BEREC
Body of European Regulators for Electronic Communications

BoR (25) 21

BEREC Opinion on Meta's reference offers to facilitate Messenger and WhatsApp interoperability under Article 7 of the Digital Markets Act

3 March, 2025

Contents

1. Introduction

Under Article 7, the Digital Markets Act (DMA) introduced an obligation for a designated gatekeeper to "*make the basic functionalities of its number-independent interpersonal communications services interoperable with the number-independent interpersonal communications services of another provider offering or intending to offer such services in the Union, by providing the necessary technical interfaces or similar solutions that facilitate interoperability, upon request, and free of charge*" (Article 7(1) DMA).

The gatekeeper should publish "*a reference offer laying down the technical details and general terms and conditions of interoperability with its number-independent interpersonal communications services, including the necessary details on the level of security and end-to-end encryption* (…) *and update it where necessary*" (Article 7(4) DMA).

The gatekeeper should make *at least* the following basic functionalities interoperable when provides them to its own end-users: i) end-to-end text messaging and sharing of any attached file (images, videos, voice messages or any other) within six months after the gatekeeper designation for communication between two individual end-users, and ii) within two years for users within groups. Moreover, iii) four years after the gatekeeper designation, voice and video calls should also be made interoperable.

Following the publication of the reference offer, any provider of number-independent interpersonal communications services (NI-ICS), offering or intending to offer such services in the EU, may request interoperability with the gatekeeper's NI-ICS, and the gatekeeper should "*comply with any reasonable request for interoperability within 3 months after receiving that request by rendering the requested basic functionalities operational*" (Article 7(5) DMA).

The end-users of the gatekeeper's NI-ICS should "*remain free to decide whether to make use of the interoperable basic functionalities that may be provided by the gatekeeper*" (Article 7(7) DMA).

According to Recital 64 of the DMA, the designated gatekeeper should publish "*a reference offer laying down the technical details and general terms and conditions of interoperability*" with its NI-ICS, and the European Commission (EC) can consult BEREC "*in order to determine whether the technical details and the general terms and conditions published in the reference offer that the gatekeeper intends to implement or has implemented ensures compliance with this obligation*".

As of February 2025, the only designated gatekeeper providing NI-ICS as core platform service is Meta. Meta must comply with the interoperability obligation since 7 March 2024 for WhatsApp and since 6 September 2024 for Facebook Messenger[1].

[1] The EC has granted Meta an extension of 6 months to comply with Article 7 DMA for Facebook Messenger. The decision is based on a specific provision in Article 7(3) DMA and follows a reasoned request submitted by Meta.

BEREC already published two opinions on Meta's proposed solutions for WhatsApp interoperability: one on the *draft* reference offer (February 2024)[2] and one on the final reference offer (June 2024)[3].

The current BEREC opinion is based on Meta's reference offers for the interoperability of Messenger (September 2024) and of WhatsApp (March 2024) and is based on the elements available on Meta's messaging webpage[4] mentioned hereafter and which were lastly consulted in December 2024.

For Messenger:

- Messenger Reference Offer
- Messenger Developer Documentation Overview
- Messenger Application Guidelines
- Messenger Messaging Interoperability User Experience – iOS
- Messenger Messaging Interoperability User Experience – Android

For WhatsApp:

- WhatsApp Reference Offer
- WhatsApp Developer Documentation Overview
- WhatsApp Application Guidelines
- WhatsApp Messaging Interoperability User Experience – iOS
- WhatsApp Messaging Interoperability User Experience – Android

Moreover, BEREC could consult the documentation that Meta shared with the third-parties who requested interoperability following the signature of a non-disclosure agreement (NDA).

[2] BoR (24) 19, BEREC Opinion on Meta's draft reference offer to facilitate WhatsApp interoperability under Article 7 of the Digital Markets Act, 15.02.2024, see: https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-metas-draft-reference-offer-to-facilitate-whatsapp-interoperability-under-article-7-of-the-digital-markets-act

[3] BoR (24) 78, BEREC Opinion on Meta's reference offer published in March 2024 to facilitate WhatsApp interoperability under Article 7 of the Digital Markets Act, 04.06.2024, see: https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-metas-reference-offer-published-in-march-2024-to-facilitate-whatsapp-interoperability-under-article-7-of-the-digital-markets-act

[4] See: https://developers.facebook.com/m/messaging-interoperability/

For the purpose of this opinion, BEREC is referring to the NI-ICS' providers willing to interoperate with WhatsApp and/or Messenger as "third-party NI-ICS providers", "third-parties", "interoperability seekers", "potential interoperability seekers" or "partners".

2. General remarks

The reference offer should contain all information necessary for any (potential) interoperability seeker to assess general, technical and commercial conditions provided.

BEREC welcomes the public availability of the relevant documents[5] and the easy-to-use process for requesting interoperability, since this enhances transparency, facilitates non-discrimination principles and lowers barriers for potential interoperability seekers, who need to decide whether to apply for it.

BEREC would like to stress that compliance with the DMA obligations should be assessed by the EC in light of the general objectives of the DMA. One of the main goals of the DMA – and in particular for the interoperability obligation under Article 7 – is to ensure contestability of the core platform services provided by gatekeepers.

The implementation of the **reference offer should therefore be assessed, among other issues, as regards its potential to reach the objective of reducing barriers to entry and expansion for alternative NI-ICS providers and allow for market contestability**. Therefore, special attention should be paid to those technical specificities/features which may lead to service dysfunction or disruption and/or to a degraded user experience, as both could compromise the effectiveness of the goals established in this regulation.

In addition, it also important to highlight that the **dialogue between the EC and the potential interoperability seekers** of the reference offer is of utmost importance and should be done regularly, since it can provide valuable insights on the main challenges they face and on how the offer may need to evolve.

