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AUSTRIA

To:

European Commission
Rue de la Loi 200
1049 Bruxelles
BELGIUM

Vienna, 30th June 2026

**Subject: EU-US Data Transfers in light of the
Trump v. Slaughter decision**

Dear Commissioner McGrath,
Dear Irena Moozova,

Unfortunately, we have to inform you about yesterday's decision by the US Supreme Court in *Trump v. Slaughter*, where the majority of the US Supreme Court has re-written more than 90 years of US constitutional doctrine and relied on the “unitary executive theory” to come to the conclusion that any independent executive authorities in the US are unconstitutional. This very case has concerned the Federal Trade Commission (FTC) and clearly ruled that the authorities' long-standing independence is now suddenly unconstitutional.

While you may be aware that we have many other fundamental disagreements about the legality of Commission Implementing Decision EU 2023/1795, (the “EU-US Data Protection Framework”), we understand that the European Commission agreed that Article 16(2) TFEU and Article 8(3) of the Charter requires an independent supervisory authority for an adequacy decision. To ensure that Article 16(2) and 8(3) are complied with, the Commission has so far relied on the FTC as the equivalent to an independent EU supervisory authority. The core role of the FTC in this framework is also reflected by Decision EU 2023/1795 referring to the FTC more than 250 times.

While there are (private) dispute resolution bodies or other sectoral oversight bodies like the DoT mentioned in Decision EU 2023/1795, none have a broad and horizontal public enforcement function that could replace the role of the FTC in the EU-US Data Protection Framework.

Even where sectoral enforcement functions may exist, like for the DoT, these authorities are equally subject to the *Trump v. Slaughter* ruling that now prohibits independent executive bodies in the US constitutional system.

Furthermore, the EU has put great reliance on Executive Order 14086, through which former President Biden has created a so-called “*Data Protection Review Court*”, which is in fact a body within the US Department of Justice. While we always rejected the idea that this body was ever a “court” or an “independent” tribunal as required by Article 47 of the Charter, the ruling in *Trump v. Slaughter* seems to equally apply to this legal creature. If the US constitution does not allow the US legislator to create an independent executive body, then – logically – it cannot be created by the internal order of a President. Also, logically, any President can overturn an Executive Order at will, which makes any independence guaranteed by an Executive Order logically irrelevant.

The same logic applies to other oversight, such as the Privacy and Civil Liberties Oversight Board (PCLOB). While they never had any function beyond seeking information to generate very limited transparency about US surveillance programs, they are equally subject to the ruling in *Trump v. Slaughter*, given that their independence was created by a (now unconstitutional) act of congress.

It is important to highlight that we now even have a constitutional clash of laws, given that EU treaty law requires independent supervisory authorities and the US constitution now prohibits such independent authorities. We are therefore confronted with a rift that is not merely related to the current US administration. Instead, this incompatibility will exist until either EU treaties are changed via a unanimous vote of all EU Member States or the US constitution is changed or reinterpreted. Both is rather unlikely to happen in the next years or even in the next decades.

Against this backdrop, we urge the Commission to immediately take all necessary steps to allow European citizens and businesses an orderly exit from the “EU-US Data Protection Framework”. This should include an imminent plan for the orderly repeal of Commission Implementing Decision EU 2023/1795, as well as reasonable transition periods. We acknowledge that *formally* Commission Implementing Decision EU 2023/1795 stays in force until it is repealed or annulled.

While we hope that the Commission will take these steps, we also want to inform you, that we are also planning to challenge Implementing Decision EU 2023/1795 before the courts on the grounds established above, as well as many other shortcomings we see with the Decision. We, however, see a legal challenge as a last resort and think that an orderly transition is preferable, to avoid a “compliance cliff” as seen previously after the so-called “*Schrems I*” and “*Schrems II*” decisions. We think it is preferable that the European Commission includes the matter of EU-US data transfers in policy program, like the recently announced “Tech Sovereignty Package”.

We stay available for any further questions.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Schrems', written in a cursive, slightly slanted style.

Max Schrems
Chair of noyb