

CJEU Clarifies Consumer Jurisdictional Privilege in Personal and Assigned Claims for Breach of Data Rights



On 25 January 2018, the Court of Justice of the European Union (the **CJEU**) rendered its decision in [Maximilian Schrems v. Facebook Ireland Limited](#).

The CJEU followed the opinion of Advocate General Bobek (the **Advocate General**) – [that we previously discussed](#) – and clarified the extent of the consumer jurisdictional privilege.

As we already discussed, Maximilian Schrems is a well-known Austrian activist in the field of technology and electronic privacy. [Previously, Mr. Schrems had successfully challenged the transfer of data from the EU to the U.S. through the Safe Harbour regime.](#)

In the present case, Mr Schrems sued *Facebook Ireland Limited* (**Facebook**), the European subsidiary of *Facebook Inc.*, for alleged violations of his privacy and data protection rights, as well as those of seven other Facebook users who had assigned their claims to him. These seven co-claimants were

domiciled in the EU as well as in India.

Mr Schrems initiated proceedings in the Austrian courts, relying on the consumer jurisdictional privilege provided for in Article 16(1) of the now repealed Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the **Brussels I Regulation**). This provision allows consumers (*i.e.*, non-commercial parties) to sue the other party to a contract in the courts of the EU Member State in which the consumer is domiciled. Article 18(1) of the currently applicable Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the **Brussels Ibis Regulation**) contains similar terms. Article 15(1) of the Brussels I Regulation (reproduced in Article 17(1) of the Brussels Ibis Regulation) limits this jurisdictional privilege to *“matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession”*.

Facebook contested the jurisdiction of the Austrian court, which therefore asked for clarification from the CJEU in the form of a preliminary reference. Facebook argued that (i) Mr Schrems was not a consumer, given the public nature of his activities on the site, and (ii) any consumer jurisdictional privilege that Mr Schrems enjoys cannot extend to the claims assigned to him by other Facebook users.

Mr Schrems maintained two presences on Facebook. The first, an “account” was for personal use. The second, a “page”, was public and used for promoting his books, lectures, media appearances and fundraising activities. Mr Schrems set up his public “page” in 2011, three years after first opening his personal “account”.

The CJEU held that, for the purposes of the Brussels regime, the notion of a consumer must be strictly construed. As a

general rule, the status of consumer arises from the nature and the aim of the contract at the time it was concluded. Once acquired, therefore, consumer status will normally persist. A subsequent change in use may, exceptionally, transform the user's status. According to the CJEU, the fact of publishing books, giving lectures, operating websites, fundraising and possessing particular knowledge or expertise in the field covered by the digital services (*i.e.*, online social networks such as Facebook) is not sufficient to deprive claimants of their consumer status. The CJEU added that neither the fact of having been assigned another's claim nor the assurances given in order to persuade such an assignment removes the jurisdictional privilege from the original personal claim.

The assigned claims do not, however, enjoy the same consumer jurisdictional privilege. The CJEU was clear that a consumer is protected "*only in so far as he is, in his personal capacity, the plaintiff or defendant in proceedings*". That privilege cannot, therefore, extend to an applicant who is not a party to the contract at issue, or who is assigned the claims of other applicants (each of whom has concluded a separate contract with the service provider). Thus, a vehicle for collective redress which specifically aims to gather litigants and assign their claims to one claimant is incompatible with the consumer jurisdictional privilege. On this point, the CJEU expressly agreed with Advocate General Bobek's concerns that assigned claims could be used to circumvent otherwise predictable rules of jurisdiction.

Thus, the CJEU held that Mr Schrems should maintain his consumer jurisdictional privilege in respect of his personal claims, but not in respect of those claims which had been assigned to him by other parties.

Overall, this judgment puts a limit to forum shopping and on the possibility (for consumers) to assign their claims to a person domiciled in whatever place appears to be the most appropriate forum. In particular, since one of the assignors

was domiciled outside the EU (in India), the judgment of the CJEU can also be read as precluding the possibility of using EU jurisdictional rules as a means for gathering consumer claims from around the world.

This post was largely based on an article drafted by my colleagues Koen T'Syen and Benedict Blunnie. It will be published in the January 2018 edition of Van Bael & Bellis' newsletter on Belgian Business Law.

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