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# Web Forum on Data and Values

## Deutsches Institut für Japanstudien

10.6.2021 | Dr. Axel Frhr. von dem Bussche, LL.M.  
(L.S.E.)

Private and Confidential

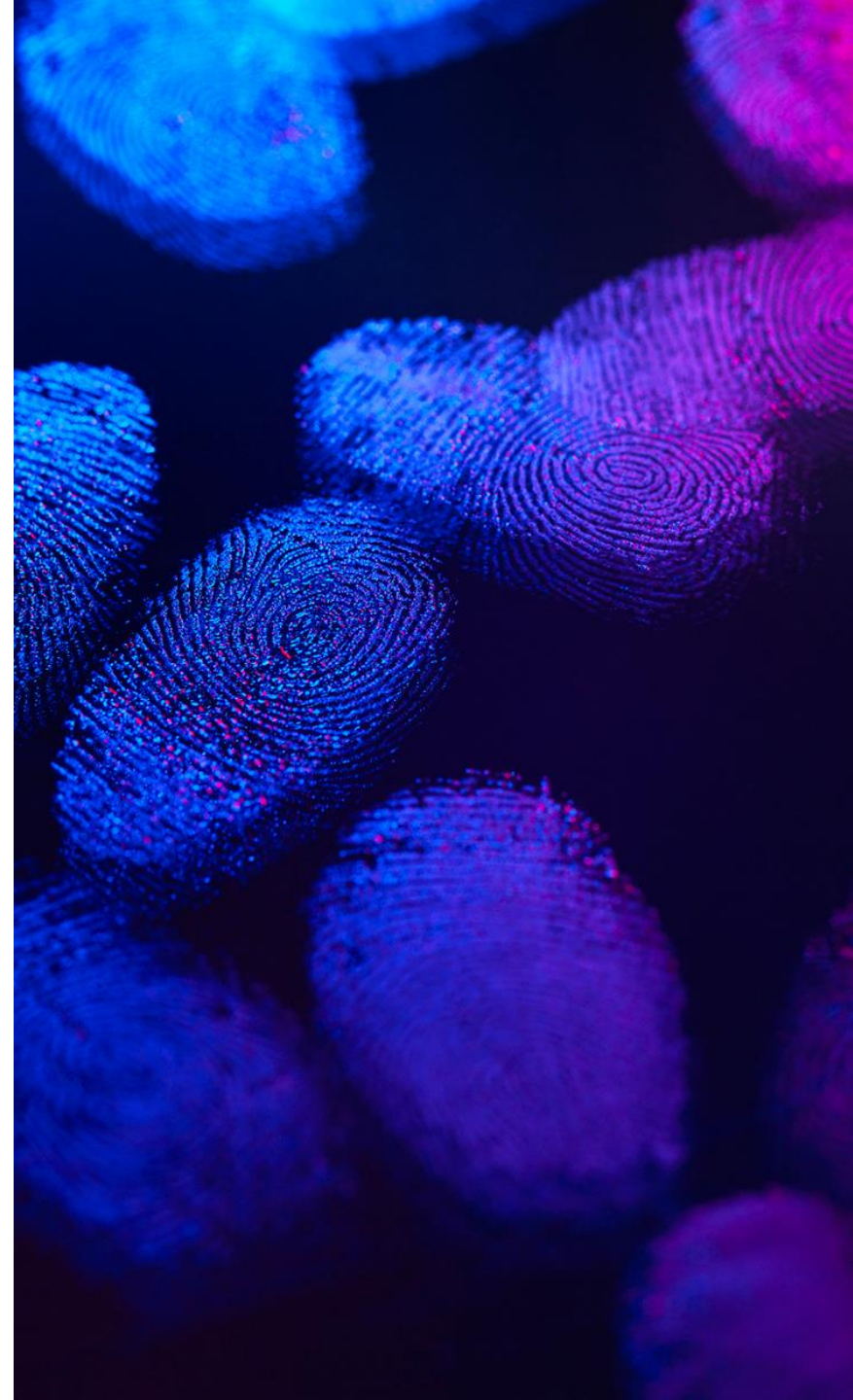
# 1 | Introduction

Basic concepts of the GDPR  
How is the GDPR relevant for Japan?

