


Statement on the Court of Justice of the European Union C-311/18 - Data Protection Commissioner v Facebook Ire Maximillian Schrems



 Friday, 17 July, 2020

The European Data Protection Board has adopted the following statement:

The EDPB welcomes the CJEU's judgment, which highlights the fundamental right to privacy in the context of the transfer of personal data to processors established in third countries. The CJEU's decision is one of great importance. The European Data Protection Board (EDPB) has taken note of the fact that it concerns the adequacy of the protection provided by the EU-US Privacy Shield, and of the fact that it concerns the use of Standard Contractual Clauses (SCCs) for the transfer of personal data to processors established in third countries validly.

The EDPB discussed the Court's ruling during its 34th plenary session of 17 July 2020.

With regard to the Privacy Shield, the EDPB points out that the EU and the U.S. should achieve a complete and effective level of protection granted to personal data in the U.S. is essentially equivalent to that guaranteed within the EU, in line with the requirements of the GDPR.

The EDPB identified in the past some of the main flaws of the Privacy Shield on which the CJEU grounds its decision to conclude that the level of protection is not essentially equivalent to that guaranteed within the EU.

The EDPB questioned in its reports on the annual joint reviews of Privacy Shield the compliance with the data protection principles of proportionality in the application of U.S. law. (1)

The EDPB intends to continue playing a constructive part in securing a transatlantic transfer of personal data that benefits both sides and stands ready to provide the European Commission with assistance and guidance to help it build, together with the U.S. Department of Justice, a framework that complies with EU data protection law.

While the SCCs remain valid, the CJEU underlines the need to ensure that these maintain, in practice, a level of protection of personal data guaranteed by the GDPR in light of the EU Charter. The assessment of whether the countries to which data are sent provide an essentially equivalent level of protection is the responsibility of the exporter and the importer, when considering whether to enter into SCCs. When performing such an assessment, the exporter and importer should take into account the level of protection in the destination country, the nature of the data, the purposes of the processing, the rights of the data subjects, and the availability of redress mechanisms.

necessary, with the assistance of the importer) shall take into consideration the content of the SCCs, the specific circumstances, and the legal regime applicable in the importer's country. The examination of the latter shall be done in light of the non-exhaustive list of factors in the GDPR.

If the result of this assessment is that the country of the importer does not provide an essentially equivalent level of protection, the EDPB may consider putting in place additional measures to those included in the SCCs. The EDPB is looking further into what these measures could be.

The CJEU's judgment also recalls the importance for the exporter and importer to comply with their obligations included in the SCCs, and the information obligations in relation to change of legislation in the importer's country. When those contractual obligations are not fulfilled, the exporter is bound by the SCCs to suspend the transfer or terminate the SCCs or to notify its competent supervisory authority of the transferring data.

The EDPB takes note of the duties for the competent supervisory authorities (SAs) to suspend or prohibit a transfer of data to a third country, if, in the view of the competent SA and in the light of all the circumstances of that transfer, those clauses are not sufficient to ensure the protection of the data transferred cannot be ensured by other means, in particular where the contract is itself suspended or put an end to the transfer.

The EDPB recalls that it issued guidelines on Art 49 GDPR derogations (2); and that such derogations must be applied only in exceptional circumstances.

The EDPB will assess the judgment in more detail and provide further clarification for stakeholders and guidance on the transfer of personal data to third countries pursuant to the judgment.

The EDPB and its European SAs stand ready, as stated by the CJEU, to ensure consistency across the EEA.

For the European Data Protection Board

The Chair

(Andrea Jelinek)

(1) See EDPB, EU-U.S. Privacy Shield - Second Annual Joint Review report [here](#), and EDPB, EU -U.S. Privacy Shield - Third Annual Joint Review report [here](#).

(2) **EDPB Guidelines 2/2018 on derogations of Article 49 under Regulation 2016/679**, adopted on 25 May 2018, p3.