

Data Protection Commission
21 Fitzwilliam Square South
Dublin 2
IRELAND

Mag. Maximilian Schrems

[REDACTED]

[REDACTED]

AUSTRIA

20 July 2020

Re: Data Protection Commissioner v Facebook and Schrems (C-311/18)

Dear Mrs. Dixon,

I refer to the above.

As you are well aware, the CJEU delivered its Judgment in the above case on 16 July 2020. The Original Complaint was made on 25 June 2013 (more than 7 years ago).

In the judgment the CJEU has highlighted the duty of the DPC to stop the relevant data transfers under Article 4 of the SCCs (as demanded in the reformulated complaint). As the law in relation to the SCCs has not changed all parties have made extensive submissions on all possibly relevant points, I assume that you will now take such a decision without undue delay.

As you are also aware, Mr Justice Hogan, in his Order of 20 October 2016, noted that your office provided, through Counsel an undertaking that the matter will *“be investigated promptly and with all due diligence and speed.”*

Therefore, I would be grateful if you confirm, within 7 days (Monday 27 July 2020, COB), the next steps that you propose to take in order to issue a Decision. In particular, I would be grateful if you would propose a concrete timeline to ensure that the complaint is resolved with all due diligence.

Kind Regards,

Maximilian Schrems

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24 July 2020

Our Ref: DY/ DAT001/0119

**RE: Data Protection Commissioner v. Facebook Ireland Ltd & Schrems
CJEU Judgment of 16 July 2020**

Dear Sirs,

We refer to the above matter and to your client's letter of 20 July 2020, sent directly to the DPC.

Our client is presently formulating a position setting out the means by which it will give full effect to the Court's findings, which, contrary to what appears to be suggested by your client, are transformative of the law as it relates to EU/US data transfers. We would also observe that the Court's findings endorse our client's assessment of the core problems associated with US public authority access to the personal data of EU citizens, as previously affirmed by the Irish High Court.

Whilst the CJEU's findings are clear, the procedural means by which they are to be implemented is not without complexity. Equally, such enforcement steps as are to be taken by our client must respect the parties' right to due process. Such matters cannot be dispensed with simply because your client considers it useful, for his own purposes, to seek to impose particular timeframes on a unilateral - and arbitrary - basis.

Subject to those observations, and consistent with the Court's directions, our client is expediting matters to the greatest possible extent.

Finally, and for completeness, we should say that your client's characterisation of the CJEU's findings (and, indeed, the other matters canvassed in his letter) is not accepted.

Yours faithfully,



PHILIP LEE

DAT001-0119-5596410-4

Our Ref: GR/MC /SCH002-9341

Your Ref:

Date: 27 July 2020

Philip Lee Solicitors
7/8 Wilton Terrace
Dublin 2
D02 KC57

By email [REDACTED]

Re: Data Protection Commissioner v Facebook Ireland Limited & Maximilian Schrems

Dear Sirs,

We refer to your letter of 27 July 2020.

As you are aware, our client's complaint (the "Complaint") was made on 25 June 2013. Over 7 years has passed since the Complaint was made. Your client has yet to issue a Decision in respect of the Complaint.

At paragraph 109 of its judgment, the CJEU reiterated the view previously expressed in relation to your client's duty to handle a complaint. It stated as follows:

"The supervisory authority must handle such a complaint with all due diligence (see, by analogy, as regards Article 25(6) of Directive 95/46, judgment of 6 October 2015, Schrems, C-362/14, EU:C:2015:650, paragraph 63)."

Furthermore, Mr Justice Hogan, in his Order of 20 October 2015, noted that your client provided, through Counsel an undertaking that the matter "be investigated promptly and with all due diligence and speed."

It is surprising that, in light of the background set out above, your letter, 8 days after the CJEU judgment, provides no detail in respect of a timeline in order to bring the Complaint to a conclusion. Your client has not even provided a deadline for when it will have formulated a position.

There is no reason why the Complaint cannot be concluded swiftly while respecting **both** parties' right to due process. Indeed, it is clear that your client is **under a clear legal obligation** to conclude the Complaint with all due diligence and speed. For the avoidance of doubt, our client is determined to ensure that this is done.

Judgment of CJEU 16 July 2020

In your letter under reply, and in the Statement released by your client on 16 July 2020, your client has mischaracterised the judgment of the CJEU by attempting to maintain that the CJEU has, in some way, endorsed your client's position in relation to these proceedings. It has not done so.

In your letter under reply you state the following:

"We would also observe that the Court's findings endorse our client's assessment of the core problems associated with US public authority access to the personal data of EU citizens, as previously affirmed by the Irish High Court."

This is a very surprising contention for you to make in circumstances where your client's focus throughout the proceedings was in respect of remedies available in the United States. For whatever reason, your client did not deal with the substance of US surveillance law. This was dealt with by our client's expert witness, Ashley Gorski. As you can see from the Joint Experts Report (attached), your client's expert did not address at all the first 25 issues under the heading US Government Surveillance Authority.

Furthermore, the CJEU has held that your client's view that the SCC Decisions were "likely to offend against Article 47 of the Charter insofar as they purport to legitimise the transfer of personal data of EU citizens to the US notwithstanding the absence of any possibility for any such citizen to pursue effective legal remedies in the US" was entirely misplaced and quite simply wrong. The CJEU joined with our client's view that as the controller or processor or, failing that, the DPC has a duty to suspend data flows the fact that the SCCs do not bind the authorities of third countries does not affect the validity of the SCCs. This argument was made by our client from the outset.

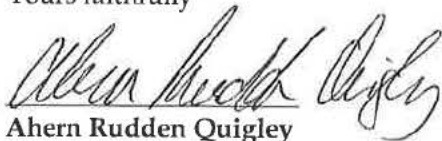
As you have not provided any detail in relation to how or when the Complaint will be finalised, and your client is under a clear legal obligation to act, our client requests you to take the following actions immediately:

1. So as to ensure fair procedure, your client provide any documentation provided to it by Facebook since 25 June 2013 touching on the Complaint that has not already been furnished to our client. This should be furnished by 31 July 2020.
2. Your client should clarify the legal basis that Facebook relies on for their EU-US data transfers. This information is required to be kept by Facebook under Article 30(1)(e) and made public under Articles 13(1)(f) and 14(1)(f) GDPR. There is no reason why this information could not be obtained by 31 July 2020 pursuant to your client's powers in Article 58(1)(a) GDPR.
3. Should Facebook purport to rely on any new legal basis, our client will undertake to make Submissions by 14 August 2020.
4. Should there be the need to exchange further arguments, our client is happy to commit to an oral hearing so that all issues between the parties can be fully ventilated.
5. Our client sees no reason why a final Decision cannot be issued by you client by 1 October 2020.

Should your client see any legal or practical reasons why the above timetable cannot be met, our client is anxious that your client would make alternative suggestions by return to ensure that your client meets its obligations as outlined above and complies with the Order of Hogan J dated 20 October 2020.

We look forward to hearing from you.

Yours faithfully



Ahern Rudden Quigley

Email: [REDACTED]