



2018/2855(RSP)

14.9.2018

DRAFT MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission

pursuant to Rule 123(2) of the Rules of Procedure

on the use of Facebook users' data by Cambridge Analytica and the impact on
data protection
(2018/2855(RSP))

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on behalf of the Committee on Civil Liberties, Justice and Home Affairs

European Parliament resolution on the use of Facebook users' data by Cambridge Analytica and the impact on data protection (2018/2855(RSP))

The European Parliament,

- having regard to the Treaty on the European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), the EU Charter on Fundamental Rights, notably its articles 7, 8, 11, 12, 39, 40, 47 and 52, the European Convention on Human Rights, notably its articles 8, 9, 10, 11, 13, 16, 17, and the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, notably its article 3;
- having regard to the International Covenant on Civil and Political Rights, notably its articles 2, 17, 19, 20 and 25;
- having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)¹, and to Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA²;
- having regard to the Council of Europe Convention on Data protection (ETS no 108) and its Additional Protocol (ETS No 181);
- having regard to the House of Commons inquiry into fake news and its Digital, Culture, Media and Sport Committee's 5th Interim Report on Disinformation and 'fake news';
- having regard to the hearings held in the US House of Representatives Committee on Energy and Commerce;
- having regard to the Commission Implementing Decision (EU)2016/1250 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield³;
- having regard to European Parliament resolution of 5 July 2018 on the adequacy of the protection afforded by the EU-US Privacy Shield ([2018/2645\(RSP\)](#));

¹ OJ L 119, 4.5.2016, p. 1.

² OJ L 119, 4.5.2016, p. 89.

³ OJ L 207, 1.8.2016, p. 1.

- having regard to the judgment of the European Court of Justice of 6 October 2015 in Case C-362/14 *Maximilian Schrems v Data Protection Commissioner*¹;
 - having regard to the judgment of the European Court of Justice of 25 January 2018 in Case C-498/16 *Maximilian Schrems v Facebook Ireland Limited*²;
 - having regard to the filing of the formal request by David Carroll requesting Cambridge Analytica to recover his personal information and to reveal its source;
 - having regard to the Opinion of the European Data Protection Supervisor (EDPS) 3/2018 on online manipulation and personal data³;
 - having regard to the Opinion of the Article 29 Working Party of 3 October 2017 on the protection of individuals with regard to the processing of personal data⁴;
 - having regard to the in-depth hearings conducted by the Committee on Civil Liberties, Justice and Home Affairs, mandated by the European Parliament, on the use of Facebook users’ data by Cambridge Analytica and the impact on data protection;
 - having regard to the reports of the Information Commissioner’s Office of the United Kingdom on the investigation into the use of data analytics and political campaigns and the report called “Democracy disrupted”⁵;
 - having regard to the testimonial by the European Consumer Organisation (BEUC) presented on 25 June 2018⁶;
 - having regard to the statement by the Commission;
 - having regard to the motion for a resolution of the Committee on Civil Liberties, Justice and Home Affairs;
 - having regard to Rule 123(2) of its Rules of Procedure;
- A. whereas investigative journalism uncovered and made public major data leaks of Facebook user data in relation to the access that was granted by Facebook to third party applications and the subsequent abuse of this data for electoral campaigning efforts and other personal data breaches of personal data held and gathered by major social media companies that came to light afterwards;
- B. whereas these personal data breaches impacted citizens across the globe, including European citizens and non-European citizens residing on European Union territory,

¹ EU:C:2015:650

² EU:C:2018:37

³ https://edps.europa.eu/sites/edp/files/publication/18-03-19_online_manipulation_en.pdf

⁴ ec.europa.eu/newsroom/article29/document.cfm?doc_id=49826

⁵ <https://ico.org.uk/media/action-weve-taken/2259369/democracy-disrupted-110718.pdf>
<https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/07/findings-recommendations-and-actions-from-ico-investigation-into-data-analytics-in-political-campaigns/>

