

Fact Sheet

Based on previous questions by journalists and the public, we have drafted the following fact sheet before the delivery of the AG's opinion, aimed at persons not familiar with the procedure. Please check for updates on europe-v-facebook.org and on twitter: [@maxschrems](https://twitter.com/maxschrems) / [@europevfacebook](https://twitter.com/europevfacebook)

I. Procedure, Parties, Roles and Timeline

Parties to the Procedure.

Parties: The plaintiff is Max Schrems (27), an Austrian law graduate, PhD student at the University of Vienna and Facebook user.

The defendant in the case is the Irish Data Protection Commissioner (DPC), Helen Dixon.

Interventions: As the "European Commission" has issued the relevant "Safe Harbor" decision (2000/520/EC) the Commission had the role of in fact defending the decision during the ECJ hearing. The European Parliament, the European Data Protection Supervisor (EDPS) and eight member states (Austria, Belgium, Czech Republic, Ireland, Italy, Poland, Slovenia and the UK) have also intervened in the procedure. DRI was joined as an "amicus" in the Irish procedure.

Facebook: While the case is about Facebook's interaction with the NSA and other US agencies, Facebook has (for unclear reasons) decided to not formally join the procedure. While the case will have direct effect on Facebook's data transfers to the US, it is not party of the procedure.

Judges and AG: The advocate general (AG) delivering his opinion is "Yves Bot" of France.

The reporting judge at the ECJ (preparing the final decision) is "Thomas von Danwitz" of Germany.

The final decision will be delivered by the "Grand Chamber", consisting of 15 of the 28 ECJ judges.

It is an Irish reference for a preliminary ruling before the CJEU.

The Irish procedure was held before High Court judge "Gerard Hogan".

Irish Procedure

The case is based on a "judicial review" application at the "High Court" in Dublin, Ireland. The "High Court" procedure was paused to refer a number of legal questions to the European Court of Justice (ECJ). The case will be finally decided by the High Court, but the Irish court is bound by ECJ's opinion.

Common Error: The "High Court" is not the "highest court" in Ireland – there is also a "Supreme Court".

Advocate General's role

The advocate general (AG) delivers a legal opinion – not the final judgement. The final judgement will be delivered later, by the judges. In most cases the judges follow the AG's opinion, but they are not bound by the opinion.

Common Error: The AG does not make a "decision", but presents a non-binding legal "opinion".

Irish "PRISM" Case ≠ Austrian "Class Action"

The Irish procedure is independent from a recent consumer "class action" against "Facebook Ireland Ltd" filed at an Austrian court with more than 25.000 participants. There are three "lines" of procedures that are factually connected and often confused in the public:

1. The Juridical Review before the Irish High Court (only this procedure is subject to today's opinion);
2. A "class action" before the Austrian courts (filed 2014 and right now at the appeals level) and

3. Administrative “complaints” filed at the Irish DPC in 2011. These “complaints” were withdrawn in 2014 as the DPC refused a “fair trail” and a “formal decision” for three years. These complaints are therefore not existent anymore.

Often mistaken: The opinion of the AG is only concerned with the “Judicial Review” in the “PRISM / Safe Harbor / Facebook” case – not the Austrian “class action” procedure.

Dates / Timeline

26. 6. 2013	Complaint against “Facebook Ireland” filed with Irish DPC
25. 7. 2013	Irish DPC finds that he has “no duty to investigate” the complaints Later the DPC argues that the complaint was “frivolous and vexatious”
24. 10. 2013	Judicial Review against Irish DPC filed at the Irish High Court
29. 3. 2014	Hearing at the Irish High Court
18. 6. 2014	Interlocutory Judgment, Reference to the ECJ for a preliminary ruling
24. 3. 2015	Hearing before the Grand Chamber of the ECJ
24. 6. 2015	Initial date for the delivery of the AG’s Opinion (<i>postponed for unknown reasons</i>)
23. 9. 2015	Delivery of the AG’s Opinion.
<i>unknown</i>	Delivery of the Court’s Judgement (<i>typically within months from the AG’s opinion</i>)
<i>unknown</i>	Delivery of the High Court’s Judgement (<i>typically soon after the ECJ’s judgement</i>)

