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## FOCUS:

### *Personal Data Protection*

EVER SINCE ITS INCEPTION 30 YEARS AGO, ONE OF THE MOST FUNDAMENTAL FUNCTIONS OF AMCHAM HAS BEEN TO MAINTAIN PLATFORMS FOR SHARING PROFESSIONAL KNOWLEDGE AND EXPERIENCE BETWEEN ITS MEMBERS. THERE ARE SEVERAL SUCH PLATFORMS, INCLUDING AMCHAM MONTHLY MEETINGS, THE AMCHAM COMMITTEES, AND ONLINE EXPERT DISCUSSIONS. IN THIS DISPATCH WE PRESENT THE MAIN CONCLUSIONS OF A DISCUSSION HELD ONLINE BY AMCHAM WITH **MIROSLAW SANEK, DEPUTY PRESIDENT OF THE PERSONAL DATA PROTECTION OFFICE (UODO), AND PIOTR DROBEK, DIRECTOR OF UODO ANALYSIS AND STRATEGY DEPARTMENT,** OVER THE REPERCUSSIONS OF A RECENT VERDICT INVALIDATING US-EU AGREEMENTS REGARDING PERSONAL DATA TRANSFERS.

# FOCUS

## *Personal Data Protection*



**Presenting points of view:** Mirosław Sanek, Deputy President of the Personal Data Protection Office (UODO), and Piotr Drobek, Director of UODO Analytics and Strategy Department, meet AmCham members online.

the use of standard contractual clauses requires data controllers to conduct a case-by-case assessment of the level of data protection that these clauses are to provide. The judgment affects all European companies that transfer data from the EU to the US and puts these entities in a world of legal uncertainty.

### **CLEARING DOUBTS**

According to Mirosław Sanek, there are a variety of legal interpretations of the verdict, ranging from the interpretation that nothing has changed to the interpretation that the transfers of personal data to the US from the EU are illegal. Companies in the EU who do business with the US are now in the dark about whether they can send personal data (of their clients, etc.) to their business partners outside of the EU.

Those doubts may be dispelled by the European Data Protection Board (EDPB) when it updates the requirements that standard contractual clauses need to contain following Schrems II. Sanek said that when data protection experts and the business sector discuss the repercussions of Schrems II, it may transpire that new legal solutions should be applied to safeguard personal data outside of the EU.

### **ONE FOR ALL**

Piotr Drobek noted that the UODO could, as a national personal data safety regulator, issue its own regulations governing data transfers outside of the EU. However, such regulations would only be binding for companies registered in Poland. Companies in other EU states would need to follow different regulations, which would lead to procedural mismatches within the EU. This is why the UODO and other like agencies across the EU prefer to wait for the EDPB to update the contractual clauses. “We understand the consequences of such regulations for business and we see the legal complexity of the problem, but our mission is to protect personal data,” Drobek said. He added that once the European Commission announces the new regulations, the UODO will be tasked with implementing them in Poland. The UODO is “open to consulting with the business sector and analyzing solutions from a practical point of view.”

# IN SEARCH OF A BETTER WAY

## **PERSONAL DATA SAFETY REGULATIONS IN THE EU ARE UNDER REVISION FOLLOWING THE EUROPEAN TRIBUNAL OF JUSTICE’S RECENT VERDICT**

In November, AmCham held an online meeting with Mirosław Sanek, Deputy President of the Personal Data Protection Office (UODO), and Piotr Drobek, Director of the UODO Analytics and Strategy Department. The discussion, moderated by Marta Pawlak, Head of Legal & Public Policy at AmCham, focused on the legal repercussions of a judgment passed in July 2020 by the European Court of Justice, which invalidated earlier EU-US agreements regarding the protection of personal data obtained by US companies from the EU.

### **DIFFICULT HISTORY**

The transfer of personal data from the EU to the US has been a controversial issue for a long time. Both the US and the EU assert that they are committed to

upholding individual privacy rights and ensuring personal data protection, including electronic data. The US does not broadly restrict cross-border data flows and has traditionally regulated privacy at a sectoral level to cover certain types of data. The EU, on the other hand, considers the privacy of communications and personal data protection to be fundamental rights codified in EU law. Since 2000, many entities have used EU-US negotiated agreements for cross-border data flows. The first agreement introduced a program called Safe Harbor, which was later upgraded and renamed Privacy Shield. However, the EU’s top court has invalidated successive accords due to concerns regarding US surveillance laws, striking down Privacy Shield in July with the Schrems II judgment. This invalidated the EU-US Privacy Shield and determined that



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