

PRISM: Irish DPC's Refusal to investigate Facebook being reviewed by High Court

Student Group "europe-v-facebook.org" won a first stage victory against the Irish Data Protection Commissioner (DPC). The Irish High Court will review the inaction of the authority in relation to the PRISM scandal. An application for Judicial Review was granted by the High Court ([PDF](#)). The Irish Data Protection Commissioner Billy Hawkes had previously claimed that there is "nothing to investigate" ([Interview](#)) when it comes to Facebook's role in the PRISM scandal. Max Schrems (spokesman of europe-v-facebook.org): *"The DPC simply wanted to get this hot potato off his table instead of doing his job. But when it comes to the fundamental rights of millions of users and the biggest surveillance scandal in years, he will have to take responsibility and do something about it."*

Facebook continues illegally export of data. The case was triggered by a complaint against "Facebook Ireland Ltd" ([PDF](#)) which is responsible for Facebook outside the U.S. and Canada. European's data is transferred to the US - via Ireland. Under EU law, data may only be exported abroad if an "adequate level of protection" is guaranteed (Art 25 of Directive 95/46/EC). The students claimed in their complaint that such an "adequate level of protection" can hardly be guaranteed if a company is involved in the PRISM scandal. If the application of the group is successful, Facebook could be forced to limit the access of the NSA to European's data or would otherwise need to keep Europeans' data within the EU.

Validity of "Safe Harbour" questioned. The "Safe Harbour" decision of the European Commission ([PDF](#)) regulates the details about data export to the United States. The core of the complaint were therefore the validity and the scope of the "Safe Harbour" decision. Schrems: *"In our complaint we have questioned the scope and the validity of the 'Safe Harbour' system. The DPC has totally ignored this and has only verified that Facebook is member of the 'Safe Harbour' system - this was just never the question in our complaint."*

Frivolity throughout Europe? Rather than dealing with the complaint, the DPC has simply refused to make a decision - despite a duty to investigate. This was achieved by deeming the complaint "frivolous or vexatious" ([PDF](#)). Only if a complaint is frivolous the DPC may not make a formal decision. Schrems: *"This is the cheapest excuse in a long while. Our complaint was based on a legal view that is not only shared by every expert we know of, but also the DPCs in German, on the European level and even the European Commission. To claim that such a view would be 'frivolous' is absurd, but the DPC seems to have a system to turn down complaints."* Statistically, the DPC decides only on 2-4 % of all complaints ([PDF](#)).

Germany and Luxembourg investigate. Similar complaints against Microsoft and Skype in Luxembourg and against Yahoo in Germany are processed by the competent authorities. Only the Irish DPC refused to investigate the complaints. Schrems: *"We are excited to see what happens in Luxembourg and Germany. So far we only know that the complaints are investigated. We certainly hope that there are serious consequences if the data of millions of Europeans is misuse. We have to take action - and this will need to be more than a couple of angry letters by our politicians."*

Supported by Crowd-Funding. The procedure before the High Court is made possible by more than 1,500 donors that donated almost € 50,000 on www.crowd4privacy.org so far. Schrems: *"Without this financial assistance, it is virtually impossible to take action in Ireland. The court costs are extremely high. We are really happy about the great support we got."*

Next Steps. After the complaint has been served, the DPC now has a chance to respond to it. After that it will go on trial. Schrems: *"We hope for a ruling in the coming half year. The lawyers expect a simple case. We will of course publish all documents online, as we did before, so that everyone can see what is going on."*

Questions (europe-v-facebook.org):

E-Mail: media@europe-v-facebook.org

Phone: +43 660 1616 327 (from 10 am CET)

Photos, Files and more: <http://www.europe-v-facebook.org/EN/Media/media.html>