

日本DPO協会 第2回オンライン例会

2020年8月27日(木) 11:00~12:00

「CJEUのSchrems II Judgmentについて」
挨拶用資料

一般社団法人日本DPO協会代表理事

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Schrems II (Data Protection Commissioner v Facebook Ireland and Maximilian Schrems) (2020年7月16日)

- 欧州連合司法裁判所 (Court of Justice of the European Union, CJEU) は、2020年7月16日、EU-USデータ保護シールドの十分性決定を無効である、と判断した。データ保護シールドは**プライバシー・シールド** (Privacy Shield) として知られている。後述の2015年10月6日判決がSchrems I 事件に関するものであるとすると、今回の判決は、Schrems II として知られる。
- 米国の商務省 (Department of Commerce) は、2000年7月26日に**セーフ・ハーバー・プライバシー諸原則** (Safe Harbor Privacy Principles) についてデータ保護指令 (Data Protection Directive) 第25条第6項 に基づく十分性の認定を受けた。
- ところが、2015年10月6日、CJEUは、マキシミリアン・シュレムス対データ保護コミッショナー (Maximilian Schrems v. Data Protection Commissioner) 事件において、欧州委員会のセーフ・ハーバー決定は無効である、と判断した。
- その後、それに代わる**プライバシー・シールド** (Privacy Shield) 決定が、2016年7月12日、欧州委員会により正式に採択され、同年8月1日から実施されていた。

反響例① (A part of U.S. Secretary of Commerce IMMEDIATE RELEASE Thursday, July 16, 2020,)

- 米国商務省口ス長官 (U.S. Secretary of Commerce Wilbur Ross)
- “While the Department of Commerce is deeply disappointed that the court appears to have invalidated the European Commission’s adequacy decision underlying the EU–U.S. Privacy Shield, we are still studying the decision to fully understand its practical impacts.”
- . “We have been and will remain in close contact with the European Commission and European Data Protection Board on this matter and hope to be able to limit the negative consequences to the **\$7.1 trillion** transatlantic economic relationship that is so vital to our respective citizens, companies, and governments. Data flows are essential not just to tech companies—but to businesses of all sizes in every sector. As our economies continue their post–COVID–19 recovery, it is critical that companies—including the **5,300+ current Privacy Shield participants**—be able to transfer data without interruption, consistent with the strong protections offered by Privacy Shield.”
- **\$7.1 trillion** 約745兆円

反響例②-1(A part of EDPS * Statement following the Court of Justice ruling in Schrems II)

- EDPS * Statement following the Court of Justice ruling in Case C-311/18 Data Protection Commissioner v Facebook Ireland Ltd and Maximilian Schrems (“Schrems II”)
- The EDPS welcomes that the Court of Justice of the European Union, in its landmark Grand Chamber judgment of 16 July 2020, reaffirmed the importance of maintaining a high level of protection of personal data transferred from the European Union to third countries. The EDPS will continue to strive, as a member of the European Data Protection Board (EDPB), to achieve the necessary coherent approach among the European supervisory authorities in the implementation of the EU framework for international transfers of personal data.
- * EDPS (European Data Protection Supervisor、欧州データ保護監察官)

反響例②-2 (A part of EDPS * Statement following the Court of Justice ruling in Schrems II)

- This is the second time in almost 5 years that a European Commission adequacy decision concerning the United States is invalidated by the Court. In its judgement, the Court confirmed the criticisms of the Privacy Shield repeatedly expressed by the EDPS and the EDPB. European supervisory authorities will advise the Commission on any future adequacy decisions, in line with the interpretation of the General Data Protection Regulation (GDPR) provided by the Court.

Joint Press Statement from European Commissioner for Justice Didier Reynders and U.S. Secretary of Commerce Wilbur Ross (10 Aug. 2020)

- The U.S. Department of Commerce and the European Commission have initiated discussions to evaluate the potential for an enhanced EU–U.S. Privacy Shield framework to comply with the 16 July judgement of the Court of Justice of the European Union in the Schrems II case. This judgement declared that this framework is no longer a valid mechanism to transfer personal data from the European Union to the United States.
- The European Union and the United States recognise the vital importance of data protection and the significance of cross–border data transfers to our citizens and economies. We share a commitment to privacy and the rule of law, and further deepening of our economic relationship, and have collaborated on these matters for several decades.
- As we face new challenges together, including the recovery of the global economy after the COVID–19 pandemic, our partnership will strengthen data protection and promote greater prosperity for our nearly 800 million citizens on both sides of the Atlantic.
- (European Commission Justice and Consumers Newsroom Data protection 10 August 2020)

noyb (none of your business) 101 Complaints on EU-US transfers filed, Aug 17, 2020

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101 Complaints on EU-US transfers filed

Aug 17, 2020

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A part of the noyb * webpage

- A quick analysis of the HTML source code of major EU webpages shows that many companies still use Google Analytics or Facebook Connect one month after a major judgment by the Court of Justice of the European Union (CJEU) – despite both companies clearly falling under US surveillance laws, such as [FISA** 702](#). Neither Facebook nor Google seem to have a legal basis for the data transfers. Google still claims to rely on the “Privacy Shield” a month after it was invalidated, while Facebook continues to use the “SCCs”, despite the Court finding that US surveillance laws violate the essence of EU fundamental rights.
- * none of your business (関係ないでしょ)
- **FISA(Foreign Intelligence Surveillance Act of 1978)