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Attorney General delivers opinion in consumer collective action case against Facebook

On 14 November, the Attorney General of the EU Court of Justice (CJEU) delivered his opinion on the collective action of Max Schrems against Facebook. Max Schrems, an Austrian citizen, has brought a case to court in Austria on behalf of 25,000 Austrian and foreign consumers to claim compensation from Facebook for violation of their privacy rights.

At the heart of the proceeding initiated by the Austrian data protection activists are the questions of whether Max Schrems is considered a 'consumer' and therefore eligible to bring the case before the court where he lives (Vienna) or whether he lost this right since he used his Facebook profile also for activities which might be considered not purely private, such as raising donations. Even more important is the question whether Max Schrems can collect claims of other consumers and bring all of them to the court of his home country, even if these consumers live in other EU Member States and non-EU countries.

The Advocate General Michal Bobek proposes that Max Schrems should be considered a consumer with regard to his own claims arising from the private use of his own Facebook account. However, he cannot bring claims assigned by other consumers before his home court in Austria.

Monique Goyens, Director General of The European Consumer Organisation (BEUC) comments:

"The opinion of the Advocate General is disappointing as it would rule out that consumers team up in cases of mass harm. Bundling claims before one court would have been an interesting and practicable solution to claim redress in some cases.

"In any case, access to justice in mass harm cases will not be solved by the courts. We need the EU to take their responsibility and to introduce an effective EU-wide tool for the collective enforcement of consumer rights. The Volkswagen-scandal has demonstrated that victims of fraudulent actions which financially affect millions of consumers often do not have access to justice."

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