

April 13, 2021

### **Urgency procedure opened against Facebook in connection with the new WhatsApp terms of use**

The Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) opened proceedings against Facebook Ireland Ltd. with the aim of issuing an immediately enforceable order with the content of not collecting data from WhatsApp users and processing it for its own purposes. Facebook will first be given the opportunity to comment as part of a hearing.

The background to this is WhatsApp's updated terms of use and privacy policy, which users have been confronted with since the beginning of the year. They are asked to agree to the new provisions by mid-May at the latest. Otherwise, they will no longer be able to use WhatsApp. The WhatsApp terms and conditions contain extensive passages with which the service grants itself the right to share users' data with other Facebook companies. Facebook's privacy policy itself also provides for general cross-company use and evaluation of data from connected companies. The HmbBfDI fears that with the new provisions, WhatsApp will expand data transfers with Facebook for marketing purposes and direct advertising, in addition to the already existing areas of product improvement, analysis, network/security.

The HmbBfDI has jurisdiction over Facebook in Germany because Facebook's German branch is based in Hamburg. It can therefore, in exceptional circumstances, which are seen here, also open proceedings against Facebook in Ireland on the basis of Art. 66 of the General Data Protection Regulation (GDPR) in order to protect the rights and freedoms of German users. Corresponding measures are limited to three months, but may be extended or supplemented by a decision of the European Data Protection Board (EDPB).

The issue of the transfer of WhatsApp user data to Facebook arises again. Four and a half years ago, the HmbBfDI issued an order against Facebook prohibiting such mass data matching. After Facebook took legal action against this, the order was confirmed by two courts.

Johannes Caspar comments: "WhatsApp is now used by almost 60 million people in Germany and is by far the most widely used social media application, even ahead of Facebook. It is therefore all the more important to ensure that the high number of users, which makes the service attractive to many people, does not lead to an abusive exploitation of data power. Unfortunately, up to now there has been no supervisory review of the actual processing operations between WhatsApp and Facebook that we are aware of. Currently, there is reason to believe that the provisions that will enable and expand the sharing of data between WhatsApp and Facebook will be unlawfully enforced due to the lack of voluntary and informed consent. In order to prevent unlawful mass data sharing, if

necessary, and to put an end to unlawful consent pressure on millions of people, a formal administrative procedure has now been initiated to protect data subjects."

The aim is to reach a decision in the urgency procedure before May 15. Information on the progress of the proceedings will be provided timely.

**Press contact:**

Martin Schemm

Phone: +49 40 428 54-4044

E-mail: [presse@datenschutz.hamburg.de](mailto:presse@datenschutz.hamburg.de)