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**Berlin Commissioner for
Data Protection and
Freedom of Information**

Friedrichstr. 219
10969 Berlin

Visitors' entrance:
Puttkamer Str. 16-18

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disabled members of the public.

Final Decision

The Berlin Commissioner for Data Protection and Freedom of Information (Berlin DPA) decides as follows on the complaint against Entertainment Media GmbH for violations of the right to information and the right to object:

The complaint is rejected.

Legal basis: Art. 15, Art. 21, Art. 57(1)(f), Art. 60(8) and Art. 77 of Regulation (EU) 2016/679 (General Data Protection Regulation - GDPR).

REASONS

A. Arguments of the parties and procedure

1. By letter of 14 March 2019, the complainant informed the Berlin DPA that he had been receiving advertising e-mails for months. It was alleged that one could unsubscribe through the infoboxes in these e-mails. In the imprint of an enclosed e-mail message, the controller was named. On the basis of Art. 15 DSGVO, the complainant wanted to know where the controller got his data from, to whom the data was forwarded, what purpose the storage it served and what data about him was stored.

2. Since the facts of the case are based on cross-border data processing, the Berlin DPA placed the case in the Internal Market Information (IMI) system, which is used in the context of the cooperation procedure and consistency mechanism to handle the cross-border procedure in accordance with the provisions of the GDPR. It turned out that the controller's main establishment, per address Wienerbergstraße 111/12A, 1100 Vienna, is Vienna, so that the Austrian data protection authority (DPA) is the lead supervisory authority in this procedure pursuant to Art. 56(1) GDPR.

3. On 5 August 2019, the Austrian DPA requested the Berlin DPA to submit the correspondence of the complainant in which he asserts his rights as a data subject vis-à-vis the controller, since this correspondence had not been enclosed with the original complaint. On 29 October 2019, the Berlin DPA informed the Austrian DPA by way of mutual assistance in the "Internal Market Information (IMI) System", IMI number: A61VM 72872 to the effect that the complainant has not yet acted vis-à-vis the controller and is therefore unable to produce any correspondence.

B. Subject matter of the complaint

In the present case, the question arises whether the respondent infringed the complainant's right to information or his right to object.

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C. Findings of the facts

The complainant has received an unsolicited advertising e-mail from the controller. He informed the Berlin DPA of this fact in the context of his complaint of 14 March 2019. The controller has its main establishment in Austria. The complainant did not contact the controller regarding the assertion of his rights as a data subject concerned.

Evaluation of the evidence: The findings result from the complainant's submission to the Berlin DPA dated 14 March 2019 and from the notification of the Berlin DPA to the Austrian DPA in the Internal Market Information (IMI) system dated 29 October 2019.

D. From a legal point of view, it follows:

It follows from Art. 12 GDPR that the rights under Art. 15 to 22 GDPR are rights that require a request by the data subject.

As has been established, in the present case, such requests for information (Art. 15 GDPR) or objections (Art. 21 GDPR) were not made to the controller, which is why the present complaint had to be dismissed for this reason alone.

If a complaint is dismissed or rejected, the supervisory authority to which the complaint was submitted issues the decision in accordance with Art. 60(8) GDPR and notifies it to the complainant and the controller.