



Press and Information

Court of Justice of the European Union

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Judgment in Case C-498/16

Maximilian Schrems v Facebook Ireland Limited

## **Mr Schrems may bring an individual action in Austria against Facebook Ireland**

*By contrast, as the assignee of other consumers' claims, he cannot benefit from the consumer forum for the purposes of a collective action*

Mr Maximilian Schrems, who is resident in Austria, brought legal proceedings against Facebook Ireland ('Facebook') before the Austrian courts. He claims that Facebook has infringed several data-protection provisions in relation to his private Facebook account<sup>1</sup> and to the accounts of seven<sup>2</sup> other users who have assigned to him their claims for the purposes of those proceedings. Those other users are also consumers and live in Austria, Germany and India. Mr Schrems seeks, inter alia, a declaration from the Austrian courts that certain contractual terms are invalid and an order requiring Facebook both to refrain from using the data in question for its own purposes or the purposes of third parties and to pay damages.

Facebook takes the view that the Austrian courts do not have international jurisdiction. According to Facebook, Mr Schrems cannot rely on the rule of EU law<sup>3</sup> that allows consumers to sue a foreign contracting partner in their own place of domicile ('consumer forum'). Facebook argues that Mr Schrems, by using Facebook also for professional purposes (in particular by means of a Facebook *page* designed to provide information on the steps which he is taking against Facebook<sup>4</sup>), cannot be regarded as a consumer. So far as the assigned claims are concerned, Facebook submits that the consumer forum is not applicable to those claims since such jurisdiction is not transferable.

It is in that context that the Oberster Gerichtshof (Supreme Court, Austria) asks the Court of Justice to clarify the conditions under which the consumer forum may be invoked.

By today's judgment, the Court replies that **the activities of publishing books, giving lectures, operating websites, fundraising and being assigned the claims of numerous consumers for the purpose of their enforcement in judicial proceedings do not entail the loss of a private Facebook account user's status as a 'consumer'**.

**However, the consumer forum cannot be invoked in proceedings brought by a consumer with a view to asserting, in the courts of the place where he is domiciled, not only his own claims but also claims assigned by other consumers** domiciled in the same Member State, in other Member States or in non-member countries.

**So far as the status of consumer is concerned**, the Court points out that the consumer forum applies, in principle, only where the contract between the parties has been concluded for the

<sup>1</sup> Since 2010, Mr Schrems has been using a Facebook *account* solely for his private activities. In addition, in 2011, he also opened a Facebook *page* (i) to inform internet users of the steps he is taking against Facebook, of his lectures, his participation in panel debates and his media appearances, (ii) to fundraise and (iii) to publicise his books.

<sup>2</sup> Mr Schrems has also had assigned to him, by more than 25 000 people worldwide, claims for enforcement.

<sup>3</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1; 'the Brussels I Regulation'). According to that regulation, defendants must, in principle, be sued in the courts of the Member State in which they are resident or have their registered office. It is only in cases mentioned in an exhaustive list that defendants may or must be sued before the courts of another Member State.

<sup>4</sup> See footnote 1.

purpose of a use of the relevant goods or services that is other than a trade or professional use. As regards services relating to a digital social network which is intended to be used over a long period of time, it is necessary to take into account subsequent changes in the use which is made of those services.

Therefore, a person bringing legal proceedings who uses such services may rely on his status as a consumer only if the predominately non-professional use of those services, for which the applicant initially concluded a contract, has not subsequently become predominately professional.

Nonetheless, given that the notion of a 'consumer' is defined by contrast to that of an 'economic operator' and that it is distinct from the knowledge and information that the person concerned actually possesses, neither the expertise which that person may acquire in the field covered by those services, nor his assurances given for the purposes of representing the rights and interests of the users of those services, can deprive him of the status of a 'consumer'. An interpretation of the notion of 'consumer' which excluded such activities would have the effect of preventing an effective defence of the rights that consumers enjoy in relation to contracting partners who are traders or professionals, including those rights which relate to the protection of their personal data.

**As far as assigned claims are concerned**, the Court notes that the consumer forum was established in order to protect the consumer as a party to the contract in question. A consumer is therefore protected only in so far as he is, in his personal capacity, the applicant or defendant in proceedings. Consequently, an applicant who is not himself a party to the consumer contract in question cannot enjoy the benefit of the jurisdiction relating to consumer contracts. The same also applies in regard to a consumer to whom the claims of other consumers have been assigned.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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