⁶ http://www.beuc.eu/publications/beuc-x-2018-067_ep_hearing_facebook-cambridge_analytica.pdf

- whereas various national parliaments conducted hearings, inquiries and published findings on the matter;
- C. whereas these personal data breaches occurred before the application of the new General Data Protection Regulation and for an extended period of time; whereas the companies concerned were however in breach of EU data protection law applicable at that time, particularly Directive 95/46/EC and Directive 2002/58/EC;
 - D. whereas the data misuse which was revealed in the context of the Cambridge Analytica scandal happened before the application of the GDPR;
 - E. whereas Facebook has affirmed that no bank account or credit card information or national identity information was shared with Cambridge Analytica;
 - F. whereas Cambridge Analytica claimed the data processing was officially done for research purposes, but subsequently passed on for political and commercial use;
 - G. whereas the initial reaction by the companies concerned did not meet the expected standards and did not enable a full and independent investigation and audit by the authorities concerned both on national as European level;
 - H. whereas the European Parliament held a first exchange of views with the CEO and founder of Facebook, Mark Zuckerberg on 22 May 2018 and this meeting resulted in the request by the Conference of Presidents for the Committee on Civil Liberties, Justice and Home Affairs, in association with the Committees on Constitutional Affairs, Legal Affairs and Industry, Research and Energy, to hold in-depth follow-up hearings;
 - I. whereas three hearings on the impact of the Facebook / Cambridge Analytica case on issues related to data protection, electoral processes, fake news and the market position of social media were held on 4 June, 25 June and 2 July 2018 with the participation of the European Commissioners concerned, the Executive Director of the European Union Agency for Network and Information Security, the European Data Protection Supervisor, the Chair of the European Data Protection Board, the UK Information Commissioner's Office, the Chief Executive of the UK Electoral Commission, citizens concerned and Facebook;
 - J. whereas Facebook refused to delegate the staff members at the appropriate technical and responsibility level and having the necessary technical expertise and knowledge requested by the Committee Chairs concerned and sent public policy team members to all three hearings instead; whereas information provided by Facebook representatives during the hearings lacked precision on the concrete and specific measures taken to ensure full compliance with EU data protection law and was rather of general nature;
 - K. whereas in its Opinion 3/2018 the EDPS raises several concerns on online manipulation and personal data; while the EDPS also argues that competition law has a crucial role in ensuring the accountability of dominant players in the market and protecting democracy against excessive market power; whereas the interests of individuals should be better reflected in assessing the potential abuse of dominance or the mergers of companies, which may have accumulated significant informational power;

- L. whereas in its Opinion of 3 October 2017 the Article 29 Working Party stated that profiling and automated decision-making can pose significant risks for individuals' rights and freedoms which require appropriate safeguards;
- M. whereas the Chair of the European Data Protection Board highlighted that the Facebook / Cambridge Analytica case occurred before the entering into force of the GDPR, and thus the EDPB is not the leading authority in this case but rather the UK Information Commissioner's Office;
- N. whereas Facebook accepted and agreed to a contract with an app developer that openly announced they reserved the right to disclose personal data to third parties and such practice was already illegal under the old data protection law;
- O. whereas negotiations are currently ongoing on the E-Privacy Regulation;
- P. whereas the EDPB has already received over 30 cross-border cases which it vowed to investigate very carefully according to the rules of GDPR; whereas it coordinates the actions of national data protection authorities in order to ensure a common approach of enforcement of EU data protection law;
- Q. whereas Facebook, a signatory to the Privacy Shield, has confirmed that the personal data of 2,7 million EU citizens were among those improperly used by political consultancy Cambridge Analytica;
- R. whereas the US Federal Trade Commission is currently investigating whether Facebook failed to honor its privacy promises, including to comply with Privacy Shield, or if it engaged in unfair acts that cause substantial injury to consumers in violation of the FTC Act and the previous settlement between the FTC and Facebook reached in 2011;
- S. whereas four consumer organisations of Belgium, Italy, Spain and Portugal have launched a collective redress action against Facebook, claiming economic compensation for affected Facebook users in their respective countries;
- T. whereas the European Consumer Organisation (BEUC) stated in its testimonial presented on 25 June 2018 that it is necessary to ensure platform accountability for third-party access to personal data; whereas the European Consumer Organisation also argues in the same testimonial that companies should do more to ensure solid accountability structures for partner access to personal data and the further exploitation of these data;
- U. whereas the investigation by the Information Commissioner's Office of the United Kingdom also covered the link between Cambridge Analytica, its parent company SCL Elections Limited and Aggregate IQ and involves allegations that personal data, obtained from Facebook, may have been misused by both sides in the UK referendum on membership of the EU and used to target voters during the 2016 American Presidential election process; whereas the investigation by the Information Commissioner's Office of the United Kingdom was mainly conducted under the Data Protection Act 1998 and under the Privacy and Electronic Communications Regulations (PECR) 2003, whilst also

