

Director of the Personal Data Protection Agency, Mr. Zdravko Vukić, participated in the 34th plenary session of the European Data Protection Board held on July 17, 2020. The main topic of discussion was the judgment of the Court of Justice of the European Union in case C-311/18 Data Protection Commissioner / Maximilian Schrems and Facebook Ireland, which annulled Decision 2016/1250 on the adequacy of protection under the Euro-American privacy system. In contrast, the Court ruled that Commission Decision 2010/87 on standard contractual clauses for the transfer of personal data to processors in third countries is valid.

Agenda of the 34th plenary session of the European Data Protection Board

https://edpb.europa.eu/sites/edpb/files/files/file1/20200717plen1.2_agenda_public.pdf

Press release Court of Justice of the European Union

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-07/cp200091en.pdf>

Full text of the judgment

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=228677&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=10300380>

At the meeting in question, the members of the European Data Protection Board adopted the following statement:

The European Data Protection Board welcomes the judgment of the Court of Justice of the European Union, which emphasizes the fundamental right to privacy in the context of the transfer of personal data to third countries. The decision of the Court of Justice of the European Union is of great importance. The European Data Protection Board took note of the fact that the Court of Justice of the European Union annulled Decision 2016/1250 on the adequacy of protection provided by the EU-US Privacy Shield and the fact that Commission Decision 2010/87 on standard contractual clauses considered valid for the transfer to personal data processors established in third countries.

With regard to the Privacy Shield, the European Data Protection Board points out that, in line with the ruling, the EU and the US should adopt a complete and effective framework to ensure that the level of personal data protection in the US is equal to that guaranteed in the European Union.

The European Data Protection Board has previously identified some of the main shortcomings of the Privacy Shield on which the Court of Justice of the European Union bases its judgment annulling Decision 2016/1250, and has questioned US Shields' annual joint audits in its reports on compliance necessity and proportionality.

The European Data Protection Board intends to constructively contribute to the security of transatlantic data transmission for the benefit of citizens of the European Economic Area and organizations, and is ready to assist the European Commission and the US in building a new framework fully in line with the General Regulation.

The judgment of the Court of Justice of the European Union emphasized that standard contractual clauses serve to ensure a level of protection essentially equal to that guaranteed by the General Data Protection Regulation, in the light of the EU Charter of Fundamental Rights. It is the responsibility of the data exporter and importer to assess whether the country to which the data is transferred provides an appropriate level of protection. In carrying out such a preliminary assessment, the exporter (if necessary with the assistance of the importer) shall take into account the content of the standard contractual clauses, the specific circumstances of the transfer, as well as the legal regime applicable in the importer's country. The examination of the latter shall be carried out in the light of the non-exhaustive factors set out in Article 45 (2) of the General Data Protection Regulation.

If the result of this assessment is that the importing country does not provide an equivalent level of protection, the exporter may need to consider introducing additional measures compared to those included in the standard contractual clauses.

The European Data Protection Board is further considering what these additional measures could consist of.

The judgment of the Court of Justice of the European Union also emphasized the importance of the exporter and importer respecting their obligations included in the standard contractual clauses, and in particular the information obligations regarding changes in legislation in the importer's country. If these contractual obligations are not fulfilled or cannot be fulfilled, the standard contractual clauses oblige the exporter to suspend the transfer or terminate the standard contractual clauses or to notify the competent supervisory authority in his country if he intends to continue the data transfer.

The European Data Protection Board notes the obligation of the competent supervisory authorities to suspend or prohibit the transfer of data to a third country in accordance with standard contractual clauses, in case the competent supervisory authority, taking into account all circumstances of that transfer, finds that the standard contractual clauses are not are respected or cannot be respected in that third country, and the protection of the transferred data cannot be ensured by other means, especially if the controller or processor has not already suspended or interrupted the transfer.

We remind you that the European Data Protection Board has issued guidelines on derogations from Article 49 of the General Data Protection Regulation https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_2_2018_derogations_en.pdf and

that these derogations can be apply on a case-by-case basis.

The European Data Protection Board will consider the judgment in more detail and provide further clarification to stakeholders and guidance on the use of personal data transfer instruments to third countries in accordance with the judgment in question.