

## FACT SHEET

### Parties to the Proceedings

The parties to the proceedings are Max Schrems (main plaintiff) and 'Facebook Ireland Ltd' (defendant) headquartered in Dublin. 'Facebook Ireland Ltd' is a subsidiary of Facebook Inc. (USA) and offers the social network internationally (except for the US and Canada). Therefore, roughly 81.2% of active users worldwide have a contract with 'Facebook Ireland Ltd'. Sources: clause 19.1 of the [Terms and Conditions of Use](#) and [Facebook media page](#)

### Procedure in Ireland and at the CJEU

This civil law procedure is independent from an administrative complaints procedure before the Irish Data Protection Commissioner (DPC). The Irish complaints were withdrawn (except for one complaint relating to "PRISM" and "Safe Harbor", pending before the CJEU) as the DPC refused a proper investigation for three years.

### Charges

The extensive lawsuit relates, among others, to the following points: • Validity of data use policy under EU law • Aiding the NSA to run the 'PRISM' spy programme • Tracking of users on external pages through 'social plugins' • Illegal 'big data' analytics • Illegal introduction of 'Graph Search' • Illegal data sharing with external 'apps' • Non-compliance with the Right to Access • tort and unjust enrichment claims.

### Legal Venue: Vienna

As a consumer, Max Schrems can take legal action at his place of residence under EU procedural law. The choice of jurisdiction clause in Facebook's terms is not valid under EU law. Consequently the Court in Vienna is the relevant legal venue under EU law. Legal basis: Art. 15 to 17 of the *European Regulation on Jurisdiction and the Enforcement of Judgements*, [Regulation 44/2001/EC](#).

### Enforcement of Austrian rulings in Ireland

An Austrian ruling can be enforced directly in Ireland; it must not be separately 'recognised' by Ireland or implemented in a national ruling. An Austrian ruling also cannot be 'opposed' in Ireland. Legal basis: *chapter III of the European Convention on Jurisdiction and the Enforcement of Judgements* ([Regulation 44/2001/EC](#))

### 'Class action lawsuit' in Austria

In Austria there is no typical "class action". It is possible, however, for a group of people to transfer their financial claims to a single person ('assignment'). Legally, the proceedings remain two-party proceedings but factually they are run as a class action. The Supreme Court of Austria has declared this form of "class action" to be valid. Rulings: [3Ob275/04v](#) and [4Ob116/05w](#) Compared to US class action, participants must actively join the Austrian lawsuit by assigning their claim ("OptIn"). At the same time class actions in Austria do not have to overcome other hurdles (like 'certification' or 'standing' rules that exist in the US).

### Expansion of Lawsuit

The charges have already been filed by Max Schrems and on behalf of a small group of users. Other Facebook users were able to join the existing lawsuit. Under Austrian procedural law, this is achieved through an 'expansion of the lawsuit' (*Klageausdehnung*), which turns the individual lawsuit gradually into a class action. The expansion can take place up to the last day of the oral hearing. Legal basis: art. 235 of the *Austrian Code of Civil Procedure (ZPO)* ([ris.bka.gv.at](#))

### 'Assignment app'

Since active participation by each affected user is necessary for an Austrian class action, users were able to assign their claim on [www.fbclaim.com](#). All non-commercial customers of 'Facebook Ireland Ltd' (all users outside of the US and Canada) can participate. Because more than 25.000 users assigned their claims after only

six days, the app was changed to still allow registrations, but not assignments. So far another 50.000 users have registered to join the class action.

### Hybrid US/EU law

In international cases, the applicable law within the EU is determined by the 'Rome I' regulation ([Regulation 593/2008/EC](#)). The regulation differentiates by field of law:

- In the area of '**data protection**', Article 23 of the 'Rome I' regulation and Article 4 of the 'Data Protection Directive' ([Directive 95/46/EC](#)) specify **Irish law** and thus EU law in this case. Data protection law cannot be selected, but is determined by the domicile of 'Facebook Ireland Ltd'.
- In the area of torts, however, clause 16.1 of the Terms and Conditions of 'Facebook Ireland Ltd' elects **Californian law** for all civil claims. A choice of law is possible in relation to civil matters.

These two facts ultimately results in a 'hybrid' of EU privacy and US tort law. The fact that Californian law does not have any data protection in the European sense is irrelevant; the violation of the law and the liability for damage ('*cause of action*') arise on account of Article 23 of [Directive 95/46/EC](#).

*Note: independently of this hybrid situation, more advantageous Austrian or EU law can also be applied in a consumer context. For **German users** (due to a special provision in clause 17.3 of Facebook's Terms and Conditions of Use), **German law** and EU law apply, not Californian law.*

### Damages for violations of the right to data protection

California does not make a general distinction between 'out of pocket loss' (measured in terms of money) and 'non-economic harms' (e.g. pain, sadness, interference of the right to privacy). There is no uniform rule, worldwide and in the EU. To simplify the matter, the claims will therefore be filed primarily under Californian law, and only on a second level under EU law and national laws.

The **money value** for damage to the right to privacy can of course not be determined objectively. In the filed class action damages of only **€500 per user** was claimed. This is substantially lower than Austrian courts here have allowed in other cases (e.g. €750 for an illegal sharing of one information at a credit agency ). A total of 25,000 participants receiving €500 results still in €12,5 million. 'Facebook Ireland Ltd' has over one billion users. *Case law on the extent of damage: [6 Ob 247/08dgt](#)*

### Unjust Enrichment

In addition to damage, unjust enrichment is also a claimed. This allows for the class member to demand from 'Facebook Ireland Ltd' the financial benefit that was obtained through the unlawful use of personal data. *Legal basis: art. 1041 of the Austrian Civil Code (ABGB) or the corresponding national rule.*

### Legal Costs funder (ROLAND Prozessfinanz)

Proceedings against a multinational corporation cost not only a lot of time, but also a lot of money. Like any court proceedings, the ruling can also be negative despite all expectations to the contrary. In Austria, all legal costs must be paid by the losing party: a financial risk that makes it impossible for 'normal people' to file lawsuits against large corporations or to organise a 'class action'. In order to eliminate this risk, [ROLAND ProzessFinanz](#) will finance the proceedings and will cover all costs in the event of a negative outcome. If the class action is successful, it will receive (a relatively low) ratio of 20% as remuneration, calculated on the basis of the awarded compensation after costs.

### Financial information

Participation is free. Participants will face no financial risk from the lawsuit as a result of the financing of the proceedings. Max Schrems will not receive any remunerations as the lead plaintiff. The lawyers and external service providers work at the standard rate, at a 'friendship price' or even for free. ROLAND ProzessFinanz will receive 20%. The total obtained at the end (less costs) is transferred to the participants.

The distribution may range from €0 to approx. €400 for a claim of €500 and depends on the outcome of the proceedings as well as many (not predictable) factors. Therefore, participants should *not* anticipate a certain financial benefit. The legally binding rules and all other details can be found in the [terms](#).