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Judgment of the Court in Case C-97/23 P | WhatsApp Ireland v European Data Protection Board

GDPR: the action brought by WhatsApp Ireland against Binding Decision 1/2021 of the European Data Protection Board is admissible

That decision being an act open to challenge which is of direct concern to that undertaking, the Court of Justice sets aside the order of the General Court and refers the case back to that court so that it may rule on the merits

The Court of Justice finds that a binding decision of the European Data Protection Board (EDPB) settling a dispute between several national supervisory authorities concerning whether a data controller has infringed the General Data Protection Regulation (GDPR) ¹ and, if that is the case, as appropriate, to amend the corrective measures envisaged against that controller constitutes an act open to challenge before the Courts of the European Union. That decision emanates from an EU body and is intended to produce legal effects vis-à-vis third parties. In addition, in the present case, the Court holds that the decision at issue is of direct concern to WhatsApp Ireland Ltd ('WhatsApp'). Since WhatsApp's action for annulment is admissible but the General Court of the European Union has not yet examined the merits of the case, the Court sets aside the order under appeal and refers the case back to the General Court.

Following the entry into force of the GDPR, the Irish supervisory authority, namely, the Data Protection Commission, received complaints from users and non-users of the 'WhatsApp' messaging service concerning the processing of personal data by that undertaking. That authority initiated *ex officio*, in December 2018, a general investigation into WhatsApp's compliance with its obligation of transparency and its obligation to provide information with regard to individuals.

In December 2020, the Irish supervisory authority submitted a draft decision to all the other national supervisory authorities concerned for their opinion. ² Since no consensus was reached on certain aspects of that draft, it referred the matter to the EDPB for it to resolve the dispute between the supervisory authorities concerned, by adopting a position on the matters which had been the subject of relevant and reasoned objections.

The EDPB issued a decision ³ binding on all of the supervisory authorities concerned, namely Decision 1/2021, in which it found, inter alia, that certain provisions of the GDPR had been infringed and required the Irish supervisory authority to amend the corrective measures envisaged, including the amount of the fines. On that basis, that authority issued its final decision, which was addressed to WhatsApp and which imposed on it, in particular, fines for a **total amount of € 225 million**.

WhatsApp brought an action for annulment of the EDPB's decision before the General Court. ⁴ However, by its order of 7 December 2022, ⁵ the General Court dismissed that action as inadmissible on the ground that the EDPB's decision was not an act open to challenge and that that decision was not of direct concern to WhatsApp. According to the General Court, the EDPB's decision was merely an intermediate act and WhatsApp could challenge only the final decision of the Irish supervisory authority before a national court. WhatsApp then challenged the order of the General Court by bringing an appeal before the Court of Justice.

In today's judgment, the Court of Justice declares that **the EDPB's decision is indeed an act open to challenge before the Courts of the European Union**. That decision is an act which emanates from an EU body and which is binding vis-à-vis third parties, namely, in the present case, the Irish supervisory authority and all the other supervisory authorities

concerned. Moreover, that decision definitively determines the position of that body and deals exhaustively with all the issues referred to it. Consequently, such a decision cannot be regarded as an intermediate act not open to challenge.

Furthermore, the Court notes that **that decision was of direct concern to WhatsApp**, since it brought about a distinct change in the legal position of that undertaking, without leaving any discretion to its addressees. That decision unconditionally binds the supervisory authorities concerned, in particular as regards the finding of infringement of certain provisions of the GDPR, and those authorities cannot change its result.

WhatsApp's action is thus declared admissible and **the order of the General Court is set aside**. The Court refers the case back to the General Court for it to rule on the merits, including on whether WhatsApp infringed the relevant provisions of the GDPR.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation).

² In accordance with Article 60(3) of the GDPR.

³ Under Article 65(1) of the GDPR.

⁴ Under Article 263 TFEU.

⁵ Order of 7 December 2022, *WhatsApp Ireland v European Data Protection Board* [T-709/21](#) (See also Press release [No 196/22](#)).