Finally, BEREC believes that it would be useful to implement a **structured monitoring exercise** taking stock of the interoperability refusals or (temporary) malfunctions that the gatekeeper would have to formally declare to the EC. Such a tool could facilitate the effective enforcement of the interoperability obligation, and also allow for the adaptation of the reference offer, if needed. The relevant information should be regularly provided by the gatekeeper(s) and gathered in a database or a tracker, which would be accessible by the EC, the interested parties (third-party NI-ICS providers who already interoperate or are willing to do so), as well as BEREC.

[5] See: https://developers.facebook.com/m/messaging-interoperability/

In the next chapters, specific comments on Meta's reference offers for Messenger and WhatsApp interoperability[6] are made. These comments follow the list of minimum criteria for the reference offer defined in BEREC report on the interoperability of NI-ICS[7] and build on the two previous opinions that BEREC delivered on the proposed solutions for WhatsApp interoperability[8].

3. Description of the service and specification of the relevant basic functionalities and their features/facilities

BEREC notices one first significant difference in the reference offers for WhatsApp and for Messenger: while Messenger users who can benefit from an interoperable service must be over the age of 18[9], no age floor is set for WhatsApp. BEREC acknowledges that Meta has set some restrictions to protect teens from unwanted contact on Instagram and Messenger (e.g. by restricting adults over 18 from starting private chats with teens they're not connected to)[10]. However, most of the different Meta services remain available to minors. The same approach could apply to Messenger under interoperability, i.e. minors could enjoy an interoperable service submitted to the same restrictions which are applied to the service for first-party users.

BEREC welcomes the improvements in the technical documentation for Messenger interoperability, which now covers well-established messaging features, such as:

- Read receipts: it can now be communicated if a message was read by a recipient;
- Typing indicators ("chat states");
- Reaction messages (i.e. reacting with emoji such as "👍" to messages);

---

[6] Based on the documentation consulted in December 2024 on Meta's website, see: https://developers.facebook.com/m/messaging-interoperability/

[7] Chapter 6.3.1 of BoR (23) 92, BEREC report on interoperability of Number Independent Interpersonal Communication Services (NI-ICS), 08.06.2023, see: https://www.berec.europa.eu/system/files/2023-06/BoR%20%2823%29%2092%20BEREC%20Report%20on%20interoperability%20of%20NI-ICS.pdf.

[8] BoR (24) 19, BEREC Opinion on Meta's draft reference offer to facilitate WhatsApp interoperability under Article 7 of the Digital Markets Act, 15.02.2024, see: https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-metas-draft-reference-offer-to-facilitate-whatsapp-interoperability-under-article-7-of-the-digital-markets-act and BoR (24) 78, BEREC Opinion on Meta's reference offer published in March 2024 to facilitate WhatsApp interoperability under Article 7 of the Digital Markets Act, 04.06.2024, see: https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-metas-reference-offer-published-in-march-2024-to-facilitate-whatsapp-interoperability-under-article-7-of-the-digital-markets-act

[9] See: "Definitions and interpretation" in Messenger Reference Offer

[10] See for instance: https://about.fb.com/news/2024/01/introducing-stricter-message-settings-for-teens-on-instagram-and-facebook where Meta announces to restrict "adults over 18 from starting private chats with teens they're not connected to (…) limit the message requests people can send to someone who doesn't follow or isn't already connected to them, to text-only messages (…) (and) by turning off their ability to receive DMs from anyone they don't follow or aren't connected to on Instagram – including other teens – by default. (last updated by Meta on 25 November 2024)

- Messages replies: in message threads, it's now possible to reference messages that are being replied to. This allows e.g. to cite original messages or to give replies better visibility in chats.

Unlike Messenger, the current[11] developer documentation for WhatsApp does not mention these functionalities. BEREC believes that **such improvements should also be integrated in the updated version of the reference offer for WhatsApp interoperability**.

Furthermore, when comparing to functionalities provided by similar services in the market[12], **some functionalities considered as common in current messaging services still do not seem to be offered by Meta** for any of its interoperable NI-ICS. In particular, there seems to be no possibility for editing or deleting sent messages, editing or removing message reactions and setting a profile image and status message. This could lead to a detriment in user experience, as such functionality is present in all leading messaging services.

The technical documentation includes the (necessary) building blocks and (expected) traffic flows, thus the service is described at a minimum level to support interoperability. The used protocols and specifications are also mentioned and explained in appropriate detail. Third-parties have the possibility to select between two architectures: with or without a separate proxy service. The "Interoperable Messaging Services" are listed in Annex I Chapter 6.3 of the reference offers.

Several potential interoperability seekers suggested to include native multi-device support as an essential feature. It is very common for NI-ICS providers to offer their users the possibility to use and synchronise their chats over multiple devices (e.g. smartphone and laptop) and among different operating systems (e.g. iOS, Android, Windows), and this feature seems to be widely adopted. If the interest for this functionality by third-parties is confirmed, a lack of this function could be a disincentive for users to adopt interoperable options, or, at least, it could lead to users' frustration when they do not get the same experience as they are used to in many other messaging services. Currently, Meta also provides the multi-device option to WhatsApp users, but limits this to four devices[13]. And even for Messenger, the function of multi-device support is available.[14]

There might be technical reasons why multi-device support could be difficult to implement for interoperability. Allowing multiple devices increases the attack surface and by introducing new threat vectors complexity to the overall architecture is added, potentially leading to new security risks. However, there are already technical solutions like MLS[15] in development

[11] Consulted in December 2024 on Meta's website, see: https://developers.facebook.com/m/messaging-interoperability/
[12] See RTR's study from August 2024: *More than just Text Messages: The Numerous Functionalities of Messengers https://www.rtr.at/TKP/aktuelles/publikationen/publikationen/messenger_functionalities.en.html*
[13] See: https://blog.whatsapp.com/one-whatsapp-account-now-across-multiple-phones
[14] See: https://www.facebook.com/help/messenger-app/920535438076445/?helpref=uf_share
[15] Messaging Layer Security, IETF RFC 9420.

addressing those issues. However, a switch from WhatsApp's current architecture to MLS may entail additional complexity.

