

Order of the HmbBfDI against Facebook

Photo by LoboStudioHamburg from Pixabay

Order of the HmbBfDI: Ban on the further processing of WhatsApp user data by Facebook

Order of the HmbBfDI: Ban on the further processing of WhatsApp user data by Facebook

05/11/2021

•

Facebook

Whatsapp

The Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) issued an order that Facebook Ireland Ltd. prohibits the processing of personal data from WhatsApp, insofar as this is done for its own purposes. Immediate execution was ordered. This is done under the emergency procedure of the General Data Protection Regulation (GDPR), which provides for the enactment of measures with a limited period of validity in the respective sovereign territory.

The background to the procedure is the request to all WhatsApp users to agree to the new usage and privacy regulations by May 15th. This allows WhatsApp to be granted far-reaching powers to pass on data to Facebook.

With the new conditions, the powers to process data are formally renewed and expanded in terms of content in the future. This applies, among other things, to the evaluation of location information, the transfer of communication data of company users on WhatsApp to third-party companies, expressly with reference to Facebook, the additional purpose of ensuring the integrity of the services and the cross-company verification of the account in order to use the service in an "appropriate manner". to use. Furthermore, the use of the data to connect to products from Facebook companies is opened up. A legitimate interest in data processing or the exchange of data will in future also be asserted against underage users. Furthermore, the previous indication that WhatsApp messages are not shared on Facebook so that others can see them is no longer applicable.

After evaluating the current situation and hearing Facebook Ireland Ltd. there is no sufficient legal basis for processing by Facebook for its own purposes, regardless of the consent to the terms of use currently obtained by WhatsApp. The provisions on data transfer are scattered at different levels of the data protection declaration, they are unclear and difficult to distinguish between the European and international versions. In addition, they are ambiguous in terms of content and show considerable contradictions. Even after a more detailed analysis, it is not possible to see what consequences the consent has for the users.

Furthermore, the consent is not given voluntarily, as WhatsApp requires consent to the new provisions as a condition for continued use of the functionalities of the service.

Against this background, there are no data protection bases that could justify an independent processing authority by Facebook. In particular, Facebook cannot assert an overriding legitimate interest in the processing of the data of WhatsApp users, since their rights and freedoms are opposed. Consent is neither transparent nor voluntary. This is especially true for children. For these reasons, consent under data protection law cannot be considered as a legal basis. The processing of WhatsApp user data is also not required for Facebook to execute a contract.

The examination of the new regulations has shown that the close connection between the two companies should be further expanded so that Facebook can use the data of WhatsApp users for its own purposes at any time. For the areas of product improvement and advertising, WhatsApp reserves the right to pass on data to Facebook companies without the consent of those affected being required. In other areas, use for one's own purposes in accordance with the data protection guidelines can already be assumed. It or the FAQ describes, for example, that WhatsApp user data such as telephone numbers and device IDs are already being exchanged between the companies for common purposes to ensure network security and to prevent the sending of spam. Despite our request, there has not yet been an investigation by the lead supervisory authority into the actual practice of data transfer and use.

WhatsApp users are confronted with opaque conditions for extensive data transfer. At the same time, it is claimed that the processing operations described are not actually carried out at all, only to be gradually implemented at a later date on the basis of the legal framework based on the consent of the users. This strategy is currently being used in particular for the newly introduced business marketing function, which, including Facebook, makes it possible to process data across companies for sending direct advertising and marketing communication. Overall, the procedure does not comply with the requirements of the GDPR, both with regard to data processing that is already being carried out according to the data protection directive and those that can be implemented by Facebook at any time.

Johannes Caspar, Hamburg Commissioner for Data Protection and Freedom of Information: "The order is intended to secure the rights and freedoms of the many millions of users throughout Germany who give their consent to the terms of use. It is important to prevent the disadvantages and damage associated with such a black box process. The data protection scandals of the past few years, from "Cambridge Analytica" to the recently announced data leak, which affected more than 500 million

Facebook users, show the extent and dangers of mass profiling. This not only affects privacy, but also the possibility of using profiles to influence voter decisions in order to manipulate democratic decisions. In view of the almost 60 million users of WhatsApp, the danger is all the more concrete in view of the upcoming federal elections in Germany in September 2021, as these will arouse desires for Facebook advertising customers to influence opinion-forming. The order that has now been issued relates to the further processing of WhatsApp user data and is addressed to Facebook. The global criticism of the new terms of use should give reason to fundamentally reconsider the consent mechanism. Without the trust of users, no business model based on data can be successful in the long term.”

Due to the limited time frame of the order in the emergency procedure of only three months, the HmbBfDI will apply for a referral by the European Data Protection Board (EDPB) in order to bring about a decision at European level.

press contact

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

Phone:

+49 40 428 54-4044

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