

# Legal and Policy: Privacy EUNITY Project Workshop

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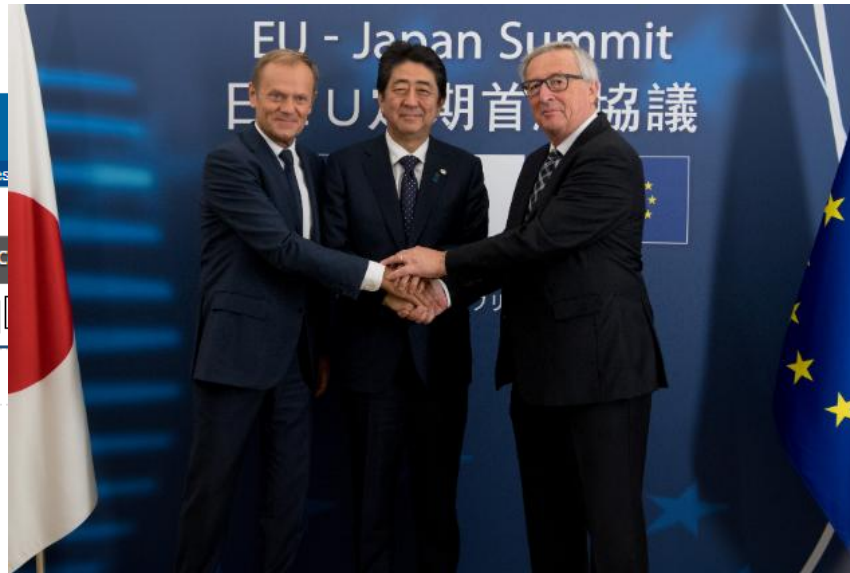




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## European Commission - Statement

### Joint Declaration by Mr. Shinzo Abe, Prime Minister of Japan, and Mr. Jean-Claude Juncker, President of the European Commission

Brussels, 6 July 2017

*At the G7 Ise Shima Summit we reaffirmed that the free flow of information is a fundamental principle to promote the global economy and development, and ensures a fair and equal access to the cyberspace for all actors of digital economy.*

*We stress the importance of ensuring a high level of privacy and security of personal data as a fundamental right and as a central factor of consumer trust in the digital economy, which also further facilitate mutual data flows, leading to the development of digital economy. With the recent reforms of their respective privacy legislation: the entry into force of the EU General Data Protection Regulation (GDPR) on 24 May 2016, which will apply from 25 May 2018, and of the Japanese Act on the Protection of Personal Information (APPI) on 30 May 2017, the EU and Japan have further increased the convergence between their two systems, which rest notably on an overarching privacy law, a core set of individual rights and enforcement by independent supervisory authorities. This offers new opportunities to facilitate data exchanges, including through a simultaneous finding of an adequate level of protection by both sides. With this in mind, we reaffirm our commitment to further intensify our efforts towards achieving this goal by early 2018.*

STATEMENT/17/1917

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# 1-1. IC Public Transportation Cards sold in an Anonymous Form