From end-users' expectations, and in order to foster the take-up of interoperability, BEREC believes that a multi-device support is a very desirable feature for market contestability. When the gatekeeper itself does not provide a certain feature in the way third-party NI-ICS providers do, the DMA does not require the gatekeeper to change its own service and align it with the services of the interoperability seekers. However, BEREC would like to stress that this feature is available for WhatsApp and Messenger users and could therefore also be implemented in an interoperable environment, if third-parties express an interest for it.

The previous design of WhatsApp used the primary device model in which the mobile device is seen as the "single source of truth"[16]. This has been extended to cover up to 4 devices. Those design decisions taken by WhatsApp lead to its own limitation in providing the multi-device support to their own users, but this would also affect users of third-party NI-ICS providers in the case of interoperability. This limitation could explain the – rather arbitrary – definition in Annex I Point 1.3[17], where "Client means an Android or iOS device running a native app that is connecting to the WhatsApp infrastructure". Moreover, BEREC notes that there seems to be no technical reason to exclude Microsoft Windows, Linux or macOS as operating systems – especially since Meta itself is offering WhatsApp clients on these operating systems.

On top of the absence of multi-device solutions, BEREC notices that Messenger reference offer mentions that interoperability will only be provided in the Messenger application that runs on mobile devices (iOS and Android) and not in the chat functionality within the Facebook application. Given the wording and the spirit of Article 7 DMA, **BEREC does not see any technical reason for the lack of interoperability within the Facebook application**.

4. Technical definition and documentation of relevant interfaces and standards to be used

The Interoperability Developer Documentation for WhatsApp and Messenger provide an implementation scheme and explain the basic protocols for the exchange of messages and the necessary functions (e.g. verification, user enlistment and authentication processes).

[16] A "Single Source of Truth" or "Single Point of Truth" is a concept/practice in which a data element is managed and mastered in only one place. Any use of this data element elsewhere is only a reference to the master element, and every edit/update or change only happens to the master element. With regard to messaging services, the single source of truth may be the phone number and the data stored in the device connected to this phone number. Every use of this data on another device is then only a reference to the data stored on the device with the phone number. Opposing to this concept, in a fully decentralized architecture the data may be copied to every device used (i.e. "synchronized"). To enable this, a user has to login (e.g. via username and password) on every new device (and eventually securing this step with another factor besides username and password) to synchronize all data among all devices.

[17] WhatsApp & Messenger Reference Offers.

Additional detailed technical documentation is to be sent separately under NDA to qualified parties.

The set of documents which are made publicly available should include a side reference to a version history, which should be made easily accessible in a list column. BEREC welcomes the changelog included in Messenger Interoperability Developer Documentation and suggests to include the same information in WhatsApp Interoperability Developer Documentation, as well as in both reference offers. Moreover, it should be possible to retrieve, on Meta's website, any previous versions.

With respect to the encryption protocol that can be used to interoperate with WhatsApp and Messenger, **BEREC welcomes the choice of three options given to third-parties**, where i) potential interoperability partners can use the Signal Foundation's open-source protocol or negotiate their own licence with the Signal Foundation, ii) Meta can sub-licence Signal's implementation of the OSS Signal Protocol to potential interoperability partners, and iii) Meta allows potential interoperability partners to use another E2EE implementation, provided that it has a security standard that is equivalent to the OSS Signal Protocol (and subject to Meta's confirmation of compatibility). BEREC believes that some further details need to be clarified. First of all, the reference offers must mention the conditions under which the sublicense is granted, i.e. that the sub-license referred above under option ii) is provided free of charge. BEREC welcomes the reference to the free provision of the Signal sub-licence in the Messenger reference offer[18] and believes that WhatsApp reference offer should also be updated accordingly.

Regarding **interoperability testing**, BEREC welcomes Meta's provisions in Chapter 5 of "Annex 1 - Interoperable messaging services" of both reference offers to support the partner in implementing and activating the interoperable messaging service. It is also stated that in case any issue is identified, Meta can restrict the Partner activation status. Moreover, Meta states that it may *"(in its discretion) continue to extend the testing period until the partner has resolved the issue and is able to demonstrate a working test model, provided that the partner is able to demonstrate continued progress towards resolution of the issue during that extension period"*. While there is no indication regarding the duration of the interoperability testing, BEREC stresses that Meta is required to work collaboratively with Partners in order to meet the 3-month-deadline prescribed by Article 7 DMA. The testing could include a) the required features list (updated) provided in the developer documentation, b) all combinations of the OSs supported by Messenger/WhatsApp and partners' messaging applications, and c) interoperability testing with active the multi-device feature, if relevant. Concerning the Partner activation status, BEREC believes that Meta should provide clear reasons for restricting it, as well as for any failure of the interoperability test, should this occur.

[18] See Chapter 8 "Software rights" of Annex 1 in Messenger Reference Offer.

5. Reachability/discoverability and rules concerning opt-in/opt-out

According to the reference offers, no provisions regarding the onboarding or verification of users by the third-party are directly set as **the technical process of discoverability and reachability of users is not further specified**. For instance, the reference offers do not explain:

- How users can find each other (based on which identifiers),
- How a chat can be initiated (from both sites, by a WhatsApp/Messenger user to a third-party user or by a third-party user to a WhatsApp/Messenger user) and
- How the user IDs are exchanged between WhatsApp/Messenger and third-parties.

BEREC notes that Meta has made publicly available UX mocks which detail how first-party users can send chat requests in order to reach other third-party users, as well as how first-party users can import and add new contacts for interoperable messaging. In the document provided, Meta highlights that "*the example screenshots are illustrative and non-binding, and may be subject to change*".

According to the screenshots[19] provided, BEREC assumes that user discovery must be carried out manually by the users e.g. when they want to start a chat with third-party app user ("*You will need to know the third-party app name and their user ID*"). From the developer documentation, functionality to set and transmit profile information is also missing. There is no possibility to convey i.e. display names, profile images, time of last online-status. This is a functionality that is ubiquitous in up-to-date communication services[20] and would be especially helpful for users to correctly identify users of other services (see Chapter 6 for further details).

