



2020/2789(RSP)

13.1.2021

DRAFT MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission

pursuant to Rule 132(2) of the Rules of Procedure

on the ruling of the ECJ of 16 July 2020 - Data Protection Commissioner v
Facebook Ireland Limited, Maximilian Schrems (“Schrems II”) - Case C-
311/18
(2020/2789(RSP))

Juan Fernando López Aguilar

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

European Parliament Resolution on the ruling of the ECJ of 16 July 2020 - Data Protection Commissioner v Facebook Ireland Limited, Maximillian Schrems (“Schrems II”) - Case C-311/18 (2020/2789(RSP))

The European Parliament,

- having regard to the Charter of Fundamental Rights of the European Union, particularly Articles 7, 8, 47, and 52,
- having regard to the judgment of the Court of Justice of 16 July 2020 in case C-311/18, Data Protection Commissioner v Facebook Ireland Limited and Maximillian Schrems¹ (Schrems II);
- having regard to the judgment of the Court of Justice of 6 October 2015 in Case C-362/14 Maximillian Schrems v Data Protection Commissioner² (Schrems I);
- having regard to the judgment of the Court of Justice of 6 October 2020 in case C-623/17 Privacy International v Secretary of State of Foreign and Commonwealth affairs³;
- having regard to its Resolution of 5 July 2018 on the adequacy of the protection afforded by the EU-US Privacy Shield⁴;
- having regard to its Resolution of 25 October 2018 on the use of Facebook users’ data by Cambridge Analytica and the impact on data protection⁵;
- having regard to its Resolution of 23 November 2020 on the EU Trade Policy Review⁶;
- having regard to Regulation (EU) 2016/679, the General Data Protection Regulation (GDPR)⁷;
- having regard to Recommendations 01/2020 of the European Data Protection Board on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data and 02/2020 on the European Essential Guarantees for

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62018CA0311&qid=1610640279033>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62014CJ0362>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CJ0623>

⁴ P8_TA(2018)0315, https://www.europarl.europa.eu/doceo/document/TA-8-2018-0315_EN.html

⁵ P8_TA(2018)0433, https://www.europarl.europa.eu/doceo/document/TA-8-2018-0433_EN.html

⁶ P9_TA(2020)0337, https://www.europarl.europa.eu/doceo/document/TA-9-2020-0337_EN.html

⁷ 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), OJ L 119, 4.5.2016, p. 1–88, <http://data.europa.eu/eli/reg/2016/679/oj>

surveillance measures⁸;

- having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas the Court of Justice of the EU (ECJ) in the “Schrems I” judgment pointed out that indiscriminate access by intelligence authorities to the content of electronic communications violates the essence of the right to confidentiality of communications as provided in Article 7 of the Charter;
- B. Whereas the Court in the “Schrems II” judgment pointed out that the United States (US) do not provide sufficient legal remedies for non-US persons against the mass surveillance, and that this violates the essence of the right to a legal remedy as provided in Article 47 of the Charter;
- C. Whereas in its Resolution of 25 October 2018, the European Parliament had already called on the Commission to suspend the Privacy Shield;

GENERAL OBSERVATIONS

1. Takes note of the ECJ ruling of 16 July 2020, in which the Court upheld the validity of Decision 2010/87 on standard contractual clauses (SCCs) deeming them an effective mechanism to ensure compliance with the level of protection provided in EU law; notes further that the Court invalidated the Commission Decision 2016/1250 on the adequacy of the protection provided by the EU-US Privacy Shield;
2. Believes that the ECJ ruling has significant implications for adequacy decisions concerning third countries; reaffirms the need for legal clarity and certainty;
3. Is concerned that the whole “Schrems II” case was started by the Irish Data Protection Commissioner, instead taking a decision within its powers pursuant to Article 58 GDPR; shows deep concern that several complaints against breaches of the GDPR filed on 25th May 2018, have not yet been decided by the Irish Data Protection Commissioner, which is the lead authority for these cases; strongly condemns the attempt of the Irish Data Protection Authority to shift the costs of the judicial procedure to Maximilian Schrems, which would have created a massive chilling effect; calls on the Commission to start infringement procedures against Ireland for not properly enforcing the GDPR;
4. Urges the Commission to publish further guidance on international data transfers for companies, in particular for SMEs, including on the additional safeguards required for transfers using SCCs;

