

ARTICLE 29 Data Protection Working Party



Brussels, 16 December 2016

Dear Mr Koum,

On 14 November 2016, WhatsApp replied to the letter sent by the Chairwoman of the WP29 on 27 October 2016.

The WP29 is pleased that WhatsApp has replied promptly and welcomes its commitments to establish a constructive dialogue and to provide the additional information and further clarification requested regarding the changes to the WhatsApp Terms of Service and Privacy Policy.

The WP29 also notes that WhatsApp confirms that it has refrained from sharing of EU user account information within the Facebook "family of companies" for it to use for the purposes of improving Facebook products and advertising experiences.

On this point, the WP29 remains concerned that data exchange does still take place between WhatsApp and Facebook, for purposes other than "improving Facebook products and advertising experience".

The WP29 calls upon WhatsApp to provide precise clarification in this respect and reasserts its concerns regarding the potential impact of the sharing of information between WhatsApp and Facebook for millions of EU data subjects using those services.

Moreover, the WP29 notes that WhatsApp has yet to provide a comprehensive response to the information request outlined in its previous letter. The Working Party looks forward to receiving the requested information to enable its members to conclude whether changes are necessary to ensure that the processing is compliant with the legal framework.

The WP29 also underlines that the work of the enforcement subgroup, in which the exchange of personal data between WhatsApp and Facebook is discussed, does not in any way abridge the competences of national supervisory authorities pursuant to Directive 95/46. WhatsApp therefore remains obliged to respond to requests for information from national authorities in accordance with the requirements specified in the national laws of each Member State. In addition, pursuant to article 4(2) of Directive 95/46, WhatsApp is obliged to designate a representative in each Member State where it makes use of equipment for purposes of processing personal data insofar as it acts as a controller without an establishment on Community territory.

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental rights and rule of law) of the European Commission, Directorate General Justice and Consumers, B-1049 Brussels, Belgium, Office No MO59 02/27

Website: http://ec.europa.eu/justice/data-protection/index_en.htm

The WP29 remains committed to having a constructive dialogue with WhatsApp and Facebook in order to clarify the issues at stake.

Yours sincerely,

On behalf of the Article 29 Working Party,

Isabelle FALQUE-PIERROTIN
Chairwoman