

Data Protection Authorities in Ireland, Belgium and Germany requested to review and suspend Facebook's data transfers over US spy programs

On October 6th the European Court of Justice (CJEU) has ruled that transfers of personal data from the European Union to the United States are violating European Fundamental Rights to Privacy and a Fair Procedure and struck down the "Safe Harbor" data sharing deal with the USA in the light of US "mass surveillance" programs exposed by Edward Snowden.

In a first round of coordinated complaints the Data Protection Authorities (DPAs) of Ireland, Belgium and the German City of Hamburg were now legally requested to enforce this judgement on Facebook. Max Schrems (the complainant): *"We want to ensure that this very crucial judgement is also enforced in practice when it comes to the US companies that are involved in US mass surveillance. The court's judgement was very clear in this respect."*

The Irish "Data Protection Commissioner" received a complaint ([PDF](#)) aimed at Facebook's operations in Ireland. Facebook outsourced its international business to Dublin for reasons of tax avoidance. The Belgian Privacy Commissioner received a complaint ([PDF](#)) aimed at Facebook's European Lobbying office in Brussels. Belgian courts have recently held that the Belgian authority has jurisdiction over Facebook. The Hamburg DPA received a complaint ([PDF](#)) aimed at Facebook's Office in Germany.

Alternative Transfer Methods. After "Safe Harbor" was invalidated companies like Facebook, have used contractual agreements (a copy was obtained by the complainant – [PDF](#)) as an alternative to be able to transfer data under the law, but all of them have an exception for cases of illegal "mass surveillance". Gerard Rudden of Ahern Rudden Quigley Solicitors, representing the complainant in Ireland: *"All relevant EU decisions include an exception for cases of mass surveillance. There is no 'quick fix' through alternative transfer methods for companies that are involved in the violation of European fundamental rights."*

New "Safe Harbor" irrelevant. The European Commission has recently announced that it plans to reach an agreement on a successor to "Safe Harbor" until January. Gerard Rudden: *"The Court of Justice has based its findings on the Charter of Fundamental Rights, while a new 'Safe Harbor' may be helpful for most companies, it will not be able to overrule the findings in cases of 'mass surveillance', which is why there is no reason to await the political process underway."*

CJEU judgements broaden jurisdiction of local DPAs. The options to file complaints in jurisdictions other than the main European establishment of a company are backed by recent CJEU judgments in "Google Spain" and "Weltimmo". Max Schrems (the complainant): *"My personal experience with the Irish DPC was rather mixed, which is why I felt involving more active DPAs make proper enforcement actions more likely. I hope the DPAs will cooperate in this case."*

DPAs under duty to act. DPAs are under a legal obligation to enforce the CJEU judgement. If DPAs are not enforcing the law as interpreted by the CJEU, officeholders may even face criminal charges. Schrems: *"I have absolutely no doubt that the vast majority of all European DPAs properly investigate complaints and take reasonable actions. However in one particular case I felt the need to clarify that willful resistance to do the job may have personal consequences for officeholders."*

Other PRISM companies. After the invalidation of the “Safe Harbor” decision by the CJEU more than 4.000 US companies lost the legal basis to transfer data from the EU to the United States. These companies are not directly affected by the complaint. However other that participated in the “PRISM” program (like Apple, Google, Microsoft or Yahoo) may face similar complaints. Schrems: *“We are reviewing he situation in relation to all PRISM companies right now.”*

Reasonable Implementation Periods. All complaints suggest a reasonable implementation period, to allow the relevant companies to take all necessary technical and organizational steps to comply with the CJEU judgement. These options may range from moving data to Europe, encrypting data that is stored in the United States or reviewing the corporate structure. Schrems: *“Users really don’t have to worry that their screens go dark, but I hope we will see serious restructuring in the background – just like Microsoft has now started to offer more secure data centers in Germany, that are supposedly not subject to US jurisdiction.”*

Further details and documents on europe-v-facebook.org

Further questions: media@europe-v-facebook.org and/or enquiries@arqsolicitors.com

The Hamburg DPA: <https://www.datenschutz-hamburg.de/>

The Belgian DPA: <https://www.privacycommission.be/>

The Irish DPC: <https://www.dataprotection.ie/>