

**APPLICATION
PURSUANT TO ART. 15(1) GDPR AND ART. 35(1) UAVG**

District Court of Amsterdam

Applicants in these proceedings are:

1. [...], residing in [...], United Kingdom, at the [...], hereinafter [**Applicant 1**],
2. [...], residing in [...], United Kingdom, to the [...], hereinafter [**Applicant 2**],
3. [...], residing in [...], United Kingdom, to the [...], hereinafter [**Applicant 3**],
4. [...], Residing in [...], United Kingdom, at the [...], hereinafter [**Applicant 4**],

all of whom have their domicile at (1019 AZ) Amsterdam at Panamalaan 6G, at the office of Ekker Advocatuur, of whom mr. A.H. Ekker is appointed as a lawyer and will act as such.

The defendant is a **private limited company UBER BV**, established in (1097 DP) Amsterdam, with its office at the address Meester Treublaan 7.

1. INTRODUCTION

1. The Applicants work as licensed private hire drivers for Uber in the United Kingdom. In doing so, they use the services of Uber via the Uber Driver App (“Driver App”).
2. Uber is a licensed private hire transport operator. The company is active in 67 countries and uses its mobile app to bring customers into contact with official taxi drivers, as well as private drivers. In the UK, an estimated 100,000 drivers work for Uber.
3. On 21 June 2020, by email [Applicant 2] requested Uber to:
 - give access to the personal data concerning him that are processed by Uber, on the basis of Art. 15 General Data Protection Regulation (GDPR);
 - provide the personal data in a structured, commonly used and machine-readable form, on the basis of Art. 20 GDPR (Exhibit 1).
4. [Applicant 1] and [Applicant 3] made identical requests by email on 20 June 2020 (Exhibits 2 and 3). [Applicant 4] made an identical request on 21 June 2020 through the Driver App (Exhibit 4).
5. In response to the aforementioned requests (the “GDPR Requests”), Uber sent a number of digital files containing information about Uber's data processing to [Applicant 2] and [Applicant 4] (Exhibits 5 and

6). However, these files do not contain the full information requested by [Applicant 2] and [Applicant 4] and to which they are entitled under the GDPR. [Applicant 1] and [Applicant 3] have not received files from Uber.

6. In view of the above, the Applicants apply to the Court with the following request for Uber to comply in full with the GDPR Requests, made in accordance with Art. 35 (1) of the General Data Protection Regulation Implementation Act.

2. BACKGROUND

7. The Applicants are affiliated with the App Drivers & Couriers Union (“ADCU”). The ADCU is a union that represents the interests of all private hire drivers and couriers in the UK, including in relations with employers and regulators. Among other things, the ADCU is committed to more transparency about data processing by parties such as Uber. The ADCU is affiliated with the International Alliance of App Transport Workers (“IAATW”). Both organizations are committed to digital rights for 'platform workers'.
8. The applicants are also involved in the Worker Info Exchange Ltd. (“WIE”). WIE is a non-profit organization that aims, among other things, to give employees and self-employed persons in the information economy access to their (personal) data that is collected during work. An important goal is to structure the balance of power between large digital platforms, such as Uber, and the people who make these platforms successful - the employees.
9. The ADCU and IAATW jointly took the initiative to establish a 'data trust'. Within this data trust, which is maintained by Worker Info Exchange, the personal data of drivers is collected. The obtained insights thus can be used, among other things, in the context of collective bargaining.
10. The interest of transparency regarding data processing by Uber is important / significant, for the following reasons:
 - (i) Proceedings are being conducted in various jurisdictions as to whether there is an employment relationship between Uber and the Uber drivers. Noteworthy in this respect is the degree to which Uber has management control. This control is, among other things, exercised by means of algorithms and automated decision-making;
 - (ii) The UK Courts have ruled that drivers are entitled to minimum wages and holiday pay for every hour they are logged into the Uber platform. In this context, drivers need access to their data in order to calculate their wages, to assess the quality and quantity of the work offered and to understand how they perform compared to others. The information mentioned is also necessary to organize and to build collective bargaining power;
 - (iii) Transparency on data processing enables drivers to better express their interests in the discussion of public transport policy decisions. To date, Uber has dominated the discussion of pricing and congestion charging, while their interests usually do not coincide with what is best for drivers or society;

