Essential Legislative Approaches for Enabling Cross-Border Data Transfers in a Global Economy

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CIPL’s Fundamental View

- CIPL is **not** recommending that national legislatures prohibit or restrict cross-border data transfers.
- On the contrary, CIPL’s view is:
  
  The fewer cross-border data transfer restrictions, the better.
  
  Especially where the law relies instead on the Accountability Principle.

- The white paper acknowledges the spread of national data protection laws containing cross-border data transfer restrictions.
- It proposes exceptions and exemptions that would allow data to be transferred across borders notwithstanding the restrictions, so as to mitigate the damage caused by the restrictions.
What is the Accountability Principle?

- The Accountability Principle places the burden of getting privacy right on the organization, rather than on the individual.
- This represents a shift in the burden. It was originally the individual’s responsibility to get privacy right.
- The burden is shifted to the party that is better equipped to address the issues.
- This is a change in the structure of the legal arrangement, and could solve much of the current breakdown in the functioning of the existing legal arrangement.
List of Potential Cross-Border Transfer Mechanisms

- Contracts
- Corporate Rules
- Cross-Border Rules
- Codes of Conduct, Certifications, Privacy Marks, Seals and Standards
- Self-Certification Arrangements
- Consent
- Adequacy and Whitelists
- Others (performance of a contract; public interest; establishment or defense of legal claims; vital interests; legitimate interest)
Cross-Border Transfer Mechanisms that are More Consistent with the Accountability Principle

- Contracts
- Corporate Rules
- Cross-Border Rules
- Codes of Conduct, Certifications, Privacy Marks, Seals and Standards
- Self-Certification Arrangements
- Legitimate Interest
Cross-Border Transfer Mechanisms that are Less Consistent with the Accountability Principle

- Consent
- Adequacy and Whitelists
- Performance of a Contract
- Public Interest
- Establishment or Defense of Legal Claims
- Vital Interests
Thank you!

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