

EXTRACT FOR THE CENTRAL REGISTER OF COLLECTIVE ACTIONS WITHIN THE MEANING OF ARTICLE 1018C DCCP

of the summons pursuant to article 305a of Book 3 DCC, as issued on 1 March 2024 by:

DATA PRIVACY STICHTING,

a foundation having its registered office in Amsterdam, claimant, hereinafter referred to as the "**Foundation**", represented by: J.H. Lemstra LLM, W.P. Wijers LLM and G.J. Zwenne LLM,

versus:

1. **META PLATFORMS INC.,**
a company incorporated and existing under the laws of the United States, having its registered office in Menlo Park, California, United States
2. **META PLATFORMS IRELAND LTD,**
a company incorporated and existing under the laws of Ireland, having its registered office in Dublin, Ireland
3. **FACEBOOK NETHERLANDS B.V.,**
a private company with limited liability, having its registered office in Amsterdam,

defendants, hereinafter collectively referred to as "**Meta**",

at the Amsterdam District Court, with effect from a first scheduled date of 3 July 2024.



1. INTRODUCTION

1.1. This is an extract from the summons issued by the Foundation on 1 March 2024 against Meta, whereby a collective action as referred to in article 305a of Book 3 DCC is initiated.

1.2. With this extract from the summons, the Foundation is providing the required information pursuant to article 1018c (2) DCCP (as amended as at 25 June 2023)¹, the purpose of which is to enable others to properly consider whether they also wish to bring an action against Meta regarding the same event. This extract confines itself to providing a description of the purpose of the collective action, the facts relied on by the Foundation, the names of the defendants and a precise description of the persons whose interests this action seeks to protect.

1.3. This extract is structured as follows:

- in paragraph 2, the Foundation describes which parties are involved in the proceedings and for whose benefit it has brought the proceedings;
- paragraph 3 sets out the essence of the case and clarifies the factual contentions on which the collective action is based;
- in paragraph 4, the Foundation explains Meta's wrongful conduct and sets out the breaches of the law it has established;
- in paragraph 5, the Foundation explains the damage suffered by the Members; and
- paragraph 6 contains the full claim for relief of the summons, showing the purpose of the collective action.

2. THE PARTIES TO THE PROCEEDINGS

2.1. The Foundation is an independent non-profit foundation. The object of the Foundation is to represent the interests of victims of privacy violations. The Foundation has an independent board and supervisory board, consisting of advocates and experts in the field of privacy protection and collective actions of social importance.

2.2. In these proceedings, the Foundation stands up for:

- (i) The former and current users of the Facebook platform (the "**Facebook service**"), who used the Facebook service in the period between 1 April 2010 and the date of the final judgment to be rendered in these proceedings (the "**Relevant Period I**") while they were residing in the Netherlands, who did not act in the exercise of a profession or business and were not an Excluded Party (as defined

¹ *Parliamentary Papers II 2021/22*, 36034, no. 3 (Explanatory Memorandum), pp. 34-35.



in the Articles of Association), all this in the broadest sense, and who did not delete their Facebook account before 15 November 2016 (the "**Members I**"); and

- (ii) The former and current users of the Facebook service and/or Instagram platform who used those platforms at any time in the period between 25 May 2018 and 10 July 2023 (the "**Relevant Period II**"), while they were residing in the Netherlands at any time they used those platforms, or any of those platforms, while not acting in the exercise of their profession or business, and who are not an Excluded Party (as defined in the Articles of Association), all in the broadest sense (the "**Members II**").

- 2.3. Where the Foundation refers to the "**Members**", the distinction described above is irrelevant. The Foundation is initiating this case on behalf of the Members.
- 2.4. The Foundation is *inter alia* assisted by experienced lawyers or law firms, specializing in the field of collective action law and privacy law. The Foundation and its lawyers operate independently of the funder and other third parties.² The Foundation is funded for the purposes of this collective action by Lieff Cabraser Heimann & Bernstein LLP.
- 2.5. The Foundation has on several occasions in vain attempted to enter into talks with Meta with a view to pursuing its claims without court intervention, but this did not result in an amicable settlement. For this reason, the Foundation has decided to issue the summons.
- 2.6. The Foundation has issued the summons against Meta Platforms Inc. ("**Meta Inc.**"), Meta Platforms Ireland Ltd. ("**Meta Ireland**") and the Netherlands-based company Facebook Netherlands B.V. ("**Facebook NL**"). Where the Foundation refers to Meta, the distinction between the three defendants is irrelevant.
- 2.7. The Foundation is aware that Stichting Onderzoek Marktinformatie (the Foundation for Market Information Research) by summons of 3 November 2023 filed a collective action for the same events, or partly the same events, as those to which the collective action filed by the Foundation relates. However, the Foundation is particularly well placed to be appointed as exclusive representative. Earlier, the Foundation already successfully brought a collective action against Meta, as will be explained below. The Members will benefit from this collective action, the Foundation is representative and has thorough knowledge of and experience with both data protection law and the WAMCA (the Settling of Large-scale Losses or Damage (Class Actions) Act), given the expertise and

² More information about the Foundation, its directors, supervisory directors and partners, may be found at www.dataprivacystichting.com.



experience of the members of the board and supervisory board and its lawyers. Moreover, the Foundation enjoys the support from several important civil society organizations, including the Dutch Consumers' Organization Consumentenbond and the leading privacy non-profit organization NOYB. The Foundation therefore requests the court to designate it as the Members' exclusive representative.