- projecting forward to the General Data Protection Regulation where appropriate;
- V. whereas the UK House of Commons Culture, Media and Sport Select Committee heard evidence that showed alleged Russian interference in electoral processes in the EU and urged the responsible national authorities to investigate these allegations; whereas in the US, a Special Counsel was appointed in May 2017 to investigate Russian interference with the 2016 Presidential elections and related matters and whereas this investigation is ongoing;
- W. whereas the Information Commissioner's Office of the United Kingdom has issued Facebook with a Notice of Intent to issue a monetary penalty in the sum £500,000 for lack of transparency and security issues relating to the harvesting of data constituting breaches of the first and seventh data protection principles under the Data Protection Act 1998;
- X. whereas the Information Commissioner's Office of the United Kingdom has already issued 23 Information Notices to 17 different organisations and individuals, including Facebook on 23 February 2018, to request provision of information from the organisations in a structured way; while Facebook confirmed on 18 May 2018 that Aggregate IQ created and, in some cases, placed advertisements on behalf of the DUP Vote to Leave campaign, Vote Leave, BeLeave and Veterans for Britain;
- Y. whereas the Information Commissioner's Office of the United Kingdom has expressed its concerns as regards the terms of the information available to users about the sources of the data, the availability and transparency of the controls offered to users; while the Information Commissioner's Office of the United Kingdom also stated that the overall privacy information and controls made available by Facebook did not effectively inform the users about the likely uses of their personal information; whereas the Information Commissioner's Office of the United Kingdom has raised concerns in which data was accessed from the Facebook platform and used for purposes it was not intended for or that data subjects would not have reasonably expected;
- Z. whereas figures from the Electoral Commission of the UK have shown that the political parties in the United Kingdom spent £3.2 million on direct Facebook advertising during the 2017 general election;
- Z. a whereas social networks constitute an important platform for political parties and public institutions by allowing them to connect with citizens;
- Z. b whereas global online platforms face challenges to counter false news effectively given the different threats and media landscapes in different countries and regions;
- Z. c whereas data analysis and algorithms increasingly impact on the information made accessible to citizens; whereas such techniques, if misused, may endanger fundamental rights to information as well as media freedom and pluralism;
- Z. d whereas algorithmic accountability and transparency is essential to ensure the proper information and clear understanding of individuals about the processing of their personal data; whereas it should mean implementing technical and operational measures that ensure

transparency, the non-discrimination through automated decision-making and ban the calculating of probabilities of individual behaviour; whereas transparency should give individuals meaningful information about the logic involved, the significance and the envisaged consequences; whereas this should include information about the data used for training big data analytics and allow individuals to understand and monitor the decisions affecting them;