- (iv) When making decisions about private hire licenses, drivers are assessed on their suitability. Their track record and behavior are highly relevant in this respect. For this reason, drivers have a strong interest in having unlimited access to their data at Uber;
- (v) The UK Courts have ruled that Uber drivers are entitled to protection against discrimination. Reports from Transport For London (“TFL”) ¹ show that 94% of drivers with a private hire license are of black, Asian or minority ethnic origin. The drivers are therefore regularly confronted with discrimination. To determine whether there is discrimination or unequal treatment, drivers need access to the calculation of their rating in the Uber Driver App, the variance over time and the variance with respect to others. It is important to note that drivers are deactivated by Uber when their customer rating falls below 4.4 out of 5.0.

11. In view of the above, the GDPR Requests are partly aimed at making personal data available to WIE.

3. LEGAL FRAMEWORK

12. With regard to the personal data that Uber processes about them, the Applicants can be regarded as data subjects within the meaning of Art. 4 section 1 GDPR. The relevant data can after all be traced back to Applicants, including via the account details (name, address, telephone number, etc.) in the Driver App.
13. Uber BV and Uber Technologies Inc., a San Francisco-based entity, act as data controllers for the processing of personal data collected in connection with the use of Uber's services in the European Economic Area and the United Kingdom (see the Uber Privacy Notice, [production 7](#)). To the extent that Uber BV and Uber Technologies Inc. act as joint controllers, the Applicants choose to exercise their rights towards Uber BV, in accordance with Art. 26(1) GDPR.

Right of access by the data subject

14. Art. 15(1) GDPR provides:

The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information:

(a) the purposes of the processing;

(b) the categories of personal data concerned;

(c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;

(d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;

(e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;

¹ Transport For London is a regulator in the UK with enforcement of laws and regulations for the taxi industry.

(f) the right to lodge a complaint with a supervisory authority;

(g) where the personal data are not collected from the data subject, any available information as to their source;

(h) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

15. A data subject does not have to substantiate an access request access under Art. 15(1) GDPR.

Right to data portability

16. Article 20(1) and (2) GDPR provide:

1. The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where:

(a) the processing is based on consent pursuant to point (a) of Article 6(1) or point (a) of Article 9(2) or on a contract pursuant to point (b) of Article 6(1); and

(b) the processing is carried out by automated means.

2. In exercising his or her right to data portability pursuant to paragraph 1, the data subject shall have the right to have the personal data transmitted directly from one controller to another, where technically feasible.

17. Uber is required to offer data subjects within the scope of the GDPR the possibility to download personal data directly. Uber is also required to offer the opportunity to send personal data directly to another controller. An Application Programming Interface ("API") or a Trusted Third Party (TTP) can be used for this purpose.² A good example is the possibility that TomTom offers to download data via its website for use on other websites and in other file formats ([Exhibit 8](#)).
18. The right to data portability applies to all data provided by the data subject. This concerns, on the one hand, personal data that is 'consciously and actively' provided by the data subject, such as account data (email address, username, age) and, on the other hand, personal data that the data subject 'provides' through the use of the service or equipment offered.
19. In general, given the objective of the right to data portability, the term 'data subject' should be broadly understood and excludes only 'deduced' and 'derived' data. A controller can exclude this deduced data, but must add all other personal data that the data subject has provided by means made available by the controller.³

² An *application programming interface* (API) consists of subprograms, protocols and means for creating software and applications. It refers to the interfaces of applications or web services made available by those responsible so that other systems or applications can connect to and work with their system. See "*Guidelines for the right to data portability*", Dutch Data Protection Authority, p. 6, par. 2.3.

