

Feedback to Draft implementing decision on SCC and Annex (日本語版)

December 10, 2020

Japan Electronics and Information Technology Industries Association (JEITA)

欧州委員会の Draft Commission Implementing Decision on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 (※1) とその Annex の公表を受け、JEITA (電子情報技術産業協会) はこれらのドラフト文書に対するコメントをぜひ共有させて頂きたい。

※1 <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12741-Commission-Implementing-Decision-on-standard-contractual-clauses-for-the-transfer-of-personal-data-to-third-countries>

JEITA (<https://www.jeita.or.jp/english/>) は、素材から電子部品や半導体、また、民生電子製品から産業システム機器、さらには、IT 製品からソリューションサービス等を含む日本の代表的な電子情報産業の業界団体である。会員企業の多くは欧州市場にも展開しており、研究開発、生産、販売、サービス提供等の事業拠点を設置している。

JEITA はこれらの文書について、EEA 域外への個人データ移転を可能とする適切な保護措置の 1 つである SCC を GDPR の下で明確化するものとして歓迎する。しかしながら、円滑な越境データ移転を推進する観点から、以下の幾つかのコメントを提出させて頂ければ幸甚である。

1. 既存の SCC の有効性について (Commission Implementing Decision recital (24) and Article 6.3)

- 新たな SCC が正式決定してから 1 年間の移行期間中に、既存の SCC をすべて新しい SCC に交換する必要があるとすれば、企業実務の観点からは非合理的である。例えばデータ処理契約 (DPA) の有効期間中は、少なくともサービス契約が完了するまで、既存の SCC が有効であることを許容して頂きたい。

2. 移転先の第三国の法律の評価について (ANNEX Section II Clause 2)

- 新たな SCC では、データ輸出者や輸入者は、移転先の第三国の法律がガバメントアクセス等により SCC の義務遵守を妨げないことを保証するために、当該国の法律を事前に評価 (アセスメント) することが義務付けられている。評価の範囲や方法については、欧州データ保護会議 (EDPB) の「Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data」(※2) と「Recommendations 02/2020 on the European Essential Guarantees for surveillance measures」(※3) で或る程度示されているものの、一企業として第三国の法律についてどこまで包括的に評価すればよいか明確でなく、SCC の締結時にデータ輸出者と輸入者の双方に過度な負担を強いるものとなり得る。特に、小規模な企業にとっては対応が非常に困難である。個々の企業が一から各国の法律の評価を行うことは非合理的であるため、第三国の法律の評価に関する何らかの共通的な指針を準備して頂きたい。

※2 https://edpb.europa.eu/our-work-tools/public-consultations-art-704/2020/recommendations-012020-measures-supplement-transfer_en

※3 https://edpb.europa.eu/our-work-tools/our-documents/recommendations/edpb-recommendations-022020-european-essential_en

以 上

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Japan Electronics and Information Technology Industries Association (JEITA)

Following the publication of Draft Commission Implementing Decision on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 and its Annex, JEITA, the Japan Electronics and Information Technology Industries Association, welcomes the opportunity to share with you its comments on these documents.

JEITA (<https://www.jeita.or.jp/english/>) 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 centers and through trade with the European Union.

Overall, JEITA welcomes these documents as it clarifies the standard contractual clauses (SCCs) among appropriate safeguards for transfers of personal data to third countries under GDPR. From the perspective of promoting smooth cross border transfer of personal data, JEITA would be pleased to be given the opportunity to submit the following comments on the documents.

1. Validity of existing SCCs (Commission Implementing Decision recital (24) and Article 6.3)

- If all the existing SCCs needed to be replaced with the new SCCs during a transitional period of one year from the date of entry into force of the Decision, it would be unreasonable from the business practical point of view. We would ask for example that the existing SCCs would be allowed to be valid for the duration of the DPAs until completion of the service contracts at least.

2. Assessment on the laws in the third country of destination (ANNEX Section II Clause 2)

- The data exporter and importer need to carry out assessment on the laws in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, in order to ensure these laws do not prevent the data importer from fulfilling its obligations under the new SCCs. Although the scope and method of assessment to some extent are shown in EDPB's "Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data" and "Recommendations 02/2020 on the European Essential Guarantees for surveillance measures", it is not clear how comprehensively a company should assess the laws of a third country, which could impose excessive burdens on both the data exporter and importer when concluding SCCs. Especially for smaller companies, it is very difficult to deal with. It is unreasonable for individual companies to assess the laws of each country from scratch, so we would ask for some common guidance on the assessment of the laws of third countries.

We sincerely hope that you will find the above-mentioned comments useful. Thank you very much.