- Z.e whereas Facebook promised at the meeting with European Commissioners on 2 July 2018 to cooperate and give access to the data about the alleged voting manipulation to independent academics;
1. Expects all online platforms to ensure full compliance with Union data protection law, namely the GDPR and Directive 2002/58/EC (e-Privacy) and to help users understand how their personal information is processed in the targeted advertising model, and that effective controls are available, which includes greater transparency in relation to the privacy settings, and the design and prominence of privacy notices;
 2. Stresses that the research argument exemption in European Union data protection law can never be used as a loophole for data misuse;
 3. Takes note of Facebook's statement that it exclusively uses data of non-Facebook users to create aggregated datasets from which it derives conclusions about how the service is used;
 4. Emphasises the need for much greater algorithmic accountability and transparency with regard to data processing and analytics by the private and public sectors and any other actors using data analytics, as an essential tool to guarantee that the individual is appropriately informed about the processing of their personal data;
 5. Takes the view that the digital age requires electoral laws to be adapted to this new digital reality and suggests Member States introduce an obligatory system of introduce an obligatory system of digital imprints for electronic campaigning and advertising. Any form of political advertising should include easily accessible and understandable information on the publishing organisation and who is legally responsible for spending so that it is clear who sponsored campaigns, similar to existing requirements for printed campaign materials currently in place in various Member States;
 6. Notes that Facebook has updated its privacy settings to allow users to opt-out from targeting, including the showing of advertisements based on information obtained from third parties and the use of their personal information collected by Facebook to show advertisements on other websites or platforms;
 7. Recommends all online platforms distinguish political uses of their online advertising products from their commercial uses;
 8. Believes that the requirement to verify the identity, location and sponsor of political advertisements recently introduced by Facebook in the US is a good initiative which will increase transparency and contribute to the fight against election meddling by foreign actors; urges Facebook to introduce the same requirements for political

advertisements in Europe;

9. Believes that profiling for political and electoral purposes, as, pursuant to EU data protection law, it refers to political or philosophical opinions, should be prohibited and is of the opinion that social media platforms should monitor and actively inform authorities if such behaviour occurs;
10. Urges social media platforms, political parties and the advertising industry to work closely with the European Commission to develop sector-wide Codes of Conduct that include at least guidelines for ethical campaigning in the digital age and cooperation methods with authorities in charge of verifying electoral processes in Member States;
11. Considers election interference to be a great challenge for democracy which requires a joint effort involving service providers, regulators and political actors and parties; welcomes the intention of the Commission to provide recommendations in this regard;
12. Is of the opinion that if companies fail to agree and implement such a Code of Conduct on ethical campaigning, the European Commission should introduce regulation to make such ethical rules compulsory;
13. Recalls Facebook of its promised made on giving access to the data about the alleged voting manipulation to independent academics and expects to be informed before the end of the year 2018 on the main findings and proposed remedies;
14. Notes the actions undertaken by Facebook to counter data misuse, including the disabling or ban of applications suspected of misusing user data; expects Facebook to act swiftly on reports regarding suspicious or abusive applications;
15. Stresses that social media platforms are not merely passive platforms that only group user generated content but highlights that technological developments have widened the scope and role of such companies by introducing algorithm based advertising and content publication, concludes that this new role should be reflected in the regulatory field;
16. Notes with regret that Facebook was not willing to send staff members with the appropriate technical level and of corporate responsibility to the hearings and points out that such an approach is detrimental to the trust European citizens have in social platforms; regrets that Mark Zuckerberg did not want to attend a public hearing with Members;
17. Takes note of the privacy improvements that Facebook has undertaken after the Facebook/ Cambridge Analytica scandal, but recalls that Facebook promised to hold a full internal audit of which the European Parliament has not yet been informed and recommends that Facebook make substantial modifications that would also affect the core business model and the structure of its platform;
18. Urges Facebook to allow and enable ENISA and the EDPB to carry out a full and independent audit of its platform investigating data protection and security of user personal data and to present the findings of such an audit to the EC, EP and national

