

**Comments of the Global Data Alliance on the  
Data Localization Elements of Decree 53 to Implement the Law on Cybersecurity**

The Global Data Alliance<sup>1</sup> (“Alliance” or “GDA”) welcomes the opportunity to share its views on Vietnam’s *Decree 53 to Implement the Law on Cybersecurity*. The GDA supports Vietnam’s goals of improving standards of cybersecurity protection in Vietnam. However, to avoid unintended harms, the GDA recommends that Vietnam explore alternative approaches to the data localization mandates found in the Decree.

On 15 August 2022, the Ministry of Public Security (MPS) published the final Decree No. 53/2022/ND-CP (“Decree 53” or “the Decree”) – the latest administrative step relating to the Vietnam Law on Cybersecurity. In the past few years, the GDA has followed with great interest developments related to the Law on Cybersecurity. For instance, the GDA provided comments on data localization and related data restrictions in Vietnam in April 2021<sup>2</sup> (translation),<sup>3</sup> September 2021<sup>4</sup> (translation),<sup>5</sup> November 2021<sup>6</sup> (translation),<sup>7</sup> and December 2021<sup>8</sup> (translation).<sup>9</sup> The GDA has also joined a broad group of global industries in expressing concerns with the restrictive direction of Vietnam’s cross-border data policies.<sup>10</sup>

**I. Introduction**

The GDA is a cross-industry coalition of companies, headquartered in different regions of the world, that are committed to high standards of data privacy and security. The GDA supports policies that help instill trust in the digital economy without imposing undue cross-border data restrictions or localization requirements that undermine data security, innovation, economic development, and international trade.

Alliance member companies are significant investors in Vietnam, investing millions of dollars and supporting thousands of jobs. GDA member companies are active in Vietnam in the aerospace, automotive, consumer goods, electronics, energy, financial services, health, media, supply chain, and telecommunications sectors. Data transfers enable the digital tools and insights that are critical to enabling entrepreneurs and companies of all sizes, in every country, to create new kinds of jobs, boost efficiency, drive quality, and improve output.

The GDA is concerned that the Decree’s data localization mandates and related restrictions will impede Vietnam’s stated goals and will produce significant unintended consequences. We respectfully recommend that the Decree be revised to adopt robust and rigorous data protection standards that promote privacy and security while allowing enterprises in Vietnam to benefit from cross-border access to best-in-class cloud-delivered technology and while allowing citizens to benefit from economic and educational opportunities available online and across borders. In particular, we respectfully recommend that Vietnam explore alternative approaches to the data localization mandates found in the Decree, and to evaluate the other recommendations suggested herein.

**II. Specific Comments and Recommendations regarding Decree 53**

The GDA offers the following specific comments on the data localization elements of Chapter V:

**(1) Possible inconsistencies in the definition of “domestic enterprise” and the scope of applicable service providers for which Decree 53 would apply.**

Article 26.2 of Decree 53 requires domestic enterprises to store data in Vietnam, and Article 2.11 of Decree 53 defines a “domestic enterprise” as an enterprise established or registered for establishment under Vietnamese law and having its head office located in Vietnam. While we are appreciative that a good number of GDA’s member companies would be excluded from the definition and will not be required to store required data within Vietnam, we are concerned that certain enterprises such as foreign-direct-investment (FDI) companies with head offices in Vietnam would be considered domestic enterprises. We recommend issuing a formal interpretation specifying that Article 26.2 does not include

foreign-invested enterprises or subsidiaries of foreign or multinational corporations within the scope of “domestic enterprises”.

Article 2.2 defines “service users” as “organizations [and/or] individuals in the use of services in cyberspace” and Article 2.3 defines “service users in Vietnam” as “organizations [and/or] individuals using cyberspace with the territory of the Socialist Republic of Vietnam.” We recommend that MPS clarify that the term “service user”, defined in Articles 2.2 and 2.3, does *not* require domestic or foreign enterprises to consider their employees or other internal staff as “service users”. This would allow Vietnamese domestic enterprises to continue using internationally available cloud services for their internal business operations.

- (2) ***Article 26.2 of Decree 53 requires local domestic enterprises to store data in Vietnam. We wish to confirm that such data can be transferred, stored, and processed outside of Vietnam so long as the data itself is also stored in Vietnam.***

Data localization requirements, such as those imposed in Decree 53, prevent domestic enterprises from fully benefiting from technology and services available in the global marketplace. For instance, data localization requirements restrict Vietnamese enterprises, both small and medium-sized enterprises (SMEs) and larger organizations such as hospitals and banks, from using world leading information technology (IT) and cloud computing solutions from service providers that offer their services from outside of Vietnam. Such services frequently provide best in class security capabilities and prohibiting domestic companies from using such services may reduce their competitiveness, especially internationally, and expose them to greater data security risks.

