

ARTICLE 29 Data Protection Working Party<sup>1</sup>

# Open Letter onto the WhatsApp Chief Executive Officer Jan Koum

Brussels, 27 October 2016

Dear Mr Koum,

We are writing to you in relation to the updated Terms of Service and Privacy Policy made by your company in August 2016.

According to the information which has been provided to users of the service, WhatsApp will share information within the “Facebook family of companies” for a range of purposes that include marketing and advertising. These are not purposes which were included within the Terms of Service and Privacy Policy when existing users signed-up to the service. These changes have been introduced in contradiction with previous public statements of the two companies ensuring that no sharing of data would ever take place.

Given the popularity of the messaging service these changes may affect many citizens in all EU member states and have created great uncertainty among users and non-users of the service.

The Article 29 Working Party (WP29) has serious concerns regarding the manner in which the information relating to the updated Terms of Service and Privacy Policy was provided to users and consequently about the validity of the users’ consent. WP29 also questions the effectiveness of control mechanisms offered to users to exercise their rights and the effects that the data sharing will have on people that are not a user of any other service within the Facebook family of companies.

Therefore, the members of the Working Party 29 will act in a coordinated way and take actions according to their respective competences and powers in order to clarify these points of concern and to ensure that the principles and rights set forth in European and national Data Protection laws are upheld in a consistent manner across the EU.

In that context, at the last plenary, the WP29 agreed to dedicate a working group for enforcement actions on organisations targeting several member states. The issue of the update of your privacy policy will be addressed within this group.

Therefore it is of the utmost importance that your company communicates all the available information. This includes not only but specifically information on the exact categories of data (eg. names, telephone numbers, email, postal address, etc.) and the source of such (eg. data from the users’ phones or data already stored on company servers) as well as a list of recipients of the data and the effects of the data transfer on the users and potential third persons. This extensive information is essential for enabling WP29 members to correctly conclude whether any changes are necessary in order to ensure that the processing is compliant to the European legal framework. Please note that on October 7th we received a letter from Facebook concerning this update.

In order to avoid the possibility that the processing of personal data by WhatsApp or the Facebook family of companies is not compliant with EU legislation, WP29 urges WhatsApp not to proceed with the sharing of users’ data until the appropriate legal protections can be assured.

*Yours sincerely,  
On behalf of the Article 29 Working Party,  
Isabelle FALQUE-PIERROTIN  
Chairwoman*

<sup>1</sup> 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 Union citizenship) of the European Commission, Directorate General Justice and Consumers, B-1049 Brussels, Belgium, Office No MO59 02/27 Website: [http://ec.europa.eu/justice\\_home/fsj/privacy/index\\_en.htm](http://ec.europa.eu/justice_home/fsj/privacy/index_en.htm)