

CPC Network  
c/o European Commission

and

Marie-Paule Benassi  
DG JUST  
European Commission  
Rue Montoyer 59

B – 1040 Brussels

Ref.: BEUC-X-2021-077/UPA/ABI/rs

14 September 2021

**Subject: Follow-up to our alert of 12 July 2021 against WhatsApp.**

Dear members of the CPC network,  
Dear Ms Benassi,

We are reaching out to you in the context of the alert that BEUC – The European Consumer Organisation submitted to the CPC network on 12 July 2021 to report on several infringements to EU consumer protection rules by the company WhatsApp.<sup>1</sup>

We would like to bring to your attention additional elements and further clarifications, in particular after the recent decision of the Irish Data Protection Committee (DPC) issued on 20 August 2021 against the same company based on the General Data Protection Regulation (GDPR)<sup>2</sup>.

**For the reasons set out below, we believe that WhatsApp continues to infringe EU consumer protection rules. The decision of the Irish DPC has not brought a response to our alert but conversely strengthened several of the points we raised in the alert.**

**First, WhatsApp continues to unduly prompt its users to accept its new terms via recurrent notifications.** For example, a consumer reported to us that she received notifications on 22, 24, 25, 26, 27, 28, 30, 31 July, 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 28, 30, 31 August, 2, 3, 4, 5, 6, 7, 10, 11, 13, 14 September, **which means almost every day since we submitted the alert.** This also means that WhatsApp has not stopped bombarding its users with notifications despite having been notified our alert.

**Second, the message conveyed in the notifications continues to be misleading and put undue pressure on users.** The text of the notifications has remained identical and not a single word has been modified since we submitted the alert in last July. The notification still provides:

*"The terms go into effect on 15 May 2021. Please accept these terms to continue using WhatsApp after this date.*

.../...

<sup>1</sup> [www.beuc.eu/publications/beuc-x-2021-063\\_report\\_-\\_whats\\_up\\_with\\_whatsapp.pdf](http://www.beuc.eu/publications/beuc-x-2021-063_report_-_whats_up_with_whatsapp.pdf)

<sup>2</sup> [https://edpb.europa.eu/system/files/2021-09/dpc\\_final\\_decision\\_redacted\\_for\\_issue\\_to\\_edpb\\_01-09-21\\_en.pdf](https://edpb.europa.eu/system/files/2021-09/dpc_final_decision_redacted_for_issue_to_edpb_01-09-21_en.pdf)

**Third, the decision of the Irish DPC issued in August 2021 is of limited relevance for the alert.** The decision follows the DPC's own investigation ("own-volition inquiry") into WhatsApp's transparency obligations under the GDPR. This investigation started in December 2018 and the DPC made it clear that it did not consider the developments happening after this date. This means that the DPC did not consider the changes occurring in January 2021 which we referred to in the alert to the CPC network.

The DPC highlighted in its decision:

(Par. 185 at p.64). *"For the avoidance of doubt, the assessments recorded in Parts 2 and 3 of this Decision **reflect an assessment of the material relied upon by WhatsApp, as available to the public at the date of commencement of the within inquiry (10 December 2018). I have not had regard to any amendments that might have been made to the material provided in the intervening time, save insofar as those amendments have rendered it unnecessary for me to issue a previously proposed direction to WhatsApp, as regards the remedial action required to address an identified issue that is not directly the subject of any finding (of infringement or otherwise)**".*

(Par 217 at pp.70-71). *"While I acknowledge WhatsApp's willingness to amend its Privacy Policy and related material, this is not a matter that is relevant to the question of whether or not an infringement of the GDPR has occurred/is occurring in the context of the within inquiry. **The assessments recorded in this Decision are based on the material relied upon by WhatsApp to achieve compliance with its transparency obligations as at the date of commencement of the within inquiry.** This material forms the factual framework against which I have carried out my assessment (...)."*

The fact that the DPC's decision did not cover WhatsApp's recent developments is clear considering that the European Data Protection Board (EDPB) called on the Irish DPC in July 2021 to **conduct another urgent investigation into WhatsApp**.<sup>3</sup> This new request from the EDPB follows the decision of the Hamburg Data Protection Authority issued in May 2021, which unveiled several misleading and contradictory statements in WhatsApp's policies and expressed serious concerns about a potential illegal sharing of data between WhatsApp and its mother company Facebook.<sup>4</sup>

**Fourth,** we would like to highlight that our alert is mainly concerned with the unfair practices used by WhatsApp to make consumers accept amendments to its new privacy policy, and not with the transparency of WhatsApp's privacy policy as such.

**Ultimately,** we believe that the finding that WhatsApp has infringed its transparency obligations under the GDPR does not **replace but rather reinforced our concerns of possible infringements to EU consumer law**. This situation strengthens the need for the European Commission and the CPC-network to launch a comprehensive investigation into WhatsApp's practices.

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

Yours sincerely,

Ursula Pachl  
Deputy Director General

<sup>3</sup> [https://edpb.europa.eu/our-work-tools/consistency-findings/register-for-decisions\\_en](https://edpb.europa.eu/our-work-tools/consistency-findings/register-for-decisions_en)

<sup>4</sup> <https://datenschutz-hamburg.de/assets/pdf/2021-05-11-press-release-facebook.pdf>