



PRESS RELEASE

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BREAKING: Top Court in Europe Invalidates EU-U.S. Privacy Shield, Citing Lack of Privacy Safeguards and Overbroad U.S. Surveillance Laws

WASHINGTON, DC – The Court of Justice for the European Union (CJEU) has issued its decision in *Data Protection Commissioner v. Facebook & Max Schrems*, a case concerning transfers of personal data by Facebook between the EU and the United States. The case arises from a complaint filed by the Irish Data Protection Commissioner in Ireland, where Electronic Privacy Information Center (EPIC) participated as an *amicus curiae*, along with the United States, Digital Europe, and the Business Software Alliance. The case was referred by the Irish court to the CJEU, the highest court in Europe, to address whether Facebook’s use of standard contractual clauses provided adequate protection for personal data transferred to its U.S. subsidiary. But the Court also sought arguments on the validity of the EU-U.S. Privacy Shield agreement, which the European Commission had previously concluded provided adequate protection for personal data.

The CJEU ruled that the Privacy Shield does not provide adequate protection, and invalidated the agreement. The court also ruled that European data protection authorities must stop transfers of personal data made under the standard contractual clauses by companies, like Facebook, subject to overbroad surveillance. This decision has significant implications for U.S. Companies and for the U.S. Congress because it calls into question the adequacy of privacy protection in the United States.

The case was brought by Austrian lawyer and privacy advocate Max Schrems, who argues that given the scope of the United States' mass surveillance laws, Facebook's data transfers to the United States violate the privacy rights of Europeans. EPIC was admitted to file amicus submissions in the case to "provide a counterbalancing perspective from the US Government on the position in the US."

At its core, this case is about a conflict of law between surveillance laws in the United States, which authorize broad and suspicionless surveillance of foreigners abroad, and EU data protection laws that protect the privacy of personal data as a fundamental right. Mr. Schrems first brought his complaint to the data protection commissioner following the Snowden revelations in 2013, which made public for the first time the extent of U.S. Intelligence Community access to personal data held by Facebook and other internet companies. As Mr. Schrems explained in a [statement](#) this morning "*the EU will not change its fundamental rights to please the NSA, the only way to overcome this clash is for the US to introduce solid privacy rights for all people – including foreigners. Surveillance reform thereby becomes crucial for the business interests of Silicon Valley.*"

"This is another landmark ruling for privacy rights by the Court of Justice, and a clear signal that the United States needs to reform its surveillance laws or risk losing its position as a global technology leader. Congress should act quickly to bring U.S. law in line with international human rights standards." said Alan Butler, EPIC Interim Executive Director and General Counsel.

EPIC played a key role in the case as an amicus curiae in both the Irish High Court and the CJEU. As EPIC explained in its [submissions](#) to the Irish court, U.S. surveillance laws fundamentally discriminate between U.S. and non-U.S. persons "and impose restrictions primarily on the collection, use, and dissemination of U.S. person communications and information." This disparate treatment is at odds with the fundamental rights guaranteed in the European charter. And companies that seek to transfer data under standard contractual clauses have an obligation to confirm that those transfers do in fact provide adequate protection for personal data. If the contracts themselves do not provide adequate protection, then data protection authorities have an obligation to block the transfers.

This ruling has immediate implications for U.S. legislators and others working on privacy and surveillance policy, but it does not leave a legal vacuum. Necessary data flows can still be undertaken pursuant to the General Data Protection Regulation, but the U.S. will no longer be treated as having a special arrangement

under Privacy Shield. The only way for the U.S. to gain that special treatment is to enact adequate protections in law for all personal data, including that of non-U.S. persons abroad.

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EPIC was represented in this case by the Free Legal Advice Centres (FLAC) and by barristers Grainne Gilmore and Colm O'Dwyer, SC.

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Key Terms: Court of Justice for the European Union (CJEU), Charter of Fundamental Rights for the European Union (Article 7 & Article 8), EU-U.S. Privacy Shield, General Data Protection Regulation (GDPR), Foreign Intelligence Surveillance Act (FISA), Executive Order 12,333

ABOUT EPIC

The Electronic Privacy Information Center (EPIC) is a nonpartisan, public interest research center in Washington, DC. EPIC was established in 1994 to focus public attention on emerging privacy and civil liberties issues and to protect privacy, freedom of expression, and democratic values in the information age. EPIC pursues a wide range of program activities including policy research, public education, conferences, litigation, publications, and advocacy. EPIC routinely files amicus briefs in federal courts, pursues open government cases, defends consumer privacy, organizes conferences for NGOs, and speaks before Congress and judicial organizations about emerging privacy and civil liberties issues. EPIC works closely with a distinguished advisory board, with expertise in law, technology and public policy.

REFERENCES

EPIC: Data Protection Commissioner v. Facebook & Max Schrems (CJEU)
<https://epic.org/privacy/intl/dpc-v-facebook/cjeu/>

NOYB, *CJEU Media Page*
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