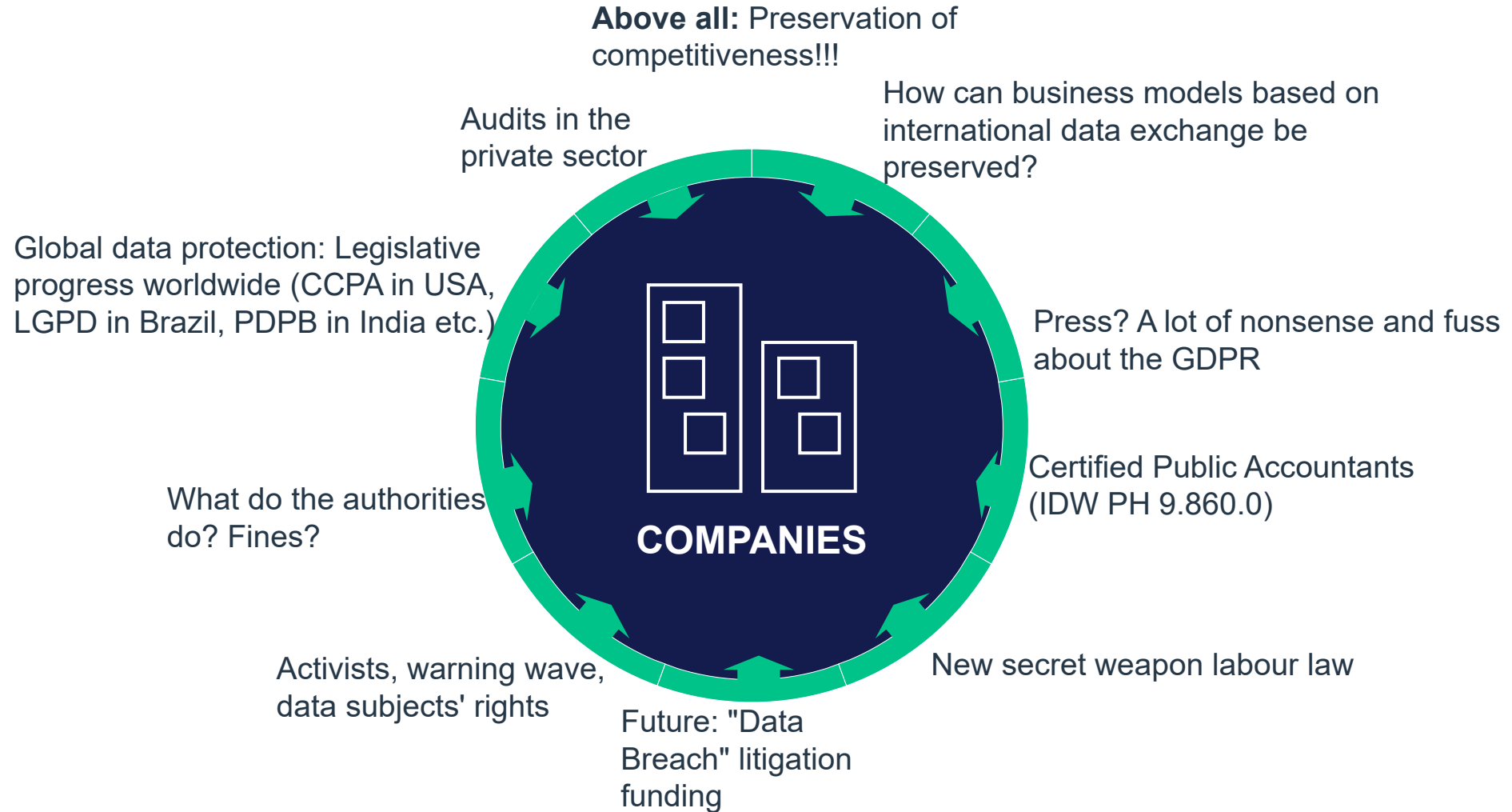
# Introduction

## Data protection is ...

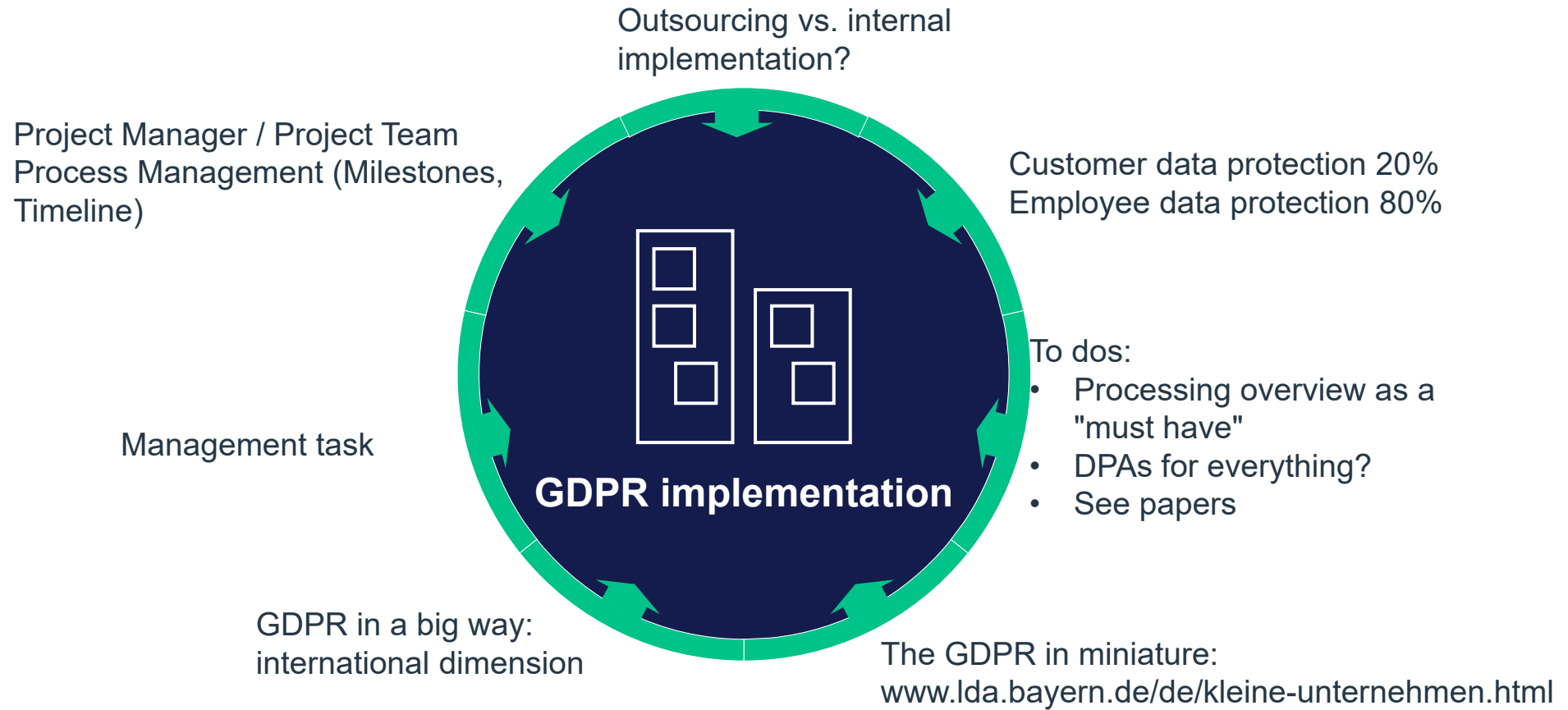
- a new market and power factor
- a corrective to digitalisation in a modern data economy
  - international industry standard
  - competitive advantage
- the new nature protection
  
- GDPR as the new gold standard:



# Introduction



# Introduction



# Introduction

## How is this relevant for Japan?

### How is this relevant for Japan?

- Japanese companies must also comply with the requirements of the GDPR if they offer services in the EU or monitor the behaviour of data subjects.
- The GDPR has a comprehensive catalogue of obligations, the violation of which can lead to heavy fines.
  - In the case of certain infringements, fines of up to **EUR 10 million** or **2%** of the total worldwide annual turnover of the company or in other cases **EUR 20 million** or **4%** of the total worldwide annual turnover of the company (in particular for data transfers to a third country).