³ See "*Guidelines for the right to data portability*", Dutch Data Protection Authority, p. 9.

20. The controller should include as much metadata as possible with the data, with the highest degree of fine grain, in order to maintain the precise meaning of the information exchanged.⁴

Automated decision-making and profiling

21. Uber has the right to use automated decision-making and profiling with regard to the applicants, insofar as this is necessary for the execution of the agreement between Uber and the applicants (Art. 22 (2)(a) GDPR).
22. When applying automated decision-making and profiling, Uber must comply with the provisions of Art. 22 (3) GDPR:

In the cases referred to in points (a) and (c) of paragraph 2, the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.

23. In order to assess whether Uber meets these obligations, it is of great importance for drivers that Uber complies with the requirements of Art. 15 Section 1 under h GDPR included information obligation.
24. The GDPR defines profiling as follows:

"profiling": any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements (Art. 4 section 4 GDPR).

25. When applying profiling, Uber should use appropriate mathematical and statistical procedures and take technical and organizational measures to ensure proper and transparent processing for the data subject, including to correct inaccuracies in personal data and minimize the risk of error. Discriminatory consequences of profiling must also be prevented (Recital 71 GDPR). These conditions are also laid down in the general principle of "fair data processing" under Article 5 (1) (a) GDPR.

4. DATA PROCESSING UBER

26. Uber processes large amounts of personal data about drivers via the Driver App. General information about these data processing operations is included in the Uber Privacy Notice ([Exhibit 7](#)).
27. The data processing by Uber has a major impact on applicants. After all, this data processing provides Uber with a very invasive picture of, among other things, the use of the Driver App, the location and driving behavior of the driver, communication with customers and Uber's support department, etc. Within the Uber Driver App, decisions are made partially based on that data, for example about the allocation of journeys and applicable rates. The Applicants are highly dependent on this for their income.

Lack of transparency

28. It has been established that Uber has not been open and transparent about the processing of personal data / data processing in the past and has violated data protection law several times. For example, this has been demonstrated in legal proceedings between Uber London Limited ("ULL") and TFL regarding

⁴ See "Guidelines for the right to data portability", Dutch Data Protection Authority, p. 15.

the extension of Uber's operator license.⁵ The statement by Helen Kay Chapman, Interim Director of TFL's Licensing, Regulation and Charging Department, shows that Uber, among other things:

- used various software applications, called Greyball and Ripley, to interfere with and disrupt surveillance and enforcement. Greyball endeavored to block access to the services for government officials wishing to use these services for surveillance and enforcement purposes. Among other things, use was made of location data and credit card information of these government officials;
- collected passenger location data, even after the Uber journey was completed;
- collected data from iPhones in violation of Apple's privacy guidelines.

29. TFL cites these circumstances as one of the reasons for its decision of 22 September 2017 not to renew the license of ULL.

30. In the Netherlands, Uber was fined € 600,000 in 2018 by the Dutch Data Protection Authority for violating the data breach reporting obligation.⁶

Lack of response to GDPR Requests

31. In practice, it has proved to be very difficult for drivers to gain full access to their personal data. Uber offers drivers the opportunity to request access to their personal data via its website or the Uber Driver App. However, the scope of the inspection option is limited.

32. In addition, Uber's response to access requests is not consistent. Drivers usually only receive incomplete information. Often it only concerns a very limited part of the categories of personal data that Uber processes and the access granted is limited to a period of several months. This also applies to the responses received by the applicants from Uber.

33. In response to previous requests for access made via a lawyer, Uber has provided more detailed information on several occasions. In those cases, Uber has explained the information provided by means of 'Guidance Notes' (Exhibit 7) (the "Guidance Notes").

34. In the Guidance Notes, Uber lists the following data categories:

- 01 Driver and rider account profile information
- 02 Driver lifetime trip data
- 03 Rider lifetime trip data
- 04 Driver and Rider communications data
- 05 Driver communications data
- 06 Driver GPS data
- 07 Rider GPS data
- 08 Driver performance badges

⁵ Witness Statement of Helen Kay Chapman in the Westminster Magistrates Court case between Uber Limited London (ULL) and Transport For London (TFL), p. 12, par. 44 - 46. Available at www.content.tfl.gov.uk.