JR East

Suica IC Cards

Anonymous technique

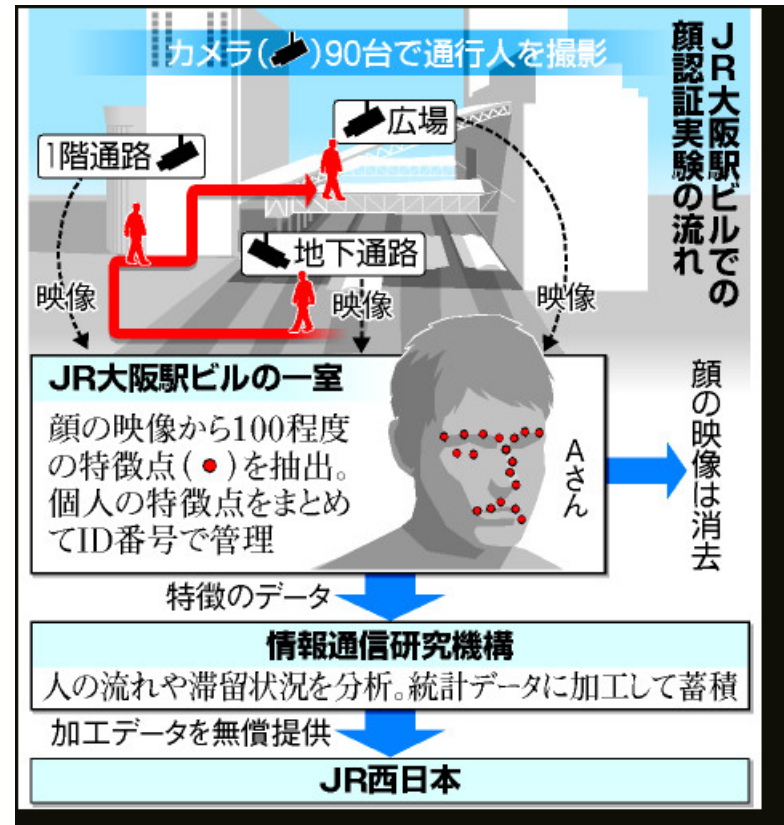
Hitachi

Data Analytics

(boarding and disembarking stations, times and dates of use, age segments, and gender)



# 1-2. Facial Recognition and CCTV in Osaka Station



National Institute of Information and Communications Technology prepared for the experiment on the facial recognition CCTVs, but canceled in March 2014.

Photos from Asahi Newspaper, January 6, 2014

# 1-3. Data Broker

## 35 million personal information sold

- 35.04 million customer personal data (name, birthdate, address, email address ect (no credit card information)) in Benesse Corp. was sold by the employee to the 3 data brokers.
- Benesse submitted the report to the Ministry of Economy, Trade and Industry (July 2014/ October 2014), which was appointed by the Prime Minister to investigation.
- Benesse voluntarily paid 500 yen gift cards.
- Class action lawsuit was brought by several parents.



Photo by Asahi Newspaper

Press Release: Notice and Apology Regarding Leakage of Customers' Personal Information in English

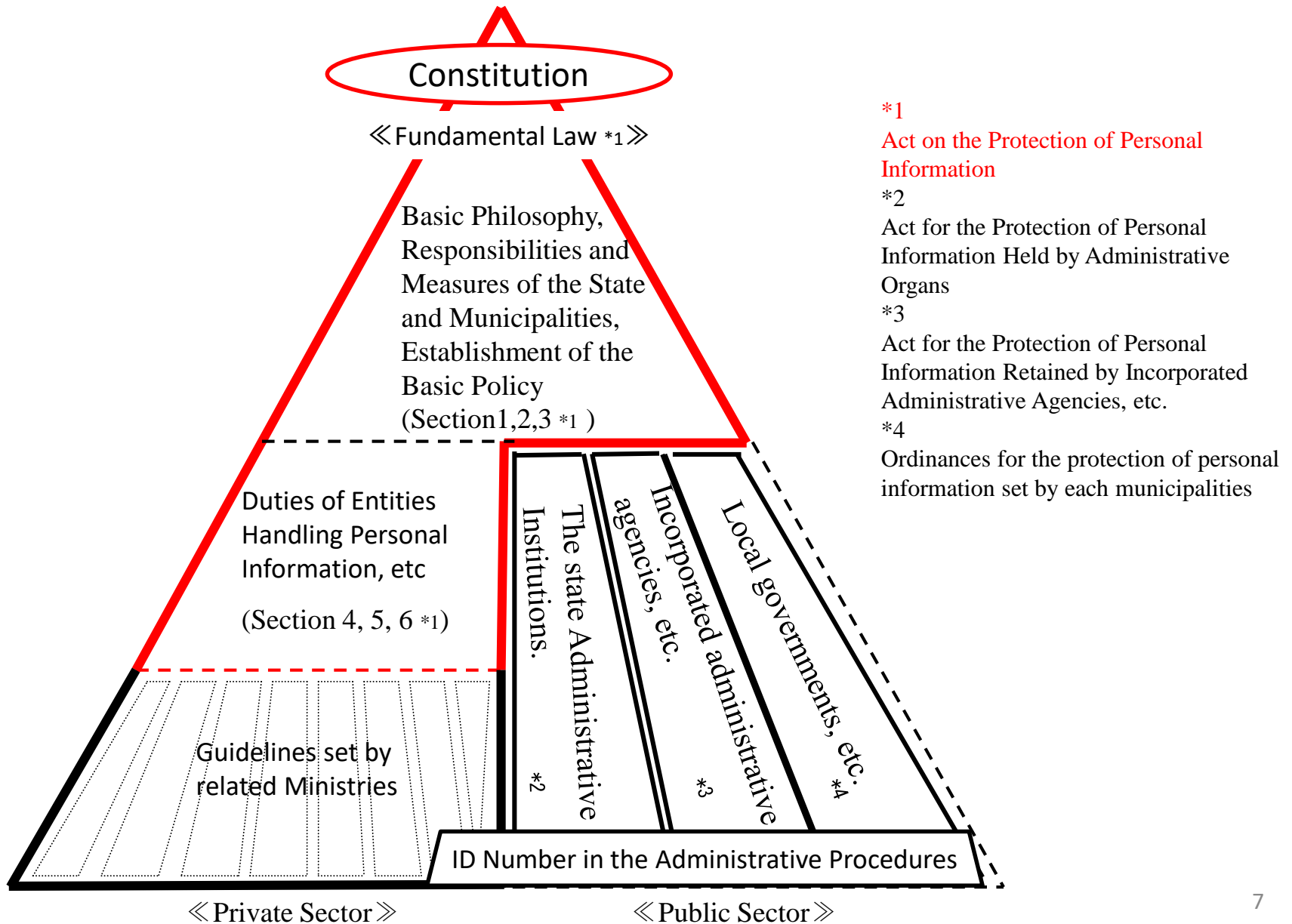
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# Comparison: EU GDPR and the Japanese Act

