



Berlin Commissioner
for Data Protection
and Freedom of Information

521.13974 / 631.342

CR: 290757

IMI DD 344664

Berlin, 05 May 2022

Final Decision

Preliminary remarks

The complaint (ref. no. 521.13974 / 631.342) was raised before the Berlin DPA in January 2021. It was transferred to the supervisory authority Netherlands, which is the Lead Supervisory Authority (LSA) for the cross-border processing carried out by Uber B. V., in accordance with Article 56 GDPR. The LSA Netherlands conducted the investigation and the cooperation procedure with all concerned supervisory authorities in accordance with Article 60 GDPR. The LSA Netherlands proposed a Draft Decision and thereby the complaint was rejected. In accordance with Article 60 (8) GDPR, the Berlin DPA as the supervisory authority with which the complaint was lodged, hereby adopts the decision as it was agreed upon in the cooperation procedure and is included below:

With regard to the abovementioned case and pursuant to Article 60(3) of the General Data Protection Regulation (GDPR), the Autoriteit Persoonsgegevens (Dutch Data Protection Authority, hereafter: NL SA) has issued the following draft decision:

Summary of the Case

**Berlin Commissioner for Data Protection
and Freedom of Information (BlnBDI)**

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On 15 March 2021 an article 56 notification with number 184404 was broadcast by the Berlin SA. On 24 March 2021 the NL SA indicated that we considered ourselves the lead authority in this matter, in accordance with Article 56 GDPR. On 20 April 2021 the Berlin SA broadcast an article 61 Voluntary Mutual Assistance Notification with number 290775 using Case Register Entry 290757.

The complainant wrote that he received a newsletter from Uber and that in the email he could not find an option to simply unsubscribe. He tried to unsubscribe by replying to the sender's address (uber@uber.com), but the e-mail bounced. He then sent a complaint to his local data protection authority.

Norm allegedly infringed

- Article 12 (2) GDPR states that the controller shall facilitate the exercise of data subject rights under Articles 15 to 22 GDPR.
- Article 21 (2) GDPR states that where personal data are processed for direct marketing purposes, the data subject shall have the right to object at any time to processing of personal data concerning him or her for such marketing, which includes profiling to the extent that it is related to such direct marketing.

The complainant states that he could not unsubscribe from the marketing emails that Uber was sending him by using the reply function.

Investigation by the NL SA

On 15 October 2021 the NL SA sent an inquiry to Uber regarding this case. Uber replied on 1 November 2021 that Uber carried out internal research and has come to the conclusion that at the bottom the relevant email contains a link with the title: "Email settings", or in German: "E-Mail-Einstellungen". This link refers to a web page of Uber where users can unsubscribe (and, if desired, resubscribe) for different types of communication. The user has not made use of this link.

Uber wrote to the NL SA that since the date of the complaint the link has been modified in order to be more clear to the user. It now bears the title: "Email abbestellen" (unsubscribe). Uber added that the data subject has now been unsubscribed from marketing emails after the NL SA contacted them.

Furthering the statements of Uber the NL SA has checked the e-mail that the data subject complaint about and the NL SA established that it does indeed contain a link called “E-Mail-Einstellungen”.

The NL SA has also reviewed the privacy policy on the website of Uber (<https://www.uber.com/legal/nl/document/?name=privacy-notice&country=germany&lang=de>) and established that it clearly describes the steps data subjects should take to unsubscribe from marketing emails.

The NL SA holds that the GDPR does not prescribe that unsubscribing should always be possible using the reply function. Furthermore NL SA established that the controller did offer an unsubscribe option with the link “E-Mail-Einstellungen” included at the bottom of the e-mail. Also Uber agreed to clarify to the name of the button. It now reads “Unsubscribe”. Uber facilitates right of data subjects to object as required per Article 12(2) jo. article 21 GDPR. By actually unsubscribing the complainant from marketing emails it has facilitated the right to object of the complainant.

Proposed action by the NL SA

Thus, based on the above-mentioned explanations, the NL SA did not identify any infringement of the obligations set out in articles 12(2) and 21 Regulation (EU) 2016/679 (GDPR) by the controller. The NL SA has rejected the complaint according to Article 60 (8) GDPR. Henceforth, the cross border complaint case (national reference 521.13974 / 631.342) should be closed.

Appeal Notice to the complainant

Against this decision a lawsuit before the Verwaltungsgericht Berlin (administrative court of Berlin), Kirchstraße 7, 10557 Berlin is admissible. The lawsuit needs to be filed in written form within one month after the notification of this decision, it can also be filed as an electronic document with a qualified electronic signature (QES) or for the record of the clerk of the court. Please, note that in case of filing the lawsuit in writing the legal deadline is only met if the lawsuit reaches the administrative court within the deadline.

The Berlin Commissioner for Data Protection and Freedom of Information