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Op-Ed: “The Challenge to EU-US Data flows Before The General Court in *Latombe* (T-553/23): On Light-Touch Scrutiny and Low-Level Review”

Elaine Fahey

Introduction: EU-US Data Protection Review Court Under Light-Touch Scrutiny in *Latombe*

The recent General Court decision in *Latombe* ([T-553/23](#)) continues a short but high-profile line of case law on the question of checks and balances in EU-US data transfers, which are among the world’s most significant economically and politically. It was the third time the ‘adequacy’ of an EU-US data transfer agreement was assessed by the EU’s highest courts in the last 10 years, with the first two challenges invalidating the EU-US Safe Harbor Framework in 2015 and the EU-US Privacy Shield in 2020. After the Court of Justice struck down the EU-US Privacy Shield in *Schrems II* ([C-311/18](#)), the EU and the US took some time to agree on a way forward that would enable data to flow safely in one of the world’s largest data transfer regimes. This included an agreement after much negotiation to include a ‘transatlantic court’ – a so-called Data Protection Review Court (DPRC) – and independent oversight. These steps were taken to enable an adequacy decision under [Regulation 2016/679](#). No such ‘court’ exists with any other EU-third country partners with adequacy decisions, and its nomenclature proved challenging from day one. The development of this ‘court’ had been supported by a highly EU-disposed US Biden administration, keen to engage with EU law concerns as well as US law.

The EU-US Data Privacy Framework

In March 2022, the EU and the US announced an agreement on a new Data Privacy Framework (DPF), which was finalised in 2023 following extensive involvement from the European Parliament and engagement with numerous stakeholders. The DPF, similar to its predecessor, the EU-US Privacy Shield, comprised both commercial and governmental dimensions. On the commercial side, the DPF maintained the ‘voluntary but binding’ approach of the Privacy Shield, as well as its own predecessor, the so-called Safe Harbour Agreement, towards organisations importing personal information from the EU. Such organisations could self-certify that they complied with the predecessor Privacy Shield, and then freely transfer personal data from EU territory to the US.

On the US government side, the matrix of legal instruments of the DPF consisted of Presidential Executive Order 14086, dated October 7, 2022, on *Enhancing Safeguards for United States Signals Intelligence Activities* (EO 14086), along with a Data Protection Review Court. Intelligence Community Procedures further implemented the privacy and civil liberties safeguards in EO 14086. These developments were far-reaching in their attempts to engage with the Court of Justice’s findings in *Schrems I* ([C-362/14](#)) and *II* ([C-311/18](#)). They specifically addressed concerns that EU citizens were unable to seek review of EU-US data transfer agreements through an independent entity. Upon the entry of the Trump II administration into office, the removal of democratic members from the Privacy and Civil Liberties Oversight Board (PCLOB), a key plank of the DPF aimed at addressing the earlier Court of Justice concerns in *Schrems II*, has stymied its key elements and is reportedly [under litigation](#).

Max Schrems' organisation NOYB, a key protagonist in EU-US data transfer arrangements to date, responded with opposition to the DPF, asserting that the so-called bulk surveillance would continue under the new Executive Order and any data sent to US providers would still end up in programs like PRISM or Upstream.

After the DPF development, the European Commission nonetheless announced that it would grant the US an Adequacy Decision in July 2023. With the Adequacy Decision, the European Commission announced that it had favourably assessed the executive order's changes to the US data-protection framework. However, it was difficult for many to accept that the DPF satisfied the requirement of legal certainty despite its tremendous efforts to pivot US law towards essential equivalence with EU law.

As part of the recent US-EU trade 'deal' in the summer of 2025, the EU agreed to buy more American energy and military equipment, but did not make any apparent concessions on tech regulation. The non-binding Framework Agreement of 21 August 2025 notably makes only two mentions of 'digital' or 'digitalisation'. It was followed by threats of sanctions against European Commission officials implementing the Digital Services Act (DSA), highlighting the sharp turns and high politics of EU-US relations, as well as the curious place of digital matters, despite its economic value.

The Latombe Proceedings and The Recent General Court Decision

Max Schrems was not alone in his attempts to challenge the DPF. In the past, MEPs such as Sophie in 't Veld have litigated many aspects of EU-US data transfers individually without the support of the European Parliament. French MEP Philippe Latombe initiated proceedings to annul the DPF, complaining, inter alia, that the DPRC and actors in the DPF lacked independence as understood under EU law. He alleged infringement of Article 47 of the Charter and Article 45(2) of Regulation 2016/679. Latombe argued that the appeal body set up in the US was not an independent tribunal and did not offer the guarantees similar to those required by EU law.

The General Court has now rejected a challenge by MEP Latombe, which was initiated before the change of administration in the US in early September 2025. The General Court paid limited attention to the issue of *locus standi*, an ostensibly thorny issue in EU law but ultimately not prohibitive of EU-US challenges to date. It instead permitted the litigation in the interest of 'administration of justice'. It stated that it was apparent that safeguards and conditions accompanied the appointment of judges to the DPRC and the DPRC's functioning to ensure the independence of its members. Moreover, judges of the DPRC may be dismissed only by the Attorney General and only when justified, and the Attorney General and intelligence agencies may not hinder or improperly influence their work. The General Court held that the Commission was required to monitor continuously the application of the legal framework on which that decision is based. Thus, if the legal framework in force in the US at the time of the adoption of the adequacy decision, the Commission might decide, if necessary, to suspend, amend or repeal the contested decision or to limit its scope. The General Court rejected the plea alleging that the DPRC was not independent. The General Court found that there was nothing in *Schrems II* to suggest that the collection must necessarily be subject to prior authorisation issued by an independent authority. Rather, the decision authorising such collection must, at least, be subject to ex-post judicial review. It found that, under US law, intelligence activities carried out by US intelligence agencies are subject to ex post judicial oversight by the DPRC. The General Court found that it could not be considered that the bulk collection of personal data by US intelligence agencies fell short of the

requirements arising from *Schrems II* in that regard or that US law had failed to ensure a level of legal protection that is essentially equivalent to that guaranteed by EU law.

Conclusions

The decision of the General Court represents a modest, light-touch and unintrusive review of current EU-US data flow arrangements. EU-US relations constitute a highly politicised context for any Court, yet *Latombe* also has a rather 'historical' feature to its decision. It is said that one of the critical changes in the processing of personal data by US federal agencies since *Schrems I* and II may be the increased deployment of AI systems to make decisions about individuals. The 'historical' nature of *Latombe* may prove fatal. According to a 2022 judgement from the Court of Justice on Passenger Name Records, many of these systems are likely to be vulnerable under EU law (eg in [C-817/10](#)). Whether it is a quickly outdated precedent remains to be seen. Efforts to institutionalise the data flow regimes of the EU and US have been extraordinarily complex, similar to the byzantine arrangements for an adequacy decision, itself an esoteric feature of EU law. While the grounds in EU external relations continue to be largely similar to EU data privacy and governance, it is a disappointing context to see MEPs litigate individually in the EU's interest, contesting regimes that govern nearly one billion EU and US citizens. Much will hinge on how much the DPF meaningfully evolves the Privacy Shield, an issue that appears thwarted by widespread use of politicised Executive Orders in the US, including those that upset checks and balances within EU-US data transfer arrangements.

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