3. THE ESSENCE OF THE MATTER

- 3.1. This action is made up of two parts.
- 3.2. The first part of these proceedings builds on a declaratory decision pronounced by the Amsterdam District Court (the "**District Court**") in the (final) judgment of 15 March 2023 (the "**Judgment**")³ in the proceedings against Meta that the Foundation commenced on 30 December 2019 pursuant to article 305a of Book 3 of the old DCC. In the Judgment, the District Court held that Meta Ireland had acted unlawfully towards Dutch users of Facebook in the period 1 April 2010 - 1 January 2020, by processing personal data for advertising purposes without a valid basis.⁴ According to the District Court, Meta Ireland had acted in breach of articles 8, 16, 33 and 34 Wbp, articles 6, 9, 12-14 GDPR, article 11.7a Tw and article 193d of Book 6 DCC. The District Court held that the processing of personal data for advertising purposes was not necessary for the performance of the contract that is entered into with Meta Ireland by the users of Facebook,⁵ that it was not necessary for the legitimate interests alleged by Meta⁶ and that Meta had not obtained the consent of Facebook users in the Netherlands for Meta's way of processing personal data.⁷ This conduct also constituted an unfair commercial practice, according to the District Court.⁸
- 3.3. To date, Meta still provides advertisers with the opportunity to send ads to Facebook users, both on the platform itself and off the platform, for example in apps or third-party websites. In the period starting on 1 January 2020, there has been little or no change to this advertising model operated by Meta, as noted by the Irish regulator, the Data Protection Commissioner, in its report of 31 December 2022.⁹
- 3.4. On 14 July 2023, the Norwegian data protection regulator Datatilsynet imposed a three-month ban on Meta Ireland and Facebook Norway AS

³ Amsterdam District Court 15 March 2023, ECLI:NL:RBAMS:2023:1407.

⁴ Judgment, ground 12.73.

⁵ Judgment, ground 12.17.

⁶ Judgment, ground 12.72.

⁷ Judgment, grounds 12.40, 12.45 and 12.55.

⁸ Judgment, ground 17.19.

⁹ Decision concerning a complaint directed against Meta Platforms Ireland Limited in respect of the Facebook service made pursuant to Section 113 of the Data Protection Act 2018 (Inquiry 18-5-5) dated 31 December 2022, paras. 2.1-2.2.



regarding the processing of personal data in Norway for personalised ads on the basis of contractual necessity or legitimate interest. As Meta nevertheless (even in Norway) continued processing personal data for personalised ads, Datatilsynet asked the EDPB on 28 September 2023 in the expedited proceedings pursuant to article 66 GDPR, to rule by binding decision that Meta must stop this processing of personal data.

- 3.5. On 27 October 2023, the European Data Protection Board (“EDPB”) ruled¹⁰ that Meta had been guilty of an “ongoing infringement” of article 6 (1) GDPR, because Meta wrongly relies on contractual necessity for the processing of personal data and wrongly relies on ‘legitimate interest’ for the processing of personal data for personalized ads. For this reason, the EDPB adopted an urgent binding decision, instructing the Irish regulator to prohibit Meta from processing personal data under article 6 (1) (b) and article 6 (1) (f) GDPR.
- 3.6. From 3 November 2023 onwards, the Members were given the choice of using the Facebook service supposedly ‘for free’ with ads or subscribing (for a fee) to use it without ads. A Facebook user who both does not want ads targeting personal data and does not want to pay for the use of the Facebook service has no choice but to delete his account. It is not possible to continue using the Facebook service and (for example) only agree to non-personalized ads.
- 3.7. However, it soon emerged that even personal data of users who had taken out a paid subscription to the Facebook service continued to be processed by Meta for advertising purposes, as Meta continues to track the browsing behaviour of Facebook users and records this information in users’ interest characteristics.
- 3.8. In these proceedings, the Foundation requests the District Court to take the declaratory decision in the Judgment as a starting point. The Foundation will explain that Meta’s unlawful conduct has continued up to the present, because Meta has not, or not adequately, amended its conduct. On these grounds, in addition to an extension of the declaratory decisions already obtained, the Foundation seeks payment of damages for the Members I.
- 3.9. The second part of these proceedings concerns the fact that Meta Ireland collects and transfers personal data of Dutch users of Facebook and Instagram to Meta Inc. in the U.S. It is in the U.S. that the servers are located on which Meta Inc. processes the personal data of the users of its platforms. As soon as the personal data are to Meta Inc. by Meta Ireland, this data may be subjected to large-scale monitoring and analysis by U.S. intelligence agencies. Processors of personal data of Dutch users of

¹⁰

EDPB Urgent Binding Decision 01/2023 dated 27 October 2023.



