



30 December 2021

Comments on Proposed Amendments to Draft Decree 72

Submitted electronically to the Ministry of Information and Communication

On behalf of the Global Data Alliance (**GDA**)¹, we would like to send you our sincere regards and express our appreciation to provide further comments on the proposed amendments to Decree No. 72 on the Management, Provision and Use of Internet Services and Online Information (**Decree 72**). While member companies may have interests and concerns on a range of issues raised in draft Decree 72, the GDA is focused on policies related to cross-border data transfers. Accordingly, this letter addresses those provisions that are relevant to cross-border data transfers.

GDA had previously [commented](#) on the July version of the draft Decree 72 in September, and understands that draft Decree 72 has since been revised in light of feedback from industry and stakeholders.

Data Localization Requirements

We are grateful that some of our recommendations have been taken on board in the revised draft, notably our suggestion to remove data localization requirements in Article 22.3(d). The scope of localized data is now limited to Vietnamese organisations and individuals under the new Article 44k. However, even with the narrowed scope of localized data under the new Article 44k.4, such data localization requirements will still increase the business costs of providing online services in Vietnam, which may result in end-users and SMEs in Viet Nam paying additional costs or being deprived of advanced offshore enterprise services and may impede their ability to compete internationally.

Requirements in Article 44k.4 that “[d]ata of data center service users (being Vietnamese organizations and individuals) must be stored in Vietnam” also raise concerns regarding Vietnam’s compliance with its obligations under Article 14.11 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which provides that “[e]ach Party shall allow the cross-border transfer of information by electronic means...” and Article 14.13, which provides that, “No Party shall require a covered person to use or locate computing facilities in that Party’s territory, including personal information, when this activity is for the conduct of the business of a covered person.”

¹. The Global Data Alliance ([globaldataalliance.org](https://www.globaldataalliance.org)) is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. Alliance members are headquartered across the globe and are active in the advanced manufacturing, aerospace, automotive, consumer goods, electronics, financial services, health, media and entertainment, natural resources, supply chain, and telecommunications sectors, among others. BSA | The Software Alliance administers the Global Data Alliance. For more information on the Global Data Alliance, please see: <https://www.globaldataalliance.org/downloads/aboutgda.pdf>

As Vietnam's grace period to bring itself into compliance with CPTPP Article 14.11 and 14.13 will be ending soon, the requirements noted above could ultimately put Vietnam in breach of its international obligations. **We urge Vietnam to duly account for these important commitments in its review process.**

Additionally, we note that under the new Article 44i.3, data created by service users are required to be stored only in Vietnam. While this requirement may stem from concerns regarding the security of data created by state agencies, how the data is being protected is more important than where the data is located. Indeed, the most direct path toward improved security is in prioritizing and funding the effective implementation and operationalization of strong, existing cybersecurity and data security risk management practices.

We therefore continue to strongly recommend that MIC revise the restrictive approach in Decree 72 regarding international data transfers. **Accordingly, GDA urges Vietnam to remove the data localization measures in Articles 44i.3 and 44k.4.**

Widened Scope of Violations

GDA notes that the scope of possible violations in Article 22.2(a) has been widened significantly. While the previous draft limited violations to breaches of Article 5 of Decree 72, Article 8.1 of the Cybersecurity Law and Article 28 of the Intellectual Property Law, the current draft extends this to “the laws of Vietnam”. This widened scope, which does not specify the laws and regulations which businesses should take note of, generates legal uncertainty for businesses and would likely increase compliance and legal costs considerably. **In the circumstances, we urge Vietnam to reinstate the language used in the previous draft of Decree 72, which referred specifically to violations arising from Article 5 of Decree 72, Article 8.1 of the Cybersecurity Law and Article 28 of the Intellectual Property Law.**

Conclusion

We appreciate the opportunity to share these views and hope that they will be helpful as MIC considers revisions to Decree 72 so that it can improve the regulation of digital services while promoting a safe online environment in Viet Nam.

Please do not hesitate to contact us with any questions regarding this submission.

Sincerely yours,



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