

## Emergency Proceedings Against Facebook

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Emergency procedure opened against Facebook in connection with the new WhatsApp Terms of Service

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Facebook

Whatsapp

The Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) has initiated proceedings against Facebook Ireland Ltd. opened, which aims to issue an immediately enforceable order with the content not to collect any data from WhatsApp users and process it for their 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 regulations by mid-May at the latest. Otherwise they can no longer use WhatsApp. The WhatsApp regulations contain extensive passages with which the service grants itself the right to share user data with other Facebook companies. Facebook's privacy policy itself also provides for general cross-company use and evaluation of data from affiliated companies. The HmbBfDI fears that with the new provisions, WhatsApp will in future create additional options for marketing purposes and direct advertising in addition to the existing exchange options with Facebook for the areas of product improvement, analysis, network/security.

The HmbBfDI is responsible for Facebook in Germany, as the German branch of Facebook is based in Hamburg. Under exceptional circumstances, which he sees here, he can therefore open proceedings against Facebook in Ireland on the basis of Article 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 can be extended or supplemented by a decision of the European Data Protection Board (EDPB).

The issue of forwarding WhatsApp user data to Facebook has come up again. Four and a half years ago, the HmbBfDI issued an order against Facebook that prohibited such a mass data comparison. After Facebook took legal action against this, the

order was confirmed by two instances.

Johannes Caspar: "WhatsApp is now used by almost 60 million people in Germany and is by far the most used social media application, ahead of Facebook. It is all the more important to ensure that the high number of users, which makes the service attractive for many people, does not lead to the misuse of data power. Unfortunately, so far there has been no regulatory review of the actual processing operations between WhatsApp and Facebook that is known to us. There is currently reason to believe that the provisions on sharing data between WhatsApp and Facebook are to be impermissibly enforced due to the lack of voluntary and informed consent. A formal administrative procedure to protect those affected has now been initiated in order to prevent any illegal mass exchange of data and to end the impermissible pressure to consent on millions of people."

The aim is to reach a decision in the emergency procedure before May 15th. You will be informed promptly about the progress of the procedure.

press contact

rot13("Znegva Fpurzz", "nvzxdwkiqbhjumoc");mmehcS nitraM

Phone:

+49 40 428 54-4044

Email: rot13("cerffr@qngrafpuhgm.unzohet.qr", "idpmszwcvgjxule");ed.grubmah.ztuhcsnetad@esserp