Facebook and Instagram in the U.S., such as Meta Inc., are obliged under U.S. law to render their assistance in this surveillance and the powers of the U.S. intelligence agencies may be far-reaching. This leads to a large amount of personal data, including sensitive data and special categories of personal data, being collected from people who have not given their consent to this. By processing the personal data collected in the Netherlands (and in other EU member states) on its servers in the U.S., Meta helps ensure that U.S. authorities can get or do get access, as the case may be, to the most personal and confidential personal data of the users of its platforms.

- 3.10. This transfer was in breach of European privacy rules and fundamental safeguards against untargeted government surveillance. The Court of Justice of the European Union ("CJEU") has found that U.S. law did not afford a level of protection essentially equivalent to that guaranteed in the EU.¹¹ Interference by US surveillance programmes was wrongly not limited to what is strictly necessary, and no effective judicial review mechanisms were available to non-Americans who are potentially monitored.
- 3.11. Meta has always counted on the fact that its continued violation of the law would be resolved by European politics. This has meanwhile happened. On 10 July 2023, the European Commission decided that U.S. law by now was supposed to provide the required level of protection, and therefore adopted the Data Privacy Framework (the "DPF") on 10 July 2023.¹²
- 3.12. With no fundamental changes in the legal field, it is inevitable that the CJEU will rule that the U.S. still does not have a level of protection equivalent to that of the EU and will declare the DPF invalid as well. But until that happens, the Foundation is waiting to see whether the data transfers to Meta Inc. will be legitimised by the DPF with effect from 10 July 2023. In any event, all this means that Meta in any case acted in breach of the requirements for data transfers to the U.S. as contained in the GDPR from 25 May 2018 until 10 July 2023 (the Relevant Period II). The Foundation reserves the right to extend the Relevant Period II and supplement its claims regarding the unlawful trans-Atlantic data transfers, if and as soon as the CJEU has declared the DPF invalid.
- 3.13. The Foundation demands compensation for the damage suffered by the Members II as a result. In addition to damages, the Foundation requests the Court, if and as soon as the CJEU declares the DPF invalid in the course of these proceedings, to order Meta Inc. to delete the personal data that

¹¹ CJEU 16 July 2020, C-311/18, ECLI:EU:C:2020:559 (*Schrems II*).

¹² Adequacy decision for the EU-US Data Privacy Framework, C(2023) 4745, 10 July 2023, commission.europa.eu.



was transmitted to the U.S. during the Relevant Period II or return it to Meta Ireland, or in any case to make sure that this data can no longer be accessed by/be made available to the intelligence and security agencies in the U.S.

4. META'S UNLAWFUL CONDUCT

4.1. In the Relevant Period I, Meta:

- (i) insufficiently informed the Members about the processing of their personal data for commercial purposes. This is in violation of articles 33 and 34 of the GDPR, articles 12-14 of the GDPR and article 11.7a (1) (a) Tw;
- (ii) processed personal data of the Members for commercial purposes without a legally valid basis for processing. This is in violation of article 8 Wbp, article 6 (1) GDPR and article 11.7a (1) (b) Tw; and
- (iii) in violation of the processing ban, processed special categories of personal data of the Members. This is in violation of articles 16 and 9 (1) of the GDPR.
- (iv) These violations furthermore constitute an unfair commercial practice within the meaning of article 193b in conjunction with article 193d of Book 6 DCC.
- (v) Moreover, Meta has unjustly enriched itself at the expense of the Members I within the meaning of article 212 of Book 6 DCC.

4.2. In the Relevant Period II, Meta:

- (vi) transferred personal data of the Members to the U.S. without having taken appropriate measures, or protective measures. This is in violation of article 44 in conjunction with article 46 (1) GDPR.

Re (i): Meta inadequately informed the Members

4.3. Meta did not inform its users, or inadequately informed them, about the processing of personal data for advertising purposes and the processing of personal data by third parties. Meta deliberately made it too difficult for the average user to be adequately informed of the required and relevant information about the data processing operations, meaning that an average user could not understand what the full extent of the consequences of Meta's data processing operations will be.

4.4. The above was established by the District Court in its Judgment¹³ with regard to Meta Ireland concerning the period up to 19 April 2018, but the same applies to the entire Relevant Period I. Because the Foundation asserts that, contrary to what was ruled by the District Court in the

¹³ Judgment, grounds 12.53 and 12.55.



