



Facebook case: Groundbreaking opinion on transferring personal data to the US

The Opinion of the Advocate General of the Court of Justice of the European Union, dated 23 September 2015, may result in reviews of, and a reduction in, personal data transfers from Europe to the US. Currently no permission is needed if the data recipient is a company located in the US and is registered in the Safe Harbor List.

Austrian law school graduate, Maximillian Schrems (27), has been on Facebook since 2008. Following the affair of former CIA employee Edward Snowden, who published information about the the US security services' massive global monitoring of telephones and electronic communication, Schrems in 2013 filed a complaint against Facebook with the Irish data protection authority. Facebook has a subsidiary in Ireland that stores data of European Facebook users on servers located in the US. Because Facebook stores data on servers in the US, Schrems argued that it assists in the US's massive surveillance. According to Schrems, the transfer of data should cease because of lack of protection against monitoring by the US.

The Irish data protection authority rejected the complaint in reference to the Commission's decision, according to which personal data from EU Member States may be freely transferred to the US within the framework of the so called Safe Harbor Programme. Personal data transfers to companies located in the US and included in the "Safe Harbor List" (such as Facebook) do not require special permission from the national data protection authority.

Within the framework of judicial review, case C - 362/14 came before the European Union Court of Justice. On Wednesday 23 September 2015, the Advocate General Yves Bot issued his long awaited Opinion in the case. The Advocate General expressed his view that national supervisory authorities may review and suspend data transfers to the US regardless of the Commission's decision. In his view the Commission's decision is invalid and he recommends suspending application of the decision.

It will be interesting to follow the reaction of the Court of Justice to the Advocate General's Opinion. If it supports his Opinion, national authorities may proceed to review personal data transfers to foreign companies that have so far been excluded from review based on their inclusion on the Safe Harbor List.

If national authorities review and suspend personal data transfers to the United States, it would cause problems to companies that transfer their employees' or customers' personal data to parent companies in the US. Users of social networking, cloud computing and e-mail services whose providers have their servers in the US could also be affected.

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