



## **JBCE comments on the data breach notification, international data transfers and consent guidelines**

The Japan Business Council in Europe (JBCE) is a European association representing over 80 multinational companies of Japanese parentage in EU policy discussions. Our members are active in Europe across many sectors, including digital, information and communication technologies, electronics, automotive, pharmaceuticals and chemicals. JBCE aims to be a bridge between the EU and Japan to strengthen ties and cultivate understanding among European decision-makers of the contribution of Japanese companies to Europe.

JBCE and our members would like to thank the national Supervisory Authorities (SA) and the Article 29 Working Party (29WP) for taking this initiative to consult with different stakeholders on the recently adopted draft guidelines on automated individual decision-making and data breach notifications. We understand from the FabLab workshop of October 18 that guidelines on international data transfers and consent will also be adopted not later than February 2018. We would also like to offer our thoughts on these subjects for your consideration.

### **1. Data breach notifications**

The guidelines on data breach notifications are comprehensive and answer most of the outstanding questions that several stakeholders had. But, doubts remain as to the 72-hour notification period particularly in what concerns the data processor.

Accordingly, the General Data Protection Regulation (GDPR) does not provide an explicit time limit within which the processor must alert the controller, except that it must do so “without undue delay”. The draft guidelines recommend an immediate notification by the processor to the controller, with further information about the breach provided in phases as information becomes available. A too short notification period or unclarity as to when to notify could lead to reporting incidents of which little is known, potentially with inaccurate information. We would welcome if further clarification is given on this issue.

SAs should also adopt a culture of reciprocity and responsiveness. Often, when information is reported to the SA, these remain in silence. It could be helpful to receive more information from the regulator. The quantity of information that needs to be analysed by SAs is, no doubt, very high and that replying to every notification might be hard. We would recommend that clarification is given to the legal value of silence by the regulator.

## **2. International data transfers**

JBCE would like to support the successful completion of the negotiations between the European Union (EU) and Japan and simultaneous finding of an adequate level of protection by both sides. The amended Act on the Protection of Personal Information (APPI) put into effect in Japan in May 2017 and the GDPR follow similar objects and converge in terms of the mechanism that ensure privacy and enhance trust. We are confident that the adoption of this mechanism will bring immense benefits to both regions.

## **3. Consent**

Some of our members are involved in large-scale industrial data projects, both in a business-to-business and business-to-consumer angles. The growing usage of personal devices, smart phones and connected devices will bring new challenges on consent, including for instance how the data subject is determined. We would like to request that further guidance is given on how to obtain consent of sufficient quality from users of connected and smart devices, particularly in the context of the Internet of Things.