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To:
Meta Platforms Ireland Limited
Merrion Road
Dublin 4, D04 X2K5,
IRELAND

Vienna, 14.05.2025

Cease and Desist – Training of Meta AI in the EU

To whom it may concern,

noyb – European Center for Digital Rights is a not-for-profit organisation active in the field of the protection of data subjects' rights and freedoms with its registered office in Goldschlagstraße 172/4/3/2, 1140 Vienna, Austria, registry number ZVR: 1354838270 (*"noyb"*). *noyb* is designated as a qualified entity in accordance with Article 4 of the Representative Actions Directive ("RAD") within Ireland[1] and as a cross-border Qualified Entity in the EU/EEA.[2]

As such *noyb* is qualified to bring representative actions before courts in all EU/EEA member states regarding any infringement covered by the RAD, including infringements of the General Data Protection Regulation ("GDPR"). This includes but is not limited to injunctive measures in the collective interest of affected consumers and redress measures.

Due to recent emails sent to users of Meta Platforms Ireland Limited ("Meta") in the EU/EEA and numerous news reports it came to *noyb*'s attention that Meta plans to ingest personal data of EU/EEA data subjects to their AI training system, based on a "legitimate interest" of Meta under Article 6(1)(f) GDPR.

In line with Section 21 of the Irish Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 ("RAA"), § 619(3) of the Austrian Civil Procedures Act ("ZPO") and/or other national implementation of the RAD (at whatever jurisdiction *noyb* may seek to bring legal action to protect the collective interests of some or all EU/EEA data subjects), we send this letter, giving Meta the opportunity to avoid litigation.

[1] https://enterprise.gov.ie/en/publications/raa-register-of-qualified-entities.html
[2] https://representative-actions-collaboration.ec.europa.eu/cross-border-qualified-entities?field_ms_of_designation_target_id=All

Details of the Infringement

Without prejudice to any additional elements that may be included in litigation, we currently rely, *inter alia,* on the following facts and legal analysis to take the position that the intended processing by Meta is unlawful:

- **No legitimate interest**

We understand that Meta purports to rely on Article 6(1)(f) GDPR to process any personal data that users have entered and that is considered "public" on social networks such as Instagram or Facebook for training AI systems.

(1) In *Bundeskartellamt* (C-252/21) the CJEU held, that Meta cannot rely on Article 6(1)(f) GDPR for personalized advertisement within a platform, partly because data subjects would not reasonably expect that their data would be used for advertisement. It seems illogical that data subjects that entered their personal data between 2004 and 2024 on a social network (that they may largely not even use anymore) would in any way have had a reasonable expectation that their data would be used for AI training any more than for advertisement - especially bearing in mind that Meta's platforms have always been financed via ads whereas AI systems qualify as a novel form of information technology unknown to the average user, when they created their account with Meta.

(2) In *Google Spain* (C-131/12) the CJEU held, that mere commercial interests of a controller cannot serve to scrape data from the entire internet, even if such scraping is only undertaking to index public websites. Furthermore, the CJEU highlighted the need to ensure the full enforcement of all other GDPR rights even if such indexing is done. Notably, this led to the need to "delist" entries from search indexed (often dubbed the "right to be forgotten").

(3) We note, that Meta has made clear that GDPR rights under Articles 13 to 22 GDPR can (largely) not be exercised once personal data has been ingested in an AI system. We are therefore convinced, that the open admission that GDPR rights cannot be complied with, once personal data is e.g. ingested in an open-source model like "Llama" (that may be used by thousands of other controllers later; see Article 19 GDPR), makes it on its own - impossible to rely on a "legitimate interest" under Article 6(1)(f) GDPR for such processing.

(4) We further note, that Meta has limited the right to object under Article 21 GDPR to be a mere *ex-ante* right, when in fact the right to object is an unlimited right – hence can be exercised at any time a data subject may want to rely on it, also *ex-post*. This is further underlined by the clear duty of a controller to erase personal data that has been subject to a successful objection under Article 17(1)(c) GDPR and the "right to be forgotten" of the user. We assume that Meta tries to entertain the *ex-ante* right to object as a mitigating factor in any Article 6(1)(f) GDPR balancing test. However, the limitation of a statutory right cannot serve as such a mitigating factor, only a clear expansion of such rights could be a factor. To the contrary, limitations of rights seem to be unlawful and hence a factor that speaks against the use of Article 6(1)(f) GDPR.

(5) We also note that Meta openly admits, that it will be *de facto* unable to comply with any objection throughout the platform, but would limit the exercise of such rights only to personal data directly associated with the account of a data subject. Data subjects without a Meta account and/or personal data that it not digitally linked to an account (e.g. multiple people in one picture on another person's account) do not seem to be captured by an opt-out. The form provided for non-users, does not seem to realistically allow data subjects to generally object to the use of personal data on the platform – as they may not even be aware of personal data being present. Such persons would not even enjoy a limited *ex-post* right to object but would be stripped of any means to stop the processing before it starts.

