Does Schrems II Impact my Canadian Business?

**HOW DO YOU GET IT?**

From an organization based in the UK or EEA, e.g. a branch office of my company; a business that oursources services to my business.

**DO YOU...**

- target goods or services at, or monitor behaviour of people in the UK / EEA? E.g. through a:
  - website or app
  - SaaS product
  - training or products
  - ...to people in the UK/EEA?

**AS A PROCESSOR YOU MUST**

- Have a data processing agreement (DPA) with your controller
- Get controller’s prior written permission for any sub-processing & international data transfers
- Follow the Schrems II Roadmap for any international transfers of EU personal data

**PROCESSOR**

Follow the Schrems II Roadmap if you transfer UK/EEA personal data outside Canada.

**CONTROLLER**

EEA/UK-based processor? GDPR does NOT apply to personal data they transfer back to you UNLESS mingled with EEA/UK data. NO Schrems II Roadmap.

AS A PROCESSOR YOU MUST

- Have a data processing agreement (DPA) with your controller
- Get controller’s prior written permission for any sub-processing & international data transfers
- Follow the Schrems II Roadmap for any international transfers of EU personal data

Controller / Processor rules still apply.

**NOT SURE**

**NOPE!**

Are you sure? GDPR defines “Personal Data” very broadly. It can include metadata & even de-identified data. Go to “NOT SURE”

**YES**

UK GDPR & /or EU GDPR directly apply to these activities.

**NOT SURE**

HOW DO YOU GET IT?

From an organization based in the UK or EEA, e.g. a branch office of my company; a business that oursources services to my business.

GDPR does NOT apply directly to you (the Data Importer) but it does apply to your Data Exporter. They’ll need a transfer mechanism.

They must follow the Schrems II Roadmap with your help.

They can rely on ADEQUACY!

**YES**

Do you process personal data of people in the UK or EEA?

Are you sure? GDPR defines “Personal Data” very broadly. It can include metadata & even de-identified data. Go to “NOT SURE”

**PROCESSOR**

Have a data processing agreement (DPA) with your controller

**CONTROLLER**

Get controller’s prior written permission for any sub-processing & international data transfers

Follow the Schrems II Roadmap for any international transfers of EU personal data

Follow the Schrems II Roadmap if you transfer UK/EEA personal data outside Canada.

Choose-your-own- SCC-adventure...

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Does PIPEDA apply?

**YES**

They process personal data of people in the UK or EEA?

Controller rules still apply.

Controller / Processor rules still apply.

Choose-your-own- SCC-adventure...

**NOPE!**

Are you sure? GDPR defines “Personal Data” very broadly. It can include metadata & even de-identified data. Go to “NOT SURE”

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Choose-Your-Own-SCC-Adventure*

A (Canadian) hitchhiker’s guide to choosing the right Standard Contractual Clauses for your EEA or UK personal data.

Does GDPR directly apply?

No

WHAT IS YOUR ROLE? E.g. Controller, Processor?

Controller

Does a Processor outside Canada e.g. SaaS provider help process the data?

No

Will you transfer it outside Canada to another Controller?

No

Buckle up!

Your EEA / UK data exporter must follow the Schrems II Roadmap & you’re coming along for the ride!

Does GDPR directly apply to them?

Yes

Does a Processor outside Canada e.g. SaaS provider help process the data?

No

Follow the Schrems II Roadmap

Know your role

Controller

Processor

No SCCs needed but maintain compliance

Use the Controller-Processor SCCs or your own DPA

NOT the Int’l Transfers SCCs

Use the Intl Transfers SCCs

No DPA needed. The SCCs do double duty & override conflicting clauses in your DPA

Choose the right modules.

Add all the parties (incl. intermediaries)

PLUS

Supplementary Measures if required

AND

Use the International Transfers SCCs

GDPR doesn’t apply to you just because you use an EEA/UK-based Processor. But it applies to them. They need a transfer tool but no Schrems II Roadmap (unless EEA data slips through!)

GDPR doesn’t apply

DONT FORGET

90% chance of SCCs

Complete the "Does Schrems II Impact My Canadian Business" decision tree. Then use this for each processing activity involving UK / EEA personal data that is not PIPEDA-regulated (i.e. no adequacy).

*Based on the draft SCCs of November 12, 2020.


Need help navigating this? Get in touch.

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