# Introduction

## How is this relevant for Japan?

### Adequacy Decision – Free Flow of Data between EU and Japan?

- Commission Implementing Decision: Japan ensures “adequate level of protection”.
  - Came into force on 23 January 2019
  - Political context of JEFTA: free trade *and* free data flow.
- What does it mean?
  - Transfers of personal data from the EU are not subject to *additional* requirements.
  - E.g. Standard Data Protection Clauses, Binding Corporate Rules, Code of Conduct
- What does it **not** mean?
  - Exemptions from GDPR: scope of applicability remains the same.
  - Clear distinction between European and Japanese data protection regimes.
    - processing activities may be subject to EU and Japanese law at the same time
    - companies may be subject to EU and Japanese supervision at the same time



# 2 | Transfers of personal data to third countries

Schrems II, SCC



# Transfer of personal data to a third country

## Schrems II

### Background

- Activist Maximilian Schrems called for the Irish Data Protection Commissioner to invalidate the SCCs used by Facebook Ireland Ltd. for transferring personal data to the US.
- European Court of Justice ruled on 16 July 2020 – ([C-311/18 „Schrems II“](#)).
- SCCs remain applicable and can be the basis for a third country transfer.



# Transfer of personal data to a third country SCC

## SCC – Key takeaways:

➤ 4 June 2021 the European Commission issued modernised SCCs.

1. Future transactions: after grace period of 3 months following official publication (yet to come) only new SCC shall be used.
2. Existing agreements: + within 15 months, existing SCC to be replaced with new SCC.
3. The new SCC include a lot of Schrems II obligations. However, additional safeguards will need to be implemented.
4. Mandatory transfer impact assessment (TIA) re importer's country laws meeting EU standards. TIA documentation duty, authorities can request copy.
5. The new SCC follow a “modular approach”: more flexible but also more difficult to use.
6. New scenarios “Processor-to-Processor” and “Processor-to-Controller” have been introduced.
7. The new SCC include strict hierarchy and a liability clauses; difficult for data importers to limit their liability.



# Your Taylor Wessing Team

Axel von dem Bussche is a specialist lawyer for information technology law. He heads up the Technology, Media & Telecoms practice group and coordinates Taylor Wessing's international US Group for Germany.

With his considerable years of experience and outstanding expertise, he routinely guides clients from the technology sector through complex international transactions, contract drafting and regulatory issues. Axel is an accomplished data protection and GDPR expert. He supports corporate groups with the transformation to digital and global business models and also conducts negotiations with the responsible regulatory authorities.

## Languages

- German, English, French



"Axel von dem Bussche is a data protection specialist, advising companies on complex implementation mandates. His expertise also includes cybersecurity as well as whistle-blower protection matters." [Chambers & Partners Europe 2020](#)

"very experienced", "top networked", [Competitors, JUVE 2019/2020](#)

Highlighted as Best Lawyer for IT, [Best Lawyers in Germany, Handelsblatt 2018-2020](#)

Leading Individual, [Legal 500 Germany 2019-2021](#)

TOP Lawyer for Data Protection Law, [WirtschaftsWoche 2019, 2020](#)

"Axel Freiherr von dem Bussche is an 'excellent IT lawyer', praise peers.", [Who's Who Legal 2020](#)

One of the world's leading Data Privacy and Protection and Information Technology lawyers, [Who's Who Legal 2018 - 2020](#)

Recommended for information technology, data protection and media  
"one of the best, absolute strategist" ; "absolute expert in the industry", [JUVE 2018/2019](#)

Especially highlighted for Privacy Law, [Kanzleimonitor \(BUJ\) 2018/2019](#)



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### Key areas of expertise

- IT & Telecoms
- Data Protection
- Copyright & Media Law
- Litigation & Dispute Resolution
- Technology, Media & Communications