As identifiers of WhatsApp users are always the E.164 telephony numbers[21], discovering WhatsApp users based on known telephone numbers, i.e. from the phone book of the third-party app user, is possible. For Messenger users, within the first-party app, it is possible to utilize the social graph formed within the Facebook social network to discover new contacts – in Facebook, users can regularly be searched by their real name[22]. Also, within the first-party Messenger app itself, a limited search for users not present in the contact list is possible. It is

[19] WhatsApp Messaging Interoperability User Experience, available at https://developers.facebook.com/m/messaging-interoperability/

[20] Ref. RTR's study: with the exception of SMS, every examined service allows for setting a profile name, all besides SMS and Google Messages allow for setting a profile image, and 70% of examined messaging services allow for seeing a "person is online"-status.

[21] BEREC notes that the connection between an E.164 telephone number and a WhatsApp account is not always exact, as E.164 numbers get recycled which might mean a person's new number might still be "in use" via WhatsApp by the previous owner; see in detail: https://faq.whatsapp.com/3347469605523961/?locale=en_US&cms_id=3347469605523961&draft=false

[22] Facebook urges users to use their legal name that is also the name listed in their official documents, see: https://en-gb.facebook.com/help/112146705538576?cms_id=112146705538576;

unclear if this functionality will be available for interoperability seekers, as in the UX documents, the phrase "*you use a username to chat*" is present without further explanation. It also seems unclear how discovery within Messenger in relation to interoperability seekers works if the user decides to use Messenger without a Facebook account.[23]

BEREC welcomes the introduction of the Existence Check API to provide third-party messaging apps the possibility to check a list of phone numbers to validate whether each phone number belongs to a WhatsApp user who is opted-in and reachable through interoperability. However, this should be extended to support not only phone numbers but also other user identifiers, and be included for Facebook Messenger too. BEREC considers that an easy and user-friendly process to find other users (discoverability), to initiate conversations with other users and to provide an informed opt-in is essential for the adaption of interoperability.

Regarding rules for the user to decide whether to make use of the interoperable basic functionalities both reference offers do not provide much information on how this choice will be implemented and how users will to be discoverable for other users. However, BEREC notes that according to the UX mocks provided by Meta, opt-in will be required for first-party users in the following situations:

- When interoperability for WhatsApp/Messenger is offered for the first time,
- When a new interoperable third-party NI-ICS is available to users of WhatsApp/Messenger,
- When a third-party user attempts to contact a non-opted-in first-party user.

BEREC welcomes that opt-in is chosen to decide whether the user wants to make use of the interoperable basic functionalities in accordance with Article 7(7) DMA. However, BEREC notes that the opt-in mechanism may also have an impact on future functions, especially group functionalities which have to be made interoperable at later stage. The opt-in mechanism should therefore be designed in such a way that it does not make the use of these group functionalities excessively difficult or not usable at all.

6. User Experience and Design

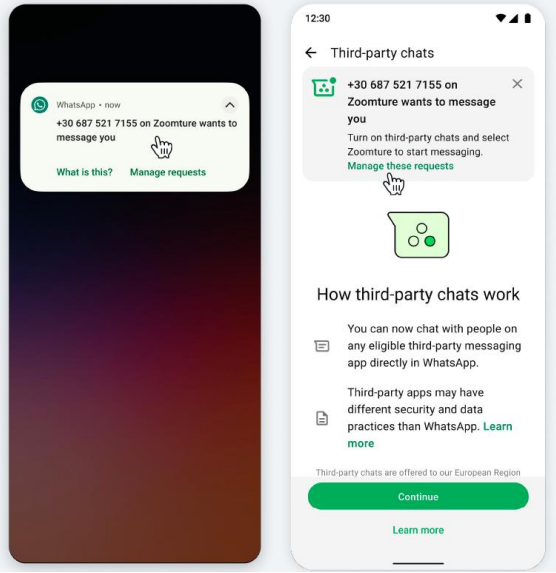
BEREC welcomes the initiative by Meta to publish and provide more information and enhancements on the notifications, set-up and settings for WhatsApp and Messenger users to opt in and use interoperability. The process to discover and add users of third-party messaging services is key to the adoption and use of interoperability.

[23] See "Options to use Messenger without a Facebook account": https://www.facebook.com/help/messenger-app/117818065545664?cms_id=117818065545664

BEREC also welcomes the new possibility for users to choose, whether their chats in WhatsApp and Messenger with/from third-party NI-ICS should be displayed in a separate or combined inbox. BEREC is of the opinion that showing all messages in the same place in combined inbox increases the attractiveness of interoperable communications. This can be attributed to the fact that already interoperable communication services such as telephony services, SMS messaging or e-mail services do not differentiate received messages by provider, but provide a unified inbox to users.

Even though the inbox may be unified, the absence of profile pictures, profile names and profile status for third-party NI-ICS users are still different compared to the first-party users' experience. This holds even more true for WhatsApp in case third-party NI-ICS users are only presented by their telephone number, even when their telephone number is part of the contacted user's phone book, and when WhatsApp appears to have access to a user's phone book (see Figure 1).