GDPR		Japanese Act
extraterritorial (offering goods or services / monitoring behaviour)	territorial scope	extraterritorial (offering goods or services)
any information relating to an identified or identifiable natural person / pseudonymisation / genetic, biometric data	definition	information relating to a living individual which a specific individual can be identified (easily collated with other information)/ personal identifier / anonymous processing information
lawfulness of processing / conditions for consent/ conditions of child's consent / special categories of personal data	principles	information with special care
Information to data subject / access, rectification, erasure (right to be forgotten) / data portability / profiling	rights	disclosure, rectification, cease / explanation of reason (provided in the obligations chapter)
data protection by design / representatives / processing records / data breach notification & communication / impact assessment / data protection officer / codes of conduct	obligations	purpose limitation / proper collection / security / supervision over employee and trustee (processor) / transfer to the third party / opt-out notification / records keeping of sending and receiving / anonymous processing information
adequacy / appropriate safeguards / binding corporate rules / derogations	international transfer	equivalence / commission's rule or consent
independence / investigative, corrective & advisory powers / lead authority / cooperation and consistency (one-stop shop) / European Data Protection Board	independent supervisory authorities	Independence / order, recommendation, guidance & report collection, onsite inspection / delegation of powers to the competent Minister in an emergency / accreditation
lodge a complaint / effective judicial remedy / compensation and liability	remedies, liability	fee for disclosure exhaustion & two weeks waiting requirement
up to 20,000,000 EUR (10,000,000EUR) or 4 % (2% )of annual turnover	penalties	database stealing: up to 500,000 yen (4,200 EUR) or one year imprisonment failure of recommendation, order & report : up to 300,000 yen or six months imprisonment
freedom of expression / official documents / employment / archiving, scientific, historical purposes	specific situation	exemptions for press / writer / academic institution / religious body

# Picture of the Legal System



# 2-1. Points of the Privacy Law Reform in Japan

- 2007/6 The Quality-of-Life Council decided not to amend the law
- 2011/8 The Consumer Commission pointed out the challenges on privacy
- 2013/12 The Law Reform Plan adopted by the Cabinet (IT Strategic Headquarter)
- 2014/6 Policy Outline of the Institutional Revision for Utilization of Personal Data
- 2014/12 The Amendment Outline of the Bill
- **2015/3 The Cabinet Decision on the Amendment on the Acts**

