Union Regarding the European Commission Proposal on Data Flows April 17, 2018

The Global Services Coalition (GSC) submits the following comments to the Member States of the European Union (EU). The members of the GSC speak for the services sectors in their respective economies on services trade and investment issues. GSC members represent a broad spectrum of services companies, including sectors such as information and communication technology, telecommunications, express delivery and logistics, retail and wholesale services, banking, insurance, and professional services.

We very much welcome the fact that the EU is working on a proposal for “Horizontal provisions for cross-border data flows and for personal data protection” (hereinafter “the Proposal”). It is important for the EU, as one of the largest exporters of digitally deliverable services, to be actively engaged in and contribute positively to international discussions on digital trade.

Services industries, as major providers of infrastructure and solutions to the digital value chain, recognize the need to establish trust in the digital economy and the importance of data protection. The GSC recognizes that data-security, as well as appropriate and effective protection of personal data, are essential and must be assured through compliance with local privacy and security regulations.

Any exceptions to the principles promoting cross-border data flow and avoiding forced localization should be limited to legitimate public policy objectives and only in full compliance with the provisions of GATS Articles XIV and XIV bis, and treat all services providers – foreign and local – equally.

We would like however to raise serious concerns on some aspects of the Proposal, which we understand is designed to govern the EU's approach to the digital economy in trade agreements. We consider that the Proposal falls well short in providing a modern and stable approach to the flow of data between the EU and its trading partners.

We very much welcome Article A of the Proposal which states that the EU will ensure that trade agreements include protections against data flow restrictions and against requirements to locate data centres and computing facilities in-country as a condition of doing business. We would recommend however to ensure that the restrictions should not be limited to the four listed localisation methods but also cover any other potential restrictions.

Article B paragraph 2, on the other hand, creates to our understanding the possibility of setting a too far-reaching exception for data protection and privacy that completely undermines the protections for legitimate data flows covered by Article A. Any trading partner of an FTA with the EU would be allowed to circumvent the prohibition of data localisation requirements in the name of privacy and data protection, without the need for justification or a recourse to appeal or challenge.

By proposing such a far-reaching exception, the European Commission is sending a counter-productive signal that trade agreements could be used to introduce new trade barriers. This is exactly the opposite of what trading partners are seeking to achieve with their trade policy.

GSC members believe that, if adopted, this Proposal would risk undermining innovation, growth and job creation across Europe and its trading partners. It is essential that any provision in a trade agreement on this matter ensures that the protection of personal privacy is not misused to legalise protectionism. We urge EU Member States to revisit the work and discussions on this topic with the European Commission in order to develop a new, more balanced approach that protects privacy while ensuring legitimate cross-border data flows.