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EU's Highest Court to Decide Validity of Standard Contractual Clauses

On Oct. 3, 2017, the Irish High Court ruled that the European Court of Justice (ECJ) should decide whether Standard Contractual Clauses (SCC) used to legitimize the transfer of personal data of residents of the European Union and European Economic Area (EU/EEA) to the United States are valid for that purpose.

In its ruling, the Irish High Court stated that the decision regarding the validity of the SCC raises “very major, indeed fundamental, concern to millions of people within the European Union and beyond.” It pointed out that the issue is “relevant to the data protection rights of millions of residents of the European Union”. The Irish Court also acknowledged that the decision also has “implications for billions of euros worth of trade between the EU and the US” and other non-EU countries.

After a 150-page analysis of prior decisions and the arguments of the different parties and participants, the Irish High Court concluded that “there are well founded grounds for believing that the SCC decisions are invalid” and that it is “extremely important that there be uniformity in the application of the Directive [95/46/EC] throughout the European Union on this vitally important issue”.

The referral as it stands is not surprising. Given that the ECJ previously declared the U.S.-EU Safe Harbor Program invalid, and given the importance of the decision on world trade of the EU/EEA, many expected that this matter would ultimately be transferred to the ECJ. So far, the referral to the ECJ does not mean that SCCs have been or will be invalidated. It only means that the Irish High Court concluded that the decision should be made at the highest level of the judiciary of the European Union.

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