Purpose of Law Reform: To create innovation and new services and realize the promotion of safety of the people by protecting personal information and fostering the use of personal data and to extend the use of My Numbers administration

Act on the  
Protection of  
Personal  
Information

- Amendments regarding the protection and use of personal data
- Establishment of the independent authority by restructuring the existing specific personal information protection commission (My Number commission)

My Number  
Act

- Amendments on the promotion of the use of specific personal information (My number)
- Extending the use of the financial and medical data → numbering the accounts, use of numbers in the medical examination and health guidance, link with vaccination records



## Points on the Amendments

### 1. Clarification on the definition of personal information

- Adding certain categories such as facial recognition data
- Sensitive data – opt-out prohibition

### 2. Ensuring the use of personal information under the proper conditions

- Use of anonymous data
- Personal information policy

### 3. Strengthening the protection of personal information (data broker measures)

- Ensuring traceability (obligation of checking and recoding the transfer)
- Criminal sanction of processing under illegitimate purposes

### 4. Establishment of Personal Information Protection Commission

- Independent Personal Information Protection Commission (restructuring current Specific Personal Information Protection Commission) with on-site inspection

### 5. Global harmonization

- Extra-territorial scope and information sharing with the foreign authorities
- Data transfer restriction to the third countries

### 6. Other issues

- Registration of opt-out and publication by the Commission
- Relaxation of the purpose limitation requirement
- SME: the Act should apply to businesses which handle no more than 5,000 personal information

59 Articles with 6 chapters → 78 Articles with 7 chapters

# Clarification on the definition of personal information

- **Personal Information (Art. 2-1)** Information that is identifiable of the individuals by names, birthdate and the other descriptions including the documents, drawings, electromagnetic records or voices, motions and the other means
- **Personal Identifiers (Art. 2-2)** letters, numbers, marks and the other codes which fall in 1) characteristics of the part of body for the purpose of use of electronic machines, which is identifiable for the individual or 2) the individual user or purchaser designated, written, or recorded in the service use or the sales

\* IP address, device ID, mobile phone numbers, customer ID – not generally fall in

- **Sensitive Personal Information (Personal Information with the Special Care) (Art. 2-3)** Personal information including race, religious belief, social status, medical records, criminal offences, the facts of victims of criminal offences, which require the special care for not causing the injurious discrimination, bias and the other disadvantages.

# Ensuring the use of personal information under the proper conditions

- **Anonymous Processing Data (Art. 2-9)** – personal information which is not able to identify the individual and is not able to restore by 1) deleting the descriptions containing the personal information or 2) deleting all the personal identifiers containing the personal information
- **Anonymous Processing Information Entities (Art. 2-10)** – Entities that use the anonymous processing database (easily searchable for the anonymous processing information in the aggregation of information by the electronic machines)

\*The expert technological working group report (10 December 2013)

There is no generic means to process any personal information into the identifiable non-specified information or non-identifiable non-specified information. Even in the case of anonymous measures for providing the third party, it is impossible to always delete the identification and specification and to make general standards on the anonymous measures.

# Strengthening the protection of personal information (data broker measures)

- **Obligation to Keep Records (Art. 25)** Personal information handling entities must keep the records of date of providing personal data and names of its third party based on the Commission's rule. This record must retain the period which the Commission decides.

1 year: repeatedly and continuously / contractual proof  
3 years: except for the above

- **Check of Receiving Information (Art. 26)** – When the personal information handling entities receive the information from the third party, the entities must check 1) names and address (and the representatives of the corporation) and 2) the context of acquiring the personal data. The entities must keep the records of the dates of receiving personal data. This record must retain the period which the Commission decides.

- **Criminal Sanction on the Illegal Database Provision (Art. 83)** Personal Information handling entities or its employees shall be punished up to 1 year imprisonment and 500,000 yen fine when he or she provides or steals the personal information database in his or her business use for the purpose of acquiring an illegal profit.