Figure 1 – Chat request from third-party in WhatsApp



Source: WhatsApp Messaging Interoperability User Experience - Android, available at https://developers.facebook.com/m/messaging-interoperability (consulted in February 2025)

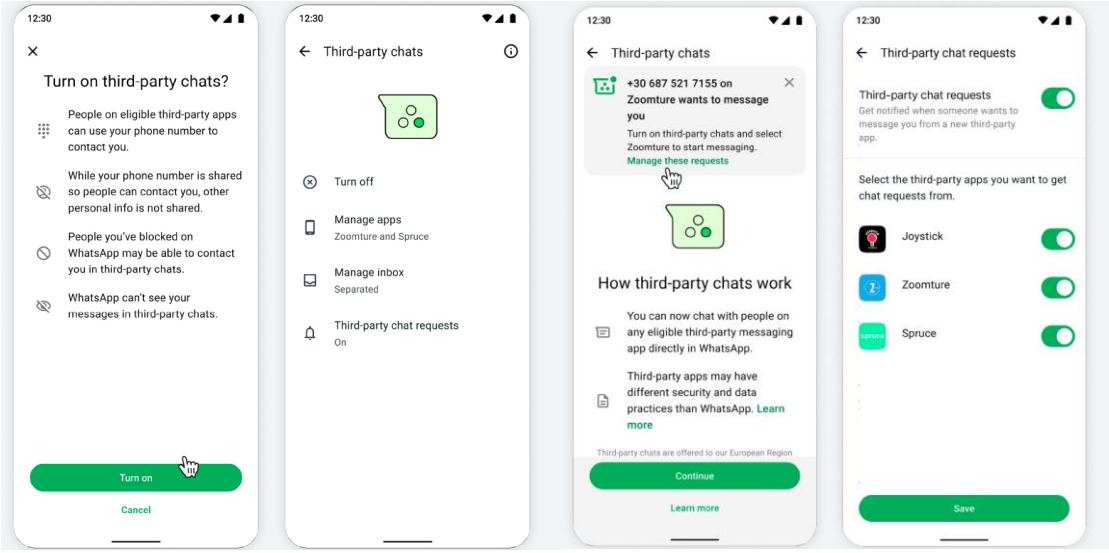
Regularly, users will not be able to identify communication partners based on their phone number alone and may be tempted to reject contacts from third-party NI-ICS because they cannot identify them without further information such as a profile name or profile picture.

Regarding a new chat request from a third-party in WhatsApp (cf. Figure 1), it seems that even if interoperability is enabled and a WhatsApp user is contacted from a third-party, users only see the user identifier and a chat request from the third-party user.

It seems impossible to gather more information about the specific request (i.e. contact name from phone book, preview of message contact, profile image, etc.) before having to choose about opt-in/opt-out of interoperability of the new third-party NI-ICS overall.

Furthermore, it is unclear for BEREC how the “Third-party chats” from the general settings, and “Third-party chats” from the notification (“third-party chat request”) are connected (cf. Figure 2). It also is unclear if turning off chat request notifications will also turn off interoperability.

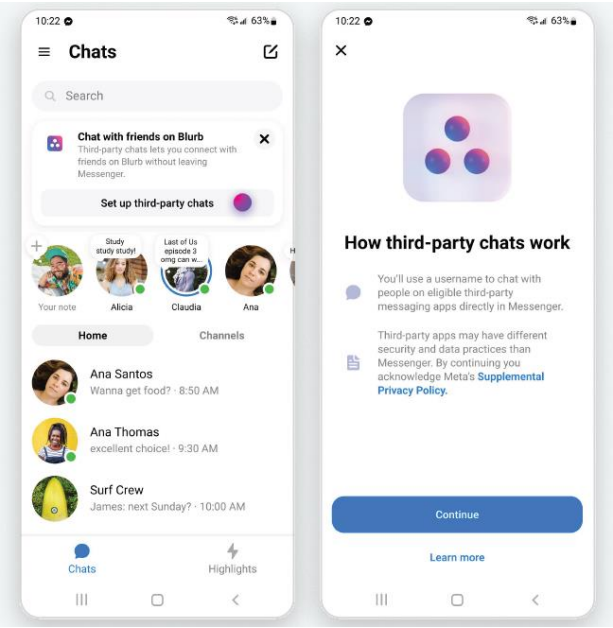
Figure 2 – General settings for “Third-party chats” vs. “third-party chat request”



Source: WhatsApp Messaging Interoperability User Experience - Android, available at https://developers.facebook.com/m/messaging-interoperability (consulted in February 2025)

On what concerns Messenger, it is unclear how discoverability and opt-in/opt-out will work in detail. It seems that a multi-step process is necessary before third-party chats will be available to users (“Chat with friends” in the contact feed, with a possibility to dismiss by touching “X”) (cf. Figure 3). Specifically, it seems that users may explicitly have to set up a username specifically for discoverability for third-party chats, which may be a further burden when enabling interoperability.

Figure 3 – Start of set-up for third-party chats in Messenger



Source: Messenger Messaging Interoperability User Experience – Android; available at https://developers.facebook.com/m/messaging-interoperability (consulted in February 2025)

7. User location

According to Annex 1, Point 7.5.1 of WhatsApp and Messenger reference offers, users of potential interoperability seekers must be located in the European Economic Area (EEA). The provisions in this aspect are the following:

- "*Any Partner users that Partner enlists or provides access to the interoperable messaging services must be located and remain in the EEA*"
- "*NI-ICS providers willing to interconnect are responsible to verify that their users are located in the EEA, if they want to make use of interoperable communications (i.e. a user must be present within the EEA within any consecutive sixty (60) calendar day period)*"
- If Meta detects or otherwise has reasonable grounds to suspect a user enlisted is not located in the EEA, Meta reserves the right to immediately suspend such user(s) from accessing the Interoperable Messaging Services.

- WhatsApp and Messenger users also need to be located in the EEA[24] in order to make use of the interoperable communication options, i.e. WhatsApp and Messenger users outside the EEA are not reachable via other third-party NI-ICS and cannot send messages to another NI-ICS.

BEREC would like to highlight that the following specific issues concerning the limitation of interoperability to users located in the EEA are not clear in the reference offers and in the accompanying documents:

- **It should be clarified how the distinction between EEA-users and non-EEA-users is made from a technical point of view**. Meta should provide further information concerning the location identification of their first-party users (e.g. declared country of residence, location of IP addresses etc.). Such details would allow to determine whether EEA users are able to correctly benefit from interoperability and whether the potential suspension of the service due to a change in the user location is justified (e.g. a user no longer resident in the EEA). The same approach should be used vis-à-vis Meta's partners: in case Meta has reasonable grounds to believe that a partner's user is not located in the EEA, the concerned partner should be appropriately informed with due notice before any service interruption, and they should have the opportunity to provide elements of proof concerning the location of their users which should not be more burdensome than those applied by Meta for its first-party users. Finally, if the EC were to provide a definition or an identification process for EEA users benefitting from the DMA as a whole, this would obviously need to be applied to Article 7 as well.

