

Overview	Legal Change	Action required
<p>The Meta (Facebook) decision by the Ireland Data Protection Commission (IDPC) on its personal data transfers to the US has been published.</p>	<p>The IDPC have decided that Meta's movement of Irish personal data to the US is in breach of Article 46 of the EU General Data Protection Regulation (GDPR).</p> <p>Under the decision, Meta must:</p> <ul style="list-style-type: none"> - suspend all EU transfers to the US; - stop, within 6 months, all unlawful processing (including storage) in the US of EU personal data transferred in breach of GDPR; - pay a fine of €1.2 billion. <p>Meta is appealing the decision to the Court of Justice of the European Union (CJEU).</p> <p>Essentially, the IDPC found that Meta's use of "standard contractual clauses" and other data transfer safeguards did not compensate for the deficiencies in US law which permit the US government to intercept and demand disclosure of EU personal data.</p>	<p>The decision ends for Meta the protection it hoped was provided by the use of standard contractual clauses in Ireland.</p> <p>The decision applies to Ireland only. However, the basis of the IDPC decision might prove persuasive to other EU states. If the CJEU rejects the Meta appeal, that decision will bind all member states.</p> <p>IMPLICATION: unless and until the new EU-US Data Protection Framework is agreed and in place, all transfers to the US of EU personal data are vulnerable to legal challenge and its consequences.</p> <p>The IDPC did not consider the use of Binding Corporate Rules. However, as these require supervisory approval by competent DP authorities, it is probable similar concerns will arise.</p> <p>For now, companies best chance is to continue to rely on standard contract clauses but with additional safeguards in the hope that they will be viewed differently from Meta by DPAs.</p>
<p>EU-US Data Protection Framework (DPF)</p>	<p>Following the invalidation (by the Schrems cases) of previous EU-US data transfer schemes (Safe Harbor and Privacy Shield), the EU Commission has been working on establishing a new framework - DPF.</p> <p>It is possible that the DPF will be ready this summer. There remain some concerns among MEPs as to the robustness of the protections it provides.</p> <p>Until the DPF comes into effect the uncertainty will remain. And even if it does, it still has to avoid being shot down by the CJEU.</p> <p>If the Meta appeal fails and the DPF is not agreed, Meta (and other similar organisations) face having to process EU personal data within the EU or pulling out of the EU altogether .</p>	<p>Await developments.</p> <p>Hope.</p>



<p>UK Position</p>	<p>The IDPC decision does not apply in the UK and nor will any CJEU decision on Meta or indeed the DPF directly.</p> <p>The UK is preparing legislation to lighten the burden on business of data protection rules now it does not need to apply GDPR. This will include making international data transfers, such as to the US, easier.</p> <p>However, the UK has largely applied the decision Schrems II decision. While it does take a slightly more business friendly approach than the EU, the UK is unlikely to drift too far from the EU position for fear of the trade consequences.</p>	<p>Track the progress of the Data Protection and Digital Information Bill.</p>
<p>Max Schrems – None or Your Business (NOYB)</p>	<p>NOYB (responsible for the deaths of Safe Harbor and Privacy Shield at the hands of the CJEU) has stated that they will continue to attack all EU-US data transfer frameworks until US data laws change fundamentally.</p>	<p>However, this will take a few years.</p>

This is a high level general update only. Legal advice should be obtained on specific circumstances.