⁶ <https://autoriteitpersoonsgegevens.nl/nl/nieuws/ap-legt-uber-boete-op-voor-te-laaten-datalek>.

09	Account Bliss tickets
10	Account Zendesk tickets
11	Driver and rider device data
12	Driver detailed device data
13	Rider detailed device data
14	Driver online / offline
15	Driver App restrictions
16	Driver star power requests
17	Ratings
18	Driver dispatches offered and accepted
19	Safety Complaints
20	Account call recordings
21	Driver trip status
22	Telematics
23	Driver cancellations from riders
24	Payment methods
25	Invoices
26	Driver documents

5. GDPR OBLIGATIONS BY UBER

35. Uber has failed to fulfill its obligations in several respects in its response to the GDPR Requests. This is explained in more detail below.

Incomplete access to personal data.

Data categories Guidance Notes

36. The Guidance Notes show that Uber processes a large number of different categories of personal data. However, the Applicants have not had access to most of these data categories.

Driver's Profile

37. In addition, Uber did not provide full access to Applicants' Driver's Profile (also referred to as Partner's Profile). The fact that that Uber maintains such a profile of drivers is evidenced by internal notes from Uber, concerning another driver, which are included in Zendesk, Uber's Customer Service Software (Exhibit 10). The notes contain several links that refer to the location of the driver's profile on Uber's systems (Internal note, September 26, 2015, 19:35) (Exhibit 10, p. 2).
38. In the Internal notes, the relevant Uber employee refers several times to the Driver's Profile of the driver:
- *"Please be aware of note on this driver's profile"* (Internal note, November 26, 2015, 01:39) (Exhibit 10, p. 1);
 - *"Assigning this to [...] as noted on this driver's profile"* (Internal note, September 26, 2015, 19:35) (Exhibit 10, p. 2);
 - *"Assigning to AS on partner's profile, and notifying by email"* (Internal note, August 20, 2015, 13:14 (Exhibit 10, p. 3);
 - *"Profile mentions to send it on to [...]"* (Internal note, July 13, 2015, 04:38 (production 10, p. 4);
 - *"I've assigned this to you, per the note on the partner's profile"*, Internal note, August 20, 2015, 13:49 (Exhibit 10, p. 3.)

39. These internal notes indicate that Uber employees make notes in the driver profile.

Tags and Reports

40. Uber did not provide Applicants with access to the 'tags' and 'reports' it maintains. However, the notes in Zendesk, concerning another driver, show that Uber uses labels ('tags') for 'Inappropriate Behavior' (production 11A, notes from May 1, April 24, April 10, March 29 and February 14) and of a 'police tag' (Exhibit 11B), p. 3, note from May 2, 2016).

41. Finally, reports are kept in the Uber system ('Reports') with regard to the following aspects:

- *'Navigation' (Late Arrival / missed ETA);*
- *'Professionalism' (Canceled on rider, Inappropriate behavior, Attitude) (Exhibit 11);*

Data processing Uber UK and Uber Technologies Inc.

42. The Applicants also request information demonstrating:

- *which categories of personal data are provided by Uber BV to legal entities established in the United Kingdom, including Uber London Ltd. (ULL) and Uber Britannia Ltd.;*
- *for which applicant-related data processing operations Uber Technologies Inc. acts as controller;*
- *which categories of personal data by Uber Technologies Inc. processed and for what purposes;*
- *or personal data of applicants to Uber Technologies Inc. be provided or processed in any other way outside the European Economic Area and, if so, (i) on what processing basis, as referred to in Art. 6 GDPR, this provision is based and (ii) which appropriate safeguards Uber BV has taken in this context under Art. 46 GDPR.*

Incomplete information about automated decision-making and profiling

43. Uber performs various data processing operations that must be classified as automated decision-making and / or profiling within the meaning of the GDPR. This is evident from Uber's Privacy Statement, which lists several examples (Exhibit 7, Section 'Automated Decision Making'). However, the information in the Uber Privacy Statement is particularly brief and general, partly in view of the fact that this document relates not only to drivers, but to all users of Uber, including passengers, 'Deliverers' and 'Uber partners'.