# Establishment of Personal Information Protection Commission

- Chapter 5
- **Establishment** (Art.50)- PIPC shall be established under the jurisdiction of the Prime Minister (based on Art 49-3 Establishment of the Cabinet Office Act)
- **Mission** (Art.51) – ensure the proper handling of personal information, taking into account the effective use of personal information
- **Task** (Art. 52) –
  - 1) make and promote the Basic Policy
  - 2) supervision on the use of My Number
  - 3) impact assessment of my number
  - 4) public relations and education
  - 5) necessary study
  - 6) international cooperation
  - 7) other tasks provided by laws
- **Independency** (Art. 53) – The President and the Commissioners of the Commission shall act independently
- **Organisation** (Art.54) – Commission shall consist of the President and 8 Commissioners (4 part-time); PM will appoint with consent of both Houses in the Diet; Commissioners shall include experts from academia, consumer organisation, IT technologist, My number administration, businesses, and local organisation
- **Term** (Art. 55)- 5 year; can be reappointed
- **Guarantee of Status** (Art. 56)- President and Commissioners will not dismissed except for insolvency, action against this Act, imprisonment, and being mentally or physically disabled
- **Expert Committee** (Art. 60)- Commission can establish the Expert Committee (part-time) to the examine the technical issues
- **Secretariat** (Art. 61) – Commission shall establish the Secretariat
- **Report to the Diet** (Art. 70)- Commission shall annually report the implementation status to the Diet
- **Penalty** (Art. 73) – Commissioners shall be penalized up to 2 year imprisonment or 1 million yen if he or she leaks the confidential matters.

# Supervision by Personal Information Protection Commission

- Chapter 4 –Section 3
- **Report and On-Site Inspection** (Art. 40)- Commission shall have powers to submit reports or materials and conduct on-site inspection against the personal information operators and the anonymous information operators.
- **Instruction and Advice** (Art.41)- Commission can make instruction and advice
- **Recommendation and Order** (Art. 42) – Commission can make recommendation and order
- **Limits of Powers** (Art. 43) – Commission shall not interfere with freedom of expression, academic freedom, freedom of religion and freedom of political activities.
- **Delegation of Powers** (Art.44) – Commission can delegate its powers to the Competent Minister in emergent and selective cases. The Competent Minister must report of the result to the Commission.
- **Request from the Competent Minister** (Art. 45) – Competent Minister can request the Commission to take necessary measures

# Global Harmonisation

**International Harmonisation (Art. 6)** – Government shall take necessary measure to ensure the international harmonisation with the foreign governments

**Data Transfer Restriction (Art. 24)** – Personal data cannot be transferred to the third party (except for those which prepares for the system in the Commission's standard) foreign countries (except for those which the Commission found the equivalent level of protection of our country in the protection of personal rights and interest). This restriction does not apply when obtaining the consent of data subjects.

