



DELTA legal

Legal News

Snowden's revelations put data flow between Europe and US at risk: Advocate General's groundbreaking opinion on the personal data transfer to USA

Yesterday, 23 September 2015, the Court of Justice of the European Union published the Advocate General's Opinion in "Facebook" case (No C-362/14, Maximilian Schrems v Data Protection Commissioner) concluding that despite the Commission decision that the protection of personal data in the United States is adequate, national authorities can suspend the transfer of the data of European Facebook subscribers to servers located in the United States and that Commission decision 2000/520/EC is invalid.

The practices of data surveillance in the USA endanger data protection of EU citizens

In this case, Mr Schrems lodged a complaint with the Irish data protection authority, claiming that, in the light of the revelations made by Edward Snowden in 2013 concerning the activities of the United States intelligence services, the law and practices of the United States offer no real protection against data surveillance by the United States. The Irish authority rejected the complaint, on the grounds of Commission decision 2000/520/EC, pursuant to which the United States ensure an adequate level of protection of the personal data transferred under the 'safe harbour' scheme.

Advocate General Yves Bot is however of the opinion that the existence of such a Commission decision cannot eliminate or even reduce the national supervisory authorities' powers under Directive 95/46/EC. If a national supervisory authority considers that a transfer of data undermines the protection of citizens of the EU as regards the processing of their data, it has the power to suspend that transfer, irrespective of the general assessment made by the Commission in its decision. The power conferred by the directive on the Commission does not affect the powers which the directive has conferred on the national supervisory authorities.

We will monitor the developments for your benefit

Furthermore, according to the Advocate General, where systemic deficiencies are found in the third country to which the personal data is transferred, the Member States must be able to take the measures necessary to safeguard the fundamental rights protected by the Charter of Fundamental Rights of the EU. Given such a finding of infringements of the fundamental rights of citizens of the Union, the Commission ought to have suspended the application of the decision, even though it is currently conducting negotiations with the United States in order to put an end to the shortcomings found.

Such opinion could obviously have huge business and political consequences, and it already started heated debate within a professional community. We will keep you informed about the course and final decision of this case.



For more information, please contact Lýdia Cadete at lydia.cadete@deltalegal.cz or Michal Zahradník at Michal.zahradnik@deltalegal.cz or your usual contact person in our office.

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