

## **Client Alert: Schrems Irish Case Referred to European Court – Threat to Model Clauses and International Data Transfers?**

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<https://youtu.be/AI9fmDXfz8s?t=7>

The latest round in the Max Schrems and Facebook international data transfers dispute took a very important turn this morning as the Irish High Court has now decided to refer a series of questions on the validity of EU Model Clauses/Standard Contractual Clauses (SCCs) to the European Court of Justice in Luxembourg.

### **Background**

This case is just the latest instalment in Max Schrems' litigation over the way in which Facebook handled his data. In short, this case concerns Mr Schrems' complaint to the Irish Data Protection Commissioner (DPC) that SCCs were not an adequate way of Facebook transferring data from Ireland to the US. The DPC took the view that since important questions of EU law were at stake she would like the ECJ to determine the issue. Since she could not make a direct referral to the ECJ she commenced proceedings in the High Court in Ireland to ask them to make the referral. The court hearing exceeded the initial time estimate, was then re-opened after the initial hearing and judgment was reserved until today. It is a long judgment – some 153 pages long.

### **Previous court decisions**

It will be recalled that previously the Court annulled the EU-US Safe Harbor scheme following an earlier referral to it from the Irish court. The current matter may have even wider ramifications as SCCs are relied on widely by businesses globally. This said, there should not be any cause for immediate alarm as it is not anticipated that businesses' existing SCCs will be affected in the interim, unless individual DPAs decide to act now. The Court's ruling is expected in about 2 years as the Irish court must first decide exactly the questions the ECJ is to be asked.

### **Wider implications**

It is important to remember this case does not just concern data flows to the US – SCCs are used to legitimise data flows to other countries, for example to back-office operations in India.

### **Schrems' reaction**

Immediately after the case Mr Schrems said *"I welcome the judgement by the Irish High Court. It is important that a neutral Court outside of the US has summarized the facts on US surveillance in a judgement, after diving through more than 45,000 pages of documents in a five week hearing"*.

### **Next steps**

The next hearing in the case is on October 11. The parties will be asked to agree on the exact questions that are to be referred to the ECJ.

We will update you further when more details about the referral have emerged.

You can find out more about the background to Max Schrems' challenge in our interview with him here: <http://www.corderycompliance.com/interview-with-max-schrems/>.

You can find out more about the previous challenge to Safe Harbor and the current status of Privacy Shield in our alert here: <http://www.corderycompliance.com/privacy-shield-faqs/>.

For more information please contact Jonathan Armstrong or André Bywater who are lawyers with Cordery in

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