- parliaments; such an exercise should also be carried for other major platforms;
19. Urges social media platforms to label content shared by bots and to follow in this regards transparent rules, to speed up the process of removing fake accounts and comply with court orders to provide details of those creating fake or defamatory content;
 20. Calls on all online platforms providing advertising services to political parties and campaigns to include expertise within the sales support team who can provide political parties and campaigns with specific advice on transparency and accountability in relation to how data is used to target users;
 21. Calls on all online platforms to urgently roll out planned transparency features in relation to political advertising, which should include consultation and evaluation of these tools by national authorities in charge of electoral observation and control;
 22. Recommends that it should be a requirement that third-party audits be carried out after referendum campaigns are concluded to ensure personal data held by the campaign is deleted, or if it has been shared, that the appropriate consent has been obtained;
 23. Calls on Facebook to improve its transparency to enable users to understand how and why a political party or campaign might target them;
 24. Takes the view that data protection authorities should have the same, if not more technical expert knowledge as those organisations under scrutiny. Suggests this objective could be reached by introducing funding by a levy on the sector concerned;
 25. Recalls that Facebook is a self-certified organisation under the EU-US Privacy Shield and as such benefited from the adequacy decision as a legal ground for the transfer and further processing of personal data from the European Union to the United States;
 26. Recalls its Resolution of 5 July 2018 on the Adequacy of the protection afforded by the EU-US Privacy Shield and, in view of the acknowledgement by Facebook that major privacy breaches occurred; calls on the US authorities responsible for enforcing the Privacy Shield to act upon such revelations without delay in full compliance with the assurances and commitments given to uphold the current Privacy Shield arrangement and, if needed, to remove such companies from the Privacy Shield list; welcomes, in this regard, the removal of Cambridge Analytica from the Privacy Shield in June 2018; calls also on the competent EU data protection authorities to investigate such revelations and, if appropriate, suspend or prohibit data transfers under the Privacy Shield; expects the FTC, as the responsible US authority to provide the Commission with a detailed summary of its findings once it has concluded its investigation into the data breach involving Facebook and Cambridge Analytica and to take appropriate enforcement action against the companies involved to provide an effective deterrent;
 27. Notes that the misuse of personal data affects the fundamental rights of billions of people around the globe; considers that the GDPR and the e-Privacy Directive provide for the highest standards of protection; regrets that Facebook decided to move 1.5 billion non-EU users out of the reach of the protection of the GDPR and the e-Privacy

- Directive; urges all online platforms to apply the GDPR standards (and the e-privacy) to all their services, regardless of where they are offered, as high standard of protection of personal data is increasingly seen as a major competitive advantage;
28. Calls on the European Commission to upgrade the competition rules to reflect the digital reality and to look into the business model of social media platforms and their possible monopoly situation, taking into due account the fact that such a monopoly could be present rather due to the specificity of the brand and the amount of personal data that is held rather than an traditional monopoly situation and to take the necessary measures to remedy this;
 29. Requests the European Parliament, the Commission, the Council and all other European Union institutions, agencies and bodies to verify that the social media pages and the analytical and marketing tools used on their respective websites should not by any means put to risk the personal data of citizens; suggests them to evaluate their current communication policies in that perspective which may result in considering closing their Facebook accounts as a necessary condition to protect the personal data of every individual contacting them;
 30. Urges Council to continue negotiations on the E-Privacy Regulation and to strike an agreement with the European Parliament so as to ensure that the rights of citizens especially regarding the protection of users against targeting are protected;
 31. Requests the Commission audit the activities of the advertising industry on social media and propose legislation in case the sector and concerned parties cannot find agreement on voluntary Codes of Conduct with dissuasive measures;
 32. Calls on the data protection authorities at national and European level to undertake a thorough investigation into Facebook and its current practises so that the new consistency mechanism of the General Data Protection Regulation can be relied upon to establish an appropriate and efficient European enforcement response;
 33. Is of the opinion Eurojust should urgently initiate, in cooperation with Member States authorities a special investigation into the alleged misuse of the online political space by foreign forces; calls on the Commission to swiftly come up with the necessary proposals to enlarge the competences of EPPO to include prosecution of crimes against electoral infrastructure;
 34. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the United States of America and the Council of Europe and the CEO of Facebook.