

Our Ref: **GR/MC /SCH002-9341**

Your Ref:

Date: **27 July 2020**

Philip Lee Solicitors
7/8 Wilton Terrace
Dublin 2
D02 KC57

By email [REDACTED]

Re: Data Protection Commissioner v Facebook Ireland Limited & Maximilian Schrems

Dear Sirs,

We refer to your letter of 27 July 2020.

As you are aware, our client's complaint (the "Complaint") was made on 25 June 2013. Over 7 years has passed since the Complaint was made. Your client has yet to issue a Decision in respect of the Complaint.

At paragraph 109 of its judgment, the CJEU reiterated the view previously expressed in relation to your client's duty to handle a complaint. It stated as follows:

"The supervisory authority must handle such a complaint with all due diligence (see, by analogy, as regards Article 25(6) of Directive 95/46, judgment of 6 October 2015, Schrems, C-362/14, EU:C:2015:650, paragraph 63)."

Furthermore, Mr Justice Hogan, in his Order of 20 October 2015, noted that your client provided, through Counsel an undertaking that the matter "*be investigated promptly and with all due diligence and speed.*"

It is surprising that, in light of the background set out above, your letter, 8 days after the CJEU judgment, provides no detail in respect of a timeline in order to bring the Complaint to a conclusion. Your client has not even provided a deadline for when it will have formulated a position.

There is no reason why the Complaint cannot be concluded swiftly while respecting **both** parties' right to due process. Indeed, it is clear that your client is **under a clear legal obligation** to conclude the Complaint with all due diligence and speed. For the avoidance of doubt, our client is determined to ensure that this is done.

Judgment of CJEU 16 July 2020

In your letter under reply, and in the Statement released by your client on 16 July 2020, your client has mischaracterised the judgment of the CJEU by attempting to maintain that the CJEU has, in some way, endorsed your client's position in relation to these proceedings. It has not done so.

In your letter under reply you state the following:

"We would also observe that the Court's findings endorse our client's assessment of the core problems associated with US public authority access to the personal data of EU citizens, as previously affirmed by the Irish High Court."

This is a very surprising contention for you to make in circumstances where your client's focus throughout the proceedings was in respect of remedies available in the United States. For whatever reason, your client did not deal with the substance of US surveillance law. This was dealt with by our client's expert witness, Ashley Gorski. As you can see from the Joint Experts Report (attached), your client's expert did not address at all the first 25 issues under the heading US Government Surveillance Authority.

Furthermore, the CJEU has held that your client's view that the SCC Decisions were *"likely to offend against Article 47 of the Charter insofar as they purport to legitimise the transfer of personal data of EU citizens to the US notwithstanding the absence of any possibility for any such citizen to pursue effective legal remedies in the US"* was entirely misplaced and quite simply wrong. The CJEU joined with our client's view that as the controller or processor or, failing that, the DPC has a duty to suspend data flows the fact that the SCCs do not bind the authorities of third countries does not affect the validity of the SCCs. This argument was made by our client from the outset.

As you have not provided any detail in relation to how or when the Complaint will be finalised, and your client is under a clear legal obligation to act, our client requests you to take the following actions immediately:

1. So as to ensure fair procedure, your client provide any documentation provided to it by Facebook since 25 June 2013 touching on the Complaint that has not already been furnished to our client. This should be furnished by 31 July 2020.
2. Your client should clarify the legal basis that Facebook relies on for their EU-US data transfers. This information is required to be kept by Facebook under Article 30(1)(e) and made public under Articles 13(1)(f) and 14(1)(f) GDPR. There is no reason why this information could not be obtained by 31 July 2020 pursuant to your client's powers in Article 58(1)(a) GDPR.
3. Should Facebook purport to rely on any new legal basis, our client will undertake to make Submissions by 14 August 2020.
4. Should there be the need to exchange further arguments, our client is happy to commit to an oral hearing so that all issues between the parties can be fully ventilated.
5. Our client sees no reason why a final Decision cannot be issued by you client by 1 October 2020.

Should your client see any legal or practical reasons why the above timetable cannot be met, our client is anxious that your client would make alternative suggestions by return to ensure that your client meets its obligations as outlined above and complies with the Order of Hogan J dated 20 October 2020.

We look forward to hearing from you.