(6) We further note that Meta has previously argued (in respect to EU-US data transfers) that a social network is a single system that does not allow to differentiate between EU and non-EU users, as many nodes (e.g. an item linked to an EU and a non-EU user) are shared. Such needs for differentiations between users are not just limited to geography, but also to opt-out and opt-in status. Based on previous legal submissions by Meta, we therefore have serious doubts that Meta can indeed technically implement a clean and proper differentiation between users that performed an opt-out and users that did not. This lack of proper differentiation would mean that messages between a user who objected to the use of their data for AI training and a user who did not object, could end up in Meta's AI systems despite the first user's objection.

(7) The same issue of correct differentiation of data categories also plays out when it comes to special category data. Article 6(1)(f) GDPR cannot be relied on to justify the processing of "special category data" such as a user's religious belief, sexual orientation or political opinions – information commonly created and shared on both Facebook and Instagram. We fail to see how Meta could possibly separate such information from "non-special category data" to avoid their processing. Processing "special category data" for AI training purposes without explicit user consent under Article 9(2)(a) GDPR would constitute a grave GDPR infringement.

(8) There is no public information as to any written legitimate interest balancing exercise that Meta has undertaken under Article 6(1)(f) GDPR, despite Meta's duties under Article 5(2), 12, 13, 14 and 21 GDPR to enable data subjects to understand why their rights would be allegedly be trumped by Meta's commercial interests to consequently exercise their rights under Article 21 GDPR. Without such a clarification, Meta could continuously change the scope of processing but also gradually evade any protections it may have (secretly) implemented. Meta does in no way demonstrate compliance with the GDPR towards data subjects, despite the clear duties under the GDPR.

(9) Insofar that Meta may rely on the fact that used personal data would have to be "public" as a defence, we want to highlight that such personal data is not "public" as on a normal website, given that Meta entertains sophisticated systems to prevent "scraping" from its social networks. Furthermore, many types of content (e.g. Instagram stories) are also automatically deleted and – even if public – realistically only shown to a limited number of followers. We therefore take the view that Meta falsely portrays such information to be as "public" as a content on a regular website that can be found via search engines.

(10) The existence of a legitimate interest overriding the rights, freedoms and interests of the affected data subjects is also highly questionable when assessing the envisaged AI training from the viewpoint of the principles of data processing under Article 5 GDPR. In light of the above-mentioned lack of "reasonable expectations" the principle of fairness under Article 5(1)(a) GDPR seems to be infringed. Moreover, we fail to see how the envisaged training for a "general purpose" AI complies with the principle of purpose limitation under Article 5(1)(b) GDPR or how the scope of processing complies with the principle of data minimisation under Article 5(1)(c) GDPR. These shortcomings not only hinder the reliance on Article 6(1)(f) GDPR but lead to grave GDPR violations on their own.

(11) In addition to these purely GDPR-related concerns, the impending violation of other EU law provisions also makes it structurally impossible for Meta to lawfully rely on Article 6(1)(f) GDPR. We note that e.g. Article 5(1)(b) and (c) of the Digital Markets Act (DMA) prohibit gatekeepers such as Meta from combining personal data from core platform services with other services and from cross-using personal data for its services without user consent under the GDPR. The envisaged AI training with data from both Facebook and Instagram for the improvement of an AI system usable even beyond these core services appears to ignore both prohibitions.

While this is just a preliminary analysis based on the limited information that Meta has provided, we fail to see how Meta can in any way rely on Article 6(1)(f) GDPR.

- **Other matters of concern**

We are also aware that Meta informed data subjects that, despite that fact that an objection to AI training under Article 21(2) GDPR was accepted in 2024, their personal data will be processed unless they object again – against its former promises, which further undermines any legitimate trust in Meta's organizational ability to properly execute the necessary steps when data subjects exercise their rights.

To the extent information was provided to us, we also understand that the actions planned by Meta were neither approved by the Irish DPC nor other Concerned Supervisory Authorities (CSAs) in the EU/EEA. We therefore have to assume that Meta is openly disregarding previous guidance by the relevant Supervisory Authorities (SAs).

- **Consultation in accordance with Section 21 of the Act**

Should Meta wish to enter into consultation with *noyb* in accordance with Section 21 of the RAA in relation to any injunctive action or a relief action (including damages under Article 82 GDR), we kindly ask Meta to **provide any evidence** so far not available to *noyb* that would in any way change the factual or legal analysis outlined above **by 17:00 CET on 21 May 2025**.

Should Meta not be willing to enter into consultation with *noyb,* we request Meta Platforms Ireland Limited to return the **declaration to cease and desist (Annex I) by 17:00 CET on 21 May 2025** signed by a representative of Meta with proof of the valid representation. *noyb* will only consider

the practice ceased if Meta returns the declaration to cease and desist, without any amendments or changes; a mere change of the practice described above or discontinuing the practice does not eliminate the risk of a future repetition by Meta.

Given the potential need to file legal action before the start of any processing on 27 May 2025 we are sure you understand the need to set short deadlines.

Maximilian Schrems
Chairperson of noyb