The GDA’s first recommendation would be to do away with data localization requirements for both domestic and foreign enterprises altogether. However, until the Government rescinds the data localization requirement, the GDA recommends **that the requirement for storage of data in Vietnam be scoped to “an electronic copy of the required data should be stored in Vietnam.”** This would allow an enterprise to store local copies of the required data described in Article 26.1 using a form of data storage determined by the enterprise according to Article 26.5. Given that the required data would already be stored in Vietnam, the enterprise would then be free to use a copy of the required data on any cloud-based service that does not or cannot store data in Vietnam as part of its service. While such an arrangement would result in extra costs to enterprises, it would have a lower impact on their access to world-leading and best-in-class IT and cloud computing solutions compared to more onerous data localization requirements such as requiring cloud computing solutions or any kind of processing to be kept onshore.

GDA supports efforts to ensure data is protected commensurate with the risk its compromise poses. Unfortunately, requiring data localization can increase the risk that such data may be compromised.

- (3) ***The effective date of implementation of Decree 53 is too short and covered enterprises will not be able to migrate data and workloads effectively prior to October 1, 2022.***

The short timeframe for compliance does not afford domestic enterprises enough time to make necessary changes and would be highly disruptive to ongoing operations. Requiring domestic enterprises to rush into compliance could result in the lowering of cybersecurity postures as enterprises may create poorly constructed or secured data bases in order to meet the current effective date. If data migration is required, domestic enterprises would need time for the migration of data and workloads to store data in Vietnam.

**We recommend that covered enterprises be given 24 months to comply with Decree 53** even if the effective date of implementation is 1 October 2022. Providing the Vietnamese business community with a transition period of 24 months will enable businesses to have adequate time to familiarize themselves with these new obligations and implement measures to comply with them while ensuring that their cybersecurity posture remains high. This would also avoid a situation in which the law would be in force, but enterprises are unable, though not unwilling, to comply.

### III. General Comments and Recommendations regarding Decree 53

The GDA offers the following general comments:

- (1) **Concerns regarding Consistency with CPTPP Commitments:** The data localization requirements of Article 26.1 and 26.2 raise concerns regarding Vietnam's compliance with its international obligations under the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP). These requirements may be incompatible with CPTPP Article 14.13, which states (in relevant part) as follows:

“Article 14.13: Location of Computing Facilities: ... 2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that territory.”

However, any foreign enterprises that wish to offer data storage or processing services to Vietnamese entities are required by Articles 26.1 and 26.2 of the Decree to “use or locate computing facilities” in Vietnam as a condition for conducting business. Vietnam's limited transition period to comply with this obligation will expire in January 2024, meaning that such measures will be formally out of compliance with Vietnam's CPTPP commitments at that time.

- (2) **Ineligibility for CPTPP Exceptions:** The localization requirements may not qualify as reasonable or permissible exceptions within the meaning of CPTPP Article 14.13.3.<sup>11</sup> Derogations from CPTPP Art. 14.13.2 must “not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.” Unfortunately, Decree 53 does not appear to meet this standard. Indeed, far from advancing cybersecurity objectives, the data localization mandates in Decree 53 could undermine the Decree's stated objectives of improving data security and protection in Vietnam. Cross-border data transfers help improve data security, allowing for real-time visibility and response to emergent cyberthreats, including malware, online fraud, and other criminal activity online. Imposing data localization requirement may impede cross-border data transfers and reduce the ability to of Vietnamese enterprises to respond to threats to their data – creating unintended data security vulnerabilities for Vietnam.
- (3) **Exclusion from IPEF and Other Regional Trade Initiatives:** The data localization requirements in the Decree would also threaten Vietnam's ability to participate in and benefit from regional trade initiatives, such as the Indo-Pacific Economic Framework (IPEF). If Vietnam fails to abide by existing international commitments, it may raise questions about the strength and value of commitments that Vietnam would purport to undertake in other negotiations. A loss of trust in Vietnam's ability to abide by its international commitments could undermine the willingness of partner economies to engage in digital trade negotiations with Vietnam in the future.

