

WhatsApp/Facebook data exchange remains unregulated

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Data exchange between WhatsApp and Facebook remains unregulated at European level

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The European Data Protection Board (EDPB) has rejected the request of the Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) to impose final measures to prevent data exchange between WhatsApp and Facebook. He rated this question as non-urgent. Other forms of regulation, e.g. warning Facebook not to process data from WhatsApp users for their own purposes such as product improvement and security without their consent, were not taken. The General Data Protection Regulation (GDPR) provides a warning as an option in cases where the intended processing is likely to violate the GDPR.

The EDPB found considerable contradictions between the information with which WhatsApp users are informed about the extensive use of their data by Facebook on the one hand, and the companies' commitments to data protection supervisory authorities on the other hand not (yet) to do so. The EDPB also raised serious doubts about the legal basis on which Facebook wants to rely when using WhatsApp data for its own or joint processing. He thus takes up essential parts of the argumentation of the HmbBfDI.

Despite these findings, the EDPB has only decided to ask the lead Irish data protection supervisory authority (IDPC) to carry out an audit. This should include the actual processing processes at Facebook in relation to WhatsApp data and the question of the possible legal basis, in particular the overriding legitimate interest within the meaning of Art. 6 Para. 1 f) GDPR. The IDPC was not given a deadline for this.

Ulrich Kühn, Deputy Hamburg Commissioner for Data Protection and Freedom of Information: "The decision of the European Data Protection Board is disappointing. The body created to ensure the consistent application of the GDPR across the European Union is missing an opportunity to speak up to protect the rights and freedoms of millions of data subjects across Europe. He continues to leave that to the Irish regulator alone. Despite our repeated request over more than two years to

investigate and, if necessary, sanction the question of data exchange between WhatsApp and Facebook, they have not taken any action in this regard. The fact that she is now being urged to take an exam is a result of our many years of effort. However, this non-binding measure does not do justice to the importance of the subject. There is hardly a case imaginable in which, against the background of the impending encroachment on the rights and freedoms of a very large number of those affected and their actual powerlessness in the face of monopoly-like providers, the urgent need for concrete measures is more obvious. The EDPB is thus depriving itself of a key instrument for enforcing the GDPR throughout Europe. This is not good news for data subjects and for data protection in Europe as a whole.”

The EDPB decision (Urgent Binding Decision) can be downloaded as a PDF in English [here](#) (PDF).

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