

# EU PRIVACY REFORM

## UPDATE ON CANADA'S EU ADEQUACY STATUS

Innovation,  
Science and  
Economic  
Development  
Canada

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February 8, 2018  
Reboot Conference

# OUTLINE

- **EU Data Protection Framework**
- **Canada's Adequacy Status**
- **Current State of Play**
- **Next Steps**

# EU DATA PROTECTION DIRECTIVE

- The 1995 European Union (EU) Data Protection Directive dictates the content of privacy laws enacted by EU Member States.
- The Directive imposes strict requirements on all private and public organizations that process personal data and ensures the free flow of data throughout the EU.



**EUROPEAN COMMISSION**

# GENERAL DATA PROTECTION REGULATION

- A new General Data Protection Regulation (GDPR) will replace the existing Directive as of May 25, 2018.
- The GDPR modernizes principles in the existing Directive and harmonizes data protection across the EU into one single law.
- Key elements of the GDPR will provide individuals with better control over their data:
  - Data breach notification
  - Data portability
  - One-stop-shop
  - The right to be forgotten



# EU ADEQUACY DECISIONS

- An “adequacy decision” is a decision adopted by the European Commission (EC) that establishes a non-EU country (known as a third country) as having an “adequate” level of privacy protection
- Adequacy decisions permit transfers of information about EU citizens to companies in third countries without the need for additional safeguards or the need for foreign firms to individually show compliance with the Directive.

# COUNTRIES WITH ADEQUACY STATUS

- The EU has recognized 12 countries as providing adequate protection:
  - Switzerland (2000)
  - **Canada (2001)**
  - Argentina (2003)
  - Guernsey (2003)
  - Isle of Man (2004)
  - Jersey (2008)
  - Andorra (2010)
  - Faeroe Islands (2010)
  - State of Israel (2011)
  - Eastern Republic of Uruguay (2012)
  - New Zealand (2013)
  - United States (2016 for Privacy Shield)



# CANADA'S ADEQUACY STATUS

- The EU recognized the *Personal Information Protection and Electronic Documents Act (PIPEDA)* as providing adequate privacy protection in 2001
- Canada was the first non-European country to be granted adequacy status under the Directive.
- Our status was reaffirmed in 2006

# EU ADEQUACY DECISIONS UNDER GDPR

- No sunset clause under GDPR for existing adequacy designations, but provides for a periodic review “at least every four years”
- Alternative transfer tools reflect expanded “toolkit” for international transfers (e.g. standard contractual clauses, binding corporate rules, codes of conduct, certification mechanisms)
- “Mechanics” of how adequacy decision will be reflected in the GDPR not yet clear
- Article 29 Working Party “Referential on Adequacy” is providing some information



# ADEQUACY REFERENTIAL

- Adequacy means to establish the essential or core requirements of the legislation.
- Data protection laws must be efficiently enforced and “followed in practice”.
- Adequacy reviews to take place “at least every four years” but could be shorter depending on circumstances, or incidents in the third country.
- Data protection principles clarify that one-to-one correspondence with EU law not required (e.g. a lack of data portability not an obstacle for essential equivalence)
- Lists the four essential guarantees for law enforcement and national security: clear rules, necessity and proportionality, independent oversight, and effective remedies for the individual

# NEW CONSIDERATIONS IN DETERMINING ADEQUACY

- Recent court actions in the EU arising from the Snowden revelations (i.e., *Schrems* case) have put increased emphasis on access to personal data by government authorities
- Adequacy now being viewed in a broader context that extends beyond the scope of criteria used to determine original EU adequacy
- Means that there is an interest in aspects beyond PIPEDA to include the federal *Privacy Act* and the limitations and safeguards governing the access to personal data by public authorities

# NEW EC MONITORING OBLIGATION

- As a result of these court decisions, the EC is required to monitor changes to the data protection frameworks of all countries that currently have adequacy status
- Information requested by the EC relates to all aspects of a country's privacy regime
- In May 2017 Canada provided the EC with a report outlining developments in Canada's privacy and data protection regime since 2001
- An Addendum Report was provided in September 2017
- In November 2017, Canada provided a second report
- Reporting will be done on a bi-annual basis (next report May-June 2018)

# KEY PRIVACY DEVELOPMENT IN CANADA

- The Digital Privacy Act (2015) was of key interest to the EC
- The Act amended PIPEDA in three substantive ways by adding provisions that:
  - better protect consumers
  - simplify rules for businesses
  - increase compliance with PIPEDA
- The amendments bolster PIPEDA's overall alignment with new provisions contained in the GDPR.
- PIPEDA's upcoming mandatory data breach notification requirements will increase that alignment considerably

# GOVERNMENT OF CANADA APPROACH

- To assist in developing reports and responding to EC requests for information, ISED has established an interdepartmental advisory group
- Includes representatives from Justice, Global Affairs, Treasury Board, Public Safety, Canadian Border Services and Immigration, Refugees and Citizenship Canada
- Forum also provides advice on EC engagement options and opportunities

# OTHER ACTIVITIES ON EU ADEQUACY

- Informal meetings with the EC
- Interdepartmental meetings
- Engagement with the Office of the Privacy Commissioner
- Outreach and awareness
- Working with international organizations (OECD, APEC etc.) on global interoperability of privacy regimes

# EU ADEQUACY – NEXT STEPS

Forward strategy for ensuring the continuity of Canada's adequacy determination includes:

- Continuing to providing the EC with update reports (twice yearly – generally June and December)
- Working with other government departments to co-ordinate engagement with EC officials
- Exploring other complementary mechanisms (eg., interoperability/compatibility of the APEC Cross-Border Rules system and the GDPR)

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