

Brussels, 14 January 2011

Response to the European Commission's

'Consultation on the Commission's comprehensive approach on personal data protection in the European Union'

Japan Business Council in Europe (JBCE) welcomes the opportunity to comment on the European Commission's Communication on 'a comprehensive approach on personal data protection in the European Union'.

As the organisation representing Japanese businesses in Europe we are active in contributing to the development of the public policy of the EU.

With this paper we submit some general comments on the Communication as well as comments on specific points raised in various sections of the Communication that are of particular relevance to our members.

General comments

For our members, personal data protection is one of the key issues.

Our members, which are by definition engaged in global business, have their operations spread across the world. The headquarters of these global companies design and implement strict compliance and governance systems for their entire groups of companies. Personal data protection is one of the key issues that should be managed centrally and implemented consistently throughout an entire global organisation.

Moreover, these global companies are constantly exposed to competition and are in need of reducing costs and improving efficiency - even as they strengthen their compliance regimes. Staying competitive through cost reductions is particularly important under the current economic conditions.

Therefore, our ultimate desire is the closer alignment of various data protection regimes around the world that would enable global businesses to transfer personal data by complying with one regime. Not only does compliance with different personal data protection regimes incur additional cost without any apparent added value, but also it creates several sets of rules applied to one and the same issue within one global organisation.

Comments on Section 2.2.3. - Clarifying the rules on applicable law and Member States' responsibility

Many businesses outsource part of their internal operations and functions. Due to the evolution of ICT, it is not necessary to limit outsourcing within the same country. For example, cloud computing is one of the options that companies increasingly choose for further optimisation of their computer systems and reduction of costs. These practices introduce the possibility and necessity of managing and processing information and personal data beyond the jurisdiction of any single country or region.

As stated in the Communication, the EU should improve legal certainty surrounding the use of new technological tools such as cloud computing applications and services. We believe that such improved legal certainty would support and enhance the application of

new technological developments while maintaining the degree of data protection in Europe.

Comments on Section 2.2.5. - Encouraging self-regulatory initiatives and exploring EU certification schemes

We support the Commission's initiative to encourage self-regulatory initiatives and to explore the feasibility of establishing EU certification schemes in the field of privacy and data protection. We believe that such schemes should be voluntary and affordable. In exploring such feasibility, it will be important to look at the global dimension of certification schemes because such schemes will have an impact on global businesses operating both inside and outside the EU/EEA. For example, the 'Privacy Mark' scheme in Japan has successfully been in operation already for several years and has been expanding internationally through mutual recognition. The Commission should study Japan's Privacy Mark scheme not only for possible EU certification schemes but also for the global linking of self-regulatory initiatives.

Comments on Section 2.4.1. - Clarifying and simplifying the rules for international data transfers

We support the Commission's initiative to examine how to clarify the Commission's adequacy procedure and better specify the criteria and requirements for assessing the level of data protection in a third country or an international organisation.

We believe that the criteria and requirements for assessing the level of data protection in a third country should have sufficient flexibility to allow for the different societal conditions which underpin the various countries' legal systems; for example, it should be possible to recognise the adequacy of protection in a third country by taking account of the effectiveness of the key self-regulatory initiative, such as Privacy Mark in Japan, and by making it conditional that data importers in the third country are certified by the effective self-regulatory scheme.

Comments on Section 2.4.2. - Promoting universal principles

We agree on the analysis of the Commission that data processing is globalised and calls for the development of universal principles. We encourage the EU to seek an international framework by enhancing cooperation with third countries and international organisations. It should eventually lead to the closer alignment of data protection regimes around the world that would enable global businesses to transfer personal data by complying with one regime.