Judgment,¹⁴ Meta Inc. and Facebook NL are joint controllers together with Meta Ireland, all this also applies to Meta Inc. and Facebook NL. This is the case with respect to all the claims to be discussed below, so that the Foundation will not repeat that position in each case.

- 4.5. In its decision of 31 December 2022, the Irish regulator also concluded that Meta does not provide Facebook users in the EU with sufficiently clear and complete information about the processing of personal data for advertising purposes.
- 4.6. Meta furthermore failed to inform its users of the fact that, under certain circumstances, third-party developers were given access to, or had access to, their personal data. This was established by the District Court in its Judgment¹⁵ for the period up to June 2018.
- 4.7. Lastly, Meta did not inform its users, or not adequately and in a timely manner, about the fact that access to personal data was granted to integration partners. In respect of Meta Ireland this had already been established by the District Court in the Judgment¹⁶ for the period up to 1 January 2020. The sole integration partner after that date continued to use access to the data until January 2022, so that Meta's unlawful conduct in this regard also continued until that date.

Re (ii): Meta processes personal data without a valid basis for processing

- 4.8. In the Relevant Period I, Meta relied on the bases for processing of contractual necessity (1 April 2010 - 30 March 2023), legitimate interest (1 April 2010 - 25 May 2018 and 30 March 2023 - 3 November 2023) and consent (1 April 2010 - 25 May 2018 and 3 November 2023 – to date).
- 4.9. In the Judgment¹⁷ the District Court already ruled that Meta Ireland did not have a valid basis for processing at any time in the period up to 1 January 2020. Meta's business model has not changed on this point since then. The EDPB came to a similar conclusion.¹⁸ This means that Meta does not have a valid basis for processing for the period from 1 January 2020 onwards either.
- 4.10. Changing the basis for processing to 'consent' (from 3 November 2023 onwards) does not alter the District Court's finding. Meta forces Facebook users to make a choice: either take out a paid subscription or accept that Meta processes personal data for advertising purposes. However, Meta also continues to process personal data of Facebook users who do opt for the subscription model. Moreover, it concerns forced consent, which,

¹⁴ Judgment, ground 17.19.

¹⁵ Judgment, ground 11.55.

¹⁶ Judgment, grounds 11.74-11.76.

¹⁷ Judgment, ground 12.73.

¹⁸ EDPB Urgent Binding Decision 01/2023 dated 27 October 2023.



therefore, is not freely given, the provision of information is insufficient and it is not specific.

Re (iii): Meta processes special personal data in violation of the ban on processing

- 4.11. In the Judgment,¹⁹ the District Court found that Meta Ireland processed special personal data for advertising purposes in the period up to 1 January 2020, without express consent from the Members I.
- 4.12. This conclusion also applies with respect to the period from 1 January 2020 onwards. According to Meta, the interest characteristics that reveal a special piece of personal data do not qualify as special personal data. The CJEU found that this assumption is unjustified.²⁰ In 2023, several regulators found that Meta still offers targeting based on interest characteristics that contain a special piece of personal data.²¹

Re (iv): Meta misleads consumers

- 4.13. In the Judgment, the District Court²² ruled that Meta Ireland had not sufficiently informed the Facebook users about the purpose for which and the way in which personal data was processed and about its business model. However, Meta Inc. and Facebook NL must also be regarded as traders within the meaning of article 193a of Book 6 DCC and they too have therefore engaged in an unfair commercial practice.

Re (v): Meta has been unjustly enriched

- 4.14. Meta has made billions of euros in profits through its unlawful practices for years. As a result, Meta has been unjustly enriched. In the Judgment, the District Court rightly held that the Facebook service is based on personal data and personal data is of unmistakable value to Meta. This finding of the District Court implies enrichment. In addition, it has been sufficiently established in the Judgment that Meta processed and used personal data for commercial purposes without a basis for processing (and thus without reasonable cause or justification). Meta's enrichment therefore finds no support in a valid legal act between Meta and the Members I. The unjustified nature of the enrichment is thus given.
- 4.15. Because this data represents economic value to both Meta and the Members, and Meta has consistently accepted being fined and penalized as “the cost of doing business,” this alone justifies payment of compensation pursuant to article 212 of Book 6 DCC.

¹⁹ Judgment, grounds 13.14-13.17.

²⁰ CJEU 4 July 2023, C-252/21, ECLI:EU:C:2023:537 (*Meta/Bundeskartellamt*).

²¹ The Dutch Data Protection on 4 May 2023, see EDPB Urgent Binding Decision 01/2023 of 27 October 2023, and the Norwegian regulator Datatilsynet on 14 July 2023, see its letter to Meta Ireland of that date.

