

**Von:** Facebook Inc Regulatory Mail  
[REDACTED]  
**An:** dsb@dsb.gv.at <dsb@dsb.gv.at>  
**Gesendet am:** 26.05.2021 20:09:42  
**Betreff:** Private and Confidential: Response to [REDACTED]

*Private and Confidential*

Hello,  
Please see the attached correspondence in response to [REDACTED]

Thank you.

**Facebook, Inc.**  
1601 Willow Road  
Menlo Park, CA 94025

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Austrian Data Protection Authority

BY EMAIL: [dsb@dsb.gv.at](mailto:dsb@dsb.gv.at)

May 26, 2021

Your ref: [REDACTED]

Matter: NOYB/Marco Blocher Complaint under Article 77(1) GDPR against oe24 GmbH, Facebook Ireland Limited and Facebook, Inc. ("**Complaint**")

Dear [REDACTED]

Thank you for your letter dated May 11, 2021 (and received by email on May 12, 2021) from the Austrian Data Protection Authority ("**DSB**") to Facebook, Inc. ("**FINC**") in respect of the Complaint ("**2<sup>nd</sup> DSB Letter**").

FINC understands from the 2<sup>nd</sup> DSB Letter that the DSB is considering whether it is competent to engage with FINC and, if so, whether FINC violates the provisions of Chapter V of the GDPR (transfer of personal data to third countries). In this respect, FINC wishes to note the following:

1. Firstly, the Complaint requests the DSB to investigate transfers "**from the Controller and/or from Facebook Ireland to Facebook, Inc.**" and "*which transfer mechanism under Article 44 et seqq. GDPR the **Controller and/or Facebook Ireland** based this data transfer on*", whilst seeking a "*ban or suspension of data flows **from the Controller and/or from Facebook Ireland to Facebook, Inc.***" (added emphasis).<sup>1</sup>

The relevant data transfers are made *from* the EEA to FINC principally pursuant to standard contractual clauses in accordance with Article 46 GDPR. As a company incorporated in the US, FINC does not make any such transfers but rather is a recipient of certain data transferred to it and, as the recipient, could not have breached Article 46.

2. Without prejudice to questions regarding whether FINC is a party to the complaint procedure and the DSB's competency or responsibility regarding FINC, FINC considered the questionnaire included in the DSB's letter dated February 26, 2021. As FINC outlined in its letter to the DSB dated March 18, 2021 ("**1<sup>st</sup> FINC Letter**"), the questionnaire raised questions regarding the products and services provided by Facebook Ireland Limited ("**FIL**") to its customer, oe24 GmbH, as well as the relationship between them (such as under the Facebook Business Tool Terms and other applicable terms).

Consequently, as FINC outlined previously, FINC considers that FIL is the appropriate entity to respond. It is for this reason that FINC has addressed the DSB's queries by redirecting the DSB to

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<sup>1</sup> Paragraph 2 of the Complaint.

FIL. FINC trusts this will not be viewed as a lack of cooperation with the DSB but rather is a reflection that FIL is the appropriate entity to respond under the GDPR.

FINC understands that, following the 1<sup>st</sup> FINC Letter, FIL has written to the DSB, as well as its lead supervisory authority the Irish Data Protection Commission ("**IDPC**"). FINC is also aware in this regard that FIL has confirmed to the IDPC that it will, on request, co-operate with the IDPC in the performance of its tasks with respect to the NOYB complaints (which include the Complaint) in accordance with the GDPR. FINC can similarly confirm that it will provide information to FIL as necessary in this regard. FINC notes that FIL has stated that it would envisage that the IDPC could coordinate any engagement with other concerned supervisory authorities as appropriate and in accordance with Chapter VII GDPR.

Finally, FINC understands (without prejudice to issues addressed above) that correspondence between the DSB and FINC regarding these issues should not be shared (whether in full or by way of summary) with NOYB or the complainant or form part of the DSB's file for the purposes of section 17 of the Austrian Administrative Procedural Act. FINC also understands that the DSB has confidentiality obligations under Article 54(2) GDPR.

FINC, therefore, kindly requests that the DSB will accordingly treat this response as confidential and will not disclose it outside the DSB save where the DSB is legally required to do so. FINC raises this in particular as, as the DSB may be aware, NOYB has publicly disclosed Google's response to the DSB in respect of other NOYB complaints which raises legitimate concerns that it would similarly do so in this case.

FINC confirms, however, that it has no objection to this letter being shared with the IDPC or, if applicable, any other concerned supervisory authority in accordance with the GDPR. In the event that the DSB intends to share any of the correspondence between it and FINC with a third party in any other circumstances, we request that the DSB consults with FINC before doing so.

FINC will pass a copy of this letter to FIL.

Yours sincerely

*Sent by email, no signature*

Facebook, Inc.