- **Handling of cases of roaming**. Meta should provide further information concerning the consecutive sixty (60) calendar day period during which the user must be present in the EEA to enjoy the interoperability solution. In particular, it should be clarified which (automatic?) actions are taken when a user temporarily leaves the EEA during or after this consecutive 60 calendar day period. Moreover, concerning the setting of the timeframe, the fair use policy set for international telecommunication roaming[25] can be used as a reference. Article 4(4) of this regulation refers to "*prevailing* domestic consumption over roaming consumption or *prevailing* domestic presence of the customer over presence in other Member States of the Union" and states that such indicators of presence and consumption should be observed cumulatively and for a period of time of at least four (4) months. Thus, the roaming regulation provides more flexibility than the current proposal by Meta, i.e. the presence in a specific jurisdiction needs to be "prevailing" and neither absolute nor consecutive. This is the case

[24] See Chapter 1 "Definition and interpretation" in WhatsApp and Messenger reference offers. Meta also informs to third- party users that the IP address is collected to estimate their general location (see: https://www.whatsapp.com/legal/dma-notice-non-users).

[25] Commission implementing regulation (EU) 2016/2286 of 15 December 2016 laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment, see: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R2286.

although the costs for providing roaming services to the users are significantly higher than the variable/marginal costs incurred by Meta to provide interoperability once the technical architecture to do so is already put in place. Therefore, BEREC cannot identify a reasonable justification to determine that a consecutive 60-day period would be appropriate. If it is considered that a period limitation must be set, in BEREC's opinion there is no technical or economic reason to provide stricter conditions in the case of NI-ICS. In any case, similarly to the determination of the user location, the partners should be appropriately informed with due notice before any service interruption and they should not be asked for more burdensome proof than those applied by Meta for its first-party users.

- **Information provided to users.** BEREC stresses that users must be actively informed if their location classification (EEA and non-EEA) changes and what consequences it implies, e.g. if and under which conditions (including the timeframe) the service may be disrupted.

8. Service level agreements and service level objectives

Meta's reference offers include a section on service levels agreements under Annex 1 – Appendix A which sets out a description of the general service levels, support service levels and product service levels that third-party interoperability partners can expect. In particular, this Appendix stipulates that Meta "*will use commercially reasonable endeavours to provide availability of* [WhatsApp/Messenger] *Application for interoperability that is materially the same as the general availability of the* [WhatsApp/Messenger] *Application, including in terms of* [WhatsApp/Messenger] *Application uptime and Message latency*".

BEREC would like to stress that reference offers are of binding nature. In this context, as regards the quality of service, there must be no difference for first- or third-party users in terms of some specific aspects of the service, such as uptime and latency. Indeed, quality of service is key to meet the underlying objectives of Article 7 of the DMA, as degraded quality would result in an effective disadvantage for the interoperability seekers. Thus, BEREC considers that this should be interpreted as a real equivalence of output, meaning that the provision of Meta's wholesale inputs to interoperability seekers must be materially the same (e.g. in terms of functionalities) as what Meta can enjoy internally.

Moreover, the fact that Meta shall only adopt "*commercially reasonable endeavours*" to provide availability does not seem to be as binding as an obligation of best effort.

BEREC deems that Meta's reference offers should set accurate Service Level Agreements (SLAs) based on the internal Service Level Objectives (SLOs). Given the novelty of the interoperability obligation for NI-ICS, BEREC suggests that quantitative SLAs be defined in the framework of a regulatory dialogue with the EC and the relevant stakeholders (i.e. the gatekeepers and third-parties).

SLAs typically include:

- SLAs for ordering, delivery, service (availability) and maintenance (repair) including specific time scales for the acceptance or the refusal of a request for testing or delivery of services and facilities and for provision of support services;
- Procedures in the event of proposed amendments, which may include a requirement for notification to the EU competent authority for such amendments, for example, launch of new features, upgrades, changes to existing services (see Chapter 11 below);
- Set of actions (e.g. remedies) when SLA terms are breached.

BEREC believes that SLOs with specific internal targets as regards e.g. obligations tied to specific response times are likely to be set within Meta. Such SLOs should be included in the reference offer to provide more transparency to the interoperability seekers.

9. Key performance indicators (including threshold values)

Well-defined Key Performance Indicators (KPIs) would set a quantifiable and transparent measure of performance for specific objectives. This will enable the Commission and interoperability seekers to monitor whether Meta is offering interoperability at non-discriminatory conditions. This is typically the case for reference offers in electronic communications markets. Meta's reference offers do not include any element related to KPIs. BEREC expects that **KPIs** concerning Article 7 will be **included in the upcoming Meta's compliance report**. Once defined, they should be included **in the reference offers as well**.

It should be noted that a tracker system and public reporting on certain KPIs are measures that the EC is considering in relation to Article 6(7) DMA regarding interoperability of hardware and software features available to Apple and accessed or controlled via iOS and iPadOS. The system may serve as guidance for other obligations.[26]

KPIs should reflect what end-users expect when using NI-ICS. While stakeholders should be consulted to establish the most relevant KPIs, BEREC deems that they should at least reflect:

- Technical aspects of interoperability:
    - Service descriptions linked to binding times for providing the service availability, including KPIs related to communications failure. These KPIs could be a means to compare the QoS granted by Meta to its WhatsApp and

[26] See CASE DMA.100204 – ARTICLE 6(7) – APPLE – IOS AND IPADOS – SP https://ec.europa.eu/competition/digital_markets_act/cases/20253/DMA_100204_1752.pdf , p. 20-22

Messenger's users and the QoS granted by Meta to users of alternative NI-ICS providers;

- Traffic limitations (like expected amounts of messages within a certain timeframe), including KPIs related to latency. These KPIs could be a means to compare the QoS granted by Meta to its WhatsApp and Messenger's users and the QoS granted by Meta to users of alternative NI-ICS providers;
- Guaranteed time to repair:
  - Initial reaction to newly created tickets, differentiated by severity;
  - Time to effective reparation.

