

**UNOFFICIAL ENGLISH TRANSLATION**

**APPLICATION  
ART. 15 (1) GDPR**

Court of Amsterdam

Applicants in these proceedings are:

1. [Applicant 1],
2. [Applicant 2],

both choosing their domicile in this matter in (1019 AZ) Amsterdam at the address Panamalaan 6G, at the offices of Ekker Advocatuur, of whom mr. AH Ekker is appointed as a lawyer and will act as such.

The Respondent is the **private limited company Ola Netherlands BV**, having its registered office and principal place of business in (1114 AB) Amsterdam at the address Joop Geesinkweg 901 (**Ola Netherlands BV or 'Ola'**).

**1. INTRODUCTION**

1. Applicants work as licensed private hire drivers for Ola in the United Kingdom. They use the services of Ola via the Ola Driver App (“Driver App”).
2. Ola is a licensed private hire transport operator. The parent company is based in Bangalore, India and, through its mobile app, connects customers with official taxi drivers, as well as private drivers. Ola is also active in Australia, New Zealand, since February 2020, and the United Kingdom. In the UK an estimated 25,000 drivers work for Ola.
3. The Applicants requested Ola to:
  - inspect the personal data concerning them that are processed by Ola, on the basis of art. 15 General Data Protection Regulation (GDPR);
  - make the data they provide to Ola available in a structured, commonly used and machine-readable form, on the basis of art. 20 GDPR.
4. In response to the aforementioned requests (the “GDPR requests”), Ola Petitioners sent digital files. Ola's responses to the GDPR requests are attached in Exhibit 1A / B.

5. The files received by the Applicants do not contain the complete information they have requested and to which they are entitled under the GDPR. Applicants therefore turn to your Court with a request for Ola, in accordance with art. 35 paragraph 1 of the Implementation Act of the General Data Protection Regulation, to order that the GDPR requests be fully complied with.

## 2. BACKGROUND

6. Applicants are members of the App Drivers & Couriers Union (ADCU). The ADCU is a union who represents the interests of all private hire drivers & couriers in the United Kingdom, including in their relationship with employers and regulators. Among other things, the ADCU is committed to greater transparency about data processing by parties such as Ola. The ADCU is affiliated with the International Alliance of App Transport Workers (IAATW). Both organizations are committed to digital rights for 'platform workers'.
7. The ADCU is supported by Worker Info Exchange (WIE). WIE is a non-profit organization that aims, among other things, to give employees in the information economy access to (personal) data that is collected about them during their employment. In this context, WIE helps trade unions set up 'data trusts' in which personal data are brought together for analysis purposes. The insights obtained in this way can be used, among other things, in the context of collective bargaining. An important goal is to evenly distribute the balance of power between large digital platforms, such as Ola, and the people who make these platforms successful - the employees. The ADCU and WIE have jointly taken the initiative to establish a 'data trust' for (among others) Ola drivers.
8. The importance of transparency about the data processing by Ola is great, partly for the following reasons:
  - (i) Proceedings are being conducted in various jurisdictions regarding the question whether an employer-employee relationship exists between providers of Ride Hailing apps and drivers. An important factor here is the degree to which such providers have management control. This control is exercised, among other things, by means of algorithms and automated decision-making;
  - (ii) The UK court has ruled that drivers are entitled to a minimum wage and holiday allowance for each hour that they are logged into a Ride Hailing platform. In this context, drivers need to access their data in order to calculate their wages, assess the quality and quantity of the work offered and understand how they are performing in comparison to others. The aforementioned data are also necessary to be able to organize and to build collective bargaining power;

- (iii) Transparency about data processing enables drivers to better express their interests in the discussion of public policy decisions regarding transport regulations. Until now, the platform providers dominate the discussion about pricing and congestion charging, while its interests usually do not coincide with the interests of employees in the platform economy or society;
  - (iv) When making decisions about private hire licenses, drivers are assessed on their suitability. Their track record and behavior are very relevant in this regard. For this reason, drivers have a great interest in having unlimited access to their data at Ola;
  - (v) The UK court has ruled that drivers are entitled to protection against discrimination. Reports from Transport for London show that 94% of drivers with a private hire license have a migration background and / or a Black, Asian or other Minority Ethnicity background ('BAME'). Drivers are therefore frequently confronted with discrimination. In order to determine whether there is discrimination or unequal treatment, drivers need access to the calculation of their 'rating' in the Ola Driver App, the variance over time and the variance with respect to others, before every trip. Drivers with low ratings may be fired on the spot or be faced with other adverse consequences, such as deterioration in the quality or quantity of the work offered.
9. In view of the foregoing, the GDPR requests are also aimed at making personal data available to Worker Info Exchange.

