

Schrems case falls at first hurdle

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The result of one of Europe's most anxiously awaited data protection cases came out last week. We have previously reported on the action brought by Max Schrems in Austria against Facebook. Our previous alert with background on the case is [here](#).

What happened?

On July 1, 2015, the Vienna Regional Court (Landesgericht) rejected the Schrems class action for lack of jurisdiction, essentially agreeing with Facebook's initial submissions. The court apparently felt that the courts in Ireland were the proper venue since Facebook's international operations are based there or in the alternative Schrems could sue in California where Facebook have their HQ.

What does Schrems say?

Schrems has expressed regret that the court refused (in his view) to deal with the 'hot potato'. He says he will appeal. The deadline for filing an appeal is two weeks. On appeal the matter will be decided by the Higher Regional Court (Oberlandesgericht) – the decision of that court can then be appealed to the Austrian Supreme Court (Oberster Gerichtshof). It seems as if Schrems still has his litigation funding in place and approaching 100,000 potential plaintiffs so an appeal would seem likely. Schrems also says that 187 Irish nationals had signed up to the Austrian action so separate proceedings in Ireland cannot be ruled out.

Schrems says that the Austrian court did not look at his substantive case and he says the merits of his case remain. He says:

"The decision is lacking a profound reasoning for this finding. The view expressed by the Regional Court is in stark contrast with all relevant case law and jurisprudence, including the case law by the European Court of Justice and the Austrian Supreme Court."

Other actions remain

Our understanding is that Schrems' second action in the European courts against the Irish data Protection Commissioner's refusal to deal with his complaints about Facebook's safe harbor registration remains. An opinion from Advocate General Bot of the Court of Justice of the European Union was expected in June but was delayed without a new date being set – given the summer recess of the court the earliest expected date is therefore the Autumn. Additionally even if the Schrems appeal fails this is not the end of data protection class actions in Europe. We also reported recently on the UK litigation against Google. Our update on that case - Google Inc. vs. Judith Vidal-Hall; Robert Hann; Marc Bradshaw and The Information Commissioner is [here](#).

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