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JEITA and JISA's Opinions on General Data Protection Regulation dialogues

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With significant interests in Europe, JEITA and JISA have been active stakeholders in the institutional discussions on the draft Data Protection Regulation. At the beginning of the dialogues, both organisations are keen to share their position on their key issues of interest as well as potential solutions to be discussed during the negotiations.

International Transfers by Certification Mechanisms

JEITA and JISA highly welcome how the European Parliament and Member States are seeking to sustain smooth international data flows, and are keen to offer a wide array of ways for companies to comply with the Regulation when operating international data transfers. In particular, we fully welcome the inclusion of certification mechanism in the list of appropriate safeguards for data transfers in Article 42 of both the Parliament and the Council's text.

Certification mechanisms are in JEITA and JISA's view a very effective way to demonstrate compliance, an approach used by Japan through its highly effective data protection seal system. Certification, when framed by effective enforcement requirements, help increase the trust in using certified service-providers in both B2B and B2C situations, particularly when seek those services in a third country.

For example, Japanese companies check for the use of Japanese certifications when looking to outsource data processing activities, thereby reducing costs and risks related to the legal examination of the outsourcee's compliance with data protection requirements in Japan. This is particularly relevant cross-border and in the context of large scale information systems operations for both the public and private sectors. Replicating this approach at EU level will be beneficial for service and goods providers based in the EU in seeking to outsource data processing activities to a third country, as it is very common in a globalised digital economy.

With regards to the draft GDPR's approach to the development and accreditation of certification mechanisms, we would urge on the European co-legislators to adopt the Council's enhanced approach, featured in Article 39 and 39a. This approach ensure strict accreditation and compliance requirements while allowing diversity in the provision of certification requirements, which could be connected to a specific industry, type of data processing or geography. This diversity will help the creation of specific certification schemes, hereby increasing trust and recognisability to a specific industry or set of consumers, while at the same time making the Regulation more future-proof.

Finally, in the spirit of ensuring flexible yet trustworthy cross-border data flows, we call on the co-legislators to ensure that the draft Regulation:

- Streamlines the certification process so that a certification received by one certification body is applied to the whole of the EU, thereby fulfilling the draft Regulation's intention to cut down administrative costs;
- Allows for third country certification mechanisms to be accredited by an EU-body, under the same conditions and requirements outlined for EU based certification mechanisms;
- Allows for the potential mutual recognition of certification mechanisms, for example with APEC's privacy protection schemes;
- Ensures clear and proportionate obligations on controllers/processors in EU and recipients in third countries, differentiating between them according to their role in the context of data transfers by certification mechanisms

Recital 20 on Territorial Scope

JEITA and JISA fully understand the wish of European Institutions to ensure that the personal data of EU data subject is fully protected when handled in a third country, when the data processing is connected to the offer of a service or good to the EU data subject. In the view of JEITA and JISA, it is crucial to ensure legal certainty by providing some clarification in a recital of the criteria demonstrating that a service or good is indeed intended to be consumed by a European data subject.

In this light, JEITA and JISA strongly welcome the inclusion of elements of the the Alpenhof ECJ case (C-144/09) in Recital 20 of the Council General Approach, and urges the European Parliament and the Commission to adopt this approach. The criteria offered by Council's Recital 20 significantly increases legal certainty while remaining at the same time future-proof, thanks to its non-exhaustive nature which remains open to case-by-case interpretation.

International Transfers with Adequacy Decisions

JEITA and JISA highly welcome the broadening of elements that should be considered when assessing the adequacy including the participation in multilateral or regional systems, in Article 41.2(c) of Council's approach. In particular, JEITA and JISA appreciate the addition of "obligations arising from its participation in multilateral or regional systems". This approach will help promote international cooperation to ensure sustained global data flows.

Best regards,

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About JEITA and JISA

JEITA is the Association of Japanese Electronics and Information Technology Industries, ranging from materials to electronic components and semiconductors, from consumer electronics to industrial system devices, from IT products to solution services. JEITA represents a large number of companies in these sectors, many of which are active on the European market, both through local manufacturing plants and research centres and through trade with the European Union. <http://www.jeita.or.jp/english/>

Japan Information Technology Services Industry Association (JISA) is one of the biggest trade associations of IT software and service industry in Japan, which has about 600 member companies. JISA works for greater dynamism and sophistication in the industry through various activities. These include surveys and research related to business operations, technology trends and policies, providing information, and international exchange. <http://www.jisa.or.jp/e/>