

Action brought on 16 September 2016 – Digital Rights Ireland v Commission

(Case T-670/16)

Language of the case: English

Parties

Applicant: Digital Rights Ireland Ltd (Bennettsbridge, Ireland) (represented by: E. McGarr, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

declare that the Application is admissible ;

declare that the Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-US Privacy Shield is a manifest error of assessment by the Commission insofar as it finds an adequate level of protection in the US, for personal data, concordant with Directive 95/46/EC¹ ;

declare that the contested decision is null and void and order the annulment of the contested decision relating to the adequacy of the protection provided by the EU-US Privacy Shield;

order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on ten pleas in law.

First plea in law, alleging that the contested decision is not in accordance with Article 25(6) of Directive 95/46, read in the light of Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union.

Second plea in law, alleging that the contested decision is not in accordance with Article 25(6) of Directive 95/46, read in the light of Articles 7, 8 and 47 of the Charter of Fundamental Rights of the European Union and the judgment of the Court of justice of the European Union in Case C—362/14, Schrems.

Third plea in law, alleging that the “privacy principles” and/or the official (US) “representations and commitments” contained in Annexes I, III to VII of the contested decision do not constitute “international commitments” within the meaning of Article 25(6) of Directive 95/46.

Fourth plea in law, alleging that the provisions of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (“FISA Amendments Act of 2008”) constitute legislation permitting public authorities to have access on a generalised basis to the content of electronic communications and consequently are not concordant with Article 7 of the Charter of Fundamental Rights of the European Union.

Fifth plea in law, alleging that the provisions of the FISA Amendments Act of 2008 constitute legislation permitting public authorities to have secret access on a generalised basis to the content of electronic communications and consequently are not concordant with Article 47 of the Charter Fundamental Rights of the European Union.

Sixth plea in law, alleging that by failing to fully transpose the provisions contained in Directive 95/46 (specifically Article 28(3)), the contested decision, on its face, fails to adequately ensure that the European

Union citizens' rights under EU law are fully provided for where their data is transferred to the United States of America.

Seventh plea in law, alleging that the contested decision is incompatible with Articles 7 and 8 and Article 52(1) of the Charter of Fundamental Rights of the European Union.

Eighth plea in law, alleging that insofar as the contested decision allows, or in the alternative fails and has failed to safeguard against indiscriminate access to electronic communications by foreign law enforcement authorities, it is invalid as a breach of the Rights of Privacy, Data Protection, Freedom of Expression and Freedom of Assembly and Association, as provided for under the Charter of Fundamental Rights of the European Union and by the general principles of EU Law.

Ninth plea in law, alleging that insofar as the contested decision allows, or in the alternative fails and has failed to safeguard against indiscriminate access to electronic communications by foreign law enforcement authorities, and fails to provide an adequate remedy to EU citizens whose personal data is thus accessed, it denies the individual the right to an Effective Remedy and the right to Good Administration, contrary to the Charter of Fundamental Rights and the General Principles of EU Law.

Tenth plea in law, alleging that by failing to fully transpose the rights contained in Directive 95/46 (specifically at Article 14 and 15), the contested decision, on its face, fails to adequately ensure that the European Union citizens' rights under EU law are fully provided for where their data is transferred to the United States of America.

¹ Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995 L 281, p. 31.