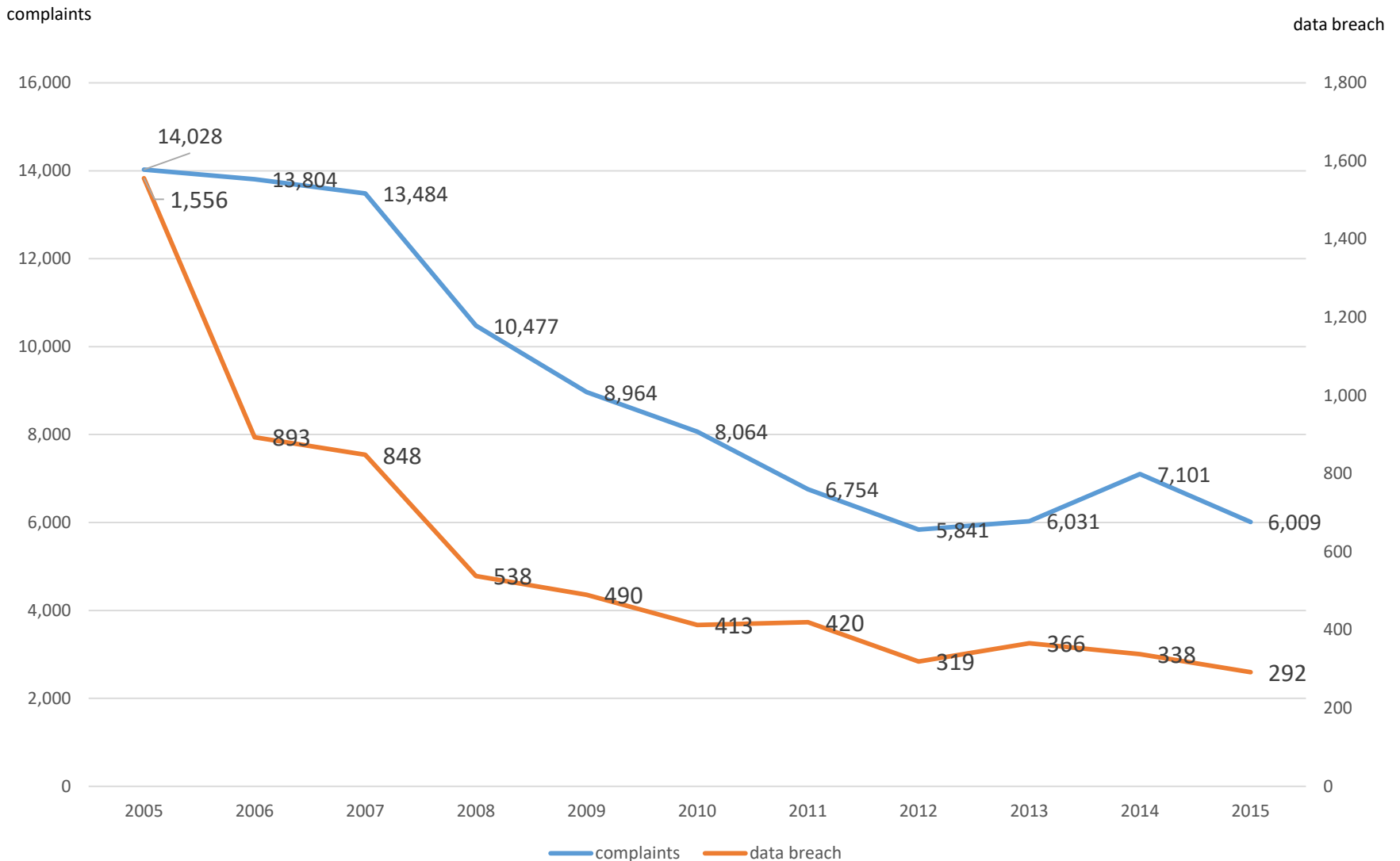
**Information Sharing with the Foreign Counterparts (Art. 78)** – Commission can provide information to the foreign counterparts when it is necessary for conduct its tasks. Information sharing is limited to use for the purpose of conducting the task of the foreign counterparts and not to use for the criminal investigations unless Commission's approval.

# Other Issues

- **Opt-out Notification and Publications (Art 23-4)** Personal information handling entities can use opt-out only when it notifies or publicises the data subjects and notifies to the Commission. The Commissions shall publicise the items of the opt-out notifications
- **Purpose Limitation (Art 15)** duly relevant to the original purpose in changing the purpose; “duly ” was erased
- **Small-Medium Enterprise Exemptions** – The existing 5,000 personal data requirement will be abolished

