

Invalidation of European Commission Decision (EU) 2016/1250 on the EU-US Privacy Shield

In its judgment of 16 July 2020 in Case C-113/18, the Court of Justice of the European Union annulled Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 under Directive 95/46 / EC of the European Union European Parliament and the Council on the adequacy of the protection afforded by the EU-US Privacy Shield.

Thus, the CJEU examined the validity of European Commission Decision (EU) 2016/1250 in the light of the requirements of Regulation (EU) 2016/679, taking into account the provisions of the Charter guaranteeing respect for privacy and family life, protection of personal data and the right to effective judicial protection.

In the opinion of the CJEU, the limits on the protection of personal data arising from US domestic law on access to and use by US public authorities of such data transferred from the European Union to a third country are not circumscribed in a way that satisfies they are essentially equivalent to those imposed by European Union law, in accordance with the principle of proportionality, in so far as surveillance programs based on these provisions are not limited to what is strictly necessary.

At the same time, the CJEU emphasized that, although these provisions set out the requirements that the US authorities must comply with when implementing the surveillance programs in question, the provisions do not grant the persons concerned rights of action before the courts against the US authorities.

With regard to the requirement of judicial protection, in the opinion of the CJEU, the Ombudsman's mechanism for the Shield of Confidentiality does not offer guarantees equivalent to those required by EU law, so as to ensure both the Ombudsman's independence and rules allowing him to make decisions that are binding on the US intelligence services. In this regard, the CJEU notes that although Recital (120) of European Commission Decision (EU) 2016/1250 mentions a commitment by the US Government that the intelligence component should be obliged to remedy any breach of the applicable rules detected by the Ombudsman for the Shield. This decision does not contain any indication that the Ombudsman was empowered to take binding decisions in respect of those services, nor does it mention the legal safeguards which would accompany such an , the Ombudsman-type mechanism provided for in European Commission Decision (EU) 2016/1250 does not provide an appeal to a body that provides persons whose data are transferred to the United States with guarantees essentially equivalent to those provided for in Article 47 of the Charter of Rights. fundamental rights of the European Union.

For all these reasons, the Court of Justice of the European Union has annulled Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 under Directive 95/46 / EC of the European Parliament and of the Council on the adequacy of the

protection offered by the EU-US Privacy Shield. The CJEU decision is available at the following link:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=228677&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10304093>

At the same time, the Declaration on the invalidation by the Court of Justice of the European Union of Commission Implementing Decision (EU) 2016/1250 was adopted at the Plenary Session of the European Data Protection Board, held online on 17 July 2020. of 12 July 2016 pursuant to Directive 95/46 / EC of the European Parliament and of the Council on the adequacy of the protection afforded by the EU-US Privacy Shield.

In such a situation, in the absence of a decision on the adequacy under art. 45 para. (3) of Regulation (EU) 2016/679, the transfer of personal data to the United States may be carried out in accordance with one of the following instruments provided by art. 46 of Regulation (EU) 2016/679:

standard data protection clauses,

mandatory corporate rules,

codes of conduct and certification mechanisms,

Also, the transfer of personal data to the United States may be made under the derogations provided in art. 49 of Regulation (EU) 2016/679.

The English version of the EDPS Declaration is available at the following link:

https://edpb.europa.eu/news/news/2020/statement-court-justice-european-union-judgment-case-c-31118-data-protection_en .