

██████████  
Assistant Commissioner  
Data Protection Commission  
21 Fitzwilliam Square  
Dublin 2

By email: [info@dataprotection.ie](mailto:info@dataprotection.ie)

27 September 2018

Your ref: C-18-5-5

**Re: Notice of Commencement of an Inquiry**

Dear ██████████

I am writing to you on behalf of Facebook Ireland Limited (“**Facebook Ireland**”) in response to the Notice of Commencement of Inquiry (the “**Inquiry**”) dated 20 August 2018 sent to ██████████, Data Protection Officer for Facebook Ireland.

Our responses to your queries are set out in the Schedule accompanying this letter which is supported by additional documents in the Appendices to the Schedule.

As a preliminary matter, we are keen to set out the basis on which we have responded to the queries raised as part of the Inquiry. Firstly, given the limited information provided to date (i.e. name only, and no email address or telephone number associated with the relevant user account), we have been unable to identify the specific user that has made the complaint which has triggered the Inquiry (the “**Complaint**”). This limits our ability to consider and respond to specific allegations made against us. As a result, the responses we are providing necessarily have to relate to our general approach to compliance with the GDPR rather than to the compliance of the specific processing that is taking place with regard to the user who has made the Complaint.

Secondly, we note the scope of the Inquiry is to examine “*whether Facebook has discharged its obligations in connection with the subject matter of the Complaint*”. The Complaint makes clear that it is “*explicitly limited to any processing operations that are wholly or partly based on Article 6(1)(a) and/or Article 9(2)(a) of the GDPR*” (section 1.6). We note that the Inquiry has raised queries relating to matters which on their face could be construed to go beyond the scope of the Complaint. In order to assist the Data Protection Commission (the “**Commission**”) we are responding to each query, albeit on the assumption that the Commission intends to focus particularly on those parts of our responses which relate to the Complaint.

In addition, we note that the Complaint is brought on the basis of Article 80(1) of the GDPR. We would welcome clarification from the Commission as to what, if any, formal steps it has taken, or intends to take, to satisfy itself that the requirements of Article 80(1) are met in this case, including

- Whether the (undated) “Assignment of Representation” provided in your email of 20 September 2018 satisfies the criteria necessary for a clear and valid mandate by a data subject under Article 80(1) of the GDPR.
- Whether the Complaint has been brought in a manner and in relation to matters that are in fact supported by the mandate (if valid) that has been provided by the data subject. For example, we note that the Assignment of Representation is premised on

a mandate regarding alleged “forced consent to the update [sic] privacy policy that I clicked on to [on an unspecified date] in May 2018”. Even if one assumes that the relevant formalities have been complied with, this is a limited mandate, i.e. to file a complaint about *involuntary* consent. The Complaint on the other hand appears to raise matters which go beyond the scope of this mandate. For example, it challenges Facebook Ireland’s practices for obtaining *informed* consent, which is a distinct allegation to whether or not such consent was forced or involuntary.

- Whether the Complaint is being brought by “a not-for-profit body, organisation or association which has been properly constituted in accordance with the law of a Member State, has statutory rights which are in the public interest, and is active in the field of the protection of data subjects’ rights and freedoms with regard to the protection of personal data to lodge the complaint on [behalf of a data subject]”, as required under Article 80(1).

While we wait to hear from the Commission as to these steps, Facebook Ireland reserves the right to make further submissions on this issue if necessary.

We have drafted this response against the background of our detailed direct engagement with the Commission prior to the implementation of the recent update to our terms, spanning 10 meetings, which covered many of the issues responded to herein. Facebook Ireland has not materially changed its compliance approach since these meetings. The response is provided on the understanding that it will be treated by the Commission as confidential in accordance with Section 26 of the Data Protection Act 2018 and Article 54 of the GDPR and will not be disclosed outside the Commission save where the Commission is legally permitted or required to do so. In the event that the Commission shares the response with concerned supervisory authorities in accordance with Article 60 of the GDPR, we kindly ask that we be notified of this. In the event the Commission intends to share the response with a third party in any other circumstances, we request that the Commission consults with us before doing so.

We would welcome the opportunity to meet with you and your colleagues to discuss any of the issues discussed in the Schedule in due course.

Kind regards



P. R.

[Redacted]

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