

Comment: Facebook's Irish court win eases pressure on privacy regulators over SCCs

16 Sep 20 | 13:10 GMT

Author: Matthew Newman

In Brief

Facebook's Irish court win over US data transfers this week has given other European privacy authorities some breathing room. Regulators are facing a barrage of complaints from privacy activist Max Schrems against companies' use of Standard Contractual Clauses to transfer Europeans' data to the US, following a landmark EU court ruling in July. Central guidance is still urgently needed to ensure they handle the cases in a coherent way.

Facebook's Irish court win over US data transfers this week has given other European privacy authorities some breathing room to deal with a barrage of complaints that similar transfers are illegal under EU data-protection rules.

The Irish Data Protection Commission had drafted an order for Facebook to stop transferring Europeans' data to the US with immediate effect. But Facebook challenged the order on procedural grounds, and an Irish judge ruled on Monday that the company could pursue a judicial review against the decision (see [here](#)).

In the meantime, Facebook can continue to transfer data to the US under a popular mechanism known as standard-contractual clauses, or SCCs. The judge set a new hearing for November, meaning that a final decision on Facebook's data transfers is months away at least.

That should ease the pressure on other European data-protection authorities, which last week formed two task forces to come up with guidelines on how to deal with complaints against the use of SCCs (see [here](#)). The guidelines are essential to avoid contradictory approaches by different national authorities.

The uncertainty stems from a landmark ruling in July by the EU's top court. The primary effect of the judgment was to invalidate the EU-US Privacy Shield, a data-transfer tool used by more than 5,000 companies. But it also placed strict conditions on the use of SCCs, despite ruling that they are legal in principle (see MLex comment [here](#)).

That created an urgent need for clarity: More than 90 percent of multinational companies rely on SCCs for data transfers. And complaints have flooded in since the Court of Justice ruling: Austrian group Noyb, led by privacy activist Max Schrems — a protagonist in the EU court case — has alone filed 101 complaints against companies across Europe (see [here](#)).

— Guidance needed —

Authorities across Europe will need clear guidance from their umbrella group, the European Data Protection Board, if they are to tackle these and other complaints in a coherent way.

David Stevens, the head of Belgium's data-protection authority, said that it's not "realistic" for

companies to assess the appropriateness of a country's law enforcement and surveillance laws. Authorities could however develop codes of conduct for companies so that they can continue to transfer data, he said at a press conference* yesterday.

In July, a group of German regional data-protection authorities said additional safeguards are needed when organizations rely on SCCs or Binding Corporate Rules for the transfer of personal data outside Europe (see [here](#)). Berlin's data-protection authority suggested that personal data should no longer be transferred to the US at all.

Switzerland, which is outside the EU but has its own data-transfer deal with the US, said that companies can no longer rely on the Swiss-US Privacy Shield. Companies that rely on SCCs need to carry out a risk assessment on a case-by-case basis and appropriate safeguards should be put in place.

— Commission move —

The European Commission is also under pressure to act quickly to ease companies' anxiety about the use of SCCs.

Following the entry into force of the GDPR in 2018, the commission had to update and modernize SCCs to take into account new ways of transferring data. For example, new model contracts were needed for transfer between an EU-based data processor and a non-EU-based sub-processor.

Ideally, the commission should be integrating advice from the EDPB on adequate measures when it updates the SCCs. However, it's not clear that the EU's data-protection authorities will reach an agreement quickly enough for the commission to amend its new model contracts.

The commission will soon circulate its draft SCCs internally, MLex understands. The EDPB will then issue an opinion on them. Justice Commissioner Didier Reynders has vowed that they'll be ready by the end of the year (see [here](#)).

These new SCCs will come some way to ease companies' concerns about new kinds of data transfers, but they won't answer the overarching problem of whether SCCs need to be amended, and how they should be changed to conform with the EU court's decision.

That guidance can only come from the EDPB or following a ruling by a data-protection authority. For now, it seems the authorities will hold off taking quick action, but they will eventually have to address Schrems' dozens of complaints.

Additional reporting by Jakub Krupa.

**Scope Europe, Schrems II - Cloud Industry Unites to Create Global Standard for Transfer of Personal Data, Sept. 15, 2020.*