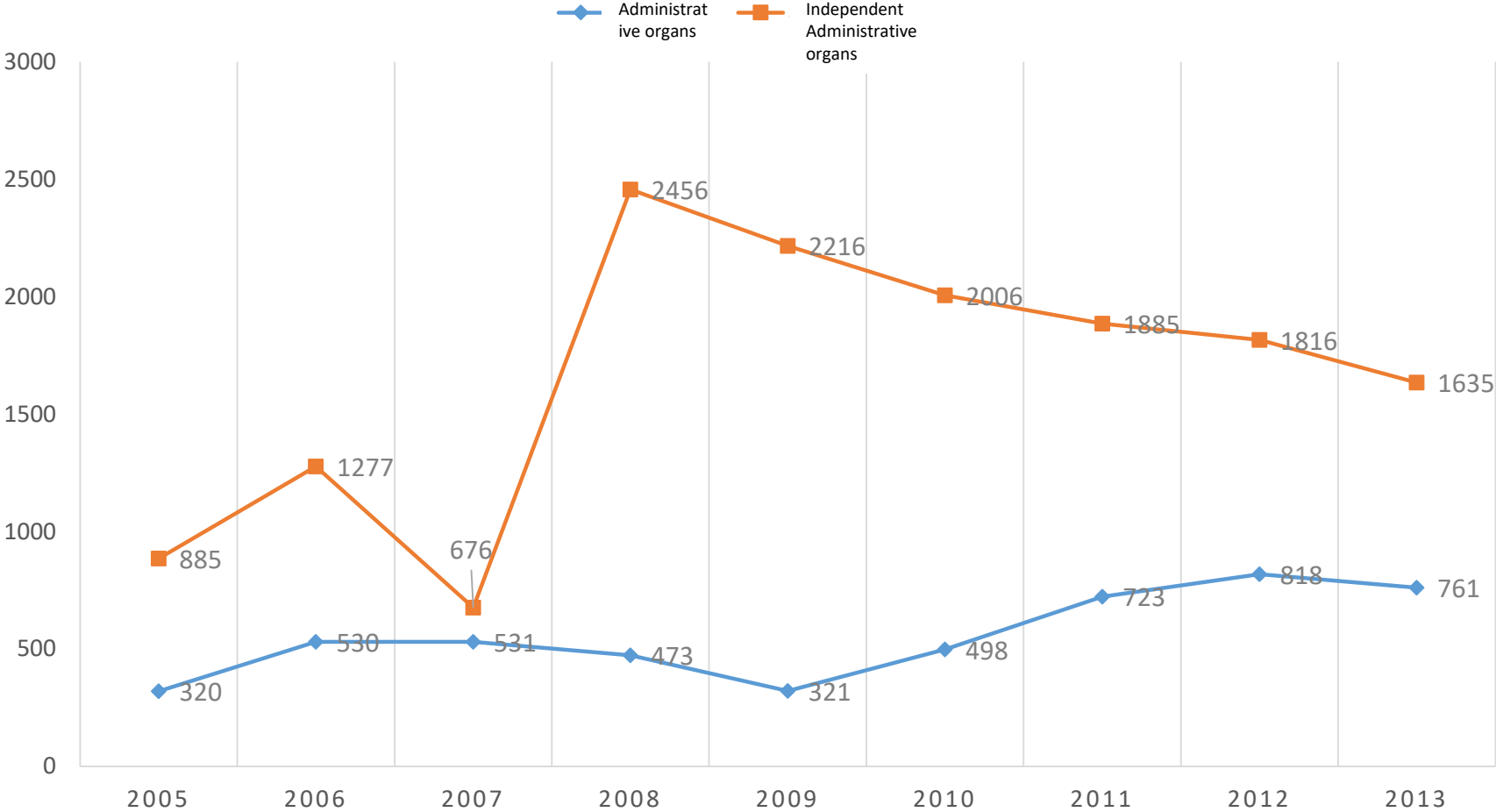


# Data Breach Cases in the Private Sector



# Data Breach Cases in the Public Sector

## MINISTRY OF INTERNAL AFFAIRS AND COMMUNICATIONS



# Cyber Attack Case

## Japan Pension Service (June 2015)

- The national pension system hacked: 1.25 million items of personal information stolen (pension IDs, names, addresses and birth dates)
  - 8/5/2015 Two target emails sent to two open email addresses
  - 18-19/ 5/2015 A series of target emails attack (101 emails)
  - 20/5/2015 Target emails (5 emails)

### Ad hoc committee's report (21 August 2015)

- 1) A lack of preparation of the human and organizational measures(rotation personnel change)
- 2) A lack of information security system (unclear responsibility and power in an emergency)
- 3) A lack of sense of personal information protection (no passwords for the shared folders)
- 4) Inadequate risk assessment and audit

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