

CPC Network
c/o European Commission

and

Ms Marie-Paule Benassi
Head of Unit
DG JUST
European Commission
Rue Montoyer 59

B – 1040 Brussels

Ref.: BEUC-X-2021-064/UPA/ABI/rs

12 July 2021

Subject: BEUC submits an external alert to the CPC-Network about WhatsApp.

Dear members of the CPC network,

Dear Ms Benassi,

I am writing to you on behalf of BEUC, The European Consumer Organisation, to inform you that today we are launching an external alert to the CPC-Network to report on several aggressive and misleading practices by the messaging app **WhatsApp**. According to our analysis, these constitute a **widespread infringement with a Union dimension** of several EU consumer laws.

This letter is a complement to our external alert submitted according to Article 27 of the Consumer Protection Cooperation Regulation on the Internal Market Information System platform ('IMI platform'), based on BEUC's report *"What's Up with WhatsApp – an assessment of WhatsApp's practices in the light of EU consumer protection rules"* analysing WhatsApp's practices in breach of Directive 2005/29/EC (the Unfair Commercial Practices Directive) and Directive 1993/13/EEC (the Unfair Contract Terms Directive) (*Attachment 1*).

With over 2 billion active users and more than 100 billion messages sent every day, WhatsApp has become one of the world's most popular messaging apps. It counts millions of users across Europe, including 48m in Germany, 35m in Italy, 33m in Spain, 20m in France, 12.4m in the Netherlands or 4.8m in Romania. For several months, WhatsApp has been pressuring its users to accept new policy changes. **Across the EU, WhatsApp has infringed and continues to infringe consumer rights during that process.**

In summary, we would like to bring to the attention of the CPC-Network:

- **WhatsApp's aggressive practices.** WhatsApp has been sending and continues to send persistent and intrusive notifications pressuring users to accept its policy updates. The content of these notifications, their nature, timing, and recurrence put undue pressure on users and impair their freedom of choice. This practice is aggressive and misleading, hence in breach of Articles 6, 8 and 9 of the Unfair Commercial Practices Directive (UCPD) and of points 24 and 26 of its Annex.

- **Unclear and misleading changes in WhatsApp's policies.** The policy updates are neither transparent nor comprehensible. WhatsApp fails to explain in plain and intelligible language the nature of the changes. It is impossible for consumers to get a clear understanding of what consequences the changes entail for their privacy, particularly in relation to the transfer of their personal data to its parent company Facebook and other third parties. This practice is in breach of Article 5 of the Unfair Contract Terms Directive and is also unfair and misleading pursuant to Articles 5 and 6 of the UCPD.

Please note that we provide a detailed analysis and conclusions on each of the points highlighted above in the report attached to this letter.

We consider that these infringements of the UCPD are aggravated by the fact that the Hamburg data protection Commissioner issued an emergency decision on 9 May 2021 in which it found WhatsApp's practices with regards to the new policies to be in breach of the EU General Data Protection Regulation (GDPR), and prohibited its parent company Facebook from processing the data of WhatsApp users for its own purposes.¹ Following this German decision, WhatsApp's policy updates are currently under scrutiny by the European Data Protection Board (EDPB).

Therefore, we ask the European Commission and the national authorities to launch a comprehensive investigation into WhatsApp's practices, and to stop WhatsApp from pressuring users to accept the new policies. We also urge the CPC-network to work in close collaboration with the EDPB on these issues.

In addition to the present alert, we also sent a letter for information to the EDPB in the context of its ongoing investigation into WhatsApp.

Please be informed that eight BEUC member organisations active in seven countries² have also alerted their CPC authorities to urge them to take action.

Finally, we ask the European Commission to inform us about any relevant procedural steps taken with regards to the potential investigation and co-ordination based on this external alert, and to be regularly informed about the process.

Please do not hesitate to contact us in case you would require any further information or clarification.

Yours sincerely,

Ursula Pachi
Deputy Director General

Attachment:

- BEUC report "*What's up with WhatsApp? –An assessment of WhatsApp' practices in the light of EU consumer protection rules*" (July 2021).

C/c:

- Mr Nils Behrndt, Director, Consumers, DG Justice and Consumers, European Commission.
- Mr Olivier Micol, Head of Unit, Data Protection, DG Justice and Consumers, European Commission.
- Mr Angelo Grieco, Deputy Head of Unit, Consumer Enforcement and Redress, DG Justice and Consumers, European Commission.

¹ <https://datenschutz-hamburg.de/assets/pdf/2021-05-11-press-release-facebook.pdf> (11 May 2021).

² Asociația Pro Consumatori-APC (Romania), Consumentenbond (The Netherlands), dTest (Czech Republic), Forbrukerrådet (Norway), KEPKA (Greece), EKPIZO (Greece), S.O.S. Poprad (Slovakia) and UFC-Que choisir (France).