

February 27<sup>th</sup> 2016 (Version 3)

## Media Update

### *“Data Protection Commissioner v. Facebook Ireland Ltd and Maximilian Schrems”*

Starting on Tuesday February 7<sup>th</sup> 2017 the Irish High Court will hear a case brought by the Irish Data Protection Commissioner (DPC) against Facebook Ireland Ltd and Mr Schrems over EU-US data transfers after the Snowden disclosures. The United States Government has joined the procedure as *amicus curiae*.

### Background of the Procedure

---

Mr Schrems filed a complaint ([original 2013 complaint here](#)) with the DPC in 2013 concerning data transfers between “Facebook Ireland Ltd.”, the international subsidiary of Facebook and the parent company “Facebook Inc.” in the wake of the Snowden disclosures on US warrantless surveillance like the PRISM program.

Generally EU companies are not allowed to send personal data to non-EU territories, unless they can ensure essentially equivalent data protection in the foreign country. There are a number of options to derogate from this rule. Facebook used the so-called “*Safe Harbor*” system at the time.

The DPC refused to investigate the complaint, claiming that the “*Safe Harbor*” system between the EU and US allowed for such data transfers. In this case the Court of Justice of the European Union (CJEU) decided on October 6<sup>th</sup> 2015 in C-362/14 that the “*Safe Harbor*” was invalid, siding with Mr Schrems’ concerns ([CJEU decision available here](#)). In the light of the CJEU judgment the DPC was ordered by the Irish High Court to investigate Mr Schrems’ complaint.

In 2015 Facebook Ireland Ltd. switched from “*Safe Harbor*” to so-called “*Standard Contractual Clauses*” (SCCs) ([the European Commission’s information page on SCCs here](#)) to justify its EU-US data transfers, as “*Safe Harbor*” had been invalidated ([copy of Facebook’s SCCs is available here](#)).

Mr Schrems accordingly submitted a reformulated complaint, claiming in essence that the SCCs do not allow a data transfer once a recipient is subject to surveillance laws that violate the EU’s fundamental rights to privacy and data protection ([reformulated 2015 complaint is available here](#)). Article 4 of the SCC decisions allows national DPCs, like the Irish DPC, to suspend data flows in this case, which Mr Schrems requested from the DPC.

The DPC has investigated the reformulated complaint, but suspended the investigations after it made a draft finding that the US does not provide legal redress in line with Article 47 of the Charter of Fundamental Rights of the European Union (CFR). Instead of suspending Facebook’s data flows under Article 4 of the SCC decision, the DPC initiated proceedings before the Irish High Court against Facebook Ireland Ltd. and Mr Schrems, aimed at raising the validity of the European Commission’s SCC decisions before the CJEU.

### Procedure so far

---

- The US government, the non-profit EPIC and two industry groups DigitalEurope and BSA were admitted as “*amicus curiae*” – while the non-profits EFF, ACLU, Irish Council for Civil Liberties, the Irish Human Rights and Equality Commission and the Irish industry group IBEC were not admitted ([link to High Court decision](#)).

- Mr Schrems Protective Costs Motion was struck out on terms agreed between Mr Schrems, DPC and Facebook.
- Between summer 2016 and January 2017 the parties have made legal and factual submissions in line with a timetable set out by the Irish High Court.

## High Court Hearing - Timetable *(subject to changes)*

---

The High Court has so far informed the parties about the order and the rough times for the hearing, however the exact times for each item will be depending on the progress of the procedure. The following items and times are based on current expectations and will be updated as soon as the procedure progresses:

<b>1<sup>st</sup> Week</b>	
Tuesday, Feb 7 <sup>th</sup>	Opening Statement by the Data Protection Commissioner ("DPC") <i>(expected to take 3.5 to 4 days according to the DPC)</i>
Wednesday, Feb 8 <sup>th</sup>	
Thursday, Feb 9 <sup>th</sup>	
Friday, Feb 10 <sup>th</sup>	
<b>2<sup>nd</sup> Week</b>	
Wednesday, Feb 15 <sup>th</sup>	Remaining Opening by the DPC Short Opening Statements by Schrems and Facebook Legal Submissions on whether the <i>amici</i> will be admitted to submit facts on US law.
Thursday, Feb 16 <sup>th</sup>	
Friday, Feb 17 <sup>th</sup>	
<b>3<sup>rd</sup> Week</b>	
Monday, Feb 20 <sup>th</sup> <i>(moved from Tuesday)</i>	Decision if the Affidavits of the <i>amici</i> are admitted Cross-Examination of (1) Neil Richards and (2) Andrew Serwin (experts for the DPC) Cross-Examination of (3) Peter Swire (expert for Facebook)
Wednesday, Feb 22 <sup>nd</sup> to Friday, Feb 24 <sup>th</sup>	
<b>4<sup>th</sup> Week</b> <i>(exact timing unclear)</i>	
Tuesday, Feb 28 <sup>th</sup> to Friday, March 3 <sup>rd</sup>	Cross-Examination of (4) Steve Vladeck (expert for Facebook) Legal Submissions by the amicus ( <i>US Government, BSA, DigitalEurope and EPIC</i> ) Closing Statements by Facebook, Schrems and DPC <i>(will likely go into 5<sup>th</sup> week)</i>

Given the progress of the procedure, it is reasonably likely that the procedure will go into a 5<sup>th</sup> week between March 7<sup>th</sup> to 10<sup>th</sup> details are not clear yet. The judgement will be delivered at a separate date, after the hearings.

The High Court is understood to be sitting between 11:00 am and 1:00 pm and then again between 2:00 pm and 4:00 pm on the days above. We will try to update on the hearing via twitter ([@maxschrems](https://twitter.com/maxschrems)) and on [this page](#).

## Other Statements

---

The Data Protection Commissioner's latest update on the case can be found [here](#).  
EPIC's Update on the case can be found [here](#).

## Questions?

---

Please note that only limited information can be shared due to the pending procedure.

Phone: +43 660 1616 327 *(limited availability)*  
 E-Mail: [media@europe-v-facebook.org](mailto:media@europe-v-facebook.org)  
 Twitter: [@maxschrems](https://twitter.com/maxschrems)  
 More Info: [www.europe-v-facebook.org](http://www.europe-v-facebook.org)