STANDARD CONTRACTUAL CLAUSES

5. Takes note of the Commission draft implementing decision and draft SCCs; welcomes the fact that the Commission is currently seeking feedback from stakeholders on this

⁸ https://edpb.europa.eu/our-work-tools/public-consultations-art-704/2020/recommendations-012020-measures-supplement-transfer_en
<https://edpb.europa.eu/our-work-tools/our-documents/recommendations/edpb-recommendations-022020-european-essential>

draft;

6. Takes note of the European Data Protection Board (EDPB) Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data; is concerned by potential conflicts of these recommendations with the Commission proposal for SCCs; considers that more detailed guidelines from the EDPB are required;
7. Believes that it is crucial that EU companies rely on solid mechanisms compliant with the ECJ judgement; finds, in this regard, that the current Commission's proposal for a SCC template should have to take duly into account all the relevant recommendations; supports a toolbox of supplementary measures, e.g. security certification and encryption safeguards, that are accepted by regulators;
8. Points out that for data controllers that fall within the scope of the US Foreign Intelligence Surveillance Act, a transfer of personal data from the Union is not possible under these SCCs, due to the high risk of mass surveillance; only a comprehensive reform of surveillances practices in the US can sustainably address this problem and provide legal certainty to businesses and data subjects;
9. Reminds that a large number of SMEs make use of SCCs; stresses that companies and SMEs urgently need clear guidelines and assistance in the application and interpretation of the Court ruling;
10. Highlights the limited bargaining power and legal capacity of European SMEs which, through the mandated third country self-adequacy assessments, are expected to determine the complex legal frameworks of different third countries; urges the Commission and the EDPB to thoroughly examine the necessity and feasibility of any required supplementary measures, especially for SMEs;
11. Urges national supervisory authorities to use their respective powers referred to in Article 3 of the draft implementing decision and pursuant to Article 58 of the GDPR in such cases;

PRIVACY SHIELD

12. Notes that, despite improvements of the Privacy Shield compared to the Safe Harbour arrangements, the ECJ found that the EU-US privacy shield does not guarantee an essentially equivalent, and therefore adequate level of protection to that provided by the GDPR and the EU Charter, particularly because of the conditions put in place with regard to the access by US public authorities of personal data transferred under the Privacy Shield and the absence of actionable rights for EU data subjects before the US courts against the US authorities;
13. Reminds the Parliament's resolution of 2018 on the Privacy Shield, which underlined the risk of the invalidation of the Privacy Shield by the ECJ;

MASS SURVEILLANCE AND LEGAL FRAMEWORK

14. Encourages the Commission to continue monitoring the use of mass surveillance technologies in the United Kingdom;

15. Points out that neither California Consumer Privacy Act (CCPA) in the US nor any of the federal proposals so far meet the requirements of the GDPR for an adequate level of protection; encourages the US federal legislator to adopt a national-level strong comprehensive federal data protection and privacy act that meets those requirements;
16. Points out that such consumer data protection and privacy legislation will not by itself remedy the fundamental issues found by the Court on mass surveillance by US intelligence services and the insufficient access to remedy; encourages the US federal legislator to reconsider modifications to section 702 of the FISA Act, Executive Order 12333 and Presidential Policy Directive 28, particularly with regard to granting same level of protection between EU and US citizens;

ADEQUACY DECISIONS

17. Calls on the Commission to take all the necessary measures to ensure that any further arrangement with the US fully complies with Regulation (EU) 2016/679, with the EU Charter, and every aspect of the ECJ judgement;
18. Recalls the Commission's obligation to review all the adequacy decisions adopted under the Directive EC 95/46 applying the conclusions of the "Schrems I and II" judgments to assess whether an essentially equivalent level of protection is afforded;
19. Calls upon the Commission not to adopt any new adequacy decision in relation to the US, unless meaningful reforms in laws and practices in the area of access to information by public authorities are introduced, in particular for national security and intelligence purposes;
20. Calls on the Commission to publish an updated list of criteria it considers when evaluating whether a third country qualifies for an adequacy decision;
21. Instructs its President to forward this resolution to the Commission, the European Council, the Council, the EDPB and the national parliaments;