### 3. LEGAL FRAMEWORK

10. With regard to the personal data that Ola processes about them, the Applicants can be regarded as data subjects within the meaning of art. 4 section 1 GDPR. After all, the relevant data can be traced back to Applicants, for example via the account data (name, address, telephone number, etc.) in the Ola Driver App.
11. Ola Netherlands BV and ANI Technologies Private Limited, an entity based in India, act as data controller within the meaning of the General Data Protection Regulation (GDPR) (see the Ola Privacy Policy, [Exhibit 2A / B](#)). Insofar as Ola Netherlands BV and ANI Technologies Private Limited act as joint controllers, the Applicants choose to exercise their rights against Ola BV, in accordance with the provisions of art. 26 (1) GDPR.

#### *Right of access*

12. Art. 15 (1) GDPR is:

*The subject has the right to obtain from the controller answer available on whether or not processing of personal data concerning him and, if that is the case, to obtain access to the personal data and the information:*

- a) *processing purposes;*
- b) *the categories of personal data concerned;*
- c) *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;*
- d) *if possible, the period during which the personal data are expected to be stored or, if that is not possible, the criteria for determining that period;*
- e) *that the data subject has the right to request the controller to rectify or erase personal data or to restrict the processing of personal data concerning him or her, as well as the right to object to such processing;*
- f) *that the data subject has the right to lodge a complaint with a supervisory authority;*
- g) *where the personal data are not collected from the data subject, all available information about the source of that data;*
- h) *the existence of automated decision-making, including profiling referred to in Article 22 (1) and (4), and, at least in those cases, useful information about the underlying logic, as well as the importance and expected consequences of that processing for the data subject.*

13. A data subject is required to submit a request for inspection on the basis of art. 15 (1) GDPR cannot be substantiated further.

#### *Right to data portability*

14. Article 20 (1) and (2) of the GDPR provide:

*1. The data subject has the right to obtain the personal data concerning him / her, which he has provided to a controller, in a structured, commonly used and machine-readable form, and he has the right transfer that data to another controller, without being hindered by the controller to whom the personal data were disclosed, if:*

*(a) the processing is based on consent under point (a) of Article 6 (1) or Article 9 (2) (a) or to an agreement under Article 6 (1) (b); and*

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

*2. When exercising his or her right to data portability under paragraph 1, the data subject shall have the right to have the personal data, where technically feasible, directly transferred from one controller to another.*

15. Ola must provide data subjects the opportunity to download personal data directly within the meaning of the GDPR. Ola is also required to provide data subjects with the possibility to send their personal data directly to another controller. For this purpose, an Application Programming Interface ('API') or a Trusted Third Party (TTP) can be used.<sup>1</sup> A good example is

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<sup>1</sup> An *application programming interface* (API) consists of subprograms, protocols and resources for creating software and applications. It refers to the interfaces of applications or web services that are made available by controllers 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.

the possibility that TomTom offers to download data via its website for use on other websites and in other file formats ([Exhibit 3](#)).

16. 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.
17. Generally speaking, given the purpose of the right to data portability, the term 'provided by the data subject' should be understood broadly and only 'deduced data' and 'derived data' are excluded. 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.<sup>2</sup>
18. The controller must enclose with the data as much metadata as possible, with the highest possible degree of fine grain, in order to preserve the precise meaning of the information exchanged.<sup>3</sup>

#### *Automated decision-making and profiling*

19. With regard to the Applicants, Ola is entitled to use automated decision-making and profiling, insofar as this is necessary for the performance of the agreement between Ola and the Applicants (art. 22 (2) (a) GDPR).
20. When applying automated decision-making and profiling, Ola must comply with the provisions of art. 22 (3) GDPR:

In the cases referred to in paragraph 2 (a) and (c), the controller shall take appropriate measures to protect the rights and freedoms and legitimate interests of the data subject, including at least the right to human intervention of the controller, the right to express one's point of view and the right to challenge the decision.

21. In order to assess whether Ola complies with these obligations, it is very important for drivers that Ola complies with the requirements set out in art. 15 (1) (h) of the GDPR.
22. The GDPR defines profiling as follows:

*“profiling”*: any form of automated processing of personal data in which certain personal aspects of a natural person are evaluated on the basis of personal data, in particular with the aim of his professional performance, economic situation, health, personal preferences, analyze or predict interests, reliability, behavior, location or movements (art. 4 section 4 GDPR).

