

Maximilian Schrems

[REDACTED]
[REDACTED]

Austria

BY EMAIL ONLY TO [REDACTED]

31 August 2020

Dear Sir,

I refer to the judgment delivered by the CJEU on 16 July last in proceedings entitled *Data Protection Commissioner v. Facebook Ireland Limited and Schrems*, Case C-311/18 (“the **Judgment**”).

In the light of the Judgment, the Commission has given very careful consideration to the means by which it must now proceed, both generally, and, more specifically, in respect of the reformulated complaint submitted by you on 1 December 2015 (“the **Complaint**”).

The matters to which the Commission has had regard to in this context include, amongst other things, the following:

- (1) The contents of (and the findings contained within) the Judgment;
- (2) the extent to which the Court’s analysis was conducted by reference to relevant provisions of Regulation (EU) 2016/679 (“the **GDPR**”);
- (3) the fact that the Complaint was formulated by reference to Directive 95/46/EC; and,
- (4) our preliminary view that data transfers between Facebook Ireland Limited (“**FB-I**”) and Facebook Inc. involve cross-border processing of personal data relating to individuals who are in the European Union/ European Economic Area who visit, access, use or otherwise interact with products and services provided by Facebook Ireland Limited.

On the basis of its consideration of these matters, and to buttress its capacity to exercise effective corrective powers, if required, the Commission considered it necessary and appropriate that, in the first instance, it would undertake an inquiry, to be conducted pursuant to Section 110 of the Data Protection Act, 2018 (“the **2018 Act**”) and Article 60 of the GDPR. In that inquiry, the following two issues are being considered:

- A. Whether, taking into account the analysis contained in the Judgment, FB-I is acting lawfully, and in particular, compatibly with Article 46(1) of the GDPR, when, pursuant to the standard contractual clauses contained in the Annex to Commission Decision 2010/87/EU (as amended), it transfers, to the United States, personal data relating to individuals who are in the European Union/ European Economic Area who visit, access, use or otherwise interact with products and services provided by Facebook Ireland Limited; and,
- B. if, upon the conclusion of the procedures provided for at Chapter VII of the GDPR, a decision is made to the effect that the transfers in issue give rise to an infringement of Article 46(1), whether any one or more of the corrective powers set out in Article 58(2) of the GDPR should be exercised and, if so, which such power(s) should be exercised.

I can confirm that, in order to advance matters, the Commission has now written to Facebook Ireland Limited, identifying the issues the subject of the inquiry, as set out above. In order to facilitate the making of targeted submissions by FB-I, the Commission has also set out its preliminary views on each of those issues.

FB-I has been invited to submit its written response within a period of 21 days.

That response will be carefully considered by the Commission, following which a draft decision will be prepared pursuant to Article 60(3) of the GDPR and issued to the other supervisory authorities.

It is anticipated that a draft decision will be submitted to the Article 60 procedure within a period of 21 days of receipt of the above-referenced submissions from FB-I.

Thereafter, the Commission will, in turn, review and consider such further or other steps as may be required to conclude its ongoing investigation into your complaint.

At this point, the Commission neither requires nor intends to call for further submissions from you, noting that, in your letter to this office of 20 July last, you expressed the view that “all parties have made extensive submissions on all possibly relevant points”, that view no doubt reflecting the fact that, in the context of the proceedings leading to the Judgment, voluminous factual and expert evidence was adduced, and extensive legal submissions were made.

The Commission will review and, if necessary, determine your complaint following the completion of the inquiry described above. You will be given an opportunity to make a submission to the Commission at that point, prior to the determination of your complaint.

Finally, please note that the information contained in this letter is being provided to you on the basis that the inquiry described herein is relevant to the Commission's ongoing handling of your complaint. In circumstances where the issues identified in this letter are now the subject of a statutory inquiry procedure, however, the contents of this notification are confidential and should not be disclosed to any third party.

Yours sincerely,

[Sent electronically; bears no signature]



Deputy Commissioner,
Data Protection Commission