
DIGITALEUROPE



Trilateral Dialogue JEITA-ITI-DE

Forced Localization Measures

EUROPEAN INDUSTRY VIEWS



European
Public Affairs Awards
2014

Shortlisted Trade Association of the Year

Rue de la Science 14, 1040 – Brussels [Belgium]

T: +32 2 609 53 10 F: +32 2 431 04 89

www.digitaleurope.org - info@digitaleurope.org

European Context

Privacy vs Open market

- **NSA** Surveillance Revelations have created strong anti-US sentiment in various EU countries
 - Result: calls for creation of « Fortress Europe » by European Telcos and certain politicians
- Cyber « Attacks » (towards public and private actors) illustrate weakness of EU security systems
 - Result: reform of National Infrastructure Systems Directive
- Data Privacy is regarded as a « fundamental right » - EU **Data Privacy** Reform
 - Result: free flow of data challenged because EU Data Privacy rules would become more stringent in the world
- Safe Harbor Agreement under review and even many call for immediate suspension
 - Result: cannot discuss data flows in TTIP unless Safe Harbor review is finalized
- Umbrella agreement btw EU-US on exchange of information in law enforcement cases
 - Result: request from EU for equal rights for EU citizens as US citizens in the US (judicial redress)
- US Gov case against Microsoft and Ireland – judge orders Microsoft to hand over data located in non-US server
 - Results: completely undermines the protection of data located in the EU

European Context

Privacy vs Open market

- Google case/**Right to be forgotten**
 - New Juncker « **Digital** » Commission
 - Challenges for the next five years: **Digital Single Market & Coherence** among portfolios.
 - **Anti-trade climate** in Brussels (e.g. No TTIP, CETA) : far-right political parties in the EP, NGOs, Trade Unions.
- Main objective Digital Europe: Re-Building **trust in the Internet/Data Flows** (and American ICT companies)
- Challenge: certain elements of the puzzle first need to be addressed before receiving full EU support for supporting free flow of data

European views on Forced Localization Measures (FLM)

Evaluating the threat

- Debate quite recent in Europe
- « **Cautious** » approach at the European level (EC) – FLM require better analysis and understanding
- EU **fears** « **lack of credibility** » when addressing these FLM with other third countries (as its official representatives made it very clear that Privacy & Security of the EU citizen's data are the concern).
- New Designated EU Trade Commissioner Malmström intends to promote **the WTO as the best tool for dispute settlement**
- Pluri/Multi-lateral approach (TBT Committee) vz Bilateral approach (via Free Trade Agreements)
- Trade in Services Agreement: EU in a « listening mode » on US proposal to include provisions on cross-border data flows and to prevent FLM
- European vision should be delivered for the **ITA Workshop on Non-Tariff Barriers (NTBs)**, Geneva, 7 May 2015