- Commercial relationship between Meta and interoperability seekers:
  - Timespan from initial contact to granting access to the testing system;
  - Dispute resolution times.

It should be noted that this list is not exhaustive and should be considered as dynamic. It will probably be necessary to adapt KPIs over time to make them correspond to the objectives of the DMA and to what is expected by end-users.

10. Data security and data protection rules

Although a specific chapter (Chapter 10) in Meta's reference offers and several annexes (annexes 3, 4 and 5) specify the conditions on data security and data protection rules, BEREC considers that some key aspects could be further detailed and clarified.

For instance, even though it is referred in Point 2.1 of Annex 5 that parties "*are each independent controllers in respect of their respective Processing of (…) Personal Data*", no further details are provided, so it is not completely clear what role Meta, third-parties and end-users play under GDPR, e.g. with regard to contracted data processing (c.f. Article 28 GDPR and Commission Implementing Decision EU 2023/1795[27]) or with view to the DMA as the legal basis for data processing. There is only a reference in that regard, namely in Point 2.2.1 of Annex 5, which states that "*each Party shall be individually responsible for ensuring that its Processing of the Personal Data is lawful, fair and transparent in accordance with applicable Data Protection Requirements, including where applicable on the basis that the Data Subject*

[27] Commission Implementing Decision EU 2023/1795 of 10 July 2023 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate level of protection of personal data under the EU-US Data Privacy Framework (notified under document C(2023)4745)

has unambiguously given his or her consent, or on the basis of some other valid ground provided for in applicable Data Protection Legislation".

BEREC also notes that details on the **interplay of data processing** – by both parties: Meta and NI-ICS willing to interconnect – **could be more comprehensive**, especially with regard to the application of the GDPR and the consideration of each other's data protection declarations.

With regard to data, such as user information, metadata, a network security program that includes encryption in storage and transit is required. BEREC notes that it is unclear how the data handling will be reflected in each other's data protection declarations.

BEREC notes that Meta states that the opt-in of third-party providers' users must be collected, as it is referred, in Point 7.4.2. of Annex 1, that "(…) *Partner must not Enlist a Partner User to the* [WhatsApp/Meta] *Infrastructure without that Partner User voluntarily opting in to receive the Interoperable Messaging Services according to Applicable Laws.*".

In addition, Annex 5 of the reference offers ("*Privacy and data protection requirements*") provides the contractual clauses for complying with EU legislation related to privacy and data integrity included the Standard Contractual Clauses (SCCs) for the transfer (including onward transfer) of personal data to third countries. With particular regard to international transfers, where the SCCs apply[28], the reference offers provide for an ad hoc "Module" (5.2.1 referring to "Appendix to Annex 5)). In the Appendix to Annex 5, section B clarifies that it applies to "sensitive data", a category of data guaranteed by special safeguards under the GDPR (Article 9). Concerning this category, the reference offers do not specify that, being the purpose of the data transfer to enable interoperability between messaging services (including the transmission, receipt, synchronization, and display of messages exchanged between end-users), the exchange of sensitive data can be only incidental, apart from being limited to what is strictly necessary for this purpose. In addition, the refence offers do not state the categories of sensitive data which may be transferred. As an example, it could be useful to make reference to the related metadata, i.e. metadata associated with the messages which can reveal sensitive patterns or to drivers of incidental transfers.

Finally, BEREC welcomes the explicit references to the EECC, NIS 2, e-Privacy directive and GDPR when defining a "Data / Security Incident". However, notifications on incidents seem to only be an obligation by the interoperability seeker to inform WhatsApp and Messenger, not vice versa. The reported information on the incident (e.g. affected number of users, duration, geographical spread of the area) could in general also be helpful for interoperability seekers to assess incidents and manage service continuity.

[28] That is transfers of personal data outside the EEA in absence of an EU adequacy framework.

11. Rules on dynamic adjustments

Meta states that they "*will, if reasonably possible, provide prior notice to the Partner of any standard change, urgent change and/or legally required change*"[29]. BEREC considers that **Partners should be notified by Meta with reasonable advance notice and by one-to-one communication about upcoming changes** (e.g. not only posting them on the official website/standard developers' channels, but also via a dedicated email). This would be an advisable procedure also in urgent cases (e.g. when security and integrity issues arise). Clarifications at which conditions Meta may bring modifications to its services, which impact interoperability could help making updates manageable for any involved party.

Annex 2, section 2 of Meta's reference offers currently only states that the Developer Documentation may be amended "at any time" and that the Partner would be notified through Meta's standard developer channels. Interoperability Partners have a three (3) months deadline to adopt the latest supported version; in case of failure by Partners to adopt the new version, Meta reserves the right to suspend interoperability until adoption.

Annex 2, section 3 of Meta's reference offers adds the option to connect via proxy servers and provides scope for discussion on the technical "*additional steps*" (if any) to implement such a solution. Apart from reference to Point 7.6 of Annex 1, further details on the way to face critical issues, which may arise alongside the implementation of proxies are not addressed. Likewise, no details are spelt out about the way in which proxies may affect the transfer and processing of end-users' personal data, although some impact about such data is factored in.

Overall, BEREC notes that, concerning updates to the Developer Documentation for WhatsApp and Messenger and discussions for proxies' operational roll out, Meta does not clarify which guarantees – apart from ex post call for dispute resolution – interoperability seekers may enjoy in case of disagreement on one side and which support in case of technical difficulties on the other.

Furthermore, BEREC recommends that either concerning unilateral changes to the Meta Developer Documentation or with regard to issues related to the set up and operation of proxies, given their systemic impact on interoperability, the EC and the interoperability beneficiaries should be informed in advance, especially if changes relate to technical specifications and protocols. The EC can rely on BEREC to provide the relevant expertise.

