The International Data Transfer: Standard European Data Protection recovered?

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In the Judgment of October 6, the Court of Justice of the European Union (ECJ) has invalidated the Commission Decision 200/520 / EC, stating that the United States was a "safe harbor" guaranteeing an adequate level of protection of personal data (http://www.export.gov/safeharbor). Therefore, the regime which until now allowed businesses to obtain data from European users and transfer it to servers un the United States, was annulled. They did not have to be under control of the privacy policies of the European Union, which were much stricter. The ECJ considers, furthermore, that this Commission decision can't leave without effect, nor limit, the powers available to the National Data Protection Authorities on the control of transfers of personal data to third countries.

The ECJ ruling is issued following a pre-judicial question raised by the Irish Supreme Court when resolving a complaint filed by a European student (Max Schrems) who considered the transfer of information from the Irish subsidiary of the social network Facebook to servers located in the territory of the United States, where they are object to treatment, did not have due process. The revelations of former CIA agent Edward Snowden, on the access of the National Security Agency to all personal data contained in the servers associated with the social network Facebook, evidenced the lack of guarantees for the security of the data.

The ECJ Judgment analyzes the provisions of the European Union on data protection (Directive 95/46 / EC of 24 October 1995) and specifically the conditions under which it can perform data transfers to third countries. The Court considers that it is only possible to authorize international data transfers if an adequate level of protection (article 25.6 of Directive 95/46 / EC) is guaranteed and concludes that the decision of 2000/520 / EC on safe harbour in the United States doesn't guarantee a level of protection equivalent to that established by the directive. Previously, and in the same direction, the Economic and Social Council had already expressed its Opinion 2014 / C 424/02, of June 4, 2014.

The ECJ ruling is relevant to the role that the right to data protection, in particular, and the fundamental rights in general can play as limits on trade and the provision of services and should deserve more detailed analysis. However, we should point our briefly three aspects where its effects are projected.

Firstly, we are dealing with a sentence which resets the standard of protection of personal data of European citizens in their relations with the United States, which had been heavily distorted by the decision 2000/520 / EC that stated that the United States was a "Safe Harbor" as an adequate level of protection of personal data was guaranteed.

Secondly, the judgment is placed in the context of negotiations between the United States and the European Union on the Treaty on the Transatlantic Trade and Investment (TTIP) that, with the goal of creating a larger market seeks the reciprocal liberalization of trade in goods and services, eliminating tariff barriers and other obstacles. This has sparked controversy and corresponding concern, precisely in regard to the possible involvement of fundamental rights where we find the right to protection of personal data. These types of provisions had already been tried to adopt in the Multilateral Agreement on Investment (MAI) and the Anti-Counterfeiting Trade Agreement (ACTA) and they did not prospere precisely because of y the degree of rejection that they aroused (Guaman A., TTIP. *The assault of the multinationals to the democracy*, Akal 2015).

Although data protection, as a fundamental right should be excluded from the scope negotiated and the Commission has ensured that it is not within the negotiated ("Fact Sheet on services"), the material connection of data protection with the development of economic services is obvious. The Digital Trade Coalition (DTC) that groups internet and high technology businesses companies presses a TTIP negotiators to include among its provisions the lifting of barriers that prevent the free flow of personal data from the European Union to the United States (Wallach, L. Le Monde Diplomatique, No. 8, pp. 7-11).

Finally, the importance of the emergence of new forms of technological services, such as *"Cloud Computing",* makes issues such as security and privacy require a new common regulation under the European Union. This regulation should clearly establish the rights and obligations of providers, users and owners of the data. In this case, European Data Protection Authorities concluded that the Safe Harbor Principles, themselves could not be considered sufficient to ensure security in data transfer (Opinion 5/2012 on Cloud Computing, the Article 29 Working Party, on July 1, 2012).

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