TABLE 1: OVERVIEW OF REQUIREMENTS IN LEGISLATIVE PACKAGES

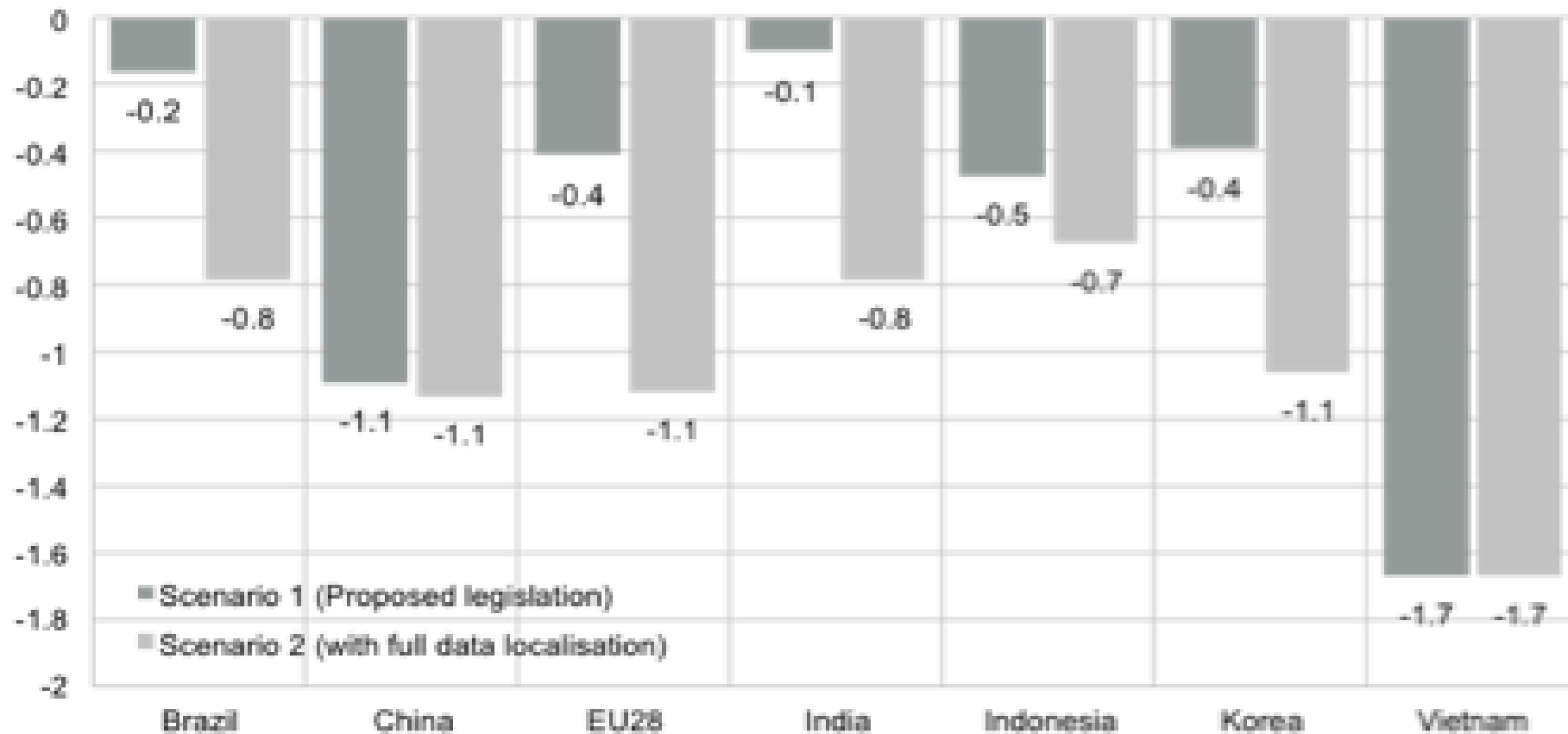
ECIPE OCCASIONAL PAPER 03/2014

	Brazil	China	EU28	India	Indonesia	Korea	Vietnam
Data localisation requirement	No	Yes	No	Partial	Yes	Partial	Yes
Consent required for data collection	Yes	Yes	Yes	Yes	Yes	Yes	No
Consent required for transfer to third parties	Yes	Yes	No	Yes	No	Yes	No
Right to review	No	No	Yes	Yes	Yes	Yes	No
Right to be forgotten	Yes	Yes	Yes	No	No	Yes	Yes
Breach notification	No	Yes	Yes	No	Yes	Yes	No
Impact assessment	No	Yes	Yes	No	No	No	No
Data privacy officers	No	No	Yes	No	No	Yes	No
Sanctions for non-compliance	Yes	Yes	Yes	Yes	Yes	Yes	No
Government access required	Yes	No	No	Yes	No	No	Yes
Data retention requirement	Yes	No	No	Yes	No	No	Yes

FLM possible impact on EU GDP

- FIGURE 1: GTAP SIMULATIONS ON GROSS DOMESTIC PRODUCT (GDP) FOR SELECTED COUNTRIES. CHANGES IN %

(in ECIPE, *The Costs of Data Localization*, N° 3-2014)



EU industry initiative

- DIGITALEUROPE Horizontal **Working Group (WG) on FLM** (leadership: IBM) – close work with other WGs (Privacy & Security, Market access, Internet Governance)
- **Main actions:**
 - DIGITALEUROPE **leadership on EU industry actions** (letters, position papers, statements) to prevent or remove FLM (e.g. Russia, Vietnam);
 - Undergoing Mapping of forced localization measures around the world (focus on EU28, ASEAN, Turkey, Russia, Latin America,...);
 - Joint initiative with ITI and JEITA?
 - Advocacy for the inclusion of horizontal binding commitments in FTAs (e.g. EU-Vietnam, TTIP) and Plurilateral agreements (TiSA) for cross border data flows and the rejection of FLM in accordance with Article 14 of GATS;
 - Inform MEPs, European Commission, Permanent Representatives, National Trade Associations (e.g. Ametic, ZVEI, Bitkom), other EU ICT & non-ICT industry stakeholders (e.g. Google, eBay CCIA, BUSINESSEUROPE, TABC, AMCHAM EU, EUCOMED, EECA, FUELS EUROPE, European Digital Media, & others) about risks and impact of FLM.

Building a global industry coalition against FLM

- Joint statement for the G20 Trade Ministers Meeting in Sydney (July 2014) - +30 signatories
- Next action(s) ? APEC Leaders Meeting (10 November 2014); ITA Workshop on NTBs (7 May 2015)
- Develop global mapping of forced localization?
- Develop language that can be inserted in FTAs?

Global Industry Coalition against FLM

See joint statement and signatories:

<http://www.digitaleurope.org/SearchResults.aspx?Search=forced%20localization>

DIGITALEUROPE



For more information, please contact:

diane.mievis@digitaleurope.org

@dianemievis

Thank you!