



# A Modern European Data Protection Framework

*Safeguarding Privacy and Exchanging Data in a Connected World*

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# Outline

1. The new EU data protection framework
2. The transition period
3. GDPR: trust, legal certainty and innovation
4. International dimension

# **1. The new EU data protection framework**

# Why a new EU framework for data protection?

- **Technological developments and globalisation:** Trust comes from high data protection standards, backed by a system of individual rights and robust enforcement
- **Data protection as a fundamental right** (Lisbon Treaty)
- **Fragmentation of legislative framework** (different transposition of the current Data Protection Directive into national laws)

# **Main objectives and major changes**

- a. RULES FIT FOR THE DIGITAL SINGLE MARKET (a harmonised and simplified framework)**
- b. PUTTING INDIVIDUALS IN CONTROL OF THEIR DATA (an updated set of rights and obligations)**
- c. A MODERN DATA PROTECTION GOVERNANCE**

## a. A harmonised and simplified framework

- **One single set of data protection rules for the EU** (Regulation)
- **One interlocutor and one interpretation** (one-stop-shop and consistency mechanism)
- **Creating a level playing field** (territorial scope)
- **Cutting red tape** (abolishment of most prior notification and authorisation requirements), including as regards international transfers

## b. An updated set of rights and obligations

- **Evolution rather than revolution:** basic architecture and core principles/obligations/rights are maintained
- **Putting individuals in better control of their data...** (e.g. consent to be given by clear affirmative action, better information about data processing)...
- **...including through the introduction of new rights** (e.g. right to portability) and **obligations** (e.g. data breach notification)
- Obligations graduated in function of the nature and potential risks of processing operations (**risk-based approach:** DPO, DPIA, data breach notification)
- Stronger rights, clearer obligations, **more trust**

## c. A modern governance system

- **Better equipped DPAs and better cooperation amongst them** (e.g. joint investigations)
- **A new decision-making process for cross-border cases** (the consistency mechanism)
- The creation of the **European Data Protection Board** (guidance and dispute settlement)
- **Credible and proportionate sanctions** (max. 2/4% of global turnover in light of nature, duration, gravity etc. of the violation)

## **2. The transition period**

- **Aligning other legislative instruments** (e.g. 10 Jan. 2017 proposal for an ePrivacy Regulation)
- Central role of **DPAs** (Art. 29 WP/EDPB) – **guidelines** issued so far concern **data portability**, **DPOs**, **'Lead Authority'**, **DPIAs** and **administrative fines**
- Final adoption after **consultation of stakeholders**. Consultation recently concluded on draft guidelines on **profiling**, **consent** and **transparency**. Ongoing consultation on so-called **derogations** and **accreditation of certification bodies**
- Commission **guidance**, online tool, Q&A
- Setting up of a **multi-stakeholder expert group**
- Close dialogue with **Member States** on national implementation
- **Market-driven instruments** (e.g. codes of conduct)

# **3. Why the GDPR is good for business: trust, legal certainty and innovation**

## ***USER TRUST: BASIS FOR DIGITAL ECONOMY***

- Protection and security of data are the main concerns of users going online around the world (also in India, see EY's Global Forensic Data Analytics Survey 2018)
- Strong protections/control over data ensure trust

## ***PRIVACY AS A SELLING POINT***

- Being trusted constitutes competitive advantage
- Giving value to technology leadership
- Data protection is sound business practice: incidents can seriously harm reputation (Yahoo, Equifax, Facebook/Cambridge Analytica, ...)
- Mark Zuckerberg: 'This is a major trust issue ...'

## ***TAKING STOCK OF ONE'S DATA***

- GDPR requires companies to analyse which data they collect and how they use it
- Helps companies to avoid unnecessary collection of data and to better use the data they hold

## ***NEW MARKET OPPORTUNITIES FOR PRIVACY-FRIENDLY TECHNOLOGIES***

- Privacy by design encourages innovative ways of strengthening data protection
- Innovation can reduce "regulatory burden" (risk-based approach, technological solutions)

- No contradiction regulation / innovation: Numerous EU business success stories
  - **DeepMind**, the British Artificial Intelligence company acquired in 2014 by Google for \$500 million;
  - **SAP**, Europe's most valuable tech company valued at \$135 billion;
  - **Skype**, developed in Estonia and acquired by eBay in 2005 for \$1.9 billion, and later by Microsoft for \$8.5 billion in 2011;
  - **Spotify**, the Swedish company valued at \$8.5 billion in 2015, which is preparing to launch an IPO in March 2018.