12. Suspension and termination

The cases upon which Meta has the right to suspend interoperability are enlisted in Point 5 of the reference offers. BEREC considers them to be too broad as they may allow an unbounded discretionary power, especially in points 5(1)(c) suspension for "*operational reasons*", (e)

[29] Chapter 19 of WhatsApp and Messenger reference offers

suspension for "*a material adverse effect on the Services"* and (f) arising from Annex 1 Point 7.5 and 8.3, Annex 2 Point 2, Annex 3 Point 4.8, Annex 4 Point 2.2.3.

Given the novelty of the set-up of NI-ICS interoperability, it may be envisaged to have such a broad precautionary approach against threats to integrity and security. However, the conditions in the reference offers would need to be reconsidered and to evolve over time.

It is important to note that Article 7(9) DMA allows the notified gatekeeper (in this case Meta), to request interoperability seekers for measures to preserve the integrity, security and privacy of its own services, only when such measures are duly justified and strictly necessary. Hence, this provision does not accrue to an extensive and general safe harbour. This implies that a thorough set of reasons strictly aimed at guaranteeing integrity, security and privacy should be spelt out by the gatekeeper on a case-by-case basis, including reasons for terminating and suspending the interoperability service, when this can occur.

In the reference offers it should be granted that the possibility for the gatekeeper to **suspend interoperability should be exclusively limited to statutory exceptions allowed for in Article 7 DMA**. Such statutory exceptions should be spelt out, Meta should provide sound statement of reasons and Partners should be granted specific safeguards for the reasonableness of the procedure. Overall, such a suggested progressive path towards the transparency of evidence satisfying the reasonableness test, would help to meet the proportionality principle and the duty of justification set by Article 7(9) DMA.

The same reasoning should apply to the section of the "Effect of termination"[30], where BEREC notes that the power of Meta to terminate the agreement and thus the provided services is too discretionary.

In addition, BEREC highlights that the **clauses of renegotiation and the reasons of termination should also be detailed, transparent, non-discriminatory** and take into consideration the rights of both participating parties. In the reference offers, Meta seems not to provide sound safeguards and prerogatives to the interoperable NI-ICS providers in case of termination; in addition, Meta reserves various reasons for contract termination in interoperability access without alternatives, which risk to undermine the service itself.

Furthermore, there is no reference to the way or the time to communicate to end-users of both parties the wind down of the final service to them (retail level), should the termination be accomplished.

13. Compliance monitoring

Section 18 of the reference offers ("Compliance") presents the powers and functions of WhatsApp and Messenger with regard to monitoring the third-party compliance as well as the

[30] Chapter 5.6 of WhatsApp and Messenger reference offers.

security, privacy and integrity of Meta's Confidential Information. With due regard to Meta's entitlement to regular monitoring, it appears that the scope of the right of auditing the access seeker has a very broad remit. More in detail, Meta's prerogative to "*inspect Partner and Partners' Parties records, resources, facilities, equipment, electronic data, documents, technical processes, operations and systems"* (referred to as "Relevant Materials") allows Meta to access a full basket of private assets of Partners who are also its competitors.

Thus, such audit rights may give Meta the possibility to closely monitor potential competitors, which raises issues from a competition standpoint (see analogous case in point under Article 6(2) DMA), although Meta labels data and information collected during such audits as Partner's confidential information. In addition, the broad scope of the so-called "Relevant Materials" and the pervasiveness of inspecting powers may clash with the system of fundamental rights of the EU legal system, where inspection of private assets is usually only allowed for public bodies. Therefore, such a power of inspection should abide to an evidence-based proportionality test, to prove that it is balanced to and aimed at the effective need to protect serious harms to the security, privacy and integrity of Meta's Confidential Information.

14. Rules on dispute resolution between providers

In Meta's reference offers, at section 20.2, a specific procedure for the cases of technical disputes is set and, for this purpose, a relevant definition of "technical dispute" is introduced at section 20.1. Then the procedure foresees that if the involved parties, after following the steps for resolving this technical dispute do not reach a settlement, they can follow the steps of section 20.3 related to a general dispute. The two parties can also decide that even if a dispute meets the definition of and is characterised as "technical", the steps detailed under section 20.3 can be directly followed (section 20.2).

In addition, although the escalation and dispute resolution procedures seem adequate in terms of the proposed timeframes, under which Meta engages to find a solution with the third-party NI-ICS providers to restore/ensure effective interoperability, BEREC highlights that no further solution is provided for in case an agreement between the parties cannot be found. In this case, a referral to an independent body for dispute settlement in the context of interoperability could be foreseen as a last resort before the judicial review. Even though seeking an injunction or going through the courts is a form of formal dispute resolution, sufficient time and effort should be invested beforehand to avoid this potentially lengthy process.

The conciliation process for a fair and impartial mechanism to address disagreement with Apple on technical issues devised by the EC in relation to DMA Article 6(7) regarding

interoperability of hardware and software features available to Apple and accessed or controlled via iOS and iPadOS may serve as guidance.[31]

As regards the transparency of the procedure, BEREC notes that although in the case of reaching a settlement, a provision for writing down a binding agreement is foreseen, it should be clearly stated how this is applied and communicated **to all other market players with the appropriate notice period** (see Rules on dynamic adjustments, Chapter 11). In case the adjustment concerns (a) specific access seeker(s) and may not be of interest for all the other parties, Meta should still inform all partners and let them the choice to benefit, if they wish, from the same solution found in the bilateral dispute.

15. Updating mechanism for the reference offer

Article 7(4) DMA states that the gatekeeper should update the reference offer "*where necessary*". Updating mechanism for the Meta reference offers could be introduced and aligned with other updates e.g. with regard to technical documentation or the general provision of the implementation of interoperability.

[31] See case DMA.100204 – Article 6(7) – Apple – iOS and iPadOS – SP https://ec.europa.eu/competition/digital_markets_act/cases/20253/DMA_100204_1752.pdf, p.12-15