

Press release of the TLfDI

Order of the HmbBfDI: Prohibition of

Further processing of WhatsApp user data

through Facebook

Erfurt, May 11, 2021

The Thuringian state commissioner for data protection and freedom of information

(TLfDI), Dr. Lutz Hasse, hereby informs you about today's press release

of the State Commissioner for Data Protection and Freedom of Information Hamburg:

"Order of the HmbBfDI: Ban on further processing of WhatsApp

User Data by Facebook

The Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI)

has issued an order that the Facebook

Ireland Ltd. prohibits

to process personal data from WhatsApp, insofar as this is your own

purposes. Immediate execution was ordered. This takes place within the framework of

Emergency procedure of the General Data Protection Regulation (GDPR), which the decree

of measures with a limited period of validity in the respective territory

provides.

The background to the procedure is the request to all users of

WhatsApp, the new terms of use and privacy by May 15th

agree. This allows WhatsApp far-reaching powers for a

Allow data transfer to Facebook.

With the new terms, data processing powers become formal

updated and expanded in future. This includes the evaluation of

Location information, the sharing of communication data of users of

Companies on WhatsApp to third-party companies expressly with reference to

Facebook, the additional purpose of ensuring the integrity of the Services as well the cross-company verification of the account in order to use the service to use it in an "appropriate manner". Furthermore, the use of the data for the connection opened with products from Facebook companies. A legitimate interest for the Data processing or for the exchange of data will also be a flat rate in the future

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brought forward to underage users. Furthermore, the previously existing falls

Note away that WhatsApp messages are not visible to others on Facebook to be shared.

After evaluating the current situation and hearing Facebook Ireland Ltd is missing for processing by Facebook for its own purposes, regardless of the consent to the Terms of Use currently obtained by WhatsApp sufficient legal basis. Find the Data Sharing Policy scattered at different levels of privacy policy, they are unclear and difficult to tell apart in their 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 clear what the consequences are

consent for the users. Furthermore, the approval does not take place

voluntarily, since WhatsApp consent to the new provisions as

condition for continued use of the functionalities of the service.

Data protection legal bases that have an independent processing authority

could be justified by Facebook are not available against this background.

In particular, Facebook cannot have an overriding legitimate interest in the

Claim processing of the data of WhatsApp users, since

whose rights and freedoms conflict. Consent is not given

transparent nor voluntary. This is especially true for children. From these

Reasons, a data protection consent as a legal reason does not come into play

consideration. The processing of the data of the users of WhatsApp is also for Facebook

not required to execute a contract.

The study of the new provisions has shown that the close connection

between the two companies should be further expanded so that Facebook the

WhatsApp users' data at any time for their own purposes

can use. For the areas

WhatsApp reserves the right to pass on product improvements and advertising

Facebook company without the consent of the

concerned needs. In other areas you can use it for your own purposes

already assumed in accordance with the data protection guidelines. In it or in the

FAQ is described about that for network security and prevention

of sending spam already current data of WhatsApp users such as

Phone numbers and device identifiers shared between companies

purposes

lead

supervisory authority over the actual practice of data transfer and use

it has not happened so far despite our request.

WhatsApp users are met with opaque conditions

for a far-reaching data transfer. At the same time it is claimed that

the processing described would actually not be carried out at all in order to then

at a later date gradually on the basis of the consent of

implement the legal framework established by users. This strategy

is currently taking place in particular with the newly introduced function of business

Marketing that makes it possible, including Facebook, to send

Direct mail and marketing communication across companies to data

to process.

Overall, the procedure corresponds to both with regard to

Data processing that is already being carried out according to the data protection directive,

be replaced. An investigation

the

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as well as those that can be implemented by Facebook at any time, not the

requirements of the GDPR.

For this Johannes Caspar, Hamburg representative

for privacy and

Freedom of Information: "The order is intended to protect the rights and freedoms of the many millions

Secure users who throughout Germany give their consent to the

give terms of use. It applies disadvantages and harms with one

to prevent such black box processes. The privacy

Scandals in recent years from Cambridge Analytica to the recently known one

become data leak that affected more than 500 million Facebook users

were showing the magnitude and dangers of a en masse

out profiling. This not only applies to privacy, but also to

Ability to use profiles to influence voter decisions to

manipulate democratic decisions. The danger is in the face of almost 60

Millions of WhatsApp users with a view to the

September 2021 upcoming federal elections all the more concrete, since these

Desires to influence the formation of opinion

on the part of

Facebook advertisers will be woken up. The order that has now been issued relates

relates to the further processing of WhatsApp user data and is aimed at the

Address from Facebook. The worldwide criticism against the new terms of use

should give reason to fundamentally redesign the consent mechanism

rethink. Without the trust of the users, no one can open in the long run

data-based business model will be successful.”

Due to the limited time frame of the emergency order

of only three months, the HmbBfDI will be referred by the European

Data Protection Committee (EDPB) to request a decision on a European

bring about level.

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