

By Registered Mail

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Your ref. 20150153 Privacy First/PILP and others – Facebook

Re: Your letters of 15 December 2015

Dear Mrs Volgenant, Blokhuis and Van Groenendaal,

Thank you for your letters of 15 December 2015. We note that your letters are written on behalf of a number of privacy organisations, however it is not clear who those organisations would represent in this regard. In any event, the points raised in your letters are addressed below.

As you note in your letters, in its recent decision of *Schrems v. Data Protection Commissioner* (the "Judgment"), the European Court of Justice invalidated the existing Safe Harbor regime as a valid basis to transfer personal data to the United States under Article 25(1) Directive 95/46/EC (the "Directive").

However, as you will no doubt be aware, Article 26 of the Directive provides a number of grounds upon which personal data may be transferred lawfully to a third country outside the EEA. The Judgment does not address any of these grounds and is **expressly limited** to the Safe Harbor regime. Further, in its Judgment, the Court expressly stated that: "*the Court alone has jurisdiction to declare that an EU act [...] is invalid*".¹ Accordingly, the grounds for transfer of data set out in Article 26 of the Directive remain entirely lawful.

Facebook Ireland complies with these other grounds to transfer data legally from the European Union to the United States. These same grounds are used daily by many thousands of other companies throughout the European Union.

¹ Schrems v Data Protection Commissioner, Case C-362/14, para 61

We agree with many other commentators that an appropriate long-term solution for transatlantic data transfers is a new Safe Harbor agreement. We understand that such a revised Safe Harbor agreement is currently being negotiated by the EU and US governments. In the meantime, Facebook Ireland will continue to abide by the other grounds set forth in Article 26 of the Directive in respect of the lawful transfer of personal data.

Finally, we note from your letters that your clients "*reserve the right to initiate legal proceedings in the Netherlands and to request a preliminary injunction from the competent Dutch Court*". It is not clear, from the letter or otherwise, what civil claim your clients could conceivably assert or that a Dutch court would be competent to adjudge any such claim against Facebook Ireland, the controller with regard to the processing of personal data of European Facebook-users. For completeness, Facebook Netherlands B.V. is *not* the controller in this regard. Should your clients elect nevertheless to initiate legal proceedings, Facebook Ireland will of course defend itself.

We trust that the above adequately satisfies your clients' concerns.

Sincerely yours,



Facebook Ireland