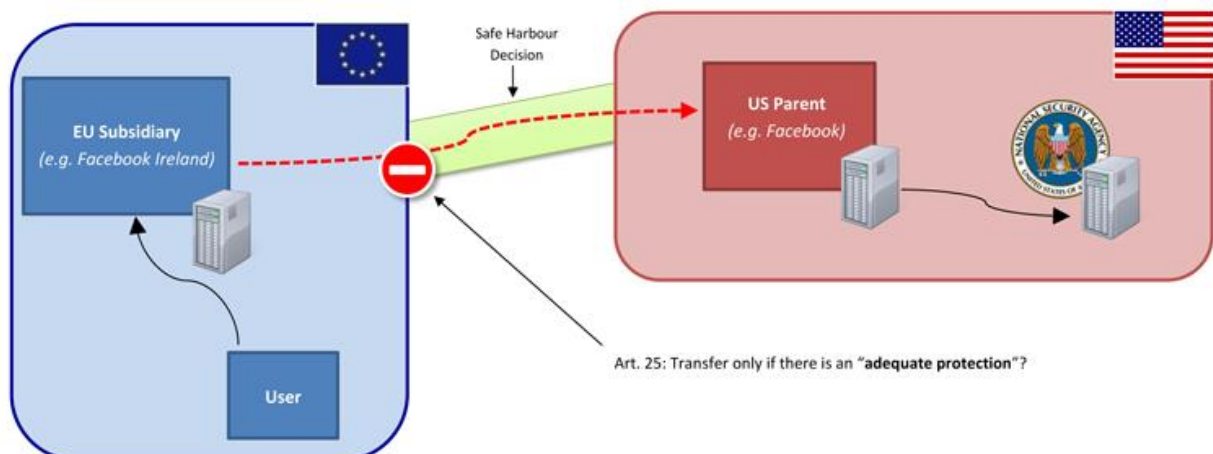
II. Key Facts of the Case

The case is based on the facts revealed by Edward Snowden, who uncovered the mass surveillance programs by the US government (e.g. the [“PRISM” program](#)).

Facts: Facebook’s EU-US data flows

Facebook Ireland. Most US tech companies involved in US mass surveillance have their international or European headquarter in Luxemburg or Ireland. “Facebook Inc” has outsourced the operations outside of the US and Canada to “Facebook Ireland Ltd”, based in Dublin. “Facebook Ireland Ltd” is responsible for more than 83.1% of all worldwide Facebook users, according to Facebook ([Link](#)).

Data not processed in Dublin – but forwarded to the US. The data is however not processed in Dublin, but forwarded by “Facebook Ireland” to “Facebook Inc” in the United States. Facebook only operates an office in Dublin. This sharing of data with “Facebook Inc” constitutes a “transfer to a third county” (or simply put a „data export“ to the US). Such an export of data is only allowed under Article 25 of the EU data protection directive (95/46/EC) if the receiving country can provide an “adequate protection” of this personal data or if the other conditions of Article 26 of the data protection directive (95/46/EC) are fulfilled.



Data further shared with US authorities. Because the data is forwarded from “Facebook Inc.” to the NSA and other US authorities for mass surveillance programs, the core claim was that personal data transferred to the US is *not* adequately protected once it reaches the United States.

Other tech companies. These facts are similar in the case of Apple, Microsoft, Google and Yahoo.

Core Question: “Adequate Protection” in the United States?

The core claim in this case is that the US does not provide “*adequate protection*” as required by EU law, if data on facebook.com is subject to “mass surveillance” under US laws.

Multiple Legal Layers

The legal details of the case are a bit more complicated than the mere question if the US provides for an “adequate protection”, as there is a complex interplay between different layers of EU law.

EU Data Protection Directive: Data Protection issues are regulated in Directive 95/46/EC. It says that data may only be transferred in a non-EU country if “adequate protection” is provided.

Safe Harbor: In 2000 the European Commission has issued the so-called ‘safe harbor’ decision (an executive decision, 2000/520/EC), which says that companies in the US that have “self-certified” under the so-called ‘safe harbor program’ provide “adequate protection” within the meaning of EU law. “Facebook Inc.” has self-certified ‘safe harbor’, just like more than 4.000 other US companies.

The question before the court arose, if the ‘safe harbor’ decision (2000/520/EC) by the European Commission from 2000 can be interpreted to be in line with EU law – if not, the decision would be invalid as it would be incompliant with the law.

Common Error: ‘Safe harbor’ is an executive decision by the European Commission – not an international agreement/treaty.

Charter of Fundamental Rights: Another issue arose, as the ECJ had held in his 2014 “data retention” decision (C-293/12 und C-594/12) that mass collection of “meta data” is a violation of the EU’s Charta of Fundamental Rights (the EU’s “constitutional rights document”).

US programs like PRISM go far beyond such “meta data” collection, which was found to be a human rights violation by the ECJ. The additional question arose, if a transfer of data to a country that conducts “mass surveillance” can be allowed under the EU’s fundamental rights.

The Charter of Fundamental Rights (CFR) is part of the EU treaties. It is the EU’s equivalent of national constitutional protections (like the “Bill of Rights” in the United States).

Duties of the Irish DPC

The question referred by the High Court also aims at the role of the Irish Data Protection Commission (DPC) and if it is able to simply “not investigate” a complaint – or if national data protection authorities have a duty to protect users against privacy violations. The Irish DPC is of the view, that she has no duty to act, the plaintiff claims that he has a duty to take action.

III. Contact, Questions and Documents

- The AG’s opinion will be published on the webpage of the ECJ under the Case Number “C-362/14” (Link: http://curia.europa.eu/jcms/jcms/j_6/)
- All previous documents can be found at europe-v-facebook.org > Procedures > PRISM
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