European Union rules on international data transfers: lessons from the Schrems saga

Francisco Pereira Coutinho

Nova School of Law

Lisbon, Portugal

Jurisnova
Associação da Faculdade de Direito da Universidade Nova de Lisboa
Faculdade de Direito Universidade Nova de Lisboa
20 anos 1997-2017

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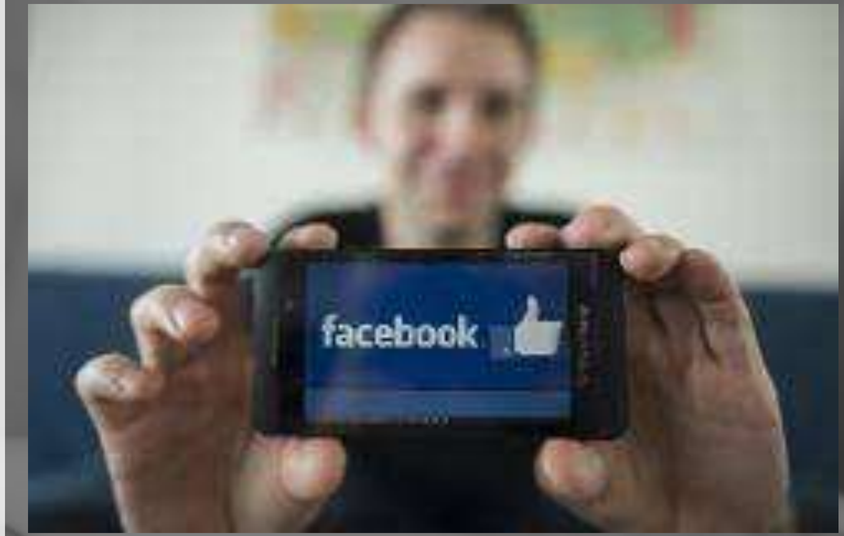

jurisnova Associação da Faculdade de Direito da Universidade Nova de Lisboa
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1. Economic impact of Schrems

International Data Transfers are “necessary for the expansion of international trade and international cooperation” (recital 101 GDPR)

“The level of protection of natural persons ensured in the Union (by the Regulation) should not be undermined, including in cases of onward transfers of personal data (recital 101 GDPR) (*Principle of equality of protection* (art. 44));

Key findings

In our negative scenario, which reflects our current path, **Europe could miss out on:**

€1.3 trillion
extra growth by 2030, equivalent to the size of the Spanish economy in any given year

€116 billion
exports annually, equivalent to Sweden’s exports outside the EU, or those of the ten smallest countries of the EU combined in any given year

1.3 million jobs
many of which are **highly skilled**

In our optimistic scenario, **the EU stands to gain:**

€720 billion
extra growth by 2030, or 0.6 per cent GDP per year

€60 billion
exports per year, over half coming from manufacturing

700,000 jobs

The difference between these two scenarios is
€2 trillion
in terms of **GDP for the EU economy** by the end of the Digital Decade

25%
of input into the provision of healthcare consist of data-reliant products and services. In this regard, data localisation requirements also hurt sectors that do not participate heavily in international trade

58%
of the EU’s export losses in the negative scenario **come from an increase in its own restrictions** rather than from third countries’ actions

€3 trillion
is a conservative estimation of what data transfers will be worth to the EU economy by 2030. This is a conservative estimate because the model’s focus is international trade – this excludes, for example, transfers within the same company

€280 billion
exports by data-reliant manufacturing SMEs in the EU. In the negative scenario, exports from EU SMEs would fall by €14 billion, while in the optimistic scenario they would increase by €8 billion

€60 billion
of annual loss by the manufacturing sector. Manufacturing is the sector that stands to lose the most. Proportionately, media, culture, finance, ICT and most business services, such as consulting, stand to lose the most – about 10 per cent of their exports. However, **these same sectors are those that stand to gain the most.**

2. Definition of International Data Transfer

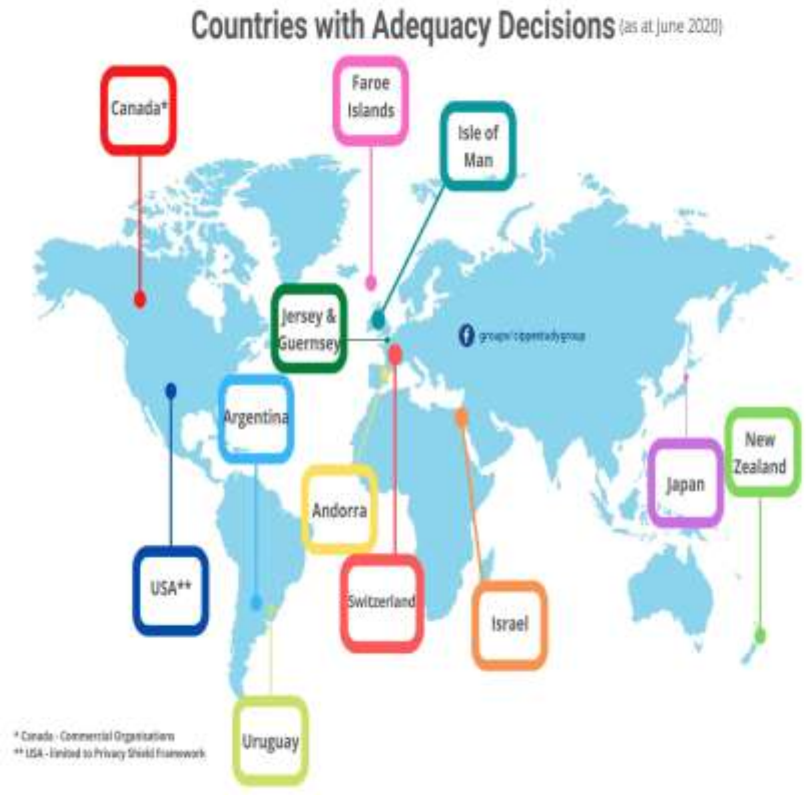
The EDPB (Guidelines 05/2021) has identified the three following cumulative criteria that qualify a processing as a transfer:

i) A controller or a processor is subject to the GDPR for the given processing;

ii) This controller or processor ("exporter") discloses by transmission or otherwise makes personal data, subject to this processing, available to another controller, joint controller or processor ("importer");

iii) The importer is in a third country or is an international organization, irrespective of whether or not this importer is subject to the GDPR in respect of the given processing in accordance with Article 3.

3. Conditions for transfers – Chapter V GDPR



International Agreements — Art. 48

EU Commission Adequacy Decisions — Art. 45

Appropriate Safeguards — Art. 46 and 47

Derogations — Art. 49

- BCRs.
- Standard Contractual Clauses.
- Approved codes of conduct and certification mechanisms with binding commitments.
- "Ad hoc" contractual clauses authorized by DPAs

Adapted from Domingos Soares Farinho (2022)

OBRIGADO!

Francisco Pereira Coutinho