



GDPR in Practice No. 1:

Using WhatsApp in compliance with GDPR

The [EU General Data Protection Regulation \(GDPR\)](#) and the [UK Data Protection Act 2018 \(DPA 2018\)](#) set out the data protection framework for the UK.

This Note, part of a new MRS series: *GDPR in Practice (complementing the GDPR in Brief series)*, aims to provide researchers with further practical support for day to day data protection compliance.

MRS is providing this data protection guidance as general information for research, insight and data practitioners. It is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to any specific legal problems or matters.



Overview

INCIBE, the Spanish Institute for Cybersecurity, took a close look on the implication of using WhatsApp for business and how to ensure compliance with the GDPR¹.

WhatsApp has become THE instant messaging application. With more than 800 million active users - 27,5 only in the UK², it is also used by companies for communication both internally and with customers.

It is important to remember that companies that decide to use this tool must do so in **compliance with GDPR and the conditions set by Facebook**.

Companies or freelancers who decide to rely on this instant messaging tool must use [WhatsApp Business](#) and not the WhatsApp Messenger application, which is designed for personal communications.

WhatsApp Business is an application designed to meet the needs of businesses. As indicated by the company, it has been created to facilitate communications with customers, providing tools that allow you to automate, sort and reply messages quickly.

As with any third party tool, the [terms and conditions specified by the company](#) must be read, understood and followed; otherwise, WhatsApp could suspend the account for many reasons, such as spreading spam.

The application is used in a multitude of companies internally to communicate with colleagues. It is important to remember that all employees must be notified before being added to a WhatsApp Business group, must be able to accept or refuse and may withdraw consent and exercise their rights as data subjects at any time.

¹ <https://www.incibe.es/protege-tu-empresa/blog/utiliza-whatsapp-tu-empresa-cumpliendo-el-rqpd-y-lopdqdd>

² [eMarketer](#)



Use WhatsApp for client communications

WhatsApp can also be used as a communication channel with customers or as a means for a first contact.

Researchers who wish to communicate with their customers through the instant messaging application need to make sure that this data processing is lawful and meets the conditions of Art. 6 and Art 13 GDPR. Practitioners must inform the participants about their identity, the purposes of the treatment and the legal basis on which they rely, among other elements.

WhatsApp Business has an [API](#) (*Application Programming Interface*) that allows the implementation of different functions of the application in other software products such as CRM, for the management of communication with customers. Within this API, users are offered a function that allows them to obtain participants' and employees' consent before starting to interact with them through WhatsApp.

WhatsApp Business allows user to establish welcome messages, it is recommended to use this message to indicate the basic information about the data processing.

WhatsApp should be used as a communication channel for information only, not as a means to share personal data or confidential information. Because of the WhatsApp T&C, businesses can only rely on the privacy policy of WhatsApp but, in case of breach, they are liable in accordance with Art. 5 GDPR.

When commercial communications are intended through the application, direct marketing regulations must be strictly followed.

In addition to the legal considerations, other issues which must be taken into account include:

- Businesses should use secure devices.
- Practitioners need to be aware about the correct treatment of the personal data of the clients and the proper use of the internal groups of the organization.
- An impact assessment about the risks for the protection of personal data should be carried out about the risks involved in using this application or any other similar one before using it. Necessary technical and organisational need to be established so that its use is as safe as possible.

If you use WhatsApp for your business, don't forget to do it legally and ethically.



MRS GDPR Resources

General guidance on data protection can be found on the MRS website:

- [Data Protection & Research: Guidance for MRS Members and Company Partners 2019](#)
- [GDPR in Brief Series](#) (Members and CP Only)
 - GDPR in Brief No.1 – Overview of Data Protection Reform
 - GDPR In Brief No.2 – Compliance Checklist
 - GDPR In Brief No.3 - Data Processors
 - GDPR In Brief No.4 - Data Protection Officer
 - GDPR In Brief No.5 - Informed Consent
 - GDPR In Brief No.6 - Informed Consent Checklist
 - GDPR In Brief No.7 - Transparent Privacy Information Notices
 - GDPR In Brief No. 8 – Personal Data Breaches
 - GDPR In Brief No.9 - Personal Data Breach Checklist