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<sup>2</sup> See 'Guidelines for the right to data portability', Dutch Data Protection Authority, p. 9.

<sup>3</sup> See 'Guidelines for the right to data portability', Dutch Data Protection Authority, p. 15.

23. When applying profiling, Ola must 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 to minimize the risk of errors. Discriminatory consequences of profiling must also be avoided (Recital 71 GDPR). These conditions are also laid down in the general principle of "proper data processing" ("fair" in the English version) on the basis of art. 5 (1) (a) GDPR.

#### **4. DATA PROCESSING OLA**

24. Ola processes large amounts of personal data about drivers via the Driver App. General information about these data processing operations is included in the Ola Privacy Policy (Exhibit 2A / B). In her Privacy Policy, Ola refers to a document called 'How we process your data' (Exhibit 2B). This includes a more detailed overview of the categories of data that Ola processes.
25. The data processing by Ola has a major impact on the Applicants. After all, through this data processing Ola gets a highly penetrating picture of, among other things, the driver's work performance, use and usage patterns of the Ola Driver App, the location and driving behavior of the driver, communication with customers and Ola's support department, etc. Within the Ola Driver App decisions are made partly on the basis of this data, for example about the allocation of rides and applicable rates. Applicants are highly dependent on this for their income.

#### **5. VIOLATIONS OF GDPR OBLIGATIONS BY OLA**

26. In its response to the GDPR requests, Ola has not complied with its obligations in several respects. This is explained in more detail below.

##### **Incomplete access to personal data**

###### *Privacy Policy data categories*

27. The Ola Privacy Policy and the accompanying documentation show that Ola processes a large number of different categories of personal data. However, the Applicants were not allowed access to many of these data categories. This concerns in particular:
- the Personal Data mentioned in the document 'How we process your data' under 'If you are a driver or partner', including in particular Customer transactions, Rating history, Earning profile, Booking cancellation history, Booking acceptance history and Fraud probability score. These data are essential for Ola's assessment of the Applicants. For example, the passenger rating ('Rating history') can determine the amount and quality of the rides offered to Applicants and poor ratings can lead to the deactivation of drivers' accounts;
  - full GPS data of each trip: Applicants have only received the GPS data of the start and end of the trips they carried out, while Ola has the complete GPS data of each trip. This

is evident from the fact that Ola makes these complete data available to passengers. Moreover, Ola only received data for the last month, while the 'RTA Information' file received by the Applicants shows that Ola has data that goes back much further. Moreover, the GPS data is not provided with date and time, which makes these data incomprehensible to Applicants. The GPS data is essential for Applicants, among other things, to be able to analyze what part of their time is spent on journeys and what part on unpaid kilometers;

- Device data from the mobile phone and other peripherals of the driver, such as location data, battery data and other data about the use of this equipment.

#### Data processing outside the EEA

28. Applicants request on the basis of art. 15 (2) GDPR also for information showing whether personal data of Applicants are provided to a third country and, if so, (i) on what processing basis, as referred to in art. 6 GDPR, this provision is based and (ii) what appropriate safeguards Ola BV, pursuant to art 46 GDPR, has taken in this context.

#### **Incomplete information about automated decision-making and profiling**

29. response to their request for access, Applicants have received further information about the existence of automated decision-making and / or profiling. In her response, Ola referred to her Privacy Policy and the document "How we process your data" (Exhibit 2A / B). The latter document contains the following description:

##### *Allocation of Vehicles, Route Determination, Pricing, Offers and Communications*

We use a combination of customer and driver personal data, such as:

- (i) customer data such as frequency and time of usage of our site / application / services, payment modes, pickup and destination area, derived pickup locations, vehicle category preference, device information, gender, age, historical driver preference, cancellation history, fraud probability score and / or interaction history with customer care; and
- (ii) driver data such as rating history, earning profile, booking cancellation history, booking acceptance history, distance from user, home location preference, payment method preference, fuel type of the car, leasing car, car maintenance history, proximity to customer , fraud probability score, and / or interaction history with customer care,

to allocate drivers' vehicles to requesting customers, and to determine the route and pricing. We also use a combination of the above information to communicate to customers and drivers regarding our offers, discounts, incentives and promotions. We also use this personal data to determine your preferences for pickup and destination locations,

##### *Safety and Security*

Based on the name provided by you at the time of registration, we may determine your gender and provide services with the intention of ensuring your safety, security and comfort.

##### *Device Information*

Based on the device information collected from you, combined with online sources for device prices, we may match your device information (including brand, model and version) with a device pricing catalog to determine your economic status. Based on the category of economic status identified, we may provide personalized offers, communications and services.

