

## The Hamburg Commissioner for Data Protection and Freedom of Information

March 2nd, 2018

### Higher Administrative Court confirms the prohibition of data sharing between WhatsApp and Facebook

#### Order to protect WhatsApp users' data from transfer effective

The declaration of an immediately enforceable administrative order of the Hamburg Commissioner of Data Protection and Freedom of Information, which bans Facebook to use data of WhatsApp users extensively for its own purposes, was confirmed by the Higher Administrative Court (OVG) Hamburg yesterday as lawful. Facebook's complaint against the previous decision of the Hamburg Administrative Court was unsuccessful. Therefore Facebook is still not allowed to transfer millions of user data from the Group's own Messenger service WhatsApp.

The OVG confirms the opinion of the Hamburg Administrative Court that there was no valid consent of the users for the planned mass data exchange. It also confirms the assumption that there is no legal basis for the exchange of user data. This applies not only for purposes such as business intelligence analytics and optimizing advertising, but also for the platform and user security that Facebook had indicated as the reason for the data transfer. In individual cases, the transfer of data might be permitted for security reasons. However, there is no legal basis for the retention of data of millions of users without an initial cause, for which WhatsApp wanted to obtain consent.

Prof. Dr. Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information said: „Even though the OVG has left open the question of the applicability of national law, the decision marks a clear success for data protection. The ECJ will decide on the validity of national law soon. The Advocate General's opinion on this topic is already available and confirms our view. Whether the unresolved question in the urgent proceedings before the Hamburg administrative courts will still be settled in new main proceedings, seems, however, questionable. This is because the Federal Data Protection Act expires at the end of May in the wake of the validity of the European GDPR. The lead supervisory authority for Facebook will then be the Irish Data Protection Authority. Their decisions may be reviewed by the other European authorities in a new type of procedure before the soon constituted European Data Protection Board. The present decision sets clear limits to the exchange of user data within a group of undertakings. In the future, it has to be taken into account in the European context under the EU General Data Protection Regulation. I assume, that without the informed consent of users in the EU a mass data exchange, as planned by Facebook with its subsidiary WhatsApp, will be off the table.“

The court decision can be downloaded from the press release of the OVG Hamburg in PDF format:  
<http://justiz.hamburg.de/aktuelles/10550476/pressemitteilung>

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