²² Judgment, ground 17.17.



Re (vi): Meta Ireland has transferred personal data to Meta Inc. in the U.S. in breach of the prohibition on transfer

- 4.16. Under privacy legislation, the transfer of personal data to third countries must not compromise the level of protection guaranteed by that legislation. For this reason, the transfer of personal data to these third countries is in principle prohibited, unless one of the exceptions can be successfully relied on. Such is not the case here.
- 4.17. There was no valid adequacy decision in the Relevant Period (or before), as referred to in article 45 GDPR. Two consecutive adequacy decisions, in which the Commission claimed that the U.S. ensured an adequate level of protection ("Safe Harbor" and "Privacy Shield") have both been declared invalid by the highest EU court, after it had found that the level of protection afforded by U.S. law is insufficient. These are the *Schrems I*²³ and *Schrems II*²⁴ judgments.
- 4.18. The measures Meta claims to have taken are not effective. There was no appropriate measure available to prevent the U.S. authorities from accessing personal data of Facebook or Instagram users. Since Meta Inc. provided or sold, as the case may be, the data to third parties, it can only be concluded that Meta Inc. either received the data unencrypted or that it could decrypt such data, meaning that there was nothing to prevent the U.S. authorities from accessing the data. The damage suffered by the Members II as a result should be compensated by Meta Ireland and Meta Inc.
- 4.19. Like its predecessors, the adequacy decision for personal data transfers to the U.S. (the DPF) that was adopted on 10 July 2023, is doomed to be declared invalid, given the fact that the fundamental flaws in U.S. legislation have not been removed. The Foundation therefore requests the District Court in these proceedings, if and insofar as the CJEU declares the DPF invalid, to order Meta Inc. to delete the personal data or return it to Meta Ireland, or in any case to make sure that this personal data can no longer be accessed by/be made available to the intelligence and security agencies in the U.S.

5. DAMAGE SUFFERED BY THE MEMBERS SHOULD BE COMPENSATED BY META

- 5.1. Meta's conduct has resulted in both non-material and material damage on the part of the Members. The Members are entitled to compensation for this damage pursuant to article 82 GDPR and article 106 (1) of Book 6 DCC.

²³ CJEU 6 October 2015, C-362/14, ECLI:EU:C:2015:650 (*Schrems I*).

²⁴ CJEU 16 July 2020, C-311/18, ECLI:EU:C:2020:559 (*Schrems II*).



Non-material damage

- 5.2. For years, Meta has been systematically and unlawfully processing personal data of the Members I for commercial purposes. The Members' internet behaviour, including their Facebook activities, is constantly being monitored by Meta. Meta exploits the Members' personal data, including special personal data, and provides it to third parties. In addition, Meta Ireland's transfer of the personal data of the Members II to Meta Inc. results in such data being subject to the risk of surveillance by the U.S. authorities. Meta's unlawful conduct has continued until this date.
- 5.3. As a result, the Members have permanently lost control over their personal data. This is irreversible. Their personal data has fallen into the hands of a large number of third parties, or unknown third parties, and can also be accessed by the U.S. government. What these third parties and the U.S. government subsequently do with their data cannot be verified by the Members and is beyond Meta's power and control. Loss of control is explicitly listed in the GDPR as one of the types of harm that may result from a privacy breach and, in itself, justifies the award of damages to the Members.
- 5.4. The loss of control over personal information may furthermore lead to feelings of irritation, anxiety and stress among users. Research further shows that the mere expectation or feeling of being monitored online may lead to self-censorship among users. To this may be added that, according to the CJEU, even the fear experienced by a data subject with regard to a possible misuse of his or her personal data by third parties as a result of an infringement of that regulation is capable, in itself, of constituting 'non-material damage' within the meaning of article 82 GDPR.²⁵
- 5.5. To determine the extent of non-material damage, Dutch case law usually seeks a connection with national compensation law, in particular article 106 (1) (b) of Book 6 DCC and the assessment framework based on the *EBI* judgment.²⁶ Meta's breach of standards is of such a nature and gravity that the relevant consequences for the Members may be considered obvious.
- 5.6. The Foundation believes that, given the relevant circumstances and the various aspects of the breaches of standards, compensation of EUR 750 per Member I, and compensation of EUR 500 per Member II, is reasonable and appropriate.
- 5.7. If the District Court takes the view that the same amount in non-material damages for all the Members for any reason is not appropriate, the Foundation in the alternative claims payment of an amount for each year

²⁵ CJEU 14 December 2023, C-340/21, ECLI:EU:C:2023:986 (*VB/NAP*), ground 86.

²⁶ See, inter alia, S.D. Lindenbergh and M.C. Samsom, 'Smartengeld wegens AVG-inbreuken na 'Österreichische Post'', 26 June 2023, *NJB* 2023/1621, paras. 4-5.



that a Member used Facebook and/or Instagram during the Relevant Period.

