

March 8, 2021

François Legault
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Re: Comments on Bill 64 of the National Assembly of Québec

Dear Premier Legault,

Thank you for meeting with US business representatives on March 1, 2021. We welcomed the opportunity to connect with you and look forward to continued engagement. Many Global Data Alliance¹ member companies invest in Québec and are active in sectors that you highlighted in your March 1 remarks, including green technologies, satellite communications, publishing and media, transportation equipment, ICT services, and biopharmaceuticals and medical devices.

As companies active in these sectors in Québec and across North America, we wish to raise a concern regarding the cross-border data transfer provisions of Bill 64 of the National Assembly of Québec, *An Act to modernize legislative provisions as regards the protection of personal information*. These provisions in Bill 64 appear to favor the local storage of personal data in Québec and strict limitations on its transfer outside of Québec. To the extent that these provisions are intended to achieve cybersecurity or privacy objectives, we respectfully suggest that the restrictions do not advance those objectives. As explained in our paper ([Cross-Border Data Transfers & Data Localization \(globaldataalliance.org\)](https://www.globaldataalliance.org)), these objectives can be most effectively protected by the adoption of best-in-class security and privacy protections that focus on how data is protected.

As drafted, Bill 64 would appear to prohibit cross-border data transfers that are necessary to companies in Québec that depend upon international trade and investment, and that depend upon cloud computing and other network technologies. Cross-border data transfers support international investment, commercial transactions, cybersecurity, fraud monitoring and prevention, and a broad range of other activities relating to the protection of health, privacy, and security of persons and businesses in Québec. Jobs and exports are particularly dependent upon data transfers in the advanced industries where Québec is globally competitive, including the transportation, biotechnology, energy, and finance sectors.

Article 70.2 of Bill 64

GDA members are concerned about provisions in Article 70.2 of Bill 64 that would have the effect of unnecessarily isolating Québec from Canada's North American trading partners and global commerce. This Article permits data transfers only to "equivalent" jurisdictions, but the applicable process and substantive standards for being deemed "equivalent" are opaque. It is unclear whether other Canadian provinces, let alone neighboring countries like the United States or Mexico, would qualify as "equivalent"

¹ The Global Data Alliance is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to transfer data around the world to innovate and create jobs. GDA members include BSA members and Abbott, American Express, Amgen, AT&T, Citi, ExxonMobil, ITB360, Lumen, LEGO, Mastercard, Medtronic, Panasonic, Pfizer, RELX, Roche, United Airlines, Verizon, Visa, and UDS Technology. BSA members include Adobe, Atlassian, Autodesk, Bentley Systems, Box, CNC/Mastercam, DocuSign, IBM, Informatica, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Siemens Industry Software Inc., Slack, Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, and Workday. BSA | The Software Alliance administers the Global Data Alliance. For more information on the Global Data Alliance, please see: <https://www.globaldataalliance.org/downloads/aboutgda.pdf>

jurisdictions under the process outlined in Bill 64. Furthermore, Bill 64 does not reflect international norms intended to ensure that national or sub-national privacy frameworks are interoperable with the privacy frameworks of other jurisdictions; that a range of transfer mechanisms are available; and that relevant persons remain responsible for the protection of data, regardless of where or by whom it is processed. For legal and business certainty, we also recommend due consideration of how Bill 64 will integrate with the federal Bill C-11, An Act to enact the Consumer Privacy Protection Act (CPPA) and the Personal Information and Data Protection Tribunal Act (PIDPTA).

Finally, we urge Québec to assess the relationship between Bill 64 and international commitments under USMCA Articles 19.08 (relating to personal information protection), 19.11 and 17.17 (relating to data transfers), and 19.12 and 17.18 (relating to location of computing facilities). For example, Article 19.11 mandates that cross-border data transfers be permitted for business purposes, and that any rules limiting such transfers not impose unnecessary or discriminatory restrictions.

Conclusion

The ability to transfer data, including personal data, across Canada, North America, and the globe is critical for all enterprises in Québec with international sales or operations. Without this ability, no enterprise can effectively engage in international trade, investment, or commercial transactions. From this perspective, Bill 64 warrants careful review. We thank you for the opportunity to share these views. Please do not hesitate to contact us with any questions.

Sincerely yours,

Joseph Whitlock
Director, Policy
BSA | The Software Alliance