



Mr. Frans Timmermans

First Vice-President
European Commission
Rue de la Loi 200
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Brussels
BELGIUM

30 October 2017

Dear First Vice-President,

I would like to address this letter to you in the context of the current discussions on the EU's approach to cross-border data flows and the inclusion of specific provisions in the Free Trade Agreements negotiated by the EU. We are aware of the particular attention you pay to this matter and support your efforts to develop an EU proposal.

Cross-border data flows are essential to global trade and contribute significantly in the growth of the economy as a whole. They enable business operations for companies big and small across industry and service sectors. They also support consumers' access to a wider variety of goods and services. The EU is the biggest global exporters of IT enabled services, and we should ensure that we maintain this leadership. At the same time, we recognise the need to address legitimate concerns on privacy and the protection of personal data.

BusinessEurope has a clear position on this issue. We support a solution that enables cross-border data flows and effectively tackles forced data localisation when it is disproportionate and unjustified, without questioning the application of the EU General Data Protection Regulation.

In our view, the EU cannot remain silent on this important topic and a proposal should be agreed as a matter of urgency. We do not believe the "concept paper" released earlier created the right balance, as it could have potentially made it very easy for our trading partners to invoke data protection reasons to engage in data protectionism. We also noted that a very large majority of Member States expressed concerns with the European Commission proposal. European companies across the board are currently faced with an increasing number of barriers that prevent the flow of data and promote forced data localisation. It's a worrying sign that many of our trading partners are taking advantage of the lack of an enforceable legal framework to promote their own interests and support their own companies. The inability of our companies to transfer data from third countries to Europe will force them to delocalise operations.

It is time to send the right signal to our trading partners and develop a position that will enable the EU to advance on this matter in trade negotiations both at bilateral as well as plurilateral and multilateral levels.

Bilateral level – FTAs negotiated between the EU and its partners

The EU-Japan Free Trade Agreement offers an ideal framework to include modern and ambitious provisions on cross-border data flows and rules to address forced data localisation. This Agreement with a like-minded country can provide the best model to follow in ongoing and future FTA negotiations.

We understand that a “place holder” is foreseen in the text of the Agreement that, in absence of an EU position, allows the two partners to revisit the issue in 3 years. This is not an acceptable approach if we want the EU-Japan EPA to be a benchmark for future agreements. We believe it is essential that the EU adopts its position as soon as possible, to enable negotiations with Japan on this part of the Agreement and ensure its rapid and effective implementation. Such a position should also be proposed in all on-going trade negotiations of the EU.

Plurilateral and Multilateral levels – TiSA and the WTO

The lack of a position also prevents the EU from being more ambitious in the context of the ongoing discussions on E-commerce ahead of the 11th WTO Ministerial Conference that will take place in December 2017 in Buenos Aires as well as on a possible Trade in Services Agreement.

It is clear that negotiations that aim at developing plurilateral and multilateral rules on cross-border data flows are sensitive and more complex than bilateral ones, as they involve many partners with different models and experiences. However, we are convinced that an EU position will contribute to drive negotiations out of the current impasse and, ultimately, to deliver an ambitious set of rules that will level the global playing field.

In conclusion, BusinessEurope views the issue of cross-border data flows as a strategic interest for the EU, as already identified in the European Commission’s “Trade for All” Communication of September 2015. We hope that you can share our sense of urgency in this matter and that an EU position is agreed soon. In the meantime, we are ready to further discuss this matter with you.

Yours sincerely,



Markus J. Beyrer