- 5.8. When determining the non-material damage per year, the calculation can be based on the assessment in accordance with article 104 of Book 6 DCC, in the amount of the profits, or a part of the profits, generated by Meta with their unlawful conduct in the Relevant Period in the Netherlands, in the same way as explained in the section on the claim for compensation of the material damage suffered.

Material damage

- 5.9. Meta has appropriated the fruits of an exclusive right from its users without justification. Meta should have compensated Facebook users for the commercial exploitation of their personal data. In addition, the value of Facebook users' personal data has decreased due to Meta's actions. This has resulted in material damage for the Members I. This damage is also eligible for compensation under article 82 GDPR. The improper use of the personal data of the Members I has enabled Meta to generate its profits.
- 5.10. The Foundation requests the District Court to assess the material damage suffered by the Members I, in accordance with article 104 of Book 6 DCC, in the amount of the profits realized by Meta in the Netherlands as a result of its unlawful actions in the Relevant Period I.

Joint and several liability

- 5.11. Meta Inc., Meta Ireland and Facebook NL are jointly and severally liable for the damage suffered by the Members I, because they are joint controllers within the meaning of article 1 (b) Wbp and article 4 (7) GDPR. According to Meta Ireland itself (and according to the District Court in the Judgment²⁷) it is a controller regarding the processing of personal data for commercial purposes. Since Meta Inc. and Facebook NL jointly with Meta Ireland determine the purposes and means of the processing, they are joint controllers, or data controllers. The Meta group's business model includes a global unified processing strategy aimed at collecting as much personal data as possible, and subsequently using this data to sell advertisements. Meta Inc. plays a decisive role in determining this uniform processing strategy. Facebook NL plays a decisive role in operating the Facebook service in the Netherlands through its role in placing advertisements. Meta Inc. and Meta Ireland are jointly and severally liable for the damage suffered by the Members II, because they are joint controllers with regard to the unlawful transfer of data to the U.S.

²⁷

Judgment, ground 10.9.



- 5.12. The basis for this class action is article 305a of Book 3 DCC, as amended with effect from 1 January 2020 when the WAMCA entered into force. This case concerns a continuous wrongful act, or at least a series of events that took place both before and after 15 November 2016, so that the WAMCA is applicable under article 119a of the New Civil Code Transition Act.

6. CLAIM FOR RELIEF

- 6.1. Inserted below is the full claim for relief as contained in the summons.
- 6.2. The Foundation requests the District Court, to the extent possible by provisionally enforceable judgment:

Q.1 Exclusive representative

To designate the Foundation as exclusive representative as referred to in article 1018e DCCP.

Q.2 Narrowly-Defined Group whose interests the Foundation represents

To define the Narrowly-Defined Group as referred to in article 1018e (2) DCCP as follows:

Q.2.1 Regarding the DPS I claims

Users, or former users, of the Facebook service at any given moment in the period starting 1 April 2010 until the date of a final judgment to be rendered in this case (being the Relevant Period I) and/or their legal guardians, insofar as they were residing in the Netherlands at the time of their Facebook use and did not delete their account before 15 November 2016, not acting in the exercise of a profession or business and whose interests the Foundation represents by virtue of its objects in the articles of association (**Narrowly-Defined Group I**).

Q.2.2 Regarding the Schrems II claims

Users, or former users, of the Facebook and/or Instagram service at any given moment in the period starting 25 May 2018 - 10 July 2023 (being the Relevant Period II) and/or their legal guardians, insofar as they were residing in the Netherlands at the time of their Facebook and/or Instagram use, not acting in the exercise of a profession or business and whose interests the Foundation represents by virtue of its objects in the articles of association (**Narrowly-Defined Group II**).

Q.3 Opt in/opt out

- Q.3.1** To rule that, in accordance with article 1018f (1) DCCP, any member of the Narrowly-Defined Group I and/or II residing or domiciled in the



Netherlands may, within one month of the announcement pursuant to article 1018f (3) DCCP of the decision appointing the exclusive representative, by means of a written communication addressed to the registry of the District Court, notify the district court that he or she wishes to be released from the representation of his or her interests in this collective action.

Q.3.2 To rule that, in accordance with article 1018f (1) DCCP, any member of the Narrowly-Defined Group I and/or II not residing or domiciled in the Netherlands may, within one month of the announcement pursuant to article 1018f (3) DCCP of the decision appointing the exclusive representative, by means of a written communication addressed to the registry of the District Court, notify the district court that he or she agrees to the representation of his or her interests in this collective action and that their interest is not represented in a collective or individual action based on similar issues of fact and law for the same event or events against Meta Platforms Inc., Meta Platforms Ireland LTD. and Facebook Netherlands B.V. in another Member State of the EU or the European Economic Area.

