

Facebook Challenged by Activist Who Broke EU-U.S. Data Pact

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- Austrian activist plans mass privacy, consumer case in Vienna
 - Social media giant tells court such a suit would bring chaos
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Facebook Inc. <https://www.bloomberg.com/quote/FB:US> finds itself fighting an old foe, the Austrian activist who took on the social-media giant and brought down an international data-sharing pact two years ago. Now, Max Schrems is using a class-action suit that could represent as many as 25,000 users to accuse the social-media giant of further violations of privacy and consumer rights.

Schrems returned to the court that backed his earlier argument that the user data of EU citizens was not sufficiently protected when shipped to the U.S. This time, the 29-year-old privacy activist is hoping for the EU Court of Justice's green light to bring an Austrian-style collective suit against Facebook with claims from around the EU and beyond.

"Mr. Schrems has been a resident in Vienna for the last 10 years" and Facebook "cannot say that it had no idea that it would ever face litigation there, given also the significant number of users of Facebook," Herwig Hofmann, a lawyer for Schrems, told a five-judge panel at the EU court in Luxembourg on Wednesday. Regardless of where claims come from, under Austrian-style class actions, "if assigned to Schrems, they become his own claims."

Schrems is hoping to have a second win, like the one he celebrated in 2015 when the EU's top court [overturned](https://www.bloomberg.com/news/articles/2015-10-06/eu-u-s-data-sharing-pact-is-invalid-eu-s-top-court-rules-iff2hpgy) <https://www.bloomberg.com/news/articles/2015-10-06/eu-u-s-data-sharing-pact-is-invalid-eu-s-top-court-rules-iff2hpgy> the so-called Safe Harbor data-sharing pact based on his complaint about how American security services can gain unfettered access to Facebook customer information sent to the U.S. The case threw thousands of companies into legal limbo and forced the EU and U.S. back to the drawing board to [agree](https://www.bloomberg.com/news/articles/2016-02-01/eu-u-s-data-transfer-pact-proves-elusive-as-deadline-looms) <https://www.bloomberg.com/news/articles/2016-02-01/eu-u-s-data-transfer-pact-proves-elusive-as-deadline-looms> on a new pact that would sufficiently protect EU citizens' data when transferred across the Atlantic.

Vienna Suits

Schrems started his vendetta years ago by filing 22 complaints against the Menlo Park, California-based company in Ireland, where Facebook has its European base. Besides the separate Irish cases, Schrems in 2014 also filed suit in his hometown of Vienna, accusing Facebook of exploiting users' data for commercial and other purposes in breach of European privacy and consumer laws. Some 25,000 other Facebook users assigned their rights to him, though for now only seven of those claims have been added to a pending test case.

Upholding Schrems' position would lead to "an untenable outcome" where any consumer, wherever in the world, would be free to bring a case against any company in any EU court, by simply assigning their claims to one person based in a country where the company operates, according to Facebook.

Schrems' action "and related manipulation and multiplication of consumer places of jurisdiction, creates chaos and uncertainty," Nikolaus Pitkowitz, a lawyer for Facebook, told the EU judges. "If we opened the floodgates and allowed those class actions anywhere, many other people might follow and it would be totally out of control."

Bits and Pieces

Consumers shouldn't be allowed to "assign bits and pieces of claims and just jump onto the most convenient bandwagon," Pitkowitz said.

The EU court's ruling, which will be binding, could help bring clarity for consumer rights more broadly too. European consumer group BEUC said the case is important if the judges decide to give people a "home-field advantage" when they represent the claims of many affected EU customers.

"Consumers are often powerless when tech giants breach data-protection rules," said Christoph Schmon, team leader for consumer rights at BEUC. "Even though consumers might be able to use their local courts to act against companies such as Facebook, they are often reluctant to take legal action. The procedural costs are high and the value in litigation rather low."

European consumers still waiting for compensation from [Volkswagen AG](https://www.bloomberg.com/quote/VOW3:GY) over rigged diesel cars may be looking toward the ruling in this case too.

"The VW scandal has shown that in many EU countries consumers fail the legal means to get compensation," Schmon said in an e-mailed statement. "In the end, it will require legislative action to provide consumers effective access to justice."

The Austrian government supported Schrems' action in the EU court hearing Wednesday, rejecting Facebook's arguments that it would open the floodgates to all kinds of randomly constituted cases.

"I really can't understand where Facebook is coming from," Austria's lawyer Gerhard Kunnert said. "Why would you want every single individual consumer in the EU to bring separate claims" in each of the bloc's nations.

A key question from the Austrian court, which sought the EU judges' guidance last September, is whether Schrems can be seen as a consumer, given he used Facebook partly also for commercial purposes. Should the court decide that he qualifies as a client, he would stand a chance to bring the class action. The EU court will also answer whether users from other EU countries, or even outside the EU, could assign their claims to Schrems.

Advocate General Michal Bobek said he would issue a non-binding opinion in the case on Oct. 31. The court's ruling normally follows four to six months later.

The case is: C-498/16, Schrems.