*Performance and Reliability of Users*

Based on user ratings and their work performance, including any complaints received by us, we may automate the allocation of drivers to customers and vice versa.

30. This explanation is not complete. First, there is no information about automated decision-making that Ola uses to determine that rides are 'invalid'. Such automated decision-making is apparent, among other things, in the following explanation by Ola, in response to questions from [Applicant 1] about such a settlement [\[Exhibit 4\]](#):

*"We like to inform you that at Ola we do have a system in place which checks all the unusual activity and applies penalty and deduction if something found against Ola's terms and conditions. As this is an automated process hence we do not have any manual intervention in it. and as per the update form our relevant team, we have found the trips to be invalid. Hence, deductions hold correctly and cannot be reversed. "*

31. This explanation shows that the automated decisions relate, among other things, to the application of 'penalties' and 'deductions'.

32. In addition, information is lacking about specific forms of artificial intelligence and machine learning that Ola has recently introduced. This is evident from a press release from Ola of February 10, 2020 ([exhibit 5](#)):

*Ola is launching its flagship global safety feature, 'Guardian', which uses AI and machine learning to automatically detect irregular vehicle activity, a 'Start Code' feature to ensure customers and drivers are correctly matched, 24/7 voice support for riders and drivers, and a cap of six penalty points for drivers on its platform.*

33. This passage shows that automated decision-making is used to detect irregular vehicle activity, to match customers and drivers and to keep track of penalty points, which can lead to deactivation of the Driver Account.

34. After all, Ola has not complied with its obligation to provide 'useful information' with regard to automated decision-making about 'the underlying logic, as well as the importance and expected consequences of that processing for the data subject' (Article 15 (1) (h) GDPR) .

35. As licensed private hire drivers, the Applicants are required by regulators, including Transport for London ('TFL') to comply with high standards, including in the field of safety. The Applicants therefore have a great interest in transparency about the way in which it can be



concluded with the aid of artificial intelligence and machine learning that there is “irregular vehicle activity”. This is the case, among other things, because Ola is legally obliged to share certain findings of unlawful conduct or fraud with supervisors, who can decide on this basis to take further measures, including the withdrawal of the Applicants' licenses.

36. In view of the foregoing, the Applicants request an order addressed to Ola to still comply with Art. 15 (1) GDPR, preamble and under h) to provide complete information about the existence of automated decision-making and / or profiling.

#### **No transfer of personal data**

37. Applicants asked Ola for the data concerning them, insofar as this falls within the scope of art. 20 GDPR, to be provided in the form of a CSV file. However, the Applicants have received only a very small part of the data concerning them in this format.

#### **6. EXPLANATION OF COSTS**

38. Applicants are requesting the imposition of a penalty of € 2,000. The amount of this penalty payment is justified for various reasons. In the first place, the Applicants have a great interest in accessing and transferring the data concerning them, since they are highly dependent on Ola for their income.
39. In addition, the amount of the penalty must be related to Ola's turnover and financial strength. Ola had worldwide sales of \$ 310 million in 2018. In this light, the claimed penalty can be called proportional.

#### **REASONS WHY:**

Applicants respectfully request your Court to:

- I Order the Respondent to, within one month of service of the order on this application, or within a reasonable period of time to be determined by your Court, grant Applicants access in a commonly used electronic form to:
  - (i) all personal data relating to them that it processes, including the personal data as stated in the Privacy Policy and the accompanying documentation;
  - (ii) the purposes of the processing, 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) information about 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 significance and expected consequences of that processing for Applicants;

- (iv) in the case of a transfer to a third country or an international organization, the appropriate safeguards regarding this transfer which the Respondent has made in accordance with art. 46 GDPR.
  
- II to order the Respondent to provide the Applicants with the personal data provided by the Applicants to the Respondent in a structured, commonly used and machine-readable form, within one month of service of the order on this petition, at least within a reasonable period to be determined by your Court, namely as a CSV file, or by means of an Application Programming Interface (API), in such a way that this data can be directly transmitted to another controller;
- III to order the Respondent to pay a penalty of € 2,000 (two thousand euros), or at least a penalty to be determined by your Court, for each day or part thereof that the Respondent fails to fully comply with one or more of the under I and II said orders;
- IV order the Respondent to pay the costs of these proceedings;
- V declare the decision provisionally enforceable;
- VI to determine a day and hour on which to start processing this petition.

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This case is being handled by A.H. Ekker, Attorney at law.

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