Q.4 Declaratory decisions

Q.4.1 To rule that Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V., jointly and/or each of them individually, have acted unlawfully and are liable for the damage suffered and yet to be suffered by the Narrowly-Defined Group I, because:

Q.4.1.1 during the Relevant Period I, or at least during a period to be determined by the District Court in the proper administration of justice, they have acted unlawfully towards the Narrowly-Defined Group I, for which conduct they may be held liable, because they have violated the data protection rights and the privacy rights of the Narrowly-Defined Group I by:

- a. permitting, or at least enabling and facilitating, that third-party developers could have the disposal of and/or could have access to personal data of the Members I and could subsequently process those personal data, without having informed the Members I of this in a sufficiently clear and timely manner.
- b. not informing, or at least not informing sufficiently clearly and/or in a timely manner, the Members I about the 'integration partnership'



programme and the related processing of personal data concerning the Members I.

- c. violating the requirement regarding a basis as contained in articles 6 and 8 Wbp and article 11.7a Tw, or at least corresponding provisions in national privacy laws in other Member States, and/or violating article 5 (1) (a) and article 6 (1) GDPR, by processing personal data of the Members I without such processing being able to be based on an adequate and legally valid basis for processing;
- d. violating the prohibition on processing regarding special data as contained in article 16 Wbp, or at least corresponding provisions in national privacy laws in other Member States, and/or article 9 (1) GDPR, by processing special personal data of the Members for advertising purposes.

Q.4.1.2 during the Relevant Period I, or at least during a period to be determined by the District Court in the proper administration of justice, they have acted unlawfully towards the Narrowly-Defined Group I and are liable for the damage suffered and yet to be suffered by the Narrowly-Defined Group I, because Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V. have performed a commercial practice which is unfair within the meaning of article 193b (3) of Book 6 DCC in conjunction with article 193d of Book 6 DCC.

Q.4.1.3 during the Relevant Period I, or at least during a period to be determined by the District Court in the proper administration of justice, they have been unjustly enriched vis-à-vis the Narrowly-Defined Group I.

Q.4.2 To rule that Meta Platforms Ireland Ltd. and Meta Platforms Inc., jointly and/or each of them individually, during the Relevant Period II, or at least during a period to be determined by the District Court in the proper administration of justice, have acted unlawfully towards the Narrowly-Defined Group II, for which conduct they may be held liable, because Meta Ireland, in violation of the GDPR, has transmitted data of the Narrowly-Defined Group II to the United States, facilitated by Meta Inc. and are liable for the damage suffered and yet to be suffered by the Narrowly-Defined Group II.

Q.5 Compensation for damage suffered

Q.5.1 Compensation for material damage

To order Meta Platforms Ireland Ltd., Meta Platforms Inc. and/or Facebook Netherlands B.V., jointly and severally, within two weeks of



service of the final judgment, to compensate the Narrowly-Defined Group I for the material damage suffered, namely:

Q.5.1.1 Principally

To assess the material damage for each member of the Narrowly-Defined Group pursuant to article 104 of Book 6 DCC on the basis of the profits enjoyed by **Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V.** for each year of the Relevant Period that he or she has had a Facebook account.

Q.5.1.2 In the alternative

To order that the material damage is to be assessed later during separate follow-up proceedings and to be settled according to the law.

Q.5.1.3 Both principally and in the alternative

To increase the aforementioned amounts **to be paid by** Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V. by the statutory interest from the date of the Summons, or at least from the date of the final judgment to be rendered in these proceedings, or at least from a date to be determined by the District Court in the proper administration of justice, until the day payment is made in full.

Q.5.2 Compensation for non-material damage

To order Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V. jointly and severally, within two weeks from service of the final judgment, to compensate the Narrowly-Defined Groups I and II for the non-material damage suffered, namely:

Q.5.2.1 Principally

In respect of **Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V.:** an amount of EUR 750 for each member of the Narrowly-Defined Group I;

In respect of **Meta Platforms Ireland Ltd. and Meta Platforms Inc.:** an amount of EUR 500 for each member of the Narrowly-Defined Group II, ordering that, if he or she has in any one year of the Relevant Period used both Facebook and Instagram, **no** obligation shall arise to pay compensation twice.

Q.5.2.2 In the alternative

In respect of **Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V.:** an amount to be determined by the District Court in the proper administration of justice for each year (or part thereof)



in the Relevant Period I that a member of the Narrowly-Defined Group I had a Facebook account;

In respect of **Meta Platforms Ireland Ltd. and Meta Platforms Inc.**: an amount to be determined by the District Court in the proper administration of justice for each year (or part thereof) in the Relevant Period II that a member of the Narrowly-Defined Group II had a Facebook and/or Instagram account, ordering that, if he or she in any one year of the Relevant Period II used both Facebook and Instagram, **no** obligation shall arise to pay compensation twice.

