

Landmark EU-US data privacy court case opens in Dublin

February 7 2017, by Douglas Dalby



Austrian privacy campaigner Max Schrems wants to stop Facebook's transfer of personal data from Europe to the US

A campaign by Austrian privacy lawyer Max Schrems against Facebook's transfer of personal data from Europe to the US is being heard in an Irish court from Tuesday, the latest twist in a long legal battle.

The landmark case in Ireland, where the US tech giant has its European headquarters, will have serious repercussions for personal privacy policies and trans-Atlantic business.

The US government will be allowed to make representations to the [court](#), underlining the importance of the case.

Ireland's Data Protection Commissioner (DPC) is asking the country's High Court to refer the mechanisms used to [transfer](#) data between the EU and the US to the European Court of Justice, saying that such issues cannot be decided at national level.

The legal action follows a complaint to the DPC by Schrems about Facebook's use of so-called standard contractual clauses (SCCs) to transfer personal data from Europe to the US.

In a provisional finding, the watchdog last year said Schrems's argument against the tech giant was "well founded".

SCCs are now widely used by data exporters and are intended to allow for the legal transfer of data from EU citizens as long as "adequate protection" is in place.

Mason Hayes & Curran, the Dublin-based legal team acting for Facebook, earlier warned in a briefing note of the negative impact a defeat would have on its client and other multinationals.

"The widespread interest in this case arises, in part, from the potential economic and commercial consequences that could flow from a ruling that the SCC decisions are invalid," it said.

The lawyers quoted estimates saying that if services and cross-border data flows were to be disrupted, the European Union's [gross domestic](#)

[product](#) (GDP) could be hit by as much as 1.3 percentage points.

No redress?

Facebook argues there is nothing wrong with the current system and that there is no need for a referral.

It was forced to switch to SCCs last year after the European Court of Justice ruled in 2015 that the Safe Harbour framework, which had governed the EU-US flow of [personal data](#), contravened EU law because the privacy of European citizens could not be guaranteed in the US.

The SCCs are considered as something of a stopgap measure designed to allow the transfer of data, pending agreement on a more comprehensive regime.

Schrems, whose complaints eventually led to the demise of Safe Harbour, is a party to the proceedings alongside Facebook.

He argues that the Irish watchdog already has the power to stop data transfers from Facebook and should use it.

He also says that the SCCs offer no redress for European citizens in the US in the event of their data being accessed by a third party, such as US intelligence services, or compromised in some other way.

The hearings in Dublin are due to last three weeks.

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