Provisions on protecting cross-border data transfers, prohibiting data localization and digital customs duties, and promoting cybersecurity and personal data protection are core pillars of the IPEF trade pillar. Those provisions will be based on standards found in the US-Japan Digital Trade Agreement (USJDTA), the Australia-Singapore Digital Economy Agreement (DEA), the Singapore-Korea Digital Partnership Agreement (DPA), the Digital Economic Partnership Agreement (DEPA), the US-Mexico-Canada Agreement, and the CPTPP, among others. Unfortunately, the restrictions outlined in Decree 53 would be incompatible with the aforementioned provisions in each of the named agreements. By avoiding the data localization requirements outlined of the Decree, Vietnam would also avoid disqualifying itself from participating in the IPEF trade pillar negotiations on cross-border data matters.

- (4) **Threat to Vietnam's Innovation and Technology Ecosystem:** The Decree's data localization requirements could threaten Vietnam' ecosystem for technology start-ups, and its ability to attract investment. Conversely, by imposing restrictions that make it more difficult to engage in Vietnam in cross-border software development and technology transfer, Vietnam risks hobbling its own indigenous enterprises and making itself less attractive (in both absolute and relative terms) to foreign investment in software development and other emerging technologies. Avoiding the restrictions outlined in Chapter V of the Decree would help Vietnam avoid this negative outcome.

The GDA urges Vietnam to reconsider these problematic aspects of Chapter V, and respectfully submits that the GDA's Cross-Border Data Policy Principles<sup>12</sup> may offer a more suitable policy approach that promotes data security and protection without sacrificing Vietnam' economic and technological development.<sup>13</sup>

#### IV. Conclusion

In conclusion, we respectfully recommend that Vietnam remove the Decree's data localization mandates, and address other recommendations set forth in these comments. We appreciate the opportunity to share these views and hope that they will be helpful as Vietnam considers its next steps regarding Decree 53. Please do not hesitate to contact us with any questions regarding this submission.

Sincerely,

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<sup>1</sup> The Global Data Alliance 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. The Alliance supports policies that help instill trust in the digital economy while safeguarding the ability to transfer data across borders and refraining from imposing data localization requirements that restrict trade. 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>

<sup>2</sup> [Vietnam: Comments on Draft Viet Nam Personal Data Protection Decree \(globaldataalliance.org\)](https://www.globaldataalliance.org)

<sup>3</sup> [Góp ý về Dự thảo Nghị định về Bảo vệ Dữ liệu Cá nhân \(globaldataalliance.org\)](https://www.globaldataalliance.org)

<sup>4</sup> [Vietnam: Comments on Proposed Amendments to Draft Decree 72 \(globaldataalliance.org\)](https://www.globaldataalliance.org)

<sup>5</sup> [Ý kiến Đóng góp về các Sửa đổi được Đề xuất đối với Dự thảo Nghị định 72 \(globaldataalliance.org\)](https://www.globaldataalliance.org)

<sup>6</sup> [Vietnam: Comments On Proposed Amendments To Draft Decree On Sanctions Against Administrative Violations In the Field of Cybersecurity \(globaldataalliance.org\)](https://www.globaldataalliance.org)

<sup>7</sup> [Ý kiến Đóng góp về các Đề xuất Sửa đổi đối với Dự thảo Nghị định Quy định về Xử phạt Vi phạm Hành chính trong Lĩnh vực An ninh mạng \(globaldataalliance.org\)](https://www.globaldataalliance.org)

<sup>8</sup> [GDA Comments on Proposed Amendments to Draft Decree 72 \(globaldataalliance.org\)](https://www.globaldataalliance.org)

<sup>9</sup> [Ý kiến Đóng góp về các Sửa đổi được Đề xuất đối với Dự thảo Nghị định 72 \(globaldataalliance.org\)](https://www.globaldataalliance.org)

<sup>10</sup> [Vietnam: Multi-association Letter on Draft Decree on Personal Data Protection \(globaldataalliance.org\)](https://www.globaldataalliance.org)

<sup>11</sup> CPTPP Article 14.13.3. states as follows:

“Nothing in this Article shall prevent a Party from adopting or maintaining measures inconsistent with paragraph 2 to achieve a legitimate public policy objective, provided that the measure:

- (a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and
- (b) does not impose restrictions on the use or location of computing facilities greater than are required to achieve the objective.”

<sup>12</sup> GDA's Cross-Border Data Policy Principles

<sup>13</sup> See Global Data Alliance, *Trends in International Negotiations regarding Cross-Border Data Transfers* (2020), <https://www.globaldataalliance.org/downloads/06022020GDInternationalNegotiations.pdf>.