44. The fact that the information provided by Uber is not complete is demonstrated by various functionalities in the Driver App that provide information about driving behavior, the use of the phone while driving and the percentage of accepted trips (Exhibit 10). The information provided here is the result of an analysis of 'professional performance', 'reliability', 'behaviour', 'location' and 'movements', as referred to in Art. 4 section 4 GDPR and should therefore be regarded as a form of 'profiling'.

45. The Applicants have not received any further information regarding the existence of automated decision-making and / or profiling in response to their request for inspection. They therefore request an

order addressed to Uber to provide this information in accordance with Art. 15 (1) GDPR, first paragraph and under h). In particular, the Applicants wish to receive further information about automated decision-making and / or profiling in which (co-) use is made of the data categories mentioned in Guidance Notes (Exhibit 7), the Driver's Profile and / or Tags and Reports.

No transfer of personal data

46. Applicants have asked Uber for the data concerning them, insofar as it falls within the scope of Art. 20 GDPR, to be provided in the form of a CSV file. However, the Applicants have only received an exceptionally small part of the data concerning them in this format.

6. PECUNIARY PENALTY

47. Applicants request the imposition of a pecuniary penalty of € 10,000 each day Uber is in violation of the GDPR. The amount of this penalty is justified for several reasons. First, the Applicants have a strong interest in accessing and transferring their data, as they are highly dependent on Uber for their income.
48. Second, in the past, Uber has consistently failed worldwide to provide complete and accurate access in accordance with the GDPR and to cooperate with requests for data transfers. The legitimate interests of tens of millions of drivers in inspection and transfer (see marginal / paragraph 10) are therefore being systematically ignored.
49. Finally, the amount of the pecuniary penalty must be related to Uber's turnover and financial capacity. Uber had global revenues of \$ 14 billion in 2019. The claimed pecuniary penalty is therefore proportionate.

REASONS WHY:

The Applicants apply to the Court with the respectful request:

- To order the Respondent to provide Applicants, within one month after service of the decision on this Application, or within a reasonable period to be determined by your court, against a reasonable reimbursement of costs, in a commonly used electronic form, access to:
 - (i) all processed personal data related to them, including the personal data referred to in the Guidance Notes previously provided, the personal data in the Driver's Profile, including the notes of Uber employees and personal data in Tags and Reports related to Applicants;
 - (ii) the processing purposes, the categories of personal data concerned, the recipients or categories of recipients to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organizations and the retention period for these data;
 - (iii) if there is a transfer to a third country or an international organization, the appropriate safeguards regarding this transfer that the Respondent has made in accordance with Art. 46 GDPR;
 - (iii) the existence of automated decision-making, including the profiling referred to in Art. 22 (1) and (4) GDPR, and at least in those cases, useful information about the underlying logic, as well as the importance and expected consequences of that processing for Applicants.

- To order the Respondent to provide Applicants, within one month after service of the decision on this Application, or within a reasonable period to be determined by the Court, with the personal data provided by the Applicants to the Respondent in a structured, commonly used and machine-readable form, i.e. as a CSV-file, or through an API, in such a way that this data can be forwarded directly to another controller;
- To order the Defendant to pay a penalty of € 10,000 (ten thousand euros), or a penalty to be determined by the Court, for each day or part thereof that the Respondent fails to fully comply with one or more of the provisions under I and II orders mentioned;
- To order the Respondent to pay the costs of these proceedings;
- To declare the decision to be made to be provisionally enforceable;
- To determine a day and hour on which consideration of this petition will commence.

This case is being handled by mr. dr. A.H. Ekker, attorney at law.

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