Q.5.2.3 In the further alternative

To assess the amount in non-material damage to be paid by **Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V.** for each member of the Narrowly-Defined Groups I and II pursuant to article 104 of Book 6 DCC on the basis of the profits enjoyed by **Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V.** in respect of each year in the Relevant Period I and the Relevant Period II respectively that he or she had a Facebook and/or Instagram account, ordering that, if he or she in any one year of the Relevant Period II used both Facebook and Instagram, **no** obligation shall arise to pay compensation twice.

Q.5.2.4 As a final alternative

To order that the non-material damage to be paid by **Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V.** is to be assessed later during separate follow-up proceedings and to be settled according to the law.

Q.5.2.5 Both principally, in the alternative, in the further alternative and as a final alternative

To increase the aforementioned amounts by the statutory interest from the date of the Summons, or at least a date to be determined by the District Court in the proper administration of justice, until the day payment is made in full.

Q.6 Settlement of claims

To order that the collective settlement of claims shall principally be structured in a manner to be determined by the Foundation, or at least (in the alternative) as will be deemed appropriate by the District Court in the proper administration of justice, on the basis of proposals for the collective settlement of claims to be submitted by the Foundation and



Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V. pursuant to article 1018i DCCP.

Q.7 Orders to cease the unlawful conduct

Q.7.1 Order to cease the processing of personal data, or special personal data, without a basis for processing

To order **Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V.**, jointly and/or each of them individually, to comply with their statutory obligations as set down in the Summons, in particular by ceasing the unlawful conduct described in parts 4.1.1 (c. - d.) and 4.1.2 of the claim for relief, on pain of a penalty payment of EUR 5,000,000 for each day of the period starting four months after the date of service of the final judgment that Meta Platforms Ireland Ltd, Meta Platforms Inc. and Facebook Netherlands B.V. fail to comply with the order, to a maximum of 4% of the worldwide annual turnover of Meta Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V. in the financial year preceding the final judgment, or at least a penalty payment and related maximum to be determined by the District Court in the proper administration of justice.

Q.7.2 Conditional order to destroy or in any case return personal data

If and to the extent that the CJEU declares the Data Privacy Framework (C(2023) of 10 July 2023 invalid, to order **Meta Platforms Inc.** no later than four months from the date of service of the final judgment, to destroy the personal data of the Narrowly-Defined Group II that was transmitted by **Meta Platforms Ireland Ltd.** to Meta Platforms Inc. in the period 25 May 2018 - 10 July 2023 or return it to Meta Platforms Ireland Ltd. and to make sure that this data is no longer available and accessible in the U.S., on pain of a penalty of EUR 5,000,000 for each day following the period of four months from the date of service of the final judgment that Meta Platforms Inc. fails to comply with the order, to a maximum of 4% of the worldwide annual turnover of Meta Platforms Inc. in the financial year preceding the final judgment, or at least a penalty payment and related maximum to be determined by the District Court in the proper administration of justice.

Q.8 Order for costs

To order **Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V.** jointly and severally to pay the reasonable and proportionate costs of the proceedings and other costs of these proceedings to the Foundation, consisting in:

(a) the Foundation's full legal costs pursuant to article 1018l (2) DCCP, or at least the legal costs actually incurred pursuant to article 237 DCCP, to



be increased by the statutory interest from the date of the final judgment to be rendered in this matter, until the day payment is made in full.

(b) the full costs, extrajudicial and otherwise, incurred and yet to be incurred by the Foundation pursuant to article 96 of Book 6 DCC, to be increased by the statutory interest from the date of the final judgment to be rendered in this matter, until the day payment is made in full.

(c) the agreed fee to be paid in full by the Foundation to the litigation funder, pursuant to article 96 of Book 6 DCC and article 1018I (2) DCCP; and

(d) the full cost of the settlement of claims, all this as to be assessed later.

To order **Meta Platforms Ireland Ltd., Meta Platforms Inc. and Facebook Netherlands B.V.**, jointly and severally to pay the costs incurred by the Foundation in these proceedings, to be increased by the subsequent costs amounting to EUR 173 without service being effected, or EUR 263 in the event of service having to be effected, all this to be paid within fourteen days from the date of the final judgment, and - in the event that the costs, or subsequent costs, fail to be paid within the period stipulated - to be increased by the statutory interest on the costs, or subsequent costs, to be calculated from the aforementioned period for payment until the day payment is made in full.

This case is handled by:
J.H. Lemstra and W.P. Wijers
Lemstra Van der Korst N.V., PO Box 75655, 1070 AR Amsterdam
T 020 2050533, E j.lemstra@lvd.com
and by:
Prof. G.J. Zwenne
Pels Rijcken N.V., PO Box 11756, 2502 AT The Hague
T 071 527 8838, E g.j.zwenne@pelsrijcken.nl