## ***SIMPLIFICATION AND HARMONISATION***

- Harmonised set of rules and coherent application across the EU enhances legal certainty
- Cutting red tape and thus compliance costs, more reliance on accountability and co-regulation

## ***FACILITATING GLOBAL BUSINESS OPERATIONS***

- GDPR represents global trend: typical features of a modern data protection law
- In particular in certain regions (Asia...)
- Compliance greatly facilitates access to any data market in the world
- Multinationals increasingly embrace GDPR as international standard
- Opens up new market opportunities for GDPR compliance tools, services, etc.

## **4. International dimension**

# International personal data transfers

## ***ADDRESSING THE CHALLENGES OF GLOBALISATION***

- Personal data is being **transferred across an increasing number of borders** and stored on servers in multiple countries
- **Trade** relies more and more on personal data flows
- These transfers **should be facilitated, forced localization is counterproductive**
- The **protection should travel with the data!**
- **Convergence as trade facilitator:** Promoting high standards of data protection contributes to free, stable and competitive commercial flows

## ***DIRECT APPLICATION VS. INTERNATIONAL TRANSFERS***

- **Territorial scope of application** (Article 3 GDPR): no extra-territorial application but "effects-based"  
Foreign companies processing data of Europeans directly fall under the GDPR if they:
  - process data in the context of the activities of an EU establishment
  - target the EU market by offering goods or services to European customers or monitoring their behaviour
- **International data transfers** (Chapter V of GDPR)

# International strategy

## ***DIVERSIFIED TOOLKIT FOR TRANSFERS***

- Precise criteria for **adequacy decisions** (also partial or sector-specific)
- **Simplification** (abolishment of prior notification/authorisation) and **expanded possibilities of using other transfer tools** (model clauses, BCRs)
- Introduction of **new tools** (e.g. certification mechanisms, approved codes of conduct)

## ***STRATEGIC VISION FOR INTERNATIONAL TRANSFERS: COMMUNICATION OF JAN. 2017***

- at **bilateral level** focus on **adequacy** ("*starting with Japan and Korea in 2017 and, depending on progress towards the modernisation of its data protection laws, with India*")
- at **multilateral level** promotion of convergence (in particular in the framework of **Convention 108** of the Council of Europe)

# Universal trend, not just an "EU approach"

- Trend of **convergence towards universal model** (core principles, enforceable rights, oversight by independent authority, judicial redress)
- **Japan, South Korea**: recent modernisation based on fundamental rights approach
- **India**: Supreme Court decision and White paper
- **Other countries** are also moving: Indonesia, Singapore...
- Self-regulation as an **alternative?** GDPR supports co-regulation, but need for clear rules and enforcement (missing e.g. in APEC CBPR)

# Advantages of adequacy

## ***Most comprehensive & business friendly tool***

- Foreign country considered like EU Member State
- No red-tape
- No need for a transfer basis
- Reliance on domestic oversight & enforcement system
- Business / investment enhancer [ex: Argentina]
- Competitive advantage / other countries in Asia are moving ahead

## ***Flexible tool***

- Partial adequacy possible but a missed opportunity in case comprehensive law is in place
- Requires clear sectors delineation : is IT a sector ?



# EU-India: further convergence could pave the way to adequacy

*"Beyond the free flow of goods and services, we should also step up work to **ensure the free flow of personal data** between your great nation and the European continent.*

*This is why I stressed this morning the importance on the need to agree to the **highest standards of data protection**.*

*Indian companies have specialised in offering back office and IT services to European companies. **Many of these services** – and the jobs that go with them – **depend on the exchange of data**.*

***If India's standards of data protection are converging with those of the European Union, the European Union will be in a position to recognise the adequacy of India's rules.** This is a precondition for exchanging personal data freely and securely."*

*President Juncker's speech at the EU-India Summit, 6 Oct 2017*

*See already Communication of Jan. 2017*

**Thank you very much for your attention!**

***Questions, comments?***